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Religious Communication and Its Relation to the State: Comparative Perspectives

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Religious Communication and Its Relation to the State: Comparative Perspectives

1. Introduction

It is fairly clear that there is a need, in terms of global and comparative perspectives, to explore alternative schemes for thinking about the role of the state with respect to religious communication. The predominant mode of discussion, especially in the comfortable discourse of modern Western traditions, is to lodge analysis in terms of free speech and human rights. Increasingly, however, that discourse is insufficient descriptively and in danger of irrelevance prescriptively. Religious or implicitly religious speech is inflected with new power, as if it were a form of violence itself. Religious communication becomes a transcendent force with a claim to authority higher than that of other forms of speech. Religious speech, because it has the capacity to motivate large-scale attitudes, raises important questions as to the manner by which national and global identities are formed. As 'religion' becomes an integral aspect of defining international oppositions and threats to national security, how states think about the propagation of messages by religious groups changes greatly.

Thus, there is substantial change in the perceived public importance of religion and the exercises of communication that relate to it. But modes of thinking about religion and speech, religion and the state, and religion and great publics have not sufficiently taken into consideration the new realities. The consequence is puzzlement about how to deal with the national and geopolitical aspects of religious ideas. In the last decade, especially, the privileging, banning, or subsidizing of religious communication has accelerated, but the question remains whether the paradigms for dealing with

A. SAJÓ (ED.), Censorial Sensitivities: Free Speech and Religion in a Fundamentalist World, 85-106.
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this subject matter area should be altered. It is impossible to engage in a broad conceptualization in this paper; my more modest goal is to look at a variety of contexts where the sponsorship or restriction of religion is encouraged or restricted by the state and to do so in a comparative way. What I hope to begin to do in this paper is to map a few new modes of looking at the relationship between the state and what might be called 'religious communication'.

The well-known paradigm that serves as the baseline is one in which 'religious speech' is a subcategory of a larger, identifiable category called 'speech' and one where, under international standards, maximum protection is to be afforded. The inspiration of this baseline of 'modernization' is the Enlightenment and its ideal of the secular free-thinker able to speak and act independently of constraint by government. Linked is the idea of government acting independently of a dominant religion or of religion acting effectively as if it were government. Equally basic is the principle that a dissenting, innovative, or competing religion can assert itself without state interference. The modern project can be seen as honoring societies more plural than monopolistic, so that power among religions (as well as political parties) is diffused. Another aspect of the model – reflected in the notion of government independence – is a sufficient separation so that religions should prosper without the smothering hand of the state expressed in various establishing ways (or, in the weaker statement of the model, that such assistance should be non-discriminatory). A rather new addition to the core is the right of one person or a set of individuals to seek to convince others to adopt a certain religion, part of the right of an individual to choose or profess a religion (or none at all) and the corollary right to resist conversion, including the right to be sure that unfair power is not used in a proselytizing process.[1]

All this is within the traditional mode of thinking about these questions. What is needed is to open or invigorate this discourse through questioning assumptions that undergird the traditional paradigms. The great global narratives, said to involve massive battles for 'hearts and minds', are being used to present a geopolitics in which religion is an instrument of power and sometimes a verbal scabbard, sheathing agendas of politics and force. In the crunch of these global narratives, not only are there more strongly defined and aggressive efforts to extend particular religious spheres of influence, but there are unusually framed struggles between aspects of religion and more secular forces such as democratization. How these grand narratives play themselves out must contribute to the redefinition of free speech and religion.

[1] We can already begin to see the various complexities, some of which mirror complexities in other circumstances. For example, problems of comparing free speech for individuals with free speech for corporate actors find a counterpart here. One kind of analysis may be needed to protect the free religious speech of individuals against the state or even against the force of a dominant organized religion. Another kind of analysis may fit where one seeks to establish the free speech of dissenting or novel religions in a context of monopoly or near-monopoly religions.

With the stakes so high, it is hardly surprising that governments increasingly become involved (no matter what their constitutions say) in addressing the impact of religious activity. Religion becomes a factor in national security, both offensively and defensively. This process signifies the reconsideration of religion as a dominating factor in *realpolitik* of the unification of state and religion. And this means rethinking religious communication and its relationship to the state and the individual in relationship to religion and speech (including a redefinition in which the individual is subordinated to the state).

2. Religion and the Market for Loyalties

In an article entitled *The Market for Loyalties: The Electronic Media and the Global Competition for Allegiances*,[2] I posited a market in which there are a variety of producers of allegiances (political parties, movements, ideologies, religions). These producers are competitors and behave in the same way, sometimes with as much rancor and skill as do advertisers and producers of loyalties to commercial goods. They combine to limit competition and use governmental power to sustain their influence and maintain or expand market share. Cartels of producers of allegiances are abundant. We know too well circumstances in which the state seeks to enforce a monopoly in the production of allegiances. Our ideal model of a 'marketplace of ideas' assumes ease of entry and many players existing in a kind of equilibrium of abundance. But this formula is the exception. Governments, sometimes independent of such producers or at their behest, intervene to maintain cartels or to force or permit openings (sometimes small, sometimes radical) to allow new entrants in a measured way. And at times, events occur or technologies are found that upend the historic efforts to establish and nourish existing cartels. These arrangements exist through the actions of individual states or are organized by regions or aggregated spheres of influence. Strong (or innovative) producers of allegiances (or state sponsors of such producers) seek to intervene to change the rules or take other actions to break an existing cartel or existing balance where they seek to establish a stronger foothold.

Religion has always been a major aspect of markets for loyalties (perhaps religions were, in some places, the original market players), but how the strength and influence of religions – as entrants in the competition for loyalties – comes into national and global debates changes over time, and those changes worth examining.[3] For example, the naming of belief and practice of religion

[2] M. Price, *The Market for Loyalties: The Electronic Media and the Global Competition for Allegiances*, 104 Yale L. J. 667 (1994).

[3] *See* S. Shapiro, *Ministering To the Upwardly Mobile Muslim*, New York Times Magazine, 30 April 2006, at 46.

as a particular right supplies a basis for breaking an existing monopoly or oligopoly. Examination of how 'rights' come to be articulated is one way, but hardly the only way, to analyze these shifts. Scoring how a state ranks, or how the international community performs, in terms of recognition of rights does not capture the changing religio-political map of the world. And when looking at these markets, another important distinction can be made. One can contrast competition among religious providers (say, Catholics and Protestants) or competition between (at least some) religious providers and other producers of allegiances (e.g., Christian fundamentalists versus those favoring a secular approach to the world). Analytically, one can examine the market for loyalties as if it plays itself out solely or primarily within a particular state, with that state having or purporting to have control (e.g., arguments over church and state in the US); as compared with a market for loyalties in which the influences are strong across national boundaries (most evident in areas of intense missionary activity, as in parts of Africa, or in times of conflict, as with the Balkans).

We are more familiar with markets for loyalties within the boundaries of a state. One could think of three historic patterns of religion in the single-state context: a state coupled with a monopoly established religion, a state constitutionally and in fact dedicated to plural religious practices and a commitment to separation, and a state that is ruthlessly anti-religious and that asserts and imposes secularism as a replacement for religion.[4] Each of these paradigms would imply a different view of religious communication. Taking just one element of regulation, relating to religious broadcasting, the implications might be as follows. A monopoly state – one with an established and dominant religion – may either preclude any other religions from the use of powerful electronic media, or provide the established religion with a monopoly itself (a variety on this would be a strong and small cartel). Over time, where a monopoly or established religion is the centerpiece, a slow atrophying may occur because of the lack of a discipline of competition. The second model might be thought of as carrying out pluralism in broadcasting (see the Netherlands example, below). Rules would exist, perhaps even limiting new entrants, but the notion would be to be inclusive, fair, and nondiscriminatory, at least as to the historic players. The third model would seek to maximize secularism by looking at religions as fierce competitors whose role in the public sphere should be minimized, if not prohibited or subject to degradation (Turkey and possibly the Soviet Union spring to mind). There, religious broadcasting would be severely limited if not prohibited.

These are nation-based ways of thinking about the market for loyalties and the place of religion or religions within them.[5] Much of the way we think about

[4] This line of thinking grew out of a conversation with Professor Brendan O'Leary, University of Pennsylvania.

[5] *See* A. Rice, *Enemy's Enemy, Evangelicals v. Muslims in Africa*, New Republic, 9 August 2004, at 18.

regulation and the role of the state has arisen in this nation-based construct. Of course, the place of religion in the building of allegiances has always had transnational aspects. But today, obvious by these extensions and modes of altering allegiances have become increasingly intense and transnational. Christian proselytizing is measured through continents and regions. The move toward an Islamist Restoration has global implications. States certainly seek to maintain the patterns of control that have long existed, indeed maintain the monopoly or oligopoly that characterized the past and could be construed as a significant part of national identity. In terms of the models described above, the state-legitimated monopoly conferred on a dominant religion may be harder to sustain (though that is far from always the outcome), and a carefully planned and balanced pluralism is equally at risk. Maintaining strict secularism where religions can so easily gain entrance also appears problematic.

There is a small literature that conceptualizes religious competition in market terms and, at times, suggests the regulatory implications. Rodney Smith writes that,

> especially where they are in a majority, nonproselyting religions often seek to use broadcasting regulation to limit the capacity of minority religions to gain converts from among adherents of the majority religion. Majority religions do so by regulating broadcasting in a manner that limits the access of minority religions to the media or by increasing their own share of time on the media.[6]

Finke and Iannaccone use a supply-side approach as part of an economic analysis of the growth of religious organizations. They generally deny that the growth of various new faiths (they focus on historical religions in the United States) ought to be attributed to "altered desires, perceptions, or circumstances," namely, changes in demand.[7] Their approach deprecates the idea that shifts in large scale adhesions are due to changed concepts of the world or altered notions of self and society. Their goal is to challenge the traditional assumption that trends in religious practice come from altered circumstances, increased poverty, or other changes in outlook. Largely focusing on the US experience, they assert that "the most significant changes in American religion derive from shifting supply, not shifting demand. Colonial revivalists, Asian cult leaders and contemporary *televangelists* all prospered when regulatory changes gave them freer access to America's religious marketplace."[8] For them, it is changes in the incentives and opportunities facing religious producers that account for expansion or contraction among faiths, not "some sudden shift in the material or psychological state of the populace."[9]

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[6] R. Smith, *Regulating Religious Broadcasting: Some Comparative Reflections*, 1996 BYU L. Rev. 905.

[7] R. Finke & L. R. Iannaccone, *Supply-Side Explanations for Religious Change*, 527 Annals of the American Academy of Political and Social Sciences (AAAPSS) 27-39 (1993).

[8] *Id.*, at 27.

[9] *Id.*, at 28.

They would, if pressed, generalize this assumption into the global context. If Fink and Iannaccone are correct, and their analysis can be scaled up, then global changes in the hold of belief systems are a function of shifts in technology and regulatory patterns: in supply and access rather than in appeal or content. Perhaps this changes at a given moment: there is a tipping point in acceptance or decline that supersedes these more technical explanations. And, perhaps, there are exceptional moments, tulipmanias, where a religion (or an ideology) achieves a sharp upswing in its place in the market for loyalties.

Finke and Iannaccone attribute significance to the governmental role:

> The market model views churches and their clergy as religious producers who choose the characteristics of their product and the means of marketing it. Consumers in turn choose what religion, if any, they will accept and how extensively they will participate in it. As in other markets, government regulation can profoundly affect the producers' incentives, the consumers' options and the aggregate equilibrium.[10]

In a stroll through US religious history, they claim, among other things, that "the so-called Great Awakenings" of the period from 1730-1760 and 1800-1830 succeeded because of religious campaigns that arose "when restrictions on new sects and itinerant preaching diminished. Early American religion flourished in response to religious deregulation."[11] They speak about the Grand Itinerant, George Whitefield, whose efforts to spread his message was resisted by more established preachers. One group of Congregational ministers complained that "for a Minister to invade another's Province and preach in his Charge without his leave, is disorderly and tends to Confusion, and hurteth the Work of God."[12] The natural response, in these circumstances, is to seek to restrict entry through regulation. Finke and Iannaccone call the itinerant preachers "unregulated competitors in the religious marketplace, foreign competition that threatened the privileges and profits of a domestic cartel." In that early time, the Connecticut legislature prohibited unlicensed propagators from "preaching in any parish without the approval of the minister of that parish."[13]

A more recent and modest example within the US reflects the process of cartelization and its casual enforcement. In a 1935 article, *Radio and Religion*, Spencer Miller recounted the way the National Broadcasting Company (NBC) (and others) dealt with the public interest obligations and opportunities established by the Federal Communications Commission (FCC) with respect to religion.[14] Soon after the NBC was created in 1927 (and in anticipation of government concern), it formed an Advisory Committee to guide in the

[10] *Id.*, at 28.
[11] *Id.*, at 29.
[12] *Id.*, at 31.
[13] *Id.*, at 32.
[14] S. Miller, Jr., *Radio and Religion*, 177 AAAPSS 135-140 (January 1935).

development of programs in various fields including religious broadcasting. A standing committee was formed to provide time or opportunities, and they did so for the benefit of the 'three great religious communions' and no more. Among the principles adopted were the following:

> The national broadcasting company will serve only the central or national agencies of great religious faiths, as for example, the Roman Catholics, the Protestants, and the Jews, as distinguished from individual churches or small group movements where the national membership is comparatively small.
>
> The religious message broadcast should be nonsectarian and nondenominational in appeal.
>
> The religious message broadcast should be of the widest appeal; presenting the broad claims of religion, which not only aid in building up the personal and social life of the individual but also aid in popularizing religion and the church.[15]

This approach, 'establishment'-oriented and exclusive, extended to all the networks and, with tacit governmental approval, remained the dominant approach for decades. An oft-told story about how *televangelism* came to be such a strong force today is the reaction of non-establishment religious movements to this audio-visual cartel and the campaign to change the rules. The dominant religions – working with the established networks – sought to maintain their cartel. In defiance, and with populist pressure on Congress, the excluded groups created a competing lobbying organization and mastered the licensing opportunities provided by the Federal Communications Act.[16] Of course, it is only against the political structure in the US and the relative transparency of decision-making that this story can be told in so full a fashion.

The conscious role that the FCC plays in the problem of market entry – and the switch in the ideology of approach – is exemplified by a much more recent example of regulation. What gave birth to the issue was the application for a transfer of license from a traditional public service broadcaster, WQED Pittsburgh, to an entity, Cornerstone TeleVision, Inc., that was known for its religious use of frequencies. On 29 December 1999, the FCC released a 'additional guidance' in the face of concerns that the station would be largely 'religious' in the face of an historic reservation of noncommercial channels

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[15] *Id*.

[16] The story is told in various places: J. K. Hadden, *Regulating Religious Broadcasting: Some Old Patterns and New Trends*, *in* J. E. Wood, Jr. & D. Davis (Eds.), The Role of Government in Monitoring and Regulating Religion in Public Life (1992); J. K. Hadden & A. Shupe, Televangelism: Power and Politics on God's Frontier (1988). As to whether there was a deliberate effort by mainstream religious organizations to keep evangelical programs off the primary airwaves, Hoover demurs. He argues that the evangelicals insisted on preaching doctrine, while the mainstream groups went along with an FCC and network preference for 'broad truths.' S. Hoover & D. K. Wagner, *History and Policy in American Broadcast Treatment of Religion*, 19 Media, Culture and Society 7-27 (1997).

for general educational purposes.[17] To put it in 'market for loyalties' terms (or even Finke and Iannaccone terms), one might say that greater access for religious producers of allegiances was being made available through the potential opening up of these noncommercial or public service channels. At any rate, addressing concerns about shifting the balance (here between the religious and the secular), the majority of the FCC added these words to the grant of permission:

> […] not all programming, including programming about religious matters, qualifies as "general educational" programming. For example, programming primarily devoted to religious exhortation, proselytizing, or statements of personally-held religious views and beliefs generally would not qualify as "general educational" programming. […] The reserved television channels are intended "to serve the educational and cultural broadcast needs of the entire community to which they are assigned," and to be responsive to the overall public as opposed to the sway of particular political, economic, social or religious interests.[18]

The fashioning of this content-related rule gave rise to a great outcry and pressure. In contrast to the 1930s and 1940s, the balance of political force and power to mobilize had shifted, with greater strength among those who sought more openness to religious producers. So great was the heat on the FCC that a month later, the 'additional guidance' was dropped and the previous decision amended. Harold Furchgott-Roth, reflecting on the change before a Congressional hearing said:

> […] the Commission's "additional guidance" raised the specter of discrimination against certain broadcasters on the basis of their religious message. No other noncommercial, educational broadcasters, of course, were subject to the "no exhortation" or "no statement of personally-held views" standard announced in the Order. In *Rosenberger* v. *University of Virginia*, the Supreme Court made clear that once government opens up an avenue for expression, it may not deny access to those with religious editorial viewpoints simply because of those viewpoints. Conversely – and contrary to the assertion of some in the WQED majority – the Court also made clear that allowing such groups to speak on the same basis as others in order to avoid a violation of the Free Speech Clause does not, in turn, violate the Establishment Clause. [19]

Gloria Tristani, one of the Commissioners who had voted for the guidance, had a different perception of what had occurred:

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[17] WQED Pittsburgh *v.* Cornerstone Television, Inc., Memorandum Opinion and Order of the FCC of 15 December 1999, FCC 99-393, at 43.

[18] *Id.*, at 44.

[19] Testimony of Commissioner Harold W. Furchtgott-Roth before the Subcommittee on Telecommunication, Trade, and Consumer Protection, Hearing on H.R. 3525, the Religious Broadcasting Freedom Act and H.R. 4201, the Noncommercial Broadcasting Freedom of Expression Act of 2000, 13 April 2000.

> Then the pressure campaign began. It was alleged that the Commission was barring certain religious programming from the reserved channels. Not true – the Commission simply held that not all religious programming would count toward the "primarily educational" requirement. Then it was alleged that the Commission was somehow restricting religious speech, or engaging in a prior restraint. Again, not true – the decision only dealt with the small number of television channels set aside for noncommercial educational use. Religious broadcasters are free to broadcast whatever they wish on commercial channels. Indeed, Cornerstone has been broadcasting unimpeded on a commercial television channel in Pittsburgh since 1978. In this case, Cornerstone was seeking a special privilege from the government – the right to broadcast on a channel reserved primarily for public education. The government may selectively promote certain speech (e.g., public educational speech) without thereby abridging other types of speech (e.g., religious speech). Perhaps the most disturbing charge leveled against the Commission is that its decision reflects an "anti-religion bias" at the agency. I reject and resent this type of attack, reminiscent of a witch-hunt.[20]

Religious broadcasters, the first majority was implying, have the use of commercial channels. There was no desire to say, explicitly, that the noncommercial reservations were for secular purposes (and in a deep constitutional, though not a pragmatic, sense that would be an error). The *Cornerstone* decision played with allocation of tools of persuasion in the market for loyalties.

Too much of the literature on what might be called religious communication focuses on the history of religious broadcasting in the United States. This has been supplemented with histories of televangelism. There is even the sense of television itself as a religious experience. But there is something wanting about these analyses. They tend to look at religious broadcasting as a segmented, separated phenomenon, as an outlier in the history of broadcasting, without looking at it as an important component of history itself. Religious broadcasting is an oddity, a place of fraud and deceit, a place not mediated by the broadcast executive class, and not part of the standard story of broadcasting, networks, entertainment, and mainstream news. Increasingly, in the twenty-first century, religious communication is at the center of global concerns.

To turn outside the United States, an intriguing and complex example of government-enforced cartelization of religious communication involves the Netherlands. There the mode for achieving it was pillarization, the way the Dutch (and also the Belgians) have dealt with a specific multicultural society. Various aspects of life: churches, political parties, trade unions, hospitals, scouting organizations, broadcasters, and newspapers were divided into pillars. In the Netherlands, there were originally three pillars (Catholic, Protestant, and Socialist), but over time, particularly in the broadcasting arena, there was a fragmentation and a variety of entities, including atheists, gained pillar status.

[20] WQED Pittsburgh *v.* Cornerstone Television, Inc., Order on Reconsideration of 28 January 2000, FCC 00-25.

The associations fought entry by entities that would strenuously compete with them (usually, with respect to broadcasting, secular and commercial outsiders – or pirates). Ultimately, technology (and changes in European Union law commanding access) spelled the decline of the cartel and the ready entry of competitors into the previously tight market for allegiances.

Another significant example of cartelization occurred in Lebanon after its civil war of the 1970s. During the conflict and in the absence of state power, a large number of radio and television stations were created in what amounted to a proliferated open market. As part of the pacted settlement, the number of television stations was dramatically reduced, and access to audiences was restricted to each of the four major militia and religious participants, including Christians, Sunnis, and Shiites. Many stations there, including Hezbollah's al-Manar, owe their existence to this settlement. These were agreements of exclusion as well as inclusion. This cartel was affected by the rise of satellite broadcasting in the Middle East and by international efforts to affect the internal market, especially the broadcasting of al-Manar.[21]

Just as important as these national efforts to establish and enforce market shares among religious producers of allegiances are efforts that cross borders. These require more scholarly attention. Examples of such transnational interventions are abundant. One could look at this issue in terms of the impact of satellite on the ability of fundamentalist imams (exiled to Germany) to reach audiences in Turkey and alter or intensify the profile of religious practice there. In Turkey, regulation was attempted (bans on satellite dishes), but it was insufficiently coercive. Another well-known example is the adaptation of the audiocassette as a mode of spreading intensity of allegiance to fundamental ayatollahs in the Shah's Iran. These are similar to examples of technology performing the role of deregulation – as ways of increasing the effectiveness of supply, where changes in technologies serve as powerful deregulating agents. Turning again to Finke and Iannaccone, and applying their analysis to large scale refiguring of religious markets, several issues could be identified: What relationship is there between new communication technologies and changes in the religious landscape? What effect has deregulation of restrictions on missionaries had on the rate of conversion? To what extent have restrictions on proselytizing maintained market share in Russia for the Orthodox Church? What has been the overall impact of the growth of Middle East satellite services in terms of regional allegiances? Who controls access to the satellite transponders that serve the region, and how has that gate-keeping function been exercised? To what extent are some of the entrants (al Arabiya,

[21] Al-Manar was created by Hezbollah in 1991, with financial support from Iran. In 1997, the Lebanon government granted it one of only five broadcasting licenses, under pressure from Syria. The US, France, and Spain have all banned its broadcasts; in 2004, the US placed al-Manar on the Terrorist Exclusion List, blocking its broadcasts to North America. *See* A. Jorisch, *Hizbullah TV, 24/7*, 11 Middle East Quarterly 20 (2004), http://www.meforum.org/article/583.

for example) meant to be secularized balancing forces? Changes cannot be attributed to technological and regulatory change alone. An implication of the Fink and Iannaccone analysis would be to consider which producer is most adept at using the new technologies, i.e., of expanding supply to nourish the ideological product.

To suggest the geopolitics of these cross-boundary efforts, it is useful to quote the former US Secretary of Defense, Donald Rumsfeld. He was hinting at this new reality in a 2006 talk to the Council on Foreign Relations. He said the following:

> Our enemies have skillfully adapted to fighting wars in today's media age, but for the most part we – our country – our government, has not adapted. Consider that the violent extremists have established "media relations committees" – these are terrorists and they have media relations committees that meet and talk about strategy, not with bullets but with words. They've proven to be highly successful at manipulating the opinion elites of the world. […] They know that communications transcend borders – and that a single news story, handled skillfully, can be as damaging to our cause and helpful to theirs, as any other method of military attack. […] Our federal government is really only beginning to adapt our operations to the 21st century.[22]

Secretary Rumsfeld was not discussing religious groups, per se, nor was he discussing systematic modes of affecting the market for loyalties through technology and law. This was more of a burst of reaction to altered realities, to the recognition that the market had significantly changed and it was not clear to those in the status quo ante how to react to those changes. He was discussing skill in designing the message, not skill in dealing with an altered technological environment. He was not discussing regulatory impositions to restrict or favor entry of a particular religious group. What was critical was comparative expertise in exploiting changed circumstances. And these changed circumstances had important consequences in the market for loyalties.[23] In short, inappropriate or differential adaptation to the technologies leads to differential consequences in the market for allegiances.

3. State Regulation and Proselytism

There are many ways of describing state intervention in the religious-communication market for loyalties. In this section, I will focus on an area of discourse that has historically had transnational dimensions: control of campaigns for conversion (from barbarian to Christian, from one religion to another, from sects or divisions within a religion to alternatives). These are

[22] Speech by US Sec. of Defense Donald Rumsfeld to Council on Foreign Relations, 17 February 2006, http://www.defenselink.mil/speeches/2006/sp20060217-12574.html.

[23] *See further* the Report of the US Defense Science Board Task Force on Strategic Communication. http://www.acq.osd.mil/dsb/reports/2004-09-Strategic_Communication.pdf.

often seen through the prism of proselytizing and its regulation. Proselytizing is a useful technique to study. It has two faces. On the one hand, it is speech at its most central, the articulation of ideas most important to the speaker and possibly of redemptive significance to the receiver. On the other hand, proselytizing can be perceived as disruptive or subversive of existing arrangements among providers of allegiances. We can look at practices concerning proselytization as an example of state and non-state behavior in the market for loyalties.

There are states that regulate conversion practices formally or informally to maintain existing shares, including near monopoly status, in the religious cartel. Informal agreements exist between or among religious entities that tolerate some degree of conversion advocacy but also suggest limits on the practice. Greece, Russia, and the states of Central Asia all provide case studies of regulation of efforts to convert. There are examples of one state trying to influence conversion regulation in another state. The regulation of proselytizing practices can be studied by looking at particular religious contexts. Focusing on evangelical Christian churches or church-agents generally, different contexts yield varying regulatory environments: China, with its current emphasis on secularism; Russia, with its Orthodox tradition;[24] and the Middle East, where there are efforts to convert Muslims to Christianity.[25] Or one can look across national boundaries at specific technologies of conversion. Broadcasting provides a specific instance (not necessarily the most effective). We can think of regulation of religious broadcasting as turning, in large part, on how the regulator sees the channel, i.e., as undergirding or reaffirming religious faith among those who hold it, or, rather, as a more aggressive agent of change, designed primarily to encourage change or conversion.

Here, as elsewhere in the regulation of religious communication, international norms become a factor in setting limits (effective or not) on state action. And just for that reason, the way in which the international norms are constructed becomes itself an element in shaping the market for loyalties. An overriding and effective norm that privileges the right to convert can be a victory for the freedom to speak and believe, but it also can favor certain religions over others and the process of change over a commitment to

[24] In Russia, there are mutual arrangements between religious entities (or attempts for agreements). Alexis II, the Patriarch of Moscow and All Russia, issued his notion of what constituted appropriate understandings with his counterpart in Rome: "Cooperation with the Roman Catholic Church must exclude the forms of proselytism (i.e., the Vatican spreading its influence to what the ROC sees as its canonical territory) that have been pursued recently." *Russian Patriarch: Cooperation Does not Imply Proselyte Activities*, RIA Novosti, 8 June 2005.

[25] *See* for one earlier survey, J. Witte, Jr. & R. C. Martin (Eds.), Sharing the Book: Religious Perspectives on the Rights and Wrongs of Proselytism (1999). *See also* T. Stahnke, *Proselytism and the Freedom to Change Religion in International Human Rights Law*, 1999 BYU L. Rev. 251, at 289-298 (discussing cases from Europe and Pakistan).

stable power arrangements. In this way, defending or qualifying the right to proselytize (or the right to be converted or to hear arguments for change) alters the power of states to maintain a given cartel in the market for loyalties. By guaranteeing rights to receive and impart information, a norm is established, quite obviously, that encourages greater competition and somewhat favors religions that are committed to active conversion. In examining human rights, one needs to understand the various perspectives. Is there, under the human rights regimes, a clear individual right to choose whatever religion one wants (a right to commit apostasy, for example)? Is there a right to be free from (coercive or manipulative) efforts to proselytize, and under what circumstances can the state limit that right?[26]

The language of the human rights documents is deceptively simple. Article 18 of the International Covenant on Civil and Political Rights (ICCPR) provides:

> 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.
>
> 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.
>
> 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.

Section 2 seems to limit the right of proselytizers to use "coercion" as a means of inducing conversion or exercise of "choice." This has led to a discourse, including in the decisions of the European Court of Human Rights, of what should be considered coercion. The ICCPR had been amended on this issue differentiating it from the 1948 Universal Declaration of Human Rights. The "religious freedom" in the 1948 version explicitly included the freedom to "change" one's religion, and in the later version (above) the word "change" disappeared. Freedom became the "freedom to have or to adopt" a religion or belief. Perhaps this was a subtle effort – under pressure from newly decolonized states to make it clear that *maintaining* religious beliefs was a value equivalent to altering them.

Article 9 of the European Convention on Human Rights provides:

> 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 worship, teaching, practice and observance.

[26] For one approach to these questions, *see* Stahnke, *id.*, at 251.

> Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.

Note that Article 9 has the "freedom to change" language that was altered in the ICCPR. Note also that both the ICCPR and the European Convention provide (in the usual form) for limitations on the means of "manifesting" one's religion and, likely, activities related to proselytizing are such a manifestation, often a central one. The issue then would be under what circumstances, when all other requirements are met (prescribed by law and necessary in a democratic society), limits on this kind of activity might be justified. Specific attitudes toward conversion appear in Arab states. Article 10 of the Cairo Declaration on Human Rights in Islam of 1990 states that "It is prohibited to exercise any form of compulsion on man or to exploit his poverty or ignorance in order to convert him to another religion or to atheism." [27]

An example of this problem is a series of cases from Greece (where proselytizing of certain kinds is banned). In the case of *Larissis*,[28] officers in the airforce argued that their prosecution, conviction, and punishment for proselytism violated Article 9 of the European Convention. The Court acknowledged that the government had interfered with the officers' rights to "freedom […] to manifest [their] religion or belief."[29] Looking at the conditions in which such interference was authorized, the Court held that it had been "prescribed by law" and, more interestingly, had a "legitimate aim," namely, protecting the rights and freedoms of others. The Court also found that as far as the measures taken following the proselytizing of airmen under their command was concerned, the aim was of preventing disorder in the armed forces and thus protecting public safety and order.[30]

Was the Greek prosecution "necessary in a democratic society?" Here the decision spoke, though obliquely, to the interest of the state in refereeing in techniques designed to shift loyalties. First, "while religious freedom is primarily a matter of individual conscience, it also implies, inter alia, freedom to 'manifest [one's] religion,' including the right to try to convince one's neighbour, for example through 'teaching.'"[31] Still, Article 9 does not "protect

[27] Cairo Declaration on Human Rights in Islam, 5 August 1990, reprinted *in* I. Brownlie & G. S. Goodwin-Gill (Eds.), Basic Documents on Human Rights 764-769 (2002). *See also* A. E. Mayer, *Universal Versus Islamic Human Rights: A Clash of Cultures or a Clash with a Construct?*, 15 Mich. J. Int'l L. 307, at 329 (1994). Another useful article is L. S. Lehnhof, *Note & Comment, Freedom of Religious Association: The Right of Religious Organizations to Obtain Legal Entity Status Under the European Convention*, 2002 BYU L. Rev. 561, at 575.

[28] Larissis and Others *v*. Greece, Judgment of 24 February 1998, 1998 ECHR 13.

[29] *Id*., at Para. 38 (citing Kokkinakis *v.* Greece, Judgment of 25 May 1993, 1993 ECHR 20, at Para. 36).

[30] *Id*., at Para. 43.

[31] *Id*., at Para. 45 (citing *Kokkinakis*, *supra* note 29, at Para. 31).

improper proselytism, such as the offering of material or social advantage or the application of improper pressure with a view to gaining new members for a Church."[32] In the case of proselytizing airmen, the Greek government contended that the applicants had abused the influence they enjoyed as air force officers and had "committed the acts in question in a systematic and repetitive manner. The measures taken against them were justified by the need to protect the prestige and effective operation of the armed forces and to protect individual soldiers from ideological coercion."[33]

The Court concluded:

> […] the hierarchical structures which are a feature of life in the armed forces may colour every aspect of the relations between military personnel, making it difficult for a subordinate to rebuff the approaches of an individual of superior rank or to withdraw from a conversation initiated by him. Thus, what would in the civilian world be seen as an innocuous exchange of ideas which the recipient is free to accept or reject, may, within the confines of military life, be viewed as a form of harassment or the application of undue pressure in abuse of power. It must be emphasised that not every discussion about religion or other sensitive matters between individuals of unequal rank will fall within this category. Nonetheless, where the circumstances so require, States may be justified in taking special measures to protect the rights and freedoms of subordinate members of the armed forces.[34]

Larissis demonstrates the potential for international norms to act as a brake on the power of states to regulate the market for loyalties (though it also shows the complexity of defining and applying the human rights norms concerning religion and proselytizing). It indicates that there are issues of speech and privilege for the proselytizer and, as well, for the object of the proselytizing. It suggests the idea of inducement and of context.

The issue of regulating conversion practices was and remains an important one in Russia and Ukraine and other post-Soviet societies. In 1997, by an overwhelming vote, the Russian Parliament passed a bill establishing two categories of religious institutions: 'traditional' and 'nontraditional.' Traditional religious communities, legally referred to as 'religious organizations,' were defined as those with an established presence in Russia of fifteen or more years. They included Orthodoxy, Judaism, Islam, and Buddhism. Under the statute these entities have – though there is some debate about this – a privileged status that allows them, among other things, to run radio and television stations. Roman Catholic, Baptist, and breakaway or dissident Russian Orthodox denominations, even those that have been in Russia longer than fifteen years, were classified as religious 'groups,' and did not have the same bundle of rights, including the right to run broadcasting outlets as

[32] *Id.*
[33] *Id.*, at Para. 47.
[34] *Id.*, at Para. 51.

religious 'organizations.'[35] Though "[…] the stated aim of the law was to restrict 'totalitarian sects' and 'dangerous religious cults,'" the law in fact can be said to discriminate against less-established religious groups, especially Protestant and para-Christian denominations, such as Jehovah's Witnesses and Mormons, by making it difficult for them to establish institutional bases.[36] Catherine Wanner, who has written about comparative Russian and Ukrainian post-Soviet approaches to this question, places the statute in a national identity context:

> Ukrainian government and cultural leaders remain obsessed by the growth of nontraditional religious groups, meaning neither Orthodox nor Greek-Catholic. The growing presence of foreign missionaries in Ukraine buttressing these new religious institutions strains the ideal of Ukrainians as a unified ethno-religious people and complicates the process of nation building.[37]

The desire to rein in proselytism, especially by foreigners and by foreign-imported nontraditional religious groups, was "palpable" among government leaders and even among the population at large.[38]

These approaches can be seen not only as a competition among religious entities, but within a larger environment of competition for allegiances. At the fall of the Soviet Union, the Protestant fundamentalist denominations were perceived as aggressively anti-communist and that gave the movement a special immediate appeal. The ideological vacuum left by the collapse of communism as a viable worldview and a source of individual and collective meaning was replaced, according to Wanner, by a "religious-based orientation to self and society."[39] Indeed, Wanner claims, "the disorientation prompted by sweeping social change as the Soviet system began to fall apart caused some to embrace religion as an anti-Soviet alternative, as a new moral compass to guide their ideas and behavior amidst social confusion and economic collapse."[40] Perhaps one could call this a non-Finke and Iannaccone approach to understanding altered market shares for competing religious entities.

Many religious groups engage in self-regulation in terms of what are considered appropriate in efforts to reach out and expand. Self-regulation (by the group or by the cartel) limits the mode of expansion. Religious entities that consider proselytizing prohibited, or impose strong ethical limits on activities (perhaps more restrictive than would be imposed by the European Court of Human Rights), can be compared with those that have a more aggressive

[35] C. Wanner, *Missionaries of Faith and Culture: Evangelical Encounters in Ukraine*, 63 Slavic Review 732, at 738 (2004).
[36] *Id.*, at 738. *See also*, T. J. Gunn, *Caesar's Sword: The 1997 Law of the Russian Federation on the Freedom of Conscience and Religious Associations*, 12 Emory Int'l L. Rev. 43, especially at 98-99 (1998).
[37] Wanner, *supra* note 35, at 740-741.
[38] *Id.*
[39] *Id.*, at 733-734.
[40] *Id.*

set of standards. Furthermore, host states have different interpretations of what constitutes 'coercion' in proselytizing activities. Mark Elliott's essay offers a useful insight into the complex legal and ethical questions relating to national regulation and self-regulation of proselytizing. Sensitive to national regulation that minimizes or eliminates inducements that are inconsistent with ethical religious practice, Elliott reaffirms that [p]roselytism is fine if there is no "coercion, material inducement, violation of privacy, and preachments to captive audiences."[41] Commenting on post-Soviet Russia, he contends:

> Increasingly the xenophobic Russian Orthodox Church sees not only such manipulative charity but all Western Protestant compassionate ministries and communications as illegitimate material inducements. […] throughout the 1990s Patriarch Alexis II decried the "massive influx" of "well-organized and well-financed" missions of "foreign proselytizing faiths," "zealots" in search of "new markets."[42]

I have only touched the surface of the debate over active efforts to convert, state regulation of them, and the application of international norms to temper such state rules. Regulation of proselytizing is a case study in the structuring of cartels. It is an example of the complexity of relying on 'rights'-related jurisprudence alone. And an examination of proselytizing opens up what might be meant by a broader concept, namely regulation or control of religious communication. And it brings us back to the issue of trans-border religious broadcasting. How does one map attitudes toward proselytizing onto the practices of religious broadcasters? It would be wrong to contend that broadcasting is intrinsically manipulative, but some practices of persuasion by radio or television – those that promise cures, perhaps those that defraud or even exaggerate, may be inconsistent with ethical and legal standards and could, possibly, be subject to state regulation as coercive under international standards.[43]

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[41] M. Elliott, *Evangelism and Proselytism in Russia: Synonyms or Antonyms?*, 25 International Bulletin of Missionary Research 72, at 72 (2001). *See also* The Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief (1981).

[42] *Id.*, at 73. Elliott concludes, at 74:

> […] two distinct and seemingly antithetical propositions deserve consideration, one legal, and one theological. Legally, freedom of conscience, to be genuine, must concede the possibility of culturally insensitive, even patently obnoxious propagation, as long as it falls short of the aforementioned coercion, material inducement, invasion of privacy, and preachments to captive audiences.

[43] For an early and interesting exploration of these themes in the US context, *see* J. Weiss, *Privilege, Posture and Protection: "Religion" in the Law*, 73 Yale L. J. 593, at 604 (1964).

4. International Considerations

One of the interesting aspects of contemporary markets for loyalties – as I have mentioned above – is the activity of one state intervening in the market of another state. One could ask, for example, whether the United States has a stake in the working of the market for religious loyalties in Egypt, Syria, Mali, or Indonesia. Partly, this stake is tied to the post-September 11 'war on terror'. The US, as well as other states, claims to have a strong interest in strengthening what is called moderate Islam and diminishing the power of certain strains of fundamentalism (certainly what has been called Islamo-fascism by President Bush). This is true not only domestically, but globally. The US government may seek to modulate Islam and forms of Islamic education in Pakistan and Afghanistan. Partly, reflecting domestic political interests, the US may have a stake in protecting Christian groups abroad (in Nigeria, China, and elsewhere) and protecting the right of Christian missionaries to practice their activities.

A curious note to all of this is the American statute: the International Religious Freedom Act of 1998 (IRFA), the vehicle by which the US reflects a belief in certain universal or human rights principles regarding freedom of religion.[44] This legislation is relevant because it commits the US government (and its State Department and other missions abroad) to further religious freedom, as (more or less) defined in international documents, with a gloss of US interpretation.[45] IRFA compels the Executive Branch to document and take certain actions where religious freedom is denied in foreign states. The US perception of religion in society relies on 'change of religion' as a necessary right.[46]

The International Religious Freedom Act is interesting for other reasons. IRFA can be seen, quite simply, as the projection of standards internationally that permit new entrants to arise in foreign markets of loyalties. The Act also implies bringing US economic and other power to bear to compel such markets to open. Among its mandates are that the Department of State prepare national reports that survey how states permit or violate religious freedom as it is defined or approximated by the law. In these reports, there are a variety of related interventions in Islamic states. These include prohibitions on proselytizing by non-Muslim religions, prohibitions on having and

[44] An excellent study of IFRA is by D. Decherf, *Religious Freedom and Foreign Policy: The U.S. International Religious Freedom Act Of 1998*, http://www.wcfia.harvard.edu/fellows/papers/2000-01/decherf.pdf.

[45] This is an interesting set of standards because the US does not adhere to all the relevant international agreements that are said to govern interpretation of the statute.

[46] For further insight into IRFA, *see* M. Fore, *Shall Weigh Your God and You: Assessing the Imperialistic Implications of the International Religious Freedom Act in Muslim Countries*, 52 Duke L. J. 423 (2003).

distributing certain tracts or religious material, prohibitions on the entry of foreign clergy, and prohibitions on any private use of broadcast frequencies, much less religious ones.

This prompts a return to the earlier question of the stake one nation has in the religious market for loyalties elsewhere. The September 2004 Report of the Defense Science Board Task Force on Strategic Communication suggests some of the motivations for US actions: "Islam's internal and external struggle over values, identity, and change is the dominant political arena in which strategic communication takes place […] Islam's crisis must be understood as a contest of ideas and engaged accordingly."[47] The Report notes, among other things, "the hostile atmosphere in which terrorists act is reinforced by religious messages […]; the contest of ideas is taking place not just in Arab and other Islamic countries but in the cities and villages of Europe, Asia, Africa and the Western Hemisphere."[48] The Science Board sets forth a context (one that is subject to active debate with important consequences): the large narrative, it claims, is not about terrorism, but debate over an Islamic Restoration, the removal of antiquated, dictatorial governments that stand in the way of a unified whole because they are keeping hold of dictatorial power. Thinking about religion and communication in this ambitious story is different from thinking about proselytizing Christians (who may have their attention on the next world somewhat more than radically reorganizing the political structure of the present one). In this respect, one can ask: What is the communications system of the Umma? In a non-secularized environment like the Arab Middle East, how does one distinguish between 'religious stations' and secular counterparts? How are publics being mobilized? What is the mode of intervention by those interested in changing them? What exactly does freedom of religious communication mean where there is so decisive and comprehensive a goal?

5. Regulation of Religious Communication

Let us take a few other areas affecting religious communication, and try to link them to the market for loyalties model. In the United States, one current phenomenon is new and more extensive enforcement of 'indecency standards' by the FCC on radio and television broadcasters, with large fines and indisputable chilling effects. There are several explanations for this increased zest for enforcement. One is that those who are engaged (on the Commission and the Congress) actually believe in the standards they are

[47] Report of the Defense Science Board Task Force on Strategic Communication of 23 September 2004, at 17-18. The report can be found at http://www.acq.osd.mil/dsb/reports/2004-09-Strategic_Communication.pdf.
[48] *Id.*, at 18.

enforcing or in their duty to enforce them. A second, often articulated, view is that it is part of a different (not essentially religious) market, namely the market for votes. But a third explanation is that this is a process of what might be called 'sacralizing' the commercial broadcasters so as to make them less effective competitors, less capable of advancing a particular and captivating view of the secular. While commercial broadcasters complain that restricting them while allowing cable channels to operate free of indecency standards hampers their competitive posture, churches or advocates of a more guarded lifestyle can claim to be less endangered.

Another interesting example involves new British laws seeking to reduce the maligning of religious groups. These laws, especially the Racial and Religious Hatred Act of 2006, are provisions criminalizing incitement of religious hatred and are designed to protect less dominant religions. How does this fit within the market for loyalties paradigm? This is not the usual case where the anti-blasphemy law appears to exist to protect the dominant religion. It is rather an instance where there is interest in maintaining a version of the status quo of plurality, of giving a sense to an embattled group that their market share is not being endangered, preserving stability rather than having an environment in which competition is brutal. It is a method of seeking to include and protect 'moderate Islam' within the cartel, while criminalizing or marginalizing more fundamental elements.

I have been interested in the regulation of sermons and other religious communication as an example of cartelization and the market for loyalties. In the post-September 11 world, for example, increased attention is being paid internationally to what is taught in *madrasas* not only in Pakistan, but in London and Amsterdam. All of a sudden, states that have benignly neglected supervision see themselves as having a positive stake in whether the Islamist teaching is 'moderate' or extremist. As to sermons, the arrest and deportation of the fierce British imam, Abu Hamza is an example. As one of the British papers put it:

> […] the role of the 47-year-old Egyptian-born cleric in radicalising the men responsible for Britain's worst mainland terror atrocity, the London suicide bombings, can be revealed. So, too, can the extraordinary influence Hamza and the Finsbury Park mosque had over some of the world's most notorious terrorists. For in the six years the hook-handed former mujahidin fighter was preaching his anti-Western sermons in North London, it became a breeding ground for terrorism under his controlling power.[49]

A favorite example of mine, however, involves the discovery of efforts by the Wahhabi sect to obtain a monopoly position among chaplains in prisons, and then the effort by the relevant governments to break the monopoly and

[49] D. Williams & B. Taylor, *Evil Incarcerated*, The Mercury, 11 February 2006.

virtually ban the sect from participating in that particular market for loyalties. Here is an excerpt from US Senator Charles Schumer explaining the context during Congressional hearings:

> Let me give you an example of how Wahhabism has wreaked some degree of havoc in my own backyard in New York State. For 20 years the New York State Department of Corrections employed Warith Deen Umar as one of its chaplains, eventually appointing him administrative chaplain of the New York Department of Correctional Services. A strict believer in Wahhabi Islam, Umar was responsible for the hiring and firing of all chaplains in the New York State prison system, exercising complete control over personnel matters. But last year Mr. Umar was banned from ever again entering a New York State prison after he incited prisoners against America, specifically preaching to inmates that the 9/11 hijackers should be remembered as martyrs.
>
> […] militant Wahhabism is the only form of Islam that is preached to the 12,000 Muslims in federal prisons. That is against the American view of pluralism.[50]

6. Conclusion

The purpose of this essay has been to sketch some elements of a still woefully incomplete theory of regulation of religious communications. But it has also been to suggest limitations and deficiencies in approaches that look solely to human rights norms and to rights of speech and belief as ways of thinking about religion, media, and society. The argument from the perspective of a market for loyalties analysis is more descriptive than normative. It is descriptive because it suggests how states engage in shaping and regulating competition among religious groups. It approaches the normative as it implies that one state's religious formation, religious education, and religious tendencies have a global environment – a serious impact on the political and security structure in another state. Because of such externalities, there is a justified interest in the international community (and in various affected states) in such national formations. These can be articulated in international norms and in unilateral actions.

There are periods of stability and periods of extensive change in particular markets for loyalties. Three things now characterize the role of religion in the market: there are large scale disturbances undermining stability in significant markets (or perhaps just as important, there are changes in perceptions of how the market is functioning). Market players are moving from persuasion to the use of force. There is the re-association, or stronger association, of religion with the political. And finally, there is the move from the domestic to the transnational.

[50] Senator Schumer, Hearing of the Terrorism, Technology and Homeland Security Subcommittee of the Senate Judiciary, Federal News Service, 26 June 2003.

Religions compete with each other to gain adherents. They compete with other forces (secularism, consumerism, etc.) as well. And, granted that they act like competitors in other markets and seek advantages, some competition is fair and some is unfair. Communications are central to their enterprise. Personal, organizational, and mass communication are the mainstays of this competition. These efforts can take the form of mass-producing copies of the Bible in the vernacular, or competition can take the form of tens of thousands of missionaries in Africa and Latin America. It can take the form of religious broadcasting stations reaching across national boundaries. Competitors have some common stake (under certain circumstances) in the establishment of rules that will allow each of them to function. At least they feel so if there is a danger that they will not be dominant. Most competitors like stability and often seek rules that preserve their market shares (even if those market shares are far from equal). Apocalyptic or messianic religions may feel that their time of dominance will certainly come and that actions to accelerate that day are more than justifiable. Competitors have a common interest in excluding new entrants (this is a corollary of the rule of maintaining market share). These factors lead to certain rules in the business world and probably do in religion as well. Competitors, and Christian groups in particular, seek the patronage of powerful governments to protect them and assure their capacity to function throughout the world.

And, of course, the making of rules is not up to the competitors alone. Consumers, citizens, and 'buyers' in the market for allegiances have a stake in rules that govern the behavior of the great producers. Consumers may have an interest in a set of mechanisms that allows supply to expand, that permits innovation, and that allows access to new technologies. In the great understanding of Albert O. Hirschman's Exit, Voice and Loyalty, they have an interest in Exit, though the reinforcement of Loyalty is sometimes in the mutual interest of seller and buyer.[51]

Examining this market and looking at forms that it takes does not abrogate the need to examine what might be called 'fundamental rights,' such as the right of the individual. It does not foreclose the need to determine which state interventions are appropriate, but it provides a different context for analysis.

[51] A. O. Hirschman, Exit, Voice and Loyalty: Responses to Decline in Firms, Organizations and States (1970).