



# Democracy and the Rule of Law

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## Theme Report: Law and Religion



“Although religion, law and morals can be separated, they are nevertheless still very much dependent on each other. Without religion there can be no morality and without morality there can be no law.”  
Lord Denning – quoted by **Jiří Pehe**, Director of New York University, Prague

Within the last decade, the relevance of religion has resurfaced throughout the world. The place and role of religion in different social contexts has been widely discussed, and the Forum 2000 Conference has often served as a platform for this important debate. The delegates joined several panels to discuss the relevance and influence of religion, primarily in the sphere of law.

The overall consensus was that religion and law remain very much intertwined and heavily influence each other. The panels discussed the relationship between ethics and morality and how this relationship varies from community to community. As with the relationship between religion and law, that of ethics and morality has changed noticeably within the past decade and is reshaping the international community.

### World Religions and Human Rights

Despite their major differences, the three major monotheistic religions, Judaism, Christianity and Islam, face similar challenges within the international community regarding the relationship between religious and humanitarian law. In order for communities to progress, there must be dialogue supported by both international organizations and religious communities. Similarly, there should be stronger dialogue between Islamic and Western traditions if the international community is to make positive progress.

Despite the modern concept of human rights having emerged from the intellectual traditions of the Abrahamic religions, religious and public law often come into conflict with individual rights. Panelists discussed the complexities involved in supporting human rights and human dignity, whilst acknowledging and respecting the variety of religious laws to which people subscribe.

**Prince El Hassan bin Talal** of Jordan spoke of the need for a regional declaration of human rights for the Middle East that would include the right to be free from religious discrimination. He stressed that religious leaders must stand up for the religious freedoms of others and emphasize dialogue and conversation, rather than conversion. He called for mutual cooperation to break the ghettos of isolation in which we live. **Michael Melchior** (Chief Rabbi of Norway) noted that the size of the audience reflected a new interest in religion as a social phenomenon among intellectuals and policymakers; “religion returned to history”. Religions, he continued, have both totalitarian and dialectical impulses but must minimize the former and maximize the latter. Religious and political leaders have a limited but still significant window of opportunity to accomplish this. He also stated that it is through dialogue among religions that peace will be achieved.

Egyptian journalist, **Shahira Amin**, expressed her doubts that the Arab Spring will usher in a secular society. Although Egypt is historically a moderate society, present-day Egyptian Islam is being radicalized as a result of Wahhabi influence and discrimination against Coptic Christians is becoming a significant problem. In her view, the root of this is school education which teaches intolerance towards other faiths. She echoed Melchior in speaking of the need for responsible Islamist leadership. She noted that the Muslim Brotherhood has, since the revolution in Egypt, been speaking in more moderate tones in an attempt to appear politically responsible.

### The Religious Foundations of Legal Systems

**Vartan Gregorian** (President of the Carnegie Corporation) discussed the dialectic between faith and reason in all three Abrahamic religions. Highlighting the history of the relationship and tension between faith and reason, he argued that the key concept in all three religions is not conflict, but synthesis between faith and reason, which created space for the development of a legal system. Gregorian concluded the discussion panel by stating, “All religions evolve and they have to cope with reason.”

A European and Christian perspective was offered by **Václav Malý** (Bishop of the Catholic Archdiocese of Prague) who recalled that Christianity in Europe provided the philosophical roots for the concept of human rights. Although those roots have been widely forgotten, it was the Christian concept of, “man created in the image of God,” that implied human dignity and freedom, including freedom of conscience



and religion. All human beings are equal. This right must be respected and even religious law cannot be imposed, said Malý. The Catholic Church, he continued, does not favor a confessional state, but a pluralist state in which people with different religious and philosophical outlooks, including a non-religious outlook, can peacefully co-exist. He encouraged the audience to visit countries where human rights are infringed. Through personal meetings and acts of solidarity, the persecuted realize that they have not been forgotten.

**Geshe Tenzin Dhargye** (Tibetan Buddhist Scholar) described the two key ethical principles of Buddhism: the laws of causation (karma) and non-harming behavior, and how these form an approach to law and society. Promotion of self-discipline and innate values, such as honesty and truthfulness, are the key to a better and more peaceful society. In his view, most of the problems in the world stem from a lack of compassion or concern for the wellbeing of others.

### Law and Ethics: The Growing Divide

The question of the relationship between religion, ethics and law was also discussed. Although the legal tradition in Western civilization developed from the ethical principles of Judaism and Christianity, the philosophy of law and legal practice now appear to be gradually separating from their ethical base. Panelists discussed the growing divide between law and moral principles, and the increasing disconnect between the legality and morality of behavior in the public sphere. They also discussed the influence of secularization.

**Tomáš Halík** (Sociologist and President of the Czech Christian Academy) discussed the different concepts of law in Islam, Judaism, and Christianity. While Christianity is essentially about faith, Halík argued, Judaism and Islam are primarily about law. Judaism and Islam emphasize orthopraxy; Christianity emphasizes orthodoxy. Whereas Judaism and Islam have systems of religious law based on divine revelation, in Christianity, according to St. Paul's doctrine, humans are linked with God by faith not law; the law of God's Spirit is written in their hearts. Halík noted that Christianity thus opened the path for the secularization of law and that Western law has been influenced both by Christian roots and the secularizing effect of the Enlightenment.





### A State of Ethical Crisis: The Impact of Secularization?

The increasing number of ethics committees in the West today is evidence of an ethical crisis, said **Günther Virt** (Professor of Theology at the University of Vienna) who expanded on his experience of working on bioethics committees in the Council of Europe. He described how we perceive ethics on a variety of levels, ranging from bio-ethics to religion, and spoke of translating faith commitments into public policy arguments. He also discussed human rights. Although human rights can be justified intellectually without religion, religion provides the necessary motivation for honoring human rights in particular circumstances. In addition, De Tocqueville's insights into the role of intermediary private organizations in promoting ethics, human rights and democracy were presented by **William Cook** (Professor of History and Religion at State University of New York).

**Mark L. Movsesian** (Director of the Center for Law and Religion at St. John's University) asked whether secularization had led to a separation of law from morality. Drawing on an example from American legal tradition, he discussed the distinction between moral and legal advice in American lawyers' ethics. He provided evidence of the fact that American legal ethics code has minimized, over the last century, the lawyer's role as moral counselor. One hundred years ago, a lawyer had a duty to counsel clients on the need for "strict compliance" with "moral law." Today, a lawyer's duty is confined to providing legal advice; moral guidance is optional. Movsesian argued, that the change could be understood, at least in part, as an effect of secularization. The American legal system, originally rooted in Christian morality, has shifted significantly towards individualism and people currently make their own ethical choices within the legal system.

### Prospects for the Future

Looking at the relationship between religious and secular law, **Mark Movsesian** argued that this will be a crucial issue in the years ahead. Religion is resurging around the world, and there are likely to be many conflicts between secular and religious law. He discussed two doctrinal examples from the United States: the ministerial exception, currently before the Court in *Hosanna-Tabor*, and restrictions on religious practice under *Employment Division v. Smith*. **Ivana Hrdličková** (Czech Judge and Adviser to the Council of Europe) followed with a discussion of Islamic law and its compatibility with the European legal system. She argued that many Muslim customs originate in culture and tradition rather than Islamic law. Their potential conflicts with secular law therefore do not represent a conflict between secular and religious law. She also discussed the Sharia courts in the United Kingdom and other European countries and predicted that their legality and jurisdiction will be widely disputed in the near future. **Luboš Kropáček** (Professor of Islamic Studies at Charles University) offered an overview of the different schools of Islamic law. He offered a historical perspective on Islamic intellectual and legal tradition, emphasizing the significant differences between Muslim countries.



## Law and Religion Theme Speakers

**Shahira Amin**, Journalist, Egypt; **Anna Teresa Arco**, Chief Feature Writer, The Catholic Herald, United Kingdom/Austria; **Prince El Hassan bin Talal**, Chairman, West Asia-North Africa Forum, Jordan; **William Cook**, Professor of History and Religion, State University of New York, USA; **Geshe Tenzin Dhargye**, Buddhist Scholar, Austria/Tibet; **Vartan Gregorian**, President, Carnegie Corporation of New York, USA; **Tomáš Halík**, Sociologist, President, Czech Christian Academy, Czech Republic; **Ivana Hrdličková**, Judge, Legal Expert, Council of Europe, Czech Republic; **Luboš Kropáček**, Professor, Hussite Theological Faculty, Charles University, Czech Republic; **Václav Malý**, Titular Bishop of Marcellia and Auxiliary Bishop of Prague, Czech Republic; **Michael Melchior**, Politician, Chief Rabbi of Norway, Israel; **Mark L. Movsesian**, Director, Center for Law and Religion, St. John's University, USA; **Jiří Pehe**, Director, New York University, Prague, Czech Republic; **Günter Virt**, Professor of Theology, University of Vienna, Austria

## About Forum 2000 Foundation

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The Forum 2000 Foundation pursues the legacy of Václav Havel by supporting the values of democracy and respect for human rights, assisting the development of civil society, and encouraging religious, cultural and ethnic tolerance. It provides a platform for global leaders, as well as thinkers and courageous individuals from every field of endeavor, to openly debate and share these critical issues.

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### Published by:

Forum 2000 Foundation  
Pohorelec 6, 118 00 Prague 1, Czech Republic  
secretariat@forum2000.cz  
www.forum2000.cz

### Prepared by:

Oldřich Černý, Jakub Klepal, Peter Mucha, Eleanor Hammond, Boris Kaliský, Tereza Šritrová

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