

## Religious Freedom and Democracy

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DOI: 10.56201/ijrcp.v8.no3.2023.pg56.67

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### Abstract

*A convention of democracy is that government should promote the common good. Citizens' common good is based on their shared civil interests, including the security of themselves and their possessions, equal basic liberties, diverse opportunities, and an adequate social minimum. Citizens' civil interests ground what John Rawls calls "the political values of justice and public reason." These political values determine the political legitimacy of laws and the political constitution and provide the proper bases for voting, public discussion, and political justification. These political values similarly provide the terms to properly understand the separation of church and state, freedom of conscience, and free exercise of religion. It is not the proper role of government to promote religious doctrines or practices or to enforce moral requirements of religion. For government to enforce or even endorse the imperatives or ends of religion violates individuals' freedom and equality: it encroaches upon their liberty of conscience and freedom to pursue their conceptions of the good; impairs their equal civic status; and undermines their equal political rights as free and equal citizens.*

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**Keywords:** *religious freedom, democracy, citizens' common good, political values, political rights*

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### Introduction

The common good must be promoted by government, according to the democratic constitution. Common civic interests, such as personal and property security, equality of fundamental freedoms, variety of opportunities, and sufficient social minimums, form the foundation of the common good of the people. John Rawls refers to the civic interests of citizens as "the political values of justice and axiom." These political principles establish the proper foundation for voting, public discourse, and political legitimacy. They also determine the political legitimacy of laws and political constitutions. The principles of the separation of church and state, freedom of conscience, and the unrestricted practice of religion are also provided by these political values.

It is not the proper function of government to promote the teachings and practices of a religion or to enforce the moral requirements of a religion. When a government enforces or supports the commandments and goals of a religion, it violates individual freedom and equality. Government impedes freedom of conscience and the freedom to pursue ideas of good affect their equal civil

status and undermines our equal political rights as free and equal citizens. Lamentably, democracy is in decline around the world and all civil liberties are under crossfire.<sup>1</sup> The freedoms of expression and religion, the touchstones of democracy, are also being threatened. It must be understood that religious freedom and democracy are inseparable.

## **I. Religious Freedom**

It should be the right of every citizen to practice their religion according to their conscience. The freedom of religion encompasses the following: the ability to worship publicly or privately, alone or in groups, and the ability to observe, practice, and impart religious knowledge without fear of retaliation from the state or other social groups. Everybody has the right to create and uphold locations for these uses as well as the right to worship and gather in accordance with a religion or belief. Religious freedom is not established or bestowed by the state, as other fundamental human rights are, but it is something that every state ought to defend. Constitutions of democracies contain provisions guaranteeing religious freedom. While many democracies may opt to acknowledge a formal division of church and state, there is no intrinsic conflict between the principles of governance and religion. Democracies may compel houses of worship and religious organizations to register for administrative or tax purposes, but they normally do not establish governmental agencies or other official authorities to control religious issues. Governments that guarantee everyone's right to practice their religion are more likely to uphold other rights that are essential to that freedom, such as the freedom of assembly and speech.

## **II. Public Reason, Democracy and Religion Freedom.**

Reasonable people in the constitutional democracy of Nigeria largely agree on the basic significance of religious and conscience freedom as well as the obligation of democratic societies to tolerate a diversity of moral, philosophical, and religious beliefs. Divergences in opinions on these matters typically center on whether religious practices and beliefs merit extra safeguards over philosophical and non-religious moral practices and beliefs. And if special protections for religious freedom are warranted, does that extend to the provision of political support and public support for religious symbols and practices, such as prayer in public schools?

The claim that religion has a legitimate place in public political life and that religious reasons are legitimate reasons for political decisions is often justified by appealing to the democratic sentiments of the majority. If members of a religiously homogeneous community support prayer

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<sup>1</sup> See LARRY DIAMOND, *THE SPIRIT OF DEMOCRACY: THE STRUGGLE TO BUILD FREE SOCIETIES THROUGHOUT THE WORLD* 56–87 (2008) (discussing generally the global “democratic recession” that commenced in 1999 and continuing today, and highlighting a number of swing states that impact this trend such as China, India, and Russia); see also BRIAN J. GRIMM & ROGER FINKE, *THE PRICE OF FREEDOM DENIED: RELIGIOUS PERSECUTION AND CONFLICT IN THE TWENTYFIRST CENTURY* 83–84 (2011) (presenting the increasing trend from 2001 to 2007 of social and governmental restriction on religion and arguing that in many of these countries, religion is viewed as a political threat).

in public schools, why is it not allowed unless children are forced to participate? Few would accept teaching atheism in public schools, even if it received majority support on the grounds that it would infringe on the freedoms of children. This means that political debates over official religious symbols and practices are not motivated by political values, but rather by a belief in the greater importance of religion than non-religion. The position is in tension with the liberal justification for liberty of conscience and tolerance of diverse views and ways of living, which assumes that conscientious religious convictions and conduct are not exceptional or deserving of greater political protection and endorsement than are non-religious philosophical and moral convictions and conduct.

Is majoritarian democratic support legal enforcement of religious morality—such as religious opposition to rights of abortion and contraception, or laws declaring fertilized eggs legal persons from the moment of conception—compatible with the First Amendment non-establishment clause and free exercise clause of Nigeria. Constitution and freedom of individual conscience? Similar questions are raised by a government’s endorsement of religious beliefs and symbols of religion. State endorsement of Christianity or religion in general calls into question the political equality of those who reject it. Even if state endorsement of religion or religious symbols and practices does not involve coercive interference with individual conscience, it can jeopardize or diminish the equal civic standing of nonbelievers. State endorsement of religion dilutes nonbelievers’ equal rights of -political participation and their claims to a political justification of laws and public policies on terms they can accept as free and equal democratic citizens.

These authors believe that these and related issues regarding freedom of conscience and religion, political equality, separation of church and state, and special support and consideration for religion justify political action in the light of John Rawls's "political values" these authors would argue that it depends on whether you can do it or not. This is sometimes called “justice and public reason” or simply "public reason"<sup>2</sup>. To explain the idea of political justification through public reason, these authors begin with some remarks on the theme of liberal neutrality between religion and political values of constitutional democracy.

The purpose of these authors is to clarify the idea of democratic public reason and explain its relevance to questions regarding the appropriate role of religion role in political decisions and public life in a free constitutional democracy.

### **III. Contemporary Trends in Religious Freedom and Democracy**

Today, the most significant international human rights treaties and the constitutions of many democracies uphold religious freedom as a fundamental human right. As a result, it is more than just a natural right and is not conferred by law. Without it, societal harmony and the peaceful

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<sup>2</sup> AldirGuedes Soriano, *Direito à LiberdadeReligiosasob a Perspectiva da DemocraciaLiberal* [Right to Religious Freedom Under the Perceptive of the Liberal Democracy], in *DIREITO À LIBERDADE RELIGIOSA: DESAFIOS E PERSPECTIVAS PARA O SÉCULO XXI* [RIGHT TO RELIGIOUS FREEDOM: CHALLENGERS AND PERSPECTIVES IN THE 21ST CENTURY] 165 (2009). For examples of constitutions with human rights provisions, please see infra note 44 and accompanying text. For examples of human rights treatises, please see infra notes 18–22 and accompanying text.

coexistence of the many religious manifestations that already exist in society—including those of atheists and agnostics—would not be viable outcomes<sup>3</sup>. The general state of religious rights in many democracies and even non-democracies is concerning, despite the fact that these rights are recognized in significant international human rights treaties and national constitutions.

All religious groups, including the Baha'i in Iran, the Ahmadis in Pakistan, the Buddhists in China and Tibet, the Falun Gong adherents in China, and the Christians in Saudi Arabia, are subject to religious persecution, according to Paul Marshall<sup>4</sup>. Apart from these religious communities, atheists and agnostics may also suffer persecution. For instance, it is illegal to be an atheist in Indonesia<sup>5</sup>. In Saudi Arabia, a person who declares himself to be an atheist may be executed for apostasy.<sup>6</sup> But the people who face persecution the most frequently are Christians<sup>7</sup>. At least two hundred million Christians were thought to be subjected to religious persecution, discrimination, or tyranny in more than sixty nations in 1997, according to Marshall's estimation.<sup>8</sup> Many Christians still face prejudice, persecution, imprisonment, execution, beheading, hanging, martyrdom, or torture in order to end their lives due to their faith<sup>9</sup>.

According to research reports, the most egregious persecutions and violations of the right to religious freedom are spread over the Eastern and Near East countries (North Africa and the Arabian Peninsula of Asia)<sup>10</sup>. Indeed, there are terrible religious persecutions in many countries located in the “10/40 Window”<sup>11</sup>. The situation is markedly better in democratic countries of the

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<sup>3</sup> Basically, atheists do not believe in God, while agnostics doubt his existence but admit a chance of the possibility of his existence.

<sup>4</sup> See Paul Marshall, *The Current State of Religious Freedom*, in *RELIGIOUS FREEDOM IN THE WORLD* 18, 18–25 (2000).

<sup>5</sup> See Paul Marshall, *Country Profiles: Indonesia*, in *RELIGIOUS FREEDOM IN THE WORLD* 161, 164 (2000).

<sup>6</sup> See Paul Marshall, *Country Profiles: Saudi Arabia*, in *RELIGIOUS FREEDOM IN THE WORLD* 265, 266 (2000) (explaining that anyone who converts from Islam faces the death penalty for apostasy).

<sup>7</sup> See DAVID B. BARRETT & TODD M. JOHNSON, *WORLD CHRISTIAN TRENDS*, AD 30–AD

<sup>8</sup> See PAUL MARSHALL & LELA GILBERT, *THEIR BLOOD CRIES OUT* 225 (1997).

<sup>9</sup> See THE PEW FORUM ON RELIGION & PUB. LIFE, PEW RESEARCH CTR., *RISING TIDE OF RESTRICTIONS ON RELIGION* 22–24 (2012), available at

<http://www.pewforum.org/uploadedFiles/Topics/Issues/Government/RisingTideofRestrictions-fullreport.pdf> (showing that in 2010 Christians were being harassed in 111 different countries, more than any other religion).

<sup>10</sup> See ARCH PUDDINGTON, *FREEDOM HOUSE, FREEDOM IN THE WORLD 2013: DEMOCRATIC BREAKTHROUGHS IN THE BALANCE* 4–5, 7–8 (2013), available at [http://www.freedomhouse.org/sites/default/files/FIW%202013%20Booklet%20-%20for%20Web\\_0.pdf](http://www.freedomhouse.org/sites/default/files/FIW%202013%20Booklet%20-%20for%20Web_0.pdf) (acknowledging relative success of developing democratic ideals in these regions of the world, but identifying a number of countries that are still “Not Free” or “Partly Free” only).

<sup>11</sup> The “10/40 Window” refers to the parts of the Eastern Hemisphere, as well as the European and African part of the Western Hemisphere, that are located between ten and forty degrees north of the equator. See Elizabeth McAlister, *Globalization and the Religious Production of Space*, 44 *J. FOR THE SCI. STUDY OF RELIGION* 249, 252 (2005) (explaining this point). For an empirical presentation of current trends towards religious freedom in this area of the world, see THE PEW FORUM ON RELIGION & PUB. LIFE, PEW RESEARCH CTR., *supra* note 9.

Western world<sup>12</sup>. As Marshall observed, of the twenty nations considered “not free,” twelve are Muslim-majority countries (Iran, Iraq, Maldives, Saudi Arabia, Sudan, Turkmenistan, Uzbekistan, Afghanistan, Bangladesh, Mauritania, Pakistan, and Palestine).<sup>13</sup> Of these twenty countries,

Harassment was defined as physical assaults, arrests and detentions, the discretion of holy sites, discrimination against religious groups in employment or education or housing. Additionally, it can be assumed that five of them—China, North Korea, Cuba, Vietnam, and China-Tibet—have anti-democratic inclinations and have routinely imposed restrictions on the freedom of expression and religion<sup>13</sup>. Therefore, the conditions for the enjoyment of religiously connected public rights are better in democratic and Christian states in the West. However, non-democratic nations are well known for gravely violating and persecuting freedom of belief.

According to Robert F. Drinan, “The 172 countries participating in the 1993 United Nations World Conference on Human Rights in Vienna echoed and reinforced the declarations of world law supporting religious freedom”<sup>14</sup>, such as the International Covenant on Civil and Political Rights of 1966<sup>15</sup>. This same conference established the proposition of universality of human rights against cultural relativism<sup>16</sup>. Furthermore, according to the 1993 Vienna Declaration, “all human rights are universal, indivisible, interdependent and intimately linked<sup>17</sup>. So, in theory, religious freedom is a transnational right that must be respected equally, regardless of national culture.

The debates surrounding Article 18 of the International Covenant on Civil and Political Rights of 1966<sup>18</sup> and the 1981 Declaration on the Elimination of All Forms of Intolerance and of

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<sup>12</sup> See THE PEW FORUM ON RELIGION & PUB. LIFE, PEW RESEARCH CTR., *supra* note 9, at 28–29 (showing that Western countries experience less social hostility towards religion than their Eastern counterparts). <sup>13</sup> Paul Marshall, *The Current State of Religious Freedom*, in RELIGIOUS FREEDOM IN THE WORLD 18, 18–28 (2000). See also THE PEW FORUM ON RELIGION & PUB. LIFE, PEW RESEARCH CTR., *supra* note 9, at 11 (listing Iraq, Saudi Arabia, Afghanistan, Bangladesh, Pakistan, and Iran)

<sup>13</sup> See *id.* at 19–20 (noting that China, Tibet, North Korea, and Vietnam are dominated by communist powers and also score low in religious freedom tests).

<sup>14</sup> ROBERT F. DRINAN, *CAN GOD AND CAESAR COEXIST?: BALANCING RELIGIOUS FREEDOM AND INTERNATIONAL LAW* 6 (2004).

<sup>15</sup> See International Covenant on Civil and Political Rights art. 18, Dec. 19, 1966, 999 U.N.T.S. 171 (entered into force Mar. 23, 1976) (providing that everyone has the right to freedom of thought, conscience, and religion and the right to manifest that belief in worship, observance, practice, and teaching).

<sup>16</sup> World Conference on Human Rights, June 14–25, 1993, Vienna Declaration on Human Rights 1993, ¶ 2, U.N. Doc. A/CONF.157/24 (Jun. 25, 1993) (stating that all people have the right of self-determination and because of this right, individuals may pursue their own economic, social, and cultural development).

<sup>17</sup> . *Id.* ¶ 5.

<sup>18</sup> See MALCOLM D. EVANS, *RELIGIOUS LIBERTY AND INTERNATIONAL LAW IN EUROPE* 194–226 (James Crawford et al. eds., 1997) (explaining that the controversy generally included the appropriate scope of the right of religious freedom). A major provision of contention in regards to Article 18 was whether to include the right to change one’s religion. *Id.* at 201–02, 221.

Discrimination Based on Religion or Belief also touched on the controversy surrounding the universality of human rights as proclaimed in the 1948 Universal Declaration of Human Rights<sup>19</sup>.  
20 The concept of cultural relativism is being used to defend discrimination and even the persecution of religious minorities by government agencies, notwithstanding the agreement reached at the Vienna Conference in 1993<sup>20</sup>. Therefore, in the twenty-first century, cultural relativism about the universality of human rights still poses a threat to international law.

The 1968 Tehran Conference and the 1993 Vienna Conference [World Conference on Human Rights], according to Cançado Trindade, "are, in fact, part of a lengthy process of constructing a universal culture of observing human rights"<sup>21</sup>. But this is a long process that might not work in some situations. For example, Littman contends that the Cairo Declaration on Human Rights in Islam, which was adopted in 1990, makes it very evident that Shari'a, or Islamic law, should govern human rights rather than Islamic law that recognizes globally recognized human rights<sup>20</sup>.

It should be mentioned, incidentally, that public freedoms have been notoriously reduced in thirty-eight countries, and that democracy has been steadily declining worldwide<sup>22</sup>. The 2013 Freedom House report notes that despite recent political upheavals in the Middle East and Northern Africa, progress made toward achieving. (Robert Spencer ed., 2005) saying that a criticism of the Universal Declaration of Human Rights comes from countries like China, India, Iran, Pakistan, and Saudi Arabia which have ancient legal systems, calling "for human rights to be viewed in the historical and cultural context of each country or civilization".

Freedom in these areas is endangered by opposition from "governments, security forces, ruling families, or religiously based political factions"<sup>23</sup>, some even conclude that the Arab Spring movement gave radicals a chance to impose theocratic forms of administration rather than advancing democracy<sup>24</sup>.

The "democratic recession" is therefore more significant than the "economic recession," political scientist Larry Diamond cautions<sup>25</sup>. Furthermore, Daniel Greenfield noted that "there are fifty-five

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<sup>19</sup> See *id.* at 231 (stating that Article 1 of the 1981 Declaration was closely modeled after Article 18 of the 1966 International Covenant on Civil and Political Rights).

<sup>20</sup> . See David G. Littman, Universal Rights and "Human Rights in Islam," in *THE MYTH OF ISLAMIC TOLERANCE: HOW ISLAMIC LAW TREATS NON-MUSLIMS* 317, 321–22

<sup>21</sup> ANTÔNIO AUGUSTO CANÇADO TRINDADE, *DIREITO INTERNACIONAL EM UM MUNDO EM TRANSFORMAÇÃO [INTERNATIONAL LAW IN A TRANSFORMING WORLD]* 649 (2002).

<sup>22</sup> See DIAMOND, *supra* note 1, at 46–87 (arguing that from 1974 through 2006, twelve countries experienced a political breakdown without any return to democracy as of 2007, such as Sudan, Pakistan, Kyrgyzstan, and Venezuela).

<sup>23</sup> PUDDINGTON, *supra* note 9, at 2.

<sup>24</sup> See JOHN R. BRADLEY, *AFTER THE ARAB SPRING: HOW ISLAMISTS HIJACKED THE MIDDLE EAST REVOLTS* 14–16 (2012).

<sup>25</sup> See DIAMOND, *supra* note 1, at 46–87.

authoritarian regimes and twenty-six complete democracies, with the latter outnumbering the former in population three to one, according to the Economist's Democracy Index"<sup>26</sup>.

#### **IV. Democratic Origin of The Right To Religious Freedom**

The idea of the universality of natural or innate rights was first established by liberals in the Virginia Declaration of Rights, which was written in 1776.<sup>27</sup> Later, the French Declaration of the Rights of Man and of the Citizen of 1789, the United States Declaration of Independence from 1776, the Universal Declaration of Human Rights from 1948, and even the French Declaration of Independence from 1789 all repeated the same theme<sup>28</sup>. In fact, the Universal Declaration of Human Rights' Article 1 1948 Act declared: "All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and must treat each other in a spirit of brotherhood"<sup>29</sup>. Additionally, according to Michael McConnell, the religious freedom clause in the Virginia Declaration of 1776 is recognized as a precursor to the First Amendment to the United States Constitution<sup>30</sup>.

It is interesting to note the concept of religion as a duty to obey the sacred precepts of Virginia Proclamation : This religion, or the duty we owe to our Creator, as well as the manner in which it is carried out, can be governed only by reason intelligence and faith, not by force or violence; and this is why everyone has the same right to religious freedom, in accordance with the precepts of their conscience; and it is the common duty of all to practice tolerance, love and Christian charity towards one another<sup>31</sup>.

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<sup>26</sup> DANIEL GREENFIELD, 10 REASONS TO ABOLISH THE UN 53 (2011). Cf. ECONOMIST INTELLIGENCE UNIT, THE ECONOMIST, DEMOCRACY INDEX 2011: DEMOCRACY UNDER STRESS 2 (2011) (showing that authoritarian regimes outnumber full democracies about 2:1, but that authoritarian regimes are composed of 37.6% percent of the world population whereas full democracies include only 11.3%).

<sup>27</sup> See FORREST CHURCH, THE SEPARATION OF CHURCH AND STATE: WRITINGS ON A FUNDAMENTAL FREEDOM BY AMERICA'S FOUNDERS 26–28 (2004) (explaining that the Virginia state delegates drafted a declaration of rights that stood as a model for the twelve other colonies); see also PAUL JOHNSON, A HISTORY OF THE AMERICAN PEOPLE 195 (Harper Perennial 1999) (1997) (stating that the Virginia Declaration of Rights provided a model for James Madison when he drafted the federal Bill of Rights).

<sup>28</sup> THE FRENCH DECLARATION OF THE RIGHTS OF MAN AND OF THE CITIZEN arts. 1, 4 (Fr. 1789) (arguing that men are born and remain free and equal in rights and that the natural rights of man has no bounds other than to ensure that others enjoy the same right). 32. The Universal Declaration of Human Rights, G.A. Res. 217 (III) A, U.N. Doc. A/RES/217(III), at 71 art. 1 (Dec. 10, 1948) (stating that "[a]ll beings are born free and equal in

<sup>29</sup> The Universal Declaration of Human Rights, G.A. Res. 217 (III) A, U.N. Doc. A/RES/217(III), at 71 art. 1 (Dec. 10, 1948) (stating that "[a]ll beings are born free and equal in dignity and rights").

<sup>30</sup> Michael McConnell, Religious Freedom at a Crossroads, 59 U. CHI. L. REV. 115, 155 (1992).

<sup>31</sup> Virginia Declaration of Rights, ¶ XVI (1776), available at [http://avalon.law.yale.edu/18th\\_century/virginia.asp](http://avalon.law.yale.edu/18th_century/virginia.asp); see also CHURCH, supra note 31, at 26–30 (telling some of the background story behind the drafting of paragraph sixteen of the Virginia Declaration of Rights).

The Judeo-Christian heritage and political liberalism are both evident in the US Declaration of Independence. The concepts that "men are created equal" and "endowed by their Creator with certain unalienable rights" are presented in this most significant document. Therefore, the rights are not gifts from the state, the king, or the government. In contrast, one text states that "governments are instituted among men to secure these rights"<sup>32</sup>.

Thus, safeguarding the human individual and her inalienable rights is the primary goal of the democratic and liberal state. The state is "an instrument in the service of man," as Jacques Maritain once said on the other hand; placing man at the service of this tool, dignity, and rights would be a political perversion<sup>33</sup>. In the end, because the state did not create human rights, it cannot arbitrarily suspend or limit such rights. From an intelligible (natural rights) perspective as well as a philosophical or religious one, rights are intrinsic. Two interconnected pillars or fundamental ideas of liberal democracy are included in the First Amendment of the United States Constitution: the freedom to practice one's religion (the Free-Exercise Clause) and the prohibition against the state establishing any religions (the Non-Establishment Clause). Forty-two significant rulings by Justice Hugo L. Black of the U.S. Supreme Court—*Everson v. Board of Education*<sup>34</sup> and *McCullum v. Board of Education*—canonized the metaphor of the wall of separation<sup>34</sup>. The knowledge that neither the federal government nor the states may form a church emerged from these decisions. Justice Black asserted that the wall ought to be "kept high and impenetrable"<sup>35</sup>.

Currently, a list of fundamental rights—the dogmatic portion of a constitution—is found in most countries' constitutions, guaranteeing citizens the maximum degree of freedom with the fewest constraints still consistent with liberal democracy<sup>36</sup>.

## V. Theoretical Framework

### Philosophical and Legal Foundation of The Right To Religious Freedom

The philosophical and legal foundation of the right to religious freedom may be found by responding to the following question: Why should the state protect the right to religious freedom? Two major theoretical frameworks each attempt to answer this question and establish the

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<sup>32</sup> THE DECLARATION OF INDEPENDENCE para. 2 (U.S. 1776).

<sup>33</sup> *Id.*

<sup>34</sup> 330 U.S. 1, 16 (1947) (stating that the First Amendment was intended to erect a wall of separation between Church and the State and thus, neither state nor federal governments can set up churches, pass laws aiding religion, influence men to choose a particular religion, or participate in the affairs of any religious groups).

<sup>35</sup> *Illinois ex rel. McCollum v. Bd. of Educ.*, 333 U.S. 203, 212 (1948) (arguing "that both the religion and government can best work to achieve their lofty aims if each is left free from the other within its respective sphere" and thus the First Amendment has erected a wall between Church and State).

<sup>36</sup> *Id.*; see also DANIEL DREISBACH, *THOMAS JEFFERSON AND THE WALL OF SEPARATION BETWEEN CHURCH AND STATE* 4–5 (2002) (explaining how Justice Black's gloss on Thomas Jefferson's "wall" metaphor dominates modern political and legal discourse on this subject).



foundation of the right to religious freedom. They are the liberal viewpoint and the anti-liberal viewpoint.

### **A. The Liberal View of Religious Freedom**

In this context, "liberal" often means "less government." The American founding fathers believed that in order to effectively assure the protection of individual freedoms, government power should be subject to checks and balances. Therefore, less government can provide better protection than more. In this article, "liberal" also refers to political liberalism, which holds that governments need to maintain their impartiality in the face of divergent views on what is desirable<sup>37</sup>.

According to the liberal perspective, since every citizen has the right to freedom of religion, the state should uphold that freedom<sup>38</sup>. That is, he is free to choose his religion and to follow the guidance of his conscience, whether it be religious, atheist, or agnostic. But this response to the initial query raises another one: Why should the freedom of choice of the citizen be respected? The idea of human dignity provides the most compelling justification. Because each and every human has inherent dignity and should be treated with respect and regard, the state ought to honor decisions made by individuals. Therefore, the dignity of the human person is the fundamental basis for the right to freedom of religion<sup>38</sup>.

Democracy and political liberalism also help the state by promoting people and economy. Liberal values served as the foundation for the United States of America's prosperity. This country rose to the top of the globe thanks to democracy. Alexis de Tocqueville asserted that religion in America imposed its own boundaries<sup>38</sup>. All things considered, is the liberal position on religious freedom<sup>37</sup> as beneficial to the individual, to the economy and to the state. The liberal perspective also holds that the autonomy of each person's conscience—that is, their freedom of choice—lays the groundwork for religious freedom<sup>39</sup>. As an agnostic, John Garvey believed that a liberal perspective would embrace a wide definition of religion, even going so far as to say that "even disbelief is a kind of religion"<sup>40</sup>. Notably, this point of view—which Garvey refers to as agnostic—expands the definition of religious freedom to include non-believers as well as believers (atheists and agnostics). Stated differently, it safeguards both faith and atheism. Though it may embrace the logical perspective of natural justice, the liberal idea does not, in and of itself, signify a departure from religion. Rather, the freedom of religion is based on what liberal theory refers to as

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<sup>37</sup> See JOHN H. GARVEY, WHAT ARE FREEDOMS FOR? 42–43 (1996) (identifying that some believe freedom of religion is important because it is a way a person exercises autonomy in shaping his life).

<sup>38</sup> On the dignity of the human person, see generally PICO DELLA MIRANDOLA, ON THE DIGNITY OF MAN (Charles Glenn Willis trans., The Bobbs-Merrill Company, Inc. 1965) (1940).

<sup>39</sup> ALEXIS DE TOCQUEVILLE, A DEMOCRACIA NA AMÉRICA, LIVRO II [DEMOCRACY IN AMERICA, VOLUME II] 6 (Eduardo Brandão trans., Martins Fontes 2004). On the United States of America as a pinnacle nation, see generally BEN CARSON, AMERICA THE BEAUTIFUL: REDISCOVERING WHAT MADE THIS NATION GREAT 179–95 (2013).

<sup>40</sup> Id. at 37 (arguing that the free exercise clause of the U.S. Constitution appears to be inconsistent with the idea of autonomy because it seems to favor “choices for religion over choices against religion”).

free will—the individual conscience's right to make their own decisions. John Locke, John Milton, and Voltaire, the French Illuminist, were liberal thinkers who did not entirely reject metaphysics or religion. Because the liberal position draws some inspiration from biblical ideas, it cannot be categorized as agnostic<sup>41</sup>. One of the most essential human rights, according to the liberal tradition, is the freedom of choice<sup>41</sup>. When a citizen is prevented from exercising his or her freedom to select and express their religion through prayer, teaching, or keeping a religious holiday that is in line with their beliefs, that citizen's dignity is diminished.

## **B. The Anti-Liberal View of Religious Freedom**

Here, "anti-liberal" refers to increased government and maybe the state imposing predetermined standards of thought and behavior. Individual liberty is often compromised by increased government. Based on the notion that religion is a positive thing, John Garvey offers an anti-liberal interpretation of religious freedom<sup>41</sup>. Because religion is a "good thing," the state should defend religious freedom, according to Garvey's anti-liberal perspective<sup>42</sup>. However, defending religious freedom against the state merely out of morality creates at least two significant challenges. First, if the state is democratic, secular, and pluralistic, it would have to determine what beliefs are considered religious, which is an unachievable challenge.

Only a theocratic state would be able to define what constitutes "religion"; a secular state is unable to do so. When religion and civil law are combined, this type of definition is feasible. The pretension of arriving at a legal religious notion satisfying the whole gamut of creeds existing in human civilizations is the epitome of utopianism.

Moreover, the anti-liberal thesis—that religion is just a wonderful thing—is axiomatic. Is it reasonable to acknowledge that religion benefits individuals and the state as well if it is so? And which theological doctrine ought a state to embrace? Would it be a combination of all religions or the totality of them? Would the citizen not be shut out of society and the state if he disagreed with the outcome? Answering these important problems with the simple justification that religious freedom is beneficial does not suffice. Furthermore, a person would probably be shunned from society if he came to disagree with the state's stance. The very opposite of religious freedom is this outcome.

It is clear that the anti-liberal notion of religious freedom, in opposition to political liberalism, would allow for the establishment of a single, predetermined moral definition of good. Thus, a

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<sup>41</sup> Such authors did not break with religion. On the contrary, they created a synthesis between religion, reason, and natural right. To Umberto Eco, Illuminism was a heterogeneous movement divided into: 1) the Christian Illuminism of Voltaire, Kant, Newton, and Rousseau, and 2) the Atheistic Illuminism of Marx, Nietzsche, and Freud. UMBERTO ECO, *EM QUE CRÊEM OS QUE NÃO CRÊEM?* [WHAT DO NON-BELIEVERS BELIEVE IN?] 129–34 (10th ed. 2006).

<sup>42</sup> GARVEY, *supra* note 46, at 49–57 (arguing that religious freedom should not be protected in order to preserve autonomy, but that religious freedom should be preserved because religion is inherently good).

conception of religious freedom that is anti-liberal would ultimately curtail the citizen's freedom of choice.

The state would ultimately choose an official religion after defining religion. Because he would be subject to predetermined norms and adhere to a single, moral definition of good, the human being would not have ultimate free will. Such thinking resurrects the medieval conception of religious freedom, which permits freedom within the bounds of the prevailing state religion and obstructs the ability to choose, so restricting human liberty well beyond what is fair. Actually, the anti-liberal interpretation of religious liberty is a return to the religious interpretation of freedom of religion (*libertas ecclesiae*) or to the confessional state<sup>41</sup>. Thus, pluralism, religious variety, and equal rights to religious freedom for all religions and religious organizations are at odds with the anti-liberal trend.

## VI Conclusion

There now exists around the world a marked tendency toward authoritarianism and a reduction in the number of countries that have full democracy<sup>43</sup>. This truly presents a threat to religious freedom and other public freedoms. The future of religious freedom depends on the survival of liberal democracy, which is the substrate that permits the greatest possible freedom with the minimum amount of restriction necessary for peaceful social association.

We live in a world in which the future of religious freedom remains uncertain. Thus, one must ask: what is going to prevail in the future of the world, a model of minimum government or an omnipotent one? A world of free initiative or total governmental economic control? One of democracy or totalitarianism? Of universal human rights or cultural relativism? A world of autonomy of the individual conscience or of the autonomy of the collective conscience? Or, finally, of freedom or oppression?

The consequences of the adoption of the autonomy of the collective consensus or, in other words, the adoption of the anti-liberal conception of religious liberty by the government, would be terrible and may mean an open door for religious persecutions or even mass killings.

Because of the consequences of the adoption of the anti-liberal conception of religious liberty (autonomy of the collective consensus), it is a constitutional duty for all free people to promote the principles and values of political liberalism and of the autonomy of the individual conscience as well.

The future of religious freedom depends, in large part, on what happens to the future of democracy around the world. The Western countries need to remain vigilant. It is important that all democratic

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<sup>43</sup> See ECONOMISTS INTELLIGENCE UNIT, *supra* note 28, at 2–3 (explaining that there has been a “decline in democracy across the world in recent years” and that over the past five years there has been a backslide on previously attained democratization); see also DIAMOND, *supra* note 1, at 59–64 (discussing the breakdowns in democracy since 1999).

nations preserve the best of what they have—the principles and values of political liberalism, which is also a Judaic-Christian legacy.

These principles are the true antidotes for tyranny and oppression. If Western countries cannot export democracy to “not-free” nations, they have at least the challenge to preserve democracy with the goal to protect their own populations from totalitarian policy and the autonomy of the collective consensus. Freedom of worship of belief and non-belief is an important element of democracy, contributing to social peace, encouraging full political participation, and strengthening pluralism more broadly. Free devout communities can make critical commitments to society, and person inner voice can serve as a final bastion of freedom and a source of extraordinary resolve in profoundly oppressive settings.

## **VII Recommendation:**

Real democracies understand that religious diversity among individuals must be acknowledged and that protecting religious freedom is a fundamental duty of the state, even in situations when a specific religion is officially sanctioned. Therefore, these authors recommend that democracy should:

- not judge what sermons, educational materials, or religious publications say;
- respect parents' authority to decide what their children learn about religion;
- prohibit encouraging violence against others on the basis of religion;
- protect members of linguistic, religious, or ethnic minorities;
- allow people to observe holy days and take part in rest days linked with their religion is important;
- permit interfaith movements to grow as people of different faiths work together to address problems that affect the entire community and seek common ground on a range of issues;
- permit journalists, nonprofit organizations, and representatives of the government and religion to look into claims of religious persecution; and
- respect religious organizations' freedom to engage in and make contributions to civil society, including running faith-based schools, hospitals, and senior care facilities, as well as developing other socially beneficial initiatives.