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## **The Atlas of Religious or Belief Minority Rights: First Data (With a Focus on Jehovah's Witnesses)**

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**ABSTRACT:** The article describes the content, aim and methodology of the project “Atlas of Religious or Belief Minority Rights in the European Union Countries,” providing a few examples of the data and information it contains. In the last section, these data and information are examined with reference to the Jehovah's Witnesses, and the process of “normalization” of the legal position of this religious group.

**KEYWORDS:** Religious Minority Rights, Atlas of Religious or Belief Minority Rights, Religious Minorities, Religious Minorities in the European Union, Jehovah's Witnesses.

### *Introduction*

Is it possible to map and measure the rights of religious or belief minorities? Yes, provided that certain conditions are met regarding how to collect and analyse the data.

The first part of this paper provides a description of the project, followed by a discussion of some methodological issues and a presentation of a small sample of data. The second part is devoted to the examination of a case study consisting of a particular religious minority, Jehovah's Witnesses.

### *The Atlas of Religious or Belief Minority Rights in the European Union Countries*

Fostering equal treatment of religious and belief minorities (RBMs) and fighting discrimination is a more and more pressing need in countries where religious and belief diversity is rapidly growing. To face this challenge, innovative technological

tools, new theoretical approaches, and original implementation strategies are needed. They must (a) provide reliable data and information about the status of RBMs in the EU countries; (b) develop a sound scientific framework for the interpretation of the impact of social and political change on new and old minorities; (c) make this new knowledge available to the general public, raising the awareness of the need to include RBMs in our societies; (d) develop instruments that are immediately available to people confronted with discrimination based on faith or belief in their everyday life.

These goals can be attained only by bringing together different stakeholders: scholars and institutions from social sciences and information technology, RBMs leaders, members of organizations which are engaged with the protection and promotion of RBMs at the grass-roots level, representatives of international and national bodies engaged in tackling RBM discrimination. Combining their different expertise is the key to address the complexity of the issue of RBM rights, and to build interpretive models and dissemination tools that are scientifically sound and practically effective.

The purpose of the Atlas is two-fold:

(a) provide a map of the RBM rights in the EU countries. This map does not currently exist, and the Atlas will make it possible to “see” the rights enjoyed by all RBMs in a country (or in the EU countries as a whole), and the actual compliance with them by any individual State;

(b) provide a reliable system for measuring these rights (also not currently available). The measurement will cover both the rights granted to RBMs by the laws in force in a country and the rights they actually enjoy (the two rarely coincide).

The Atlas website is the terminal point of the data and information collected through questionnaires addressed to social science experts and RBM representatives in the EU States. These data constitute the “new knowledge” component of the project, and the Atlas is the instrument to translate this new knowledge in communication formats that can help educators, politicians, community leaders, judges, and other stakeholders to develop a “culture” of equal treatment in the different settings (school, workplace, etc.) where people are confronted with discrimination based on religion or belief.

The Atlas will offer an easy-to-read comparative description of the legal and social status of RBMs in the EU countries. The website user will be able to select a

single RBM, a specific country, and a particular area of rights (for example, education) and obtain the relevant information concerning the legal and social status enjoyed by the RBMs in that country and rights area. Alternatively, the user can get a comparative view of the rights enjoyed by all RBMs in a country (or a group of countries), or a comparative view of the rights enjoyed by a specific RBM in all the EU countries. These research tools can be further combined to obtain the data and information sought by the user. Particular attention will be devoted to the rights implementation, so that the gap between formal entitlement and real enjoyment of rights is reduced.

#### a) The Questionnaires

The data and information provided by the Atlas are based on the answers to two questionnaires, one for socio-legal experts and the other for RBM representatives. The former provides the description of the rights enjoyed by RBMs in each country; the latter, the degree of their implementation and the perception of inequality or discrimination existing within each RBM. The questionnaires cover seven policy areas: legal status of RBMs, education, marriage and family, media, places of worship, religious symbols, spiritual assistance. Additional policy areas as well as additional data and information collected through the analysis of media, reports, and other sources of information can be included at a later stage. Currently, the Atlas takes into consideration the following religious or belief organizations: Buddhist communities; Church of Jesus Christ of Latter-day Saints; Church of Scientology; European Humanist Federation; Hindu communities; Islamic communities; Jehovah's Witnesses; Jewish communities; Orthodox Churches; Protestant Churches (both mainline and Evangelical); Seventh-Day Adventist Church; Roman Catholic Church; Sikh communities.

#### b) The Indexes

The answers to the questionnaires are assessed with reference to three indexes. The following observations concern the evaluation of the data obtained from the questionnaires sent to the legal experts. I will discuss the application of the indexes to the provisions concerning spiritual assistance in the prisons of five EU countries below.

The most important is the *respect and promotion index*. It measures the extent to which the RBM rights are respected and promoted in each country. Respect means ensuring that the rights granted to an individual or group of people under international human rights standards (discussed below) are not violated. Promotion means putting in place the conditions that facilitate the enjoyment of these rights.

The index takes respect for rights as the benchmark and assigns the “0” score to the State provisions that ensure it. Everything above this line constitutes promotion and is marked in the index with the scores “0.33, 0.66, 1” according to the significance of the promotion; the State provisions which fall below this line are marked with the score “-0.33, -0.66, -1.” This does not mean that any form of promotion is legitimate: there may be forms of promotion that lack of a proper basis or result in discriminatory measures. These eventualities will be reported and discussed in the Atlas, but in the first instance the index is limited to recording the regulations that promote or hinder the protection of RBM rights.

It is possible that a State promotes or hinders the rights of certain minorities only. The index takes into account this possibility by giving the following additional scores: 0.33 when the promotion/hindering affects from one minority to one third of all minorities considered; 0.66 when it affects between 1/3 and 2/3 of minorities; 1 when it affects more than 2/3 of minorities.

Finally, not all rights are equally important. For example, the right to teach religion at school is more important than the right to teach it for two hours a week instead of just one hour. This difference has been taken into account by applying the coefficient 0.33 or 0.66 to the rights that carry less weight.

The second index is the *inequality index*. States do not equally promote (or hinder) RBM rights: it happens frequently that a RBM is entitled to enjoy more rights than another. This index measures the difference between the rights recognized to each RBM in each State (differences which, if there is no legitimate justification or are disproportionate, may amount to discrimination). This index is created by breaking down the same data provided by the respect/promotion index, and considering them with reference to each RBM.

Finally, the *gap index* measures the distance between the rights recognized to religious majority and religious minorities in each country. To distinguish between

majority and minority the Atlas follows the indications provided by the UN Special Rapporteur on Minority Issues in 2019 and considers as minority

any group of persons which constitutes less than half of the population in the entire territory of a State whose members share common characteristics of culture, religion or language, or a combination of any of these (United Nations Special Rapporteur on Minority Issues 2019, no. 53).

The number of RBM members in each country has been calculated based on the data provided by ARDA, the Association of Religion Data Archives.

This distinction will not be applied in countries (e.g. Estonia) where no religious group reaches the threshold of half the State population.

### *Measuring RBM Rights: The International Standards*

As already said, the starting point for developing an index of RBM rights are the international human rights standards. They provide the standard of treatment human beings are entitled to expect from their governments and societies. International human rights standards are derived from treaties and other international documents and ensure the minimum required level, which States should not go below (Sharom et al. 2016).

Concerning the international standards that apply to RBMs, the members of these minorities enjoy first and foremost all human rights (including freedom of religion or belief) that are due to all human beings, regardless of whether they are members of a minority. In addition to these rights, RBM members are entitled to other rights that “complement instruments concerned with freedom of religion or belief” (United Nations Office of the High Commissioner for Human Rights 2014, 1). These rights are classified according to three principles which together form the basis of the whole system of minority rights: protection and promotion of identity; non-discrimination; participation (Henrard 2011).

This system of protection of religious minorities includes rights that “go beyond” the right to freedom of religion and belief, because they require positive actions by the State which the latter right does not entail. For example, the principle of participation of minorities in the political, social and cultural life of a country requires that the State establishes “bodies and mechanisms aimed at creating a space for discussions and exchanges on issues relevant to religious

minorities,” including their participation in decision-making processes on matters concerning them (United Nations Office of the High Commissioner for Human Rights 2014, 1).

Such an obligation cannot be derived from the right of religious freedom, which does not require the State to involve minorities in its decision-making processes. The same remarks apply to the principle of protection and promotion of RBM identity. Article 1 of the “Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities,” adopted by the United Nations on December 18, 1992 (United Nations General Assembly 1992), affirms that States are obliged not only to “protect the existence and the national or ethnic, cultural, religious and linguistic identity of minorities,” but also to “encourage conditions for the promotion of that identity,” thus implying the adoption of positive measures aimed at creating these conditions. In this case too, the active promotion of the religious identity of a minority goes beyond the obligations incumbent on the State as a consequence of the right to religious freedom.

### *Data and Information: A Few Examples*

This section provides a few examples of the data and information that can be obtained from the analysis of the answers to the questionnaires. The examples concern the right of the RBM members to receive spiritual assistance in prisons.

The questionnaires provide three categories of information on the RBM rights in the EU countries. Before describing them, I would like to point out that the following information is of a legal nature, i.e. indicates the rights recognized to religious minorities in a country. The fact that these rights are actually enjoyed or, for various reasons, remain on paper will only become apparent when these legal data are combined with those collected through the questionnaires sent to RBM representatives. However, knowing what RBMs have the right to do, and what they are not entitled to do, is far from being irrelevant, because the existence of a right is the first step for any discussion about its implementation.

In relation to spiritual assistance in prison, the international standards affirm that inmates have the right to receive assistance from a representative of their RBM, according to Rule 65 of the Standard Minimum Rules for the Treatment of Prisoners (so-called *Nelson Mandela Rules*: United Nations Office on Drugs and

Crime 2015, 19–20) and to Recommendation Rec(2006)2 of the Committee of Ministers of the Council of Europe to member states on the European Prison Rules (Committee of Ministers, Council of Europe 2006, no. 29). This entails that these representatives are entitled to visit the prison institutions to respond to inmates’ requests.

However, in some countries a few RBMs enjoy a different right, the right to have a chaplain, i.e. a person professionally devoted to assist inmates. The chaplain can access the prison independently from an inmate’s request, and in some cases is paid by the prison or other State institutions. The same difference emerges in relation to worship places. The international standards require that prisons provide suitable spaces for religious services (Committee of Ministers, Council of Europe 2006, no. 29.2), but some RBMs have the right to have their own chapel, that is a space for their permanent and exclusive use. In both cases, the first solution corresponds to the international standards (score 0), the second exceeds them in that it facilitates inmates who wish to receive spiritual assistance (score 1).

The following table concerns the State respect and promotion of RBM rights. It answers the question: concerning spiritual assistance in prisons, in which States the rights of the RBM members are best protected and promoted?

<b>Prisons</b> Scores: 1=yes; 0=no. Percentage of RBMs that enjoy the right: 0.33: betw. 1 RBM and 1/3 of all RBMs; 0.66: betw. 1/ and 2/3 of RBMs; 1: more than 1/3 of RBMs. Red: below average; blue: above	Right to have a chaplain	Percentage of RBMs which are entitled to have a chaplain	Chaplain paid by State/prison (1)	Percentage of RBMs whose chaplains are paid by State/prison	Right to have a chapel	Percentage of RBMs which are entitled to have a chapel	Total	Average of each State	Average all States	Deviat. from average
Austria	1	0,66	0,5	0,33	0	0	2,49	0,4		0,01
Belgium	1	0,66	0,5	0,66	1	0,66	4,48	0,8		0,33
Estonia	1	0,66	0,5	0,66	0	0	2,82	0,5	0,42	0,05
France	1	0,66	0,5	0,66	0	0	2,82	0,5		0,05
Italy	0	0	0	0	0	0	0	0		0,42

(1) The score is 0,50 because the right to receive financial support is less significant than the right to have a chaplain (see para 2)

The table shows that Belgium promotes the RBM rights in this field more than other countries: 5 RBMs (Protestant [both mainline and Evangelical], Orthodox, Jewish, Muslim, and Humanist minorities) are entitled to have a chaplain and a chapel. It also shows that in Italy these rights are under-respected: no RBM is entitled to have a chaplain or a chapel. In a middle position there are Austria, Estonia, and France: in these countries no RBM has the right to have a chapel but a significant number of RBMs enjoy the right to have a chaplain.

In the following table, data relating to the State respect and promotion of RBM rights are broken down by reference to each RBM. The table answers the question: which RBMs enjoy the best protection and promotion of their rights in these countries?

Prisons (1=yes; 0=no) Green: major. relig. organ.; red: below average; blue: above average	Austria						Belgium						Estonia (2)								
	Right to have chaplain	Chaplain paid by State/prison (1)	Right to have a chapel	Total	Average of each RBM	Average of RBMs	Deviat. from average	Right to have chaplain	Chaplain paid by State/prison	Right to have a chapel	Total	Average of each RBM	Average of RBMs	Deviat. from average	Right to have chaplain	Chaplain paid by State/prison	Right to have a chapel	Total	Average of each RBM	Average of RBMs	Deviat. from average
Adventist Church	0	0	0	0	0	0	0.22	0	0	0	0	0	0	0.38	1	0.5	0	1.5	0.5	0.5	0.14
Catholic Church	1	0.5	0	1.5	0.5	0.77	1	0.5	1	2.5	0.83	1.35	1	0.5	0	1.5	0.5	0.5	0.14		
Islamic commun.	1	0.5	0	1.5	0.5	0.28	1	0.5	1	2.5	0.83	0.45	1	0.5	0	1.5	0.5	0.5	0.14		
Jehovah's Witnesses	1	0	0	1	0.33	0.11	0	0	0	0	0	0.38	1	0.5	0	1.5	0.5	0.5	0.14		
Jewish commun.	1	0	0	1	0.33	0.11	1	0.5	1	2.5	0.83	0.45	1	0.5	0	1.5	0.5	0.5	0.14		
Mormons	1	0	0	1	0.33	0.11	0	0	0	0	0	0.38	1	0.5	0	1.5	0.5	0.5	0.14		
Orthodox Churches	1	0	0	1	0.33	0.11	1	0.5	1	2.5	0.83	0.45	1	0.5	0	1.5	0.5	0.5	0.14		
Protestant (Evang.)	1	0.5	0	1.5	0.5	0.28	1	0.5	1	2.5	0.83	0.45	1	0.5	0	1.5	0.5	0.5	0.14		
Protestant (mainl.)	1	0.5	0	1.5	0.5	0.28	1	0.5	1	2.5	0.83	0.45	1	0.5	0	1.5	0.5	0.5	0.14		
Scientology	0	0	0	0	0	0.22	0	0	0	0	0	0.38	0	0	0	0	0	0	0.36		
Hindu commun.	0	0	0	0	0	0.22	0	0	0	0	0	0.38	1	0.5	0	1.5	0.5	0.5	0.14		
Sikh commun.	0	0	0	0	0	0.22	0	0	0	0	0	0.38	0	0	0	0	0	0	0.36		
Buddhist commun.	1	0	0	1	0	0.22	0	0	0	0	0	0.38	1	0.5	0	1.5	0	0	0.36		
Belieforganiz.	0	0	0	0	0	0.22	1	0.5	1	2.5	0.83	0.45	0	0	0	0	0	0	0.36		

(1) Protestant and Muslim chaplains receive less money than Catholic chaplains. (2) In Estonia there is no majority religious organization.

Prisons (1=yes; 0=no) Green: major. relig. organ.; red: below average; blue: above average	France						Italy										
	Right to have chaplain	Chaplain paid by State/prison	Right to have a chapel	Total	Average of each RBM	Average of RBMs	Deviat. from average	Right to have chaplain	Chaplain paid by State/prison	Right to have a chapel	Total	Average of each RBM	Average of RBMs	Deviat. from average			
Adventist Church	1	0.5	0	1.5	0.5	0.13	0	0	0	0	0	0	0	0			
Catholic Church	1	0.5	0	1.5	0.5	0.39	1	0.5	1	2.5	0.83	0.39	0	0	0	0	0
Islamic commun.	1	0.5	0	1.5	0.5	0.13	0	0	0	0	0	0	0	0			
Jehovah's Witnesses	1	0	0	1	0.33	0.04	0	0	0	0	0	0	0	0			
Jewish commun.	1	0.5	0	1.5	0.5	0.13	0	0	0	0	0	0	0	0			
Mormons	1	0	0	1	0.33	0.04	0	0	0	0	0	0	0	0			
Orthodox Churches	1	0.5	0	1.5	0.5	0.13	0	0	0	0	0	0	0	0			
Protestant (Evang.)	1	0.5	0	1.5	0.5	0.13	0	0	0	0	0	0	0	0			
Protestant (mainl.)	1	0.5	0	1.5	0.5	0.13	0	0	0	0	0	0	0	0			
Scientology	0	0	0	0	0	0.37	0	0	0	0	0	0	0	0			
Hindu commun.	1	0	0	1	0.33	0.04	0	0	0	0	0	0	0	0			
Sikh commun.	1	0	0	1	0.33	0.04	0	0	0	0	0	0	0	0			
Buddhist commun.	1	0.5	0	1.5	0.5	0.13	0	0	0	0	0	0	0	0			
Belieforganiz.	0	0	0	0	0	0.37	0	0	0	0	0	0	0	0			

These data show that there is a group of RBMs (Catholic [with reference to Estonia: in the other countries the Catholic Church is the majority religious organization], Islamic, Jewish, Orthodox and Protestant [both mainline and Evangelical] communities) whose rights are better protected than the rights of other groups, including Adventist, Jehovah's Witnesses, Scientology, miscellaneous belief organizations, Mormon, Hindu, Sikh, and Buddhist communities.

The number of members of each religious organisation certainly has something to do with this division, but alone is not enough to explain it (in many countries, Jews are fewer than Jehovah's Witnesses and yet enjoy a better legal status). In most cases, differences between the rights enjoyed by RBMs can be explained only through a contextual analysis that takes into account the historical and cultural specificities of each country on the one hand and, on the other, how long a religious organization has been active in the country and how controversial its doctrines and practices are.

Finally, another set of interesting information is provided by the Atlas data concerning the distance between the rights enjoyed by RBMs and by the majority religious organizations. In four of the five countries taken into consideration, the Catholic Church is the majority organization, but the gap between majority and minority religious organizations is very different in each of them: very high in Italy (2,5), much lower in Austria (0.36) and Belgium (0.40), in a middle position in France (1.12).

<b>Prisons</b>	RBM Average	Religious majority (Catholic Church) average	Difference	Coefficient	Gap
Austria	0,41	0,77	0,36	0,66	0,23
Belgium	0,75	1,35	0,4	0,66	0,26
Estonia (1)	//	//	//	//	//
France	0,38	1,5	1,12	0,66	0,74
Italy	0	2,5	2,5	0,33	0,82
(1) In Estonia there is no religious majority					

### *The Jehovah's Witnesses*

What can we learn from the Atlas about the rights of a specific RBM such as the Jehovah's Witnesses? A few indications have already been provided by the second table, but they concern a very specific subject, spiritual assistance in prisons. A broader test is provided by the analysis of the data related to RBM registration, which has a decisive impact on the allocation of rights RBMs enjoy in all fields of their activity.

The legal systems of the EU countries do not follow the same pattern, but all of them entail three, or in some cases four, different levels of rights. At the top are the religious organizations regulated by special laws or agreements with the State. This is the level at which the majority religious organizations, and some of the most important RBMs, are placed, and is also the level that ensures more rights for the religious organizations in the field of teaching religion in public schools, religious assistance in prisons, hospitals and armed forces, celebration of marriages, State funding of religious activities, and so on. Jehovah's Witnesses are never included in this group of religious organizations.

In the intermediate position are the organizations that are registered as religious entities. In some countries, they are further divided into two groups: this is the case of Austria, where registered religious organizations may have public law or private law status, Romania, where they are divided into “religious denominations” and “religious associations,” and Spain, where a difference has been introduced between registered religious organizations that are “deeply rooted” in the country (i.e. provided with “notorio arraigo”) and all the others (in the following table the two levels are indicated as registration/recognition “type A” or “type B”). This intermediate level is where Jehovah’s Witnesses are most frequently placed.

Finally, there is a last and lowest level, where religious organizations are registered as civil law entities, on equal footing with non-profit organizations that do not pursue religious goals. The religious organizations that are placed at this level enjoy the least number of rights. This is the level where the Church of Scientology is almost always located, together with those religious groups, such as Sikhs, which are too small to obtain State recognition as religious organizations. At this lowest level, Jehovah’s Witnesses are almost never represented.

As far as registration is concerned, international standards require that States “grant upon their request to communities of believers, practicing or prepared to practice their faith within the constitutional framework of their states, recognition of the status provided for them in their respective countries” (OSCE 1989, no. 16.3). In other words, States should grant religious organizations the right to obtain legal personality, as this right “is one of the most important aspects of freedom of religion, without which that freedom would be meaningless” (European Court of Human Rights 2020, no. 155). Therefore the minimum standard is represented by the registration as civil law entity (score 0); above this threshold, we enter the area of promotion of RBM rights with scores that go from 0.33 to 1, depending on the recognition level.

Registr./recogn. tA3:R17through special laws or agreements: 1; registr./recogn. as religious organization: 0.50 (type A: 0.66; type B: 0.33); registr./recogn. as civil law organization: 0	Austria	Belgium	Estonia	Finland	France	Greece	Hungary	Italy	Poland	Romania	Spain	Sweden	Total	Average of each RBM	Average of RBMs	Deviation from average
Adventist Church	0,33	1	0,5	0,5	0,5	0,5	0,5	0,5	1	1	0,66	1	0,5	7,99	0,61	0,13
Catholic Church	1	1	0,5	0,5	0,5	0,5	1	1	1	1	0,66	1	0,5	9,82	0,75	0,27
Islamic commun.	1	1	0,5	0,5	0,5	0	0,5	0,5	1	1	0,66	1	0,5	7,66	0,59	0,11
Jehovah's Witnesses	0,66	0	0,5	0,5	0,5	0,5	0,5	0,5	0,5	0,66	0,66	0,5	5,98	0,46	0,48	-0,02
Jewish commun.	1	1	0,5	0,5	0,5	1	1	1	1	1	0,66	1	0,5	9,66	0,74	0,26
Mormons	0,66	0	0,5	0,5	0,5	0,5	0,5	1	0,5	0	0,66	0	5,32	0,41	0,48	-0,07
Orthodox Churches	1	1	0,5	1	0,5	1	1	1	1	1	0,66	1	0,5	10,16	0,78	0,3
Protestant (Evang.) Churches	1	1	0,5	0,5	0,5	0,5	1	1	1	1	0,66	1	0,5	9,16	0,7	0,22
Protestant (mainl.) Churches	1	1	0,5	1	0,5	0,5	1	1	1	1	0,66	1	1	10,16	0,78	0,3
Scientology	0	0	0	0	0	0	0	0	0	0	0	0,33	0,5	0,83	0,06	-0,42
Hindu commun.	0,33	0	0	0,5	0,5	0	0,5	1	0	0	0,33	0,5	3,66	0,28	0,48	-0,2
Sikh commun.	0	0	0	0,5	0,5	0	0	0	0	0	0,33	0	1,33	0,1	0,48	-0,38
Buddhist commun.	0,66	0	0,5	0,5	0,5	0	0	1	0,5	0	0,66	0,5	4,82	0,37	0,48	-0,11
	0	1	0,5	0	0	0	0	0	0	0	0	0	1,5	0,11	0,48	-0,37

The examination of this last group of data confirms the picture emerging from the previous tables. Jehovah’s Witnesses are never at the top of the pyramid of religious organizations, but are almost never at the lowest level either. They are just a little below the average, a little better than Mormons and a little worse than Adventists (the two religious minorities that are more easily comparable with Jehovah’s Witnesses because of their history, origin, and numerical consistency).

The table shows that their legal status is firmly placed in the mid-level, comprised of the religious organizations to which EU States guarantee the right to freely carry out their activities and grant a limited form of promotion or support.

In conclusion, the data concerning Jehovah’s Witnesses suggest that a process of “normalization” of their legal status is well on its way in the 12 countries that have been taken into consideration in this research. For a long time, Jehovah’s Witnesses have been marginalized and discriminated against all over Europe, and still today they are kept in an inferior legal position compared to other religious groups (in Italy, for example, they did not succeed to obtain an agreement [Intesa] with the State, something that the Adventist, Mormon, and Hindu communities were able to do).

Now, things are changing. In Europe, the rights of a religious minority often depend on the combination of three elements: the number of the religious minority members, the number of years it has been active in a country, and how much its principles and practices are compatible with the convictions of the majority of citizens. The rejection of military service and blood transfusions have for a long time prevented Jehovah’s Witnesses from obtaining the same rights recognized to religious groups that are comparable to them in terms of number of members and years of presence in a country. The data collected through the Atlas questionnaires

show that today the rights enjoyed by Jehovah's Witnesses are not too far from those granted to Mormons and Adventists, i.e. to two religious groups whose principles and practices have met less social hostility in European countries.

It would be interesting to discuss whether the normalization of the Jehovah's Witnesses' situation in the EU countries has been somehow accelerated by the persecution they are suffering in Russia. The Russian events may have played a role; however, they are not the central component of the process, which started much earlier, already since the landmark decision of the European Court of Human Rights in the *Kokkinakis* case (European Court of Human Rights 1993). It was the European Court case-law that played a decisive role in the normalization of the situation of Jehovah's Witnesses, and this gives hope for the future of other discriminated religious minorities.

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## Why Opposition? An Exploration of Hostility Towards Jehovah's Witnesses

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**ABSTRACT:** Jehovah's Witnesses have experienced opposition since the Watch Tower Society's inception, and the history of opposition is traced here. Initially, grounds for disapproval were doctrinal, but spanned out to controversies about "miracle wheat" and founder-leader Charles Taze Russell's marital breakdown. Under second leader Joseph Franklin Rutherford, controversy surrounded patriotism and military service. The Witnesses' refusal to celebrate popular festivals attracted subsequent disapprobation, as did allegations of failed prophecy. The Society's stance on blood, disfellowshipping, and shunning have given rise to further unpopularity, and its *New World Translation* of the Bible has attracted hostility from Christian counter-cult critics. Jehovah's Witnesses have experienced political opposition, and particular attention is given to Russia and South Korea. Most recently, accusations of sexual abuse have gained publicity, and official investigations in Australia and the Netherlands. Finally, the advent of the Internet has enabled critics to organize opposition online. The author does not evaluate these criticisms or examine the Society's rejoinders, but notes that Jehovah's Witnesses continue with faith maintenance, regarding opposition as fulfilment of biblical prophecy.

**KEYWORDS:** Jehovah's Witnesses, Religious Minorities, Counter-Cult Movement, Religious Minorities in Russia, Religious Minorities in South Korea, Charles Taze Russell, Joseph Franklin Rutherford.

### *Introduction*

Jesus said, "And you will be hated by all people on account of my name. But the one who has endured to the end will be saved" (*Mark* 13,13). Having enemies can be an expectation by those who vigorously proclaim a religious message, and this article aims to identify the theological, political, and societal objections that have been made against the Watch Tower Bible and Tract Society since its

inception. Not only Jehovah's Witnesses believe that fierce opposition is one of the signs that we are living in the end times, but Jesus' words provide a measure of the veracity and impact of one's message. Vehement opposition demonstrates that the proclaimers have hit a raw nerve, and should redouble their efforts. This article aims to explore the various grounds on which Jehovah's Witnesses (originally known as Bible Students) have experienced opposition, from the inception of Zion's Watch Tower Tract Society (now the Watch Tower Bible and Tract Society) to the present day.

From its very inception, the Bible students encountered opposition. Initially, opponents were mainstream Christian leaders who objected to founder-leader Charles Taze Russell's (1852–1916) teachings on theological grounds. William C. Irvine (1871–1946) commented that “any believer who has been induced to buy his literature ought to burn it” (Irvine 1917, 151); and William G. Moorehead (1836–1914) stated that, “perhaps among all the books of the English-speaking world there is not another which contains as many errors as ‘Millennial Dawn’” (cited in Gray 1909, 70; *Millennial Dawn* was the original series title of Russell's six books, later named *Studies in the Scriptures*).

Moorehead's objections were mainly directed at Russell's Christology (Moorehead 1910, 107–08). Russell presented Christ as the firstborn of God's creation, thus denying his full deity, in contrast to the traditional creeds, which stated that Christ is “eternally begotten of the Father, begotten, not made, of one being with the Father.” According to Watch Tower teaching, Jesus Christ pre-existed as the Archangel Michael, and was born as a fully human being, who acquired his messianic status, not at birth, but at his baptism. This concept of the person of Christ had important repercussions for Russell's doctrine of Atonement: while he viewed the doctrine of Christ's “ransom sacrifice” as central to his theology, the ransom was that of a perfect human being, not of one who was fully God and fully human.

The emphasis on Christ's human nature presented further implications for his resurrection and ascension, since a physical being could not be taken up into Heaven. Russell therefore declared that Jesus rose from the dead with a “spiritual body,” not a physical one, and that his physical body was miraculously removed from the tomb. It was in this spiritual body that Jesus ascended back into Heaven, from whence he cast Satan down in 1874 (later revised to 1914), attaining his

“second presence” with his followers; he is not expected to return on the clouds of Heaven, as many mainline Evangelicals hold.

Russell’s teaching that humanity is living in the end times was no doubt not so objectionable, and even the calculation of end-time prophetic dates was done by many Adventists, and indeed had its origins with mainstream clergy like Edward Bishop Elliott (1793–1875) (Elliott 1844). However, his teachings on life after death were less acceptable. He rejected the immortality of the soul, which numerous clergy were teaching, and he held that there was no Hell for the wicked, only oblivion: not all the dead would be raised at the resurrection, but only those worthy of “probation after death,” which meant a subsequent opportunity to accept the Christian faith.

What added to the mainstream clergy’s resentment was who Russell was. He was a haberdasher, without formal theological training, who had mingled with a number of Adventist teachers who also lacked qualifications and, notwithstanding this lack of credentials, he had the temerity to criticize and correct the rest of Christendom, urging his supporters to “come out of her.” James Martin Gray (1851–1935) commented, “How great effrontery, therefore, that this modern religious teaching ... by one man, should challenge the interpretation of all the churches, in all the centuries!” (Gray 1910, 20).

Not content simply to criticize all of Christendom, Russell and his supporters were enthusiastically propagating this message. Russell offered his sermons to newspaper syndicates, and they often appeared in as many as 2,000 different publications. Russell travelled worldwide, reaching countries as far afield as Japan, the Middle East, and Europe, setting up new branches of the Society, and his supporters travelled widely in the US, Canada, and Europe, distributing his literature, and promoting his distinctive brand of Christianity. Clergy were losing members to the Bible Students organization; it is impossible to determine the scale of the defections, but it was certainly a matter of concern to them.

Criticism of Russell, however, was not confined to his theology. Opponents continue to cite the “miracle wheat” controversy, over a century later, as an example of the allegedly fraudulent nature of the Watch Tower organization. In 1908, an edition of *Zion’s Watch Tower* offered wheat for sale that was produced by a Virginian farmer, which had a remarkably high yield, the proceeds from which would go to the Society’s funds (*Zion’s Watch Tower* 1908). The wheat had already aroused the interest of the US government, and Russell believed it

fulfilled Ezekiel's prophecy that "the earth shall yield her increase" (*Ezekiel* 34,27). When the seed failed to meet expectations, the Society offered refunds to purchasers (*The Watch Tower* 1910), but this did not prevent the Brooklyn newspaper *The Eagle* accusing Russell of profiteering. Russell decided to sue for libel, but lost the case, thus damaging the Society's prestige further.

A further controversy involved Russell's domestic life: his wife Maria (1850–1938) filed for divorce, amidst accusations of sexual impropriety with their foster child. The dispute was given prominence by Russell himself, who wrote about it at some length in *Zion's Watch Tower* (*Zion's Watch Tower* 1906a). A further high-profile libel suit involved John Jacob Ross (1871–1935), a Baptist minister who wrote a pamphlet in 1912, which, among other things, described Russell as "a religious fakir of the worst type, who goes about like the Magus of Samaria enriching himself at the expense of the ignorant" (Ross 1912, 4), and brought up the subjects of the miracle wheat and Russell's divorce once more. Russell sued and lost, and the court proceedings served to damage Russell further by raising questions about his competence in Greek.

### *The Rutherford Era*

When Russell died in 1916, the Great War was at its height, and the US entered into it in the following year. During Russell's period of office, some readers of *The Watch Tower* had enquired about whether they should engage in combat. Russell's response was that enlisting in the army was acceptable, but not killing, and he recommended alternatives to armed military service, such as joining the ambulance corps, which involved saving rather than taking life.

When his successor Joseph Franklin Rutherford (1869–1942) took over the leadership, however, the Society's stance hardened. The catalyst for state opposition to the Society was the publication of *The Finished Mystery* in 1917: the book was inappropriately attributed to Russell as a posthumous publication, being substantially the work of Clayton J. Woodworth (1870–1951) and George H. Fisher (1870–1926), probably assisted by Gertrude Seibert (1864–1928). The book accused the clergy of being responsible for the war in Europe, denounced patriotism as being a narrow-minded "hatred of other peoples" (Woodworth and Fisher 1917, 247), and described the war as "butchery" (Woodworth and Fisher 1917, 272). The book was banned in Canada, and was

only allowed to be circulated in the US once certain pages had been excised. Rutherford and seven other Watch Tower leaders were arrested, and made to serve prison sentences. Rutherford alleged that the arrests were instigated by the clergy, intensifying opposition between the Watch Tower organization and mainstream denominations.

The government finally withdrew its case, and the Watch Tower leaders were released from prison in 1919, after the Great War had ended, but their punishment increased rather than diminished their zeal. At a Watch Tower Convention at Cedar Point, Ohio, in 1922, signs were displayed throughout the auditorium with the letters “ADV.” It became a practice to tantalize convention attendees by displaying enigmatic letters, whose meaning was eventually divulged, when Rutherford gave a rousing speech, concluding “Advertise, advertise, advertise the king and his kingdom!”

One of Rutherford’s innovations was to encourage—indeed require—his supporters to advertise the Society’s teachings by their house-to-house evangelism, for which they continue to be known. However, the encouragement to commence this work was at a time when the Society’s popularity was extremely low. The promotion of the Society’s teachings was not only by house-to-house visiting: its preachers would give talks using loudspeakers in public places, and go around the streets with “sound cars” (vans with loudspeakers). Sometimes this was without the requisite permission, since they believed that their right to proclaim Jehovah’s message did not require permission from any human authority. If the police attempted to make arrests, Witnesses would summon other cars to converge on the area, so as to ensure that there was insufficient room in the jail cells to accommodate them (Chryssides 2019, 47).

Jehovah’s Witnesses were not content simply to practice their own faith privately, and their evangelizing tactics were designed to draw attention to their organization. One method of publicity was the “information march,” which began in Glasgow in 1936, when Witnesses put on sandwich boards advertising public events, such as conventions. Rutherford devised the slogan “Religion is a snare and a racket,” which was frequently displayed on these boards, “religion” denoting mainstream Christendom.

In 1938, an information march heralded a lecture to be given by Rutherford in the Royal Albert Hall in London, entitled “Face the Facts.” If the publicity was provocative, Rutherford’s lecture was even more so. Rutherford claimed to

identify two “incontrovertible” facts. The first was uncontentious enough, namely that God wanted to establish his kingdom over the earth, and that Jesus Christ had come to the world to establish that kingdom. The second “incontrovertible fact,” however, was not so incontrovertible: he declared that a “hideous monstrosity” had ensured that no righteous government existed on earth, since Satan had been cast out from Heaven to earth, to establish his own governments there. Satan’s new threat was totalitarian government, which, he argued, began in Russia in 1917 with the Bolshevik government’s rise to power, and continued with the regimes in Italy and in Germany, under Benito Mussolini (1883–1945) and Adolf Hitler (1889–1945). Further, Christendom, he claimed, had colluded with these governments, and Britain had begun to forge an alliance with Roman Catholicism. Only Jehovah’s Witnesses had maintained their allegiance to Jehovah by opposing these governments. Regarding the Pope and the current political leaders, Rutherford went on:

Today you stand before the judgment seat of Christ, the great Judge of the world. According to the undisputed facts you are convicted out of your own mouth, and the Lord’s final judgment has been entered against you and you are going to die. You have willingly yielded to Satan, abandoned God and his King, and have permitted the Devil to gather you to Armageddon, that battle of the great day of God Almighty, as Jesus foretold (*Revelation* 16,13–6). The final showdown has come. Your high-sounding titles, your garments, your exalted positions, your money, and your boasted power, shall now completely fail you. Christ Jesus, the antitypical David, has called your bluff. Jehovah’s witnesses do not fear you, but they do fear and serve God and Christ. ... At the battle of Armageddon Christ Jesus, leading his invincible army, will slay you and give your dead carcasses to the fowls of the air and to the wild beasts of the earth, and all creation shall know that Jehovah is the Almighty God, that Christ Jesus is the rightful Ruler of the world and the Vindicator of God’s word and name, and that Jehovah can put men on earth who will remain true to him (Rutherford 1938, 23–4).

Rutherford’s lecture was relayed on a transatlantic radio link, and could be heard by around 150,000 listeners in the United States, Canada, Britain, Australia, and New Zealand. His strident tone proved too much for three of the stations, who cut the broadcast midway.

### *Holidays*

A further way in which Jehovah’s Witnesses have marked themselves out as different from others is their stance on holidays. The non-celebration of Easter

was a feature of the Society from its inception, and appears to have been the norm in various Adventist groups that influenced Russell. Christmas celebrations were part of the Society's tradition initially, and Russell would typically wish all the residents a happy Christmas when he entered the dining room on Christmas morning. Rutherford, however, came to the view that 25 December was unlikely to be the authentic date for Jesus birth and, perhaps more importantly, the date was associated with "pagan" festivals, particularly the Roman Saturnalia, which were celebrated around that date. Accordingly, the last Christmas celebration at the Brooklyn Bethel was in 1926, and ever since then the festival has gone unmarked.

The avoidance of birthday celebrations did not come until some time later. The exact date of their abandonment is unclear, but appears to have been around 1950, and certainly after Rutherford's death. The biblical reasoning behind the avoidance is that the Bible only twice mentions birthdays—once that of the Egyptian pharaoh in the time of Joseph, and much later by King Herod (before 20 BCE–after 39 CE). Both birthdays were of "pagan" rulers, and both had unfortunate consequences: the pharaoh's baker was condemned to death, and Herod's birthday resulted in the execution of John the Baptist at the request of Herodias' (15 BCE–after 39 CE) daughter.

Jehovah's Witnesses also believe that birthdays involve superstitious practices such as making a wish when blowing out candles; they are also selfish events, involving adulation of the individual whose birthday is celebrated, and that they are unduly commercialized. Other more minor popular celebrations such as Valentine's Day and Halloween are associated with an apostate church's calendar. Jehovah's Witnesses do not acknowledge Christian saints, and Halloween involves occult practices, such as portrayals of witches and an inappropriate fascination for the dead.

While it is not particularly onerous for adults to avoid such celebrations, the Society's stance on these events impacts much more seriously on schoolchildren, at least in countries where Christianity is the dominant religion, since school activities frequently focus on such celebrations, for example designing Valentine cards or Halloween decorations. Socially, on returning from their Christmas vacation, children's conversation will frequently turn to the presents they have received, causing Jehovah's Witness children to explain that their families do not celebrate the festival.

There can be other issues for children at school: care is needed to avoid any overtly religious activity, for example at a morning assembly, and activities such as pledging allegiance to the state mark Witness children out as different. Religious education can present problems, although Jehovah's Witnesses normally have little objection to children being taught about religions in an objective and non-confessional way.

Sex education in schools can also create difficulties: although schools teach the biology of sex, Witnesses believe that this is inappropriate without promoting the moral standards that should accompany it. Some schools have been known to make contraceptives available, advise on how to avoid pregnancy, and have condoned practices such as masturbation, and most recently homosexuality and gender transitioning, all of which have attracted Jehovah's Witnesses' disapprobation.

### *"Failed Prophecies"*

A further common criticism relates to prophetic failure. Although failed prophets are not as inconvenient to society as other aspects of Jehovah's Witnesses, members are frequently criticized for apparently setting dates for "the end of the world," which invariably fail to materialize. I have argued elsewhere that their prophetic statements and "adjustments in view," or "clarifications of doctrine," as they call them, are frequently misunderstood (Chryssides 2010). Nonetheless, the year 1925 provided a clear example of a prediction that did not materialize. In his highly publicized *Millions Now Living Will Never Die* (Rutherford 1920), Rutherford's end-time calculations gave rise to a firm prediction that in the year 1925 the "faithful ones of old"—the patriarchs, prophets, and other worthy individuals of ancient Hebrew times—would rise from their tombs and come back to life with the expectation of inheriting a renewed earth as their everlasting entitlement.

This prediction left no room for adjustment, and Rutherford was forced to admit that he had simply been wrong. At a convention the following year, he was asked, "Have the ancient worthies returned?" leaving Rutherford with this somewhat lame rejoinder,

Certainly they have not returned. No one has seen them, and it would be foolish to make such an announcement. It was stated in the “Millions” book that we might reasonably expect them to return shortly after 1925, but this was merely an expressed opinion (*Yearbook of Jehovah’s Witnesses* 1980, 62).

The year 1975 was not explicitly defined in Watch Tower literature, but there was an expectation that, since the year was reckoned to be 6,000 years after Adam’s creation (reckoned as 4026 BCE), it would mark the beginning of the millennium, and hence the commencement of Armageddon. Frederick Franz (1893–1992), who was then vice-president of the Society, was particularly vocal in raising expectations. Some members sold up property in order to fund the increased witnessing that took place in the run-up to the year; and others postponed marriage or having children. When 1975 came and went, some attempt was made to resolve the cognitive dissonance that resulted: the fact that the Jewish New Year began in October rather than January provided some leeway, as did the observation that Eve was created after Adam, which allowed a slight extension to the length of the sixth creative day. However, when 1976 had passed, disillusionment set in, and the Society experienced a decline of membership over the ensuing two years. Jehovah’s Witnesses learned after the failed 1975 date not to set further dates for the end-times, but the reputation for failed prophecy lingers on, and critics continue to pour ridicule on the organization, claiming that “they keep changing the dates.”

### *The Flag Salute Controversy*

Jehovah’s Witnesses’ political neutrality has caused them to incur consequences that have gone beyond verbal criticism. They do not support any earthly government, holding that patriotism involves paying homage to the state rather than to Jehovah. This belief gave rise to major controversy about saluting the national flag. At a convention in 1935 in Washington DC, Rutherford urged his supporters to refuse to salute the flag, since this was placing loyalty to the nation over allegiance to Jehovah.

In 1931, Rutherford had authored a booklet entitled *The Kingdom, the Hope of the World*, which cited the story in the book of Daniel of three Jewish men—Shadrach, Meshach, and Abednego—who refused to comply with King Nebuchadnezzar’s (ca. 634–562 BCE) decree that all citizens should bow down

and worship a 90-foot tall gold statue in Babylon, or else face the prospect of immolation in a blazing furnace (*Daniel* 3,1–30). At the 1935 convention, Rutherford urged followers of Jehovah to follow their example by refusing to comply with expressions of allegiance to the state, such as saluting the national flag or reciting the pledge of allegiance (Rutherford 1931).

Soon afterwards, a number of schoolchildren heeded his instruction, and were excluded from school. This led to numerous famous court cases: Jehovah's Witnesses were finally victorious in 1943, on the grounds that religious freedom, as granted by the First Amendment, should prevail over schools' requirements concerning declarations of national allegiance. Although the Watch Tower Society was jubilant at the final outcome, its members' non-compliance in expressions of patriotism did not enhance public perception of the organization.

### *Blood*

Jehovah's Witnesses are probably best known for the stance they take on blood. There is no other religious group known to the author that rejects blood transfusion, and the uniqueness of the Jehovah's Witnesses' position therefore makes them stand out. Jehovah's Witnesses' stated opposition to blood transfusion is biblical (Pattillo 1931; *The Watchtower* 1944, 1945, 1952a). After the great flood, God gives Noah new dietary laws, stating, "Every moving animal that is alive may serve as food for you. Just as I gave you the green vegetation, I give them all to you. Only flesh with its life—its blood—you must not eat" (*Genesis* 9,3–4). A similar prohibition is found in the *Book of Leviticus*: "You must not eat the blood of any sort of flesh because the life of every sort of flesh is its blood. Anyone eating it will be cut off" (*Leviticus* 17,13–4). The continuing application of this law is seen as confirmed by the First Jerusalem Council in 49 CE, at which the early Christian leaders agreed to "abstain from things polluted by idols, from sexual immorality, from what is strangled, and from blood" (*Acts* 15,20). The *Book of Leviticus* prescribes the penalty for contravening the law relating to blood: the offender should be "cut off"—in other words, removed from the rest of the people.

In 1961, it was announced that voluntarily accepting a blood transfusion constituted grounds for being disfellowshipped; today the act of knowingly

receiving a transfusion and being unrepentant is a signal that the member has disassociated from Jehovah's organization.

Jehovah's Witnesses have never attempted to conceal or play down their attitude to blood transfusion; indeed, if anything, they have been proud of what they regard as faithfulness to Jehovah. In 1994 the front cover of *Awake!* magazine displayed the heading "Youths Who Put God First," depicting three of five young people who were featured inside. They were between 12 and 17 years of age, and had refused blood transfusions rather than betray their religious beliefs. Three of them died of blood cancer. The article commended their courage (*Awake!* 1994), and two subsequent letters to the editor also endorsed their bravery, but opponents continue to draw attention to the article.

### *Disfellowshipping*

The practice of disfellowshipping was mentioned above: congregations ensure that strict integrity is maintained among their members, in accordance with Jesus' preaching, as recorded by Matthew:

Moreover, if your brother commits a sin, go and reveal his fault between you and him alone. If he listens to you, you have gained your brother. But if he does not listen, take along with you one or two more, so that on the testimony of two or three witnesses every matter may be established. If he does not listen to them, speak to the congregation. If he does not listen even to the congregation, let him be to you just as a man of the nations and as a tax collector (*Matthew* 18,15–7).

The first step in maintaining discipline, therefore, is for a member who is aware of another baptized member's wrongdoing to talk to that person and point out their error, thus giving him or her an opportunity to repent and change their behavior. If this proves ineffective, the other members should be brought in to speak to that person. If the erring member continues, then the matter should be raised at congregational level by involving the elders, who will investigate the report and determine how it should be dealt with, and whether they should form a judicial committee.

When a serious offence has been alleged, such as sexual impropriety, drunkenness, fraud, or apostasy, a judicial committee of three elders is appointed and meets with the accused. In accordance with biblical principles, two or more witnesses are needed before he or she can be found guilty and disciplined.

Depending on the severity of the offence, the committee may issue a judicial reproof, which may either be private or public, or they may decide to disfellowship the offending member. A public reproof or a decision to disfellowship will be announced to the congregation at its weekday meeting; the precise reasons are not announced, but it is merely stated that “[N] is no longer one of Jehovah’s Witnesses.” Disfellowshipping often involves being barred from association with fellow members; the disfellowshipped member may attend congregational meetings, but without social exchange with others, not even a simple greeting.

### *Shunning*

The practice of shunning dissociated and disfellowshipped members has frequently attracted criticism, and there is no doubt that ostracism of such people has caused considerable suffering. In the Society’s early years, Charles Taze Russell expressed the view that Christians in general—not merely Bible Students—should avoid becoming “unclean,” and should separate themselves from God’s enemies. By this, he meant that the Christians should avoid associating with people of reprehensible character, which did not include those whose opinions differed from the rest of the congregation. In his later work *The New Creation*, in which Russell set out the regulations governing congregational practice, he allowed that a congregation might discuss a member’s misdemeanors and, if appropriate, disfellowship that person (Russell 1904).

However, disfellowshipping did not entail shunning, but merely that the rest of the congregation should “withdraw special brotherly fellowship” and that the offender should be treated “as a heathen man and a publican.” The word “publican” means a tax collector in the King James Version of the Bible: tax collectors were unpopular among first century Jews, and were typically avoided.

Nonetheless, an early *Zion’s Watch Tower* article (1906b, 3801) recommended that such people should be treated courteously, not snubbed, and even Joseph Franklin Rutherford, who wished to exert greater control over the Society’s members, expressed opposition to “bondage to creeds,” which he believed to be characteristic of the Roman Catholic Church (*The Watch Tower* 1930, 283). It was Nathan Homer Knorr (1905–1977), the third president, who argued that there was no biblical warrant for congregational voting, and

introduced the institution of judicial committees in 1944. Offences which merited judicial investigation and possible disfellowshipping now included “disturbing the unity of the congregation” and not merely moral lapses, and recourse was made to Paul’s advice to the Corinthians:

But now I am writing you to stop keeping company with anyone called a brother who is sexually immoral or a greedy person or an idolater or a reviler or a drunkard or an extortioner, not even eating with such a man.... Remove the wicked person from among yourselves (*1 Corinthians* 5,11–3).

In 1952, it was made a requirement for congregations to disfellowship those who were guilty of serious offences and unrepentant, and in 1955, a *Watchtower* article went further, stating that even associating with a disfellowshipped person could itself be grounds for disfellowshipping (*The Watchtower* 1952b, 1955).

As the Watch Tower Society’s stance on blood, disfellowshipping, and shunning intensified, it inevitably came to public attention, was publicized in the media, and became the subject of films, television programs, and documentaries. Jehovah’s Witness parents refusing blood transfusion for their child made for exciting film and television drama; some plots, such as Ian McEwan’s *The Children Act*, were based on real-life cases, although the fact that they were not always well researched no doubt helped fuel public antagonism towards the Society.

### *The New World Translation*

The Watch Tower Society’s own translation of the Bible, *The New World Translation of the Holy Scriptures* (1961/2013), which commenced in 1950 and was completed in 1961, enabled new opposition to the Society’s teachings. Up to that time, the Society used mainstream versions of the Bible, mainly the King James Version and the American Standard Version. The Society wanted a version that was “not colored by the creeds and traditions of Christendom” (*Jehovah’s Witnesses: Proclaimers of God’s Kingdom* 1993, 609). In addition, the translators wanted to reintroduce the name “Jehovah” as a rendering of the tetragrammaton YHWH in the Hebrew scriptures and its presumed equivalent *kurios* in Greek. They also wanted to clarify the translation of *parousia*, which they have insisted, right from the time of Russell, means “presence” rather than

“coming,” and refers to Christ’s invisible kingly presence which they believe began in 1914.

*The New World Translation* inevitably provoked much mainstream criticism, and a number of prominent mainline scholars expressed their evaluation. William Barclay (1907–1978) described it as “a shining example of how the Bible ought not to be translated” (Barclay 1953, 31–2), although his short article in *The Expository Times* did not identify any specific deficiencies. Bruce Metzger (1914–2007) provided a much more detailed critique, mainly focusing on how the translation addresses Christological issues (Metzger 1953). Like many subsequent critics, he takes issue with the rendering of *John* 1,1 as “the Word was a god,” and takes exception to the translation of *Colossians* 1,15: “He is the image of the invisible God, the firstborn of all creation, because by means of him all other things were created in the Heavens and upon the earth.” As he points out, the word “other” does not appear in the Greek text, and the anonymous Watch Tower translators inserted it to support their view that Jesus Christ is the first created being, rather than “eternally begotten.” Again, in common with many other critics, Metzger questioned the use of the name Jehovah, either as a rendering of Yahweh, or as a legitimate translation of *kurios*.

One postscript concerning *The New World Translation* is worth mentioning. Critics have alighted on the use that the Society allegedly made of Johannes Greber’s (1874–1944) translation of the Bible, which appeared in 1937 (Greber 1937). Greber was a Roman Catholic priest who joined a Spiritualist group, and his translation supposedly involved the help of the spirit world. The Watch Tower Society referred to him in a small number of articles in the 1950s and 1960s, expressing approval of his translation of *John* 1,1, and *Matthew* 27,51–3, which I have discussed elsewhere (Chryssides 2016, 169–70). Greber’s translation of *John* 1,1–3 was quoted in full in a booklet entitled “*The Word*”—*Who is He? According to John* (1962). The Society later ceased quoting Greber, recognizing his occultist connections with disapproval, but this detail of the Society’s history continues to haunt it: its critics contend that not only are Jehovah’s Witnesses really occultist at heart, but hypocritical as well!

Of the countercult literature that targets Jehovah’s Witnesses, books by Robert H. Countess (1937–2005), David A. Reed, Ron Rhodes, and Robert M. Bowman, specifically address the Society’s translation and interpretation of the Bible (Countess 1982; Reed 1986; Rhodes 1993; Bowman 1991). Particularly

influential is the writing of Walter R. Martin (1928–1989), whose *The Kingdom of the Cults* was first published in 1965, and sold over half a million copies by 1986 (Martin 1965). His chapter on Jehovah’s Witnesses started life as a short booklet, co-authored with Norman H. Klann (1919–1971), entitled *Jehovah of the Watchtower* (Martin and Klann 1953). Also well-known is Anthony A. Hoekema’s (1913–1988) somewhat more measured *The Four Major Cults* (1963), one of which is inevitably Jehovah’s Witnesses, and other more recent critics have included Bob Larson’s *Larson’s Book of Cults* (1982).

In addition to mainstream Christian literature, there are many writings by ex-members, the best-known being William J. Schnell (1905–1973), Raymond V. Franz (1922–2010), Marvin James Penton, and Edmund C. Gruss (1933–2018). A large number of ex-members have now produced novels, of which there are now over 50—a topic that merits further research—some of which are autobiographical, and others works of fiction, which show strong evidence of being based on the authors’ own experience of the Watch Tower organization.

### *Political Opposition: Nazi Germany*

Much more serious than countercult critique is political opposition. Undoubtedly, the most serious persecution was during the Third Reich in the 1930s and 1940s, when Jehovah’s Witnesses—or *Bibelforscher* (Bible Students) as they were called in Germany—declined to participate in national festivals, to salute the national flag, or to give the greeting “Heil Hitler,” and refused to undertake military service. They continued with their house-to-house work and their literature distribution, despite government banning of their activities. As a consequence, they were barred from government employment, denied state benefits, had their businesses boycotted, and children were separated from their families. They were subjected to arrests and beatings, and some 13,400 *Bibelforscher* were sent to prisons or camps.

Unlike the Jews, however, the *Bibelforscher* were given the option of release, on condition that they “swore off” by signing a document certifying that they had left the Watch Tower organization and would no longer participate in any of its activities, transferring their allegiance to the State. Very few Witnesses availed themselves of this option, and around 2,000 did not survive, 270 of whom were

executed. The Nazi authorities were less inclined to sentence *Bibelforscher* to death, since they judged the Witnesses to be “ideologically” rather than biologically unfit, and renouncing their faith was viewed as a greater victory than execution.

### *South Korea*

While Jehovah's Witnesses are now free to proclaim their message in Germany, opposition continues elsewhere. Military service remains a highly contentious issue: while there are many countries that offer alternative civilian service for conscientious objectors, some offer no alternatives, and some require longer periods of alternative service than the equivalent time required in the military. Jehovah's Witnesses are amenable to alternative service, so long as it is not under military control.

In recent times the greatest difficulties have occurred in South Korea and in Russia. In South Korea, the 1948 Military Service Act required military service for all men of 18 years and over, with no option of alternative service, and objectors were criminalized. From 1953, some 19,000 Jehovah's Witnesses have served prison sentences, totaling 36,000 years in all. When Park Chung-Hee (1917–1979) became president, his aim was to have a 100% compliance with the 1949 Conscription Law, and in 1971 he declared a state of emergency, thus making freedom of conscience subordinate to national security. Soldiers were ordered to seek out congregations to arrest conscientious objectors, and use was made of military courts rather than civilian ones, which entailed that Witnesses received not only a less sympathetic hearing, but longer prison sentences for non-compliance—typically, three years' imprisonment rather than two. Prison conditions were harsh, contacts with family were denied, and Witnesses were often tortured, as a result of which five young men died.

Matters changed for the better in 2001, when cases were moved to civilian courts and, following some 500 complaints to the United Nations' Human Rights Committee, assisted by the legal department of the Watch Tower Headquarters, the right of conscience became protected in 2018, and South Korea was required to offer alternative service. However, South Korea's alternative service extends to three years, as compared with the period of military service, which is only 18

months, making it the world's longest period of alternative service. However, all Jehovah's Witnesses there have now been released.

### *Russia*

In Russia, the Bolshevik Revolution of 1917 resulted in new opposition. Although Vladimir Ilyich Ulyanov Lenin (1870–1924) had proclaimed the freedom of religion, the atheist Social Democratic Party soon regarded religion as the “opium of the people,” and made religious instruction illegal. Opposition intensified, as Witnesses continued to ensure the availability of their literature by smuggling it into the country, operating clandestine printeries, and continuing with street witnessing. When Germany attacked Russia in 1941, Jehovah's Witnesses maintained neutrality, and refused to enlist in military service or to vote in elections. In 1951, the KGB persuaded Joseph Vissarionovich Stalin (1878–1953) to exile the “Jehovists” to Irkutsk and Tomsk, where they continued with informal witnessing. In 1961, a budget of 5,000,000 rubles was designated to deal with Jehovah's Witnesses, such was the perceived threat.

Under *perestroika*, which was announced in 1985, the situation began to change, and in 1990 the Chairman of the Committee for Religious Affairs received a delegation of 15 Jehovah's Witnesses, as a result of which the Society was allowed to register in 1991. The religious freedom of Jehovah's Witnesses was short lived, however. The situation for Jehovah's Witnesses was largely prompted by the attitude of the Russian Orthodox Church: Eastern Orthodoxy has tended to be intolerant of other forms of religion, and it is opposed to proselytizing, which of course Jehovah's Witnesses insist on undertaking.

In 1993 Alexander Dvorkin, a Russian Orthodox scholar and activist, decided to set up the Saint Irenaeus of Lyons Information and Advisory Center, Russia's first anticult organization, with the approval of the Patriarch of Moscow. At first, the Center targeted small sectarian Russian groups, but with the passage of time better-known new religious groups, such as Scientology, the International Society for Krishna Consciousness, and numerous others were targeted, including Jehovah's Witnesses.

In 2002, the Russian federal authorities passed a law “On Combatting Extremist Activity,” defined as “propaganda of exclusivity, superiority or

inferiority of a person on the basis of their religious affiliation or attitude towards religion.” In 2006, modifications were made to the legislation, resulting in Jehovah’s Witnesses being accused of incitements to “religious discord” and assertion of superiority and exclusivity, and the following year the Prosecutor General’s Office began an investigation of the Watch Tower organization in the country, commissioning a number of “expert studies.” Although it was concluded that Jehovah’s Witnesses did not actively incite hostility, some 95 of their publications were defined as extremist, and put on the Federal List of Extremist Materials.

Meeting together as congregations came to be regarded as extremist, and 16 Jehovah’s Witnesses were found guilty by the Taganrog City Court on November 13, 2015. This was followed by police raids, and in 2017 the Supreme Court required the liquidation of all the Society’s assets, making it impossible for the premises to be used for meetings. As of October 9, 2020, 388 Witnesses in Russia and Crimea are under criminal investigation, 45 are in prison (10 convicted; 35 awaiting trial); over 190 have served time in pre-trial detention; 26 are under house arrest; and 1,146 homes have been raided since the Supreme Court ruling in 2017.

### *Sexual Abuse*

As the public became increasingly aware of sexual abuse scandals, Jehovah’s Witnesses came under scrutiny. In the year 2000, William H. Bowen, who had been an elder in a Kentucky congregation, and at one time a Brooklyn Bethelite, decided to publish an Internet post, inviting victims to contact him, and he set up the website [Silentlambs.org](http://Silentlambs.org), which became an incorporated organization in 2001. The website’s material is not confined to the Watch Tower Society, but it describes Jehovah’s Witness organization as a “pedophile paradise.”

In reality, there are few, if any, opportunities for pedophile activity at Kingdom Hall meetings or at conventions, since there are well attended, with no special activities for children, who remain with their parents throughout. Sexual abuse has tended to occur within families, or with a congregational member—sometimes an elder or ministerial servant—who has befriended vulnerable fellow members and received hospitality in their homes. What has attracted particular attention, however, appears to be the way in which Jehovah’s Witnesses have

dealt with the problem. Jehovah's Witnesses have now been the subject of two government reports—one in Australia (Royal Commission into Institutional Responses to Child Abuse 2015), and the other in the Netherlands (van den Bos et al. 2019). The Australian Royal Commission's investigations were not confined to Jehovah's Witnesses but had a much wider scope, including health care and educational establishments, as well as a number of religious denominations, such as Anglicans, Roman Catholics, and the Salvation Army. By contrast, the Netherlands Report exclusively targeted Jehovah's Witnesses.

### *Online Opposition*

Mention should also be made about the opportunities for opposition afforded by the Internet. There are many websites that have been created in opposition to the Watch Tower Society: many of these are amateurish, but there are a number of quite professionally produced web pages, such as [avoidjw.org](http://avoidjw.org), [jwfacts.com](http://jwfacts.com), [jwsurvey.org](http://jwsurvey.org). Particularly vocal in his online criticism is Lloyd Evans (who also writes under the pseudonym John Cedars), author of *The Reluctant Apostate* (Evans 2017), who has authored various books and web pages, and features numerous videos.

These online critiques of Jehovah's Witnesses address numerous perceived doctrinal and social issues, particularly blood, disfellowshipping, and shunning, and highlight atrocity tales, as well as alleged changes in doctrine, offering advice on what to say to Jehovah's Witnesses at the door and on literature carts, and how to leave. These pages also make available archival material, as well as restricted literature normally only available to elders.

Perhaps most important for ex-members is the role of social media. One major problem for ex-members is that they miss former friends, families, and community. Groups such as the Facebook (2020) Ex-Jehovah's Witnesses Support provide an alternative community: at the time of writing, it is followed by 9,140 members, with 8,695 "likes." The forum is international, and because social media groups are themed, it can readily bring together those who would have found difficulty in the past pre-Internet years finding others in like situations. Although such groups operate in cyberspace, the online contact frequently leads to physical meetings, and thus can create new communities of conventional friendships.

## *Conclusion*

The preceding discussion has not attempted to evaluate these criticisms or to consider how the Watch Tower Society has responded, but merely to enumerate the kinds of criticism that have been made of the organization since its inception. A thorough assessment would be a more major task. More detailed discussion of sexual abuse allegations can be found in the Jehovah's Witnesses' response to the Dutch Government and an expert report by Holly Folk, Massimo Introvigne, and J. Gordon Melton (van Ling 2020; Folk, Introvigne, and Melton 2020). Further analysis must await my forthcoming *Jehovah's Witnesses: An Introduction* (Chryssides 2021). In the meantime, it is worth mentioning briefly that many of the critics only tell part of the story. For example, the Miracle Wheat incident ended with the Watch Tower Society offering a full refund to all purchasers—an offer of which no one took advantage.

Allegations against Russell and the foster child Rose Ball (1869–1950) were never substantiated, and indeed seem unlikely if, as is often reported, his marriage with Maria was a celibate one (*The Watchtower* 1953). Critics of the Society's policy on blood often fail to mention the medical alternatives that Jehovah's Witnesses find acceptable, their Hospital Liaison Committees, or the fact that blood transfusion has sometimes caused illness rather than cure. While their stance on war may seem unpatriotic, Jehovah's Witnesses will typically point out that, if all countries adopted the same attitude to armed conflict, the world would be a much more peaceful and prosperous place. I have discussed the Jehovah's Witnesses' position on prophecy elsewhere and, without endorsing their views on inter-time chronology, I have argued that it has been seriously misunderstood (Chryssides 2010).

Mainstream Christians will of course continue to challenge Watch Tower teachings; that is certainly their right, but criticism of course should be based on accurate understanding rather than caricature or scant and careless reading of the Society's literature. Few critics in the free world would endorse the persecution that Witnesses have undergone, but Jehovah's Witnesses remain undeterred, continuing with their worship and their evangelism, believing that the truth should not be compromised by secular ideologies or vociferous critics, and that opposition is to be expected as confirmatory evidence that Armageddon is near.

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## Opposition to Jehovah's Witnesses in the United States Through the Twentieth Century

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**ABSTRACT:** The Jehovah's Witnesses have emerged in the United States as one of the very few denominations that have attracted as many as a million members, a status that came only after battling back from both social discrimination and government persecution over some of its unpopular beliefs. In 1918, the president and several of his fellow leaders of the precursor Watch Tower Bible and Tract Society were convicted under the Espionage Act for ostensibly advising young men to avoid joining the armed services. Then, beginning in the 1930s, members were harassed for refusing to salute the flag and recite the pledge of allegiance. About the same time, they also began to experience pushback from their active evangelistic efforts such as distributing materials on the street and knocking on the front door of private residents. Their ability to practice and spread their faith would lead to multiple cases going to the Supreme Court for final resolution, most culminating in Witnesses prevailing. Their fight to defend their freedoms in the courts through the mid and late twentieth century expanded the understanding of the First Amendment freedoms to all American religions.

**KEYWORDS:** Jehovah's Witnesses, Religious Freedom, American Flag, Pledge of Allegiance, Religious Freedom in the United States.

### *Introduction*

The Jehovah's Witnesses communion has emerged in the 21<sup>st</sup> century as one of the more important religious groups globally. It is one of a miniscule number of religious denominations to have a worshipping community in as many as 200 countries (of the 240 recognized by the UN). Meanwhile in the US, the land of its birth, and home to several thousand religious communities, it is one of but 25 denominations to attract as many as a million adherents (Chryssides 2008, 2009, 2016; Holden 2012; Knox 2018; Penton 2015; Bergman 1984). Its numerical

success has not come without controversy, indeed, the JWs have a unique history of overcoming public disparagement of their beliefs and practices.

What we know today as the Jehovah's Witnesses emerged in stages through the 1870s in the United States, beginning with an independent Bible study group in Pittsburgh, Pennsylvania, organized by Charles Taze Russell (1852–1916) in 1870. Russell, who had been influenced by the Adventist tradition and was deeply concerned with eschatological questions, promoted a solution of a critical problem about the return of Jesus Christ based on a redefinition of the Greek word *parousia* (which had several historical antecedents). Rather than “return,” he promoted the theory that *parousia* be translated as “presence.” He followed that theory by suggesting that Jesus’ *parousia* or presence was in 1874. A generation later (in 1914) would see the end of this present age (Horowitz 1986; Zydek 2009).

To further his views, Russell began issuing a periodical, the *Zion's Watch Tower* (1879), incorporated the Zion's Watch Tower Tract Society (1884), and moved his headquarters to Brooklyn in 1909. During this period, he also issued a six-volume *Studies in the Scripture*, that presented his broad perspective and announced the Millennial Dawn, the arrival of a new age of the coming kingdom. As the volumes appeared, he recruited an army of associates to spread out across the country and distribute his writings. Russell died in 1916, by which time he led a movement with centers across North America and was already spreading around the globe.

Russell died shortly after World War I began (but prior to the United States' entrance into the war in 1917) amid speculation that the war was a sign of the end of the present social order. Shortly after America's entrance into the war, the government passed the Espionage Act, which targeted anyone in the US who might interfere with military operations or recruitment, or provide support for the country's enemies. On May 16, 1918, the Sedition Act amended the Espionage Act, adding anti-war speech as a prosecutable offence. This act immediately called into question any religious groups with pacifist tendencies (such as the Mennonites and Quakers), especially those that had formed relatively recently, such as the Church of God in Christ, an African American Pentecostal group, whose founder Charles Harrison Mason (1864–1961) was arrested on two occasions for advising its younger members to refuse the draft (White 2015; Brock 2016; Mollin 2006).

Meanwhile, Russell would be followed by Joseph Franklin Rutherford (1869–1942) as the new head of the Watch Tower organization. The legitimacy of his leadership was challenged by several colleagues and led to the first schisms among the Watch Tower Bible Students, especially after Rutherford backed the publishing of a seventh volume of *Studies in the Scripture*, called *The Finished Mystery* (Woodworth and Fisher 1917). He emerged, however, with the overwhelming support of the followers, and went on to direct the society for the next three decades. He is remembered today for leading the society to adopt its present name, Jehovah's Witnesses, in 1931.

Rutherford died in 1942, and was succeeded by Nathan Homer Knorr (1905–1977), who would remain in charge for the next quarter of a century. Among the more noticeable changes introduced by Knorr was the removal of any author's name(s) from the literature. Rutherford had issued a stream of books, but beginning in the 1940s, Watch Tower books no longer carried the name of any who contributed to their writing. Knorr also instituted a new leadership training program that raised the level of interaction of Watch Tower people with possible recruits, and led to a significant expansion of the size of the Witnesses community both nationally and internationally. In addition, and possibly most significantly, Knorr oversaw the Witnesses' response to the controversies that surrounded them, and led them through its most intense phase.

### *Accusations of Being a "Cult"*

It was during the height of Russell's career at the end of the nineteenth century that leaders within the mainstream Protestant denominations, still in a growth phase, recognized that they had a variety of competitors who denied what was considered the essential core of Christian doctrine. Inside the church were the Modernists, and on the fringe were a growing number of new religions, the "cults." The term "cult" was introduced in the 1890s, and popularized in the 1920s.

Relative to the Bible Students, Christian critics accused them of a variety of doctrinal errors beginning with the Arian theology espoused in the *Studies in the Scriptures*. The 4<sup>th</sup> century bishop Arius (256–336) essentially denied the divinity of Jesus, suggesting that Jesus was God's firstborn but slightly less than

God himself. That definition of Jesus's status then reverberated through Christian theology relative to, for example, the nature of Jesus' role in human salvation.

The rise of a Christian counter-cult movement paralleled the rise of fundamentalism, and counter-cultists always included the Witnesses among their targets. They received lengthy chapters in Jan Karel Van Baalen's (1890–1968) *The Chaos of the Cults* (1938) and Walter Martin's (1928–1989) *The Kingdom of the Cults* (1965), and were prominent as one of the *Four Major Cults* (1963) cited by Anthony Hoekema (1913–1988). Through the last half of the twentieth century, the Witnesses vied with the Latter-day Saints as the major target of counter-cult attention (Van Baalen 1938; Martin 1965; Hoekema 1963).

Major accusations against the Witnesses included their denial of the full divinity of Jesus, their denial of the traditional doctrine of hell, and the obvious failure of some predictions about the end of the present social order (i.e., the failure of prophecies). Since the Witnesses introduced their own translation of the scripture, the *New World Translation of the Holy Scriptures*, beginning in 1950, it has been given extensive scrutiny and denounced by some as a flawed translation (Guarino 2019; Wright 2019).

The counter-cultists also gave particular attention to apostate stories. The autobiography of William Schnell (1905–1973), *30 Years a Watchtower Slave*, initially released in 1956, becoming an essential item in every counter-cultist's library. It has remained in print into the new century. As apologetics has developed as a significant discipline in Evangelical seminaries, new anti-Jehovah's Witness material is continually being generated, including a whole new generation of apostate material (Schnell 1956; McDaniel 2014; Scolah 2019).

### *Persecution*

This brief overview of JW history defines an environment in which the Witnesses encountered government and legal forces through the twentieth century. Their initial problem emerged just as the leadership was reorganizing in the wake of Charles T. Russell's death in 1916.

The United States formally entered World War I in April 1917. Two months later, the legislature passed the already mentioned Espionage Act, which made it a crime, among other things, to refuse duty in the armed forces and to obstruct the

country's recruiting or enlistment service. Conviction led to fines (up to \$10,000) and/or imprisonment (up to 20 years). It was passed by a narrow margin, the legislators being aware of the unpopularity of the war among the general population, the Woodrow Wilson (1856–1924) administration having been elected on the slogan, "He kept us out of war." As mentioned earlier, it was followed by the Sedition Act.

While initial targets of the acts were those in the socialist wing of the labor movement, the government also moved against the Bible Students. In May 1918, sedition charges were laid under the provisions of the Espionage Act against Rutherford and seven of the Watch Tower directors and officers, prosecutors citing as their rationale some statements made in *The Finished Mystery*, that final volume of the *Studies in the Scripture* series that had been published in 1917 (Woodworth and Fisher 1917).

Particular statements used against the Watch Tower Bible Students grew out of the general separatist position expressed in the Watch Tower's early pacifist stance. Rutherford and his colleagues were subsequently charged on four counts, arrested, and tried. Following their conviction, on June 21, the seven defendants were sentenced to four 20-years terms, the sentences to run concurrently. The war ended in November 1918, and shortly thereafter, the prisoners' cause gained some traction. Nine months into their sentence, Supreme Court Justice Louis Brandeis (1856–1941) ordered their release on bail. They served nine months in the federal penitentiary in Atlanta, Georgia, before finally being released. In April 1919, an appeals court ruled that they had been denied an impartial trial, and reversed their conviction. A year later, the government announced that all charges had been dropped, and there would be no attempt to retry them. The matter seemed closed.

Meanwhile, in the post-war years, the movement to display the flag and to wed that display to a newly written pledge of allegiance gained ground. Churches had become involved, especially in the Midwest where many German and Scandinavian churches, which had previously maintained worship in their home country's language, quickly anglicized during the war years, and placed an American flag in their sanctuaries.



Figure 1. Rutherford's prison picture.

After the war, especially after the adoption of the present text of the allegiance in the 1920s, the placement of a flag, the pledge of allegiance, and a lay form of a salute to the flag all began to make their way into the public schools. In the 1930s, even as the Jehovah's Witnesses gained a new level of visibility by adopting a distinctive name and beginning to build Kingdom Halls, the insertion of the pledge into the public schools morning exercise led to the Witnesses reiterating their belief that some expressions of patriotism were nothing more than idolatry and should be avoided.

As World War II began, and especially in the years prior to the United States officially entering the conflict in the wake of the attack on Pearl Harbor, the case of the children and youth of Witnesses families refusing to salute the flag and recite the pledge of allegiance would become a significant public issue.

The issue was assigned an increased importance after Congress formally adopted the pledge in 1942, and then the following year designated a standard form of the average citizen (not a member of the armed forces in uniform) response/salute (Jones and Meyer 2010; Ellis 2005).

The Jehovah's Witnesses refused to salute the flag, or repeat the pledge of allegiance, practices that had their greatest impact on the children attending

public schools, where they faced both the ire of teachers and the taunts of classmates.

A new phase in the opposition to activities around the flag began in the summer of 1935 when Rutherford told a Jehovah's Witnesses convention that to salute an earthly emblem was unfaithfulness to God and that he would not do it. As school started up, one Carleton Nichols (1927–2007), a third-grade pupil brought up in a Jehovah's Witnesses family, refused to recite the pledge and was duly expelled from his school in Lynn, Massachusetts. As the incident received press coverage, other Jehovah's Witnesses children followed suit, and Rutherford publicly praised them. He wrote a brief booklet, *Loyalty*, discussing the issue, which had the effect of transforming his opinions concerning the flag into the official teachings and accepted doctrine of the organization. Rutherford explained that, while members of the organization respected the flag, going through a ritual before it constituted idolatry. Idolatry was repeatedly forbidden in the Scripture (Rutherford 1935, 16–8). Some Witnesses formed private schools to continue their offspring's education.

Several years later, in Minersville, Pennsylvania, a predominantly Roman Catholic community, the children of a local Witness, Walter Gobitas (1900–1990, whose name was incorrectly spelled “Gobitis” in the court decision), challenged the system by refusing to say the pledge of allegiance. By this time, the Witnesses had informally begun to actively oppose regulations that attempted to squelch their religious behavior. As early as 1933, the organization had quietly passed around instructions on how members should act if arrested and/or faced a court appearance (Bergman 1984).

Walter Gobitas and his family were recent converts to the Jehovah's Witnesses. They were inspired by stories of fellow members who challenged the system and suffered for it. Walter's children did not pledge allegiance when at school. His son William (“Billy,” 1925–1989), in the fifth grade, and his sister Lillian (later Klose, 1923–2014) were expelled. His business was boycotted. The situation led to a trial in February 1938. Gobitas won the first round when in June a judge ruled the Minersville school board's requirement that the children salute the flag violated the children's free exercise of religious beliefs. The school board, however, decided to appeal the decision, and the case wound up in the US Supreme Court in 1940. In the case of the *Minersville School District v. Gobitis*,

the court ruled 8-1 to reverse the lower courts and upheld the mandatory flag salute.

The ruling led to a public backlash against the Witnesses. People were physically assaulted, and kingdom halls were burned. The American Civil Liberties Union reported to the Justice Department that nearly 1,500 Witnesses had been physically attacked in more than 300 communities nationwide. At the time, the US was publicly debating the country's entrance into World War II, and many interpreted the decision as suggesting that the Witnesses were traitors to the country (Peters 2000).

In 1942, the West Virginia's Board of Education ordered the public schools to make the salute to the flag a regular part of the daily program of their schools' activities, and added that any refusal would be regarded as an act of insubordination. It should be noted that the salute at this time was a raised right arm that looked strangely similar to the Adolf Hitler (1889–1945) salute in Nazi Germany. It was also to be done while repeating the pledge of allegiance.



**Figure 2.** American school children in the early 1940s salute the flag.

At this point, Marie Barnett (later Snodgrass, 1933-) and Gathie Barnett (later Edmonds, 1931–2012: their names were misspelled as “Barnette” in the court decisions), children of a Jehovah's Witness family in Charleston, West Virginia, refused to salute the flag, were duly expelled, and their parents filed suit against

the school board. They actually won the case when first heard locally, but it was appealed upward and landed at the Supreme Court. The Witnesses' lawyer—Hayden Covington (1911–1978)—argued for the court to overturn its previous decision, an argument that had gained broad support including that of the American Bar Association. And the court listened. Reversing the Pennsylvania ruling, it concluded in a 6-3 decision that it was unconstitutional for public schools to compel students to salute the flag. It added that any attempt to establish a “compulsory unification of opinion” was both doomed to failure and antithetical to the values set forth in the First Amendment (Covington 1950; Peters 2000).

Parallel to the flag cases were a set of cases involving the Witnesses active program of evangelization. The Witnesses were active on the streets and in knocking on the doors of private homes to present their case. They passed out literature and solicited donations to cover the printing costs of their publications. They also carried phonograph machines to play records presenting their teachings. Some of this material was blatantly hostile to other religions in general and to the Roman Catholic Church in particular (which in turn published vitriolic criticism of the Witnesses). It should be noted that while the Roman Catholic Church was the largest church in the United States, and had been so for a hundred years, the Protestant churches were collectively much larger and often shared the anti-Catholic views of the Witnesses. While the content of the material distributed by the Jehovah's Witnesses was at issue in some contexts, the manner in which they distributed it was most often the legal concern at issue.

Beginning in the late 1930s, cases on literature distribution (and related issues) began to arise in locations around the country. The most critical one began in a predominantly Roman Catholic neighborhood of New Haven, Connecticut, in which a Witness name Newton Cantwell (1878–1981), along with his two sons, carried out their proselytizing ministry. They were arrested for not having obtained a certificate to solicit funds in public and for breaking the peace. Initially the state supreme court ruled against the Cantwells. But in a unanimous ruling, the US Supreme Court ruled against the state, in that requiring what amounted to a license to exercise religion violated the free exercise of religion. Crucial to the issuing such a document was allowing an individual official the authority to determine which groups should and should not receive such a certificate.

*Cantwell v. Connecticut* also had the effect of clarifying an understanding in American law—the first amendment guarantees of freedoms applied to the state governments and not just to the federal government. Not only was the federal government forbidden to pass laws abridging the free exercise of religion, but neither could the states (Alley 1999; Peters 2000, Kaplan 1989).

### *Conscientious Objection*

Following Pearl Harbor, an old issue reemerged for the Witnesses, actual participation in the armed services. The Jehovah's Witnesses had from the days of Charles Russell refused to take up arms in any country's war, even as, citing *Roman 13*, Russell had no objections to service in the Armed Forces in noncombatant positions, especially in the supplying of medical services, under the obligation of being subject to the authority of government. However, a quarter of a century after Russell's passing, in 1940, the United States passed the Selective Training and Service Act, which provided for mandatory alternative service for those who refused to take part in combat because of religious belief. Those who objected to the noncombatant alternative service could be arrested and imprisoned. By this time, however, Rutherford had come to feel that even noncombatant service was wrong. In accepting noncombatant duties, one freed up someone else to take up firearms, and hence little was gained by the individual in a partial withdrawal from warfare (DePaul College of Law 1955).

The position articulated in the 1940s would become a source of tension between the Witnesses and the United States government over the next generation. In 1983, the Witnesses leadership, looking back over a generation of struggle on the issue, noted:

An examination of the historical facts shows that not only have Jehovah's Witnesses refused to put on military uniforms and take up arms but, during the past half century and more, they have also declined to do noncombatant service [under the Army] or to accept other work assignments as a substitute for military service. [...] Many of Jehovah's Witnesses have been imprisoned because they would not violate their Christian neutrality (*United in Worship of the Only True God* 1983, 167).

Witnesses developed a rather sophisticated position on war and peace and their place in it, given Israel's many wars described in the Old Testament. The Witnesses also reflected upon a coming war in the future, the war of

Armageddon, in which they might be called upon to fight (although without using “carnal weapons”). One was in the far historical past, the other in a future only vaguely conceivable from the limited texts referring to it. More consequential were the anti-war biblical statements that offer an immediate rationale for refusal to participate in any present-day armed services, on the grounds that Bible believers should be neutral in worldly conflicts and as *Isaiah 2:4* states, “neither shall they learn war anymore.”

Over the years of the war and for decades afterwards, Jehovah's Witnesses faced periodic conflict even as a general acceptance of conscientious objection to war was largely accepted by the public. Among the key cases relative to Witnesses arrested for their conscientious objection was that of Anthony Sicurella (1927–1988), who had refused to enlist in the armed forces because of his religious beliefs.

Sicurella's appeal of his conviction worked its way to the Supreme Court in 1955. In this case, his status as a pacifist was challenged due to his stated willingness to fight, if called upon by God, in the eschatological battle of Armageddon. The Supreme Court overturned his conviction holding that the law on conscientious objection to military service referred to citizen's attitudes to real shooting wars in the present rather the spiritual battles anticipated at the world's end, wars in which the Jehovah's Witnesses were by no means unique in believing to be in their future (Hunt 1969). The Supreme Court also reiterated that in these future “spiritual wars,” “Jehovah's Witnesses, if they participate, [believe they] will do so without carnal weapons” (*Sicurella v. United States* 1955).

The Witnesses would continue to deal with conscientious objection issues in the United States until the end of the draft in the mid-1970s made the issue largely a moot point. The Witnesses' leadership has nevertheless remained alert due to the on-going nature of the issue relative to military service in multiple countries around the world.

### *Blood Transfusions*

A final set of court cases, all more recent, involved a particular belief of the Witnesses relative to drinking blood. Based upon biblical admonitions not to drink blood (cf. *I Samuel 14:33*), the Witnesses refuse blood transfusions. This

belief, while considered by many secular opponents to be ignorant and superstitious, and by most mainline Christians to be based on a very peculiar exposition of scripture, is a strongly held credence of the Jehovah's Witnesses.

In the United States, individuals (adults) can refuse most medical treatments. The issue is medical, not legal. For Witnesses, the primary legal issue involving blood transfusions has concerned minors who might need operations in life or death situations that involve the use of transfusions. This situation has often led to court intervention, and the assumption by the court of the responsibility of the minor's parents until the operation is performed.

These cases, however, assumed a radically new perspective in the 1990s, when America faced a dramatic blood shortage due to contamination of the blood supply by the AIDS virus, and in several countries, patients died because of transfusions with contaminated blood. Through the 1970s and 1980s, due to their belief, the Witnesses had led in the development of various alternative surgical procedures that did not require transfusions. These alternative procedures became quite popular in the 1990s, and have led to more permanent changes in surgical procedures in the post-AIDS era, affecting all patients and not the Jehovah's Witnesses only (Stevenson 2016; Carbonneau 2003; Bergman 1980).

### *Conclusion*

Through the middle and late twentieth century the Witnesses championed a set of unpopular beliefs and practiced several very unpopular behaviors, which led initially to a community reaction, and then caused them to challenge a set of laws that at the state and local level attempted to push back against those beliefs and practices (Côté and Richardson 2001). In order to practice their religion, the Witnesses at first fell victim to the laws, and then mounted a successful legal effort to have the laws changed or removed.

Through the 1940s, their efforts resulted in more than twenty First Amendment cases that went to the Supreme Court, almost all of which they won. That number has more than doubled in the years since. In winning these cases, they ended their major conflicts with the American government, but also have, in the process, rewritten American law relative to the First Amendment to the

Constitution by extending the impact of the Bill of Rights and of its guarantees of the freedoms of the exercise of religion, speech, and assembly. They have done so just as America has experienced a radical growth of religious diversity, with the decisions in their many cases clarifying the covering that the First Amendment offers for all religious communities.

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## **Dangerous Freedoms: Jehovah’s Witnesses, Religious Liberty, and the Questions of Sexual Abusers and Disfellowshipped Ex-Members**

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**ABSTRACT:** Sociologist Hans Joas sees the coexistence, and sometimes conflict, of three forms of sacralizations in modern history: religious sacralization, and the sacralizations of the nation and the person. The article argues that today the “religion of God” defends its religious liberty against some excessive claims both by the “religion of the state” and the “religion of the person.” Like canaries in the coal mine, Jehovah’s Witnesses are often the first to be hit, both by the “religion of the state” in non-democratic regimes that deny their individual religious liberty, and by the “religion of the person” in modern democracies where their corporate religious liberty is under attack. By defending their rights to be free from interferences of the states when they decide which members should be disfellowshipped (and as a consequence shunned or “ostracized”), even when these members are accused of sexual abuse (a different question with respect to whether they should be reported to secular authorities), the Jehovah’s Witnesses are again today at the cutting edge of the defense of religious liberty against the most subtle and dangerous forms of assault.

**KEYWORDS:** Jehovah’s Witnesses, Religious Liberty, Freedom of Religion and Belief, Sexual Abuse and Religion, Shunning and Religion, Ostracism.

### *Three Forms of Sacralization and Their Conflicts*

The struggle of the Jehovah’s Witnesses for their individual and corporate religious freedom throughout the world is one of the most relevant issues in the global scenario of religious liberty and persecution. It is also a mirror reflecting crucial questions in the contemporary sociology of religion.

Perhaps the issue most frequently discussed by sociologists of religion is secularization. In his 2017 book, *Die Macht des Heiligen*, German sociologist

Hans Joas offered an original answer to the decade-old question whether secularization is a theory invented by some anti-religious scholars, or a real phenomenon. Joas believes that the situation of some Western European countries shows that a society without organized religion, or where organized religion only interests a small minority, is at least theoretically possible, if not already present. Building on the early sociology of religion of Émile Durkheim (1858–1917), but going beyond it, Joas argues that there may be societies without (organized) religion, but not societies without sacralization. Religion is not the only possible form of sacralization. History also knows a “sacralization of the nation” (or the state, or the country), and a “sacralization of the person” (Joas 2017, 475–79).

An alternative to Joas’ terminology would be to see three “religions” at work in history: the “religion of God” (where “God” can be personal or impersonal, and there can be one God or many), the “religion of the nation” (or “of the state,” although state and nation are obviously not the same), and the “religion of the person.” Other relevant insights by Joas are that the sacralization of the nation, at least since the late 18<sup>th</sup> century, is present everywhere, in democratic as well as in totalitarian states, although in different forms, that modern sacralization of the person centers on human rights (Joas 2011), and that some conflict between the three forms of sacralization is unavoidable.

I would argue that here precisely lie the core problems of religious liberty in the 20<sup>th</sup> and 21<sup>st</sup> centuries. The forms of sacralization are different, but the human individual is one, and inhabits different spheres at the same time. One may be a member of a particular “religion of God,” yet being subject to the “religion of the nation” as a citizen, and partaking of the “religion of the person” as a general cultural climate. This situation may be lived as not conflictual. One example is Alcide De Gasperi (1881–1954), who was Prime Minister of Italy between 1945 and 1953. He was such a pious Catholic that he is now being considered for beatification. At the same time, he certainly regarded himself as an Italian patriot, and was an enthusiastic apologist of the then newly proclaimed Universal Declaration of Human Rights (Romano 2008).

Conflict, however, is also frequent. Each of the three “religions” may exhibit a tendency to affirm itself against the others. This is also true for the “religion of the person” and human rights, which may at first sight look as the more benign and less dangerous form of sacralization. One problem, here, is that the concept

of human rights is not uncontested, and there is a continuous tendency to add or claim new rights. Feminists and the LGBT community, or more recently the Black Lives Matter movement, for example, claim, and in their own way “sacralize,” “new” rights that may create conflicts with the “religion of God.” Feminists claim for women the right to access all positions and offices, while several religions reserve their priesthood and higher offices to males. LGBT activists may see religions teaching that homosexuality is a sin as infringing their rights to be respected and not discriminated. During the Black Lives Matter protests, statues of saints and other religious figures that the movement accused of having supported colonialism and racism were vandalized or destroyed, in incidents that some religionists have in turn perceived as an assault on their religious freedom.

Cardinal Joseph Ratzinger, later Pope Benedict XVI, whose richness of analysis of religious liberty is unsurpassed among Catholic theologians, saw new, growing conflicts between (what I call here) “religion of God” and “religion of the person,” due to the emergence of “new human rights,” joining old conflicts between the “religion of God” and the “religion of the nation.” Ratzinger was, of course, aware that religious liberty is in itself part of human rights, but distinguished between individual and corporate freedom of religion. In modern democratic societies, Ratzinger noted, it is generally accepted that individuals have a freedom to believe or not to believe, but it is less accepted that corporate religious bodies have rights of their own (see Introvigne 2012).

Ratzinger, however, did not fully elaborate on the question of the limits of corporate freedom of religion. The latter is limited by other essential human rights. A religion cannot claim that organizing human sacrifices is part of its corporate freedom. But what other human rights should be considered essential? Ratzinger saw something important, that corporate religious liberty is at risk today because of the sacralization and expansion of the “religion of the person,” centered on both old and new human rights. But almost all his examples of corporate religious liberty worth being defended concerned the Catholic Church.

There is, however, a political and legal Vatican document endorsed by Pope Benedict XVI that was highly significant in this respect. On January 23, 2013, shortly before he announced his resignation, the Pope authorized the Permanent Representation of the Holy See to the Council of Europe to publish a note on two cases then being examined by the European Court of Human Rights, *Sindicatul “Păstorul cel Bun” v. Romania* and *Fernández-Martínez v. Spain* (Permanent

Representation of the Holy See to the Council of Europe 2013). Both cases would be eventually decided by the Grand Chamber according to the Holy See's recommendations. *Fernández-Martínez* affirmed the right of the Catholic Church, who under the Concordat with Spain designates the teachers of religion and ethics in Spanish public schools, who are then appointed and remunerated by the government, to ask the Ministry of Education to dismiss an ex-priests whose teachings were no longer in accordance with the Church's (European Court of Human Rights 2014).

While *Fernández-Martínez* concerned the Catholic Church, *Sindicatul* affirmed the right of the Romanian Orthodox Church to prevent his priests from forming an unauthorized trade union, both by disciplining them and by persuading the government to de-register the union (European Court of Human Rights 2013). Although *Sindicatul* was about a non-Catholic organization, the Vatican document supporting the Romanian Orthodox Church was still written with a primary reference to the Catholic Church itself:

A member of the lay faithful or a religious cannot, with regard to the Church, invoke freedom to contest the faith (for example, by adopting public positions against the Magisterium) or to damage the Church (for example, by creating a civil trade union of priests against the will of the Church). It is true that every person is free to contest the Magisterium or the prescriptions and norms of the Church. In case of disagreement, everyone may exercise the recourses provided by canon law and even break off his relations with the Church. Since relations within the Church are, however, essentially spiritual in nature, it is not the State's role to enter into this area to settle disputes (Permanent Representation of the Holy See to the Council of Europe 2013, no. 3).

It was also the case that the ecclesiastical structure of the Romanian Orthodox Church is not too dissimilar from the Catholic one. We may wonder whether the Holy See would have taken the same position, had the corporate religious freedom rights of groups labelled as "cults" and annoying the Catholics with their proselytization practices been at stake. The Vatican Note, however, affirmed a general principle that "it is not the State's role to enter into the area" of internal church discipline, and that the freedom of the single devotee is guaranteed by his or her right to leave the church in case of disagreement, not by pretending that the church adapts to beliefs and practices it regards as unorthodox.

*Canaries in the Coal Mine: Jehovah's Witnesses and Individual Religious Liberty*

The Jehovah's Witnesses powerfully contributed to the advancement of religious liberty in the world's courts. Like the proverbial canaries in the coal mine, they opened the way, at times through great efforts and suffering, and obtained decisions that went to the benefit of many other religious groups.

This is not coincidental, and is in fact deeply rooted in the Jehovah's Witnesses' theology. They regard any form of sacralization of the nation as contrary to the rights of God. They do not vote, do not join political parties, refuse to serve in the Army, and do not salute flags, precisely because they interpret all these acts as implicitly denying their exclusive allegiance to the Kingdom of God.

In the United States, the Jehovah's Witnesses have been defined as “a catalyst for the evolution of the Constitutional law” (McAninch 1987), as they obtained key Supreme Court and other decisions upholding their rights to conscientious objections, not to vote, not to salute the flag, recite the pledge of allegiance, nor sing the national anthem (Manwaring 1962).

In all or most of these cases, however, the Jehovah's Witnesses were insisting on the rights of individual believers to refuse what Joas calls the “sacralization of the nation.” Their legal struggles, as Shawn Francis Peters argued in 2000, were parts of the “rights revolution,” affirming the person's rights against the pretenses of the state (Peters 2000).

The Jehovah's Witnesses' right to follow the “religion of God” and reject the “religion of the nation” has been affirmed in the United States and other democratic countries, but does not prevail everywhere. In South Korea, the Witnesses are still struggling to see their right to conscientious objection recognized, notwithstanding a favorable Constitutional Court decision in 2018 (Kwang 2018), and an equally favorable opinion of the United Nations Working Group on Arbitrary Detention in the same year (Human Rights Council, Working Group on Arbitrary Detention 2018). The situation in Russia is well-known. In China, although the Jehovah's Witnesses are not officially included in the list of *xiejiao* (groups banned as “heterodox teachings,” an expression often incorrectly translated as “evil cults”), on June 30, 2020, the Korla City People's Court, in Xinjiang, sentenced 18 of them to heavy jail penalties, applying Article 300 of the

Chinese Criminal Code, which refers to *xie jiao* (Korla City People's Court 2020; Chang 2020).

The Chinese case deserves a short comment. Recent research has evidenced that the sacralization of the state is a constitutive part of modern China, and continues in the present-day Communist regime (Walsh 2020). Wu Junqing has explored the concept of *xie jiao* through Chinese history, arguing that those who were banned as *xie jiao* were movements perceived as offering a competing sacralization with respect to the state, through “black magic” (opposed to the state’s “white magic”) and messianism (opposed to the state’s own messianic role). The contemporary Chinese Communist Party has inherited this concept, and “black magic” has been secularized into accusations of “brainwashing” and mind control (Wu 2016, 2017). Whether or not the Jehovah’s Witnesses are officially listed as *xie jiao*, they are perceived as living outside the sphere of the sacralized Chinese state, which is enough to go to jail in contemporary China.

When they struggle to protect their *individual* religious freedom against the states, the Jehovah’s Witnesses may find allies in those who do not believe in the “religion of God,” yet believe in the “religion of the person” and of human rights. After all, except some extreme anti-cultists, few would not defend the Jehovah’s Witnesses when they are detained and tortured in China (Chang 2020), or Russia, for no other reason than peacefully practicing their faith (Rainsford 2019; *The Moscow Times* 2020). Indeed, those who promote the sacralization of the person are glad to cooperate with all those who can help them in “desacralizing the state” (Joas 2017, 478). However, religionists and libertarians make strange bedfellows, and their cooperation may turn into conflict when *corporate*, rather than individual, religious liberty is at stake.

### *A Different Freedom: Corporate Religious Liberty, Disfellowshipping Practices, and “Ostracism”*

As the Vatican note of 2013 clarified, new problems arise when some ask the states to intervene and protect human rights “within the church[es.]” Clearly, those who join a religion do not intend to abdicate their basic human rights. They do not authorize their religious leaders to rape or kill them and, should they give such an authorization, it would be null and void under the secular laws of the

state. The question, however, is whether when joining a religion, devotees can, and perhaps should, abdicate *some* human rights.

The question easily gets emotional when dealing with religions, and scholars who answer in the affirmative are easily accused of defending abusive religious leaders. To make it less emotional, we can start by observing that joining *any* social formation involves surrendering human rights that would otherwise exist. By marrying, in a monogamic society, one surrenders the basic human right to marry—i.e., to marry again, without passing through a divorce, and even in most polygamic societies the number of wives allowed is limited. By joining a political party, one surrenders his right to campaign for a rival party (indeed, expulsions from political parties for this and lesser reasons are common, and not generally regarded as objectionable). By doing consulting work for a law firm, one often signs an agreement where the right to work or consult with some rival law firms is surrendered. And so on.

The European Court of Human Rights in its *Sindicatul* decision observed that Article 9 of the [European Human Rights] Convention [which protects freedom of religion and belief] must be interpreted in the light of Article 11, which safeguards associations against unjustified State interference. Seen from this perspective, the right of believers to freedom of religion encompasses the expectation that the community will be allowed to function peacefully, free from arbitrary State intervention. The autonomous existence of religious communities is indispensable for pluralism in a democratic society and is an issue at the very heart of the protection which Article 9 affords. It directly concerns not only the organization of these communities as such but also the effective enjoyment of the right to freedom of religion by all their active members. Were the organizational life of the community not protected by Article 9, all other aspects of the individual's freedom of religion would become vulnerable (European Court of Human Rights 2013).

We find here the key statement that, in order to be real, religious freedom should include *corporate* religious liberty, i.e. the right of a religious community to organize itself as it deems fit, which is also a pre-condition for the “effective enjoyment” of *individual* religious liberty by its members.

The problem, which is both cultural and legal, is that those embracing some more radical versions of the “religion of the person” view with suspicion the fact that certain individuals may decide to surrender some of their human rights to acquire membership in a corporate body, religious or otherwise. They may even claim that the state should protect them against themselves, or that, if they accept

to surrender their human rights to a religion, they are victims of brainwashing or mind control, a notion debunked by mainline scholarship (Richardson 1996, 2014, 2015; USCIRF 2020) but still popular with some media and the anti-cultists.

The Jehovah's Witnesses discovered that they were entering a second phase of their struggle for religious freedom, one where they should defend their corporate religious liberty and could not count on the support of non-religious libertarians defending individual human rights, when they started being sued by disfellowshipped ex-members. These ex-members claimed that their human rights had been violated by the Jehovah's Witnesses, as a corporate body, in two different ways. First, they claimed they had been disfellowshipped unfairly or unjustly. Second, after being disfellowshipped, they had been subject to "ostracism," i.e. other Jehovah's Witnesses, including their closest friends, had started shunning them. They did not sue their former friends, but the Jehovah's Witnesses' corporate organizations for teaching the practice.

It is important to note that an exception to shunning is, however, made for members of the immediate family, as illustrated in numerous texts published by the Jehovah's Witnesses.

What of a man who is disfellowshipped but whose wife and children are still Jehovah's Witnesses? The religious ties he had with his family change, but blood ties remain (Christian Congregation of Jehovah's Witnesses 2020).

Since [...] being disfellowshipped does not sever the family ties, normal day-to-day family activities and dealings may continue. Yet, by his course, the individual has chosen to break the spiritual bond between him and his believing family. So loyal family members can no longer have spiritual fellowship with him. For example, if the disfellowshipped one is present, he would not participate when the family gets together for family worship (Christian Congregation of Jehovah's Witnesses 2008, 208).

If in a Christian's household there is a disfellowshipped relative, that one would still be part of the normal, day-to-day household dealings and activities ("Imitate God's Mercy Today" 1991, 22).

This is not a new development. In 1974, *The Watchtower* explained that,

Since blood and marital relationships are not dissolved by a congregational disfellowshipping [sic] action, the situation within the family circle requires special consideration. A woman whose husband is disfellowshipped [sic] is not released from the Scriptural requirement to respect his husbandly headship over her; only death or Scriptural divorce from a husband results in such release. (Rom. 7:1-3; Mark

10:11, 12) A husband likewise is not released from loving his wife as “one flesh” with him even though she should be disfellowshipped [sic] (Matt. 19:5, 6; Eph. 5:28–31) (“Maintaining a Balanced Viewpoint Toward Disfellowshipped [sic] Ones” 1974, 470).

In 1981, *The Watchtower* reiterated that, “if a relative, such as a parent, son or daughter, is disfellowshipped [sic] or has disassociated himself, blood and family ties remain,” while “spiritual fellowship” ceases (“If A Relative Is Disfellowshipped [sic]” 1981, 28).

In 1988, the magazine stated again that,

A man who is disfellowshipped or who disassociates himself may still live at home with his Christian wife and faithful children. Respect for God’s judgments and the congregation’s action will move the wife and children to recognize that by his course, he altered the spiritual bond that existed between them. Yet, since his being disfellowshipped does not end their blood ties or marriage relationship, normal family affections and dealings can continue (“Discipline That Can Yield Peaceable Fruit” 1988, 28).

The first substantial discussion of the practice of “shunning” disfellowshipped members of the Jehovah’s Witnesses is included in the 1987 decision of the United States Court of Appeal for the Ninth Circuit *Paul v. Watchtower Bible and Tract Society of New York, Inc.*, which is quoted in all subsequent American cases. The court acknowledged that the plaintiff has experienced some unpleasant incidents in being “shunned” by those who were once close friends who were Jehovah’s Witnesses after she was disfellowshipped. Nonetheless, the court maintained that,

Shunning is a practice engaged in by Jehovah’s Witnesses pursuant to their interpretation of canonical text, and we are not free to reinterpret that text. Under both the United States and Washington Constitutions, the defendants are entitled to the free exercise of their religious beliefs.

The Jehovah’s Witnesses, the court reported,

argue that their right to exercise their religion freely entitles them to engage in the practice of shunning. The Church further claims that assessing damages against them for engaging in that practice would directly burden that right. We agree that the imposition of tort damages on the Jehovah’s Witnesses for engaging in the religious practice of shunning would constitute a direct burden on religion.

The court observed that punishing shunning would have dramatic consequences for the religious freedom of the Jehovah’s Witnesses.

Imposing tort liability for shunning on the Church or its members would in the long run have the same effect as prohibiting the practice, and would compel the Church to

abandon part of its religious teachings. [...] The Church and its members would risk substantial damages every time a former Church member was shunned. In sum, a state tort law prohibition against shunning would directly restrict the free exercise of the Jehovah's Witnesses' religious faith (United States Court of Appeal, Ninth Circuit, 1987).

The plaintiff argued that shunning had caused to her emotional distress. This may well be true, the court answered, but the harm was

clearly not of the type that would justify the imposition of tort liability for religious conduct. No physical assault or battery occurred. Intangible or emotional harms cannot ordinarily serve as a basis for maintaining a tort cause of action against a church for its practices—or against its members. [...] Offense to someone's sensibilities resulting from religious conduct is simply not actionable in tort. [...] Without society's tolerance of offenses to sensibility, the protection of religious differences mandated by the first amendment would be meaningless (United States Court of Appeal, Ninth Circuit, 1987).

In this old decision, we find already a convincing criticism of the anti-cult claims based on “emotional harm.” While “physical assault or battery” are clearly not justified by an appeal to freedom of religion, if courts were allowed to sanction religious groups for inflicting “emotional harm,” that would be the end of religious liberty as we know it. And perhaps of other liberties, too. One can imagine a student suing a professor for the “emotional harm” suffered after failing an exam. The court correctly concluded that,

The members of the Church [Ms.] Paul decided to abandon have concluded that they no longer want to associate with her. We hold that they are free to make that choice. The Jehovah's Witnesses' practice of shunning is protected under the first amendment of the United States Constitution (United States Court of Appeal, Ninth Circuit, 1987).

In 2007, the Court of Appeals of Tennessee observed that,

The Church [the congregation of the Jehovah's Witnesses] argues that the freedom of religious bodies to determine their own membership is such a fundamentally ecclesiastical matter that courts are prohibited from adjudicating disputes over membership or expulsion. We agree. Because religious bodies are free to establish their own guidelines for membership and a governance system to resolve disputes about membership without interference from civil authorities, decisions to exclude persons from membership are not reviewable by civil courts.

Concerning the “shunning” of disfellowshipped ex-members, the court stated that,

The doctrines of the Jehovah's Witnesses and their reading of scripture require that their members ostracize individuals who have been disfellowshipped. While there is no question that this practice has resulted in a painful experience for the Andersons [the plaintiffs in the case], the law does not provide a remedy for such harm. For example, in other contexts, family members sometimes become estranged from each other for various reasons on their own volition, and the law does not recognize a basis for suit for the pain caused by such estrangement. Courts are not empowered to force any individual to associate with anyone else [...]

Shunning is religiously based conduct, a religious practice based on interpretation of scripture, and is subject to the protection of the First Amendment. [...]

Shunning is a part of the Jehovah's Witnesses belief system. Individuals who choose to join the Church voluntarily accept the governance of the Church and subject themselves to being shunned if they are disfellowshipped. The practice is so integrally tied to the decision to expel a member that it is beyond judicial review for the same reasons as the membership decision. Conduct that is inextricably tied to the disciplinary process of a religious organization is subject to the First Amendment's protection just as the disciplinary decision itself (Court of Appeal of Tennessee 2007).

Also, in 2007, the Justice Court of Bari, in Italy, in a well-publicized case, rejected the claims of a disfellowshipped ex-Jehovah's-Witness who happened to be a lawyer. The court concluded that, even if the principles governing the ecclesiastical system of the Jehovah's Witnesses are different from those of the Italian law, once they have been correctly followed in disfellowshipping a certain individual, secular courts cannot interfere with the decision (Tribunale di Bari 2007; see also Tribunale di Bari 2004).

In 2010 the Administrative Court of Berlin examined a complaint by a disfellowshipped Jehovah's Witness against the public announcement in congregational meetings of the measure against him, since "members of the association should have no social contact with disfellowshipped persons," and it would become impossible for him to "to have a picnic, celebrate, do sports, go shopping, go to the theatre, have a meal at home or in a restaurant" with those who used to be his friends and remained in the Jehovah's Witnesses. The court denied the request, commenting that the Jehovah's Witnesses' policy on these matters "is not subject to state authority" and is protected by "freedom of religion, the separation of Church and state, and the right of religious associations to self-determination." How the Jehovah's Witnesses decide to "exercise their constitutionally guaranteed right to self-determination" is something the state should not interfere with. Disfellowshipping policies and the

so called “ostracism” are “internal church measures” (Verwaltungsbericht Berlin 2010).

The Italian Supreme Court (Cassazione) in 2017 ruled that the so called “ostracism” is also protected by the principle of non-interference. The decision observed that in this case “ostracism” is “a refusal to associate” with the disfellowshipped ex-member, and “no law requires a person to behave in the opposite manner.” As a conclusion, “no discrimination took place.” Even if one would argue that refusing to associate with disfellowshipped members violate “good manners and civilized behavior,” this would not “constitute a justiciable crime or civil tort.” Individuals, and even a whole “category,” have a right to decide to “break off or interrupt personal relations,” and courts have no business in telling them otherwise (Corte di Cassazione 2017).

In 2018, in *Judicial Committee of the Highwood Congregation of Jehovah's Witnesses and Highwood Congregation of Jehovah's Witnesses v. Randy Wall*, a unanimous Supreme Court of Canada reiterated that “secular judicial determinations of theological or religious disputes, or of contentious matters of religious doctrine, unjustifiably entangle the court in the affairs of religion.” It added that, “even the procedural rules of a particular religious group may involve the interpretation of religious doctrine,” and concluded that, “these types of [religious] procedural rules are also not justiciable” (Supreme Court of Canada 2018 [SCC 26]).

More recently, on March 17, 2020, in *Otuo v. Morley and Watch Tower Bible and Tract Society of Britain*, the Court of Appeal in London, Queen's Bench Division (Court of Appeal [London], Queen's Bench Division 2020), upheld a High Court decision of 2019, which found that,

In accordance with Matthew 18:15–17 (the procedural compliance with which is not itself justiciable) it is to be expected that a [Christian] religious body which is guided by and which seeks to apply scriptural principles will have the power to procure that in an appropriate case a sinner can be expelled. Among other things, this is sensible, if not essential, because someone who is unable or unwilling to abide by scriptural principles not only does not properly belong as a member of such body but also, unless removed, may have an undesirable influence on the faithful.

Protecting the faithful from such an “undesirable influence” is thus not a violation of the disfellowshipped member's human rights, but a right of the congregation (High Court of Justice, Queen's Bench Division 2019). The community's right

to articulate and enforce its code of conduct is also part of its corporate religious liberty.

This body of decisions is now substantial. Critics quote the 2019 Spiess decision by the District Court of Zurich (Bezirksgericht Zürich 2019), but the Jehovah's Witnesses were not the defendants in the case. They had filed a criminal complaint against an anti-cult activist who had claimed in an interview that their "ostracism" practices and how they handle cases of sexual abuses are dangerous practices contrary to human rights. The judge found the activist not guilty, regarding some statements as true and others as uttered in good faith. As I and Alessandro Amicarelli have explained elsewhere (Introvigne and Amicarelli 2020), the Jehovah's Witnesses were not on trial in Zurich, were not interrogated, and did not have a chance to defend themselves. We regard the verdict as wrong, but it only establishes that Mr. Spiess did not commit the criminal offense of defamation.

In fact, everything that needed to be said was already said in 1987 in the *Paul* decision. It is true that those who join the Jehovah's Witnesses surrender some of their human rights. The adherents are well aware, and the elders make sure this is the case before baptism, of both the Jehovah's Witnesses' moral standards and the consequences for violating them. They are aware that they may be disfellowshipped and shunned, which may be very unpleasant. If they want to avoid this risk, they should simply not join the Jehovah's Witnesses, or leave them voluntarily. The human rights involved in being disfellowshipped and shunned are not imaginary—but, unlike, say, the right to life or to sexual integrity, they are *alienable* rights, in the sense that they can be surrendered in a legally valid matter, and irrespective of the discussion whether there is a general distinction between unalienable and "ad hoc" human rights, to which I will return in the last paragraph. Disposing of them may offend certain sensibilities, but "without society's tolerance of offenses to sensibility, the protection of religious differences [...] would be meaningless" (United States Court of Appeal, Ninth Circuit, 1987).

In this respect, the Jehovah's Witnesses acted as the canaries in the coal mine again. They came back with the good news that, even at a time when the sacralization of the person advances at full speed, and new rights are created and sacralized, in a democratic society the "religion of God" may lawfully maintain enclaves where it is protected. This protection, as we have argued when

commenting the Spiess decision (Introvigne and Amicarelli 2020), benefits many other religions. Several religions have, or had until recent times, practices similar to the Jehovah's Witnesses' disfellowshipping process and "ostracism." Thanks to the Jehovah's Witnesses, they now know that these practices are part of their protected corporate religious liberty.

### *Sexual Abuse and Corporate Religious Liberty*

The second assault on the corporate religious liberty of the Jehovah's Witnesses has been conducted in the area of sexual abuse. There is a growing and justified societal concern for sexual abuse in general, and religions are often criticized for protecting their abusive ministers from prosecution by secular courts (Shupe 1995, 1998, 2000, 2007). Anson D. Shupe's (1948–2015) theory of "clergy malfeasance" argued that the risk is maximum when a clergy presides on closed communities of vulnerable male and female children or teenagers. This would predict a lower incidence of sexual abuse, with respect to other religions, among the Jehovah's Witnesses, which do not operate "institutions" such as Sunday Schools, catechisms, kindergartens, schools, boarding schools, or similar.

Nonetheless, official reports and studies commissioned by public authorities, including one by a Royal Australian Commission in 2017 (Royal Commission into Institutional Responses to Child Sexual Abuse 2017) and a study by researchers from the University of Utrecht (van den Bos et al. 2019), on which the Dutch Minister for Legal Protection, Sander Dekker, based some controversial statements in August 2020 (Pieters 2020), have included the Jehovah's Witnesses among the groups where problems of unreported or under-reported sexual abuse exist.

I am a co-author of an Expert Report criticizing the Utrecht study (Folk, Introvigne, and Melton 2020), and we have discussed there some substantive issues on how sexual abuse is dealt with among the Jehovah's Witnesses. Here, I will focus on the connection between criticism of how the Jehovah's Witnesses handle cases of sexual abuse and corporate religious liberty.

This is a classical case where the same individuals are part of two different communities, regulated by two different systems of laws and regulations, which

are both in their own way sacralized. A Jehovah's Witness is subject to the ecclesiastical jurisdiction of its congregation and is, at the same time, subject to the secular jurisdiction of state courts and law enforcement agencies. The two jurisdictions may operate in parallel without conflicts, but in other cases conflicts and delicate problems of religious liberty may arise.

A Jehovah's Witness is suspected of sexual abuse. Very rarely, for the reasons mentioned above, this would be a case of "institutional" abuse. In most cases, the abuse would occur in the family. The elders of the congregation are informed, or hear rumors about the abuse. When this happens, two different chains of events are set in motion. The first relates to the duty to inform the secular authorities. This is regulated by national laws, which were somewhat vague decades ago but are becoming much stricter and more precise as social concern about abuse grows. The second chain of event will lead to an evaluation of whether and how the alleged offender should be prosecuted by the internal ecclesiastical jurisdiction of the Jehovah's Witnesses, and eventually, if found guilty, disfellowshipped. It is of crucial importance that these two spheres are carefully distinguished.

As we have discussed in our criticism of the Dutch report, it is factually false that the Jehovah's Witnesses do not inform secular authorities of believable reports of sexual abuse their elders have received, or worse, disfellowship victims of sexual abuse, or those who report incidents of sexual abuse to secular authorities. The current edition of the official handbook for congregation elders, *"Shepherd the Flock of God"—1 Peter 5:2*, confirms that a person who reports an allegation of abuse (or any other crime) to the secular authorities will not be disfellowshipped or in any other way sanctioned by the Jehovah's Witnesses:

One who reports an accusation to the police, the court, the elders, or others who have authority to look into matters and render a judgment would not be viewed by the congregation as guilty of committing slander [...] This is true even if the accusation is not proved (Christian Congregation of Jehovah's Witnesses 2019, 12:28).

The 2010 edition had a parallel provision:

It is not considered slander to make an accusation to the police, the court, [...] or others who have authority to look into matters and render a judgment [...] This is true even if the accusation is not proved (Christian Congregation of Jehovah's Witnesses 2010, 5:27).

The current handbook adds that,

Jehovah's Witnesses abhor child sexual abuse (Rom. 12:9). Thus, the congregation will not shield any perpetrator of such repugnant acts from the consequences of his [sic] sin. The congregation's handling of an accusation of child sexual abuse is not intended to replace the secular authority's handling of the matter (Rom. 13:1–4). Therefore, the victim, her parents, or anyone else who reports such an allegation to the elders should be clearly informed that they have the right to report the matter to the secular authorities. Elders do not criticize anyone who chooses to make such a report (Christian Congregation of Jehovah's Witnesses 2019, 14:4).

The official child safeguarding policy of Jehovah's Witnesses, published in dozens of languages on their official website, states at paragraph 4,

In all cases, victims and their parents have the right to report an accusation of child abuse to the authorities. Therefore, victims, their parents, or anyone else who reports such an accusation to the elders are clearly informed by the elders that they have the right to report the matter to the authorities. Elders do not criticize anyone who chooses to make such a report—Galatians 6:5 (Christian Congregation of Jehovah's Witnesses 2018, no. 4).

As early as 1993, the *Awake!* magazine recommended that, in case of rape, one should “call the police as soon as you are able to,” noting also that, “reporting is not the same as prosecuting, but if you choose to prosecute later, your case will be weakened by a delayed report” (“How to Cope with Rape” 1993).

In 1997, the same *Awake!* magazine suggested to Jehovah's Witnesses that, “children should also be warned about—and urged to report to authorities—any person making improper advances toward them, including people they know” (“Sexual Exploitation of Children—A Worldwide Problem” 1997).

Also, in 1997, *The Watchtower* asked, ““What if a baptized adult Christian sexually molests a child?” The answer was that “the molester may well have to serve a prison term or face other sanctions from the State. The congregation will not protect him from this” (“Let Us Abhor What Is Wicked” 1997).

The book *How to Remain in God's Love*, published in 2017, includes a discussion of *I Corinthians* 6:1–8, where Apostle Paul cautions against taking a fellow Christian to court. While in general, “taking our brother to court could reflect badly on Jehovah and on the congregation” (Christian Congregation of Jehovah's Witnesses 2017, 253), there are exceptions.

If a serious crime is involved, such as rape, child abuse, assault, major theft, or murder, then a Christian who reports such a crime to the secular authorities does not violate Paul's counsel (Christian Congregation of Jehovah's Witnesses 2017, 254).

Also, in the May 2019 issue of *The Watchtower*, we read that,

Elders assure victims and their parents and others with knowledge of the matter that they are free to report an allegation of abuse to the secular authorities. But what if the report is about someone who is a part of the congregation and the matter then becomes known in the community? Should the Christian who reported it feel that he has brought reproach on God's name? No. The abuser is the one who brings reproach on God's name ("Love and Justice in the Face of Wickedness" 2019, 10–1).

After our criticism of the Dutch report, the anti-Jehovah's-Witnesses organization Reclaimed Voices objected to us that practice does not always follow theory, and that it is possible that some local congregation of the Jehovah's Witnesses does not follow the indications of the official publications (Hintjes 2020). This is certainly possible in all organizations. However, the fact that in some cases the policy was not followed does not call into question its soundness. We cannot blame the policy, and should recognize that no human organization is composed exclusively of perfect humans, and that even the best of policies does not guarantee against the reality of human error.

There have been some cases (but much less than those concerning other religions, including the Catholic Church) in which secular courts have concluded that the Jehovah's Witnesses were not quick or effective enough in reporting sexual abuse cases to secular authorities. However, these cases should be read and assessed in context. A typical British example, and one quoted by anti-cultists against the Jehovah's Witnesses, is *A. v. The Trustees of the Watchtower Bible and Tract Society, The Trustees of the Loughborough Blackbrook Congregation and Jehovah's Witnesses, and The Trustees of the Loughborough Southwood Congregation of the Jehovah's Witnesses* (High Court of Justice, Queen's Bench Division 2015). Although it is true that the court found that a local congregation had some responsibility in not protecting children from a member who was a sexual abuser, it is important to note that the case, judged in 2015, refers to events of the 1980s and early 1990s. The judge mentioned that it was a matter of agreement between the parties that

(1) The level of understanding of child sex abuse in 2015 is very different to the level of understanding in the late 1980s and early 1990s. (2) In the late 1980s and early 1990s there was an emerging awareness of child sexual abuse, which was a long way short of a developed understanding of the complexity of the issue. (3) The Jehovah's Witness organisation could be viewed as ahead of its time in terms of its educative publications addressing the issues of child sexual abuse.

Concerning the elders of the Loughborough congregations, the judge stated that,

I found them all to be honest, upright, loyal, and devout men for whom being a Jehovah's Witness is and has been for many years a way of life for them and their families [...] All are horrified by the sexual abuse that occurred.

Ostensibly, the judge was quite reluctant to find against these "honest and devout" Jehovah's Witnesses, although in the end he believed he had to sanction them based on how he reconstructed both the facts and the British law in force in the 1980s and 1990s.

There is a consensus that while, as it happened for other religious groups, their attitudes evolved as society became more concerned about sexual abuse, particularly of minors, in general Jehovah's Witnesses complied with the laws asking them to report instances or credible allegations of abuse to secular authorities, when and where these laws existed. Their awareness of these issues compares favorably, and may even be regarded as having been at one stage "ahead of time," with respect to other religious organizations. There were some cases where congregations were found in breach of legal obligations of reporting, but these cases are rare. They do not warrant the conclusion that there was a general policy to evade these obligations, nor that the Jehovah's Witnesses were less cooperative with secular authorities than most other religious communities.

Jehovah's Witnesses, however, are vehemently criticized on a different issue, whether their *internal* ecclesiastical jurisdiction dealt fairly and effectively with members accused of sexual abuse or child molestation. In particular, the fact that they adhere to the Biblical "two-witnesses rule," requiring the testimony of two witnesses before a member can be sanctioned, has been criticized, as well as the weight they attribute to repentance.

Again, the problem here does not concern the Jehovah's Witnesses only, and it is not new. Human justice and what religionists regard as divine justice may follow different paths. Christian theology has often discussed the issue of the "latro poenitens," whose story is told in *Luke* 23:40–3. When Jesus was crucified, one of the criminals who shared the same fate asked him, "Jesus, remember me when you come into your kingdom." The criminal, addressing the fellow bandit who was cursing Jesus, told him, "We are punished justly, for we are getting what our deeds deserve. But this man has done nothing wrong." Jesus answered him, "Truly I tell you today you will be with me in paradise."

As the author of the *Gospel of Luke* tells it, the story is not about criticism of the secular justice or the death penalty. The bandits are “punished justly.” It is about a different justice, where the good thief manages to steal the Kingdom of God, and becomes a member in good standing of the Church Triumphant. He is even venerated as a saint, Saint Dismas, by the Roman Catholic Church.

Jehovah’s Witnesses’ internal justice is accused of being too severe in general in its disfellowshipping process, yet it is at the same time accused of being too bland in cases of sexual abuse, perhaps because it is administered by men only and not by women. Both the Australian (Royal Commission into Institutional Responses to Child Sexual Responses 2017, I, 53) and the Dutch (van den Bos et al. 2019, 120) reports “recommended” that women be included in the Jehovah’s Witnesses’ judicial committees, and that their rules be amended.

The Australian government rightly concluded that these are matters for internal consideration by the Jehovah’s Witnesses. Indeed, it is part of corporate religious liberty that religious organizations may organize their canonical courts or judicial committees as they deem it appropriate. Their judgements may look wrong in secular eyes, but they do not have effect outside of the religious sphere. It is a matter for the secular courts to decide whether a defendant accused of sexual abuse is guilty, and what punishment is appropriate. It is a matter for religious courts and committees to decide whether the same defendant should be disciplined, expelled, or *not* expelled. Religious instances, as the case of the bandit crucified with Jesus shows, may have a different assessment of the value of repentance.

It is part of the contemporary sacralization of the state and the person that states, and media, presume to dictate to religious organizations how they should deal with their members guilty, or even simply accused, of serious crimes. Laws can (and perhaps should) compel religious bodies to immediately report to secular authorities allegations of secular abuse they have received, outside of the existing safeguards that explicitly protect the confidentiality of the Roman Catholic confession and similar practices. Once this has been done, states cannot interfere in the parallel, but independent, ecclesiastical investigation and sanctioning. The principle is the same with respect to the disfellowshipping process in general. How the Jehovah’s Witnesses and other religious organizations conduct their internal affairs is not a matter states should interfere with.

Jehovah's Witnesses are not the only targets of this criticism. Some media, for instance, immediately request that Catholic priests accused of sexual abuse be dismissed from their clerical status. The Catholic Church has become more severe and rapid in enforcing its internal discipline in recent years, but ultimately whether a priest should be defrocked or not is an internal matter for the church to decide, not to mention that some of the priests for which the media reclaimed immediate canonical sanctions were later declared not guilty at trial.

In the case of the Catholic Church and other religious bodies, it has been argued that internal sanctions are needed to prevent pedophiles from continuing to be involved in church-operated kindergartens or boarding schools, where their crimes may be repeated. In fact, such orders can be imposed on the suspects, even before they are sentenced, by secular courts. At any rate, this does not apply to the Jehovah's Witnesses, who do not operate kindergartens or boarding schools. In addition, according to the Jehovah's Witnesses' policy, a pedophile or sexual abuser who is serving as an elder, when his acts of sexual abuse come to light, is immediately removed from his position.

The freedom for religious bodies to sanction, or not to sanction, their members may be an unpopular freedom, particularly in case of sexual abuse, which is perceived, and with good reasons, as the equivalent of sacrilege against the "religion of the person." However, it is an essential part of corporate religious liberty. Religions should be free to regulate their own internal affairs.

### *The Perils of Secretary Pompeo: Is There a Hierarchy Among Human Rights?*

On July 8, 2019, Secretary of State Michael R. Pompeo announced the formation of a Commission on Unalienable Rights. On July 16, 2020, the Commission released its draft report to the general public (Commission on Unalienable Rights 2020). The name of the Commission indicates its aim, to help the Department of State, in a moment of confusion and controversy about human rights, to identify the "unalienable human rights," and to distinguish them from "ad hoc human rights," most of which are of recent creation, and are not included in the Universal Declaration of Human Rights.

The Commission has been seen by critics as a propaganda effort to rubber-stamp decisions already taken by the Trump Administration and the Republican

Party, and to promote, in particular, the idea that religious freedom should prevail in case of conflict with “ad hoc human rights,” including women’s reproductive rights and LGBT rights to non-discrimination. Critics also observed that most members of the Commission, which included a Rabbi and a Muslim scholar, were conservative experts on freedom of religion, with pro-life Christians in the majority (Inglis 2020).

The draft report defended the right of the United States, when determining its foreign policy, to interpret the Universal Declaration of Human Rights in the light of the American Constitution. It noted that,

Foremost among the unalienable rights that government is established to secure, from the founders’ [of the U.S.] point of view, are property rights and religious liberty. A political society that destroys the possibility of either loses its legitimacy (Commission on Unalienable Rights 2020, 13).

It admits that in the Universal Declaration of Human Rights, all rights “have an integrated character and are not meant to be severed from or pitted against one another,” yet it claims “it is no departure from that affirmation to recognize that certain distinctions among rights are inherent in the Universal Declaration itself” (Commission on Unalienable Rights 2020, 37). “In practice, it concludes, decisions about the priority of rights are not only inescapable but desirable [...] in many circumstances certain rights have a necessary logical precedence” (Commission on Unalienable Rights 2020, 38). The report cautions against the post-UDHR proliferation of “new rights,” and tries to establish a list of “unalienable” rights, while remaining aware that this is a controversial area and that no list can be fully satisfactory or complete. Mentioned as “unalienable” are

the right to life, liberty and security of person; protection against slavery and torture; guarantees of equality before the law and of due process; recognition of the right to private property; [...] freedom of thought, conscience, and religion; freedom of opinion and expression; freedom of association; freedom to take part in elections by universal and equal suffrage; freedom of movement and residence; the right to marry and found a family; and the right to privacy in one’s family, home, and correspondence (Commission on Unalienable Rights 2020, 30).

Judging from the many negative reactions (see e.g. Human Rights First 2020), the Commission and its report, which was presented to a deeply divided country in an electoral year, did not offer an especially noticeable contribution towards creating a consensus on human rights. Yet, the Pompeo Commission may at least

have called the attention on one real problem, whether there is a hierarchy of human rights, and which should prevail in case of conflict.

While it is unlikely that other countries would particularly care about the U.S. Constitution, as Joas himself noted in his dense book on human rights, it does make a difference whether a human right is mentioned or not in the Universal Declaration. Claiming that the Declaration reflects the values of 1948, which are different from those of the 21<sup>st</sup> century, or of a small group of nations that were active in drafting it, plays in the hands of the tyrants of this world, who insist that the UDHR is not applicable to the “special” situation of their countries (Joas 2013, 181–85). Perhaps a new consensus and a UDHR 2.0 will one day emerge, but for the time being the text of the 1948 remains a fundamental reference and standard for the international community, and all countries that have signed it.

In classrooms all over the world, students are told that the UDHR was a reaction to Nazi tyranny and the Holocaust; that it was mostly an American and Western European initiative; that it was drafted by former U.S. First Lady Eleanor Roosevelt (1884–1962) and French jurist René Cassin (1887–1976); and that it was mostly promoted throughout the world by the United States. These arguments are now used in Russia, China, and some Arab countries to argue that the UDHR is not really “universal” but an attempt to impose Western values to the rest of the world. However, in a seminal article published in 2002, American political scientist Susan Waltz argued that all four statements are factually false. The process leading to the UDHR started, and produced significant texts, at the beginning of the 20<sup>th</sup> century, well before Nazism and the Holocaust. More important than Eleanor Roosevelt or Cassin were, in drafting the Declaration, two delegates coming from Asia, Lebanese academic Charles Malik (1906–1987), an Orthodox Christian, and Chinese philosopher Chang Pen Chun (1892–1957), who identified himself as Confucian. Although not as crucial as Malik and Chang, Indian activist for women’s rights Ms. Hansa Jivraj Mehta (1897–1995) and Chilean diplomat Hernán Santa Cruz (1906–1999) were also important. The Canadian secretary of the drafting commission, legal scholar John Peters Humphrey (1905–1995), was the editor, not the author, of the first draft, although his editorial role was in no way negligible. In the United States, many resisted propagating a document that might be used to submit their country to censorship by international authorities, while the text was enthusiastically embraced in Europe and by some “Third World” countries (Waltz 2002). The

UDHR was less “Western” than it may seem, and reading it through the lenses of an opposition of the West versus the rest makes for ideological, inaccurate interpretation.

As for the distinguished conservative religious scholars that drafted the Pompeo Commission report, my personal impression is that they missed one main problem of the defense of religious liberty, discussed in this paper. They probably had in mind cases where Christian bakers were sanctioned when they refused to bake cakes, or florists when they refused to prepare floral arrangements, for same-sex marriages (for a discussion of some of these cases, see Introvigne 2017). Understandably, conservative Christians do feel strongly about these cases, yet they remain within the sphere of individual religious freedom. It is my argument here that, notwithstanding the advance and the increasing sacralization of “new rights,” balanced solutions are easier to find here, at least in democratic countries.

At times, Evangelicals and conservative Catholics who focus on such cases cannot see the forest for the trees. I do not argue that fights about individual religious freedom are over. My point, however, is that in most democratic Western countries the most serious dangers for religious freedom come from those who deny *corporate* religious liberty, based on their interpretation of the modern sacralization of the person. By defending the rights of their judicial committees to remain free from state interference when they decide whether a member should be disfellowshipped or otherwise, and their right to interpret the Bible in the sense that it mandates shunning those who have been disfellowshipped, the Jehovah’s Witnesses are, once again, defending the religious liberty of all, precisely in the area where today it is mostly under attack.

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## Religious Freedom in the Russian Federation and the Jehovah's Witnesses

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**ABSTRACT:** Anti-extremism legislation has existed in Russia for over a decade, but only recently has it been used to discriminate against, persecute, and eventually “liquidate” the Jehovah’s Witnesses. The article reconstructs the history of anti-minority legislation in Russia, from the Soviet Union to the liberal post-Soviet reforms of the 1990s and the retrenchment in the Putin era. Jehovah’s Witnesses have been the victims of a notion of the Russian nation granting a de facto monopoly to the Russian Orthodox Church, and regarding religious minorities, particularly those headquartered in the West and proselytizing among Orthodox believers, as a threat to national integrity.

**KEYWORDS:** Jehovah’s Witnesses, Religion in the Russian Federation, Religious Freedom in Russia, “Anti-Extremism” Laws in Russia, Jehovah’s Witnesses in Russia.

### *Interventions Against Jehovah’s Witnesses in the Russian Federation*

The application of the “anti-extremism” legislation to minority religious groups, regarded as hostile to the cultural schemes and subversive of the political order, has led to a progressive institutional stiffening of persecution and heavy discrimination in the Russian Federation, especially towards Jehovah’s Witnesses (Cigliano 2013).

Although many of these legislative tools have existed for over a decade, the Russian government only recently has begun to use them in campaigns designed to punish or exclude “non-traditional” religions and movements. In the specific case of the Jehovah’s Witnesses, these measures have taken on the purpose of delegitimizing an entire community, only on the basis of its religious faith, with accusations that vary from illegal missionary activity to offending the religious

sentiments of majority Orthodox believers. Overall, these interventions are part of a wider process of ideological control over society, aimed at stemming, if not stifling, the forces of political and religious dissent. It is a process that has characterized Russian history since its transformation into a Soviet dictatorship, and which offers a new perspective to analyze, even today, the issues of “identity” and “dissent” in this geographical area.

In the Stalinist period, cultural and religious life had been severely limited, to the advantage of the so-called “Russification” policies, which tended to suffocate ideologies that were not homologated with the political objectives of the new state (Zernov 1963; Vasil’eva 1998; Kalkandjieva 2015; Kolarz 1961; Baran 2007, 2014). The Soviet government had, in fact, pursued a strategy of balance between regulation and repression. In the phase of glasnost and perestroika, a different legal scheme prevailed, which was more open to pluralism, including religious. The recognition of the Witnesses in the 1990s seemed to have brought Russian law closer to Western models of the protection of human rights but, with the beginning of the 21<sup>st</sup> century, the process took a different turn.

The culminating moment of this legal process was represented by the decision of the Russian Supreme Court which, in 2017, qualified the Jehovah’s Witnesses as an “extremist” organization and forced the liquidation of their assets. The religious community has thus been transformed into a “criminal network,” and individual believers have been made vulnerable to arrest, simply for having shared their faith with others, i.e., for carrying out the normal activity of evangelization. This intervention was, however, the culmination of two decades of growing state hostility towards the Witnesses. In fact, at the end of the 1990s, they were sued by the government of the city of Moscow to deny their legitimacy, in a long trial that ultimately led to the ban of the organization. The latest episodes, in chronological order, involved in 2020 two Russian Jehovah’s Witnesses who were deprived of their Russian citizenship, in consequence of verdicts contrary to religious freedom, as was also denounced by the United Nations Working Group on Arbitrary Detention.

The banning of Jehovah’s Witnesses, the confiscation of all their properties in the country and the imprisonment of the devotees—for the first time since the collapse of the Soviet Union—has therefore highlighted a dangerous dictatorial and xenophobic tendency, to the detriment of the right to religious freedom, enshrined in the Russian Constitution. A correct analysis of the current Russian

problems cannot, however, disregard two further considerations: the space of religious freedom in the state, and the particular position of the Jehovah's Witnesses within its social structure. Fundamental in this sense is the reference to the Russian law on freedom of conscience and religious associations of 1997, which, when read jointly with the rules subsequently adopted, appears as inspired by the desire to guarantee the "spiritual security" of Russia, according to a concept that frames the role of the Orthodox Church in safeguarding "national values." In the Presidential Decree 24 of 2000, the administration stated that guaranteeing the national security of the Russian Federation also includes the protection of the cultural, spiritual, and moral heritage of its historical traditions and norms of social life, and the preservation of the cultural wealth of all peoples of Russia. This "spiritual security," the Decree said, also requires countering the negative influence of foreign religious organizations and missionaries.

Within the logic of absolutism, the persistence of endogenous groups, which profess equality as a moral standard, and practice a conduct that does not correspond to the expectations of the regime, nor can be approved by it, constitutes a dangerous and implosive threat to the social order the state tends to build, based on the compactness of the people on the basis of the ideals defined by the leadership (Gentile 2001). In the particular Soviet situation, the establishment of a denominational and hierocratic system, even if not aimed at favoring a single religion, and of a correlated jurisdictional regime in which some religions try to assume privileged status (Russian Orthodox Church *in primis*), finds its own rationale in the need of the post-Communist state to find a superior and historically founded legitimacy of its sovereignty, and to guarantee political stability, to which is added the aspiration of the privileged religions to receive, in exchange for a support of the political system, a special *ius protectionis*.

Therefore, the case of the Jehovah's Witnesses has implications that transcend the problems of the individual religious group. In this case, the persecutions and condemnations of which they have been, and still are, victims, and their ban, take on the characteristics of a paradigmatic example of how the right to exercise religious freedom is violated in dictatorial systems. Often, the road immediately pursued to obtain legal convictions is, in fact, based on the reference to the alleged "political" and not religious character of the group, to remove it from the protection of religion otherwise guaranteed at the constitutional level. This has been the treatment of *Bibelforscher* (as the Jehovah's Witnesses were called) in

Nazi Germany (Buber-Neumann 2008) and, for diametrically opposed reasons, in the Stalinist dictatorship and in the current phase of the Putin regime.

The accusations were (and are) essentially linked to the legal concept of “betrayal of the Fatherland,” of conspiracy with foreign powers, of the will to weaken the armed forces and the effort for national unity. In short, Jehovah’s Witnesses have always been considered as dangerous subversive elements, a “cult engaged in a conspiracy” (Garbe 2008). It is also necessary to consider that the multinational and multireligious reality of the Russian territory and society has constituted a fundamental component of this cultural, religious, and political universe, within which the Russian Orthodox Church has positioned itself as the center of gravity of a complex system. Furthermore, this exclusive bond, leading to an actual identification, highlights the fear of facing religious diversity, potentially able to act as a disintegrating factor of the social fabric. This translates into a position of defense of the national traditions, and an obstacle towards “foreign” religions, not only for the protection of religious monotheism but also as a guarantee of “national security.”

### *The Historical Presence of Jehovah's Witnesses in Russia*

The Jehovah’s Witnesses movement is of comparatively recent establishment, is often derogatorily referred to as a “cult,” and is linked to Protestantism, more correctly to Adventism, with whom it has many traits in common. It is part of the religious renewal paths of Christianity, especially of Protestant origin, typical of North American history of the late nineteenth century, which quickly spread to Europe as well. Jehovah’s Witnesses have been present in Russia since 1891 but, like all religious denominations, they were banned after the 1917 Revolution and persecuted in the Soviet Union. The history of the movement in the country has therefore been marked since the 1950s by the aversion, both by governments and by society. The spread of their preaching was deemed a threat to political power. Their concepts of peace and equality, which had been considered by the Nazis as a “Bolshevik” threat, were, on the contrary, judged by the Stalinists as dangerous for the stability of Communist power.

Added to this, both in Germany and in the USSR, was the hostility of the dominant Churches (in one case, Catholics and Protestants, in the other, the Moscow Patriarchate) towards such preaching. “Religious extremism”: this is

how we could summarize the motivation that allowed the authorities, first Soviet and then Russian, to systematize the widespread hostility towards the group. The accusation of constituting a political organization, even “disguised,” with revolutionary or in any case subversive intentions against the established state order, was linked to the other charge, perhaps even more serious, of connection to a foreign, enemy power and therefore of being part of an international conspiracy.

Again, the group’s proclaimed pacifism, pushed to the extreme, was seen as indicative of an attempt at destabilization, within totalitarian states that used force and the army to hold power. The Jehovah’s Witnesses’ ideas were therefore in opposition to the interests of the dictatorships, and this led them to consider the religious aspect of their organization as secondary, almost a cover “of convenience,” compared to the international ties with the headquarters of the movement.

The story of the “purple triangles,” a visible symbol of the Jehovah’s Witnesses in the concentration camps in Nazi Germany is now well known (Vercelli 2011; Canonici 1998; Graffard and Tristan 1994). In the decisions issued against the congregation, reference was always made to the anti-patriotic spirit, neutralism, and pacifism, perceived as a deliberate offense to the honor of the German people. In this way, they were perceived as a “foreign” element with respect to the constituting “national community of the people” and, therefore, as dangerous. However, their tragedy fits fully into the European corpus of the history of deportations.

Nevertheless, they were also victims (which is less known) of the Stalinist dictatorship, characterized by a systematization of violence, with thousands of arrests, incarcerations, and deportations, of those accused of not joining the “Soviet system.” As in Adolf Hitler’s (1889–1945) Germany, more than on religious motivations, the accusations against the Jehovah’s Witnesses were centered on their lack of fidelity to the ideals of the state, denial of political leadership, categorical refusal to participate in patriotic ceremonies and to serve the state through the use of weapons, clandestine press activities, and refusal to enroll children in Communist youth organizations (see Solženicyn 1973). A slight improvement in the life of believers was recorded only after the 1960s, but until the implosion of the USSR there were still several cases of trials, within a framework of discrimination common to all religious communities.

Following the entry into force, in 1990, of the law on “freedom of conscience and religious organizations,” the Ministry of Justice was able to register their statute, and so, on February 28, 1991, the religious organization of Jehovah’s Witnesses was officially registered in Russia. However, starting in 1995, the Committee for the Salvation of Youth from Totalitarian Cults, a non-governmental organization aligned with the Russian Orthodox Church, began to denounce the leaders of the community, arguing, in particular, that they oppressed followers with exorbitant demands, putting their families in an economically precarious situation, and fomented the hatred of “traditional” religions. These requests, rejected five times, were finally accepted in 1998, but the conclusion was that, even if the community acted in violation of certain Russian and international laws, it had not committed any criminal offense. However, this resulted in a civil action against the congregation, with the request for its dissolution and the prohibition of its activities. In 2001, a new series of proceedings began, and three years later, in 2004, the Moscow District Court decided to grant the prosecutor’s requests to dissolve the applicant community and to permanently ban its activity. After 2009, however, new and dangerous episodes of violence began to occur.

Invested of the case, the European Court of Human Rights (ECHR) intervened with a 2010 judgment (Lapi 2011). Accused of interference with consciences, violation of privacy, being a “cult,” religious extremism, incitement to social isolation and behaviors that undermined the harmony of society, according to the Russian authorities, it was concluded that the Jehovah’s Witnesses could represent a “threat to the defense of the rights and the interests of society and public safety.” The ECHR pointed out, however, that the refusal to grant recognition under the 1997 law revealed an interference with the religious organization’s right to freedom of association, and also its right to freedom of religion, as the “law on religions” limited the faculty of a religious association, without legal personality, to carry out a whole series of activities and to modify the articles of its Statute (Carobene 2008). Consequently, it found an interference in the rights of the applicant community, pursuant to the combined provisions of Articles 9–11 of the Convention. In 2015, the Russian Federation also blocked [www.jw.org](http://www.jw.org), the official website of Jehovah’s Witnesses, making its advertising within the country a crime.

The culmination of these judicial proceedings was reached with the aforementioned intervention of the Supreme Court that, at the request of the Ministry of Justice, in 2017, defined the Jehovah's Witnesses as an "extremist organization." Its members were thus prohibited from practicing their faith, and the seizure of assets was envisaged. Already in the months following this decision, their places of worship had been searched by the police, and many devotees had been arrested. In 2019, the United Nations Working Group on Arbitrary Detention firmly condemned the arrests of Jehovah's Witnesses, and called on the Russian Federation for the immediate release of the believers illegally detained. In 2020, the European Union also expressed concern over recent reports of torture and other mistreatment suffered by many Jehovah's Witnesses. Both the OSCE (of which Russia is a participating state) and the EU reiterated that Russia is required to stop the ongoing persecution and protect the victims, ensuring that all—including Jehovah's Witnesses—enjoy their human rights peacefully, including the right to freedom of religion or belief. It is also important to remember that the Jehovah's Witnesses are, so far, the only organized religion to which Russian extremism legislation has been applied.

### *Religious Freedom in Soviet Union Law*

Russian history includes a particular approach to the religious phenomenon, which appears as profoundly different when compared to the contexts of the Western European countries (Zenkivskyy 1953). It is known that the conversion to Christianity, before the year 1000, represented for the first Russian state, the so-called Kievan Rus', a fundamental historical turning point, since it meant the entry into the Eastern Christian ecumene and, more generally, into the group of European states. The model that was emerging was linked to the theocratic one of Constantinople and, in this sense, the Orthodox Christian faith modeled the more traditionalist Russian ideology of a different relationship between religion, state, and nation, developing a corresponding geopolitical approach. The ideas of the so-called Slavophiles, still in the present age, perceive, in fact, the Orthodox Church, society, and the state as one, and believe that the Church, as the mystical body of Christ, includes in itself the nation, the people and culture, having the Christian mission at their center (Codevilla 2011; Stroyen 1967; Timasheff 1942; Ferrari 2007; Bordeaux 1970).

The “oriental” vision of a Christian nation as a single community was already structured in the Byzantine and early traditions. This connoted Russian theological and philosophical thought, giving rise to the concept of the “Nation-Church,” and developing the doctrine of Moscow as the “Third Rome,” which led to the elevation of the metropolitan seat to the rank of Patriarchate, strengthening the prestige of the Church (Strémooukhoff 1953; Codevilla 2009; Ellis 1990; Ramet 1988). If this union has kept its importance over time, it has nevertheless undergone a long period of “captivity” since 1721, after its abolition by Peter the Great (1672–1725).

It was only with the beginning of the twentieth century that the Orthodox Church felt the need to get out of this impasse and to re-establish the relationship of harmonious collaboration, that symphony between *Imperium* and *Sacerdotium*, which Russia had inherited from the Byzantine world (Codevilla 2019a; Werth 1993; Daniel-Rops 1964). Following the revolutionary events of 1905, there were further and important consequences for the internal structure of the synodal Church. The idea began to emerge that the Russian Church should definitively break away from the state administration (Walters 1986). The fall of Tsarist Russia meant the end of the Orthodox state model, heir to the Byzantine Empire and its theocratic tradition. Paradoxically, it was only in the midst of the October Revolution that the Church achieved what Peter the Great had denied two centuries earlier, with the restoration of the Patriarchate.

The rise to power of the Bolsheviks, however, radically changed the course of historical events. The Marxist ideology, on which the new political power was based, was absolutely convinced of the need to completely eradicate religious feelings (Codevilla 2019b). According to this approach, the disappearance of religion was perfectly framed within a program of radical renewal of society and restructuring of consciences. The Orthodox Church, completely deprived of its assets, was enslaved to the government, also by virtue of a “lexical trick”: the affirmation, in fact, that church and religion are private affairs did not have the same semantic meaning attributed by Westerners, given that the concept of “private” was not envisaged in the Communist ideology and everything was nationalized, or put under state control. Russian Communism subsequently developed this vision to its extreme consequences, and imposed a concept of revolutionary class struggle, which fatally degenerated into genuine persecution. Religious practice was allowed only in the context of approved religious

associations, limited in fact only to adult citizens, gathered as a community supervised by the state (Berdjaev 1937; Zenkovsky 1957).

The establishment of Soviet power led, in 1918, to the promulgation of a decree on the separation of the church from the state, which recognized freedom of conscience for all citizens, understood both as the right to profess a religious faith but above all not to profess it at all and to make atheistic propaganda. The Socialist state was not, therefore, simply separatist, in the sense of neutral or indifferent, but adopted an explicit discriminatory and repressive policy towards all religious faiths, including the Orthodox (Curtis 1953; Anderson 1944; Alexeev 1953). If during the period of the Second World War the government had referred to the patriotism of the Russian Orthodox Church, in the post-war phase of the 1950s and 1960s the persecutions toward the Orthodox believers began again, leading to total state control over the country's religious life. Thus began a particularly difficult period, which led to multiple attempts to separate the various churches, favored by the Soviet government which, in the division of the Orthodox Churches, saw the possibility of annihilating the Patriarchal one. Furthermore, the 1977 Constitution, establishing the obligation to respect the "rules of Socialist coexistence," had transformed the right to atheism into a duty of the Soviet *bonus civis*, in the sense that this must actively contribute to curing believers from the "disease" of religious faith.

### *The Laws on Freedom of Conscience of the 1990s*

The adherence to new legislative models on freedom of conscience only started with the political opening promoted by Mikhail Gorbachev. The process of détente that began in 1985 with his appointment as party secretary and, in particular, the phase of perestroika, determined the approval of the law of 1990, which guaranteed the perfect equality of all religious denominations and the full exercise of the right to freedom of conscience (Carobene 1991; Codevilla 1998). It also imposed a complete semantic revolution of the Soviet concept of freedom. The new law defined freedom as a right that could be exercised individually or together with others; ample space was given to religious organizations, which were legally granted the right to obtain legal personality, in an equal position.

However, the subsequent phase of the so-called "religious awakening" did not bring about major upheavals in the discipline and guarantees given to religion,

due especially to the position granted to the Russian Orthodox Church within the political and social structure. The liberal tendencies of the law determined, in fact, an increase in foreign missionary activity, and the renewed success of dynamic religious movements, including the Jehovah's Witnesses, immediately arousing some concern within the Russian Orthodox Church, which began to press for a stricter law (Codevilla 2008). The weakness of the "rule of law" has gradually become an endemic feature of the system, which has now become a so-called "dictatorship of the law." The Russian legislative approach, in fact, leverages on principles and ideas that are not exactly those of the liberal European tradition of the protection of human rights, but are still culturally anchored to the Tsarist and Socialist past, even if, after the collapse of the Soviet Union, it had to establish new standards of human rights protection.

The 1993 constitutional text and subsequent adhesions to international organizations, such as the Council of Europe, introduced a conceptually new *noyau* of rights compared to the past, at least on a theoretical level. This allowed the country to comply with the requirements of freedom of religion, opinion, and information of the liberal West. The Constitution stated, in Articles 14 and 28, that the Russian Federation is a secular state that guarantees freedom of religion and belief, as well as the ideal of separation between the church and the state (Codevilla 1998; Pospelovsky 1984; Fletcher 1973). Furthermore, it is proclaimed that it is the people and not the party, the Soviet, the collective that is the holder of sovereignty and the only source of power. The implosion of the Communist ideology in the same years made it no longer possible to identify secularism with the exclusion of religious phenomena from the social life of the country. At least at a tendential level, secularism should now be defined as a principle of neutrality or indifference towards religion of the political power.

In 1996, by joining the Council of Europe, Russia undertook, *inter alia*, to adapt the 1990 law on religious freedom to European standards. A reform was thus approved by the Duma, the Russian Parliament, in 1997, but on the contrary, it seemed aimed at bringing the protection of religious freedom back to the period of the Church's submission to temporal power (Anderson 1994; Durham and Homer 1998; Shterin 2000; Medvedev 2002). The recognition of the "particular role of Orthodoxy in the history of Russia, in the formation and development of its spirituality and culture" is immediately evident from a first reading of the Preamble, where a respect is proclaimed for "Christianity, Islam,

Buddhism, Judaism, and other religions, which form an integral part of the historical heritage of the peoples of Russia” (Fagan 2012). With this law, the tradition at the center of Orthodox theology thus becomes a political category, also through the reference to the symbiotic relationship between “Russian” and “Orthodox” (Carobene 2008).

The approval of this law, and its endorsement by the highest hierarchies of the Orthodox Church, therefore highlighted the desire of the latter to place itself in a position of supremacy over all the other denominations existing in the country that, after the collapse of the regime, had acquired greater force of penetration. There were less worries about the ensuing situation of enslavement to temporal power, which carried the role of the Church centuries back in history (Baran 2006a, 2006b; Richardson and Van Driel 1994). The rights of the “other” Orthodox not part of the Patriarchate of Moscow, non-Orthodox Christians, and those belonging to the “new religious denominations” were thus severely limited. This law has therefore clearly granted innumerable advantages to the Patriarchate of Moscow, which was eager to strengthen ties with the political power.

The law operated by strengthening the Patriarchate’s position of dominance, and avoiding an opening towards religious minorities, unlike what was foreseen in the previous legislative document. It also favored the representatives of power who dreamed of a single national ideology of the “Slavophile” type, capable of bringing together “Orthodoxy,” “national spirit,” and “autocracy,” taking a dangerous step back in time. Limits on freedom of religion have been established when necessary, among other things, in order to “guarantee the defense and security of the state,” in evident contrast with the specific terms of article 9.2 ECHR. It should also be considered that, alongside this legislation, there is the coexistence of a plurality of norms, since there are more than eighty federal and thirty national laws governing the activities of religious associations.

In 1999, the Constitutional Court ruled that the state has the right to provide limitations in order not to automatically assign the status of religious organizations to, and not to allow the legalization of, “cults” that violate human rights or commit illegal and criminal acts, as well as the power to hinder missionary activity (Škarovskii 2003).

From a formal point of view, therefore, in Russia religious freedom for minorities is still currently in force. It applies only, however, to the four “respected/traditional” religions (non-Orthodox Christianity, Islam, Buddhism,

and Judaism) and to the other “religious organizations” that register with the authorities. What is happening is the implementation of an inverse process to that of secularization, and a clear governmental orientation towards Orthodoxy as a state religion. This is reflected in a wide range of possibilities recognized to it within the army and the education system, and the Russian Orthodox Church’s participation in public events. It claims the role of a new ideology, a kind of special Orthodox thinking. However, this bond of union between Church and nation, between Orthodox religion and traditional national values, seems to be in clear contrast with the secular and separatist regime outlined by the Constitution.

This law, in the years following its approval, has been continuously subject to discussions and amendments. In 2004, in order to make some improvements and to provide a precise legal definition of missionary activity, the Department of the Russian Parliament that deals with religious and social organizations considered four proposals of amendments (Simons and Westerlund 2016). They, however, were not accepted, given the religious stability that the country enjoyed in those years. A subsequent attempt to modify it was made in 2007, with the declared intention of protecting atheism, which was also rejected (Codevilla 2007).

The amendments to this rule, introduced with a series of federal laws that followed one another until 2016, also established numerous cases in which, through a judicial procedure, it is possible to order the prohibition of religious activities, if not the dissolution of the organizations themselves, widening the scope of the restrictions to which religious groups must submit. In 2013, it was stated that domicile and residence in the Russian Federation may be denied to foreign citizens engaged in subversive activities. The latter, however, were not defined with sufficient clarity, thus allowing arbitrary and discriminatory applications of the law.

Currently, all religious communities without legal status should inform the authorities about their existence and activities. Still, another amendment required religious organizations, which receive foreign funding, to report information to the Ministry of Justice about their budget plans, activities, and leadership. The government therefore has the right to inspect, without any warning, the financial activities of the religious groups that receive funding from abroad, or are suspected of illegal activity or extremism.

*The “Anti-Extremism” and Counter-Terrorism Legislation*

Since the beginning of the new century, the legislation on religious organizations has been grafted on to the law on combating extremist activities, which has granted the authorities the power to censor freedom of religion and expression, and to criminally prosecute a wide spectrum of religious activities, defining a whole federal list of prohibited “extremist” materials (Codevilla 2007; Rousselet 2000; Moniak-Azzopardi 2004; Curanovic 2012).

Since 2012, the intensification of the fight against extremism in Russia has therefore manifested itself through a series of interventions aimed at suppressing political opposition and, progressively, also non-traditional religious groups. This situation has also been perceived as discriminatory in Europe and, in fact, in the same year the Parliamentary Assembly of the European Council adopted a further resolution (no. 1896/2012) denouncing the violation of fundamental human rights in Russia, emphasizing the impediments to the normal development of civil society. The resolution was, however, totally ignored in Russia.

In 2013, a law introduced substantial changes to art. 148 of the Criminal Code and art. 5.26 of the Code of Administrative Offences, which, although with slightly different formulations, include liability and penalties up to six years in jail for public actions that express a clear lack of respect for society and have the intention of offending the religious feelings of believers. The ambiguity of these normative formulations, which are undoubtedly anomalous in a secular state, is obvious.

The anti-extremist legislation of 2014, although formally enacted because of the need to combat terrorism, has also allowed dangerous interferences in the sphere of religious practices. It has, in fact, introduced with Art. 282.1 and 282.2 a criminal liability for inducing, recruiting, or otherwise involving a person in extremist organizations. This is how the concept, absolutely indefinable at a legal level, of the “inductor to participation,” distinguished from the mere member/adept, was included in the law. The law frames as extremist activity the propaganda of the exclusivity, superiority, or inferiority of a person, on the basis of religious affiliation or attitude to religion.

The authorities are also extremely suspicious of religious practices that may seem incompatible with the public order, including the refusal to serve in the military. Sometimes, the unknown nature of some denominations or their links to

foreign entities could be arbitrarily linked to alleged terrorist or subversive activities. The case of the Jehovah's Witnesses is paradigmatic in this respect. The ambiguous notion of "extremism," mentioned in the Russian laws, allows the authorities to interfere in religious activities, and to prosecute believers. The policy of the government in the religious sphere is perfectly embedded in a process of ideological control of the society, albeit in a different sense than that exercised during the Communist period.

The most recent anti-terrorism law, passed in 2016, further aggravated the situation of Christian churches other than the Russian Orthodox, and other faiths. This law, in fact, forbids any pastoral or missionary activity by foreigners who have only a tourist visa, unregistered organizations, and foundations that do not have an immediate religious purpose. In addition, religious activities (catechisms, training, liturgical celebrations) carried out in private apartments have also been prohibited. Religious denominations are obliged to sign an employment contract in order to invite a person to Russia for religious activities. The laws also prohibit missionary activities in public places, as they could allegedly violate security and public order, engage in extremist activities, separate families, violate the person or rights and freedoms of citizens, harm the morality and health of citizens, including through the use of drugs, and incite citizens to disobey their statutory obligations. Finally, foreigners wishing to engage in religious activities will not be able to receive a humanitarian visa to enter the country. The Russian Orthodox Church continues to maintain a position of privilege, but only as it remains an institution functional and subservient to the political power.

Among the most significant criticisms of these anti-terrorism regulations, introduced as part of the "Yarovaya package," is that of the United States Commission on International Religious Freedom, which stresses that the provisions of the law, under the pretext of tackling terrorism, would grant the government radical powers to reduce civil liberties, including the introduction of broad restrictions on religious practices, which would make it very difficult for religious groups to operate (Kravchenko 2018). These measures would allow the Russian authorities to further crack down on smaller religious communities that are critical of the government and the President, and to jail dissidents.

The accusation of "extremism," with its extremely broad definition, may include in this case the peaceful promotion of the "superiority of one religion

over another,” thus also leading to the banning of religious texts, or even to the obligation to dissolve religious groups, as happened in the case of Jehovah’s Witnesses. Numerous accusations are based on the ambiguous definitions contained in the law, in particular, where it defines, for example as “dangerous” the propaganda of exclusivity, superiority or inferiority of a person on the basis of her religious affiliation, something which does not seem only aimed at preventing hate speech on the basis of religious motivations. On the contrary, an attitude of suspicion is implied, which is reflected in the use of the adjective “non-traditional” and the term “cult” (in Russian, “секта,” *sekta*), which are firmly rooted, in a negative sense, in the official vocabulary. The most worrying elements of these laws and their application are essentially linked to the considerable and arbitrary interference of the state in the internal organization and doctrines of religious communities, and in the creation of discrimination between the religious communities themselves.

The recent amendment of the Russian Constitution in 2020, promoted by Putin, approved by the Constitutional Court, by the Parliament, and by the citizens themselves in a referendum, in addition to the extension of the prime minister’s mandate, inserted an explicit reference to God in the Constitutional text, accepting the explicit requests of the current Patriarch. The art. 67 was integrated with the addition of the formula:

the Russian Federation, unified by a millenary history, preserving the memory of the ancestors who transmitted to us the ideals and faith in God as well as the continuity in the development of the Russian state, recognizes the historically established state unity.

### *Conclusion*

The examination of this legislative evolution makes it possible to highlight how the substantial profile of the significant legal interests in Russia is linked not so much to the (omitted) recognition of individual and collective rights of freedom, as to the emergence, in increasingly stronger forms, of a real totalitarian ideology. Its characteristics as a way of thinking are, *inter alia*, the anti-pluralistic intolerance (which obviously involves intolerance of dissent as an expression of plurality of ideas), and a millenarian tension, perhaps not to spirituality but to nihilistic destruction (Fisichella 1992). The churches are suppressed or coopted,

that is, concretely, ideologized, and obliged to respect the line drawn by the propaganda, with evident and important repercussions in the legal sphere.

The right to freedom of religion includes the right to express one's belief in community with others, and the expectation that believers can associate freely, without arbitrary state intervention. Indeed, the autonomous existence of religious communities is indispensable for pluralism in a democratic society. The duty of neutrality and impartiality of the state should therefore be incompatible with any provision authorizing the government to assess the legitimacy of religious beliefs.

Even the European Court, in its intervention in favor of Jehovah's Witnesses against Russia, made it clear that any interference must correspond to an "urgent social need" (Lapi 2011). A need is something "necessary," not just "useful" or "desirable," and European institutions actively promote this standard of religious liberty. Gradually, we witnessed an expansion of the European concept of freedom of religion, which should have had important effects on domestic laws, consolidating this fundamental right and extending it to all religions, not only traditional but also "new" in a given country.

With reference to Russia, however, these important legal developments, due to political pressure, may remain only within the speculative, theoretical sphere. In fact, on July 14, 2015, the Russian Supreme Court ruled that the country could set aside an ECtHR ruling, in the event of a conflict with the fundamental principles and norms of the Constitution, and this resolution was transformed into federal law in the same year. The following year, on April 19, 2016, the Russian Constitutional Court established for the first time the inapplicability of a judgment of the ECtHR, affirming the supremacy of the Russian constitutional rule over a supranational decision whose interpretation seemed to conflict with the Federal Constitution. The logical consequence was the impossibility of enforcing, in the specific case, the intervention of the European Court (Abashidze, Ilyashevich, and Solntsev 2017).

The danger of such a legal approach is obvious. As is well known, according to international law, a state cannot invoke the provisions of its domestic law to justify the non-execution of a treaty. The application of this norm implies that the conventional bonds cannot yield, even if in individual and specific cases, in the face of the (conflicting) constitutional norms of a contracting state, even of norms that define its constitutional identity. The state would have the only remedy, to

safeguard its constitutional identity, of withdrawing from the treaty. This hypothesis, however, is not feasible for those multilateral documents which, for the matter dealt with, have assumed strategic political importance in the context of relations between states of the same geographical area. For the purposes it pursues, this trend cannot, moreover, be confused with the so-called doctrines of “counter-limits,” on the basis of which the constitutional embankment placed on supranational law was essentially designed to safeguard a standard of protection of humans rights not known or not applied at the supranational level (Bowring 2015).

What seems to emerge from this impasse is that the national supreme and constitutional courts may experience difficulties in establishing a dialogue with the European Court of Human Rights and, above all, in accepting interference in the so-called domestic jurisdiction. The emergence of increasing tensions between the defense of the constitutional identity of the contracting states and the fulfillment of the obligations deriving from the ECHR should, however, lead to the necessary identification of new instruments. This could also be implemented through an amendment of the Convention, which would ensure a stable dialogue between courts, providing the Strasbourg judge with full and effective awareness of the functioning of an internal system, before assessing its compatibility with the conventional system, to avoid dangerous and arbitrary implosions of the European system of protection of human rights, deriving from the failure to implement the decisions of the European court.

The particular juridical position of Jehovah’s Witnesses in the Russian Federation, within a legal framework of freedom so strongly compromised, therefore takes on a further symbolic value, in which the defense of freedom of religion must be placed as an insurmountable limit to dictatorial tendencies. The Soviet state had tenaciously pursued a political strategy that attempted to establish a relationship between regulation and repression. After the 1991 reform, with the easing of state pressures, however, the will to control of the dominant Church emerged, associated with the general attitude of mistrust towards the new “cults” that emerged in Europe at the end of the 20<sup>th</sup> century due to the originality of their message, which could not be framed within the schemes of traditional religions.

The current political phase is, however, linked to a more centralized form of state control, with greater restrictions on individual and collective freedoms. The

characteristics of the Jehovah's Witnesses movement have, therefore, evidenced in even clearer forms the difficult balance between the protection of religious freedom and the states' claims that they need to defend themselves from the centripetal forces, potentially implosive, that can operate within their structure.

It is well known that secularism is based on two fundamental principles: first, the inviolability of human rights, which constitute the pre-condition of political power and therefore of the state and, second, the importance of a culture and institutions that guarantee the effectiveness of pluralism. The analysis of the peculiarities of Russian history and of the problems of the Jehovah's Witnesses offer, in this sense, an important perspective. They call into question the effectiveness of the European model of recognition and guarantee of religious pluralism if it is not subordinated to a real and effective control by supranational bodies that can guarantee the effectiveness of rights (Mazzola 2012; Licastro 2014).

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