

Human Rights and Religion: A Sociological Perspective

OLGA BRESKAYA

*University Human Rights Centre
University of Padova*

GIUSEPPE GIORDAN

*Department of Philosophy, Sociology, Education and
Applied Psychology
University of Padova*

JAMES T. RICHARDSON

*Emeritus Foundation Professor of Sociology and
Judicial Studies
University of Nevada*

This essay aims to review mainstream literature and research perspectives on the sociology of human rights with the further focus on relationship between human rights and religion. We consider the challenges of late engagement of sociology with human rights and current narratives of the relationship of human rights and religion that encompass normativity as the central category of historically oriented sociology. We discuss the contribution of two empirical research mainstreams on human rights and religion and focus on a new field of study—sociology of religious freedom. A detailed new agenda for sociological research on human rights and religion is explored in the final part of our assessment.

Keywords: *human rights, human rights and religion, sociology of rights, sociology of religious freedom, judicialization.*

INTRODUCTION

The study of human rights developed in the aftermath of World War II (Donnelly 1999; Richardson 2007). The resulting human rights agenda was activist in orientation and predominantly legal in its perspective. Largely absent was an attempt to include a sociological perspective. Over six decades later, the hints of a new emerging sociology of rights became noticeable although some claimed that it “still cannot be said to exist” (Somers and Roberts 2008:386). Thinking through human rights sociologically is not an easy exercise due to theoretical obstacles and the challenges of engagement with the human rights agenda (Connell 1995; Morgan 2009; Somers and Roberts 2008; Turner 1993). Like the larger literature on human rights, the study of human rights and religion has also largely failed to include a sociological perspective. However, a sociological approach toward human rights and religion has grown more prominent over the last decade. In this essay, we review this sociological turn in the literature and propose ways for it to continue to develop.

Our aim is to review mainstream research perspectives on the sociology of human rights with the further focus on human rights and religion, highlighting the sociological engagement, its challenges and prospects. After illustrating the challenge of “normativity” discourse for sociology, we will consider current narratives of the relationship of human rights and religion that encompass normativity as the central category of historically oriented sociology. Further, by focusing on contributions from two empirical research mainstreams on human rights and religion, we will

*Correspondence should be addressed to Olga Breskaya, University Human Rights Centre, University of Padova, Italy.
E-mail: olga.breskaya@phd.unipd.it*

pay particular attention to the new field of study—sociology of religious freedom. A detailed new agenda for sociological research on human rights and religion will be explored in the final part of our assessment.

HUMAN RIGHTS AND RELIGION BEYOND THE LEGAL PERSPECTIVE

Human rights scholarship has been dominated by legal, international relations and political science analyses. Over the past two decades, however, there has been an increasing emphasis on the sociology of human rights. Sociological approaches to human rights originated through careful attempts to compare and develop discourses of sociology of citizenship, social movement research, gender sociology, political sociology, sociology of law, and sociology of religion while approaching sensitive social problems through lenses of sociological theory and measuring techniques. It even has become possible to designate subfields of sociology of human rights and to define the sociology of religious freedom (Richardson 2006) or political sociology of human rights (Nash 2015), as well as a subfield of international relations (Dunne and Wheeler 1999).

Starting from the mid-'90s, the discussion around the subject of the sociology of human rights was initiated within the discipline of sociology by Turner (Turner 1993; Turner et al. 1995) and Waters (1996). Competing foundationalist and constructionist approaches evolved as two sociological discourses were debated: whether human rights should be seen as foundational moral principles grounded in human frailty, precariousness of social institutions, and moral sympathy (Turner) or as social constructs and instruments of sociopolitical relations (Waters). While Turner emphasized the importance of viewing these perspectives as two concomitant discourses, explaining that universalism ontology of human rights aimed to contribute to the “universal basis for normative evaluation of rights abuse” (Turner 1997:566), Waters suggested another vision. He opposed two universalization processes—human frailty and human interest (Waters 1996:599).

The following two decades could be seen as the genesis of sociology of human rights with the invariable endeavor of sociology to demarcate human rights from citizenship rights (Turner 2009), natural rights from human rights (Somers and Roberts 2008), globalization of concern about religious freedom (Beckford 2003; Beyer and Beaman 2007), and to introduce sociological foundational principles for the universalism of human rights (Joas 2013; Nash 2015). It is true that sociologists, while facing “natural,” “universal,” “legal,” and “indigenous” rights, could have what Somers and Rogers describe, as an “uncomfortable” experience (Somers and Roberts 2008:388). Also, the sociology of human rights informs us that the specific language and rhetoric of human rights calls for sociological translation and interpretation when the basic human condition is under threat in particular cases and groups. Sociologists recognize that monitoring human rights is not only the method of social problems elicitation or an empirical tool for the ranking of modernization, democratization or secularization processes, but a theoretical challenge calling for sociology to be part of an interdisciplinary dialogue in which sociological optics and methods are in demand.

As Turner (2009) stated, to be “something more than a metatheory” (Turner 2009:12) is a sign of relevant social theory, which has to be sensitive to contemporary social problems and challenges. Along with this axiom, Turner claims that especially during the globalization stage it is a sociological must to stand up for a sociology of rights (Turner 2009). Theorizing an ambivalent relationship of human rights and religion from a sociological perspective responds to both conditions. Such an approach has in its focus current and appealing challenges, tensions, and debates on human rights and religion within the domestic and global contexts, and could consider them within the sociology of rights perspective. Whether we analyze cases of violence on the grounds of religion, growth of religious restrictions around the world, gender inequality and customs, blasphemy laws, current practices of secular divorces of religious marriages in Europe and elsewhere, or religious hatred, Turner's axioms inform new perspectives for sociological

theorizing human rights and religion as well as paths of sociological knowledge construction. An analysis of how the fabric of religious life is affected by human rights and vice versa could uncover the most problematic zones of such interaction and also illuminate why sociology has heretofore experienced a period of relative indifference toward human rights.

It should not be surprising that a sociologically informed approach to human rights is less advanced than legal scholarship on human rights, which experienced prompt development from the end of World War II, along with the succeeding processes of ratification of international human rights treaties (Donnelly 1999). Growing interest of sociologists toward human rights could be seen within the wider processes of paradigm shift in social sciences and introduction of public sociology (Burawoy 2005) with a “normative turn” in sociological knowledge (Blau and Moncada 2009). This shift “embedded” the concern of normativity into various fields of sociological analysis raising the issues of inequality, justice, and dignity. It questioned value-neutral sociology which “does not raise normative questions about justice or rights” (Turner 2009:12) with appealing issues of equality and nondiscrimination. Sociology did not ignore the normativity concept in its past but approached it indirectly (Turner 2009) through the perspectives of stratification, income, or types of mobility.

However, normativity of human rights could be seen as one of the main obstacles for the late engagement of sociology with human rights. As Somers and Roberts (2008) maintain, the necessity of addressing the issue of normative foundations of rights discouraged social scientists. In sociology, normativity discourse is opposed to “the inherently value-laden (Weber), illusory (Marx), and philosophically speculative (Durkheim) nature of rights as moral entities” (Somers and Roberts 2008:386). Unsurprisingly, the issues of moral justification of rights were left for moral and political philosophers while sociologists were more concerned about the agenda of citizenship (Somers and Roberts 2008).

According to Morgan, human rights seen within both a domestic and international legal framework “are a modern and secular version of God-given or natural rights, but they are heir to this normativity in that they are expressive of what ‘should’ or ‘ought’ to be in human affairs” (Morgan 2009:3). Leaving aside the question of the source of normativity, this approach implies that sociologists should recognize the legal character of human rights together with their moral authority and aspiration. The latter feature could be considered as even more important than the legal normativity by contemporary sociologists. Nash asserts that law “can be an obstacle to achieving human rights” (Nash 2015:5) and due to the moral dimension of human rights we can be faced with situations when rights “can be claimed where no legal rights are codified” (Nash 2015:5). “Claiming rights” perspective could be considered one of the oldest and mostly inherent aspects of sociology, as it encompasses historical processes of revolutions and reforms within the social movement discourse analyzing competing rights claims, their causes and effects (Frezzo 2015). This approach induces us think about social problems from the perspective of human rights claims. And it also shows how historically informed sociology could assist in viewing human rights as not purely legal norms but values that through the history of the 20th century have become entitlements (Donnelly 1999; Richardson 2007).

The question of human rights “must be seen in postinstitutional terms as instruments, rather than as a prior ethical entitlement” (Sen 1999:229). This also raises other issues such as the differentiation of law from religious, moral, customary norms in Western legal tradition. As Berman (1983) strongly argues, law is a relatively autonomous system that incorporates a value dimension and thus requires social scientists to take a specific theoretical approach. He wrote:

Social theory must, therefore, accept a broader concept of law than that which Marx and Weber adopted. Law is, as they believed, an instrument of domination, a means of effectuating the will of the lawmaker. But this theory of law, usually identified with the positivist school of jurisprudence, tells only part of the story. Law is also an expression of moral standards as understood by human reason. This view of the law, which is associated with natural law theory, is also partly true. Finally, a law is an outgrowth of custom, a product of the historically rooted

values and norms of the community. This third view, identified with the historical school of legal philosophy, can also claim like each of the other two schools one-third of the truth (Berman 1983:555).

A sociological analysis of human rights could follow the same logic that Berman introduced to the conceptualization of legal system as it commingles social aspects of power relations with the genealogy of norms and their rationalization. In addition, such a perspective implicitly acknowledges that human rights “have the potential to reshape (or solidify) existing social configurations” (Roberts 2013:211) including religious systems. However, rights have to maintain an emancipatory strategy that determines their significance (Banakar 2010). While reassessing normativity of rights, sociologists should reconsider how the moral and empirical could provide a framework for each other (Sjoberg, Gill, and Williams 2001) and how human rights practices force scholars and policy-makers to reassess secular and religious normative systems and their interactions. Engaging with human rights and religion through the discourse of normativity and pluralism of normative ordering, sociologists could identify various types of religious encounters with modernity (Possamai, Richardson, and Turner 2015). As an effect of these encounters, the boundaries between the concepts of religion, community, culture, custom, and norm are redefined with the proposals of new heuristic for the relationship of multiple modernities and legal pluralism (Possamai 2015).

NARRATIVES OF HUMAN RIGHTS AND RELIGION

As Joas (2013) argues, the normativity of human rights could not be understood without interpretation of their genesis and validity, produced together with historical and philosophical discourses. The task of historically oriented sociology, according to Joas, is a combination of such approaches, which could suggest “affirmative genealogy” of human rights, that is, the successful story of the birth of a common morality in a particular historical moment. Considering the religious/secular-humanistic divide in the origin of human rights to be unproductive, Joas tells us four narratives of human rights genesis. The first narrative suggests a secular genesis of human rights taking its origin from the French Revolution, with a clarification that human rights are not linked with any religious tradition. The second genesis narrative suggests a linkage between the intellectual tradition of Christian personalism with an individualistic human rights project. Joas emphasizes that the attitude of Catholic Church toward human rights changed considerably during the 20th century from “repudiation of its original condemnation of human rights as a form of liberal individualism” (Joas 2013:4) to the defense of such rights. The third genesis narrative is a compromise between the first and the second, namely differentiating anticlerical Enlightenment from the Christian intellectual tradition of personalism, which could be seen as inherent to human rights, but still with an emphasis on the ambiguous institutional position of Christianity toward human rights. The fourth narrative is introduced by Joas as the narrative of interpreting human rights genesis as “the history of the sacralization of the person” developing the Weberian idea of “charismatization” of human rights (Joas 2013:5). Sacralization here is used in terms of Durkheim or Eliade, not solely as belonging to the religious domain but to the secular one as well.

Banchoff and Wuthnow (2011) suggest two historical narratives structuring the relationship of human rights and religion. The dominant narrative of opposition is based on the argument that the “modern conception of human rights triumphed only as traditional religious authorities eroded” (Banchoff and Wuthnow 2011:3). This narrative opposes human rights and religion, viewing the former from a secular perspective. The alternative historical narrative is about the “story of struggles within and across religious and nonreligious communities about how to adapt to the rise of modernity” (Banchoff and Wuthnow 2011:5). This narrative suggests a possibility of evaluating if and how religions could be cooperative with human rights normativity. The binary perspective of opposition and engagement suggests a dualistic perception and interpretation

scheme while evaluating spheres of religious freedom, equality, gender empowerment, and right to life including issues of abortion and euthanasia, and many others. In the debate on what kind of foundations of human rights are “stronger” or “weaker” (Henkin 1998), we find various arguments opposing and supporting the convergence of human rights and religion. The idea of “tying up” religious and secular genealogies with current perspectives on human rights is of special interest for sociological analysis, as the religious perspective could “provide, as the human rights idea does not adequately provide, for the tensions between rights and responsibilities, between individual and community, between the material and the spirit” (Henkin 1998:239). However, we must take care not to overestimate the antithetic narratives of the relationship between human rights and religion (Ventura 2015) as this “paradigm rests on the assumption that each of the two categories of human rights and religion corresponds to a clear and distinct set of concepts” (Ventura 2015:163).

The importance of more detailed analysis within these two major narratives became urgent for sociologists when approaching new topics and readdressing the classical issues of sociology of religion. Processes of new diversity management (Lefebvre and Brodeur 2017), analyses of contemporary pluralism (Giordan and Pace 2014), new global politics of religion (Hurd 2015), patterns of multiple secularities (Wohlrab-Sahr and Burchardt 2012), or secularization and differentiation in western and nonwestern societies (Berger, Davie, and Fokas 2008) while analyzed through the human rights lenses, produce many new research topics for sociologists. A human rights perspective forces the discovery of “what is religious in religions” (Henkin 1998) and patterns of the conjunction of the religious and social dynamically change with the development of an international human rights regime.

Recent studies on new global politics of religion specify that such human rights as religious freedom should not be seen only as a “preconceived liberal principle” (Hefner 2015:128), universal international norm, or legal standard (Hurd 2015). Such studies should be analyzed as a historically contingent form of governing religious and religious-secular differences considering social tensions and conflicts, as well as “historically specific understandings of religion, religious subjectivity, and freedom itself” (Hurd 2015:38). Suggested conceptualizations of religion—expert religion, lived religion, and governed religion (Hurd 2015)—develop further the classical sociological perspectives on everyday religion (Ammerman 2013; McGuire 2008) and organized religion. These perspectives add the modern tasks of defining religion for international law and public policy in the context of an international religious freedom regime. This approach in some sense changes the rhetoric of binary historical narratives of the relationship of human rights and religion by switching the research perspective to how lived and governed religions interact in a historically contingent context of particular religious differences, social and cultural diversity, and their regulations.

HUMAN RIGHTS AND RELIGION IN EMPIRICAL SOCIOLOGY

The search for new disciplinary language and creation of theoretical discourses and topics of research in sociology of human rights have been complemented by a growing number of empirical data collections. During the last decade empirical studies on human rights culture and religious freedom regulations contributed to the sociological analysis of human rights and religion. Questioning if human rights are still a “powerful liberational idea and movement” (Ziebertz and Crpic 2015:VI), an international research project, “Religion and Human Rights,” explored the impact of religion on human rights culture at the level of individual attitudes (Van der Ven and Ziebertz 2012, 2013) or religious culture patterns (Price 2002). The idea that religion could be supportive to human rights values and that both concepts are not mutually exclusive (Van der Ven 2010) has been verified in various ways. Empirical findings indicating that religious affiliation has less impact on human rights culture than citizenship status in a particular country or regarding variations in religiosity effects on human rights generations (Van der Ven and Ziebertz

2012) raise various theoretical questions. Why do societies differ in their human rights culture? Why do religions have various effects on human rights attitudes? What is religion in regard to human rights or in relation to religious freedom? The interpretation of such results moves scholars to consider new theoretical schemes to classical concepts of sociology of religion such as religious belonging, religious minority, spiritual experience, religiosity, secularization, while taking into consideration human rights cultural codes that have developed within societies. The detailed analysis of results on various rights and independent variables of religious/nonreligious affiliation, secularism patterns, and the public role of religion give insights that, regardless of the dominant opposing historical narrative, religion in its sociological dimensions contributes to the concept of human rights culture at various levels (individual, family, community, societal, public).

Responding and participating in the rhetoric and processes of modernization, religions incorporate the concepts of dignity, rights, freedoms, and equality in various ways showing that religious norms and human rights principles both contribute to socialization processes of young generations globally. However, the levels of incorporation of human rights into the religious institutions affect attitudes toward human rights culture. In this regard, processes of democratization of religion could be seen along with the processes of democratization of societies. The religious “nones” in this regard becomes an interesting control group which informs about human rights culture in the society and the historical embeddedness of religious-humanistic values into the wider culture of a society (Van der Ven 2010).

Along with the study of human rights culture, empirical studies of religious freedom (Grim and Finke 2007, 2011) significantly contribute to a sociological perspective toward human rights research. As Finke (2013) has noted, the study of religious freedom is a comparatively new enterprise and cross-national data on religious freedom has begun to emerge since about 2000, together with the development of religious freedom indexes. Based on large data analyses, the research strategy to measure religious discrimination globally and the effects of state’s favouritism, political regimes, social and cultural pressures, and the role of an independent judiciary led to the designation of sociological levels of religious discrimination (formal institutional vs. all members of religious minorities) (Finke, Martin, and Fox 2017) and social factors correlated with them. Religious freedom examined through concepts of dominant religion, social order, formal/informal social and political control, social isolation and exclusion, religious minority/majority nexus, and social conflicts and movements (Finke 2013) signifies the importance of continuous translation of law into sociological language and vice versa while redefining the meaning of a right to free exercise of religion (Finke and Martin 2014). In spite of explaining that religious freedom is distinct from other human rights due to embeddedness of religion into a historical and cultural relationship with larger society (Finke and Marin 2014), sociologists can extrapolate a similar methodology while analyzing other rights. The process of denotation of quite sensitive and controversial sociological issues of religious belief and expression induce sociologists to rethink the limits of freedom, patterns of restrictions, and definition of religion in private and public spheres. At the same time the topics of peace and violence, status of minority groups in society, and independent judiciary (Richardson 2015; Richardson and Lee 2014) challenge sociological perspectives with political and legal discourses through macrolevel empirical research.

Recent research on religious registration requirements (Finke, Mataic, and Fox 2018) depicts why and how the research of legal mechanism of registration used by the states to limit religious freedom goes beyond the legal perspective and addresses this question to social scientists. In order to understand “how the registration process can contribute to the denial of freedom for some or all religions” (Finke, Mataic, and Fox 2018) we need to examine political regimes, types of political secularisms, nationalism, and types of religious competition within the country or regionally. The international human rights regime in its turn affects that process with the standard of religious freedom and with the measurement of International Religion Indexes: Governmental

Regulation, Government Favouritism, and Social Regulation of Religion (Grim and Finke 2006). Legal aspects of religious freedom are intertwined with social and political contexts and variations of religious freedom implementation.

Generalizing two models of the empirical study on human rights and religion, we could find how research of human rights culture complements the institutional analysis of governing religion perspectives. In this regard, the study of moral reasoning at the micro- and macrolevels considering legal norms and religious and state authority in cross-national perspective (Finke and Adamczyk 2008) could be demonstrative. The heuristic tension between human rights attitudes and limitations on religious freedom is an inquiry about how human rights cultural codes are compatible/absorbed/abstained by religions, and whether religious governance patterns impact the human rights culture and inform religious action.

A SOCIOLOGY OF RELIGIOUS FREEDOM

Cross-national empirical studies of religious freedom and sharpening of a sociological perspective on judicial practices concerning religious freedom regulation globally contribute to the emerging concept of sociology of religious freedom. Introducing the definition of sociology of religious freedom, Richardson (2006) described it as “an integration of research from the sociology of new and minority religions with theoretical ideas from the Sociology of Religion and the Sociology of Law” (Richardson 2006:271). The topic of religious freedom has attracted attention from scholars in several disciplines including sociology, political science, religious studies, history, and the law.¹ Richardson (2006) proffered a somewhat interdisciplinary perspective on religious freedom, defining it as a social construct that is relatively new in human history, and one with meanings that have varied over time and place. He proposed an integration of historically informed ideas from sociology of religion and sociology of law to better understand the various meanings of religious freedom in contemporary contexts. Of particular note in this effort were concepts and theories from major sociology of law theorists Donald Black (1976, 1993) and William Chambliss (Chambliss and Zatz 1993), both of whose theories had not heretofore been applied in the area of religion. Richardson made use of Chambliss’s (1979) “making law” approach to explain how and why certain new laws, and court decisions, affecting minority faiths developed (see Richardson 2014a) and applied theories from Donald Black’s ideas to explain outcomes when minority faiths become involved in the legal system (Richardson 2004, 2007, 2011, 2014b).

A major element of this interdisciplinary approach is recognition of the religious history of a society, particularly if there are significant minority religious groups present, and how those groups have been dealt with by the greater society. Any effort to recognize and accommodate minority religious groups furnishes the seed for religious freedom to possibly evolve in that society. How, and whether, that seed is nourished depends on many factors, including the type of governing structure present in the society, basic values within the society, and the formal legal underpinning of the society. For example, minority faiths can function more openly in a society that has a constitutional and statutory structure offering at least minimal guarantees for religious freedom. This can allow a culture of tolerance to develop and furnishes a basis for law makers and judicial officials to offer at least a modicum of protection for religious groups, even

¹Examples of this voluminous scholarly literature from various fields includes Finke (2013), Fox (2013), Gill (2008), Hertzke (2013), Beaman (2008), Sandberg (2014), Hurd (2015), Barras (2012), Sharma (2011), Griffin (2007), Fokas (2015), Evans (2001), Durham (1996), Cumper (2009), Joppke (2015), Besier (2009), Koenig (2015), Kirkham (2013), Hamilton (2014), Gunn (2013), Sarkissian (2015), Sullivan (2005), and Ferrari (2012), among others. Also see the recent special issue of *Religion, State & Society* on “The European Court of Human Rights and minority religions” (Fokas and Richardson 2017).

unpopular ones. Having a societal system of governance that allows some checks and balances is also useful and deters dominance by one institutional structure which could seriously undermine any tendencies toward tolerance of minority groups and religious freedom.

Characteristics of legal systems are important to understanding the development of religious freedom, including the pervasiveness and centralization of the legal system. A highly centralized legal structure can, if developed within a culture of tolerance based on formal protections for minority religions, afford considerable protection to minority faiths. If a more tolerant legal system is pervasive within a society, local customs cannot easily override societal level values and official positions toward minority faiths. An independent and autonomous judicial system affords a crucial check on the power of other institutional structures in a society, if (and only if) those in positions of authority within the judicial system share values of tolerance and are willing to rule in favor of religious freedom for minority faiths.

As Black (1976, 1993) notes, the importance of “cultural intimacy” between members of minority groups and those in decision-making positions in a society, such as judges or heads of institutional structures within a society, can be very important. This refers to shared values and understanding between decisionmakers and those who appear before them seeking redress and justice. This translates into consideration of status, which means, of course, that often minority religious groups are disadvantaged within society’s institutions, including the judicial system. Those groups do not usually share the same status within society as those who are leading major institutions. Here another important concept from Black’s work (Black and Baumgartner 1993) comes into play, that being “third-party partisans.” This concept was developed to help explain why low-status, unpopular groups or individuals sometimes prevail within legal systems.

Black posits that such occurrences usually mean that the group has managed to attract assistance and support from individuals or groups that share cultural intimacy and status with decisionmakers. Examples of this abound. Within the United States the American Civil Liberties Union is noted for defending the civil and human rights of unpopular, low-status individuals and groups, including religious groups. The United Nations allows, even encourages, interventions on behalf of religious entities within its elaborate committee structure to make sure all points of view are heard (Arsheim 2016; Fautre 2006; Lehmann 2016). Within the European context the growing willingness of the European Court of Human Rights to accept interventions (*amicus* briefs) in cases involving minority groups is another demonstration of how third-party partisan intervention can function to support minority faiths involved in that legal system (Cichowski 2016; Fokas 2018; Richardson 2018; Van den Eynde 2017). Indeed, the Court itself can perhaps be thought of as acting, whether deliberately or not, in a third-party partisan manner concerning minority religions, particularly in the newer areas of the 47 nation Council of Europe region (Richardson 2017a,b).

The term “judicialization of religious freedom” (Richardson 2015) highlights the important role that courts can play in defining and defending religious freedom and demonstrates the value of theories discussed above in defining religious freedom in contemporary western societies. This term is derivative of the concept “judicialization of politics” that has become an important theoretical perspective in political science (Hirschl 2006, 2011; Tate and Vallinder 1995).² Judicialization of politics refers to the tendency in modern societies to defer difficult political decisions to judicial systems because legislative or executive branches cannot agree or choose not to address problems that arise (see Sadurski 2008). Managing religious diversity has become a major controversial issue within many modern societies, and often the difficult issues have been left to the courts to decide. As has been noted (Beckford and Richardson 2007; Finke and Martin 2014; Lykes and Richardson 2014; Richardson 2015; Richardson and Lee 2014), in some nations and regions the courts have in fact been involved in constructing and implementing an expanded

²See Sandberg (2014) for similar discussions using the term “juridification.”

version of religious freedom. Such developments have not been linear and even, but an overall pattern seems clear that religious freedom has garnered important support in at least some major judicial systems, with caveats. Especially notable is the difficulty that court systems in some western nations are having in handling issues involving Islam (Durham et al. 2012; Martinez-Torron 2012; Meerschaut and Gutwirth 2009). It remains to be seen if courts can manage Islam-related matters with an even hand in light of political pressures that have developed within some western societies.

The concept of judicialization of religious freedom has been expanded recently by sociologist Damon Mayrl (2018), using an institutional approach. Mayrl notes that the judicialization of religious freedom term has sometimes been taken to mean that the more courts gain in power the more religious freedom develops within a society. That assumption obviously has limitations (see for example, Sarkissian 2015), leading Mayrl to propose a more “ecological” approach taking into account that judicial systems are embedded within various institutional structures that impact whether or not courts can, through their rulings, expand (or diminish) religious freedom within a society. This more ecological approach seems useful (also see Koenig 2015) and complements the original delineation of the concept as presented in Richardson (2006), adding a valuable contribution to the many scholarly efforts cited above to understand how religious freedom operates in modern societies.

NEW AGENDAS FOR SOCIOLOGICAL RESEARCH ON HUMAN RIGHTS AND RELIGION

A sociological perspective on human rights and religion introduces new theoretical discourses, agendas, and methodologies for use in religious freedom analyses. Universalism of human rights and their genealogy demonstrate the importance of sociological sensitivity to law, political science, and history. This perspective highlights the necessity of structuring the emerging field of sociology of human rights with “progressive” and “problematic” (Nash 2015) lenses that intertwine aspirational/normative dimensions of human rights with a critical sociological approach. Within this frame, some possible directions of sociological engagement with human rights and religion are suggested.

First, the importance of developing a new sociological vocabulary and discourse on human rights is tangible when analyzing particular spheres of human rights application. For example, research on women’s rights and religion could provide new perspectives for rethinking secularism patterns and understanding of new social “spaces” of women’s vulnerability by taking religion into account (Giordan and Breskaya 2018). Also, it is important to reassess the location and role of religion in the processes of functional differentiation or social (dis)integration, in this regard bringing back classical sociological approaches while reexamining the relationship of women’s rights and religion. Various sociological levels of “human rights and religion” study should contribute to the multilevel analysis using sociological data of secularization, globalization, or modernization patterns, as well as support better understanding of the universalism/particularism divide.

At the same time, study of human rights policies and their application at national and global levels enriches sociological understanding of religiosity and religion as such and relationship between religious identities, behavior, and attitudes. A study of the effect of religious mobilization on international human rights policy (Wuthnow and Lewis 2008) contributes to revision of the role of organized religion and individual religiosity/spirituality in the public sphere and to conceptualization of the multidimensional construct of religion in modern societies.

Second, the internal dynamics of religious traditions in their relationship toward human rights should become a current sociological issue ripe for research. This process needs to be analyzed at the level of religious institutions and their internal conceptualization of human rights, as well as at the level of practical application of human rights practices within religious communities. The

new visibility that religions gain in the public sphere in the situation of growing societal diversity and the refugee crises while performing the role of national human rights organizations could be studied in comparative perspective (Giordan and Zrinščak 2018). By exploring how different social and cultural contexts can use the language of human rights in a different, selective, ambiguous way (or avoid its usages) scholars can understand more fully whether, under which conditions, and how the human rights frame can represent the possibility for religions to gain a new visibility and relevance in the public sphere.

Third, sociological empirical research on human rights and religion is a promising sphere, which explores both specific rights as well as “rights bundles” (Frezzo 2015), stressing various factors that determine human rights violations or advancement. Sociological research data gathered on human rights and religion during the last two decades have raised a number of salient questions, as noted above. The conceptualization of rights in sociological surveys read-dresses the meaning of particular rights, raising the problems of their contextualization in various socioreligious contexts.

Fourth, more careful research is needed on the internal workings of various institutions that are crucial to determinations of how religious freedom is actualized within societies. Such research might examine in more detail the operations of courts systems in nations and regional courts such as the European Court of Human Rights and the European Court of Justice about how they handle religious matters. The important work on the various United Nations bodies that deal with religion needs to be examined and better understood as well. Studies of mass media coverage of religious freedom matters are needed to determine how and why certain positions are adopted by major mass media outlets. Research on how political bodies make decisions germane to religious freedom will be important. All these future studies should make use of approaches from the sociology of religion and the sociology of law, but from other relevant disciplines as well.

If a research agenda that includes the four approaches recommended above (as well as others) is implemented then the social scientific study of religion will experience the implementation of major new areas of study in the sociology of human rights. Such a development will be useful for scholars in many disciplines, as well as for policymakers who are seeking to understand the management of religion in modern societies in ways that do not detract from the flourishing of religious freedom.

REFERENCES

- Ammerman, Nancy T. 2013. *Sacred stories, spiritual tribes: Finding religion in everyday life*. Oxford: Oxford University Press.
- Arsheim, Helge. 2016. Internal affairs? Assessing NGO engagement for religious freedom at the United Nations. In *Religion, state and the United Nations—Value politics*, edited by Anne Stenvold, pp. 79–94. London: Routledge.
- Banakar, Reza. 2010. Law, rights and justice in late modern society: A tentative theoretical framework. In *Rights in context: Law and justice in Late Modern society*, edited by Reza Banakar, pp. 19–37. Farnham, Burlington: Ashgate.
- Banchoff, Thomas and Robert Wuthnow. 2011. *Religion and the global politics of human rights*. New York: Oxford University Press.
- Barras, Amélie. 2012. Transnational understandings of secularisms and their impact on the right to religious freedom—Exploring religious symbols cases at the UN and ECHR. *Journal of Human Rights* 11(2):263–79.
- Beaman, Lori. 2008. *Defining harm: Religious freedom and the limits of the law*. Vancouver: UBC Press.
- Beckford, James A. 2003. *Social theory and religion*. Cambridge: Cambridge University Press.
- Beckford, James A. and James T. Richardson. 2007. Religion and regulation. In *The Sage handbook of the sociology of religion*, edited by James A. Beckford and N. J. Demerath, pp. 396–418. London: Sage Publications.
- Berger, Peter, Grace Davie, and Effie Fokas. 2008. *Religious America, secular Europe? A theme and variations*. Aldershot, Burlington: Ashgate.
- Berman, Harold J. 1983. *Law and revolution: The formation of the Western legal tradition*. Cambridge, MA and London, England: Harvard University Press.
- Besier, Gerald. 2009. How to understand religious freedom in Germany. *Religion-Staat-Gesellschaft* 10:325–36.
- Beyer, Peter and Lori Beaman. 2007. *Religion, globalization, and culture*. Boston: Brill.

- Black, Donald and Mary P. Baumgartner. 1993. Toward a theory of third party partisans. In *The social structure of right and wrong*, edited by Donald Black, pp. 95–124. New York: Academic Press.
- Black, Donald. 1976. *The behavior of law*. New York: Academic Press.
- Black, Donald. 1993. *The social structure of right and wrong*. New York: Academic Press.
- Blau, Judith and Alberto Moncada. 2009. Sociological theory and human rights: Two logics, one world. In *New Blackwell companion to social theory*, edited by Bryan S. Turner, pp. 496–512. Malden and Oxford: Wiley-Blackwell.
- Burawoy, Michael. 2005. For public sociology—Presidential address. *American Sociological Review* 70:4–28.
- Chambliss, William and Marjorie Zatz. 1993. *Making law*. Bloomington: Indiana University Press.
- Chambliss, William. 1979. On lawmaking. *British Journal of Law and Society* 6(2):149–71.
- Cichowski, Rachel. 2016. The European Court of Human Rights, amicus curiae, and violence against women. *Law & Society Review* 50(4): 890–919.
- Connell, Raewyn W. 1995. Sociology and human rights. In Symposium: Human rights and the sociological project. *Journal of Sociology* 31(2):1–44.
- Cumper, Peter. 2009. Article 9: Freedom of religion. In *Law of the European convention on human rights*, 2nd edition, edited by David Harris, Michael O’Boyle, Edward Bates, and Carla Buckley, pp. 425–41. Oxford: Oxford University Press.
- Donnelly, Jack. 1999. The social construction of human rights. In *Human rights in global politics*, edited by Tim Dunne and Nicholas Wheeler, pp. 71–102. New York: Cambridge.
- Dunne, Tim and Nicholas Wheeler. 1999. *Human rights in global politics*. Cambridge: Cambridge University Press.
- Durham, W. Cole, Rik Torfs, David Kirkham, and Christine Scott. 2012. *Islam, Europe and emerging legal issues*. Burlington, VT: Ashgate.
- Durham, W. Cole. 1996. Perspectives on religious liberty: A comparative perspective. In *Religious human rights in global perspective: Legal perspectives*, edited by Johan d. van der Vyver and John Witte, pp. 1–44. The Hague: Martinus Nijhoff.
- Evans, Carolyn. 2001. *Freedom of religion under the European Convention on Human Rights*. Oxford: Oxford University Press.
- Fautre, Willy. 2006. Non-state actors and religious freedom in Europe. In *Non-state actors in the human rights universe*, edited by George Andreopoulos et al., pp. 421–33. Boulder, CO: Kumarian Press.
- Ferrari, Silvio. 2012. The Strasbourg court and Article 9 of the European Convention of Human Rights. A quantitative analysis of the case law. In *The Lautsi papers: Multidisciplinary reflections on religious symbols in the public school classroom*, edited by Jeroen Temperman, pp. 13–34. Leiden-Boston: Martinus Nijhoff.
- Finke, Roger and Amy Adamczyk. 2008. Cross-national moral beliefs: The influence of national religious context. *The Sociological Quarterly* 49:617–52.
- Finke, Roger and Robert R. Martin. 2014. Ensuring liberties: Understanding state restrictions on religious freedoms. *Journal for the Scientific Study of Religion* 53(4):687–705.
- Finke, Roger, Robert Martin, and Jonathan Fox. 2017. Explaining religious discrimination against religious minorities. *Politics & Religion* 10(2):389–416.
- Finke, Roger, Dane Mataic, and Jonathan Fox. 2018. Assessing the impact of religious registration. *Journal for the Scientific Study of Religion* 56(4):720–36.
- Finke, Roger. 2013. Origins and consequences of religious freedom: A global overview—Presidential address. *Sociology of Religion* 74:297–313.
- Fokas, Effie and James T. Richardson. 2017. The European Court of Human Rights and minority religions: Messages generated and messages received. *Religion, State & Society* 45(3/4):166–73.
- Fokas, Effie. 2015. Directions in religious pluralism in Europe: Mobilizations in the shadow of European Court of Human Rights religious freedom jurisprudence. *Oxford Journal of Law and Religion* 4:54–74.
- . 2018. Religious America and secular European courts, or vice-versa? A study of institutional cross-pollination. In *Peter Berger and the sociology of religion: 50 years after The Sacred Canopy*, edited by Titus Hjelm, pp. 135–55. London: Bloomsbury Academic.
- Fox, Jonathan. 2013. *An introduction to religion and politics: Theory and practice*. New York: Routledge.
- Frezzo, Mark. 2015. *The sociology of human rights*. Cambridge: Polity Press.
- Gill, Anthony. 2008. *The political origins of religious liberty*. Cambridge: Cambridge University Press.
- Giordan, Giuseppe and Enzo Pace. 2014. *Religious pluralism: Framing religious diversity in the contemporary world*. Cham: Springer.
- Giordan, Giuseppe and Olga Breskaya. 2018. Divided by religion, united by gender: A socio-religious interpretation of the “Convention on the Elimination of All Forms of Discrimination against Women.” *Sociologia* 1: 110–16.
- Giordan, Giuseppe and Siniša Zrinščak. 2018. One Pope, two Churches: Refugees, human rights, and religion in Croatia and Italy. *Social Compass* 65(1): 62–78.
- Griffin, Leslie. 2007. *Law and religion: Cases and materials*. New York: Foundation Press.

- Grim, Brian and Roger Finke. 2006. International religious indexes: Governmental regulation, government favouritism, and social regulation of religion. *Interdisciplinary Journal of Research on Religion* 2(1). Available at www.religjournal.com, accessed July 1, 2018.
- . 2007. Religious persecution in cross-national context: Clashing civilizations or regulated religious economies? *American Sociological Review* 72: 633–58.
- . 2011. *The price of freedom denied: Religious persecution and violence*. Cambridge, UK: Cambridge University Press.
- Gunn, Jeremy 2013. The politics of religious freedom: Competing claims in the United States (and other places). In *Freedom of religion or belief in foreign policy. Which one?* edited by Pasquale Annicchino, pp. 32–37. Florence: European University Institute. Available at http://cadmus.eui.eu/bitstream/handle/1814/30059/Religiowest_Annicchino_web.pdf?sequence=2&isAllowed=y, accessed June 20, 2018.
- Hamilton, Marci. 2014. *God versus the Gavel: The perils of extreme religious liberty*. Cambridge: Cambridge University Press.
- Hefner, Robert W. 2015. Varieties of religious freedom and governance: A practical perspective. In *Politics of religious freedom: Case studies*, edited by Winnifred F. Sullivan, Elizabeth Hurd, Saba Mahmood, and Peter Danchin, pp. 127–34. Chicago and London: University of Chicago Press.
- Henkin, Louis. 1998. Religion, religions, and human rights. *Journal of Religious Ethics* 26(2):229–39.
- Hertzke, Allen D. 2013. *The future of religious freedom: Global challenges*. Oxford: Oxford University Press.
- Hirschl, Ran. 2006. The new constitutionalism and the judicialization of pure politics. *Fordham Law Review* 75: 721–34.
- . 2011. The judicialization of politics. In *The Oxford handbook of political science*, edited by Robert E. Goodin, pp. 253–74. Oxford: Oxford University Press.
- Hurd, Elizabeth. 2015. *Beyond religious freedom: The new global politics of religion*. Princeton: Princeton University Press.
- Joas, Hans. 2013. *The sacredness of the person: A new genealogy of human rights*. Washington: Georgetown University Press.
- Joppke, Christian. 2015. *The secular state under siege: Religion and politics in Europe and America*. Cambridge: Cambridge University Press.
- Kirkham, David. 2013. *State responses to minority religions*. Burlington, VT: Ashgate.
- Koenig, Matthias. 2015. Governance of religious diversity at the European Court of Human Rights. In *International approaches to governing ethnic diversity*, edited by Jane Boulden and Will Kymlicka, pp. 51–77. Oxford: Oxford University Press.
- Lefebvre, Solange and Patrice Brodeur, eds. 2017. *Public commissions on cultural and religious diversity: Analysis, reception and challenges*. Abingdon, Oxon; New York: Routledge.
- Lehmann, Karsten. 2016. *Religious NGOs in international relations*. London: Routledge.
- Lykes, Valerie and James T. Richardson. 2014. The European Court of Human Rights, minority religions, and new versus original Member States. In *Legal cases involving new religious movements and minority faiths*, edited by James T. Richardson and Francois Bellanger, pp. 171–201. Burlington, VT: Ashgate.
- Martinez-Torron, Javier. 2012. Islam in Strasbourg: Can politics substitute for law? In *Islam, Europe and emerging legal issues*, edited by Cole Durham et al., pp. 19–61. Burlington, VT: Ashgate.
- Mayrl, Damon. 2018. The judicialization of religious freedom: An institutionalist approach. *Journal for the Scientific Study of Religion* 57(3):514–530.
- McGuire, Meredith B. 2008. *Lived religion: Faith and practice in everyday life*. New York: Oxford University Press.
- Meerschaft, Karen and Serge Gutwirth. 2009. Legal pluralism and Islam in the scales of the European Court of Human Rights: The limits of categorical balancing. In *Conflict between fundamental rights*, edited by Eva Brems, pp. 431–62. The Hague: Intersentia.
- Morgan, Rhiannon. 2009. Human rights research and the social sciences. In *Interpreting human rights: Social science perspectives*, edited by Rhiannon Morgan and Bryan S. Turner, pp. 1–22. London, New York: Routledge.
- Nash, Kate. 2015. *The political sociology of human rights*. Cambridge: Cambridge University Press.
- Possamai, Adam, James T. Richardson, and Bryan S. Turner. 2015. *The sociology of Shari'a: Case studies from around the world*. New York: Springer.
- Possamai, Adam. 2015. Shari'a and multiple modernities in Western countries: Toward a multi-faith pragmatic modern approach rather than a legal pluralist one? In *The sociology of Shari'a: Case studies from around the world*, edited by Adam Possamai, James T. Richardson, and Bryan S. Turner, pp. 291–303. New York: Springer.
- Price, Daniel. 2002. Islam and human rights: A case of deceptive first appearances. *Journal for the Scientific Study of Religion* 41(2):213–25.
- Richardson, James T. 2004. *Regulating religion: Case studies from around the globe*. New York: Kluwer.
- . 2006. The sociology of religious freedom: A structural and socio-legal analysis. *Sociology of Religion* 67(3):271–94.
- . 2007. Religion, law, and human rights. In *Religion, globalization, and culture*, edited by Peter Beyer and Lori Beaman, pp. 407–28. Leiden: Brill.

- . 2011. The social construction of legal pluralism. *Democracy and Security* 7:390–405.
- . 2014a. Contradictions, conflicts, dilemmas and temporary resolutions: A sociology of law analysis of Shari'a in selected western countries. In *The sociology of Shari'a: Case studies from around the globe*, edited by Adam Possamai, James T. Richardson, and Bryan Turner, pp. 237–52. New York: Springer.
- . 2014b. Religious diversity, social control, and legal pluralism: A socio-legal analysis. In *Religious pluralism: Faming religious diversity in the contemporary world*, edited by Giuseppe Giordan and Enzo Pace, pp. 31–47. New York: Springer.
- . 2015. Managing religion and the judicialization of religious freedom. *Journal for the Scientific Study of Religion* 54(1):1–19.
- . 2017a. Managing religion: Courts as 'partners' and "third party partisans" in the social construction of religious freedom. *Religioni e Società* 87:17–23.
- . 2017b. Update on Jehovah's Witness cases before the European Court of Human Rights: Implications of a surprising partnership. *Religion, State & Society* 45(34):232–48.
- . 2018. The European Court of Human Rights: Changes and challenges in the social construction of religious freedom. Forthcoming, *Religion, State & Society*.
- Richardson, James T. and Brian M. Lee. 2014. The role of the courts in the social construction of religious freedom in Central and Eastern Europe. *Review of Central and Eastern Europe Law* 39(3/4):291–313.
- Roberts, Christopher N. J. 2013. Sociology of law. In *The handbook of sociology and human rights*, edited by David L. Brunsma, Keri E. Iyall Smith, and Brian K. Gran, pp. 204–12. Boulder, London: Paradigm Publishers.
- Sadurski, Wojciech. 2008. *Rights before the courts: A study of constitutional courts in postcommunist states of Central and Eastern Europe*. Dordrecht: Springer.
- Sandberg, Russell. 2014. *Religion, law and society*. Cambridge: Cambridge University Press.
- Sarkissian, Ani. 2015. *The varieties of religious repression: Why governments restrict religion*. Oxford, New York: Oxford University Press.
- Sen, Amartya. 1999. *Development as freedom*. Oxford: Oxford University Press.
- Sharma, Arvind. 2011. *Problematizing religious freedom*. New York: Springer.
- Sjoberg, Gideon, Elizabeth Gill, and Norma Williams. 2001. A sociology of human rights. *Social Problems* 48(1):11–47.
- Somers, Margaret R. and Christopher N.J. Roberts. 2008. Toward a new sociology of rights: A genealogy of "buried bodies" of citizenship and human rights. *Annual Review of Law and Social Science* 4:385–425.
- Sullivan, Winnifred F. 2005. *The impossibility of religious freedom*. Princeton, NJ: Princeton University Press.
- Tate, Neal and Torbjorn Vallinder. 1995. *The global expansion of judicial power*. New York: New York University Press.
- Turner, Bryan S. 1993. Outline of a theory of human rights. *Sociology* 27(3):489–512.
- . 1997. A Neo-Hobbesian theory of human rights: A reply to Malcolm Waters. *Sociology* 31(3):565–71.
- . 2009. A sociology of citizenship and human rights: Does social theory still exist? In *Interpreting human rights: Social science perspectives*, edited by Rhiannon Morgan and Bryan S. Turner, pp. 177–99. London, New York: Routledge.
- Turner, Bryan S., Robyn Rowland, Raewyn W. Connell, Malcolm Waters, and Jack M. Barbalet. 1995. Symposium: Human rights and the sociological project. *Journal of Sociology* 31(2):1–44.
- Van den Eynde, Laura. 2017. Encouraging judicial dialogue: The contribution of human rights NGOs' briefs to the European Court of Human Rights. In *Judicial dialogues and human rights*, edited by Amrei Müller and Hege E. Kjos, pp. 339–97. Cambridge: Cambridge University Press.
- Van der Ven, Johannes A. 2010. *Human rights or religious rules?* Leiden: Brill.
- Van der Ven, Johannes A. and Hans-Georg Ziebertz. 2012. *Tensions within and between religions and human rights (empirical research in religion and human rights)*. Leiden, Boston: Brill.
- . 2013. *Human rights and the impact of religion (empirical research in religion and human rights)*. Leiden, Boston: Brill.
- Ventura, Marco. 2015. Human rights within religions. In *Routledge handbook of law and religion*, edited by Silvio Ferrari, pp. 161–78. London, New York: Routledge.
- Waters, Malcolm. 1996. Human rights and universalization of interests: Toward a social constructionist approach. *Sociology* 30(3):593–600.
- Wohlrab-Sahr, Monika and Marian Burchardt. 2012. Multiple secularities: Toward a cultural sociology of secular modernities. *Comparative Sociology* 11:875–909.
- Wuthnow, Robert and Valerie Lewis. 2008. Religion and altruistic U.S. foreign policy goals: Evidence from a national survey of church members. *Journal for the Scientific Study of Religion* 47(2):191–209.
- Ziebertz, Hans-Georg and Gordan Crpic. 2015. *Religion and human rights*. Cham: Springer.

27 June 2021

To Whom It May Concern:

Hereby I, Olga Breskaya certify that the article:

"Human Rights and Religion: A Sociological Perspective." *Journal for the Scientific Study of Religion* 57(3): 419–431. 2018. DOI: 10.1111/jssr.12544. ISSN:0021-8294, ISSN Online 1468-5906

was co-authored with Giuseppe Giordan and James T. Richardson.

The article was jointly conceived in dialogue among the three authors. Olga Breskaya took the lead in writing the sections "Human Rights and Religion beyond the Legal Perspective", "Human Rights and Religion in Empirical Sociology" and "New Agendas for Sociological Research on Human Rights and Religion", while Giuseppe Giordan and James T. Richardson took the lead in writing "Introduction" and "A Sociology of Religious Freedom."

Respectfully,

Dr. Olga Breskaya



Prof. Giuseppe Giordan

