RELIGIOUS LIBERTY IN NATION-STATES: PRACTICE, PRINCIPLES AND IDEAS

Religious liberty has become a more contentious issue in today’s globalised world, says Samuel Gregg

The subject of religious liberty is, almost by definition, closely associated with the question of the character and limits of state authority. In the pre-Christian world, Judaism always implied some limits upon the authority of temporal rulers. It was, however, with the advent of Christianity that the question of religious liberty—in the sense of limits on state coercion on the religious beliefs and practices of individuals and organisations—started to assume profound political and institutional significance.

Jesus Christ’s famous words ‘render to Caesar what belongs to Caesar—and to God what belongs to God’ (Lk. 20:25) were revolutionary in their implications for how most people (including non-Christians) subsequently understood the state. Luke’s Gospel records that Christ’s ‘answer took [his questioners] by surprise’ (Lk. 20:26). As Lord Acton said, ‘in religion, morality, and politics, there was only one legislator and one authority’ in the pre-Christian ancient world: the polis (πόλις) and later the Roman state. Separation of the temporal and spiritual was incomprehensible to pagan minds because such a distinction did not exist in the pre-Christian world.

Throughout the Greco-Romano world, the widespread ascription of divine characteristics to the polis and the Roman state was paid lip service. Roman authorities generally exempted Jews from the emperor worship required of all the emperor’s subjects. Yet the pagan synthesis of religion and state caused immense difficulty when people could not appeal to a divine law that transcended the polis or the state.

By universalising the Jewish belief that those exercising legal authority were as subject to Yahweh’s law as everyone else, Christianity achieved the hitherto unthinkable: the state’s de-sacralisation. Certainly, Christianity was respectful of the Roman state’s authority. The writings of St. Paul and St. Peter, for instance, underlined the divine origin of the state’s legal authority. Nevertheless, Judaism and Christianity also quietly insisted that Caesar was not a god and may not behave as if he was a god. Though Jews and Christians would pray for earthly rulers, it was anathema for Jews and Christians (and, later, Muslims) to pray to such rulers. Jews and Christians regarded the state as the custodian of social order, not the ultimate source of truth and law.

When Constantine gave religious liberty to the Christian Church in his Edict of Milan (313 AD), he effectively conceded that Caesar was no longer god.

This set the stage for on-going confrontations concerning the religious freedom of individuals and organisations vis-à-vis the state all over the world. The denial of religious liberty has resulted in the systematic and sporadic coercion of millions over the centuries, particularly by...
communist regimes throughout the twentieth century. Today, we still face questions about the legitimacy of religious belief as a foundation for activity in the public square, blasphemy laws, religious tests for public office, religious education in private and public settings, state-funding of religious activities, etc.

This essay focuses on a very specific issue: religious liberty vis-à-vis the nation-state. It identifies the primary ways in which the nation-state has unduly inhibited religious liberty and discusses how nation-states might avoid such infringements in the future.

Why religious liberty matters

Religion, ‘religious liberty,’ and religious belief are best defined in terms of one’s search for and conclusions concerning the truth about the transcendent. The word ‘religion,’ derived from the Latin *religionem*, meant ‘reverence for the gods, respect for what is sacred, or the bond between man and the gods.’ Religion is thus directly concerned with the truth about the divine (including the question of whether or not there is a divinity) and the meaning of that truth for human choice and action in a way that political beliefs and ideological convictions or non-religious forms of human organisation are not.

Of course, particular political or ideological convictions may imply, reflect or demand commitment to a specific religious position (such as Marxism’s deep commitment to and reliance upon atheism, or National Socialism’s promotion of a type of paganism) from its adherents. But political philosophies such as liberalism, socialism and conservatism, or projects such as the promotion of cultural and national identities, are not immediately concerned with attempting to know and then express the truth about the transcendent in the ways that atheism, Christianity, Islam, Judaism, Hinduism, or Buddhism are.

Such an understanding of religion does not require the assent of the mind and will to a religious claim. An atheist is one who has presumably thought seriously about and found unconvincing the claims of one or more religions to embody a divine revelation and the many arguments for the existence of a divinity that have and continue to be made on the basis of reason unaided by revelation. But what the atheist or agnostic *can* share with the religious believer is an understanding of the point of considering whether there is some ultimate, more-than-human source of value and meaning, of using one’s intellect to discern such a truth, and then trying to order one’s life based on one’s judgments about this matter.7

This understanding of religion’s nature provides a strong basis for religious liberty as an *immunity from coercion* in respect of religious belief, expressions of religious belief, and other acts of putting one’s religious belief into practice that are compatible with law exclusively motivated by concern to uphold just public order: the rights of others, public peace, and public order.8 For if religion is conceptualised in this manner, then religious liberty must be about ensuring that all are *free to consider* whether there is an ultimate transcendent being/s who provide/s a compelling explanation of life, and then to assent to the conclusions of their reason. This is crucial for the *integrity* of one’s religious belief or non-belief.9 As St Augustine wrote: ‘If there is no assent, there is no faith, for without assent one does not really believe.’10 Coercion for the sake of religious belief (including atheism or agnostic convictions) destroys people’s understanding of the point of free inquiry into such matters.11

But religious liberty goes beyond and allows *all* people the *freedom to act* according to their conclusions consistent with the rights of others and public order—the freedom to go to a synagogue, church, temple, mosque, or nowhere on a given day; to fast or not to fast at particular times of the year; to dress in a particular way; to educate one’s children in a certain fashion; to formally change one’s religion, or even create one’s own religion; or to abandon one’s religion.

In each of these instances, the believer will regard the protection of religious liberty as upholding his freedom to fulfil his duties towards God or the gods. Nevertheless, it also means that agnostics and non-believers cannot be forced to worship anyone or anything, or perform actions inconsistent with their non-belief or agnosticism. Legal recognition of religious liberty confers upon believer, non-believer, and agnostic alike
RELIGIOUS LIBERTY IN NATION-STATES: PRACTICE, PRINCIPLES AND IDEAS

certain immunities from coercion, regardless of their actual beliefs.

Religious liberty is not of course an absolute. It is subject to the legitimate demands of public order. If, for instance, a religion regards violence against its members, potential adherents of that religion, or anyone else as permissible or even obligatory, then there are good reasons for governments and legal systems that acknowledge the right to religious freedom to prevent such actions. To do so would be consistent with the state's responsibility to protect religious liberty, rather than contrary.

The state and the nation-state
The state is an organisation that claims to exercise the rights of sovereignty over a territorial unit. In this sense, the Roman state shares the same qualities as the pólis of Athens in the fourth century BC, the eighteenth-century Kingdom of Prussia, or the twenty-first century Commonwealth of Australia.

Defining the nation-state, however, is more complicated. A nation-state's emergence typically involves several of the following:

1. Identifying a sovereign state with a particular ethnic, linguistic, cultural, tribal or religious identity and usually constrained territorial boundaries and political and moral commitments.

2. The centralised provision of public works and forms of transportation within their borders, designed in part to consolidate ease of movement within those boundaries.

3. Abolishing economic barriers between different regions of a country. Free trade established between Scotland and England in 1707 created the United Kingdom of Great Britain.

4. Forced integration and assimilation of different linguistic and cultural groups over long periods of time and expulsion of groups deemed incompatible with national identity or unity because of their customs, language, and/or religion.

At different points in their history, many nation-states have also been the focus of, and often enabler of, nationalism in ways that the pólis, for instance, was not. Nationalism here means a powerful identification by a group of individuals of ethnic, linguistic, and/or cultural links with the state and implies some hostility to other nations. Historically speaking, nationalism emerged after the French Revolution. Such nationalism can become closely associated with a particular religion. But nationalism can also embody negative views of various religions—either because adherence to certain religions is regarded as incompatible with belonging to the nation, or because it views religion as an obstacle to national unity.

Nation-state governments generally tend to assert increasing control over religious belief, practice and institutions. Between the Edict of Milan (313 AD) and the sixteenth-century, the state and the Christian Church in the West had an uneasy relationship—monarchs were constantly attempting to limit the considerable autonomy enjoyed by the Church. Nation-states, however, went much further than medieval societies in their efforts to subordinate the autonomy of religious organisations. In a number of Protestant nation-states such as England and the Scandinavian nations, the monarch claimed to be the unrivalled and uncontested head of the Church and answerable to God alone.

The nation-state versus religious liberty
The nation-state presents at least three challenges to religious liberty.

The first are efforts by nation-states to formally penalise, expel or even eliminate groups of people whose religious beliefs are considered a hindrance to national unity and cohesion. In sixteenth-century Europe, penal laws were enacted against Roman Catholics in England and Scotland, the Huguenots were expelled from Louis XIV's France, and Philip III of Spain exiled the Moriscos to North Africa. In all these instances, the religious beliefs and/or practices of those being persecuted were regarded by the civil authorities as compromising the loyalty owed by subjects to the relatively new nation-states.

In our own time, many nation-states often avoid direct confrontation and instead employ
RELIGIOUS LIBERTY IN NATION-STATES: PRACTICE, PRINCIPLES AND IDEAS

administrative and quasi-legal methods to harass and intimidate religious groups they consider hostile. This is how the Nazi regime pursued its campaign against the Christian churches. In other cases, state officials sympathetic to (or intimidated by) particular political movements may turn a blind eye. State officials in parts of India have, for example, persistently failed to act against the often violent harassment of some Christian minorities by Hindu-nationalists.

A second challenge created by nation-states to religious liberty are those instances in which people are formally free to embrace any religion, but only on terms which amount to the state asserting a claim—on the basis of national interest or national unity—to determine what people embracing a particular religion are permitted to believe and/or do.

China is a contemporary instance of such nation-state subordination of religion. China has five state-approved religions subordinated to the government’s State Administration of Religious Affairs: Buddhism, Taoism, Islam, Protestantism, and Catholicism. Such arrangements reflect the long history of Communist hostility to civil society. But in China’s case, they also reflect a long-standing suspicion of the Chinese state towards religions with allegiances beyond China’s boundaries or that are perceived to be associated with colonialism. As the saying once went: ‘One more Christian, one fewer Chinese.’

To worship legally, Protestant Christians must belong to churches recognised by the National Committee of the Three-Self Patriotic Movement of the Protestant Churches in China. Only those Catholics belonging to the Chinese Catholic Patriotic Association can worship publicly. The deliberate use of the words ‘national’ and ‘patriotic’ in the titles of these organisations reflects the regime’s claim that national interests trump religious liberty.

The third instance of nation-state conflict with religious liberty may be found in the state's efforts to associate national identity with the practice of a particular religion. Such cases do not involve the association of national identity (loosely or formally) with the cultural influence of certain religions (such as Lutheranism in Scandinavian countries). Rather, they concern instances such as the deep integration of the state, Russian nationalism, and the Orthodox that prevailed under Tsarist rule in Russia. This often created considerable difficulties for many of the Tsars’ non-Orthodox, non-Russian, and non-Christian subjects in the form of usually sporadic (but sometimes systematic and violent) formal and informal state discrimination against and harassment of one or more of these groups at different times.

Legal recognition of religious liberty confers upon believer, non-believer, and agnostic alike certain immunities from coercion, regardless of their actual beliefs.

Securing religious liberty in nation-states

For the foreseeable future, nation-states are likely to remain part of the world’s geo-political structure. They will continue to exist alongside much older formations, specifically religions such as Islam, Buddhism, and Christianity, whose scope and outlook is by definition not limited to national boundaries and which, in many cases, insist that the will of the state or the nation is not absolute.

It is also likely that variants of the three problems that nation-states pose for religious liberty will continue in the near future. It will be especially interesting to see how nation-states such as Egypt, Libya and Tunisia in the Middle-East, long subject to authoritarian regimes that often legitimised themselves in nationalist and/or pan-Arab terms, will treat the issue of religious liberty.

Today’s nation-states appear to resolve, avoid or suppress in four ways the legitimate claims religious liberty to immunity from coercion.

1. Soft-establishmentarianism: Nation-states recognise a particular religion as the national religion or the state church while also insisting that religious liberty is a right enjoyed by every member of the political community, regardless of their faith or non-belief. For example, England recognises the Church of England
as the officially established church of the country but does not constrain other religious organisations. People are also free to change their religious commitments and practices with no interference from the state or the Church of England.

There is a regrettable tendency, particularly on the part of Western policymakers, to treat all religions the same, to regard all religious traditions as infinitely adaptable sociological and cultural phenomena.

2. **Hard-establishmentarian:** Establishmentarianism can also manifest itself in the form of the nation-state upholding and aggressively promoting an official national religion in ways that undermine legitimate religious liberty immunities. In such cases, government may not overtly force others to convert to the official religion. But such nation-states can make it very difficult—and even a legal offence—for adherents of the official national religion to convert to another religion or eschew religion altogether. The state may also exert informal pressures, such as refraining from punishing those who engage in forced conversion practices on non-adherents of the official national religion.

3. **Doctrinaire-secularism:** In this approach, nation-states adopt a form of secularism that allows people to choose their religion but restricts the exercise of religious liberty to religious worship in the sense of prayer and gathering in religious buildings such as mosques, temples, synagogues and churches. In short, it endorses one dimension of religious liberty but radically constrains the freedom to act on one's religious convictions.

St. Jerome’s Latin New Testament uses the word ‘secular’ for Greek words that signify the affairs of this world neutrally as the world of time rather than eternity, and as the daily life of any human society. By ‘secularism,’ however, I mean a distinct set of beliefs by which any religious-motivated action is unacceptable in the public square. Such secularism has nothing to do with maintaining a healthy distinction between spiritual and temporal authority. Rather, it is about the state effectively prohibiting or unduly restricting religiously-motivated acts outside the freedom to worship.

4. **Non-confessionalism:** Governments of nation-states refrain from legally recognising any one religious position and treat fairly members of all religious groups, including non-believers and agnostics. This arrangement seeks to guarantee the freedom of all religious communities and non-believers within a free society, consistent with the liberties of others and the legitimate demands of public order.

Non-confessionalism does not mean the nation-state is obliged to deny a nation’s religious heritage—something often implied in doctrinaire secularist positions. To pretend that Islam is not the religion of the overwhelming majority of Saudis or that it has not exerted tremendous influence upon Arab and Turkish history and culture is as ahistorical as trying to deny the influence of Orthodoxy in Russia, Hinduism in India, Lutheranism in Finland, Shintoism in Japan, or Buddhism in Thailand.

The first and fourth models are most conducive to the exercise of religious liberty. Neither will resolve all conflicts between religious liberty and the demands of the nation-state. They do, however, provide a basis for coherent legal and political policies concerning religious liberty in nation-states in ways that are less obvious in hard-establishmentarian or doctrinaire-secularist positions. They also do the most justice to the understanding of religion as the search for the truth about the transcendent and the consequent decisions about this subject that inform one’s actions.

**Prospects for accommodation**
The precise policies towards religion and religious liberty in nation-states that adopt soft-
establishmentarian or non-confessionalism need not be uniform. Imposing an abstract one-size-fits-all framework is likely to produce unnecessary conflicts, especially with truly transnational religions.

The extent to which nation-states can adapt to either soft-establishmentarianism or non-confessionalism may have less to do with the specific characteristics of the nation-state itself and more to do with its attitude towards religion in general and/or the position of religious minorities. Nation-states that desire to radically limit religious liberty to attain particular national goals, regard particular religions as deeply corrosive of national unity, are committed to one or more forms of doctrinaire-secularism, or are hostile in principle to all religions will certainly struggle to accept either non-confessionalism or soft-establishmentarianism.

In whichever way nation-states address the religious liberty issue, globalisation has significantly changed the religious complexion of so many nations so that they now contain large numbers of people who follow a religion (or none) other than the traditional religion. Several million Muslims live in historically Christian Europe, while hundreds of thousands of Hindus and Christians live and work in the traditionally Islamic Gulf states.

Religious liberty is of even more pressing concern for those concerned with free societies in nation-states because of the growing religiosity of people across the globe. Having written an obituary for God in 1999, The Economist found itself backtracking just seven years later as it sought to explain why religiosity was on the rise in a book. The world is becoming more religious rather than less; modernisation or globalisation is not automatically leading to less-religious societies.

While certain parts of the West (broadly construed) have become less overtly religious over the past century, they are very much the exception rather than the rule. Societies can move from somewhat indifferent to religion to being overtly religious in very short periods of time. Likewise, the rather secular-nationalist and socialist-modernisation agendas that characterised much of the Arab world and culture from the 1850s to the early 1970s have been largely eclipsed by more overt expressions of commitment to Islam.

But perhaps above all, accommodation requires the nation-state—and therefore those determining its policies regarding religion and religious liberty—to take seriously the internal nature of different religions. There is a regrettable tendency, particularly on the part of Western policymakers, to treat all religions the same, to regard all religious traditions as infinitely adaptable sociological and cultural phenomena, and to view their respective religious authorities as akin to temporal politicians. The result is to disregard or fatally misread two of the most important forces at work in a given religion, namely, the question of authority—who decides what a religion determines to be true doctrine—and a religion's theological understanding of the divinity. For better or worse, ideas matter—including theological ideas and each religion's conception of religious authority. Until lawmakers and policymakers take such matters seriously, their capacity to secure religious liberty in different contexts, including that of nation-states, will be severely inhibited.

Endnotes

1 Lord Acton, Essays on Freedom and Power (Boston: Crossroad, 1948), 45.
6 It is true that through the centuries, there have been instances when Christian churches and ecclesial communities have associated themselves with the exercise of temporal power to varying degrees, precisely because they paid insufficient attention to the differences and distinctions between the temporal and spiritual orders that Christian

This understanding of religious liberty may be found in the European Convention on Human Rights, Article 9(1), but is expressed even more clearly in the Second Vatican Council’s Declaration on Religious Liberty, *Dignitatis Humanae* (1965).

Note that this conception of religious liberty is not based on ‘a right to self-respect,’ as Ronald Dworkin interprets the American Constitution’s First Amendment (Ronald Dworkin, *Justice in Robes* (Harvard: HUP, 2006), 134). It is primarily based on respect for the truth.

St Augustine, *De Fide*, Spe et Caritate, 7.

This is one of the central points made by Pope Benedict XVI in his now famous 2006 Regensburg address. See Benedict XVI, ‘Faith, Reason and the University: Memories and Reflections,’ Aula Magna of the University of Regensburg (12 September 2006).

In *Dignitatis Humane*, the Second Vatican Council framed ‘legitimate demands’ in terms of the requirements of natural law (understood in Aristotelian-Thomistic terms). It was able to do so because the council’s statement about religious liberty was itself based on natural law principles (as well as Christian Revelation in the form of Sacred Scripture and Tradition) rather than pragmatic arguments, strictly autonomist claims, premises derived from scepticism, or a commitment to religious indifferentism.

There may well be other supplementary reasons (immediate concerns, for example, about civil peace) for the state to tolerate a plurality of religious beliefs and religiously motivated actions within its borders. However, there are two difficulties in relying upon pragmatic rationales.

First, pragmatism provides no principled basis to protect the religious liberty of others if a religious or non-religious group with little respect for religious liberty becomes the majority and establishes political dominance over that society. Being ‘pragmatic’ in such circumstances could easily lead to the conclusion that suppressing one or more other religions is ‘the pragmatic thing to do.’

Second, the absence of a principled defence of religious liberty can make it easier for the state to act in ways that unreasonably suppress the religious liberty of individuals and organisations. Almost all communist states (with the exception of Albania), for instance, were formally committed by their constitutions to religious liberty. Yet the same regimes regularly invoked pragmatic concerns (‘reasons of state’) to suppress the religious liberty of individuals and organisations—to the point of harassing, imprisoning, torturing and executing hundreds of thousands of people. Today, the same rationales are employed against particular religious groups in modern-day communist states such as China, Vietnam and North Korea. By contrast, if religious liberty is based on the idea of religion outlined in this essay, then at least the burden of proof for legitimate coercion by the state of religious believers in countries that take the rule of law and legal justice seriously is much higher.

Il Tim. 1.9; Tit: 1.2.

14 I. Cor. 6: 3-4

15 See ‘God,’ *The Economist* (Millennium issue) (23 December 1999).

16 ‘In God’s Name,’ *The Economist* (1 November 2007).


18 In America, the percentage of the population that describes itself as ‘atheist’ has remained steady at less than 4% of the population since 1944 (See Rodney Stark and Byron Johnson, ‘Religion and the bad news bearers,’ *The Wall St Journal* (26 August 2011)). In most European countries, rates of religious practice have either stabilised or, in some cases, actually increased. Rates of mass attendance in Italy and Spain have grown considerably since 1980. It is arguable that we are witnessing in parts of the West: (1) the collapse of religious practice among society’s economically poorer segments; (2) the slow-motion demise of ‘liberal Christianity’ (‘liberal’ in the sense of a notable self-distancing from orthodox Christian doctrinal claims and often the effective replacement of such claims with the espousal of progressive political and social causes); and (3) the deterioration of the churches that enjoy the status of being a given country’s formally established church.