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To cite this article: François Foret & Margarita Markoviti (2021): Fundamental right or political value? The evolution of 'freedom of religion or belief' in the European Union's legitimation and public action, Journal of Contemporary European Studies, DOI: [10.1080/14782804.2021.1965555](https://doi.org/10.1080/14782804.2021.1965555)

To link to this article: <https://doi.org/10.1080/14782804.2021.1965555>



Published online: 08 Aug 2021.



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ARTICLE



Fundamental right or political value? The evolution of ‘freedom of religion or belief’ in the European Union’s legitimisation and public action

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ABSTRACT

In the last decade, freedom of religion or belief (FoRB) emerged as part of the European Union’s (EU) agenda in two ways: first, through attempts of its institutionalisation as a full-fledged diplomatic issue by the European External Action Service; and, second, as a bone of contention in EU internal affairs through its instrumentalization by national leaders, such as Hungarian Prime Minister, Viktor Orbán, who advocated for ‘Christian religious freedom’ as a rallying cry for identity politics. Our research question is twofold: whether FoRB has turned from a legal principle to a value likely to shape political conflicts; and to what extent the developments around FoRB in the realms of law and external affairs are connected to its uses in domestic EU politics. Using various qualitative methods (discourse analysis; interviews, media analysis) and drawing on a selection of relevant data (case-law, policy reports and recommendations) we trace the manifestations of FoRB across different policy sectors. Our findings suggest that no cross-cutting ‘politics of religious freedom’ is likely to appear in the EU. Looking at the broader picture, this article contributes to the scholarship on the interactions between politics and religion in the EU and on the latter’s quest of legitimisation.

KEYWORDS

Religion and politics;
European Union; secularism;
freedom of religion or belief

Introduction

In September 2019, Hungarian Prime Minister, Viktor Orbán, presented his re-interpretation of religious freedom, entitled ‘Christian freedom’. He defined this as constituted by: ‘patriots instead of cosmopolitans, patriotism instead of internationalism, marriage and family instead of promoting same-sex relationships, protection of the children instead of drug liberalisation, border protection instead of migration, Hungarian children instead of migrants and Christian culture instead of a multicultural mishmash’.¹ Orbán’s discourse illustrates how freedom of religion can shift from an exclusively legal principle to a political value instrumental for identity politics. This tension between freedom of religion as a fundamental human right on the one hand and as a value, on the other, has intensified due to the increasing presence of freedom of religion or belief (FoRB) in several European Union (EU) policy domains.

The purpose of this article is not to document the multiple legal cases and controversies that may occur in national societies about religious freedom as a right. Focusing on the EU level, the objective is rather to explore the ways in and extent to which a shift from the realm of law to the one of values has established religious freedom as a new key category in EU external and internal affairs; and, subsequently, what this tells us about the interactions between politics and religion. This evolution of FoRB may be explained in two ways. The first scenario would tell the story of the ‘importation’ of FoRB as

a value from global to EU politics. It highlights in particular the influence of the US, where the term 'politics of religious freedom' (Saba 2015) was originally coined. An alternative way to comprehend this evolution is to see the emergence of FoRB as a value as part of a broader rise of 'European values' in the EU's legitimisation since the early 2000s (See François and Vargovčíková 2020; Foret and Calligaro, 2018).

Our findings suggest that these two scenarios are in fact more complementary than alternative, and that FoRB has not completely transformed from a legal principle to a political value narrative in the EU. Regarding the first scenario, the influence of global politics and third countries (mostly the US) is obvious. However, the politicization of religious freedom is hampered in secularized Europe by the low social relevance of religion. Conflicts that may arise on this issue are not strong enough to polarise party politics, nor mobilise support in the ballot boxes, in the media or in society. Regarding the second scenario on internal dynamics, FoRB is bound to be less successful than other principles that have turned into European values, such as human dignity (Dupré 2016), due to the lack of EU competencies on religion and to the resilience of EU secularism. In short, the interaction of external factors and internal EU dynamics of the EU leads to the enhancement of FoRB as a prominent right, and to its emergence as a secondary value with only limited political agency.

From a legal perspective, any action of the EU around religion is circumscribed by Article 17 of the Treaty on the Functioning of the EU, which asserts that 'The Union respects and does not prejudice the status under national law of churches and religious associations or communities in the Member States'. FoRB is protected by Articles 9 of the European Convention on Human Rights of the Council of Europe and 10 of the EU Charter of Fundamental Rights. These include first, the freedom to have or not to have or adopt (which also includes the right to change) a religion or belief of one's choice; and, second, the freedom to manifest one's religion or belief, individually or in community with others, in public or private, through worship, observance, practice and teaching.

From a political perspective, since the beginning of the 2000s, FoRB has emerged as a cross-cutting EU policy narrative. The Commission, the European External Action Service (EEAS) and the European Parliament (EP) have each developed 'best practices' on FoRB and have encouraged their dissemination through the publication in 2013 of the 'EU Guidelines on the promotion and protection of freedom of religion or belief' (Council of the European Union, 24 June 2013). In terms of identity politics, the intensification of the instrumentalization of religious freedom as a flagship topic dates to the comeback of Viktor Orbán as Hungarian Prime Minister in 2010 and in particular to his emphasis on illiberal democracy after his re-election in 2014.

Our findings draw on empirical research, using various qualitative methods, such as discourse analysis, semi-structured interviews with EU officials in the Commission and the EP, and media analysis, coupled with discourse analysis of a selection of relevant data (case-law, policy reports and recommendations). The article is organised as follows. The first part discusses three main explanations for the increased salience of religious freedom as a policy issue: the rise of religion in international affairs; the cultural diversification and secularization of European societies; and the evolution of the relevant European jurisprudence. In the second part, the efforts of EEAS to develop a strategy on FoRB are analysed as the joint outcome of both external and internal structures of opportunity and constraints. The third part examines the extent to which religious freedom has turned into a trans-sectoral narrative as a means to frame other religiously-laden issues (anti-Semitism, Islamophobia, hate speech) and crises (refugee crisis, identity politics). In the conclusion we acknowledge the relevance of the two scenarios – the importation from global politics and the internal dynamics of EU legitimisation – to explain the recent prominence of FoRB. We, finally, highlight the limits of the two propositions regarding the transformation of religious freedom as a catch-all value likely to shape the legitimisation of the EU.

The triggers behind the rise of FoRB as a minor mantra of European affairs

The increasing salience of FoRB on the EU agenda can be explained by three factors. First, it reflects the acknowledgment of religion as a recurrent matter of international politics and global affairs. Second, it is an outcome of the developments around the secularization of European societies. Third, it reflects the increasing judicialization of religion through an emerging jurisprudence of European courts.

The new global Salience of FoRB: a US-led transformation linking religion to violence

The idea of a resurgence of religion in international affairs since the 1970s, and especially after 9/11, is commonly accepted (Berger, Davie, and Fokas 2008), even if it remains a secondary variable (Hassner 2011). Religion is re-established on the diplomatic agenda on two occasions: when dangerous religious forces escape the control of one country and require cooperation with other states; and in cases where religion can be mobilised to promote the common public international good (humanitarian and development projects, human rights campaigns, transitional justice efforts, etc.) (Shakman Hurd 2012). International and transnational actors, such as the US, the United Nations (Bielefeldt 2017) and the EU, have played a key role in this dichotomisation between 'bad' and 'good' religion, framed in terms of FoRB (Shakman Hurd 2015). Heated controversies have developed about different versions of religious freedoms (Witte and Green 2012) and the ways to assess religious restrictions (Birdsall and Beaman 2020). According to Shani (2014), FoRB is mostly framed in association with violence, be it as a cause or a solution: when it is violated, the victims may fight for its re-establishment; when it is implemented as a policy, it may have the opposite effect of in fact (re)defining conflicts in religious terms and of hardening cleavages in contexts where cultural diversity used to be regulated by flexible social practices. Both views have contributed to the securitisation of FoRB, understood as its treatment as a risky business. Besides, the re-enhancement of FoRB derives largely from US politics (Su 2016). The risk is then that the cultural wars raging in American society over religious issues will spread worldwide (Smith 2016), in this way repeating the US 'tragedy of religious freedom' (DeGirolami 2013).

FoRB as an outcome of the evolution of European secularism and secularization

The literature emphasizes several factors behind the growing significance of FoRB as a political matter. First, the secularisation process has sought to turn religion into a personal matter that everyone may accommodate at their own taste. Second, the cultural diversification of societies asks for a regulation of the coexistence of different faiths claiming the free exercise of their beliefs and practices (Ferrari 2012). Third, states tend to treat religion predominantly as a legal issue, substituting formal regulation to traditional/grassroots accommodation, this way creating windows of opportunity for politicization (McCrea 2014).

Secularism is understood as a model for the coexistence of politics and religion, rather than their strict separation in institutional terms. It has become a dominant discursive repertoire in European societies to enunciate a sense of collective identity, through a specific way of relating to and treating religion. Contemporary secularism in Europe is characterised by a constant oscillation between the recognition and the surveillance of religion (Portier 2016). Religion is used as a resource of governance, and religious actors are mobilised as representatives of civil society and experts. Meanwhile, restrictions against the presence of religious signs in the public sphere have multiplied. There is a double movement of de-establishment of religion in legal and institutional terms to comply with the cultural diversification of society; and, as a reaction against the fear of alienation, of a symbolic reassertion of majority religions in cultural and historical terms, seeking to re-enhance a common identity. This has two outcomes: the securitisation of religion, where religious forms that do not seem to be congruent with social norms are treated as threatening; and its culturalisation, turning majority

religion into a common cultural heritage, to which the protection and limits placed on other faith matters do not apply. Both these processes contribute to the conflicts around the purpose and application of FoRB. Parts of the populations suspected of radicalisation may have their freedoms restricted, highlighting, at the same time, the protection of the rights of potential targets. Meanwhile, the culturalisation of religion may lead to a prioritisation of the rights of majority denominations to the detriment of minority ones for the sake of collective identity and memory (Portier 2016).

Despite its emergence as a bone of contention, FoRB is not a prominent issue for European citizens. In the project *Voices on Values* (2018), respondents in France, Germany, Italy, Greece, Poland and Hungary were asked to rank the rights and freedoms that they consider essential for a good society: freedom of religion figured well behind freedom of expression and media, and came in the same range as free parliamentary representation or openness of government (Grabbe and Eichhorn 2018). On a global scale, a 2019 Pew Research Centre survey² showed that the freedom of people to practice their religion freely is not considered as important in Europe as in other parts of the world.

FoRB as a legal principle in European courts and its policy implications

FoRB appears as secondary in the enunciation of key topics in EU law. In the EU Charter of Fundamental Rights, FoRB comes under Title II 'Freedoms', after title I on 'Dignity'. In article 10, FoRB leaves precedence to the right to liberty and security, respect for private and family life or protection of personal data. In the Commission's website, FoRB is similarly merged with other kinds of freedoms.³

Courts speak the language of legal doctrine, but their decisions reflect their environments (Hirschl 2010). The European Court of Human Rights (ECtHR) and the Court of Justice of the EU (CJEU) both consider their political context and the social impact of their rulings, with slightly different outcomes. A brief discussion of relevant cases, for instance concerning the freedom of religious manifestation in the workplace,⁴ reveals the distinct approaches of the two European Courts.

The first ever case on FoRB adjudicated by a European court concerned the question of proselytism: in 1993, the ECtHR ruled on the case *Kokkinakis v. Greece*, setting the ground for a growing jurisprudence in the field. Since then, European courts have regularly resorted to the principle of the margin of appreciation, suggesting that national authorities are better placed to rule on sensitive matters (Fokas 2015) to avoid challenging traditional state-church arrangements (Evans 2001).

Two emblematic FoRB cases about proselytism and discrimination based on religion or belief are the ECtHR *Lautsi v. Italy* case and the two CJEU cases on freedom of religious manifestation in the workplace. *Lautsi* is a striking example of two trends: the recourse to FoRB to challenge a majority religion in the realm of public education, and the use by European judges of other framings to avoid ruling directly on religion in ways that may question national arrangements. The first *Lautsi* decision in 2009 found a violation of the European Convention on Human Rights in the mandatory display of the Catholic crucifix in Italian public schools. After a political uproar, in 2011, the Grand Chamber of the Court overturned the 2009 decision. It argued that 'the decision whether crucifixes should be present in State-school classrooms falls within the margin of appreciation of the respondent State' (para.70); and that this symbol represents the tradition and the historic development of the country, which the school is meant to help perpetuate. (paras. 67, 68).⁵ This reasoning is in line with the views of Professor Weiler about the necessity to protect Christianity *as part of* FoRB: 'In a society where one of the principal cleavages is not among the religious but between the religious and the secular, absence of religion is not a neutral option' (Weiler 2010). Along these lines, FoRB is primarily understood as a norm protecting religion from a radical secularism that would require freedom *from* religion.

A similar debate was revived by two CJEU cases regarding the interpretation of the Employment Equality Directive (Council Directive 2000/78/EC of 27 November 2000, establishing a general framework for equal treatment in employment and occupation). In March 2017, two decisions were

delivered about two female employees' right to wear an Islamic headscarf in the workplace of private companies. In the one case, that of Samira Achbita (Belgium), the employee was dismissed for wearing a headscarf, in violation of the company's neutrality policy. The CJEU stated that an internal general and undifferentiated prohibition of all visible signs of political, philosophical or religious convictions treats all the company's employees in the same way and does not constitute direct discrimination based on religion. In the other case, of Asma Bougnaoui (France), the CJEU ruled in favour of the applicant who was dismissed after refusing to remove her headscarf, following the complaint of a customer that her choice contradicted the company's rule to maintain a neutral image. However, it did so only because of the absence of clear internal rules in the company proscribing to wear any religious signs for staff in contact with the public, thus confirming the principles laid down in *Achbita*.

Critics of these two CJEU cases targeted the general discriminatory restriction of the religious freedoms of Muslim women, which are limited in the name of secularism, neutrality or social cohesion (Heider 2012; Pei 2013). The ECtHR has also adjudicated on the right to be free from discrimination in the exercise of religious freedom and the manifestation of religious belief in the workplace. More specifically, in the case *Eweida and Others v. UK*,⁶ the applicant, a Christian, claimed that the company she worked for (British Airways) had discriminated against her because, when she refused to either remove or cover the cross she was wearing while at work, she was sent home without pay. Unlike in the two CJEU cases concerning discrimination against the applicants who refused to remove their Muslim veils, however, the ECtHR ruled, in 2013, that the domestic authorities had, in this case, failed to sufficiently protect the applicant's right to manifest her religion, in breach of the positive obligations under Article 9 of the ECHR. The different outcomes over seemingly similar issues between the two European Courts serve to show that even at the realm of law – within which religion has been primarily addressed in Europe – the jurisprudence varies and the understandings and, by extension, the application of FoRB are, in fact, malleable.

Overall, evolutions at global, societal, political and legal levels converge to re-enhance FoRB as a policy issue but only as a second-order one. From scratch, the two scenarios – the importation from global politics and the internal dynamics of EU value politics appear to overlap and to meet the same limits, as illustrated by the case of the way the EEAS turns FoRB as a European diplomatic issue.

How FoRB became an EU diplomatic matter but remained a minor, non-political one

Alongside European Courts, the nascent EEAS has taken initiatives advocating religious freedoms distinctly from other fundamental rights. This endeavour illustrates the range and limits of value- and rights-based institutional agency on FoRB, at the crossroads of internal and international affairs.

The EEAS elaborated a strategy on religion partly by necessity to deal with a pressing international topic, partly as an opportunity to assert itself in the EU internal inter-institutional game. Two case studies of policy instruments dedicated to FoRB are the EU guidelines (2013) and the establishment of the post of Special Envoy (European Commission 2016). Both cases were perceived as possible attempts to transcend purely legal approaches and to single out religion as a political issue. But neither gave evidence of a value-based advocacy of FoRB breaking free from the EU's 'business as usual' in its treatment of religion.

The EEAS tackled FoRB both as a necessity and an opportunity. The necessity concerned the need to respond to frequent invitations made to European institutions to contribute to international conferences on FoRB, which was a difficult task in the absence of in-house expertise. The first attempts to develop common resources on FoRB originated from individuals occupying various positions in national administrations who constituted a transnational 'like-minded group'. Some of these actors later transferred to the EEAS, where they produced supranational practices (Bilde 2015). This initiative was also seen as the opportunity to assert the institutional profile of the new European diplomacy on a timely topic, regarding other EU institutions, third countries and international organisations. It was anchored in the Transatlantic Policy Network on Religion and Diplomacy,⁷

a forum launched in 2015 and co-chaired by officials from the EEAS and the U.S. Department of State. In its institutionalisation thus of FoRB at a global level, the EU is neither a lone rider nor a leader, but rather a follower.

Viewed from Brussels, religion remains 'an exotic and esoteric business at best' (Mandaville and Silvestri 2015). It is perceived as a 'quasi outcome' of human rights policy (Vimont 2014), emerging through other European competencies (trade, development, humanitarian aid). This largely explains why religion is narrowed down to a legal principle. Indeed, the option to give a cultural meaning to FoRB by prioritising the defence of Christian communities worldwide is played down by the opposition of left-wing forces at the EP, and the counter-effects it may produce on the field (Vimont 2014, 331).

All these constraints frame the search for a 'European way' to advocate FoRB, which, as mentioned above, led in 2013 to the formalization of the 'EU Guidelines on the Promotion and Protection of Freedom of Religion or Belief' (EUFoRB). An analysis of the implementation of EUFoRB on the ground shows that European action is still submitted to power games by big players and to a realist defence of EU interests. The interpretation of EUFoRB by EU delegations and diplomacies of member states varied depending on the region of the world, the status of the third country and the interests at stake: the bigger the states, the bigger the stakes and the less EUFoRB were considered.⁸

Another policy development has been the creation of the position of Special Envoy for the Promotion of FoRB outside the EU in 2016.⁹ This Special Envoy duplicated similar positions in international organisations and national diplomacies. As usual, external influences were intertwined with endogenous logics to shape EU bureaucratic politics. The place of the Special Envoy in the inter-institutional game has been controversial. He did not report to the EU High Representative for Foreign Affairs and Security Policy, but instead served as Special Adviser to the Commissioner for International Cooperation and Development. His mandate was focused on action against radicalisation in third countries, particularly in the Middle-East, as the most critical area regarding FoRB.¹⁰ This thematic and geographic focus illustrated the usual links drawn between religion, violence and poverty. Finally, the Special Envoy was established for a term of one year, reinforcing the perception that this was an exploratory policy 'coup'.

The incumbent was Slovak Christian Democrat and former European Commissioner for Education, Training, Culture and Youth, Ján Figel'. In his mandate, Figel' emphasised the use of FoRB as a weapon to tackle the migrant crisis, arguing that the protection of religious minorities would save them from persecution at home. He stated publicly that Europe should rescue Christians at risk all around the world, in alignment with the mainstream European approach favouring multilateralism and collaboration with the UN (Annicchino 2020, 77). As a lone player, Figel' enjoyed more freedom than the EEAS, as a constrained bureaucracy, but remained limited by the post's precarious status and lack of institutional resources. EUFoRB and the Special Envoy constituted a 'policy package' discussed by NGOs, policy-makers and experts. Recurrent reproaches addressed the gap between discourse and concrete actions, and the lack of transparency and clarity in the implementation of the EU policy on FoRB (Portaru 2019).

After the end of J. Figel's mandate in 2019, the Commission had initially announced that the EU would not reappoint a Special Envoy on FoRB, arguing that, though FoRB was still a priority, such a position was no longer relevant.¹¹ Still, after lobbying from religious civil society, the European People's party and other conservative forces, it reversed its decision and chose to continue the mandate.¹² On 5 May 2021, the Commission appointed as Special Envoy for the promotion of FoRB outside the EU Christos Stylianides, a Cypriot national. Compared to other candidates with a more bureaucratic background who had either applied or who were considered for the position,¹³ Mr Stylianides is a political heavyweight as former Commissioner for Humanitarian Aid and Crisis Management from 2014 to 2019, a former MEP and a national politician. A new element is his attachment to the Commission's Vice-President Schinas, who is in charge of leading the Commission's dialogue with churches and religious associations or communities, and with philosophical and non-confessional organisations. This may be seen as a way to export the deliberative

model of the EU worldwide as a solution to prevent discrimination. Stylianides' order of mission includes de-radicalisation and prevention of extremism on grounds of religion or belief in third countries. He is further invited to promote religious diversity and tolerance through education and to coordinate his activities closely with the EU Special Representative on Human Rights. These new arrangements may be read as an effort by the EU to promote the integration of the Special envoy in a cross-cutting approach towards religiously-loaded issues.¹⁴

Looking at the broader picture to date, the original ambitions displayed by the EEAS on FoRB may have met their limits, while other initiatives, like the development of internal training to increase the 'religious literacy' of EU officials, have been increasingly successful. Former EU High Representative, Federica Mogherini, strongly contributed to the enhancement of religion as a diplomatic matter, illustrated by the launch of the 'Global Exchange on Religion in Society'¹⁵ as part of her policy legacy.¹⁶ Mogherini's successor, Josep Borrell, has so far not shown the same interest. This shift in the EU strategy on FoRB may be partly attributed to internal divergences or to indifference.

Meanwhile, external incentives have also faded away, as FoRB has lost some of its gloss in the global sphere. The threat of religious terrorism has reinforced the securitisation of religion and the prioritisation of safety over freedom (Foret and Markoviti 2019). Canada, a pioneer on the topic, closed its Office of Religious Freedom in March 2016 (Lee 2016). The issue still forms an axis of American foreign policy, but is increasingly criticised. The Obama administration had put the emphasis on the engagement of religious actors. During the presidency of Donald Trump, US foreign policy prioritised an understanding of international religious freedom shaped by Judeo-Christian ideology that took precedence over other human rights, such as equality for women and sexual minorities (Haynes 2020). Joe Biden is already criticized by fellow Catholics of reversing this trend and of adopting too narrow a definition of religious freedom, reduced to worship. In their view, President Biden ignores the rights of believers to live all aspects of their lives according to their conscience, including regarding moral issues such as abortion. In short, Biden is reproached for refusing so far – and unlike his predecessor – to turn FoRB into a broad value narrative (Boegel Ellen 2021). It seems that, once again, internal and external elements intertwine to weaken the salience of FoRB as a policy issue and its relevance as a political value and resource for the EU.

Does FoRB frame other religiously-laden issues?

The institutionalisation of FoRB as a European issue must also be assessed in domestic policy sectors. Our findings show that FoRB has not turned into a common matrix with which to deal with religion in the EU. Some examples are the fight against discrimination on grounds of religion and the actions against antisemitism and islamophobia; including the handling of the religious dimension of several crises, especially those related to refugees and identity politics.

The fight against discrimination on grounds of religion: antisemitism and islamophobia

Since 2015, after the wave of terrorist attacks across European countries, specific measures were taken by the EU to fight discrimination against two religious communities: Jews and Muslims. A crucial implication of antisemitism (FRA 2018) and islamophobia (Organization for Security and Cooperation in Europe 2018) is a violation of the freedom to express and observe publicly one's religion, due to an increasing feeling of insecurity. However, freedom of religion is not the key notion framing the policy response offered by European institutions.

A Coordinator in charge of the fight against antisemitism was appointed in 2015 by the European Commission, with the mission to raise institutional awareness on antisemitism and to liaise with civil society. At the legal level, the objective was to punish references to the Holocaust likely to incite violence or hatred,¹⁷ to counter illegal hate speech online and to advocate education. Questions around religious freedom remained elusive in this approach. In July 2016, Von Schnurbein, the first incumbent, conceived of FoRB as a component of the global package of human rights that the EU is

bound to defend by fighting antisemitism. Religion was one among many elements of an ‘open and diverse society’.¹⁸

References to FoRB are even more elusive in the EU actions against islamophobia. As with antisemitism, a Coordinator on combating anti-Muslim hatred was appointed in December 2015. The main areas of action have been teaching and education, integration and social inclusion policies, employment and non-discrimination. FoRB is either not mentioned or is enclosed in the broader value discourse on human rights and fundamental freedoms.¹⁹ Databases developed in support of this policy focus on discrimination.²⁰ In short, the examples of the EU action against Anti-Semitism and Islamophobia do not indicate that FoRB has emerged as a cross-cutting policy category framing religiously-laden issues. Rather, EU actors rely on other notions, such as freedom of expression that allow them to treat religious subjects in a secular way.

The Commission’s fight against hate-speech online exemplifies this practice, which aims both at maintaining the issue within the realm of EU competences and at circumscribing the controversial dimension of religion. In an interview, an official of the Commission’s Directorate General Migration and Home Affairs (Home) in charge of this matter juxtaposes the freedom of expression – that must be upheld – with ‘religious propaganda’ – that should be countered. The reference to FoRB is implicit and is enshrined in the efforts of securitisation of the ‘bad religion’ that must be contained:

‘One of the main questions that we constantly try to address is what are the limits between freedom of expression and religious propaganda? On the one hand, we do not want to place any limits on people’s freedom of speech – and we certainly do not want to tell them what religion they should believe in. On the other, this freedom may in some cases reach the stage and take the form of religious propaganda, which may then lead to radicalisation and terrorism’. (Interview, DG Home, February 2019)

The prevalence of freedom of expression is further confirmed through the ways in which European institutions deal with blasphemy. Blasphemy represents the dark side of FoRB, as extremist religious groups may invoke it against views which they perceive as disrespectful of their own beliefs. Due its lack of competences over religion in internal affairs, the EU is mostly dragged in the debate on blasphemy in external cases. A prominent story was the rescue of Asia Bibi, a Pakistani Christian woman sentenced to death penalty for blasphemy in 2009: MEPs led active campaigns to support her²¹ and the EP nominated her with the Sakharov prize in 2017.²² She was finally liberated and authorised to leave Pakistan. In European circles, Asia Bibi’s story contributed to a reinforcement of the association of religion with violence. Its outcome was framed mostly as a victory for the protection of religious minorities. The EU Special Envoy for Freedom of Religion outside of Europe claimed to have played his role (Gagliarducci 2019), but the incident was perceived as a sign of the limits of European engagement in the advocacy for FoRB *per se* (Portaru 2018).

The refugee crisis: controversial religious framing and suspicions over the uses of FoRB

Like in international politics, religion comes frequently to the fore in European politics in a context of crisis. The examples of the so-called refugee crisis and clashes over the rule of law and identity politics (especially between European institutions, Poland and Hungary) show that, as usual, FoRB is not the main matrix for addressing religious issues.

Religion has been mobilised in many capacities in political and intellectual controversies about migration and the so-called refugee crisis in the second half of the 2010s, either to criticise or to advocate the reinforcement of ‘Fortress Europe’ (Schmiedel and Smith 2018). Most often, however, the religious dimension of the crisis was not directly addressed in policy-processes at national and supranational levels, but constituted the ‘elephant in the room’ that everybody had in mind but nobody named (Mavelli and Wilson. 2017). German Chancellor Angela Merkel was a notable exception to this. In 2015–2016, she largely contributed to the framing of the debate over migration in religious terms, with an emphasis on FoRB. First, she referred to the liberty that should be granted to newcomers: ‘Although some religiously motivated behavior may seem strange, we must always keep

the high value of religious freedom in mind', as the latter belongs to the 'core of what makes our country what it is and what we hold dear' (Kinkartz 2016). Second, by referring to the Bible and the Christian moral duty to help those in need (Mueller 2016), Merkel sought to motivate Germans to enjoy their own religious freedom and to reinvigorate the spirit of Christian-democracy by welcoming refugees. As the daughter of a pastor, her advocacy for religious freedoms was directly related to the spirit of the Reformation and the historical remembrance of Catholic persecutions against Protestants (Carrel 2017).

This stance – which Merkel had to downscale after a political backlash in Germany involving the rise of the far-right parties Alternative for Germany (AfD) and Pegida (Mushaben 2017) – sharply contrasted other political and media discourse. In Eastern Europe countries, such as Romania and Hungary, religion was mostly mobilised in public discussions in secularised cultural forms to foster identity politics. FoRB was not really on the agenda (Vincze 2018). Religion operated as a precondition for the acceptance of migrants on the basis of a presumed 'cultural conformity'. In Poland, Foreign Minister Witold Waszczykowski stated that 'an individual who arrives in Poland must demonstrate that he or she can integrate in our culture and society. Therefore, we can place greater hopes that Christian refugees have more potential to assimilate' (Brändlin 2016). Accordingly, freedom of religion was not a priority and could even become an object of suspicion. Refugee conversions from Islam to Christianity in Europe and in Turkey (Casciani 2016; Sherwood 2016) were questioned as ways to maximise their chances to get asylum, to secure welfare protection provided by some Christian NGOs and sometimes to claim protection against persecution in the country of origin (Fine, 2018). FoRB was then seen as a principle instrumentalised to gain *other* rights or advantages.

Controversies on migration and the refugee crisis were one battle of a larger conflict mobilising religion and religious freedoms as a means to serve identity politics, together with other European values, primarily rule of law (Hennig and Weiberg-Salzman 2021). Hungarian prime minister V. Orbán has been a protagonist in this ongoing crisis and has re-appropriated the notion of religious freedom in a way that strikingly illustrates its plasticity.

Orbán's assault on religion and FoRB for the appropriation of EU identity politics

Religious freedom is a salient point in the EU's criticism of Orbán's 'illiberal democracy', especially regarding cooperation privileges granted to historically grounded Christian Churches, considered as violations of the formal separation between church and state and as discrimination between religious communities (Zoltán and Bozóki 2016, 143). In response, V. Orbán reappropriated the notion in his move to establish himself as a key player in European politics, openly challenging European institutions and claiming ideological leadership for the renewal of European Christian democracy and European identity (Rupnik 2020). The refugee crisis was a fresh opportunity for Orbán to assert the Christian essence of Europe, by selecting migrants on the basis of their denominational belonging:

[the migrants] arriving have been raised in another religion, and represent a radically different culture. Most of them are not Christians, but Muslims. This is an important question, because Europe and European identity is rooted in Christianity'.²³

Subsequently, Orbán expanded his plea to 'preserve Hungary's security and Christian culture', putting forward a customised version of religious freedoms as 'Christian-freedom politics'. This notion aimed at giving him even more leverage to assert Christianity as the foundation of national and European identity and to rebrand Christian democracy (Zoltán and Bozóki 2016, 143). He established Christian freedom as the nexus of illiberal politics:

'Policies geared towards Christian freedom are about working to protect everything that liberals neglect, forget about or despise (. . .) We are going to spend the next 15 years on the mission of our generation to confront the liberal spirit of the era and liberal internationalism. (. . .) There is something on our side nonetheless that can be said to be beautiful, free and just; something that can be

summed up as Christian freedom. (...) And it's intolerable if Hungary, Poland, Austria, Italy and the Czech Republic stick to their own views, and they must be hated, because they stand against universal good of humanity.²⁴

Orbán clarifies that he is not only defending Hungarian national sovereignty and identity but also claiming European and even universal leadership. In this ambition, Christian freedom is turned into a rallying flag that has very little in common and creates many tensions with the usual EU advocacy for religious freedom.

At a European level, Orbán's discourse has been met with opposition wavering in time and space. The conversion by the mid-1990s of his party, Fidesz, from a liberal anti-clerical force into a frontrunner of European Christian civilisation has been an embarrassment for the European's People Party, its continental political family that is constantly divided between the option to evict him and the fear of electoral loss and weakening at the EP (Zoltán and Bozóki 2016). The main opposition to Orbán comes from countries like France, which are anchored in a tradition of critical distance from religion, as well as from other highly secularised societies where a strong affirmation of religion in both public and private realms seems irrelevant. Nordic and Benelux countries with a Protestant heritage have also reacted, due to their distrust of a self-assertive Catholic Europe.

Orbán's ideological discourse on illiberal democracy has gained undeniable audience. Still, the religious dimension is salient in symbolic terms, but it does not necessarily instruct substantial policy and political choices. And the reframing of religious freedom has not imposed itself as a mainstream category of the European debate, nor has it led to a revival of FoRB as a priority issue.

Looking at the broader picture, Orbán's initiative is neither the only nor the first attempt of this kind to mobilise religion as raw material for identity politics at the extreme right of the party spectrum. Other attempts to secure cultural hegemony and ownership of religion are illustrated by the school of political science founded by Marion-Maréchal Le Pen in 2018. Her ambition was to advocate 'the principles of the Christian and Greco-Roman civilisation' to gain control of value-loaded issues, such as gay marriage or medically-assisted procreation (Soullier 2019). In a similar endeavour, the academy launched by Donald Trump's former advisor, Steve Bannon, together with Benjamin Harnwell, director of the Dignitatis Humanae Institute²⁵ in Brussels, sought to rearm intellectually and normatively Catholic elites and to reverse the process of secularisation in Europe (Harlan 2018). Such efforts to rejuvenate 'Christian Europe' quickly met their limits regarding the divergent agendas of each nationalist leader, and above all a common refusal to accept Bannon's leadership (De La Baume and Sciorilli Borrelli 2019). This suggests that a US-style advocacy around FoRB is hampered in the EU context by the underlining European diversity in the framing of relations between religion and politics on the one hand, and by the weak agency of religious rhetoric in politics on the other.

The above also serve as reminders that this line of discourse is neither new, nor is it more effective now than it was before. Bannon's initiative was considered a direct response 'to a growing secularist intolerance to Christians of all confessions that has led to a myriad of attacks on human dignity',²⁶ with the recurrent argument that religious freedom was granted to all minorities except Christians. This rhetoric was developed as early as 2004 by Rocco Buttiglione, an Italian Commissioner candidate and outspoken Catholic who had to withdraw following the attacks he received for his statements about homosexuality being a moral sin and migration.²⁷ Buttiglione framed his failure as an outcome of the 'Christianophobia' of European institutions (Foret 2007, 7). Almost twenty years ago, thus, the ingredients (and part of the actors) around religion were the same, as was the particular status of FoRB: its secondary role in the formal institutional debates and in symbolic politics; its association to American cultural imperialism; as well as its use by Christian traditionalists to appropriate the legitimate repertoire of human rights.

Conclusion

Our findings show that no politics of religious freedom has developed in Europe. FoRB has gained prominence on the political and policy agenda and is likely to remain a controversial subject in the

years to come, both in foreign and domestic affairs. However, it neither frames an encompassing narrative serving as a matrix to deal with all religiously-laden issues, nor does it constitute a bone of contention strong enough to polarise party competition within EU arenas, civil society mobilizations or conflicts between member states, let alone in the public space. Like religion at large, FoRB is a meaningful symbolic resource – that may be culturalised to appeal to specific constituencies (as in Orbán’s reference to Christian freedom) – but not a policy-building cause.

Both our propositions seem to thus stand. First, a US-style politics of religious freedom is unlikely to emerge due to the weak relevance of religion in Europe that makes it unable to shape issues, cleavages and coalitions. Transatlantic networks of actors and circulation of ideas do exist and contribute to some convergence in policies and discourses. Social, political and legal realities are however too diverse for further comparison and collaboration.

Second, FoRB has also benefited from endogenous trends in European governance, like the rise of value politics as the new mantra of EU governance. This was especially obvious in the attempt of the EEAS to brand FoRB as a cause to be upheld globally in a distinctive European manner. Nevertheless, in internal politics, the appeal to FoRB comes mostly from peripheral forces in national and European politics and has little impact on policy outputs. It is more a response to identity fears and a strategy of containment (the defence of Christian freedom responding to the perception of excessive freedom of minority denominations) rather than a full-fledged government manifesto. Even in Orbán’s Hungary, where it is used as a rallying flag, FoRB is an ornament with high symbolism and not a cornerstone of authoritarian policy agendas. Looking at the larger European context, FoRB has major flaws. It is essentially a reversible political resource, as denominational minorities can claim it to challenge culturalised majority religions. European secularism, understood as the maintaining of a distance between religion and politics, leaves ample space for the mobilisation of religion as part of memory and identity, which, though likely to stir controversies in diversifying societies, does not activate actual policy. The EU weakens the potential of religiously related value politics even further due to the necessity of compromise between various national traditions and the heavy reliance on law to circumscribe normative dissents. Finally, to make culture wars on FoRB, you need warriors, and most Europeans simply just do not seem to care enough.

Notes

1. <https://hungarytoday.hu/orban-christian-freedom-v4-west/> (accessed August 28, 2020).
2. <https://www.pewresearch.org/fact-tank/2019/02/19/british-attitudes-on-national-identity-and-religious-minorities-not-unique-in-eu/> (accessed 29 June 2020).
3. https://europa.eu/european-union/about-eu/eu-in-brief_en (accessed 29 June 2020).
4. For more on the two Court’s rulings around religious freedoms see: Fokas (2016), ‘Comparative Susceptibility and Differential Effects on the Two European Courts: A Study of Grassroots Mobilizations around Religion’, *Oxford Journal of Law and Religion*, Vol. 5, Issue 3; and, more recently Schorkopf, Frank; Uhle, Arnd; Wolf, Judith (Hg.) (2020), ‘Institutionen unter Druck. Europarechtliche Überformung des Staatskirchenrechts?’. Essener Gespräche zum Thema Staat und Kirche. Aschendorff Verlag.
5. [https://hudoc.echr.coe.int/eng#f{“documentcollectionid2”:\[“GRANDCHAMBER”,“CHAMBER”\]}](https://hudoc.echr.coe.int/eng#f{“documentcollectionid2”:[“GRANDCHAMBER”,“CHAMBER”]}) (accessed June 29 2020).
6. [https://hudoc.echr.coe.int/fre#f{“itemid%22:\[%22001-115881%22\]}](https://hudoc.echr.coe.int/fre#f{“itemid%22:[%22001-115881%22]}) (accessed May 22, 2021).
7. See <https://religionanddiplomacy.org.uk> (accessed August 21, 2020).
8. These observations rely on a survey of EU delegations. More information in Foret (2017). ‘How the European External Action Service Deals with Religion through Religious Freedom’, EU Diplomacy Papers, College of Europe, 7/2017: <https://www.coleurope.eu/fr/research-paper/how-european-external-action-service-deals-religion-through-religious-freedom>.
9. https://ec.europa.eu/commission/presscorner/detail/en/IP_16_1670 (accessed August 25, 2020).
10. ‘Mandate and work plan of the Special Envoy for the promotion of freedom of religion or belief outside the European Union’, Brussels, 26 September 2016. Internal document quoted in Foret, 2017, 20.
11. <http://1ztp833emcfef7tm24jjqbe-wpengine.netdna-ssl.com/wp-content/uploads/2020/06/International-Religious-Freedom-Roundtable-FORB-002-Copy.pdf> (accessed June 20, 2020)

12. <https://www.catholicireland.net/eu-continues-mandate-for-special-envoy-for-religious-freedom-after-campaigning/> (accessed September 25,2020).
13. Information by an internal source at the European Commission under condition of anonymity, November 2020.
14. European Commission, « The European Commission appoints Special Envoy for the promotion of freedom of religion or belief outside the EU », press release, https://ec.europa.eu/cyprus/news/20210505_1_en
15. <http://www.federicamogherini.net/presenting-the-new-global-exchange-on-religion-in-society/?lang=en> (accessed June 11,2020)
16. Speech by High Representative/Vice-President Federica Mogherini at the launch of the initiative 'Global Exchange on Religion in Society'.
17. European Council. 2008. "Framework Decision of 28 November 2008 on Combating Certain Forms and Expressions of Racism and Xenophobia by Means of Criminal Law."
18. Katharina von Schnurbein, Speech at Informal meeting of the General Assembly of the UN, 26 June 2019.
19. https://ec.europa.eu/info/policies/justice-and-fundamental-rights/combating-discrimination/racism-and-xenophobia/combating-anti-muslim-hatred_en#the-commissions-coordinator-on-combating-anti-muslim-hatred (accessed June 15,2020).
20. <https://fra.europa.eu/en/publication/2017/second-european-union-minorities-and-discrimination-survey-muslims-selected>; <https://fra.europa.eu/en/databases/anti-muslim-hatred/> (accessed June 15,2020).
21. See <https://www.parismatch.com/Actu/Politique/MAM-et-Dati-en-croisade-pour-Asia-Bibi-658724> (accessed August 30,2020).
22. <https://www.la-croix.com/Urbi-et-Orbi/Actualite/Carnet/Asia-Bibi-nominee-Prix-Sakharov-2017-2017-09-26-1200879878> (accessed 21 August 2020)
23. <https://www.nytimes.com/2015/09/04/world/europe/hungarian-leader-rebuked-for-saying-muslim-migrants-must-be-blocked-to-keep-europe-christian.html> (accessed September 10,2020)
24. <https://dailynewshungary.com/orban-the-point-of-illiberal-politics-was-christian-freedom/> (accessed July 1 2020).
25. <http://www.dignitatishumanae.com/index.php/home/> (accessed July 1 2020).
26. See 'About the Institute': <http://www.dignitatishumanae.com/index.php/about-us/about-the-institute/> (accessed September 11,2020).
27. http://www.europarl.europa.eu/hearings/commission/2004_comm/pdf/gen_buttiglione_fr.pdf (accessed June 15,2020)

Disclosure statement

No potential conflict of interest was reported by the author(s).

Funding

This work was supported by the Fonds de la Recherche Scientifique (FRS-FNRS) under Grant PDR/OL T.0252.18;Fonds De La Recherche Scientifique - FNRS [PDR/OL T.0252.18.];

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