

# Religious Human Rights and a Democratic State

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This century has witnessed the emergence of the struggle for human rights throughout the world, and religious human rights lie at the heart of that struggle. By religious human rights are meant the inherent right of a person in public or in private to worship or not to worship according to one's own conscience, understanding, or preferences; to profess and to propagate one's faith; to join in association with others of like faith; and to change one's religious identity—all without hindrance, molestation, or discrimination. Religious human rights require the equality of all religions,<sup>1</sup> as well as irreligion, before the law, and that, according to the law, a citizen neither enjoys advantages nor suffers disadvantages because of one's religious faith or identity.

The recognition of religious human rights as a valid principle in law has become one of those axiomatic commitments that are almost universally shared among the family of nations; this recognition is

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1. In the words of Lord Acton, "Religious liberty . . . is possible only where the co-existence of different religions is admitted, with an equal right to govern themselves according to their own equal principles"; John Emerich and Edward Dalberg-Acton, *The History of Freedom and Other Essays* (New York: Books for Libraries Press, 1967), 152.

surely one of the major achievements of modern times. While there is overwhelming evidence to indicate that religious human rights are far from being an existential reality in most of today's world, and nowhere fully realized, religious liberty has become a normative principle for most of the nations of the world and, conversely, the denial of religious liberty is almost everywhere viewed as morally and legally improper and unacceptable. Consequently, guarantees of religious rights and religious liberty presently appear in the vast majority of the national constitutions throughout the world today, including even totalitarian states and governments committed to atheistic communism. Although respect for religious human rights or religious liberty—namely the absence of discrimination based upon religion or belief and the equality of all religions before the law—can hardly be said to be descriptive of conditions as they exist in most countries of the world today, there is profound significance to be found in the fact that the concept of religious liberty has come to have normative value almost universally.

Despite an almost universal commitment to religious human rights, as witnessed in the United Nations "Universal Declaration of Human Rights" in 1948,<sup>2</sup> and, even more explicitly, in its "Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief" in 1981,<sup>3</sup> there is no universal consensus as to their intellectual or philosophical basis. While there are often important political and practical reasons for defending religious human rights, religious human rights need the support of the major world religions themselves and should not depend primarily, let alone solely, on political expediency and self-interest considerations.

## I. RELIGIOUS HUMAN RIGHTS IN HISTORICAL PERSPECTIVE

Guarantees of religious human rights, it should be noted, are a recent achievement in international law. As late as World War II, a worldwide study declared, "No writer asserts that there is a generally accepted postulate of international law that every State is under legal obligation to accord religious liberty within its jurisdiction."<sup>4</sup>

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2. "Universal Declaration of Human Rights," G.A. Res. 217A(III) at 71, U.N. Doc. A1810 (1948) (entered into force 23 March 1976) [hereinafter *Universal Declaration*].

3. G.A. Res. 36/55, U.N. GAOR, 36th Sess., Agenda Item 75, U.N. Doc. A/RES/36/55 (1981). The Declaration was adopted by unanimous consent by the U.N. General Assembly on 28 November 1981.

4. Norman J. Padelford, *International Guarantees of Religious Liberty* (New York: International Missionary Council, 1942); quoted in M. Searle Bates, *Religious Liberty: An Inquiry* (New York: Harper and Brothers, 1945), 476.

Historically, the principle of religious human rights or religious liberty was rooted in the concept of "liberty of conscience," a phrase of modern origin that came into use after the sixteenth century and appeared most prominently during the seventeenth, eighteenth, and nineteenth centuries. Gradually, religious liberty was proclaimed to be both a natural and a divine right. Furthermore, it was reasoned, religious liberty required liberty of conscience. As John Milton expressed it, "Give me the liberty to know, to think, to believe, and to utter freely, according to conscience, above all other liberties."<sup>5</sup> In the words of the late Jacques Maritain, "With respect to the State, to the temporal community and to the temporal power . . . freedom of conscience is a natural, inviolable right."<sup>6</sup>

Today, guarantees of religious human rights may be found in the norms of international law and by international agreements affirming these rights as an international standard among signatory nation-states, such as "The UN Universal Declaration of Human Rights" (1948),<sup>7</sup> "The UN International Covenant on Civil and Political Rights" (1966),<sup>8</sup> "The Principles of the Helsinki Final Act" (1975),<sup>9</sup> and "The UN Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief" (1981).<sup>10</sup>

Although religious liberty was long advocated by individuals and religious dissenters, who at least sought religious freedom for themselves, full religious liberty was nowhere legally realized until the modern era and, even today, is far from being a reality in most of today's world. Nevertheless, in recent decades the principle of religious human rights or religious liberty has come to be recognized as an accepted postulate in international law.

It is of profound historical significance that, following the organization of the United Nations in 1945, concerted efforts were soon directed toward the formulation of the Universal Declaration of Human Rights, including the principle of religious liberty as a fundamental right to which all member nations were to subscribe and in recognition of the vital relationship of religious liberty to relations between states. Recently, Professor Henry J. Steiner of Harvard Law School observed that "no other document has so caught the historical moment, achieved the same moral and rhetorical force, or exerted so

5. John Milton, *Areopagitica* (1644).

6. Jacques Maritain, *The Rights of Man and Natural Law* (New York: Scribner, 1943), 81-82 and notes.

7. "Universal Declaration," fn. 2.

8. U.N. GAOR, 21 Sess., Supp. No. 16, at 71, U.N. Doc. A/6316 (entered into force 23 March 1976) [hereinafter ICCPR].

9. "Conference on Security and Cooperation in Europe: Final Act (1975); reprinted in 14 I.L.M. 1923 (1975) [hereinafter Helsinki Final Act].

10. "Declaration on Religion and Belief," fn. 3.

much influence on the [human rights] movement as a whole."<sup>11</sup> As well known, one of the basic principles included in the Charter of the United Nations is that of "the dignity and equality inherent in all human beings."<sup>12</sup> Therefore, all member nations "pledged themselves to take joint and separate action in cooperation with the Organization to promote and encourage universal respect for an observance of human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion."<sup>13</sup>

Three years after its founding, the United Nations General Assembly adopted the "Universal Declaration of Human Rights"<sup>14</sup> in which it gave specific attention to a person's right to religion as a basic human right. Article 2 affirmed that everyone is to be entitled to all the rights and freedoms in the Declaration without respect to religion. Article 18 declared, "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." In various forms, this portion of the Declaration has been incorporated in the national constitutions of many nations, particularly in the nations emerging since 1948.

After more than four decades of consultation and negotiation, the United Nations Assembly in November 1981 adopted the "Declaration on the Elimination of all Forms of Intolerance and of Discrimination Based on Religion or Belief,"<sup>15</sup> in which the religious rights of the "Universal Declaration of Human Rights" were affirmed. In addition, the 1981 Declaration categorically declared that "no one shall be subject to discrimination by any State, institution, group of persons or person on grounds of religion or other beliefs."<sup>16</sup> Such discrimination, the Declaration went out of its way to note, must be regarded not only an "affront" to human dignity, but also a "disavowal" of the principles of the Charter of the United Nations and a violation of the freedoms

11. "Securing Human Rights," *Harvard Magazine* (October 1998). Similarly, in *Pacem in Terris* (1962), Pope John XXIII praised the U.N. Universal Declaration as "an act of the highest importance" and "an important step forward on the path toward the juridical-political organization of the world community." In his first encyclical, *Redemptor Hominis* (1979), Pope John Paul II spoke of it as a "magnificent effort" toward the establishment of the inviolable rights of persons, including religious freedom (No. 17), and in his address to the United Nations, 5 October 1995, he characterized the Universal Declaration as "one of the highest expressions of the human conscience of our time."

12. U.N. Charter Art. 56.

13. *Ibid.*

14. Universal Declaration, fn. 2.

15. Declaration on Religion or Belief, fn. 3.

16. *Ibid.*, Article 2.

guaranteed in the "Universal Declaration of Human Rights." Thus, at long last, religious human rights were given explicit recognition in the family of nations as an inviolable and sacred human right.

It is well to remember that historically pleas for religious toleration and religious liberty have come primarily from religious minorities and dissenters, the religiously disenfranchised and persecuted, and not from religious majorities which enjoyed state patronage and support. At the same time, it should be noted, the major advances toward the recognition of religious human rights and religious liberty in the modern world have come not from religious confessions of faith, ecclesiastical councils, or synods, but from constitutions, legislative bodies, and courts of law. After the Middle Ages, the emergence of new nation-states and a new national spirit weakened the political power of old religious establishments to a degree from which they generally could not recover. In widely varying degrees, religious liberty became inexorably linked to the modern democratic state. In the twentieth century, among both communities of faith and nation-states throughout the world, a broad consensus gradually evolved toward support of the principle of religious liberty, at least in some form.

Legal recognition of freedom of religion has been particularly aided, both in principle and in practice, by international relations that resulted in the ratification of treaties between states. As one major study on religious liberty written more than fifty years ago affirmed, "International law and religious liberty grew in intimate association."<sup>17</sup> The study found that a substantial majority of the writers of general treaties on international law following the time of Hugo Grotius (1583-1645), long recognized for his work as a codifier of international law, specifically referred to religious liberty in their documents. In the nineteenth century, with sovereign states identified with different religious traditions, it became common in the drawing up of treaties to include provisions granting the right of religious expression to the nationals of each contracting party in the territory of the other. Since these foreign nationals were identifiable by both their nationality and their religion, it was inevitable that specific safeguards came to be provided for freedom of conscience, worship, and religious work "upon the same terms as nationals of the state of residence," to use a phrase common to many of these international treaties with provisions of religious liberty.

There are many examples of the role of international agreement in the advance of religious human rights. The Treaty of Berlin in 1878 at the close of the Russo-Turkish War, with its provisions for the equal

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17. Bates, *Religious Liberty*, 476. From this study, Bates observed, "A review of the forty-seven writers of the more important treaties on international law, following the time of Hugo Grotius, shows that [a] full thirty refer to religious liberty"; *ibid.*

rights of religious minorities, has been called "the most important single expression of international agreement for religious liberty" prior to the post-World War I era.<sup>18</sup> Similar guarantees of religious liberty were embodied in the General Act relating to American Possessions<sup>19</sup> and the Minorities Treaties of 1919-23, following World War I.<sup>20</sup> Of special historical significance is the European Convention for the Protection of Human Rights and Fundamental Freedoms of 1953, which declared that "everyone has the right to freedom of thought, conscience, and religion."<sup>21</sup> Still later, thirty-five nation-states in 1975 signed the Helsinki Final Act (i.e., The Final Act of the Conference on Security and Cooperation in Europe) in which religious rights were made an integral part of a major international agreement between thirty-five nations of Europe, Canada, and the United States. Principle 7 of the document gives special attention to "respect for human rights and fundamental freedoms, including freedom of thought, conscience, religion, or belief."<sup>22</sup> Meanwhile, more and more states throughout the world voluntarily entered into constitutional and treaty commitments to secure religious liberty for their own citizens as well as for foreign residents. With the increasingly wide geographical distribution of adherents of the world's major religions, the religions themselves challenged those national policies' denying the religious rights of their adherents and communities of faith.

Indeed, the principle of religious liberty has increasingly become one of those axiomatic commitments that is almost universally recognized. In at least some modified form, the principle of religious liberty has come to be affirmed by virtually all national governments as a part of national law. Even if highly restrictive, some guarantees of religious liberty now appear in almost all national constitutions throughout the world.<sup>23</sup>

18. *Ibid.*, 478.

19. General Act of the Berlin Conference Respecting the Congo, 26 February 1885, 165 *Consol. T.S.* 485.

20. See Richard B. Lillich and Hurst Hannum, *International Human Rights* (Buffalo, N.Y.: William S. Hein, 1995), 324.

21. Convention for the Protection of Human Rights and Fundamental Freedoms, 4 November 1950, Article 9(1), 213 *U.N.T.S.* 222.

22. Final Act, fn. 9, 1295.

23. A somewhat random sampling well illustrates this among the following: EUROPE: Bulgaria (1991), "Freedom of conscience, freedom of thought, and choice of religious or atheistic views are inviolable" (Article 37); Germany (1991), "Freedom of faith, of conscience, and freedom of creed, religious or ideological (*weltanschaulich*), shall be inviolable" (Article 4); Russia (1991), "Establishes guarantees of the realization of human rights to freedom of conscience and freedom of religion" (Article 1 of The Soviet Law on Freedom of Conscience and Religion); Spain (1978), "Freedom of ideology, religion and worship of individuals and communities is guaranteed. . . ." (Article 16.1). AFRICA AND THE MIDDLE EAST: Algeria (1989), "Freedom of conscience and the freedom of opinion

Nonetheless, religious liberty and respect for religious human rights remain far from realized in most of today's world. While freedom of religion is almost universally recognized *de jure*, the principle is by no means recognized *de facto* in most of today's world. Ironically, the very century (twentieth) that witnessed the emergence of religious liberty and religious human rights as norms in international law and in most of the constitutions of the world was the very century in which religious rights and religious freedom were repeatedly and flagrantly violated on a wholesale scale throughout much of the world. For the first time in human history and for much of the twentieth century, numerous governments came into power with a sworn hostility to religion and expressly dedicated to the eradication of all religion.

Meanwhile, in more recent years, new democracies of both old and new nation-states have come into being which recognize freedom of religion as crucial to a democratic state. This is seen most recently in the emerging democracies of the New Europe. Throughout the New Europe, for example, constitutional reform commissions have been involved in addressing questions of freedom of religion and conscience, along with a broad range of other human rights. In some countries, permanent standing committees have been named by parliaments to address questions relating to new laws on religion on an ongoing basis. While there are many complex and difficult questions yet to be resolved in the face of counter forces of resistance, the subject of freedom of religion and conscience has become, as never before, a subject that is coming to be viewed, at least by some, as crucial to the

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are inviolable" (Article 35); Egypt (1971), "The State shall guarantee the freedom of belief and the freedom of practice of religious rites" (Article 46); Israel (1949), Israel "will guarantee freedom of religion, conscience, language, education, and culture"; Nigeria (1979), "Every person shall be entitled to freedom of thought, conscience and religion" (Article 20); South Africa (1993), "Every person shall have the right to freedom of conscience, religion, thought, belief and opinion" (Article 14.1). ASIA AND OCEANIA: Australia (1986) "The Commonwealth shall not make any law for establishing any religion . . . or for prohibiting the free exercise of any religion" (Chapter V); India (1950), "The State shall not discriminate any citizen on grounds only of religion" (Article 15.1); Indonesia (1945), "The State shall guarantee the freedom of the people to profess and to exercise their own religion" (Article 29.2); Japan (1947), "Freedom of religion is guaranteed to all" (Article 20); South Korea (1988), "All citizens shall enjoy freedom of conscience" (Article 19) and "All citizens shall enjoy freedom of religion" (Article 20.1); Sri Lanka (1945), "Every person is entitled to freedom of thought, conscience and religion" (Article 10). AMERICAS: Brazil (1988), "Freedom of conscience and of belief is inviolable" (Article 5.6); Canada (1982), "Everyone has . . . freedom of conscience and religion" (Article 2); Chile (1980), Affirms "freedom of conscience, the manifestation of all beliefs, and the free exercise of all religions" (Article 19); Cuba (1992), "The State . . . respects and guarantees the freedom of conscience and religion" (Article 55); Ecuador (1995), Affirms "freedom of conscience and religion, individually and collectively" (Article 19.5); Paraguay (1992), "Freedom of religion, worship, and ideology is hereby recognized without any restrictions other than those established in this Constitution and the law" (Article 24).

movements of nations toward democracy and freedom. Among the questions inextricably intertwined with religious rights and religious liberty is one of ethnic and religious identity, which in many countries throughout the world is virtually conterminous with the rights of religious minorities. The potential role to be played by the United Nations in this critical area is an important one with much yet to be done to advance the rights of religious minorities throughout the world.

The problem of religious tolerance is clearly "one of the great and most urgent challenges now confronting the world."<sup>24</sup> The action taken by the United Nations General Assembly, 25 November 1981, in adopting the "Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief," while long overdue, was an important step taken by the family of nations.<sup>25</sup> Adopted first by the Commission on Human Rights in March 1981, the action taken by the United Nations Assembly followed twenty years of negotiations. Although there are serious limitations in the Declaration itself with respect to the omission of certain basic religious rights, the Declaration deserves the strong support of all religious faiths. In fact, the religions of the world should lead the way in calling for a convention to expand the Declaration and include some of those provisions now presently omitted: the equal protection of all religions or the right of judicial review when one's religious rights are denied; the freedom to witness to one's faith in public life; the freedom to disseminate the teachings of one's faith; the freedom of religious association on a local and national basis; and the freedom to maintain, without unwarranted restrictions, a relationship with one's religious community at the international level.

This is an age of religious encounter when new and old religious faiths can no longer remain isolated from one another or ignore each other's presence in today's world. This religious encounter is accentuated by a world that has increasingly come to be perceived as a "global village," one in which distances halfway around the globe are measured by only a few hours of jet travel. At the same time, through immigration and missionary outreach, the geographical distribution of the major world religions, as well as many new religions, has reached worldwide dimensions. International travel, international cultural exchange, and international relations through trade and treaty negotiations have contributed significantly to interreligious encounters and thereby have further underscored the need for the commitment of nations to uphold religious human rights. To express it another way,

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24. Gustav Mensching, *Tolerance and Truth in Religion* (Chicago, Ill.: University of Chicago Press, 1963), 10.

25. See the author's essay, "The Proposed United Nations Declaration on Religious Liberty," *Journal of Church and State* 23 (Autumn 1981): 413-22.

legal recognition of freedom of religion and conscience has become an international necessity. In this task, the United Nations has a vital role to play.

## II. RELIGIOUS HUMAN RIGHTS IN THE HISTORY OF RELIGION

All too often discussions of freedom of religion and conscience are virtually limited to the political restrictions imposed by government as if the problem is one simply between political or secular authority and religion. But the problem is also one deeply imbedded in the history of religion. From time immemorial, tolerance has not been characteristic of religion, quite to the contrary. Throughout human history, since religion generally served as the basis of the identity of a tribe, an ethnic community, or a nation, this religious identity formed the basis of differentiation from any other tribe, nation, or ethnic community, and from the world at large. What is more, religion often became the root cause of intergroup conflict between tribes, communities, and nations—for example, Israelites and Canaanites, Christians and Romans, Muslims and Jews, Eastern Orthodox and Roman Catholics, Sikhs and Hindus, Catholics and Protestants. In this way, religion fostered division and not unity, conflict and not concord, and at the heart of this division or conflict was each religion's perception of the truth, whether based upon its claims of prophetic revelation, some mystical experience(s), or a particular rational apprehension of existence. The very historical and metaphysical particularity of religion did not make for tolerance or the recognition of religious human rights outside of one's own religious tradition. Each religion claimed, or at least assumed, a uniqueness or superiority of its own, even when it maintained a posture of inclusivity and embraced some form of syncretism in its philosophical or theological propositions of truth.

To be sure, there have been historical incidents and teachings of tolerance in religious traditions, but they have been the exceptions and not the rule in the phenomenology of religion. Intolerance not tolerance, conformity not nonconformity, and assent not dissent have been dominant motifs in the history of religions. More wars have been fought, more persecutions have been carried out, and more lives have been lost in the name of religion than probably for any other single cause. As one historian has succinctly expressed it, "Nowhere does the name of God and justice appear more frequently than on the banner and shield of the conqueror."<sup>26</sup> Repeatedly, religious intolerance has been made the basis of ethnic or racial prejudice and the rationale for political and social discrimination against nonadherents and

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26. Hubert Muller, *Religion and Freedom in the Modern World* (Chicago, Ill.: University of Chicago Press, 1963), 52.

nonconformists of the religious establishment. Intrinsic to religion is the absoluteness of each religion's perception of truth and the world. From his research as a historian of religion, Gustav Mensching concluded that "all world religions raise an extensive claim to absoluteness. Every one of them claims to be the only true and valid faith and every one of them demands to be accepted as such."<sup>27</sup> Through the centuries, the absoluteness of the truth embraced by each religion provided a religious sanction of intolerance and discrimination.

The ultimate concerns of religious traditions have by and large precluded the tolerance of opposing views of faith and practice. "All religions are born absolute," Ernst Troeltsch observed, "because they follow an unreflected compulsion and express a reality that demands recognition and faith, not only for the sake of its existence, but more yet the sake of its validity."<sup>28</sup> The words of Jesus come to mind: "I am the way, the truth, and the life; no man cometh to the Father, but by me."<sup>29</sup> This has been true not only of the great Near Eastern faiths of prophetic revelation (Judaism, Christianity, and Islam), which are by their very nature exclusive in character, but also of the great Asian religions of mysticism and rationalism (Hinduism, Buddhism, Confucianism, and Taoism), which claim to be inclusive in their perceptions of truth. Even among the latter, however, the element of absoluteness is to be found. As Gautama Buddha declared, "Having acquired enlightenment by myself, whom could I call my teacher? I have no teacher, one like unto me is not to be found. In the world with its devas (gods) there is no god equal to me."<sup>30</sup> One Buddhist text states, "There is no other way to gain salvation than through his [Buddha's] teaching."<sup>31</sup> While the causes or motives of religious intolerance are many and varied, they may be broadly summarized to include the following: a religion that is viewed as false and/or dangerous to the prevailing religious community; a religion that is perceived to be in conflict with the mores and moral values of a particular society; a religion that is judged to be subversive because its teachings threaten the pattern of political authority or the political policy being advanced; a religion that is believed to be alien to the culture in which it is being promulgated; or a religion that is identified with a foreign power.

The absoluteness of each religious tradition has served to provide a religious foundation for the intolerance of other faiths. From his years

27. Mensching, *Tolerance and Truth in Religion*, 152.

28. Ernst Troeltsch, *The Absoluteness of Christianity and the History of Religions* (Richmond, Va.: John Knox Press, 1917), 138.

29. *John* 14:6.

30. Majjhima Nikaya 26.

31. Yashomitra, *Commentary to Vasubhandu's Abhidharma-Kosha*; quoted in Mensching, *Tolerance and Truth in Religion*, 127.

of study of religious persecution, the late Roland H. Bainton noted three prerequisites for religious persecution: "that the persecutor must believe that he is right"; "that the point in question is important"; and "that coercion will be effective."<sup>32</sup> Religious intolerance has been characterized by the absolutizing of the faith of the persecutor, the insistence of the persecutor on the necessity of defending his faith, fear of the consequences of tolerating moral and religious error, abhorrence of unorthodox views and practices, and intense hostility toward dissenters and nonconformists.

The religious identity of the nation has also made for political intolerance, since to be a dissenter in religion was to be an enemy of the state. The intolerance of ancient Israel toward foreign religious cults stemmed from their threat to the religious identity and unity of Israel, just as in ancient Greece to avow atheism was to manifest disloyalty to the state gods, and therefore atheism was met with court trials and legal action against such persons as adversaries of the state. As long as religion was the basis of the identity of the state, religion was an expression of patriotism and national loyalty. Any criticism of the religion of the state could, therefore, not be tolerated, since such criticism threatened the very foundation of the state. While unbelief represented a denial of the religious identity of the state, alien religious beliefs endangered the unity of the state or empire. This concern for the unity of the religious community was recognized throughout the ancient world and most of the history of the world. Because of the need to maintain the unity of the nation or empire, religious differences or expressions of dissent were met with intolerance and even persecution. Diversity was abhorred, for it represented a threat to the unity and solidarity of the state.

In the history of religions, intolerance and persecution have not been restricted to any one era or to any one religion. Among numerous examples are: the persecution of the adherents of Amon of Ikhnoton (Ahmenhotep IV) by the religious establishment of Egypt; of the Canaanites by the Israelites; of Jesus and the early Christians by the Romans; of Buddhists by Shintoists; of Sufis by Orthodox Muslims; of heretics and Jews by Christians; of Muslims by Christians and Christians by Muslims; of Protestants by Catholics and of Catholics by Protestants; of Anabaptists by Lutherans; of sectarians by Eastern Orthodoxy and, indeed, by established churches generally; of "witches" and Quakers by Puritans in the Massachusetts Bay Colony; and of religious dissenters by religious establishments, as in present-day Iran. Among the religions of the world, tolerance has not been a characteristic in the phenomenon of religion.

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32. Roland H. Bainton, *The Travail of Religious Liberty* (Philadelphia, Pa.: Westminster Press, 1951), 17.

The history of Christianity is replete with examples of the denial of toleration of dissenters who dared challenge the authority of the church or who embraced teachings in conflict with the church. Before the modern era, neither Roman Catholicism, nor Eastern Orthodoxy, nor Protestantism espoused toleration as such. Each tradition advocated coercion, even physical violence if necessary, to maintain its sway over the territories in which each became established. In the history of Christianity, as among other religions of the world, tolerance has not come easily. Tolerance toward other religions was generally deplored because it was viewed as being rooted in religious apathy and indifference.

### III. TOLERANCE AND FREEDOM OF RELIGION IN THE TEACHINGS OF THE MAJOR WORLD RELIGIONS

While freedom of religion and conscience has a long, albeit tortuous, history, voices against intolerance and respect for religious human rights may be traced back even to the ancient world. The practice of tolerance, however, emerged slowly. As alluded to earlier, there are, of course, examples of tolerance in the history of religions that should not be ignored. For example, the religious tolerance shown Jews in their years of Babylonian exile and their return to Jerusalem under Cyrus the Great.

The notion of tolerance and freedom of religion may be found in the teachings of the great world religions, even though it has been far less descriptive of the history of the religions themselves. In arguing the case for freedom of religion and conscience today, it should not be overlooked that there are explicit teachings of tolerance and condemnation of religious coercion and disrespect for religious views other than one's own to be found in the major world religions.<sup>33</sup> Furthermore, these teachings from the religions themselves stand to serve as helpful reminders to their adherents today that the sacred writings of their religious traditions endorsing religious human rights may constitute a basis for interfaith relations based upon mutual

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33. Among recent publications that have highlighted this phenomenon, see: Leonard Swidler, *Religious Liberty and Human Rights in Nations and in Religions* (Philadelphia, Pa.: Ecumenical Press, 1986); David Little, John Kelsay, and Abdulaziz Sachedina, *Human Rights and the Conflicts of Culture: Western and Islamic Perspectives on Religious Liberty* (Columbia, S.C.: University of South Carolina Press, 1988); Arlene Swidler, ed., *Human Rights in Religious Traditions* (New York: Pilgrim Press, 1982); Leroy S. Rouner, *Human Rights and the World's Religions* (Notre Dame, Ind.: University of Notre Dame Press, 1988); Robert Traer, *Faith in Human Rights: Support in Religious Traditions for a Global Struggle* (Washington, D.C.: Georgetown University Press, 1991); Hans Küng and Jürgen Moltmann, eds., *The Ethics of World Religions and Human Rights* (Philadelphia, Pa.: Trinity Press International, 1990); and David Cohn-Sherbok, ed., *World Religions and Human Liberation* (Maryknoll, N.Y.: Orbis Books, 1992).

respect and good will, even dialogue. In addition, these teachings provide support for constitutional and legal provisions on religious human rights that are being increasingly called for in both national and international law. Obviously, however, these teachings from the major world religions in support of religious human rights need to be lifted above the historical and nationalistic expressions of the religions themselves and to serve as a call to their adherents to be true to the ethical norms and teachings of their respective faiths with regard to freedom of religion and religious human rights.<sup>34</sup>

In the ancient teachings of Hinduism, for example, intolerance and the very denigration of the religious rights of other faiths are expressly condemned. Basic to the Hindu tradition is the declaration, "Truth is One; sages call it by different names."<sup>35</sup> Or again, from Hindu Sacred Writings, "Ignorant is he who says, 'What I say and know is true; others are wrong.' It is because of this attitude of the ignorant that there have been doubts and misunderstandings about God. It is this attitude that causes dispute among men. But all doubts vanish when one gains self-control and attains tranquility by realizing the heart of Truth. Thereupon dispute, too, is at an end."<sup>36</sup> The ancient Sacred Writings of Hinduism affirm not only that tolerance and respect are to be shown those of other religious traditions, but also these writings reason that tolerance and respect are rooted in the belief that there is good to be found in all religions. "Like the bee, gathering honey from different flowers," Hindu Scriptures declare, "the wise man accepts the essence of different scriptures and sees only good in all religions."<sup>37</sup> In the words of one of Hinduism's most renowned twentieth-century thinkers and apologists, Sarvepalli Radhakrishnan, "The faiths of others all desire to be honoured for one reason or another. By honouring them, one exalts one's own faith and at the same time performs a service to the faith of others. By acting otherwise, one injures one's own faith and also does disservice to that of others. For if a man extols his own faith

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34. The purpose here in citing the teachings from the sacred writings of the major world religions bearing upon respect for religious human rights is not to suggest that there is an essential oneness among the major world religions in their concepts of ultimate reality or that they share a common worldview or way of salvation. Rather, it should be understood that the selections from the sacred writings of the major world religions cited here are made solely because they reflect views of these traditions on religious human rights and the concept of religious liberty. As one Buddhist scholar, Phra Khantipolo, has rightly warned, "To try to steamroller every religion into the concept of basic sameness or 'all-is-one-ness' is to ignore facts in favor of a pre-conceived ideal." For, Khantipolo concludes, "in trying to believe in everything, one does in fact neither believe anything sincerely nor understand anything thoroughly"; see Phra Khantipolo, *Tolerance: Study from Buddhist Sources* (London: Rider, 1964), 35, 37.

35. *Rig Veda* Book 1, Hymn 164: 46.

36. *Srimad Bhagavatam* 11: 15.

37. *Ibid.*, 11: 3.

and disparages another, because of devotion to his own and because he wants to glorify it, he seriously injures his own faith."<sup>38</sup>

Similarly, the tolerance of Buddhism, the first of the great world religions to become international, was demonstrated centuries ago in its encounters with other faiths. In China and Japan, where the geographical outreach of Buddhism resulted in its becoming thoroughly indigenous to those cultures, Buddhism by and large sustained a harmonious coexistence with the national faiths of both countries with little conflict and discord on its part. "Buddhism was and is, on the whole, an outspokenly tolerant religion; this is documented by the fact that wherever it has spread it has never tried to annihilate the . . . original religion, but rather has existed beside it. . . ."<sup>39</sup> Buddhism is deeply rooted in the concept of religious freedom and respect for religious human rights. A charitable attitude toward all religious views and their adherents is encouraged. The founder of Buddhism, Siddhartha Gautama, urged that his followers not bear ill-will toward anyone who spoke ill of him. Rather, Gautama declared, "If anyone were to speak ill of me or my doctrine or my Order, do not bear ill-will towards him, do not be upset or perturbed at heart; for if you were to be so, it will only cause you harm."<sup>40</sup> Again, to quote from Buddhist Scriptures, "The Buddha says, 'To be attached to a certain view and to look down upon other views as inferior—this the wise men call a fetter [i.e., a wrong].'"<sup>41</sup> In teaching respect for all believers, Gautama declared, "If a man says 'This is my faith,' so far he maintains truth. But by that he cannot proceed to the absolute conclusion: 'This alone is Truth, and everything else is false.'"<sup>42</sup> In the Sacred Writings of one Buddhist sect in Japan, the Ormoto Kyo, is to be found the following: "There is not a single place in all the corners of the world where God is absent."<sup>43</sup> The first of the great world religions to become international, Buddhism has demonstrated throughout much of its history a spirit of tolerance and a respect for religious human rights in its encounters with other faiths.

Still other ancient religious traditions call for respect to be shown toward those of other faiths. In the Scriptures of Jainism, founded like Buddhism six centuries before the dawn of Christianity, appears the following: "Those who praise their own doctrines and disparage the doctrines of others do not solve any problem."<sup>44</sup> Jains are admonished

38. S. Radhakrishnan, *Religion in a Changing World* (London: George Allen and Unwin, Ltd., 1967), 174.

39. Mensching, *Tolerance and Truth in Religion*, 22.

40. *Digha Nikaya* 1: 3.

41. *Sutfa Nipata* 798.

42. *Majjhima Nikaya* 2: 176.

43. *Michi-no-Shiori*.

44. *Sutrakritanga* 1.1: 50.

in their Sacred Scriptures to “comprehend one philosophical view through comprehensive study of another one.”<sup>45</sup> This regard for other religious traditions is affirmed also in Confucianism. “In the world there are many different roads,” Confucius said, “but the destination is the same. There are a hundred deliberations but the result is one.”<sup>46</sup>

The tradition of Judaism has long contended for religious human rights. In Judaism, the very covenant which God established with Israel affirmed that God’s love is for *all* people, and purposed that through that covenant, “All the families of the earth are to be blessed.”<sup>47</sup> In the Holy Scriptures of Judaism, which are, of course, also viewed as Sacred Scripture in the Christian tradition, are these words: “For from the rising of the sun to its setting my name is great among the nations, and in every place incense is offered to my name, and a pure offering; for my name is great among the nations, says the Lord of hosts.”<sup>48</sup> In the *Tosefta*, Rabbi Joshua is recorded as saying, “There are righteous men among the nations who have a share in the world to come.”<sup>49</sup> The ultimate ground for respect for all human rights in Judaism is to be found in its teachings concerning the infinite worth of every person or the sanctity of every individual life. Respect for divergent faiths is clearly and explicitly affirmed in the Talmudic writings of Judaism, as illustrated by the following: “The scholars . . . sit in groups; some forbid and others permit; some declare a thing unclean and others declare it clean; some pronounce a thing unfit and others pronounce it fit. Let anyone say to them I shall sit back and not study, Scripture declares, ‘They are given from one shepherd: one God created them, one leader gave them, the Master of all things uttered them!’ Thou, too, therefore, make thine ear like a hopper and take in the words of them that pronounce unfit and the words of them that pronounce fit.”<sup>50</sup> In the Mishnah are to be found these words, “Therefore, was a single person [first] created to teach thee that if anyone destroys a single soul . . . Scripture charges him as though he had destroyed a whole world, and whosoever rescues a single soul . . . Scripture credits him as though he had saved a whole world. . . . The Holy One has stamped all mankind with the die of the first man and yet not one of them is like to his fellow. Therefore, everyone is bound to say, ‘For my sake was the universe created.’”<sup>51</sup> One of Judaism’s most beloved and respected scholars of recent history, the late Rabbi Abraham Heschel, was fond

45. *Acarangasutra* 5: 113.

46. *I Ching*, 2: 5.

47. *Genesis* 12:3.

48. *Malachi* 1:11.

49. *Tosefta Sanhedrin*, 13.2.

50. Judah Goldin, *The Living Talmud: The Wisdom of the Fathers and Its Classical Commentaries* (Chicago, Ill.: University of Chicago Press, 1957), 21.

51. *M. Sanhedrin*, 4:5.

of saying, "God's voice speaks in many languages"—a view widely shared in Judaism.<sup>52</sup> For centuries, the missionary motive has been largely disavowed by Judaism as incompatible with religious tolerance.

Teachings of tolerance toward other faiths also have a long history in Christianity. Jesus preached against intolerance and religious bigotry.<sup>53</sup> In Christianity, religious tolerance and the sanctity of religious rights may be found, as with Judaism, in the affirmation that all of humanity is created in the image of God. Beyond that, Christian Scripture categorically declares that "God has not left himself without witness"<sup>54</sup> and speaks of "the true Light, which lighteth every man that cometh into the world."<sup>55</sup> Religious tolerance and respect for religious rights may be found also in Christian Scripture in the manner of God's dealings with all human beings. Peter, one of the disciples of Jesus who became a leader of early Christianity, is quoted as saying, "God has shown me that I should not call anyone common or unclean." "Truly I perceive that God shows no partiality, but in every nation anyone who fears him and does what is right is acceptable to him."<sup>56</sup> Between Jews and Gentiles, Paul also declared, "God shows no partiality."<sup>57</sup> A person's capacity for freedom, the Scripture maintains, is from God. As Paul wrote, "Where the spirit of the Lord is present, there is freedom."<sup>58</sup> The very invitation of Jesus throughout the Gospels is repeatedly conditioned with the words, "whosoever will . . ." or "if you want to. . .,"<sup>59</sup> words which by their very nature constitute an invitation born out of respect for the human will in matters of religious belief. God's very approach to all of humankind is perhaps nowhere in Christian Scripture more clearly portrayed than in the last book of the New Testament, *The Revelation*, in which respect for the inviolability of the religious rights of every person is presented dramatically and unequivocally: "Behold I stand at the door and knock; if *any* person hears my voice and opens the door, I will come into his house and eat with him, and he will eat with me."<sup>60</sup>

In the third century, Tertullian wrote that freedom of religion "is a human right, a privilege of nature . . . everyone should worship as he

52. Abraham Joshua Heschel, *God in Search of Man: A Philosophy of Judaism* (New York: The Jewish Publication Society of America, 1955), 142.

53. For some examples of Jesus' teachings against religious intolerance and religious bigotry, note the following: *Matthew* 8:5 ff., 9:10-13, 21:12-45, 23:1-39; *Luke* 7:31-50, 9:51-56, 10:25-37, 15:1-32; and *John* 4:7 ff. 21, 24, 46 ff.

54. *Acts* 14:17.

55. *John* 1:9.

56. *Acts* 10:34-35.

57. *Romans* 2:11.

58. *2 Corinthians* 3:17.

59. See, for example, *Matthew* 19:21-22.

60. *The Revelation* 3:20.

pleases.”<sup>61</sup> Almost a century later, Lactantius argued that “nothing is as much a matter of freewill as religion. . . . It is religion alone in which freedom has planted her dwelling. For beyond everything else it is a question of freewill.”<sup>62</sup> Unfortunately, pleas for religious toleration, not to mention religious liberty, have with rare exception come from persecuted minorities and the religiously disenfranchised rather than from communities of faith of social status and political power. While long advocated by individuals such as Marsilius of Padua in Italy and by various religious minorities, religious liberty was not widely realized until the modern era, and, even today, is by no means universally enjoyed.

In Islam, the Qur’an categorically declares that “there shall be no compulsion in religion.”<sup>63</sup> The Qur’an further declares that belief is ultimately a matter of personal choice: “Proclaim, O Prophet, This is the truth from your Lord; then let him who will, believe, and let who will, disbelieve.”<sup>64</sup> Tolerance toward other religions is explicitly enjoined on those who follow the Qur’an, as follows: “Reville not those deities whom the unbelievers call upon and worship.”<sup>65</sup> Indeed, according to the teachings of the Qur’an, Muslims can respect the believers and the teachings of all religions—even those not mentioned in the Qur’an, such as Hinduism, Buddhism, Jainism, and Confucianism.<sup>66</sup> According to Islam, a person’s freedom to choose is prerequisite to faith. Again, in the words of the Qur’an, “If it had been the Lord’s will, all the people on the earth would have come to believe, one and all. Are you then going to compel the people to believe except by God’s dispensation?”<sup>67</sup>

Similar teachings may be found in the Scriptures of Sikhism, whose founder, Nanak, declared, “Search not for the True One afar off; He is in every heart.”<sup>68</sup> According to Sikhism, people of God are to be found in all religions. The Scriptures of Sikhism declare, “There are those who read the Vedas and others—Christians, Jews, Muslims—who read the Semitic scriptures. Some wear blue, some white robes. Some call themselves Muslims, others Hindus. Some aspire to *bahishat* [Muslim heaven], some to *swarga* [Hindu heaven]. Says Nanak, Whoever

61. Quoted in Arnold Toynbee, ed., *The Crucible of Christianity: Judaism, Hellenism, and the Background to the Christian Faith* (New York: World Publishing Co., 1969), 350.

62. Lactantius, *Epitome, divinarum Institutionum*, 54.

63. *Qur’an* 2:256.

64. *Ibid.*, 18:29.

65. *Ibid.*, 6:108.

66. See *Qur’an* 35:24; 40:78; and 22:67.

67. *Ibid.*, 10:99-100; still another translation given ends with these words: “Wilt thou then compel mankind against their will, to believe?”

68. M. A. MacAuliffe, *The Sikh Religion: Its Gurus, Sacred Writings, and Anthems*, 6 vols. (Oxford: Clarendon Press, 1909), 1: 328.

realizes the will of the Lord, he will find out the Lord's secrets!"<sup>69</sup>

While these citations from the teachings of the religions hold special significance in establishing a linkage between the history of religion and religious human rights, at the same time it must once again also be acknowledged that the spirit of tolerance and respect for religious human rights have not, by any means, been historically characteristic or descriptive of the religions themselves. Alas, none of the world religions has lived up to its own teachings with regard to freedom of religion and conscience.<sup>70</sup> This is readily observable in the history of Christianity, not only with respect to religious human rights, but also with respect to its original teachings on peace and its repudiation of the use of the sword or violence. The disparity between the teachings of the religions and their historical expression is simply undeniable. This disparity between faith and practice has plagued all of the world religions, which, without exception, have all too often been but pale shadows, sometimes even perversions, of their true essence. As alluded to earlier, the historical record of the religions has often been one of contradiction to their teachings. Admittedly, the sanctity of the rights of the individual person and the basic human right to religious self-identity has been flagrantly and repeatedly violated by the religions themselves. In fact, as alluded to earlier, the hallmarks of the history of religion have been intolerance not tolerance, conformity not nonconformity, and assent and not dissent.

It cannot be denied, for example, that for more than a thousand years the history of Christianity was marked by intense intolerance and persecution of Jews and all religious dissenters, who were readily branded as "heretics." Nevertheless, despite any disparity between the history of religions and their sacred writings, special importance must be given the presence of the concept of religious human rights in the scriptures of the major religions themselves, since these writings provide for each of the religious traditions the authoritative teaching norms of the faith. Even from this brief sampling, there are clearly valuable resources to be found in the great world religions to show that the concept of religious human rights, far from being an alien concept, is expressly endorsed within the very core of the teachings of the major world religions.

69. *Adi Granth, Rag Ramkali*, 885.

70. There are those who would readily cite passages in the Scriptures of Judaism, Christianity, and Islam, in particular, that would appear to be contradictory to showing respect or even tolerance toward those of other religious traditions. The point being made here, however, is that there are sacred writings of the world's religions that do affirm a respect for the religious rights of others.

#### IV. THE PRINCIPLE OF RELIGIOUS HUMAN RIGHTS ROOTED IN THE NATURE OF RELIGION

Freedom of religion and conscience may not only be found in the sacred writings of the major religions of the world, but is also rooted in the nature of religion. The reality is that religious intolerance is antithetical to the nature of religion and is, indeed, religion's worst enemy. To believe is a *voluntary* act. To be true to itself, authentic religion must wait upon the voluntary responses of persons who are free of coercion in order for religious faith to be genuine and to be true to itself. Recognition of this was conceded by the early church fathers. Near the close of the second century, Justin Martyr, who argued for the principle of the *logos spermatikos*, namely that the seed of the divine word is also present outside of the Christian tradition, perceptively wrote, "Nothing is more contrary to religion than constraint."<sup>71</sup> In the third century, when Emperor Septimius Severus issued a decree in 202 forbidding conversion to Christianity, Tertullian wrote that freedom of religion is a fundamental right. "It is a matter of both human and natural law," he declared, "that every man can worship as he pleases. . . . It is not in the nature of religion to impose itself by force," but "should be adopted freely."<sup>72</sup> Almost a century later, and with considerable insight into the nature of religion, Athanasius declared, "It is not with the sword and spear, nor with soldiers and armed force that truth is to be propagated, but by counsel and sweet persuasion."<sup>73</sup> Similarly, Lactantius, the tutor of Emperor Constantine's son, argued that "it is only in religion that liberty has chosen to dwell. For nothing is so much a matter of free will as religion, and no one can be required to worship what he does not will to worship. He can perhaps pretend, but he cannot will."<sup>74</sup>

During the Middle Ages, when religious liberty existed nowhere in Europe, Marsilius of Padua, a Catholic lawyer, eloquently argued in the fourteenth century that coercion is completely foreign to the nature of religion and that religious convictions by their very nature cannot be forced. No religious authority has the right to exercise coercion for compliance to religious commandments. "For it would be useless," Marsilius wrote, "for him to coerce anyone to observe them, since the person who observed them under coercion would be helped not at all

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71. Quoted in M. Searle Bates, *Religious Liberty: An Inquiry* (New York: Harper and Brothers, 1945), 137.

72. *Ad Scapulam*, 2; Migne, *Patrologia Latina*, 1: 699; quoted in Joseph Lecler, S.J., "Religious Freedom: An Historical Survey," in *Religious Freedom*, ed. Neophytos Edelby and Teodoro Jimenez-Urresti, Concilium (New York: Paulist Press, 1966), 5.

73. *Divina Instituta*, 54; Migne, *Patrologia Latina*, 6:1061.

74. Lactantius, *Divina Instituta*, 1,5c 20; Migne, *Patrologia Latina*, 6: 516.54.

toward eternal salvation."<sup>75</sup> "For Christ did not ordain that anyone should be coerced to observe in this world the law made by him, and for this reason he did not appoint in this world a judge having coercive power over transgressors of his law."<sup>76</sup> "Even if it were given to the bishop or priest to coerce men in those matters which relate to divine law, it would be useless. For those who were thus coerced would not be helped at all toward eternal salvation by such compulsion."<sup>77</sup> As with earlier voices for religious liberty, Marsilius espoused religious liberty as a matter of principle and viewed religious liberty as an essential feature of authentic religion.

Two centuries later, Desiderius Erasmus, the great Catholic humanist and irenicist, wrote similarly that the use of coercion is contrary to the nature of religion and, therefore, he argued for "the futility of persecution."<sup>78</sup> In a letter to John Carondelet, Erasmus wrote, "When faith is in the mouth rather than in the heart, when the solid knowledge of Sacred Scripture fails us, nevertheless by terrorization we drive men to believe what they do not believe, to love what they do not love, to know what they do not know. That which is forced cannot be sincere, and that which is not voluntary cannot please Christ."<sup>79</sup>

Special tribute must always be given to the Radical Reformers who championed voluntarism in religion and its corollary the separation of church and state, that is the separation of religious affairs from temporal power and the denial of the use of temporal power in religious matters.<sup>80</sup> The voices of the Radical Reformation for religious

75. Marsilius, *Defensor Pacis*, trans. Alan Gewirth (New York: Columbia University Press, 1956), II, ix, 2.

76. *Ibid.*

77. *Ibid.*, II, v, 6.

78. Quoted in Roland H. Bainton, *Erasmus of Christendom* (New York: Charles Scribner's Sons, 1969), 185.

79. Ep. 1334, 5 January 1523, in *Opus epistolarum*, 5: 11.362-81; quoted in *Concerning Heretics: Whether They Are To Be Persecuted and How They Are To Be Treated: A Collection of the Opinions of Learned Men, Both Ancient and Modern*, ed. Sebastian Castellio and trans. Roland H. Bainton (New York: Columbia University Press, 1935), 34. Later in 1519, in response to Martin Luther's dramatic public challenge at Wittenberg of the Roman Catholic Church, Erasmus wrote to the archbishop of Mainz, the following: "If he is innocent, I would not like to see him crushed by evil factions; if he is in error, I would like to see him cured, not lost. Such conduct would agree better with the example of Christ who . . . did not extinguish the smoking flax, nor break the bruised reed"; quoted in Joseph Lecler, S.J., *Toleration and Reformation*, trans. T. L. Westow, 2 vols. (New York: Association Press, 1960), I: 116.

80. In his monumental study of the Radical Reformation, George H. Williams concluded that "almost all of the Radicals [i.e., Radical Reformers] insisted on the utter separation of the church from the state and found in the willingness of the Magisterial Reformers [e.g., Martin Luther, Huldreich Zwingli, and John Calvin] to use coercive power of princes, kings, and town councilors an aberration from apostolic Christianity no less grievous than papal

liberty were predicated upon the uncoerced response to the gospel. This, they held, was essential for the *esse* of the true church. Thus, the use of coercion in religion was opposed. "A Turk or a heretic," Balthasar Hubmaier wrote, "is not convinced by our act, either by the sword or with fire, but only with patience and prayer; and so we should await with patience the judgment of God."<sup>81</sup>

Writing a century later in England, in a book which boldly set forth for the first time in the English language the right of universal religious liberty, Thomas Helwys argued that the nature of religion removed it from the jurisdiction of the civil ruler:

Our Lord the King is but an earthly King, and he hath no authority as a King, but in earthly causes, and if the Kings people be obedient & true subjects, obeying all humane lawes made by the King, our Lord the King can require no more: for men's religion to God, is betwixt God and themselves; the King shall not answer for it, neither may the King be jugd betwene God and Man. Let them be heretikes, Turks, Jewes, or whatsoever it apperteynes not to the earthly power to punish them in the least measure.<sup>82</sup>

Similarly, a few years later, Leonard Busher of England wrote also in opposition to the use of temporal power in religion: "It is not only unmerciful, but unnatural and abominable, yea, monstrous, for one Christian to vex and destroy another for difference and questions of religion."<sup>83</sup>

The voluntariness of religious faith has come to be increasingly recognized in contemporary thought.<sup>84</sup> Reaffirmation of the voluntary character of religion has been clearly affirmed, for example, in twentieth-century Christian ecumenical thought. The World Council of Churches has on various occasions seen religious liberty as integral to the nature of religion and religious faith. "God's redemptive dealing with men is not coercive. Accordingly, human attempts by legal enactment or by pressure of social custom to coerce or eliminate faith are violations of the fundamental ways of God with men. The freedom which God has given . . . implies a free response to God's love. . . ."<sup>85</sup>

pretensions"; see Williams's *The Radical Reformation* (Philadelphia, Pa.: The Westminster Press, 1962), 860.

81. Henry C. Vedder, *Balthasar Hubmaier* (New York: G. P. Putnam's Sons, 1905), 86; see also Article 16 of "On Heretics and Those Who Burn Them," in *Balthasar Hubmaier: Theologian of Anabaptism*, trans. and ed. H. Wayne Pipkin and John H. Yoder (Scottsdale, Penn.: Herald Press, 1989), 62.

82. Thomas Helwys, *A Short Declaration of the Mistery of Iniquity*, fac. reprint ed. (London: Kingsgate Press, 1935), 69.

83. *Religious Peace or a Plea for Liberty of Conscience*; quoted in Anson Phelps Stokes, *Church and State in the United States*, 3 vols. (New York: Harper and Brothers, 1950), 1113.

84. See James E. Wood, Jr., "Religious Liberty in Ecumenical and International Perspective," *Journal of Church and State* 10 (Autumn 1968): 421-36.

85. "Statement on Religious Liberty," in *The New Delhi Report: The Third Assembly of the World Council of Churches, 1961* (New York: Association Press, 1962), 159.

In the words of Vatican II, "God calls men to serve him in spirit and in truth; hence they are bound in conscience, but they stand under no compulsion."<sup>86</sup>

The heart of the matter is that for religion to be authentic, it must be a voluntary, personal, and free act, and membership in a faith community is one of voluntary association. Faith is not faith if its voluntary character is abridged by coercion. As Augustin Leonard, a Catholic theologian, wrote, "An imposed faith is a contradiction in terms . . . faith must be free if it is not to destroy itself."<sup>87</sup> Recognition of religious liberty is fundamental to religious human rights and, indeed, to all other human rights. In the words of the late A. F. Carrillo de Albornoz, for some years the Secretary of the Secretariat on Religious Liberty of the World Council of Churches, "No intellectual ingenuity, no organized institution, no kind of compulsion and no power of persuasion can change the fact that God deals with men as free and responsible beings and that he expects from them an uncoerced response."<sup>88</sup> Or, as Albert Hartmann expressed it, "A person's one and only means of learning God's will is the voice of one's conscience."<sup>89</sup> The right to religious identity and to a personal religious faith, including association with others of like faith, requires voluntariness. Religious human rights are thereby undermined and vitiated whenever any form of external coercion is superimposed on the individual.

#### V. RELIGIOUS LIBERTY: THE CORNERSTONE OF ALL CIVIL LIBERTIES AND A DEMOCRATIC STATE

The principle of religious liberty may well lay claim to its being the foundation of all civil liberties and a democratic state. The concept of religious liberty was the inevitable result of a way of thinking about the nature of religion, the nature of the human person, and the nature of the state. By "religious liberty" is meant the inherent right of a person to profess or not to profess a religious faith; to worship or not to worship, in public or in private, according to one's own conscience, understanding, or preferences; to witness to or to propagate one's faith

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86. *De Libertate Religiosa: A Declaration of Religious Freedom*; see *The Documents of Vatican II: All Sixteen Official Texts Promulgated by the Ecumenical Council, 1963-1965*, ed. Walter M. Abbott, S.J. and trans. Joseph Gallagher (New York: Guild Press, 1966), 690.

87. Augustin Leonard, "Freedom of Faith and Civil Toleration," in *Tolerance and the Catholic* (New York: Sheed and Ward, 1955), 113.

88. A. F. Carrillo de Albornoz, *The Basis of Religious Liberty* (New York: Association Press, 1963), 74.

89. Albert Hartmann, *Toleranz und Christlicher Glaube* (Frankfurt-am-Main: Knecht, 1955), 5.

or beliefs; to join in association with others of like faith or beliefs; and to change one's religious identity or beliefs. In the words of Lord Acton more than a century ago, "Religious liberty . . . is possible only where the co-existence of different religions is admitted, with an equal right to govern themselves according to their own equal principles."<sup>90</sup> To express it in somewhat more restrictive terms, as noted earlier, religious liberty requires the absence of discrimination based on one's religion or belief, namely the equality of all religions, as well as irreligion, before the law, and that, according to the law, a citizen neither enjoys advantages nor suffers disadvantages because of one's religion or beliefs.<sup>91</sup>

Recognition of freedom of religion and conscience is integrally related to all other civil liberties and to the maintenance of a free and democratic state.<sup>92</sup> This relationship arises from the sanctity or intrinsic worth ascribed to the human person (even when personhood is defined in radically different ways as in the various religious traditions), which ultimately form the basis of all human freedom. It is the sanctity or intrinsic worth of the person, whether explicitly acknowledged or not, that forms the basis of democracy and constitutional government in which the concept of human rights is accepted as inalienable and, therefore, as binding on government. Each human being has juridical rights because he or she possesses certain inalienable moral rights as a person. And basic to all human rights are religious rights, without the guarantee of which all other human rights are in peril.

It was the principle of religious liberty that gave birth in the New World to the founding of "the first secular state of modern times."<sup>93</sup> As the founder of Rhode Island, Roger Williams insisted that the authority of the state is "not religious, Christian, etc., but natural, human [and] civil," and therefore it is "improper" in proscribing conscience or religious matters. "All lawful magistrates in the world both before the

90. Emerich and Dalberg-Acton, *The History of Freedom and Other Essays*, 152.

91. This principle was explicitly affirmed by the United Nations in Its General Assembly Resolution on the Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief, G.A. Res. 36/55, U.N. GAOR. 36th Sess., Agenda Item 75, U.N. Dec. A/Res/36/35 (1981), which was adopted by unanimous consent by the U.N. General Assembly on 28 November 1981.

92. There are those who argue that the very concept of civil liberty, like all human rights, is "ineliminably religious." See Michael J. Perry, "The Idea of Human Rights: Is the Idea of Human Rights Ineliminably Religious?," in *Problems and Conflicts Between Law and Morality in a Free Society*, ed. James E. Wood, Jr. and Derek H. Davis (Waco, Tex.: Baylor University, Institute of Church-State Studies, 1994), 55-116. In the words of Perry, "If the conviction that every human being is sacred is inescapably religious, it follows that the idea of human rights is ineliminably religious, because the conviction is an essential, even foundational, constituent of the idea"; *ibid.*, 79.

93. Carl Bridenbaugh, *Fat Mutton and Liberty of Conscience Society in Rhode Island, 1636-1690* (Providence, R.I.: Brown University Press, 1974), 5.

coming of Christ Jesus and since," Williams wrote, "are but derivatives and agents . . . serving for the good of the whole."<sup>94</sup> Williams's close associate, John Clarke, who having petitioned Charles II in 1662 for a charter for Rhode Island and therefore is generally credited with being the "Father of Rhode Island," argued that "a most flourishing civil state may stand, yea, and best be maintained . . . with full liberty in religious concernments."<sup>95</sup> The ratification of the religion clauses of the First Amendment more than a century later would come to be widely regarded as constituting the cornerstone of the American Bill of Rights.

Today, it is widely conceded that freedom of religion is a basic civil liberty or human right. Therefore, it should not be surprising that virtually all types of governments throughout the world, even the most totalitarian, profess to be democratic republics, and at least make the claim of their giving legal recognition to freedom of religion. It may well be said that freedom of religion has become a normative constitutional principle for virtually all modern nation-states throughout the world.

While there is a sense in which all civil liberties, as with all human rights, both individual and social, may be said to be indivisible, religious liberty constitutes the cornerstone of all other civil liberties and all human rights. This is not in any way intended to diminish the critical role to be played on behalf of economic and social rights, as well as civil and political rights, in the overall struggle for human rights, for all human rights are inextricably interrelated. Rather, what is being argued here is that freedom of religion and conscience is fundamental and integral to the advancement of all other human rights because of their final grounding in the nature and sacredness of the human person. For this reason, as is increasingly affirmed in modern jurisprudence and in much Christian ecumenical thought, freedom of religion and conscience is the cornerstone of all civil liberties. As Franklin I. Gamwell has written in this regard, the principle of religious freedom "cannot be merely one constitutional principle among others; all implications taken into account, it is the only constitutional principle. One may even say that religious freedom is the constitution, in the sense that other constitutional prescriptions are, properly speaking, stipulations necessary to the full and free political discourse that religious freedom constitutes."<sup>96</sup>

On numerous occasions since World War II, ecumenical

94. Roger Williams, *The Bloudy Tenent, of Persecution for cause of Conscience, discussed in A Conference between Truth and Peace* (1644); see vol. 3 of *The Complete Writings of Roger Williams*, 7 vols. (New York: Russell and Russell, Inc., 1963).

95. Stokes, *Church and State in the United States*, 1: 205 (quoting records of the Colony of Rhode Island and Providence Plantations).

96. Franklin I. Gamwell, *The Meaning of the Religious Freedom: Modern Politics and the Democratic Resolution* (Albany, N.Y.: State University Press of New York, 1995), 162.

conferences, including those held even outside the West, have affirmed that “the most fundamental freedom is religious freedom.”<sup>97</sup> For many reasons, too numerous to be expanded upon here, freedom of religion and conscience is the foundation of all other freedoms, and is fundamentally interrelated to all other civil liberties. In the words of the World Council of Churches, “Religious freedom is the condition and guardian of all true freedom.”<sup>98</sup> Without freedom of religion, freedom of speech, freedom of press, freedom of assembly, and freedom of association are all endangered. Without recognition of freedom of religion and conscience, the very right of dissent is seriously threatened, if not denied. In the words of Charles Evans Hughes, a former Chief Justice of the United States Supreme Court, “When we lose the right to be different, we lose the right to be free.”<sup>99</sup>

Respect for religious human rights is profoundly important in the state’s regard for other human rights and its view of the worth of its individual citizens. Indeed, by respecting religious rights, the state is giving substantive expression to its regard for the dignity and worth of its citizens. Such recognition is not only an acknowledgment of the state’s limited political authority, as over against the claims of the totalitarian state, but is quite likely to result in giving far greater recognition to other human rights, both civil and political, and economic and social. It is entirely reasonable to argue, again in the words of the late A. F. Carrillo de Albornoz, that

respect for the highest values or loyalties of man (which are the religious ones) will be the final “test” and also the best guarantee of the respect for all other human values. If, for instance, a totalitarian state does not recognize even the most sacred sphere of religion and the most intimate human autonomy, it will most probably not stop before other less important values and less intimate spheres. In this sense it seems perfectly correct to affirm that, if society does not respect religion and its liberty, one does not have any security that the rest will be respected.<sup>100</sup>

With the adoption by the United Nations of the “Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief,” the United Nations went out of its way to note that such discrimination must be regarded not only as an “affront” to human dignity, but also a “disavowal” of the very principles of the Charter of the United Nations and a violation of the other freedoms guaranteed in the Universal Declaration of Human Rights. Religious rights are not only individual, but also corporate and social, since they must include the right of religious association and the free exercise of

97. A. F. Carrillo de Albornoz, *The Basis of Religious Liberty* (New York: Association Press, 1963), 27-41; quoting the Eastern Asia Conference, Bangkok, 1949.

98. “Statement on Religious Liberty,” Minutes and Reports, Central Committee of the World Council of Churches (Chicester, Great Britain, 1949), 15.

99. Quoted in Stokes, *Church and State in the United States*, 2: 462.

100. Carrillo de Albornoz, *The Basis of Religious Liberty*, 41.

religion within a social context. In sum, recognition of freedom of religion and conscience is the cornerstone of all human rights—civil, economic, and social—and quintessential for the emergence of a free and democratic state in which respect for both individual and social rights for all are assured. Clearly, the issue of religious human rights is one of the great and most urgent challenges facing the world today.

It was noted earlier that legal recognition of freedom of religion and conscience has increasingly become an international necessity within the family of nations. As Wilfred Cantwell Smith wrote, "Unless men can learn to understand and to be loyal to each other across religious frontiers, unless . . . [men] can build a world in which people of profoundly different faiths can live together and work together, then the prospects for our planet's future are not bright."<sup>101</sup> In the present age of increasing religious encounter, recognition of religious human rights, both by governments and religions, is not only a moral imperative but also a practical necessity for the creation of a world community and possibly the survival of the human family.

#### CONCLUSION

The issue of religious human rights is one of growing significance in today's world. The growth of religious pluralism is worldwide and constitutes one of the major challenges facing all of the religions of the world today. The increasing presence of multiple faiths in secular societies makes religious isolation impossible and interfaith encounters inevitable. The worldwide distribution of communities of virtually all of the major religious traditions exacerbates the concern of all religions for guarantees of religious liberty and the protection of the religious rights of their own adherents and thereby for religious minorities generally.

The particular plea of this essay is that the call for the recognition of religious human rights in the world community needs to be sounded by the religions themselves as well as by instruments of national and international law. The international dimension of the major world religions holds the promise of effecting important gains not only for the advancement of religious human rights, but also for genuine interfaith dialogue and collaboration on behalf of religious freedom and the building of a world community. Freedom of religion and conscience is not only a moral imperative worthy of universal support of nation-states and religions around the world, it also needs to be seen as essential for the emergence of civil liberty and the creation of a world community

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101. Wilfred Cantwell Smith, "The Christian in a Religiously Plural World," in *Christianity and Other Religions*, ed. John Hick and Brian Hebblethwaite (Philadelphia, Pa.: Fortress Press, 1980), 95.

and may well prove to be crucial to the survival of the human family.

It is to be fervently hoped that the words of the Charter of Paris for a New Europe, signed by thirty-four member nations of the Helsinki Final Act, in which religious freedom and other fundamental freedoms are made “the birthright of all human beings . . . inalienable, guaranteed by law” may become realized throughout the world.<sup>102</sup>

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102. “Charter of Paris for a New Europe,” *A New Era of Democracy, Peace and Unity*, 21 November 1990, 30 I.L.M. 193 (1990).

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