

Banal, Benign or Pernicious? Religion and National Identity from the Perspective of Religious Minorities in Greece*

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Abstract

Intersections between religion and law are increasingly permeating the public sphere. From burqa bans to same-sex marriage, a strong relationship between religion and national identity (whether 'negative', as in the French case, or 'positive' as in the Greek case), can often be found as a central factor therein. Based on empirical research conducted on pluralism and religious freedom in Greece and other majority Orthodox countries, this article seeks to locate the religion-national identity link within the grey area at the intersection between religion and law. The voices of religious minority groups illustrate the blurred lines between the benign and the pernicious in banal manifestations of the religion-national identity link in the Greek context. Against the backdrop of the Greek example, the article then navigates through normative debates about whether and how limitations to the freedoms of religious minorities, in cases where these limitations are linked to the relationship between religion and national identity, can be effectively redressed.

Keywords: Orthodoxy, church-state relations, religious education, proselytism, equality

'Kokkinakis is in the drawer'. With these words a representative of the Greek ombudsman offers important insight into religious freedoms as experienced by religious minorities in the Greek context. His reference is to the 1993 European Court of Human Rights (ECtHR, or the Court) case of Greek Jehovah's Witness Minos Kokkinakis, against the Greek state, after he was arrested

over 60 times for violation of the Greek ban on proselytism.

This was a watershed case for the ECtHR: it was the first Article 9¹, that is, religious freedom, conviction issued by the Court, after its first 34 years of operation. In the 20 years since then, the Court has issued over 50 Article 9 decisions (and far more on religious freedom, but in

* This article draws on research conducted by the author on pluralism and religious freedom in majority Orthodox contexts (PLUREL, Contract no. 255533), funded by the European Commission 7th Framework Package (Marie Curie Fellowship). The country cases examined in PLUREL are Greece, Romania, Bulgaria and Russia, and the research was conducted between 2010 and 2013. I would like to thank the two anonymous reviewers of this article for their constructive comments. An earlier version of this paper was presented to the LSE Hellenic Observatory Research Seminar Series ; I thank the participants for their helpful feedback.

¹ Article 9 on Freedom of thought, conscience and religion provides that: 1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance. 2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.

conjunction with another right – such as non-discrimination or freedom of expression). These numbers suggest a rapid judicialisation of religion, post-*Kokkinakis*.

Of those 50-odd convictions, the Greek state has been on the receiving end of over 20% of them. This is a striking statistic, given that of 47 countries covered by the European Convention of Human Rights (ECHR), and thus by the Court which protects it (the ECtHR), a single country, Greece, is responsible for such a large percentage of violations found of the religious freedoms article. Seven majority Orthodox countries account for over 63% of these violations².

Though these statistics should be taken with a grain of salt³, still this data, together with a broad body of literature that questions the relationship of Orthodoxy to democracy and to pluralism (Pollis 1993; Payne 2003; Prodromou 2008), at least raises some concern about Greece specifically and Orthodox countries more generally from a religious freedoms perspective.

This article draws on research conducted on pluralism and religious freedom in four majority Orthodox countries, the aim of which was to ascertain factors and mechanisms influencing limitations to religious freedoms in majority Orthodox contexts. The present focus is on the case of Greece, and the above-cited quotation serves as a good introduction to a critical dimension of the Greek case: namely, the uneasy balance between courts and governments in

² Armenia 3; Bulgaria 5, Georgia 1, Greece 11, Moldova 4, Russia 5, Ukraine 3.

³ These statistics regarding Article 9 convictions alone are of limited explanatory value regarding religious freedoms jurisprudence in general, given that many religious freedoms cases are decided under or in conjunction with other Convention articles (e.g., Freedom of Expression, Art.10, Freedom of Assembly and Association, Art.11, and Prohibition of Discrimination, Art.14). Another factor to consider is the timing of *Kokkinakis*, so soon after the inclusion into the ECHR framework of a number of newly democratizing post-Communist countries, many of them majority Orthodox. From different perspectives Ferrari (2012) and Richardson and Shoemaker (2008) argue that an example was made of Greece to communicate a message to the new member states.

addressing religious freedom issues. The Greek Ombudsman's representative delivered this statement as a positive thing: police no longer send Jehovah's Witnesses to jail in Greece, he said, because they have the *Kokkinakis* case in their desk drawer, like a trick up their sleeve, in order to justify to complainants why the Jehovah's Witness in question could not be sent to jail (and of course to remind themselves of the same thing).

But from a different perspective, namely, from that of religious minorities, the *drawer* is not a particularly prominent or effective place for *Kokkinakis* to be; it should be on the *books*, in the legislation. Instead, the 1938 law banning proselytism, which dates back to the Metaxas dictatorship, is still formally in effect. At the same time, in theory *Kokkinakis* could be on the books but *not* in the drawer, and with more adverse effects for religious minority groups. This example points to a recurrent theme in my research, which is that there's a significant *grey area* around the intersection between law and religion. My research suggests that we need to give a great deal more attention to this grey area, and to what is happening on the ground, in the shadow of the law, and in the shadow of court decisions, because this is one context where the daily experiences of religious pluralism on the ground have more to tell us than do laws and court decisions⁴.

The objective of this paper is twofold. First, it seeks to locate the religion-national identity link within the grey area at the intersection between religion and law. Intersections between religion and law are increasingly permeating the public sphere, and a strong relationship between religion and national identity can often be found as a central factor therein. This point applies equally to cases where the strong relationship between religion and national identity is 'posi-

⁴ This is the topic of a current (2014-2018) European Research Council (ERC) – funded project entitled 'Directions in religious pluralism in Europe: Grassroots mobilisations in the shadow of the European Court of Human Rights religious freedoms jurisprudence' (Grassrootsmobilise).

‘negative’, as in the Greek case for example, or ‘negative’, as in the French and Turkish cases, where secularism, rather than a majority faith, is central to state-promoted conceptions of national identity⁵. Second, the paper navigates through normative debates about whether and how limitations to the freedoms of religious minorities, in cases where these limitations are linked to the relationship between religion and national identity, can be effectively redressed.

The first part of the paper sets out what may be described as a conundrum around the relationship between religion and national identity. In a second part I outline a research agenda designed to better understand the challenges faced by religious minorities in majority Orthodox country contexts where a close link between Orthodox Christianity and national identity permeates politics and society to varying degrees and in different ways. Third, the paper engages the voices of religious and civil society actors in the Greek context consulted for this study, in order to illuminate the difficulty in distinguishing between the banal, the benign and the pernicious in terms of the implications of the religion-national identity link, from the perspectives of religious minorities. A fourth section presents schematically debates within socio-legal scholarship on potential ways to address the latter problem, including the relative virtues of parliaments vs. courts in the efforts to secure religious freedom and equal treatment for religious minorities.

The religion-national identity link as a conundrum

In the contexts and in the extent to which a close religion-national identity link leads to exclusions, at various levels, of religious minorities, it represents a conundrum for those striving towards religious pluralism⁶. The religion-national iden-

tity link represents a conundrum for several reasons, one of which is that it is often banally manifested. A close relationship between religion and national identity is manifested in all kinds of symbols around us, including flags, anthems, depictions on currency, etc., much like Michael Billig’s description of ‘banal nationalism’ (this is the title of his popular 1995 book on nationalism). In other words, it is so common and ordinary as to go unnoticed most of the time. A religion-national identity link underlies a number of ‘invisible national norms’, as for example in the Swedish case of the taken-for-grantedness of using church buildings for public school functions and ceremonies (Pettersson and Edgardh 2008). In majority Orthodox contexts, one seemingly banal expression of a close relationship between Orthodoxy and the identity of the nation is the embedding of special references to the Orthodox faith or church either in the actual texts or in the ‘symbolic clauses’ of their constitutions or laws on religion⁷.

The question is, where do banal manifestations of a majority religion (or of a majority *non*-religion, or secularism, as the case may be) *stop*

⁷ The Romanian 2006 Law (Law 489/2006) on Religion indicates that ‘The Romanian State recognises the important role of the Romanian Orthodox church and that of other churches and denominations as recognised by the national history of Romania and in the life of the Romanian society.’ (Art.7(2)). The preamble (which has no formal legal effect) to the Russian 1997 Law on Freedom of Conscience and Religious Association recognizes Orthodox Christianity’s ‘special role’ in Russia’s history, spirituality and culture, and proclaims respect for Christianity, Islam, Buddhism, Judaism, ‘and other religions, constituting an integral part of the historical heritage of Russia’s peoples’. In the Greek case Article 3 of the Constitution indicates that Greek Orthodoxy is the ‘prevailing’ faith, though whether this is a descriptive or normative statement is debated. In the Bulgarian case, Art. 13 (3) of the Constitution defines the Christian Orthodox Religion as ‘the traditional religion of the Republic of Bulgaria’, and the preamble of the 2002 Denominations Act (the preamble of which is also without formal legal effect) refers to the ‘special and traditional role’ of the Bulgarian Orthodox Church in Bulgarian history and the formation and development of its spiritual and intellectual history is acknowledged.

⁵ A point which applies less to the AKP-led government of course.

⁶ Nota bene: I use pluralism not as a descriptive term (as is diversity, or plurality), but as a *prescriptive* term – i.e., normative support for religious diversity which is enacted through policies protecting that diversity.

being banal and actually impinge upon freedoms of religious minority or non-religious groups? As Billig notes, banal does not imply *benign* (1995: 1). A lot more than we may realize may fall within a grey area between the benign and the pernicious.

A second reason the religion-national identity link represents a conundrum is that – if and where it is found to be pernicious – you can't exactly put it on trial. Thinking about the European legal context, European institutions go to great lengths to assure Europeans that European unification does not require, but in fact (or, in theory at least), *discourages* cultural levelling. Unity in diversity is an EU motto, and protection of diverse national identities (including whatever relation the national identities have to religion) is part of the EU's claimed aim. This means also that different forms of church-state relations are meant to be respected and that there should not be what Olivier Roy (2010: 9) describes as a 'formatting' of religion in the name of freedom and equality.

The European Court of Human Rights, itself not an EU institution but still an integral part of the European unification project, also embraces this aim of unity in diversity. The Court respects national diversity especially through the principle of subsidiarity and the 'margin of appreciation'. The margin of appreciation was, until recently, an informal tool developed through the Court's case law in order to allow individual states certain extra breathing space on nationally sensitive issues (as is, for example, the relationship between religion and national identity, and the same applies to church-state relations).

In 2013 both the subsidiarity principle and the margin of appreciation became formally embedded into the European Convention on Human Rights, which the ECtHR protects⁸. This

⁸ More specifically, in 2013 Protocol 15, which inserts a reference to the principle of subsidiarity and the doctrine of the margin of appreciation into the Convention's preamble, was adopted; it will formally take effect upon ratification by contracting states.

happened largely as a result of a reform process within the Court following a legitimacy crisis (which, in turn, has conspicuous links especially with the *Hirst vs. UK* judgment of the ECtHR on prisoner's voting rights). So while, as mentioned, there had been a rapid judicialisation of religion after the 1993 *Kokkinakis* case, in the context of this reform process the Court may be considered to have become more conservative in religion-related convictions that can be avoided by using the margin of appreciation⁹.

Third, it is difficult to change: the relationship of majority religions to national identities is often deeply embedded in the national narrative, especially within the education system. It is also often enacted by nationalist forces, whether on the part of the church or the state. People *mobilise* around religion-national identity links – we see this conspicuously in majority Orthodox contexts but not only. And finally, who, if anyone, has the authority to try to change it? Is that a legitimate aim?

All of the above provoke interesting normative questions, and there is a great deal of excellent scholarship arguing in divergent directions (e.g., Evans 2008; Weiler 2010; Bielefeldt 2013; Nussbaum 2008; Durham 1996). This scholarship frames a fascinating debate about the proper place of majority religion in the public sphere.

Rather than seeking to add another analyst's voice to an already well-developed scholarly discussion, this paper injects instead the voices of actors at the grassroots level – those of the *interviewees* in the referenced study – to explore the question of how, why and under what conditions the relationship between religion and national identity becomes problematic. After sharing these voices, I will consider the notion of what, if anything, can be done about the problems that arise from this relationship.

⁹ This, in any case, is a trend suggested by the more recent judgments of the Court in the cases of *Sindicatul Pastoral v. Romania* (2013); *Fernandez-Martinez v. Spain* (2014); and *S.A.S v. France* (2014).

A Research Agenda – methods and definitions

As noted above, though statistics regarding convictions for violation of religious freedoms should be taken with a grain of salt, still they provoke legitimate questions regarding majority Orthodox countries' practices related to religious freedom and thus warrant careful consideration. Accordingly, a scholarly inquiry was built around the following two questions: what are the experiences of religious minorities in the country contexts of Bulgaria, Greece, Romania and Russia? And what are the factors and mechanisms influencing limitations to religious freedom, where experienced?

The country case study selection includes old, new and non-members of the EU (Greece 1981; Bulgaria and Romania 2007) and countries with and without the experience of a communist regime. Together the countries cover a range of levels of religiosity vs. secularity (from highly secular in the Bulgarian case and highly religious in the Romanian case).

The empirical research was qualitative in nature, aimed at understanding the attitudes and practices of the religious majority *vis-a-vis* religious minorities, and the experiences of religious minority groups within this context. The fieldwork consisted of in-depth semi-structured interviews, conducted mainly in the capital cities of the countries studied, with representatives of religious minority groups; representatives of the Orthodox Church; representatives of state organs dealing with 'religious affairs'; and representatives of NGOs dealing with religious freedom issues (often representing secular and secularist organisations) and lawyers handling religious freedom cases. Between 25-30 interviews were conducted in each country case¹⁰.

Besides offering a vibrant picture of current grassroots developments in the domain of religious pluralism, in-depth interviews offered

insight into the deeper mentalities, perceptions and perspectives of people in positions of power, and to their broader objectives – i.e., what do they hope to achieve? These perspectives and mentalities have value independent of the actual facts and realities on the ground: together they offer a picture of pluralism, or lack thereof, internalised by the representatives of various stakeholder groups.

The research generated rich and fascinating material about each of these four cases individually, and in comparison with one another. It yielded a view of a broad range of experience, from extreme limitations to more minor annoyances. It also yielded a broad spectrum of *expectations* of religious minority groups, from a basic right to worship to a demand for non-discrimination and equality amongst all religious groups, including the majority Orthodox Church. Certainly the Greek case was more on this side of the spectrum with more vocally advanced equality demands.

Most importantly for our purposes, though, the research also offered rich insight into the various ways the relationship between Orthodoxy and national identity in each case impacted upon the experience of religious minority groups and thus factored into conceptions of pluralism and religious freedom.

Religion and national identity links as banal, benign or pernicious

I will now draw from the interview material to present different perspectives on particular manifestations of the religion-national identity link in the Greek context which are commonly treated as banal (i.e., so common, ordinary, and routine as to be almost/somewhat invisible), but which from some perspectives are considered benign (and so certainly not harmful and, in fact, helpful), and from others, pernicious (i.e., harmful, malign). And I will draw from different voices from each category of interviewees.

I have chosen to focus on such manifestations arising in three particular areas: religious education; the so-called 'Metaxas laws' on reli-

¹⁰ In November of 2010 in Romania, in December of 2010 in Bulgaria and, following a maternity leave gap, in November of 2012 in Russia and in January-February 2013 in Greece.

gion; and the public presence of Greek Orthodox clergy. As will become clear eventually through these examples, the boundaries between the three categories of the banal, benign and pernicious in these three areas are somewhat fuzzy.

Religious Education

Currently in Greek public schools there is a mandatory course of religious education taught which is catechetical in character, teaching the Orthodox faith (catechetical to varying degrees, depending on the level of education in question, whether primary or secondary and with variations within each stage of education). Exemption from the course is formally available only to the non-Orthodox¹¹.

The course in religious education has been at the centre of intense debates in Greece with contributions from human rights advocates, representatives of religious minority groups, spokespersons of the Ministry of Education and Religious Affairs, the Office of the Greek Ombudsman, individual theologians and members of the Union of Theologians and, finally, representatives of the Greek Orthodox Church. The religious education curriculum has, both because of and in spite of the above debates, undergone a significant reform process within a broader process of reform of the Greek education system which has yielded a pilot programme of a new religious education course, implemented in a number of Greek schools between 2011 and 2014. The latter retains the course as compulsive but is meant to be less confessional in nature (Koukounaras-Liagkis 2015).

The mandatory course in religious education is treated by many interviewees as a banal expression of the historical place of Orthodoxy in Greek society. One Greek Orthodox cleric

describes the course as a natural reflection of reality: *“What we say is that since the Orthodox here are more than 85% of the population, the course ought to be taught as Orthodox.”* Meanwhile, a representative of the Ministry of Education and Religious Affairs describes the course as so inconsequential as to be irrelevant: *“What many don’t understand is that what one paper says is one thing, and what happens in a classroom is another. If someone thinks that a 15-year old child will become Orthodox because the theologian teaches him Orthodoxy, then that person is in the dark.”*

That very same representative, however, also explains the teaching of the mandatory course in benign terms. He describes the course as a fair and healthy recognition of the important historic role of the Orthodox Church:

“The revolution had, as a basic parameter, the Church. And so the Church was with the ethnos when the ethnos was established. And it was established through blood in the revolution. They came to die as Orthodox, and not as Greeks or something else. Kolokotronis made the clear statement, we took arms first for our faith and then for the fatherland. These are things our history has written.”

Simultaneously, though, religious education in its current expression entails a conspicuous problem area for many religious minorities – globally but particularly in many majority Orthodox contexts. Many minority interviewees complained about the negative ways in which religious minorities were depicted in the public school text books and about the process of exemption (as explained above, exemption requires a formal declaration of minority religious status which then appears on the school diploma). Here, the words of a parent and representative of a Pentecostal church point to more subtle problems, indicating the discomfort experienced by his child:

“There was a teacher always putting him outside of class, with the excuse that he was causing trouble. Never before had a teacher taken him out of class. Of course, I had the right and I asked for exemption, and so it was ok. He sat in an empty room and studied.”

¹¹ For approximately a two-year period in the last decade, exemption was also formally possible on purely philosophical grounds and without requiring a formal declaration of a minority faith or of non-belief. Now such exemptions on philosophical grounds, where granted, are offered informally and on an ad hoc basis.

Metaxas laws

The so-called ‘Metaxas laws’ on religion were introduced under the Metaxas dictatorship in 1938 and brought into force in 1939. These include the banning of proselytism and requirements for the building of minority religious places of worship¹². It is the Metaxas law on proselytism which was ‘on trial’ in the *Kokkinakis v. Greece* case, and it is in the aftermath of *Kokkinakis* in particular that the Metaxas laws have largely been rendered either weak or irrelevant through subsequent legislation, but they still remain formally in force. *Kokkinakis* is ‘in the drawer’, as a reminder to police that proselytism should not land its perpetrators in jail, but it remains in force legally, ‘on the books’, both because governments avoid potentially upsetting a majority church which enjoys protection of the state from ‘external threats’, and, critically, because of the aforementioned ‘margin of appreciation: in its ruling in the *Kokkinakis* case, the ECtHR did not actually enforce a change in the law. Instead, it convicted the Greek state for applying the law too harshly. A judgment requiring a change in religion laws would have been perceived by national governments as too intrusive on church-state relations, particularly then, given this was the *first* religious freedom conviction issued by the Court. So the Court chose instead to show deference to national cultural tradition in the state’s handling of religious affairs, through use of the margin of appreciation.

For many, the gradually decreasing enforcement of the Metaxas laws makes the latter a banal remnant of the past not worthy of attention given the fact that they are not currently implemented. Furthermore, one Greek Orthodox cleric, charged specifically dealing with

the Greek Orthodox Church’s relations with religious minorities, argues that the introduction of the laws under a dictatorship is more or less irrelevant given the laws’ recognition and acceptance by so many subsequent governments: *“It doesn’t mean that the law must be abolished because he was a dictator. All the governments following the dictatorship, all recognised the law and left it in force. I know that the study of law says there must be continuity in the law...”*

Meanwhile, a government official who engages with religious affairs explains that we must keep a balance, not rocking the boat with extreme nationalists by forcing a change in the laws. Thus keeping the laws on the books also serves the benign purpose of maintaining the balance: *“They will change... they can’t help but change at some point. But at this point in time because of the crisis the far right forces are heightened...”*

Religious minorities, however, point to the negative effects, for them, of the continued legal relevance of the laws. Here a Jehovah’s Witness representative indicates that indeed, post-*Kokkinakis*, matters are much better and there are far fewer arrests, but still the fact that the Metaxas law banning proselytism remains in place serves as a platform for such arrests:

“Yes, things are better than in the 70s and 80s, when we had 100+ court cases per month about proselytism especially. But there are still annoyances, “come to the station with me, and stay for 2 hours”, trying to stop them passing out literature ... a priest could have called, a fanatic Orthodox. But not a word about removal of that law. No one dares remove that law.”

From his perspective, the failure to abolish the laws continues to signal to the mass public – members of which may be likely to contact the police about an ‘annoyance’ from a ‘proselytising Protestant’ – that proselytism is illegal and that the rights of the majority are being violated when people of a different faith approach them in the hope of converting them.

¹² The Metaxas laws provided that for all applications to the Ministry of Education and Religious affairs for the building of a minority faith place of worship, the opinion of the local Orthodox bishop must be sought. The opinion was not officially binding but still of course barred the state to critique for involving the majority church at all in the process. This practice ceased in 2006, and the opinions of local bishops are no longer sought by the Ministry.

Public presence of Greek Orthodox Church clergy

In Greece, the Archbishop presides over each opening session of Parliament and blesses each of the Parliamentarians with holy water. And in general Orthodox Church and state leaders often jointly preside over state functions and national holiday celebrations. The same may apply even to sports celebrations¹³.

Below we have the words of an Orthodox cleric suggesting that it is common, it is natural, and it is fine. Further, what is the harm, given that 'the others are alongside us too'. In fact, this particular cleric goes further to argue that this sharing of the public space is definitive of religious freedom in Greece:

'But you see...also present is the Catholic archbishop, and the rabbi, the mufti... No one takes them out of the parade. That's how we see religious freedom. But we can't understand why the Orthodox Church must relinquish its freedom, for the sake of others. All of us have our freedom.'

The very same issues are presented as benign from different perspectives. In fact, on *minority faith* representative echoes the words of one of the Orthodox clerics cited above, indicating that indeed it is good that his faith group is also represented at certain public state functions. But at the same time he notes that this happens only at the top level and does not impact upon the experiences of religious minorities in general. His broader point is that he is not seeking a public square devoid of religion and of clergy in general, so it is good that more religions can have a public presence, but the effects should not remain only at the formal level:

'At the highest level there is a difference; we are on the list of invitees for foreign ministry events, but this is a matter of protocol and has nothing to do with real life; it does not influence the experience of the common people.'

But the public presence of Orthodox Church clergy appears as pernicious from yet again dif-

ferent perspectives. Many interviewees feel that this public presence cannot but have a *less* transparent side to it, whereby the Church influences state decisions in ways that are detrimental for the non-Orthodox.

Below are three supporting quotations, the first two from people working in the Ombudsman's office, and the third from an NGO representative. The first suggests that there is a *message* communicated by the public presence of the clergy which influences how others in society act. The other two quotations suggest that the public presence has a behind-the-scenes element of political influence of the church. In the reference to the identity cards case below¹⁴, the suggestion is that the government won the battle but lost out in the next parliamentary and local elections (as was indeed the case; see Fokas 2004).

"Even now the Church comes in the Parliament to bless them. Most of the problems of religious freedom don't have as much to do with laws as much as with relations of the church with the state, because that relationship gives the impression to the [local] administration that church and state are one and the same."

"We have to move carefully on these issues, because our competence to intervene on issues with an ethno-political character is doubted. In other words, whatever may result in the limiting of the power of the Church."

"Remember what happened with the identity cards! No one wants to open a front against the Church when it can help you win votes, or at least when it's quiet, it doesn't prevent you from winning votes."

Again, it is easy to see from these examples that the lines between the banal, benign and pernicious are blurred, in terms of effect. The lines are *not* blurred, however, in terms of the perspectives of the actors in question; this distinction is key.

¹⁴ This is a reference to the church-state conflict over removal of the religious field from the national identity cards in 2000. For discussions of this development, see Fokas 2004; Molokotos-Liederman 2007.

Scholarly debates on potential solutions

On to the second question I posed at the outset: what, if anything, can be done about the problems that arise, if and when they do, around close religion-national identity links? As mentioned before, scholars are divided on this issue, and they actively disagree in religious freedom literature about the boundaries between the banal, benign and pernicious.

Some argue that strict separation of church and state is the solution. Others contend that we need to go further than that and have *no* privileging of one or more religions by the state, because no matter how much a state *may* try to keep the privileges specified and bounded, the message of preference communicated to society in general may have an *amplifying effect* on those privileges. This point reminds us not to think only in terms of state attitudes and actions but also in terms how these may be adopted and possibly skewed or amplified by society in general.

The UN Special Rapporteur on the Freedom of Religion or Belief, Heiner Bielefeldt, is amongst those scholars who see any privileging of one or more religions as fundamentally contrary to religious pluralism. Bielefeldt is cited, as opposed to the many scholars who share his views (most outspoken of whom is Martha Nussbaum), specifically because of the import of his position: his is not meant to be merely an ivory tower conception, given he engages with matters of freedom of religion or belief on the ground in various country contexts.

Bielefeldt posits that equality and freedom inextricably belong together, as part of the 'architectural principles' of human rights (2013: 50-51): "Without equality," he posits, "rights of freedom would amount to mere privileges of the happy few." Bielefeldt argues further that identity politics which are focused on *particular* identities rather than being universal, *when* practiced, as they often are, together with political favouritism towards particular religious groups, entail a threat to the idea that freedom of religion *should be* universal, for all peoples (2013: 34). He gives as an example various countries with constitu-

tions or laws on religion that give a privileged status to one or a few 'recognised', or, in the case of Greece, 'known' religions. The various lists of recognised religions, he argues, whether short or long, are problematic in that their mere existence suggests that 'pluralism can only unfold within a predefined set of permissible options', and this runs counter to the foundational concept of normative universalism (Bielefeldt 2013: 37).

Many scholars resist such 'human rights approaches to religion', both as expressed through the ECtHR religious freedoms jurisprudence but also as embedded in the spirit of Bielefeldt's above-cited perspective. Efforts within human rights circles to secure pluralism and tolerance between religions are, in some cases, seen as a direct restriction upon the manifestation of religion by believers. According to Malcolm Evans, the elevation of secularism in the name of pluralism, where evinced, is deeply problematic as it is achieved by 'sanitising' public life of traces of the religious (Evans 2008: 312).

Here Evans is focusing on rights at the individual level and argues that the individual right to practice religious freely is too often curtailed in the name of pluralism and equality. But he also expresses concern regarding religious rights at the national level, seeing in certain human rights approaches 'an attempt to brush aside the reality of church-state relations and with it a foundational element of national identity' (2008: 303).

These concerns are echoed by Olivier Roy, who argues that gradually, "a common template of 'religion' is emerging" because, in the context of the struggle for pluralism, institutions are seeking a one-size-fits-all definition that applies to all religions. Such 'formatting' of religion which, in the past, occurred in state interventions seeking to control, dominate and acculturate religion, happens today "for precisely the opposite reason: it is done in the name of freedom and equality" (Roy 2010: 9).

Beyond these conceptual problems which provoke scholarly debate, we also have significant *practical* problems in the implementation of equality in the domain of religious freedom or, as

Bielefeldt (2013: 56) puts it, “the practical problem of whether and how freedom of religion or belief can actually be implemented in a strictly non-discriminatory manner.” Equality in celebration of public holidays is an obvious example of a problem area.

Here the term ‘reasonable accommodation’ comes in. According to Bielefeldt, “What [reasonable accommodation] means in practice cannot be defined abstractly, but must be worked out in a case by case manner... ‘but when there is goodwill on all sides, practical solutions can usually be found’” (2013: 57-58).

The problem, of course, is the fact that there is not always, and in some contexts not *often*, goodwill on all sides. To take an example, following Bielefeldt’s suggested case-by-case approach, below I present two different takes on the financial privileges enjoyed by the Orthodox Church in Greece.

In particular, the fact that Greek Orthodox Clergy salaries are paid by the state is a sticking point for many religious minority representatives. It is also something strongly defended by the Orthodox clergy. I use my interviewees’ voices again to illustrate the different perspectives and the impasse between them.

Below is the perspective of an Evangelical church in Greece; his statement includes reference to a lack of goodwill on the side of the Orthodox Church which, from his perspective, ‘fights him’:

“Think about how all of us, we not only don’t get paid, we have our own other jobs and rather even contribute financially to the running of the church. Meanwhile, Orthodox priests have pay of civil servants. They justify this saying we’ve given, we’ve offered, etc. This, for us, as a serious injustice: for me to pay taxes, from my work, for the priest to be paid who fights me and sees me as his enemy.”

Meanwhile, this cited Orthodox cleric’s argument is classic and is used well beyond the case of clerics’ pay in order to justify a large number of the privileges the Greek Orthodox Church enjoys. So by virtue of a particular historical engagement between church and state whereby the state

took, or was given, church property, the state rightly pays (and is obliged to pay, forever) the wages of the Orthodox clergy. This is an abstract, undefined and unbounded notion of eternal debt of the state to the Church, and it is a highly *prevalent* notion, in many of my interviewees’ perspectives.

“And they may complain: why does the state give part of the pay of the clerics? And I ask, which of the non-Orthodox churches gave to the state any of its property? We have given 96% of it. And the state undertook, in exchange, to pay the clergy. Let’s leave aside the national dimension, regarding the freedom of ‘21, of ‘41, etc., and let’s just look at the financial side: all the things you see around, hospitals etc., were the Church’s. How can they demand equal treatment, without having given something to the church, I mean, state?”

Thus, in the context of this normative disagreement around these issues, not just between religious majorities and minorities but also between scholars, what can be done to help address, and re-dress, problems experienced by religious minorities which have their root somehow in the historical Orthodoxy-Greek national identity link?

There is also a great deal of scholarly debate over whether solutions lie with parliaments or with courts. I will discuss two possibilities from a theoretical and then practical perspective.

One prominent response in Greece calls for a strict separation of church and state and an end to such privileges for the Church.

In an interesting article on political liberalism and religion, political theorist Cecile Laborde (2013) applies an incisive process of elimination to a list of four ideal-typical models of religion-state relations, in order to assess which is compatible with religious freedom. The four models are listed below:

Militant separation: inadequate protection of religious freedoms; official support and promotion of scepticism or atheism by the state; secularist anti-religious state

Modest separation: adequate protection of religious freedoms; no official support of religion(s) by the state; no public funding of religious education and no state aid to religious groups

Modest establishment: adequate protection of religious freedoms; official support of religion(s) by the state; public funding of religious education and state aid to religious groups

Full establishment: inadequate protection religious freedoms; official support and promotion of religious orthodoxy by the state; theocratic anti-secular state (Laborde 2013: 68).

Through this process, she reaches the conclusion that only two of the four ideal types of religion-state relations – modest separation and modest establishment – can possibly provide adequate protection of religious freedoms, and so the other two models are ruled out as incompatible with political liberalism.

At the heart of the reasoning in this process of elimination is the principle of equality. Regarding moderate establishment Laborde explains that “A political liberal state can give symbolic preference to one religion – as long as the preference is purely *symbolic*” (2013: 82, *emphasis mine*) and that members of religious minorities are otherwise treated as free and equal citizens. Modest establishment is only acceptable, is only ‘modest’ enough, as long as these conditions are met. Strictly speaking, the norm in many if not most European states falls far short of meeting these conditions, thus not qualifying these states as moderate establishment, much less as moderate separation.

She argues further that state financial assistance within modest establishment is justifiable only if adequate protection of freedom of religion is interpreted as requiring such assistance (i.e., *if* the state assistance is *necessary* for protection of religious freedoms), *or* if equality between believers of different religions is interpreted as mandating even-handed support of all by the state (Laborde 2013: 72).

Neither of these conditions is anywhere near the case in Greece, nor in other majority Orthodox contexts. In other words: state assistance to religious groups (mainly to the Orthodox Church) is *not* granted because such assistance is deemed necessary for the protection of religious

freedom; nor is such assistance granted even-handedly across all religions in order to provide for equality between believers. Thus Laborde’s conception suggests, echoing Bielefeldt’s, that the type of establishment we have of the Orthodox Church in Greece is necessarily problematic from a religious freedoms perspective.

From a practical perspective, this is a highly polarising topic in Greece. With varying levels of intensity since the early 80s, a handful of scholars have been trying to introduce changes to current church-state relations. They rarely, however, manage to garner sufficient political support to enact changes. Meanwhile, these efforts are open to the critique that a state *ought* to be able to preserve its own cultural identity, and if religion is a part of that, then the right to privilege a religion will necessarily trump some religious minority rights to equality.

Assuming these limitations, then, what can or should courts do? Again, I will approach the topic from a theoretical perspective and then from a particular one.

Two particular provocatively titled book publications can serve usefully as a frame for my discussion here: *The Impossibility of Religious Freedom* (by Winnifried Fallers Sullivan 2005) and *The Tragedy of Religious Freedom* (by Marc DeGirolami 2013). These texts represent a budding new genre of literature questioning the role courts can play in relation to religious freedom.

DeGirolami’s and Sullivan’s concerns and conclusions are distinct, but both speak in terms of *predicaments*. DeGirolami addresses the ‘predicament of legal theory’ (2013: 2), and Sullivan the ‘predicament of religion’ (2005: 5). ‘Legal theory’, according to DeGirolami, ‘seeks to fix crystalline conceptual categories ... [b]ut the social practice of religious liberty is resistant to legal theory’s self-assured, single-minded drive to evaluate, justify, and adjudge’ (2013: 1).

For her part, Sullivan argues that religion “fits uneasily into a legal scheme that demands such categories and such expert certainty.” Rationalizing religion in the ways proposed by courts and

legislatures “fails to capture the complex nature of people’s religious lives” (2005: 10).

In short, the predicaments have a common basis in the messiness of lived religion, including the relationship between religion and national identity.

Most notable is the incredible difficulty Courts face (or, impossibility, as Sullivan might say) in untangling religion, culture, history, and identity *just* enough to be able to ascertain whether religious freedom has been violated.

Judges get into terrible muddles trying to decide, for example, whether the crucifix on Italian school walls is a religious symbol which can indoctrinate pupils, or rather a symbol of national identity (*Lautsi v. Italy*, 2009, 2011, ECtHR). Or, in the US context, whether the Ten Commandments on school walls represents state promotion of religion or a harmless example of American national identity, shaped as it is by civil religion (*Stone v. Graham*, 1980, US Supreme Court). The same applies to the pledge of allegiance recited by children in public schools, indicating that the nation is ‘under God’ (*Elk Grove Unified School District v. Newdow*, 2004, US Supreme Court).

This fact leads many scholars to argue that Courts are not the right place for sorting out such issues. And certainly Courts too experience social and political pressures, as their legitimacy is contingent on reception of the messages and decisions they communicate (as suggested above with reference to the ECtHR legitimacy crisis).

In the Greek case, Courts, and specifically, the ECtHR, has taken very bold decisions relating to religious freedom. And, again, the fact that ‘*Kokkinakis*’ is in the drawer at police stations, barring police from abusing and even using the anti-proselytism laws, is a welcome development to religious minority groups, for which they have the European Court of Human Rights to thank, even if the legislation has not changed.

In reality, I would argue that for the Greek case, both parliaments and courts are necessary actors in securing religious freedom for minority religious groups, and both are still insuffi-

cient guarantors of religious freedom. This point may be illustrated in reference to the recent bill, approved by the Greek parliament in October of 2014, introducing a new form of legal status for religious minority groups in Greece.

On October 1st, the Greek Parliament passed a bill offering a formal legal status recognizing minority religious groups specifically as religious communities (rather than as other forms of organization), thus influencing taxation, property rights, running of places of worship, etc. The only religious groups formally recognized until now as having legal personality *as a faith community*, are Orthodoxy, Judaism and Islam *in Thrace* (not in general).

This bill was largely made possible by the European Court of Human Rights’ judgment in *Chania Catholic Church v Greece*. Here, a Catholic Church in Chania was challenged by a neighbour concerning its property ownership and the Greek lower courts refused to recognize the Church’s legal personality in order to defend its property in court. The Catholic Church won the case, and the Greek state half rectified the situation by a change to the civil code in 1999, but the Catholic Church continued to press for full and formal legal recognition as a religious community.

The new bill confirms the present legal status of the Greek Orthodox, Jewish and Muslim of Thrace communities, and offers a new form of formal legal status automatically (i.e., without some application or court process necessary) to the Roman Catholic, Anglican, Ethiopian Orthodox, Evangelical, Coptic Orthodox and Armenian Orthodox communities; and it offers *the possibility* of the legal status to other religious minority groups but only through court confirmation that they fulfil the following conditions:

- a threshold of 300 members
- an application to the ministry of education including: the constituent deed establishing the group, the religious creed of the faith group; the names of the members of the group’s administration, which must necessarily include the ‘pastor’ of the group (i.e., the pastor is required to be a formal member of

the groups administration); the full CV of the pastor (including education, length of current position and way the pastor was chosen for the post); the list of places of worship; its by-laws, and the signatures of its members and the date.

- The members of the community cannot simultaneously be members of other religious communities with legal status
- The faith's by-laws must not be deemed antithetical to public order or to the acceptable standards of morality
- And the religious community with legal status may be dissolved if its membership level drops below 100; if it remains without a pastor for 6 months; if its aims are in practice different from those approved; and if its practice has become illegal, unethical, or against public order.

The new bill is problematic from several perspectives, and certainly opens Greece to the potential for further cases in the European Court of Human Rights, because in some of the groups who have now achieved legal status, there is an internal division, and through the bill only one side of the divide is effectively recognised, thus opening the state to criticism of meddling in the internal affairs of a religious group.

The bill is received with mixed feelings by religious minority groups. One Jehovah's Witness representative indicates:

"Personally, I believe it depends on the leaders of the Ministry of Education and Religious Affairs at a given time how they will use it, either liberally or to control the religious groups, since there is now [with this new bill] central control from the General Secretary of Religious Affairs. From our side, we are waiting to see what will actually happen."

In the case of this bill, we have an example of a complaint of a religious minority group, the Roman Catholic Community of Chania, supported by a court, the European Court of Human Rights in 1997, which finds its reflection in Greek legislation some 17 years later, and of course with imperfections.

Both developments are more positive than negative, but even together here the acts of the court and of the parliament are insufficient, as the worries of this particular religious minority representative cited here indicates.

The necessity of revised national identity narratives

The 'cultural defence paradigm' is quite conspicuous in the Greek context and is also well documented in relevant literature¹⁵. What the present article has sought to articulate is a nuanced perspective on the various and multi-level challenges to addressing religious freedoms problems which arise in relation to the defence of religion-national identity links.

These problems are conspicuous in, but of course not limited to, majority Orthodox contexts. The French examples of 'pluralism as problem' are also conspicuous: the 2011 ban on the burqa in public spaces in general (i.e., moving far beyond the 2004 ban on religious symbols in public schools) was notably preceded by a 'public debate on French national identity' launched by Nicholas Sarkozy in 2009 (see 'Débat sur l'identité nationale' 2010); the debates five years later around whether a Muslim girl's wearing of a long black skirt in school is acceptable may also be seen as part of the same continuum in which a particular conception of national identity leaves little space for acceptance of religious minority expression.

From wholly different perspectives and contexts in the United States and in Italy, the relationship between religion and national identity (embedded in American civil religion in the US context) underpin secularist, rather than religious minority, resistances to the predominant national narrative manifested in such practices as the recitation of the Pledge of Allegiance ('under God') and the display of the crucifix in public schools. Regardless of where one stands in ideological terms on these issues, the active implica-

¹⁵ See, for example, Halikiopoulou and Vasilopoulou (2013).

tions of national narratives with either a positive or negative relation to religion are evident.

What is, however, more unique to majority Orthodox contexts is the prevalence of particular problems related to the transition to democracy, especially in post-communist contexts¹⁶. For example, so many problems have been borne simply from the messy party politics first in the immediate and then in the less immediate aftermath of the collapse of the communist regimes.

A poignant example is that of the schisms in the Bulgarian Orthodox Church and in the Muslim Community of Bulgaria, caused in large measure by state actions. In a brief and oversimplified version of the account: a newly-elected democratic government in 1991, in a supposed process of democratisation, removed from office the Patriarch of the Bulgarian Orthodox Church, and the Chief Mufti of the Muslim community, both of whom had collaborated extensively with the communist regime. The government declared the elections of these leaders invalid and appointed new interim leaderships. In both cases, and in the context of heated party politics, subsequent governments reinstated the leaders who had been deposed, but by then the 'new' leaders had already gained followings. Both cases reached the ECtHR.

But when we consider the Greek case as a majority Orthodox context without the transition-from-communism experience, we see it as no less, only differently, challenged by pluralism. Here we find relatively fewer basic freedoms claims of religious minorities (first, life and limb; freedom of belief, freedom to worship, freedom to assemble as a religious group, etc.), and rather more demands for equality, for example equality in financial privileges such as tax exemption, or equality in access to mass media.

The religion-national identity link arises from the research as a main and common denominator between the four country cases of Greece, Bulgaria, Romania and Russia. References to this relationship are also strikingly prevalent within each country case study, in terms of the weight given by interviewees to this relationship in their explanations of limitations to religious freedom (whether they were complaining about those limitations, as religious minority groups, or explaining or even *defending* those limitations, as representatives of the Orthodox majority¹⁷). Somewhere behind nearly every cited limitation on religious freedom lurked the shadow of the close relationship between religion and national identity.

I will close with what I – to pre-empt critique – will admit is itself a banal point, but at the end of this research process it is what I find most critical: that what is most necessary for a fuller respect of religious freedoms for religious minority groups is a national-education-led change in conceptions of national identity, allowing for a more open conception that is inclusive of religious minorities and more reflective of Greek contemporary diverse society, inclusive of its religious minority and non-religious, secular and in some cases anti-religious components¹⁸.

This, of course, requires a change in the national education policy – not only in the tuition of religious education but more broadly in the way history is taught. Given the extensive debates and controversies around past efforts in these directions in Greece, this too is a political minefield. Still, subtle but consistent efforts towards a widening of conceptions of national identity could form the foundation for an unravelling of much of the often imperceptible web keeping certain limitations on religious freedoms firmly in place.

¹⁶ Anderson considers the cases of Greece and Spain alongside post-communist contexts in this study of religious liberty, for their transitions to democracy from dictatorships (40 years, in the Spanish case, 7 in the Greek case). (I find it difficult to apply the same arguments to post-communist and post-dictatorship transitions of Greece and the other case studies).

¹⁷ Whether clerical or lay, representatives of the Church or the state or others.

¹⁸ See Trine Stauning Willert's *New Voices in Greek Orthodox Thought. Untying the Bond between Nation and Religion* (2014) for an excellent elaboration on new trends within Orthodox theology calling for a de-emphasis within the Church on national identity.

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