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Chapter 1

The Right to Freedom of Religion: An Historical Perspective from the West

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Abstract

This chapter traces the history of religious freedom and its abridgement from the earliest biblical and classical sources of the West until today. This chapter highlights a few of the decisive steps, sometimes born of hard and cruel experience, in the development of religious freedom and religion-state relations. It traces religious freedom among the Church Fathers and within the Roman Empire; medieval scholastic theology and canon law; the Protestant Reformation with its Lutheran, Anabaptist, Calvinist, and Anglican branches, and the Catholic Counterreformation; the early modern clashes of religious establishments and religious freedom movements on both sides of the Atlantic; the gradual constitutional protection of liberty of conscience, religious equality, and free exercise of religions during the age of democratic revolutions; and the essential place of religious freedom in the Universal Declaration of Human Rights and its progeny and in the modern teachings of Catholic, Protestant, and Orthodox Christian traditions.

Keywords: Christianity; Catholicism; Orthodoxy; Protestantism; religious freedom; freedom of conscience; church-state relations; establishment of religion; free exercise of religion; constitutional liberty

In its most basic sense, the right to religious freedom is the freedom of individuals and groups to make their own determinations about religious beliefs and to act upon those beliefs peaceably without incurring civil or criminal liabilities. More fully conceived, freedom of religion embraces a number of fundamental principles of individual religious liberty – freedom of conscience,

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exercise, speech, association, worship, diet, dress, and evangelism; freedom from religious discrimination, coercion, and unequal treatment; freedom of religious and moral education; and freedom of religious travel, pilgrimage, and association with coreligionists abroad. It also involves a number of fundamental principles of corporate religious liberty – freedom of religious groups to organize their own polity and leadership; to hold and use corporate property; to define their own creed, cult, confessional community, and code of conduct; to establish institutions of worship, education, charity, and outreach; and to set standards of admission, participation, and discipline for their members and leaders. These are now standard terms of religious freedom in modern international human rights instruments and many national constitutions (Durham and Scharffs, 2019).

The Western legal tradition came to this fuller understanding of "the right to freedom of religion" only after many centuries of hard and cruel experience to the contrary. The phrase "freedom of religion" (*libertas religionis*) emerged in the early third century; the phrase "right to freedom" (*ius libertatis*) emerged in the twelfth. But it took five centuries more for "the right to religious freedom" (*ius libertatis religionis*) to become a common phrase in religious and legal circles, and for the abridgement of this right to trigger a cause of action in court, rather than a reason to flee or revolt. While religious freedom guarantees became more common in treaties and constitutions after the seventeenth century, they were still often honored in the breach by leaders of religious establishments and secular states alike. And while the twentieth century brought powerful major new guarantees of religious freedom in both national and international human rights instruments, vicious religious persecution remains a commonplace of modern life around the globe today, including in many Western lands (Philpott and Shaw, 2018). This chapter highlights a few of the decisive steps in the development of religious freedom and religion-state relations in the Christian West.

First Millennium

In the first three centuries of its existence, the Christian church separated itself from official Roman society and soon became a persecuted minority. Christians refused to acknowledge the divinity of the emperor, as required by Roman law, or to swear the oaths or to join the pagan rituals necessary for participation in Roman civic, political, or military life. Early Christians taught obedience to the political authorities but only up to the limits of Christian conscience, following Jesus's call to "render to Caesar the things that are Caesar's, and to God the things that are God's" (Matt. 22:21). They also sought to expand their faith and reform society, following Jesus's command to "make disciples of all nations, teaching them to observe all that I have commanded you" (Matt. 28:19-20). Both this nonconformity and agitation for reform by Christians brought reprisal from the Roman authorities. By the mid-first century, the Roman authorities began to repress Christians as well as Jews, departing from Rome's usual policy of indifferently tolerating all faiths that remained politically subservient and religiously sequestered. By the end of the first century, Rome declared Christianity to be an "illicit faction" and outlawed Christian worship,

charity, and education, triggering intermittent waves of brutal persecution (Wilken, 2003: 22-23, 31-67, 156-63).

Several early Church leaders protested this oppression. Among the earliest was Tertullian of Carthage (ca. 160-220), a theologian with legal training. He was the first to introduce the term "religious freedom" (*libertas religionis*) into Western Christian thought -- in part as a gloss on the repeated New Testament statements on Christian freedom: "For freedom [*libertas*], Christ has set us free" (Gal. 5:1) "Where the Spirit of the Lord is, there is freedom" (2 Cor. 3:17). You have all been given "the glorious freedom of the children of God" (Rom. 8:21). After decrying Roman persecution of Christians, Tertullian wrote famously: "It is only just and a privilege inherent in human nature that every person should be able to worship according to his own convictions; the religious practice of one person neither harms nor helps another. It is not part of religion to coerce religious practice, for it is by choice not coercion that we should be led to religion." "To take away freedom of religion [*libertas religionis*] and forbid free choice with respect to divine matters" only "fosters irreligion" (Wilken, 2019: 1, 11-13). Leading Church Father Lactantius (220-340) wrote similarly to the emperor: "[I]f you wish to defend religion by bloodshed, and by tortures, and by guilt, it will no longer be defended, but will be polluted and profaned. For nothing is so much a matter of free-will as religion; in which, if the mind of the worshiper is disinclined to it, religion is at once taken away and ceases to exist. The right method is that you defend religion with patience" (Lactantius, 1871, bk. v.20; p. 340).

With the Christian conversion of Constantine in 312, Christians came to enjoy a new measure of religious toleration at Roman law. The so-called "Edict of Milan" (313) for the first time guaranteed to Christians alongside all other faiths "a public and free liberty to practice their religion or cult" and "free permission to follow their own religion and worship as befits the peacefulness of our times." The Edict also recognized the rights of Christian groups to property and places of worship, "which belonged by right to their body—that is, to the churches not to individuals," and the right to restitution of properties confiscated in earlier times of persecution. Such guarantees of individual and group religious rights were granted, the Edict provided, "so that the supreme Divinity, whose religion we obey with free minds, may be able to show in all matters His accustomed favour and benevolence towards us" (Ehler and Morrall, 1954: 3-6).

Had these provisions of the Edict of Milan been fully implemented for Christians *and* all other faiths, Rome would have instituted a regime of religious toleration that the Western tradition would not see again for more than a millennium. Even in Constantine's reign, however, and increasingly thereafter, the Roman emperors moved from a policy of open religious toleration of most peaceable faiths to a policy of increasing preference for Trinitarian Christianity. They also began to persecute "Jews, pagans, apostates, and heretics" who opposed the church's orthodox teachings, subjecting them to the same repressive and bloody measures that Christians had faced before the fourth century. An imperial edict in 380 sealed this shift in policy by legally establishing

Trinitarian Christianity as the official state religion and declaring all other forms of faith as heresies that deserved punishment:

> [T]here is one Godhead, Father, Son, and Holy Spirit, in an equal Majesty and Holy Trinity. We order that those who follow this doctrine to receive the title of Catholic Christians, but others we judge to be mad and raving and worthy of incurring the disgrace of heretical teaching, nor are their assemblies to receive the name of churches. They are to be punished not only by Divine retribution but also by our own measures (Ehler and Morrall, 1954: 7).

This formal state establishment of Trinitarian Christianity brought the Christian Church under both the support and the control of Roman political authorities. On the one hand, Christian clergy and monastics were given special criminal law protections, legal privileges, and financial support to spread the faith, to educate the young, to care for the poor, and to build new churches, monasteries, schools, and charities. Heretics, pagans, and Jews, in turn, were subject to severe repression and legal disability, sometimes matyrdom, which Christian bishops and clergy sometimes led at the behest of the emperor. On the other hand, the Roman emperors declared themselves to be the supreme rulers of both civil and religious affairs in the Empire. They convened the major ecumenical church councils, appointed and removed bishops and other clergy, and chartered and administered churches and monasteries. Numerous imperial laws regulated the internal activities of the church, the lives of its clerics and monks, the acquisition and disposition of church property, and the definition of church doctrine and liturgy. The great compilations of Roman law, the *Theodosian Code* (438) and the *Corpus Iuris Civilis* (529-533) and *Novels* (ca. 565), were filled with new imperial laws that governed the doctrine, liturgy, polity, and property of the established church (Maas, 2005: 161-214).

This new form of church-state relations drew to itself a variety of new theories. The most famous was developed by St. Augustine (354-430), who contrasted the “city of God” with the “city of man” that coexist in earthly life. The city of God consists of all those who are predestined to salvation, bound by the love of God, and devoted to a life of Christian piety, morality, and worship led by the Christian clergy. The city of man consists of all the things of this sinful world, and the political and social institutions that God had created to maintain a modicum of order and peace on the earth. Augustine sometimes depicted this dualism as two walled cities separated from each other. But his more dominant teaching was that, in the Christianized Roman empire, these two cities overlapped in responsibility and membership. Christians would remain dual citizens until these two cities were fully and finally separated on the Return of Christ and at the Last Judgment of God. They remained bound by the sinful habits of the world, even if they aspired to greater purity of the Gospel. Christians remained subject to the power of both cities, even if they aspired to be a citizen of the city of God alone. If the rulers of the city of man favored and

protected orthodox Christians, rather than persecuting them, so much the better. And it was better still if the civil authorities would "compel" recalcitrant and destructive heretics "to come in" (Luke 14:23) and join the true church (Augustine, 1958: bks. 4, 19-21).

It was crucial, however, that the spiritual and temporal powers that prevailed in these two cities remain separate in their core functions. Even though Christianity became the one established religion of the Roman Empire, patronized and protected by the political authorities, Augustine and other Church Fathers insisted that political authorities not intrude upon core spiritual functions. Even the Roman emperors were not ordained clergy but laity. They had no power to administer the sacraments or to mete out religious discipline. They were bound by the teachings of the Bible, the decrees of the ecumenical councils, and the traditions of their predecessors. They also had to accept the church's instruction, judgment, and spiritual discipline. Thus, for example, Ambrose, Bishop of Milan (d. 397), excommunicated the powerful Emperor Theodosius (347-395) for massacring the people of Thessalonica and readmitted him to communion only after he had done public penance for his immoral act. Pope Gelasius I (r. 492-496) put the matter famously in 494 in a letter rebuking Emperor Anastasius (430-518):

> There are, indeed, most august Emperor, two powers by which the world is chiefly ruled: the sacred authority of the Popes and the royal power. Of these the priestly power is the more important, because it has to render account for kings of men themselves at [the Last Judgment]. For you know, our clement son, that although you have the chief place in dignity over the human race, yet you must submit yourself faithfully to those who have charge of Divine things, and look to them for the means of your salvation (Ehler and Morrall, 1954:10-11).

This "two powers" passage became a *locus classicus* for many later theories of religion and state.

This system of tempered imperial or royal rule within the church largely continued in the West after the fall of the Roman Empire in the fifth century. Before their conversion, many of the pagan Germanic rulers were considered to be divine and were the cult leaders as well as the military leaders of their people. Upon their conversion to Christianity, they lost their divinity, yet continued as sacral rulers of the church within their territories. They found in Christianity an important source of authority in their efforts to extend their rule over the diverse peoples that made up their regimes. The clergy not only supported the Germanic Christian kings in the suppression of tribal religions but also looked upon such leaders as the Frankish Emperor Charlemagne (r. 768–814) and the Anglo-Saxon King Alfred (r. 871–899) as their spiritual leaders. Those Germanic rulers who converted to Christianity, in turn, supported the clergy in their struggle against heresies and gave them military protection, political patronage, and material support. Feudal lords within these Germanic domains further patronized by the church, by donating lands and other properties to the church in return for

the power to appoint and control the priests, abbots, and abbesses who occupied these lands (Morrison, 2016: 26-67, 136-64).

The Papal Revolution

This first millennium model of church-state relations was turned upside down in the Papal Revolution. In the name of "freedom of the church" (*libertas ecclesiae*), Pope Gregory VII (r. 1073-1085) and his successors threw off their political and feudal patrons, and declared the Catholic Church itself to be an independent and superior legal and political authority of Western Christendom. In his revolutionary manifesto, *The Dictates of the Pope* (1075), Gregory proclaimed that emperors and kings had no authority over the church, or over its clergy and polity. Only the pope, Gregory declared, had authority to ordain, discipline, depose, and reinstate bishops, to convoke and control church councils, and to establish and administer abbeys and bishoprics. Only the pope had authority "to enact new laws according to the needs of the time" that were universally binding. Only the papal court was "the court of the whole of Christendom" open and available to all Christians. The pope "may depose emperors," and "the pope is the only one whose feet are to be kissed by all princes" (Berman, 1983: 85-119). Such a bold proclamation did not go unchallenged. For more than three generations thereafter, a good deal of Europe was locked in bitter religious and civil war, with the papacy and its supporters ultimately prevailing.

In the twelfth and thirteenth centuries, the church made good on a number of these claims. The papacy and clergy now claimed a vast new jurisdiction, an authority to "declare the law" (*jus dicere*) for Christendom, based on the church's preeminent authority over spiritual and sacramental life. They claimed exclusive personal jurisdiction over clerics, pilgrims, students, heretics, Jews, and Muslims. They claimed subject matter jurisdiction over doctrine, liturgy, patronage, education, charity, inheritance, marriage, oaths, oral promises, and moral crimes. And they claimed concurrent jurisdiction with political authorities over secular subjects that required the church's special forms of Christian equity. A vast body of new church laws, called canon laws, issued by popes, bishops, and church councils came to govern Western Christendom. A vast network of church courts and officials, centralized in Rome, enforced these laws throughout the West. From 1150-1350, the Catholic Church, ironically, was "the first modern state" in the West, and its canon law was the first modern international law (Berman, 1983: 205-254; Tierney, 1982: 30-39).

The medieval canon law developed a refined jurisprudence of rights (*iura*) and liberties (*libertates*), including the right to religious freedom for individuals and groups. The canonists grounded these rights and liberties in natural law, and associated them variously with the capacity (*facultas*) of rational human nature and with the property (*dominium*) of a person or the power (*potestas*) of an office of authority (*officium*). They repeated and expanded the subjective rights and liberties set out already in the texts of Roman law – especially the

private rights and liberties of property, and what Gratian' *Decretum* (ca. 1140) called the "rights of liberty" (*iura libertatis*) enjoyed by persons of various stations in life and offices of authority. The canonists also began to weave these early Roman law texts into a whole complex latticework of what we now call rights, freedoms, powers, immunities, protections, and capacities for different groups and persons (Tierney, 1997: 56-69).

Corporate and individual rights to religious freedom figured prominently in this new legal system. The canon law defined the rights of the clergy to their liturgical offices and ecclesiastical benefices, their exemptions from civil taxes and duties, their immunities from civil prosecution and compulsory testimony. It defined the rights of ecclesiastical organizations like parishes, monasteries, charities, and guilds to form and dissolve, to accept and reject members, to establish order and discipline, to acquire, use, and alienate property. It defined the rights of church councils and synods to participate in the election and discipline of bishops, abbots, and other clergy. It defined the rights of the laity to worship, evangelize, maintain religious symbols, participate in the sacraments, travel on religious pilgrimages, and educate their children. It defined the rights of the poor, widows, and needy to seek solace, succor, and sanctuary within the church. A good deal of the rich latticework of medieval canon law was cast, substantively and procedurally, in the form and language of rights (Tierney, 1997: 43-92; Reid, 1995). These canonical rights formulations had parallels in medieval common law and civil law texts, too. Among sundry other medieval charters of rights, the English Magna Carta of 1215 set out a whole panoply of rights, starting with "the Church of England shall be free [*libera*] and shall have all her whole rights [*iura*] and liberties [*libertates*] inviolable" (Stephenson and Marcham, 1972: 115-27). These medieval charters of rights later became important prototypes for early modern constitutional architects who crafted bills of rights and religious freedom provisions for European and American lands (Griffith-Jones and Hill, 2015: 81-156).

To be sure, medieval rights were not unguided by duties, nor were they available to all parties. Only the Catholic faithful—and, notoriously, not heretics, Jews, Muslims, or Orthodox Christians—had full rights protection at medieval law, and all rights were to be exercised with appropriate moral and sacramental constraints. But Tertullian's opening admonition against religious coercion was oft repeated by medieval writers, even if this ideal was also oft betrayed, especially during the brutality of the crusades, pogroms, and inquisitions. And these canonical rights formulations sparked a whole industry of sophisticated rights talk that would become axiomatic for the Western legal tradition. This included the work of nominalist philosophers like John Duns Scotus (1266-1308) and William of Ockham (1285-1307), political thinkers like Marsilius of Padua (1275-1342), Jean Gerson (1363-1429), and Conrad Summenhart (1455-1502), and sundry Spanish sages gathered at the University of Salamanca (Tierney, 1997: 93-206). This latter group included Francisco de Vitoria (1483-1546) and Bartolomé de las Casas (d. 1566) who made path-breaking advances in defending what they called the universal "natural right of freedom of religion" (*naturale ius libertatis religionis*). Both of them decried the forced baptisms and

conversions of Latin American natives and slaves, and risked much to urge religious and political authorities to guarantee missionaries the freedom to preach the Gospel and natives the freedom to accept or reject that preaching without reprisal (Vitoria, 1991: 231-92, 339-52; Lantigua, 2016:41-59).

In the fourteenth and fifteenth centuries, however, this medieval system of church-state relations and religious freedom began to crumble. Strong monarchs began to increase their control over the church, and clerical authority and religious freedom began to wane—in part because of widespread corruption and division even at the highest levels of church government. In response, the German Emperor Sigismund convoked a series of great church councils that declared their authority over Church polity and canon law, despite papal disapproval. In the Pragmatic Sanction of Bourges (1438) and again in the Concordat of Bologna (1516), French kings banned various papal taxes, limited appeals to Rome, required French bishops to be elected by church councils called by the king, subjected the clergy in France to royal discipline, and increased royal control over church property. In Germany, strong princes and city councils began to pass what they called "legal reformations" that placed limits on church property and taxation, disciplined wayward clergy, and curtailed the jurisdiction of church courts over crime, family, inheritance, and contracts. Fifteenth-century Spanish monarchs subordinated church courts in Spain to the civil courts and took control of the prosecution and execution of heretics, Jews, and Muslims, unleashing the terrifying Spanish Inquisition, which operated in Europe and later in Latin American colonies as well (Witte, 2002: 33-52).

The Protestant Reformation

These late medieval reforms helped fuel the Protestant Reformation. Inaugurated by Martin Luther (1483-1546) in 1517, the Reformation began as a call for "freedom of the Christian" -- freedom of the individual conscience from intrusive canon laws and clerical controls, freedom of political officials from ecclesiastical power and privileges, freedom of the local clergy from central papal rule and taxation. The Reformation soon split into Lutheran, Anabaptist, Calvinist, and Anglican groups living tenuously alongside each other and their Catholic neighbors. Peace treaties like the Peace of Augsburg (1555), Union of Utrecht (1579), Edict of Nantes (1598), and Peace of Westphalia (1648) provided measures of religious toleration for religious minorities. But religious persecution and religious warfare were tragically regular events in early modern Europe, and several Protestant lands created their own harsh religious establishments, despite the Reformation's opening calls for religious freedom.

The Lutheran Reformers of Germany and Scandinavia gave the local Christian magistrate ample new political power over civil and spiritual affairs. Echoing the imperialist ideas of Christianzed Rome, Luther described the magistrate as God's vice-regent in the earthly kingdom, called to elaborate and enforce God's law and to reflect God's justice and judgment for earthly citizens. The Christian magistrate is "a voice of the Ten Commandments," wrote Luther's colleague Philip Melanchthon (1509-1560), "a man holding in one hand the

tables of the Ten Commandments and holding in the other a sword." As custodians of the Decalogue, the magistrate must not only pass laws against idolatry, blasphemy, and violations of the Sabbath that violate the Decalogue on its face. He must also "establish pure doctrine" and right liturgy, "prohibit all wrong doctrine," "punish the obstinate," and root out the heathen and the heterodox (Witte, 2002: 110-113, 130-134).

This was the theoretical basis for the wave of new state establishment laws in Lutheran lands that copiously regulated spiritual life as well as the clergy, polity, property, and finances of the established church. The Peace of Augsburg (1555) and the Peace of Westphalia (1648) confirmed the constitutional principle that each civil ruler was free to establish the religion of his of her own local polity ("*cuius regio eius religio*"). The Peace of Westphalia, however, which finally ended the bloody Thirty Years Wars of religion (1618-1648), also guaranteed "the freedom of religious exercise" to all peaceable Catholic, Lutheran, and Calvinists dissenters within these established religious communities. These religious dissenters were to be free from all violence and from coerced participation in the established forms of faith, and were guaranteed "a free conscience to frequent privately their place of worship" and to educate their children in their own private schools or homes. Over time, they also gained the right to establish their own charities, foundations, and businesses within their neighborhoods, and to get professional licenses for trade, banking, navigation, legal and medical practice, and more. All religious dissenters were also guaranteed the right to move (*ius emigrandi*) across state lines if they could no longer abide the religion or policies of their home territory (Ehler and Morrall, 1954: 164-72, 189-92).

By marked contrast to established Lutheranism, early modern Anabaptists called for the separation of church and state and for religious freedom for all peaceable believers. Echoing apostolic church ideals, various Anabaptists groups -- Amish, Brethren, Hutterites, Mennonites, Baptists, and Free Churches -- ascetically withdrew from civil and political life into small, self-sufficient, open democratic communities. These communities were governed internally by biblical principles of discipleship, simplicity, charity, and non-resistance. They set their own internal standards of worship, liturgy, diet, discipline, dress, and education. They handled their own internal affairs of property, contracts, commerce, marriage, and inheritance – so far as possible by appeal to biblical laws and practices, not those of the state. Recalcitrant sinners and community members who grew violent, destructive, or persistently betrayed the community's ideals were shunned and if necessary banned from the community. Moreover, when Anabaptist communities grew too large or too internally divided, they deliberately colonized themselves, eventually spreading Anabaptists from Russia to Ireland to the furthest frontiers of North America.

The state and its law, most Anabaptists believed, were part of the fallen world, which was to be avoided so far as possible in accordance with biblical injunctions that Christians should not be "of the world" or "conformed" to it (John 15:19; Rom. 12:2). God had built a "wall of separation" (*paries maceriae*)

between the redeemed church and the fallen world, leading theologian Menno Simons (1496-1561) wrote, quoting Ephesians 2:14. God had allowed the world to survive by ordaining magistrates and their positive laws who are empowered to use coercion and violence to maintain a modicum of order and peace. Christians should obey the laws of political authorities, so far as the Bible commanded -- paying their taxes, registering their properties, avoiding theft and homicide, keeping their promises, and testifying truthfully. But Christians should avoid active participation in and unnecessary interaction with the world and the state -- avoiding litigation, oath-swearing, state education, banking, large-scale commerce, trade fairs, public festivals, drinking houses, theaters, games, political office, policing, or military service. Most early modern Anabaptists were pacifists, preferring derision, exile, or death to active participation in war or violence. This aversion to common political and civic activities often earned Anabaptists scorn, reprisal, and repression by Catholics and Protestants alike – violent martyrdom in many instances (Klaassen, 1981: 247-57; Estep 1996).

While unpopular in its genesis, Anabaptism ultimately proved to be a vital source for Western legal arguments for the separation of church and state and for the protection of the civil and religious liberties of a plurality of peaceable faiths. The Anabaptist doctrine of adult, rather than infant, baptism underscored the teaching that each adult was called to make a free conscientious choice to accept the faith -- metaphorically, to scale the wall of separation between the fallen world and the realm of religion to come within the perfect realm of Christ. This metaphor provided a powerful platform for claims of freedom of conscience and free exercise of religion. Diverse leaders within and beyond the Anabaptist world – John Smyth (d. 1612), Roger Williams (ca. 1604-1684), William Penn (1644-1718), Isaac Backus (1724-1806), and others – pressed hard for the absolute religious freedom of the individual to choose, change, or reject religion. State coercion or control of this choice, either directly through persecution and repression or indirectly through withholding civil rights and benefits from those who made unpopular choices, was an offense against God and the individual. A plurality of religions should coexist in the community, and it was for God, not the state or the church, to decide which religion should flourish and which should fade (McLoughlin 1971).

Calvinists scattered throughout Europe and its colonies built on the teachings of Genevan Reformer John Calvin (1509-1564), to chart a course between Lutherans and Anglicans. Like Anabaptists, Calvinists insisted on a basic separation of the offices and operations of church and state, leaving the church to govern its own doctrine and liturgy, polity and property, without interference from the state. Like Lutherans, in turn, Calvinists insisted that each local polity be an overtly Christian commonwealth that adhered to the general principles of natural law and translated them into detailed new positive laws for public, private, and spiritual life. Unlike both groups, however, Calvinists stressed that both church and state officials were to play complementary roles in the creation of the local Christian commonwealth and in the cultivation of the Christian citizen. It was the church's responsibility to teach aspirational spiritual norms, using the tools of spiritual discipline alone. It was the state's

responsibility to enforce mandatory civil norms, using criminal punishment if necessary in dealing with dangerous immorality or recalcitrant heresy (Witte, 2007: 56-80). This latter position led to the infamous execution of Michael Servetus in Geneva in 1553 for publicly critizing the doctrine of the Trinity and refusing to stay away from the city. Calvin and his followers defended the execution as necessary to maintain the morality and integrity of the local Christian republic of Geneva. His critics, notably Sebastian Castellio (1515-1563), decried it. "To kill a man is not to defend a doctrine. It is to kill a man," Castellio charged (Bainton, 1951: 75).

While some early modern Calvinists continued to persecute religious dissenters on both sides of the Atlantic, other Calvinists laid new foundations for Western theories of religious freedom and human rights for all, as they responded to vicious religious persecution that was killing their own coreligionists by the tens of thousands. Christopher Goodman (c. 1530-1603), Theodore Beza (1519-1605), Johannes Althusius (1557-1638), and several others argued that humans have fundamental rights rooted in the Decalogue and other biblical commands. The Decalogue set out not only the natural duties of love owed to God and to neighbors, they argued, but also the complimentary natural rights to discharge these fundamental duties. A person's First Table duties toward God thus supported the rights to the free exercise of religion: the right to honor God and God's name, the right to rest and worship on one's Sabbath, the right to be free from false gods and false oaths. A person's Second Table duties towards others supported the neighbor's fundamental right to have those duties discharged. One person's duties not to kill, to commit adultery, to steal, to bear false witness, or to covet their neighbor's household thus gives rise to another person's rights to life, property, fidelity, reputation, and privacy. Goodman called these "unalienable rights," and Althusius pressed for written constitutions that enumerated these rights and provided procedures for their vindication. John Knox (c. 1514-1572), and others argued further that the persistent and pervasive breach of these "unalienable rights" by a tyrant triggered a further "fundamental right" to resistance and rebellion, even revolution and regicide. (Witte, 2007: 102-42).

Such ideas helped to drive the Protestant revolutions against political tyranny and religious persecution in early modern England, Scotland, France, and the Netherlands. These revolutionaries included strong protection of religious freedom in their demands for the full and free exercise of fundamental rights. A 1584 Dutch pampleteer, for example, wrote presciently: "How is it possible to grant freedom of conscience without exercise of religion?… There is no difference between so-called freedom of conscience without public worship, and the old rigour of the edicts and inquisition of Spain." In England, John Lilburne (1614-1657) and John Milton (1608-1674) advocated liberty of conscience, free exercise of religion, religious pluralism and equality, basic separation of the offices and operations of church and state, and the disestablishment of religion. New England jurist and theologian Nathaniel Ward (1578-1652) issued a 25-page "Body of Liberties" in 1641, including detailed religious freedom provisions, drawing on these Calvinist teachings as well as the

Magna Carta and the later common laws it had inspired (Witte, 2007: 143-150, 226-48, 279-88).

Religious Establishment and Religious Freedom in Europe

These revolutionary ideas and actions in favor of fundamental religious and civil rights brought heavy reprisal from the establishment regimes in early modern England and France, among others. The English establishment went back to the sixteenth century, when King Henry VIII (r. 1509-1547) and early Anglican reformers like Thomas Cranmer (1489-1556) and Thomas Cromwell (1485-1540), severed England's ties with Rome and rapidly established the Church of England as the state established religion. The Supremacy Act (1534) declared the monarch to be the "Supreme Head" of the Church and Commonwealth of England, with final authority to appoint, discipline, and dismiss Anglican clergy, to call church councils and synods, to reform the church's doctrine, liturgy, and canon law, to register church properties and personnel, and to collect church tithes and taxes. The state further orchestrated the massive seizure and dissolution of monasteries, schools, and other church properties, and claimed jurisdiction over charity, social welfare, education, and the arts. Queen Mary (r. 1553-1558) sought forcibly to return England to Catholicism, executing and exiling hundreds of Anglicans and others who resisted. Queen Elizabeth I (r. 1558-1603) and her Parliaments, however, reestablished a uniform Anglican liturgy and doctrine through *The Book of Common Prayer* (1559), *The Thirty-Nine Articles of Religion* (1571), and, later, the Authorized Version of the Bible (1611). Communicant status in the Church of England was a condition for citizenship status and various civil benefits in the Commonwealth of England. Contraventions of royal religious policy were punishable as both heresy and treason. Catholics and dissenting Protestants were subjected to growing repression during Elizabeth's later years and even more under her Stuart successors King James I (r. 1603-1625) and King Charles I (r. 1625-1649). Hundreds of Protestants and Catholic dissenters were martyred, and untold thousands were exiled to the Continent and North America (Haigh, 1993: 105-284).

As repression continued, English Protestant dissenters together with Scottish Presbyterians led a violent civil war in the 1640s and 1650s, drawing on Calvinist ideas of rights, resistance. and revolution. Led by Oliver Cromwell (1599-1658), the revolutionaries deposed and later executed King Charles I in 1649, outlawed the Anglican establishment, and granted religious toleration to all Protestants—though not to Catholics or to Jews. In 1660, however, royal rule was restored, Anglicanism was forcibly reestablished, and dissenters were again violently repressed. But when the dissenters again rose up in revolt and threatened a new civil war, Parliament passed the Toleration Act and Bill of Rights in 1689 that guaranteed limited freedoms of association, speech, and worship to all Protestants. Many of the remaining legal restrictions on Protestants fell aside in the following decades. Catholics and Jews, however, remained

formally banned from England until the Catholic and Jewish Emancipation Acts of 1829 and 1833 (Stephenson and Marcham, 1972: 607-79).

As part and product of this revolutionary struggle, English philosopher John Locke (1632-1704) and others encouraged more robust religious freedom. The church must be "absolutely separate and distinct from the commonwealth," Locke wrote, and must be free to determine its own worship, order, organization, membership, and discipline. But the church must also use "no force" against its members, for "true and saving religion consists in the inward persuasion of the mind" which only God can touch and tend. The state, in turn, must exercise no coercion over consciences either through "confiscation of estate, imprisonments, [or] torments" or through mandatory compliance with "articles of faith or forms of worship" established by law. Every person "has the supreme and absolute authority of judging for himself" in matters of faith. Locke still presupposed a magistracy and community committed to a common Christianity. He also called for exclusion of Catholics and Muslims "who deliver themselves up to the service and protection of another prince" as well as those "who deny the being of a God" altogether, since "promises, covenants, and oaths which are the bonds of human society, can have no hold upon an atheist" (Locke, 1825: vol. 5, 9-47).

In France, the monarchy gradually abandoned its earlier policies of religious toleration -- particularly as they had been set out in the Edict of Nantes (1598) which had granted modest toleration to Protestant nonconformists. Supported by the antipapalism of the revived Gallican party in France, and by the new theories of absolute monarchy earlier expounded by Jean Bodin (1530-1596) and others, the French monarchs consolidated their control over a national Catholic church. They also sharply curtailed remaining papal power over church property, ecclesiastical courts, and clerical nomination. King Louis XIV (r. 1643-1715) passed more than one hundred acts against Catholic and Protestant critics and dissenters, gradually restricting their freedoms and imposing crushing taxes upon them. Finally, in the Edict of Fontainebleau (1685), Louis XIV revoked the toleration policies of the Edict of Nantes and ordered all Protestant churches and schools destroyed, proscribed all liturgies and theologies that deviated from officially sanctioned Gallicanism, and banished all dissenting clerics from France. Protestants fled from France by the tens of thousands, many making their way to Belgium, the Netherlands, Switzerland, and Germany—and eventually to distant colonies in North America and Southern Africa (Ehler and Morrall 1954, 205-13). French Protestant Pierre Bayle (1647-1706) and others offered strong biblical and philosophical arguments for religious freedom for all and against religious coercion by the state, but these writings largely fell on deaf ears as the royal authorities destroyed most French Protestant communities, and strengthened their hold on the Gallican Catholic establishment. (Zagorin, 2003, 167-83).

In the eighteenth century, however, French political authorities turned on the Catholic establishment, too. Growing numbers of French Enlightenment writers –Voltaire (1694-1778), Jean Jacques Rousseau (1712-1778), Marquis de Condorcet (1743-1794), and many others -- pressed liberal philosophical arguments not only for stronger religious freedom for individuals, but also for

stronger separation of church and state and reduction of Catholic privileges and prerogatives in French law and society. Condorcet, for example, urged the authorities "to separate religion from the State." Though priests should have the freedom of sacraments, censures, [and] ecclesiastical functions" within their own churches, he allowed, the state was "not to give any civil effect to any of their decisions; not to give any influence over marriages or over birth or death certificates; not to allow them to intervene in any civil or political act; and to judge the lawsuits which would arise, between them and their citizens … or between this association and private individuals" (Hamburger, 2002: 60).

In the French Revolution (1789), these Enlightenment liberal ideas about religion came to vivid, and eventually violent expression. The French Declaration of the Rights of Man and Citizen (1789) provided that "No one ought to be disturbed for his opinions, even religious ones, provided that their manifestation does not trouble the public order established by the law." The 1790 Constitution further guaranteed "the freedom of every man ... to exercise the religion to which he is attached." But in the 1790s the French political authorities unleashed their fury against Catholicism, exiling some 30,000 priests, imprisoning and killing several hundred more, and killing tens of thousands of Catholic men, women, and children in bloody battles and executions. The government closed all monasteries and convents, looted or destroyed much priceless religious art, and converted numerous churches into sites for state-designed rites. An 1801 Concordat restored a measure of peace, order, and restitution, but the Catholic Church and French state remained in perennial conflict for the next century and more. French authorities gained control over much remaining church property, education, charity and polity, and then severed its financial support for the church in the 1905 Law of Separation of Church and State. The papacy condemned liberalism, human rights, religious freedom, and separation of church of state -- most notably in Mirari Vos (1832) and The Syllabus of Errors (1864) – a position that largely remained canonical until the sweeping reforms and embrace of religious freedom for all by the Second Vatican Council (1962-1965) (Maclear 1995: 75-118; Ehler and Morrall, 1954: 201-213, 234-249, 355-71).

Religious Establishment and Religious Freedom in the New World

This checkerboard of rival religious and political groups in early modern Europe was duplicated, in part, in the New World. Spanish and Portuguese Catholic rulers from the later fifteenth century onward extended their regimes through much of Latin America, the Caribbean, Mexico, Florida, and far into the American southwest reaching to California. These Spanish regimes featured strong Catholic establishments and powerful church-state alliances that remained in place in many Central and Latin American countries until the twentieth century, and still shape the culture of many Latin American lands to this day (Domingo and Mirow, 2020).

French Catholics established strong colonies and churches in Quebec and the Canadian Maritimes, and down the midwest corridor to Louisiana. Although the English later conquered Quebec, Parliament's Quebec Act (1774)

guaranteed the "free exercise of the religion of the Church of Rome, subject to the king's Supremacy" (Ehler and Morrall, 1954: 324). Dutch Protestant authorities chartered Dutch Calvinist companies to New York and the middle colonies, whose populations were bolstered by later waves of Calvinist colonists fleeing European persecution. Scandanavian and German Lutheran monarchs and merchants sponsored scattered colonial companies throughout North and Central America. The British colonized the entire Atlantic seaboard up to Canada and down to the Caribbean. By the time of the American Revolution of 1776, there were established Anglican churches in every American colony, all under the authority of the Bishop of London (Gaustad and Barlow, 2001: 1-54).

Colonial America was also a haven for European dissenters, many of whom introduced their own new experiments in religious liberty. Colonial Rhode Island was established by Roger Williams in 1636 as "a lively experiment [for] full liberty in religious concernments," and guaranteed members "liberty of conscience" and "the free exercise and enjoyment of all their civil and religious rights." Pennsylvania Quaker leader William Penn (1644-1718) instituted a "holy experiment" in religious liberty in Pennsylvania, guranteeing that no peaceable theist would "be molested or prejudiced for his or her conscientious persuasion or practice. Nor shall he or she at any time be compelled to frequent or maintain any religious worship, place, or ministry whatever contrary to his or her mind, but shall freely and fully enjoy his, or her, christian liberty in that respect, without any interruption or reflection" (Witte and Nichols, 2016: 20-23).

These early colonial experiments helped inspire the new American constitutional experiment in religious freedom after the American Revolution of 1776. Particularly Enlightenment, Quaker, and Baptist writers attacked the millennium-old Western idea that one form of Christianity must be established in a community and that the state must protect and support it against all other forms of faith. America would no longer suffer such governmental prescriptions and proscriptions of religion. All forms of Christianity had to stand on their own feet and on an equal footing with all other religions. Their survival and growth had to turn on the cogency of their word, not the coercion of the sword, on the faith of their members, not the force of the law. American Enlightenment writers like Thomas Paine (1737-1809), Thomas Jefferson (1743-1826), and James Madison (1751-1836) argued strongly that the state should not offer the church any special tax exemptions, property donations, or criminal protections, nor predicate its laws on explicitly religious premises. The state should not fund or support religious schools or other religious causes or enlist the services of religious officials. Nor should the state interfere in the order, organization, or orthodoxy of religious bodies or abridge the peaceable religious choices and activities of any subjects. There must be a "wall of separation between church and state," Jefferson wrote; a "clear line of division between religion and government," Madison added (Witte and Nichols, 2016: 32-36). These new views were reflected in the new American state constitutions and in the First Amendment to the United States Constitution that outlawed religious test oaths for federal political office and guaranteed: "Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof" (Witte and

Nichols, 2016: 64-116). These federal and state guarantees have produced more than 250 United States Supreme Court cases, and thousands of lower federal and state court cases vindicating the rights of religious freedom.

Modern Religious Freedom in the West and Beyond

Other Western nations gradually adopted comparable constitutional provisions, statutes, and judicial opinons for the protections for the right of religious freedom for all peaceable faiths. An influential early example was the Belgian Constitution of 1831 that included provisions for "freedom of religions and their public worship"; "no one can be compelled to join in any manner whatever in the rites and ceremonies of any religion, nor to observe its days of rest;" and "the State shall have no right to interfere either in the nomination or in the installation of ministers of any religious denomination whatever" (Ehler and Morrall, 1954: 270-72). While the totalitarian regimes of Italy, Germany, Spain, and the Soviet Union crushed religious freedom for many subjects, several European nations after World War II ratified strong new religious liberty protections, even while sometimes retaining their Christian establishments. The Italian Constitution of 1947 celebrated Italy's Catholic heritage but insisted that "the State and the Catholic Church are independent and sovereign, each within its own sphere." Morever, "all religious denominations are equally free before the law" with "the right to self-organisation according to their own statutes, provided these do not conflict with Italian law." The Basic Law of the Federal Republic of Germany (1949) provided: "Freedom of faith and conscience and freedom of religious and ideological profession shall be inviolable. Undisturbed practice of religion shall be guaranteed. No one may be compelled against his conscience to perform war service as a combatant." The Spanish Constitution of 1978 provided comparably: "Freedom of ideology, religion and worship of individuals and communities is guaranteed, with no other restriction on their expression than may be necessary to maintain public order as protected by law. No one may be compelled to make statements regarding his or her ideology, religion or beliefs. No religion shall have a state character. The public authorities shall take into account the religious beliefs of Spanish society and shall consequently maintain appropriate cooperation relations with the Catholic Church and other confessions." Many other European nations combined generous religious freedom gurantees for all peaceable religions with constitutional provisions and concordats that privileged Catholic, Anglican, Lutheran, Reformed, or Greek Orthodox Christian churches. The Vatican led the way in forging concordats with a dozen Western countries (Maclear, 1995; Doe, 2012).

Strong religious freedom provisions also were woven into modern international human rights instruments. The Universal Declaration of Human Rights (1948), passed in response to the devastation of World War II, stated famously: "All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood." The Declaration banned discrimination on religion and other grounds and provided: "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." The 1966 International Covenant on Civil and Political Rights, a binding treaty ratified by 165 countries, provided further: "No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others." The same Covenant also urged States Parties "to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions." In 1993, the United Nations Human Rights Committee issued a lengthy "General Comment" on the 1966 Covenant making clear that "freedom of thought and the freedom of conscience are protected equally with the freedom of religion and belief," and it includes "theistic, non-theistic and atheistic beliefs," whether traditional or new, whether held by a majority or minority. "These freedoms are protected unconditionally; . . . no one can be compelled to reveal his thoughts or adherence to a religion or belief." Protected religious practices include "ritual and ceremonial acts," "the building of places of worship, the use of ritual formulae and objects, the display of symbols, and the observance of holidays and days of rest." They also include "observance of dietary regulations, the wearing of distinctive clothing or headcoverings, participation in rituals associated with certain stages of life, and the use of a particular language." And they include, still further, "freedom to choose their religious leaders, priests and teachers, the freedom to establish seminaries or religious schools and the freedom to prepare and distribute religious texts or publications" (Stahnke and Martin, 1998: 57-96). Comparably expansive religious freedom provisions appear in several other United Nations documents most notably the Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief (1981) as well as in regional instruments like the European Convention on Human Rights (1950), the American Convention on Human Rights (1969), and the African Charter on Human and People's Rights (1981) (Stahnke and Martin, 1998: 101-160).

Modern religious communities within and beyond the West have become important advocates for religious freedom and other fundamental rights. Protestants, Catholics, Jews, Muslims, Buddhists, and various ecumenical and interreligious groups proved critical to the early development of the international bill of rights, including its provisions on religious freedom (Morsink 2017). The Second Vatican Council (1962-1965) transformed the Catholic Church into a powerful religious freedom advocate as well. Every person, the church now taught, is created by God "with intelligence and free will" and has rights "flowing directly and simultaneously from his very nature." The church emphasized the religious rights of conscience, worship, assembly, and education, calling them the "first rights" of any civic order. The church also stressed the need to balance individual and associational rights, particularly those involving the church, family,

and school. Governments everywhere were encouraged to create conditions conducive to the realization and protection of these "inviolable rights" and encouraged to root out every type of discrimination, including notably religious discrimination. The Catholic Church also now advocated limited constitutional government, disestablishment of religion, and the separation of church and state (Gremillion, 1976: 203-218; Abbott and Gallagher, 1967: 675-696).

Orthodox Christian churches, too, rose in partial support of religious freedom and human rights, as they faced oppressive rule in the Soviet bloc and in various totalitarian regimes in the Middle East and northern Africa. The World Congress of Orthodox Bishops (1978), for example, called for "prayers for those whose human rights are being denied and/or violated; for those who are harassed and persecuted because of their religious beliefs, Orthodox and non-Orthodox alike, in many parts of the world; for those whose rightful demands and persistence are met with greater oppression and ignominy; and for those whose agony for justice, food, shelter, health care and education is accelerated with each passing day." A 1980 Orthodox Congress implored "totalitarian and oppressive regimes to restore respect for the rights and dignity of the individual and to insure the free and unhindered exercise of these vital rights by all citizens, regardless of racial and ethnic origin, or political or religious espousal"(Harakas, 1982: 21-28). Other Orthodox theologians and church leaders, however, also warned the West about abandoning its faith in the name of freedom. Bartholomew, Orthodox Ecumenical Patriarch of Constantinople, put it provocatively: "Faith is not a garment to be slipped on and off; it is a quality of the human spirit, from which it is inseparable." "There are a few things [the West] can learn from the Orthodox Church," the Patriarch declared. Foremost is the lesson "that, paradoxically, faith can endure without freedom, but freedom cannot long abide without faith" (Witte and Bourdeaux, 1999: 19-22).

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