

# THE FRAGILITY OF RELIGIOUS FREEDOM

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**Abstract:** One implication of freedom of religion is that the State must accept a variety of religious beliefs and practices. Yet, not everything can be accepted. One way of dealing with such a conflict is to state that freedom of religion is absolute in so far that it does not infringe upon some other more important value. Another way is to limit what is considered 'religious.' Both these ways are insufficient. In this contribution it is argued that the whole freedom of religion construct is a fragile edifice and it be better seen as such; only if the fragility is recognised can non-conformist and anti-totalitarian approaches flourish. Such approaches may vitalise political life and encourage ability to discern and make judgements concerning what is permitted and what is not with regard to religion in the public sphere.

**Keywords:** freedom of religion, institutional agnosticism, linguistic mobility, non-conformist liberalism and religion, religion and public life.

## INTRODUCTION

There can be little doubt that the freedom of religion is being threatened by various processes both at home and abroad. Nonetheless, it is not the topic of this article. I am more interested in the fragility of the very idea of freedom of religion, which is perhaps a surprising approach since it seems that the *idea* of religious freedom is clear and well-established. For instance, it has a solid legal—or at least formal—foundation in the United Nations Declaration of Human Rights of 1948 (Article 18), subsequent conventions, and national legislation. While I do believe that the idea of religious freedom *is* stable and rather well established, I maintain that there is a fundamental fragility about it. And that it has to be so! If the idea of religious freedom is to avoid the snare of being totalitarian, it must also be accepted that it is a fragile idea. A consequence is that human agency and human subjectivity are brought to the fore.

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This article<sup>1</sup> starts from the commonly held idea that implementing freedom of religion requires some sort of neutrality that may be labelled ‘institutional agnosticism.’ No religion should be favoured or disfavoured; the State should adopt an agnostic position not taking sides in religious matters.<sup>2</sup> It is also widely believed that such neutrality has its limits, and that it is sometimes required to limit, regulate, or even prohibit certain religious practices. Hence, there is an apparent dilemma, problem or conflict to be resolved. Two main approaches to overcoming this are briefly discussed, but the main concern is that whatever solution is found, it in turn relies on some kind of worldview. The problem is that a fundamental aspect of freedom of religion requires the State to remain ‘agnostic’ with regard to various beliefs and worldviews, while taking a stand regarding what is permitted or not in religion. The latter necessarily entails subscribing to one worldview to the exclusion of other worldviews. The core issue is to be found here; it is fundamentally impossible to identify absolute grounds when taking such a stand. What is good or bad, important or unimportant, desirable or not is also determined by how it is framed, how it is understood, how it is categorized, what it is called, the terminology used to describe it, and the labels employed. In brief, I maintain that to claim any justification for advocating a particular worldview is a fragile enterprise, as it always and necessarily depends on something else in order to form a solid foundation. Consequently, I argue that there is a moment in decision-making that cannot entirely depend on any pre-established rule. Such undecidability is of course problematic because there is no way of knowing for certain whether a decision is correct. Yet, this aporetic aspect is also an opportunity, and necessarily so. Real decisions have to pass through the land of undecidability; ultimate decisions and final standpoints cannot be predicted. Still, how to be a good decision maker in this respect may well be a matter of training.

As the article moves from the topic of religious freedom as a particular problem in political theory to large philosophical themes

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<sup>2</sup> See Malcolm D. Evans (2008). “Freedom of Religion and the European Convention”, in *Law and Religion in Theoretical and Historical Context*, edited by P. Cane, C. Evans and Z. Robinson. Cambridge & New York: Cambridge University Press, p. 305. See also John Rawls (2005). *Political Liberalism*, New York: Columbia University Press, pp. 192-193.

such as subjectivity, agency, responsibility, and the nature of language, and back again, an indirect argument is also formulated. Topics in ordinary everyday life can be better understood through extended reflection on large philosophical themes that in turn resonate with most concrete dealings. A clarification is appropriate. Although some of the examples come from the human rights discourse, the approach is primarily philosophical and not juridical for instance, implying that even though something is indeed said about human rights, it is not entirely within the framework of the mainstream debate on human rights.

### FREEDOM OF RELIGION AND ITS DILEMMA

When philosopher Paul Ricœur talks about the State's relation to religion in terms of 'institutional agnosticism,'<sup>3</sup> he is perhaps mainly thinking about the French context but I think that the expression is useful in a broader sense. A reading of the UN Declaration of Human Rights (1948) could give exactly that impression; it has to do with 'institutional agnosticism,' as a foundation for freedom of religion.

Although freedom of religion could be characterized by this *agnosticism*, it is not absolute agnosticism. As an individual person, I sometimes feel a need to distance myself from particular religious ideas or specific practices within a given religious tradition. At times we collectively do experience the same need to refute certain religious behaviour and ideas, and this we do regardless of our possible declarations that we do not want to interfere with other people's religious convictions, beliefs and practices. In the same way, there are always cases when the State has to say 'no' to a given religious expression.<sup>4</sup>

These two points seem *prima facie* to be in conflict; the institutional agnosticism that is open to all religions appears to be in conflict with the institutional need to set limits to various religious activities. Given that there is a conflict that calls for a solution, it is possible to proceed to an account of some suggested solutions. One way to get around the difficulty is to narrow down the understanding

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<sup>3</sup> Paul Ricœur (1995). *La critique et la conviction*, Paris: Calmann-Levy, pp. 194-195.

<sup>4</sup> Neil Levy (2002). *Moral Relativism*, Oxford: Oneworld, p. 27; Hugo Strandberg (2005). *The Possibility of Discussion*. Uppsala: Uppsala universitet, p. 169; Bernard Arthur Owen Williams (1996). "Toleration. An Impossible Virtue?", in *Toleration. An Elusive Virtue*, edited by D. Heyd. Princeton: Princeton University Press, p. 23.

of religion. If religion is seen as something that has to do with faith and not with practice, if it is an individual attitude without societal aspects, a private matter and not a public one,<sup>5</sup> about morality and not politics etc., then it is perhaps possible to maintain freedom of religion as absolute, at least as an *internal* freedom,<sup>6</sup> without an obligation to make concessions to any particular religious practices in public life.<sup>7</sup> This is rather unpractical and narrowing the definition of religion in this way is absurd. Religion is always implemented in some way. Religion appears always to have at least some consequences in practical life; some kind of embodiment appears to be necessary. A religious community is unlikely to accept being concerned solely with 'the private;' every religious community perceives itself as having a public side.<sup>8</sup> Moreover, such a 'narrow' definition is not supported by the United Nations Declaration of Human Rights or other such conventions,<sup>9</sup> although it appears that concrete juridical decisions based on these texts sometimes go in the direction of a 'narrow definition.'<sup>10</sup>

Another solution is to claim that there are other values that override religious freedom in a number of contexts. Religious freedom would then be a matter of negative freedom, i.e. freedom from interference by other people.<sup>11</sup> Defining freedom of religion as a

<sup>5</sup> Dominic McGoldrick (2011). *Religion in the Public Square and in European Public Life—Crucifixes in the Classroom?*, "Human Rights Law Review", 11 (3), p. 454.

<sup>6</sup> For 'absolute internal freedom,' see for instance Malcolm D. Evans (1997) *Religious Liberty*, Cambridge: Cambridge University Press, pp. 284-314, and Pamela Slotte (2011). "What Is a Man If He Has Words But Has No Deeds?", in *Religion in the Public Sphere*, edited by R. Trigg and N. Brunsveld. Utrecht: Ars Disputandi, p. 268.

<sup>7</sup> Richard Rorty seems to advocate this solution, see Richard Rorty (2005). *The Future of Religion*, New York: Columbia University Press, p. 33.

<sup>8</sup> Paul Ricœur (1995), *op.cit.*, p. 201.

<sup>9</sup> See for instance The Convention for the Protection of Human Rights and Fundamental Freedoms, articles 9 and 14. See also the Human Rights Committee General Comment 22: "The freedom to manifest religion or belief in worship, observance, practice and teaching encompasses a broad range of acts. [...] observance of holidays and days of rest. The observance and practice of religion or belief may include not only ceremonial acts but also such customs as the observance of dietary regulations, the wearing of distinctive clothing or head coverings, participation in rituals associated with certain stages of life, and the use of a particular language [...]." See also Pamela Slotte (2011), *op.cit.*, p. 268.

<sup>10</sup> See e.g. Pamela Slotte (2010). "Huvuddukar, krucifix och högtidsfirande", in *Mot bättre vetande*, edited by M. Lindfelt, P. Slotte and M. Björkgren. p. 221, p. 228.

<sup>11</sup> Isaiah Berlin (1958). *Two Concepts of Liberty*, Oxford: Clarendon Press, *passim*.

'negative liberty' makes it possible to override it; it is then possible to say that everything is allowed *as long as...* followed by qualifications like 'no one else is hurt,' 'public order is not disturbed,' or something similar.<sup>12</sup> Although this solution does not suffer from the immediate absurdity of the first one, it is a solution with some difficulties. For instance, *not* doing something can also be damaging to other people. Besides, is it possible to act in such a way as to have *no* effects on others?<sup>13</sup> (In a sense, my deportment would have effects on others, at least in so far as it sets an *example*.) And when can someone be said to be hurt? Where is the demarcation line?<sup>14</sup> Furthermore, how to delimit the field of responsibility is not at all evident. The effects of a particular act become independent at a certain point, in the same way as an utterance becomes detached from the utterer when it is written down or otherwise transmitted. There are perhaps undesired effects, but to what extent can these more or less remote effects be ascribed to the 'first agent?' When it comes to a series of events, it is even more difficult to hold one and only one agent responsible for all that takes place.<sup>15</sup> Still, even if there are obvious difficulties, they seem to be of an empirical or practical nature. Where to draw the demarcation line and how to count something in or out is something that can be negotiated.<sup>16</sup> There is another aspect, which is rather more intriguing.

#### WORLDVIEWS—A PROBLEM

Religious freedom as some kind of 'institutional agnosticism' appears to entail some kind of what I call—for lack of a better word—relativising; there is not one particular religion that is held to be superior but all religions, in principle, should have the same right to exist. Yet, *some* limits to this relativising are also required, which gives rise to a problem. When freedom of religion is limited, or

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<sup>12</sup> See for instance *La déclaration des droits de l'homme et du citoyen*, Art. 4, and Dominic McGoldrick (2011), *op.cit.*, p. 454. See also Pamela Slotte (2011), *op.cit.*, p. 268.

<sup>13</sup> Patrik Fridlund (2011). *Mobile Performances*, Leuven: Peeters, pp. 118-121. Neutrality seems to be conceptually difficult, see Stanley Fish (2000). "Mission Impossible", in *Law and Religion*, edited by S. M. Feldman. New York: New York University Press, *passim*.

<sup>14</sup> Allan Gibbard (1990). *Wise Choices*, Oxford & Cambridge (Mass.), Clarendon Press & Harvard University Press, p. 240.

<sup>15</sup> Paul Ricoeur (1990). *Soi-même comme un autre*, Paris: Seuil, p. 130.

<sup>16</sup> Isaiah Berlin (1969). *Four Essays on Liberty*, Oxford: Clarendon Press, pp. 122-124.

circumscribed, it is on the basis of some other principle that legitimately can outweigh the freedom principle. Now, the legitimacy of such an overriding principle seems to be grounded on a particular worldview, on a given vision of the world, of human beings and of what is valuable. The reason for allowing something to be decisive stems from ideas of what is important and what has value, which can be demonstrated with an example: In Sweden, and several other European countries, ‘ritual slaughter’, according to Jewish and Muslim rules, is not allowed. The methods of slaughter are judged according to an ‘animal rights’ perspective rather than being judged religiously and from a cultic perspective.<sup>17</sup> Without taking any particular stand on the issue here, I think that this kind of legislation shows how one particular view is taken to be superior to another; the animal rights perspective holds a stronger value than the religious-cultic perspective.

If there are some values overriding the freedom of religion, then there are a few practical or technical issues to be dealt with. If everything is allowed as long as for example ‘no one else is hurt,’ such technical issues would have to do with things like: *when* is something damaging? to *whom*? to *what extent* must it be damaging in order to count as damage? what *responsibility* can be attributed to a particular agent supposedly causing the damage? Claiming fundamental values leads to another problem of a different type. Why exactly do these values have the force to override? This is of course a question that can be asked whenever there are conflicting interests and a decision is required. In this particular case, it has a special role, though. Evidently, a religion is more than and different from a worldview, and a worldview does not have to be religious. Nonetheless, adhering to a given religion, or having certain religious convictions means, or can mean at least, adhering to a specific worldview. Hence, it may be exactly on this level that the conflict appears.<sup>18</sup> It may have to do with a cult perspective *versus* an animal rights perspective (ritual slaughter) for instance. In that case, one would have to ask why certain arguments are accepted *a priori*, while others are dismissed *a priori*. If it is about freedom of religion, it is also about freedom of worldviews, so why should one particular worldview be accepted and not another?

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<sup>17</sup> Göran Gunner (1999). *Att slakta ett får i Guds namn*, Stockholm: Fakta info direkt, pp. 54-55.

<sup>18</sup> McGoldrick (2011), *op.cit.*, p 457.

This illustrates how agreement on religious freedom—and even agreement on how it should be defined—does not suffice. Agreement with regard to how it should be implemented is also required. It becomes clear that formal procedures and apparently neutral structures are and have to be supported by some specific ethos.<sup>19</sup> The ‘institutional agnosticism’ cannot be altogether agnostic. As Chantal Mouffe puts it when discussing liberal democracy: “Far from being based on a relativistic conception of the world, liberal democracy is the expression of specific values.”<sup>20</sup> Bhikhu Parekh fills in when saying: “[a] morally and culturally neutral state which makes no moral demands on its citizens and is equally hospitable to all cultures and conceptions of the good is logically incoherent and practically impossible. And since every law coerces those not sharing its underlying values, a morally and culturally non-coercive state is a fantasy.”<sup>21</sup>

The tension between a religious outlook and a secularist one is in fact present in contemporary politics. Malcom D. Evans claims that there is a tendency to privilege the principle of secularism to the extent that religious manifestations in the public should be considered inappropriate or even banned.<sup>22</sup> It has been pointed out that judgements at the European Court of Human Rights appear to be based on a tolerance of private forms of religion only, and what is private and inoffensive seems to be dependent on what is familiar; wearing a head cloth is a threat to public order whilst the Salvation Army Uniform is not.<sup>23</sup> The problematic aspect is that if one particular worldview had priority over other worldviews in society, it would seem to reduce the

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<sup>19</sup> Cf. Chantal Mouffe (2006). “Religion, Liberal Democracy, and Citizenship”, in *Political Theologies*, edited by H. d. Vries and L. E. Sullivan, p. 321. See also for instance Joshua Broady Preiss (2011). *Multiculturalism and Equal Human Dignity: An Essay on Bikhhu Parekh*, “Res Publica”, 17 (2), p. 144.

<sup>20</sup> Chantal Mouffe (2006), *op.cit.*, p. 321. See also François Huguenin (2009). *Résister au libéralisme*, Paris: CNRS Éditions, p. 44.

<sup>21</sup> Bhikhu Parekh (2006). *Rethinking Multiculturalism*, Basingstoke: Palgrave, pp. 201–202.

<sup>22</sup> See Malcolm D. Evans (2008). “Freedom of Religion and the European Convention”, in *Law and Religion in Theoretical and Historical Context*, edited by P. Cane, C. Evans and Z. Robinson. Cambridge & New York: Cambridge University Press, p. 307. See also Howard Caygill and Alan Scott (1996). *The Basic Law versus The Basic Norm? The Case of the Bavarian Crucifix Order*, “Political Studies”, 44, p. 111, p. 117, and Pamela Slotte (2011), *op.cit.*, p. 260.

<sup>23</sup> Pamela Slotte (2011), *op.cit.*, pp. 266–267.

very idea of freedom of religion. It would seem to impose a particular anthropology: for example, it seems to impose an anthropology favouring the individual and not the collective. Perhaps one could say, “yes, because this very worldview is simply the best on this very point.” This could be understood as holding rationality to be the ultimate and the optimal measure when a question is to be settled. In this respect, Nicholas Rescher represents an important current in western philosophy; being rational equals doing what one *ought to do*. There is also an intellectual obligation to make the right choices with regard to beliefs and worldviews.<sup>24</sup> Reason has to do with not only what should be believed and what should be held to be true—“not only what it is ill advised to believe”—nay, it also has to do with “what it is ill advised to esteem,” Rescher says.<sup>25</sup> In other words, reason has to do with what people *ought to wish for*, what *sensible people* look for, what those who think *well and correctly* want.<sup>26</sup> Similar views are expressed by Roderick Chisholm, who emphasises that it is a matter of responsibility and duty.<sup>27</sup> Laurence Bonjour talks about epistemic responsibility.<sup>28</sup>

Isaiah Berlin describes the situation well. A widespread idea is that, in principle, there is only one rational answer to a particular question. As such answers are rational, they cannot be in mutual conflict with each other.<sup>29</sup> In other words, if the problem is a real problem, there is a single correct solution, and any rational thinker should be capable of discovering this solution. There would be no conflicts between two rational beings as two truths cannot be irreconcilable, following this line of thought, Berlin says.<sup>30</sup> The fundamental idea is that all is rationally ordered and structured. There is an old idea saying that there may be—or there should be—one and only one principle as the basis for our lives; this sole and unique fundamental principle can be the key to solving conflicts between

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<sup>24</sup> Nicholas Rescher (1988). *Rationality. A Philosophical Inquiry*, Oxford: Clarendon Press, p. 102.

<sup>25</sup> *Ibid.*, p. 94.

<sup>26</sup> *Ibid.*, pp. 95-99.

<sup>27</sup> Roderick M. Chisholm (1966). *Theory of Knowledge*, Englewood Cliffs: Prentice-Hall, pp. 14-15.

<sup>28</sup> Laurence Bonjour (1985). *The Structure of Empirical Knowledge*, Cambridge (Mass.): Harvard University Press, pp. 7-8.

<sup>29</sup> Isaiah Berlin (1969), *op.cit.*, p. 8.

<sup>30</sup> *Ibid.*, pp. 144-146.

different interests.<sup>31</sup> If this line of thought is followed, Berlin claims, human beings will have a free will, but this free will does not include the freedom to do anything that is irrational, stupid, or wrong.<sup>32</sup> Berlin quotes Johann Gottlieb Fichte saying that no one has rights against reason.<sup>33</sup>

If seen in this way, there would be an answer to the question of *why* this or that value, and not other values, are and should be preferred. This is particularly problematic, though, if we are moving within the sphere of religious freedom, as this very principle is precisely concerned with freedom of *worldviews*. The reasoning in this section can now be taken one step further.

### THE CORNERSTONE PROBLEM

The dilemma and the tension outlined at the beginning of this article go deeper, go further, and are more radical than one might at first suspect. What appears to be a conflict between the fundamental toleration of ‘institutional agnosticism’ and the call for order, including the need to limit the extent to which practices could be permitted, touches upon issues of worldviews. It is probably unavoidable in a pluralistic society to deem some types of religiosity as being acceptable while others are not, or to claim that religious practices should be judged according to some other ethical standard. A problematic aspect is that any such judgment has implications for worldviews, and religious freedom is precisely a matter of freedom of worldviews. Still, the difficulty has even deeper roots. The conflict of worldviews—and the difficulty of holding one to be *definitely and absolutely* superior in any secure way—has to do with the structural impossibility of determining a centre from which judgments can be made; it is impossible to determine a centre that could function as a foundation in any absolute and definite sense.

One example of this impossibility of establishing an absolute centre is perceptible in language. Language—in this context—is both central and *prototypic*. Basically, my argument can be resumed in one sentence: the problem when claiming that one value overrides another is that we do not know with absolute certainty exactly what we are

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<sup>31</sup> Isaiah Berlin (1969). *Four Essays on Liberty*, Oxford: Clarendon Press, pp. liv-lvi; Cf. Richard Rorty (1998). *Philosophical Papers: Truth and Progress*, Cambridge: Cambridge University Press, pp. 76-78.

<sup>32</sup> Isaiah Berlin (1969), *op.cit.*, pp. 147-149.

<sup>33</sup> Fichte quoted in Isaiah Berlin (1969), *op.cit.*, p. 151.

talking about, due to linguistic mobility<sup>34</sup>. The explanation of this idea could be that linguistic mobility implies that meaning is always questionable. Hence, what is meant by a given linguistic entity<sup>35</sup> is *in principle* always negotiable.

If there is mobility of meaning, and consequently undecidability, what are the implications? I suggest having a look at some concrete cases. When doing so, one should keep in mind that my argument here is about linguistic mobility, open concepts, and the indispensable general undecidability that make negotiations possible and necessary. My argument is not focused on any discussions regarding the particular phenomena involved.

A first example could be found in the Middle East and the so-called suicide bombers.<sup>36</sup> Young men, as well as young women, are detonating bombs in cafés, bars, buses etc. in the Israel-Palestinian conflict, killing themselves in the process. Such actions are of course tragical in many respects. There is, though, an aspect that is of particular interest to this article. When these young men and women kill themselves in such suicide attacks, they often do so as Muslims. Suicide is *prima facie* prohibited in the Muslim tradition; suicide (*intihâr*) is a sin (in a similar way, the Christian tradition does not accept suicide). Therefore, according to the tradition, in the name of which they commit suicide attacks, any such acts cannot be accepted. Consequently, those who are warriors in the army of God would be condemned by the same God for their acts. If the act is interpreted differently, and categorised in another manner—as martyrdom (*istishhad*)—the situation changes dramatically. As Abd al-Aziz Rantisi (1947-2004), one of the leading figures of Hamas, is reported to have said: if one wants to kill oneself because one is tired of life, then it is suicide. If one sacrifices one's life in order to hit the enemy, and in the name of God, then one is a martyr.<sup>37</sup> Hence, something that

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<sup>34</sup> For this particular terminology, see Patrik Fridlund (2011), *op.cit.*, pp. 39-42.

<sup>35</sup> For a similar use of the term 'linguistic entities,' see Ronald N. Giere (2006). *Scientific Perspectivism*, Chicago: University Press of Chicago, pp. 72-76, p. 128 note 6; Björn Thorsteinsson (2007). *La question de la justice chez Jacques Derrida*, Paris: Harmattan, p. 53 (quoting Roman Jakobson), and Björn Larsson (2009). "A mon avis la vue des crocodiles rend nerveux", in *Mélanges plurilingues*, edited by P. Bernadini, V. Egerland and J. Granfeld. Lund: Lunds universitet, p. 250.

<sup>36</sup> For a discussion on the very phenomenon, see for example Talal Asad (2007). *On Suicide Bombing*, New York: Columbia University Press, *passim*.

<sup>37</sup> Mark Juergensmeyer (2000). *Terror in the Mind of God*, Berkeley: University of California Press, pp. 73-75.

appears to be a prohibited act, condemnable in a given context, may be transformed into something desirable. A vital aspect of this transformation is the re-naming, the alternative terminology, or another vocabulary. The terminological aspect is important, which is very clear from the account Nasra Hassan gives of interviews with suicide bombers who have survived. The interviews took place under the condition that the deeds under discussion were not referred to as 'suicide;' the preferred term was 'sacred explosions.'<sup>38</sup>

The second example is taken from a different context. Many Western thinkers have seen the Indian caste system as being in clear and evident conflict with Western, liberal and democratic values. The very definition of a caste system is that people are hindered from development for the sole reason that they are *born into a specific group*. This would be a paradigmatic example of non-permissible discrimination on the grounds of some characteristic that an individual has not chosen and cannot change (ethnicity, race, religion, sex, or skin colour), according to Raphael Cohen-Almagor.<sup>39</sup> Philosopher Mary Daly points out that sexism (also in Western societies) functions precisely as a caste system:<sup>40</sup> "[...] a worldwide phenomenon of sexual caste, basically the same whether one lives in Saudi Arabia or in Sweden. This planetary sexual caste system involves birth-ascribed hierarchically ordered groups whose members have unequal access to goods, services, and prestige and to physical and mental well-being."<sup>41</sup>

Instead of insisting on a particular vocabulary in order to make it possible to express esteem of something otherwise condemned (cf. suicide above), Daly moves in the opposite direction. She deliberately chooses a particular wording in order to denounce a phenomenon that otherwise tends to be accepted. Many have found it difficult to accept inequalities between men and women in Western liberal societies being labelled a 'caste system.'<sup>42</sup> The resistance to her vocabulary shows how important vocabulary is.

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<sup>38</sup> Nasra Hassan (2001). *Letter from Gaza: An Arsenal of Believers—Talking to the "Human Bombs*, "The New Yorker", November 19, 2001.

<sup>39</sup> Raphael Cohen-Almagor (1996). "Female Circumcision and Murder for Family Honour", in *Nationalism, Minorities, and Diasporas*, edited by K. E. Schulze, M. Stokes, and C. Campbell. London: Tauric Academic Studies, p. 183.

<sup>40</sup> Mary Daly (1985). *Beyond God the Father*, Boston: Beacon Press, pp. 2-6, p. 87.

<sup>41</sup> *Ibid.*, p. 2.

<sup>42</sup> See for example Gordon Zahn who is quoted in Mary Daly (1985), *op.cit.*, note 3 on p. 199.

These examples seem to illustrate what Richard Rorty says, namely that anything can be presented as good *or* bad, important *or* unimportant. It depends on the descriptions, on the terms used, on the labels given.<sup>43</sup> How something is labelled, what something is called, in what category it is placed and in what way it is described *are* important when it comes to the treatment it gets. For instance, Kathryn Pyne Addelson notes that when abortion is discussed, the discussions are often based on the idea that it has to do with the woman's right *versus* the child's right; other aspects are simply left out (responsibility, love, sexuality, paying attention to what is the best for humankind as a whole, etc.).<sup>44</sup> The way the discussion is framed and classified has a significant influence on what outcome that is made possible. Mary Daly shows how the deliberations concerning moral judgments of abortion differ from the ones regarding war, for instance. Christian moral theology has a long history of caution when it comes to judgments about war and other forms of physical violence. Standpoints judgments are hedged by contextual analyses making it morally right to kill other human beings in war, in self-defence etc; the intellectual apparatus around 'the just war' is impressive. The distinctions between killing in war and murder, capital punishment and homicide, and so on are many; the *complexity* of the matter is widely recognised. When it comes to abortion, there is nothing to indicate that it is a complicated matter, according to Daly. Christian morality is simple and straightforward in its condemnation.<sup>45</sup> She adds that, in the debate, 'murder' is even the term used by the fiercest opponents as a synonym for 'abortion'.<sup>46</sup>

In the political debate, issues of torture constitute yet another example. Since at least 1948 (the UN Declaration of Human Rights), there has been consensus: no torture is permitted under any circumstances.<sup>47</sup> What has happened recently is not a discussion about whether torture is legal or not, but whether acts are 'properly defined

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<sup>43</sup> Richard Rorty (1982). *Consequences of Pragmatism*, Brighton: Harvester P., pp. 6-7. Cf. Isaiah Berlin (1969), *op.cit.*, pp. xxviii-xxx.

<sup>44</sup> Kathryn Pyne Addelson (1990). "Why Philosophers Should Become Sociologists", in *Symbolic Interaction and Cultural Studies*, edited by H. S. Becker and M. M. McCall. Chicago: University of Chicago Press, pp. 128-129.

<sup>45</sup> Mary Daly (1985), *op.cit.*, p. 109.

<sup>46</sup> *Ibid.*, p. 113.

<sup>47</sup> Alex J. Bellamy (2006). *No Pain, No Gain? Torture and Ethics in the War on Terror*, "International Affairs", 82 (1), p. 126.

as torture.’ The 1984 UN Convention Against Torture, Article 1, states: “[a]ny act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any other reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.”<sup>48</sup>

A strategy when trying to get away with certain behaviour has been to offer very narrow interpretations of what counts as torture. Jay Bybee at the US Defense Department holds, according to Alex J. Bellamy, that to count as torture it must be “equivalent in intensity to the pain accompanying serious physical injury, such as organ failure, impairment of bodily function, or even death.”<sup>49</sup> In other words, physical-medical aspects, in a restricted sense, are the only ones. What is interesting in this context is that such re-definitions make it possible to claim that certain techniques, such as subjecting people to extreme temperature, privation of light, isolation etc., are *not* torture.<sup>50</sup> Hence, the way terms are used, descriptions are made, and labels are attributed, does have consequences for legislation. The definitions given are not innocent—they actually even make possible, or not, the very acts in the first place. Torture is “possible because reality [is] defined in such a way as to make it possible,” Ronald D. Crelinsten claims.<sup>51</sup> There are not only cognitive and ideological constructions that justify torture; in a context of torture, everything is being reshaped, including a new language, and a new vocabulary is being devised.

These examples of how the vocabulary makes possible certain things, or not, are significant to my argument regarding freedom of religion and worldviews. Linguistic meaning is and has to be mobile. A consequence is that what is said or formulated can always be read

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<sup>48</sup> The 1984 UN Convention Against Torture, Article 1.

<sup>49</sup> Alex J. Bellamy (2006), *op.cit.*, p. 127. See also Manfred Nowak (2006). *What Practices Constitute Torture?: US and UN Standards*, “Human Rights Quarterly”, 28, p. 812, p. 815.

<sup>50</sup> Manfred Nowak (2006), *op.cit.*, p. 814.

<sup>51</sup> Ronald D. Crelinsten (2003). *The World of Torture. A Constructed Reality*, “Theoretical Criminology”, 7 (3), p. 295.

differently. Therefore, judgments, standpoints, and evaluations can always, *in principle*, be questioned, re-formulated, and re-evaluated.<sup>52</sup> Linguistic mobility is important as such but it is also paradigmatic. In general, the very idea of any irreducible, clear, and absolute centre that could govern all the rest—the periphery—is an impossible one. The centre will always depend on the periphery; there is always an interaction between central and peripheral. For example, what is considered decisive in one context does not have to be seen as decisive in another context.<sup>53</sup>

A conclusion that one can draw regarding religious freedom and the possibility of legitimately limiting this freedom is, for example, that it is possible to speak about ‘fundamental values,’ which, in this context, could override other values. Religious freedom may thus be overridden in the name of other and more powerful values. However, I claim that what is at stake is a) why exactly *these* values are held to be fundamental; and b) exactly what it *means* to subscribe to these values. Neither (a) nor (b) is automatically clear. Consequently, one has to acknowledge that—returning to the theme of this article—the very idea of religious freedom is fragile. I maintain that this is not a mishap; it *must* be so. This means, among other things, that *decisions* have to be taken, as there is nothing *evident* emerging by itself.

There will of course be *some* stability, *some* centre, and *some* things more reasonable than others; the meaning is of course relatively clear. The point is that nothing of this can be *totally* clear, *absolutely* transparent, or *totally* stable. There is always a potential fissure that would make another reading *possible*, and some other understanding cannot be excluded. This is basically what makes political compromises possible. Or, to broaden the picture, this is what makes it possible for people with different worldviews and different attitudes towards life to live together. Furthermore, such mobility is a condition for human subjectivity as a responsible subjectivity. This will constitute a theme in the following section.

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<sup>52</sup> Paul Ricœur (1986). *Du texte à l'action*, Paris: Seuil, pp. 51-54, pp. 175-176. Ruth Sonderegger (1997). *A Critique of Pure Meaning: Wittgenstein and Derrida*, “European Journal of Philosophy”, 5 (2), pp. 191-201.

<sup>53</sup> Patrik Fridlund (2011), *op.cit.*, pp. 71-73, pp. 78-87.

## UNDECIDABILITY

The examples above indicate two things; namely that linguistic articulations and formulations play a decisive role, and that what is meant by a particular linguistic term is negotiable—the meaning is mobile. Mobility is necessary in order to make it possible to see and formulate new things with recognizable tools. The alternatives would be either never being able to formulate anything new, *or* always doing so with new and hitherto unknown tools. Both alternatives appear odd and difficult to reconcile with our experiences; we formulate new ideas and describe new findings without on every single occasion being obliged to employ a vocabulary previously never seen. That would have ruined what we mean by human language.<sup>54</sup> Lévinas seems to have this in mind when claiming that any search for non-contextual meaning is fruitless; it does simply not make sense to seek meaning outside any context. A non-contextual-meaning would imply comprising all possible linguistic contexts and all possible positions in which any language user may find her/him-self.<sup>55</sup>

This first part of the argument has to do with how language seems to work. There is also a second part to the argument. Philosopher Nicholas Rescher claims that there is a temptation to see the world as *one* entity, with *one* nature and *one* kind of knowledge about it. The temptation lies in the wish to see the graspable, the understandable. Nonetheless, he says, this temptation must be resisted; it is important to keep the door open to several thought worlds.<sup>56</sup> The argument for this is that if we do not accept that we do not know everything about an object (pretending absolute correctness), if no variation were allowed for, a discussion would be inseparably linked to our own specific information.<sup>57</sup> Everything would have to pass through a particular scheme. This, in turn, entails that everything that is ‘other’ must be reduced to a relation to ‘same.’ Sameness—the possibility of bringing everything to ‘same’ positively or negatively—would thus be the sole measuring stock; there would be no *other*; there would be no

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<sup>54</sup> Jacques Derrida (1988). *Limited Inc*, Evanston: Northwestern University Press, pp. 7-12, pp. 47-49; Paul Ricœur (1975). *Métaphore vive*, Paris: Seuil, pp. 142-155, pp. 161-177; Paul Ricœur (1986). *Du texte à l'action*, Paris: Seuil, pp. 241-245.

<sup>55</sup> Emmanuel Lévinas (1972). *Humanisme de l'autre homme*, Paris: Librairie générale française, p. 20.

<sup>56</sup> Nicholas Rescher (1993). *Pluralism Against the Demand for Consensus*, Oxford: Clarendon Press, p. 73.

<sup>57</sup> *Ibid.*, pp. 143-144.

place for any other, otherness; all others would be erased, if sameness and unity were guiding principles.<sup>58</sup> A problem is the subsequent totalitarianism in the way that *all* are forced to take the same position, the same perspective, work according to the same parameters, same notions, and have the same understanding. Ultimately, everything and everyone would have to be ‘same.’<sup>59</sup> Eventually, that would mean very limited possibilities of seeing and understanding anything at all, or acknowledging some *other* and that there is *someone*, any human *subject*.

The argument *pro* subjectivity and *contra* totalitarianism relies on the idea that decisions in this sense must be made without clear rules or absolute instructions. Making such decisions implies making moral, juridical, and political decisions and hence taking responsibility. Decisions must be taken beyond what is calculable; there would be no decision if it did not pass through a zone of undecidability.<sup>60</sup> In that way, through the uncontrollable and undecidable, human subjects are forced to choose, judge, evaluate, and decide, which is in no way a drawback. If there were clear rules and instructions regarding how to do this, the evaluative moment of decision and judgment would vanish.<sup>61</sup>

The argument is not unconditional. One premise is that multiplicity, plurality, and a place for otherness and human subjectivity are desirable things. Similarly, there is an underlying value in describing human language in a way that seems to resonate with how it functions. Of course, to be consistent with the argument of this article, it is not possible to claim that totalitarianism is *false* or that it is *wrong* to labour for everyone having the same perspective, the same notions, and the same understanding of everything. I argue, however, that taking such positions seems pointless—they are simply not very fruitful or productive<sup>62</sup>—and ethically questionable.

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<sup>58</sup> Luce Irigaray (1992). *J'aime à toi*, Paris: Grasset, pp. 112-115, p. 155, pp. 183-185; Luce Irigaray, *Être deux*, Paris: Grasset, pp. 58-59, p. 104; Luce Irigaray, “Pouvoir du discours”, in *Ce sexe qui n'en est pas un*. Paris: Éditions de Minuit, passim.

<sup>59</sup> Jean-François Lyotard (1979). *Au juste*, Paris: Bourgois, pp. 47-49.

<sup>60</sup> Jacques Derrida (1988), *op.cit.*, p. 116.

<sup>61</sup> Jacques Derrida (1985). “Préjugés devant la loi”, in *La faculté de juger*, edited by J.-F. Lyotard, p. 94. See also Emmanuel Lévinas (1990). *Autrement qu'être*, Paris: Librairie générale française, pp. 214-219.

<sup>62</sup> See for example Joan Rogharden, who argues that biological diversity in the sense of variation in sexual behaviour and gender is also a fundamental trait of

## RESTATING THE CASE

The case can be restated: the meaning of what is said or written is mobile in principle, and an epistemological feature to do with how reality is shaped. There is also an ethical side. Difference is suppressed in the struggle for unity and non-alteration. Non-alteration and non-variation imply that there is one single way of being and of identifying a human subject. Very concretely, this entails a reduction of what it is to be a human subject; one would have to neglect race, sex, class, sexual orientation and so on, in order to acquire some authority as a rational subject.<sup>63</sup> Consequently, what is deviant must be silenced in a culture of unification according to certain presupposed norms.

This is the heart of what I want to say regarding the inevitable and indispensable fragility of religious freedom. Now, where does this bring us?

My thesis can be summarized in the following points. First, there is *prima facie* a dilemma regarding freedom of religion. It must be based on some type of *institutional agnosticism* and at the same time allow for saying no to certain behaviour. The neutrality implied in adherence to freedom of religion is in conflict with the obligation of prohibiting some things done in the name of religion. Second, attempts to circumvent this dilemma exist. Two of them are briefly discussed; namely, if *religion* is defined narrowly, the conflict evaporates and if certain other values can override freedom of religion when needed there is a solution at least in theory. In many cases, these two function well *but* ultimately the dilemma goes deeper; it is *another* dilemma. Third, I claim that naming, framing and articulation are decisive for how things are seen, and all three are mobile. Fourth, I maintain that linguistic meaning has to be mobile; anything else would have serious consequences epistemologically *and* ethically. As a consequence, I identify the fragility of religious freedom as a structural and inherent fragility, not because of the particular concept but as a result of a general trait. This implies that what is covered by freedom of religion is not, and cannot be, given once and for all, as the meaning is negotiable and fragile.

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evolution: Joan Roughgarden (2004). *Evolution's Rainbow*, Berkeley: University of California Press, *passim*.

<sup>63</sup> Amy Hollywood (1998). *Deconstructing Belief. Irigaray and the Philosophy of Religion*, "The Journal of Religion", 78 (2), p. 234; Ewa Plonowska Ziarek (2001). *An Ethics of Dissensus*, Stanford: Stanford University Press, p. 93, p. 207.

If there is fragility of the very idea of religious freedom, a consequence is that claiming fundamental values as grounds for human rights can be questioned. Many seem to fear that every possibility of standing up for rights, striving for freedom and equality etc. is suppressed. I suggest that it is the other way round. As there is no way of living that is *prima facie* superior to other ways, the incentive to give reasons for the way that has been chosen is all the stronger. This does not automatically lead to any cheap relativism, conventionalism or the like.<sup>64</sup> Hence, I argue that it is possible to be sceptical regarding the *absolute* foundations and still strongly *believe* them to be correct. It is enough that some things *seem* to be correct and that I trust them; I do not have to claim to *know* that they *are* indeed correct in a strong sense. For example, in science, as in everyday life, things are done on the basis of unjustifiable metaphysical foundations; the fact that they are unjustifiable does not prevent science from functioning.<sup>65</sup> It is simply not necessary to resolve overarching metaphysical questions in order to work together scientifically.<sup>66</sup> Serious investigations are possible in various aspects of human life and human understanding of the world without claiming the vocabulary to be *essentially correct*.<sup>67</sup>

#### CODA

The idea of religious freedom is well-established and rather stable. What it protects and what it does not protect are rather clear. Nonetheless, seeing and accepting the fragility of the idea are necessary and helpful in several ways. I contend that this may be seen in four interrelated ways. Acknowledging that the idea of religious freedom is inherently fragile could entail a general questioning starting from liberal non-conformism as formulated by John Stuart Mill in *On Liberty*.<sup>68</sup> This side of liberal thinking is rather marked by a readiness to accept difference instead of looking for a neutral, autonomous, and

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<sup>64</sup> Morag Patrick (1997). *Derrida, Responsibility, and Politics*, Aldershot: Ashgate, p. 134, p. 140.

<sup>65</sup> Francisco J. Varela and Evan Thompson, and Eleanor Rosch (1991). *The Embodied Mind*, Cambridge (Mass.) & London: MIT Press, p. 228.

<sup>66</sup> Grace M. Jantzen (1987). "Conspicuous Sanctity", in *The Rationality of Religious Belief*, edited by W. J. Abraham and S. W. Holtzer, Oxford: Clarendon, p. 126.

<sup>67</sup> Nicholas Rescher (1993), *op.cit.*, pp. 171-172; Jacques Derrida, *L'écriture et la différence*, 412, 416-418; Jacques Derrida (1967). *De la Grammatologie*, Paris: Éditions de Minuit, p. 25; Francisco J. Varela and Evan Thompson, and Eleanor Rosch (1991), *op.cit.*, p. 218.

<sup>68</sup> John Stuart Mill (1985). *On Liberty*, Harmondsworth: Penguin, *passim*.

transcendental subject, or something similar. Such a *liberal* approach would emphasise the importance of human rights in general, and freedom of religion in particular. Such *non-conformism* would also underline the complexity and the obligation to allow for variation. Rules for what is permitted and what is not are indispensable. Yet, they can never be taken for granted and it is a mistake to perceive them as anchored to some kind of absolute. As we do not, and cannot, *know* what is definitely right, seeing the idea of religious freedom as a fragile idea is nothing strange. The fragility of the idea is a condition for human beings to struggle with the issue in order to grow and mature.

Perceiving and accepting the fragility of religious freedom may also be seen in the light of anti-totalitarian philosophy, viz. a clear position for *not* being absorbed in a totality, not being drowned in a universal order. Emmanuel Lévinas points out that Western thought has been deeply involved with a search for totality. All forms of ambivalence and plurality have been refuted in an ontological discourse that encompasses everything, understands everything and does not permit any deviation, according to Lévinas.<sup>69</sup> My belief is that this entails the incapacity to see what is *other*, what is *different*. Luce Irigaray picks up the thread, maintaining that Western imagination is constructed around the idea that every *other* must be reducible to being in relation to *same*; sameness is the goal or at least the ultimate measure.<sup>70</sup> The idea of sameness and unity is of course a strong and powerful thought. A problem, nonetheless, is that the *unity* and *oneness* eventually become totalitarian in the way that *everyone* has to conform to one perspective, work with the same measures, use the same notions, and understand everything in the same way.<sup>71</sup> If the idea of religious freedom is to avoid the snare of being totalitarian, it must also be accepted that it is a fragile idea.

Recognising the necessary fragility of religious freedom could be an important factor in vitalizing political life; the promotion of human rights and religious freedom could then be perceived as a *project*. This entails recognising the articulation of different modes of

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<sup>69</sup> Emmanuel Lévinas (1990), *op.cit.*, p. 262.

<sup>70</sup> Luce Irigaray (1992). *J'aime à toi*, Paris: Grasset, pp. 112-115, 155, 183-185; Luce Irigaray (1997). *Être deux*, Paris: Grasset, pp. 58-59, 104; Luce Irigaray, "Pouvoir du discours", in *Ce sexe qui n'en est pas un*. Paris: Éditions de Minuit, *passim*.

<sup>71</sup> Patrik Fridlund (2011). *op.cit.*, pp. 136-137, and Jean-François Lyotard (1979), *op.cit.*, pp. 47-49.

reasoning, each of them with a different logic. Although all can be questioned, it does not mean that rules should be abolished.

The implication is that there is not only one rational answer, or only one solution, to a given question or a given issue. If there were, it would mean that politics would be nothing but an exercise of bureaucracy and a capacity to use technical skills. Decisions have to be taken beyond what is possible to arrive at through a calculation. A real decision, which obliges the decision maker to take on his or her responsibility, has to pass through a zone of the undecidable.<sup>72</sup> If it is uncontrollable, and undecidable, the human subject is forced to choose, obliged to judge and compelled to decide. Far from being a deficit, the area of undecidability is the very condition for decision making and judging. Were there rules to follow, it would no longer be a question of making judgments or decisions, but purely a mechanical affair and a question of logical determinism.<sup>73</sup> In that case, religious freedom runs the risk of excluding certain worldviews, which is problematic, since the very idea of religious freedom is to guarantee freedom in precisely this field.

A consequence of non-conformist and non-totalitarian revitalisation of the political life is of course that stress will be put on human agency and human subjectivity. Hence, there is a need to cultivate the ability to make judgments and to take decisions. Even in situations where there is a strong imperative like that of justice, the implementation requires discernment and decision in order to see what it means concretely.<sup>74</sup> Such ability cannot be captured in any simple formula and can only partly be explained. It is a practical ability that can be cultivated and trained.<sup>75</sup> In short, it is about training human subjects to become experts in the field of making judgments and taking responsibility. This may seem odd. Often the term 'expert' is reserved for a small proportion, the elite, but this can be seen differently. Human beings may be experts not only in nuclear physics or transplantation surgery, but also in many everyday activities like cutting onions or mending a tube. Thus, being an expert does not necessarily mean being better than all others on a ranking list; in many

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<sup>72</sup> Jacques Derrida (1988), *op.cit.*, p. 116.

<sup>73</sup> Jacques Derrida (1985), *op.cit.*, p. 94. Emmanuel Lévinas (1990), *op.cit.*, pp. 214-219.

<sup>74</sup> Patrik Fridlund (2011). *op.cit.*, p. 139.

<sup>75</sup> *Ibid.*, pp. 160-161; Ruth Sonderegger (1997). *A Critique of Pure Meaning: Wittgenstein and Derrida*, "European Journal of Philosophy", 5 (2), p. 186.

everyday activities, such ranking would seem ridiculous. As human beings can be experts in many different domains and in the whole spectrum of expertise, why should it not be the case in politics, human rights, and matters regarding religious freedom?

Cultivating expertise does not necessarily entail training according to one sole model. There is not one single way of doing philosophy, making music or being an artist so why should there be only one single way of making decisions and taking responsibility? Similarly, just as it is possible to be trained in music, art, and philosophy, one could be trained in decision-making and responsibility. In any such process, there may be an element of listening to 'outside authority,' to justice, or to a call from God. The crucial point is that there is nobody to say which of these is most worthy of being heard.

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