THE RIGHT OF RELIGIOUS FREEDOM AND ILLEGAL ABUSE OF FAITH

Fausto Martin de Sanctis
Desembargador Federal do Tribunal Regional Federal da 3ª Região.

ABSTRACT

Religious institutions occupy a unique place in human culture. Although they have a protected right to govern and manage their own affairs spreading religious doctrine, they must keep their moral and legal obligations and avoid being used for illegal practices. This paper tries to review some definitions showing the importance of guaranteeing religious freedom without allowing such freedom to be abused for illicit purposes.

Keywords

Religious institutions; religion freedom; religion definition; illegal practices; bankruptcy; anticorruption; crimes.

INTRODUCTION

The traditional image of God and religion is being subsumed by a potent force of materialistic progress and alternative scientific paradigms for defining the facts of world. With exploding cultural and religious diversity in the world, especially in the United States and Brazil, courts face an increasingly varied and complicated religious environment. So much seems to be included "under the umbrella of religion that little is left over – and if everything qualifies as a religion, then the term, itself, stops being very useful anymore."[1] That is why some flexibility and careful consideration are needed.

When religious leaders trick worshippers (through false statements) to donate money, this could be considered the crime of larceny. The improper use of the status of a religious organization to evade taxes could also be considered larceny.

This paper is an attempt to discuss such a sensitive subject that includes the clash between the Freedom of Religion and the Public Peace scratched with criminal practices.

RELIGION'S FUNCTION

What is religion? An institution's self-identification as "religious" is typically not questioned. Indeed, any definition of religion by the state runs the risk of violating the Establishment Clause.[2] It is necessary to look to non-legal fields for assistance when formulating a legal definition of religion, avoiding attempts to define religion by reference only to the entities in which the adherent believes, which may collapse into disputes about the unverifiable.

Courts must develop an understanding of religion to be applied in cases presented before them. They cannot avoid defining religion and the definition should be express, even though it will never be perfect. The plurality of the understandings of religion can be apparent and it is important that its definition be applied in a consistent manner.

> Religion exists both in the cultural sense as well as the ritual sense. It is about a community of like-minded people who identify with each other in ways other than what they are doing when they are praying. Religion is an aspect, sometimes a defining aspect, of culture. However, it is different from other forms of culture because religious adherents believe that their system of beliefs has a divine origin: they believe God decided what the rules are, and these rules are more fixed than fluid.[3]

In some way there is "a consensus that, first, a religion's essential nature is not simply private experience; second, religion cannot be unqualifiedly identified either with the irrational and emotive or with the rational and conceptual;

third, religion is not identical with morality; and fourth, religion needs not to be theistic."[4]

The U.S. Supreme Court first attempted to define religion substantively in 1890, in *Davis v. Beason*, stating "The term 'religion' has reference to one's views of his relations to his Creator, and to the obligations they impose of reverence for his being and character, and of obedience to his will."[5] In its 1961 decision in *Torcaso v. Watkins*, a unanimous Supreme Court invalidated a provision of the Maryland Declaration of Rights that required public officials to declare a belief in God prior to taking office.[6] The Court, per Justice Black, held that neither the state nor the federal government may "aid those religions based on a belief in the existence of God as against those religions founded on different beliefs."[7]

The U.S. Internal Revenue Service, in its Tax Guide for Churches and Religious Organizations, states that it generally uses a combination of factors in analyzing the facts and circumstances to determine if an organization is a church for federal tax purposes.

It is hard to clarify the definitional ambiguity, but there is some need to adopt a clear standard of what constitutes a church or a temple, including one that can be applied to electronic or virtual ministries. It is important to draw a line to elucidate how it is possible that churches and temples are religious organizations, but not all religious organizations are churches or temples.[8]

A particularly potent source of conflict in church-state relations is the treatment of new or emerging religions. Many of these faiths, loosely grouped together under the label "cults," have been especially troubling to observers of religion and religious freedom, both for their own behavior and for the way they have been treated.[9]

Mega-churches have ushered in a new form of religious observance distinct from the style of observance commonly associated with a traditional church. They are not only houses for services and prayer, but also an one-stop shops for congregants. Their amenities range from sports arenas and gymnasiums to day care centers and entire apartment complexes.[10] Mega-churches and mega-temples are continuously expanding their worship and services to new cities. They usually have a unique worship style that includes one dominant male pastor, motivational speeches, and an innovative use of uplifting songs.[11] Part church, part civic community, they function like small towns. They have the ability to devote their activities, labor, and funds to influence legislation and directly lobby policy makers. The adverse effects that these establishments impose on those who reside nearby have prompted justifiable concern among some communities. Yet the religious aspects of mega-churches, like the functioning of any other church, are protected by law because they are still considered eleemosynary institutions, regardless of the amount of money that they make. As commercial organizations, churches–mega or not–should not be warranted the same protection as a traditional ones if, for example, they offer gym memberships, bookstores, and franchises. These aspects do not fit the definition of eleemosynary and should not have the same level of protection that is granted to the church itself. The services provided should be considered commercial and private, not religious. Yet the presumption is still that they have eleemosynary status if the religious benefits provided are similar to those provided by typical churches. In this case, the protection of the law should be granted as it is granted to any church or charitable organization.

New religious movements raise questions of ultimate values and, in some degree or another cannot be evaluated in terms common to all citizens. If a religion is based on beliefs whose source is beyond common comprehension, it makes principled challenges to the status quo. New religious movements may claim the right to enjoy the privileges accorded to churches in non-separationist societies as well as the right to be judged with suspicion.

The vagueness of the term "religion" leads to a broad definition that can make tax-exempt status easily ascertainable. Tax exemption, of course, does not subsidize churches, but permits them to operate freely without having financial burdens placed on them by the government. The protection afforded to the sanctity of the relationship between a church and its members promotes the principle of autonomy by recognizing the true inter-independence that defines the appropriate relationship between church and state. It is helpful to verify how churches and temples, Congress, courts, and the IRS might apply these concepts. Moral and

religious issues are at stake, which include some degree of direct and indirect lobbying, and can result in pejorative and immediate calls for the revocation of a church's tax-exempt status.[12] It is important that the government requires, through the IRS, formal recognition of the status of churches or temples as exempt to qualify for tax benefits, with clear criteria that distinguishes churches and religious organizations.

Some argue that any taxation of churches is unconstitutional.[13] At the opposite extreme, there are those who claim that the tax-exempt status of churches is an unconstitutional establishment of religion.[14]

Given the short-comings of proposed definitions, it is difficult to ascertain a single – or even multi-factor analysis – to arrive at an acceptable definition of religion. For example, a stricter and clearer definition may be required in order to avoid the adoption of a "Temple of Marijuana" as a church. Similarly, it is difficult to delineate whether a school should be judged independently from the church, and whether it is a religious institution for purposes of obtaining tax exemption.

In a preliminary and simple search using the Aurélio Portuguese dictionary, one can find the following as the first and main definition of religion: "Belief in the existence of one or many supernatural forces, considered as the creator(s) of the Universe and that, as such, should be worshipped and obeyed."[15] This is the main definition provided, and all other definitions presented by this dictionary use the first conception of a belief in a supernatural entity. The term "religion" ("religião", in Portuguese), according to the dictionary, comes from the Latin word *religione*, which has uncertain etymology. In the work of Cicero, the word refers to *relegere*, which could encompasses the meanings of "recover," "read again," "revise," and "revisit." Some Christian authors, on the other hand, connect the meaning of *religione* to the verb *religare*, which means "connecting again."[16]

Sociologically, the view of Durkheim, who analyzed the theme of religion in his work *Les formes elementáires de la vie religieuse* (The Elementary Forms of Religious Life), is a very useful one. The author identifies religion as a social fact consisting of a unified system of beliefs and practices related to sacred elements, around which a moral community forms and accepts them as venerable. For Durkheim, sacred is everything that is considered apart – or even forsaken – from the ordinary life. For that reason, the concept of the sociologist can be considered broader, covering not only systems related to supernatural elements, but also immanent elements, such as simple objects and beings, like a pebble, trees, animals, and many other things.[17]

This discussion about the amplitude of the term "religion" was the subject of a judgment by the Supreme Federal Court of Brazil (*Supremo Tribunal Federal*), when the Court had to rule on Extreme Appeal (*Recurso Extraordinário*) Nº. 562.351/RS. On that occasion, the justices looked into the questions regarding the definition of "religion," "worship," and "temple" in order to decide whether tax immunity should be applied to entities related to the Freemasonry. The prevailing thesis was the one presented by Justice Ricardo Lewandowski, who concluded that tax immunity should not be applied to Masonic activity. In this decision, the justice adopted a broad conception by which "temples of any denomination" (*templos de qualquer culto*) refers to religious entities themselves and not only to the places where the acts of worship take place. Still, the justice claimed that there was a need to interpret immunities restrictively, differently from constitutional freedoms, in a way that the Freemasonry could not be considered immune because it does not consist of a religion, nor does it present any kind of religious worship. Thus, considering that the goal of the constitutional norm in question consists of the protection of religious freedom and assuming that Freemasonry is not a religion, it was ruled that the constitutional immunity was inapplicable in that case.[18]

There was, however, a diverging voice in the Court. Justice Marco Aurélio, disagreeing with Lewandowski, affirmed that immunities, as means of protection of freedoms, should be interpreted in a broad way, differently from exemptions (*isenções*). Justice Aurélio noted that the Constitution only mentions the word "worship" (*culto*) and not the word "religion." He thus concluded that only the term "worship" (*culto*) was necessary in order to configure the application of tax immunity. He also claimed that there were undisputable religious elements in Freemasonry, including the expression of faith in common values and even in a supernatural

being, the so-called Great Architect of the Universe. Finally, he employed a comparative law analysis, showing how Freemasonry is registered as a civil religion in other places. For those reasons, outvoted Justice Aurélio ruled in favor of the extraordinary appeal.

Thus, the exercise of defining religion may have some weight in determining how a new religious movement is treated in a legal system, despite the long tradition of tolerance for religious faiths. Considering cultural and historical context is important not only for our understanding of how a state will define freedom of religion, but also for the formation of legal and rhetorical strategies to protect this freedom.[19]

Applying the definition of religion in a consistent manner requires being cautious, but not frightened to a point where courts retreat to such vague definitions that the term loses its meaning.

Religion occupies a unique place in human culture. For a long time temples have been one of the most hospitable institutions in a legally constituted society. They have such a strong influence on human behavior that, in the words of Jon Meacham, churches give the best chance to keep violence down, discourage out-of-wedlock births, encourage the healthy upbringing of children, and imbue a sense of work and responsibility that would help end poverty."[20] Although churches and temples should have a protected right to govern and manage their own affairs spreading religious doctrine, they must also keep their moral and legal obligations. Unfortunately, churches and temples are increasingly being used to commit crimes, notably fraud, embezzlement, tax evasion, and money laundering.[21]

RELIGIOUS FREEDOM IN THE CONSTITUTIONAL ORDER

Civil religion is a shared public set of beliefs, symbols, and rituals indicating a popularly accepted religious legitimation of political authority. According to Professor Robert Bellah, "every nation exhibits public rituals and discourse that constitute an identifiable form of religion paralleling ordinary religion."[22] Both the Brazilian and American governments have "received popular legitimation by the invocation of a suprapolitical sovereignty, 'a God who stands above the nation and whose ends are standards by which to judge the nation and indeed only in terms of which the nation's existence is justified.'"[23]

The rhetoric of strict separation of church and state has obscured the many ways in which the state is inherently religious.

The phenomenon of civil religion raises questions about the assumed neutrality of government in its treatment of religions. There is a risk of expansion of the regulatory state, increasing the points of contact between churches/temples and government. Yet the need for highly limited government powers, leaving individuals and groups free to shape their own destinies, remains.

Helping religious education could be considered a violation of the Constitution and a breakdown of the separation between church and state. Nevertheless, it is necessary to distinguish between secular and sacred subjects in education–tax aid to religious schools is not the same as tax aid to the church or temple itself. Complete separation is the best for the state and for religion, but the educational curriculum of some religious bodies can be verified to uphold the principle of separation.[24]

The First Amendment to the United States Constitution, adopted on December 15, 1791, as one of the ten amendments that comprise the Bill of Rights, prohibits the making of any law respecting an establishment of religion, impeding the free exercise of religion, abridging the freedom of speech, infringing on the freedom of press, interfering with the right to peaceably assemble, or prohibiting the petitioning for a governmental redress of grievances. Originally, the First Amendment applied only to the federal government, but the 1947 U.S. Supreme Court decision in *Everson v. Board of Education* incorporated the Establishment Clause, making it applicable to the states.

The Establishment Clause of the First Amendment means that neither a state nor the federal government can set up a church or pass laws that aid one religion, aid all religions, or prefer one religion over another. No tax in any amount, large or small, can be levied to support any religious activity or institution.[25]

The U.S. Supreme Court, in its first major free exercise case, rejected the suggestion that the Free Exercise Clause created exemptions from generally applicable laws. In 1878, in the case of *Reynolds v. United States*, the

Court limited the scope of First Amendment protection by weighing conflicts between laws of general applicability and religious practices in favor of laws of general applicability. Reynolds, the petitioner, challenged a federal statute that prohibited plural marriages, a practice he engaged in as a requirement of his religious faith and church. Although the law required imprisonment of Reynolds for obeying a command of his religion, the Court upheld the law, reasoning that "laws are made for the government of actions, and while they cannot interfere with mere religious belief and opinions, they may with practices." Beginning in 1963, the Court's interpretation of the Free Exercise Clause shifted in favor of religious conduct. In *Sherbert v. Verner*, the Court departed from *Reynolds* and adopted a strict scrutiny test for exercise cases. Any government act that significantly burdened religiously-motivated conduct was presumptively unconstitutional and government--imposed burdens were valid only where the state could establish a compelling government interest.[26]

On November 6, 2013, the U.S. Supreme Court heard oral arguments in *Town of Greece v. Galloway*, the first legislative prayer case that the Court has taken in more than three decades.[27] *Greece* focuses on whether a small town in upstate New York acted unconstitutionally in allowing only Christian clergy to open official town meetings with sectarian prayer. The outcome of this case could have major implications for the future of religion in the public sphere in America. The case could determine whether religious liberty in the United States remains strong or is seriously limited. *Greece* is just one of many religious liberty cases winding their way through the federal courts today, on issues ranging from the role of religion in same-sex marriage to protests of contraceptive coverage in the Affordable Care Act. The decisions in each of these cases will either strengthen and broaden religious liberty or limit and weaken it.

Sandhya Bathija stated that the "last time the U.S. Supreme court explored the topic of legislative prayer at public meetings was in *Marsh v. Chambers* in 1983. That case examined whether it was constitutional for the Nebraska Legislature to open each legislative day with a prayer offered by a chaplain paid by the state. A majority of the Court said the practice was constitutional and not a violation of the First Amendment." The Supreme Court pointed to the country's long history and tradition of opening public and legislative meetings with prayer. In 1989, however, the Supreme Court (in *Allegheny v. American Civil Liberties Union*) ruled unconstitutional a nativity scene on government-owned property. The Court explained: "However history may affect the constitutionality of nonsectarian references to religion by the government, history cannot legitimate practices that demonstrate the government's allegiance to a particular sect or creed."[28] Although legislative prayer is part of the country's history, the Supreme Court made clear that public bodies do not have blanket permission to open meetings with sectarian prayers because doing so would align the government with a particular religion. So the government cannot endorse or favor a particular religious view.

Typically, in analyzing the free exercise clause of the First Amendment to the U.S. Constitution, commentators focus on individual religious exercise and belief. "The right of conscientious objection–the free exercise right that protects individual religious practice when the commands of the state conflict with the demands of religion–figures prominently in their work. Religious organizations are usually dismissed as being mere aggregations of individuals holding common beliefs and thus significant only in that they represent the free exercise concerns of their individual members. In the past [forty] years, however, religious organizations themselves have begun to challenge government regulation under the free exercise clause, both as representatives of their members and on their own behalf."[29]

As Laurence Tribe has noted, the constitutional guarantee of free exercise cannot be concerned merely with the protection of individuals: "Worship and practice both are commonly mediated through structures of social interactions; each would wither if such structures could be easily ruptured by government. So it follows that the autonomy of religious entities, both congregational and hierarchical, is not simply one of several doctrines supporting the religion clauses of the Constitution. It follows that such autonomy lies at the very core of religion's place in the Constitution's scheme."[30]

The freedom of conscience cannot be served by protecting only individual free exercise rights. To protect the individual's freedom of conscience from substantial government intrusion, "society must protect the social structure or zone in which that freedom of conscience is exercised. By joining a religious organization and agreeing to the responsibilities that group membership entails, an individual engages in perhaps the most fundamental exercise of religion protected by the first amendment."[31]

Protection of religious freedom is also expressed through the Constitution of the Federal Republic of Brazil, in Article 5, Part VI, which states that freedom of conscience and of belief are unalienable rights, securing religious acts of worship as well as its places of practice and liturgies. It is important, from the beginning, to demonstrate that the distinction between freedom of conscience and freedom of belief denotes the insertion, in the grounds of protection, of the non-believer, that is, the one who claims to have no faith at all (being identified as an atheist, agnostic, or any other denomination). That was the lesson of Pontes de Miranda, the well-known Brazilian jurist, when he treated this distinction by analyzing it in the light of the 1967 Brazilian Constitution.[32]

According to José Afonso da Silva, religious freedom comprises three forms of expression: (1) freedom of belief, (2) freedom of worship, and (3) freedom of religious organization.[33] The author posits that the first freedom, the freedom of belief, refers to the constitutional right to adhere to any religion, to change from one religion to another, and to not to adhere to any religion. So, this facet of religious freedom encompasses everyone, protecting believers and non-believers.

The second of freedom is freedom of worship. The definition of the word "worship" ("cult" or "service") resembles the definition of "religion." The first and main conception presented is "adoration or paying tribute to a deity in any of its forms and in any religion."[34] The term "worship" (*culto* in Portuguese) has its origins in the Latin word *cultus*, which, originally, carried the meaning of "cultivated" and afterwards transformed to signify, figuratively, "worshipped" or "honored."[35] One could conclude, therefore, that the word "worship," when not referring to the concept of religion itself, is, at the very least, intimately connected to it, for it is identified as one of its essential elements: the set of practices related to an entity considered absolutely valued. Accordingly, José Afonso treats freedom of worship as a means of protection to the many acts and practices identified as exterior expressions of religion, without regard as to whether they take place at home or in public locations. The constitutionalist author affirms that the 1988 Brazilian Constitution brought an innovation by taking away the determination that this freedom should not disagree with "public order or the good customs" (*ordem pública ou os bons costumes*), which were vague and, because of this, only brought the possibility of subjecting the different religions to arbitrary actions of the State government.

Finally, religious freedom includes the freedom of religious organization, that is, the freedom of establishing and organizing religious institutions and allowing them to relate themselves with the State. José Afonso claims that, presently, in Brazil, there is a regime of separation between the State and religious institutions. This is what a careful reading of the Article 19, Part I, of the Brazilian Constitution, for example, allows us to visualize. The text prohibits any favor relating a specific religion, as well as the thwarting of religious activities caused by public administration. The Article only makes one reservation regarding opportunities in which the collaboration between State and religious institutions may favor public interest. According to the author, such a collaboration must, however, be established by an Act or Law of the collaborating federal entity, it must not happen on the religious field, and it must be general in order to comprise all possible religious denominations. Furthermore, it should be stated that there are other constitutional norms, like the right to religious assistance on unities of collective confinement (as protected by Article 5, Part VII), the ministration of facultative religious teachings at public schools of basic education (as protected by Article 210, Section 1), and the civil effects of religious marriage (as protected by Article 226, Sections 1 and 2). [36]

Manoel Gonçalves Ferreira Filho considers religious freedom a facet of the freedom of belief and mentions, specifically, the freedom of worship. He argues that the freedom of worship should be protected according to the law. He also considers that the absence of the requirement of conformity to the public order and good customs

does not mean that religions are authorized to disrespect them, since the maintenance of such institutions depends on the maintenance of the legal system.[37]

LEGAL NATURE OF RELIGIOUS ORGANIZATIONS

In many countries, Roman Catholic morality has influenced legislation, which has typically remained denominationally neutral in formal terms. Religious bodies are submitted to generally applicable regulation to some extent, but they have been subjected to particular regulation to their own organizational needs.[38]

Article 44 of the Brazilian Civil Code establishes that "religious organizations" are legal entities of private law. Moreover, section 1 of the same article asserts that such organizations are free to organize and structure themselves, prohibiting the government from denying the registration of their constitutive acts.

Act Nº. 10,825/03 provided the wording for Article 44. This Act added religious organizations and political parties to the list of autonomous and private legal entities. This Act also amended Article 2,031, sole paragraph, of the Civil Code by establishing that a term that previously applied to all legal entities, requiring them to conform to the new Code's regime, did not apply to religious organizations.

According to Sílvio Venosa, the reason given by the Legislature for that innovation was that Article 53, which defines associations, would not encompass religious institutions completely with all of their peculiarities. Venosa suggests that the motivation for the change (adding religious organizations as an autonomous type of legal person) may be more related to the corporate interests of these entities. For him, the exclusion of religious organizations from some norms, such as the one contained in Article 59 of the Code,[39] is contrary to present legal trends and favors the possibility of these religious organizations to become hermetic.[40]

The 2004 Journal of Civil Law (*Jornada de Direito Civil*), in its Enunciation Nº. 142 of the Federal Justice Counsel (*Conselho da Justiça Federal*), confirms the associative nature of unions, political parties, and "religious associations." The Civil Code would, therefore, be completely applicable to them.

Nevertheless, other authors, such as Jones Figueirêdo Alves and Mário Luiz Delgado, claim that those institutions constitute different species of legal entities of private law that would not be subject to the commandments contemplated in Articles 53–61, since these articles (especially Article 59, sole paragraph) could lead to a violation of Article 19, Section I, of the Brazilian Constitution.[41]

Even considering that religious organizations are autonomous types of legal entities, they still seem to be subject to the possibility predicted in Article 50, which allows the practice of piercing the corporate veil. Thus, if there is sufficient evidence of diversion of social purpose or property confusion involving goods both from the organization and its associates, then the judge is allowed to pierce the corporate veil in order to broaden the effects of some obligations to the property of some of its members.

That is what one finds when reading decisions such as the one given for Interlocutory Appeal (*Agravo de Instrumento*) Nº. 0136470-58.2011.8.0000, which recognized the possibility of piercing the corporate veil of religious organizations, as long as either the comingling of assets (religious and personal) or the diversion of purpose is proven (Article 50).[42]

Aside from the tax relations (or the absence thereof) with the State, religious institutions also maintain important relationships with public administration regarding the regulation of the use of urban spaces where rituals take place. In general, municipal governments demand from religious entities a charter for the temples, which can be obtained depending on the number of people attending to their services.

Cities are supposed to not intentionally create zoning ordinances that prevent new churches or temples from being built or that discriminate against certain religions. A good practice is for zoning laws and regulations to give better guidance in order to reduce discrimination and enable more straightforward resolutions about zoning disputes.[43]

There are continual heated debates over whether churches and houses of worship are shown bias in the zoning process. One side of the argument focuses on the fact that cities intentionally create zoning ordinances to prevent new churches from being built and to discriminate against certain religions.

It is important to understand how zoning ordinances and land use regulations are relevant to churches and religious institutions. If a place of worship is essential to organized religions, it is also a place to perpetuate the sense of unity among members. "Without places of worship, organized religions would become obsolete. With that understood, it must be noted that the opponents argue that churches have an advantage over other institutions because they are shown deference with regards to zoning rights. Cities oppose church zoning requests for a variety of reasons, such as creation of more traffic hazards and noise in a residential area or reduction of tax benefits in a commercial area."[44]

ILLEGAL PRACTICES BY AND THROUGH RELIGIOUS INSTITUTIONS. BANKRUPTCY AND ANTICORRUPTION ACTS

The Brazilian Bankruptcy Act (Act Nº. 11,101 of February 9, 2005) establishes a policy of providing equal treatment to creditors while affording the debtor some flexibility in formulating a plan. Article 1 of this Act, however, makes it clear that this norm does not apply to religious organizations by stating as follows:

> This Law regulates the judicial reorganization, the bankruptcy extra judicial reorganization and the bankruptcy of entrepreneur and corporation, hereinafter referred to simply as the debtor.

The Brazilian Civil Code (Act Nº. 10,406, of January 10, 2002) considers religious organizations as legal entities of private law (Article 44, Part IV). Its first Section states as follows:

> The creation, organization, and internal structure and functioning of religious organizations are free, and the government is forbidden from denying them the recognition and registration of the constituent acts necessary for their operation. (Added by Act Nº. 10,825, of December 22, 2003).

Thus, because religious organizations are legal entities of private law and not corporations or entrepreneurs, they cannot avail themselves to bankruptcy laws.

In the United States, the treatment is the same. Creditors cannot force churches into involuntary bankruptcy because churches are classified as "eleemosynary" institutions. At the same time, creditors are guaranteed equal treatment under the law, while debtors are able to work out their financial situations under protection of the automatic stay.[45] This protection is an exception to the general principles of the Bankruptcy Code which has a well-established policy of providing "equal treatment of creditors while affording the debtor some flexibility in formulating a plan." "Courts have at various times relied on the state legal status of an institution, the nature of the organization's activities, whether the organization's activities were entirely ancillary to its eleemosynary goal, and whether the eleemosynary organization competed with commercial enterprises. None of these evaluations have been considered determinative.[46]

Mega-churches and mega-temples raise serious questions about the scope of this special protection. Some of them can be qualified as a non- or quasi-religious entities because they own gyms, movie theaters, and amusement parks in addition to their worship and liturgy activities. But, as stated before, the U.S. Supreme Court has not addressed the issue of how to distinguish them from their smaller counter-parts with respect to bankruptcy proceedings.

Andrew Stone Mayo recounts an interesting bankruptcy story of one mega-church. "Crystal Cathedral, a California mega-church founded in the 1950s that boasts over ten thousand members, announced in April 2010 that it owed creditors over $55 million. The church estimated that as many as 185 creditors could be waiting for payment. The church stated that it was not looking into bankruptcy, but that it could not afford to pay the creditors at the time. The church refused to enter bankruptcy for six months. It ignored the complaints of creditors, including those with long-standing ties to the church who had been trying to collect money for months with no results. Creditors who did not wish to file a lawsuit could only wait and hope that the church would be able to wade through its messy financial situation or eventually file for bankruptcy. However, should the fact that the church owned a campus with soccer fields, a retreat center, and camping grounds, change the fact that creditors would have no recourse other than individual lawsuits if the church refused to pay?"[47]

The Bankruptcy Code dictates that "an involuntary case may commenced only under chapter 7 or 11 of this title, and only against a person except a farmer, family farmer, or a corporation that is not a moneyed, business, or commercial corporation, that may be a debtor under the chapter under which such case is commenced."[48] Thus, the Code maintains the prohibition on involuntary bankruptcy suits against eleemosynary institutions, such as churches, schools, and charitable organizations and foundations.

Otherwise, the Brazilian Anticorruption Act (Act Nº. 12,846 of August 1st, 2013) provides for administrative and civil liability of legal persons for the commission of corrupt practices against public, national or foreign administration. Its first and second article establish as following:

> Art. 1. This Law provides for administrative and civil strict liability of legal persons for the commission of acts against the public, national or foreign administration.
>
> Single paragraph: This also applies to companies entrepreneurs and simple societies, embodied or not, regardless of the form of organization or adopted corporate model, as well as any foundations, associations of entities or persons, or foreign companies which have their registered office, branch or representation in Brazil, consisting of fact or law, even temporarily.
>
> Art. 2 Legal entities shall be liable strictly, in administrative and civil areas, the harmful acts provided for in this Law committed in their interest or benefit, exclusive or not.

Thus, because religious organizations are legal entities of private law, including in the provision of the single paragraph of article 1, they are subjected to anticorruption law, having the obligation of a compliance activity.

New religious movements are often regarded with suspicion. Some question whether the faith as a whole is fraudulent, or whether particular instances of conduct are fraudulent.[49]

It is a well-known fact that some religious institutions act in controversial ways when it comes to collecting financial resources through donations from worshipers. This is especially true of protestant churches of neo-charismatic orientation, which are commonly referred in Brazil as "evangelicals." The press and governmental bodies have investigated and released reports of evidence of criminal activity related to financial collections. Some leaders of these organizations have been charged with crimes, such as money laundering, participation in organized crime, and larceny by fraud, among others.

The U.S. Supreme Court ruled, in *United States v. Ballard*,[50] on the prosecution and conviction of the founders of the "I Am" movement for mail fraud, based on their soliciting funds accompanied by representations that they had the power to heal illnesses and injuries. The Court did not explicitly sanction fraud convictions based solely on a lack of sincerity. Justice Jackson argued that some degree of skepticism is a normal feature of religious belief, so it would be dangerous to make sincerity a viable question. For him, the Constitution requires us to tolerate a certain amount of fraud rather than weaken the guarantees of the First Amendment. However, he left open the possibility that a fraud conviction could be sought on grounds unrelated to religion, such as a misrepresentation about what would be done with solicited donations.

Religious values do not endorse corruption and fraud. This is true of several religious bodies, including Islamic laws. Islam looks to moral development within the individual to strengthen resolve and foster self-restraint.[51] Corruption is a "deep-rooted phenomenon that exists in innumerable forms, knows no cultural boundaries, operates in the private as well as the public sector, occurs in rich countries and poor, and defies comprehensive definition."[52] This logically extends to internal religious authority.

The fact that religious institutions enjoy significant autonomy and constitutional protection from state interference makes it especially difficult for law enforcement to detect their illegal activities, particularly in the area of financial crimes. Churches and temples should be required to submit to the state's law enforcement interests, like verification of the destination of donations to and from churches and temples, in a way that does not impair the institutions' beliefs, operations, and development.[53]

CONCLUSIONS

> Religious life manifests itself on two conceptually distinct levels: on an individual level, where individuals seek to shape their beliefs and actions with respect to their own conceptions of spiritual precepts, and on a communal level, where individuals holding shared beliefs develop and exercise those beliefs as a group. One of the key features distinguishing the two categories is the expansionist nature of the former: unlike individual religion, corporate religion seeks to recruit converts to its views of God and the world.[54]

To find out how easy it is to commit fraud in the name of God, a law firm in São Paulo, Brazil, adopted measures to create a fake church. They verified that there are no theological or doctrinal requirements to register a church with the state, nor is there a minimum number of followers. All that was required was filing one document in the National Register of Legal Entities. With this single registration, the "church" was allowed to open bank accounts, hold several financial investments, purchase and sell property, and engage in other economic transactions, all while benefitting from tax exempt status. The "church" could designate personal property for exemption from municipal taxes, and its leaders were even exempt from compulsory military service.[55]

It is very important to have an understanding of the weaknesses present in the management of religion institutions, as well as the deficiencies in the legal system. For that, it requires to dispel many mysteries surrounding financial crimes, especially money laundering, by inquiring into the scale of the problem and examining legislative and institutional loopholes that give power and mobility to organized crime. After sketching the landscape of this interesting topic, it is always welcome the transparency to business dealings and thereby inhibit or curtail unlawful activity inside religion institutions.

Addressing the concept of religious freedom, with particular attention paid to constitutional protections and the legal nature of religion institutions, also outlining some illegal practices carried out by and through religious institutions are something needed to keep discussing. International religious activities, payments using illegal and disguised instruments, and the misuse of religion institutions, must be well addressed and clarified in order to improve the war against financial crimes within them.

If, on one side, it is necessary to highlight the importance of guaranteeing religious freedom without allowing such freedom to be abused for illegal purposes, on the other hand, we cannot avoid describing a sensitive and virtually unknown world in which religion is used to commit serious crimes.

Although it is important to cast some light on the necessity of the neutrality and secular religious purpose, the freedom of thought and conscience is an important value linked to freedom of religious belief. Any attempt to violate this freedom cannot be based on the grounds of illegal activity. However, states should legitimately ban all criminal activity, even criminal activity committed on behalf of "promoting religion."

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