

1-1-2014

Liberal Democracy and the Right to Religious Freedom

Aldir Guedes Soriano

Follow this and additional works at: <https://digitalcommons.law.byu.edu/lawreview>

 Part of the [Constitutional Law Commons](#), [Human Rights Law Commons](#), [Political Science Commons](#), and the [Religion Law Commons](#)

Recommended Citation

Aldir Guedes Soriano, *Liberal Democracy and the Right to Religious Freedom*, 2013 BYU L. Rev. 581 (2014).
Available at: <https://digitalcommons.law.byu.edu/lawreview/vol2013/iss3/8>

This Symposium Article is brought to you for free and open access by the Brigham Young University Law Review at BYU Law Digital Commons. It has been accepted for inclusion in BYU Law Review by an authorized editor of BYU Law Digital Commons. For more information, please contact hunterlawlibrary@byu.edu.

Liberal Democracy and the Right to Religious Freedom

*Aldir Guedes Soriano**

Paper presented at the 19th Annual International Law and Religion Symposium, 7-9 October 2012, at the J. Reuben Clark Law School on the campus of Brigham Young University–BYU, Provo, Utah – USA.

ABSTRACT

Foremost, this paper examines the current situation of the rights to religious freedom and democracy around the world, which deserve attention and concern. Civil liberties are currently in crossfire. This article examines the foundations of the right to religious freedom. Depending on the philosophical foundations, there are two different rationales for the right to religious freedom: liberal and anti-liberal. According to the liberal tradition, the best reason to protect religious freedom rests upon the autonomy of the individual conscience. It is clear that a constitutional democracy does not allow the establishment of any religion by the government, using either executive or legislative power. In other words, there are democratic restrictions to the autonomy of the collective consensus in the sphere of religious conscience. Behind the discussions of the separation between church and state and of different forms of government, there is a struggle between the autonomy of individual conscience and the autonomy

* ALDIR GUEDES SORIANO is a citizen of both Brazil and Spain. He is an Attorney at Law and a professor of Public International Law at Oeste Paulista University- Unoeste in Presidente Prudente, Sao Paulo, Brazil. He received his postgraduate degree in Public Law from the Brasiliense Public Law Institute and in Constitutional Law from Salamanca University (Spain). He has published several works on human rights and religious liberty in books as well as doctrinal articles in newspapers and magazines. In 2002, he published his first book titled "Religious Liberty According to Constitutional and International Law." He was also coordinator of a selection of excerpts on religious liberty with the participation of renowned scholars from several countries, which was released at the library of the Brazilian Supreme Federal Court in November 2009. He contributes to a blog located at <http://direitoshumanoseliberdade.blogspot.com.br>.

The author would like to thank Fabio Sagebin for the initial translation of part of the text from the Portuguese to English and Lyndon Bradshaw, Travis Hunt, Adaury Rocha and José Milton Gonçalves for their precious help in revising the English text.

of the collective consensus. The purpose of this article is to demonstrate the importance of liberal thought as the foundation of democracy, religious freedom, and all of Western civilization. The paper also shows the risk to both democracy and religious freedom if a government was to adopt the anti-liberal viewpoint of religious freedom, or in other words, the full autonomy of the collective consensus. Individuals should be free to choose how they want to live and what to believe in.

I. INTRODUCTION

The fundamental right to religious freedom may be considered a legacy of the liberal thought that permeated the American Revolution and was a determining factor in the coming forth of the U.S. Constitution. This same chain of political thought also influenced the constitutionalism of other nations, mainly Western ones. Thus, religious freedom, as an established human right by-law, is a recent achievement in the history of mankind, which may easily be associated with the coming forth of the liberal and democratic state. Without democracy, there are neither civil rights nor religious freedom. Democracy is the substrate that permits the exercise of religious freedom and the other fundamental rights of the human person.

Lamentably, democracy is in decline around the world and all civil liberties are under crossfire.¹ The freedoms of expression and religion, the touchstones of democracy, are also being threatened. It must be understood that religious freedom and democracy are inseparable.

In the context of these threats against democracy and individual liberty, it is essential to restore the liberal thought of such authors as John Locke, the father of liberalism, and John Rawls, who was responsible for the resurgence of political liberalism.

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

The purpose of this paper is to demonstrate the importance of liberal thought as the foundation of democracy, religious freedom, and all of Western civilization.

II. CURRENT SITUATION SURROUNDING RELIGIOUS FREEDOM AND DEMOCRACY

Today, religious freedom is a fundamental right of the human person, consecrated in the constitutions of a number of democratic states and in the principal international human rights treaties.² Thus, it is not just a natural right with no binding legal force. It is an achievement without which there could be neither social peace nor harmonious association among the various existing religious expressions in society, including atheists and agnostics.³

In spite of the recognition of religion-related rights in the most important international human rights treaties and in the constitutions of the various democratic and even non-democratic states, the overall status of these rights is worrisome at the least. Paul Marshall observed that religious persecutions affect all religious groups, such as the Baha'i in Iran, Ahmadis in Pakistan, Buddhists in China-Tibet, members of the Falun Gong religion in China, and Christians in Saudi Arabia.⁴ In addition to these religious groups, atheists and agnostics may also suffer persecution. For instance, it is illegal to be an atheist in Indonesia.⁵ In Saudi Arabia, a person who declares himself to be an atheist may be executed for apostasy.⁶ However, Christians are the ones who most often suffer persecution.⁷ In 1997, Marshall estimated that at least two-hundred

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

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

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

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

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

7. See DAVID B. BARRETT & TODD M. JOHNSON, WORLD CHRISTIAN TRENDS, AD 30–AD

million Christians lived under some form of religious oppression, discrimination, or persecution in more than sixty countries.⁸ Even today, many Christians are discriminated against, persecuted, incarcerated, executed, beheaded, hanged, martyred, or tortured to death because of their faith.⁹

According to research reports, the most egregious persecutions and violations of the right to religious freedom are spread over the Eastern and Near East countries (North Africa and the Arabian Peninsula of Asia).¹⁰ Indeed, there are terrible religious persecutions in many countries located in the “10/40 Window.”¹¹ The situation is markedly better in democratic countries of the Western world.¹² As Marshall observed, of the twenty nations considered “not free,” twelve are Muslim-majority countries (Iran, Iraq, Maldives, Saudi Arabia, Sudan, Turkmenistan, Uzbekistan, Afghanistan, Bangladesh, Mauritania, Pakistan, and Palestine).¹³ Of these twenty countries, it

2200: INTERPRETING THE ANNUAL CHRISTIAN MEGACENSUS 399 (Christopher Guidry & Peter Crossing eds., 2001) (presenting lists detailing the number of martyrs to which the Christian religions have been subjected over the past century); GRIMM & FINKE, *supra* note 2, at 11 (noting that 130,000–170,000 people die each year from violence directed at Christianity alone).

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

9. See THE PEW FORUM ON RELIGION & PUB. LIFE, PEW RESEARCH CTR., *RIISING TIDE OF RESTRICTIONS ON RELIGION* 22–24 (2012), available at <http://www.pewforum.org/uploadedFiles/Topics/Issues/Government/RisingTideofRestrictions-fullreport.pdf> (showing that in 2010 Christians were being harassed in 111 different countries, more than any other religion). Harassment was defined as physical assaults, arrests and detentions, the discretion of holy sites, discrimination against religious groups in employment or education or housing. *Id.*

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

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

12. See THE PEW FORUM ON RELIGION & PUB. LIFE, PEW RESEARCH CTR., *supra* note 9, at 28–29 (showing that Western countries experience less social hostility towards religion than their Eastern counterparts).

13. Paul Marshall, *The Current State of Religious Freedom*, in RELIGIOUS FREEDOM IN THE WORLD 18, 18–28 (2000). See also THE PEW FORUM ON RELIGION & PUB. LIFE, PEW RESEARCH CTR., *supra* note 9, at 11 (listing Iraq, Saudi Arabia, Afghanistan, Bangladesh, Pakistan, and

may also be inferred that five of them have anti-democratic tendencies (China, North Korea, Cuba, Vietnam, and China-Tibet) and have systematically restricted the freedom of religion and the freedom of speech.¹⁴ Thus, democratic and Christian states of the Western world offer better conditions for the exercise of religion-related public liberties. On the other hand, non-democratic states are notorious for serious freedom of belief violations and persecutions.

According to Robert F. Drinan, the “172 nations that participated in the 1993 UN World Conference on Human Rights in Vienna repeated and reinforced the proclamations of world law in favor of religious freedom,”¹⁵ such as the International Covenant on Civil and Political Rights of 1966.¹⁶ This same conference established the proposition of the universality of human rights over cultural relativism.¹⁷ Also, according to the 1993 Vienna Declaration, “all human rights are universal, indivisible and interdependent and interrelated.”¹⁸ Therefore, religious freedom is, theoretically, a transnational right that should be equally respected, regardless of national culture.

The controversy regarding the universality of human rights proclaimed in the 1948 Universal Declaration of Human Rights was also present in the debates surrounding Article 18 of the International Covenant on Civil and Political Rights of 1966¹⁹ and in the Declaration on the Elimination of All Forms of Intolerance and

Palestinian territories as countries that experience some of the most religiously hostile activity).

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

15. ROBERT F. DRINAN, *CAN GOD AND CAESAR COEXIST?: BALANCING RELIGIOUS FREEDOM AND INTERNATIONAL LAW* 6 (2004).

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

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

18. *Id.* ¶ 5.

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

of Discrimination Based on Religion or Belief of 1981.²⁰ Even today, in spite of the consensus achieved at the 1993 Vienna Conference, the idea of cultural relativism continues to be invoked as a justification for discrimination and even for the persecution of religious minorities through government institutions.²¹ Thus, cultural relativism in relation to the universality of human rights continues as a challenge to international law in the Twenty-First Century.

Yet, Cançado Trindade argues that “the two world human rights conferences, the 1968 Tehran Conference and the 1993 Vienna Conference [World Conference on Human Rights], are, in fact, part of a lengthy process of constructing a universal culture of observing human rights.”²² However, this process is slow, and possibly ineffectual in certain contexts. Littman, for example, argues that the 1990 Cairo Declaration on Human Rights in Islam clearly establishes that human rights should submit to Islamic law, i.e. Shari’a, rather than Islamic law accommodating universally accepted human rights.²³

Incidentally, it should be noted that democracy around the world has been in considerable decline and there is a notorious decrease of public freedoms in thirty-eight countries.²⁴ Despite the political revolutions in the Middle East and Northern Africa over the past couple of years, the 2013 Freedom House report warns that gains for

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

21. See David G. Littman, *Universal Rights and “Human Rights in Islam,”* in *THE MYTH OF ISLAMIC TOLERANCE: HOW ISLAMIC LAW TREATS NON-MUSLIMS* 317, 321–22 (Robert Spencer ed., 2005) (saying that a criticism of the Universal Declaration of Human Rights comes from countries like China, India, Iran, Pakistan, and Saudi Arabia which have ancient legal systems, calling “for human rights to be viewed in the historical and cultural context of each country or civilization”).

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

23. Littman, *supra* note 21, at 327–28 (demonstrating that the Cairo Declaration subjects the Universal Declaration of Human Rights to Islamic Law). Cf. BAT YE’OR, *THE DHIMMI: JEWS & CHRISTIANS UNDER ISLAM* 51–67 (1985) (explaining that historically, and under Koran authority, non-Muslims in Islamic territory were subjected to discriminatory taxes, exclusion from public office, inequality in the eyes of the law, restrictions on religious freedom, and general segregation and humiliation).

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

freedom in these regions are threatened by opposition from “governments, security forces, ruling families, or religiously based political factions.”²⁵ Some even find that instead of promoting democracy, the Arab Spring movement opened an opportunity for radicals to establish theocratic government models.²⁶

Thus, political scientist Larry Diamond warns that the “democratic recession” is more important than the “economic recession.”²⁷ Moreover, Daniel Greenfield observed that “[a]ccording to the Economist’s Democracy Index, there are twenty-six full democracies and fifty-five authoritarian regimes with the latter outnumbering the former in population three to one.”²⁸

III. DEMOCRATIC ORIGIN OF THE RIGHT TO RELIGIOUS FREEDOM

The Virginia Declaration of Rights of 1776 was the first liberal document to establish the idea of the universality of natural or innate rights.²⁹ The same idea was later reproduced in the Declaration of Independence of the United States of 1776,³⁰ in the French Declaration of the Rights of Man and of the Citizen of 1789,³¹ and even in the Universal Declaration of Human Rights of 1948.³² Indeed, Article 1 of the Universal Declaration of Human

25. PUDDINGTON, *supra* note 10, at 2.

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

27. See DIAMOND, *supra* note 1, at 46–87.

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

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

30. THE DECLARATION OF INDEPENDENCE para. 2 (U.S. 1776) (claiming that “all men are created equal” and “endowed by their Creator with certain unalienable Rights” including “Life, Liberty and the pursuit of Happiness”).

31. THE FRENCH DECLARATION OF THE RIGHTS OF MAN AND OF THE CITIZEN arts. 1, 4 (Fr. 1789) (arguing that men are born and remain free and equal in rights and that the natural rights of man has no bounds other than to ensure that others enjoy the same right).

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

Rights of 1948 proclaims: “All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.”³³

Further, according to Michael McConnell, the provision of religious freedom in the Virginia Declaration of 1776 is recognized as the precursor to the First Amendment of the American Constitution.³⁴ It is interesting to note the concept of religion as a duty of obedience to divine precepts in the Virginia Declaration:

That religion, or the duty which we owe to our Creator, and the manner of discharging it, can be directed only by reason and conviction, not by force or violence; and therefore all men are equally entitled to the free exercise of religion, according to the dictates of conscience; and that it is the mutual duty of all to practise Christian forbearance, love, and charity towards each other.³⁵

The United States’ Declaration of Independence reflects political liberalism, as well as the Judeo-Christian legacy. This most important document presents the idea that “men are created equal” and “endowed by their Creator with certain unalienable rights.”³⁶ Thus, the rights are not concessions from the king, the government, or the state. On the contrary, this document establishes that “to secure these rights, governments are instituted among men.”³⁷ Therefore, the foremost purpose of the democratic and liberal state is to protect the human person and her unalienable rights. In the words of Jacques Maritain, the state is “an instrument in the service of man.”³⁸ In contrast, it would be a political perversion to place man at the service of this instrument,

dignity and rights”).

33. *Id.*

34. Michael McConnell, *Religious Freedom at a Crossroads*, 59 U. CHI. L. REV. 115, 155 (1992).

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

36. THE DECLARATION OF INDEPENDENCE para. 2 (U.S. 1776).

37. *Id.*

38. JACQUES MARITAIN, *MAN AND THE STATE* 13 (Catholic Univ. of Am. Press 1998) (1951).

the state.³⁹ Ultimately, the state can neither revoke nor restrict human rights at its own pleasure because *it* was not the author of those rights. Rights are innate, whether from the rational point of view (natural rights) or a metaphysical or religious point of view.

The First Amendment of the American Constitution contains two interrelated pillars or crucial principles of liberal democracy: the free exercise of religion (Free-Exercise Clause) and the non-establishment of religion by the state (non-Establishment Clause).⁴⁰ The metaphor of the wall of separation was canonized by two important U.S. Supreme Court decisions written by Justice Hugo L. Black in *Everson v. Board of Education*⁴¹ and *McCullum v. Board of Education*.⁴² From these cases prevailed the understanding that neither the states nor the federal government may establish a church. According to Justice Black, the wall should be “kept high and impenetrable.”⁴³

Today, constitutions around the world typically contain a catalogue of fundamental rights (the dogmatic part) that guarantees to citizens the greatest possible freedom with minimum necessary restrictions that are still in consonance with liberal democracy.⁴⁴

IV. LEGAL AND PHILOSOPHICAL FOUNDATION OF THE RIGHT TO RELIGIOUS FREEDOM

The legal and philosophical foundation of the right to religious freedom may be found by responding to the following question: Why should the state protect the right to religious freedom? Two major

39. *Id.*

40. See KENT GREENAWALT, *RELIGION AND THE CONSTITUTION: FREE EXERCISE AND FAIRNESS 1* (2006) (identifying free practice of religion and the prohibition of a governmentally established religion as crucial principles of liberal democracy).

41. 330 U.S. 1, 16 (1947) (stating that the First Amendment was intended to erect a wall of separation between Church and the State and thus, neither state nor federal governments can set up churches, pass laws aiding religion, influence men to choose a particular religion, or participate in the affairs of any religious groups).

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

43. *Id.*; see also DANIEL DREISBACH, *THOMAS JEFFERSON AND THE WALL OF SEPARATION BETWEEN CHURCH AND STATE 4-5* (2002) (explaining how Justice Black’s gloss on Thomas Jefferson’s “wall” metaphor dominates modern political and legal discourse on this subject).

44. See, e.g., S. AFR. CONST., ch.2, 1996; Hong Kong Bill of Rights Ordinance, No. 59, (1991); New Zealand Bill of Rights Act 1990 (N.Z.).

theoretical frameworks each attempt to answer this question and establish the foundation of the right to religious freedom. They are the liberal viewpoint and the anti-liberal viewpoint.

A. The Liberal View of Religious Freedom

Liberal, in this article, refers to less government generally. According to the American founding fathers, government power should be subject to checks and balances to best ensure the protection of individual freedoms. Less government can therefore offer better protection than more government. Liberal, in this article, is also associated to political liberalism, which teaches that governments should be neutral between competing conceptions of good.⁴⁵

The liberal viewpoint believes that the state should protect religious freedom because the citizen has the right to choose.⁴⁶ That is, he has the right to choose his beliefs and to live according to the dictates of his religious, atheist, or agnostic conscience—or not. This answer to the original question, however, poses another question: Why should the citizen's right to choose be respected? The most satisfactory explanation is connected to the dignity of the human person. Accordingly, the state should respect choices because human beings are endowed with their own intrinsic dignity and, therefore, deserve to be treated with respect and consideration. Thus, the cardinal foundation of the right to religious freedom is the dignity of the human person.⁴⁷

Political liberalism and democracy also benefit the state by bolstering individuals and economies. The prosperity of the United States of America was built under liberal principles. Democracy led this nation to the pinnacle of the world. According to Alexis de Tocqueville, religion in America established by itself its own limits.⁴⁸ In sum, the liberal viewpoint of religious freedom is

45. See *infra* notes 61–65 and accompanying text.

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

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

48. ALEXIS DE TOCQUEVILLE, A DEMOCRACIA NA AMÉRICA, LIVRO II [DEMOCRACY IN AMERICA, VOLUME II] 6 (Eduardo Brandão trans., Martins Fontes 2004). On the United States of

beneficial to the individual, to the economy and to the state.

The liberal viewpoint further sees the foundation of religious freedom as residing in the autonomy of the individual conscience, that is, in the right to choose.⁴⁹

To John Garvey, the liberal viewpoint would be agnostic and would therefore include a broad concept of religion, to the point of accepting “that even disbelief is a kind of religion.”⁵⁰ It is noteworthy that this *viewpoint*, called *agnostic* by Garvey, broadens religious freedom to reach both believers and non-believers (atheists and agnostics). In other words, it protects both religion and irreligion. The liberal concept, however, does not represent a break with religion, although it might adopt the rational viewpoint of natural right. Instead, liberal thought bases the right to religious freedom on the right to choose (autonomy of the individual conscience), which the Bible calls free will. The liberal thought of John Locke, John Milton, and even of the French Illuminist Voltaire did not completely break with either metaphysics or religion.⁵¹ Therefore, the liberal viewpoint could not be classified as agnostic because it is based in part on a biblical idea.

According to the liberal tradition, the right to choose is one of the most fundamental rights of the human person.⁵² The dignity of the person is denigrated when the citizen is hindered in the exercise of his right to choose and express his religious beliefs through worship, teaching, and observing a religious day of rest compatible with his religion.

America as a pinnacle nation, see generally BEN CARSON, *AMERICA THE BEAUTIFUL: REDISCOVERING WHAT MADE THIS NATION GREAT 179–95* (2013).

49. See GARVEY, *supra* note 46, at 42–43 (noting the role of autonomy in religious freedom).

50. *Id.* at 43 (arguing that the free exercise clause of the U.S. Constitution appears to be inconsistent with the idea of autonomy because it seems to favor “choices *for* religion over choices *against* religion”).

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

52. John Milton, *Areopagitica*, in *GREAT BOOKS OF THE WESTERN WORLD* No.32, at 394–95 (Robert Maynard Hutchins et al. eds., Encyclopedia Britannica, Inc. 1952) (1644) (discussing the freedom to choose that God gave to Adam and what Adam did with that freedom).

B. The Anti-Liberal View of Religious Freedom

Anti-liberal, here, means more government and, perhaps, the imposition of predefined thought and behavior standards by the state. More government often means less individual liberty. John Garvey presents an anti-liberal concept of religious freedom based on the idea that religion is a good thing.⁵³ According to Garvey's anti-liberal viewpoint, the state should protect religious freedom because religion is a "good thing."⁵⁴ But, state protection of religious freedom simply because it is a good thing presents at least two important difficulties. First, the state would have to define which beliefs constitute religion, which is an insurmountable impossibility if the state is democratic, secular, and pluralistic. A secular state cannot define what amounts to "religion"; only a theocratic state would be able to do this. This kind of definition is possible when there is a fusion between civil law and religion. There is nothing more utopian than the pretense of achieving a legal religious concept that satisfies the entire diversity of creeds that exist in human societies.

Furthermore, the anti-liberal premise—religion is merely a good thing—is an axiom. Would it be reasonable to admit that if religion is a good thing for the individuals that it would also be a good thing for the state? Further, which religious concept should a state adopt? Would it be the sum of all religions, or a synthesis of them? If the citizen did not agree with the result, would he not be excluded from the state and society? Characterizing and supporting religious freedom simply because it is a good thing does not provide an answer to these critical questions. And, if a citizen ultimately disagrees with the state's position, it is likely that he would be excluded from the society. Such a result is the harsh opposite of religious freedom.

As is apparent, the anti-liberal idea of religious freedom, in contrast with political liberalism, would permit only a single moral concept of good, established *a priori*. Therefore, an anti-liberal

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

54. *Id.*

concept of religious freedom would end up restricting the citizen's right to choose.

In defining religion, the state would end up adopting an official religion. The human person would not be completely free to choose because he would be conditioned to pre-established standards and conform to the one moral concept of good. Such thought revives the medieval view of religious freedom, which restricts human liberty far beyond what is reasonable because it authorizes freedom within the boundaries of the dominant state religion and impedes the right to choose. In fact, the anti-liberal view of religious freedom is a return to the confessional state or to the religious view of religious freedom (*libertas ecclesiae*).⁵⁵ Therefore, the anti-liberal tendency is contrary to pluralism, religious diversity, and religious freedom for all religions and religious groups under equal terms.

V. LIBERAL DEMOCRACY AND THE THOUGHT OF JOHN RAWLS

As explained, liberal democracy is the political system that offers the best conditions for peaceful association among all religions and religious professions.⁵⁶ In this regard, Ortega y Gasset observed:

The political form that provides the greatest desire for association is liberal democracy. It takes to the extreme the decision to take one's neighbor into consideration and is the prototype of 'indirect action.' Liberalism is the principle of public right by which public power, even if it is omnipotent, is limited to itself and seeks, even at the possible expense of its existence, to leave a place in the state in which it rules for those to live who neither think nor feel like it does, that is, in the same way that the strongest and the majority do. Liberalism, it should be remembered, is the supreme generosity: it is the right that the majority grants to the minority. Therefore, it is the noblest of cries that ever sounded on the planet.⁵⁷

The idea of justice as fairness, as elaborated by John Rawls in *A Theory of Justice and Political Liberalism*, applies in the context of the fundamental right to religious freedom because this theory

55. JÓNATAS MACHADO, A LIBERDADE RELIGIOSA NUMA COMUNIDADE CONSTITUCIONAL INCLUSIVE [Religious Freedom in an Inclusive Constitutional Community] 50–52 (1996).

56. See *supra* notes 45–52 and accompanying text.

57. JOSÉ ORTEGA Y GASSET, *A REBELLIÃO DAS MASSAS* [The Rebellion of the Masses] 108 (Marvlene P. Michael trans., 3d ed. 2007).

reconciles two important values: the liberties of the moderns, associated with John Locke; and the liberties of the ancients, which is individual freedom and equality, as represented by Rousseau.⁵⁸ Furthermore, the Harvard philosopher's liberal propositions contribute to the resolution of difficult cases in which rights collide. In other words, Rawls's liberalism establishes a clear limit on the restriction of individual freedoms.

In his theory, Rawls starts with the presupposed fact of pluralism, which divides society with its profound and insurmountable religious, philosophical, political, and moral differences.⁵⁹ From this finding comes the question or central problem of his reflections: how can society be ordered so that free and equal individuals may peacefully associate in spite of their profound religious, cultural, and moral differences?⁶⁰

According to Rawls's thought, constitutional democracy acknowledges all reasonable religious views (diverse reasonable views of good on reasonable terms).⁶¹ This is the central idea of his first principle: "Each person has equal claim to a fully adequate scheme of equal basic rights and liberties, which scheme is compatible with the same for all; and in this scheme the equal political liberties, and only those liberties, are to be guaranteed their fair value."⁶² For example, constitutional democracy does not acknowledge anti-social behavior that is incompatible with peaceful association, such as a religion that practices human sacrifice. This, then, is the restriction on individual liberties. The state should permit all religious practices, except those that involve acts that are

58. See JOHN RAWLS, *POLITICAL LIBERALISM* 4–11 (expanded ed. 2005) (distinguishing what is called the "liberties of the moderns," which includes freedom of thought and conscience, from "the liberties of the ancients," which focused on equal political liberties and the values of public life); JOHN RAWLS, *A THEORY OF JUSTICE* 10–15 (rev. ed. 1999) (discussing the concept of "justice as fairness").

59. See RAWLS, *POLITICAL LIBERALISM*, *supra* note 58, at 3–4 (stating that the political culture of a democratic society is marked by opposing and irreconcilable "religious, philosophical, and moral doctrines").

60. *Id.* at 4 (asking how it is possible for a just and stable society of free and equal citizens to exist over time despite these doctrinal divisions).

61. *Id.* at 18–22 (discussing the concept of "good" and its relation to religion, and how each person's conception of "good" may be different but that cooperation allows these varying understandings).

62. *Id.* at 5.

anti-social and hostile to the human being himself. It is prohibited to kill, rob, or commit fraud in the name of religion.⁶³

Further, the restriction of the freedom of conscience on account of security and public order is the logical consequence of contractualism. This does not, however, imply that public interests are on a higher plane in relation to religious or moral interests. Indeed, the government is not authorized to suppress convictions because they conflict with state affairs.⁶⁴ It may restrict the right of religion only in the case of incompatibility with public order and peaceful association.

Religious pluralism is wholesome. It presents no threat to individual freedoms or to the democratic state. In a democratic and pluralistic state, all religions can coexist in peace. Furthermore, social harmony does not depend on the elimination of differences nor on the union, unification, or homogenization of the religious diversity in the society.⁶⁵ On the other hand, religious ecumenism, if promoted by the state in pursuit of its own uniform morality, may represent a threat to religious freedom. Nothing prevents individuals and religious organizations from promoting the pursuit of religious unity. The right to religious freedom, in theory, also protects ecumenical ideas, but an ecumenical unity should not be imposed on everyone, especially not through the coercive force of government legislation. Similarly, constitutional law protects religion and atheism through the right to believe, but neither should be imposed on citizens. In his commentary in the book *AUTOBIOGRAPHICAL REFLECTIONS* by Eric Voegelin, Ellis Sandoz says that “the idea of ecumenism is one more way for man to achieve *libido dominandi* over his fellow man without worrying about the moral consequences of his actions.”⁶⁶

63. See, e.g., *Emp’t Div., Dep’t of Human Res. of Or. v. Smith*, 494 U.S. 872, 890 (1990) (holding a law that disallowed the use of Sacramental Peyote was constitutional because it was facially neutral and generally applicable). Laws prohibiting what a legislature deems anti-social behavior are generally upheld despite the negative impact they may have on a particular religion. *Id.*

64. See RAWLS, *A THEORY OF JUSTICE*, *supra* note 59, at 219–20 (arguing that the paternalistic nature of the state should not be interpreted as a license to constrain convictions).

65. Regarding the absence of attempting religious unification and seeking a world religion, see generally LEE PENN, *FALSE DAWN: THE UNITED RELIGIONS INITIATIVE, GLOBALISM, AND THE QUEST FOR A ONE-WORLD RELIGION* (2004).

66. Ellis Sandoz, *Commentary to ERIC VOEGELIN, REFLEXÕES AUTOBIOGRÁFICAS [Autobiographical Reflections]* 157 n.2 (2007).

Upon acknowledging the fact that pluralism is an insurmountable element of a contemporary and democratic society, tolerance should be promoted in the sense of respecting religious freedom, regardless of existing theological divergences. It would be a mistake to encourage tolerance based only on what the various religious confessions have in common. An intolerant person is one who does not acknowledge the religious freedom of others. It is the duty of all citizens to promote peace and tolerance. Religious freedom and tolerance contribute to the reduction of social conflict. And although it is not always possible to find common ground in religious matters, atheists, agnostics, and religious people do not have to agree about their convictions in order to respect each other, nor to work together for everyone's freedom of conscience.

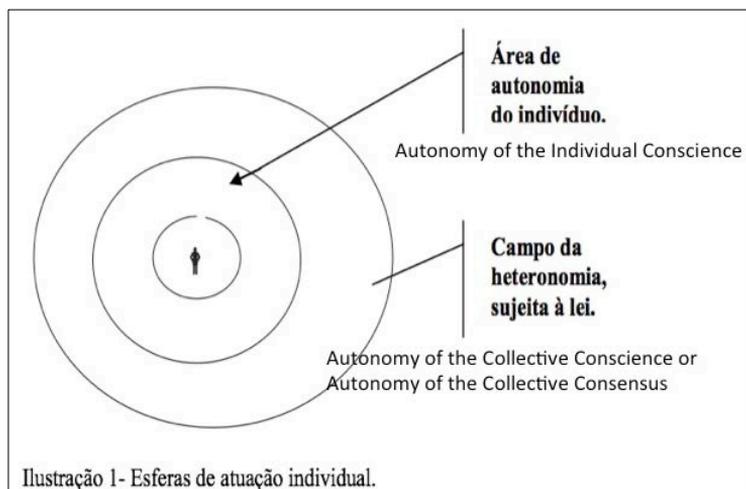
VI. AUTONOMY OF THE INDIVIDUAL CONSCIENCE OR AUTONOMY OF THE COLLECTIVE CONSENSUS?

To Karl Loewenstein, the most effective restriction among all restrictions imposed on the state is the legal recognition of certain spheres of self-determination that the state may not penetrate.⁶⁷ Therefore, there is a sphere in which the individual has complete and absolute autonomy. Not even the law may invade this sphere.⁶⁸ Encircling this sphere of action, there exists another area in which the citizen's freedom does submit to the law. This is known as heteronomy. In this sphere, there is autonomy of the collective conscience or autonomy of the collective consensus.⁶⁹

67. Karl Loewenstein, *Teoría de la Constitución* [*The Theory of the Constitution*] 390 (1965).

68. *See, e.g.*, *Braunfeld v. Brown*, 366 U.S. 599, 603 (1961) (stating that "[t]he freedom to hold religious beliefs and opinions is absolute").

69. *See* HENRY E. ALLISON, *KANT'S THEORY OF FREEDOM* 99 (1990) (explaining the dichotomy between autonomy and heteronomy).



Please consider the discussion below to better understand the interplay between autonomy and heteronomy.

Autonomy. Autonomy is the freedom that an individual has to self-determination. According to liberal thought, as already established, the individual has the right to choose: to do or not to do; to act or not to act; to have or not to have a religious belief.⁷⁰ Accordingly, the freedoms of conscience, belief, and worship are made inviolable. For instance, Article 5, paragraph 6, of the Brazilian Federal Constitution of 1988 states:

All persons are equal before the law, without any distinction whatsoever, Brazilians and foreigners residing in the country being ensured of inviolability of the right to life, to liberty, to equality, to security and to property, on the following terms:

6. freedom of conscience and of belief is inviolable, the free exercise of religious cults being ensured and, under the terms of the law, the protection of places of worship and their rites being guaranteed.⁷¹

Heteronomy. To a certain extent, the idea of heteronomy is connected to the notion of the democratic state of law, which subjugates all citizens through law enacted by the people.⁷² Accordingly, verticality is in force: everyone is obligated to obey the

70. *See supra* Part V.

71. CONSTITUIÇÃO FEDERAL [C.F.] [FEDERAL CONSTITUTION] art. 5, para. 6 (Braz.).

72. *See* ALLISON, *supra* note 69, at 99.

laws promulgated by the legislative power. In addition to safeguarding the Constitution, constitutional restrictions also protect the citizen, since no infra-constitutional law may annul or restrict fundamental human rights. A law duly enacted by the legislative process may not empty the vital contents of fundamental rights. For example, when this happens in the Brazilian system, such laws may lose their force by being declared unconstitutional by the Supreme Court.

According to Baron Montesquieu, “[l]iberty is the right to do everything the laws permit.”⁷³ Similarly, Article 5, section 2, of the Brazilian Federal Constitution of 1988 proclaims that “no one shall be obliged to do or refrain from doing something, except by virtue of the law.”⁷⁴ Only the law may restrict human liberty and it is worth remembering that the law may restrict only those actions that are harmful to society.⁷⁵ The promulgated laws may not be used as instruments of oppression or discrimination, which is why they are subject to abstract constitutional control.

John Garvey believes that “the best reason for protecting religious freedom rests upon the assumptions that religion is a good thing.”⁷⁶ I disagree with this anti-liberal point of view. In my opinion, the best reasons for protecting religious freedom rests upon the autonomy of the individual conscience or, in other words, on the individual right of choice.

According to the liberal point of view, a citizen has the right to choose to believe or not to believe. Conversely, according to the anti-liberal viewpoint, the citizen is obliged to follow an official belief adopted by the state. In this case, he does not have the right to believe or to disbelieve, according to his own conscience. Thus, the liberal viewpoint provides more liberty to believers and non-believers alike.

The liberal viewpoint is not an agnostic conception of religious freedom.⁷⁷ On the other hand, the anti-liberal point of view does not

73. CHARLES DE SECONDAT DE MONTESQUIEU, *On the Laws that form Political Liberty in its Relation with the Constitution*, in THE SPIRIT OF THE LAWS 154, 155 (Anne M. Cohler et al. eds., trans., 1989).

74. CONSTITUIÇÃO FEDERAL [C.F.] [FEDERAL CONSTITUTION] art. 5, para. 2 (Braz.).

75. See *supra* note 63 and accompanying text.

76. See *supra* note 53–54 and accompanying text.

77. See *supra* note 51 and accompanying text.

provide for the autonomy of the individual conscience or the individual right of choice. If a state adopts the anti-liberal viewpoint of religious freedom, the government is allowed to interfere inside of the sphere that belongs to autonomy of individual conscience. According to this conception, the autonomy of the collective consensus or the autonomy of the collective conscience is superordinate to the individual right of choice.

Here, it is reasonable to establish a connection between the anti-liberal viewpoint and either totalitarian ideologies or theocratic systems, in which the right to choose is not allowed. A theocratic government is also anti-liberal because it denies the autonomy of individual choice. Under this condition, changing one's religious persuasion is not allowed, even punishable by death in extreme cases. Totalitarian regimes are also anti-liberal because the right to believe is not allowed. Both totalitarian and theocratic states adopt the autonomy of collective consensus and don't allow for individual choice. Human liberty is restricted and violated within the sphere of individual autonomy. Thus, there are greater restrictions on an individual's right to choose under the anti-liberal point of view.

One could ask if in the democratic system the majority preference (or collective consensus) should always prevail. No, it cannot and should not. Both autonomy of individual conscience and autonomy of the collective consensus must coexist. Such a scenario would create a dictatorship of the majority, which must be avoided, especially in the sphere of religious conscience. Both the American and Brazilian Constitutions establish limitations to the autonomy of the collective consensus on religious matters.⁷⁸

The First Amendment to the American Constitution states that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof"⁷⁹

As a liberal document, the American Constitution does not allow the establishment of any religion by the government, state or legislative power.⁸⁰ In other words, the First Amendment establishes

78. See *supra* notes 40–43, 71 and accompanying text.

79. U.S. CONST. amend. I.

80. While the Establishment Clause expressly prohibits the establishment of a state religion, there is constant debate regarding whether a particular government action reaches the level of "establishment." See, e.g., Alex Geisinger & Ivan E. Bodensteiner, *An Expressive Jurisprudence of the Establishment Clause*, 112 PENN. ST. L. REV. 77, 80–81 (2007) (discussing various theories that the U.S. Supreme Court applies when determining whether the

the autonomy of the individual conscience and, at the same time, forbids the autonomy of the collective consensus in the sphere of religious conscience. However, there is little doubt that the law can restrict religious liberty exercised in cases of threats against the public order.⁸¹ No one may commit, for instance, murder or pedophilia in the name of religious freedom, because such absolute rights do not exist and doing so would threaten public order.⁸² Similarly, marriage under the legal age is prohibited by law in Western countries.

A complete autonomy of collective consensus on religious matters is impracticable if the state is democratic, secular and liberal because the state cannot define what religion is and the individual has religious freedom. Conversely, it is absolutely possible under totalitarian government force because, in that case, the state adopts an official position on religious matters in violation of the autonomy of the individual conscience. Today, both North Korea and Iran maintain different kinds of autonomy of the collective consensus, atheistic in the former's case⁸³ and theocratic in the latter's.⁸⁴

In the last century, the worst genocides were performed by totalitarian communist and fascist regimes.⁸⁵ Joseph Stalin, for instance, murdered approximately 43 million people.⁸⁶ In the name of the autonomy of the collective consensus and the elimination of the autonomy of the individual conscience, Mao Tse-tung ordered

Establishment Clause has been violated).

81. *See, e.g.*, *Reynolds v. United States*, 98 U.S. 145, 166–67 (1878) (holding that Congress could restrict the practice of polygamy despite its use by some religious groups and illustrating the point by implying that legislatures would be able to prohibit other socially undesirable activities such as human sacrifice even if the practice is proclaimed to be religious).

82. *Id.* (describing the “law of the organization of society” to be under the exclusive control of the federal government).

83. *See* The Pew Forum on Religion and Pub. Life, *supra* note 11, at 33 (explaining that North Korea's government is among the most repressive in the world with respect to religion and noting that the U.S. State Department says that religious freedom does not exist in North Korea).

84. Paul Marshall, *Country Profiles: Iran*, in *RELIGIOUS FREEDOM IN THE WORLD* 167, 168–69 (2000) (describing Iran's theocratic political state).

85. *See* R.J. RUMMEL, *DEATH BY GOVERNMENT* 8 (1994) (showing that the majority of this century's mass murders were committed by communist or fascist regimes).

86. *Id.* (stating that Stalin ordered the death of millions and was responsible for millions of other deaths as well); *see also* JUNG CHANG & JON HALLIDAY, *MAO: THE UNKNOWN STORY* 59–65 (2005) (describing the relationship between Mao and Stalin, as well as the killings conducted by Mao in China).

the death of at least 40 million, including peasants and religious people.⁸⁷

Why did these atrocities occur? It is because religion, particularly Christianity, is a threat to totalitarian government. According to Marxism, religion “is the opium of the people.”⁸⁸ Therefore, Stalin and Mao Tse-tung tried to eliminate it by killing and spreading fear. It is reasonable to admit that these totalitarian regimes also adopted some kind of atheistic full autonomy of the collective consensus. Thus, they severely restricted the autonomy of the individual conscience and religious freedom in those totalitarian states was nonexistent.

Atheism was the collective consensus adopted by dictators from Soviet Gulag and China in the last century. Moreover, the totalitarian government power was ensured throughout persecution and violence against religious people. Unfortunately, the same thing is happening today in North Korea.⁸⁹

Finally, I would like to stress that the anti-liberal viewpoint of religious freedom can be linked with ecumenism. Ecumenism can be a type of autonomy of the collective consensus. It is a utopia, but a forced political ecumenism can be established that reflects a collective consensus of all religions. If a state follows the anti-liberal viewpoint of religious freedom, then it will generally adopt either one official religion (a theocratic regime) or a synthesis of all religions (ecumenism). Even though ecumenical ideas are under religious liberty protection, a democratic government should not support it because ecumenism violates the autonomy of individual conscience and religious freedom.

There are two kinds of autonomy of the collective consensus: theistic (theocratic) or atheistic. In other words, either religious ecumenism or atheism, if promoted by the state in pursuit of its own uniform morality, represents a threat to individual liberty, as

87. See RUMMEL, *supra* note 85, at 8 (attributing nearly forty million murders to Mao Tse-tung and stating that this may surprise some people since communist killings under his leadership are less known in the West); see also CHANG & HALLIDAY, *supra* note 86, at 243–51 (describing the ruthless and deplorable tactics the Mao used to maintain control of the Chinese people in the early 1940s including torture, jailing, and killing).

88. KARL MARX, *CRITIQUE OF HEGEL'S PHILOSOPHY OF RIGHT 1* (Maurice Cowling et al. eds., Annette Jolin & Joseph O'Malley trans., Cambridge Univ. Press 1977).

89. See SOON OK LEE, *EYES OF THE TAILLESS ANIMALS: PRISON MEMOIRS OF A NORTH KOREAN WOMAN 1–10* (1999) (describing the atheistic persecution in North Korea).

demonstrated above. Therefore, the autonomy of the collective consensus as the foundation for religious liberty is a real threat to the individual conscience.

VII. CONCLUSION

There now exists around the world a marked tendency toward authoritarianism and a reduction in the number of countries that have full democracy.⁹⁰ This truly presents a threat to religious freedom and other public freedoms. The future of religious freedom depends on the survival of liberal democracy, which is the substrate that permits the greatest possible freedom with the minimum amount of restriction necessary for peaceful social association.

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

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

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

The future of religious freedom depends, in large part, on what happens to the future of democracy around the world. The Western countries need to remain vigilant. It is important that all democratic nations preserve the best of what they have—the principles and

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

values of political liberalism, which is also a Judaic-Christian legacy. These principles are the true antidotes for tyranny and oppression. If Western countries cannot export democracy to “not-free” nations, they have at least the challenge to preserve democracy with the goal to protect their own populations from totalitarian policy and the autonomy of the collective consensus.⁹¹

91. Cultural relativism is a troublesome obstacle to the adoption of the universality of the human rights by communist and theocratically controlled countries. Those regimes cannot assimilate the occidental standard of democracy and human rights. Also troubling is the declining level of democracy and individual liberties in the Western countries. Thus, the focus should be to improve the inner problem, that is, inside the Western countries. Maybe, the cause of such decline rests on the disdain of the principles of liberal democracy and Western values.