

# A Recipe for Political Polarization?

## Tackling Distorted Views on Freedom of Religion or Belief

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### **Introduction: Populist distortions of a human right**

More than any other human right, freedom of religion or belief (FoRB) is at the center of political polarization.<sup>1</sup> In a number of countries – including Poland, Brazil, the U.S. and others – it is even a component within fully-fledged cultural wars. Conservatives from different religious backgrounds have invoked FoRB to oppose same-sex marriage, question specific parts of the mandatory school curriculum or back up restrictive anti-blasphemy laws. In turn, some liberals have criticized FoRB as an anachronism, that is a largely outdated historical right that has lost its legitimate role in modern secular societies. The fault lines may vary and shift back and forth in manifold ways: religious versus secular worldviews (or vice versa), tradition versus modernity (or the other way around), gender-related emancipation versus patriarchal structures and misogynistic prejudices, Christian legacy versus “foreign invasion” (for example, by Muslim immigrants), or enlightenment versus obscurantism, to mention just a few random examples. What comes to the fore in all such configurations is the polemical pattern.

Prima facie, polarizing views on FoRB derive a certain degree of plausibility from a broad range of conflicts that have emerged around religious issues. While people from different religious backgrounds have brought their concerns to courts or other decision-making bodies, one should take note that this is part of “normal” human rights practice. No one should be surprised to

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<sup>1</sup> For a detailed analysis, see Bielefeldt, Heiner/Wiener, Michael: Religious Freedom Under Scrutiny, Philadelphia: University of Pennsylvania Press 2020. This book (which is also available in German and Indonesian languages) contains many examples and references.

see FoRB – like any other human right – coming up in litigation. Additional complications may occur if conflicts take place in the intersection of different human rights issues. For example, FoRB-related interests can collide with issues of gender justice, just as freedom of speech can come into conflict with anti-racism agendas. Again, dealing with conflicts between different rights-based concerns has always been part of human rights practice, and it is certainly not an exclusive feature of FoRB. In such situations, the task is to find practical solutions that should do justice – to the maximum degree possible in the specific context – to all human rights-based concerns at stake. However, many polarizing invocations of FoRB are characterized by the absence of any interest in finding viable solutions by which to settle the issues. Instead, contextual conflicts (which can always emerge) are turned into *abstract dichotomies*. In fact, keeping the conflict alive appears to be a purpose in itself. The intended “solution” – if envisaged at all – can only be the total victory of one’s own position, according to the logic of “the winner takes it all.”

Such polarizing invocations typically ignore the nature of FoRB as an integral part of a broader human rights agenda.<sup>2</sup> Building on existing confusion concerning the content and purpose of FoRB, they exacerbate misperceptions or even promote deliberately distorted views. In extreme cases, this culminates in turning FoRB into a *bastion of anti-liberalism and anti-genderism*. Notwithstanding the fact that this human right carries “freedom” in its title, FoRB ironically seems to function as a sort of anti-liberal “counter-right” employed to disrupt emancipatory achievement in areas like school education, public health or gender justice. Whereas right-wing political movements frequently play the most active role in such projects of “weaponizing” FoRB for the purposes of cultural warfare, people from other parts of the political spectrum also contribute to obscuring the status and content of this human right. Rather than defending FoRB as an indispensable component within a holistic human rights agenda, commentators from the left or the liberal political spectrum often seem to treat FoRB with a certain degree of suspicion, thus inadvertently corroborating the distortions caused by right-wing populist movements.

In the face of misperceptions and distortions, this article aims to provide a conceptual clarification of FoRB. I first present FoRB as the human rights-

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<sup>2</sup> FoRB has been enshrined in numerous international human rights instruments, including the 1948 Universal Declaration of Human Rights (article 18) and the 1966 International Covenant on Civil and Political Rights (again article 18).

based approach to dealing with religious and belief-related diversity. Subsequently, I define some criteria on how to deal with conflicts between FoRB and other human rights, in particular rights concerning sexual orientation and gender identity. The article concludes with a short reflection on how to cope with illiberal uses of a liberal human right.

## **FoRB: The rights-based approach to dealing with religious diversity**

Many misperceptions of FoRB rest on the assumption that it protects the authority of traditional religious views, norms or values. The fact that FoRB carries “religion” in its title may nourish expectations that it serves the purpose to strengthen the role of religion in general, including the values traditionally promoted by many religions. For example, people who fear for the future of traditional family structures in the face of new developments – like the recognition of same-sex marriage – often turn to FoRB as a potential defense strategy. Their aspiration may be to fortify the heteronormative family as a manifestation of FoRB. When it comes to countering provocative or satirical comments on religious norms, practices or authorities, FoRB again seems to offer a political response. Some even cite FoRB when arguing for restrictive anti-blasphemy laws.<sup>3</sup> However, the underlying assumption that FoRB protects traditional religious beliefs or values is flawed. FoRB does not protect the integrity of belief systems or the societal status of traditional values, but instead consistently focuses on *human beings*. Like any other human right, FoRB protects *human beings* in their dignity, freedom and equality.<sup>4</sup>

True, FoRB specifically deals with concerns relating to religion or belief, and it is no coincidence that the letters “R” and “B” stand out in this acronym. Nonetheless, the point is that religions or beliefs only *indirectly* come into the focus of human rights, namely through claims brought forward by *human beings*. They are the right holders of FoRB, not religions or belief systems in themselves. The same is true for religious values: rather than backing up existing religious value systems, FoRB empowers human beings to hold, voice and stand

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3 Over more than a decade, various UN forums discussed resolutions titled “Combating Defamation of Religions,” which factually supported blasphemy laws and other restrictive policies. The resolutions can easily be found on the internet.

4 See article 1, first sentence of the Universal Declaration of Human Rights, which famously proclaims: “All human beings are born free and equal in dignity and rights.”

up for their various religious or moral convictions, including in public political debates. In this case, again human beings are the ones receiving legal protection of their rights. The general purpose of FoRB is to guarantee respect and protection for human beings in the vast area of conscientious convictions, religious orientations, spiritual practices, theological or non-theological beliefs, religious rules and so on.

Why this strict focus on human beings? Does this not confirm the conservative diagnosis of a general decline of religion in public life? The opposite is true. Above all, taking religion seriously implies appreciating the *diversity* that we witness in the field. Indeed, “religion” only exists in the plural, namely as “religions.” Theological views substantially differ between and within religious traditions, and practical rules – from dietary stipulations or traditional clothing to initiation rituals or the celebration of religious holidays – differ even more. The *one common element* to be found in all of this is *human practice* in the broadest sense of the word. Obviously, human beings are the ones holding or challenging religious views, they are the ones interpreting and observing community-related religious rules, and they are the ones cherishing or abandoning religious practices and promoting or criticizing certain religious values. Keeping the focus of legal protection consistently on human beings rather than religions or beliefs themselves seems to be the only way of doing justice to the existing – and further emerging – diversity in the broad area of faith, belief and religiosity.

The clear focus on human beings as right holders thus accounts for the wide scope of FoRB. Qua its nature as a universal human right, FoRB cannot be confined to the orthodox followers of traditionally recognized “world religions.” Rather, it facilitates numerous manifestations of *inter*-religious, *intra*-religious and *post*-religious diversity. It protects promoters of feminist re-interpretation of religious sources no less than their conservative opponents. While certainly facilitating traditional religious practice, FoRB also opens the space for new religious movements or theological reforms. Generally speaking, FoRB covers people’s identity-shaping existential convictions and related practices in the broadest sense, including atheism and agnosticism.<sup>5</sup> Whoever claims FoRB for their own – conservative, liberal, progressive, etc. – positions should be aware

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<sup>5</sup> In paragraph 2 of its General Comment no. 22 (of 1993), dedicated to clarifying the normative profile of FoRB, the UN Human Rights Committee has pointed out that “Article 18 protects theistic, non-theistic and atheistic beliefs, as well as the right not to profess any religion or belief. The terms ‘belief’ and ‘religion’ are to be broadly con-

that FoRB likewise protects the freedom of people holding other views or pursuing alternative agendas.

Against a widespread misperception, the clear focus on human beings as right holders is not tantamount to promoting an “individualistic” way of life, detached from societal expectations and communitarian demands. Although FoRB aims to protect individuals from coercion and undue pressure, it also covers numerous community-related features of religious life, such as religious socialization of children, community-based worship, fasting and breaking the fast together with others, carrying out pilgrimages and burying community members who have passed away. FoRB furthermore includes institutional preconditions of religious community life, like the establishment of religious schools and training institutions, the building and restoring of houses of worship or the running of cemeteries. Nonetheless, this does not alter the fact that the protection provided by FoRB is due to *human beings*, as individuals and together with others.

Another misunderstanding concerns the “anthropocentric” nature of human rights in general and FoRB in particular. While the consistent focus on human beings as right holders implies some sort of political and legal “anthropocentrism,” it would be incorrect to mix political concerns about the basic rights of human beings with a fully-fledged anthropocentric doctrine or ideology. Human rights do not presuppose the understanding that the human being constitutes “the center of all things.”<sup>6</sup> In fact, FoRB opens a wide space for most different religious and non-religious worldviews, including theocentric, biocentric, cosmocentric and other *non-anthropocentric perspectives* and related practices. Nonetheless, even non-anthropocentric views are held and cherished by human beings, which is what matters for the practice of human rights.

The clear and consistent focus on human beings as right holders remains a decisive criterion by which to identify genuine FoRB claims from false or misleading invocations. Vague references to existing “religious interests,” “religious traditions” or “religious values” do not suffice to qualify political agendas as being in line with FoRB. Sometimes, the opposite is the case. For example, restrictive policies aimed at protecting a country’s religious status quo through anti-conversion laws are obviously incompatible with FoRB. The same

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strued.” This important clarification has been regularly cited by other human rights bodies, including the UN Special Rapporteurs on FoRB.

6 A well-known proverb ascribed to the Ancient Greek sophist Protagoras.

is true for anti-blasphemy laws, which stifle public dissent or critique of religion, or laws designed to fortify collective observance of traditional religious values against public criticism and internal reform movements. Even when hijacking a superficial language of “religious freedom,” as it sometimes happens, such restrictive policies or laws turn the logic of FoRB upside down.

Owing to its nature as a human right, FoRB opens the space for manifestations of religious and belief-related *diversity*, often in conjunction with other forms of diversity. Of course, no one is compelled to like this. Exposure to diversity – whether in the field of religiosity or other areas – can be exhausting, and it is always a challenge. This experience has become the entry point for various populist movements and their vague promises to “clean up” the messiness of modern life. However, policies of promoting ethnic, cultural or religious homogeneity by stoking resentments against minorities or immigrants can certainly not be in the interest of FoRB.

### How to assess conflicts between FoRB and other human rights

The understanding that FoRB always focuses on human beings also changes the perception of many of the conflicts that occur around religious issues. In some cases, an adequate contextual analysis may reveal that a particular conflict involving religious beliefs or values actually lacks any genuine FoRB dimension. Indeed, many of the cases presented under the auspices of FoRB rest on fundamental misunderstandings; for example, people who feel offended by the sheer fact that their country recognizes same-sex marriages cannot legitimately claim a violation of their FoRB. In a religiously pluralistic society, no one is entitled to expect that others cherish and observe the same values as they themselves do. Persons with a conservative mindset concerning gender issues are certainly free to voice their reluctance, criticize the societal development and promote their own skeptical views: this is part of their freedom of expression and – if based on religious convictions – their freedom of religion,<sup>7</sup>

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7 I cannot discuss here the issue of limitations on FoRB or freedom of expression, which the state can impose in the interest of preventing incitement to acts of hatred. Any limitations deemed necessary require a detailed justification in conformity with the criteria defined for that purpose. They are *inter alia* contained in article 18, paragraph 3 of the International Covenant on Civil and Political Rights.

although they cannot impose their value systems on others. This example illustrates that not every rhetorical invocation of FoRB has a solid normative basis. Whether or not a specific conflict with religious overtones contains a genuine FoRB dimension always requires a diligent contextual analysis.<sup>8</sup>

Nonetheless, conflicts between FoRB and other human rights concerns can actually occur. Examples include the refusal of parents to have their children participate in sex-education, even though this is part of the mandatory school curriculum, or parental opposition against co-education of girls and boys, in particular in sports and swimming classes. Hotel owners refusing to host gay couples or bakers who do not wish to prepare a wedding cake for homosexuals have justified their position by pointing to their religious convictions, thus claiming recognition of their interests under FoRB. Registrars not wishing to become professionally involved with same-sex marriage ceremonies have invoked conscientious objection on religious grounds. Pharmacists who refuse to sell contraceptives have likewise referred to FoRB. One could easily prolong the list of examples of conflicts in the intersection of FoRB and gender justice. Given the high degree of public attention attributed to such issues, the conflict configuration of “FoRB versus gender” has meanwhile become a litmus test for the possibility of reconciling different human rights concerns in general.

How should one cope with this kind of conflict? It is impossible to provide a comprehensive general answer, because adequate judicial decisions will always be contextual. There is no “one-size-fits-all” solution. The task is to do justice – to the maximum degree possible<sup>9</sup> – to all genuine human rights concerns at stake in the specific context. This precludes constructing abstract hierarchies, according to which one right would generally “trump” the conflicting right. Neither can the invocation of FoRB push aside rights claims relating to gender justice, nor can the interest in promoting more gender justice justify the neglect of FoRB. All of the human rights-based concerns involved in a particular conflict must be taken seriously. Ultimately, it may be inevitable to take a decision that prioritizes one rights-based concern over the other, although

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8 It should be noted in passing that conflicts presented under the auspices of FoRB also warrant a diligent empirical analysis, not only a normative assessment. For example, assumptions that wearing the Islamic hijab indicates an inferior position of women incompatible with gender equality have often proven empirically wrong.

9 This caveat is important. Human rights are based on the insight that we obviously live in a non-ideal world.

it is important not to turn such *contextual priorities* into *abstract dichotomies* or a general ranking of rights.

While the idea of one right generally “trumping” another right is obviously incompatible with elevated normative status of *all* human rights, it also seems flawed to search for a lukewarm compromise somewhere in the “middle ground” between the (seemingly) conflicting rights. A vague 50/50 compromise would be no less problematic than the logic of “winner takes it all.” In order to move beyond those two problematic lines of thinking, one has to challenge a metaphor that regularly emerges in discussions on the adequate treatment of conflicting rights-based concerns, namely that of “balancing.” Many people seem to like “balancing,” since it stands for a nuanced and complex perspective, which may account for the extraordinary popularity of the term. However, the underlying picture of the two weighing scales is misleading,<sup>10</sup> as it suggests a zero-sum conflict in which the two scales necessarily move in opposite directions: whenever one scale goes down, the other one will inevitably move up, and vice versa. In other words, gains on the one side will always be linked to losses on the other side, or at least this is what the picture suggests. Applying this zero-sum logic to different human rights issues discourages the search for holistic solutions, thus reflecting the problem. For example, it may nourish the assumption that any progress concerning gender justice necessarily threatens the status of FoRB and that any additional emphasis placed on FoRB necessarily reduces the weight accorded to gender-related rights.

In the interest of a holistic human rights approach, it seems imperative to overcome this kind of zero-sum logic suggested by the metaphor of the weighing scales. Without downplaying contextual contestation between FoRB issues and LGBTIQ+ rights, it is actually quite possible to simultaneously promote both human rights. Working for both human rights is certainly not schizophrenic. When understood as universal right owned by human beings, FoRB does not constitute a general obstacle to the implementation of gender-related rights, nor does progress in the area of gender justice in any way diminish the significance of FoRB. Pursuing a holistic human rights agenda proves particularly important in view of the many millions of people worldwide who live in circumstances where they would actually need *both*

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<sup>10</sup> For a detailed analysis, see Bielefeldt, Heiner: “Limiting Permissible Limitations. How to Preserve the Substance of Religious Freedom,” in: Religion and Human Rights 15 (1–2/2020), pp. 3–19.

respect for their freely articulated religious identities in accordance with their religious self-understandings as well as the freedom to live in harmony with their sexual orientations or gender identities. Dichotomized constructions of the relationship between FoRB and gender justice would tear those people's life world apart and rob them of a much-needed source of hope.

One should bear in mind that the invocation of FoRB is not a privilege for conservative religious believers. As previously mentioned, FoRB facilitates a broad range of different uses. Just as it functions as a reference for conservative followers of religious traditions, it can also empower people with liberal views or progressive religious aspirations. As a human right that generally promotes diversity not only between but also *within* religious communities, FoRB can indirectly<sup>11</sup> contribute to broadening the space for religious reform agendas, not least for projects that try to reconcile religious traditions with modern aspirations of gender justice. The way in which FoRB comes to the fore ultimately depends on the right holders themselves, who have to decide on whether and how to make use of their human rights, including their right to FoRB.

## Coping with illiberal uses of a liberal right

FoRB is a liberal right that explicitly proclaims "freedom" in its title. In this regard, it displays structural similarities with the freedom of expression, freedom of assembly or freedom of association, to name just a few examples. However, liberal rights are not rights for liberals only, just as human rights in general cannot remain reserved for the friends of Amnesty International or other human rights organizations. Due to their universalistic aspiration, human rights belong to *all humans equally*, regardless of whether a person's attitude is liberal or less liberal, ultra-liberal or even openly anti-liberal. Rights-based diversity even includes those who do not appreciate such diversity and would prefer living in a much more homogeneous religious, cultural or political environment.

Leaders, followers and supporters of populist movements also enjoy their human rights, as individuals and together with others. They are free to express

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<sup>11</sup> Highlighting this "indirectness" seems important to avoid a possible misunderstanding. Just as FoRB does not protect traditional religious values, it does not promote liberal or progressive religious agendas in themselves. In any case, the appreciation of diversity does promote openness for internal discussions and reform projects.

their positions, except when openly inciting to acts of hatred. They can hold public demonstrations, establish political parties and participate in national elections. People are also free to propose their own idiosyncratic re-conceptualizations of human rights, including strange, problematic and dangerously misleading interpretations of FoRB, which actually happens quite frequently.

However, it is one thing to use a right to freedom for voicing conservative or ultra-conservative positions, including skepticism concerning gender-related emancipation. This happens not only in the name of FoRB but also in relation to other human rights, like the freedom of expression, freedom of association or freedom of assembly. Twisting one specific human right into a bastion of anti-liberalism or anti-genderism – as it happens with FoRB – is something else. Beyond obscuring the human rights nature of FoRB, such ideological constructions are an attack on the indivisibility of all human rights in general. As prohibition cannot be a solution, it seems all the more important to expose flagrant misunderstandings and ideological distortions of FoRB to public criticism. This cannot be an exclusive task for experts; rather, what is required to counter the simplistic and polarizing slogans of populist movements is the commitment of many people who take an active ownership in human rights. Working for a clear understanding of the normative contours and purpose of FoRB is an integral part of such much-needed political commitment against populism.