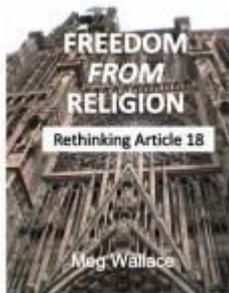


Meg Wallace: Why I wrote 'Freedom From Religion: Rethinking Article 18'

Article 18 of the *Universal Declaration of Human Rights* ('UDHR') provides that everyone has the right to freedom of thought, conscience and religion, and the right to practice their religious or other beliefs. This latter right is subject to limitation by government in the interests of public health, security and morals, and protection of the rights of others.



I wrote this book because my investigation into religious freedom has led me to conclude that the claim for religious freedom as established by Section 18 is either misused or misconceived. Its meaning needs reconsideration.

The UDHR is the basic modern establishment of human rights for every individual. Every nation in the world is a signatory.

This raises many questions for societies with multiple diverse and often conflicting religious and non-religious beliefs. In most cases, religions promote practices contrary to accepted human rights, such as denial of women's autonomy, equality, well-being and personal integrity, and suppression of free speech. Religious proponents often claim the right to establish a judicial system that is at odds with established law.

How do we deal with the claim of one person to act according to their religion when this interferes with another's similar demand? If a nation commits to the UDHR, how does society maximise each individual's opportunity to hold and practice a 'religion or belief' of their choosing? How do we maximise everyone's enjoyment of human rights at the same time?

While working on a Bill of Rights for the self-governing Australian Capital Territory, I determined that 'traditional' approaches to human rights do not provide adequate answers to these questions. Recognising that not one nation satisfactorily implements the limitation provisions of Article 18, I wanted to understand more fully the nature of, and reasons for, this failure.

To research this issue further, I took up a PhD scholarship. *Freedom from Religion* is based on my doctoral research.

In seeking a theoretical framework -how a UDHR-compatible society which included freedom of belief should look - I found the most useful guide was developed by John Rawls, the internationally renowned American political theorist. His treatise *A Theory of Justice* set out what he saw as the model for a liberal democracy. His later work, *Political Liberalism*, while not specifically addressing the UDHR, gives an account of human rights it expresses, with a cogent analysis of the relationship between religion and the state.

Rawls concluded that the best way for the equal opportunity to practise a religion or belief by everyone in a pluralist society is through liberal democracy, where all beliefs are valued equally, and government and religion are separate. He recognised the potential incompatibility of personal moral worldviews, so a common philosophical life stance is impracticable. Rather, he said, equal human rights for all are maximised by society when people reach an overlapping political consensus through the process of liberal democracy based on human rights and the rule of law. This consensus establishes a public morality: values everyone can accept as principles on which society is governed, regardless of their personal beliefs.

This is where Rawls's work sheds light on the very important distinction in Article 18 between personal and public (or political) morality. It indicates that personal morality is based on principles that give meaning to our lives and establish our personal values. Public morality on the other hand, is based on principles that apply in the society we live in, whether by consensus (in democracy) or by fiat (in dictatorship or theocracy).

The UDHR, based on liberal democracy, provides that sometimes how we manifest our religious or other personal beliefs may be restricted by the public interest. This includes upholding public morality such as personal autonomy and equality for all regardless of race, religion, gender, or sexuality.

With this concept of Article 18 in mind, I set out to (a) test whether this model for interpreting Article 18 is sound, and (b) if so, the extent to which the UN and governments have met its criteria.

The European nations have also adopted the *European Convention on Human Rights*, with provisions similar to the UDHR, and set up the *European Court of Human Rights*, which has some powers of enforcement (unlike the UDHR). I spent time in Geneva at the UN human rights headquarters, and at the European Court library in Strasbourg, France considering documents regarding the framing and implementation of Article 18. I also looked at the laws and policies of nations around the world, as well as learned writings on its interpretation and implementation.

While my interpretation of Article 18 was confirmed, I found that, across the globe, it has been rejected altogether by some governments. These equate citizens' rights with particular religious dictates. Other governments overlook Article 18's

limitation provision to a greater or lesser degree, in which case it has become a pretext for demanding privileged treatment, enhancing the economic, social and political influence of religion. 'Freedom of conscience,' when it is accepted religious conscience, is seen as the right to defy the law. Overall, the interests of religious institutions and individuals are significantly reflected in government policy and legislation.

This amounts to some form of worldwide theocracy, either as constitutionally established religious governance or, in more liberal states, 'soft theocracy': where governments accommodate religious interests. This results in, e.g., prayers in government proceedings, religious activities or instruction in government schools, grants, privileges and tax exemptions, and religiously-inspired government laws and policy. Sectarian interests have largely overcome attempts at government impartiality towards belief.

Compromise within the UN, moreover, has permitted membership of its Human Rights Council— established to uphold '*the highest standards in the promotion and protection of human rights*'— to include repressive regimes such as Saudi Arabia and the UAE. 'Soft theocracy' has been countenanced by the UN and European Court, as separation of religion and state is not part of their language in interpreting the very general and sometimes ambiguous terms of Article 18. Consequently, the right to religious privilege has become fundamental to social consciousness.

In effect, even where we have nominal freedom *of* religion, we need to better promote freedom *from* religion to realise the promise of Article 18.

The human rights proclamations mentioned above provide for freedom of ideas, expression, association and assembly, catering for belief freedoms. Freedom to adopt and practise a system of personal ethical doctrines is indirectly recognised, but the effect of Article 18 has been to provide unwarranted widespread expectation and pressure for unmitigated freedom to follow religious or cultural practices. It has been used to promote sectarian interests, influence and power, unquestioning access to government resources and policy, and to demand associated immunity from the general law.

My conclusion is that a willingness by government and society to specifically recognise and articulate the distinction between public and private morality, and its associated obligations, is more likely to increase everyone's experience of freedom, both *of* and *from* religion, than the current prevalence of state involvement in religion.

There is a growing awareness that the most effective way to do this is for societies to legislate (preferably by constitutional provision) that religious or other belief is personal (i.e. not the state's business), and that religion, belief and the State are separate. As rights for one person in effect establish obligations on others, these obligations need to be spelt out in some detail, preferably at the constitutional level, for them to be clear and effective.

Legislation should firstly establish that the state is secular. It should spell out that government and public office holders cannot dictate, prefer, fund or advance any belief, religious instruction or practice, and that no person shall assert any belief as a legal reason to disregard the law.

As an Australian, I am impressed that in 2013 nearby Fiji adopted this approach in its Constitution, drawing a clear distinction between government and religion, and clarifying the rights and obligations of Article 18. This small regime sets out a model for belief rights, something its larger neighbours have failed to do.
