

Editorial

FREEDOM OF RELIGION

From Tolerated Practice to Human Right

1. Introduction

Freedom of religion is asserted in the constitutions and the charters and bills of rights of nations around the world, and yet it is one of the most contested of the basic human freedoms. From the ‘Rock Edicts’ of King Piyadasi in the third century BCE, to the *United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities* of 1992,¹ we find repeated the statement that communities and individuals should be free to believe and to worship as they wish, and not be subject to compulsion or restriction on matters of religion. At the same time, however, such freedom has consistently met with resistance if not outright opposition, and even today many countries attempt to restrict not only change of belief or conversion, but the exercise of religious practice.

To respond to this opposition, then, it is important to know exactly what this freedom is, what it means, and on what grounds one can argue for it. There are many other related issues that need to be addressed besides. To begin with, there are conceptual questions, such as: What is ‘religion’? That is, what practice or practices are covered by the claim to this freedom? What is distinctive of this freedom: is it different from, for example, freedom of thought or opinion? Who can claim this freedom? There are several practical matters that arise as well. What does this freedom entitle one to do? What is its place in the public sphere, that is, in relation to national and international law, but also to matters of social and public policy and politics? How does this freedom bind in practice, and on whom? How and how far does it limit civil authorities, and what limits, if any, can be reasonably imposed on it?

In this issue of the *Journal of Dharma*, the authors explore these questions concerning how to understand this freedom and how to respond to some of the challenges to it in the contemporary world.

¹General Assembly resolution 47/135, 18 December 1992; for the text, see http://www.unhchr.ch/html/menu3/b/d_minori.htm.

To begin, however, it is important to know something of the history of the notion of freedom of religion. By showing how this freedom has been understood and what justifications of it have been given, we will have more of a context for considering and reflecting on several recent cases where this freedom has been appealed to or contested. This will, in turn, help to answer some of the preceding questions or, at least, suggest where research on this theme needs to be done.

2. Historical Roots

The term ‘freedom of religion’ is a recent one, although the origin of this notion may be traced to antiquity, where there are references to religious liberty and religious tolerance. (While these latter two terms do not mean the same, they have been closely associated throughout much of history.²) Understanding the history of ‘freedom of religion’ is important, then, not only because it shows the value of this freedom over time and across cultures, but also because it reveals to us something of the grounds or justifications that have been provided for it.

2.1. Classical Approaches

An early example of what we today would call freedom of religion can be found in India, where a reference to it appears in an inscription of King Asoka or Piyadasi (304-232 BCE), who converted to Buddhism from Hinduism.

Beloved-of-the-Gods, King Piyadasi, does not value gifts and honors as much as he values this – that there should be growth in the essentials of all religions... By so doing, one’s own religion benefits, and so do other religions, while doing otherwise harms one’s own religion and the religions of others. Whoever praises his own religion, due to excessive devotion, and condemns others with the thought “Let me glorify my own religion,” only harms his own religion.³

²The standard distinction is maintained as follows: ‘freedom of religion’ is a right and a moral claim that ought to be respected; ‘religious toleration’ suggests that certain religions are false or evil, that there is no right to engage in them, but that the civil authorities permit them in order to avoid greater evils or to ensure a greater good.

³*The 14 Rock Edicts*, # 12; see M. Searle Bates, *Religious Liberty: An Inquiry*, New York: International Missionary Council, 1945, 196.

We find other examples of such a liberty in classical Greece and Rome.

In Greece, commerce and trade with people from different regions of Europe, the Near East and northern Africa made clear the diversity of religious belief, practice, and worship – and, generally, these practices were simply accepted. St. Paul’s speech to the philosophers in Athens on the Areopagus (as recounted in Acts 17:22-31) begins with his remarking on the presence of an altar on which were inscribed the words, “*To God the Unknown.*” The existence of a pantheon which included even an ‘unknown god’ is a clear indication of the acknowledgement by the Athenians not only of the existence of deities other than their own, but of the freedom to worship them.

In the time of the Roman Empire (31BCE-476), as well, local religious belief and practices were generally allowed, providing there was no challenge to imperial rule. Jewish communities, for example, were permitted to retain not only their forms of religious worship and practice, but were even provided with exemptions from certain civic obligations. This is, of course, not to say that there was no persecution of religious groups: Christians were harassed periodically from the time of Claudius, and persecuted particularly by The Roman emperors Nero (64), Decius (250-251), and Galerius (303). But there were also periods of toleration and, in 313, in their joint edict at Milan, Constantine and Licinius (the co-Emperor in the east) extended freedom of religion to all. The reasons given for this seem to have been twofold: that human beings owed devotion to their deity – so there should be no restriction of it, if it did not disrupt public order – and that it was a practice that “would be advantageous for the security and welfare of the empire;”⁴ Christians were often involved in charity work and care for the poor, from which the empire clearly benefited.

2.2. Early Christian Views

The Christian approach to freedom of religion has been, however, rather ambiguous. To be sure, from the beginning one finds Christian writers who defended a form of religious liberty. In a letter to Scapula, Proconsul of Africa, Tertullian (c.160-c.220) argued that neither law nor religion requires compulsion on matters of religion:

⁴*The Catholic Encyclopedia*, 1914 edition, s.v. “Constantine the Great,” by Charles G. Herbermann and Georg Grupp.

... it is a fundamental human right, a privilege of nature, that every man should worship according to his own convictions: one man's religion neither harms nor helps another man. It is assuredly no part of religion to compel religion – to which free-will and not force should lead us...⁵

Other Christian writers, such as Lactantius (c.250-c.325) and Origen (185-254) presented arguments in favour of a religious freedom as well. What is suggested here is that one's religion is something that need not concern either the state or other religious groups, and that to compel or forbid religious belief and practice was both ineffective and disruptive of social order. (There is, admittedly, a hint in these texts that religious worship is a human right, but it was still some time before rights theories were articulated.) In this context, it is interesting to note a statement from *The Catholic Encyclopedia* of 1914: "Most probably oppression and persecution had made men realize that to have one's way of thinking, one's conception of the world and of life, dictated to him was a mischief-working compulsion."⁶

As Christianity developed and became more powerful in the west, there continued to be an acknowledgement by some that certain groups could be allowed to retain their non-Christian beliefs and to enjoy a measure of toleration. Thus, in 598, Pope Gregory the Great acknowledged that the Jews "had a claim to be treated equitably and justly. They were to be allowed to keep their own festivals and religious practices, and their rights of property, even in the case of their synagogues, were to be respected."⁷

Still, what such a claim or freedom meant, and what it amounted to, are not entirely clear. It was, it seems, a permission for members of a community to hold religious beliefs and to engage in worship, and a recognition that interference with this would be inappropriate or counterproductive. While freedom of religion was a freedom sought from the state, not from religious authorities, in most cases the precise difference between the two was not obvious. In early and mediaeval

⁵*Ad Scapulam*, Chapter ii, trans. S. Thelwall, <http://www.earlychristianwritings.com/text/tertullian05.html> [From the Christian Classics Electronic Library server, at Wheaton College; modified for the Tertullian Project, 6 July 2001].

⁶Herbermann and Grupp, "Constantine the Great."

⁷See *The Catholic Encyclopedia*, 1914 edition, s.v. "History of Toleration," by Herbert Thurston.

Christendom, then, the ‘justification’ of religious freedom seems to have been largely practical. So long as there was no social disruption or corruption of those of the ‘true faith,’ the state could allow the presence of certain ‘false faiths’ and for their followers to practise these religions in private – and even in public – without interference. But there was no right to this ‘freedom’; such religions were, at best, merely tolerated. (Later commentators distinguished, then, among ‘practical civic tolerance’ [which an individual may show to another out of charity], ‘public political tolerance’ [which the state shows towards various religious denominations on its territory], and ‘theoretical dogmatic tolerance’; this latter, since it putatively calls into question whether there is any objective truth, Catholics could not admit.⁸)

In short, then, such a tolerance was not guaranteed; the justification of it was contingent, political and prudential. Moreover, there were limits to this toleration. Through the middle ages up to the counter Reformation, this toleration, when present, was generally extended only to those who were outside the Christian faith; heresy and apostasy from Catholicism (or, later, Christianity) were not immune from punishment.

2.3. Religious Freedom and Islam

Religious freedom or toleration was not a uniquely European phenomenon. Not only do we have the evidence of the Buddhist King Piyadasi, cited above, but we sometimes see a similar practice in the Islamic world. Throughout much of the Ottoman Empire (1299-1922), there was a broad – though, admittedly, not a universal – toleration of religious difference. Like Muslims, Christians and Jews were “People of the Book” (Arabic: اهل الكتاب; *ahl al-Kitâb*). While this did not mean that people of all faiths had equal opportunity in serving in government and in the civic administration – indeed, there was no assertion of equality of religions – the standard practice was that certain non-Muslim groups could enjoy cultural and religious freedoms so long as civic obligations were fulfilled and obedience to the political rulers observed. Persecution of

⁸*The Catholic Encyclopaedia*, 1914 edition, s.v. “Religious Toleration,” J. Pohle.

difference was not normally acceptable.⁹ Moreover, throughout their Empire, the Ottomans allowed for the organisation of a “millet” arrangement (established in the fifteenth century, but not fully institutionalized until the nineteenth century), whereby the members of major religious communities – Greek Orthodox Christian, Jewish, and Armenian – could continue their worship as well as organise much of their day to day lives within the Ottoman political structure.¹⁰ These religiously-based millets had control over their own courts, schools, and social welfare, and “[m]embers of the millet even built roads, water fountains, and communal buildings for their own neighbourhoods.”¹¹ In this way, the Ottoman government was able to maintain civil order while, at the same time, allow both local autonomy and religious practice.

The justification of this tolerance was, again, largely practical. It is true that Muslims were enjoined to respect other “People of the Book,” but this treatment did not automatically extend to other religions. The Ottomans recognized, however, that so long as people could meet their religious obligations, many would be more willing to accept Ottoman rule. To restrict Christianity or Judaism as such was neither necessary for political stability nor likely to be successful. Yet, to speak here of a right – an individual right – to religious freedom or to religious conscience would still be an anachronism.

2.4. Uniformity and Tolerance in the Early Modern Period

One might think that the Reformation in Europe was an occasion for religious toleration and religious freedom, but in fact this was usually only indirectly the case. Under the first Act of Uniformity (so called) in England (1552, under the Anglican king Edward VI), people were required to attend religious services every Sunday and holy day. While this act was

⁹Aron Rodrigue, “Difference and Tolerance in the Ottoman Empire” (Interview by Nancy Reynolds), *Stanford Humanities Review* 5 (Fall 1995), 81-92; available also at <http://www.stanford.edu/group/SHR/5-1/text/rodrigue.html>.

¹⁰Charles A. Frazee, *Catholics and Sultans: The Church and the Ottoman Empire 1453-1923*, London: Cambridge University Press, 1983.

¹¹American Forum for Global Education, “Turkish Toleration,” in *Spotlight on Turkey: Continuity and Change. An Interdisciplinary Curriculum*, ed. Linda Arkin, Hazel Sara Greenberg, and Abby Barasch, New York: American Forum for Global Education, 1992; see <http://www.globaled.org/nyworld/materials/ottoman/turkish.html>.

repealed by Edward's successor, the Catholic Queen Mary in 1553, another such act was promulgated by Elizabeth I, in 1559. While King Henry IV of France, a Protestant who converted to Catholicism, provided for some religious freedoms (such as liberty of conscience and public worship) for the Protestant Huguenots in the Edict of Nantes (13 April 1598),¹² his grandson Louis XIV gradually limited these freedoms, culminating in the Revocation of the Edict of Nantes, on 22 October 1685.

Nevertheless, religious tolerance and religious freedom gradually expanded in Europe through the sixteenth and seventeenth centuries. One way this was achieved was through acts of resistance, principally by members of the nobility, which forced rulers to accommodate divergent religious practices. (Such a freedom, however, meant only the allowability of belonging to another Christian denomination.) Grants of religious toleration were given in 1571, by Maximilian II, the Holy Roman emperor and King of Bohemia and of Hungary, to the Lutheran nobles and knights in Austria; by the Confederation of Warsaw (28 January 1573) to the nobles and peoples of Poland and Lithuania; and, in 1609, by Maximilian's son, Rudolf II, to the people of Bohemia (the present day Czech Republic) in the "Majestatsbrief." Such 'grants', however, were usually done under duress, i.e., in exchange for political and military support (as in the case of the Majestatsbrief), or to remove obstacles to national stability (as in the Warsaw document).

Another way of gaining religious freedom in the West was through emigration to 'the new world' and, in particular, to North America. Several communities were founded there to allow religious practice that had been restricted in England. Thus, we find, in 1636, the clergyman Roger Williams establishing the settlement of Providence (now in Rhode Island, USA) specifically as a place of religious toleration. According to Williams, "it is the will and command of God that (since the coming of his Son the Lord Jesus) a permission of the most paganish, Jewish, Turkish, or antichristian consciences and worships, be granted to all men in all nations and countries."¹³ In 1649, on April 21, the Maryland General Assembly,

¹²The French king Charles IX had signed an edict on religious tolerance, the *Édit de tolérance de Saint-Germain* (17 January 1562), but it was not formally ratified by the parliament.

¹³Sanford H. Cobb, *The Rise of Religious Liberty in America: A History*, New York: Macmillan, 1902, 13.

under Lord Baltimore, issued “An Act Concerning Religion,” better known as the “Act of Toleration.” The Act provided that “no person in this province professing to believe in Jesus Christ shall be in any ways troubled, molested, or discountenanced for his or her religion.”¹⁴ Some communities – such as New Amsterdam (now called New York City) – strongly resisted extending religious freedom to members of other faiths, but even there a *de facto* religious toleration was extended to Jews within ten years of their arrival in the community, i.e., by the late 1650s.¹⁵ In 1680s, the ‘Commonwealth of Pennsylvania’ was established by the Quaker, William Penn (1644-1718). Among its founding principles was the following statement:

That all persons living in this province who confess and acknowledge the one almighty and eternal God to be the creator, upholder, and ruler of the world, and that hold themselves obliged in conscience to live peaceably and justly in civil society, shall in no ways be molested or prejudiced for their religious persuasion or practice in matters of faith and worship, nor shall they be compelled at any time to frequent or maintain any religious worship, place or ministry whatever.¹⁶

2.5. New Arguments and Justifications

By the early modern period in the West, then, the recognition of the importance of religious freedom had increased dramatically. One of the key figures here was John Locke (1632-1704). Of Puritan stock, Locke seems to have held broadly ‘latitudinarian’ views; certainly, in *The Reasonableness of Christianity* (1695), Locke argued for the importance of a rational defence of religion that contained only a rather limited range of key beliefs. In the *Fundamental Constitution of the Carolinas* (1 March 1669), articles 97 and 109ff. (written with Anthony Ashley Cooper, Earl of Shaftesbury), and in his *Letter on Toleration* (written in Latin in 1685-86 while in exile in Holland, and published anonymously in 1689), Locke

¹⁴*Archives of Maryland*, Baltimore, 1883, 1: 244-47; See <http://www.swarthmore.edu/SocSci/bdorsey1/41docs/56-mar.html>.

¹⁵Cyrus Adler, Max J. Kohler, Cyrus L. Sulzberger, and D. M. Hermalin, “New York,” in *The Jewish Encyclopedia*, New York: Funk & Wagnalls Company, 1901-06; this resource is available online at www.jewishencyclopedia.com.

¹⁶*The Pennsylvania Code* (1682), Section 35. This code was drafted by Penn.

clearly defends some measure of religious toleration, though he did not wish it extended to include Catholics, Muslims, or atheists.¹⁷

Locke's arguments here are far reaching. For much of the prior history of "freedom of religion," what was advocated was usually either indifference or the toleration of error for the sake of a public good. Thus, as we have seen, the arguments for it were primarily practical – the recognition that there was a diversity of religions, and that attempting to eliminate the diversity was not necessary for (or might even impede) the efficient functioning of the state. The separation of church and state was not an established principle, and toleration was an act of charity or of prudence, so that the state could still officially discourage religious difference. By the time of Locke, however, we have some rather new justifications for religious freedom.

One key argument was based largely on Locke's epistemology – that human knowledge and reason are limited, that the capacity for error is present in human interpretation, and that belief itself is simply a relation of ideas that is "presumed" or "supposed" in the production of reasons, arguments, and proofs (*ECHU*, Bk. IV, xiv, 4).¹⁸ Admittedly, faith is "a settled and sure principle of assent and assurance, and leaves no manner of room for doubt or hesitation" (*ECHU*, Bk. IV, xvi, 14), for it has, as its source, God himself. But to know that an article of faith is a genuine revelation requires arguments from reason – and reason is not infallible. So (in matters of faith) we cannot be certain of many matters of putative dogma (seeing as they are either 'above reason' (*ECHU*, Bk. IV, xviii, 7) and therefore outside of human discernment, or about which there is a (wide) range of interpretations, with no key to help to settle the matter).

¹⁷"That Church can have no right to be tolerated by the magistrate which is constituted upon such a bottom that all those who enter into it do thereby *ipso facto* deliver themselves up to the protection and service of another prince." *A Letter Concerning Toleration*, trans. William Popple, London, Awnsham Churchill, 1689; see also *A Letter Concerning Toleration*, Latin and English texts revised and edited with variants and an introduction by Mario Montuori, The Hague: M. Nijhoff, 1963.

¹⁸See John Locke, *Essay Concerning Human Understanding*, in *The Works of John Locke in Nine Volumes*, 12th ed., London: Rivington, 1824, vol. 2. Locke also writes that, while people can control their beliefs by not engaging in this process, once "upon full Examination I find the most probable, I cannot deny my Assent to" that belief (see *Essay Concerning Human Understanding*, IV, xx, 16).

The best course of action is not to compel but to allow people to hold different views on a wide range of topics.

A second ground of religious freedom was related to the attempt to make sense of religious diversity. Here the argument was as much theological as philosophical. For some religious groups or movements, such as the Saumur Protestants (c.1608-1680), there were strong arguments to be made for religious pluralism, and, therefore, for tolerance. Though there was only one truth, given human nature, more than one interpretation of this truth was possible, and a person cannot know in advance which interpretation is the best. Moreover, having the truth was not necessarily limited to a particular religious denomination. There were many who had not heard the faith and, given the widely-shared belief that God wishes to save all of humanity, it was thought that there must, therefore, be different ways of coming to faith. For example, the Protestant reformer and visitor to Saumur, John Cameron, argued that faith was also available through a “covenant of nature,” open to all.¹⁹

For some religious groups, the Protestant emphasis on a direct relationship between God and the believer undermined arguments for religious uniformity, and made each individual – and not the religious communities or the state – the authoritative interpreter of one’s religious obligations. It followed, then, that there needed to be sufficient freedom to allow individuals to respond appropriately to these obligations. Another argument appealed to was that, because belief is not open to external constraint, and because force is useless as a means to have people adopt or change their religious views, there was simply no point to attempt to restrict basic freedom of religion or conscience.

But, perhaps, the decisive argument for freedom of religion was based on the claim that it was a ‘natural’ right. According to Locke, for example, individuals had rights that others must respect and that served as checks or limits even on public authority. There was an anthropological basis for this approach. Human beings were said to be motivated, not by an abstract notion of happiness, but by the objects of desire that varied according to the person concerned. Thus, rights to life and liberty came to extend to the right to pursue happiness in one’s own way – which involved

¹⁹See Leslie Armour, “Philosophical Anthropology, the Saumur Philosophers, and Economic Rights,” in *Philosophical Theory and the Universal Declaration of Human Rights*, ed. William Sweet, Ottawa: University of Ottawa Press, 2003, 57.

a right to be free from coercion and intimidation on matters of opinion or belief. Further, Locke recognized that human beings had a basic right to property and, to the extent that one has property in oneself, one has property in one's ideas. Consequently, just as one may dispose of one's physical property as one wishes, restricted only by the general principles of human reason and the requirements of social life, so one may 'dispose' of, i.e., hold, profess, and exercise, one's ideas with minimal restriction as well.

What this suggests is that it is as religion is seen to be more and more a matter of private interpretation and conviction and not within the sphere of knowledge, and as individuals are seen to have proprietorship over themselves, laws concerning religion cannot and should not be enforced. While it would still be some time before many of the laws in Europe would allow a broad religious freedom, it is as we distinguish between the 'public sphere' and a 'private sphere' – where we recognize not only human diversity but the importance of human beings to determine their own good or happiness – that calls for a right to freedom of religion and freedom of conscience become more acute.

2.6. Establishing Religious Freedom

In part because of Locke's influence, England abandoned attempts to ensure 'uniformity' in religion; in fact, in the Act of Toleration of 1689 (May 24), the English Parliament granted freedom of worship to Nonconformists (i.e., 'dissenting' Protestants). The Lockean arguments for religious freedom also later came to influence the governments of some of Britain's former colonies in the Americas. *The Virginia Statute for Religious Freedom*, written in 1779 by Thomas Jefferson, proclaimed:

“[N]o man shall be compelled to frequent or support any religious worship, place, or ministry whatsoever, nor shall be enforced, restrained, molested, or burdened in his body or goods, nor shall otherwise suffer, on account of his religious opinions or belief; but that all men shall be free to profess, and by argument to maintain, their opinions in matters of religion, and that the same shall in no wise diminish, enlarge, or affect their civil capacities.”²⁰

²⁰<http://religiousfreedom.lib.virginia.edu/sacred/vaact.html>. See also W. W. Hening ed., *Statutes at Large of Virginia*, 12 (1823), 84-86.

Similarly, in 1791, in the Bill of Rights of the United States (i.e., in the first 10 amendments to the American Constitution), we read that “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.”²¹ The freedom was markedly greater than that which existed in many of the early American colonies, for here there was not only a freedom from restriction and compulsion, but also a freedom to act, and it was a freedom that extended not only to all Christians, but to all human beings.

Britain slowly followed France and the United States. In 1829 (April 13), the British Parliament passed the Roman Catholic Relief Act (10 George IV, c. 7), which removed the disqualification of Catholics from high public office in Britain. While the arguments for religious freedom that had inspired these reforms were often derived from Locke and his contemporaries, they had other sources as well. By mid-century, John Stuart Mill, although no great friend of religion, provided yet another reason for affirming liberty of religious belief, and that is that, by the extension of such liberties, humanity is a greater gainer.²²

The interest in securing general religious freedom was not obviously shared by all. In 1864, Pope Pius IX promulgated the “Syllabus of Errors” in which we find condemned as an error the belief that “[e]very man is free to embrace and profess that religion which, guided by the light of reason, he shall consider true.”²³ A similar view was reiterated by Pius’ successor, Leo XIII, in 1885: “The gravest obligation requires the acceptance and practice, not of the religion which one may choose, but of that which God prescribes and which is known by certain and indubitable marks to be the only true one.”²⁴

²¹A roughly comparable view appears in Article X of the French *Declaration of the Rights of Man and the Citizen* (1789): “No one shall be disquieted on account of his opinions, including his religious views, provided their manifestation does not disturb the public order established by law.”

²²Mill, *On Liberty*, Ch. 1: “Mankind are greater gainers by suffering each other to live as seems good to themselves, than by compelling each to live as seems good to the rest.”

²³Syllabus of Errors # 15, see <http://www.ewtn.com/library/PAPALDOC/P9SYLL.HTM>; the document refers the reader to Pius IX’s allocution “*Maxima quidem*” (9 June 1862) and Damnatio “*Multiplices inter*” (10 June 1851)

²⁴Leo XIII, Encyclical “*Immortale Dei*” (1 November 1885); see H. Denzinger, *Enchiridion Symbolorum*, 9th ed., Freiburg, 1900, n. 1701.

Nevertheless, to these papal pronouncements even many Catholic leaders, such as John Henry Cardinal Newman, expressed caution. Newman emphasized that the theses of the Syllabus of Errors should not be understood on their own, and that each ‘condemnation’ needed to be read by looking specifically at the context in which (and in opposition to what) the statement was originally made. In any event, it is important to note that such papal statements were restrictions of ‘freedoms to’ (e.g., to act in a certain way), but not of ‘freedoms from’ (e.g., coercion). So, even here one might argue that there was no question of individuals being coerced to come to the Christian or Catholic faith. Thus, even such apparent challenges to religious freedom were not as strong as many had feared.²⁵

2.7. The Twentieth Century

By the 1940s in the western world, freedom of religion was broadly acknowledged as a basic right. Seeing the attacks on and the restriction of fundamental freedoms by fascism and communism, the American President Franklin D. Roosevelt, in his State of the Union address to the United States Congress (6 January 1941), listed, among four basic human rights, “freedom of worship.” Similarly, in his *Les droits de l’homme et la loi naturelle* (1942), Jacques Maritain writes of one’s “freedom of conscience” as “a natural, inviolable right” “with respect to the state” – and he refers with approval to Roosevelt’s mention of freedom of worship.²⁶ Maritain adds that one has a “right to the pursuit of eternal life along the path which conscience has recognized as the path indicated by God,” and declares the “right of the Church and other religious families to the free exercise of their spiritual activity.”²⁷

Drawing on these and other calls for freedom and basic rights, in 1948, the United Nations formally adopted a resolution proclaiming the

²⁵See John Henry Newman, *A Letter Addressed to the Duke of Norfolk on Occasion of Mr. Gladstone’s Recent Expostulation: Certain Difficulties Felt by Anglicans in Catholic Teaching* (1874), New York: Longmans, Green, and Co., 1900, vol. 2. See <http://www.newmanreader.org/works/anglicans/volume2/gladstone/section7.html>.

²⁶See Jacques Maritain, *Natural Law: Reflections on Theory and Practice*, ed. William Sweet, South Bend, IN: St Augustine’s, 2001, 79.

²⁷Maritain, *Natural Law*, 97.

Universal Declaration of Human Rights. Among these rights, one finds that

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. (Article 18)

Further, the next Article continues:

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers. (Article 19)

Freedom of religion, then, was seen clearly to entail both a freedom to believe and a freedom to act.

Here, we find no justification for these rights based on contingent factors, such as the stability of the social order. Instead, the basis for these and other rights was that there was an inherent dignity and worth of the human person. Such rights were fundamental, and applied equally to men and women. The ‘recognition’ of this dignity and these rights was, the Declaration affirmed, necessary to “social progress and better standards of life,” to “the free and full development of [one’s] personality,” and to “freedom, justice and peace in the world.” But this dignity and these rights did not depend on any of these results for their existence.

In the succeeding decades, freedom of religion has been reaffirmed as one of the most fundamental of all human rights. Members of the United Nations must subscribe not only to the Universal Declaration, but to successive documents, such as the *Declaration on the Elimination of All Forms of Intolerance and of Discrimination based on Religion or Belief* of 1981²⁸ and the *Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities* of 1992. All states, then, are called on to recognize freedom of religion as a basic right – and even those regimes which in practice fail to do so, nevertheless often protest that they really do.

Many religious denominations recognise this freedom as well. At the First Assembly of the World Council of Churches in Amsterdam in August

²⁸General Assembly Resolution 36/55 of 25 November 1981; for the text of this document, see <http://www.ohchr.org/english/law/religion.htm>.

1948, the Council published its *Declaration on Religious Liberty*: “The rights of religious freedom herein declared shall be recognized and observed for all persons without distinctions as to race, colour, sex, language, or religion.” Later, in 1965, Pope Paul VI published the Declaration *Dignitatis humanae*, which asserted that

the human person has a right to religious freedom ... [and] that all men are to be immune from coercion on the part of individuals or of social groups and of any human power, in such wise that no one is to be forced to act in a manner contrary to his own beliefs, whether privately or publicly, whether alone or in association with others within due limits.

The foundation of religious freedom, Paul VI pointed out, is “the very dignity of the human person” and “is to be recognized in the constitutional law whereby society is governed and thus it is to become a civil right.”

Like the Universal Declaration of Human Rights and its successor documents, *Dignitatis humanae* and the declarations of other religious bodies affirm a freedom of religion that is not a toleration of a difference or of an evil, or is a contingent, practical compromise, but something that is itself a fundamental right. Yet, when we look at events today, this freedom is consistently challenged, restricted, and denied. In response, then, it is still necessary to ask whether and how such a freedom can be defended and whether it can be actualized in the contemporary world. This requires addressing a number of conceptual issues.

3. Conceptual Issues

The preceding historical sketch shows clearly the importance of the notion of freedom of religion over time and across cultures. It also provides some of the principal reasons or arguments that have been given for it. These reasons have developed and changed, but we can say that they are cumulative rather than contradictory. As we have seen, they are essentially threefold: first, that freedom of religion is an inalienable right of human beings that is essential to their dignity as persons; second, that because assured knowledge on religious issues is so limited, toleration of diversity is required; third, that if we wish to assure a stable civil society – something which is a basic common good – a separation of civil and ecclesiastical authorities and a toleration of religious diversity and practice are necessary.

The failure or neglect of respecting such a basic freedom today has rarely been based on its outright rejection. Rather, this freedom is challenged because of alleged problems, e.g., in determining to what or to whom such a freedom applies, how such a freedom is to be defined, what it includes, what its source is, and what its limits are. These are, admittedly, primarily conceptual issues, and it is here that the authors in this issue of the *Journal of Dharma* provide both analysis and direction.

3.1. Defining Religion

If freedom of religion is to be extended to all who profess a religion, and even who wish to be free of it, then, an obvious question is: ‘What is religion?’ Unfortunately, however, it is difficult today to give a precise answer to this question. According to a recent news report, some 10,000 religions have been identified, and there are two new religions in the world each day.²⁹ The difficulties in constructing a clear definition pose a particular problem when it comes to the law. In countries in which freedom of religion is an established right, the law must not only protect this freedom, but must extend its benefits to all who legitimately claim it. These benefits may include exemption from military service or certain civic responsibilities, exemption from certain taxes, the provision of opportunities to engage in worship, the right to wear religious symbols in the workplace, and so on. To provide this, the state and the law clearly need to have some criteria for what counts as a religion.

One option is simply to leave it to the courts to determine whether a practice is a religion, or whether a particular individual or group who claims to adhere to a religion should be permitted the benefits provided by the law. Yet, there is the fear that neither the law nor the state is qualified to decide whether a religious belief is genuine, and that, as it may be in the

²⁹“Bad Moon on the Rise,” *National Post* (Canada), 20 July 2004. The author writes: “Nearly 10,000 religions have been identified worldwide. Sociologists estimate new ones spring up at the rate of two per day. The majority of governments in Canada – federal and provincial – list upwards of 60 as protected creeds, from Christianity, Judaism and Islam, through Buddhism, native spiritualism, Sikhism and Unitarian-Universalism. Even Neo-Paganism and Wicca are protected in most provinces. Ontario goes so far as to safeguard ‘non-deistic bodies of faith’ provided the ‘beliefs and practices’ they maintain ‘are sincerely held and/or observed.’” Retrieved July 2004, from <http://www.canada.com/national/nationalpost/news/comment/story.html?id=b990cbe4-0284-4fbc-a062-7621b49a7961>.

interest of certain governments to severely restrict accommodation of religious belief, the state is not a neutral party here. Still, it is evident that the law needs at least a ‘working conception’ of religion that can be used in its dealings with those who appeal to this freedom. Without a definition of some kind, how can the law be called on to ensure even basic respect of freedom of religion?

One landmark case (which has had repercussions throughout the English-speaking world), was the 1944 US Supreme Court decision on *United States vs. Ballard*. Guy Ballard was a founder of the “I AM” movement, and claimed that he was empowered by a divine messenger to perform healings. He used the postal service to solicit donations to his cause and, as a result, was accused by the US government of mail fraud. Although the government argued that Ballard knew very well that his claims to be able to heal were false and that his religious beliefs were not serious, the defence – Ballard having passed away in 1938 – replied that the government had no right to judge the truth or falsity of one’s beliefs or of one’s religion. The Supreme Court, in its ruling, agreed, affirming that juries could not judge the content of one’s religious beliefs or whether they made any sense, but only whether these beliefs were held sincerely.³⁰ In other words, this decision excluded challenging an appeal to freedom of religion by calling into question the content of that religion. The relevance of this decision to the claims of new religious movements is clear.

The practice in many ‘common law’ countries has been, then, not to define specifically what a religion is, but simply to consider whether an individual, group, or organization meets the same broad criteria that established religious groups satisfy. Perhaps for many of the same reasons given in jurisprudence in the United States, the tendency is to refrain from saying much, if anything, concerning the content of the belief.

³⁰For the majority, Justice William O. Douglas wrote: “Freedom of thought, which includes freedom of religious belief, is basic to the society of free men. It embraces the right to maintain theories of life and death of the hereafter which are rank heresy to followers of the orthodox faiths. Heresy trials are foreign to our Constitution. Men may believe what they cannot prove. They may not be put to the proof of their religious doctrines or beliefs. Religious experiences which are as real as life to some may be incomprehensible to others. Yet the fact that they may be beyond the ken of mortals does not mean that they can be made suspect before the law.” *UNITED STATES vs. BALLARD*, 322 U.S. 78 (1944); see <http://caselaw.lp.findlaw.com/cgi-bin/getcase.pl?court=us&vol=322&invol=78>.

Defining religion, then, remains a challenge; and even if the law may employ an inductive approach for determining what legally counts as a religion, this still gives rather little guidance about what it is.³¹ There is a further implication that, on this view, religion is not open to any objective assessment, its claims are determined not to be matters of fact, and it is, at best, private opinion. One may well wonder, then, how we can identify those beliefs or practices that are supposed to be protected by freedom of religion.

3.2. Defining Freedom of Religion

There is a second conceptual issue that is often raised in debates about freedom of religion: What exactly does freedom of religion involve? What does it entitle one to do? Does it extend to being able to express what some might regard as heresy and apostasy? As we have seen, the Universal Declaration of Human Rights states that freedom of religion includes the freedom “to manifest his religion or belief in teaching, practice, worship and observance” and “freedom to change his religion or belief,” and some say that it also includes a freedom *from* religion. Moreover, this freedom is closely connected with “the right to freedom of opinion and expression.” But is freedom of religion distinct from these other freedoms? If so, what is it about freedom of religion that goes beyond them?

In “Jacques Maritain and Freedom of Conscience,” William Sweet presents a series of arguments from the contemporary Catholic tradition concerning the nature, source, and limits of freedom of religion. He begins with the claim that freedom of religion is distinctive, specifically that it is not assimilable to freedom of opinion, belief, or expression. This freedom is, moreover, central to human dignity. Yet, Sweet points out that it may not be absolute. Those within a religious tradition may well have certain overriding obligations on their freedom to exercise and express – and it is important to note that such a restriction is not peculiarly religious. Article 29 of the Universal Declaration asserts that there are correlative “duties to the community” and that “In the exercise of [one’s] rights and freedoms”

³¹In the United States, for example, there is an ongoing debate whether even “secular humanism” would count as a “religion.” See “Is ‘Secular Humanism’ a ‘Religion’?” http://members.aol.com/patriarchy/definitions/humanism_religion.htm and “Secular Humanism in U. S. Supreme Court Cases,” <http://members.tripod.com/%7Ecandst/sec-hum3.htm>.

one may be “subject ... to such limitations as are determined by law ... for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.” Thus, even if freedom of religion is a fundamental freedom, there can be limits on it (for example, limitations posed by the common good) – although these limits would undoubtedly be relatively few and rare.

In “Religious Freedom,” Warayuth Sriwarakuel points out that ‘religious freedom’ can be understood in two senses: as a right (i.e., as a freedom from compulsion, with corresponding claims on others), and as a state of mind. Sriwarakuel argues that the right to religious freedom follows from the fact of the plurality of religions in the world. Nevertheless, he also holds that, while such a freedom from external constraint is important, we must also recognize what this freedom is a ‘freedom to’, specifically, to achieve a state of mind based on self-negation and the logic of non-attachment.

If the arguments of Sweet and Sriwarakuel are correct, freedom of religion goes far beyond a freedom of thought or opinion because it involves the possibility of committing oneself to a way of life – and, so, engages all of one’s moral personality. This, in turn, suggests that the foundation or basis of such a freedom cannot merely be a matter of seeking to ensure social stability or abstaining from involvement in matters concerning which there can be no sure knowledge.

3.3. Bases for Freedom of Religion

A third issue that needs to be addressed in discussions of freedom of religion, then, is What is the basis for such a freedom? As we have seen above, a number of different justifications have been given in the past. But are there any which hold in our increasingly secular, post-modern world?

Robert Delfino (“The Problem of Justifying the Right to Freedom of Religion”) argues that, in light of the continued existence of religious persecution in the world, it is important to be able to provide an argument or grounding for freedom of religion as a natural right. Two arguments, he maintains, are particularly useful here: that of Jacques Maritain, which is rooted in an account of a transcendentally-grounded human natural law, and that of Alan Gewirth, which is based on a “principle of generic consistency.” According to Delfino, on either view, the existence of natural human rights, including a right to freedom of religion, can be

defended, but Gewirth's position proves to be especially helpful in a contemporary secular environment.

In "Religious Pluralism and Freedom of Religion," Jove Jim Aguas argues that religious freedom is not only firmly established in the Universal Declaration and in *Dignitatis humanae*, but also required by the fact of religious diversity. For Aguas, the major world religions express different perceptions of the same ultimate reality. Since human beings are creatures of inherent value, and since they are also fundamentally religious beings, they not only have a moral claim to practice their religion, but other individuals have an obligation to respect this. This respect is, in turn, a basis for dialogue.

Bambang Sugiharto ("The Right to Religion") argues that freedom of religion is a human right, that human rights are themselves based on religion, and that religion has often been a defender of human rights. But while religious freedom is a human right, what it means for something to be a human right is more than what is understood in the classical European tradition. Sugiharto emphasizes that human rights must respond to religion – specifically, to the underlying insight of religion concerning what it means to be human – and that this is essential to seeing what a right to religious freedom concretely involves.

The arguments of Delfino, Sugiharto, and Aguas clearly go some way in showing how the freedom of religion is a right, and in explaining why this freedom must be defended. There may, of course, be other justifications as well. For the freedom of religion, it might be argued, is more than a (subjective) individual right. It may be a group right, and it may be defended in terms of its contribution towards a common good. We have, then, a wide range of philosophical or theological arguments for such a basic freedom. But the practical success of any of these defences hinges on a further matter – that is, on whom the claim of this freedom can be made, and who it is that must guarantee its respect. The most obvious candidate is the state.

3.4. Freedom of Religion and the State

How, then, does freedom of religion relate to law and the state? What is the force of such a right? Must such a freedom inevitably yield to the law and the state? What kind of a state would be needed to ensure that this freedom is adequately respected?

Contrary to first appearance, perhaps, these questions are not particularly speculative or abstract. Their practical import is evident from the experience of the limitations and violations of religious freedom in modern times. Many such violations occurred in the so-called “people’s republics” of the 20th century, and we continue to find examples today. One well-known recent case is that of Abdul Rahman Jawed, a citizen of the Islamic Republic of Afghanistan. Rahman converted to Christianity in 1990 while in Pakistan, but – after some years living in Europe – was deported back to his home country. During a custody battle for his children following his divorce, his relatives reported to the police that Rahman was an unfit father because he was a convert to Christianity. Article 7 of Afghanistan’s constitution commits the country to respect for the Universal Declaration of Human Rights, including, therefore, the “freedom to change [one’s] religion or belief.” But Article 3 of that same constitution says that Islamic law is fundamental in the country – and, accordingly, anyone who abandons Islam is guilty of a crime for which the punishment is execution. This case is not unique. Conversion from Islam is regarded as a capital offence by many in Islamic countries. In Iran, members of the Baha’i faith, who are considered by Iranian officials to be apostates from Islam, have been declared criminals, and have suffered harassment, persecution, long-term detention, and even death.

Change of belief is not the only issue where states and laws have come into conflict with the claim of freedom of religion. The Universal Declaration states that one’s “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.” But consider the widely-publicized struggle between the government of China and the Falun Gong (or Falun Dafa) movement. Falun Gong draws on elements from Buddhism and Daoism, and emphasizes physical and moral exercise and development. In July 1999, however, the movement was accused by the Chinese government of “spreading fallacies, hoodwinking people, inciting and creating disturbances and jeopardizing social stability,” and was outlawed. Since then, the group states, tens of thousands of its practitioners have been detained, arrested, or sent to prison, and there are

some 40 documented cases of practitioners being beaten up and tortured to death.³²

Other instances where freedom of religion continues to be under threat are legion. The U.S. Commission on International Religious Freedom has identified 11 nations as “countries of particular concern” for violations of religious freedoms: Burma, North Korea, Eritrea, Iran, China, Saudi Arabia, Sudan, Vietnam, Pakistan, Turkmenistan, and Uzbekistan. Religious proselytism and conversion are forbidden or restricted in several other nations, and the exercise of religion in countries where there is a dominant or state religion is often subjected to limitations of various degrees.

One might well ask, then, what is required for freedom of religion to exist in any meaningful sense in such countries? How should the relation between religion and the state be conceived in order to ensure a genuine respect for freedom of religion?

Stephen Schneck (“Religion and the American Framing”) examines the issue of religion and its relation to the state in the United States, by reviewing the debates among the American “Founding Fathers” in the late eighteenth century. One finds, Schneck points out, four broad models of what such a relation could be. Extreme views – for example, of religion controlling the state or of the state being entirely free of religion – were held by very few. Instead, Schneck notes, the majority of the Founding Fathers opted for other models in which religion, and a more robust freedom of religion, has a place in the public sphere. So, readers may discover that, in turning to one of these models, not only Americans but all those interested in protecting freedom of religion can see how a genuine recognition of this freedom might be possible today.

In “The Non-Discriminatory State: Toward a Model of Church-State Relationship and Freedom of Religion in Nigeria,” Pantaleon Iroegbu discusses freedom of religion in much the same way, though drawing specifically on the African experience. Given the strong place of religion in African traditions, there is, Iroegbu notes, no call for an “absolutely secular” or totally neutral state, i.e., where the state has nothing at all to do

³²The Chinese government has gone to extraordinary lengths in its opposition to Falun Gong. In January 2006, as part of an agreement to allow the Google search engine to operate in China, the company agreed to allow the filtering of a long list of “bad words,” including non-Chinese sites related to “Falun Gong.”

with religion. Nevertheless, to guarantee a substantive religious freedom, and also to allow for the freedom of those who do not embrace religion, Iroegbu argues for a “non-discriminatory state.”

Schneck and Iroegbu would maintain, then, that for there to be an effective right to freedom of religion, and for such freedom to be genuinely secure within the state, we require a state that allows the presence of religion and religious belief in the public sphere, that is open to cooperation with religious groups, and yet that also remains formally separate from religion. While we can see what kinds of arrangements need to be in place for this freedom to exist, we also recognize that there is an enormous practical challenge, that is, how to bring about such a state and how to ensure that good relations between the state and religion are maintained.

3.5. Freedom of Religion and Education

Another way in which freedom of religion has been challenged comes, interestingly, from religious communities themselves, and we see this particularly when it comes to matters of education about religion.

It is often held today that the purpose of education is to seek the truth, although this does not presuppose that one already has it. In most fields of study, knowledge and truth are things to be sought, and such a search is ongoing. Some, however, insist that, in religion, knowledge and truth are already possessed; religious education is not a search for new knowledge but, rather, the transmission of an established knowledge. They would, therefore, argue that ‘secular’ education is inferior and should yield to the religious.

An example of such a tension between religion and a secular model of education is found where religious communities insist on educating their children by themselves, or by refusing to follow a state curriculum. In a famous 1972 United States Supreme Court case, the defendants, who were members of the Amish faith, came into conflict with the state of Wisconsin. The Amish parents refused to send their children, aged 14 and 15, to public school after the children had completed the eighth grade. They claimed that the US Constitution’s guarantee of freedom of religion “protects a community’s right to live in accordance with its tradition and

beliefs, even if this limits the individual freedom of children.”³³ On the other hand, the state argued that the freedom of religion does not extend so far as to deprive children of certain benefits, such as an education provided by the state.³⁴

There are, indeed, many other instances of conflict concerning religion and the purpose and content of education. In “Reconciling the Madrassah with the School: Freedom of Religion, Education, and the Dilemma of Contemporary Muslims,” Ghazala Irfan looks at the case of the Madrassah – the Islamic school attached to a mosque – and raises the issue of whether freedom, and particularly religious freedom, exists within the confines of such an institution. Irfan notes, first, that there may be a tension between education (conceived as an activity that is open to challenging established truths) and educational institutions that affirm a text as true. More importantly, there may also be a tension within the religious community itself, i.e., between those who control the madrassahs (and the methods and ways in which the Qur’an is studied) and other Muslims. Irfan’s study suggests an even further question: Can any religious authority permit, and should we expect such an authority to permit, a substantial freedom of religion that may challenge that authority? Yet, if religious groups make claims to religious freedom, surely they have to respect it themselves.

The preceding issues – on the definition of religion, on the nature, source, and limits of religious freedom, on the justification of this freedom, on the role of the state, and on the place of this freedom within religious communities – are clearly conceptual matters. As these issues are clarified and addressed, however, it becomes more obvious what freedom of religion amounts to, how it can be defended and, by extension, what needs to be done in order for it to be actualized in the contemporary world. Thus, following the analyses and the directions suggested by the authors in this volume, if we can respond to the problems alleged concerning freedom of religion, the practical opposition to this freedom will be increasingly difficult to sustain.

³³people.brandeis.edu/~teuber/justicepaptop3.html; see *Wisconsin V. Yoder Et Al.*, No. 70-110 Supreme Court of the United States - 406 U.S. 205; 92 S. Ct. 1526; 32 L. Ed. 2d 15; 1972 U.S. LEXIS 144 - December 8, 1971, Argued - May 15, 1972, Decided. See <http://people.brandeis.edu/~teuber/yoder.html>.

³⁴The Supreme Court upheld the Amish claim.

Of course, there are differences among the positions presented in this volume. But equipped with the insights and analyses of their authors, and with a clearer sense of the arguments that have been employed over two millennia, we know better what values and principles are presupposed, what additional arguments need to be given, and which directions in research need to be pursued. All these are essential to the key concern of how freedom of religion can be guaranteed or respected in the increasingly pluralistic and multi-confessional countries of today.

4. Conclusion

The authors in this issue of the *Journal of Dharma*, then, introduce and contribute to the discussion of a number of the central issues involved in understanding freedom of religion today. We are provided with some philosophical justifications of such a freedom, we see some of the risks and potential limitations of this freedom, and we have a better sense concerning what conditions are required for this freedom to be guaranteed or respected, both in the state and in religious communities.

The call for religious freedom is, it is important to remember, not a new one. Though initially it appeared as a plea for toleration, today freedom of religion is generally accepted as a basic human right. Indeed, what is consistent throughout the essays in this volume is the recognition that freedom of religion is fundamental because of its relation to human dignity. This freedom, then, is not something that lies at the disposition of any public or religious authority. It is essential to the very being and identity of the human person.

We are reminded by the authors that such a freedom is part of the public sphere, and that this includes a freedom of expression. For if human beings have dignity and have a right to preserve their identity and integrity, then rights not only to hold but to express their faith are clearly fundamental. Nevertheless, more needs to be said concerning how such beliefs have a place in the public sphere.

The authors in this volume also remind us that such a freedom is not obviously absolute. For while all accept that there is no justification to coerce people to believe, the freedom to act on one's belief or conscience – to express, worship, and so on – may well be limited, if only by duties to others. But, again, what exactly these limits are, and under what conditions their limitations can be imposed, are issues that require further consideration.

Freedom of religion is clearly one of the most basic rights of human beings, for it is rooted in the nature of what they are. It is, perhaps, for this reason that the challenges to this freedom have also been often regarded as violations of what it is to be a human person. This issue of the *Journal of Dharma*, then, serves to indicate and to provide direction on some of the major concerns that philosophers and other scholars have had to address and need to readdress if this freedom is to withstand the many contemporary attacks on it.

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