

# **Religious Freedom in Education: A Fundamental Human Right**

CHARLES J. RUSSO

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# Religious Freedom in Education: A Fundamental Human Right

CHARLES J. RUSSO



## KEYWORDS

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From the earliest times, whether in cave paintings in prehistoric France, the ancient polytheistic religions of Egypt, Greece, and Rome, or the animistic belief systems in much of the rest of the pre-Judeo-Christian Western world, humans all over the globe recognized the need to call on a higher being as they engaged in what today is described as freedom of religion.<sup>1</sup> Yet, at the outset of the second decade of the 21st century, a palpable tension exists between two fundamental human rights, freedoms to education and religion, especially as they interact in public or state-funded elementary and secondary schools. In other words, most nations subscribe to an array of international documents proclaiming both education<sup>2</sup> and religious freedom as fundamental human rights. Still, significant limitations exist in much of the world as to whether people can exercise the rights to religious freedom in and around state-funded or, in some instances, private schools,<sup>3</sup> even as formal schooling is increasingly available.

Two comprehensive studies by the Pew Forum on Religion and Public Life reveal astounding results.<sup>4</sup> The first reported that the residents of 64 nations, accounting for 70% of the world's population, live under circumstances under which religious freedom is severely restricted.<sup>5</sup> These limits apply even though the constitutions of 76% of nations provide for "freedom of religion."<sup>6</sup> The follow-up study indicated that "[r]estrictions on religious beliefs and practices rose between mid-2006 and mid-2009 in 23 of the world's 198 countries (12%), decreased in 12 countries (6%) and remained essentially unchanged in 163 countries (82%)."<sup>7</sup> The report added that "[t]he share of countries with high or very high restrictions on religious

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beliefs and practices rose from 31% in the year ending in mid-2009 to 37% in the year ending in mid-2010...[such that] three quarters of the world's approximately 7 billion people live in countries with high government restrictions on religion... up from 70% a year earlier."<sup>8</sup>

As a bellwether in human rights, *Brown v. Board of Education*<sup>9</sup> is recognized as significant throughout the world.<sup>10</sup> In mandating equal educational opportunities for all regardless of race, the United States Supreme Court declared that "education is perhaps the most important function of state and local governments."<sup>11</sup> This same Court, though, sets American public education apart from much of the Western world insofar since it created "a wall [of separation] between church and state. That wall must be kept high and impregnable. We could not approve the slightest breach."<sup>12</sup>

A second group of nations represent the antithesis of the judicially imposed American separatism because there is little or no distinction between and among religion, state, and education in their educational systems.<sup>13</sup> In a third set of countries, including Canada,<sup>14</sup> Australia,<sup>15</sup> and much of Western Europe,<sup>16</sup> state funding is provided to support what are referred to as *denominational* or *confessional schools*. In these schools religion is integral to curricula even in the face of growing conflicts over religious plurality, hostility,<sup>17</sup> secularism, or neutrality that is analogous to the American perspective but with twists on aid to faith-based schools.

Education, whether provided in state or private, also known as nonpublic schools in the United States, typically religiously affiliated or faith-based, is of paramount importance because it holds the key to the future not only for personal growth and fulfillment but also by providing countries with a steady flow of well-informed citizens. However, under the euphemism of "control follows the dollar," educational officials in confessional schools in Europe and elsewhere tend to have less freedom to direct their curricular content than religiously affiliated nonpublic schools in the United States because they depend on the state, rather than tuition, for operating revenues. For this reason, leaders in many religious schools in the United States refuse to accept public funding so that they can preserve curricular control and doctrinal purity.

The right to an education is crucial regardless of whether it is a shared state and local concern as in the United States or is directed at the national level as in most other nations. An overlapping concern is religious freedom and the role of faith-based instruction in state schools, not to mention what is taught in private religious schools where the values may be inimical to those of host nations. Again, the United States is different from much of the world because, as indicated, the judiciary and educational leaders have more often than not adopted the Jeffersonian metaphor calling for a "wall of separation" between Church and State that does not exist in other nations where there is freedom of religion.<sup>18</sup>

American courts have applied the judicially created metaphor of "the wall of separation," particularly with regard to religious instruction and activities in

public schools. At the same time, the Supreme Court specified that educators in public schools can teach about religion in such contexts as history and literature as long they do not seek to teach religion or to inculcate religious values.<sup>19</sup> Even so, since most American educational leaders fear conflicts over religion, they typically prohibit virtually all official references to it in school-sponsored activities, even though in practice this is directed particularly at Christianity,<sup>20</sup> sending out a not so subliminal message that religion is a topic to be avoided. As a form of compromise, in response to concerns of parents who wish to have their children educated in religious settings, the Supreme Court emphatically upheld the right of religiously affiliated (and nonsectarian) nonpublic schools to operate in the seminal case of *Pierce v. Society of Sisters of the Holy Names of Jesus and Mary*.<sup>21</sup> The Court has since handed down a series of rulings placing some restrictions on public funding<sup>22</sup> under the judicial construct known as the Child Benefit Test, under which aid goes to children and not their religiously affiliated nonpublic schools, first enunciated in its 1947 judgment in *Everson v. Board of Education*.<sup>23</sup>

Using the “wall of separation” metaphor has helped the United States, as a relatively new and religiously pluralistic society, to avoid the religious strife that has plagued many other parts of the world for centuries. Yet, imposing the wall of separation in the United States often results in inequities for families who must make the draconian choice between enrolling their children in tax-supported public schools or essentially paying twice by having to also bear the cost of tuition when sending their children to religiously affiliated nonpublic schools, particularly in localities where public schools are ineffective.<sup>24</sup> The wall of separation also has the effect of largely removing instruction and discussions about religion from the market place of ideas in public elementary and secondary schools, an outcome that is something of a mixed blessing.

The trick, of course, not just in the United States, is to maintain a healthy separation between government and religion. This balance should allow individuals to practice their faiths freely wherever they live.<sup>25</sup> As reflected in the Pew Reports, this is an increasingly complex challenge as religious freedom becomes constricted in a pluralistic world.

Against the background, the remaining four substantive parts of this article reflect on the relationship between the rights to education and religion as what should be complementary fundamental human rights. The first two parts of the article highlight relevant passages in international agreements on the status of education and religion, respectively, as fundamental human rights. The third section discusses selected issues, drawn from examples of litigation in the United States on why the rights to education and religious freedom, whether with state funding in denominational or sectarian schools, as demonstrated in student dress, student-initiated religious activities, curricular issues, and celebrations of religious holidays are important issue when focusing on religious freedom. The fourth part offers recommendations for practice before rounding out with a brief conclusion.

## EDUCATION AS A FUNDAMENTAL RIGHT

The compulsory education laws of virtually all nations nominally operate in conjunction with a variety of international covenants, the effectiveness of which is beyond the scope of this article. Although not all nations automatically enter international agreements into domestic legislation,<sup>26</sup> their principles reflect the long-standing view present in many democratic nations that the right to education for children, indeed, for all, is of utmost importance.<sup>27</sup> To develop an understanding of these widely accepted documents, this section briefly reviews the key features of the leading instruments on education as a fundamental human right.

The Universal Declaration on Human Rights (UDHR), promulgated in 1948, was the first internationally accepted document to enunciate the value of education as a basic human right. According to this Declaration,

1. Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.
2. Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.
3. Parents have a prior right to choose the kind of education that shall be given to their children.<sup>28</sup>

In 1959, Principle 7 of the Declaration on the Rights of the Child reiterated the right to an education in asserting that:

The child is entitled to receive education, which shall be free and compulsory, at least in the elementary stages. He shall be given an education which will promote his general culture and enable him, on a basis of equal opportunity, to develop his abilities, his individual judgment, and his sense of moral and social responsibility, and to become a useful member of society. The best interests of the child shall be the guiding principle of those responsible for his education and guidance; that responsibility lies in the first place with his parents.<sup>29</sup>

Further, Principle 5 of the Declaration maintains that “[t]he child who is physically, mentally, or socially handicapped shall be given the special treatment, education and care required by his particular condition.”<sup>30</sup>

The 1989 Convention on the Rights of the Child (the Convention) has had a significant impact on the legal duties of educators. Although the Convention

is perhaps the most expansive instrument to achieve international recognition on the rights of children, many signatories have not acted in keeping with its spirit, let alone its letter, in safeguarding the educational rights of all children. 160

Among the more than 30 of the Convention's 54 articles impacting on education, Article 3 states that in "all actions concerning children . . . the best interests of the child shall be a primary consideration."<sup>31</sup> It is unlikely that these interests can be met without affording children some right to speak for themselves on a range of social and educational issues, including religion. 165 In this regard, Article 12 claims just such a right in stating that a "child who is capable of forming his or her own views" has a right "to express these views freely in all matters affecting them."<sup>32</sup> Article 13 extends this concept further in maintaining that children "shall have the right to freedom of expression including freedom to seek, receive and impart information and ideas of all 170 kinds."<sup>33</sup> Article 13 raises interesting and important issues about speech that could have implications for religion, some of which have played themselves out in the United States over such controversial topics as sexuality education, especially as instruction in this area conflicts with parental values.<sup>34</sup> More specifically, questions of this type lead to disputes over student dress and 175 initiated religious activities in public schools along with curricular issues and the celebration of religious holidays.<sup>35</sup>

## RELIGIOUS FREEDOM AS A FUNDAMENTAL RIGHT

The same international instruments that discussed education are just as cognizant of the need to maintain religious freedom. Article 2 of UDHR 180 declares that "Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."<sup>36</sup>

Article 18 of the UDHR adds what may be the most basic freedom of all, 185 namely that that "Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance."<sup>37</sup> 190

The 1959 Declaration on the Rights of the Child highlights the place of nondiscrimination based on religion in the following articles:.

### Article 1

The child shall enjoy all the rights set forth in this Declaration. Every child, without any exception whatsoever, shall be entitled to these rights, 195 without distinction or discrimination on account of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, whether of himself or of his family.

## Article 2

1. States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status. 200

## Article 10

The child shall be protected from practices which may foster racial, religious and any other form of discrimination.<sup>38</sup> 205

The most recent instrument on children, the 1989 Convention on the Rights of the Child, expresses similar concerns in its provisions. 210

## Article 14

1. States Parties shall respect the right of the child to freedom of thought, conscience and religion.

3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others. 215

## Article 29 General comment on its implementation

1. States Parties agree that the education of the child shall be directed to: (d) The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin . . . 220

## Article 30

In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language.<sup>39</sup> 225

The Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, enacted in December 1992, shares many of these same concerns:

## Article 1

States shall protect the existence and the national or ethnic, cultural, religious and linguistic identity of minorities within their respective territories and shall encourage conditions for the promotion of that identity. 235

## Article 2

1. Persons belonging to national or ethnic, religious and linguistic minorities (hereinafter referred to as persons belonging to minorities) 240

have the right to enjoy their own culture, to profess and practise their own religion, and to use their own language, in private and in public, freely and without interference or any form of discrimination.

2. Persons belonging to minorities have the right to participate effectively in cultural, religious, social, economic and public life.<sup>40</sup>

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More recently, Article 2.1 of the 1994 International Covenant on Civil and Political Rights stipulates that,

Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

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Further, its Article 18 declares that

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.

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2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.

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3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.

4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.<sup>41</sup>

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## DISCUSSION

A major challenge for educators and their lawyers in a world where there is growth among individuals who identify as atheists<sup>42</sup> is accommodating the religious needs, or lack thereof, of students, particularly those who attend public schools. Of course, the way in which educators and lawyers act varies from one nation to the next, even from one region of a country to another, especially a large nation. As school officials seek to educate children in environments where they can practice their faiths freely, the range of issues, as evidenced in illustrative litigation from the plethora of case law in the United States, includes such key questions as student dress, student-initiated religious activities in schools, curricular concerns, and celebrations of religious holidays, matters that go to the heart of religious freedom.

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In attempting to provide balance, the United States Supreme Court explained in *School District of Abington Township v. Schempp* and *Murray v. Curlett*, that its judgment forbidding prayer and Bible reading in public schools “[p]lainly does not foreclose teaching about the Holy Scriptures or about the differences between religious sects in classes in literature or history.”<sup>43</sup> Still, the American judiciary especially has struggled to devise an appropriate middle ground between teaching about religion and the teaching of religion in public schools. 285

As a necessary corollary, in light of *Pierce v. Society of Sisters*, educators in religiously affiliated nonpublic schools in the United States are free to teach as they see fit while requiring students to comply with their rules.<sup>44</sup> Even in acknowledging the power of the state “reasonably to regulate all schools, to inspect, supervise, and examine them, their teachers and pupils,”<sup>45</sup> the Court focused on the owners’ property rights under the Fourteenth Amendment. The Court grounded its analysis in the realization that educational officials sought protection from unreasonable interference with their students and the destruction of their businesses. The Court decided that while state officials may oversee such important features as health, safety, and teacher qualifications in nonpublic schools, they could not do so to an extent greater than they did for public schools. 290 295 300

If students are to learn to appreciate and experience freedom of religion in public education, then four closely related exemplary issues must be taken into consideration. The first is how students can engage in outward manifestations of their faiths as demonstrated in their attire,<sup>46</sup> whereas the second concerns student-led religious activities in public schools. The third topic briefly reviews curricular concerns before the fourth examines the celebration of religious holidays in schools. These four areas were selected because each is essential to how religious diversity and individuality are present in public schools. 305

## Dress Codes 310

At a time when school safety is in the forefront, the following cases illustrate how the courts agree that educators must develop the least restrictive means possible when seeking to prevent students from wearing religious garb to school. The Ninth Circuit affirmed that educational officials in California violated the rights of Sikh students by trying to prevent them from wearing ceremonial daggers under their clothes.<sup>47</sup> The court decided that officials overstepped their authority absent a showing that a total ban on these largely ceremonial religious weapons was the least restrictive alternative way to promote campus safety.<sup>48</sup> 315

In a case from Texas overlapping with issues of dress, the Fifth Circuit invalidated a local school board policy that forbade male students from having their hair touch their ears. The policy would have required a Native 320

American student to wear his long hair in a bun on top of his head or in a braid tucked into his shirt. The court affirmed that given the student's sincere religious belief in wearing his hair visibly long, the policy would have imposed an impermissible substantial burden on his right to the free exercise of religion.<sup>49</sup> In an earlier case involving dress, when students wore rosaries to school as necklaces, a federal trial court in Texas observed that educators violated their First Amendment right to speech because rosaries are a form of religious expression.<sup>50</sup>

### Student-Initiated Religious Activity

Spurred on in large part by a case from higher education—*Widmar v. Vincent*,<sup>51</sup> in which the Supreme Court ruled that when officials at a state university in Missouri made campus facilities generally available for activities of registered student groups, they could not close them to other organizations based on the religious content of their speech—in 1984 Congress enacted the Equal Access Act (EAA).<sup>52</sup> According to the EAA, officials in public secondary schools receiving federal financial aid, and that permit noncurriculum-related student groups to meet during noninstructional time, cannot deny access to groups due to the religious, political, philosophical, or other content of their speech. Among other limitations, the EAA does allow officials to exclude groups if their meetings run the risk of materially and substantially interfering with the orderly conduct of school activities.

The Supreme Court upheld the EAA in *Board of Education of Westside Community Schools v. Mergens*.<sup>53</sup> The Court agreed with Congress that insofar as most high school students could recognize that allowing peer-initiated religious clubs to function in schools did not imply state endorsement of religion, the EAA was constitutional. The Court added that the religious club was entitled to meet since doing so is a form of free speech.<sup>54</sup> Circuit courts extended the scope of the EAA to allow students to select leaders who comply with club religious standards;<sup>55</sup> to meet during lunch time<sup>56</sup> and during activity periods at which attendance was taken;<sup>57</sup> and to have access to funding and fundraising activities, a school yearbook, public address system, bulletin board, school supplies, school vehicles, and audio-visual equipment.<sup>58</sup>

The status of the EAA may be in some doubt following the Supreme Court's holding in *Christian Legal Society v. Martinez*.<sup>59</sup> The Court affirmed that officials at a public law school in California had the authority to implement a policy requiring an on-campus religious group to admit all-comers from the student body, including those who disagree with its beliefs, as a condition of becoming a recognized student organization. On remand, the Ninth Circuit rejected the group's remaining claim on the basis that organizational leaders failed to preserve their argument that law school officials selectively applied the policy for appeal.<sup>60</sup>

## Curricular Elements

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The American judiciary continues to struggle over the place of religion in public school curricula, especially in distinguishing between teaching about religion and the teaching of religion. A fairly recent case from California highlights the tension present about having different faith-based worldviews in public schools, especially amid growing religious plurality. The Ninth Circuit affirmed the dismissal of challenge from parents who questioned the use of curricular content on Islam.<sup>61</sup> The materials included a simulation unit on Islamic culture in a social studies course that, among other things, required students to wear identification tags displaying their new Islamic names, dress as Muslims, memorize and recite an Islamic prayer that has the status of the Lord's Prayer in Christianity as well as other verses from the Qur'an, recite the Five Pillars of Faith, and engage in fasting and acts of self-denial. Without addressing the merits of the claims, the court determined that the activities "were not . . . 'overt religious exercises' that raise[d] Establishment Clause concerns."<sup>62</sup>

In Delaware the mother of a Muslim child raised a variety of claims. The federal trial court rejected the school board's motion for summary judgment since genuine issue of fact remained as to whether a fourth-grade teacher's use of Christmas readings violated the student's rights under the State Constitution's Preference Clause, which combined elements of the Federal Free Exercise and Equal Protection Clause and whether school officials were entitled to qualified immunity for the alleged violations.<sup>63</sup> The court granted the board's motion for summary judgment as to the claim that the teacher's reading from a textbook that brought up religion in discussing events of 9/11 on the ground that this did not violate child's rights under the State Constitution's Preference Clause.

An ongoing contentious issue concerns teaching about the origins of humankind. Starting with *Epperson v. Arkansas*,<sup>64</sup> the Supreme Court<sup>65</sup> and lower federal courts<sup>66</sup> agree that parental wishes to the contrary notwithstanding, teaching the Biblical accounts of creation in public school science classes violates the constitution as a form of seeking to establish a Christian perspective.

## Religious Celebrations

Considering the vast amount of litigation that has transpired on religion in American public schools, it is surprising that the United States Supreme Court has yet to address a case directly on the place of religious celebrations in schools. Needless to say, this leaves educators uncertain how to proceed on this recurring matter.

In an early case, the Eighth Circuit upheld guidelines developed by a school board in South Dakota for use in connection with religious observances, most notably Christmas and other holidays.<sup>67</sup> The court held that explanations

of historical and contemporary values relating to both secular and religious holidays, the short-term use of religious symbols as examples of religious heritages, and integration of music, art, literature, and drama with religious themes could be included in curricula as long as they were presented objectively as a traditional part of the cultural and religious heritages of holidays. 410

A federal trial court in Pennsylvania reviewed a case wherein school officials permitted a “Winter Holiday” display including information on Chanukah and Kwanzaa, but nothing on Christmas other than a parody of a traditional Christmas hymn that the plaintiff, a youth minister, found offensive.<sup>68</sup> The court rejected the challenge on the ground that the display did not favor one religion over another. Subsequently, the Second Circuit upheld a policy of the New York City Board of Education that permitted seasonal displays of a menorah along with a star and crescent but not a manger scene.<sup>69</sup> The court declared that insofar as the policy had the perceived secular purpose of promoting pluralism and respect for diversity, lacked the principle or primary effect of advancing or inhibiting religion, and did not excessively entangle church and state, it was constitutionally permissible. 415 420

Courts reached mixed results with regard to commemorating Good Friday, the day on which Christ died. The Seventh Circuit first affirmed that a law from Illinois making Good Friday a paid holiday for teachers and closing schools was unconstitutional.<sup>70</sup> However, the same court later upheld Indiana’s recognition of Good Friday as legal holiday for state employees because doing so was based on secular justifications including the provision of a spring holiday supported by evidence that this was not a sham.<sup>71</sup> Similarly, the Fourth<sup>72</sup> and Sixth<sup>73</sup> Circuits agreed that treating Good Friday as a legal holiday was constitutionally permissible. 425 430

## RECOMMENDATIONS

As reflected by the review of selected American cases relating to religion in public schools, it is a challenge finding the proper balance so as to avoid appearing to be hostile to issues of faith or preferring one set of values to another. Accordingly, by including balanced instruction about religion in school curricula, educators can promote tolerance while accommodating diversity. Moreover, a balanced approach can assist in the development of more cohesive societies while helping to eradicate stereotypes that might lead to violence while advancing good relations in society. To this end, educators, their lawyers, and other interested parties may wish to consider the following recommendations. 435 440

1. Consistent with the internationally accepted norms reviewed earlier, leaders must take steps to have religious education explicitly recognized and safeguarded as a fundamental human right for all children. In other 445

- words, national leaders should develop laws and policies designed to protect and enhance the religious rights of all students regardless of their faiths. Since adopting such an approach can present a challenge in parts of the world that have been slow to extend full rights to historically underrepresented religious groups or where religious freedom and plurality have not been at a premium, political and educational leaders in particular must show their mettle if they are to help their citizens to reach their full potential. 450
2. National leaders must provide adequate funding to create schools to provide children of all faiths with a world-class education. This is an especially important concern during a time when there is a growing cynicism about the need for education as a tool to help promote diversity and understanding of others such that it must move beyond concerns over resources or capacity to focus on how systems can not only be funded but also be made accessible to all. Such funding must cover not only construction of facilities and purchasing instructional materials but also paying salaries designed to enhance “the best and brightest” to enter the field of education. 460
  3. Treat education, religious and secular, as an integrative factor, one that can help prepare all children to become productive members of their societies rather than set them apart from one another based on religion and other personal characteristics. If acceptance of diversity of religious beliefs is not encouraged in schools and not imbued throughout curricula, via such courses as world and/ or comparative religions, then one cannot expect to find them present throughout the rest of society. Consistent with Justice Scalia’s dissent in *Lee v. Weisman*,<sup>74</sup> wherein the Supreme Court invalidated prayer at public school graduation ceremonies, one can only wonder how individuals who disagree can ever learn to do so respectfully if they cannot do so within the confines of academic settings wherein all should be open to the free exchange of ideas. 470
  4. Reconceptualized school systems must be open to all children wherein educators teach respect for religiously pluralistic, cross-cultural principles that respect internationally accepted norms, as well as national laws, as explicated in the various covenants discussed herein. In other words, systems must be inclusive, not exclusive. 480
  5. Laws and policies must be enacted to meet the educational needs of religious minorities while respecting the laws of host nations and internationally accepted norms about treatment of individuals outside of their own communities.
  6. Institutions of higher learning must enhance teacher and administrator preparation programs by including instruction about dealing with religious issues so that they can better educate children. 485
  7. Leaders should adopt proactive roles helping to create shared values among all groups in developing educational curricular/standards for

- the treatment of religions by ensuring that schools offer courses such as comparative religions while avoiding the sectarian teaching of or about singular religious perspectives in public schools. It is essential for officials in central governmental ministries at the state or national levels maintain leadership role in developing curricular content about religion to ensure uniformity in all schools.
8. Educators should develop curricular content, and accompanying materials, about religion drafted by professionals who can call on outside experts for assistance. Individuals from respective governmental and educational ministries as well as from the university sector should provide leadership on this important project. At the same time, even as educational leaders work to develop curricula with an eye toward primarily satisfying religious freedom, they must simultaneously challenge students to develop critical thinking skills that may challenge established beliefs.
  9. Leaders should implement religious-based curricular content that can be widely accepted. Still, educational leaders should provide some consideration for permitting groups to preserve their independent religious heritages in the schools within the boundaries of domestic law and internationally accepted covenants.
  10. Members of committees who are assigned the task of developing curricular materials about religion should be selected from among a broad representation of stakeholders, including, but not limited to, parents, students, teachers, civil leaders, interested in helping to ensure equal educational opportunities for all children.
  11. Leaders, particularly in developing nations, should schedule conferences/meetings on the right to schooling in an attempt to obtain input from all parties, again including, but not limited to parents, students, teachers, and civil leaders, who are interested in helping to ensure equal educational opportunities for all children. In developed nations, educational leaders in particular should encourage parents to become more involved in the education of their children and citizens to vote to ensure that their school boards or governing bodies truly represent community interests while holding to appropriate educational standards.
  12. In light of the rapid pace at which change occurs, leaders should regularly re-evaluate and update educational goals to keep them current.

## CONCLUSION

As the world continues to shrink amid growing interdependence, a major challenge facing the global community is ensuring the educational and religious rights of all children. As daunting and expansive as this crucial task may appear to be, protecting these dual rights should be a priority for educational leaders, lawyers, and policymakers because doing so can help to ensure a better tomorrow for all.



## NOTES

1. See, e.g., Marija Gimbutas, "Megalithic Religion: Prehistoric Evidence," in *Encyclopedia of Religion*, 2nd ed., vol. 9, ed. Lindsay Jones (2005), 5822–5826; Mary Edwardsen and James Waller, "Prehistoric Religions: An Overview," in *Encyclopedia of Religion*, 2nd ed., vol. 11, ed. Lindsay Jones (2005), 7374–7376. 535
- Q2** 2. For a discussion of education as a fundamental right, see Charles J. Russo, "Reflections on Education as a Fundamental Human Right," *Education and Law Journal*, 18 (2010): 87–105.
3. The story of the 15-year-old Pakistani female, Malala Yousufzai, whom members of the Taliban attempted to kill for promoting education for girls comes to mind in this regard. For one story among the many documenting this incident, see Sylvia Hui, "Girl Shot by Taliban Won't Back Down: Teen Renews Plea for Education for Pakistani Girls," *Boston Globe A*, Feb. 5, 2013. 540
4. See also 2013 World-Watch-List, a website maintained by the California-based group Open Doors, identifying the 50 nations where wide-spread persecution of Christians is Prevalent: <http://www.worldwatchlist.us/?gclid=CivxoMKa67QCFUbf4AodHgkAMg> 545
5. "Global Restrictions on Religion," *The Pew Research Center's Forum on Religion and Public Life*, December 17, 2009, 1, <http://pewforum.org/Government/Global-Restrictions-on-Religion.aspx>
6. *Ibid.*, 64.
7. "Rising Restrictions on Religion: One-Third of the World's Population Experiences an Increase," *The Pew Research Center's Forum on Religion and Public Life*, August 2011, 9, <http://www.pewforum.org/uploadedFiles/Topics/Issues/Government/RisingRestrictions-web.pdf> 550
8. *Ibid.*
9. 347 U.S. 483 (1954).
10. For an example of how Brown is viewed in a comparative context, see Charles J. Russo, Johan Beckmann, and Jonathan Jansen (ed.), *Equal Educational Opportunities: Comparative Perspectives in Education Law: Brown v Board of Education at 50 and Democratic South Africa at 10* (2005). 555
- Q3** 11. *Brown*, supra Note 9 at 493.
12. *Everson v. Board of Education*, 330 U.S. 1, 18 (1947), *reb'g denied*, 330 U.S. 855 (1947).
13. In Muslim Countries, for instance, it is typically illegal to practice any religion other than Islam. See, for example, Organization of the Islamic Conference/OIC's Cairo Declaration of 1990, available at <http://www1.umn.edu/humanrts/instree/cairodeclaration.html>, at articles 24 and 25. Article 24: All the rights and freedoms stipulated in this Declaration are subject to the Islamic Shari'ah. Article 25: The Islamic Shari'ah is the only source of reference for the explanation or clarification of any of the articles of this Declaration. 560
14. See Note 46 *infra* and accompanying text for a brief discussion of this issue. 565
15. See Douglas J. Stewart and Charles J. Russo (2001), *A Comparative Analysis of Funding Non-Government Schools in Australia and the United States*. *Education and the Law* 13 (2001): 29–41.
16. For a thorough review on this issue with a primary focus on Europe, see Dymrna Glendenning, *Religion Education and the Law* (2008). 570
- Q4** 17. In *Lautsi and Others v. Italy*, application 30814/06; (2012) 54 E.H.R.R. 3; 30 B.H.R.C. 429; (2011) Eq. L.R. 633; (2011) E.L.R. 176, available at 2011 WL 2747582, on March 18, 2011 the European Court of Human Rights rejected, by a margin of fifteen-to-two, the claim of a Finnish-born mother, who argued that the presence of a crucifix in a public school classroom in Italy violated both their right to education and her right to educate her children in accordance with her atheist beliefs under the European Convention on Human Rights 1950 Protocol 1 art.2. 575
18. See, e.g., East Mathias Hariyadi, "East Java: Six Catholic Schools Could Be Shut Down for not Teaching Islam," *AsiaNews.it* (January 16, 2013) (reporting that officials in "East Java province, are threatening to shut down six Catholic schools "by 19 January" if the latter do not provide Islamic courses and readings of the Qur'an to their Muslim students, in accordance with regional bylaw n. 8 of 2012, which requires all Muslim students to receive Islamic courses in school"), available at <http://www.asianews.it/news-en/East-Java-six-Catholic-schools-could-be-shut-down-for-not-teaching-Islam-26877.html> 580
19. *School District of Abington Township v. Schempp and Murray v. Curlett*, 374 U.S. 203 (1963).
20. See, e.g., Charles J. Russo and Ralph D. Mawdsley (2001), "The Supreme Court and the Establishment Clause at the Dawn of the New Millennium: 'Bristl[ing] with Hostility to All Things Religious' or Necessary Separation of Church and State?" *Brigham Young University Education and Law Journal* 2 (2001): 231. 585

21. 268 U.S. 510 (1925).
22. See, for example, *Lemon v. Kurtzman*, 403 U.S. 602 (1971) (denying salary supplements for teachers who worked in religiously affiliated nonpublic schools); *Aguilar v. Felton*, 473 U.S. 402 (1985) (forbidding the on-site delivery of remedial services for children who attended religiously affiliated nonpublic schools). 590
23. 330 U.S. 1 (1947), reh'g denied, 330 U.S. 855 (1947) (upholding a statute from New Jersey permitting reimbursement to parents for costs associated with sending their children to their religiously affiliated nonpublic schools).
24. See, for example, *Zelman v. Simmons-Harris*, 536 U.S. 639 (2002) (upholding the use of state-funded vouchers to pay tuition for children who had attending the failing schools in Cleveland, Ohio). 595
25. See Note 13.
26. See the *Constitution of the Republic of South Africa* (<http://www.info.gov.za/documents/constitution/1996/index.htm>). 231.3 International agreements: Any international agreement becomes law in the Republic when it is enacted into law by national legislation; but a self-executing provision of an agreement that has been approved by Parliament is law in the Republic unless it is inconsistent with the Constitution or an Act of Parliament. 233 Application of international law: When interpreting any legislation, every court must prefer any reasonable interpretation of the legislation that is consistent with international law over any alternative interpretation that is inconsistent with international law. 600
27. For a report on 12 countries (Australia, Belgium, Canada, Denmark, Germany, Iceland, Ireland, New Zealand, Norway, South Africa, Spain, and Sweden) that have worked to imbed the rights of children into domestic law, see Laura Lundy, Ursula Kilkelly, Bronagh Byrne, and Jason Kang, *The UN Convention on the Rights of the Child: A Study of Legal Implementation in 12 Countries* available from [http://www.unicef.org.uk/Documents/Publications/UNICEFUK\\_2012CRCImplementationreport%20FINAL%20PDF%20version.pdf](http://www.unicef.org.uk/Documents/Publications/UNICEFUK_2012CRCImplementationreport%20FINAL%20PDF%20version.pdf) 605
28. Available from <http://www.un.org/en/documents/udhr/index.shtml> 610
29. Available from <http://www.un.org/cyberschoolbus/humanrights/resources/child.asp>
30. Ibid.
31. Available from <http://www2.ohchr.org/english/law/crc.htm>
32. Ibid. 615
33. Ibid.
34. In a partial dissent in *Wisconsin v. Yoder*, 406 U.S. 205, 245–46 Justice Douglas questioned whether children had rights apart from their parents based on his fear that students could have been “harnessed” to the lifestyles of their parents without opportunities to express their own wishes in writing: “It is the student’s judgment, not his parents,” that is essential if we are to give full meaning to what we have said about the Bill of Rights and of the right of students to be masters of their own destiny. If he is harnessed to the Amish way of life by those in authority over him and if his education is truncated, his entire life may be stunted and deformed. The child, therefore, should be given an opportunity to be heard before the State gives the exemption which we honor today.” See Charles J. Russo and William E. Thro, “Reflections on the Law and Curricular Values in American Schools,” *Peabody Journal of Education* 87 (2012): 402. 620
35. Moreover, Article 28 of the Convention directs signatories to (a) Make primary education compulsory and available free to all; (b) Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child and take appropriate measures such as the introduction of free education and offering financial assistance in case of need; (c) Make higher education accessible to all on the basis of capacity by every appropriate means; (d) Make educational and vocational information and guidance available and accessible to all children; (e) Take measures to encourage regular attendance at schools and the reduction of drop-out rates. 630
36. Available from <http://www.un.org/en/documents/udhr/index.shtml>
37. Ibid.
38. Available from <http://www.un.org/cyberschoolbus/humanrights/resources/child.asp> 635
39. Available from <http://www2.ohchr.org/english/law/crc.htm>
40. Available from <http://www.un.org/documents/ga/res/47/a47r135.htm>
41. Available from <http://www.hrweb.org/legal/cpr.html>
42. See, for example, Bill Sherman, “Report: Atheism Rate Growing Worldwide,” *Tulsa World* (August 25, 2012), available at 2012 WLNR 18136286 (“The Global Index of Religiosity and Atheism poll found, on average, that 13 percent of the world population identified themselves as convinced atheists in 2012. A 2005 poll of 39 nations found 4 percent of the people were atheists. Those same 39 nations had a 7 percent atheism rate in the 2012 poll.”) 640



43. *Supra* note 19 at 300 (1963).
44. See *Gorman v. St. Raphael Academy*, 853 A.2d 28 (R.I. 2004) (upholding a rule in a Roman Catholic secondary school restricting hair length for male students). 645
45. *Pierce*, *supra* Note 21 at 534.
46. The related question of teacher dress, as a potential impact on students is beyond the scope of this article.
47. *Cbeema v. Thompson*, 67 F.3d 883 (9th Cir. 1995). 650
48. See also *Isaacs v. Board of Educ. of Howard County, Md.*, 40 F.Supp.2d 335 (D. Md. 1999) (granting a school board's motion for summary judgment when a student unsuccessfully relied on the First Amendment right to free speech in seeking to wear a head wrap to school to celebrate her cultural heritage).
49. *A.A. ex rel. Betenbaugh v. Needville Indep. Scheme Dist.*, 611 F.3d 248 (5th Cir. 2010). For an earlier case reaching the same result, see *Alabama and Coushatta Tribes of Texas v. Trustees of the Big Sandy Indep. School Dist.*, 817 F. Supp. 1319 (E.D. Tex. 1993), *remanded by* 20 F.3d 469 (5th Cir. 1994). 655
50. *Chalifoux v. New Caney Indep. School Dist.*, 976 F. Supp. 659 (S.D. Tex. 1997).
51. 454 U.S. 263 (1981).
52. 20 U.S.C.A. §§ 4071 *et seq.* 660
53. 496 U.S. 226 (1990).
54. See, for example, *Rosenberger v. Rector and Visitors of Univ. of Va.*, 515 U.S. 819 (1995) (ruling that the newspaper of a student-led religious organization could not be denied funding due to its beliefs).
55. *Hsu v. Roslyn Union Free School Dist.*, 85 F.3d 839 (2d Cir. 1996), *cert. denied*, 519 U.S. 1040 (1996).
56. *Ceniceros v. Board of Trustees of the San Diego Unified School Dist.*, 106 F.3d 878 (9th Cir. 1997). 665
57. *Donovan ex rel. Donovan v. Punxsutawney Area Sch. Bd.*, 336 F.3d 211 (3d Cir. 2003).
58. *Prince v. Jacoby*, 303 F.3d 1074 (9th Cir. 2002), *cert. denied*, 540 U.S. 813 (2003).
59. *Christian Legal Society v. Martinez*, 130 S. Ct. 2971 (2010).
60. *Christian Legal Society v. Wu*, 626 F.3d 483 (9th Cir. 2010).
61. *Eklund v. Byron Union Sch. Dist.*, 154 Fed.Appx. 648 (9th Cir. 2005), *cert. denied*, 549 U.S. 942 (2006). 670
62. *Ibid.*
63. *Doe v. Cape Henlopen Sch. Dist.*, 759 F. Supp.2d 522 (D. Del. 2011).
64. 393 U.S. 97 (1968).
65. *Edwards v. Aguillard*, 482 U.S. 578 (1987). 675
66. *McLean v. Arkansas Bd. of Educ.*, 529 F. Supp. 1255 (E.D. Ark. 1982) (striking down a law from Arkansas that would have required providing balanced treatment for instruction on Biblical notions of creation if evolution was included in curricula); *Kitzmiller v. Dover Area Sch. Dist.*, 400 F.Supp.2d 707 (M.D. Pa. 2005) (invalidating a curriculum designed to teach "intelligent design").
67. *Floreys v. Sioux Falls Sch. Dist.* 49–5, 619 F.2d 1311 (8th Cir. 1980), *cert. denied*, 449 U.S. 987 (1980). 680
68. *Sechler v. State College Area Sch. Dist.*, 121 F.Supp.2d 439 (M.D. Pa. 2000).
69. *Skoros v. City of New York*, 437 F.3d 1 (2d Cir. 2006), *cert. denied*, 549 U.S. 1205 (2007). For a commentary on this case, see Charles J. Russo, "Of Baby Jesus and the Easter Bunny: Does Christianity Still Have a Place in the Educational Marketplace of Ideas in the United States?" *Education and Law Journal* 16 (2006): 61. 685
70. *Metzl v. Leininger*, 57 F.3d 618 (7th Cir. 1995).
71. *Bridenbaugh v. O'Bannon*, 185 F.3d 796 (7th Cir. 1999), *cert. denied*, 529 U.S. 1003 (2000).
72. *Koenick v. Felton*, 190 F.3d 259 (4th Cir. 1999), *cert. denied*, 528 U.S. 1118 (2000) (rejecting the claim that a Maryland statute providing for public school holidays on the Friday before Easter through the Monday violated the Establishment Clause). 690
73. *Granzeier v. Middleton*, 173 F.3d 568 (6th Cir. 1999) (affirming that closing courts and offices in a county courthouse and administration building on Good Friday plus posting a sign on the courthouse door containing a picture of a four-inch high crucifix with the image of Christ did not violate the Establishment Clause).
74. 505 U.S. 577, 631, 637-638 (Justice Scalia, dissenting). Justice Scalia wrote that "The Court's notion that a student who simply *sits* in "respectful silence" during the invocation and benediction (when all others are standing) has somehow joined—or would somehow be perceived as having joined—in the prayers is nothing short of ludicrous. We indeed live in a vulgar age. But surely 'our social conventions,' have not coarsened to the point that anyone who does not stand on his chair and shout obscenities can reasonably be deemed to have assented to everything said in his presence." Internal citations omitted. 700