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Religions, Human Rights, and Civil Society: Lessons from the Seventeenth Century for the Twenty-First Century

*J. Paul Martin**

I. INTRODUCTION

The treatment of religion by civic authorities today is a product of their respective histories and cultures. In almost every country in the industrialized world, however, there is a strong long-term trend from a close association between politics and religion to separation of the two. A series of debates in seventeenth century Britain contributed to this process.

In ancient times, religion and the state were closely related. In ancient Greece, Socrates chose to die rather than accept the gods as defined by the state of Athens. Rome required of all its citizens at least a formal acknowledgement of its gods. From the fourth century onwards, with the enthronement of Constantine as emperor, Christianity was elevated to the status of state religion and enjoyed this position in virtually all of the political entities of eastern and western Europe for nearly seventeen hundred years.

The close association of Christianity and the state survived major fractures within the Christian community, including the split between East and West, which became definitive in the eleventh century,¹ as well as the divisions resulting from the Protestant Reformation in the sixteenth century. In both cases, the new dispositions still assured a privileged civic status for the Christian religion, although

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1. The Christian churches in the East and the West developed in different directions from the fourth century onwards. This split reflected the restructuring of the Roman Empire under Constantine when the capital was moved from Rome to Byzantium, later called Constantinople. The respective perceptions of the problems of the relationship were quite different. The Papacy in Rome focused on the absolute primacy of its authority. The year 1054 marks the date of the Great Schism when representatives of the Orthodox churches refused to accept the primacy of Rome and a dogma concerned with relationships within the Trinity.

they introduced diversity in terms of the versions so privileged. Radical change only came with the United States Constitution, which provided for the separation of religion and the state. More radical forms of separation were implemented later in Latin America, as a result of anticlericalism, and in Eastern Europe, under the influence of the atheist tenets of Marxist-Leninism.

Today, responding to the growing acceptance of international human rights instruments, the growth of secularist rather than religious beliefs in the West, worldwide population movements that have resulted in religiously diverse societies, and the demise of most militantly atheist regimes, many countries are seeking to assure freedom of religion and belief in their societies. In practice, this is resulting in increasing separation of religion and state, although not necessarily following the United States model.

The history of these changes provides some fascinating episodes in the search for ways to accommodate religious diversity. In his 1960 report to the United Nations on religious freedom, the Indian scholar Arcot Krishnaswami reports that twenty-three centuries ago, King Asoka, patron of Buddhism, recommended tolerance to his subjects, on the grounds that

[a]cting thus, we contribute to the progress of our creed by serving others. Acting otherwise, we harm our own faith, bringing discredit upon the others. He who exalts his own belief, discrediting all others, does so surely to obey his religion with the intention of making a display of it. But behaving thus, he gives it the hardest blows. And for this reason concord is good only in so far as all listen to each other's creeds, and love to listen to them. It is the desire of the king, dear to the gods, that all creeds be illumined and they profess pure doctrines.²

More recently, in 1998, through the International Religious Freedom Act (the "IRFA"),³ the United States government adopted another approach to the promotion of religious freedom. The IRFA makes the enforcement of religious freedom through various diplomatic and economic measures a major component of the foreign pol-

2. Quoted in *Arcot Krishnaswami: Study of Discrimination in the Matter of Religious Rights and Practices*, U.N. Doc. E/CN.4/Sub.2/200/Rev.1, U.N. Sales No. 60.XIV.2 (1960), reprinted in *RELIGION AND HUMAN RIGHTS: BASIC DOCUMENTS 2-3* (Tad Stahnke & J. Paul Martin eds., 1998) [hereinafter Stahnke & Martin].

3. International Religious Freedom Act of 1998, Pub. L. No. 105-292, 112 Stat. 2787 (codified at 22 U.S.C. §§ 6401-81(Supp. 2000)) [hereinafter IRFA].

icity of the United States, the world's most powerful nation. No other nation has yet taken such a position. These two approaches, namely that of Krishnaswami and the United States Government, are very different in time and tone. The first emphasizes the need for the community to examine, debate, and accept common rules,⁴ and the full title of the Act reads "An Act to establish an Office of Religious Persecution Monitoring, *to provide for the imposition of sanctions against countries* engaged in a pattern of religious persecution and for other purposes."⁵

II. THE CHURCH-STATE DEBATES OF SEVENTEENTH CENTURY ENGLAND

Modern approaches in the West to religious tolerance and eventually separation of church and state grew out of debates that took place in seventeenth century England. It was a time when the country had experienced over one hundred years of tension, if not wars, caused by the religious and social alternatives that had sprung from the Protestant Reformation. At that time, the ideas of John Calvin were especially influential. Like the peoples in other northern European countries, English men and women were responding positively to ideas that emphasized the individual's direct relationship to God rather than through the clergy.⁶ This was not only a religious statement; by asserting that the clergy were less important in religious affairs, these ideas implied a diminished role for religion in civil affairs as well.

The doctrine put in question the past power and prerogatives of kings. Unhappy with the performance of some of their kings, a large segment of the British population sought a new order of civil government "by the people" on the now accepted premise that civil authorities possessed only as much power as the people gave them.⁷ Many of the groups promoting this principle also affirmed that privileges such as the right to vote belonged not only to landholders but to all people and especially to those ordinary citizens and soldiers

4. Stahnke & Martin, *supra* note 2, at 47.

5. IRFA, *supra* note 3, at § 6401 (emphasis added).

6. See Richard Ashcraft, *Religion and Lockean Natural Rights*, in RELIGIOUS DIVERSITY AND HUMAN RIGHTS 195, 195-212 (Irene Bloom et. al. eds., 1998).

7. See, e.g., PURITANISM AND LIBERTY: BEING THE ARMY DEBATES 1647-1649, FROM THE CLARKE MANUSCRIPTS (A.S.P. Woodhouse ed. 1992) (containing verbatim debates on self-government issues) [hereinafter PURITANISM AND LIBERTY].

who had been fighting for their freedoms against the kings and the system that had thus far denied them those rights.⁸ Interestingly, their political arguments were still advanced in religious terms. Many participants in the debates consistently sought to justify their political opinions based on the tenets of their faith and the words of the Gospel.⁹ Others argued this was not possible.¹⁰

We have verbatim records of some of these debates that took place in and around London between 1647 and 1649. The 1647 debates were fascinating because they gathered together in different sites around London leaders of the main political factions and commoners, rich and poor, famous and unknown, to debate some of the options for a new constitutional structure in England. The topics included the roles of the army and the king, the rights of property holders versus others, and the power of the civil magistrate with regard to a person's religious beliefs.¹¹

One of the organizers who was personally vocal in the debates was Oliver Cromwell (1599-1658), a very successful military officer who was then in the process of modernizing and professionalizing the British Army. Before he removed the army from politics once and for all, however, he used the units he controlled to force King Charles II into exile in 1646. In the period that followed, before he became Lord Protector of England, he helped organize a series of debates, which led to important constitutional changes, but without greater provision for religious freedom.¹²

The debaters represented the mainstreams within Puritanism, which was then the dominant version of the Christian faith in England. Within this tradition, based primarily on Calvin's ideas, there were still many theological factions characterized by names such as Levellers, Diggers, Ranters, Quakers, and Millenarists. The Putney,

8. A petition to the House of Commons in 1648 reads: "That you would have made both kings, queens, princes, dukes, earls, lords, and all persons, alike liable to every law of the land . . ." *Id.* at 339.

9. "Truly we have heard many speaking to us; and I cannot but think that in many of those things God hath spoke to us. . . . [W]e do act as Christians, as men guided by the Spirit of God, as men having the wisdom from above . . ." *Id.* at 104, 107.

10. "[W]e cannot find anything in the word of God of what is fit to be done in civil matters." *Id.* at 107.

11. *See id.* at 13, 27-29.

12. In 1646, Oliver Cromwell, who was the Lieutenant General of the army, enjoyed great prestige because of his military success and modernization of the army. He presided over these meetings of the General Council of the Army with the Commissary General Ireton.

or Army, debates,¹³ as they were called, lasted for days at a time. Recorded verbatim, they were not transcribed until the beginning of the twentieth century.

During this period of massive social change in England, all institutions were questioned with regard to their social function, most notably the universities, the cities, rural life, and Sabbath observance. At issue was the desire to purify the state by imposing higher moral standards on civil or public life in Britain. The problem was agreeing on which standards to impose. The conservatives saw the ideal of individual liberty as the path to moral breakdown, the end of private property, houses, and wives: in a word, the “perdition of souls and bodies.”¹⁴ Their opponents argued the importance of maintaining the Puritan commitment to the supremacy of the individual conscience and to the equality of all men,¹⁵ on the grounds that each person is ultimately answerable to his or her own conscience and to God, no matter what those in authority might say or order. For them, obedience to God took precedence over obedience to civil authority,¹⁶ but there is an interesting perception that God’s word comes through the consensus of the many rather than through the opinion of a few.¹⁷ Therein lay another dilemma: how does the civil power prevent anarchy and ensure social order if civil society cannot coerce individual citizens?

Out of these debates came a solution to this problem: civil power could rule in public affairs and the individual conscience in private, especially when religious beliefs and worship were at issue. One of the specific political outcomes of these debates was a constitutional order excluding clergy from politics.¹⁸ Clergy were properly in

13. The Putney debates took place from October 28, 1647, until November 1, 1647. Another series took place at Whitehall from December 1648 to January 1649. For a more general discussion of the context of these debates, see J.R. TANNER, *ENGLISH CONSTITUTIONAL CONFLICTS OF THE SEVENTEENTH CENTURY 1603-1689* (1983), especially chapter nine: “The Long Parliament and the Army,” *id.* at 134-50.

14. PURITANISM AND LIBERTY, *supra* note 5, at 51.

15. *See id.* at 53.

16. *See id.* at 61 (“[N]o injury is done when it is subordinated to the special and truly supreme power of God.” (quoting CALVIN, *INSTITUTES* 4. 20. 32 (Beveridge trans.))).

17. “God does not now speak by one particular man, but in every one of our hearts; and certainly if it were a dangerous thing to refuse a message that came from one man to many, it is a more dangerous thing to refuse what comes from God, being spoke by many to us.” *Id.* at 100-01 (footnotes omitted).

18. *See* JOHN LOCKE, *A LETTER CONCERNING TOLERATION*, *reprinted in* 33 *GREAT BOOKS OF THE WESTERN WORLD 1* (Mortimer J. Adler ed., 2d ed. 1990).

charge within the church and its activities, especially worship. The net result of this distinction was the definition of two spheres of influence, the one religious and the other civil. While this did not result in what eventually became the Anglican Church being separated from the state, the power of the state and its officers to judge a citizen's religious conviction was circumscribed.¹⁹ There were, however, limitations, as is visible in the following discussion of John Locke's approach to religious tolerance.

III. ANALYZING LOCKE'S ARGUMENTS FOR THE SEPARATION OF CHURCH AND STATE

Some thirty to forty years after the Putney or Army Debates, John Locke elaborated a more systematic set of arguments in favor of a separation of religious beliefs from the political process in his treatises (notably his *Letter Concerning Toleration*). While personally a very religious person, Locke sought to separate religion and politics to prevent an alliance between the civil and religious authorities. In his view, religious freedom and a peaceable civil society required the separation of the two authorities. Tolerance, however, had its limitations, as the late Richard Ashcraft pointed out in one of his studies of Locke:

Catholics according to Locke (and most of his contemporaries) owed their primary allegiance to a foreign power, the pope. They subscribed to beliefs that were destructive of all human society: that faith was not to be kept with heretics (Protestants), that kings could be deposed for religious reasons, that dominion was founded in grace and other propositions which made Catholics "irreconcilable" enemies to any Protestant government Whereas the sphere of religious belief was, in general, governed by persuasion, reason and the individual's own conscience, Locke . . . endorsed the application of force to Catholics as a means by which they might be "converted" to the truth of Protestantism.²⁰

This led Ashcraft to note that

[t]he political argument for religious toleration while it obviously made use of appeals to individual reason, natural law etc., depended for its practical success upon appeals to prejudices, fears and

19. *See, e.g.*, DECLARATION OF RIGHTS (Eng. 1689).

20. Ashcraft, *supra* note 4, at 207.

hatreds shared by the community and directed against Catholics, and to a lesser extent, atheists who were also excluded from membership in political society as defined by Locke's Letter [Concerning Toleration].²¹

While it is easy enough to recognize the historical limitations of Locke's particular definition of religious freedom, Ashcraft uses it to identify a more radical argument, namely, that all such definitions, including that of "rights" itself, are subject to the vagaries of time:

To see such rights as products of the cultural prejudices of the community, or a fragile political alliance, or a fear of a common enemy etc, may place these rights within a less attractive framework, but at the same time, it reinforces our consciousness that such rights are impermanent, that they are products of political struggle, and that organized human action is necessary to guarantee their preservation. Indeed the very recognition that such rights and the political values of Lockean liberalism generally depended upon shared religious beliefs which are no longer constitutive of our political society ought to make us more, not less concerned with the problematic character of the contemporary rights claims advanced by the individual and against the state.²²

IV. TWENTIETH CENTURY RELIGIOUS FREEDOM

Moving now to the end of the twentieth century, we are confronted by a very different stage. Religious freedom is now a subject of international debate and foreign, rather than solely domestic, policy. Religious pluralism is no longer a question of accepting differences within Puritanism or even within Christianity, but of the coexistence of all the world's different religions and beliefs. There is an international bill of human rights that defines in basic terms the nature of rights, including freedom of religion and belief, and the obligation of the world's states to enforce them domestically and internationally.²³ In the words of the Universal Declaration of Human Rights (the "UDHR"), today "[e]veryone has the right to freedom of thought, conscience and religion; this right includes freedom to

21. *Id.*

22. *Id.* at 208.

23. The International Bill of Rights is comprised of the Universal Declaration of Human Rights (1948), the International Covenant on Civil and Political Rights (1976), and the International Covenant on Economic Social and Cultural Rights (1976).

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.”²⁴

With the enactment of the IRFA, the United States has radically changed the enforcement scale. Religious freedom is now not only a part of United States foreign policy, it has been incorporated to such an extent that certain actions that publicize the issue are regularly required of the Department of State.

Each year, for example, the Department must issue a report on the state of religious freedom around the world.²⁵ The second such report was published in February 2000.²⁶ Inevitably, any country portrayed in a pejorative light feels obliged to defend itself in an equally public way. This is aggravated by the fact that the report also groups countries into categories from the worst to least offensive. Thus, the worst category includes countries like Afghanistan, China, Cuba, and Iraq that “control” religious beliefs and practices.²⁷ Lesser violators are grouped in other categories: those such as Pakistan, Saudi Arabia, and Serbia that are merely “hostile” to some religions, “neglect discrimination” against religions, or still “retain legislation that discriminates,” as opposed to those that merely “stigmatize” some religious groups, like France, Belgium, and Germany.²⁸ The IRFA also established an ambassador whose task it is to monitor and promote religious freedom around the world.²⁹ As an ambassador, he now travels the world to represent United States policy to governments that are seen to restrict religious freedom. The Act has thus made religious freedom and the practices of other countries a major component of the diplomacy of the world’s most powerful state.

In spite of the change in scale, there are still many similarities between the seventeenth and twentieth centuries. The question is still how the civil power should treat the different religious convictions

24. *Universal Declaration of Human Rights*, G.A. Res. 217A, U.N. GAOR, 3d sess., art. 18 (1948). The wording differs in the International Covenant on Civil and Political Rights and the 1981 Declaration on the Elimination of all Forms of Discrimination Based on Religion or Belief, in that the right to change one’s religion is omitted.

25. *See* 22 U.S.C. § 6412(b)(1) (Supp. 2000).

26. U.S. STATE DEP’T ANN. REP. ON INT’L RELIGIOUS FREEDOM FOR 1999 (submitted to the Committee of International Relations, U.S. House of Representatives, and the Committee on Foreign Relations, U.S. Senate, by the Department of State, February 2000).

27. *See id.*

28. *Id.*

29. *See* 22 U.S.C. § 6411 (Supp. 2000).

and practices of its citizens. In virtually all countries, some religions are treated differently from others in terms of taxation, property rights, access to public education, or one's place in the national identity. The problem remains that the diversity of religion and belief results in differences in the way these issues are treated by most states. In addition, religion is still an integral, if not exclusive, factor in civil wars and lesser social tensions. Certain religions are also highly committed to seeking converts, often at the expense of other religions.

V. SOME LESSONS FROM HISTORY

The first lesson of history is that we must always be prepared for continuing adjustments and to recognize the imperfections and transitory nature of any given normative synthesis. Locke and the Puritans worked out an ethic for themselves. It took two hundred more years, however, for the political system in Britain to recognize the rights of Catholics. In spite of high ideals, Locke and his contemporaries were willing to use state power for their religious cause, namely to coerce Catholics to convert to Protestantism. Civil power can be misused, and it often takes historical distance to recognize it.

Today, the United States, the world's most powerful nation, has undertaken a very active role in promoting religious freedom, forcing other countries to be reactive. Claiming to rely on the current international definition of religious freedom, the United States is ready to take resolute unilateral action.³⁰ Importantly, however, the United States Congress passed the IRFA with little or no public debate on the floor. Was that because no elected representative in Washington wanted to appear opposed to religious freedom? The bill was not examined in detail in public debate. In contrast to the British process that relied on weeklong debates among substantial segments of the population, the United States process took place behind close doors, with little national or, given the modern world, international consultation.

The second lesson of history is that building consensus is important, even if only in the face of common enemies. Both external sanctions and internal reforms can bring about religious freedom.

30. Section 6432 of the IRFA defines the tasks of the Commission on International Religious Freedom, including making policy recommendations ranging from diplomatic inquiries to imposition of broad trade sanctions and withdrawal of the chief of mission.

Both can be effective, but, while sanctions can help, internal reforms within the individual countries are essential. Governments, notably Cuba and Iraq, have used the imposition of sanctions to strengthen their own authority within the country by portraying themselves as resisting American imperialism.³¹ Without a stronger international consensus in the form of a treaty on freedom of religion and belief, even if it appeals to Article 18 of the UDHR, the United States government will be frequently accused of trying to impose its own vision of religious freedom on other countries or of using religious freedom to pursue its political goals.

The concept of civil society in seventeenth century England does not correspond to the generally accepted concept in the twentieth century. As opposed to today's definition of the complex of forces and institutions outside the ambit of the state, the seventeenth century model described the realm in which the state could operate without the oversight of the clergy. Certainly, it was not a perfect separation, but it laid the foundation for states to recognize limitations on their powers with regard to the beliefs and personal moralities of their citizens. In other words, states were compelled to become tolerant for a range of, if not for all, religious convictions.

Perhaps the main lesson from the English experience for us today is the degree to which tolerance is often accompanied and conditioned by prejudice and the exclusion of some groups from the consensus. It is not clear which lessons should be learned from the fact that it took two hundred years for Catholics to enjoy religious freedom and full civic emancipation. Ashcraft argues that it shows that any consensus, including human rights, on the part of a given polity is subject to revision.³² This would seem to underline the importance of each society having institutions that assure continual revision and inclusiveness. It does not indicate whether all those excluded today will or ought to be included tomorrow.

While the seventeenth century experience tells us nothing about international diplomacy, reading the verbatim accounts of the often

31. For a comprehensive discussion of sanctions, see Dianne E. Rennack & Robert D. Shuey, *Economic Sanctions to Achieve U.S. Policy Goals: Discussion and Guide to Current Law*, in FOREIGN AFFAIRS AND NATIONAL DEFENSE DIVISION (CRS ed. 1997), and Robert P. Quinn, *A User's Guide to Economic Sanctions*, in ROE BACKGROUNDER 1126 (The Heritage Foundation ed. 1997).

32. See Ashcraft, *supra* note 4, at 208.

vitriolic debates among highly committed and emotional believers,³³ one cannot help but be struck by the possibilities and benefits of extended verbal exchanges in building consensus among parties. In the field of religion and civil society today, one must, therefore, recommend finding analogous space in both the domestic and international arenas for debate and consensus building among the multiplicity of parties concerned with religion, rights, and civil society around the world.

33. One speaker noted, "I chanced to speak a word or two. Truly there was more offence taken at it . . . not only against yourself and the Commissary, but [against] every man that would dispute till we have our throats cut . . ." PURITANISM AND LIBERTY, *supra* note 5, at 81. Another said "I am sorry that my zeal to what I apprehend is good should be so ill resented," followed shortly afterwards by another's request "that there might be a temperature and moderation of spirit within us." *Id.* at 74-75.

