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Brazil's distinct brand of religious liberty: an example to the world, not without its challenges

A forma distinta de liberdade religiosa no Brasil: um exemplo ao mundo, não obstante seus desafios

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Abstract: Brazilian scholars, politicians, legal practitioners, and judges consistently refer to Brazil as a lay state, suggesting a type of secularism similar to French *laïcité*. However, in practice, the interaction between government, religion, and society in Brazil more closely resembles religious freedom in the United States. Among the twenty-six most populous countries, Brazil has the lowest governmental restrictions on religious freedom. The Brazilian government protects religious liberty through extensive constitutional and statutory provisions, as well as numerous international conventions. Notwithstanding these governmental protections, the country has recently experienced a dramatic increase in social hostilities directed toward people of faith. Thus, while Brazil is an example to the world with regard to minimal governmental restrictions on religious liberty, both the government and Brazilian citizens must find ways to minimize social hostilities and religious intolerance. This paper compares religious liberty in Brazil to French *laïcité* and U.S. religious freedom, explores governmental protections of religion in Brazil, exposes the growth of social hostilities towards religious groups in Brazil, highlights the work of government and grassroots organizations to turn back this rising tide of religious intolerance, and offers several suggestions on how the Brazilian government might further decrease social hostilities.

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Key words: Constitutional Law. Religious Liberty. Religious Freedom. French *Laïcité*. Intolerance.

Resumo: Professores, políticos, advogados e juizes brasileiros frequentemente se referem ao Brasil como um Estado laico, tal como a França. Porém, na prática, a forma em que o governo, a religião e a sociedade brasileira interagem é mais parecida com o sistema de liberdade religiosa nos Estados Unidos. Entre os vinte e seis países mais populosos, o Brasil possui o menor número de restrições governamentais sobre religião. O governo protege a religião através de várias disposições constitucionais, leis e convenções internacionais. Não obstante essas proteções governamentais, o país recentemente está experienciando um aumento expressivo no número de hostilidades sociais contra pessoas de fé. Portanto, mesmo que o Brasil seja um exemplo ao mundo na questão de poucas restrições governamentais sobre religião, tanto o Estado brasileiro como os cidadãos precisam encontrar meios para minimizar hostilidades sociais e intolerância religiosa. Este artigo compara o sistema de liberdade religiosa do Brasil com o dos EUA e a *laïcité* francesa, descreve as proteções governamentais de religião no Brasil, revela o crescimento de intolerância religiosa no Brasil, destaca o trabalho de organizações governamentais e sociais para diminuir essa intolerância e oferece algumas sugestões de como o Estado brasileiro pode fazer mais para diminuir hostilidades sociais no país.

Palavras-chave: Direito Constitucional. Liberdade Religiosa. Laicidade. Hostilidades Sociais. Intolerância.

Summary: 1 Introduction – 2 French *laïcité* – 3 Religious freedom in the United States – 4 Brazil's distinct brand of religious liberty – 5 Social hostilities and religious intolerance in Brazil – 6 Government and grassroots efforts to decrease social hostilities and religious intolerance – 7 Conclusion – References

1 Introduction

Brazil has a distinct brand of religious liberty. Brazilian scholars, politicians, legal practitioners, and judges consistently refer to Brazil as a lay (or secular) state,¹ professing a type of secularism that suggests the government maintains an attitude toward religion similar to French *laïcité*.² However, in practice, the interaction between government, religion, and society in Brazil more closely resembles religious freedom in the United States.³ Brazil boasts extensive

¹ RANQUETAT JÚNIOR, Cesar Alberto. A Invocação do Nome de Deus nas Constituições Federais Brasileiras: Religião, Política e Laicidade (The Invocation Of God's Name In the Brazilian Federal Constitutions), *Revista Cultura y Religión*, v. 7, n. 2, p. 86-101, jun./dez. 2013. p. 86-87 [hereinafter *The Invocation of God's Name*]; see also ASSESSORIA DE DIREITOS HUMANOS E DIVERSIDADE RELIGIOSA (Counsel for Human Rights and Religious Diversity), *Relatório Sobre Intolerância e Violência Religiosa no Brasil (2011–2015): Resultados Preliminares (Report on Religious Violence and Intolerance in Brazil (2011–2015): Preliminary Results)*, 8, 2016 [hereinafter 2016 Report].

² The concept of French *laïcité* is briefly examined *infra* in Section 2 for comparative purposes. For a more in-depth analysis and explanation of French *laïcité*, see GUNN, T. Jeremy. Religious Freedom and *Laïcité*: a Comparison of the United States and France, *Brigham Young University Law Review*, Provo, n. 2, p. 419-506, 2004.

³ The concept of religious freedom in the United States is briefly examined *infra* in Section 3 for comparative purposes. For a more in-depth analysis and explanation of religious freedom in the United States, see *id.* The United States (religious freedom) and France (*laïcité*) boast two of the world's oldest and clearly defined/integrated frameworks for separation of church and states. Furthermore, most other non-establishment countries (countries that do not have an established religion) have developed and employed models for separation of church and state patterned after either the French model or the U.S. model. Thus, this paper summarizes the development and function of French *laïcité* and United States Religious Freedom for descriptive purposes, in order to provide a context for understanding religious liberty in Brazil.

constitutional and statutory protections of religion.⁴ It also recognizes numerous international conventions that, having been ratified by both houses of the Brazilian Congress, have the authority of constitutional amendments.⁵

Brazil's distinct brand of religious liberty truly "is exceptional."⁶ Indeed, Brazil is an example to the world: "Among the 26 most populous countries, Brazil has the lowest restrictions on religious freedom of them all."⁷ In fact, the Brazilian government places fewer restrictions upon religion than the United Kingdom or the United States.⁸ The government's commitment to religious liberty is particularly admirable considering the extreme amount of religious shifting in Brazil⁹—much of it "from Roman Catholicism to highly active and conservative forms of Pentecostalism as well as many Protestant and other minority denominations"¹⁰—as the country becomes increasingly more pluralistic and the Catholic Church (Brazil's majority faith which was previously the State religion) decreases in power and influence. On the other hand, the fact that Brazil's current Federal Constitution, ratified in 1988, was adopted after the Catholic Church promulgated *Dignitatis Humanae*¹¹—a "clear and unequivocal" declaration of a more open stance toward religious freedom—in 1965, is "[p]erhaps one of the greatest contributing factors to the peaceful navigation of the past decades of religious change."¹²

Nevertheless, religious liberty in Brazil is not without its challenges. Although the government works extremely hard to promote and defend religious liberty,¹³ data from numerous studies demonstrates a dramatic increase over the last decade in the number of social hostilities directed toward people of faith.¹⁴ For

⁴ Brazil's constitutional and statutory protections of religious liberty are examined *infra* in Sections 4.3 and 4.5, respectively.

⁵ CONSTITUIÇÃO FEDERAL [C.F.] [CONSTITUTION] art. 5, cl. 78, §3 (Braz.) (added to the Federal Constitution through Amendment 45 (2004)). The various international conventions that have constitutional force in Brazil are briefly examined *infra* in Section 4.4.

⁶ GRIM, Brian J. *Brazil: A Lesson in the Peaceful Navigation of Religious Change*. Tony Blair Faith Foundation. April 20, 2015, <<http://tonyblairfaithfoundation.org/religion-geopolitics/commentaries/opinion/brazil-lesson-peaceful-navigation-religious-change>>.

⁷ *Id.*

⁸ *Id.*

⁹ See *infra* Sections 4.1 & 4.2 for a summary of the development of pluralism and religious liberty in Brazil.

¹⁰ GRIM, *supra* note 6.

¹¹ PAUL VI, *Declaration Dignitatis Humanae*. Dec. 7, 1965 [hereinafter *Dignitatis Humanae*], <http://www.vatican.va/archive/hist_councils/ii-vatican_council/documents/vat-ii_decl_19651207_dignitatis-humanae-en.html> (establishing the Catholic Church's position that people "should act on their own judgment, enjoying and making use of a responsible freedom, not driven by coercion but motivated by a sense of duty").

¹² GRIM, *supra* note 6.

¹³ 2016 REPORT, *supra* note 1.

¹⁴ PEW Research Center. *Restrictions on Religion Among the 25 Most Populous Countries, 2007-2014*, June 23, 2016 [hereinafter PEW], <<http://www.pewforum.org/interactives/restrict5-scatter/>>; see also U.S. DEP'T OF STATE – Bureau Of Democracy, Human Rights, & Labor, *Brazil 2015 International Religious Freedom Report 3*, 2015 [hereinafter 2015 U.S. DEP'T OF STATE BRAZIL REPORT], <<https://www.state.gov/j/drl/rls/irf/religiousfreedom/index.htm?year=2015&dliid=256337#wrapper>>; 2016 REPORT, *supra* note 1.

example, in 2007, the first year that Pew Research collected data on restrictions of religion, Brazil's score on the social hostilities scale was only 0.8.¹⁵ In 2014 (the most recent year for which data are available), Brazil scored a 3.5 on the social hostilities scale.¹⁶ In less than a decade, Brazil has moved from an extremely low classification in Pew's social hostility index demonstrating minimal public manifestations of religious intolerance, to a high classification in the social hostility index demonstrating considerable public manifestations of religious intolerance.¹⁷ Thus, while Brazil is an example to the world with regard to minimal governmental restrictions on religious liberty, the country has considerable room for improvement in the realm of social hostilities and religious intolerance. Brazil's Federal Government is well aware of "the growing religious intolerance that has increasingly occupied the national scene in recent years."¹⁸ So too are Brazilian citizens.¹⁹

Section 2 of this paper describes the historical roots of French *laïcité*, while Section 3 examines the historical roots of religious freedom in the United States. Section 4 explores the development of Brazil's distinct brand of religious liberty in comparison to the French and U.S. systems, and highlights the various governmental protections of religious liberty in Brazil. By contrast, Section 5 exposes the growth of social hostilities toward religious groups in Brazil and examines several specific examples of such hostilities. Section 6 analyzes both government and grassroots efforts to turn back the rising tide of religious intolerance in Brazil; it also offers some suggestions of other steps the government might take to decrease social hostilities. Section 7 concludes the paper.

2 French *laïcité*

In France, *laïcité* is a term used "to summarize prevailing beliefs regarding the proper relationship between religion and the French state."²⁰ The current French constitution, ratified in 1958, states: "France is a Republic that is indivisible, *laïc*, democratic, and social. France assures the equality before the law of all its citizens

¹⁵ PEW, *supra* note 14 (This score represents an extremely low number of social hostilities—only Japan scored lower than Brazil among the 25 most populous countries.).

¹⁶ PEW, *supra* note 14 (Interestingly, Brazil's score of 3.5 represents more social hostility than countries like South Africa (2.4), Ethiopia (3.2), Vietnam (2.7), and China (3.3); but, less than countries like France (5.4), the United Kingdom (4.4), and the United States (5.2). As was previously noted, all of these countries score higher than Brazil in terms of government restrictions of religion).

¹⁷ Current examples of social hostilities and religious intolerance in Brazil are examined in detail *infra* in Section 5.

¹⁸ 2016 REPORT, *supra* note 1, at 8–9.

¹⁹ See, e.g., COMMISSION TO COMBAT RELIGIOUS INTOLERANCE. *About Us* [hereinafter CCR], <<http://ccir.org.br/quem-somos/>>, last visited Jan. 3, 2017, 8:08 PM.

²⁰ GUNN, *supra* note 2, at 420.

without any distinction based on origin, race, or religion. It respects all beliefs.”²¹ “At its core, [*laïcité*] represents a commitment that the state will be secular; that is, it will be ‘lay’ rather than confessional, while still respecting freedom of religion or belief.”²²

The most common English translation for *laïcité* is “secularism;” however, such a simple translation hardly does the term justice as it “is difficult to define and almost impossible to translate.”²³ Perhaps *laïcité*, which “connotes a strong separation of church and state,” is best understood in its historic context, having “evolved over the past two centuries since the French Revolution.”²⁴

To a great extent, the modern notion of *laïcité* developed during three historical movements in France: (1) the Enlightenment, (2) the French Revolution, and (3) the Third Republic.²⁵ The French Enlightenment, which marked the beginning of the modern era in France, rejected the importance of religion in society.²⁶ “Voltaire viciously attacked the Catholic Church,” referring to it as “the vile one” that must be “crush[ed].”²⁷ Rousseau suggested replacing confessional religion with a “civil religion” containing dogmas of morality and fraternal duties.²⁸ And the French Declaration of the Rights of Man and Citizen (French Declaration), penned in 1789, set forth the “natural, unalienable, and sacred rights of man... in the presence and under the auspices of the Supreme Being...”²⁹ Notice that the French Declaration does not describe these rights as coming from God; rather, it is the Assembly that delineated these rights with the Supreme Being looking on as “sort of an honored but passive figure presiding over [the Assembly’s] work.”³⁰ That is because for France, a majority Catholic country in 1789, invoking the name of God as the giver of rights would have suggested an allegiance to the Catholic church, something the First Republic wanted no part of.³¹

Any doubt that the Republic had no desire for such an allegiance was quickly erased by the French Revolution. During the Revolution, the opposition to the Catholic Church demonstrated during the Enlightenment continued, only it was

²¹ *Id.* at 420, n.2 (citing CONST. art. 2 (1958) (Fr.)).

²² BAUBÉROT, Jean. The Place of Religion in Public Life: The Lay Approach. In: *Facilitating Freedom of Religion or Belief*. a Deskbook, 441, n. 1, 2004.

²³ GUNN, *supra* note 2, at 420, n. 2.

²⁴ BAUBÉROT, *supra* note 22, at 441, n. 1.

²⁵ See *id.* at 441–45; GUNN, *supra* note 2, at 432–42.

²⁶ BAUBÉROT, *supra* note 22, at 442.

²⁷ *Id.* (citing LE GOFF, Jacques; RÉMOND, René, eds. *Histoire de la France religieuse: Du Roi très chrétien à la laïcité républicaine, XVIIIe - XIXe siècle*. t. 3. Paris: Seuil, 2001. p. 150).

²⁸ BAUBÉROT, *supra* note 22, at 442; see also ROUSSEAU, Jean-Jacques. *Du contrat social*. Ed. B. de Jouvenel. Geneva: C. Bourquin, 1947. p. 369.

²⁹ DECLARATION OF THE RIGHTS OF MAN – 1789, <http://avalon.law.yale.edu/18th_century/rightsof.asp>, last visited Jan. 4, 2017, 7:15 PM.

³⁰ BAUBÉROT, *supra* note 23, at 442.

³¹ *Id.*

expressed with far less tolerance and far more hostility.³² Indeed, the French Left's strong animosity and "anticlerical attitudes toward the Catholic Church"³³ were manifest through consistent persecution, much of it violent and even murderous.³⁴

The Revolution so thoroughly debilitated the Catholic Church in France that "[f]rom the start of the nineteenth century ... civil law [in France] no longer depended on religious dictates." France continued to experience conflict throughout the entire nineteenth century, as the country was torn between two "competing conceptions of citizenship."³⁵ "Some wanted Catholicism to be the 'soul' of France, the heart of its national identity; others insisted that modern France had to establish itself only upon 'the principles of 1789' ... to which religions would have to submit themselves."³⁶ During the 1870s, partisans attempted to restore power to the monarchy; however, their failure left Republicans in power, marking the beginning of the Third Republic.³⁷

The power obtained by the Third Republic "was problematic, and in order to govern with any degree of durability Republicans were forced to reduce the social influence of the Catholic Church, whose militant leaders ... were opposed to the Republic."³⁸ The Third Republic used far less violent (but no less effective) means than those used by the First Republic to diminish the influence of the Catholic Church.³⁹ In the 1880s, the Third Republic abolished Catholic supervision of elementary schools and created lay schools.⁴⁰ "[C]ourses in religious and moral

³² *Id.*

³³ GUNN, *supra* note 2, at 420, n. 2.

³⁴ *Id.* at 433–437 (For example, the Republic seized and sold "significant amounts of former church property," and issued numerous decrees that "completely reorganized the internal structure of the Catholic dioceses in France. . . .")

issenting individuals and congregations" of religious minorities in the United States, "such beliefs of any kind shall have no civil effect." In 1790, the Constitutional Assembly "adopted a new law *requiring* all clergy to take an oath of loyalty to the state" within one week's time or they would be immediately replaced. As a result of this decree, approximately thirty to forty thousand clergy fled France while many others were hunted and imprisoned. In September of 1792, Parisians stormed the prisons "that housed the reputed enemies of the Republic." In riots that lasted for over a week, "between 1,000 and 1,500 of the inmates, including many church officials" were murdered. "During the following two years, hundreds [more] clergy and nuns were murdered ... throughout France, and perhaps as many as 40,000 emigrated." Additionally, an astounding number of religious treasures "were looted and destroyed, including the Third Abbey Church at Cluny.") (emphasis in original).

³⁵ BAUBÉROT, *supra* note 22, at 443.

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ See GUNN, *supra* note 2, 440–441 (For example, an 1880 decree suppressed the Jesuits. Another 1880 decree "required all 'unauthorized' religious congregations to apply for legal recognition within three months." This law was used to close 261 religious institutions and exile between 5,000 and 10,000 monks. In 1901, the Third Republic passed the Law on Association which "required all 'religious congregations' ... to apply for authorization ... Any congregation not receiving parliamentary approval would be 'outside the law' and subject to confiscation." In the four years following the passage of this law, parliament used the law to close hundreds of congregations and "several thousand monks and nuns sought exile outside of France.").

⁴⁰ BAUBÉROT, *supra* note 22, at 444.

instruction were replaced with a course in lay morality.⁴¹ This marked a dramatic shift in French society for, “as an element of social relations, [lay] morality was considered a-religious, because it was neither founded upon religion nor was it hostile toward religion.”⁴² The Third Republic also structured hospitals and other institutions “outside the constraints of religion.”⁴³ These institutions produced “new cultural perceptions independent of religion” as well as “a new secular clergy (professionals such as teachers and physicians) entrusted with training the population and formulating meaningful social practices.”⁴⁴

In 1905, another growing conflict between the Republic and Catholicism led to the official separation between church and state.⁴⁵ “Republicans believed that the Republic was endangered by militant Catholicism.”⁴⁶ The National Assembly dealt a final blow to the ability of the Catholic Church, or any other religion, to influence French public life, and solidified the philosophy of *laïcité*, when it passed the Law on Separation of Churches and the State in December 1905.⁴⁷ Although this law arose out of a compromise of sorts (one that would protect the state from the influence of religion and religious groups from the meddling of the state),⁴⁸ it had devastating effects on the Catholic Church in France, as it “seiz[ed] church property and refus[ed] to salary the clergy, ... effectively render[ing] the Church destitute.”⁴⁹

Jump forward over 100 years after the Law of Separation, and *laïcité* is alive and well in modern France. During a speech delivered in December 2003, French President Jacques Chirac described *laïcité* as a “pillar” of the French Constitution:

Laïcité is inscribed in our traditions. It is the heart of our republican identity. ... Its values are at the core of our uniqueness as a Nation. ... [They] are the values that create France. ... *Laïcité* guarantees

⁴¹ *Id.* (“Lay morality borrowed its elements from various traditions [including] antiquity, French moralists, the Enlightenment, Kantianism, positivism, diverse forms of Christianity, and Confucius.”).

⁴² *Id.*

⁴³ *Id.* at 443

⁴⁴ *Id.*

⁴⁵ *Id.* at 444.

⁴⁶ *Id.*

⁴⁷ GUNN, *supra* note 2, at 441 (citing Law on the Separation of Churches and the State of Dec. 9, 1905, J.O. Dec. 11, 1905, 7205).

⁴⁸ BAUBÉROT, *supra* note 22, at 444 (Cabinet minister Aristide Briand framed the law as “frank, loyal and honest and capable of ensuring the pacification of minds because churches would not find any serious reason to frown upon the new order and would themselves sense the possibility of living within this order.” One Catholic scholar who initially opposed the law acknowledged that “the law impedes us neither from believing what we wish, nor from practicing what we believe.”) (internal citations omitted).

⁴⁹ See GUNN, *supra* note 2 at 441 (“Articles 3 through 6 effectively expropriated all religious property that had been acquired or built prior to 1905, and established procedures for state officials to conduct inventories of the property. The French state continues to own church buildings constructed before 1905, including all of the famous cathedrals of France, though it pays for their maintenance and allows the Church to use them. The law also unilaterally revoked the Concordat of 1801, which had provided that the state would pay clerical salaries in compensation for lands seized during the Revolution.”).

freedom of conscience. It protects the freedom to believe or not to believe. It assures everyone of the possibility to express and practice their faith peaceably, freely, though without threatening others with one's own convictions or beliefs.⁵⁰

Yet, as has been shown, “French modernity developed in basic conflict with the Catholic Church,”⁵¹ so much so that “for many French citizens[,] the word [*laïcité*] evokes anticlericalism, anti-Catholicism, and sometimes blatantly antireligious sentiments.”⁵² This connotation is so strong that “[a]s early as 1880, some [French citizens] began to assert that the word ‘*laïc*’ was actually a synonym for ‘irreligious.’”⁵³ By contrast, a respected French dictionary provides a much softer definition of *laïcité*: It is a “political notion involving the separation of civil society and religious society, the State exercising no religious power and the churches (*Églises*) exercising no political power.”⁵⁴ Regardless as to which of these definitions is most accurate, it remains a fact that, in most of the world, “France is seen as the cradle and greatest symbol of laicism.”⁵⁵ “The Law of Separation of 1905 intended to make religion [in France] a merely private enterprise.”⁵⁶ It appears to have succeeded.⁵⁷

3 Religious freedom in the United States

Writing for the Continental Congress in 1776, Thomas Jefferson included these famous words in the American Declaration of Independence: “We hold these truths to be self-evident, that all men are created equal, that they are *endowed by their Creator* with certain inalienable Rights”⁵⁸ These words reveal that the American revolutionaries, different from their French contemporaries, were enthusiastic in their declaration that “God is the author of these [basic human] rights.”⁵⁹ Yet, acknowledging this glaring “conceptual difference” between the United States and

⁵⁰ *Id.* at 420 (citing Jacques Chirac, Speech from the Elysée Palace (Dec. 17, 2003)).

⁵¹ BAUBÉROT, *supra* note 22, at 442, The Place of Religion in Public Life: The Lay Approach, Ch. 18 of *Facilitating Freedom of Religion and Belief*: A Deskbook, Tore Lindholm et al. eds., 2004.

⁵² GUNN, *supra* note 2, at 420, n.2.

⁵³ *Id.*

⁵⁴ *Id.* (quoting ROBERT, Paul. *Le Grand Robert De La Langue Française*, 915. 2. ed. 1992 (internal quotations removed).

⁵⁵ *The Invocation of God's Name*, *supra* note 1, at 88.

⁵⁶ *Id.*

⁵⁷ Over 100 years of French history bear this out. While it is not the purpose of this paper to expounded upon the merits and challenges created by/native to/derived from French *laïcité*, it seems worthwhile to note for comparison purposes the challenge of religious expression in the public sphere in France. One need only consider the recent controversy surrounding the use of religious symbols in schools to see this controversy play out. See GUNN, *supra* note 2, at 452–504.

⁵⁸ UNITED STATES. *The Declaration Of Independence*, 1776, para. 2, <<https://www.archives.gov/founding-docs/declaration-transcript>> (emphasis added).

⁵⁹ BAUBÉROT, *supra* note 22, at 442.

France in the area of fundamental human rights merely scratches the surface to understanding why France and the United States take nearly opposite approaches to maintaining peaceful relations between religion, the state, and society.⁶⁰ An examination of the historical development of religious freedom in the United States provides a much deeper understanding.

“Many of our Nation’s founders fled religious persecution abroad, cherishing in their hearts and minds the ideal of religious freedom.”⁶¹ These “dissenting individuals and congregations” came to the new world “to escape religious persecution in Europe and to express their own religious convictions.”⁶² They weren’t exactly seeking “religious freedom for all[;]” rather, they desired the freedom to put off the established state religions of their home countries and practice “their own particular kind of religion.”⁶³ Consequently, “[i]nstances of persecution and intolerance” abounded during the colonial years.⁶⁴

However, unlike the French revolutionaries’ violent rebellion against the control and influence of the dominant Catholic Church,⁶⁵ religious persecution in the American colonies arose out of diversity and religious pluralism.⁶⁶ And “[b]y the time of the [American] Revolution,” this pluralistic environment had fostered a substantial opposition to “establishment and religious oppression.”⁶⁷ Thus, Thomas Jefferson could safely invoke the name of God in The Declaration of Independence without suggesting an allegiance to any particular denomination or religion.⁶⁸

By the end of the Revolution, “[t]he memory of the great religious wars that marked the previous centuries in Europe and the long religious persecution and intolerance of dissenting religious groups in England were fresh in the minds of the colonists.”⁶⁹ In the years following the Revolution, concurrent to the failed political

⁶⁰ *Id.*

⁶¹ U.S.C. *International Religious Freedom Act of 1998*, 22. §6401, a, 1, 2014 (On December 16, 2016, Congress passed the Frank R. Wolf International Religious Freedom Act, Pub. L. No. 114–281, 130 Stat. 1426, which amended the International Religious Freedom Act of 1998 in order “to improve the ability of the United States to advance religious freedom globally” However, §6401, a, 1, of the International Religious Freedom Act of 1998 as quoted above remains unchanged).

⁶² DURHAM, W. Cole; SMITH, Robert. *Brief History of Religious Freedom in the United States*. In: *Religious Organizations and the Law*, §2:1, West, 2013 [hereinafter *Brief History*].

⁶³ GUNN, *supra* note 2, at 442.

⁶⁴ *Brief History*, *supra* note 62.

⁶⁵ *See infra* Section 1.

⁶⁶ *Brief History*, *supra* note 62.

⁶⁷ *Id.* (internal citation omitted).

⁶⁸ However, the Declaration of Independence, along with numerous other American symbols and traditions, does suggest an allegiance to the Christian God. This allegiance has become the source of a fair amount of conflict in recent years as the United States has become an increasingly pluralistic society and welcomed immigrants from faith traditions outside of Christianity. Many believe that official expressions of allegiance to the Christian God such as the inscription “In God We Trust” found on U.S. currency, or the words “under God” in the Pledge of Allegiance, run contrary to the Establishment Clause of the First Amendment.

⁶⁹ *Brief History*, *supra* note 62.

experiment that was the Articles of Confederation, a Second Great Awakening swept the country, “increasing individual conversion and personal commitment to break the ties between religion and nationality.”⁷⁰ Thus, when it came time to establish the Constitution in 1787, “the issue of religion and its role in government was current and pressing.”⁷¹

One of most prevalent concerns among Constitutional Convention delegates was “the absence of a strong guarantee of individual and corporate rights, among which the right to religious liberty would be paramount.”⁷² To assuage these concerns, when Congress drafted the Bill of Rights (ratified in 1791), its first words were these: “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof”⁷³ These two phrases, the “Establishment Clause” and the “Free Exercise Clause,” established religious liberty as “the first of the enumerated rights in our Constitution.”⁷⁴ Accordingly, religious liberty has come to be “known as ‘the first freedom[.]’ because the founders believed it to be the lynchpin of democracy and the other fundamental human rights.”⁷⁵

“In a sense, this first freedom arose out of the first civil rights movement of the new American Republic, spearheaded by the organized resistance of the disenfranchised churches—the Baptists, Quakers, Presbyterians, and Catholics—against ratification of the federal Constitution without the guarantee of religious freedom.”⁷⁶ Thus, a clear separation of church and state was instituted in the United States while the American Republic was in its infancy. And because religious freedom was established “rapidly and in a relatively peaceful way,”⁷⁷ the government maintained a peaceful and accommodating posture toward religion, allowing religion to play an integral role in “the emergence of modernity” in the United States.⁷⁸

In this way, “[t]he right to freedom of religion undergirds the very origin and existence of the United States. ... From its birth to this day, the United States has prized this legacy of religious freedom”⁷⁹ And although preserving religious

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² *Id.* (citing OAKS, Dallin H. Separation. Accommodation and the Future of Church and State. *DePaul Law Review*, Chicago, v. 35, n. 1, 1985.

⁷³ U.S. CONST. amend I.

⁷⁴ U.S. DEP’T OF STATE – BUREAU OF DEMOCRACY, HUMAN RIGHTS, & LABOR. *International Religious Freedom Report 2002*: Introduction, Oct. 7, 2002, §2, <<http://www.state.gov/g/drl/rls/irf/2002/13607.htm>.>

⁷⁵ *Id.*

⁷⁶ *Brief History*, *supra* note 62 (internal citation omitted).

⁷⁷ *The Invocation of God’s Name*, *supra* note 1, at 88.

⁷⁸ BAUBÉROT, *supra* note 22, at 441.

⁷⁹ U.S.C. *International Religious Freedom Act of 1998*, 22. §6401, a, 1, 2014 (On December 16, 2016, Congress passed the Frank R. Wolf International Religious Freedom Act, Pub. L. No. 114–281, 130 Stat. 1426, which amended the International Religious Freedom Act of 1998 in order “to improve the ability of the United States to advance religious freedom globally” However, §6401 (a)(1) of the International

freedom in the United States has not been without its challenges,⁸⁰ in stark contrast to France, American society remains “highly religious.”⁸¹ Furthermore, even though the U.S. Constitution “declares a separation between the political sphere and the religious sphere, ... religion influences and interferes in the most important public debates.”⁸² That is because

since the First Amendment was ratified in 1791 it has been fundamental to our American culture that the enforcement of religious belief is not a legitimate concern of the civil government.

Essential to the First Amendment's guarantee is the right of the churches and other religious organizations to be free of oppression by the federal government Similarly essential is the guarantee that religious beliefs of any kind shall have no civil effects, either adverse or beneficial, in the lives of individuals and organizations.⁸³

In summary, whereas French *laïcité* “often bears the connotation of the state protecting citizens from the excesses of religion,”⁸⁴ to the point that it “might imply suspicion (or perhaps even hostility) toward religion,”⁸⁵ the idea of religious freedom in the United States “suggests that the state wishes to embrace religion fully,”⁸⁶ providing citizens the freedom to exercise their religion both in private and in public without fear of interference from the state.⁸⁷

Religious Freedom Act of 1998 as quoted above remains unchanged.); see also George W. Bush, *President Proclaims Religious Freedom Day, 2002* (Jan. 16, 2002), <https://georgewbush-whitehouse.archives.gov/news/releases/2002/01/20020116.html> (last visited Jan. 5, 2017, 8:08 PM) (“Religious freedom is a cornerstone of our Republic, a core principle of our Constitution, and a fundamental human right. Many of those who first settled in America, such as the Pilgrims, came for the freedom of worship and belief that this new land promised.”).

⁸⁰ Although the United States seems to do a better job than France with respect to accommodating religious expression in the public sphere, Religious Freedom in the U.S. is not without its challenges. For examples of historical persecutions of religious minorities in the United States, see Gunn, *supra* note 2, at 442–52. As the country becomes more pluralistic, and non-Christian religions become more pervasive, some of these groups feel marginalized and under-represented by the government. For examples of the ongoing struggle of religious minorities in the United States, see ECK, Diana L. *A New Religious America: How A “Christian Country” Has Become the World’s Most Religiously Diverse Nation*. San Francisco: Harper San Francisco, 2001. p. 294–334.

⁸¹ *The Invocation of God’s Name*, *supra* note 1, at 88.

⁸² *Id.*

⁸³ *Brief History*, *supra* note 62.

⁸⁴ GUNN, *supra* note 2, at 420, n. 2.

⁸⁵ *Id.* at 421.

⁸⁶ *Id.*

⁸⁷ *Id.* at 420, n. 2.

4 Brazil's distinct brand of religious liberty

Although many Brazilian scholars, politicians, legal practitioners, and judges consistently refer to Brazil as a lay state,⁸⁸ professing a type of secularism that suggests the government maintains an attitude toward religion similar to that of French *laïcité*, in practice, the interaction between government, religion, and society in Brazil more closely resembles religious freedom in the United States. Perhaps this can be attributed to the fact that Brazil's distinct brand of religious liberty developed in a way more similar to religious freedom in the United States than *laïcité* in France. It is true that Brazil, like France, is a Catholic majority country. Brazil even recognized Catholicism as the state religion for much of its history. Nevertheless, Brazil's Federal Constitution was drafted in an environment of deeply rooted religious pluralism, and intended to serve as the governing document to an extremely pluralistic country. Furthermore, the Federal Constitution was established after the Catholic Church's substantial change in policy regarding religious liberty under Vatican II, evidenced in *Dignitatis Humanae*,⁸⁹ negating the necessity for any type of open rebellion against the Catholic Church in Brazil. Ultimately, the invocation of God's name in the preamble of the Federal Constitution, together with the existence numerous constitutional provisions, international treaties, and statutory provisions protecting religious liberty, demonstrates that Brazil, despite professing to be a lay state, embraces religion much like the United States and diligently seeks to protect religious expression and free exercise both in private and in public.

4.1 Historical development of pluralism and religious liberty in Brazil

Brazil has a rich and complex history of diversity and pluralism, with periods and episodes of significant religious tolerance as well as periods and episodes of significant religious intolerance. In the year 1500, when Pedro Álvares Cabral

⁸⁸ See, e.g., 2016 REPORT, *supra* note 1, at 8 (“In accordance with the Federal Constitution, Brazil is a lay state, without an official Brazilian religion, and guarantees a separation between the State and religions, with the expectation that the State will remain neutral and impartial in its treatment of different religions”); see also *The Invocation of God's Name*, *supra* note 1, at 87 (explaining how many scholars understand secularism to mean that the State is “neutral to religious material, impartial and non-confessional, which also seeks to treat all religious organizations with isonomy [an equality of political rights]. The lay state is most essentially distinguished by political autonomy from religious influence, and by the idea that sovereignty and the legitimacy of power come from the people and not from the divine. Laicism is the political idea that Bhargava coined as a “mutual exclusion,” in other words, the State neither involves itself nor interferes in the religious field and the various religions do not interfere with the running of the state. In summary, the lay state is a model of a state that is in no way connected to any type of religious confession or doctrine.”).

⁸⁹ *Dignitatis Humane*, *supra* note 11.

discovered the Brazilian mainland, approximately 100 million indigenous people occupied the American continent, with approximately 5 million natives in Brazil.⁹⁰ With the arrival of the Portuguese came Jesuit missionaries from the Catholic Church.⁹¹ Because the natives followed “religious traditions and rituals that explored the forces of nature and honored the spirits of ancestors, [they] presented a cosmological vision that was considered inferior and profane to Europeans, a vision that was consequently intolerable.” In fact, like any other non-Catholic religion, the native’s religion was demonized by the Portuguese. They made concerted efforts to convert the natives to Catholicism, and over time the majority of native religions disappeared from Brazil.⁹² Brazil’s 2010 Census reports an indigenous population of only 896,917.⁹³

Interestingly, just a few short decades after the arrival of the Portuguese and the Catholics, many minority religious groups began coming to Brazil.⁹⁴ Despite the existence of the Catholic Inquisition, which was active in Brazil from 1536 until 1821,⁹⁵ these minority religious groups achieved some measure of peace in the vast country for brief periods of time and Brazil slowly became more and more pluralistic.⁹⁶ The first Lutherans arrived in Brazil in 1532, and a colony of Protestant Huguenots was formed in 1555.⁹⁷ The first Jewish synagogue in all of the Americas was established in Recife, Brazil in 1636; and, by 1644, the total number of Jewish immigrants in Brazil had already reached 1,450.⁹⁸

Forced migrations also spurred the growth of pluralism in Brazil. The African slave trade began in Brazil in the early sixteenth century.⁹⁹ Over five million Africans were brought to Brazil against their will during the approximately 200 years of the slave trade.¹⁰⁰ These African slaves believed in peculiar tribal religions; thus, as occurred with all those who did not follow Catholicism, “they were not permitted to practice their traditional religious beliefs.”¹⁰¹ Ironically, Brazilian religions of African origin that have been so persecuted throughout the centuries, and continue to be

⁹⁰ 2016 REPORT, *supra* note 1, at 11.

⁹¹ *Id.*

⁹² *Id.* (The colonizers used other strategies to enslave and exploit the natives, such as barter, violence, and transmission of disease, that resulted in the destruction of many native cultures in Brazil.)

⁹³ *Id.*

⁹⁴ *Id.* at 11–15.

⁹⁵ *Id.* at 11, 13 (During the two and a half centuries that the inquisition was active in Brazil, “approximately 25,000 people were charged with various accusations, a 1,500 were condemned to death.”)

⁹⁶ *Id.* at 11.

⁹⁷ *Id.* (The Huguenots were expelled by the Portuguese in 1560, but they returned in 1630 and established the Reformed Dutch Church in northern Brazil.)

⁹⁸ *Id.* at 13 (The Jewish community flourished in northern Brazil during a brief period of Dutch occupation from 1630 to 1654; however, when the Dutch were expelled, the Jews lost their protection from the Catholic inquisition.)

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

persecuted today, over time adopted various elements of Catholicism. Islam also arrived in Brazil by way of the slave trade in the eighteenth century.¹⁰²

European immigrants arriving in Brazil in the early nineteenth century brought with them “different ideas about liberty and equality that were flourishing in modern Europe.”¹⁰³ During this time, Protestantism was reborn in Brazil. Nevertheless, it wasn’t until 1824, when Brazil gained its independence and the Imperial Constitution was established, that certain forms of religious liberty were granted to non-Catholics—Catholicism still remained the official State religion.¹⁰⁴ With religious liberty a possibility in Brazil, religious immigrants began to arrive in droves in the latter part of the nineteenth century.¹⁰⁵ Nevertheless, in this context of intensifying diversity, “Anglicans, German reformers, Presbyterians, Baptists, Adventists, Jews, Africans, and Natives continued to live together in a territory where being Brazilian meant being Catholic.”¹⁰⁶ They suffered many persecutions “veiled or condoned by the State,” making it difficult to more thoroughly establish their religious traditions in nineteenth century Brazil.¹⁰⁷

Brazil’s first secular constitution, providing for the separation of church and state—thereby removing the Catholic Church’s status as the official religion of Brazil—was ratified in 1891. This paved the way for the arrival of various Pentecostal groups starting in 1910.¹⁰⁸ Neo-Pentecosts, such as The Universal Church of the Kingdom of God, did not begin to arrive until 1977.¹⁰⁹ Even though the Catholic Church was no longer the established state religion, it remained a powerful force in Brazil. Consequently, “the Pentecostal pioneers in Brazil suffered [various] persecutions, [including] stoning, [accusations of] blasphemy” and many others.¹¹⁰ Most often, especially in the northeast of Brazil, these persecutions were encouraged and even sponsored by Catholic leaders.¹¹¹

Despite these persecutions, religious pluralism continued to grow in Brazil throughout the twentieth century,¹¹² particularly after the Catholic Church introduced

¹⁰² *Id.*

¹⁰³ *Id.* at 14.

¹⁰⁴ *Id.* (Article 5 of the 1824 Imperial Constitution reads: “The Apostolic Roman Catholic Church will continue to be the Religion of the Empire. All other religions will be permitted as domestic worship, or meetinghouses intended for private worship, so long as they do not demonstrate any exterior form of worship.”).

¹⁰⁵ *Id.* (Large groups of Lutherans came from Germany and Switzerland in 1824. Other Methodist groups came from England in 1836. Presbyterians came in 1850. Baptists came from the United States starting in 1860. And Adventists arrived in 1890.).

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ *Id.* at 16 (The Christian Congregation of Brazil was established in 1910, and the Assembly of God arrived in Brazil in 1911. Many other Pentecostal groups arrived after 1950.).

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

¹¹¹ *Id.*

¹¹² *Id.*

*Dignitatis Humanae*¹¹³ on December 7, 1965. His Holiness Pope Paul VI begins *Dignitatis Humanae* with the following pronouncement:

A sense of the dignity of the human person has been impressing itself more and more deeply on the consciousness of contemporary man, and the demand is increasingly made that men should act on their own judgment, enjoying and making use of a responsible freedom, not driven by coercion but motivated by a sense of duty.¹¹⁴

The declaration also established that “all men are bound to seek the truth, especially in what concerns God and his Church, and to embrace the truth they come to know, and to hold fast to it.”¹¹⁵ Thus, *Dignitatis Humanae* was central in transforming the Catholic Church of the early twentieth century, perhaps “the most powerful institution on earth opposed to religious freedom,”¹¹⁶ into the Catholic Church of the late twentieth century and present day, “quite possibly ... the most influential institution on earth in defense of religious freedom.”¹¹⁷ This shift in the Catholic Church’s philosophical stance with respect to religious liberty is significant¹¹⁸ because it provided an avenue for both pluralism and religious liberty to blossom in Brazil, not in opposition to the Catholic Church (as was the case in France), but with the blessing of the Catholic Church.

The government also implicitly signified its support for religious liberty in the pluralistic environment of mid-twentieth-century Brazil. From the 1930s to the 1980s, Brazil transitioned between numerous populist and military governments, as well as a dictatorship, and saw four different constitutions.¹¹⁹ Yet, each of these constitutions invoked the name of God in its preamble, and each of these constitutions declared a separation of church and state.¹²⁰ Thus, by the time Brazil’s current Federal Constitution was established in 1988, a rich environment of religious pluralism, the decreasing influence of the Catholic Church, and a political commitment to religious liberty united to create a brand of religious liberty that is uniquely Brazilian.

¹¹³ *Dignitatis Humanae*, *supra* note 11.

¹¹⁴ *Id.*

¹¹⁵ *Id.*

¹¹⁶ SCHARFFS, Brett G. Religious Majorities and Restrictions on Religion, *Notre Dame Law Review*, South Bend, v. 91, n. 4, 1419-1435, 2016.

¹¹⁷ *Id.*

¹¹⁸ *Id.* (“Two hundred (or even one hundred) years ago, if you asked, “What is the most powerful institution on earth opposed to religious freedom?” the answer may well have been, “The Catholic Church.” If you asked the inverse question today, you might well identify the Catholic Church as the most influential institution on earth that is a defender of religious freedom. This transformation is one of the most interesting subplots in the history of the emergence of freedom of thought, conscience, and belief as a fundamental human right. *Dignitatis Humanae* is at the center of that drama.”).

¹¹⁹ *The Invocation of God’s Name*, *supra* note 1, at 89.

¹²⁰ *Id.*

4.2 The Federal Constitution of 1988 and religious liberty in modern Brazil

The 1988 Federal Constitution is “considered a milestone in Brazil’s history,” in part because it liberally granted to all numerous fundamental rights “that were once privileges ... of [only] a few people.”¹²¹ As is demonstrated in greater detail in Section 4.3 below, the Federal Constitution places considerable emphasis on religious liberty as one of these fundamental rights. That the constitutional delegacy was not bashful in its embrace of religious liberty is clear from the outset. The preamble reads in part:

*We the representatives of the Brazilian People, convened in the National Constituent Assembly to institute a democratic state for the purpose of ensuring the exercise of social and individual rights, liberty ... equality and justice as supreme values of a fraternal, pluralist and unprejudiced society ... promulgate, under the protection of God, this CONSTITUTION OF THE FEDERATIVE REPUBLIC OF BRAZIL.*¹²²

Thus, Brazil’s constitution was sent forth to the people “under the protection of God.” And even though the invocation of God’s name in the Federal Constitution contains no normative power, its symbolic power is substantial and undeniable.¹²³ One Brazilian legal scholar aptly stated: “The fact that the Federal Constitution invokes the name of God in its opening and does not make any mention of the concept of secularism or a lay State, even though it guarantees the formal separation of church and State, is not without significance.”¹²⁴ He continued:

[T]he preamble is a symbolic place *par excellence*, where the nation is explicitly defined. It expresses something of the model of the relationship between State, religion and society in Brazil, hence it points to the importance of the religious in [the] legal, social and political configuration [of our society].¹²⁵

Similarly, Aloisio Cristovam dos Santos Júnior (a noted lawyer, judge, and expert in Brazilian constitutional law) explained that when the delegates “invoke God’s protection, they make it clear that our constitutional legal order does not adopt the extreme separation of state and religion from the kind that European

¹²¹ THEBRAZILBUSINESS.COM. *Introduction to the Brazilian Constitution* [hereinafter *Introduction to the Brazilian Constitution*], <<http://thebrazilbusiness.com/article/introduction-to-the-brazilian-constitution>>, last visited Jan. 7, 2017, 4:35 PM.

¹²² CONSTITUIÇÃO FEDERAL [C.F.] [CONSTITUTION] pmb. (Braz.) (capitalization in original) (emphasis added).

¹²³ *The Invocation of God’s Name*, *supra* note 1, at 97.

¹²⁴ *Id.* at 98.

¹²⁵ *Id.* at 97 (internal citations omitted).

scholars would call 'secularism.'"¹²⁶ In fact, "the reference to God in the main political and juridical document of secular ... societies and states is unimaginable, as in the case of France in the Jacobin era... ."¹²⁷ Thus, "the reference to God [in Brazil's Federal Constitution] is revealing that the Brazilian state has an attitude of respect and appreciation in relation to the transcendent, that is, to religious faith."¹²⁸

Brazilian society has always exhibited "an intermingling of the religious and the secular...."¹²⁹ Thus, even though the constitution guarantees the separation of church and State, such a separation "did not result in a total de-Christianization of the nation, neither did it lead to a large and profound secularization of the Brazilian culture, which always was and still is endowed with religious symbols and values."¹³⁰ Consequently, in modern Brazil, "the borders between the religious and the secular are diffused, permeable, and fragile."¹³¹ "It is neither readily evident nor crystalline where one begins and the other ends."¹³²

Moving into the twenty-first century, Brazil has become increasingly pluralistic and diverse. Brazil's total population is estimated at 204.3 million.¹³³ Approximately 64.6 percent of Brazil's population is Roman Catholic.¹³⁴ Thus, with roughly 132 million members of the Roman Catholic Church, Brazil has more Catholics than any other country in the world.¹³⁵ Despite its Catholic majority, many other religious groups thrive in Brazil. Approximately twenty-two percent of Brazilians identify as Protestant.¹³⁶ Other Christian groups, such as Jehovah's Witnesses and Mormons (members of The Church of Jesus Christ of Latter-day Saints)¹³⁷ each make up less than one percent of the population, as do "Buddhists, Jews,¹³⁸ Muslims,¹³⁹ Hindus,

¹²⁶ *Id.* (internal citations omitted).

¹²⁷ *Id.*

¹²⁸ *Id.* (internal citations omitted).

¹²⁹ *Id.* at 89.

¹³⁰ *Id.*

¹³¹ *Id.*

¹³² *Id.*

¹³³ 2015 U.S. DEP'T OF STATE BRAZIL REPORT *supra* note 14, at 1.

¹³⁴ *Id.*

¹³⁵ BRAZILIAN INSTITUTE OF GEOGRAPHY AND STATISTICS. *2010 Census: Number of Catholics drops and number of the evangelicals, spiritualists and without religion increases*, Jun. 29, 2012, <<http://censo2010.ibge.gov.br/pt/noticias-censo?id=3&idnoticia=2170&t=censo-2010-numero-caticos-caumenta-evangelicos-espiritas-sem-religiao&view=noticia>> (Although Brazil remains the largest Catholic country in the world, the percentage of the population that identifies as Catholic has been on a downward trend for the last two decades. 73.6% of the population identified as Catholic in the 2000 census, compared to only 64.6% in 2010).

¹³⁶ 2015 U.S. DEP'T OF STATE BRAZIL REPORT *supra* note 14, at 1.

¹³⁷ The Church of Jesus Christ of Latter-day Saints (LDS) reported in April 2016 that there are 1.3 million members of the LDS Church in Brazil. MORMONNEWSROOM.ORG. *Facts and Statistics – Brazil*, <<http://www.mormonnewsroom.org/facts-and-statistics/country/brazil>>, last visited Jan. 5, 2017, 7:54 PM.

¹³⁸ The Jewish Confederation of Brazil reports that approximately 125,000 Jews reside in Brazil. 2015 U.S. DEP'T OF STATE BRAZIL REPORT *supra* note 14, at 2.

¹³⁹ There is no reliable report regarding the number of Muslims residing in Brazil. Estimates vary from 32,500 (reported in the 2010 census) to 1.5 million (reported by the Federation of Muslim Associations of Brazil). *Id.*

and African and syncretic religious groups such as Candomblé and Umbanda.”¹⁴⁰ The remaining eight percent of Brazil’s population consists of those who identify as “atheists, agnostics, those who claim no religion, and those whose religion is unknown.”¹⁴¹

With such tremendous diversity and religious pluralism, protecting religious liberty— particularly the free exercise of religion in the public sphere— and combating religious intolerance is becoming ever more important in Brazilian society. As one Brazilian scholar fittingly explained, “[r]eligion cannot, as is the case with other freedoms of thought, be content with only its spiritual [and private] dimension....”¹⁴² Instead, it “will necessarily seek an external manifestation which ... demands an apparatus, a ritual, a solemnity, even if the manifestation of thought does not necessarily require such.”¹⁴³ Fortunately, the Brazilian federal government is committed to protecting religious liberty and eliminating religious intolerance, as demonstrated by the numerous constitutional provisions, international conventions, and statutory provisions described in Sections 4.3, 4.4, and 4.5 below.

4.3 Constitutional provisions that guarantee religious liberty

Brazil’s constitution establishes the “promot[ion] of the well-being of all, without prejudice as to origin, race, sex, color, age, and *any other forms of discrimination*” as one of the “fundamental objectives of the Federative Republic of Brazil.”¹⁴⁴ Article 5, which establishes basic and fundamental human rights, declares in part:

All persons are equal before the law, without any distinction whatsoever, Brazilians and foreigners residing in the country being ensured of inviolability of the right to life, to liberty, to equality, to security and to property, on the following terms:

....

VI. freedom of conscience and belief is inviolable, the free exercise of religious sects being ensured and, under the terms of the law, the protection of places of worship and their rites being guaranteed;

VII. under the terms of the law, the rendering of religious assistance in civil and military establishments of collective confinement is ensured;

VIII. no one shall be deprived of any rights by reason of religious belief or philosophical or political conviction, unless he invokes it to exempt

¹⁴⁰ *Id.* at 1–2.

¹⁴¹ *Id.* at 1.

¹⁴² FONSECA, Francisco Tomazoli da. *Religião e direito no século XXI: a liberdade religiosa no estado laico*. Curitiba: Juruá, 2015. 94-95.

¹⁴³ *Id.*

¹⁴⁴ CONSTITUIÇÃO FEDERAL [C.F.] [CONSTITUTION] art. 3 cl. IV (Braz.).

himself from a legal obligation required of all and refuses to perform an alternative obligation established by law ...¹⁴⁵

Notice that clause 6 is similar to the “Free Exercise Clause” found in the United States Constitution,¹⁴⁶ except that Brazil has framed “the free exercise of religious sects” as a positive right that the government must ensure,¹⁴⁷ rather than a negative right upon which the government must not infringe. Clause 6 also guarantees “freedom of conscience and belief” and state “protection of places of worship.”¹⁴⁸ Clause 7 guarantees “religious assistance” to prisoners.¹⁴⁹ As if the guarantees in clause 6 and 7 were insufficient, clause 8 establishes that “religious belief” cannot be used as a basis for the deprivation of any other rights.¹⁵⁰

Clause 41 of Article V goes one step further still, guaranteeing that “[t]he law shall punish any discrimination against fundamental rights and freedom.”¹⁵¹ As Brazil is a civil law country, the various forms of discrimination against fundamental rights and freedom, as well as the corresponding punishments for engaging in prohibited acts, are set forth in the civil and penal codes. Section 4.5 below explores in detail various statutory provisions set forth to protect religious liberty in Brazil.¹⁵²

Brazil’s Federal Constitution also contains a provision similar to the “Establishment Clause” of the United States Constitution.¹⁵³ Article 19 declares that the Union, the States, the Federal District, and the Municipalities are forbidden from “[e]stablishing religious sects or churches, subsidizing them, hindering their activities, or maintaining relationships of dependence or alliance with them or their representatives, with the exception of collaboration in the public interest, as provided by law.”¹⁵⁴ Notice that Article 19 applies to all levels of the government, not just the federal government. In addition to prohibiting the government from establishing any religion, Article 19 also forbids government subsidy of, hindrance of, dependence on, and allegiance with religious groups.¹⁵⁵ Perhaps it is this clause that leads many Brazilian scholars to argue that the Brazilian government should maintain a stricter separation between church and state (similar to French *laïcité*). However, immediately following this separationist language in Article 19

¹⁴⁵ C.F. art. 5 cls. VI–VIII (Braz.).

¹⁴⁶ U.S. CONST. amend I.

¹⁴⁷ C.F. art. 5 cl. VI (Braz.).

¹⁴⁸ C.F. art. 5 cl. VI (Braz.).

¹⁴⁹ C.F. art. 5 cl. VII (Braz.).

¹⁵⁰ C.F. art. 5 cl. VIII (Braz.).

¹⁵¹ CONSTITUIÇÃO FEDERAL [C.F.] [CONSTITUTION] art. 5 cl. XLI (Braz.).

¹⁵² See *infra* Section 4.3.

¹⁵³ See U.S. CONST. amend I.

¹⁵⁴ C.F. art. 19 cl. I (Braz.).

¹⁵⁵ C.F. art. 19 cl. I (Braz.).

is the bizarre exception that allows the government to collaborate with religious organizations “in [furtherance of] the public interest.”¹⁵⁶

Other constitutional provisions, as well as the common practices of the government,¹⁵⁷ demonstrate that the Brazilian government favors collaboration with religious organizations over strict separation. For example, section 1 of Article 210 provides that the “teaching of religion ... shall be offered during the regular school hours of public elementary schools.”¹⁵⁸ Additionally, Article 213 allows for public funds to be “channeled to community, religious, or philanthropic schools” that establish their non-profit status in accordance with the law.¹⁵⁹ And Article 226, which designates the family as “the foundation of society ... enjoy[ing] special protection from the state,” provides that “[r]eligious marriage has civil effects.”¹⁶⁰

The Constitution provides one final protection for religious liberty, and all other enumerated individual rights: “No proposal of amendment shall be considered which is aimed at abolishing ... individual rights and guarantees.”¹⁶¹ This provision makes it clear that, in Brazil, “freedom of conscious and belief is inviolable,” ... that “free exercise of religious beliefs is guaranteed. ... [and that] neither federal, state, nor local governments ... [will be allowed to] support[] or hinder[] any specific religion.”¹⁶² These guarantees cannot simply be legislated away through a constitutional amendment;¹⁶³ instead, it would take a new constitution (and probably a cultural revolution) to remove religious liberty from Brazil.

¹⁵⁶ C.F. art. 19 cl. I (Braz.). This apparent contradiction in Article 19 might be one reason why the Brazilian Congress thought it necessary to pass Decree Number 4,496 (passed in 2002) in order to reinstate Decree Number 119-A (established in 1890), which contains a more thorough promulgation of the ideas present in Article 19. Public Law 119-A is explained in detail *infra* in Section 4.5.

¹⁵⁷ See *infra* Section 4.1; see also *The Invocation of God’s Name*, *supra* note 1, at 87 (stating that “the invocation of God’s name in the [Federal] constitution’s preamble, the presence of religious symbols in public places, the existence of official religious holidays, as well as a discipline such as religious education in public schools, indicate to Brazilians that Brazil has its own model of relations between the state, religion, and society, in truth a peculiar form of laicism”) (internal citations omitted).

¹⁵⁸ CONSTITUIÇÃO FEDERAL [C.F.] [CONSTITUTION] art. 210 §1 (Braz.); but see 2015 U.S. DEP’T OF STATE BRAZIL REPORT *supra* note 14 (Unfortunately, “neither the constitution nor legislation defines the parameters” of how this religious education is to be provided; however, the law does provide that “the instruction should be nondenominational and without proselytizing, with alternative instruction for students who do not want to participate.” Brazil has experienced numerous challenges and inconsistencies with the implementation of optional religious education in public schools: “49 percent of schools considered it a mandatory subject and approximately 80 percent did not offer alternatives or opt-out options, according to a survey of school directors by QEdU, a domestic nonprofit organization providing information on education.”).

¹⁵⁹ C.F. art. 213 cls. I & II (Braz.).

¹⁶⁰ C.F. art. 226 §7 (Braz.).

¹⁶¹ C.F. art. 60 §4 cl. 4 (Braz.).

¹⁶² 2015 U.S. DEP’T OF STATE BRAZIL REPORT *supra* note 14, at 1.

¹⁶³ To a United States’ citizen, this provision might seem somewhat unnecessary, as the U.S. Constitution established such stringent requirements for amending the constitution that the amendment process is rarely used. See U.S. CONST. art. V. However, the amendment process is used much more liberally in Brazil—Brazil’s Federal Constitution was ratified in 1988 and it has already been amended 83 times. See *Introduction to the Brazilian Constitution*, *supra* note 121.

4.4 International conventions that establish religious liberty

In addition to the constitutional provisions that guarantee religious liberty as outlined in the previous section, Brazil also recognizes several international conventions that protect fundamental human rights.¹⁶⁴ These international conventions have the same authority as constitutional amendments, having been ratified by both houses of the Brazilian Congress.¹⁶⁵ Perhaps the most well-known of these international conventions is the Universal Declaration of Human Rights (1948) (hereinafter Universal Declaration). Article 18 declares: “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 teaching, practice, worship and observance.”¹⁶⁶ Many of the elements of Article 18 of the Universal Declaration are contained in the Federal Constitution; however, the “freedom to change [one’s] religion or belief” and the freedom to “manifest [one’s] religion or belief” both in public and in private are concepts not explicitly stated in Brazil’s constitution. Brazil embraces these principles in theory and in practice. As was explained in Section 4.2 above, Brazil has experienced substantial levels of “religious switching” over the past two decades; nevertheless, a PEW research study “finds that there have been no reported incidents of hostility over conversions or proselytism.”¹⁶⁷ This is truly remarkable for such a pluralistic society.

The International Covenant on Civil and Political Rights (1966)¹⁶⁸ (hereinafter International Covenant) and the American Convention on Human Rights “Pact of San Jose, Costa Rica” (1969)¹⁶⁹ (hereinafter American Convention) also have constitutional force in Brazil. Article 18 of the International Covenant is similar to Article 18 of the Universal Declaration, only it refers to a “freedom to *have or to adopt* a religion,”¹⁷⁰ rather than “a freedom to *change* [one’s] religion”¹⁷¹ It also contains additional provisions not present in the Universal Declaration, most

¹⁶⁴ Brazil Framework Document 7–8.

¹⁶⁵ CONSTITUIÇÃO FEDERAL [C.F.] [CONSTITUTION] art. 5 cl. LXXVIII §3 (Braz.). Clause LXXVIII or Article 5 was included in Brazil’s Federal Constitution through Amendment 45, passed in 2004. It reads in relevant part: “International Treaties and Conventions on human rights approved by both houses of the National Congress ... shall be equivalent to Constitutional Amendments.”

¹⁶⁶ UNITED NATIONS. *Universal Declaration of Human Rights*, art. 18, Dec. 10, 1948 [hereinafter *Universal Declaration*], <http://www.ohchr.org/EN/UDHR/Documents/UDHR_Translations/eng.pdf>.

¹⁶⁷ GRIM, *supra* note 6.

¹⁶⁸ UNITED NATIONS, *International Covenant on Civil and Political Rights*, Dec. 16, 1966 [hereinafter *International Covenant*], <<http://www.ohchr.org/Documents/ProfessionalInterest/ccpr.pdf>>.

¹⁶⁹ ORGANIZATION OF AMERICAN STATES – DEPARTMENT OF INTERNATIONAL LAW. *American Convention on Human Rights “Pact of San Jose, Costa Rica” (B-32)*, Nov. 22, 1969 [hereinafter *Pact of San Jose*], <http://www.oas.org/dil/treaties_B-32_American_Convention_on_Human_Rights.pdf>.

¹⁷⁰ See *International Covenant*, *supra* note 168, at art. 18 §1 (emphasis added).

¹⁷¹ See *Universal Declaration*, *supra* note 166 (emphasis added).

notably a freedom from “coercion which would impair [one’s] freedom to have or to adopt a religion”¹⁷² and an acknowledgement that “[f]reedom 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.”¹⁷³ This limitation on freedom to manifest religious beliefs is completely consistent with Brazil’s statutory scheme to protect religious liberty and prevent religious intolerance, as explained in the next section.

Article 12 of the American Convention is nearly identical to Article 18 of the International Covenant. Nevertheless, the Brazilian Congress saw fit to ratify the American Covenant on July 09, 1992.¹⁷⁴ Brazil’s ratification of these three international conventions,¹⁷⁵ and the fact that they have constitutional force, demonstrates the country’s deep commitment to religious liberty and all fundamental human rights.

4.5 Statutory protections of religious liberty

Brazil is a civil law country; therefore, Brazilian law is based on statutes. Federal statutes establish various protections for religious liberty and privileges for religious organizations. As explained in footnote 157 above, Decree Number 4,496, passed in 2002, reinstated in full the text of Decree Number 119-A, a law passed in 1890.¹⁷⁶ Decree Number 119-A is similar to Article 19 of the Federal Constitution, only the decree is more thorough.¹⁷⁷ Among other things, this law “prohibits Federal and State authorities from intervening in the religious sphere and consecrates the full freedom of religious sects.”¹⁷⁸ The language in Article 2 of Decree 119-A is particularly profound: “All religious organizations have equal rights to exercise their beliefs and direct themselves in accordance with their

¹⁷² See *International Covenant*, *supra* note 168, at art. 18 §2.

¹⁷³ See *id.* at art. 18 §3.

¹⁷⁴ OAS.ORG. *American Convention on Human Rights “Pact of San Jose, Costa Rica” (B-32), Signatories and Ratifications*, Jan. 6, 2017, <http://www.oas.org/dil/treaties_B-32_American_Convention_on_Human_Rights_sign.htm>.

¹⁷⁵ Brazil has ratified 16 of the 18 international human rights treaties. See UNITED NATIONS HUMAN RIGHTS – OFFICE OF THE HIGH COMMISSIONER, *Status of Ratification Interactive Dashboard, Ratification of 18 International Human Rights Treaties*, <<http://indicators.ohchr.org>>, last visited Jan. 6, 2017, 7:06 PM. These other treaties which Brazil has ratified are outside the scope of this paper and not discussed herein; nevertheless, such prolific ratification does demonstrate to some extent Brazil’s commitment to fundamental human rights.

¹⁷⁶ Decreto No. 4.496, de 4 de Dezembro de 2002, DIÁRIO OFICIAL DA UNIÃO [D.O.U.] de 5.12.2002 (Braz.), <http://www.planalto.gov.br/ccivil_03/decreto/2002/d4496.htm>.

¹⁷⁷ See C.F. art. 19 cl. 1 (Braz.), *supra* note 156, and accompanying text.

¹⁷⁸ Decreto No. 119-A, de 7 de Janeiro de 1890, COL. LEIS REP. FED. BRASIL de 1890 (Braz.), <http://www.planalto.gov.br/ccivil_03/decreto/1851-1899/D119-A.htm>.

faith free from any contradiction from public or private acts.”¹⁷⁹ Article 3 reiterates that this law “applies not only to individuals, but also to churches, associations, and institutions,” providing both individuals and churches “the right to organize themselves and live collectively.”¹⁸⁰

Article 5 is also a key provision of Decree Number 119-A. It recognizes all churches and religious organizations have “legal personality,” thereby providing individual rights to religious organizations and permitting them to “acquire ... and administer” goods and property.¹⁸¹ This idea of “legal personality” is essential to the ability of religious organizations to operate independently. Its broad application was clarified in 2003, when the legislature passed Federal Law Number 10,825 (which amended Article 44 of the Civil Code) in order to recognize “religious organizations” as “legal persons with private rights.”¹⁸² Section 1 further provides that religious organizations can be freely created, organized, and managed, and “prohibits any public power from denying [religious organizations]” official recognition or the registration of their charters.¹⁸³

Several federal statutes also delineate the various forms of discrimination against fundamental rights and freedom, as well as the corresponding punishments for engaging in such prohibited acts.¹⁸⁴ For over seventy-five years, various types of public acts against religious individuals and organizations have been criminalized under Article 208 of the Penal Code (Decree-Law 2,848).¹⁸⁵ Public mockery of someone because of their religious beliefs, public mockery of any religious object or symbol, public mockery of any religious observance, and impeding or disturbing a religious ceremony or practice (public or private) all constitute felony offenses punishable by a fine as well as one month to one year in prison.¹⁸⁶ Furthermore, if the crime involves any element of violence, then the punishment is automatically increased by thirty percent.¹⁸⁷

A more recent law, Law Number 7,716 (passed in 1989 and modified by Law Number 9,459),¹⁸⁸ outlines the various types of crimes resulting from racial, ethnic,

¹⁷⁹ *Id.* at art. 2.

¹⁸⁰ *Id.* at art. 3.

¹⁸¹ *Id.* at art. 5.

¹⁸² Lei No. 10.825, de 22 de Dezembro de 2003, DIÁRIO OFICIAL DA UNIÃO [D.O.U.] de 23.12.2003 (Braz.), <https://www.planalto.gov.br/ccivil_03/leis/2003/L10.825.htm>.

¹⁸³ *Id.* at §1.

¹⁸⁴ Note that the federal statutes examined below do not provide a completely exhaustive list of all federal statutes that protect religious liberty in Brazil.

¹⁸⁵ Decreto-Lei No. 2848, art. 208, de 7 de Dezembro de 1940, DIÁRIO OFICIAL DA UNIÃO [D.O.U.] de 23.12.2003 (Braz.)

¹⁸⁶ *Id.*

¹⁸⁷ *Id.*

¹⁸⁸ Lei No. 9.459, de 13 de Maio de 1997, DIÁRIO OFICIAL DA UNIÃO [D.O.U.] de 14.5.1997 (Braz.), <http://www.planalto.gov.br/ccivil_03/leis/L9459.htm#art1>.

and religious discrimination.¹⁸⁹ “Provoking or inciting religious discrimination or prejudice” is a felony punishable by one to three years in prison and a fine.¹⁹⁰ Actually perpetrating a crime of religious discrimination is a felony offense punishable by two to five years in prison.¹⁹¹

Chapter 3 of the Racial Equality Statute of 2010 (Law Number 12,288) guarantees protection to religious sects of African origin.¹⁹² The purpose of the law is to “guarantee the black population the realization of equal opportunity, [as well as] the defense of separate, individual, and collective ethnic rights, and to combat discrimination and other forms of ethnic intolerance.”¹⁹³ Article 23 reaffirms that “freedom of conscious and belief is an immutable right” which provides for “the free exercise of sects of African origin.”¹⁹⁴ Article 25 “guarantees religious assistance to members of religious sects of African origin who are interned in hospitals or other institutions of health....”¹⁹⁵ Similar to the Racial Equality Statute, Law 7,347, through an amendment added by Law 12,966 in 2014,¹⁹⁶ recognizes a civil cause of action for “moral or property damages ... to the honor [or] dignity of racial, ethnic, or religious groups.”¹⁹⁷ The law allows for both damage awards and injunctive relief.¹⁹⁸

Finally,¹⁹⁹ to further demonstrate its commitment to combating religious intolerance, the Federal Congress passed Law Number 11,635 on December 27, 2007.²⁰⁰ This law instituted the “National Day to Combat Religious Intolerance,” which is officially commemorated each year on January 21st.²⁰¹ Together, these statutes attempt to prevent religious intolerance and violence and protect religious expression in both private and public.

¹⁸⁹ Lei No. 9.459, de 5 de Janeiro de 1989, DIÁRIO OFICIAL DA UNIÃO [D.O.U.] de 6.1.1989 (Braz.), <http://www.planalto.gov.br/ccivil_03/leis/L7716.htm>.

¹⁹⁰ *Id.* at art. 20.

¹⁹¹ *Id.* at arts. 1 & 3.

¹⁹² Lei No. 12.288, de 20 de Julho de 2010, DIÁRIO OFICIAL DA UNIÃO [D.O.U.] de 21.7.2010 (Braz.), http://www.planalto.gov.br/ccivil_03/_ato2007-2010/2010/lei/l12288.htm. The particular need for and urgency of this law are made apparent *infra* in Section 5.

¹⁹³ *Id.* at art. 1.

¹⁹⁴ *Id.* at art. 23.

¹⁹⁵ *Id.* at art. 25.

¹⁹⁶ Lei No. 12.966, de 18 de Junho de 2014, DIÁRIO OFICIAL DA UNIÃO [D.O.U.] de 20.6.2014 (Braz.), <http://www.planalto.gov.br/ccivil_03/_ato2011-2014/2014/Lei/L12996.htm>.

¹⁹⁷ Lei No. 7.347, de 24 de Julho de 1985, DIÁRIO OFICIAL DA UNIÃO [D.O.U.] de 25.7.1985 (Braz.), <http://www.planalto.gov.br/ccivil_03/LEIS/L7347orig.htm>.

¹⁹⁸ *Id.*

¹⁹⁹ The use of the word “finally” is not meant to suggest that the federal statutes examined in this section provide a completely exhaustive list of all federal statutes that protect religious liberty in Brazil; it simply indicates that this is the last federal statute examined herein.

²⁰⁰ Lei No. 11.635, de 27 de Dezembro de 2007, DIÁRIO OFICIAL DA UNIÃO [D.O.U.] de 28.12.2007 (Braz.), <http://www.planalto.gov.br/ccivil_03/_Ato2007-2010/2007/Lei/L11635.htm>.

²⁰¹ *Id.*

Unfortunately, these laws do not guarantee minimal religious intolerance and violence in Brazil. “Throughout centuries of occupation [and now as a democratic republic], Brazil has been harboring religions whose borders touch and advance one over the other, in a notorious syncretism between doctrines, traditions, and rites.”²⁰² Thus, it should come as no surprise that, even though Brazil is in many ways an example of religious tolerance to the world—particularly in the realm of minimal governmental restrictions—there is still much work to be done in order to encourage true religious liberty in the public sphere and discourage religious intolerance and persecution.

5 Social hostilities and religious intolerance in Brazil

As has been shown, the Brazilian government places virtually no restrictions on religious expression in private or in public,²⁰³ and it is extraordinarily committed to preventing religious intolerance and violence.²⁰⁴ Nevertheless, Brazil experiences a relatively high level of social hostilities and religious intolerance.²⁰⁵ In the introduction to a 2016 Report on Religious Violence and Intolerance in Brazil [hereinafter 2016 Report], a special human rights commission declared: “Although the Federal Constitution clearly and unequivocally protects religious freedom, the phenomenon of religious violence and intolerance still reveals itself as a challenge of living in a pluralistic society and a barrier to the full realization of religious liberty in Brazil.”²⁰⁶

The commission collected national data from 2011 to 2015, and recognizes “the growing religious intolerance that has increasingly occupied the national scene in recent years.”²⁰⁷ For example, victims of religious intolerance can contact the Secretariat of Human Rights hotline.²⁰⁸ In 2011, the hotline’s first year of operation,²⁰⁹ it received only 15 calls.²¹⁰ That number increased to 109 calls in 2012.²¹¹ Reports of religious intolerance increased only slightly from 2012 to 2014. However, in 2015, the hotline “registered 252 reports of religious discrimination related to cases of religious intolerance, a 70% increase from 2014.”²¹² In some

²⁰² 2016 REPORT, *supra* note 1, at 17.

²⁰³ See GRIM, *supra* note 6.

²⁰⁴ See *supra* Sections 4.3, 4.4, & 4.5.

²⁰⁵ See GRIM, *supra* note 6.

²⁰⁶ 2016 REPORT, *supra* note 1, at 8.

²⁰⁷ *Id.* at p. 8–9.

²⁰⁸ STECK, Juliana. Intolerância Religiosa É Crime de Ódio e Fere a Dignidade (Religious Intolerance is a Hate Crime and Damages Human Dignity), April 16, 2013, *Jornal do Senado*, <<http://www12.senado.leg.br/jornal/edicoes/2013/04/16/intolerancia-religiosa-e-crime-de-odio-e-fere-a-dignidade>>.

²⁰⁹ 2015 U.S. DEPT OF STATE BRAZIL REPORT, *supra* note 14, at 4.

²¹⁰ STECK, *supra* note 208.

²¹¹ *Id.*

²¹² 2015 U.S. DEPT OF STATE BRAZIL REPORT, *supra* note 14, at 4.

cases, callers reported violent discriminatory acts.²¹³ “Rio de Janeiro State reported the greatest number of cases, followed by São Paulo, Minas Gerais, and Bahia. In Rio de Janeiro, 71 percent of the cases of religious intolerance were reported to be related to adherents of African-originated religions.”²¹⁴

Other studies demonstrate this same trend of increasing religious intolerance in Brazil, particularly toward minority religions of African origin such as Candomblé and Umbanda. Alexandre Brasil Fonseca, the general coordinator of the 2016 Report, highlighted this fact in a conference presenting the report’s findings, noting that “cases of intolerance against religions of African origin are the most common.”²¹⁵ In a separate report, the Palmares Foundation, which is linked to the Ministry of Culture, related that it has “registered 218 reports of violent acts against places of worship for religions of African origin since it began collecting data in 2010.”²¹⁶ This trend of increasing violence against African religions is particularly disturbing because Brazil’s “self-identified Afro-Brazilian population is 106 million individuals strong, which makes it the world’s largest black population outside of Africa and the second largest after Nigeria.”²¹⁷ In Salvador, the capital city of the northeastern state of Bahia, 49 percent of the population is of African descent.²¹⁸

These numbers indicate that nearly half of Brazil’s population (108 out of 230 million) is increasingly susceptible to growing religious intolerance, for even

²¹³ *Id.*

²¹⁴ *Id.*

²¹⁵ OAB SÃO PAULO. *Estudo Apresentado em Seminário Aponta Aumento da Intolerância Religiosa no Brasil* (Study Presented at Seminar Points to an Increase in Religious Intolerance in Brazil) [hereinafter *Study Presented at Seminar*], Dec. 5, 2016, <<http://www.oabsp.org.br/noticias/2016/12/estudo-apresentado-em-seminario-aponta-aumento-da-intolerancia-religiosa-no-brasil.11403>>.

I served as a proselyting missionary for The Church of Jesus Christ of Latter-day Saints in the state of Bahia, Brazil from 2003-2005. Although I was never personally a victim of any type of violence during my time in Brazil, I did personally experience scores if not hundreds of religiously motivated micro-aggressions. Most often, these verbal attacks came from Pentecostals or Neo-Pentecostals who were none too pleased with my proselyting efforts and wanted to make sure that I knew how they felt about the LDS Church. I also witnessed a clear prejudice on the part of many Pentecostals, Neo-Pentecostals, Catholics, Evangelicals, and other Christians toward religious groups of African origin. I cannot begin to count the number of times I heard disparaging remarks with respect to these religious groups. However, I never witnessed an act of religious intolerance openly directed toward a practitioner of Candomblé or Umbanda—all of the discriminatory behavior I witnessed was the expression of negative stereotypes in conversations with members of other religions when practitioners of these African religions were not present. The data related in this section seem to suggest that religious discrimination and intolerance toward these African religions has become far more overt.

²¹⁶ 2015 U.S. DEP’T OF STATE BRAZIL REPORT, *supra* note 14, at 4.

²¹⁷ TIMSIT, Annabelle, The False Illusion of the Melting Pot, Berkley Center for Religion, Peace, & World Affairs (Georgetown University). *Jyan Blog*, December 8, 2015, <<https://berkeleycenter.georgetown.edu/posts/the-false-illusion-of-the-melting-pot>>; see also <<http://web2.sbg.org.br/congress/sbg2008/pdfs2008/23959.pdf>>.

²¹⁸ TIMSIT, Annabelle. The False Illusion of the Melting Pot, Berkley Center for Religion, Peace, & World Affairs (Georgetown University). *Jyan Blog*, December 8, 2015, <<https://berkeleycenter.georgetown.edu/posts/the-false-illusion-of-the-melting-pot>>; see also <<http://web2.sbg.org.br/congress/sbg2008/pdfs2008/23959.pdf>>.

though the majority of these African Brazilians do not practice religions of African origin,²¹⁹ they are still susceptible to misplaced discrimination and prejudice. In 2007, Edward Telles reported in the UN Chronicle that “non-whites [in Brazil] are major victims of human rights abuse, including widespread police violence.”²²⁰ He continued: “Most discrimination in Brazil is subtle and includes slights, aggressions, and numerous other informal practices Even though Brazil’s anti-racism [and anti-religious intolerance] laws target such incidents, which have long been considered un-Brazilian,” various forms of discrimination still remain.²²¹

Unfortunately, more overt crimes of religious intolerance are becoming increasingly common in Brazil. In January 2012, Luiza Barros, the cabinet secretary responsible for the promotion of racial equality, declared that “attacks against religions of African origin have reached an insupportable level. ‘The worst is not simply the large number [of attacks], but the gravity of the cases. These are physical aggressions, threats of depredation of homes and communities. We aren’t only disputing religion[;] we are also disputing civilizational values.’”²²² The following analysis describes several of the more overt and widely-reported incidents of religious intolerance of the past few years.

5.1 Evangelical drug traffickers control Rio de Janeiro’s favelas

Drug traffickers control the *favela* (a Brazilian slum), Morro do Amor, in Rio de Janeiro.²²³ After the traffickers converted to various evangelical faiths, they started persecuting those who practice Candomblé, a religious sect of African origin.²²⁴ The drug traffickers would not permit the Candomblé practitioners to maintain *terreiros* (areas where practitioners of Candomblé worship) within the neighborhood, use religious symbols, or even wear white clothing (a traditional symbol of those who practice Candomblé).²²⁵

One woman recounted how she had to leave the neighborhood to worship because all of the *terreiros* had been forced out.²²⁶ She had to wear normal clothing as she walked through the neighborhood on her way to worship, taking her white

²¹⁹ DIBUONO, Vivian. “Hardly half a percent of the country practices” Afro-Brazilian religions. *Jyan Blog*, October 18, 2011, [Diverse Religious History Informs Much of Brazil's Catholicism](#).

²²⁰ TELLES, Edward. Racial Discrimination and Miscegenation: The Experience in Brazil. *UN Chronicle*, v. XLIV, n. 3, Sept. 2007, <<https://unchronicle.un.org/article/racial-discrimination-and-miscegenation-experience-brazil/>>.

²²¹ *Id.*

²²² STECK, *supra* note 208.

²²³ SOARES, Rafael. Traficantes Proíbem Candomblé e Até Roupas Brancas em Favelas (Drug Traffickers Prohibit Candomblé and Even White Clothing in Slums). *O Globo*, Sept. 10, 2013, <<http://oglobo.globo.com/rio/traficantes-proibem-candomble-ate-roupa-branca-em-favelas-9892892>>.

²²⁴ *Id.*

²²⁵ *Id.*

²²⁶ *Id.*

garments with her in her handbag, because she was afraid the traffickers would identify her as a Candomblé worshiper.²²⁷ On one particular day, she accidentally placed her white clothing on her outdoor clothesline to dry.²²⁸ “The next week, she left the neighborhood, expelled by the bandits, never to return” because of the serious threats they levied against her.²²⁹ She is just one of many who have been expelled from Morro do Amor, including at least forty religious leaders.²³⁰

Similar religious persecution occurs in another slum (controlled by a rival gang) thirteen kilometers away.²³¹ When one religious leader tried to organize a small congregation, she was informed by a neighbor that her religion was prohibited from performing religious offerings and other ceremonies in the neighborhood.²³² She tried to stay in the neighborhood, just to visit and counsel with other members of her faith, but she was forced out.²³³ In a third neighborhood, the leader of the drug cartel that controls the *favela* openly brags about how he converted to Christianity.²³⁴ The name of Jesus Christ is tattooed on his forearm and numerous walls in the neighborhood are inscribed with Biblical phrases; however, the ten different Candomblé congregations that existed before his conversion have all been expelled.²³⁵

At the time of this report in September 2013, many allegations of religious intolerance and racial discrimination had been brought before the State Counsel for Black Rights (tasked with enforcing Law Number 12,288); however, nothing had changed.²³⁶ That’s because “armed intolerance can only be conquered with the arrival of the State in such locations, with Peacekeeping Police Units.”²³⁷ Unfortunately, these units are not being deployed.²³⁸

5.2 Young girl attacked because she practices Candomblé

In June 2015, an 11-year-old girl and several other practitioners of Candomblé were the victims of religious intolerance in a Rio de Janeiro suburb.²³⁹ They were

²²⁷ *Id.*

²²⁸ *Id.*

²²⁹ *Id.*

²³⁰ *Id.*

²³¹ *Id.*

²³² *Id.*

²³³ *Id.*

²³⁴ *Id.*

²³⁵ *Id.*

²³⁶ *Id.*

²³⁷ *Id.*

²³⁸ *Id.*

²³⁹ Menina Vítima de Intolerância Religiosa Diz Que Vai Ser Difícil Esquecer Pedrada (Young Girl Who Was a Victim of Religious Intolerance Says It Will Be Difficult to Forget Being Stoned). *GLOBO*, June 16, 2015 [hereinafter *Attack on Young Girl*], <<http://g1.globo.com/rio-de-janeiro/noticia/2015/06/menina-vitima-de-intolerancia-religiosa-diz-que-vai-ser-dificil-esquecer-pedrada.html>>.

assaulted as they were leaving a Candomblé religious service led by the girl's grandmother.²⁴⁰ The group of worshipers was peacefully heading home when two men, who likely identified the group by their traditional white clothing and proximity to the *terreiro*, started to insult the group.²⁴¹ The men raised a bible in their hands shouted at the group, calling them “devils,” and warning them that “Jesus is returning.”²⁴² They shouted that the Candomblé followers “would burn in hell.”²⁴³

One of the men threw a rock in the direction of the group; the rock bounced off a pole and hit the young girl in the head, causing a rather serious injury.²⁴⁴ The young girl recounted that she was afraid “she was going to die” and that the attack would be very difficult to forget.²⁴⁵ “Every time I close my eyes I see it all happening again,” she explained.²⁴⁶ Her grandmother, who has been practicing Candomblé for over 30 years, reported she had never experienced such terrible persecution.²⁴⁷ As of year-end 2015, the two men had not been identified.²⁴⁸

5.3 Religious buildings and images vandalized

In addition to the crimes perpetrated against religious individuals, vandalism of religious buildings and images is also a growing problem in Brazil. Sérgio Von Helder, a pastor of the Universal Church of the Kingdom of God, perpetrated what is perhaps Brazil's most notorious act of religious vandalism.²⁴⁹ In 1995, he kicked an image of Our Lady of Aparecida on national television.²⁵⁰ Von Helder's choice to kick one religious symbol might have been insignificant had it been perpetrated in private; however, because he carried out his discriminatory act on national

²⁴⁰ *Id.*

²⁴¹ *Id.*

²⁴² *Id.*

²⁴³ 2015 U.S. DEP'T OF STATE BRAZIL REPORT, *supra* note 14, at 4.

²⁴⁴ *Attack on Young Girl*, *supra* note 239.

²⁴⁵ *Id.*

²⁴⁶ *Id.*

²⁴⁷ *Id.*

²⁴⁸ 2015 U.S. DEP'T OF STATE BRAZIL REPORT, *supra* note 14, at 4.

On a side note, I am personally acquainted with dozens of missionaries who were robbed, and sometimes beaten, during their service with me in Bahia. None of my acquaintances suggested that these violent acts were inspired by religious intolerance (although a discriminatory motivation is possible because LDS missionaries are readily identifiable as such because of their traditional missionary dress—white shirt, tie, and nametag). It is more likely these attacks were the product of mere greed. Nevertheless, I desire to note these occurrences because none of the assailants were ever identified or apprehended. This anecdote, along with the other more official accounts described in the article, demonstrates the clear failing of the Brazilian police force to protect citizens and visitors from harm.

²⁴⁹ STECK, *supra* note 208.

²⁵⁰ *Id.* STECK also reports of other forms of intolerance. For example, Jehovah's Witnesses have been prosecuted for not allowing blood transfusions. Seventh Day Adventists have been denied accommodations when they are unwilling to work or take exams on Saturday. Judicial orders have impeded animal sacrifice in religious rituals.

television, he became famous in Brazil and his action has become a symbol of religious persecution and intolerance.²⁵¹

Numerous, more recent, complaints demonstrate an increase in the destruction of images or statues representing Candomblé saints or Catholic saints.”²⁵² In February 2015, “a group of unidentified men broke into an Umbanda temple in Cachambi, North Rio, and destroyed religious images and statues.”²⁵³ The police have yet to identify any suspects. More serious religious vandalism is occurring as well. For example, in September 2015, “unknown assailants set fire to two Candomblé temples” in central Brazil.²⁵⁴ One of the temples was completely destroyed by the arson.²⁵⁵

5.4 National news broadcaster demonstrates prejudice against atheists

José Luiz Datena, a broadcaster for TV Bandeirantes (one of the most well-known television networks in Brazil) made prejudiced comments about atheists on a program that aired in 2010.²⁵⁶ While reporting on the murder of a young man, Datena suggested that such a crime could only have been perpetrated by an atheist.²⁵⁷ Datena remarked: “A guy who’s an atheist has no limits, and that’s why we see these type of crimes occurring.”²⁵⁸ Datena also stated that it is because of unbelievers that “the world has gone to crap,” attributing “[w]ar, plagues, starvation, and everything else” to non-believers.²⁵⁹

After the program aired, the district attorney’s office in São Paulo brought a civil suit against TV Bandeirantes.²⁶⁰ During the trial, the prosecuting attorney asserted: “The station did a disservice to the media, as it acted in a way that encourages radical groups to persecute minorities, and may even increase intolerance and violence against atheists.”²⁶¹ He further asserted that throughout the entire program “Datena associated with atheists the idea that only those who don’t believe in God are capable of committing such [heinous] crimes.”²⁶²

²⁵¹ *Id.*

²⁵² *Id.*

²⁵³ 2015 U.S. DEP’T OF STATE BRAZIL REPORT, *supra* note 14, at 4.

²⁵⁴ *Id.* at 4.

²⁵⁵ *Id.*

²⁵⁶ BARBOSA, Rogério. Justiça Condema TV Bandeirantes Após Considerar Preconceituosos Comentários de Datena Contra Ateus (The Court Condemns TV Bandeirantes After Considering Datena’s Prejudiced Comments Against Atheists). *UOL*, January 31, 2013, <<http://televisao.uol.com.br/noticias/redacao/2013/01/31/justica-condena-tv-bandeirantes-apos-considerar-preconceituosos-comentarios-de-datena-contra-ateus.htm>>.

²⁵⁷ *Id.*

²⁵⁸ *Id.*

²⁵⁹ *Id.*

²⁶⁰ *Id.*

²⁶¹ *Id.*

²⁶² *Id.*

The judge ruled against TV Bandeirantes, explaining that “the network acted on the path of specific and targeted discrimination when ... Datena expressly stated that ‘those who do not believe in God need not watch his program.’”²⁶³ The judge also ruled that Datena’s comments “were not restricted to mere criticism nor simply a manifestation of his opinion on a particular topic.”²⁶⁴ The penalty for the network was that it must dedicate 50 minutes of its program, “Brasil Urgente,” to explaining and promoting freedom of conscious and belief.²⁶⁵ The content was provided by the court, and the network was fined R\$10,000 for every day that it failed to comply with the court order.²⁶⁶

6 Government and grassroots efforts to decrease social hostilities and religious intolerance

At a December 2016 seminar to present the findings of the 2016 Report, Flávia Piovesan, Special Secretary for Human Rights proclaimed:

We must strengthen our emancipatory platform in support of diversity and the call for pluralism, reinforcing the principle of secularism, which prohibits the State from ... impeding the functioning of religion. ... [T]he lay state ... still requires strengthening, and it is up to the State to create and ensure a pluralistic arena in which [even] the most different religions deserve equal consideration and deep respect.²⁶⁷

The Special Secretary’s words leave no doubt that the government understands its central role in promoting religious liberty and combating religious intolerance. This landmark seminar was co-sponsored by the Commission for Law and Religious Liberty of the São Paulo Chapter of the Brazilian Bar Association, demonstrating a healthy cooperation between the government and social organizations in this most important fight.²⁶⁸ The following analysis expounds on both government and grassroots efforts to decrease social hostilities and religious intolerance in Brazil.

²⁶³ *Id.*

²⁶⁴ *Id.*

²⁶⁵ *Id.*

²⁶⁶ *Id.*

²⁶⁷ OAB SÃO PAULO. Estudo Apresentado em Seminário Aponta Aumento da Intolerância Religiosa no Brasil (Study Presented at Conference Points to an Increase of Religious Intolerance in Brazil), Dec. 5, 2016 [hereinafter *Study Presented at Conference*], <<http://www.oabsp.org.br/noticias/2016/12/estudo-apresentado-em-seminario-aponta-aumento-da-intolerancia-religiosa-no-brasil.11403>>.

²⁶⁸ *Id.*

6.1 Government efforts

In early 2016, the federal government published the 2016 Report on Religious Violence and Intolerance in Brazil referenced above.²⁶⁹ Tremendous coordination over a period of six months was required to prepare this 147-page document; it brought together studies and observations from 65 media outlets, representing each of the 26 states and the Federal District in Brasília; ombudsmen from 118 organizations; 61 separate State, Federal, and Superior courts; specialized police units from 5 different states; and 20 personal interviews with leaders of 10 different religious denominations.²⁷⁰ Thus, the 2016 Report provides convincing evidence that the federal government is aware of the current challenges and barriers to religious liberty in Brazil, and that it is intent on dedicating the resources necessary to “better identify the presence of acts of violence and religious intolerance in Brazilian society.”²⁷¹ The report registered 965 violations of religious freedom in Brazil from 2011 to 2015; and, although the report contains only preliminary findings about religious intolerance and violence in Brazil, the special commission that produced the report hopes to use the information to “establish more adequate directives and strategies for the promotion of respect for religious diversity” moving forward.²⁷²

The 2016 Report represents the latest in a series of government efforts to combat religious intolerance in Brazil. For example, in 2012, the cabinet secretary for Human Rights mobilized a committee to combat religious intolerance.²⁷³ The committee has twenty members, five of them government representatives and the other fifteen “representatives from civil society who work in the promotion of religious diversity.”²⁷⁴ The committee “aims to promote the right to free exercise of religion and assist in the developing of policies that affirm religious liberty, respect for diverse religious sects, and the option of having no religion.”²⁷⁵

In August 2015, over 100 federal deputies and senators joined together to form the Parliamentary Front in Defense of Religious Liberty. The Parliamentary Front desires to symbolize the importance of religious liberty to the National Congress and “promote public policies that strengthen this right for all.” Marcos da Costa, president of the São Paulo Chapter of the Brazilian Bar Association,

²⁶⁹ 2016 REPORT, *supra* note 1.

²⁷⁰ *Id.* at 28, apps. 1–7.

²⁷¹ *Id.* at 8.

²⁷² *Id.* at 8.

²⁷³ STECK, *supra* note 208.

²⁷⁴ CRISTALDO, Heloisa. SDH Cria Comitê de Combate à Intolerância Religiosa (SDH Creates Committee to Combat Religious Intolerance). AGÊNCIA BRASIL, Jan. 22, 2013, <<http://memoria.ebc.com.br/agenciabrasil/noticia/2013-01-22/sdh-cria-comite-de-combate-intolerancia-religiosa>>.

²⁷⁵ STECK, *supra* note 208.

stated that “[t]he creation in the National Congress of this Parliamentary Front corroborates the Brazilian tradition of always showing great religious tolerance, where different creeds live together in harmony, as an exemplary country in the practice of religious liberty to the world.”²⁷⁶ Morôni Torgan, a congressman from Fortaleza and member of The Church of Jesus Christ of Latter-day Saints, is the group’s leader.²⁷⁷ He has been a delegate to the International Law and Religion Symposium hosted by the International Center for Law and Religion Studies at the J. Reuben Clark Law School on several occasions (most recently in 2015) and is dedicated to working closely with religious leaders from various denominations to promote legislation that will strengthen religious liberty in Brazil. The Parliamentary Front now contains 220 members of the National Congress working together to achieve this goal.²⁷⁸

One legislative proposal is currently in process that, if passed, will strengthen religious liberty in Brazil. In 2015, the Constitution and Justice Committee of the Chamber of Deputies approved a proposal to amend the Federal Constitution, PEC 99/2011.²⁷⁹ If ratified, the proposed amendment would provide religious organizations with the opportunity to request judicial review of laws before the Federal Supreme Court.²⁸⁰ Unfortunately, this amendment has been in the works since 2011 and no official legislative action has been taken on this amendment since November 2015.²⁸¹

Two public hearings held by the National Congress in 2015 further demonstrate the government’s efforts to combat social hostilities and religious intolerance. An August hearing in the House of Deputies promoted “religious tolerance and interfaith dialogue.”²⁸² Members of the House of Deputies heard from “a panel comprising of members of the National Committee for Religious Diversity, the SDH Coordinator for Religious Diversity, a Candomblé priestess, the president of the National Council for Christian Churches, and the president of the Association of Evangelical Jurists.”²⁸³ After hearing from the panel, government representatives

²⁷⁶ Frente Parlamentar em Defesa da Liberdade Religiosa Será Lançado em Brasília (Parliamentary Front in Defense of Religious Liberty Will Be Initiated in Brasília). OAB SÃO PAULO, Aug. 07, 2015, <<http://www.oabsp.org.br/noticias/2015/08/frente-parlamentar-em-defesa-da-liberdade-religiosa-sera-lancada-em-brasilia.10289>>.

²⁷⁷ Frente Parlamentar Para a Liberdade Religiosa do Congresso (Mista) (Congressional Parliamentary Front for Religious Liberty (Mixed List)). CÂMARA DOS DEPUTADOS, Feb. 26, 2015, <<http://www.camara.leg.br/internet/deputado/frenteDetalle.asp?id=53457>>.

²⁷⁸ *Id.*

²⁷⁹ Projetos de Lei e Outras Proposições (Projects of Law and Other Propositions): PEC 99/2011 (Projects of Law and Other Propositions: PEC 99/2011). CÂMARA DOS DEPUTADOS, <<http://www.camara.gov.br/proposicoesWeb/fichadetramitacao?idProposicao=524259>> [hereinafter *Projects of Law*] (last visited Jan. 8, 2017, 9:56 PM).

²⁸⁰ *Id.*

²⁸¹ *Id.*

²⁸² 2015 U.S. DEP’T OF STATE BRAZIL REPORT, *supra* note 14, at 3.

²⁸³ *Id.*

explained how the government is engaged in “efforts to organize state forums on religious diversity and to create state-level committees on religious diversity.”²⁸⁴

In September, the Senate Committee of Human Rights held a similar hearing to explore the problem of “religious intolerance, focusing on instances of violence against practitioners of religions of African origin.”²⁸⁵ “Some religious leaders and senators called for the creation of a congressional investigative committee to investigate these cases of violence.”²⁸⁶ This request might seem duplicative, given the work of the special commission which created the 2016 Report; nevertheless, the Senate’s willingness to hold such a hearing and field suggestions once again demonstrates the government’s willingness to confront the issue of religious intolerance. In fact, “[a] government representative acknowledged the problem, and spoke of plans to improve national reporting on religious violence and to expand the network of permanent forums on interfaith dialogue existing in seven of the country’s states.”²⁸⁷

6.2 Grassroots efforts

Several grassroots organizations are also working to diminish religious violence and intolerance in Brazil. In 2008, a group of practitioners of Candomblé and Umbanda (both religions of African origin) formed the Commission to Combat Religious Intolerance (CCRI).²⁸⁸ The group was formed in response to drug traffickers who invaded religious buildings, destroyed religious idols and other symbols, and threatened to kill those who practiced African religions and who were unwilling to convert to Christianity.²⁸⁹ Today, the group contains members from various other religious sects, including Catholics, Jews, Evangelicals, Muslims, Buddhists, and Wiccans, as well as Gypsies, Atheists, and Agnostics.²⁹⁰ The growing popularity of the CCRI’s annual “March in Defense of Religious Liberty” is one representation of the commission’s robust growth and significant support from the general public.²⁹¹ Roughly 20,000 people marched in the streets of Rio de Janeiro in 2008 (the first year the march was held).²⁹² 80,000 people marched in 2009; 120,000 supporters marched on Copacabana beach in 2010; in 2011, 180,000 people participated in the march; and the number of participants continues to increase each year.²⁹³

²⁸⁴ *Id.*

²⁸⁵ *Id.*

²⁸⁶ *Id.*

²⁸⁷ *Id.*

²⁸⁸ CCRI, *supra* note 19.

²⁸⁹ *Id.*

²⁹⁰ *Id.*

²⁹¹ *Id.*

²⁹² *Id.*

²⁹³ *Id.*

The CCRI is engaged in numerous other efforts to combat religious intolerance. It established a Forum for Inter-religious Dialogue²⁹⁴ and has petitioned the government on numerous occasions, most recently in 2015, to draft a “National Plan to Combat Religious Intolerance.”²⁹⁵ The government’s 2016 Report On Religious Intolerance and Violence, cited throughout this article, represents the first step toward creating this national plan.²⁹⁶ The CCRI also assisted the Civil Police of Rio de Janeiro in updating their database that registers complaints and violations of Law 7,716/89, which criminalizes religious intolerance, such that Rio de Janeiro’s database and ability to respond to complaints now serves as a model to the rest of the country.²⁹⁷ And the CCRI develops, publishes, and distributes educational materials, such as the “Guide for Fighting Against Religious Intolerance and Racism.”²⁹⁸

The Brazilian Association for Religious Freedom & Business (hereinafter Association) is another grassroots organization that is working hard to combat religious intolerance and promote religious liberty in Brazil. The Association operates under the belief that businesses can have a positive impact on society “by promoting an ethic of religious freedom applied to corporate culture and codes of governance.”²⁹⁹ On April 29, 2015, the Association co-sponsored a national “Celebration of Religious Freedom” held at *Mesquita Brasil*, Brazil’s largest and oldest mosque. The celebration attracted “hundreds of religious, political, and business leaders, with Catholic cardinals invited to share the same podium as Pentecostals, Adventists, Mormons and Muslim leaders.”³⁰⁰ On September 6, 2016, the Association, together with the United Nations Global Compact *Business for Peace*, hosted the first ever Business, Faith, and Freedom Global Awards to recognize “the best advances and innovations by businesses in improving respect for religious freedom, interfaith understanding, and peace.”³⁰¹

Another group of professional organizations unique to Brazil is engaged in the fight against religious intolerance: many of the regional chapters of the Brazilian Bar Association have special Law and Religious Liberty Commissions—the São Paulo Chapter boasts the country’s oldest and largest such commission. Its objective is to

²⁹⁴ *Id.*

²⁹⁵ Brazil 2015 International Religious Freedom Report, *supra* note 14, at 3–4.

²⁹⁶ See 2016 REPORT, *supra* note 1.

²⁹⁷ See CCRI, *supra* note 19.

²⁹⁸ *Id.*

²⁹⁹ The ARFB, Association for Religious Liberty and Business, Unites Professionals from the Legal, Business, Academic, and Political Sectors, Among Others, With the Common Goal of Promoting Religious Liberty. *Association for Religious Freedom & Business*, <<http://alm.org.br/alm/>>, last visited Jan. 3, 2017, 11:12 PM.

³⁰⁰ GRIM, *supra* note 6.

³⁰¹ *Id.*; see also ASSOCIATION FOR RELIGIOUS FREEDOM & BUSINESS. *Global Business & Interfaith Peace Awards – Rio 2016*, <<http://alm.org.br/premios-globais/>>, last visited Jan. 3, 2017, 8:49 PM.

“[p]romote a culture of peace, build a culture of respect among the various religions ... and spread respect for the right to freedom of belief, conscience, and worship.”³⁰² In September 2015, at City Hall, the São Paulo chapter released its “Manifesto to Combat Religious Intolerance on the Internet.” The document “reinforces to society the necessity of protecting social networks and the internet from persons with evil intentions”³⁰³ Ivette Senise Ferreira, chapter Vice President, suggested that because social networks are replacing traditional forms of communication, there is an urgent need to regulate the established norms necessary to prevent improper conduct. In May 2016, the São Paulo chapter, together with the Special Secretariat for Human Rights, hosted an academic conference about the lay state, intolerance, and religious diversity. The main purpose of the event was to present and explain the findings of the 2016 Report on Religious Intolerance and Violence and “establish strategies for an effective confrontation of the increase in religious intolerance in the country.”³⁰⁴ This event, like many of the others described above, demonstrates the valuable collaboration between government and grassroots organizations in the fight against religious intolerance in Brazil.

6.3 Additional suggestions

The 2016 Report provides clear evidence that the Brazilian Federal Government is neither ignorant of nor apathetic to the increasing tally of social hostilities due to religious intolerance in Brazil.³⁰⁵ Nevertheless, more can be done to eradicate religious intolerance in Brazil and increase religious liberty in the public sphere. I offer two suggestions.

First, the government must find more ways to visibly discourage religious intolerance. The Datena incident described above³⁰⁶ is indicative of a much larger problem: Much of Brazil (including the news media) is either unaware or in denial of the growing problem of religious intolerance nationwide.³⁰⁷ The 2016 report discusses this problem in detail, noting that “[t]he topic of religious violence and intolerance is still an incipient matter in the news media, such that the [issues]

³⁰² OAB SÃO PAULO. *Objetivos – Direito e Liberdade Religiosa* (Objectives – Law and Religious Liberty), Sept. 3, 2015, <<http://www.oabsp.org.br/comissoes2010/liberdade-religiosa/objetivos/Objetivos%20-%20Direito%20a%20Liberdade%20Religiosa.pdf/download>>.

³⁰³ Secional Paulista da Ordem Lança Manifesto Contra a Intolerância Religiosa na Internet (São Paulo Section of the Bar Association Releases a Manifesto Against Religious Intolerance on the Internet). OAB SÃO PAULO, Nov. 16, 2015, <<http://www.oabsp.org.br/noticias/2015/11/secional-paulista-da-ordem-lanca-manifesto-contra-a-intolerancia-religiosa-na-internet.10507>>.

³⁰⁴ *Study Presented at Conference*, *supra* note 267.

³⁰⁵ See generally, 2016 REPORT, *supra* note 1.

³⁰⁶ See *supra* Section 5.4.

³⁰⁷ 2016 REPORT, *supra* note 1, at 35–36.

are not accurately covered.”³⁰⁸ When the media does cover events, they often choose to cover only national events of religious intolerance while neglecting coverage of local events.³⁰⁹ Furthermore, the media often covers only the initial act of violence or intolerance instead of providing continual coverage on the topic until its resolution.³¹⁰

Networks also choose to cover international events (i.e. terrorist attacks) at the expense of domestic events.³¹¹ This has led to a common misperception that the struggle to promote religious liberty is only relevant outside of Brazil.³¹² Lastly, the sparse media coverage of religious intolerance that Brazilian networks do provide is often delivered in an unsophisticated way because the majority of Brazilian journalists “lack knowledge regarding [how to analyze and discuss] acts of religious violence and intolerance.”³¹³ Taken together, all of these shortcomings have created a situation in which the general public does not have an accurate perception of religious intolerance in Brazil. In light of these facts, perhaps the most practical way for the government to increase awareness of religious intolerance is to encourage and support the national, state, and local networks in an effort to improve the quantity and quality of their reporting of the topic.

Second, it is absolutely imperative that the government establish a reliable system of recourse for individuals and religious organizations who have been harmed—better and more consistent enforcement of the law would serve as a reliable deterrent to religious intolerance. I see three ways in which the government can begin to work toward this goal: (1) Improve law enforcement efforts, (2) Work toward more consistent judgments, and (3) Establish judicial review. It is clear that law enforcement agencies have a lot of work to do, as is evidenced by the many failings of police organizations around the country to apprehend perpetrators of crimes of religious intolerance.³¹⁴ The legislature could pass a law to create and fund a special task force to investigate crimes of religious intolerance. Alternatively, they could pass a law requiring the various states create such special units. Furthermore, the government must find a way to root out religious persecution within the *favelas*, instead of ignoring the plight of the poor who have little political influence.

In order to establish a reliable system of recourse, the State must also find a way to promote consistent judgments when civil and criminal cases regarding

³⁰⁸ *Id.* at 35.

³⁰⁹ *Id.*

³¹⁰ *Id.*

³¹¹ *Id.* at 36.

³¹² *Id.*

³¹³ *Id.*

³¹⁴ See, e.g., *supra* Sections 5.1–5.3; see also, *supra* note 248 and accompanying text.

religious intolerance are brought to trial. It is a common presumption that judgments in a civil law country are more consistent because a judge is simply tasked with applying the facts to a thoroughly established body of law. Such is not the case in Brazil, in part because the judiciary is completely overwhelmed. For example, there is a backlog of approximately 100 million appellate cases nationwide. These overwhelmed judges do not always give a case the necessary attention it deserves. Another problem with the overburdened system is that it often takes years, even decades to resolve a case.³¹⁵

In 2004, the legislature took one drastic step in an effort to correct this problem, passing a constitutional amendment that established a system known as *Sumula Vinculante*.³¹⁶ *Sumula Vinculante* functions on a principal similar to *stare decisis* in the United States, and permits judges to issue a binding summary that constrains lower courts in their decisions.³¹⁷ Unfortunately, in accordance with Article 103-A of the amendment, only the Federal Supreme Court is permitted “to publish rules and decisions that are binding on inferior courts and public administrators.”³¹⁸ Consequently, even though *Sumula Vinculante* has been in place for over a decade, the program is hardly functional and rarely applied. The legislature and the judiciary should work to more efficiently and thoroughly implement *Sumula Vinculante*.

A final step that Brazil can take to establish a reliable system for recourse for those whose rights have been violated would be to allow for judicial review. Although not the focus of this paper, it is nevertheless a fact that the government does at times enact laws that discriminate against religion in general.³¹⁹ Currently, as was noted in Section 4.1 above, the Brazilian constitution does not permit religious organizations to petition the Federal Supreme Court for judicial review of laws.³²⁰ United States history demonstrates that, at times, it takes a ruling of the Supreme Court to vindicate religious rights, both to protect religious groups from

³¹⁵ CONSTITUIÇÃO FEDERAL [C.F.] [CONSTITUTION] amend. 45 (Braz.).

³¹⁶ V-BRAZIL.COM. *Brazil Constitution, Recent Constitutional Amendments*, <<http://www.v-brazil.com/government/laws/recent-amendments.html>>, last visited Jan. 9, 2017, 8:00 PM.

³¹⁷ *Id.*

³¹⁸ CONSTITUIÇÃO FEDERAL [C.F.] [CONSTITUTION] amend. 45 (Braz.).

³¹⁹ In the course of my research, I discovered a few instances of potential government restrictions on religion, namely: (1) the ratification of an accord with the Holy See in 2010 which provides special treatment to the Catholic Church (AÇÃO EDUCATIVA. *Acordo Entre Brasil e Vaticano Ameaça o Estado Laico e as Liberdades Fundamentais*, July 7, 2009); (2) challenges and inconsistencies with the implementation of optional religious education in public schools, with many schools failing to provide numerous options for religious instruction or an opt out option as required by law so that optional religious education in practice becomes compulsory (Brazil 2015 International Religious Freedom Report, *supra* note 14); and (3) certain municipal election committees attempting to appropriate LDS chapels for use as polling places on the Sabbath, thereby disrupting worship services. CAVALCANTE, Aroldo. *Intervenção do Estado na Propriedade: O Problema da Requisição de Espaço Religioso Para Uso Público*, Working Paper. But these government restrictions are beyond the scope of this paper and will not be detailed here.

³²⁰ See *Projects of Law*, *supra* note 279.

government oppression and from private persecution. Unfortunately, “it was not until the 1940s that the first powerful and inspiring modern decisions regarding religious speech and other manifestations of religion were published” by the Supreme Court of The United States.³²¹ Brazil should learn from the mistakes of the U.S. and empower and encourage its Federal Supreme Court to protect religious liberty. Accordingly, PEC 99/2011, the proposed constitutional amendment that would allow for judicial review, and that is stalled in the Chamber of Deputies, should be expeditiously moved forward.

7 Conclusion

Brazil's government is extraordinarily favorable to religious liberty and committed to protecting free exercise of religion both in private and in public. Unfortunately, these efforts at times fall short of preventing religious intolerance and social hostilities. Brazil's environment of rich ethnic diversity and “religious pluralism, achieved at great cost, should be guaranteed, in such a way that the conflicts that involve different religious groups in practices of religious intolerance must be combatted ... so that Brazil can experience ever more fully and completely respect for religious diversity.”³²² Both government and grassroots organizations are working diligently to turn back the tide of religious intolerance and ensure that Brazil is an example to the world not only in terms of minimal government restrictions of religion, but, also in terms of minimal social hostilities toward religion. I have suggested a few other steps the government might take to expedite this process. No doubt there are many other options that have escaped my mind. Most important is that Brazil continues to diligently promote religious liberty and freedom for all.

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³²¹ GUNN, *supra* note 2, at 451–52. (“Perhaps the most impressive of these decisions, *West Virginia State Board of Education v. Barnette*, came in the wake of widespread violence against Jehovah's Witnesses because of their insistence that their highest loyalty was to God It was not until 1940 that the Free Exercise Clause was found to be applicable to the states. Social and political, though not legal, discrimination against Catholics and Jews was open and notorious well into the 1960s.”).

³²² See 2016 REPORT, *supra* note 1, at 17.

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