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Artificial Intelligence and Religious Freedom

Published in:

Artificial Intelligence and Human Rights

Publication status and date:

Published: 06/09/2023

Document Version

Early version, also known as preprint

Citation for the published version (APA):

Temperman, J. (2023). Artificial Intelligence and Religious Freedom. In A. Quintavalla , & J. Temperman (Eds.), *Artificial Intelligence and Human Rights* (pp. 61-75). Oxford University Press.
https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4570206

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Early uncorrected version of paper forthcoming in: Quintavalla and Temperman (eds.), *Artificial Intelligence and Human Rights* (Oxford University Press, 2023), chapter 4.

Artificial Intelligence and Religious Freedom

Jeroen Temperman

1 Introduction

Whereas the attention to the potential impact of artificial intelligence on human beings in general has erupted in the last decade in all such arenas as politics, law and policy making, as well as scientific scholarship, the more specific question of the dynamics between AI and religion remains very much a niche issue.

This goes, too, for arts and literature. Contemporary fiction writing, notably Ian McEwan's *Machines Like Me*, Jeanette Winterson's *Frankissstein*, and Kazuo Ishiguro's *Klara and the Sun*, is intrigued particularly by human relationships with AI. This includes questions of application and usage; friendly, amorous and sexual relationships; dependency –

all of which combined with ethical questions, in addition to more grandiose issues like transhumanism and cryonics.

For all-out AI & religion narratives we may refer back to the classics, notably classic sci-fi writers like Asimov. As early as 1941 Asimov ventured in the question of, say, ‘robot beliefs’ in a story called *Reason*, which later became a chapter in *I, Robot* (1950) and which extensively features and applies Asimov’s ‘Laws of Robotics’. *Reason* plays with the notion of human disdain for narrow AI: humans as the masters of the AI puppets, who merely do as we have programmed. Naturally, this hubris is faulted when the protagonist-robot defies human entrepreneurial limitations and gradually starts shifting from narrow to deep AI – all *avant-la-lettre*, naturally. This shift starts subtly when the robot called Cutie (officially: QT) starts experiencing existential questions, which in turn lead to spiritual musings. Upon learning that it was ‘put together’ by the two human beings with whom it staffs an energy space station, Cutie argues: ‘It strikes me that there should be a more satisfactory explanation than that. For *you* to make *me* seems improbable.’ Humouring the robot and its questions about its existence, the two human beings go on to explain to Cutie the ways of the world, its human population, and that robots have been developed to ‘replace human labor’.

‘Do you expect me’, said Cutie slowly, ‘to believe any such complicated, implausible hypothesis as you have just outlined? What do you take me for?’ Powel [one of the two human staffers] sputtered apple fragments onto the table and turned red. ‘Why, damn you, it wasn’t a hypothesis. Those were the facts.’ Cutie sounded grim, ‘Globes of energy millions of miles across! Worlds with three [in 1941] billion humans on them! Infinite emptiness! Sorry, Powell, but I don’t believe it. I’ll puzzle this thing out for myself. Good-by.’

That is the moment for Cutie's titular reason to kick in and, ironically, the robot arrives at the same conclusion billions of human beings have arrived at: There are more things in heaven and Earth. Cutie cannot possibly be made by humans, since Cutie is superior to human beings:

'Look at you,' he said finally. 'I say this in no spirit of contempt, but look at you! The material you are made of is soft and flabby, lacking endurance and strength, depending for energy upon the inefficient oxidation of organic material—like that.' He pointed a disapproving finger at what remained of Donovan's sandwich. 'Periodically you pass into a coma and the least variation in temperature, air pressure, humidity, or radiation intensity impairs your efficiency. You are *makeshift*. 'I, on the other hand, am a finished product. I absorb electrical energy directly and utilize it with an almost one hundred percent efficiency. I am composed of strong metal, am continuously conscious, and can stand extremes of environment easily. These are facts which, with the self-evident proposition that no being can create another being superior to itself, smashes your silly hypothesis to nothing.'

Consequently, Cutie reasons, the robot's creator must be an entity more powerful than itself—a Master. In that instance, in that thought, robot religion is born. Cutie commences religious rituals, including one thinly disguised pillar of Islam, the *Shahada*. Adapted to robot faith this becomes: 'There is no Master but the Master ... and QT-1 is his prophet'. And once there is religion and prophets, it is but a small leap to outrage at sacrilege and blasphemy, to commandments and codes of conducts, including do's and especially don'ts.

Turning from fiction masters to non-fiction authorities, international organisations too display a sense of urgency in the present regard and have commenced issuing numerous

guidelines and recommendations in the area of AI, notably as regards its dynamics to human rights.¹ Typically, though, any dynamics between AI and the right to freedom of religion or belief are omitted from those recommendations. Religious freedom, in such instruments, is either it is not touched upon at all, or only tangentially referenced in conjunction with data protection or in the more general context of non-discrimination.

This chapter ventures into that apparent gap. Is the above omission a question of oversight, or is there indeed ‘nothing to report’ under the heading of AI & religious freedom. Naturally, the chapter’s working hypothesis steers closer to the former hypothesis.

To provide structure and in search of meaningful concepts and dynamics, the chapter proposes to breakdown the interplay between religious freedom and AI along the standard axis of the triple human rights obligations that form the foundation of contemporary human rights standards and theory. States that ratified international human rights conventions commit to *respect* (section 2), *protect* (section 3) and *fulfil* (section 4) the rights enshrined.² Accordingly, this paper seeks to ‘fill in’ this threefold state obligations in the area of religious freedom as problematised, complicated or facilitated by the phenomenon of AI.

2 Duty to Respect

The duty to respect human rights is perhaps the most straightforward human rights obligation.

It means essentially: state, back off.³ It is a so-called negative obligation since the state is

¹ Eg Secretary General of the Council of Europe, *Artificial Intelligence and Human Rights* <<https://www.coe.int/en/web/artificial-intelligence/secretary-general-marija-pejcinovic-buric>>. See for a more comprehensive overview of such instruments and recommendations the introductory chapter of this volume.

² The triple obligation theory has its origins in the specific world of economic, social and cultural rights. See eg 1997 *Maastricht Guidelines on Violations of Economic, Social and Cultural Rights*, 1987 *Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights*, and UN Committee on ESC Rights, *Right to Adequate Food as a Human Right* (1989).

³ For official UN nomenclature, see eg UN Office of the High Commissioner for Human Rights, *International Human Rights Law*, available at <https://www.ohchr.org/en/professional_interest/pages/internationallaw.aspx>

directed to *refrain* from adverse action.⁴ Under the duty to respect the state must refrain from interfering with fundamental rights. The state – and its agents – ought to refrain from torturing people, ought to refrain from arbitrarily depriving people of their lives, ought to refrain from censoring or otherwise encroaching on the right to freedom of expression, ought to refrain from interfering with private and family life, and so on.

In relation to the right to freedom of religion or belief, this duty pens out as follows. This fundamental right actually consists of two freedoms: the freedom to have a religion or belief and the freedom to manifest that religion or belief. The freedom to have a religion or belief is the so-called inner freedom, the *forum internum*, which is related to one's innermost religious feelings or absence of thereof. This freedom is an absolute freedom. Since this freedom is not subject to the limitations paragraph of freedom of religion clauses (such as Article 18 of the ICCPR or Article 9 of the ECHR)⁵ states may under no circumstances interfere with this freedom. The scope of protected religions or beliefs is vast. The UN Human Rights Committee has declared that both theistic and non-theistic or atheistic belief systems are covered, new as well as old religions and believes, large as well as small religions or beliefs.⁶ From a human rights perspective, hence, it is immaterial whether a religion or belief was founded, say, two millennia ago or last year, or whether it has, say, one billion adherents or one hundred.

The second freedom is the 'outward' freedom, the freedom to manifest one's religion or belief externally, also referred to as the *forum externum*. Freely manifesting one's religion

providing that '[t]he obligation to respect means that States must refrain from interfering with or curtailing the enjoyment of human rights.'

⁴ Cf David Jason Karp, 'What is the Responsibility to Respect Human Rights? Reconsidering the "Respect, Protect, and Fulfil" Framework' (2019) 12(1) *International Theory* 83-108, arguing that the duty to respect has gradually been defined too narrowly as a duty to do no harm and instead advocating for a wider duty-not-to-dehumanise interpretation.

⁵ International Covenant on Civil and Political Rights, 999 UNTS 171 of 16 December 1966; and [European] Convention for the Protection of Human Rights and Fundamental Freedoms, ETS No 5, 213 UNTS 222, of 4 November 1950.

⁶ Human Rights Committee, *General Comment No 22: Article 18 (Freedom of Thought, Conscience or Religion)* CCPR/C/21/Rev.1/Add.4 [1993], para 2.

or belief may consist of numerous activities, some of the broad categories being – in the words of the Universal Declaration of Human Rights – ‘teaching, practice, worship and observance’.⁷ More concretely, then, any limit on – among countless other practices – access to houses of worship, restrictions on religious meetings, religious rituals, religious dress, compliance with dietary practises, religious ministry, scholarship or correspondence, activities by religious organisations, chaplaincy, religious charities, amounts in principle to an interference with the free manifestation of religion or belief. Crucial difference with the *forum internum*, however, is that this freedom to manifest one’s religion may be limited under tightly prescribed conditions. The *forum externum* ‘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’.⁸ This test serves to assess the legality, legitimacy and necessity of the limitation made on the free exercise of religious freedom and in order to surpass this test, plausible answers must be provided by states: Was the restriction foreseeable as in provided by law (legality or rule of law test)? Was the restriction imposed to promote one of the listed goods (legitimacy)? And was the restriction absolutely necessary so as to uphold that good (necessity)?

Turing to the AI context, let us consider scenarios when the ‘duty to respect’ religious freedom is breached. The inner freedom, the *forum internum*, would be violated if a state were to ban ‘the belief in AI’ period. Anthropological fieldwork suggests the existence of religious,⁹ including theistic, conceptions of AI, ranging from feelings of being ‘blessed by the algorithm’¹⁰ to – more¹¹ or less¹² – full-fledged AI religious systems revolving around the

⁷ Universal Declaration of Human Rights, Article 18. See also Article 18 of the ICCPR; Article 9 of the ECHR.

⁸ ICCPR, Article 18, paragraph 3; see also Article 9 of the ECHR.

⁹ See Beth Singler, ‘An Introduction to Artificial Intelligence and Religion for the Religious Studies Scholar’ 20:3 *Journal of Implicit Religion* (2017) 215-232.

¹⁰ Beth Singler, ‘“Blessed by the Algorithm”: Theistic Conceptions of Artificial Intelligence in Online Discourse’ (2020) 3 *AI & Society* 945-955.

¹¹ Eg the Turing Church, described as a New Religious Movement (NRM) by Singler, *ibid.*, section 4 (‘AI new religious movements’).

deification of AI or the belief in the ‘grand narratives’ of AI, like AGSI or, in full, artificial general superintelligence.¹³

Accordingly, if a state were to prohibit by law deep AI beliefs such a coercive measure would amount to straightforward breach of the *forum internum*. As explained, as this freedom is absolute there can be no justification for any such interference. This is the case even if the state deems any such beliefs dangerous, a threat to the peace, undermining public safety, public order, or by reference to any other public good.

More academic would be the scenario of a state interfering in the very development of beliefs by AI-operated non-human beings. Since deep AI of the type required for this interference to be even possible does not yet exist, here we enter the realm of sci-fi. Still and all, what if the state were to call Cutie (see introduction) to a halt, hit the kill switch the moment it embarks on its religio-existential quest and starts developing religious answers thereto? Naturally, religious freedom cannot be mobilised against such interferences, at least not to the extent it affects the non-human Cutie. Since AI has no human conscience and since AI is for the time being in any event not granted legal personality at the international plane, internationally codified human rights do not apply here. For that to change, either the present international legal framework would need to become inclusively interpreted, or AI legal personality and rights-holdership would need to become separately developed.¹⁴ The workings of international policymakers move in precisely the opposite direction, adamantly insisting there can be no such thing as legal personality for AI.¹⁵ There are dissenters in this

¹² One ‘Church of AI’, formally established as the Way of the Future (WOTF) by former Google engineer Anthony Levandowski, has been formally dissolved within a year of its existence.

¹³ See Boris Rähme, ‘Artificial Intelligence and Religion: Between Existing AI and Grand Narratives’ (2021) *Journal of Objects, Art and Belief* 1-4.

¹⁴ See also the chapter by Klaus Heine in this volume reflecting on some of these scenarios and consequences.

¹⁵ Eg European Parliament resolution of 20 October 2020 with recommendations to the Commission on a civil liability regime for artificial intelligence (2020/2014(INL)), providing in the Annex under subsection (6): ‘Any required changes in the existing legal framework should start with the clarification that AI-systems have neither legal personality nor human conscience, and that their sole task is to serve humanity.’

debate, but they hint at the benefits of legal personality from an *accountability* perspective,¹⁶ not from a rights-based approach.

But what about the religious freedom of the creators of Cutie, or more generally, of the persons behind the (deep) AI techniques – the, say, ‘humans behind the machine’? For the latter’s forum internum or forum externum to be affected, their religious belief system or practices would need to be tightly connected with the AI techniques-in-development. The link would need to be inextricable indeed. After all, the state blocking the (further) development of an AI technique would not as such stand in the way of the human belief in deep AI. If religious freedom would be claimed with respect to AI techniques and their development, a secular judge would probably be wise to bring virtually any aspect of the *development of AI* under the scope of the *manifestation* of religion, where public good limitations are – contrary to the inner belief freedom – possible in principle. The alternative would render the development of any AI technique immune from scrutiny and restriction the moment the forum internum of the creators behind the technique is invoked.

Cases involving the freedom to manifest religious practises that involve AI elements or rather AI-like or alleged AI elements, although scarce, do exist. The 1979 ECHR case of *X and the Church of Scientology v. Sweden* revolves around a religious artifact called the ‘E-meter’.¹⁷ Redesigned and patented by Scientology various times, earliest versions were in fact not invented by Scientology’s founder L. Ron Hubbard, although the latter did join forces with other inventors to bring separate ‘Hubbard’ and ‘Scientology E-meters’ on the market. The instrument serves to measure whether someone’s confession was successful. More specifically, the E-meter, according to the applicants, the Church of Scientology and one of its

¹⁶ Eg Vagelis Papakonstantinou and Paul de Hert, ‘Refusing to Award Legal Personality to AI: Why the European Parliament Got it Wrong’ (*European Law Blog*, 25 November 2020) <<https://europeanlawblog.eu/2020/11/25/refusing-to-award-legal-personality-to-ai-why-the-european-parliament-got-it-wrong/>>.

¹⁷ *X and Church of Scientology v Sweden* App no 7805/77 (European Commission of Human Rights, 5 May 1979).

Swedish ministers, is a ‘religious artifact used to measure the state of electrical characteristics of the ‘static field’ surrounding the body and believed to reflect or indicate whether or not the confessing person has been relieved of the spiritual impediment of his sins’.¹⁸

The Swedish Ombudsperson took legal action against the manner in which the artifact was advertised. An injunction to have certain passages redacted was successful before a court and upheld in higher instances. The Church of Scientology and one of its ministers complained before the European Commission of Human Rights that that restriction amounted to a violation of the Church’s freedom of religion and freedom of expression. The Commission emphasised that the ‘Market Court did not prevent the Church from selling the E-meter or even advertising it for sale as such. Nor did the Court restrict in any way the acquisition, possession or use of the E-meter.’¹⁹ The Commission further reasoned that the right to freedom of religion or belief does not render protection to acts that are of a ‘purely commercial nature’, like advertising goods for profit, even if this ‘may concern religious objects central to a particular need’.²⁰ In sum, the state’s actions against the advertisement of the E-meter – rather than against the production or usage of the E-meter per se – did not even amount to an ‘interference’ with the right to freedom of religion or belief.

Now, whether the artifact central to this case could be deemed an AI instrument *avant-la-lettre* is obviously quite debatable; yet, the relevance of a case like this is that in practice the state may decide to intervene with the development or usage of AI (like) techniques, precisely like Sweden in fact did, in this case indirectly, by challenging the advertisement of the technology involved. The harshest interference imaginable would have been the one whereby the state would have altogether banned the production and dissemination of the E-meter, which was not the case.

¹⁸ Ibid., ‘Summary of the facts’.

¹⁹ Ibid., ‘The Law’.

²⁰ Ibid.

The examples of AI being deployed by religious groups or churches as part of their religious mission are swiftly growing. AI can be used in religious studies, including as part of textual analysis of religious sources;²¹ AI can be used in the process of digitisation and in religious group's social media and wider communication strategies;²² and AI can be used – in the form of robot priests or spiritual machines – in the discharge of core religious rituals, such as religious services, confession, blessings, or prayer.²³

Should the state intervene with respect to any of these developments, minimally an interference with the freedom to manifest religion or belief, as practised individually or collectively, is likely. Future such cases will likely turn on the necessity test: Was it absolutely necessary for the state to curtail the development, dissemination and/or usage of the AI-based technique or artifact, in order to protect the opposing value at stake, be it public safety, the rights of other persons, or one of the other recognised grounds for limiting the freedom to manifest one's religion or belief?

Thus far we have focussed on the duty to respect religious freedom as conceptualised from the perspective of individual or organised religion. The state may cause interferences with religious freedom, justified or not, when it imposes restrictions on AI developments which are incorporated into religious practises. An altogether different angle to the duty to respect religious freedom is the scenario wherein *the state* develops, adopts, or otherwise uses AI technologies with the view towards, or with the result of, limiting the freedom of religion or belief.

²¹ Eg Mayuri Verma, 'Lexical Analysis of Religious Texts using Text Mining and Machine Learning Tools' (2017) 168:8 *International Journal of Computer Applications* 39-45; and Randall Reed, 'A.I. in Religion, A.I. for Religion, A.I. and Religion: Towards a Theory of Religious Studies and Artificial Intelligence' (2021) 12(6) *Religions* 401.

²² Giulia Isetti, Elisa Innerhofer, Harald Pechlaner, Michael de Rachewiltz (eds), *Religion in the Age of Digitalization: From New Media to Spiritual Machines* (Routledge 2021).

²³ Adrienne Mayor, *Gods and Robots: Myths, Machines, and Ancient Dreams of Technology* (Princeton University Press 2018), argues that early attempts at religious automata and artificial life go back to the ancient myths and are less novel or religiously anachronistic than we tend to assume.

For example, AI may be used as part of surveillance techniques to single out persons based on religion, potentially causing discrimination or intimidation or other forms of ill-treatment of individuals or groups on grounds of religion or belief. Just as public safety measures in general may overstep the mark and be overly intrusive, disproportionately affecting privacy or other rights, or be downright discriminatory, the same risk in theory applies to AI techniques incorporated into public safety policies.

Indeed, some such techniques are already in existence and deployed, including in ways that alarmingly illustrate the said risks. Notably, China uses AI techniques to facially profile the Uyghurs, a Turkic ethnic group. The group's religious history is comprehensive and complex, yet present-day Uyghurs compose the second-largest predominantly-Muslim group in China. The Uyghurs are under intense surveillance by the Chinese government, facilitated by intrusive surveillance techniques, including AI-based ones, but also in the form of 're-education camps' some wherein an estimated million Uyghurs are being detained. Moreover, the Uyghurs in Xinjiang form somewhat of a Chinese laboratory for testing AI techniques. For instance, AI emotion-detection software has been tested upon Uyghur people, reducing people to statistical pie charts and supposedly unveiling their levels of anxiety. In this way, the very dubious assumption on the part of the Chinese government is, persons who harbour dissident feelings against the Chinese authorities may be detected.²⁴

As one surveillance watchdog responded to this latest AI addition to China's surveillance apparatus, 'It makes any kind of dissidence potentially impossible and creates true predictability for the government in the behaviour of their citizens. I don't think that Orwell would ever have imagined that a government could be capable of this kind of analysis'.²⁵ In addition to the gross violations of numerous other civil rights, one may argue that these surveillance measures encroach upon the *forum internum*. Even if these results of

²⁴ Jane Wakefield, 'AI Emotion-Detection Software Tested on Uyghurs' (*BBC News*, 26 May 2021) <<https://www.bbc.com/news/technology-57101248>>.

²⁵ *Ibid.*, quote from BBC interview with IPVM's director, Conor Healy.

these surveillance techniques may be questioned – for one thing, who would not display feelings of anxiety in such a state of *1984* –, China quite literally attempts to get into the head and minds of people, seeking to chart their innermost feelings.

3 The Duty to Protect

Whereas the duty to respect is essentially a negative obligation forcing states to refrain from adverse action, the *duty to protect* requires states to be active and proactive. More specifically, this obligation sees to the relationship between the state and non-state actors as potential offenders, whereas the duty to respect chiefly deals with the relationship between the state and individuals as rights-holders. The UN Office of the High Commissioner for Human Rights defines the obligation to protect as a duty that ‘requires States to protect individuals and groups against human rights abuses’.²⁶ The obligation to protect thus implies that the state under circumstances ought to step in so as to ‘horizontally’ enforce human rights standards. The state, under this duty, must ensure the protection of human rights vis-à-vis other individuals, groups, or miscellaneous non-state entities such as companies or organisations. This duty does not strictly serve to hold those non-state actors accountable for human rights breaches. Whereas the latter may be possible in some jurisdictions under the dictates of domestic (constitutional and other) law, under international human rights law states are the chief duty bearers. States ratify international human rights treaties and are the principle legal persons that may be held accountable. The relevance of the duty to protect, in all this, is hence that the state’s accountability may significantly be broadened up beyond direct state-instigated

²⁶ UN Office of the High Commissioner for Human Rights, *International Human Rights Law* <https://www.ohchr.org/en/professional_interest/pages/internationallaw.aspx>.

breaches of human rights law. That is, under circumstances the state may be held accountable not as a result of breaching human rights standards itself, but as a result of not sufficiently discharging the duty to secure protection of human rights vis-à-vis other individuals or groups.

Zooming in on the specific context of AI & religious freedom, examples that come to mind include the state's duty to protect religious groups and individual religious practitioners from acts of discrimination and violence and from incitement to such adverse actions. It is particularly in the latter context, that of incitement, more specifically, online advocacy of hatred that incites discrimination or violence, that AI plays a role. Like most discussions concerning AI and human rights, we are dealing with a double-edged sword here. For AI may facilitate the state's investigation into cybercrimes like online hateful incitement based on religion, among other grounds. And at the same time, recent incidents of mob violence, notably the attacks on the US Congress by Trump supporters, show how AI in the form of algorithms help forge information vacuums where clicks on certain (false) information triggers further information along the same lines, seemingly corroborating the original (false) information from further angles, but actually creating an algorithm-steered tunnel-vision.

The duty to respect, in this context, suggests that the state cannot hide behind the fact that these platforms and their advertising models, algorithms, and approaches to suggested further readings, are created and maintained by private business actors. At the very least the state would be obliged to liaise with these non-state actors to discuss ways of avoiding these platforms to be used for the dissemination of hateful incitement. The duty to respect may, under circumstances, imply the state needing to go as far as actively penalising companies over not sufficiently combatting hateful incitement. Hence, the state may incur accountability for the role of these private platforms if it does not sufficiently discharge these positive obligations of damage prevention and damage control.

The EU has also assumed a leading role as far as the Union's territory is concerned. It does so in a twofold fashion. An attempt at discharging the duty to protect in this area in the actual sense can be seen in a provision like Article 6 of the Audiovisual Media Services Directive which stipulates that 'Member States shall ensure by appropriate means that audiovisual media services provided by media service providers under their jurisdiction do not contain any incitement to hatred based on race, sex, religion or nationality'.²⁷ The 2018 amended and updated Audiovisual Media Services Directive moves beyond pure state accountability towards shared responsibility with the platform providers themselves and proposes self-regulatory duties. While the latter duties would strictly not qualify under the (state-centred notion of the) duty to protect, the fact that such duties are imposed by public authority gives the regulatory endeavour a proactive and protective signature. Moreover, these responsibilities are distilled and underscored with a view towards protecting vulnerable groups like children and the general public against harmful content. The relevant 2018 amendment reads in full:

A significant share of the content provided on video-sharing platform services is not under the editorial responsibility of the video-sharing platform provider. However, those providers typically determine the organisation of the content, namely programmes, user-generated videos and audiovisual commercial communications, including by automatic means or algorithms. Therefore, those providers should be required to take appropriate measures to protect minors from content that may impair their physical, mental or moral development. They should also be required to take appropriate measures to protect the general public from content that contains incitement to violence or hatred directed against a group or a

²⁷ Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the Coordination of Certain Provisions Laid Down by Law, Regulation or Administrative Action in Member States Concerning the Provision of Audiovisual Media Services (Audiovisual Media Services Directive), Article 6.

member of a group on any of the grounds referred to in Article 21 of the Charter of Fundamental Rights of the European Union (the ‘Charter’), or the dissemination of which constitutes a criminal offence under Union law.²⁸

Also outside the realm of audiovisual, media and other online platforms, the duty to respect may force states to act vis-à-vis non-state actors. Within this general area of *business & human rights* the state’s obligations may be twofold: (i) to liaise with (private) developers of AI techniques to ensure that these techniques are optimally attuned to respect for human rights within the future operational (public service) areas; and (ii) to guard against AI techniques being developed that can be used at the detriment of religious freedom rights.

With respect to the first point, it is not far-fetched to assume that AI will be used within such areas as security, health and education. Accordingly, AI applications may be used in hospitals, in prisons, in schools. In some if not all of these areas, the state has express functions, competences and human rights obligations. Thus, where health bots may well help discharge the state’s *duty to fulfil* the right to health, at the same time the state remains, whether under the duty to respect or the duty to protect (in private hospitals), liable under the duty to respect patients’ freedom of religion or belief.²⁹ Similar scenarios may be anticipated in the area of schooling or prison safety and prison management, among many other areas. Consequently, respect for religious diversity, religious needs, including dietary ones, is best flagged during the very design phase of new AI techniques that may become operational within important public and private service areas. The state’s role, there, is a delicate one, hovering between funding and facilitating promising novel techniques that help promote such

²⁸ Directive (EU) 2018/1808 of the European Parliament and of the Council of 14 November 2018 Amending Directive 2010/13/EU on the Coordination of Certain Provisions Laid Down by Law, Regulation or Administrative Action in Member States Concerning the Provision of Audiovisual Media Services (Audiovisual Media Services Directive) in View of Changing Market Realities, para 47.

²⁹ See for a more comprehensive analysis the chapter on AI and the right to health by Santamaría Echeverría in this volume.

public values health, public safety and education whilst liaising with developers to guarantee human rights standards.

More than liaising is clearly needed with respect to the second point: AI techniques may very well, and indeed are already, being developed and used at the detriment of human rights, including religious freedom. The transnational nature of human rights abuses complicates questions of accountability and enforcement. For instance, if AI surveillance techniques developed by a company adversely impact the privacy and equal rights of a group within the state, the state is to guarantee, under the duty to protect, the rights of this group, failing which it may be responsible for the discriminatory usages of these novel techniques. This is a different scenario from, for instance, Dutch companies that co-develop the AI techniques with which the Chinese government discriminatorily target the Uyghur community.³⁰ Naturally, China is responsible for the acts of repression, but to what extent are the Netherlands, or the EU, responsible too for not preventing the exported techniques from being abused to encroach upon human rights?

While Chinese companies may have no scruples expressly mentioning the profiling potential of novel techniques upon filing for patents (including express references to Uyghurs),³¹ Western companies tend to patent their techniques as abstract technological advancements. These advancements, in any event, are typically sold as but a cog in the wheel of larger surveillance operations. The implicit defence, hence, is that it is not the technique that is at fault, but the user. Under proposed EU regulation, the *Artificial Intelligence Act*, any such risks to the enjoyment of fundamental rights is to be assessed and compliance is to be

³⁰ ‘Berucht Chinees veiligheidsministerie gebruikt Nederlandse software die emoties leest’ (*De Correspondent*, 12 Juli 2019).

³¹ Several 2018 and 2019 patent registrations by Huawei, SenseTime and Megvii explicitly mention Uyghurs in the context of recognition techniques. ‘Onderzoeksbureau: Chinese techbedrijven bezig met etnisch profileren, Oeigoeren zijn doelwit’ (*De Volkskrant*, 13 January 2021).

ensured on the basis of a risk classification and human rights compliance scheme.³² However, this pending legislation is largely preoccupied with the Union's internal market.³³ Dual-use items – techniques that can be used both for civilian and military purposes – produced within the EU are singled out and subject to export control schemes.³⁴ All in all, this leaves a grey and vulnerable area consisting of AI techniques that may be developed and exported and that are on its face but an element in the larger wheel of abusive measures as used by third countries, threatening the fundamental rights beyond the realm of the Union.

In the above we have focussed on AI developed by non-state actors and potentially deployed at the detriment of human rights. A dissimilar area wherein the duty to protect may be engaged is the scenario of fake AI techniques. Consumers may be misled by false claims as to the usefulness and benefits of developed AI techniques.³⁵ In the area of religion, we may refer back to the early AI-like case revolving around the E-meter (see section 2). While consumer protection generally is a pertinent ground for the state to interfere in cases of mal- or non-functioning goods that do not live up to their advertised qualities, the area of religious artifacts is more complex. Here the state would need to walk a fine line between discharging its duty to protect persons against gross instances of fraud and respect for religious autonomy, i.e. the collective realm of religious belief systems wherein a religious community, as led by its religious leaders, decide over rituals and the meaningful place therein of religious artifacts. One extreme is the scenario wherein the trust of impressionable religionists is grossly abused by unscrupulous business churches with a view towards cajoling them out of their hard-won

³² Proposal for a Regulation of the European Parliament and of the Council: Laying Down Harmonized Rules on Artificial Intelligence (Artificial Intelligence Act) and Amending Certain Union Legislative Acts, COM(2021) 206 final 2021/0106(COD).

³³ Article 2 on scope provides: 'This Regulation applies to: (a) providers placing on the market or putting into service AI systems in the Union, irrespective of whether those providers are established within the Union or in a third country; (b) users of AI systems located within the Union; (c) providers and users of AI systems that are located in a third country, where the output produced by the system is used in the Union'.

³⁴ Regulation (EU) 2021/821 of the European Parliament and of the Council of 20 May 2021 Setting up a Union Regime for the Control of Exports, Brokering, Technical Assistance, Transit and Transfer of Dual-Use Items.

³⁵ See for a more comprehensive account the chapter on consumer protection and AI by Li, Schütte and Majewski in this volume.

savings. Under those circumstances the state's duty to protect would be engaged. Yet, the secular state is not to second-guess every claim of organised religion concerning the alleged powers and benefits of religious artifacts and there is no reason why that consideration would not extend, too, to the area of (future) AI-based artifacts or AI-driven rituals.

In *X and Church of Scientology v Sweden*, the state had not forced the removal of the E-meter from the market, but in the interest of consumer protection ruled that some of the terms of the E-meter's advertisement needed to be redacted. In its periodical, the Church had placed this ad:

Scientology technology of today *demands* that you have your own E-meter. The E-meter (Hebbard [*sic*] Electrometer) is an electronic instrument for measuring the mental state of an individual and changes of the state. *There exists no way to clear without an E-meter.* Price: 850 CR. For international members 20% discount: 780 CR.³⁶

The emphasised parts combine a strong appeal to an alleged religious imperative with a categorical necessity of the instrument. In sum, there is no alternative for 'good believers'; those refusing to incur the expense are a lost cause, may well be doomed, such is the implication. The Swedish Market Court had deemed the formulation misleading and that the consumer, the church periodical's readership primarily, would be 'particularly susceptible to selling arguments'.³⁷ The European Commission of Human Rights concludes that

... the Market Court did not prohibit the applicants from advertising the E-meter and did not issue the injunction under penalty of a fine. The Court chose what

³⁶ *X and Church of Scientology v Sweden*, Summary of the facts.

³⁷ *X and Church of Scientology v Sweden*, para 5.

would appear to be the least restrictive measure open to it, namely the prohibition of a certain wording in the advertisements. Consequently, the Commission cannot find that the injunction against the applicants was disproportionate to the aim of consumer protection pursued.³⁸

It may be argued that Sweden's interference with Scientology's E-meter navigated the tightrope between consumer protection and church autonomy rather well.

4 Duty to Fulfil

The duty to fulfil is arguably hardest to conceptualise in the present context. Generally, this obligation means 'that States must take positive action to facilitate the enjoyment of basic human rights'.³⁹ In General Comments on economic, social and cultural rights, this duty tends to be broken down into three complementary obligations: the obligations to facilitate, promote and provide.⁴⁰

The facilitation duty is problematic in the present context, since state involvement with religious affairs may all too easily encroach upon religious autonomy. For instance, AI could in theory play a fulfilling role in the seating and security arrangements around religious mega-events; yet, if this duty is accrued to the state as a matter of principle, immediate questions of privacy and general matters of state interference with religious autonomy may arise.

³⁸ *X and Church of Scientology v Sweden*, para 5.

³⁹ UN Office of the High Commissioner for Human Rights, *International Human Rights Law* <https://www.ohchr.org/en/professional_interest/pages/internationallaw.aspx>.

⁴⁰ E.g. Committee on ESC Rights, *General Comment No 15: The Right to Water* (2002), paras 25-29.

The promotion of religious freedom revolves around important informational and transparency duties. Within the classical religious freedom area, one could think of the duty to inform parents as to the existence of certain opt outs from religious instruction within public schools. Translated to the AI context, one may recall the health bot from previous discussions and distil a duty to inform patients about certain medical procedures that may encroach on religious convictions so that the patient is in a position to withdraw or seek alternative treatment. There one sees how the duty to fulfil directly impacts the duty to respect.

The ‘obligation to provide’ sounds on its face like an impossibility in the present context – how can the state directly ‘provide’ religious freedom? –, but analytically the duty signifies for instance in the area of asylum where states may guarantee no less than the religiously persecuted life and by implication fulfil the religious freedom rights of the asylum seeker. A completely different area, the duty has also been mobilised in the context of repatriation of religious artifacts.⁴¹

AI may in the future in theory play a role in those existing, highly specialised, obligation-to-fulfil areas, or, more likely, broach new ones.

5 Concluding Remarks

The triple human rights obligations terminology meaningfully unveils the dynamics between artificial intelligence and the right to freedom of religion or belief. Especially under the duty to respect and the duty to protect, the often-reported double-edged-sword function of AI is visible. AI techniques, also developed by non-state actors, may be used by state and private actors at the detriment of religious freedom, thus engaging crucial human rights obligations in

⁴¹ For a comprehensive account, see Vanessa Tünsmeier, *Repatriation of Sacred Indigenous Cultural Heritage and the Law: Lessons from the United States and Canada* (Springer 2021).

this area. What makes the thematic focus of religious freedom particularly fascinating and complex is that freedom claims may affect the very phenomenon of AI itself (a profound metaphysical belief in AI) as well as the development of AI techniques (AI techniques as part of a religious manifestation). While there is little risk in respecting *forum internum* claims in relation to AI, secular judges will likely push back vis-à-vis any religious freedom claims that relate to the development of AI techniques, lest such development becomes immune from scrutiny.