Religious Diversity, Social Control, and Legal Pluralism: A Socio-Legal Analysis

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Introduction

Religious diversity is a fact of modern life, even if some leaders of societal institutions deny and regret it. Most societies have a dominant religious tradition, and some of those religions have very strong legal protections and prerogatives; they might even be designated as a "state religion." However, no modern society can claim that there is no religious diversity within its boundaries. Migration patterns caused by political conditions, wars, natural disasters, and economic conditions, facilitated by modern means of travel and communication have guaranteed that various ethnic and religious minorities would develop throughout the nations of the world. Also, new indigenous religious groups have developed within societies in response to conditions experienced by members of those societies, including disquiet about the activities and culture of dominant religions. Some newer movements – referred to as New Religious Movements (NRMs) by scholars – have spread across national boundaries because of deliberate efforts to promote their beliefs and values to others, also contributing to religious diversity.

Given the undeniable fact of religious diversity, questions arise about how societies respond to the increasing variety of religious faiths within their borders. Are religious minorities allowed to function within public space, and if so, how? Are they allowed to operate as legal entities with rights and privileges associated with larger traditional faiths? Or, are minority religions harassed by authorities and attacks on them by others allowed to take place? What rights and privileges are allowed members of minority faiths? Are minority religious groups openly discouraged from building or renting space to function, and are they disallowed from opening banking accounts or owning property? Can they offer religious education classes within public schools, or function as chaplains in the military?

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Continuum of legal social control over minority religions		
Operating outside formal legal structure but with caution; typically Ignored by authorities	Operating within legal structure with varying privileges according to placement in hierarchy of accepted religions	Operating outside legal structure with approval by authoritiesbut with some limitations

Fig. 1 Continuum of legal social control over minority religions

Answers to these and related questions will reveal much about the degree of tolerance and religious freedom in a society, and also will indicate to what degree minority religious groups are allowed to exist and function within a society. Modern societies are increasingly governed by formalized legal structures. The ways those structures are built and the degree of flexibility within those structures reveals how open and accommodating societies are when dealing with minority faiths developing within or coming from outside their borders. A continuum can be posited (see Fig. 1) that involves significant differences in the legal status of minority religious groups and the ways different societies manage minority religious groups.

At left end of the continuum are religious groups with no legal status at all, which means they are not formally registered and recognized by the state. Religious groups at this end of the continuum are generally quite small, and therefore usually are viewed as inconsequential by societal authorities unless some action is taken by the group that calls attention to it by authorities. These groups operate outside the bounds of whatever legal structure exists within a society, but are always potentially subject to social control actions by the state in which they exist. Ironically, these groups that operate outside the bounds of societal legal structures can implement their own norms and values to an extent, and thus might be thought of as having a very limited form of legal pluralism. However, these groups must operate carefully in order not to attract the attention of authorities. Such groups may be allowed to exist and function with impunity outside the formal legal structure in many societies, but in others (China being an example) they could be subject to arbitrary and punitive efforts at social control by governmental authorities.

In the middle ranges of the continuum are minority religious and ethnic groups that are allowed some measure of legal status, with attendant rights and privileges that vary greatly by society and by specific group. Many societies have formal or informal hierarchies of religious groups, and institutional structures that enforce the rules associated with the various levels within the hierarchy (Richardson 2001; Durham 1996). Typically these minority religious groups are officially registered through a process the state has established, and they are categorized within the hierarchy of religious groups thus making it clear what the group can and cannot do within the society. There are gradations in the middle ranges of the continuum,

which means there are many opportunities for states to exercise social control as they attempt to manage religious diversity within their borders.

At right end of the continuum would be religious groups that have managed to acquire a degree of functional legal autonomy by being allowed to have their own legal enclave in which the group's customs, norms, and rules operate, implemented by their own institutional structures. Such groups are generally larger or geographically isolated so that exercising social control over them would be problematic. Also, a society's history might play a role here, as indigenous peoples might be allowed to retain a degree of autonomy. Societal authorities may simply decide to leave such groups alone as much as possible, and let them govern themselves using their own norms and customs.

The situation to the far right of the continuum would be an example of legal pluralism functioning for a religious group within a society. Legal pluralism is defined as occurring when two or more legal and normative structures are allowed to function with the same geographic space. How the two (or more) legal structures function within the legal structure of a society can vary greatly, of course. Some legal pluralism situations might involve only certain matters, such as domestic affairs, to be handled within the subgroup's confines, whereas different societies might allow other areas of life, such as financial matters, to be governed by norms and rules of the subgroup. So, as in the other two major categories on this continuum, there are gradations and ambiguities present that must be understood and taken into account by minority religious groups, as the privileges associated with allowing some degree of legal pluralism can be withdrawn by leaders of the society.

There is a definite reciprocal relationship and interaction between the presence of minority religious and ethnic groups and the development of legal pluralism in a society (Beckford and Richardson 2007; Richardson 2009). If there is openness and flexibility, with religious diversity actually being promoted by a society, then minority groups may be more prone to come into that society, and indigenous religious groups may also be encouraged to develop. If there is a perception that the society is closed and unwelcoming of religious diversity, this may discourage attempts to develop different religious traditions within the society, which also would mean less legal pluralism. But, the presence of religious and ethnic minorities, especially large and politically strong ones, may in turn encourage the development of legal pluralism within a society as these groups negotiate with the powers that be in a society for rights and privileges that allow more self-governance by the groups. Thus this is an ongoing and even dialectical process that can evolve rapidly as conditions and perceptions change within a society.

Theoretical Considerations

There are a number of relevant theoretical traditions germane to understanding how religious diversity is dealt with within a society, and how religious diversity relates to the development of legal pluralism. Adopting a broad socio-legal perspective

focuses attention on the history and culture of a society, but also incorporates theories and methods from the social sciences. Thus this approach is explicitly interdisciplinary, calling on several related areas of scholarship to seek a fuller understanding of the effects of religious diversity on a society, and how the society responds to diversity. I have taken this approach in earlier writings, and will be referring to them in what follows (Richardson 2006b, 2007, 2011b; Richardson and Springer 2013).

Sociology of Religion and the Religious History of a Society

The religious history of a society is, of course, very important in understanding how a society might treat minority faiths. If there is a long history of religious pluralism, then the society's political leaders may have, over time, found ways to accommodate religious differences, even if there is a dominant religion that has more privileges and higher status in the society. Such arrangements are always subject to internal or external events that might disrupt the peaceful co-existence mode that had evolved over time. Events such as the destruction of the World Trade Center or the Madrid train bombing can shift public opinion rapidly about certain minority groups within a society.

However, there are historical examples of societies that have accommodated different religious traditions for periods of time, and done so relatively peacefully, as Jamila Hassan (2011) discusses in the case of Malaysia. The accommodation may derive from a formal legal structure that is established that includes a hierarchical arrangement with attendant privileges by category, as has been developed in Singapore (Hill 2004), or the accommodation could be based on customs of long standing, perhaps even from colonial times. Accommodation mechanisms could include a casual approach that ignores minority faiths as long as they are not perceived to be disruptive of the social order, or accommodation could include an overt effort to manage religious diversity using formal processes and procedures established in law.

In situations where minority faiths have developed more recently or come into a society from outside, problems can arise, and quickly. Dominant religious groups may feel threatened when indigenous religious groups arise from within the tradition or when groups enter the society from outside and begin aggressive proselytizing and criticizing the dominant religious tradition. Dominant religions also may work in concert with political authorities to defend and extend their prerogatives and influence using minority faiths as pawns in such machinations. Indeed, dominant religious traditions may attempt to foment anxiety and concern about minority faiths quite deliberately, as was the case with Russia from the 1990s onward. The Russian Orthodox Church (ROC) was attempting to reestablish itself as the dominant faith of the Russian people and as an organization with political influence (Shterin and Richardson 2000, 2002). ROC leaders courted conservative nationalistic politicians who were quite willing to join forces with the ROC using minority

religious groups as a foil in their efforts. Similarly, Chinese authorities seem to have used the Falun Gong as a way of solidifying the authority of the Chinese Communist Party during a time of rapid social change in China (Edelman and Richardson 2005; Tong 2009).

There are other concepts besides religious pluralism from the Sociology of Religion that could be brought to bear concerning social control of minority religions. One that is particularly relevant concerns whether a society defines itself as secular or religious (or somewhere in between), and how it implements the relationship between church and state. If a society defines itself as strictly secular (France and Turkey are examples), then the state apparatus may exert considerable effort to control religious groups of all kinds. If a society defines itself as religious, possessing of a theocratic state (Iran is an example), then even more rigorous efforts might be made to control, or even exterminate rival religions. Most modern states fall somewhere in between these extremes, and have worked out arrangements whereby there is some degree of separation of church and state, and mechanisms for managing religions and religious groups have been developed. How those arrangements are constructed has immense implications for social control of religious groups.

Characteristics of Legal and Judicial System

Legal and judicial systems vary considerably in terms of basic characteristics, and the way they are constructed and function influences how minority religious groups are treated in a given society. In some societies the justice system is completely subservient to the political realm, and those functioning within the system lack *autonomy* (see Finke 2013: 302–303; Finke et al. 2013). In societies operating with low levels of autonomy those who enforce the law and make decisions about conflicts and disputes that end up in court are simply following directions or expectations of other more powerful individuals or institutions. Not to do so can result in loss of their position, if not a worse penalty. China is such a society at present where the judicial system lacks independence, and even lawyers attempting to represent clients such as Falun Gong participants can get arrested for doing so (Edelman and Richardson 2005). In Russia there also are examples of directions being given and followed in major cases involving religious groups, in what is referred to as "telephone justice" (Shterin and Richardson 2002).

Examples of China and Russia are not rare, however, as many nations have relatively weak justice systems that are subservient to military rule (present day Egypt), dominance of a particular religion (Iran), or one particular political party (present day Hungary). In such societies the law and its enforcement becomes a weapon for use by those who dominate the society. This use of law and the justice system as a weapon – rule *by* law – is quite contrary to the modern western concept of the rule *of* law, which means that all citizens should be treated equally under the law, and that the law should be administered in a fair and equitable manner.

Legal systems vary greatly in terms of how *pervasive* they are. Do legal considerations affect few aspects of life, or do such considerations impinge on most daily activities of citizens and groups, including those related to their religious? Are societal institutions involved in surveillance and monitoring of minority religious groups (Richardson and Robbins 2010), or are such groups generally left alone? A less pervasive legal system would probably result in less attention being paid to smaller religious groups, such as those at the left end of the continuum posited above. Legal pluralism might also be allowed to flourish with some groups, if societal leaders decided that this would be a more prudent course than attempting to enforce normal rules and laws of the society on a minority religious group. Minority religious groups in the middle ranges of the social control continuum also might see fewer efforts to regulate and manage their activities in a society with a less pervasive and intrusive legal system. However, even in more open societies with guarantees of religious freedom minority religious groups may be subject to monitoring and surveillance, as has been shown in the U.S. with the Branch Davidians (Wright 1995) and the Fundamentalist Latter Day Saints in Texas (Wright and Richardson 2011), as well as other groups in the U.S. and elsewhere (Richardson and Robbins 2010).

Closely related but not completely overlapping with pervasiveness is the variable of degree of *centralization* of a legal system. If a society had a highly centralized legal system, including a centralized judicial system, then this could, and usually does, indicate considerable control being exerted over the lives of citizens in the society. Legal systems in western European nations are all, to varying degrees, centralized, with Switzerland being an exception to the usual rule with its Canton system of governance. And Germany grants considerable authority to its internal units (called "lands"). However, when a society such as Germany with its centralized legal system also has a "culture of paternalism" this can result in significant social control being exerted toward minority religious groups, with efforts made through governmental institutions to warn citizens of the dangers of such groups (Beckford 1985; Richardson and van Driel 1994; Seiwert 2004). France with its secular ideology of *laicité* working in concert with its centralized legal system, also has attempted to implement strong measures of social control toward minority faiths (Richardson and Introvigne 2001; Beckford 2004; Duvert 2004; Palmer 2011). And China, a quite centralized state system, certainly engages in monitoring and surveillance of unapproved religious groups, and then takes punitive action based on information gathered (Tong 2009; Edelman and Richardson 2005; Richardson 2011a).

In societies with a federated approach that allows considerable autonomy to states or territories, such as in the United States or Australia, there is more variety in how legal systems operate, thus allowing more flexibility and opportunity for citizens in such a society. Thus if a minority religion group is harassed by authorities in one region of a society with less centralized governance structure, it might be able to move to another area where the legal situation and social control apparatus differed in important ways. However, even in federated political systems there is usually an overarching legal system operating through a national

constitution and legal structure that places limits on what can occur within the federated units that make up the nation. For example, the Bill of Rights of the United States Constitution with its First Amendment guaranteeing religious freedom and precluding establishment of a state religion must be taken into account by any state or local government as it deals with minority religious groups. However, many nations such as Australia do not have a Bill of Rights, so any guarantees are based more on tradition, possibly allowing more flexibility in dealing with minority faiths (but see Bouma (2011) on Australia's culture of tolerance toward minority religions).

There are important caveats to the statements just made about the effects of centralization and pervasiveness of justice systems. One relates to an earlier discussion (Richardson 2006b) about the role of a "strong state" (which might better be thought of as a "history" variable) in promoting and protecting religious freedom for minority faiths. A strong state would usually have a highly centralized justice system. This could allow the state, if its leaders desired, to act in a punitive manner toward religious groups, and do so with impunity, as is the case with contemporary China (Tong 2009). But, leaders of a strong state could also decide to promote religious freedom, and allow or even encourage minority faiths to flourish within the society. This positive approach to diversity and religious pluralism may be rare, but it is possible, as Beckford notes in his discussion of religious pluralism (Beckford 2003). Arguably the United States can be said to promote religious freedom through its pervasive and overarching centralization of a legal system that incorporates key values found in the Constitution, such as the guarantee of religious freedom. Canada seems to be functioning similar since the development of the Charter of Rights and Freedoms adopted in 1982, which makes it clear that the provinces are subservient to federal rules and norm concerning human and civil rights, including in the area of religion.

A strong state could also decide to allow legal pluralism to develop within a society for some ethnic and religious groups, and even sanction such developments with constitutional provisions and statutes, as is the case with the relatively new South African legal structure (Danchin 2013). This might be done for reasons of convenience and economy – it could be less trouble to allow a legal pluralistic situation to develop than to attempt to force compliance with general laws within in a society. Such a situation of legal pluralism in a "strong state" also could simply be a recognition that a society is religiously diverse, and that the societal governance structure must allow for this fact of life (see discussion above about importance of taking religious history into account). Or such a development might simply derive from actions of societal leaders who value religious diversity and pluralism. Therefore it is not at all the case, just because a society has a pervasive and centralized legal system, that minority religious groups will always be more subject to social control.

Note however that, especially in strong state societies with a dominant religion having many rights and privileges, centralization and pervasiveness would usually be expected to contribute to more stringent efforts at social control of competitive minority faiths. Again, the case of Russia with the growing influence of the ROC

comes to mind as an example of this type of historical circumstance. This occurs even though there is some decentralization of the legal system in Russia. However, in Russian hinterlands the westernized notions of individual religious freedom never took root after the fall of communism, lending support to the dramatic change of law in 1997 that allowed much more control of minority religions (Shterin and Richardson 1998).

One additional but crucial consideration is that many modern societies are themselves subject to regional or even international legal and judicial systems. For example, the United Nations International Court of Justice, the European Court of Justice, which is the judicial arm of the European Union, and especially the European Court of Human Rights (ECtHR) which is the court for the 47 nations that are members of the Council of Europe (COE) exercise tremendous authority and influence over member nations and their justice and judicial systems. The ECtHR is especially noteworthy in terms of religious freedom as it has in recent decades taken up the cause of protecting minority religious groups, especially in former Soviet dominated nations but also in nations that were some of the original founders of the COE (Hammer and Emmert 2012; Richardson and Lykes 2012; Richardson 2014b; Richardson and Lee 2014; Lykes and Richardson 2014).

Thus, any analysis of how justice systems work has to take into account whether they are part of larger systems of justice, and the authority and effectiveness with which those larger systems function. As Hammer and Emmert (2012) note in their systematic treatment of former Soviet dominated nations, there is a growing tendency for courts in those nations to cite ECtHR case law and decisions as precedent, and to adhere to those precedents. Sadurski (2009) argues that the ECtHR is becoming more like an overarching "Supreme Court" for the region that is developing a willingness to declare laws "unconventional" (not comporting with the European Convention on Human Rights), and encouraging COE Member States to change their laws to better fit with Convention values. Related to this development is the growing importance of constitutional courts in the COE region. Such courts have, in some newer COE nations, over-ruled decisions of supreme courts, and exerted themselves, sometimes on behalf of minority religions (Sadurski 2006, 2009; Richardson and Shterin 2008; Richardson 2006a).

Another characteristic of legal systems that deserves mention is whether there is an *adversarial* or *inquisitorial* system operating. If the former, this means that those involved with the legal system have the right to have an advocate who represents them within the justice system. In the latter situation no advocate is possible, as judges perform multiple roles and manage cases as they see fit; no personal advocates are allowed. It seems clear that having an advocate for a defendant member of a minority religion or for a religious group itself would greatly strengthen chances for a party in a legal matter to defend themselves and increase the chances that they might ultimately prevail. Thus the chances of exerting social control over the activities of a religious group would seem lower in societies where an adversarial legal system operates, and thus those societies might be more prone to allow forms of legal pluralism to exist with some minority faiths.

Sociology of Law Theories

Two prominent Sociology of Law theorists, William Chambliss and Donald Black, have produced theoretical schemes that are quite different, but also somewhat complementary. And both schemes are useful in understanding how minority religious groups are dealt with by societal authorities attempting to manage and even control such groups and movements. Their theories can help with understanding how legal pluralism might be allowed to develop with certain religious and ethnic group. I have applied ideas from these two theorists in some of the work mentioned earlier (Richardson 2006b, 2007, 2011b; Richardson and Springer 2013). More recently the theoretical scheme of Chambliss has been applied directly to understanding how efforts to extend elements of Islamic Shari'a law are being dealt with in American, Canada, and Australia (Richardson 2014; Also see Turner and Richardson 2013).

Applying Donald Black's Theorizing

Black (1976, 1999) focused more on the question of "who wins" when conflict develops that requires resolution. His quite abstract theorizing encompasses various types of self-help dispute resolution, but also is applicable to what happens when disputes end up in court. Black posits some key variables including *social status and prestige,* and *cultural and personal intimacy* to help explain who usually prevails in disputes that arise in society. He and a former student also have proposed an intriguing concept of *third party partisan* to assist in explaining what happens when an entity unexpectedly prevails in a dispute (Black and Baumgartner 1999).

The applicability of Black's theorizing to the area of social control of minority religions is easy to demonstrate. Sometimes religious groups and individuals acting out their faith find themselves caught up in legal battles as they defend themselves from actions of the state when they are perceived to have violated a law. Such entities or individuals might also find themselves defendants in a civil legal action brought by someone who claimed to have had their interests injured by the group or individual. And in some societies private individuals or groups are allowed to bring legal actions against religious groups working in concert with the state. (France and Russia are two such societies.) When such legal actions occur, Black's theorizing allows predictions about who will prevail – those of higher status and more prestige who share cultural and perhaps even personal intimacy with decision makers will usually prevail. And when a party slated to lose because of being of lower status and prestige and not sharing cultural and personal intimacy with the decisions makers does in fact win, the concept of third party partisan often can help make sense of the outcome. In practical terms, this latter situation means that someone who is of higher status and prestige and who does share cultural and even personal intimacy

with the decision makers intervenes and becomes a partisan on behalf of the defendant.

Black's theorizing can assist in understanding what happens with religious groups arrayed along the continuum posited above. Groups to the left end are typically smaller and newer, and, unless they do something to attract attention from authorities, they are typically left alone unless and until something happens that does brings them to the attention of societal authorities. If that happens such groups are greatly disadvantaged, whether it is in dealing with representatives of institutions of society such as child welfare agencies, school authorities, or tax agencies. If irate parents of relatively high status and prestige, upset that their son or daughter has joined such a group, can call attention to the group and succeed in getting authorities and mass media to focus on them through political processes or by filing civil suits, the group also is quite disadvantaged.

In these situations the religious group would usually be expected to lose in whatever confrontation developed, unless some entity of much higher status and prestige intervened on their behalf. Such a third party intervention might involve prominent legal assistance from a well-respected advocate (attorney) who takes on the case (if such is allowed in the society), but it might also involve an organization such as the American Civil Liberties Union or an organization of religious groups seeking to defend religious freedom. Indeed, it is even possible to characterize judges or courts as third party partisans if they value religious freedom and have the authority of constitutional or convention provisions or statutes to support them in their decisions. Recent decisions of the European Court of Human Rights (ECtHR) and the United States Supreme Court demonstrate this last point quite well (Richardson and Lykes 2012; Richardson and Shoemaker 2014; Lykes and Richardson 2014; Richardson 2014b).

Those entities on the far right hand of the continuum might be allowed to develop and enforce their own internal laws and procedures in an example of legal pluralism. Leaders of such groups would clearly have to possess sufficient status and prestige, and perhaps also cultural, if not personal, intimacy with societal leaders to effect such an agreement with authorities. The status and prestige for leaders of a minority group seeking a relatively autonomous legal system might derive from various sources, but clearly one such source could be strength of numbers and an accompanying threat, implicit or explicit, that conflict and even violence might occur if the group was not allowed to develop and implement its own rules and procedures covering at least some areas of life. The minority religious group might garner some support from third parties in the process, as leaders of the political structure in a society might agree to allow some form of legal pluralism to develop for a group for several reasons, including convenience or an ideological belief that the group's cultural values should be allowed expression. The most obvious examples of legal pluralism in contemporary western societies involve indigenous peoples being allowed some self-governance, and the development of some degree of legal pluralism with Jewish, Catholic, and even Muslim

groups concerning domestic matters such as divorce, child custody, and inheritance rules.[1] Some of these situations might be sanctioned by law in a given society, while others are allowed to exist without formalization in law.

The middle range of the continuum can offer even more clear application of Black's theories. Groups in the middle ranges are subject to regulation such as being placed in some sort of hierarchical ranking of religious groups that grants different rights and privileges depending on where the group is located in the hierarchy. The placement of groups in the hierarchy is done by officials in a governmental agency which has the task of managing religious groups in the society. In developing a hierarchy of religions those officials implement their own values and the values of those who placed them in their positions. Those religious groups with higher status and prestige, and which promote values shared by those doing the ranking would be expected to be ranked at the top, and those groups having lower status and prestige and whose values are not shared by the decision makers would be placed lower in the ranking scheme, and allowed fewer rights and privileges.

One other relevant aspect of Black's theorizing was developed by another student of his, Mark Cooney, whose groundbreaking work on the social production of evidence is relevant to our focus on religious diversity and legal pluralism (Cooney 1994, Likes and Richardson 2014).[2] Cooney's theorizing can be extended to also incorporate the fact that judges not only make decisions about what evidence to admit, but they also can decide what legal rules to apply to a given case. As developed in Richardson (2000), judges are key decisions makers who usually can exercise

[1] Although Jewish and Catholic informal or even formalized tribunals have been allowed in certain areas of life in some societies (clear examples of legal pluralism in operation), recently controversies have erupted when Muslim groups have called for even limited legal pluralism for Muslim groups in some western societies. See Ahdar and Maloney (2010) discussion of controversy caused when the Archbishop of Canterbury urged that Shari'a be granted some recognition in the U.K., Turner and Richardson's discussion of controversy in America (2013), Richardson's (2013) discussion of controversies in Australia, Mcfarlane's coverage of the situation in Canada and America (2013), Aires and Richardson (2014) on controversies in Germany, Possamai et al. (2014) volume focusing on Shari'a in western and non-western nations, and Berger's (2013) on Shari's in western nations.

[2] Cooney did not discuss religion but his ideas are useful in understanding conflicts over religion that become legal and judicial matters. Those involved in a legal case make decisions about how much time and resources to spend gathering and developing evidence, and whether evidence developed can and will be used in court. Cooney points out that this is a social process explicable by knowing the status and prestige of those involved on both sides of a case, and how well they (and their advocates in an adversarial system) share the values of decisions makers. Cooney also allows for intervention in cases by third parties who might take the side of a disadvantaged party in the process. He proposes an intriguing concept of "strange attractor" to draw attention to situations where an otherwise lower status and prestige party attracts someone from a quite different station in life to assist in their defense.

considerable discretion in how they handle a given case, and what variant of law might apply in various matters before them.[3] Particularly in matters of family law, judges in many western states allow norms and customs deriving from religious traditions to be influential if not determinative. This can become quite controversial (see footnote 1), but when this happens it demonstrates that limited forms of legal pluralism are being allowed to operate.

Applying William Chambliss' Theorizing

Chambliss (1964; Chambliss and Zatz 1993) is more interested in how major changes in law occur. He posits a never-ending agency-oriented dialectical process that involves *contradictions, conflicts, dilemmas,* and temporary *resolutions*. Chambliss initially focused on economic conditions and how they can lead to problems in how a society functions. He later expanded his definition somewhat and stated Chambliss and Zatz (1993) that contradictions are situations where "...the working out of the logic of extant political, economic, ideological, and social relations must necessarily destroy some fundamental aspect of existing social relations." In short, Chambliss focuses on situations where following the letter of the extant law will lead to major difficulties in a society. When this occurs it can lead to conflicts between interest groups, which in turn can cause a dilemma for the state. The state must attempt to resolve the conflict so that order can be maintained. Thus a resolution may be adopted that solves the problem in the short term, but which causes other contradictions which can lead to more conflict and dilemmas for the state. Thus a given resolution probably is never final, according to Chambliss, even if it may last for a period of time.

Chambliss' ideas have seldom been applied in the area of religion, but the application of his theorizing in this realm can be useful. There are many contradictions concerning religious and religious groups in contemporary societies, not the least being that many modern societies have constitutional provisions guaranteeing religious freedom, and most societies are signatories to international agreements that state clearly that religious freedom is a basic and important value. However, in many

[3] Judges sometimes lower the standards of evidence when an unpopular party is a defendant in a case before them. This has happened in some famous cases involving religious groups or individuals where questionable evidence was admitted, leading to convictions and long prison terms. The "Hilton bombing" case involving the Ananda Marga group and the Lindy Chamberlain case involving the Seventh Day Adventists are examples from Australia of such cases that were eventually overturned and the individuals freed from prison after serving long terms (Richardson 2000). But, there are other examples where judges allowed suspect evidence to be admitted. The "brainwashing" cases in the United States are another example of judges allowing weak evidence to be introduced to considerable effect on the outcome of cases brought by individuals against small religious groups (Anthony 1990; Richardson 1993). Judges can also *disallow* crucial evidence that might be quite dispository of a case's outcome. Again, Cooney's theory derived from Black's theories offers assistance in understanding when decisions might be made to either allow or disallow evidence to be used in a legal matter.

societies those provisions are honored in the breech, and simply ignored. And in other societies that make impressive claims to implementing such provisions it is a modern fact of life that *religious are managed*, and that the ways in which members of a religious group can act out their values is limited, sometimes quite severely. However, sometimes the resolution that is developed as a way of managing religious minorities allows them considerable autonomy, especially in certain areas such as domestic matters. Thus, managing does not necessarily always mean rigorous control, but instead legal pluralism may be allowed to develop.

Recent developments in Russia furnish an excellent example demonstrating the value of Chambliss' theoretical approach. Russia's post-communist Constitution clearly states that religious freedom is a paramount value, and so do statutes adopted in the early 1990s. Those religious freedom guarantees are derived from language used in western oriented constitutions and in the European Convention on Human Rights and Fundamental Freedoms. However, a contradiction was immediately obvious in that the Russian Orthodox Church was attempting to assert itself and be accepted as a state church, and a number of political leaders and ordinary citizens agreed with this effort (Shterin and Richardson 1998, 2000). Potential conflicts quickly arose over the rapid influx of many New Religious Movements (NRMs) and other religious groups from the west into Russia, causing a dilemma for the state. Also, it has become obvious that this situation of western religious groups coming into Russia afforded an opportunity for the ROC and more nationalistic politicians to promote their own values and goals.

Thus a "resolution" was eventually achieved with statutes concerning religion being dramatically changed in 1997, in an effort to limit the access of foreign religious groups to Russia. That law has come under heavy criticism from some elements of Russian society, but also externally because Russia is now a signatory to the European Convention on Human Rights and therefore under the purview of the ECtHR. Efforts to enforce the new law in Russia and refuse reregistration of formerly registered groups have resulted in a number of major losses in cases brought to the ECtHR (Richardson and Lykes 2012). This result has forced recognition that the "resolution" afforded by the 1997 law has itself led to other contractions, given Russia's own constitution as well as its membership in the Council of Europe. How this situation will be resolved remains to be seen, but predictably there will be other "resolutions" in the future,[4] and those newer resolution may need to grant more

[4] The Russian case also demonstrates the confluence of the theories of Black and Chambliss, and highlights the key role of the judiciary in developing policy toward religious groups in contemporary western societies. As noted, the Russian Constitutional Court has attempted to defend religious freedom for minority groups by enforcing the constitutional provisions concerning religious freedom even to the extent of declaring provisions of the 1997 law void. The rulings of this Court represent movement in the direction of more legal pluralism in Russia. This "resolution" was, however, unacceptable to the Russian bureaucracy which refused to enforce the judgments, leading to several cases before the ECtHR which Russia lost in a series of unanimous decisions. Whether the Russian state will accept those judgments and implement a new resolution that comports with the European Convention is not clear, however (Richardson and Lykes 2012; Richardson and Lee 2014; Lykes and Richardson 2014).

autonomy to religious groups operating in Russia, which would be movement in the direction of more legal pluralism for such groups.

There are many other examples that might be cited where laws relating to religious values have been dramatically changed as a result of contradictions being found, leading to potential conflict, forcing the state to respond to resolve the dilemma it faces. One such dilemma that is widely felt in newer Member States of the COE concerns the issue of conscientious objection to military service, a basic tenant of the Jehovah's Witness religion. Many states do not allow alternative service, but this has led to problems because enforcing the law can result in incarceration of many individuals, which undercuts claims made about religious freedom and is also quite expensive. For example South Korea currently has about 600 members of the Jehovah's Witnesses in prison because of their refusal to serve in the military (Brumley 2013). This issue has also arisen with a number of former Soviet-dominated states now in the COE. Jehovah's Witnesses members have brought many legal actions to force a resolution, and have won a number of those cases, either through a "friendly settlement" that involves a change of law, or by decisions of the ECtHR (Brumley 2013; Richardson and Lykes 2012; Richardson 2014b). When these nations have agreed to allow alternatives to military service, this can be viewed as allowing alternative values to influence societal legal structures (Beckford and Richardson 2007; Richardson 2009) but also as some recognition of legal pluralism in action.

Conclusions

Religious diversity exists in every modern society, and there are as many ways to deal with that diversity as there are societies attempting to manage the diversity that exists within their borders. Herein I have posited a continuum (see Fig. 1) of efforts at social control of minority faiths that goes from little effort to exert control at all to smaller less visible groups, through many different methods of managing religions that want or require legal status, with attendant rights and privileges. At the far right end of the continuum are religious groups which may be allowed to establish their own form of legal pluralism, at least concerning certain areas of life such as domestic affairs. But on the far left end we also see a form of legal pluralism, as smaller less visible groups may be allowed to self-govern to a considerable extent.

I have then attempted herein to develop theoretical ideas derived from the Sociology of Religion and the Sociology of Law to help explain how and why religious social control is exerted over minority faiths at various locations on the continuum. I have focused attention on situations where religious diversity has contributed to the establishment of various forms of legal pluralism, in an effort to demonstrate that sometimes circumstances may allow for degrees of autonomy to develop that allow religious minorities more flexibility in managing their affairs than is commonly assumed. Space did not allow a full-blown effort to illustrate every possible aspect of these efforts, but hopefully what I have presented will

generate further research, and contribute to the fruitful integration of the Sociology of Religion and the Sociology of Law, which together can yield much of value to understanding contemporary efforts to manage religion in the very diverse contemporary societies that have developed.

References

Adhar, Rex, and N. Mahoney. 2010. *Shari'a in the west*. Oxford: Oxford University Press.

Aires, Wolf, and J.T. Richardson. Forthcoming, 2014. Trial and error: Muslims and Shari'a in German context. In *Sociology of Shari'*, ed. A. Possamai, J.T. Richardson, and B. Turner. New York: Springer.

Anthony, Dick. 1990. Religious movements and brainwashing litigation: Evaluating key testimony. In *In Gods we trust*, ed. T. Robbins and D. Anthony, 295–344. New Brunswick: Transaction Books.

Beckford, James A. 1985. *Cult controversies: The societal response to new religious movements*. London: Tavistock.

Beckford, James A. 2003. *Social theory and religion*. Cambridge: Cambridge University Press.

Beckford, James A. 2004. 'Laicité,' 'dystopia,' and the reaction to new religious movements in France. In *Regulating religion: Case studies from around the globe*, ed. J.T. Richardson, 27–40. New York: Kluwer.

Beckford, James A., and James T. Richardson. 2007. Religion and regulation. In *The Sage handbook of sociology of religion*, ed. J.A. Beckford and N.J. Demerath, 396–418. Los Angeles: Sage Publications.

Berger, Maurits. 2013. *Applying Shari'a in the west*. Leiden: University of Leiden Press.

Black, Donald. 1976. *The behavior of law*. New York: Academic.

Black, Donald. 1999. *The social structure of right and wrong*. New York: Academic.

Black, Donald, and M. Baumgartner. 1999. Toward a theory of the third party. In *The social structure of right and wrong*, ed. Donald Black, 95–124. New York: Academic.

Bouma, Gary. 2011. *Being faithful in diversity*. Adelaide: ATF Press.

Brumley, Philip. 2013. Personal communication, August, 2013. (Brumley is General Council for the Jehovah's Witness world-wide organization, the Watchtower Association.)

Chambliss, William. 1964. A sociological analysis of the law of vagrancy. *Social Problems* 12: 46–67.

Chambliss, William, and Marjorie Zatz. 1993. *Making law: The state, the law, and structural contradictions*. Bloomington: Indiana University Press.

Cooney, Mark. 1994. Evidence as partisanship. *Law and Society Review* 28: 833–858.

Danchin, Peter. 2013. The politics of religious establishment: Recognition of Muslim marriages in South Africa. In *Varieties of religious establishment*, ed. Winnifred Sullivan and Lori Beaman, 165–185. Burlington: Ashgate.

Durham, Cole. 1996. Perspectives on religious liberty: A comparative framework. In *Religious human rights in global perspective: Legal perspectives*, ed. J. van der Vyver and J. Witte, 1–44. The Hague: Kluwer.

Duvert, Cyrille. 2004. Anti-cultism in the French Parliament: Desperate last stand or opportune leap forward? A critical analysis of the 12 June 2001 Act. In *Regulating religion: Case studies from around the globe*, ed. J.T. Richardson, 41–52. New York: Kluwer.

Edelman, Bryan, and James T. Richardson. 2005. Imposed limitations on freedom of religion in China and the margin of appreciation doctrine: A legal analysis of the crackdown on the Falun Gong and other 'evil cults'. *Journal of Church and State* 47(2): 243–267.

Finke, Roger. 2013. Origins and consequences of religious freedom: A global overview. *Sociology of Religion* 74: 297–313.

Finke, Roger, Robert Martin, and Jonathan Fox. 2013. The tyranny of the majority: Why all political frameworks can fail minorities. *Presented at annual meeting of the Association for the Sociology of religion*, New York, August.

Hammer, Leonard, and Frank Emmert. 2012. *The European convention on human rights and fundamental freedoms in central and eastern Europe*. The Hague: Eleven International Publishers.

Hassan, Jamila. 2011. More than on law for all: Legal pluralism in southeast Asia. *Democracy and Security* 7(4): 374–389.

Hill, Michael. 2004. The rehabilitation and regulation of religion in Singapore. In *Regulating religion: Case studies from around the globe*, ed. J.T. Richardson, 343–358. New York: Kluwer.

Lykes, Valarie, and James T. Richardson. 2014. The European court of human rights, minority religions, and new versus original member states. In *Legal cases involving new religious movements and minority faiths*, ed. J.T. Richardson and Francois Bellanger. London: Ashgate. Forthcoming.

Macfarlane, Julie. 2013. *Islamic divorce in North America: A Shari'a path in a secular society*. Oxford: Oxford University Press.

Palmer, Susan. 2011. *The new heretics of France: Minority religions, la Republique, and the Government Sponsored 'War on Sects'*. New York: Oxford University Press.

Possamai, Adam, James T. Richardson, and Bryan S. Turner. Forthcoming, 2014. *The Sociology of Shari'a*. New York: Springer.

Richardson, James T. 1993. A social-psychological critique of 'brainwashing' claims about recruitment to new religions. In *The handbook of cults in America*, ed. D. Bromley and J. Hadden, 75–97. Greenwich: JAI Press.

Richardson, James T. 2000. Discretion and discrimination in legal cases involving controversial religious groups and allegations of ritual abuse. In *Law and religion*, ed. Ahdar Rex, 111–132. Aldershot: Ashgate.

Richardson, James T. 2001. Law, social control, and minority religions. In *Frontier religions in public space*, ed. Pauline Cote, 139–168. Ottawa: University of Ottawa Press.

Richardson, James T. 2006a. Religion, constitutional courts and democracy in former communist countries. *The Annals of the American Academy of Political and Social Science* 603: 129–138.

Richardson, James T. 2006b. The sociology of religious freedom: A structural and socio-legal analysis. *Sociology of Religion* 67: 271–291.

Richardson, James T. 2007. Religion, law, and human rights. In *Religion, globalization, and culture*, ed. P. Beyer and L. Beaman, 407–428. London: Brill.

Richardson, James T. 2009. Religion and the law: An interactionist approach. In *The Oxford handbook of sociology of religion*, ed. Peter Clarke, 418–431. New York: Cambridge University Press.

Richardson, James T. 2011a. Deprogramming: From self-help to government sponsored repression. *Crime, Law and Social Change* 53(4): 321–336.

Richardson, James T. 2011b. The social construction of legal pluralism. *Democracy and Security* 7(4): 390–405.

Richardson, James T. 2013. Minority religious and ethnic groups in Australia: Implications for social cohesion. *Social Compass* 60(4): 579–590.

Richardson, James T. Forthcoming, 2014a. Contradictions, conflicts, dilemmas, and temporary resolutions: A Sociology of Law analysis of Shari'a in selected western societies. In *The sociology of Shari'a*, ed. A. Possamai, J.T. Richardson, and B. Turner. New York: Springer.

Richardson, James T. 2014b. In defense of religious rights: Jehovah's witness legal cases around the world. In *Handbook of global contemporary christianityed*, ed. Stephen Hunt. New York: Brill. Forthcoming.

Richardson, James T., and Massimo Introvigne. 2001. 'Brainwashing' theories in European parliamentary and administrative reports on 'cults' and 'sects'. *Journal for the Scientific Study of Religion* 40(2): 143–168.

Richardson, James T., and Brian Lee. Forthcoming, 2014. The role of the courts in the social construction of religious freedom in Central and Eastern Europe. *Review of Central and East Europe Law*.

Richardson, James T., and Thomas Robbins. 2010. Monitoring and surveillance of religious groups in the United States. In *The Oxford handbook of church and state in the United States*, ed. Derek Davis, 353–369. New York: Oxford University Press.

Richardson, James T., and Jennifer Shoemaker. Forthcoming, 2014. The resurrection of religion in the U.S.? The "tea" cases, the Religious Freedom Restoration Act, and the war on drugs. In *Legal cases, new religious movements and minority faiths*, ed. J.T. Richardson and Francois Bellanger. Aldershot: Ashgate.

Richardson, James T., and Marat Shterin. 2008. Constitutional courts in Postcommunist Russia and Hungary: How do they treat religion? *Religion, State, and Society* 36(3): 251–267.

Richardson, James T., and Barend van Driel. 1994. New religions in Europe: A comparison of developments in England, France, Germany, and the Netherlands. In *Anti-cult movements in cross-cultural perspective*, ed. A. Shupe and D. Bromley, 129–170. New York: Garland Publishing.

Richardson, James T., and Valerie Lykes. 2012. Legal considerations concerning new religious movements in the 'new Europe'. In *Religion, rights, and secular society*, ed. Peter Cumper and Tom Lewis, 293–322. Cheltenham, U.K: Edward Elgar.

Richardson, James T., and Victoria Springer. 2013. Legal pluralism and Shari'a in western societies: Theories and hypotheses. In *Varieties of Religious Establishment*, ed. L. Beaman and W. Sullivan, 201–218. New York: Springer.

Sadurski, Wojciech. 2006. *Rights before the courts: A study of constitutional courts in postcommunist states of central and eastern Europe*. New York: Springer.

Sadurski, Wojciech. 2009. Partnering with Strasbourg: Constitutionalization of the European Court of Human Rights, the accession of Central and Eastern European states to the Council of Europe and the idea of 'pilot judgments'. *Human Rights Law Review* 9: 397–453.

Seiwert, Hubert. 2004. The German Enquete Commission on Sects: Political conflicts and compromises. In *Regulating religion: Case studies from around the globe*, ed. J.T. Richardson and J.T. Richardson, 85–102. New York: Kluwer.

Shterin, Marat, and James T. Richardson. 1998. Local laws on religion in Russia: Precursors of Russia's national law. *Journal of Church and State* 40: 319–341.

Shterin, Marat, and James T. Richardson. 2000. Effects of the western anti-cult movement on development of laws concerning religion in post-communist Russia. *Journal of Church and State* 42(2): 247–271.

Shterin, Marat, and James T. Richardson. 2002. The *Yakunin v. Dworkin* trial and the emerging religious pluralism in Russia. *Religion in Eastern Europe* 22: 1–38.

Tong, James. 2009. *Revenge of the forbidden city: Chinese suppression of the Falungong*. New York: Oxford University Press.

Turner, Bryan, and J.T. Richardson. 2013. United States of America: Islam and the problems of liberal democracy. In *Applying Shari'a in the west*, ed. Berger Maurits, 47–63. Leiden: University of Leiden Press.

Wright, Stuart. 1995. *Armageddon in Waco*. Chicago: University of Chicago Press.

Wright, Stuart, and James T. Richardson. 2011. *Saints under siege: The Texas raid on the fundamentalist latter day saints*. New York: New York University Press.