

## ESSAY

What do Constitutions say about religious freedom?  
More than you would think, and less than you would like!

¿Qué dicen las Constituciones sobre la libertad religiosa?  
Más de lo que cree, ¡y menos de lo que le gustaría!

Dennis P. Petri <sup>1</sup> & Jonathan Fox <sup>2 3</sup>

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### **Abstract**

Constitutions frequently affirm religious freedom, but their clauses often fail to translate into practice, making them unreliable indicators of actual religious freedom. However, their widespread inclusion highlights the global importance of religious freedom as a legitimizing principle. Using the RAS-Constitutions dataset from the Religion and State Project, this study examines constitutional provisions on religious freedom from 1990 to 2022, noting their increasing prevalence despite constitutional stability. Clauses such as official religion, separation of religion and state (SRAS), and general religious freedom show limited impact on reducing government (GRD) or societal

<sup>1</sup> Dennis P. Petri (PhD, Vrije Universiteit Amsterdam, 2020) is International Director at the International Institute for Religious Freedom, founder of the Observatory of Religious Freedom in Latin America, and Professor of International Relations and Humanities at the Latin American University of Science and Technology. ORCID: 0000-0002-7473-2576. Email: dp.petri@gmail.com.

<sup>2</sup> Jonathan Fox (Ph.D. in Government & Politics, University of Maryland, 1997) is the Yehuda Avner Professor of Religion and Politics at Bar Ilan University in Ramat Gan Israel and director of the Religion and State Project ([www.religionandstate.org](http://www.religionandstate.org)). ORCID: 0000-0002-0422-7275. Email: Jonathan.Fox@biu.ac.il.

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religious discrimination (SRD). Instead, clauses prohibiting religious hate speech and safeguarding the right not to have a religion prove more consequential, particularly in contexts of anti-religious secularism, where they act as constitutional red flags. Additionally, constitutions in 13 Muslim-majority nations that base laws on religion impose significant restrictions. The findings underscore the need for a comprehensive approach to assess religious freedom, extending beyond constitutional analysis to include legislation, jurisprudence, and broader policies. This aligns with the goals of the International Institute for Religious Freedom (IIRF) and the Religion and State Project in developing the Global Religious Freedom Index, a multi-year initiative to holistically evaluate religious freedom worldwide.

**Keywords:** religious freedom, constitutions, religious discrimination, secularism, Religion and State-Constitutions dataset, religious policy, Global Religious Freedom Index.

### Resumen

Las constituciones suelen afirmar la libertad religiosa, pero sus disposiciones rara vez se traducen en la práctica, lo que las convierte en indicadores poco fiables de la libertad religiosa real. Sin embargo, su inclusión generalizada resalta la importancia global de la libertad religiosa como principio legitimador. Usando el conjunto de datos RAS-Constitutions del proyecto Religion and State, este estudio examina las disposiciones constitucionales sobre libertad religiosa de 1990 a 2022, observando su creciente prevalencia a pesar de la estabilidad constitucional. Cláusulas como religión oficial, separación entre religión y Estado (SRAS) y libertad religiosa general muestran un impacto limitado en la reducción de la discriminación religiosa gubernamental (GRD) o social (SRD). En cambio, las cláusulas que prohíben el discurso de odio religioso y garantizan el derecho a no tener una religión resultan más relevantes, especialmente en contextos de secularismo antirreligioso, donde actúan como alertas constitucionales. Además, las constituciones de 13 naciones de mayoría musulmana que basan sus leyes en la religión imponen restricciones significativas. Los hallazgos destacan la necesidad de un enfoque integral para evaluar la libertad religiosa, extendiéndose más allá del análisis constitucional hacia legislaciones, jurisprudencias y políticas amplias. Esto se alinea con los objetivos del Instituto Internacional para la Libertad Religiosa (IIRF) y el proyecto Religion and State para desarrollar el Índice Global de Libertad Religiosa, una iniciativa plurianual para evaluar la libertad religiosa a nivel mundial.

**Palabras clave:** libertad religiosa, constituciones, discriminación, secularismo, conjunto de datos Religion and State-Constitutions, política religiosa, Índice Global de Libertad Religiosa.

## Introduction

Whilst constitutions are often overlooked in practice, rendering them poor indicators for actual religious freedom on the ground, it is essential to recognize that the prevalence of religious freedom clauses within these constitutional documents serves as a testament to the enduring legitimacy and value of religious freedom in global politics. Even if many countries may disregard these clauses in practice, the fact that they find it necessary to pay lip service to the concept underscores its considerable standing in world politics. In other words, most countries feel compelled to at least pretend that they provide religious freedom.

In this study, we take a closer look what national constitutions say about religious freedom, and explore their practical significance. To achieve this, we rely on the RAS-Constitutions dataset that was recently updated by the Religion and State Project at Bar-Ilan University under the leadership of Jonathan Fox, which we introduce in section 2. After presenting the methodology of this data collection instrument, in section 3 we conduct a descriptive analysis of the most important data pertaining to the treatment of religious freedom within national constitutions, tracing their evolution between 1990 and 2022. We find that religious freedom has become more prevalent in constitutions, even as constitutions exhibit notable stability.

In section 4, we discuss the limited significance of official religion and separation of religion and state (SRAS) clauses concerning actual religious freedom. We find that countries featuring official religions or SRAS clauses do not uniformly uphold or impede religious freedom. Consequently, drawing simplistic conclusions based solely on the presence or absence of these clauses proves unwarranted. In section 5, we delve into specific constitutional clauses that grant religious freedom. Again, we confirm that their mere existence poorly predicts instances of religious discrimination, whether instigated by governments (government religious discrimination, GRD) or non-state actors (societal religious discrimination, SRD). This underscores the necessity of examining all dimensions of religious policy to accurately assess the status of religious freedom in a given country, moving beyond constitutional text.

We further delve into the question why constitutional promises of religious freedom are so ineffective to guarantee actual religious freedom in section 6, by exploring several complementary hypotheses. Perhaps the most important hypothesis is the one we already mentioned at the start of this introduction: constitutional commitments to religious freedom are often just window dressing, yet countries continue to feel compelled to enact them.

In section 7 we discuss the only constitutional clauses that do have some impact on religious freedom. These are not the ones that might be expected and that we explored in sections 4 and 5 (presence of official religion, SRAS or religious freedom clauses) but rather clauses related to the prohibition of religious hate speech as well as safeguards for the right not to have a religion.

Following Fox (2023), we find that these kinds of constitutional clauses have more bearing on religious freedom, because they transcend symbolic affirmations and mandate specific actions from states. Significantly, they hold particular relevance in the context of anti-religious forms of secularism, where their presence serves as constitutional red flags for religious freedom, which we further discuss in section 8. In this section we also present the thirteen countries, which all have a Muslim majority, that constitutionally base their laws on religion and/or significantly subject specific rights and topic areas to religion.

Our ultimate conclusion underscores that a comprehensive understanding of religious freedom requires a holistic analysis of religious policy, extending beyond constitutional analysis. Except for the identified red flags, constitutional scrutiny alone proves largely inadequate. We must delve into lower-level legislation, jurisprudence, and broader government practices to obtain a thorough grasp of a country's religious freedom landscape. This comprehensive approach aligns with the objectives of the International Institute for Religious Freedom (IIRF) in partnership with the Religion and State Project in developing the Global Religious Freedom Index, a project that will take three years to complete.

### **Introducing the religious freedom variables in the RAS-Constitutions dataset**

The RAS-Constitutions dataset looks at the constitutions of 176 countries globally, covering the period from 1990 to 2022 (Fox & Sandler, 2020). An earlier version covered 169 constitutions from 1990 to 2008. The dataset has 154 variables that examine aspects like whether the constitution declares an official religion, separates religion and state, includes religious policies, guarantees religious freedom, limits other freedoms based on religion, makes symbolic references to religion, and bans religious discrimination.

The data was collected by getting English translations of constitutions from academic websites like [www.religlaw.org](http://www.religlaw.org) and <https://www.constituteproject.org>. If these sites didn't have copies, they were obtained from other academic sources or official government sites. When not available in English, Google Translate was used.

Each constitution was checked for various religion-related keywords like religion, religious, names of religions in the country, God, specific deity names, conscience, Bible, Koran, holy, sacred, etc. Coders marked relevant clauses related to religion for coding. A code of 1 means the clause is present, while 0 means it's not.

The unit of analysis in RAS-Constitutions is country-year. The dataset covers national constitutions and doesn't include data from sub-units of federal governments like individual states in Nigeria or India.

In this study, we focus on the variables of the RAS Constitutions dataset that directly pertain to religious freedom: official status of religion, which includes clauses on separation of religion and state (SRAS), and religious freedom clauses. The variables considered in this study are the following:

- **Official Status of Religion**
  - o No relevant clause
  - o SRAS clause
  - o Official religion clause
  - o both types of clauses
- **Religious Freedom Clauses**
  - o Freedom of religion or conscience
  - o Freedom of worship, observance, or to practice religious rituals or rites
  - o Freedom to change one's religion
  - o The right to profess (choose, etc.) a religion
  - o The right to not profess a religion or freedom from religion or be an atheist
  - o Hold or express religious opinions
  - o Right not to join or be a member of a religious organization
  - o The right to propagate or spread a religion
  - o No one is required to disclose their religion or religious beliefs
  - o Education or instruction in public schools or at the government's expense
  - o Education or instruction at one's own expense or does not list at whose expense (also right to teach)
  - o Raising children in one's religion
  - o Form religious groups or practice religion in groups. This includes the right to a religious community
  - o Have a place of worship or own property (for religious organizations)
  - o Religious organizations may manage their own affairs
  - o Right to a chaplain in hospitals, the military, etc.
  - o Protection of religious rights even in states of emergency or war
  - o Freedom from coercion with regard to religion
  - o In public
  - o In private
  - o Other

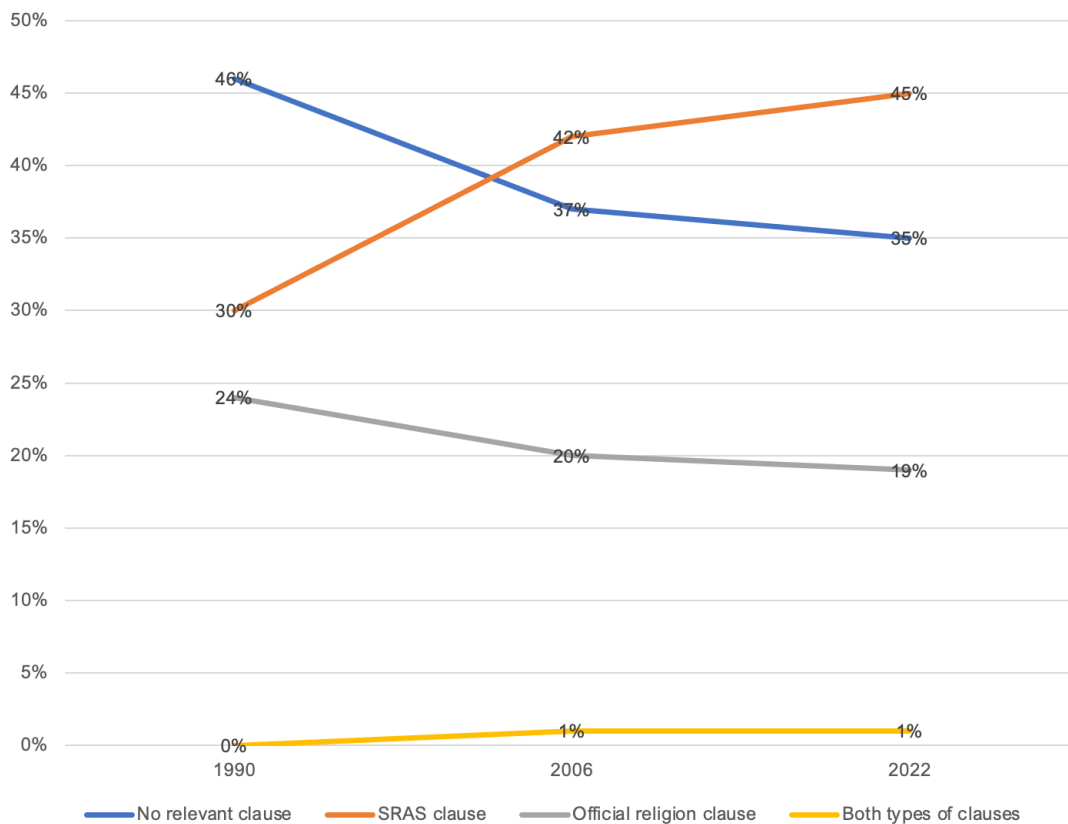
The RAS Constitutions dataset contains many more detailed variables, which all bear some degree of relevance to religious freedom, particularly when adopting a multidimensional perspective on the concept. These variables include things as the specific language and types of SRAS clauses, the specifics of the establishment of religion in the case of official religions, as well as the protections and qualifications for religious freedom. However, for the sake of brevity, our analysis is limited to the variables previously mentioned. Moreover, the conclusions we reach in this study would not be

greatly altered if the full set of variables would have been considered. For a more in-depth analysis of the RAS Constitutions dataset, please refer to Fox (2023).

## Descriptive analysis

In this section, we present distributions of the chosen variables and show changes over time, using 1990, 2006, and 2022 as reference points.

**Graphic 1.** Official Status of Religion (1990, 2006, 2022)



SOURCE: RAS-CONSTITUTIONS DATASET (2022).

As can be expected, constitutional clauses regarding religion tend to remain stable over time, even when countries adopt new constitutions. The main variation in the data took place shortly after 1990, when a historic number of new countries was created, most of which following the dismantlement of the former Soviet Union. Between 2006 and 2022, changes were minor.<sup>4</sup>

<sup>4</sup> Data tables used for this study are available in Petri & Fox (2023).

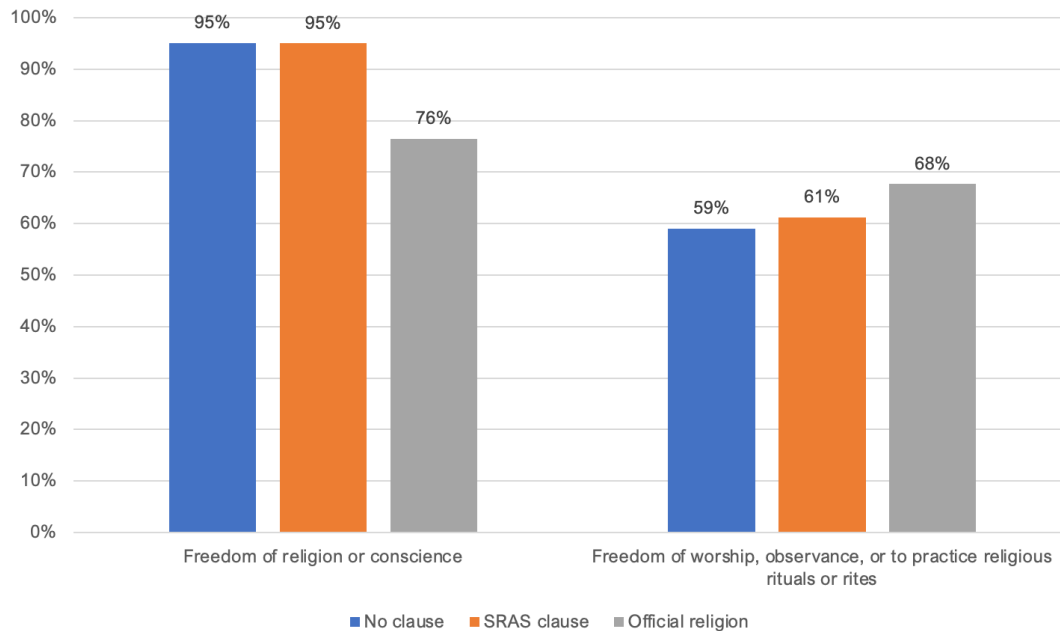
A few trends can be observed. First, even though the percentage of countries that does not have a relevant status of religion clause in their constitutions went down between 1990 and 2022, it went up in absolute numbers. Second, the percentage of countries with an official religion clause went down slightly. The percentage of countries with a SRAS clause went up more significantly, suggesting a growing consensus on the importance of the principle of separation of religion and state. Finally, the odd country that has both an official religion clause and an SRAS clause is Bulgaria, a country that both establishes Eastern Orthodox Christianity as the country's "traditional" religion, but also establishes SRAS (US State Department, 2022).

**Graphic 2.** Religious Freedom Clauses (1990, 2006, 2022)



SOURCE: RAS-CONSTITUTIONS DATASET (2022).

**Graphic 2.** Religious Freedom Clauses (1990, 2006, 2022)



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Let's take a closer look at the relation between the two most common religious freedom clauses, “freedom of religion or conscience” and “freedom of worship, observance, or to practice religious rituals or rites” and official status of religion using the most recent data available (2022). We find that the standard freedom of religion clause is present in 95% of the countries that have either no religion clause or a SRAS clause, and in 76% of the countries that do establish an official religion. The second type of religious freedom clause, whilst less frequent, exists in roughly two thirds of the constitutions, regardless of their official status of religion.

Whilst it seems logical for constitutions that do not have any official religion clause or a SRAS clause to have a religious freedom clause, it may seem counterintuitive for countries that have an official religion. At least on paper, however, having an official religion can coexist with the constitutional protection of religious freedom. It is also revealing that 5% of the countries with a SRAS clause do not have a religious freedom clause. This suggests that religious freedom clauses are often viewed as compatible with SRAS, even though this is not necessarily the case.

### **The limited significance of official religion and SRAS clauses**

As is true for many policy fields, there often is a gap between what constitutions say, and the reality on the ground. This is also true for religious policy. In fact, as we discuss below, the analysis



of constitutional protections for religious freedom cannot be considered a sufficient proxy for religious policy. In order to truly understand religious policy, a more holistic approach is necessary to account for lower legislation that complements constitutional provisions, as well as government practices.

To begin, whether a country has an official religion or not, is not a good indicator of the overall state of religious freedom. Countries with an official religion are relatively rare, as only 34 (out of 176) countries had such a clause in 2022, though a few additional countries declare official religions extra-constitutionally. The countries that do have an official religion are very heterogeneous. They include democratic countries such as Costa Rica, Denmark or Israel, but also authoritarian theocracies such as Afghanistan, Iran and Saudi Arabia, which are all listed as Countries of Particular Concern (CPC) by the US Commission on International Religious Freedom (2023). We thus conclude that having an official religion, is not, per se, incompatible with the religious freedom of minority religions.

In 2022, 80 countries had a SRAS clause. When considering SRAS clauses, we are faced with a similar heterogeneity as among countries with an official religion, as not all forms of separation are the same. As Fox clearly describes in his book *Political Secularism, Religion, and the State* (2015), a whole typology of secular states can be developed with varying implications for religious freedom. To keep the analysis simple, two general types of political secularism can be distinguished: a form of secularism that is in practice antireligious and a form secularism that is neutral toward religion. In other words, SRAS can be both a friend and an enemy of religious freedom. The United States would be an example of a neutral, and perhaps even accommodating, form of political secularism, whereas countries like France, Mexico (although a bit less since constitutional reforms in 1992) and Turkey (at least until 2003), could be categorized as anticlerical (see Fox, 2015; Petri, 2021; Petri, 2023).

In both cases, whether a country has an official religion and/or a SRAS clause does not say much about the overall state of religious freedom. To understand the overall state of religious freedom, it is necessary to consider actual religious policy, and specifically look at the nature and level of the involvement of the state in religion, as well as state practices of favoritism of the majority religion and discrimination of minority religions.

### **The difference between religious freedom clauses and actual religious policy**

Even when religious freedom finds its place within a constitution, this alone proves to be insufficient. The refusal to allow freedom of religion in constitutional texts cannot even be considered as a glaring red flag. The following countries do not include any mention to religious freedom in their constitutions: Austria, Comoros, France, Mauritania and Saudi Arabia. In some of these countries, however, religious freedom is protected by ordinary legislation and through general government practice.

As Fox (2023) shows, few of the constitutional religion clauses prove to be robust indicators of Government Religious Discrimination (GRD). The most reliable predictors of GRD are not constitutional causes, but other variables such as autocracy, tangible state support for religion, and societal religious discrimination (SRD) against religious minorities (see Fox 2016, 2020; Grim and Finke 2011).

Fox finds that the lack of correlation between most constitutional religion clauses and GRD, coupled with the capacity of other religion-related variables to predict GRD, implies that these clauses provide a suboptimal measure of a country's genuine policies and attitudes toward religion. Even when official religion clauses in constitutions predict GRD with marginal significance, it is practical levels of state support for religion that consistently predict GRD. As already mentioned, constitutional support for an official religion barely influences GRD unless it reflects a practical commitment to a state religion. Fox further indicates that religious freedom clauses, including qualifications and protections for specific religious freedoms, exhibit no discernible indirect influence on GRD. Their consistent failure to predict GRD underscores their status as common constitutional rhetoric that may or may not be applied in practice.

What holds true for GRD is equally applicable to SRD. We can employ a *contrario* reasoning by examining some highly significant cases. According to the Violent Incidents Database of the International Institute for Religious Freedom, which tracks incidents of violence against religion by systematically analyzing media sources and other public information, Nigeria consistently ranks as the country with the highest number of violent incidents related to religion, with the majority perpetrated by non-state actors (Observatory of Religious Freedom in Africa, 2023). This is in stark contrast with Nigeria's ostensibly favorable constitution regarding religious freedom. Another illustrative example pertains to many Latin American states, which boast excellent religious freedom provisions on paper but still grapple with some degree of SRD (Petri, 2021). This underscores that constitutional provisions do not guarantee the protection of religious freedom by the state.

### **Why constitutions' promises often fail to protect religious freedom**

In the complex landscape of religious freedom, there is a puzzling discrepancy between the lofty promises enshrined in constitutions and the actual respect for religious freedom on the ground. Several factors contribute to this disconnect.

Firstly, it's crucial to recognize that many constitutional clauses pertaining to religious freedom are often symbolic in nature and lack any practical implications (see Fox, 2023). This paradox does not apply to religious freedom only, but to other human rights as well. It is well-known that authoritarian states adopt constitutional structures, establish parliaments, and conduct elections, seemingly embracing democratic norms while undermining them in practice. They do so for many reasons, but most of the time this is window-dressing, i.e. a way to provide a fig leaf of democracy (see Hague, Harrop & McCormick, 2019).

Secondly, a substantial number of restrictions on religious freedom find their place not within constitutional texts but in lower-level legislation, bureaucratic practices, or remain concealed within various legal measures (see Fox, 2023). One prominent example is the presence of blasphemy laws, which can severely limit religious expression and freedom in many countries (see USCIRF, 2020), but are rarely included in national constitutions.

In this complex landscape, a multidimensional perspective on religious freedom is key. Indeed, religious discrimination also manifests itself beyond the purview of legal analysis. Indeed, even when religious rights are protected by constitutions and other legislation, religious groups may also be subject to a variety of human security threats that at first sight have nothing to do with the free exercise of their religion, but that actually constitute an alternative form of discrimination. For example, most religious groups in Cuba enjoy freedom of worship, but that does not mean they have full religious freedom. They are often hindered in ways that, at first glance, have little to do with religious freedom: they may be accused of violating zoning laws because religious services are often held in houses, as permits for the construction of places of worship are rarely granted. Additionally, religious leaders critical of the regime may be accused under fabricated charges (see Petri, 2021).

Lastly, the dissonance between the legal framework's promises and their practical implementation is a classic issue within the international human rights system. The capacity of the international human rights system to get states to enforce human rights, including the right to religious freedom, is limited by the principle of national sovereignty, which often implies there are no guarantees that constitutional and international human rights commitments, including to religious freedom, are respected in practice (see Mingst & McKibben, 2021).

### **The constitutional clauses that do matter for religious freedom**

As Fox finds, alternative constitutional clauses may wield more substantial influence over religious freedom (2023). He suggests that clauses denouncing religious hate speech and safeguarding the right not to have a religion tend to correlate with higher GRD levels when coupled with anti-religious forms of secularism.

The clauses within constitutions that significantly influence GRD do not pertain to central declarations of a state's relationship with religion or its commitment to religious freedom. Instead, they focus on more specific religious matters, which may not be perceived as the primary indicators of religious freedom in constitutional texts. Specifically, clauses safeguarding the right not to profess a religion and those banning religious hate speech both demonstrate a noteworthy association with higher levels of GRD. This observation suggests that these clauses better represent an anti-religious form of secularism compared to constitutional declarations of a state's secularity.

The prohibition of religious hate speech may appear reasonable on the surface, but its potential

implications can be complex. It raises questions about the interpretation of religious texts that criticize other religions, potentially categorizing them as hate speech. Furthermore, any limitations on speech, including hate speech restrictions, have illiberal connotations, challenging the principle of free speech essential to liberal philosophy and governance. These restrictions tend to be vague and open to interpretation, posing a risk to religious and other fundamental freedoms.

Additionally, clauses protecting the right not to profess a religion may signify a desire to shield secular or non-religious individuals from religious influence, potentially reflecting a fear or distrust of religion. This protection is often present in states with substantial societal discrimination against religion, suggesting that this concern largely arises from a non-religious perspective.

Furthermore, among the countries with such clauses, several are former Communist states where anti-religious aspects of Communist ideology still exert influence, indicating a correlation between this protection and anti-religious sentiments rooted in history. Therefore, understanding secularism as a political ideology requires distinguishing between positions advocating for state separation from religion and those promoting anti-religious agendas. This differentiation is crucial for analyzing the complexities of secularism's various facets in constitutional contexts.

### **Constitutional red flags**

As argued above, most constitutional provisions regarding religion are inadequate predictors of religious discrimination. The only three constitutional clauses that have some bearing on GRD, according to a study by Fox (2023) are the following:

- The government must support religious education or provide religious education (optional or mandatory, specify which) in schools.
- The right to not profess a religion, or freedom from religion or be an atheist.
- Bans on incitement, hate speech, animosity, enmity, or hostility based on religion (includes by political parties or other organizations).

The only country that combines all three constitutional clauses is Lithuania. In a way, the constitution of Lithuania can therefore be considered the worst for religious freedom. Eight countries have two of these clauses: Azerbaijan, Belarus, Bulgaria, Germany, Laos, Turkey, Turkmenistan and Uzbekistan. 54 countries have one such clause.

Beyond these three constitutional clauses, there are 13 countries that constitutionally base their laws on religion and/or significantly subject specific rights and topic areas to religion. These countries, all of which have a Muslim majority, include Afghanistan, Bahrain, Brunei, Egypt, Iran, Iraq, Kuwait, Maldives, Oman, Pakistan, Qatar, Saudi Arabia, and Yemen.

## Conclusions

To truly understand the scope of the protection of religious freedom, it is necessary to examine religious policy holistically. In essence, it is the government's support for religion, as reflected in its laws, administrative practices, and judicial decisions, that significantly influences religious freedom. Official religion clauses within constitutions only impact religions to the extent that they signify a genuine commitment to a state religion in practical terms. The evidence presented here clearly indicates that such clauses, at best, offer weak indications of this commitment. The Global Religious Freedom Index of the International Institute for Religious Freedom, developed in partnership with the Religion and State Project at Bar-Ilan University thanks to the generous funding from Global Christian Relief, will provide a much more comprehensive overview of religious policy, considering it across nearly 200 variables. Regional reports of this index started to come out as early as 2024. By 2026, a global report will be made public.

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