3

History and Philosophy

3.1 This chapter surveys the development of freedom of religion from 200 BC until 1945. This material has not been drawn from the Committee's inquiry. It is intended to provide a background to the development of the philosophy of religious freedom and the legal protections in place today.

Introduction

> Toleration was attained by the legal guarantee of free belief and the public exercise of that belief. Legal toleration is limited in its scope, somewhat ignoble in some of its sources, but constitutes, none the less, one of the most significant advances that the human race has ever achieved.[1]

3.2 This Chapter surveys the history and development of the philosophy of freedom of religion. This is not a modern notion, for arguments against intolerance and for religious liberty can be traced back to ancient times. The first known charter of religious toleration was carved in rock over two hundred years before the birth of Christ. Neither have ideas on religious freedom developed in a linear manner: indeed, some countries are further from religious freedom today than they were centuries ago. It is, therefore, necessary to consider the social context in which protagonists of toleration worked in order to understand the significance of their achievements.

3.3 Whilst numerous examples of religious intolerance could be found in each of the periods mentioned below, this chapter concentrates on examples of tolerance and influential individuals and events which contributed in a positive manner to the development of religious freedoms.

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1 W K Jordan, **The Development of Religious Toleration in England**, Vol I, (London, George Allen & Unwin, 1932), p. 17.

3.4 Calls for religious toleration can be seen as part of a process that has led to the development of the principle of religious liberty. Throughout history there have been laws or edicts of toleration granted by governments and leaders of the world. Such toleration, however, often merely signified a refraining from persecution of minority groups. The term implies a degree of latent disapproval of that which is being tolerated and often relies on the good will of a dominant party toward a weaker party. Toleration, therefore, usually falls well short of religious liberty.[2]

3.5 As illustrated in this chapter, throughout history there have been many calls for religious toleration and religious liberty from individuals, groups, sects and religions. The majority of those arguing for religious freedom, however, were themselves victims of persecution at the time, seeking an end to this persecution and freedom to practice their own religion. There were relatively few advocates for a universal religious liberty until modern times.

Ancient/Classical Times

India

3.6 India has a long history of religious toleration, in practice and in theoretical writing. Hinduism is a pluralistic religion, viewing all faiths as a means to the same goal. Buddhism shares this outlook. Christianity and Islam also have long histories in India. While some strands exhibited intolerance, others emphasised compassion and commonalities. The environment of extreme religious diversity in ancient India necessitated the more tolerant strands developing.

3.7 Archaeological evidence indicates that a highly sophisticated and advanced civilisation existed about 2500 BC in the Indus valley. There is also evidence to suggest that there were, in this civilisation, attempts to harmonise different religions and cults and a variety of different religious practices were tolerated.[3]

3.8 In the ancient period, while there were incidents of persecution, the different religions seem to have adopted a 'live and let live' policy, concentrating on the common goal of achieving universal salvation. It seems that in ancient India religion was not used as a political object.

2 Henry Kamen, **The Rise of Toleration**, (London, Weidenfeld & Nicolson, 1967), p. 7. Jordan, Vol I, p. 17.

3 Dhirendra K Srivastava, **Religious Freedom in India: A Historical and Constitutional Study**, (New Delhi, Deep & Deep, 1982), p. 18.

Chinese travellers recorded various sects meeting and discussing problems and universities run by teachers of different religions.[4]

3.9 Each religion seems to have taught toleration toward other religions. The concept, 'Truth is one, sages call it by different names' is basic to Hinduism. According to Hindu Sacred Writings:

> Ignorant is he who says, 'What I say and know is true; others are wrong.' It is because of this attitude of the ignorant that there have been doubts and misunderstandings about God. It is this attitude that causes dispute among men.[5]

3.10 Hinduism also adopted a practical policy of assimilation, having the flexibility to include or absorb other gods, deities and practices. There is little evidence of any early Hindu sect trying to stop another or of any religious wars.[6]

3.11 While Buddhism taught that salvation could not be achieved through another faith, it also taught tolerance and kindness towards non-Buddhists. The founder of Buddhism, Siddhartha Gautama taught:

> If a man says 'This is my faith,' so far he maintains truth. But by that he cannot proceed to the absolute conclusion: 'This alone is truth, and everything else is false.'[7]

3.12 Jainism contributed greatly to Indian tolerance by teaching non-violence and tolerance and giving absolute religious independence and freedom to individuals. Again, the teachings are clear: 'Those who praise their own doctrines and disparage the doctrines of others do not solve any problem.'[8]

3.13 Early Indian Christianity, like Hinduism, Buddhism and Jainism, followed a policy of toleration. The Christians considered themselves an integral part of the general Indian community and discouraged proselytisation.[9]

3.14 The ancient Indian policy of toleration is also contained in the concept of 'Dharma', a philosophy whereby one of the duties of the state was to protect the virtues of human life or the eternal law that maintained the world. Dharma contained the concept of righteousness, non-violence and virtue. Thereby the state was not to endorse any particular sect or religion but rather promote piety and religiousness by encouraging virtue and

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4 Srivastava, p. 21.

5 **Rig Veda**, Book 1, Hymn 164: 46. **Srimad Bhagavatam** 11:15.

6 Srivastava, pp. 22, 23.

7 Srivastava, p. 23. **Majjhima Nikaya** 2:176.

8 Srivastava, p. 23. **Sutrakritanga**, 1.1:50.

9 Srivastava, p. 23.

morality in a general sense and supporting all religions. It was the duty of the King to protect all subjects, irrespective of religious beliefs. The principle insured a separation of church and state.[10]

3.15 King Asoka, who ruled in India between 272 and 232 BC, issued what appears to be the first ever charter of religious liberty.

> The king beloved of the Gods, honours every form of religious faith, but considered no gift or honour so much as the increase of the substance of religion; whereof this is the root, to reverence one's own faith and never to revile that of others. Whoever acts differently injures his own religion while wronging another's … The texts of all forms of religion shall be followed under my protection.[11]

3.16 Asoka was the first powerful monarch to embrace Buddhism. His rule and teachings had a profound effect on Indian history and Asia generally. His tolerant and humane style was seen as an ideal to be pursued.[12]

Europe

3.17 There is some debate about how tolerant the classical world was in relation to religion. While there was a great deal of diversity, due to the size of the Greek and Roman Empires, there was little discussion, theory or policy of religious diversity, particularly in comparison to India. Much depended on the disposition of the Emperor of the time and the state of the Empire. Arguments for religious toleration were most often put forward by those being persecuted in respect to freedom for their own minority rather than any sense of universal toleration.[13]

3.18 While there was not a great quantity of literature of toleration in classical Greece and Rome, what there was contained promising ideas, some of which were elaborated on and extended in later periods.[14]

Ancient Athens

3.19 It is often assumed that ancient polytheistic religions were tolerant, recognising and respecting gods of other communities. There is, however,

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10 *ibid*, p. 25.

11 From the **Twelfth Major Rock Edict**, one of the inscriptions of Asoka's teachings engraved in rock, quoted in Srivastava, p. 26.

12 Asoka, http://www.buddhanet.net/fdd9.htm

13 Peter Garnsey, 'Religious Toleration in Classical Antiquity,' in W J Sheils (ed), **Persecution and Toleration: Papers Read at the Twenty-Second Summer Meeting of the Ecclesiastical History Society** (London, Basil Blackwell, 1984), p. 1.

14 Garnsey, p. 26.

little evidence of a literature or arguments for religious freedom from the pagans before Christianity became the religion of the emperor and pagans suffered persecution from Christians.[15]

3.20 While classical Athens was cosmopolitan and foreign gods and cults were often included, or at least not attacked, some historians argue that the religious climate of classical Athens was not, in reality, one of toleration. Athenians actively defended the state religion against impiety, as illustrated by the death of Socrates in 399 BC, who was charged with corrupting the youth, introducing new Gods and showing disrespect for the old.[16]

3.21 Due to the polytheistic nature of paganism and large and disparate communities, there was much change, melding and inclusion of foreign gods and practices. There is, however, no evidence of any active debate or doctrine on religious toleration. The rights of the individual were generally seen as secondary to those of the state and community. It is notable that in his defence, Socrates made no plea for the liberty of individual conscience, admitting his guilt and submitting to the authority of the city.[17]

Ancient Rome

3.22 Classical Rome also has a reputation for tolerance. Some historians argue that after the process of expansion was complete, ancient Rome was tolerant and knowledgeable, despite the sporadic persecution of Christians, Jews and Druids. Others argue that Rome exhibited a policy of expansion and absorption rather than of tolerance: 'Roman-style polytheism was disposed to expand and absorb or at least neutralise other gods, not to tolerate them.'[18]

3.23 Although there were incidents of persecution against religious minorities, they were, for the most part, tolerated, though perhaps reluctantly by the Roman authorities. This was, in part, a practical appreciation of the different peoples within the large empire and an acceptance of the limitations of their powers rather than any active policy of tolerance.[19]

3.24 Rome, although regarding the Jewish religion as incompatible with the *cultus deorum*, did grant it official sanction. This was, however, largely

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15 *ibid*, pp. 1, 2.

16 Garnsey, pp. 5, 3-5.

17 *ibid*, p. 6.

18 For example: Ramsay MacMullen in **Paganism in the Roman Empire**, (London, Yale University Press, 1981), p. 2. Garnsey, p. 8.

19 Garnsey, pp. 9, 12.

because Rome received services, such as valuable military assistance, from the Jews. In return edicts and letters were passed to allow them to live according to their traditional customs and laws. Interestingly, there was 'an absolute lack of any apologia for religious pluralism or religious freedom' from the Jews.[20]

3.25 Saint Justin Martyr (100?-165?), a philosopher, theologian, and one of the earliest apologists of the Christian church, sought to reconcile Christian doctrine and pagan culture. He argued that divinity was not exclusive to Christianity and wrote what was perhaps the first argument for the principle of religious freedom with: 'Nothing is more contrary to religion than restraint.' He was later beheaded under Roman law for his beliefs.[21]

3.26 The phrase religious liberty (*libertas religionis*) was first advanced by Tertullian, an early African Christian theologian and moralist, at the turn of the Second Century AD. His *Apologeticum* or *Apologeticus* (The Apology) was a defence of the Christian faith against criticism and persecution at the time but contained an eloquent plea for universal religious liberty. It was composed in late 197 AD and addressed to the provincial governors of the Roman Empire:[22]

> Look to it, whether this may also form part of the accusation of irreligion, to do away with freedom of religion (*libertas religionis*), to forbid a man choice of deity (*optio diuinitatis*), so that I may not worship whom I would, but am forced to worship whom I would not. Not one, not even a man, will wish to revive reluctant worship.[23]

3.27 A later work, the *ad Scapulam*, was in the form of an open letter written in 212 AD to Scapula, Proconsul of Africa, who had been persecuting Christians.

> We worship the one god whom you all know through nature; it is his thunder and lightning at which you tremble, his blessings in which you rejoice. The rest think you are gods, but we know are demons. Nevertheless it is ordained by both man-made and natural law that each person may worship whatever he wishes, nor does one man's religion either injure or benefit the next man. It is however not for religion to compel religion, which is something to be taken up voluntarily not under duress. Sacrifices

20 Garnsey, p. 11.

21 M Searle Bates, **Religious Liberty: An Inquiry** (New York, Harper, 1945), p. 137. James E Wood Jnr, 'An Apologia for Religious Human Rights,' in John Witte Jr and Johan D van der Vyver (eds), **Religious Human Rights in Global Perspective: Religious Perspectives**, p. 463.

22 *ibid*, pp. 6, 14.

23 Tertullian, **Apology**, trans by T R Glover, (NY, William Heinemann LTD, 1931), p. 133.

> are demanded only of those willing to perform them. You will render no real service to your gods by compelling us to sacrifice. For they can have no desire for sacrifices from the unwilling, unless they are animated by a spirit of contention, which is a thing altogether undivine.

3.28 Tertullian was originally a pagan, who became interested in the Christian movement and converted to Christianity toward the end of the Second Century. Despite the open-minded statements above, *Apologeticus* actually concludes with an assertion of the absolute superiority of the Christian religion. Tertullian later became dissatisfied with the willingness for compromise of contemporary Christianity and joined a sectarian movement called Montanism. Eventually they too were too moderate for him, and he formed his own sect.[24]

3.29 A century later, Athanasius (293-373), Christian theologian, bishop, and Doctor of the Church declared: 'It is not with sword and spear, nor with soldiers and armed force that the truth is propagated, but by counsel and sweet persuasion.'[25]

3.30 Lactantius, an African Christian apologist in about 300 AD, expanded on Tertullian's statement in response to the Emperor Diocletian's persecution of the Christians towards the end of his reign. He argued that religion was not something that could be imposed, that persecution was a violation of human and divine law and that it was a contradiction to do evil in the name of religion.[26]

> …it is only in religion that liberty has chosen to dwell. For nothing is so much a matter of free will as religion, and no one can be required to worship what he does not will to worship. He can perhaps pretend but he cannot will.[27]

3.31 The Emperor Constantine passed the Edict of Milan in 313 AD which contained references to religious toleration. This policy was partially revoked in a later edict of 324 AD. The Edict of Milan was a proclamation by which Christianity was given legal status, equal to paganism if not a little superior to it. Persecution in any form from 313 AD was supposed to stop.

> …we have given to those Christians free and unrestricted opportunity of religious worship. When you see that this has been granted to them by us, your Worship will know that we have also

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24 **Encyclopedia Britannica**, Vol 11, pp. 652-3, and http://www.tertullian.org/chi.htm

25 Athanasius, **Divinia Institutia**, 54, in Migne, **Patrologia Latina**, 6: 1061.

26 Garnsey, p. 15.

27 Lactantius, **Divinia Institutia**, 1, 5c 20, in Migne, **Patrologia Latina**, 6:516.54.

> conceded to other religions the right of open and free observance of their worship for the sake of the peace of our times, that each one may have the free opportunity to worship as he pleases; this regulation is made that we may not seem to detract from any dignity or any religion.[28]

3.32 The Roman Emperor Julian (361–363 AD) passed an edict in 361, proclaiming freedom of worship for all religions. According to Edward Gibbon:

> Julian surprised the world by an edict which was not unworthy of a statesman or a philosopher. He extended to the inhabitants of the Roman world the benefits of a free and equal toleration; and the only hardship which he inflicted on the Christians was to deprive them of the power of tormenting their fellow-subjects, whom they stigmatised with the odious titles of idolaters and heretics. The Pagans received a gracious permission, or rather, an express order, to open ALL their temples; and they were at once delivered from the oppressive laws and arbitrary vexations which they had sustained under the reign of Constantine and of his sons.[29]

3.33 Julian seemed initially to exhibit toleration. Christian Bishops who had been exiled under the previous emperor, Constantius, were allowed to return and a Jewish temple in Jerusalem was rebuilt. It is suggested, however, that the recall of Christian bishops was actually designed to encourage dissension among the Christians and the rebuilding of the Jewish temple was intended to insult the Christians rather than please the Jews.[30]

3.34 Later events seem to support this theory. Julian publicly announced his conversion to paganism in 361 AD, though he had already converted secretly from Christianity while a student during his brother's reign. He was thereafter known as 'Julian the Apostate' and set about to revive paganism and raise it again to the level of an official religion. He favoured pagans in official positions and actively persecuted Christians. Julian was assassinated, rumour had it by a Christian, during a retreat from a failed attack on Persian territory after only 20 months as Emperor and paganism died out. His religious policy had no lasting effect.[31]

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28 Lactantius, **De Mort. Pers**., Ch 48. Opera, ed. 0 F Fritzsche, II, p. 288 seq. (Bibl Patr. Ecc. Lat XI).

29 Edward Gibbon, **The Decline and Fall of the Roman Empire**, Vol 2, (New York, Knopf, 1933), p. 421.

30 Gibbon, vol 2. pp. 400-458.

31 *ibid*, p. 515.

3.35 Themistius, a philosopher and rhetorician, delivered an oration to the new emperor, Jovian, in 364 with the aim of convincing him to pass laws of toleration. He argued that moral and religious matters lie outside the sphere of legislation.[32]

3.36 Roman aristocrat Symmachus, in a theological exchange with Ambrose, Bishop of Milan, argued that there was more than one way to divinity and 'to every man his own custom and his own ritual' (*suus enim cuique mos, suus ritus est*). In the Roman Senate he also said: 'It is not by one path alone that men can attain the heart of so great a mystery' (*Uno itinere non potest perveniri ad tam grande secretum*).[33]

Medieval period

India

3.37 Islam came to India soon after its inception with Arab traders, about 600 AD. There seems to have been little tension at first. Only when the Muslim conquerors arrived, in the Eleventh Century, was there large scale violence and conflict and an end to the environment of tolerance.[34]

3.38 While the early Muslim rulers reportedly demonstrated tolerance, the rise of the monotheistic Islam brought great change to India. With Muslims expected to wage holy war against non-Muslims, there were a great many incidents of violence against Hindus and other faiths.[35]

3.39 Akbar the Great (1556-1605) is known as the most secular and tolerant of the Muslim rulers in the Medieval period. He is said to have found 'reason to be the basis of all religion' and overthrown the corruption of state religion. He is also attributed with bringing Muslims and Hindus together. Historian Sharma argues:

> His toleration was more comprehensive than that of his contemporary, the English Queen, Elizabeth. Indeed it was not till the latter half of the nineteenth century that England was able to adopt religious toleration and freedom from civic disabilities to the extent which Akbar had done in India in the sixteenth century … at a time when Europe was plunged into strife of warring sects, when Roman Catholics were burning Protestants at the stake, and

32 Garnsey, p. 21.

33 Garnsey, p. 23. Kamen, p. 13.

34 Srivastava, p. 29.

35 *ibid*, pp. 30-32.

> Protestants were executing Roman Catholics, Akbar guaranteed peace not only to warring sects but to differing religions. At a time of progress and development, he was the first and almost the greatest experimenter in the field of religious toleration if the scope of his toleration, the religions to which it was applied, and the contemporary conditions be taken into account.[36]

3.40 Akbar abolished two taxes on Hindus and, in the later part of his rule, founded a new religion which attempted to combine the practices of Islam and Hindu. He observed Muslim, Hindu and Parsee festivals and admitted Jesuit priests into his courts. He also is said to have encouraged debates between the leaders of different faiths. Akbar, however, is also renowned for the massacre of 30,000 unarmed captive peasants and numerous other atrocities. Perhaps it can be said he was tolerant only by comparison with other Muslim rulers of the time.[37]

The Ottoman Empire

3.41 The Ottoman Turks were Muslims who conquered much of the Middle East, North Africa, Greece and Eastern Europe during the Fourteenth and Fifteenth Centuries, acquiring large numbers of Jewish and Christian subjects.

3.42 The 'Millet system' of the Ottoman Empire has been cited as an important precedent and model for religious minority rights. Probably mainly for practical reasons, governing such a large and diverse kingdom containing large groups of non-Muslims, the Ottoman Empire granted these minorities freedom to practise their religion and govern their internal affairs. Between 1456 AD and the collapse of the Ottoman Empire after World War I, the Greek Orthodox, Armenian Orthodox and the Jews each had official recognition as self-governing communities. Each millet was governed by its relevant church leader.[38]

3.43 There were, however, restrictions on the millets. They could only build new churches under licence, which could not be higher than Muslim places of worship. There were limits on intermarriage, they paid higher taxes, there were limitations on the clothes they could wear, and they were required to wear identifying patches on their clothing. Neither was there really any recognition of the principle of individual freedom of conscience.

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36 S R Sharma, **The Religious Policy of the Mughal Emperors** (Bombay, Asia Publishing House, 2nd ed, 1962) pp. 58, 61, cited in Srivastava, p. 32. S R Sharma, p. 64, cited in Srivastava, p. 32. Sharma, p. 67, cited in Srivastava, pp. 32-33.

37 Srivastava, p. 33 & http://www.hindunet.org/hindu_history/modern/akbar_vs.html

38 Will Kymlicka, 'Liberalism and Tolerance', **Multicultural Citizenship: A Liberal Theory of Minority Rights**, (Oxford, OUP, 1995), p. 156.

3.44 The millet system is often praised for its humanity and toleration of group differences and stability. It does indeed seem remarkable that the Ottomans successfully ruled this diverse, polyethnic, multi-religious empire so successfully for 500 years. Although the millet system was tolerant and progressive for its time, its concept of religious tolerance was little more than a willingness of a dominant religion to do just that, tolerate and coexist with weaker minorities. While there was little persecution, there was active discrimination. Non-Muslim religions were clearly placed beneath Islam. Perhaps it was, however, this strict structure that maintained stability in the empire.[39]

3.45 The Quran clearly states that there is to be no compulsion in religion: 'Let there be no compulsion in religion', and:

> If it had been the Lord's will, all the people on the earth would have come to believe, one and all. Are you then going to compel the people to believe except by God's dispensation?[40]

3.46 According to Muslim law and practice, no one should be forced to change their religion, as long as their existing religion is a monotheistic one based on revelation. Hence, Islam recognised Judaism, Christianity and the Sabians as earlier forms of Islam, containing aspects of divine revelation. Other religions were not entitled to the toleration of the state, instead, according to law, the choice was the Quran or the sword.[41]

3.47 The relationship between the Muslim State and the non-Muslim communities was regulated by a pact called the *dhimma*, under which the non-Muslim faiths were afforded protection under law as long as they stayed in their place, by adhering to the restrictions placed on them. It seems that there was some variation in the degree to which the restrictions were applied, according to community, place, time and leader. Historians Braude and Lewis argue:

> The weakness or strength of the Muslim state and, more generally, the relations between Islam and the outside world affected the strict enforcement or lax disregard of the restrictions mandate by the Holy Law. Not surprisingly, as the Muslim world, compared with the Christian world, became weaker and poorer, the position of the non-Muslim subjects of the Muslim state deteriorated; they suffered from stricter enforcement of the restrictions and even, something which did not often happen previously, from a degree

39 Benjamin Broude and Bernard Lewis (eds), 'Introduction,' **Christians and Jews in the Ottoman Empire: The Functioning of a Plural Society**, Vol 1 (New York, Holmes & Meier, 1982), pp. 1-3.

40 **Quran** 2:256 and 10:99-100.

41 Braude and Lewis, pp. 4-5.

> of social segregation. From the era of the crusades, the twelfth and thirteenth centuries, and onward, there was a change in the balance of power between Islam and Christendom reflected in the deteriorating position of non-Muslims in the Muslim East.[42]

3.48 In response to growing European intervention, influence and sponsorship of reforms, the Ottoman Government issued decrees, firstly in 1839 and then the Hatt-*i* Humayun of 1856, proclaiming equality for all religions. This decree, however, had limited effects and did not prevent declining relations between Muslims and Christians. As the power of Europe increased, Jews and Christians within the Ottoman Empire came under the protection of nations of Europe rather than Islam, acquiring the status of 'resident aliens'. During the Nineteenth and Twentieth Centuries, as Muslim peasants became weaker and poorer, resentment increased against the Christians, who were exempt from the duties of war.[43]

3.49 While strong and thriving, the Ottoman Empire could afford to be benevolent, but when weakened and threatened by an increasingly powerful Christian Europe, persecution began to increase and the millet system broke down.

Christian Europe

3.50 By the Eighth Century AD, the Church had become the upholder of civilisation in Europe. During the medieval period in Europe there were some developments in Christian thought, such as the separation of church and state and notions for the value of the individual conscience and 'natural rights', which were to contribute to the emergence of a doctrine of religious freedom. This was not, however, to happen until centuries later.[44]

Church and State

3.51 Throughout the Middle Ages in Europe, the Church fought to limit the power of the state in the sphere of religion. Although this concerned the freedom of the Church as an institution to run its own affairs, rather than freedom of religion for the individual, freedom of the Church from the control by the state was an important development towards modern religious freedom.

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42 *ibid*, p. 10.

43 *ibid*, pp. 32, 30-33.

44 Kamen, p. 15.

3.52 There was also a continual battle for power between Kings and Popes. This had the effect of limiting the power of each, creating dual authorities of government. This duality was a somewhat unusual development at a time when the most common form of rulership was theocratic absolutism, or a divine ruler.[45]

3.53 Christianity was perhaps different for having developed in classical Greece and Rome where, for early Christians, the emperor was not a divine ruler but a persecutor of their faith. After the conversion of Constantine and the establishment of a Christian empire, church and state could foreseeably have become one. Instead, imperial power crumbled in the West and the independent role of the Church was reasserted by Pope Gelasius (492-496).[46]

Individual conscience

3.54 Medieval religious thought valued the individual conscience as a guide to correct conduct. This emphasis was an important element of later theories of religious rights and did lead to a degree of religious toleration at the time. Medieval doctrine taught that non-Christians could not be forcibly converted to Christianity, that God's grace was a free gift that could only be freely accepted.[47]

3.55 The only significant populations of non-Christian peoples in medieval Europe were the Jews. The attitude of the Papacy was one of grudging toleration, a recognition that Jews had a right to exist in a Christian society. The policy was defined by Gregory I (590-604) in a letter that became a part of the permanent canon law of the church: 'Just as the Jews ought not to be allowed more than the law concedes, so too they ought not to suffer harm in those things that the law does concede to them.' From the beginning of the twelfth century, it was customary for the Jewish community of Rome to obtain a restatement of Jewish rights from each new pope.[48]

Natural rights

3.56 Medieval thinkers began to develop the idea that all people possess natural rights. This doctrine would also be important for later theories of religious freedom. The Renaissance of the twelfth to fourteenth centuries

45 Brian Tierney, 'Religious Human Rights in Global Perspective,' in J Witte and J D van der Vyver (eds), **Religious Human Rights in Global Perspective**, (The Hague, Matinus Nijhof, 1996), p. 22.

46 Tierney, p. 22.

47 Tierney, p. 26.

48 **Decretales**, 5.6.9, cited in Tierney, p. 26.

saw a new concern for individual rights and liberties. As well, a sophistical legal language was developed, in which a doctrine of natural rights could be expressed and there was theoretical debate surrounding these rights.[49]

3.57 Despite such promising aspects of medieval thought, no theologians developed these to suggest a doctrine of religious liberty. It seems that:

> …every medieval writer who discussed this question saw heresy as a sin and a crime that was properly judged by the church and properly punished by the secular power.[50]

Heresy/Religious persecution

3.58 In the late Roman Empire, laws against heresy, sometimes imposing the death penalty, were enacted by imperial authority. After its fall, these laws were rarely used for organised persecution. When cases did come before church courts, the usual penalty was excommunication. From the Twelfth Century there was, however, more systematic persecution, despite the emerging doctrines of natural rights.

3.59 This was largely a result of the growing institutionalisation of the church. 'As the church became more aware of itself as an ordered society with its own system of laws and organs of government, it became less tolerant of those who rejected its authority.'[51]

3.60 In 1199, Pope Innocent III declared heresy equivalent to treason. Secular governments also enacted harsh penalties against heresy. In 1231, Holy Roman Emperor Fredrick II decreed death by burning the punishment for heresy. Pope Gregory IX (1227-1241) began to commission inquisitors to seek out and punish heretics. By the mid-Thirteenth Century, such inquisitors were active in many parts of the Church.[52]

3.61 In 1324, Marsilius of Padua argued in *Defensor Pacis*, or Defender of the Peace, written for Holy Roman Emperor Louis IV in his struggle with Pope John XXII, for a secular state and asserted that coercion was against the nature of religion and that religious belief cannot be forced:

> …neither the Roman bishop, called the pope, nor any other bishop, presbyter, or deacon, ought to have the ruling or judgment

49 *ibid*, pp. 27-29.

50 *ibid*, pp. 29-30.

51 Tierney, p. 30.

52 *ibid*, p. 31.

> or coercive jurisdiction of any priest, prince, community, society or single person of any rank whatsoever.[53]

and

> For in his mercy Christ wished to give every person the opportunity to become deserving up to the very end of his life, and to repent …it would be useless... to coerce anyone to observe them [Christ's commandments], since the person who observed them under coercion would be helped not at all toward eternal salvation.[54]

Marsilius was perhaps the first commentator to recognise the right of conscience as a natural and political right. *Defensor Pacis* was condemned by Pope John XXII in 1327.[55]

3.62 In this atmosphere of religious persecution, despite the promising developments in relation to natural rights, the idea of individual religious liberty was not considered. This environment in Medieval Europe can perhaps be attributed largely to fear. A common religion was the only bond of unity that held together a large and disparate Western Christian society. 'Conformity in faith implied unity and therefore security in society. Conversely, to differ in faith meant to threaten the fabric of society.' In this way, religious toleration was only to be achieved in Europe when the dominant parties no longer had any reason to fear religious dissent.[56]

The Reformation

3.63 In the early Sixteenth Century, the ancient unity of Western Christianity came to an end. Although many years would elapse before it acquired the name 'Protestant Reformation,' this rupture fundamentally affected every aspect of society and culture in western Europe. The Reformation represented a revolt against established religions and political and religious authority. It gave rise to the phrase 'liberty of conscience' and led to the emergence of new nation states and new religions.

3.64 Between 1500 and 1700, Europe experienced a series of wars of religion which splintered the previously religiously uniform region into a number

53 Marsilius, ***Defensor Pacis***, Alan Gewirth, trans. (New York, Columbia Press, 1956), p. 114.

54 *ibid*, p. 164.

55 James E Wood, Jr, 'An Apologia For Religious Human Rights,' in John Witte Jr and Johan D van der Vyver (eds), **Religious Human Rights in a Global Perspective: Religious Perspectives**, p. 467.

56 Tierney, pp. 31-4. Kamen, p. 17. Jordan, vol I, p. 21.

of sects. Many of these groups were consequently persecuted. Each group suffering persecution sought toleration but largely for their own beliefs, rather than for the concept of religious liberty for all.[57]

3.65 Modern religious toleration is often said to have emerged from the Reformation period. The revolutionary changes in politics and religion in the Sixteenth Century created a new historical context, allowing a re-evaluation of religious liberty. The impetus of the Renaissance was also relevant to the rise of toleration. The questioning of man's economical and spiritual place in society led to the development of secular thought and a search for universal human values and hence to a more liberal attitude to those who differed in point of religion.[58]

3.66 In the early 1500s, Desiderius Erasmus, Dutch Renaissance writer, scholar, and humanist, argued against the use of coercion in religion and for the futility of persecution; 'That which is forced cannot be sincere, and that which is not voluntary cannot please Christ.'[59]

3.67 An associate of Erasmus, Sir Thomas More, was highly regarded as a civil servant loyal to the State and to the Church. More's **Utopia** (1516), in which an imaginary pagan state is represented as having complete freedom of religion and opinion, while a work of fiction, was very influential at the time. In April 1534, More refused to swear to the Act of Succession, and the Oath of Supremacy, and was committed to the Tower of London on April 17. More was found guilty of treason and was beheaded on July 6, 1535. His final words on the scaffold were: 'The King's good servant, but God's First.' He was beatified in 1886, and canonised by the Catholic Church as a saint by Pope Pius XI in 1935.[60]

3.68 From the middle of the Sixteenth Century, there were discussions of a genuine religious freedom. Groups such as the Baptists and Anabaptists objected to coercion in relation to religion. Sebastian Castellio's **On Heretics, Whether they Should be Persecuted** (1555), quoting Erasmus, provided a full-scale argument for freedom of conscience. His toleration, however, did not include non-believers:[61]

> Let not the Jews or Turks condemn the Christians, nor let the Christians condemn the Jews or Turks, but rather teach and win them by true religion and justice, and let us, who are Christians, not condemn one another, but, if we are wiser than they, let us

57 Tierney, pp. 34-5.

58 Kamen, pp. 8, 22.

59 Ep. 1334, 5 January 1523, in **Desiderius Erasmus, Opus epistolarum**, 5:11.362-81, cited in James E Wood Jnr, p. 463.

60 Kamen, p. 29.

61 Tierney, p. 35.

> also be better and more merciful. The better a man knows the truth, the less he is inclined to condemn.[62]

3.69 In England in the mid-1600's, Thomas Helwys argued for universal religious liberty and the separation of church and state:

> Our Lord the King is but an earthly King, and he hath no authority as a King, but in earthly causes, and if the Kings people be obedient and true subjects, obeying all humane laws made by the King, our Lord the King can require no more: for men's religion to God, is betwixt God and themselves; the King shall not answere for it, neither may the King be jugd betwene God and Man. Let them be heretikes, Turks, Jewes, or whatsoever it apperteynes not to the earthly power to punish them in the least measure.[63]

3.70 Similarly, a few years later, Leonard Busher, a member of the first Baptist congregation in England, wrote: 'It is not only unmerciful, but unnatural and abominable, yea, monstrous, for one Christian to vex and destroy another for difference and questions of religion.'[64]

3.71 The English Civil War (1642-1649) brought the ideal of religious freedom into focus in England. Charles I was defeated by a Parliament controlled by Presbyterians who wanted to impose their discipline on the English Church. The armies that had won the victories, however, contained many members of dissenting sects such as Congregationalists, Baptists, Unitarians that all demanded toleration.[65]

3.72 In the pamphlet literature of this period, some writers such as the Presbyterian Richard Baxter began to argue for religious toleration for all. Roger Williams, in **The Bloudy Tenent of Persecution** (1644) wrote:

> It is the will and command of God that (since the coming of his Sonne 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.[66]

3.73 Three lines of argument were used to attack religious persecution: scepticism, expediency and the underlying principles of Christian faith. The sceptical argument originated in Renaissance humanist thought and

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62 Cited in Kamen, p. 78.

63 Thomas Helwys, **A Short Declaration of the Mistery of Iniquity**, facs, repr. Ed. (London, 1935), p. 69.

64 Leonard Busher, **Religious Peace or a Plea for Liberty of Conscience**, cited in Wood Jr, p. 465.

65 Tierney, p. 36.

66 **The Complete Writings of Roger Williams**, 7 vols. (NY, 1963), 3:3, cited in Tierney, p. 36.

was used by Sebastian Castellio, Acontius, Pierre Bayle, William Walwyn and Francis Osborne.[67]

3.74 Political philosopher Jean Bodin argued that while religious uniformity was desirable, it was expedient to tolerate minority religions rather than risk civil strife. Examples of expediency can be found in the decision of Henry IV of France to change his religion from Protestant to Catholic in order to gain the French crown. Then, as a Catholic king, he issued the Edict of Nantes (1598), granting substantial freedoms to Protestants. The policies of Queen Elizabeth I on religion were also largely determined by reason of state.[68]

3.75 The third and perhaps most important argument was that religious persecution contradicted the teachings of Jesus. Again, Castellio, Pierre Bayle and Roger Williams used this argument, as did Baptist pamphlets of the 1600's and English writer John Milton. 'Do to other men all that you would have them do to you' (Matt. 7:12) was used as a basic plea for tolerance among Christians. Passages such as 'no more Jew or Gentile, no more slave and freeman, no more male and female; you are all one person in Jesus Christ' (Gal. 3:28) were used to argue no forcing of conscience. Separation of church and state were urged with 'give back to Caesar what is Caesar's, and to God what is God's' (Matt. 22:21). Texts such as the parable of the tares (Matt. 13: 24-30; 36-43) were used extensively in religious debate throughout the period.[69]

3.76 One example is **Concerning Heretics and Those who burn Them** (1524) by Balthasar Hubmaier, founder of a Swiss Anabaptist group. This was one of the earliest pleas written in Europe for complete toleration.

> One should overcome them with holy knowledge, not angrily but softly … If they will not be taught by strong proofs or evangelic reasons, then let them be and leave them to rage … The law that condemns heretics to the fire builds up both Zion in blood and Jerusalem in wickedness … This is the will of Christ who said, 'Let both grow together till the harvest, lest while ye gather up the tares ye root up also the wheat with them.'
>
> The inquisitors are the greatest heretics of all, since, against the doctrine and example of Christ, they condemn heretics to fire, and before the time of harvest root up the wheat with the tares. For Christ did not come to butcher, destroy and burn, but that those that live might live more abundantly.[70]

67 Tierney, p. 37.

68 *ibid*, p. 37-8. See paragraphs 3.79-3.82 for further detail on the Edict of Nantes.

69 *ibid*, p. 38-9. Kamen, pp. 9-11.

70 Quoted in Kamen, pp. 60-61. Hubmaier was himself burned at the stake as a heretic in 1528.

3.77 A Leveller pamphlet written in 1649 set out a similar doctrine that would later be included in First Amendment to the Constitution of the USA:

> We do not impower or entrust our said representatives to … compel by penalties or otherwise any person to any thing in or about matters of faith, Religion or Gods worship or to restrain any person from the profession of his faith, or exercise of his religion according to his conscience …[71]

3.78 The medieval arguments about freedom of conscience were revived and combined with the new ideal of religious liberty. Parliamentary leader Henry Vane argued that freedom of religion could be claimed on the grounds of natural rights. William Penn, Bishop Burnet and Roger Williams also used this argument.[72]

The Edict of Nantes

3.79 The Edict of Nantes (1598), proclaimed by Henry IV, gave partial religious freedom to the Huguenots, or French Protestants. The Edict ended the series of religious wars between Catholics and Protestants that ravaged France from 1562 to 1598. During these wars, several ineffective treaties were concluded, embodying privileges for the Huguenots. The Edict of Nantes included the religious provisions of these treaties and added a number of others.

3.80 By the terms of this Edict, the Huguenots were granted liberty of conscience throughout France. They were allowed to build churches and hold religious services in specified villages and the suburbs of any city except episcopal and archiepiscopal cities, royal residences, and within a five mile radius of Paris; Huguenot nobles were permitted to hold services in their homes. Followers of the faith were granted civil rights and the right to hold official positions. Four universities or schools, at Montauban, Montpellier, Sedan, and Samur, were permitted to be Huguenot.

3.81 A special court, composed of ten Catholics and six Protestants, called the Chambre de l'Edit (Chamber of the Edict) was established for Huguenot protection in the Parliament of Paris, and subsidiary chambers were established in the provincial Parliaments. Huguenot pastors were paid by the Government, as were Catholic priests. As a guarantee of protection, 100 fortified cities (*places de sûreté*) were given to the Huguenots for eight years.

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71 'An Agreement of Free People, in W B Haller and G Davies, (eds), **The Leveller's Tracts, 1647-1653** (New York, 1944), p. 323, as cited in Tierney, p. 40.

72 Tierney, p. 42.

3.82 The provisions of the Edict of Nantes were never fully carried out, even during the reign of Henry IV. Its political clauses were abrogated by Cardinal Richelieu, chief minister of Louis XIII, in 1629. Persecution of the Huguenots resumed during the reign of Louis XIV, particularly after 1681. When the edict was revoked in 1685, hundreds of thousands of Huguenots were forced to flee France and take refuge in Protestant countries.[73]

Queen Elizabeth I

3.83 The reign of Elizabeth I (1558-1603) was significant in the development of religious freedom, for there were many changes in religion and politics that took place during this period. A number of factors which contributed to these changes. During the Sixteenth Century, there had been a growing secularisation of national politics. In addition, a number of religious groups began to be represented in government. As a result, it was unable to agree on a common religious policy, which necessitated the reaching of a compromise. [74]

3.84 The greater accessibility of travel increased knowledge of other religions and brought into question the 'truth' of any one religion. Perhaps most significantly, the invention of the printing press allowed those advocating religious freedom to communicate their ideas widely, creating a literature of toleration.

3.85 There were also economic arguments, such as the devastating costs of the French religious wars, highlighted in English literature as argument for toleration. Contact with Dutch traders, whose prosperity was often linked with a higher level of religious freedom, increased awareness and support for toleration.[75]

3.86 One of the most notable advocates of tolerance was Quaker leader, William Penn. His **The Great Case of Liberty of Conscience** (1670) was written from prison at a time when Quakers were suffering serious persecution. Penn later founded the state of Pennsylvania as a liberal state open to people of all creeds. The land in America was granted to him by the new Catholic King, James II, as payment of a government debt to his father.

3.87 In 1687, James II issued a Declaration of Indulgence, suspending all penal laws against dissenters. His argument was a logical one:

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73 Material in this section was drawn from: http://www.fwkc.com/encyclopedia/low/articles/n/n017000071f.html

74 It should also be noted, however, that there was significant persecution of Catholics and the Irish during Elizabeth I's reign.

75 Jordan, pp. 21-22.

> We cannot but heartily wish … that the people of our dominions were members of the Catholic Church; yet … conscience ought not to be constrained, nor people forced in matters of mere religion. It has ever been directly contrary to our inclination, as we think it is to the interest of government, which it destroys by despoiling trade, depopulating countries, and discouraging strangers, and finally, that it never obtained the end for which it was employed.[76]

3.88 James II was overthrown by William of Orange and Mary in 1688. The new rulers issued a Toleration Act in 1689. While this Act was important in granting liberty to non-conforming Protestants, it was largely a political move. It was far more conservative in content than James II's Declaration, and stopped short of contemporary ideals.[77]

3.89 John Locke, in his **Letter Concerning Toleration** (1689**),** wrote: 'I esteem that toleration to be the chief characteristic mark of the true Church' and 'Liberty of conscience is every man's right.' Locke's Letter was largely a moderate restatement of other European writers who had preceded him. It was, however, important because of its influence. Written by the most powerful philosopher of the century, the piece commanded instant respect and authority.[78]

3.90 By the end of the Seventeenth Century in Europe, theories of religious freedom had been formed, although implementation would take some time longer. While incidents of persecution lessened during the Eighteenth Century, it was not until the liberal revolutions of the Nineteenth Century that freedom of religion became widely established in the constitutions of Western states. Further, it was not until the Twentieth Century that major Christian Churches proclaimed religious rights as an essential feature of Christian faith itself.[79]

China

3.91 Confucianism, Taoism and Buddhism were the major religions throughout most of China's history. Confucianism and Taoism are native to China, while Buddhism came from India in the First Century AD. The beliefs of many Chinese included elements of all three religions. As in India, from

76 Cited in Kamen, p. 209.

77 Kamen, p. 211. Mary was James II's daughter.

78 John Locke, 'A Letter Concerning Toleration,' **Great Books of the Western World** vol 35, (Chicago, Encyclopedia Britannica Inc, 1987), p. 1. John Locke, **A Letter Concerning Toleration**, M. Montuori, ed. (The Hague, 1963), p. 95, as cited in Tierney, p. 42. Kamen, p. 231.

79 Tierney, p. 43.

Buddhism came the idea of *dharma* or cosmic law, which included notions of tolerance. All three religions placed an emphasis on harmony.

3.92 In 635 AD, a Nestorian bishop arrived in China, the first known Christian presence in that country. The Nestorian church was officially recognised by Emperor Taizong of the Tang Dynasty under the name of the Luminous Religion and prospered for two hundred years. In 845, however, an anti-foreign movement resulted in a ban on all foreign religions. The decree was rescinded a year later, but the religious climate in China remained changed.[80]

3.93 During the Thirteenth Century, China was ruled by the Mongol Yuan Dynasty which gave protection and favours to the Nestorians.[81]

3.94 In 1294, the Franciscans came to China. These friars enjoyed the protection of the emperor and received a state salary that allowed them to found churches in a number of major cities. In addition, the Franciscans benefited from the tax exemption granted to priests and monks of all religions by the Mongol Yuan government. They also received large imperial grants to decorate and furnish their churches.[82]

3.95 Jesuit missionaries appeared in the late 1500's, and their teachings had considerable influence on the emperor and China's cultivated society. In 1692 Emperor K'ang Hsi (1661–1722) issued an Edict of Toleration and employed some of the Jesuits as astronomers and artists in the palace. But the decision of the Catholic Church not to allow Chinese converts to worship Confucius and their ancestors led to the expulsion of Europeans from China in 1724, except for those employed by the court for their scientific knowledge.[83]

The Enlightenment

3.96 Both the American Bill of Rights and the French Declaration on the Rights of Man owed a great deal to a century of philosophical debate on the nature of human beings as individuals and members of society. Philosophers and writers of the Enlightenment, such as Voltaire, Rousseau, John Locke and David Hume, used reason and logic to challenge the church and aristocracy and assert the values of freedom, equality and tolerance. These arguments, combined with political and

80 Edmond Tang & Jean-Paul Wiest (eds), **The Catholic Church in Modern China**, (New York, Orbis, 1993), p. 181.

81 *ibid*, p. 182.

82 Wiest, p. 189.

83 *ibid*, p. 183.

economic changes, led to a powerful intellectual movement which was to have, by the end of the Eighteenth Century, a profound effect on world history, including in the field of religious liberty.

The United States

3.97 Many of the people who settled in North America at the beginning of the Seventeenth Century were seeking refuge from religious persecution and freedom to worship God as they chose. Yet many of them began denying that very same religious freedom to anyone whose belief was in conflict with their own. Those whose conscience ran counter to orthodoxy were not only damned by the religious authorities but brutally punished by the civic government. Each colony had its own established church, forcing all to pay for its upkeep and punishing any dissenters.

3.98 In only two of the early colonies was there freedom of religion, Rhode Island, brought by Roger Williams and Maryland, under Lord Baltimore. Maryland was founded on a basis of tolerance, Lord Baltimore wanting to establish a colony in which Catholics and Protestants could live with equality and good will. In 1648, an *Act Concerning Religion* was adopted by the Maryland Assembly. The Act was apparently drafted by Baltimore himself as a matter of expediency, to ensure the success of his enterprise when the Parliamentarians came to power in England and to protect the Catholic Church in the province. While it contained the phrase 'liberty of conscience in matters of religion', this Act only protected the Trinitarians and excluded Jews.[84]

3.99 Rhode Island, governed by Roger Williams, was the only colony offering any genuine religious freedom. He advocated the separation of church and state and was against the absolute authority of any one church. In his **True picture of a commonwealth** (1655), he argued that 'Papists, Protestants, Jews and Turks' all had a right to be tolerated and live and worship in their own way.[85]

3.100 The Flushing Remonstrance was the first declaration of religious tolerance by a group of citizens, so named for the town of Flushing, Long Island in the New Netherlands, in which it was written. In an attempt to build the struggling colony by attracting more people, Governor Kieft granted a patent to a group of Englishmen in October 1645, the most liberal arrangement in America at that time. The Flushing patent granted:

84 Haynes Trebor, **The Flushing Remonstrance** (The Origin of Religious Freedom in America), (New York, Bowne House, 1957) p. 8.

85 Trebor, p. 10.

> …the right to have and enjoy liberty of conscience, according to the custom and manner of Holland, without molestation or disturbance from any magistrates, or any other ecclesiastical minister, that may pretend jurisdiction over them.[86]

3.101 While the patent did not grant full religious freedom in the modern sense, Holland had one of the most lenient attitudes toward religious tolerance in Europe. A later Governor, Stuyvesant, imposed a number of restrictions on religious freedom on the colony, including a ban on Quakers, which angered the townspeople of Flushing and violated the towns' patent. In response, it was decided to send a remonstrance to the Governor in protest.[87]

3.102 The document was read and approved at a town meeting on 27 December 1657. The Governor took a number of disciplinary measures against the officials involved but the town continued to welcome Quakers, against whom there was a wave of persecution at this time. In 1662, the Governor had John Bowne, from Flushing, arrested, imprisoned and banished for harbouring Quakers. In his defence Bowne, cited the patent promised Flushing and challenged the authority of the government to restrict free exercise of religion or to deny a citizen the right to allow a person into his home because of their religion. Bowne was freed and the result of this case helped bring an end to religious persecution in the colony and promote arguments for religious toleration.[88]

3.103 Religious freedom won from the Dutch government continued under English administration, which began in 1664. The new Governor, Nichols, confirmed the patent Flushing had been granted, with its provision for liberty of conscience. A few years later, religious freedom became law for the entire colony. In 1663, the Charter of Liberties was drafted, including as one of its provisions a guarantee to the people against any form of religious persecution. This charter served as the basic law of the colony until the Bill of Rights was adopted after 1688.[89]

3.104 Virginia was also instrumental in the development of religious liberty in America. The law of the land mandated that white Virginians worship in the Anglican Church and supported it by paying taxes. Legislation granted limited religious expression and practice to persons who did not accept the religious doctrines and ritual of the Church of England. The law, however, required dissenters to notify the courts of their dissenting

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86 *ibid*, p. 12.

87 A remonstrance was the customary instrument among the Dutch for expression of public opinion. Trebor, pp. 15-18.

88 *ibid*. pp. 224-30.

89 Trebor, p. 30.

status and dissenting ministers and their meeting houses needed licenses from the General Court. Legal toleration did provide dissenters a means, however cumbersome, by which they could legally worship outside the Anglican Church, but it also disadvantaged dissenters by barring them from public office and by taxing them for support of the Anglican Church. Moreover, the privilege of religious toleration could be withdrawn at any time.

3.105 The authorities tolerated small numbers of dissenters from the Church of England who agreed to register with the courts and obtain licences. There were, however, also settlers from other religions in the colony who resented the discriminatory practises and restrictions placed on the practise of their own religion. After about 1750, evangelical Christians precipitated a struggle for religious freedom parallel to a wider struggle across America for political independence. They challenged the establishment's discriminatory practices and legal partnership with a particular church, by deliberately flaunting laws. As the Revolution approached, they formed a partnership with followers of the Enlightenment, who also wanted to destabilise the Anglican Church in Virginia.

3.106 The Virginia Convention adopted the final draft of George Mason's Declaration of Rights in June 1776. Article Sixteen stated that 'all men are equally entitled to the free exercise of religion, according to the dictates of conscience.' In response, the evangelical dissenters swamped the legislature with letters and petitions listing their grievances and demanding relief. In the same year, the General Assembly exempted the dissenters from contributing to the support of the Anglican Church.

3.107 Independence, declared in 1776, was confirmed at the end of the war. The actions of the Virginia legislators during this period destroyed the power of the Anglican Church and brought more rights to non-Anglicans. It was not, however, until 1786 that the General Assembly guaranteed freedom of religion with the passage of Jefferson's famous statute.

3.108 Spurred by the success of the American Revolution, encouraged by George Mason and James Madison and deeply convinced that religious freedom and tolerance were essential to a free people and the wellspring of all other freedoms, Thomas Jefferson wrote what came to be called the Virginia Statute for Religious Freedom. He introduced his bill for establishing religious freedom in 1779 in Williamsburg as part of a general revision of state laws. It was too radical a step for legislators to take at that time and the bill languished during the war years. Dissenters, however, continued their campaign of petitions. James Madison later

resurrected Jefferson's bill and in 1786 the Virginia Assembly enacted Jefferson's Statute for Religious Freedom.[90]

Bill of Rights

3.109 Early American mistrust of government power was a result of the colonial experience. Americans resented that taxes and laws were imposed by a distant government, in which they were not represented, and often brutally enforced. From these experiences came a uniquely American view of power and liberty as natural enemies. The nation's founders believed in containing the government's power and protecting liberty and declared a new purpose for government: the protection of individual rights.

3.110 In the summer of 1787, delegates from the 13 States convened in Philadelphia and drafted a blueprint for self-government, the Constitution of the United States. The first draft set up a system of checks and balances that included a strong executive branch, a representative legislature and a federal judiciary. The Constitution was remarkable, but flawed. It did not include a specific declaration or bill of individual rights. It specified what the government could do, but did not say what it could not do. In addition, it did not apply to everyone.

3.111 Recently freed from the English monarchy, the American people wanted strong guarantees that the new government would not trample upon their newly won freedoms of speech, press and religion, nor upon their right to be free from warrantless searches and seizures. The framers of the Constitution heeded Thomas Jefferson who argued: 'A bill of rights is what the people are entitled to against every government on earth, general or particular, and what no just government should refuse, or rest on inference.' The American Bill of Rights, inspired by Jefferson and drafted by James Madison, was adopted and in 1791 the Constitution's first ten amendments became the law of the land.

The French Revolution

3.112 The French Revolution (1789) greatly influenced European intellectual, philosophical, and political life in the Nineteenth Century. Its emphasis on Liberty, Equality, and Fraternity sparked debate between conservatives

90 Material in this section was drawn from:
http://www.history.org/life/religion/religionva.htm

such as Edmund Burke and radicals Thomas Paine, William Godwin and William Blake.

3.113 The Revolution had put an end to absolutism in France. The 'divine right of kings' was questioned and replaced with the 'will of the people'. This was understood to mean limiting the powers of Government through a constitution and electing an assembly and parliaments. Free speech, freedom of the press and freedom to form political parties were seen as basic human rights. The forces of liberalism were planted and would continue to make demands on absolutism throughout Europe.[91]

3.114 Out of the French Revolutionary period came the Declaration of the Rights of Man and of the Citizen (1789). This proclamation has influenced democratic theory ever since, and all over the world. The author was the Marquis de La Fayette, with some behind-the-scenes assistance from his friend, then US Ambassador to France, Thomas Jefferson. Louis XVI, still nominally on the throne, signed the Declaration unwillingly. It included the following article relating to freedom of religion:

> 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.[92]

Nineteenth Century

3.115 During the Nineteenth Century, these ideas on freedom of religion were developed and debated further by philosophers and writers questioning the role and authority of the church and arguing for the rights of the individual. Following the human rights atrocities which occurred during the two World Wars of the Twentieth Century, these ideas were later adopted in universal human rights legislation, through the UN's various instruments.

3.116 A number of literary and philosophical movements contributed to the development of notions of religious liberty. The Romantic period was characterised by freedom of thought and expression. Romanticism emphasised the desire to be free of convention and tyranny, asserting the rights and dignity of the individual. Political and social causes became dominant themes in romantic poetry and prose throughout the Western world. The year 1848, when Europe was wracked by political upheaval, marked the peak of romanticism in Italy, Austria, Germany and France.

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91 http://members.aol.com/agentmess/frenchrev/index.html

92 Article 10, as cited at http://members.aol.com/agentmess/frenchrev/mancitizen.html

3.117 In Victorian England (1837-1901), there was much debate about religion itself, the different denominations, organised religion and agnosticism. The philosophers and writers engaged in this debate included Thomas Carlyle, John Ruskin, John Stuart Mill, Benjamin Disraeli, John Henry Newman, Matthew Arnold and Gerard Manley Hopkins.

3.118 The Transcendentalists, who emerged in the USA during the late 1820s and 1830s, engaged in similar debate. Transcendentalism was a literary and philosophical movement that was, in part, a reaction to certain Eighteenth Century rationalist doctrines. It involved a rejection of the strict Puritan religious attitudes that were the heritage of New England, where the movement originated. It also opposed the strict ritualism and dogmatic theology of all established religious institutions.

3.119 The transcendentalists were influenced by Romanticism, especially such aspects as self-examination, the celebration of individualism, and the extolling of the beauties of nature and humankind. Intuition, rather than reason, was regarded as the highest human faculty. Prominent Transcendentalists included Ralph Waldo Emerson, feminist and social reformer Margaret Fuller, preacher Theodore Parker, educator Bronson Alcott, philosopher William Ellery Channing, and author and naturalist Henry David Thoreau.

Russia

3.120 Prior to 1917, the Russian Orthodox Church was the established church of the Russian Empire. It included a number of different religions, each of which was allowed a degree of autonomy. For example, Finland and the Baltic were largely Protestant, Poland and Lithuania were largely Catholic, the Central Asian regions were predominantly Muslim, Germans in the Volga region were Lutheran, while Russian Jews were required to live in the Pale of Settlement. These religions were largely defined by ethnicity and territory, indeed it was part of the theology of the Russian Orthodox Church that religion was closely connected with blood and soil.[93]

3.121 After the 1905 revolution, the supremacy of Russian Orthodoxy and the subordination of the Church to the Tsar began to be questioned. In 1905, the Tsar issued a Law on Tolerance, granting Russians the right to depart from Orthodoxy, raise their children as non-Orthodox, and granted provisions to foreign religions to build churches and teach in schools. This

93 This stretched from Riga to Odessa and from Polish Silesia to Kiev. Harold J Berman, 'Religious Rights in Russia: A Historical Theory,' in John Witte, Jr and Johan D van der Vyver (eds) **Religious Human Rights in Global Perspective**: **Legal Perspectives**, pp. 287-288.

was a reversal of an 1896 law prohibiting missionary activity by foreigners. Religious reforms came to an abrupt halt when Lenin seized power in 1917 and proclaimed Russia an atheist state. Gross violations of human rights followed, such as pogroms against Jews.[94]

Conclusions

3.122 Individuals and groups arguing for toleration, even if only for themselves, have contributed to the development of the concept of religious liberty and universal religious rights. Despite this long history of notions of tolerance, religious liberty was one of the last human rights to be agreed to and implemented. Indeed, this is yet to occur in many places around the world.

3.123 Throughout history, religious freedom has been enshrined in law in varying degrees in different locations and periods, with varying levels of conviction and effectiveness. In practice, levels of tolerance often depended on the strength and stability of the state, which was influenced by the level of the threat perceived by or to minority or dissenting religions.

3.124 As has been demonstrated, concepts of religious freedom are contained in the ancient teachings and texts of the world's major religions. Each tradition teaches the qualities contained within the concept of religious freedom; conscience, love, dignity, understanding, compassion, reason, liberty, mercy, tolerance, righteousness, and so on.[95]

3.125 Despite this positive basis, throughout history there has been a great deal of violence and intolerance in the name of religion. A submission from the Lutheran Church of Australia supported this view, stating that: 'Religious intolerance has been a source of untold violence and immeasurable human suffering over the ages, up to this very day.' One academic has argued that 'for several thousand years the history of religion was marked by religious intolerance and persecution' and that 'none of the world's religions has lived up to its own teachings with regard to religious human rights.' Furthermore, despite the instruments of international law in place

94 Berman, p. 288.

95 John Witte Jr, 'Introduction,' **Religious Human Rights in Global Perspective: Religious Perspectives**, John Witte, Jr and Johan D van der Vyver (eds), p. xxi. Rev John McNicol, Submissions, p. 17.

to protect religious human rights since the formation of the UN in 1945, violations of freedom and belief are still regrettably prevalent.[96]

3.126 In 'Religious Dimensions of Human Rights', Martin Marty argues for a religious answer for a religious problem, suggesting that any solution to the problem of religious human rights needed to come from the world's religions themselves. He called for greater understanding and communication between religious communities, as well as between the religious and secular worlds, in order to expand and assure a common religious freedom for all.[97]

96 Submissions, p. 1049. James E Wood Jr, 'Editorial: Religion and Religious Liberty,' **Journal of Church and State 33**, (1991), p. 226. Wood Jr 'An Apologia for Religious Human Rights,' in John Witte Jr and Johan D van der Vyver (eds), **Religious Human Rights in Global Perspective: Religious Perspectives**, p. 462.

97 Martin E Marty, 'Religious Dimensions of Human Rights', in Witte Jr and van der Vyver, pp. 9, 16.