The Revival of Religiosity and the Influence on Marriage and Children

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I. PREFACE

In recent years, we have heard important researchers worldwide stating that we are experiencing a process of profound secularization, in other words, humanity has forgotten God. However, I agreed with Peter L. Berger’s statement: “my point is that the assumption that we live in a secularized world is false”¹.

Certainly, States can be secular, and not to adopt a State religion, but this political choice does not impose upon citizens the obligation to be atheist or neutral in their intellectual position. Moreover, secularisation should be the maximum guarantee of religious freedom and protection of religious pluralism and in secular States where religious freedom is protected, there is evidence of an increment in population religious practice².

The considerable legislative progress which was made in the protection of human rights during the last decade has been slowed by the growth of fundamentalist activities. At

²“It is just as possible to say that pluralism produces secularization as it to say that secularization produces pluralism”. (Peter L Berger, The Sacred Canopy, (1967), p. 155).
present, legislative control on immigration\(^3\) has proved extremely difficult for immigrants, not only in the United Kingdom, but throughout the world.\(^4\).

Nowadays, the worldwide resurgence of the practice of religion generates repression, as a result of the fundamentalism that we are suffering, evidenced by the recent terrorist attacks. The growth of the phenomenon of fundamentalism is of major concern to society.

The caveats provided for in legislation, that is, preservation of security and public order appear to justify a situation that also produces religious discrimination in an international context:

“Religion is a victim insofar as it was exiled from the modern constitution of international relations, religion was the object that needed to vanish for modern international politics to come into being... the rejection of religion, in other words, seems to be inscribed in the genetic code discipline of international relations. Arguably, this occurred because the main constituted elements of the practices of international relations were purposely established in early Europe to end the wars of Religion.”\(^5\)

II. UNITED KINGDOM

I shall analyse the legal framework in the United Kingdom, a country in which there is an Established Church, but which does not avoid religious or cultural difference, but permits religious freedom. The reality is that the United Kingdom is experiencing a religious revolution.

Studies reveal that the Anglican and Roman Catholic Churches are the most important Churches in United Kingdom and their believers practise their religion. In addition to


this, there are many other religions in the United Kingdom, which practice, new and ancient ways to seek the Truth. They have survived the concept of modernity and also the secularity traced by the Enlightenment, playing a powerful social role in society, fighting against the cultural transformation of individualism. The map of religions in U.K belies the myth of the secularization in the west of Europe.

I shall begin with a study of the legal protection afforded to human rights in U.K and specifically the recognition and guarantee of religious freedom as a formal civil right. Furthermore, and notwithstanding that the United Kingdom has an unwritten Constitution, I will attempt to demonstrate that the State has an interest in religions and their affairs, in contrast with the inflexible secular posture in France, for example.

Finally, while the practice of the traditional religions is in decline, new and alternative forms of religious practice emerge. I will therefore attempt to describe the different religions in the British society; and evaluate the methods used by these communities to maintain their congregations, to provide a place of worship, to educate their children, satisfy all of their religious needs, and deal with the consequences of adhering to a coherent belief and satisfying religious commitments.

A. RELIGIOUS DEMOGRAPHY

According to an international report on religious freedom of 2007, released by the U.S. Department of State, a census conducted in the United Kingdom in April 2001 contained a voluntary question on religion, the results of which were released in February 2003. The topic of religion was new to the official statistics for England, Wales and Scotland, although the subject had been included in previous census data for Northern Ireland.


The census reported that approximately 42 million persons (almost 72 percent) identify themselves as Christians. Approximately 1.6 million (2.7) identify themselves as Muslims. The largest new religious groups are Hindus (1 percent), followed by Sikhs (0.6) and Jews (0.5). Over 9 million (15.5 percent) of those responding stated they have no religion. Although the question was voluntary only 7.3 percent chose not to respond.

In 2003 the Office for National Statistic indicates approximately 29 percent of the population identify with Anglican churches, 10 percent with the Roman Catholic Church, and 14 percent with other Christian Churches. An additional 2 percent of the population is affiliated with the Church of Jesus Christ of Latter-day Saints (Mormons), the Church of Christ, Christian Scientists, Jehovah’s Witnesses, and Unitarians\(^9\).

A September 2006 English-Church Census reported that Methodists were decreasing as a percentage of the population, and Pentecostals, many from Africa, were increasing.

In Northern Ireland, the 2001 Census showed that 53.1 percent were Protestants and 43.8 were Catholics. Church attendance is estimated at 30 to 35 percent. The divisions between nationalists and unionists have largely evolved along religious lines. The policy of the government remains one of promotion of religious tolerance. Bradney remarks that Muslims are the largest non-Christian group within the United Kingdom, and they have a higher incidence of religious observance as compared with other traditional British religious communities\(^10\).

**B. ESTABLISHMENT CONFESSIONS AND OTHER RELIGIOUS DENOMINATIONS**

The Church in Wales, the Scottish Episcopal Church (Presbyterian), and the Church of Ireland are members of the Anglican Communion. There are no established churches in Wales or Northern Ireland.

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A February 2001 Home Office study suggested that the established status of the Church of England causes religious disadvantage to other communities, in the event of which their only means of redress is to approach the civil courts.

The non-Established religious groups or organisations are not required to register with the government\textsuperscript{11}, nor do they receive direct funding from the State. The State only funds the repair of historic church buildings.

Most religious institutions are classified as charities or voluntary associations and, as such\textsuperscript{12}, enjoy a wide range of tax benefits. They are exempted from the value-added tax.

In England and Wales, the Charity Commission reviews the application of each body applying for registration as a charity. Commissioners base their decisions on a substantial body of case law. In Scotland and Northern Ireland, the Inland Revenue performs this task. Consequently, the religious organizations\textsuperscript{13} have no separate legal identity under state law and are not treated as juridical persons. They cannot sue or be sued \textbf{nor can they hold property}. However, institutions within churches, such as incumbents, bishops, parish councils, diocesan committees, etc, may be the legal owners of property.

This situation reflects the open relationship between the religious confessions and the State, but it also supposes that the State does not consider religion to be a merely private


\textsuperscript{12} The advancement of religion is one of the four categories of charity recognised under English law. Vid., Alan Ware, Religion, Charities and the State. In Charities and Government. Alan Ware, editor. Manchester University Press, 1989, pp. 222-247.

\textsuperscript{13} "As in the international sphere: in the United Kingdom, there are collective organizations. The Churches Main Committee exists ‘to advance the charitable work, religious or otherwise, of the Churches by furthering their common interest in secular matters relating to their work (other than educational work)’; it is to advise the churches on these matters, ‘conduct negotiations relating to those matters and to take such action as may be thought fit’, and ‘act as a liaison body between the Churches and the machinery of Government, such a government departments, local authorities and Parliament’. Its membership includes the established churches, disestablished churches, free churches, ecclesiastical alliances, and Jewish bodies, and it keeps in touch with other religious groups through its Inter-faith Network. There are also individual denominational institutions: the Church of Scotland has a Church and Nation Committee, working in areas of secular concern, and the general Synod the Church of England is ‘consider and express its opinion on any... matter of religious and public interest’ (Norman Doe, 2A sociology of Law on Religion – towards a new discipline: legal responses to religious pluralism in Europe’, in Law and Justice, 152, 2004, p. 80).
aspect in the life of the believer, but recognises its influence on the secular life of the individual.

C. THE FAITH IN THE MARITAL RELATIONSHIPS AND THE DIVORCE.
Religion is an essential factor not only in the public political space but in private matters.

Across the history, the humankind has attempted to be homogenous\textsuperscript{14} because the conservation of religious and ethnic traditions was priceless. Nowadays, the interfaith marriages are a reality around the world, the immigration as a consequence of the globalization, has done to fall down the walls between the different religions and cultures.

In spite of immigration control policies\textsuperscript{15}, people change the country residence daily. They are blending, their children grow in an intercultural context and a cumulative effect of cross-religion marriages is even more pronounced, a high per cent of the couples, come from homes where the parents were of different religions or denominations. This amazing situation far of creating a lack of commitment with the one’s faith, has caused an increment of religiosity.


\textsuperscript{15} The Secretary of State's statutory scheme required that people subject to immigration controls or who had entered the UK illegally, who wished to marry other than according to the rites of the Anglican Church, must first obtain permission from the Home Office. The claimants complained that the scheme interfered with their right to marry under the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950, Art 12, and, because of the exemption for Anglican marriages, discriminated against them contrary to Art 14.

The statutory scheme contravened Art 12 on the right to marry and Art 14 on the right not to be discriminated against for reasons of nationality or religion. The Secretary of State could only interfere with the exercise of Art 12 rights in cases that involved, or very likely involved, sham marriages entered into with the object of improving the immigration status of one of the parties. To be proportionate, a scheme to achieve that end would have to either properly investigate individual cases or at least show that it had come close to isolating cases that very likely fell into the target category, and must also show that marriages targeted did indeed make substantial inroads into the enforcement of immigration control. The scheme was not proportionate in that it inhibited marriages on grounds of immigration status rather than by reliable consideration of the genuineness of the marriage. The scheme unreasonably failed to pay attention to the circumstances of individual cases, and affected the Art 12 rights of substantially many more people than would be necessary to achieve the legislative purpose of preventing sham marriages. R (Baiai) v Secretary of State for the Home Department; R (Bigoku) v Same [2007] EWCA Civ 478. (Court of Appeal; Waller, Buxton and Lloyd LJJ; 23 May 2007).
The Judge Munby said: “I went on to say that we have to recognise that there have been very profound changes in family life in recent decades. These changes have been driven by four major developments. First, there have been enormous changes in the social and religious life of our country. The fact is that we live in a secular and pluralistic society. But we also live in a multi-cultural community of many faiths. One of the paradoxes of our lives is that we live in a society which is at one and the same time becoming both increasingly secular, but also increasingly diverse in religious affiliation. Our society includes men and women from every corner of the globe and of every creed and colour under the sun”16.

Therefore, the marriage also could be a bi-cultural community of faiths. The faith is mainly recognized like a fundamental freedom, it is deemed like a way of living, and thinking. It is a pillar in a human being life with a strict religious conscience, occupies a prominent position in human systems of values, and at the same time, this coherence is the chief reason to destroy the marital peace when the different points of view on religious grounds intend a criminal behaviour or cause serious conflicts on children religious upbringing like we shall see more ahead.

The first type of conflict is about religion the children will follow, and the second on church attendance. Some studies non update about this kind of marriages show that the couples without children also reported friction over religious upbringing as one of their major area de conflict. Meanwhile that couples who contracted interfaith marriages reported their church attendance after marriage remained the same or increased17. The current case law confirms that these conflicts go on constituting the most important marital judicial affairs, in civil and criminal courts.

The justice does not let the believers to violate the law justifying that behaviour as a fundamental freedom; all the criminal behaviours, religious or not, are prosecuted and punished according to criminal Law in secular courts.

Although the courts do not prefer one religion above another they may prefer some religious or moral guidance to none at all and may prefer the values of one parent to those of the other\(^\text{18}\). There are some religious sects which they recognise may do positive harm to the children, particularly if they have only recently been espoused by one of the parents\(^\text{19}\). Apart from those rare cases, where a child has already acquired a settled religious faith they will be reluctant to disturb it but there is no rule or principle against doing so\(^\text{20}\).

Interracial marriages are significantly more likely to involve a history of domestic violence, for example, between Hispanic and non/Hispanic. This disproportionate level of violence is not found in the cross-cultural marriages, except being the religion a life culture, and if that religion allows domestic violence on women like Islam.

The principles of Islamic Sharia are evocative on litigious matters and Islamic family laws derive from two fundamental sources of the Sharia are the Quran and the Sunna.

The labyrinth of religious, ethical and moral raw materials derived from the two principal sources, Quran and Sunna, were given shape and direction by Islamic scholars and jurists during the second and third centuries of the Muslim calendar. The Quran and Sunna was to award a legal personality to women – under the Sharia they have an independent right to enter into marriage, which is deemed a civil contract legalizing sexual relations and procreation. There are, however, issues of inequality and discrimination.

Although the requirements of the Sharia have been invoked in such controversial matters as the veil, headscarves and the wearing of Jilbab at work and in educational institutions, formalities and capacity to enter a marriage (on proxy marriages, validity of arranged or forced marriages, recognition of polygamous marriages, consequence of the Talaq (unilateral divorce by the husband) and Muslim religious obligations during employment; two of the highly contentious subjects of Islamic family laws are the polygamy and the Talaq.

\(^{18}\) May v May [1986] 1 F.L.R. 325, C.A.
\(^{20}\) Re R. (A Minor), The Times, November 3, 1992, C.A.
Javaid Rehman describes the main cause of inequality:

“A Muslim male being entitled to have valid marriages with up to four wives simultaneously. According to classical interpretations of the Sharia, while a male Muslim is allowed to marry ‘woman (women) of the book’ which includes Christians, Jews and Zoroastrians, a Muslim female is restricted to entering into marriage only with Muslims. A valid marriage can be contracted from the age of puberty, classical Sharia equating puberty with the age of majority. Certain Islamic schools also granted authority to the parent or the guardian (wali) to enforce child marriages, with the so-called ‘option of puberty’ whereby marriage is rescindable when the child attains puberty or majority. The ‘option of puberty’ is based on juristic interpretations of Islamic family laws and is neither stated in the Quran nor is it derived from the Sunna.

Polyandry is not permitted, so that Muslim women cannot have more than one husband at the same time. While there are some differences of approach within Islamic legal schools, polygamy is legitimized both by the Quran and the Sunna. This legitimacy of polygamy is reflected in modern Islamic States practices, whereby an overwhelming majority of States authorizes polygamous marriages, albeit with a variety of restrictions and sanctions. The rules relating to Islamic family law, including polygamy, have led to numerous reservations by Islamic States to the Convention on the Elimination of All forms of Discrimination against Women 1979”. Within the Sharia, women are granted a right to divorce, although they have (depending on the school of thought) the significantly onerous task of obtaining it, invariably by means of a judicial decree. A Khul (also known as Khula) divorce can be obtained by the wife although it requires the consent of the husband and the wife is required to forego part of (or the entirety of) the dower.23 Reliance on Khul is less arduous as the evidentiary requirements are less exacting and the wife is not required to establish specific grounds for divorce, other than having developed irreconcilable differences with her husband (Balchin and Warrich, 1997). Dissolution of marriage is also permissible through a judicial rescission of the marriage contract.
The Malaki School – which is the most liberal school – provides women with the right to bring judicial proceedings in instances of cruelty, refusal or inability to provide maintenance, desertion by the husband or disease or ailment of the husband.

Depending on the Islamic country, Iran, Pakistan, India, Egypt, etc, the laws have been interpreted and reformed in a widest or narrowest way. In Egypt, for example, under the 1985 legislation, the wife had to establish that she had suffered ‘harm’ as a result of the polygamous marriage. This law was eventually reformed by President Hasani Mubarak in 2000. The 2000 legislation allows a wife to petition for divorce on the grounds of ‘incompatibility’ within marriage without her having to establish evidence of ‘harm’ (Human Rights Watch, 2004)

We shall study two cases of marital conflict regarding religious traditions what affect on children in both cross – cultural marriages.

1. CHANGE OF NAMES

Law cases appying the change of names are usual in United Kingdom, but not arising cultural and religious factors. The names of children sometimes mean the belonging to a concrete religion. When the interfaith marriage is becoming broken, the spouse who

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gets the child’s custody decides the type of upbringing and some changes could be sought, including the change of the surname and forename.

In Re S, [2001] 2 FLR 1005, the interfaith marriage is stared by a Muslim women, British national, and a Sikh man who got the permanent resident as a consequence of the marriage.

The wife lost the respect of her Bangladeshi Muslim family because a Muslim woman cannot be married with a non-Muslim man.

Although the spouses got to have a son, the coexistence was not peaceful for the reason he was violent with her wife and abducted the child to India. In these circumstances, the wife sought an order to get the custody, and applied for the change of the child's three Sikh names to two Muslim names. She obtained the both demands.

When the mother reclaimed the child of three years and half, she was reconciled with her family and this fact supposed the following decision:

“Held - ordering an informal change of name, granting permission for the child to be brought up in the Muslim faith and granting the father contact with the child twice a year at a contact centre -

(1) In order that the child and the mother, whose well-being was inextricably linked with his, be enabled to integrate into the Muslim community, the child must be known on a day-to-day basis by Muslim names. However, there was no benefit to the child in his names being formally changed by deed poll, as maintaining his Sikh birth name represented the reality of his heritage.

(2) Islam was so central to the life of the Muslim community that the reality was that the child must be brought up in the Muslim faith. That would mean circumcision for the child by the age of 10”.

The number two represents the response in advance of a future trouble of religious traditions, the circumcision that will be commented in the next title.
The number one caused more debate, because legal and cultural factors were implicated. In this case, the accommodation to the religious diversity was favoured without breaking the family law rules. A formal change was not produced in the deep poll, the names were Muslim in the daily life of the child without provoking a legal and moral conflict, whether the child's half-Sikh identity would have been comprehensively eliminated and any reference to his Sikh heritage erased.

The courts have decided about problems of religious diversity in many cases produced for a deep pluralism in U.K. In words of Caroline Bridge: “Here, where the child was clearly going to be brought up by the mother, the change of name issue had to be assessed from the child welfare perspective, but within the context of the cultural and religious beliefs of the community in which he would live. This meant a way of recognition of the marked animosity between the Muslims of South Asia and the Sikhs, leading to a finding that a child with a Sikh name would not be accepted socially and culturally, as a child or adult, within the Muslim or Bangladeshi community, even if he were raised by a Muslim mother within a Muslim community. The child's Sikh surname here would cry out that he was not a proper or culturally legitimate member of the Muslim community.

Such reasoning demonstrates that the judiciary is becoming well equipped to handle significant cultural and religious issues and is very much a taste of things to come, as the family law system increasingly confronts the diversity of English family life”23.

2. CIRCUMSCISION

Some cultures may circumcise their males either shortly after birth, during childhood or around puberty as part of a rite of passage. Circumcision is most prevalent in the Muslim world, Israel, the United States, the Philippines, South Korea, Africa, and is commonly practised in the Jewish and Islamic faiths.

23 Caroline Bridge. In Family Law (Journal)/2001 Volume 31/October/Case Notes/Case Reports: Change Of Name - Fam Law 31 (728)
In fact, ritual male circumcision is an ancient religious rite for Muslim and Jews. The crucial point of this debate revolves around the primacy of parental religious convictions versus the compelling interest of the human child’s rights, the preservation of its bodily integrity, and its right of self determination.

This religious confrontation was represented when the English mother of a child, aged five, was granted a prohibited steps order preventing child's Muslim father, from making arrangements to have the child circumcised without a court order.24

The father appealed against the decision to grant the order, contending that the judge had been wrong to place greater emphasis on the fact that the child had been brought up in a secular environment than on the fact that the child had been born a Muslim. The father argued that the judge had given too much weight to the mother's opposition, whilst not appreciating the impact that the father's views would have on the child.

The court decided that a ritual circumcision was an irreversible operation which was not medically necessary, bearing physical and psychological risks and in such cases the Children Act 1989 s. 2(7), stated that the consent of both parents was essential.25 The issue of what was in the best interests of the child would depend on the facts and, in the instant case, the judge had correctly found that circumcision at the age of five which was not medically necessary, was not in the child's best interests. Besides, often surgery for non-medical reasons is deferred until children have sufficient maturity and understanding to participate in the decision about what happens to their bodies, and those that are competent to decide are entitled in law to give consent by themselves.

The first line of reasoning about the secular environment of the child upbringing is not a proper motive because ignore the Islam. If you were born a Muslim, you must live like a Muslim.

The second reasoning is the right basis, the circumcision was not in the child's best interests, because was not medically necessary, and in this case the consent of both

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parents was essential. In this case the judge concluded that "as an exercise of joint parental responsibility, male ritual circumcision is lawful".

This approach was followed by the Court of Appeal in the case of Re S. (Children) (Specific issue: circumcision) [2005] 1 FLR 236). Following divorce a Muslim mother applied for permission for her 8 year old son to be circumcised. The son’s father opposed and the opposition was held on the basis that the mother’s application stemmed from the mother’s need to portray herself as a practicing Muslim rather than the son’s best interests.

III. RELIGIOUS DIVERSITY IN UNITED STATES OF AMERICA

A. RELIGIOUS DEMOGRAPHY

The United States was founded by a mix of faiths\textsuperscript{26}. Various Christian sects came to the new America starting in the sixteenth century because they were minority religions in Europe, including Puritans, Quakers, and Baptists. When they arrived, they did not meld into a peaceful united society, but rather there was tension between the various religions for a long time.

There was always diversity beyond the Protestants. Catholics arrived in the sixteenth century. Jews arrived in the seventeenth century, three hundred fifty years ago. Of course, the Native Americans introduced or confronted settlers with their quite distinctive religious beliefs and ceremonies. During the nineteenth century, Asian immigrants brought Buddhism, Hinduism, and other new religions to America's shores. By the end of the nineteenth century, Muslims were immigrating. This marked variety has never declined, but rather has geometrically increased, so that in this current era, there are thousands upon thousands of different religious sects\textsuperscript{27}.

\textsuperscript{26} All the data in this subject are displayed in the web site: http://www.adherents.com/adhloce/indexWhere.html, where you can inquire into demographics of religion in all the countries around the world and in each state of US, and it is 2007 update. A big picture of this demography and state-by-state comparisons is founded in http://www.teachingaboutreligion.org/Demographics/map_demographics.htm.

Alternatively, Religion and ethnic identity are often tied together, whether one is Jewish, Native American, Punjab Sikh, Scottish Presbyterian, Tibetan Vajrayanan Buddhist, or Greek Orthodox.

The temptation to simplify this jumble of religious believers into one coherent national civil religion or public dialogue is extraordinary. The temptation has most recently beguiled those that have been loudly insisting that this is a "Christian nation," and, therefore, the Ten Commandments must be posted in courthouses and the Pledge of Allegiance must have "under God." They want to "reclaim" the United States as a Protestant domain, but it is far too late for that. They have an unavoidable empirical problem, and that is the physical presence of so many citizens who are not Christian, let Protestant alone.28

Other temptation is to think that the religious diversity is the product of the ambiguity, but God is only one. McKim says the fact of religious diversity and the fact of religious ambiguity are intimately linked, that there is ambiguity is a very promising explanation of the phenomenon of diversity, although there are other possible explanations. Thus, it could be, for example, the facts in the area of religion are plain for all to see but many people persist in misinterpreting them.29

B. RELIGIOUS IMMIGRATION

While we know much about the new immigrants, such as their countries of origin, patterns of settlement in the U.S. economy, cost and benefits of immigrant labour, school achievement, and assimilation, we know relatively little about their religion patterns. The neglect of religion among immigration scholars is evident.

The Helen Rose Ebaugh and Janet Saltzman Chafetz’s book30 studies the geography of worship in the recent immigration waves and fill this empty lagoon.


The Wave of immigration in the new continent is like a concept to define the United States of America, and the twentieth century was a radical breaker of the established popular Protestant religion because of the new immigrants ensconced new religious communities\textsuperscript{31} that settled in this territory looked forward the American dream, a society where the religious freedom is a reality.

The Glenmary Research Center\textsuperscript{32} presented fascinating graphic representations of the way the U.S. divides religiously by county and by religious group. One immediately look on the map that the Catholic Church and the Southern Baptist Convention have more adherents across the country than any other religious group. Despite the prevalence of Catholic adherents, there are still, overall, more U.S. Protestants because there are more Protestants combined (Southern Baptists, Methodists, Latter-Day Saints, and Lutherans) than there are Catholics. However, Catholics are more geographically widespread, and thus account for greater adherents by county in the map. This geographic spread was a result of the Catholic Church’s intentional establishing of parishes which would “cover” the entire U.S.

The map also shows a history of church propagation and ethnic migration. A good example is the state of Texas, which is largely Southern Baptist, except for its southern border, which is Catholic, probably as a result of its proximity to Mexico. Other Southwestern states are also largely Catholic.

Minnesota and the upper Midwest, home to German and Scandinavian populations, have more pockets of Lutherans than elsewhere in the U.S. Utah and its neighboring states have a large number of Latter-Day Saint congregations. The middle Midwest, populated by rural Whites of English and Scottish descent, responded to Wesley’s circuit-riding Methodist preachers throughout the 18th century and still has larger numbers of Methodists. The southern “Bible Belt,” initially made up of Scotch Irish Protestant immigrants, responded to Baptist revivals in the 18th and 19th centuries and then, as a result of the political climate before and after the Civil War, solidified their


\textsuperscript{32} http://www.glenmary.org/
commitment to a strict interpretation of the Bible—which would include slavery—as well as to the Southern Baptist Church.

In all of these cases, the history of religion, ethnicity, and geography are intertwined with and reinforce each other.

Payton said in 198633 “the changes of which I speak are demographic, and they reveal the emerging reshaping of American society. The first set of facts is transitory: the baby boom of the period from 1946 to 1962 is passing through, and for a very long time we will live in a society that is disproportionately old after decades of being unusually youthful. The second set of facts is permanent: the ethnic profile of the United States is changing dramatically, and that change will continue. *We are entering a period of being less Western in our ethnic and cultural makeup*”.

Further, there are methodological difficulties in identifying individuals’ religious traditions. Are people asked what religion they were raised in? What religion they are now? Whether they engage in religious practice regularly? How does one count children of interfaith relationships? Or people who combine faith traditions in their practice? How is it done to count people who claim no religion? What about people who identify themselves as spiritual but not religious? Or those who retain religious belief but are not members of an organized religion? Or those who are not “congregationally based,” such as Sikhs, who may practice outside a community? Depending upon how we respond these questions, the number of adherents to a particular faith tradition will vary.

In 2002 an article about unchurched believers was published. This job studies about the proportion of Americans who reported no religious preference showed that it doubled from 7 percent to 14 percent in the 1990s. Religious scepticism proved to be an unlikely explanation: Most people with no preference hold conventional religious beliefs, despite their alienation from organized religion. This dramatic change may have resulted from

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demographic shifts, increasing religious scepticism, or the mix of politics and religion that characterized the 1990s.\textsuperscript{34}

In contrast, new religious communities in the United States are undergoing deep transformations: 1. Adopting the congregational form in organizational structure and ritual; 2. Returning to theological foundations. 3. Reaching beyond traditional ethnic and religious boundaries to include other peoples. These changes support the “new paradigm” in the sociology of religion that refutes secularization theories: Internal and external religious pluralism, instead of leading to the decline of religion.\textsuperscript{35}

Anyway, the religious and cultural changes in immigrant communities have political and religious impacts on the home country and, at the same time, the transnational impacts of religious immigrants in the United States are possible because of the influence of the United States as the core country in the world – system.

C. RELIGIOUS DIVERSITY AND THE FAMILY

There are two factors that influence parenting: religious participation and the distinctive cultures of religious traditions.\textsuperscript{36}

Parental transmission of religiosity to children is more successful when both parents hold the same religious preferences.\textsuperscript{37}

Mothers influence was stronger than fathers when the adolescents perceived the parent as accepting.\textsuperscript{38} However, with the sample of 810 fathers coming from National survey

\textsuperscript{34} Hout, Michael and Fischer, Claude S. Why more Americans have no religious preference: politics and generations. In American Sociological Review, 2002, Vol. 67 (April: 165-190).


\textsuperscript{36} Bradford Wilcox, W. Convention and Paternal Involvement. In Journal of Marriage and the Family. 64 (August 2002), pp. 780-792.


of Midlife Development in the United States (MIDUS), its results indicated that fathers are more involved in religion and they reported higher quality relationships\(^{39}\).

Religious teaching and values emphasize and support the centrality of family life, the importance of positive family life relationship and all on the concern to needs of others over self\(^{40}\).

Using NELS (National Education Longitudinal Study) data set from the 1988-92 period\(^{41}\), this study assessed the effects of student religious commitment among twelfth graders who lived in a non – intact family on their academic achievement. This study first focused upon the effects on religiosity on all the students living in non – intact families in the sample and then specifically addressed the effects of religiosity on Black and Hispanic children. The results indicate that students with a high level of religiosity did better than less religious students on most measures of academic achievement\(^{42}\), even controlling for SES (socioeconomic status) and gender. These results suggested that religiosity may help many children from single – parent families to do well in school\(^{43}\).

In spite of the positive effects of religious training in the family, the divorce rate has reached an all-time high, yielding a correspondingly high percentage of children who are growing up in broken homes. Increasing religious diversification in the United States, coupled with the rising incidence of religiously mixed marriages, increases the likelihood that parents will have conflicting attitudes regarding religion.


\(^{40}\) Idem, p. 384.

\(^{41}\) [http://nces.ed.gov/surveys/nels88/](http://nces.ed.gov/surveys/nels88/)


We need to remind the Lemon test in these cases determining the *best interest of the child*. Under the Lemon test, a government activity is constitutionally prohibited if it: (1) lacks a secular purpose; (2) has a primary effect of advancing or inhibiting religion; or (3) constitutes excessive government entanglement with religion. The Lemon Court explained that the intent of the entanglement test is to prevent, as much as possible, the intrusion of the secular state into religion. The Court noted that "some involvement and entanglement are inevitable" and thus "lines must be drawn." In the words of Thomas Jefferson, the clause against establishment of religion by law was intended to erect "a wall of separation between church and State."

According to the Lemon test, can Religion be a Factor in the Determination of the Best Interests of the Child?

Following to Jenna Blackwell⁴⁴, only a few state statutes specify the factors to be considered in a best interest analysis; most statutes, however, are drafted allowing consideration of "other factors." Therefore, the best interest analysis has become a determination to be made by the courts. Although some courts have held that "moral" factors are proper considerations, other courts have also endorsed consideration of the child's spiritual or religious welfare. A New York court, claiming to focus on the secular welfare of the child, held that "religion and morality are so closely interwoven in the lives of most people that it is difficult to say whether good moral character could be moulded in a child without some religious training."⁴⁵ North Carolina went a step further in Spence v. Durham⁴⁶ when the court awarded custody to the mother on a finding that, among other factors, she was "an active member of Trinity Methodist Church . . . and attended to . . . the religious education" of the children. On the other hand, an Illinois court flatly refused to become involved in a religious question, holding it to be improper "to conclude that providing a religious environment is per se beneficial to a child's welfare."⁴⁷ We believe that the intrinsic benefits, if any, of an 'upbringing in religion' are beyond the power of a civil court to comprehend. "The majority of "courts

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⁴⁵ In the opposite sense: Johns v. Johns, 53 ArK. App. 90, 918 S.W.2d 728 (1996).
⁴⁷ With the same sense: Siegel v. Siegel, 122 Misc. 2d 932, 472 N.Y.S.2d 272 (Sup 1984).
agree that none of these considerations of religion may be the sole determinant factor in the custody’s decision.\textsuperscript{48}

Courts using the \textit{temporal well-being test} allow inquiry into the nature of the parent's religious beliefs and practices if the beliefs and practices appear to adversely affect the child, whether or not there is any evidence of actual or threatened harm.

An example of this broad approach can be found in Burnham v. Burnham.\textsuperscript{49} The Nebraska Supreme Court, without evidence of actual or threatened harm to the child's physical or mental well-being, nonetheless determined that the child's temporal well-being would be adversely affected and subsequently awarded custody to the father. In contrast, the Nebraska Court of Appeals in Garrett v. Garrett found that the mother's religious-based refusal to consent to blood transfusions for her children in the event of an emergency, and the children's confusion about their mother's refusal to celebrate holidays or say the pledge of allegiance at school did not threaten the children's temporal well-being.

A more restrictive view toward the admission of evidence regarding religion is found in the "threatened harm" approach. A guardian ad litem or clinician (psychiatrist, psychologist, or social worker) who has evaluated the child typically provides evidence of the threatened harm. This approach is more restrictive because it eliminates the court's discretion to decide whether the religion of a party is detrimental to the child in the absence of evidence showing physical or mental harm.\textsuperscript{51}

More significantly, under this view the court may use religion as a positive or negative factor in a custody determination. I state it because the Illinois Court of Appeals has noted three ways in which the positive consideration of religion in custody proceedings advances religion: (1) by preferring parents who follow organized religion and

\textsuperscript{48} It might be converging a compelling state interest: LeDoux v. LeDoux, 234 Neb. 479, 452 N.W.2d 1 (1990).
\textsuperscript{49} Case No. 2D04-4911.
conversely punishing parents who are atheists or non-practicing members of religion\textsuperscript{52}; (2) by encouraging non-religious parents to take up religion; and (3) by increasing the number of children brought up in a religious environment\textsuperscript{53}. Furthermore, "when a court considers the adverse effects of religion under the temporal welfare approach, the court's use of religion may have the primary effect of inhibiting religion by punishing its practice\textsuperscript{54}.

Finally, some courts distinguish "between children with 'actual religious needs' and those without such needs." Under this approach, "a court determines whether the child has acquired religious preferences and whether a particular religion is part of the child's identity." If so, then a determination of the relative abilities of the parents to address those needs becomes a proper consideration for the court. If not, then religion is not a determinant factor.

\textbf{IV. CONCLUSIONS}

1. The High Commissioner of United Nations released a report: "Racism, Racial Discrimination, xenophobia and all forms of discrimination. Combating defamation of religions"\textsuperscript{55}. It was a proposal of dialogue among civilizations, attempting an effort from States in order to avoid wars of ideology or religious cultures. The family is the primary private sphere where any power can interfere because of the privacy right on family matters. All private conflicts based on religious confrontation always find a solution inside the family itself or on the courts.

2. United Kingdom and United States are receiving contingents of immigrants from every country around the world. Alien People are being educated in British and American Schools, and Universities. They are blending between native people. This fact might constitute new cultures or the main reason to split up a marriage.

\textsuperscript{53} Zucco v. Garret, 150 Ill. App. 3d 875, 879 (Ill. App. 1986).
\textsuperscript{54} Also in Ohio: Angel v. Angel, 2 Ohio Op. 2d 136, 74 Ohio L. Abs. 531, 140 N.E. 2d 86 (C.P. 1956).
3. The Courts in both countries are assuming the challenge of religious diversity with a serious commitment of neutrality on religious matters. Secular decisions on religious factors in private matters are a hard task when they have to decide the children best interest.

4. Religion as a factor in custody decisions, religious upbringing decisions, adoption cases, and other similar situations are a proof of the revival of religiosity. The effects of religious beliefs, on private and public spheres, require secular decisions by Courts, this shows that the secularization is only a process of state structures, but the population is revitalizing the religious traditions and reviving the religious identity on their children upbringing.