A Human Rights Imperative: Extending Religious Liberty Beyond the Border

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Introduction

Religious faith ought . . . to be a constant fount of humility. . . . It ought to teach . . . [men] that their religion is most certainly true if it recognizes the element of error and sin, of finiteness and contingency which creeps into the statement of even the sublimest truth. Historically, the highest form of democratic toleration is based upon these very religious insights. ¹

Discrimination based upon religious beliefs and expressions forms the basis for some of the most serious deprivations of civil and political rights. The religious beliefs and expressions that are commonly the ground for discrimination include all of the traditional faiths and justifications from which norms of responsible conduct — that is, judgments about right and wrong — are derived.²

The father of international law, Hugo Grotius, alleged that in the same sense that religious toleration depends upon respect for international law, a stable international order depends upon religious toleration.³ Thirty years of bitter warfare among princes claiming that theirs was the one true dominion authorized by God persuaded Grotius that non-interference in the religious affairs of the state was essential to ensure international stability. The Treaty of Westphalia adopted this understanding in 1648, enshrining it in the principle cuius regio, eius religio — whose the rule, his the religion.⁴ Under the Treaty, external actors may not violate political boundaries to interfere in the religious affairs of other states, but the state

³. See id. at 668.
⁴. The Treaty of Westphalia brought an end to the Thirty Years' War. See id. at 668-69. See also KENNETH C. RANDALL, FEDERAL COURTS AND THE INTERNATIONAL HUMAN RIGHTS PARADIGM 197 (1990) (explaining that the Peace of Westphalia "separated church and state, but allowed each sovereign to oversee religious matters within its territory.").
may suppress the religious practices of its own people. Roughly 350 years later, this principle continues to govern international relations with the consequence that religious liberty exists at the border between states at the expense of religious minorities within them.\(^5\)

Religious minorities suffer the worst forms of human rights abuses. In the mid-1990s, as many as 250,000 Muslims died at the hands of Orthodox Christian Serbs in Bosnia-Herzegovina,\(^6\) and an estimated 164,000 Christians were slaughtered annually in primarily Islamic countries.\(^7\) In 1999, Serbs targeted Muslim Albanians in Kosovo. Currently, Sudan is enslaving Christians and minority Muslims,\(^8\) while China and other communist countries are forcing Tibetan Buddhists and Christians to undergo "reeducation" through forced labor.\(^9\) Religious minorities in these countries and elsewhere in North Africa, the Middle East, and East Asia have also endured the severest forms of torture, including electric shock, burning, flogging, amputations, suspension by wrists and ankles, and crucifixion.\(^10\) Members of religious minorities also frequently face separation from loved ones through compelled marriages to members of different faiths, forced conversions and reeducation, and the systematic rape and impregnation of women.

Part I of this Article investigates these and other crimes against humanity that governments around the world perpetrate against religious minorities. It explores case-studies in religiously-inspired genocide directed against the Armenians, Bosnians, and Sudanese. Part I also examines two forms of religiously-inspired slavery — chattel slavery in the Sudan, and forced or compulsory labor in communist countries.\(^11\) Finally,


\(^6\) See infra part I.A.2.


\(^8\) See infra part I.B.1.

\(^9\) See infra part I.B.2.

\(^10\) See infra part I.C.

\(^11\) This Article accepts the proposition shared by many influential thinkers that in numerous important respects, Marxism is a form of religion. See, e.g., Joseph A. Schumpeter, Capitalism, Socialism and Democracy 5 (1950). Schumpeter wrote that: Marxism is a religion. To the believer it presents, first, a system of ultimate ends that embody the meaning of life and are absolute standards by which to judge events and actions; and, secondly, a guide to those ends which implies a plan of salvation and the indication of the evil from which mankind, or a chosen section of mankind, is to be saved. . . . Marxist socialism also belongs to that subgroup which promises paradise on this side of the grave.

Id. See also Karl Popper, 2 The Open Society and Its Enemies 224 (1962) (affirming the religious character of Marx's thought on the basis of its status as an "oracular philosophy"); Robert Tucker, Philosophy and Myth in Karl Marx 22 (1961) (discussing four parallels between Marxism and post-Augustinian Christianity including that they both aspire to be a total account of the world, view all experience as historical, have as a main theme of their story salvation or redemption, and contain the idea of the unity of theory and practice).
Part I examines religiously-inspired torture in many of the same countries.

Part II of this Article investigates international legal linkages between human rights and religious liberty, and presents the results of the first cross-national analysis of the relationship between general human rights practices and state-religion relationships. The results indicate that the extent of religious expression is the key variable associated with state human rights practices. Other religious variables commonly associated with human rights practices demonstrate only secondary linkages at best. These variables include: (1) whether religion is established; (2) the manner in which it is established, i.e., de jure or de facto; and (3) what kind of religion is established. Accordingly, Part II suggests that by advancing religious liberty, the international community can advance other fundamental human rights.

Part III of this Article explores additional grounds for reassessing the treatment of religious minorities under international law. It contends that policies promoting religious tolerance are essential for the following reasons: (1) to respond to the dangerous multipolar, civilizational politics now driving international relations; 12 (2) to moderate religious absolutism and ensure normative development; and (3) to enable individuals to be truly human. The first of these reasons to promote international religious liberty is expressly “realist” 13 and intended to provide a geo-political rationale for advancing religious liberty. The second reason is primarily utilitarian. It explores the importance of confrontation among religious views for the purpose of refining and sometimes rejecting dogma, such as the pro-slavery theology of the antebellum Christian South in America. The final reason is essentially philosophical. It suggests that an essential element of personhood is the ability to choose a fundamental orientation toward the cosmos.

Part IV of this Article examines international law dealing with religious liberty. It evaluates United Nations and regional conventions in Europe, Latin America, Africa, and the Middle East protecting freedom of thought and conscience, freedom to manifest belief in religion, and freedom from religious discrimination. Part IV concludes that none of these instruments effectively protects even the most basic religious liberty, freedom of belief. Accordingly, Part V of this Article recommends another approach to protecting religious minorities.

Part V contends that the first priority of an effective strategy for protecting religious minorities must be to enforce *jus cogens* under international law. In addition, Part V recommends a new international convention recognizing (1) the right to choose and change one's religion as a nonderogable liberty, and (2) other religious liberties, such as free expression, association, and education, subject to a compelling governmental interest test. In this way, the international community can advance fundamental human rights while preserving the principles of the Westphalian inter-state system and even modernizing the Treaty to cope with the civilizational conflict of the next century.\(^4\)

I. Violations of *Jus Cogens* Due to Religious Intolerance

Persecution of religious minorities characteristically involves the severest forms of crimes against humanity, violations of so-called *jus cogens* under international law. According to Article 53 of the Vienna Convention on the Law of Treaties, a *jus cogens* is "accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character."\(^{15}\) Likewise, jurists characterize *jus cogens* variously as norms that are "mandatory and imperative in any circumstances;"\(^{16}\) "binding rules of international law" that invalidate contrary treaties and rules of law;\(^{17}\) "principles of law generally recognized by civilized nations;"\(^{18}\) "super-constitutional" norms;\(^{19}\) principles that are "inalienable and subject to termination only in the ways in which they are created;"\(^{20}\) and principles of "natural law."\(^{21}\)

*Jus cogens* prohibit, at the very least, genocide, slavery, torture, piracy, and war crimes.\(^{22}\) Every sovereign state has jurisdiction to penalize viola-

\(14\) The "Westphalian inter-state system" refers to the nation-state system which began with the Peace of Westphalia in 1648. The system envisions nation-states that are sovereign over their territory, citizens, and natural resources, and that are equal by juridical fiat, rather than by virtue of some higher authority (such as the church). See RANDALL, *supra* note 4, at 196-97 (noting that church and state are separated and each sovereign is autonomously in charge of the religious matters within its territory).


\(17\) See generally JOHANN C. BLUNTSCHLI, *MODERN LAW OF NATIONS OF CIVILIZED STATES* (1867).


\(20\) McDOUGAL ET AL., *supra* note 2, at 318.

\(21\) CHRISTIAN WOLFF, *JUS GENTIUM METHODO SCIENTIFICA PERTRACTATUM* 10 (J. Drake trans., 1934).

\(22\) See McDOUGAL ET AL., *supra* note 2, at 349-50; RANDALL, *supra* note 4, at 163-64. More recently, states have recognized that universal jurisdiction extends to hostage taking, crimes against internationally protected persons, hijacking, and sabotage of aircraft.
tions of these *jus cogens*.

Moreover, no state may appeal to usually applicable exceptions to customary international law such as *force majeure*, state of necessity, or self-defense to justify *jus cogens* violations. Rather, international law has already balanced military necessity with humanitarian considerations in declaring *jus cogens*. Furthermore, any treaty purporting to authorize derogations from a *jus cogens* would itself be void *ab initio*.

Accordingly, religious minorities should be safe from at least genocide, slavery and torture. Unfortunately, the next three sections demonstrate that they are not.

A. Religious Minorities Slaughtered

The Convention on the Prevention and Punishment of the Crime of Genocide defines genocide as

> [A]ny of the following acts, committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such: (a) killing members of the group; (b) causing serious bodily or mental harm to members of the group; (c) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; (d) imposing measures intended to prevent births within the group; or (e) forcibly transferring children of the group to another group.

Genocide, the most heinous crime under international law, is unconditionally prohibited. Nevertheless, genocide inspired in large measure by religious differences has occurred throughout the twentieth century, most notably in Armenia, Nazi Germany, and the Soviet Union. In the 1990s, genocide has also occurred in Bosnia-Herzegovina and the Sudan.

The following section explores the Armenian, Bosnian, and Sudanese genocides to delineate the distinctive characteristics of religiously-inspired genocide. The investigation reveals a number of distinguishing features, including scapegoating, mass migration, rape intended to propagate the majority's religious beliefs, deportation, forced conversion, the targeting of religio-cultural symbols, and propaganda justifying genocide in terms of

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23. See [RANDALL, supra note 4, at 163-64.](#)

24. See [RESTATEMENT (THIRD) OF FOREIGN RELATIONS § 702 (1986) (stating that the following practices violate international law: (1) genocide, (2) slavery or slave trade, (3) the murder or causing the disappearance of individuals, (4) torture or other cruel, inhuman or degrading treatment or punishment, (5) prolonged arbitrary detention, (6) systematic racial discrimination, and (7) a consistent pattern of gross violations of internationally recognized human rights); RESTATEMENT (THIRD) FOREIGN RELATIONS § 702 cmt. j (1986) ("[T]here is a strong case that systematic discrimination on grounds of religion as a matter of state policy is also a violation of customary law.")].

25. See id. at 220-21.


27. See Genocide Convention, supra note 26, art. 1, at 31-34; see also [MERON, supra note 24, at 20.](#)
national security and welfare. Most distinctively, religiously-inspired genocide is usually the instrument of political leaders who are themselves secular and nationalistic, but view religion and theology as powerful tools for achieving geo-political ends.

1. Armenian Genocide

In 1915, the Young Turks killed an estimated 1 to 1.5 million Armenian Christians in an effort to solve the so-called Armenian problem. According to the Young Turks, the Armenians caused disunity, conflict, and even treachery. Although predominantly secular themselves, the Young Turks “recognized the pervasive influence of Islam in the country and resolved to exploit it in their plans to eliminate the source of domestic nationality conflicts.” They began by passing laws officially expropriating and plundering the goods and assets of Armenians and conscripting Armenian men into the military, where they were shot in cold blood in squads of fifty or more, or ordered to certain death in military engagements. Then, the Young Turks implemented a massive deportation scheme from which the Armenians never returned. They emptied Turkish prisons of convicted criminals and dispatched them to raid and exterminate Armenian convoys. The death toll was enormous: “By official Turkish accounts, alone, those directly killed numbered about 800,000, not counting the tens of thousands of wartime conscripts liquidated by the military.” Armenian women and children who survived the mass killings were forced to convert to Islam. According to the Allies, at the end of World War I, the Turks also “dishonored” women and even engaged in slavery.

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29. See id. at 253, 263-64.
30. Id. at 232.
31. See id. at 267-77.
32. See id. at 262-67, 272-73.
33. See id. at 274-77.
34. Id. at 272.
35. See id. at 273.
36. See id. at 280. The Allies reported the following violations against civil populations in 1919:

- systematic terror;
- murders and massacres;
- dishonoring of women;
- confiscation of private property;
- pillage;
- seizing of goods belonging to communities, educational establishments and charities;
- arbitrary destruction of public and private goods;
- deportation and forced labor;
- execution of civilians under false allegations of war crimes;
- and violations against civilians as well as military personnel.

Id. See also Alan Dextexhe, Rwanda and Genocide in the Twentieth Century 22-23 (Alison Marschner trans., 1995). Dextexhe noted that:

Rape, the splitting-up of families, forced conversions of women to Islam... the ideology of the Young Turk movement and the methods they used to uproot, displace and eventually wipe out the Armenians all belong to the twentieth century. They used such tactics as splitting up the victims by separating the leaders from their people, the strong and able-bodied from the weak and infirm, the
Initially, the Young Turks attempted to conceal their final plan for the
Armenians, agreeing to implement reforms designed to afford non-Muslims
equality under the law while ensuring that the reforms never took effect,
and playing the hegemons against one another.\(^{37}\) Gradually, however,
Turkish propaganda openly began to characterize the Armenians as a
threat to national security.\(^{38}\) As one legal scholar commented, "govern-
ments less stupid than that of National Socialist Germany will never admit
the intent to destroy a group as such, but will tell the world that they are
acting against the traitors. . . ."\(^{39}\)

Emboldened by the failure of the Allies to intervene, Turkish officials
responded brazenly in May 1915 to the Allies' threat to hold them responsi-
ble for the ongoing massacre. Istanbul alleged that it had a "duty to resort
to any measure it deem[ed] appropriate for safeguarding the security of its
borders" and thus "that it ha[d] no obligation whatsoever to give an
account to any foreign government."\(^{40}\) Istanbul also insisted that killing
Armenians was theologically justified, because the Shari'a (Islamic law)
"prescribes that if the 'rayah' [cattle] Christian attempts, by having
recourse to foreign powers, to overstep the limits of privileges allowed to
them by their Mussulman masters, and free themselves from their bondage,
their lives and property are to be forfeited, and are at the mercy of the
Mussulmans."\(^{41}\)

The Allies, who had repeatedly defeated the Turks on the battlefield,
declined to prevent the slaughter and "failed to secure the punishment of
the perpetrators," causing many to call the Armenian genocide "the forgot-
ten genocide."\(^{42}\) Indeed, in trying to assuage the doubts some had con-
cerning his Final Solution, Hitler said, "Who, after all, speaks today of the
annihilation of the Armenians?"\(^{43}\) Hitler went on to kill an estimated 5.1
million Jews, and at least 75,000 Catholics, employing many of the same
strategies the Turkish Government used successfully against Armenians in
1915. At Nuremberg, the Allies cried "never again." Nevertheless, roughly
fifty years later, the Serbs settled on a Final Solution of their own for
Bosnia.

women who could be converted, etc., and by imposing constant hardships on
the deportees in order to demoralise them. . . .

\(^{38}\) See id. at 264. Dadrina explained that
In order to justify this enormous crime . . . the requisite propaganda material
was thoroughly prepared in Istanbul. [It included such statements as] "[T]he
Armenians are in league with the enemy. They will launch an uprising in Istan-
bul, kill off the Itihadist leaders and will succeed in opening up the straits . . . to
enable the Allied fleets to capture Istanbul. . . ."

\(^{39}\) Dadrian, supra note 28, at 278.
\(^{40}\) Id. at 277-78.
\(^{41}\) Id. at 243.
\(^{42}\) Id. at 223-24.
\(^{43}\) Id. at 225 (quoting K. Bardakjian, Hitler and the Armenian Genocide 6 (1985)).
2. **Bosnian Genocide**

The Bosnian genocide began in the spring of 1992. Predominantly Orthodox Christian Serbs mass raped, murdered, and starved Muslims, as part of an intentional program of so-called "ethnic cleansing," i.e., a "purposeful policy designed by one ethnic or religious group to remove by violent and terror-inspiring means the civilian population of another ethnic or religious group from certain geographic areas." Like the population of the former Yugoslavia itself, the Serb leadership was predominately secular. But like most nationalists, Serb leaders viewed religion as a tool "to create or amplify differences beyond those that already existed." To be sure, historical enmities separated Serbs from Croats and Albanians alike, "but when all was said and done, the only truly irreducible definition of what identified individual Croats, Serbs and Muslims ethnically, and equally important, distinguished them from each other, was religion—more exactly, in many cases, religious origin, since most people in the former Yugoslavia were secular."

While the total number of Muslims killed in Bosnia is still unknown, conservative estimates indicate that at least ten percent of the Muslim population or 200,000 to 250,000 Muslims died. Serbs set up death and rape camps across the countryside, while officially denying the existence of these camps. Professional people, local notables, and young, able-bodied men were usually the first targeted in an intentional effort to denude Bosnia of its elites. Those not killed in this "elitocide" were divided into

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46. Id. at 68.

47. Id.

48. See Roy Gutman, A Witness to Genocide xxx1 (1993); see also Allen, supra note 44, at 47; Rieff, supra note 45, at 23. Bosnians are also alleged to have committed war crimes, but Serb atrocities clearly outnumbered Bosnian war crimes. See Bosnian Refugees, Hearing before the Subcom. on Int'l Operations and Human Rights Comm. on Int'l Relations of the House of Rep., 104th Cong. 1st Sess. 17-18, 21, 47 (1995) [hereinafter Bosnian Refugees].

49. See Gutman, supra note 48, at xxxii.

50. See id. at 54 ("The Serbian side energetically denies the existence of camps for civilians anywhere in the Serbian Republic of Bosnia-Herzegovina.").

51. See Rieff, supra note 45, at 113. Refugees recounted ghastly stories of human suffering and mass exterminations at these camps, such as the following: Sometimes the prisoners were subject to horrible mutilations before they were tossed into the Sava. "The very worst day... was when I saw 10 young men laid out in a row. They had their throats slit, their noses cut off and their genitals plucked out..." The first to be executed were the Muslim political party members and Bosnian home guard, he said. "They called out names, took out the prisoners, and started killing. We would hear three shots, and the man would not come back."... But they soon switched methods and began slitting throats of prisoners... "They would tell them to lie down and put their head on a
two groups: (1) Bosnians about whom the Serbs were still "undecided" were placed in "intelligence camps," where some were later killed; and (2) Bosnian peasants and poor townspeople were sent to "open centers," designated for Red Cross inspections and marked for release from the start.\footnote{2}

Serbs also raped as many as 60,000 Muslim women and girls, resulting in more than 30,000 unwanted pregnancies.\footnote{3} This was part of one or more conscious military strategies, known as the Serbian "Ram Plan" or "Brana Plan," aimed at undermining the religious and social structure where Serbs believed it was most fragile.\footnote{4} Some Serbian soldiers were assigned "rape duty," sleeping during the day and raping at night, often "in particularly sadistic ways, so as to inflict maximum humiliation on the victims, on their family, and on the whole community."\footnote{5} One refugee remembered the following:

[There were] repeated rapes of girls as young as 6 and 7; violations by neighbors and strangers alike; gang rapes so brutal their victims died; rape camps where Serbs routinely abused and murdered Muslim and Croat women; rapes of young girls performed in front of fathers, mothers, siblings and children; rapes committed explicitly to impregnate Muslim women and hold them captive until they give birth to unwanted Serbian babies.\footnote{6}

Unfortunately, in many instances, the communities in which the raped women lived refused thereafter to accept them back to avoid becoming known as a "community of 'raped women,'" contributing to the profound shame, defilement, and guilt raped women felt.\footnote{7}

In July 1992, the Serbs also began a policy of forced deportation; in one instance, they chartered an eighteen-car train to expel all of the Bosnians from the village of Kozluk, some 1800 people.\footnote{8} Elsewhere Bosnians were forced to undertake "death marches," so named because most were killed while fleeing starvation and bombardment in search of safety and food.\footnote{9} On one such march, between 7000 and 17,500 Bosnians who.

\footnote{2}{See Rieff, supra note 45, at 113.}
\footnote{3}{See Sharon A. Healey, Prosecuting Rape Under the Statute of the War Crimes Tribunal for the Former Yugoslavia, 21 Brook. J. Int'l L. 327, 361, 372 (1995). Serbs alleged in the early part of the war that Bosnians implemented a similar policy against Serbian women. See Gutman, supra note 48, at 164 (repeating a Serbian tract stating, "[b]y order of the Islamic fundamentalists from Sarajevo, healthy Serbian women from 17 to 40 years of age are being separated out and subject to special treatment. According to their sick plans . . . these women have to be impregnated by orthodox Islamic seeds in order to raise a generation of janissaries. . . ."); Allen, supra note 44, at 47.}
\footnote{4}{See Allen, supra note 44, at 57-59 ("'Brana' means 'dam'; thus the Serb military policy will 'dam up' the Muslim population, keep it elsewhere, keep it from the territories Serbia wants to take.").}
\footnote{5}{Healey, supra note 53, at 372; see also Gutman, supra note 48, at 164 (noting "one woman at Partisan . . . was raped more than 100 times in two months").}
\footnote{6}{Healey, supra note 53, at 327.}
\footnote{7}{Id. at 340, 350.}
\footnote{8}{See Gutman, supra note 48, at 20.}
\footnote{9}{See Bosnian Refugees, supra note 48, at 60.}
escaped extermination in Srebrenica marched sixty miles through Serb-held territory and Serb-led ambushes that depleted their numbers to a handful.60

Ultimately, Serb-backed assaults on Bosnia created the largest flood of refugees in Europe since World War II; some 1.5 million people lost their homes and were forced to flee to overcrowded, impoverished refugee camps, where starvation and disease raised the war's death toll.61 Serbs also targeted Bosnian religious symbols and leaders. Serbs executed as many as thirty-seven imams, sent thirty-five to concentration camps, and expelled 300 from Bosnia.62 The London Guardian estimated that Serbs also destroyed as many as 800 mosques, many of them historical monuments dating from as early as the sixteenth century.63 Serbs used other mosques for prisons, slaughterhouses, and morgues, thereby desecrating them.64 They targeted libraries, including those with collections of rare books and manuscripts, and religious seminaries "for reasons that had nothing to do with military strategy."65 Serbs also forced religious leaders to desecrate mosques or to cross themselves on pain of torture and, usually, execution.66

3. Sudanese Genocide

In 1989, the Sudan also undertook a systematic campaign to exterminate religious minorities, namely the Christians and animists in the south67 and the Muslim Beja people in the north.68 The Sudan gained its independence in 1956, following almost fifty years of British colonial administration that had reinforced geographic, racial, and religious differences between Arabs and non-Arabs by establishing separate governing provinces and imposing restrictions on north-south trade.69 British colonial administration also

60. See id. at 85-87.
61. See GUTMAN, supra note 48, at 21, 107-08.
62. See id. at 80.
63. See id. at 79, 83; see also RIEFF, supra note 45, at 26, 97 (estimating that, where there had been 1000 mosques, by the winter of 1994 "there were certainly no more than a hundred and probably far fewer").
64. See GUTMAN, supra note 48, at 81-82.
65. Id. at 77, 79, 81.
66. See id. at 78.
68. See Slavery in Mauritania and Sudan: Joint Hearing Before the Subcomm. on Int'l Operations and Human Rights and Africa of the House Comm. on Int'l Relations, 104th Cong., 2d Sess. 47-48 (1996) [hereinafter Slavery] (statement by Baroness Caroline Cox, Deputy Speaker, House of Lords) ("The government's policy toward the people of the South and the Nuba Mountains is tantamount to genocide by means of terror, war, slavery, the mass displacement of the population, and the manipulation of aid.").
69. See Mansour Khalid, The Southern Sudan Settlement and Its African Implications, in The Organization of African Unity After Ten Years: Comparative Perspectives 175-79 (Yassin El-Ayouty ed., 1975). See also Angela M. Lloyd, The Southern Sudan: A Compelling Case for Secession, 32 Colum. J. Transnat'l L. 419, 439-42 (1994) ("From the first, British authorities treated the three southern provinces as a separate region to which access by northerners was limited.") (citing Robert Rinehart, Historical Settings, in
left the south less developed than the north. Post-colonial Sudan thus encompassed “two distinctive peoples, an Arabic-speaking, Muslim North and an English-speaking, Christian (and, often, still animist) South, in one country.”

The first Sudanese civil war began on the eve of independence in 1955 and lasted until 1972. That year, the north and south entered into the Addis Ababa Agreement, according to which the south was to gain new internal autonomy and equitable national representation. However, hostilities erupted again in the late 1970s when these promises were not kept. The war was sporadic, until a military junta led by Lieutenant General Omar Hasan al-Bashir (al-Bashir) assumed control of the Sudan in a 1989 coup. He immediately played the religious card that his predecessor, General Gaafar al-Nimiery, had increasingly invoked to legitimize his government and mask his own agenda and began profiting from a permanent state of war and arms trading. In the words of one journalist, the National Islamic Front was designed as

an ingenious hybrid, a cross between a theocracy and a Mafia syndicate. True believers provide the cannon fodder, in the form of a heavily indoctrinated Islamist militia modeled after Iran’s Revolutionary Guards. Meanwhile, an elite cabal of generals, Islamic bankers, arms merchants, currency swindlers, land appropriators, cattle raiders, oil prospectors and outright slave traders — through the patronage of their godfather, Turabi — muscle their way into the profits of war. Sudan’s big men have excelled in their peculiar environment by mastering two intertwined requirements of power. The first is the art of manipulating potent symbols, masking one’s personal agenda in a larger legitimizing cause. . . . The second requirement is to attach this larger cause to the economic forces that predominate in conditions of total anarchy. . . . For Turabi, the mask is Islam.

Referring to the south’s opposition as a “Western and Zionist plot against Islam,” al-Bashir deployed government troops and government-backed Popular Defense Forces (PDF) systematically to rid the Sudan of individuals unwilling to recognize Shari’a law. By 1997, these forces had slaughtered an estimated 1.5 to 3 million Sudanese and displaced between fifty to eighty-five percent of the population of southern Sudan, or roughly five to

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70. See Khalid, supra note 69, at 178-79 (noting for example that upon independence, only six of roughly 800 jobs the British and Egyptians vacated passed to southerners).

71. Lloyd, supra note 69, at 443.

72. See id. at 441.

73. See id. at 446.

74. See id. at 448.

75. See Lloyd, supra note 69, at 448 (discussing al-Nimiery’s decision to disregard the 1972 Addis Ababa Agreement, impose Shari’a in Southern Sudan, and thereby destroy any facade of national unity).


77. See id.
eight million people. In 1998, roughly 4.5 million people remained internally displaced, most along the Ethiopian and Ugandan border.

One of the Sudanese government’s most powerful weapons is food, which it withholds from the south to compel migration and even Islamization. Non-Muslims are denied food, clothing, and shelter unless they convert to Islam. In addition, the government loots and destroys predominantly Christian and animist villages, burns crops, tortures and rapes villagers, and abandons Sudanese in the desert without food or water. The Nuba Mountains, where a Christian population has existed since the sixth century, are littered with mass graves, the remains of destroyed villages, and camps where women and children are enslaved. Arab soldiers systematically rape Nuba women to produce non-Nuba offspring. PDF forces also target churches and religio-cultural symbols and harass and kill Christian clergy. In the Nuba region, the government burns mosques as well as churches, then refuses to issue re-building permits. There are also widespread reports that the army is crucifying Christians in remote areas of the Sudan.

B. Religious Minorities Enslaved

Certain regimes currently subject their religious minorities to slavery, even though international customary law banning slavery and the slave trade dates back to 1807, when Great Britain forbade both in the Commonwealth. Thereafter, the Vienna Declaration of 1815 declared the slave trade "repugnant to the principles of humanity and universal morality" and as "a scourge which has so long [sic] desolated Africa, degraded Europe, and afflicted humanity." From 1815 until the 1960s, a series of international human rights instruments expanded the definition of slavery to activities

80. See Slavery, supra note 68, at 48; see also MARSHALL, supra note 78, at 21; AFRICAN RIGHTS, SUDAN'S INVISIBLE CITIZENS: THE POLICY OF ABUSE AGAINST DISPLACED PEOPLE IN THE NORTH (1995) (discussing Sudan’s scorched-earth campaign and politically induced famine).
81. See MARSHALL, supra note 78, at 21.
82. See Slavery, supra note 68, at 47-48; see also SHEA, supra note 67, at 31-35; Berkeley, supra note 76, at 61 ("The U.N. invests $2 million per week in Operation Lifeline Sudan, but, say U.N. relief workers, 'They use our food to fuel their war. . . . It's a racket with the chiefs. It's like a business cartell [sic].'"); 1998 AMNESTY REPORT, supra note 79, at 317.
83. See id. at 21-22.
84. See generally U.S. DEP'T STATE, UNITED STATES POLICIES IN SUPPORT OF RELIGIOUS FREEDOM: FOCUS ON CHRISTIANS (1997) [hereinafter REPORT ON RELIGIOUS FREEDOM].
85. See MARSHALL, supra note 78, at 22; SHEA, supra note 67, at 32.
86. McDougAL ET AL., supra note 2, at 485.
such as prostitution and corrective labor, reinforcing the norm opposed to servitude.88

The Slavery Convention of 192689 provided that all necessary measures shall be taken to prevent compulsory or forced labor from developing into conditions analogous to slavery; the Supplementary Convention on the Abolition of Slave Trade and Institutions and Practices Similar to Slavery,90 adopted in 1956, provided for the complete abolition of debt bondage and serfdom without reservation.91 More recently, the Convention Concerning the Abolition of Forced Labor92 forbade compulsory labor as a means of political coercion or education; racial, social, national, or religious discrimination; and punishment for holding or expressing political views or views ideologically opposed to the established political, social, or economic system.93 Evaluating this evolution of the anti-slavery norm over more than 150 years, one commentator observed:

[T]he right to freedom of the person, and the concomitant prohibition of slavery and the slave trade, have by now not only become matters of concern to international law but are subject to established rules of international law; one may indeed say that by the middle of the twentieth century it was clear that there was a customary rule of international law according to which slavery and the slave trade are prohibited.94

Nevertheless, according to Anti-Slavery International, the world’s oldest human rights organization, over 200 million people continue to live in some form of human bondage.95

88. For a fuller explanation of these treaties addressing slavery, including the Treaty of London of 1841, the General Act of the Brussels Conference of 1890, the Covenant of the League of Nations and Mandate System, the Slavery Convention of 1926, the U.N. Convention, the Universal Declaration of Human Rights (hereinafter Universal Declaration), the Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others, the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, Convention on the Abolition of Forced Labour, the International Covenant on Civil and Political Rights, the European Convention on Human Rights, and the American Convention on Human Rights, see McDougal et al., supra note 2, at 482-505. See also Renee C. Redman, The League of Nations and The Right to be Free from Enslavement: The First Human Right to be Recognized as Customary International Law, 70 Chi.-Kent L. Rev. 759 (1994).


91. See id.; see also Meron, supra note 24, at 20-21.


93. See id.


1. Chattel Slavery

Chattel slavery, in contrast to serfdom or indentured servitude, gives a master complete ownership and control of all of his slave’s life decisions, including whether, when, and whom slaves may marry; whether slaves may have children, and whether these children may be sold; and whether slaves may possess property.96 Historically, chattel slaves were subjected to every type of physical torture, including castration, female circumcision, branding with identification marks, mutilation, and sexual molestation, including service as concubines and the “bride price.”97 These indicia of chattel slavery are widespread in the Sudan in conjunction with the persecution of religious minorities.

The Sudanese government has impressed tens of thousands of children into chattel slavery since the mid-1990s, despite outlawing slavery in the Constitution and officially denying that the practice exists.98 In their raids on predominantly Christian and animist villages in the South, government forces and the PDF kidnap children and young women to conscript them into military service or sell them to provide domestic, agricultural, and sexual services to Muslims in the north of the country.99 Since the Muja Hadeen, or warriors of the jihad, are poorly paid, the government encourages warriors in the PDF to take these so-called “spoils of war.”100 Likewise, the government began financing a Ugandan armed opposition force (the “Lord’s Resistance Army”) in 1998, by providing a market in the Sudan for abducted Ugandan children.101

The average price per slave has varied with the supply of slaves on the market. In the mid-1990s, observers reported prices ranging from five to

96. See McDougal et al., supra note 2, at 474-75.
97. See id. at 475-76.
98. See Slavery, supra note 68, at 64 (statement by Augustine Lado, President, Pax Sudani) (guessing that far more than 10,000 children have been sold into slavery and choosing to use the phrase tens of thousands of children); see also Shea, supra note 67, at 33-34 (Christian Solidarity International (CSI) estimates that more than 25,000 children from the Nuba Mountains region alone have been abducted and sold into slavery); Steven A. Holmes, Slavery is an Issue Again, N.Y. TIMES, Mar. 24, 1996, at 18 (government denies existence of slavery, despite widespread reports of it); Gilbert A. Lewthwaite & Gregory Kane, Sudan Denies Slavery But. . . ., BALT. SUN, June 18, 1996, at A9.
99. See Slavery, supra note 68, at 47-48; see also Shea, supra note 67, at 32 (“To eradicate the Christian and non-Muslim population, the Sudanese government and its agents have bombarded, burned and looted southern villages, enslaved women and children, kidnapped and forcibly converted Christian and other boys and sent them into battle, relocated entire villages into concentration camps called ‘peace villages,’ and withheld food aid to starving Christian and animist communities until they converted to Islam.”); American Anti-Slavery Group, Slave Raids Continue in Sudan, June 20, 1997 (unpublished press release, on file with author); Amnesty International, The Tears of Orphans: No Future Without Human Rights (1995); Human Rights Watch/Africa, Children of Sudan: Slaves, Street Children, and Child Soldiers (1995).
100. See Slavery, supra note 68, at 52 (statement by Kevin Vigilante, Clinical Associate Professor of Medicine, Brown University School of Medicine); see also Holmes, supra note 98, at 1:18; Christian Solidarity International, CSI Visit to Sudan, (Oct. 23-28, 1997) (unpublished manuscript, on file with author).
ten head of cattle or one automatic rifle, a value of $300 to $500. More recently, observers report there is a flooded market, so slaves in the Sudan can be bought for as little as $15, depending on their age and physical condition. Sudanese and Ugandan children are processed through various camps in the north of the country; the estimated number of these camps ranges from scores to hundreds. Christians slaves are generally given Muslim names and “forced to observe Muslim rituals.” They are tortured, sexually abused, indoctrinated in Islam, and even killed, unless they renounce their faith. The State Department and charitable organizations working in Sudan estimate that between 90,000-100,000 persons are enslaved, and another 300,000 are psychologically and/or economically dependent on their former slave masters.

Authorities require some boys to attend Koranic schools or PDF training camps, “where they are trained to wage war against their own people.” Girls are purchased to serve as concubines. Slave traders brand children and adults with marks for identification, castrate them, and, in some instances, cut their Achilles tendons so that they cannot run away. Some children are exported to neighboring Libya; others are ransomed. Sudanese Bishop Macram Max Gassis testified before Congress that half a score of parents or relatives had approached him for money to be given to abductors to liberate children and women. Consequently, Catholic missionaries lament,

Nothing has changed in the way of life of these Arab groups for the past hundred years... Their only progress has consisted in the provision of large amounts of modern weapons and up-to-date transportation. [Although the time of long lines of enchained slaves marching north is over... now truckloads of children are seen moving in the same traditional direction.]

102. See Slavery, supra note 68, at 47 (price of slave is five head of cattle); see also Walter Goodman, Television Review: Reports of Slavery in a Divided Land, N.Y. Times, Dec. 10, 1996, at C20 (price of slave is usually $300 worth of cattle, but when Christian Solidarity International (CSI) buys them back to return them to their homes, the price is $500); MARSHALL, supra note 78, at 21.
103. See SHEA, supra note 67, at 33; MARSHALL, supra note 78, at 21; Gregory, supra note 78, at 37; Jacobs, supra note 95, at 6.
104. See Slavery, supra note 68, at 64; see also 1998 AMNESTY REPORT, supra 79, at 317.
105. Id. at 47.
106. See id. at 47-48, 65.
108. Id. at 47.
109. See id. at 65.
110. See MARSHALL, supra note 78, at 21; Gregory, supra note 78, at 37.
111. See Jacobs, supra note 95, at 6.
112. See Gregory, supra note 78, at 37.
113. See id. at 39.
114. Id. at 37.
2. Forced or Compulsory Labor

Forced or compulsory labor also continues in many countries. Such labor is used

as a means of political coercion or education or as a punishment for holding or expressing political views ideologically opposed to the established political, social, or economic system; as a method of mobilizing and using labor for purposes of economic development; as a means of labor discipline; as a punishment for having participated in strikes; or as a means of racial, social, national, or religious discrimination.\(^{115}\)

The United States led the world community in opposition to the Soviet Union's treatment of Jews, Christians, Gypsies, and Muslims in Soviet gulags (labor camps), as revealed in lurid detail in Aleksandr Solzhenitsyn's *The Gulag Archipelago, 1918-1956*.\(^{116}\) However, as a result of the United States' policy of "constructive engagement" toward China, the United States essentially ignores the Chinese *laogai* system, concerning which Solzhenitsyn could have written an equally grim portrait of human suffering. Human rights activist Harry Wu said that

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\text{[t]he core of the human rights issue in China today is that there is a fundamental machinery for crushing human beings—physically, psychologically, and spiritually—called the *laogai* camp system, of which we have identified eleven hundred separate camps. It is also an integral part of the national economy. Its importance is illustrated by the fact that one-third of China's tea is produced in *laogai* camps. Sixty percent of China's rubber vulcanizing chemicals are produced in a single *laogai* camp in Shenyang. One of the largest steel pipe works in the country is a *laogai* camp...}^{117}\]

Beginning in the 1950s, Mao Zedong executed and imprisoned in reeducation camps thousands of Christians, Muslims, and Tibetan Buddhists to rid China of "foreign influences."\(^{118}\) Although the level of religious oppression has varied over the years, repression has increased dramatically since 1988.\(^{119}\) At the end of 1993, Chinese authorities admitted that 120,000 prisoners were undergoing "re-education through labor."\(^{120}\) Many believe the actual number of prisoners is much higher.\(^{121}\)

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118. See *Marshall*, *supra* note 78, at 76-78.
119. See *id.* at 79.
120. *Id.* at 77.

'Re-education through labour,' a form of administrative detention, continued to be used to arbitrarily detain dissidents... without charge or trial for up to three years... Hundreds of Roman Catholics and Protestants were detained... Thousands of political prisoners detained without trial or convicted after unfair trials in previous years remained held. Many were prisoners of conscience. In
From October to November 1998, Chinese authorities detained approximately 140 house church worshipers who had attended services in central Henan; forty house church members were beaten and detained in Liuwan, and another 100 persons were beaten and detained in Nanyang. Authorities also detained Xu Yongze, leader of the “New Born” Church in Henan, and seven other Christians in March 1998, sentencing all eight to ten years’ imprisonment for “disturbing the public order.”

The crackdown on suspected Muslim nationalists in the Xingjiang Autonomous Region and on Tibetan nationalists and religious groups in the Tibet Autonomous Region (TAR) also continued in 1998. At the beginning of the year, authorities detained over 650 Tibetan political prisoners, primarily Buddhist prisoners of conscience; an unknown number of these prisoners were sent to re-education camps for expressing reverence for the Dalai Lama. In June, Amnesty International reported that ninety-eight Tibetans had been sentenced to prison terms for “endangering national security.”

An unknown number of Chinese undergoing re-education through labor become unwilling subjects of tissue and organ harvesting. According to reports, Chinese authorities find a prisoner with the correct blood and tissue type, execute him or her, and then harvest the prisoners’ kidneys, corneas, and other organs. At the end of 1996, roughly 8759 Chinese kidney transplants occurred, 90% of which used organs from death row inmates.

Other communist countries, including Vietnam and North Korea, have labor camp systems. In the 1990s, Vietnam primarily has targeted Buddhists affiliated with the Unified Buddhist Church of Vietnam (UBCV), but the government has also subjected Catholics and Hmong Protestants involved in the house church movement to detention and forced labor.
In March 1997, in the wake of the U.S. decision not to raise human rights objections at the Human Rights Commission, Vietnam announced that it would move four UBCV leaders to "re-education labor camps"; the Supreme Patriarch of the UBCV and its Secretary General remain in detention. In addition, at least seventy-five Buddhist monks are imprisoned, "and tens of thousands of followers have either been detained, are living in exile, are in jail, or have been executed." The prisons where they are kept are the same ones used to "re-educate" South Vietnamese soldiers. According to one activist, the prisons are "really death camps, although their sentence is three years, their chances of coming back alive are slim." Similarly, beginning in the mid-1960s, Kim Il Sung rounded up religious leaders in North Korea and sent those he did not execute to a network of hidden labor camps. The State Department estimates that between 150,000 and 200,000 Koreans are detained in these concentration camps. The number of religious minorities forced to work in them is unknown. Inmates work on national construction projects, logging, and cropping. Reports suggest that adult inmates are forced to work up to sixteen hours per day (ten hours per day for children), despite severe malnutrition and starvation resulting from three consecutive years of severe food shortages in North Korea. Defectors report gruesome types of torture in the labor camps, such as the following:

Mrs. Li, a former store manager, says she was falsely accused of embezzlement as punishment for refusing to make payoffs to a policeman. She says she was beaten, stripped, sexually abused and tortured for months. Sometimes, she recounts, she was tied to a bed, forced to drink huge amounts of water from the long spout of a kettle that was forced into her mouth. The only way to avoid drowning was to drink, but then when her belly was round and full, the guards would put a board on her abdomen and stamp on it until she vomited.

131. See 1998 AMNES TY REPORT, supra 79, at 359 (they were still detained in 1999, despite worsening health); MARSHALL, supra note 78, at 86.
133. See 1996 AMNESTY REPORT, supra note 121, at 323.
134. Id.
135. See SHEA, supra note 67, at 68.
136. See 1998 COUNTRY REPORT, supra note 122, at 954.
137. See MARSHALL, supra note 78, at 95-96.
139. See Nicholas D. Kristof, Survivors Report Torture in North Korea Labor Camps, N.Y. TIMES, July 14, 1996, at 3; see also 1998 AMNESTY REPORT, supra 79, at 223.
140. Kristof, supra note 139, at 3.
C. Religious Minorities Tortured

As some of these stories suggest, many governments that repress religious minorities through genocide and slavery also torture religious minorities, thereby violating a third *jus cogen*. Article 1(1) of the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (Torture Declaration) defines torture as

> any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted by or at the instigation of a public official on a person for such purposes as obtaining from him or a third person information or confession, punishing him for an act he has committed or is suspected of having committed, or intimidating him or other persons.\(^1\)

The Declaration adds that torture “does not include pain or suffering arising only from, inherent in, or incidental to lawful sanctions to the extent consistent with the Standard Minimum Rules for the Treatment of Prisoners.”\(^1\)

Communist and theocratic states have violated Article 1(1) of the Torture Declaration more than any other *jus cogen* in connection with religious oppression. China raided and closed several hundred house churches from 1996-98 and detained, interrogated, and beat their members, some of whom were sent to concentration camps.\(^2\) The methods of torture most commonly reported include electric shock with cattle prods on the face, arms, and genitals, or through electrified beds; the use of shackles; sleep deprivation; exposure to extreme temperatures; imposition of unrealistic production quotas in labor camps; and beatings.\(^3\) For example, Chinese authorities beat the sixty-four year old Auxiliary Bishop of Baoding, Bishop Su Zhimin, until the board they were using was reduced to splinters, whereupon the police dismantled a wooden door to continue the beating.\(^4\) On another occasion, police bound Bishop Su’s wrists and suspended him from the ceiling while beating him so hard that he sustained permanent hearing loss.\(^5\) On still another occasion, Bishop Su was placed in a closet-sized room with water kept at varying levels, from ankle-deep to hip-deep, to prevent him from sleeping for several days at a time.\(^6\) Likewise, a Buddhist monk, arrested and imprisoned for three months for distributing freedom pamphlets and possessing a picture of the Dalai Lama, reported:

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\(^1\) Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, art. 1.1, G.A. Res. 3452, U.N. GAOR, 30th Sess., Supp. No. 34 at 90-92, U.N. Doc. A/10034 (1975) [hereinafter Torture Declaration]; *Restatement (Third) of Foreign Relations* § 702 cmt. g (1986) also references this definition.

\(^2\) Torture Declaration, *supra* note 141, art. 1.1.

\(^3\) See *Report on Religious Freedom, supra* note 85.

\(^4\) See 1996 *Amnesty Report, supra* note 121, at 120; *Constructive Engagement, supra* note 127, at 18-19.

\(^5\) See *Shea, supra* note 67, at 63.

\(^6\) See *id*.
The Chinese police tied my hands and suspended me from the ceiling, and then punched and kicked me, and shocked me all over my body with electric cattle prods. They shocked me on the genitals so that my genitals bled and later got infected, and it was difficult to urinate. They also beat me on the feet with sticks. In the winter, I was made to stand naked against a cold wall for 3 to 4 hours at a time a few times each week. I was also put in solitary confinement. The Chinese police repeatedly beat me with a stick on my thigh until the stick broke and splintered into the skin. It got infected and it took a long time to heal. I wasn't given any medical care for this. One time when I said Tibet was free, a prison official put a gun to my head and threatened to kill me.\textsuperscript{148}

Torture is also a key tool theocratic states use in their efforts to stamp out apostasy and suppress minority religions. In Pakistan, for example, Christians have been forced from their villages by Muslim mobs; men beaten, imprisoned arbitrarily, and tortured to death during "interrogation"; women stripped naked; and girls raped.\textsuperscript{149} In February 1998, police reportedly led "an attack by several hundred Muslims on a Christian community in Santinagar, Punjab province, following rumours [sic] that some Christians had desecrated the Qur'an."\textsuperscript{150} In Pakistan, Ahmadis, Hindus, pagans, and minority Muslims also suffer torture, usually by electric shock, burning, or flogging.\textsuperscript{151}

Likewise, religious persecution in Saudi Arabia has "increased dramatically" since the Gulf War.\textsuperscript{152} Shi'a Muslims, adherents to other minority Islamic creeds, and Christians have been detained and tortured, using techniques including falaqa (beatings on the soles of the feet), floggings, suspension of the wrists, electric shock, amputations, and inserting rods up human anuses.\textsuperscript{153} Saudi Arabia treats the conversion of Muslims to another religion as a capital offense\textsuperscript{154} and enforces the law strictly through a special religious police force, the muttawa, which is charged with ensuring strict conformity with the Shari'a.\textsuperscript{155}

In 1994, Iranian Christians faced the fiercest persecution since the Iranian Revolution, especially in the cities of Gurgan and Kermanshah. Christian pastors, including two successive leaders of the Evangelical Council of Pastors in Iran, were imprisoned, tortured, and executed on

\textsuperscript{148} Constructive Engagement, supra note 127, at 19 (statement of Allen Keller, M.D., Physicians for Human Rights) (quoting N.R., an eighteen year old Buddhist monk).

\textsuperscript{149} See id. at 36-39 (statement of Shen Tong, President, Democracy for China Fund); see also 1996 Amnesty Report, supra note 121, at 242-43; Report on Religious Freedom, supra note 85.

\textsuperscript{150} 1998 Amnesty Report, supra note 79, at 267.

\textsuperscript{151} See Shea, supra note 67, at 37; see also 1996 Amnesty Report, supra note 121, at 242 ("At least 35 Ahmadis were charged with religious offences including blasphemy, which carries a mandatory death penalty."); Report on Religious Freedom, supra note 85.

\textsuperscript{152} Shea, supra note 67, at 41.


\textsuperscript{154} See Shea, supra note 67, at 40.

\textsuperscript{155} See id.
grounds of "subverting the revolution" and apostasy.156 Iranian officials insist that evangelical Christians "have other agendas besides [sic] worship. . . . We consider them to be a political organization. . . . If someone wants to start a political organization they [sic] must go through the process to obtain permission, as is the case for Muslims."157 The Bahai and Shi'a Muslims in Iran also are subject to various forms of torture, including electric shock, flogging, and amputation.158

The Egyptian government also has grown progressively hostile toward religious minorities as Muslim militants have become more powerful. The government summarily detains Coptic Christian converts under the Emergency Powers Action of 1982 and tortures them, usually for "denigrating Islam" or apostasy.159 In addition, reports indicate that state security officers in Cairo have detained, interrogated, and physically abused Christian converts in an effort to obtain information about the identities and activities of other converts.160 The government has reportedly harassed Coptic Christian families attempting to regain custody of daughters forcibly taken from them and required to convert to Islam to marry Muslims.161 The government has detained thousands of suspected members or sympathizers of banned Islamic groups; many have been subjected to systematic torture, including electric shock, beatings, suspension by the wrists and ankles, burning with cigarettes, flogging, and psychological torture consisting of death threats and threats of rape or sexual abuse of the detainee or female relatives.162 In many cases, religious minorities have been "disappeared" after reporting to Egyptian detention and interrogation centers.163 Accordingly, the evidence is clear that religious intolerance in Egypt and elsewhere has led to severe violations of human rights.

II. Linkages Between Fundamental Human Rights and Religious Liberty

Cross-national research and international law reveal other linkages between religious liberty and fundamental human rights. As Professor McDougal has pointed out, "Discrimination based upon religious beliefs and expression forms the basis for some of the most serious deprivations of civil and political rights."164 Indeed, "If not all, the greater part of the history of humanitarian intervention is the history of intervention on
behalf of persecuted religious minorities." Nevertheless, the myth survives, perpetuated by regimes with poor human rights records (and some legal scholars), that personal liberty can exist without religious tolerance, free speech without religious speech, freedom of association without freedom to worship, women’s rights without religious rights, protection for indigenous persons without religious liberty, and nondiscrimination without freedom from religious discrimination.

A. International Legal Linkages

To the contrary, international law expressly links religious liberty with virtually every major human right, including, inter alia, freedom of association, freedom of speech, the norm of nondiscrimination, due


166. See United Nations Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief, art. 6, G.A. Res. 36/55, U.N. GAOR, 36th Sess., Supp. No. 51, U.N. Doc. A/36/51 (1982) [hereinafter Religion Declaration]. Article 6 guarantees freedom to worship or assemble in connection with a religion or belief, and to establish and maintain places for these purposes. See also Yoram Dinstein, Freedom of Religion and the Protection of Religious Minorities, 20 IsR. Y.B. HUM. RTs. 155, 168 (1990) (Article 27 of the Religion Declaration “should be viewed as a license for religious minorities to found and operate the communal institutions required for the perpetuation of the minority’s religion.”); id. at 172-73 (“Freedom of assembly and freedom of association have a symbiotic relationship with freedom of religion.”).

167. See Religion Declaration, supra note 166, art. 6 (guaranteeing freedom to write, publish and disseminate relevant religious publications, to teach religion, to solicit and receive financial contributions for religious purposes, and to establish and maintain communications with individuals and communities in matters of religion and belief at the national and international levels); Universal Declaration of Human Rights, art. 18, G.A. Res. 217, U.N. GAOR, 3d Sess., U.N. Doc. A/810 (1948) [hereinafter UDHR] (providing that “[e]veryone has the right . . . to manifest his religion or belief in teaching, practice, worship, and observance”; id. art. 19 (providing that “[e]veryone has the right to freedom of opinion and expression”); International Covenant on Civil and Political Rights, art. 19, G.A. Res. 2200, U.N. GAOR, 21st Sess., Supp. No. 16, at 52, U.N. Doc. A/6316 (1966) [hereinafter ICCPR] (adding that “[e]veryone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, or in print. . . .”); see also Implementation of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief: Report of Angelo Vidal d’Almeida Ribero, U.N. ESCOR, 43d Sess., U.N. Doc. E/CN.4/1987/35 (1987) [hereinafter the Ribero Report] (stating that religious intolerance leads to restrictions on freedom of opinion and expression); Dinstein, supra note 167, at 171 (“Freedom of expression — which comprises the right to seek, receive and impart ideas of all kinds — intermingles with freedom of religion.”).

168. See U.N. CHARTER art. 1 (providing that one of the four primary purposes of the U.N. is to promote and encourage respect for human rights and for fundamental freedoms for all without distinction as to religion, race, sex, and language); id. art. 2 (entitling everyone to all the rights specified in it “without distinction of any kind, such as race, colour, sex, language, religion, political, or other opinion, national or social origin. . . .”); id. art. 18 (providing that “[e]veryone has the right to freedom of thought, conscience and religion. . . .”). See also ICCPR, supra note 167, art. 2(1) (providing that
process, the right to free and fair elections, the rights of indigenous peoples and ethnic groups, the rights of parents and children, women's rights, the welfare of refugees and freedom of education, each "State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion . . ."); International Covenant on Economic, Social, and Cultural Rights, art. 2(2), G.A. Res. 2200, U.N. GAOR, 21st Sess., Supp. No. 16, at 49, U.N. Doc. A/6316 (1966) [hereinafter ICECSR] (containing similar language); Religion Declaration, supra note 167, art. 2(1) ("No one shall be subject to discrimination by any State, institution, group of persons, or person on grounds of religion or other beliefs"). Also note that the Religion Declaration and International Covenant on the Elimination of All Forms of Racial Discrimination were originally integrated as one document, since the aim of both declarations was the "equality of all men and all peoples without distinction as to race, color or religion." Natan Lerner, Toward a Draft Declaration Against Religious Intolerance and Discrimination, 11 Isr. Y.B. Hum. Rts. 82, 85 (1982) [hereinafter Lerner, Toward a Draft Declaration].

169. See Ribero Report, supra note 167, at 23 (breaches of freedom of religion lead to "arbitrary arrest and detention for reasons of religion. . .").


171. See ICCPR, supra note 167, art. 27 ("In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language."). See also International Labour Organisation, Convention 169 Concerning Indigenous and Tribal Peoples in Independent Countries, June 27, 1989, art. 5(a), 28 I.L.M. 1382 (providing that "the social, cultural, religious and spiritual values and practices of these peoples shall be recognized and protected"); id. art. 13(1) (likewise providing that "governments shall respect the special importance for the cultures and spiritual values of the peoples concerned of their relationship with the lands or territories"); Donna J. Sullivan, Advancing the Freedom of Religion or Belief Through the U.N. Declaration on the Elimination of Religious Intolerance and Discrimination, 82 Am. J. Intern'l L. 487, 508 (1988) ("Religion is often a central component of ethnic group identity. . .").

172. See Religion Declaration, supra note 166, art. 5 (parents shall "have the right to organize the life within the family in accordance with their religion or belief" and "[e]very child shall enjoy the right to have access to education in the matter of religion or belief in accordance with the wishes of his parents. . ."); see also ICCPR, supra note 167, art. 18(4) (states shall "have respect for the liberty of parents and, when applicable, legal guardians, to ensure the religious and moral education of their children in conformity with their own convictions."); ICECSR, supra note 168, art. 13(3) (states shall "have respect for the liberty of parents and, when applicable, legal guardians, to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions."); United Nations Education, Scientific, and Cultural Organisation (UNESCO) Convention Against Discrimination in Education, Dec. 15, 1960, art. 5(1)(b), 93 U.N.T.S. 6193 (hereinafter UNESCO Convention) (similar language).

173. See Convention on the Elimination of All Forms of Discrimination Against Women, Dec. 18, 1979, G.A. Res. 34/180, U.N. GAOR, 34th Sess., Supp. No. 46, at 193, U.N. Doc. A/34/180 [hereinafter CEDAW]. CEDAW contains a host of provisions that challenge religious conceptions of the proper role for women in society; for example, Article 16(1)(b) provides that women shall be entitled to the same extent as men to "freely to choose a spouse and to enter into marriage only with their free and full consent." Religiously-inspired contract, property, and marriage and divorce laws may present the greatest impediments to equal rights for women. See Sullivan, supra note 171, at 515 ("A major area of conflict between religious law and human rights law is that of women's rights."); see also Linda Cipriani, Gender and Persecution: Protecting Women
cation. Case-studies sponsored by the United Nations indicate that promoting religious toleration promotes each of these human rights. The next section of this Article reviews the first cross-national research bolstering this conclusion and challenging other alleged explanations for human rights conduct, such as establishments of religion and type of religion.

B. Cross-National Human Rights Research

1. Methodology

Credible cross-national research depends upon sound methodology. Charles Humana's World Human Rights Guide presents a standardized index of human rights practices in 104 countries, based on the countries' compliance with forty separate provisions articulated in various U.N. human rights documents. The three most important of these are the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), and the International Covenant on Civil and Political Rights (ICCPR).


174. See Convention Relating to the Status of Refugees, July 28, 1951, art. 4, 189 U.N.T.S. 117 ("The Contracting States shall accord to refugees within their territories treatment at least as favourable as that accorded to their nationals with respect to freedom to practise their religion and freedom as regards the religious education of their children."); see also Convention Relating to the Status of Stateless Persons, Sept. 28, 1954, art. 4, 360 U.N.T.S. (identical language); McDougal et al., supra note 2, at 674-75.

175. See UNESCO Convention, supra note 172, art. 5(1)(b) ("[N]o person or group of persons should be compelled to receive religious instruction inconsistent with his or their convictions."); see also ICESC, supra note 168, art. 13(1) (providing that parties "recognize the right of everyone to education," including education promoting "tolerance and friendship among all nations and all racial, ethnic or religious groups"); Dinstein, supra note 166, at 163-64, 173-74. See also Minority Schools in Albania, 1935 P.C.I.J. (ser. H/B) No. 64 (Apr. 6) (admonishing Albania that it could not consistently both guarantee racial, religious, and linguistic minorities an equal right to education, and abolish sectarian schools, reserving to the State the right to conduct all instruction).


178. See supra note 167.

179. See id.
Humana consulted Amnesty International, Human Rights Watch, the U.S. State Department, as well as various newspapers and other sources, to rate the human rights practices of States (ranging from strong disrespect to strong respect for human rights). He calculated a final human rights score for each country after averaging the country's performance over the range of human rights investigated, then specially weighted some of the human rights he considered the most important; e.g., those dealing with the right to life, torture and other cruel or inhuman treatment, compulsory labor, arbitrary arrest and indefinite detention, and child labor.

Like all empirical research on human rights, Humana's survey of human rights practices suffers from certain standard methodological problems. In addition, Humana modified his methodology slightly in later studies, drawing into question their comparability with earlier ones. Nevertheless, the U.N. Development Programme adopted Humana's human rights index as the basis for its Human Freedom Index, and others have insisted that earlier editions of the World Human Rights Guide present a useful, cross-national measure of human rights prac-

180. See supra note 168.
181. For a discussion of Humana's general methodology, see 1991 GUIDE, supra note 177, at 5-6.
182. Specifically, Humana calculated the final human rights score for each country using the following formula: ((nonweighted total) + (total to be weighted) x 100)/162, where the denominator represents the maximum possible raw score that a country could receive for compliance with forty selected human rights provisions. See id. at 6.
184. Humana changed his scoring methodology in the late-1980s, i.e., adding weighted variables, changing some of the questions, and adding some countries. These changes arguably improved the survey but also drew into question the comparability of studies that had used the original survey methods. In WORLD HUMAN RIGHTS GUIDE (Charles Humana ed., 1983) [hereinafter 1983 GUIDE], Humana only investigated human rights practices implicated in the UDHR and ICCPR, as well as a few human rights issues of personal concern, e.g., the maximum penal consequences for possessing hard drugs. See id. at 5, 13-23, 34. Humana also investigated a few different countries in the 1983 GUIDE and 1991 GUIDE. Compare infra Appendix 1 and Appendix 2, (note that Appendix 1 includes many more countries than Appendix 2, and that a number of countries changed cells between Appendix 1 and Appendix 2, because of the 1989 Revolution in Eastern Europe). Although Humana used a four-part ordinal scale in both the 1991 Guide and 1983 Guide, the meaning of the scales differed. The 1983 Guide graded answers to human rights inquiries, according to whether the country ranked as (1) the most free/most liberal; (2) moderately free/moderately liberal; (3) severe/restrictive; or (4) the most severe/most restrictive. In contrast, the 1991 Guide's ranking depended on whether the country (1) strongly disrespected; (2) disrespected; (3) respected; or (4) strongly respected human rights. Humana also calculated the final human rights score for each country differently in the 1983 Guide. He totaled scores for each of his 50 questions without weighting them, giving a "3" for "most free/most liberal," and so on, down to a "0" for "most severe/most restrictive." See 1983 GUIDE, supra, at 9-10. Unfortunately, Humana has not published a more recent human rights guide than the 1991 Guide.
Accordingly, despite its weaknesses, Humana's cross-national survey of human rights practices is among the best available and is used here as an indicator of the extent to which individual countries respect human rights.

Appendices 1 and 2 categorize Humana's human rights scores according to the state-religion relationship that countries manifest (y-axis) and the freedom of religious expression that they tolerate (x-axis). Countries were categorized into given cells, pursuant to their constitutions (which illuminate the existence of de jure establishments), survey research, and scholarly and U.S. government assessments of religious tolerance in individual countries. Categorization necessarily involved a good deal of discretion, but was as principled and systematic as feasible. Table 1 averages the human rights scores for countries in each cell of Appendices 1 and 2 and suggests certain tentative conclusions about the association between variables related to religious liberty and general human rights practices. Table 1 does not, of course, establish causation between the variables represented, only association.

Table 1: Typology of State-Religion Relationships

<table>
<thead>
<tr>
<th>Establishment</th>
<th>Limited Expression</th>
<th>Free Expression</th>
</tr>
</thead>
<tbody>
<tr>
<td>None (w/indig. relig.)</td>
<td>47.3</td>
<td>56.3</td>
</tr>
<tr>
<td>None (w/o indig. relig.)</td>
<td>n.a.</td>
<td>n.a.</td>
</tr>
<tr>
<td>De Jure</td>
<td>79.5</td>
<td>73.0</td>
</tr>
<tr>
<td>De Facto</td>
<td>38.5</td>
<td>54.3</td>
</tr>
<tr>
<td>Both (w/comm. ctrys.)</td>
<td>40.2</td>
<td>43.2</td>
</tr>
<tr>
<td>Both (w/o comm. ctrys.)</td>
<td>43.2</td>
<td>53.6</td>
</tr>
</tbody>
</table>

2. Freedom of Expression Contrasted with Establishments of Religion

Table 1 indicates that the best average human rights record (94.8% in 1991) belongs to countries with de jure establishments of religious expression and free religious expression, e.g., Finland and the United Kingdom. In these countries, the religious establishment represented "not much more.


187. The relevant U.S. government publications consulted include the following: (1) U.S. DEP'T STATE, SENATE COMM. ON FOREIGN RELATIONS, COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES FOR 1994 (1995); and (2) the Dept. of the Army's Area Handbook Series, e.g., DEP'T OF THE ARMY, INDIA: A COUNTRY STUDY (1985). The survey research that I consulted related to church attendance in Western industrialized countries. See RONALD INGLEHART, CULTURE SHIFT IN ADVANCED INDUSTRIALIZED SOCIETIES 200 (1990). Finally, one example of a scholarly discussion of religious intolerance in individual countries that I consulted is WILLIAMS & FALOLA, supra note 176.
than a mere historic relic."\textsuperscript{188} Although recognized by the State, the religious establishment in those states lacked the widespread adherence and participation of \textit{de facto} religious establishments. Countries with no or \textit{de facto} establishments of religion had generally worse human rights scores, whether considered in the context of limited religious expression, e.g., in Israel, or relatively free religious expression, e.g., in Norway. This proves true during the time period covered by both the 1983 Guide and 1991 Guide,\textsuperscript{189} suggesting a fairly robust result.

Countries with the poorest average human rights record in 1983 and 1991 included: (1) countries with \textit{de facto} establishments and limited religious expression, e.g., the Sudan; and (2) countries with both \textit{de facto} and \textit{de jure} establishments and limited religious expression, e.g., Iran and China. Overall, within these categories, countries with the least freedom of religious expression also had the worst human rights records in 1991: North Korea (20%); Iran (22%); China (21%); Saudi Arabia (29%); Vietnam (27%); Iraq (17%); Libya (24%); and Burma (17%). Not incidentally, both Iran and Saudi Arabia are theocracies. The remaining key offenders of human rights are primarily communist states,\textsuperscript{190} suggesting that religion is not the cause of human rights tragedies. In fact, when these states overthrew their \textit{de jure/de facto} establishments of Marxism following the collapse of the Eastern block, their human rights scores improved dramatically. For example, between 1983 and 1991, Czechoslovakia's score increased from 36% to 97%; Romania's from 32% to 82%; Poland's, from 36% to 83%; and Hungary's, from 54% to 97%.

Even more dramatically, a comparison of the free expression and limited expression columns in Table 1 reveals that the average human rights records of countries permitting relatively free religious expression was substantially better than that of countries limiting religious expression. This remains true regardless of the type of establishment a state possessed in 1983 and 1991. Even countries with \textit{de jure/de facto} establishments that, nevertheless, allowed relatively free religious expression had quite respectable human rights records, e.g., Bolivia (80.5%). This suggests that the poor human rights records of these regimes has more to do with the inherent tendency of \textit{de jure/de facto} regimes to limit religious expression than the state-religion relationship itself.

\textsuperscript{188} KRISHNASWAMI, supra note 176, at 47. For example, Finland recognizes the Lutheran Church of Finland and the Orthodox Church of Finland as its two official churches. Roughly 90% of the Finnish population affiliates with these State churches. However, surveys show that only 10\% of Finns read the Bible weekly, and only 12\% attend church at least once a month. \textit{See} DEPT OF THE ARMY, FINLAND: \textit{A COUNTRY STUDY} 103-04 (1990). \textit{See also} INGLEHART, supra note 187, at 185-211 (discussing secularization in advanced industrialized societies).


\textsuperscript{190} \textit{See} id.
3. **Freedom of Expression Contrasted with Type of Religion**

Some commentators claim that the type of religion prevalent in a country is the best predictor of human rights practices. According to this theory, certain types of religion are more often associated with human rights abuses. To examine this argument, we return to Appendices 1 and 2, which list the dominant religion of each country. Table 2 presents the average human rights score for each major religion listed in Appendices 1 and 2, calculated by totaling their associated country human rights score and dividing by the number of states having that particular dominant religion. For example, to calculate the average human rights score for Islam in 1991, the human rights scores for each country that Appendix 1 lists as predominantly Islamic was totaled and then divided by the number of Islamic states listed in Appendix 1.

**Table 2: Relationship of Religion to Human Rights**

<table>
<thead>
<tr>
<th>Religion</th>
<th>Human Rts. Score</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>1991</td>
</tr>
<tr>
<td>Protestantism</td>
<td>93.6</td>
</tr>
<tr>
<td>Catholicism</td>
<td>75.1</td>
</tr>
<tr>
<td>Orthodox</td>
<td>84.0</td>
</tr>
<tr>
<td>Islam</td>
<td>44.4</td>
</tr>
<tr>
<td>Buddhism</td>
<td>42.0</td>
</tr>
<tr>
<td>Hinduism</td>
<td>61.5</td>
</tr>
<tr>
<td>Marxist-Leninist</td>
<td>24.5</td>
</tr>
<tr>
<td>Indigenous</td>
<td>50.3</td>
</tr>
</tbody>
</table>

The resulting divergence in human rights scores among religions is startling. Table 2 indicates that in 1991 and 1983, Protestantism was associated with the best record and Marxist-Leninism with the worst. Other

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191. See, e.g., Jack Donnelly, *Universal Human Rights in Theory and Practice* 52, 57, 126 (1989) (arguing that, whereas Judeo-Christianity focuses on individual rights, Islam and most other religions focus on duty); id. at 135 (arguing that Hindus reject the notion that human life is superior to other types of life because of the doctrine of reincarnation and that the Hindu caste system “deems the equal worth of all human beings”). See also Mansour Farhang, *Fundamentalism and Civil Rights in Contemporary Middle Eastern Politics, in Human Rights and the World’s Religions* 64 (Leroy S. Rouner ed., 1988) [hereinafter Rouner] (“In Islam, the rights of individuals constitute obligations connected with the Divine”); John B. Carman, *Duties and Rights in Hindu Society, in Rouner, supra*, at 113-28 (individual rights can be understood only within the context of duty in Hindu society); Taitetsu Unno, *Personal Rights and Contemporary Buddhism*, in Rouner, supra, at 129 (Buddhism emphasizes a sense of gratitude rather than rights); Joshua Mitchell, *Protestant Thought and Republican Spirit: How Luther Enchanted the World*, 86 Am. Pol. Sci. Rev. 688 (1992) (Protestantism uniquely promoted the idea of separation of church and state).

192. The same sources that I used to classify countries in Table 1 provided the basis for my religious classifications in Appendix 1. See supra note 177 and accompanying text.
religions fall between these extremes. Thus, on first glance, Table 2 seems strongly to support the argument that human rights practices depend primarily on the type of religion a nation practices. However, a closer examination of Table 2 in relation to the Appendices reveals that this association may be superficial, resulting from a more rudimentary relationship between human rights practices and religious tolerance.

Some countries with a dominant religion that Table 2 associates with a poor human rights score nevertheless possess quite respectable human rights records, e.g., Islamic Senegal (89% in 1983 and 71% in 1991) and Guinea (93% in 1983 and 70% in 1991). Both countries practice a moderate form of Islam which permitted relatively free religious expression in the 1980s and 1990s.193 Senegalese Islam not only embraced the secular nation-state, but also the “notion of race enshrined in the cultural philosophy of Negritude,” an imperfect democracy, and religious tolerance.194 Consequently, “Senegalese society has never been subjected to the repression, exploitation, arbitrariness, or, indeed, terror known by all too many of its neighbors.”195

Secondary analysis also reveals one country with a dominant religion that Table 2 associates with a good human rights score, nevertheless possessing a poor human rights record: Catholic Guatemala (62% in 1991). Serious infringements of religious liberty in Guatemala coincided with a period of severe human rights violations in that country. Protestant General Efrain Rios Montt assumed the Presidency of Guatemala in 1982, during a period when the Protestant Church was growing rapidly and Catholic-Protestant tension was severe.196 The military began a “counter-insurgency frenzy” in the highlands of Guatemala, targeting Catholic clergy and catechists as subversives while regarding evangelicals as patriots and anti-communists.197 Liberation theology transformed Catholic Action and Delegates of the Word into strong opponents of the military regime begin-

193. See Leonardo A. Villalon, Islam and the State in West Africa: Disciples and Citizens in Fatick, Senegal 4 (1992) (unpublished Ph.D. dissertation, University of Texas (Austin)) (“[T]here is a close link between the role of Islam in [Senegal] and its political successes.”); id. at 428 (“The maraboutic system is thus central to Senegal’s relative success in maintaining the ‘precarious balance’ between state and society, and to the consequent avoidance of the unchecked authoritarian excesses that result from a disruption of this balance.”); see also HAROLD D. NELSON ET AL., AREA HANDBOOK FOR SENEGAL 125 (1974); HAROLD D. NELSON ET AL., AREA HANDBOOK FOR GUINEA 88, 91-92, 93, 96-98 (2d ed. 1976) (stating that Islam has been secularized in Guinea).

194. See Villalon, supra note 193, at 2; (“Islam in Senegal has been paradigmatically ‘conformist,’ capable of accommodating itself to the ‘prevailing political reality’ of the modern nation-state”) (citing JAMES P. FISCATORI, ISLAM IN A WORLD OF NATION-STATES (1986)); see also ROBERT FATTON, JR., THE MAKING OF A LIBERAL DEMOCRACY: SENEGAL’S PASSIVE REVOLUTION, 1975-1985 (1987) (arguing that Senegal can make a rare claim in Africa: it has a functioning democracy).

195. Villalon, supra note 193, at 3; see also SHELDON GELLAR, SENEGAL: AN AFRICAN NATION BETWEEN ISLAM AND THE WEST 23 (1982).


197. See Barry, supra note 196, at 187.
ning in the mid-1960s. Naturally, they also become opponents of evangelicals aligned with the military; Archbishop Prospero Penados del Barrio asserted that evangelicals "represented an imperialist conspiracy to assert U.S. economic and political dominance in the region." The military assassinated many Catholic clergy and banished others from the country, many of whom formed an active Guatemalan Church in Exile. Many peasants converted to evangelicalism to avoid being identified with the counterinsurgency. Human rights violations during this period were severe, and did not begin to moderate until Jorge Serrano came to power in 1991 on a platform de-emphasizing religious identity as a political issue. By the mid-1990s, tension between Catholics and Protestants eased, and the Guatemalan Peace Agreements were signed (December 29, 1996). Thus, the Appendices, together with Table 2, suggest that religions normally associated with good human rights records, in this case both Catholicism and Protestantism, can be associated with poor human rights records if states prohibit religious dissent.

History also demonstrates that the relationship between religion and human rights practices has varied over time, depending upon the openness of spiritual leaders to alternative religious viewpoints. For example, Vatican II, which ended centuries of Catholic opposition to religious tolerance and the separation of church and state, roughly marked the transition of Latin American countries from military regimes guilty of committing terrible human rights violations, most notably "disappearances," to democracies with respectable human rights records. Catholicism evolved from a religion authenticating oligarchy, authoritarianism, and religious intolerance to one opposed to it.

Protestantism in the United States, although now associated with religious tolerance, also historically promoted religious intolerance by suppressing African religion among slaves in the South; inciting mob violence against Catholics and burning their churches; discriminating against, expelling, and inciting violence against other minority Protestants; and driving the Mormons west, confiscating their property, and disenfranchising and killing them.

Islam has also wavered in its receptivity to religious minorities. The modern Islamic fundamentalist movement has been shaped by the Iranian Revolution, which has proven extremely intolerant of most religious minor-

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198. See id. at 190-92.
199. Id. at 187, 200-01.
200. See id. at 192.
201. See id. at 198.
203. See id. at 188, 193-94; see also U.N. Dept. of Public Information, Guatemalan Peace Agreements (1998).
204. See infra Part III.B.2; see also Huntington, The Third Wave, supra note 171, at 76-85.
205. See Huntington, supra note 170, at 77.
The Iranian Revolution brought fundamentalist Shi'as to power, who began exporting their views and trying to silence alternative Islamic viewpoints more tolerant of religious minorities. Before the Revolution, Turkey, Lebanon, Egypt, and Nigeria, among other countries, tolerated non-Islamic religious expression. Much earlier, during the fifteenth and sixteenth centuries, Calvinists, Montanist Christians, and Jews from Hungary, Transylvania, and elsewhere fled to the Islamic Ottoman Empire to escape Catholic rule. The Prophet Mohammed himself promised tolerance for Christians and Jews.

The average human rights score for Islam has plummeted as fundamentalists have tried to silence alternative Muslim and Christian religious viewpoints through gang violence, rape, torture, vandalism, and arson and by insisting upon capital punishment for apostasy, conversion, and defiling "the sacred name of the holy Prophet Mohammed."

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207. See, e.g., David Menashri, Iran: A Decade of War and Revolution 3-4 (1990) (arguing that secularization and westernization caused substantial popular and clerical resentment, leading to the Iranian Revolution). Following the Revolution, Iran pledged to assist Muslim revolutions anywhere. See id. at 96-97. See also John L. Esposito, Islam and Politics (1994) (discussing Iranian Revolution for export); Emanuel Sivan, Radical Islam, Medieval Theology, and Modern Politics (1985); Tareq Y. Ismael & Jacqueline S. Ismael, Government and Politics in Islam (1985); Mohammed Ayoob, The Politics of Islamic Reassertion (1981); James C.N. Paul, Islam and the State: The Problems of Establishing Legitimacy and Human Rights, 12 Cardozo L. Rev. 1057, 1065 (1991) (arguing that while Iran is a special and extreme case, it is widely thought that the events there have been influential in inspiring fundamental changes elsewhere.).

208. See Paul, supra note 207, at 1067-68 (discussing three Islamic approaches to the relationship of religion to the state, only one of which constitutes a theocracy); Abdulahi A. An-Na'im, Religious Minorities under Islamic Law and the Limits of Cultural Relativism, 9 Hum. Rts. Q. 1, 14-18 (1987) (calling for a modern approach to the Shari'a that protects minority rights).

209. See Menashri, supra note 207, at 3 (arguing that the Shah of Iran moved toward separating state and religion); Williams & Falola, supra note 176, at 19 (arguing that early Nigerian leaders made a secular state and religious tolerance a primary goal).

210. See Marshall, supra note 78, at 17; McDougal et al., supra note 2, at 669 (stating that the Ottoman Empire tolerated religion due to the Treaty of Berlin of 1878); Stephen Fischer-Galati, Judeo-Christian Aspects of Pax Ottomana, in Tolerance and Movements of Religious Dissent in Eastern Europe (Bela K. Kiraly ed., 1975) (stating that Christians and Jews enjoyed religious freedom until the end of the sixteenth century). See also Rouner, supra note 192, at 6 (separation between religion and the state existed in the Muslim world for at least eleven of Islam's fourteen centuries).

211. See Montgomery Watt, Muhammad at Medina 359 (1956) (Excursus F, v. 16). Watt noted that:

The Messenger of God . . . wrote to the bishop of B. al-Harith b. Ka'b and the bishops of Najran and their priests and those who followed them and their monks, that for all their churches, services, and monastic practices, few or many, they had the protection (jiwar) of God and His Messenger. No bishop will be moved from his episcopate, no monk from his monastic state, no priest from his priesthood. There will be no alteration of any right or authority or circumstances, so long as they are loyal and perform their obligations well, they not being burdened by wrong suffered and not doing wrong.

Id.

212. See id. at 358.

III. Additional Reasons for Promoting Religious Tolerance

Additional reasons exist for reassessing the treatment of religious minorities under international law. Policies for promoting religious tolerance are essential for the following "realistic," utilitarian, and philosophical reasons: (1) to respond to the dangerous multipolar, civilizational politics now driving international relations; 214 (2) to moderate religious absolutism and ensure normative development; and (3) to enable individuals to be truly human.

A. Multipolar, Civilizational Politics

In the post-Cold War era, multipolar civilizational politics is rapidly replacing ideological conflict as the dominant organizational principle of international relations. 215 Among diplomats, "[t]he question, 'Which side are you on?' has been replaced by the much more fundamental one, 'Who are you?'" 216 In the aftermath of the collapse of the Soviet empire, statesmen answer these questions by examining their "blood and belief, faith and family." 217 Of these, faith may be the most important source of national identity. 218 Ideologies fade away, empires rise and fall, governments come and go, but civilizations and the religions upon which they are based remain. It is not surprising, therefore, that the vacuum left by the end of ideological conflict is now being filled by civilizational conflict based upon geo-religious fault lines among Christian, Islamic, Hindu, and Confucian states. 219 The world is no longer primarily East or West and North or South, but Dar al-Islam or Dar al-Harb.

It is not surprising, therefore, that when the predominately secular Serb leadership manipulated religion to demonize Bosnians in 1992 (like the Young Turks demonized Armenians), 220 ancient international alignments reemerged. Turkey, Iran, and other Islamic states came to the aid of Bosnians, whereas Russia backed Orthodox Serbia, and Germany supported Catholic Croatia. 221 Concerning foreign policy in general, former Soviet republics are realigning along this Orthodox-Islamic axis. Belarus, Moldova, and the Ukraine are drawing closer to Russia, whereas Uzbekistan, Turkmenistan, Kazakhstan, and Kyrgyzstan are developing closer associations among themselves and with their Muslim neighbors, particularly Iran, Turkey, and Saudi Arabia. 222

214. See generally Huntington, supra note 12.
215. See id.
216. Id. at 125.
217. Id. at 126.
218. See id. at 42.
219. See id. at 53-54. Note that the only remaining world religion, Buddhism, is not currently associated with any hegemon. See id. at 47-48.
220. See supra Part I.A.1.
221. See Huntington, supra note 12, at 127.
222. See id. at 127, 146. In 1996, Turkey's Prime Minister Necmettin Erbakan was especially vocal about inaugurating a Turkish-led "global Muslim order." See James M. Dorsey, Turkish Leader's Islamic Tilt Vexes West; But Erbakan's Rhetoric and Actions Don't Always Jibe, N.Y. Times, Dec. 30, 1996, at A6. He insisted the "world has to be reshaped" and called for the creation of an Islamic military alliance similar to NATO, the introduc-
Muslims and Christians also confront one another in northern Africa, where a religious fault line divides the north from the south. We have already seen how the fundamentalist Islamic government of Sudan, based primarily in the north, is killing and enslaving Christians in the south. Similar geo-religious conflicts exist in Nigeria, Tanzania, Kenya, and Ethiopia. Religious fault lines also separate Christians and Muslims in the Philippines; Muslims and Hindu fundamentalists in India; Sinhalese Buddhists and Tamil Hindus in Sri Lanka; Muslims and Christians in Indonesia; and Orthodox Russians and fundamentalist Muslims in Tajikistan and Chechnya.

Only religious tolerance, combined with balance of power politics, can take the wind out of this civilizational confrontation, the surface of which has only been scratched. The potential for a serious global conflagration rooted in religious difference re-emerged in the 1990s, and tension and civil war premised on religious differences became more common. Accordingly, political realists cannot fairly assert that the promotion of religious tolerance constitutes merely an idealistic crusade. Rather, an international policy of religious tolerance would, among other things, (1) eliminate a potential justification for intervention on behalf of co-religionists, (2) moderate fundamentalist and nationalist movements by removing some of the impetus behind their organization, and (3) stem secessionist movements based on religious differences. The latter in particular constitute "a standing challenge to an international order based on the sovereign state."

In general, religious tolerance may be essential to ensure the continued viability of the international rule of law. Modern international law essentially represents a pragmatic compromise among states concerning what is useful and (perhaps less frequently) moral; its precepts are contingent, tentative, fluid, and often relative in the same manner as democratic governance. In contrast, theocracies and, to a lesser extent in the 1990s, Marxist-Leninist and Maoist governments advocate manifestos thought to represent everlasting deontological truth. They believe that their inspired rules supersede and subordinate all contrary laws.

Accordingly, Hans Kelsen wrote, "[t]olerance, minority rights, freedom of speech, and freedom of thought, so characteristic of democracy, have no place within a political system based on the belief in absolute values." When international law contradicts the communist manifesto or divine law, the international rule of law will generally lose and every imaginable violation thereof—including what the West deems terrorism—will be considered justifiable. International law and religious absolutism thus are ultimately incompatible in a system of nation-states that do not adhere to the same set of absolutist values. On the other hand, religious tolerance promotes respect for international law and the ideals of compromise and diversity.

B. Religious Absolutism and Normative Stagnation

Religious tolerance also undermines religious absolutism. As Mill put it, "[r]eligious belief is the weapon to destroy religious belief: new and purer forms of belief destroy the corrupt and historical forms." This is not to suggest that religious truth itself is relative, but rather that human interpretation of truth, religious or otherwise, is fallible, and the marketplace of ideas often provides the best antidote to errant doctrine. For example, alternate Christian viewpoints on slavery collided in the 1800s, and ultimately led to total victory of abolitionist thought. Likewise, intra-Catholic and Catholic-Protestant debates ultimately led to a shift in the Catholic Church's view of democracy and human rights in the 1960s. Indeed, a longer view of history suggests that revolutions in world history have always been preceded by religious ferment.

Observing relationships like these, Mill reached the controversial conclusion that "[t]he moral progress of man has depended on the progress of moral opinion, but . . . shifts in that opinion have required prior shifts in the 'truths' of religion." Mill has been attacked by both atheists and theists on account of this claim. Atheists reject the notion that moral progress depends on religion, whereas many theists deny that normative pro-

229. Id. at 27.
230. See Kelsen, supra note 227, at 25 (an absolutist position is that the state should be the sole legal authority, "the god in the world of law"); see also McDougal et al., supra note 2, at 654-56; Dinstein, supra note 166, at 166; Lerner, Toward a Draft Declaration, supra note 168, at 82, 83.
235. See infra Part III.B.3.
236. Eisenach, supra note 231, at 172.
gress occurs. Of course, one need not agree that man's inner moral condition can improve to agree with Mill that at least superficial normative progress occurs. We need only to accept that certain norms of behavior become more fashionable in some periods for non-altruistic reasons; e.g., as a result of bandwagoning. Some contend, for example, that the United States did not reject slavery until it became socially unacceptable and less profitable.\textsuperscript{238} If this is true, a type of moral progress occurred in the United States without necessarily any net improvement occurring in the moral condition of Americans.

1. American Slavery

Although it is hard to believe now, many American Christians once justified slavery, because they believed God ordained it to evangelize heathens.\textsuperscript{239} Support for slavery varied by Christian denomination and within denominations over time. In the quarter century following 1745, Presbyterians and Episcopalians, who disproportionately included the Southern white elite, led the "mission to the slaves" movement.\textsuperscript{240} Many of these Christians believed that the institution of slavery was itself neutral, but that slaveholders were responsible for Christianizing their slaves.\textsuperscript{241} In contrast, Methodists and Baptists, who included in their congregations during this period primarily lower income whites and slaves, strongly criticized slavery.\textsuperscript{242} Unfortunately, in the 1830s, this anti-slavery message was silenced (at least in the South) when Baptist churches began to attract more influential slaveholders, and Methodists came to believe that their continued growth hinged on ceasing their efforts to prohibit slaveowning.\textsuperscript{243} Gradually, a serious schism arose in these denominations over slavery, leading them to split bitterly into northern and southern branches in the 1840s.\textsuperscript{244}

The only Protestant Christians to remain steadfastly anti-slavery were Quakers and Freewill Baptists, who refused even to allow slaveholders into their midst. Catholics, Episcopalians, and Lutherans developed a disinclination even to admit that slavery was a valid subject for discussion.\textsuperscript{245} The last of the major Protestant denominations to split over slavery were the Presbyterians in 1861, the Episcopalians in 1862, and the Lutherans in


240. Id. at 8.


242. See Boles, supra note 239, at 8.


245. See McKivigan, supra note 241, at 27-28; Coulter, supra note 244, at 521-22.
Congregationalists and Unitarians, who never developed a strong presence in the South, nevertheless established fraternal correspondence with slaveowners and tended to favor African re-colonization schemes rather than emancipation.247

Pro-slavery Christians asserted that they were Biblical literalists and fundamentalists.248 They preached that blacks were the Biblical descendants of Ham or Cain, heirs to curses of perpetual subjugation.249 American slavery was consistent, they said, with the slavery of the patriarchs in the Old Testament. Furthermore, pro-slavery Christians claimed that neither Jesus Christ nor His apostles condemned slavery, even though it was practiced during their time.250 Finally, they pointed out that Saint Paul admonished slaves in several epistles to be obedient to their earthly masters and even ordered an escaped slave, Onesimus, to return to his master, Philemon.251 In contrast, abolitionists insisted that Christians must examine the Bible in its totality, stressing its overriding emphasis on the inherent dignity of human beings and on the principles of justice and righteousness — ideas they claimed were entirely at odds with the institution of slavery.252 Abolitionists also rejected the claims that African-Americans were heirs of Cain or Ham and tried to prove that American slavery was harsher than the slavery of the Old Testament Jews.253

The conflict between these two viewpoints came to a head during the Civil War, and was not resolved in favor of abolitionist theology until a considerable time after the North’s triumph. African-Americans did not receive formal apologies from many established Southern denominations (e.g., the Southern Baptists) for their pro-slavery gospel and, in many cases, active resistance to the anti-discrimination movements of the 1960s, until as late as the 1990s.254 Ultimately, however, the conflict of abolitionist and pro-slavery theologies made possible by the religious liberty our government affords was resolved in favor of human rights.

2. Vatican II and the Third Wave of Democratization

Another example of profound theological transformation leading to human rights progress occurred following the adoption of Vatican II in 1965.255 Before 1965, the Catholic Church officially opposed democracy and separ-
ration of church and state, arguing that the state should support the church and that democracy was synonymous with anti-clericalism and moral decadence. Vatican II endorsed the view that human rights and individual liberties, including religious liberty, derive from natural law. In addition, Vatican II stressed the legitimacy and need for social change; emphasized the contingent character of social and political structures; urged collegial action by bishops, priests, and laity; and advocated democracy and the separation of church and state.

Vatican II had a radical effect on the Catholic Church and world politics. The Catholic Church metamorphosed from a pillar of authoritarian rule to a powerful opponent of political absolutism. Following the Latin American bishops' conference in Medellin in 1968, liberation theology motivated Catholics in Latin America to create base communities, the eventual center of political opposition to established regimes. Papal visits and outspoken bishops in Brazil, El Salvador, South Korea and Poland mobilized powerful resistance to authoritarian leaders. In Central

256. See J. Bryan Hehir, *Catholicism and Democracy: Conflict, Change and Collaboration, in Christianity and Democracy in Global Context* 15-23 (John Witte, Jr. ed., 1993) [hereinafter *Christianity and Democracy*]. Prior to the 1970s, many scholars argued that Catholic countries could not support democracy and rapid economic growth. See Charles-Louis de Montesquieu, *The Spirit of the Laws*, in *Great Political Thinkers*, supra note 233, at 437 (stating that northern Europeans enjoy liberty and independence because they embraced Protestantism, whereas southern Europeans do not enjoy this freedom because they embraced Catholicism); Niebuhr, supra note 1, at 128 (arguing that Catholicism "is in basic conflict with a democratic society"); see generally Max Weber, *The Theory of Social and Economic Organization* (1947) (discussing Weber's Protestant Thesis, i.e., that Protestantism encourages economic enterprise, the development of the bourgeoisie, capitalism, economic wealth, and democracy).


America, church pronouncements and leadership fueled revolution.262

Overall, Vatican II contributed to a "third wave" of democratization in the Second and Third World in countries where Catholicism was predominant, virtually ending disappearances, torture, repression of speech and association, and other human rights violations that communists and military juntas perpetrated.263 Moreover, the reason for the theological shift outlined in Vatican II, according to some scholars, is the theological pressure applied by American and European Catholics and Protestants.264 Thus, Vatican II underscores that the confrontation between religious viewpoints undermines aberrant theology and promotes human rights.

3. Key Revolutions in World History

A longer view of history suggests that whenever a supra-national religious body, state, or empire has brooked no religious dissent, absolutism has prevailed and progress in human affairs has proved the exception. In contrast, radical shifts in the religious belief-systems of lay people from Catholicism to Protestantism to Deism to the secular religion of Marxist-Leninism led to the most important religious and political revolutions in world history: the German Lutheran Reformation of 1517, the English Puritan Revolution of 1640, the American Revolution of 1776, the French Revolution of 1789, and the Russian Revolution of 1917.265 Each revolution brought forth a new legal order, announced a new apocalyptic vision of the perfect end-times, and offered a new eschatology.266 With the exception of the French and Russian Revolutions, which punished religious expression, each revolution also unambiguously advanced human rights.267

262. See BERRYMAN, supra note 255, at 79-89; 105-11, 117-58, 182-219, 343.

263. See Hehir, supra note 256, at 21-26; see also Edward L. Cleary, Conclusion: Politics and Religion—Crisis, Constraints, and Restructuring, in CONFLICT AND COMPETITION, supra note 196. Roman Catholicism constitutes the predominant religion in twenty-four of the thirty-two new democracies established since 1973.

264. See Hehir, supra note 256, at 25, 27-28; see also COMBLIN, supra note 257, at 38-40; George Weigel, Catholicism and Democracy: The Other Twentieth-Century Revolution, in THE NEW DEMOCRACIES: GLOBAL CHANGE AND U.S. POLICY 20-23 (Braden Roberts ed., 1990); Edward L. Cleary, Conclusion, in CONFLICT AND COMPETITION, supra note 196, at 203-04.


266. See Witte, supra note 265, at 534.

267. See RICHARD Pipes, THE RUSSIAN REVOLUTION 838 (1990) ("All on can say with any assurance is that... Lenin's terror claimed tens if not hundreds of thousands of lives. Victims of the next wave of terror, launched by Stalin and Hitler, would be counted in the millions."); Aleksandr Solzhenitsyn, Misconceptions About Russia Are a Threat to America, 58 FOR. AFFRS 797, 803 (1980) (stating that communist apparatus eventually ground up some 60 million victims). Even the French Revolution, which inspired the Declaration of the Rights of Man in 1789 and, according to some, ushered in human rights based on republicanism, the Enlightenment, and nationalism, led to the September massacres and Napoleonic Wars. See R.R. PALMER, A HISTORY OF THE MODERN WORLD 355-63 (1963); see also Pipes, supra; see generally Timothy O'Hagan, Liberal Critics of the French Revolution, in REVOLUTION AND ENLIGHTENMENT IN EUROPE (Timothy O'Hagan ed.,...
4. **Syncretic Religions**

Notwithstanding this evidence supporting Mill's theory that religious tolerance undermines religious absolutism and leads to normative progress,268 one caveat deserves exploration. Some religions do not so much collide with other religions as merge with them. Anthropologists refer to this phenomenon as syncretism.269 Syncretic religions fuse different forms of faith and worship by selectively absorbing the tenets, customs, and rites of alien religions.270 Generally, syncretic religions result from a polytheistic religion embracing elements of another polytheistic or monotheistic religion.271 They also tend to be associated with politically absolutist societies and fatalism.272 Appendix 1 indicates a few states that (1) permit free religious expression, but (2) manifest poor human rights scores, and (3) have a dominant religion generally associated with poor human rights scores. In other words, in at least some instances, states tolerant of religious expression, but with dominant religions normally associated with poor human rights records, in fact have poor human rights records.

In these countries either the dominant religion is indigenous, e.g.,

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268. See supra notes 231, 233, 237 and accompanying text.
269. See HOMER G. BARNETT, INNOVATION: THE BASIS OF CULTURAL CHANGE 49 (1953) (subdividing the process of cultural acceptance into imitation, wherein the purpose of the acceptor nation or other unit is to produce a copy of some alien cultural pursuit, and syncretism, wherein the acceptor nation or other unit attempts a compromise between the alien religion and one of its own cultural elements); see also WILLIAM MADSEN, CHRISTO-PAGANISM: A STUDY OF MEXICAN RELIGIOUS SYNCRETISM 111 (1957); BASIL C. HEDRICK, RELIGIOUS SYNCRETISM IN SPANISH AMERICA 1 (1967); NGWABI BHEBE, CHRISTIANITY AND TRADITIONAL RELIGION IN WESTERN ZIMBABWE 1859-1923, at xii (1979).
270. See HEDRICK, supra note 269, at 1.
271. See, e.g., MADSEN, supra note 269, at 172 (stating that Aztec pantheism embraced Christianity); see also DONALD E. THOMPSON, MAYA PAGANISM AND CHRISTIANITY: A HISTORY OF THE FUSION OF TWO RELIGIONS 31 (1954) (stating that Mayan pantheism embraced Christianity); BHEBE, supra note 271, at xii, 160 (discussing the fusion of native polytheistic religions with each other and with Christianity); see generally HARVEY WHITEHOUSE, INSIDE THE CULT: RELIGIOUS INNOVATION AND TRANSMISSION IN PAPUA NEW GUINEA (1995); PETER LAWRENCE, THE GARIA: AN ETHNOGRAPHY OF A TRADITIONAL COSMIC SYSTEM IN PAPUA NEW GUINEA (1984).
272. See TALCOTT PARSONS, THE EVOLUTION OF SOCIETIES 35 (1977) (In traditional societies "the statuses of sacred object and secular social unit have not been differentiated"); DEPT. OF THE ARMY, NIGERIA: A COUNTRY STUDY 122 (1992) ("In everyday life, [adherents of indigenous religions blame] misfortune, sickness, political rivalries, inheritance disputes, and even marital choices or the clearing of a new field . . . [on] this religious framework"); WILLIAMS & FALOLA, supra note 176, at 15 (the Ogboni believe the gods cause any misfortune that befalls them); MADSEN, supra note 269, at 174 (arguing that fatalism dominates the Aztec religion); LAWRENCE, supra note 271, at 129, 193-94, 201-03 (the Garia in Papua New Guinea believe superhuman forces manipulate them for good or ill); Jacob K. Olupona, Contemporary Religious Terrain, in RELIGION AND SOCIETY IN NIGERIA 32-33, 68-79 (Jacob K. Olupona & Toyin Falola eds., 1991) (Africans honor the king next to the gods, and believe that the king communes with the gods sometimes through sorcery).
Uganda, or the state has a large indigenous population, e.g., Peru. Thus, the character of indigenous religions may, indeed, have independent importance for predicting the human rights record of countries, but for reasons entirely in keeping with the hypothesis of this Article, i.e., that free religious expression is the variable most closely associated with respectable human rights practices. Religions which absorb and merge with other religions (rather than challenging them with claims of exclusive truth) do not add to the marketplace of ideas wherein errant doctrine can be tested and rejected. Religious belief cannot unseat religious belief. Rather, even when people are permitted to practice religion freely, progress in human rights cannot occur because the reigning dogma persists. Therefore, freedom of religious expression is immaterial and political absolutism becomes the norm.

C. Impaired Weltanschauungs

Religious tolerance also enables individuals to enjoy a constitutive element of their personhood, the ability to choose a fundamental orientation toward the world, or a Weltanschauung. Weltanschauungs enable humans to structure and adapt their relationship to others and to the cosmos; they provide the lenses through which each individual consciously or unconsciously interprets reality. Attitudes toward religion and atheism fundamentally shape Weltanschauungs because they represent the ultimate basis for the metaphysical, epistemological, ethical, and anthropological views of an individual. According to John Stuart Mill, individuals deprived of the opportunity to choose these foundational beliefs suffer stunted moral and intellectual development. Accordingly, "[i]n a community genuinely committed to the goal of human dignity, one paramount policy

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273. One can argue that states in which a majority of the populace adheres to indigenous religions have established a de facto indigenous religion. However, treating various indigenous religions differently respects their wide variety more fully. Thus, I do not classify any indigenous religion as established in a country where a wide variety of indigenous religions coexist and no recent census data shows that one indigenous religion has a clear majority over another.

274. Overall, countries with indigenous religions drop the average human rights score of the "free expression/no establishment" cell of Table 1 in Part II.B.2 from 90.4% to 75.5% in 1991 and from 92.7% to 82.33% in 1983.

275. See Ronald H. Nash, Faith & Reason: Searching for a Rational Faith 21, 24 (1988) ("A world-view is a conceptual scheme by which we consciously or unconsciously place or fit everything we believe and by which we interpret and judge reality.").

276. In fact, philosophers refer to attitudes toward religion and atheism as foundational noetic structures. The word "noetic" comes from the Greek verb "noeo," which means "to understand" or "to think." Thus, a noetic structure stands for the "sum total of everything that a person believes." See id. at 21-22. See also Robert N. Bellah, Beyond Belief (1970) (Religion is "a set of symbolic forms and acts that relate man to the ultimate conditions of his existence").

277. John Stuart Mill wrote:

It is not the minds of heretics that are deteriorated most by the ban . . . The greatest harm is done to those who are not heretics and whose whole mental development is cramped and their reason cowed by the fear of heresy. No man can be a great thinker who does not recognize that as a thinker it is his first duty to follow his intellect to whatever conclusions it may lead.
should be to honor and defend the freedom of the individual to choose a fundamental orientation toward the world."

Those who would deny to individuals the right to choose a weltanschauung commonly assert the same justifications as regimes that violate human rights: they contend that community cohesion and unity requires it. Even some American legal scholars argue that the public square should be informed only by secular weltanschauungs in most circumstances. However, underlying such claims "is an assumption that is essentially contrary to respect for human dignity—an assumption that implies a profound distrust of the wisdom of allowing individuals to take the responsibility for their own beliefs." It is, in the words of Professor Douglas Laycock, "viewpoint discrimination, plain and simple," and a method of silencing "an important source of viewpoints in the process of democratic self-government"—viewpoints which in the United States led to, among other things, abolition, civil rights, the Social Gospel movement, Prohibition, most historic peace movements, and freer immigration of refugees.

John Stuart Mill, On Liberty, in GREAT POLITICAL THINKERS: PLATO TO THE PRESENT, supra note 233, at 580-81. See also Kokkinakis v. Greece, 260 Eur. Ct. H.R. (ser. A) at 17 (1993) (the "religious dimension" of freedom of expression constitutes "one of the most vital elements that go to make up the identity of believers and their conception of life, but it is also a precious asset for atheists, agnostics, sceptics and the unconcerned.").

278. McDougal et al., supra note 2, at 661, 698.
279. See id. at 663.
280. See generally Bruce Ackerman, SOCIAL JUSTICE IN THE LIBERAL STATE (1980) (arguing that political arguments may not presuppose any theory of the good or claim to give any privileged answers); Kent Greenawalt, Religious Liberty and Democratic Politics, 23 N. Ky. L. Rev. 629, 644 ("Public officials should be hesitant to rely on their religious convictions. Private citizens should feel much freer to do so."); Kent Greenawalt, RELIGIOUS CONVICTIONS AND PUBLIC CHOICE (1988) (arguing that officials and citizens should not prohibit certain acts and practices simply because they believe them to be sinful, and contending that public discourse should be primarily nonreligious, except where ordinary secular morality is inconclusive; then, persons with certain religious convictions may appropriately rely on beliefs which go beyond publicly accessible reasons);
Michael J. Perry, LOVE AND POWER: THE ROLE OF RELIGION AND MORALITY IN AMERICAN POLITICS (1991) (arguing that political arguments should be excluded if they claim infallibility or if they are inaccessible to others, and that sectarian religious argument tends to fall in these categories); Michael J. Perry, Religious Morality and Political Choice: Further Thoughts — and Second Thoughts — on Love and Power, 30 San Diego L. Rev. 703 (1993) (modifying earlier positions and appearing to argue that religious arguments are fully admissible in political debate and may be the basis of political decisions); Michael J. Perry, Religion in Politics, 29 U. Cal. Davis L. Rev. 729, 738 (1996) (modifying position and arguing that religious arguments cannot be the basis of coercive regulation unless supported by at least one secular argument, except that the argument that all humans are sacred is always admissible); Kathleen M. Sullivan, Religion and Liberal Democracy, 59 U. Chi. L. Rev. 195, 222 (1992) (arguing that the Constitution requires the "banishment of religion from the public square").
281. McDougal et al., supra note 2, at 663.
IV. International Law on Religious Liberty

To date, the United Nations and regional or quasi-regional governmental bodies with the exception of the European Union and the Conference on Security and Cooperation in Europe (CSCE) have passed human rights instruments essentially irrelevant for ensuring that religious expression remains a part of the public square. This section reviews each of the conventions and declarations passed by the United Nations and regional organizations in Europe, Latin America, Africa, and the Middle East that purportedly guarantee some aspect of religious liberty. The section concludes that real advances in international religious liberty will require another approach.

A. United Nations Conventions and Declarations

United Nations instruments addressing religious liberty distinguish between three types of religious liberty: (1) freedom of thought and conscience, (2) freedom of expression, and (3) freedom from discrimination. International law purports to protect freedom of thought and conscience absolutely and the remaining freedoms to a lesser extent; however, "limitations clauses," so named because they limit the international guarantees to which they apply, essentially swallow the free expression and non-discrimination rules. International law may be interpreted even to derogate from the right to change one's religious belief.

1. Freedom of Thought and Conscience

The UDHR, ICCPR, and the Religion Declaration purport to "guarantee the world's citizens the right to freedom of thought and conscience." This right is allegedly sacrosanct and not subject to limitation, although we shall see in the next section that it has actually been restricted under international law. Freedom of thought and conscience is also the least meaningful aspect of religious liberty for two primary reasons. First, and perhaps too obviously, no government can prevent individuals from believing what they will. Even the most committed fascist,
Communist, and monarchical regimes have discovered that, although they destroy temples, outlaw religious belief, imprison and torture believers, and indoctrinate anti-religious views, religious belief and religious thought persists.

Second, every major theistic and atheistic religion demands that its adherents practice their beliefs rather than simply meditate upon them as a fundamental part of their religiosity. Religious doctrines dictate standards of social conduct and ideals of right and wrong that necessarily impinge on social, political, and economic activities. In the words of James D. Hunter:

[Faiths lay out the moral significance of different social institutions and institutional arrangements. They set forth the social and moral meaning of marriage and the family, the needs and objectives of education, the principles of law, the role of government, and so on, and the interrelationships of these institutions. . . . Faith and culture, then are inextricably linked. By elucidating a broader cosmology or world view, faiths not only link the symbols of public culture with the symbols of private culture; they also infuse the symbols of each sphere with universal if not transcendent significance. . . . And despite the constraints modern societies have placed upon more traditional religious authority to remain sequestered in the private sphere, the impulse to synthesize and universalize public and private experience remains one of the central and unchanging features of religion in the modern world.]

Separating religion from politics, economics, and culture strikes most theistic and atheistic believers, even in the West, as nonsensical. Indeed, this Article contends that it is ultimately impossible to enforce such a separation without limiting human rights in all of these spheres. Limitations of religious expression are inevitably associated with limitations on political, economic, and cultural human rights.

2. Freedom to Manifest Belief in Religion

Freedom of expression is the most critical aspect of religious liberty. Limitations on free expression entail much more than preventing religious persons from practicing their beliefs in public. Without freedom to manifest belief, religious persons cannot assemble together for worship, disciple one another, educate their children in a manner consistent with their religion, disseminate and perpetuate doctrine, solicit and receive contributions, train and appoint religious leaders, communicate with co-religionists at the national and international level, or proselytize. Fortunately, the Religion Declaration recognizes the importance of each of these forms of free

291. See generally Rouner, supra note 191.
292. See James H. Hunter, Culture Wars: The Struggle to Define America 59 86-87 (1991); see also Stephen L. Carter, The Culture of Disbelief 35 (1993) ("Religions are in effect independent centers of power, with bona fide claims on the allegiance of their members, claims that exist alongside, are not identical to, and will sometimes trump the claims to obedience that the state makes.").
293. Hunter, supra note 292, at 58.
294. See supra Part I.B.
295. See supra notes 166-75 and accompanying text.
expression, except proselytization, by itemizing them as protected religious liberties.\textsuperscript{296}

The UDHR does not enumerate protected forms of religious expression, but is thought to guarantee the right to proselytize. It states generally that everyone shall have "the right to freedom of thought, conscience, and religion," including the "freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship, and observance."\textsuperscript{297} The ICCPR is similar, except for a minor, albeit substantive change in phraseology. The ICCPR provides that "everyone shall have the right to freedom of thought, conscience, and religion," including "freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching."\textsuperscript{298}

Arab countries forced the sponsors of the ICCPR to settle on the lesser "have or adopt" language of Article 18(1) to undermine the liberty to proselytize implied in the UDHR.\textsuperscript{299} Arab countries tried to insert similar language in the UDHR in the late-1940s, but were soundly defeated in that debate.\textsuperscript{300} Thereafter, the power of the non-aligned Arab movement grew.\textsuperscript{301} It proved sufficient to block any reference to the right to proselytize in the Religion Declaration, supposedly the most comprehensive international instrument for the protection of religious liberty.\textsuperscript{302} Accordingly, the status of the liberty to change one's belief has substantially deteriorated in the 1990s, even though it appears to be a natural corollary of the Religion Declaration's guarantee that "no one shall be subject to coercion"\textsuperscript{303} and international law's purported absolute guarantee of freedom of thought and conscience.\textsuperscript{304}

Limitations clauses have also largely swallowed the remaining guarantees of religious liberty in international human rights instruments. For example, the ICCPR provides that the "[f]reedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the

\textsuperscript{296} See Religion Declaration, supra note 166, art. 6.
\textsuperscript{297} UDHR, supra note 167, art. 18 (emphasis added).
\textsuperscript{298} ICCPR, supra note 167, art. 18(1)) (emphasis added).
\textsuperscript{300} See id. at 200.
\textsuperscript{301} See Lerner, Final Text, supra note 288, at 187-88.
\textsuperscript{302} The Religion Declaration rejects even the "have or adopt" language in favor of "have." It provides that everyone shall have the right to freedom of thought, conscience and religion including "freedom to have a religion or whatever belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching." See Religion Declaration, supra note 166, art. 1(1) (emphasis added).
\textsuperscript{303} Id. at 110 (Article 1(2)).
\textsuperscript{304} See supra Part IV.A.1.
fundamental rights and freedoms of others." Likewise, the Religion Declaration subjects religious liberty "to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals or the fundamental rights and freedoms of others." The same exception applies to each of the specific forms of religious expression acknowledged by the Religion Declaration, as well as Article 1's guarantee that "[n]o one shall be subject to coercion which would impair his freedom to have a religion or belief of his choice." Article 18 of the Universal Declaration, which extends to everyone "the right to freedom of thought, conscience and religion," is also subject to a limitations clause.

Regimes seeking to suppress religious minorities invariably invoke these limitations clauses by characterizing the activities of religious minorities as subversive or otherwise injurious to the public good. For example, to justify the fiercest crackdown yet on Sunni Muslims, Christians, and Bahais, Iranian officials insisted in 1994 that conversions from Shiite Islam were "subverting the revolution" and "undermining the public welfare." The word "fundamental" before the phrase "human rights" in Article 1 of the Religion Declaration and Article 18 of the ICCPR was designed to prevent this type of abuse by legitimating restrictions on religious expression only when the latter impinged on fundamental rights and freedoms. Unfortunately, this construction has done little for the over 200 Bahais executed since 1979 for "religious subversion." Failure to agree on what constitutes fundamental human rights means that only extremely

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305. ICCPR, supra note 167, art. 18(3). Article 19 of the ICCPR adds that "[e]veryone shall have the right to freedom of expression," except when respect for the rights or reputations of others is hindered or national security, public order, public health, or morals take precedence. Id. art. 19(2), (3). Article 22 similarly provides that "[e]veryone shall have the right to freedom of association with others," subject to restrictions "prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others." Id. art. 22(1), (2).

306. Religion Declaration, supra note 166, art. 1; see also supra note 304. In approving Article 1, the Government of Panama stated that Christian morality is included, with public order, as one of two grounds for imposing limitations on the freedom to practice all religions, in recognition of the fact that Catholicism is the majority religion. See U.N. Doc. E/CN.4/1987/37, at 13 (response from Government of Panama). Likewise, the Government of Colombia emphasized that the constitutional provision guaranteeing the freedom to practice any religion not contrary to Christian morality reflects the fact that Catholicism has historically been the religion professed by the majority of Colombians. See U.N. Doc. E/CN.4/1988/43, at 10-11 (response from Government of Colombia).

307. Religion Declaration, supra note 166, art. 1.

308. UDHR, supra note 167, art. 18. The UDHR's limitation clause states "[i]n the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society." Id. art. 29(2).

309. See Sullivan, supra note 171, at 499.

310. Hedges, supra note 156, at A5.

311. See Sullivan, supra note 171, at 497.

312. Hedges, supra note 156, at A5.
unimaginative regimes can violate Article 1 of the Religion Declaration or Article 18 of the ICCPR by suppressing religious expression.

3. **Freedom from Religious Discrimination**

The non-discrimination clause of the Religion Declaration appears less malleable on first review than the free exercise clauses, because the limitations clause in Article 1 of the Religion Declaration does not expressly apply to Article 2. Article 2 seems to provide, unconditionally, that "[n]o one shall be subject to discrimination by any State, institution, group of persons, or person on grounds of religion or other beliefs." Article 2 even borrows language from the International Convention on the Elimination of All Forms of Racial Discrimination in order to define "intolerance and discrimination based on religion or belief" broadly as "any distinction, exclusion, restriction or preference based on religion or belief and having as its purpose or as its effect nullification or impairment of the recognition, enjoyment or exercise of human rights and fundamental freedoms on an equal basis." According to commentators, this includes intentional or unintentional and public or private acts of discrimination. Article 3 of the Religion Declaration adds that religious discrimination "constitutes an affront to human dignity and a disavowal of the principles of the Charter of the United Nations." This reflects the strong general non-discrimination norm repeated frequently in the UDHR, ICCPR, the

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313. See Religion Declaration, supra note 166, art. 2.
314. See id.
315. Id.
317. Religion Declaration, supra note 166, art. 2; cf. Race Convention, supra note 316, (defining race discrimination at "[a]ny distinction, exclusion, restriction, or preference based on race, color, descent, or national or ethnic origin which has the purpose of nullifying or impairing the recognition, enjoyment, or exercise, on an equal footing, of human rights and fundamental freedoms ....").
319. Religion Declaration, supra note 166, art. 3.
320. See supra note 167. Article 1 of the UDHR provides "[a]ll human beings are born free and equal in dignity and rights"; Article 2 provides "[e]veryone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status"; Article 7 provides "[a]ll are equal before the law and are entitled without any discrimination to equal protection of the law."
321. See supra note 167. Article 2(1) of the ICCPR provides that "[e]ach State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status"; Article 3 provides "[t]he States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant"; Article 26 provides "[a]ll persons are equal before the law and are entitled without any discrimination to the equal protection of the law."
ICESC, and other major international declarations and conventions on human rights.

In fact, the Religion Declaration’s absolute prohibition of religious discrimination ironically minimizes the enforceability of Article 2. Article 2 is simply too overbroad to be an effective weapon against religious persecution. In contrast to other anti-discrimination declarations, the Religion Declaration does not clearly define what acts constitute impermissible religious discrimination. For example, whereas CEDAW clearly prohibits denying women equal access to educational institutions, denying equal access to religious minorities may not violate the Religion Declaration (e.g., where equal access to educational institutions would translate into a discriminatory imposition on another group or lead to public disorder).

Furthermore, although the limitation clause in Article 1 does not expressly apply to Article 2, in practice it must apply in many situations, e.g., when non-discriminatory treatment would lead to public disorder or violate the public welfare. Consider the situation of a religious minority claiming that polygamy is an essential aspect of its religious observance. Pursuant to Article 2 of the Religion Declaration, the minority could insist that the state may not outlaw polygamy without impermissibly discriminating against them. The state, on the other hand, could allege the limitation clause in Article 1 applies to polygamy because it violates public health and morals. In this event, Article 2 of the Religious Declaration

See supra note 167. Article 2(2) of the ICESC provides that parties “undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status;” Article 13(1) adds that education must be directed to “enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all... religious groups.”

See, e.g., Race Convention, supra note 316; CEDAW, supra note 173; Convention Concerning Indigenous and Tribal Peoples in Independent Countries, supra note 172; UNESCO Convention, supra note 172.

The overbreadth of Article 2 could bring it into conflict with other provisions of the Religion Declaration (e.g., Article 1), as well as the UDHR and the ICCPR. See Lerner, Toward a Draft Declaration, supra note 168, at 98 (recognizing the overbreadth of the anti-discrimination provisions in the Religion Declaration and arguing that Article 2 “should be read as meaning that a distinction, exclusion, restriction, or preference would be unlawful if it had either the purpose or the effect of nullifying or impairing the recognition, enjoyment or exercise of human rights and fundamental freedoms on an equal basis.”); see also Sullivan, supra note 171, at 504.

See, e.g., CEDAW, supra note 173, arts. 7, 10-11, 16 (describing specific prohibited acts).

See Sullivan, supra note 171, at 507.

See supra note 173, art. 10. Article 10 has eight sub-sections clearly defining what the drafters meant by “unequal conditions of access to educational institutions.” Id. For example, women must be given “(b) access to the same curricula” and “(d) the same opportunities to benefit from scholarships and other study grants.” Id. In contrast, the Religion Declaration defines discrimination with less specificity. See supra note 167, art. 2.

See supra note 313.

See supra note 313 and accompanying text.
would conflict with Article 1, as well as with the limitations clauses of the ICCPR and the UDHR, and Articles 3 and 6 of CEDAW (requiring states to prevent the exploitation of women and ensure their equal treatment before the law). This example illustrates how the Religion Declaration's non-discrimination rule is too general and far-reaching to be effective.

B. Regional Conventions and Other Instruments

Regional human rights instruments protecting religious liberty share (in differing degrees) the same limitations as multilateral human rights instruments. The European Convention for the Protection of Human Rights and Fundamental Freedoms (the European Convention), together with its five protocols and the Helsinki Final Act (Final Act) and subsequent interpretive amendments and accords culminating in the Charter of Paris for a New Europe (Paris Charter) is the most effective regional regime for the protection of human rights. Other important regional human rights agreements include the American Convention on Human Rights (the American Convention); the African [Banjul] Charter on Human and Peo-

330. See supra note 304.
331. See supra note 307.
332. See supra note 173, arts. 3, 6.
335. See James W. Nickel, Making Sense of Human Rights: Philosophical Reflections on the Universal Declaration of Human Rights 10 (1987); see also Rudolf Bernhardt, Human Rights Aspects of Racial and Religious Hatred Under Regional Human Rights Conventions, 22 Isr. Y.B. Hum. Rts. 17, 17-18 (1993). Bernhardt explained that [the European Convention was the first human rights document that provided for an effective international mechanism for the enforcement of human rights . . . . In the early 1990s, more than 1,500 individual applications were registered annually by the European Commission of Human Rights, and more than 30 of these cases have reached the European Court and were decided by binding judgments.

Id.
people’s Rights\textsuperscript{337} (the African Charter); the Cairo Declaration on Human Rights in Islam\textsuperscript{338} (the Cairo Declaration); and the Universal Islamic Declaration of Human Rights (the Islamic Declaration).\textsuperscript{339} Each of these regional human rights instruments will be discussed in turn.

1. \textit{European Convention on Human Rights and Helsinki Final Act}

Under the European Convention, citizens of Western European nations have the right to petition the European Commission of Human Rights (the European Commission) individually and to pursue binding adjudication through the European Court of Human Rights (the European Court).\textsuperscript{340} Individual petition represents “a remarkable innovation in international law.”\textsuperscript{341} Twenty-three contracting parties to the European Convention have signed the optional individual petition procedure as of 1992.\textsuperscript{342} Under the Convention, petitions first are referred to the European Commission for non-binding, quasi-judicial determination.\textsuperscript{343} The European Commission, respondent state, or individual applicant may also refer a petition to the European Court for binding resolution.\textsuperscript{344} The Committee of Ministers, which consists of the government representatives of each of the member-states of the Council of Europe, is charged with ensuring compliance with the European Court’s rulings.\textsuperscript{345}

The right of individual petition is not available to Europeans under the Final Act and Paris Charter.\textsuperscript{346} Neither is binding adjudication available to participating states in the Conference on Security and Cooperation in Europe (CSCE) unless they agree to submit a dispute to the Court of Conciliation and Arbitration. Nevertheless, the Helsinki Final Act sets forth important humanitarian rights, which participant states in the CSCE may seek to enforce through diplomacy.\textsuperscript{347} For example, Article 7 of the Hel-

\textsuperscript{339} Universal Islamic Declaration of Human Rights, Sept. 18, 1991 [hereinafter Islamic Declaration].
\textsuperscript{340} See \textit{Robertson}, supra note 94, at 87-89.
\textsuperscript{341} \textit{id.} at 87.
\textsuperscript{343} \textit{See Boyle}, supra note 342, at 136-37.
\textsuperscript{344} \textit{See id.} at 137.
\textsuperscript{345} \textit{See id.} at 138; \textit{see also Robertson}, supra note 94, at 90-92.
\textsuperscript{347} Summits of CSCE members occur roughly every two years. Diplomacy occurs in the intervening period through permanent institutions of the CSCE, the Ministerial Council (consisting of the foreign ministers of CSCE states), and the Senior Council (consisting of senior officials from the various European capitals and Vienna-based delegations, which prepare the work of the Ministerial Council, carry out its decisions,
Helsinki Final Act requires participating states to "respect human rights and fundamental freedoms, including the freedom of thought, conscience, religion or belief, for all without distinction as to race, sex, language, or religion."\(^{348}\) It continues, "States will recognize and respect the freedom of the individual to profess and practice, alone or in community with others, religion or belief acting in accordance with the dictates of his own conscience."\(^{349}\) Additionally, participating states must "take effective measures to prevent and eliminate discrimination against individuals or communities on the grounds of religion or belief in the recognition, exercise, and enjoyment of human rights and fundamental freedoms in all fields of civil, political, economic, social and cultural life, and to ensure the effective equality between believers and non-believers."\(^{350}\)

Article 9(1) of the European Convention provides that "[e]veryone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance."\(^{351}\) This guarantee has helped secure religious liberty for most Europeans, including some religious minorities. For example, Norway eliminated its former constitutional ban on Jesuits to conform with the requirements of the European Convention; Switzerland similarly amended its constitution to permit Jesuits to open educational establishments; and Belgium granted unemployment benefits to a practicing Jew who appealed the state's initial denial.

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\(^{348}\) Helsinki Final Act, supra note 334, art. 7.

\(^{349}\) Id.

\(^{350}\) Concluding Document of the Vienna Meeting of the CSCE Conference, art. 16(a), 28 I.L.M. 527 (1989).

\(^{351}\) European Convention, supra note 333, art. 9(1).
of his unemployment benefits because he refused to appear on Saturday to have his employment card stamped.  

However, Article 9(1) is also subject "to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others." Similar limitations clauses apply to the European Convention's separate protections for freedom of expression and freedom of assembly and association.  

Such limitations clauses do not apply to the European Convention's anti-discrimination clause, which provides that "[t]he enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as . . . religion . . . or other status." In fact, the European Commission has held that when member-states restrict freedom of expression under paragraph (2) of Articles 8 through 11 of the European Convention, they are bound by Article 14's prohibition of discrimination. Consequently, member-states theoretically can justify religious discrimination only when the discrimination has an objective aim, is consistent with the public interest, and does not exceed a reasonable relation to its aim.  

In practice, however, Article 14 has not protected unpopular European religious minorities from discrimination. In recent years, Europe has witnessed increasing animus towards religious minorities comparable to the political hysteria surrounding McCarthyism in the United States. France, Germany, Austria, Belgium, and Greece have singled-out religious minorities for surveillance. France and Belgium set up parliamentary inquiry commissions which published reports listing, respectively, 172 and 189 so-called dangerous and harmful sects. Jehovah Witnesses, who are adherents to the third largest faith in France, are suffering from "virtual administrative inquisition." Germany created a parliamentary commission on sects and published a report; it also placed the Church of Scientology under surveillance. And in 1993, a confidential report leaked to the press revealed that the Greek National Intelligence Service

353. European Convention, supra note 333, art. 9(2).  
354. See id. art. 10(2).  
355. See id. art. 11(2).  
357. See Freedom of Thought, supra note 352, at 218; see also Freedom from Discrimination, in THE EUROPEAN CONVENTION ON HUMAN RIGHTS 285-86 (Francis G. Jacobs & Robin C.A. White eds., 1996) [hereinafter Freedom from Discrimination].  
358. Freedom from Discrimination, supra note 357, at 286-87.  
353. See id. at 3-6.  
351. See id. at 4, 11.  
352. Id. at 8.  
353. See id. at 3.
"had been keeping files and classifying non-Orthodox citizens according to their respective religion, putting their activities under police surveillance, and encouraging authorities to take repressive and preventive measures against these 'non-genuine Greeks.'" The Service listed the Roman Catholic Church and a number of Protestant churches and organizations, including the Lutheran Church, as national enemies.

The European Commission and Court have not protected religious persons from these attacks. Their record with respect to controversial religious minorities is particularly disappointing. For example, the European Commission held that the United Kingdom did not violate Article 9(1) of the European Convention by (1) denying or withdrawing student status for members of the Church of Scientology, (2) refusing or terminating their work permits and employment vouchers, and (3) refusing them extensions of stay within the United Kingdom to continue their studies. The European Commission also found no violation of Article 9 when Sweden restricted the language that the Church of Scientology employed to advertise the Hubbard Electrometer, a device critical to the practice of Scientology. The Commission has also held that member-states of the Council of Europe may discriminate against religious persons unequally before the law in education and military service.

Likewise, the European Court has demonstrated ambivalence in enforcing the European Convention's religious freedom guarantees. In Kokkinakis v. Greece, the Court ruled unanimously that Greece violated Article 9 when it denied Jehovah Witnesses the right to open and operate a place of worship in Crete. However, in the same opinion, the Court failed to condemn the Greek law permitting authorities to distinguish between "known religions" and "unknown religions." As a result, Greece continues to deny licenses to disfavored religious minorities. The Kokkinakis decision also upheld Greece's ban on proselytism, even though the ban...
arguably violates the Helsinki Final Act.\textsuperscript{372} Using a technique that Islamic regimes commonly employ against Christians in the 1990s, the European Court distinguished between "proper" and "improper" proselytism, characterizing the former as bearing Christian witness and the latter as "a corruption or deformation of [evangelism] which was not compatible with respect for freedom of thought, conscience and religion."\textsuperscript{373}

Judge Pettiti and Judge Martens pointed out that distinguishing between proper and improper proselytism is at best difficult and at worst meaningless.\textsuperscript{374} Judge Pettiti argued, "[t]he only limits on the exercise of this right are those dictated by respect for the rights of others where there is an attempt to coerce the person into consenting or to use manipulative techniques."\textsuperscript{375} Judge Martens and Judge De Meyer expressed doubt that even religious coercion justifies limits on such a fundamental right as free expression.\textsuperscript{376} Judge De Meyer argued, "[p]roselytism, defined as 'zeal in spreading the faith,' cannot be punishable as such. . . ."\textsuperscript{377} Judge Martens contended that Article 9 of the European Convention prohibits member states from making it a criminal offense to attempt to induce somebody to change his or her religion.\textsuperscript{378} He explained:

Coercion in the present context does not refer to conversion by coercion, for people who truly believe do not change their beliefs as a result of coercion; what we are really contemplating is coercion in order to make somebody join a denomination and its counterpart, coercion to prevent somebody from leaving a denomination. Even in such a case of 'coercion for religious purposes' it is in principle for those concerned to help themselves. Accordingly, if there is to be legal remedy, it should be a civil-law [sic] remedy. The strict neutrality which the State is bound to observe in religious matters excludes interference in this conflict by means of criminal law. Unless, of course, the coercion, apart from its purpose, constitutes an ordinary crime, such as physical assault.\textsuperscript{379}

In contrast, Judges Valticos, Foighel, and Loizou argued that Greece's criminal law prohibiting the "rape of the beliefs of others cannot in any way be regarded as contrary to Article 9 of the Convention."\textsuperscript{380} According to Judge Valticos, Article 9 "certainly means freedom to practice and manifest [religion], but not to attempt persistently to combat and alter the religion of

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\item \textsuperscript{372} Religious Freedom, supra note 371, at 25.
\item \textsuperscript{373} Kokkinakis, 260 Eur. Ct. H.R. at 21. The Court ultimately held the conviction of the Jehovah's Witnesses was not justified under the Greek anti-proselytization statute, not because the statute was invalid, but because the Greek action was not premised on consideration of the manner in which the petitioners attempted to proselytize, i.e., whether it was proper or improper. See id.
\item \textsuperscript{374} See id. at 26 (Pettiti, J., concurring in part); id. at 38 (Martens, J., dissenting in part).
\item \textsuperscript{375} Id. at 26.
\item \textsuperscript{376} See id. at 29 (De Meyer, J., concurring); id. at 37-38 (Martens, J., dissenting in part).
\item \textsuperscript{377} Id. at 37-38; id. at 29 (De Meyere, J., concurring).
\item \textsuperscript{378} See id. at 37-38 (Martens, J., dissenting in part).
\item \textsuperscript{379} Id. at 38.
\item \textsuperscript{380} Id. at 31 (Valticos, J., dissenting). See also id. at 40-41 (Foighel and Loizou, JJ., dissenting). In contrast, Judges Valticos, Foighel, and Loizou argued that Greece's criminal law prohibiting the "rape of the beliefs of others cannot in any way be regarded as contrary to Article 9 of the Convention,"
others, to influence minds by active and often unreasonable propaganda. Under the majority's reasoning, Article 9 gives Europeans the freedom to proselytize "properly," i.e., to share the majority religion (in this case, Greek Orthodox Christianity). On the other hand, religious minorities can be denied the right to proselytize and express themselves freely, notwithstanding the European Court's admission that evangelism constitutes an "essential mission and a responsibility" of the believer.

These are dangerous precedents for all European religious persons, none of whom can be sure that their religion will remain the majority one. In the words of Justice Hugo L. Black, "Centuries of experience testify that laws aimed at one political or religious group, however rational these laws may be in their beginnings, generate hatreds and prejudice which rapidly spread beyond control."

2. American Convention on Human Rights

The American Convention is modeled broadly after the European Convention, but has a much weaker central adjudicative and legislative mechanism which hampers compliance with its provisions. The history of human rights abuses and non-democratic governance in Latin America further undermines the enforceability of the American Convention. Although any person, group, or non-governmental agency legally recognized by a member of the Organization of American States (OAS) may complain to the Inter-American Commission, member-states can choose not to cooperate with Inter-American Commission investigations. In response, the Inter-

381. Id. at 30 (Valticos, J., dissenting).
382. Id. at 21 (stating that the World Council of Churches recognized in 1956 that "true evangelism," meaning in context "bearing Christian witness," is "an essential mission and a responsibility of every Christian and every Church.").
384. See supra notes 333 and 336; see also Robertson, supra note 94, at 138-39 (noting that although the conventions are similar, the American Convention (but not the European Convention) includes the right of reply, the rights of the child, the rights to a name and to a nationality, and the right of asylum; whereas the European Convention (but not the American Convention) provides the right to education). The American Convention's adjudicative body is the Inter-American Court of Human Rights (the Inter-American Court); its legislative body is the Inter-American Commission on Human Rights (the Inter-American Commission). See Dinah L. Shelton, The Inter-American Human Rights System, in GUIDE TO INTERNATIONAL HUMAN RIGHTS PRCrICE, supra note 335, at 119-20; Anna P. Schreiber, The Inter-American Commission on Human Rights 48-54 (1970).
385. See Robertson, supra note 94, at 104, 144-45 (stating that compliance with human rights guarantees is easier when the states and individuals involved intend to respect the rules, but much more difficult when, as in Latin America, a lack of consensus exists about the legitimacy of the rules; also contrasting the allegedly "lesser" human rights concerns the European Commission typically confronts with the serious abuses of human rights that the Inter-American Commission confronts); accord Donnelly, supra note 342, at 86.
386. See Shelton, supra note 384, at 122-23, 131. Acceptance of the right of individual petition follows automatically from ratification of the American Convention, whereas the procedure for inter-State complaints is optional under the American Convention. See Robertson, supra note 94, at 129.
American Commission is empowered merely to publish a critical report, recommend policy changes, or, in some instances, refer the case to the Inter-American Court.\textsuperscript{387}

The Inter-American Court possesses jurisdiction over a case only if (1) the state concerned is a party to both the American Convention and the optional jurisdictional protocol; (2) the Commission or state decides to refer the case; and (3) proceedings before the Inter-American Commission are concluded.\textsuperscript{388} As of 1992, only thirteen of the thirty-five member-states of the OAS agreed to binding Inter-American Court jurisdiction.\textsuperscript{389} Furthermore, as of 1993, the Inter-American Court had heard only two contentious cases: one dealing with a "disappearance" in Honduras and the other with a military attack on two journalists in Peru.\textsuperscript{390} Since 1993, the number of contentious cases the Inter-American Court has reviewed has risen to eleven.\textsuperscript{391} Hence, although conditions are improving for a more active Inter-American Court, the Inter-American Commission remains the key proponent of human rights and, thus, religious liberty under the American Convention.

Article 12(1) of the American Convention provides that "[e]veryone has the right to freedom of conscience and of religion," including "freedom to maintain or to change one's religion or beliefs, and freedom to profess or disseminate one's religion or beliefs either individually or together with others, in public or in private."\textsuperscript{392} Hence, Article 12(1), unlike the European Convention and U.N. human rights instruments, expressly protects proselytism, subject to Article 12(3), the limitations clause. Article 12(3) subjects freedom of conscience and religion under Article 12(1) "only to the limitations prescribed by law that are necessary to protect public safety, order, health, or morals or the rights or freedoms of others."\textsuperscript{393} Like the European Convention, the American Convention also provides separate guarantees for freedom of expression and freedom of assembly and association, subject to limitations clauses.\textsuperscript{394} Also, the American Convention does not expressly limit the right to equal protection under the

\textsuperscript{387} See Shelton, supra note 384, at 128-29; see also Schreiber, supra note 384, at 48, 53. For a brief review of the Inter-American Commission's effectiveness through the early-1970s, see Schreiber, supra note 384, at 157-60. The Inter-American Court held its first meeting in 1979. See Nickel, supra note 334, at 12.

\textsuperscript{388} See Shelton, supra note 384, at 129.

\textsuperscript{389} See id. at 131.

\textsuperscript{390} See Donnelly, supra note 342, at 85.


\textsuperscript{392} American Convention, supra note 336, art. 12(1). Cf. American Declaration of the Rights and Duties of Man, Final Act of the Ninth International Conference of American States, O.A.S. Res. xxx, Mar. 30 - May 2, 1948, art. 3, O.A.S. Off. Rec. OEA/ ser. L/V,16 rev.6 (1965) ("Every person has the right freely to profess a religious faith, and to manifest and practice it both in public and in private.").

\textsuperscript{393} American Convention, supra note 336, art. 12(3). Cf. Article 28 of the American Declaration of the Rights and Duties of Man, supra note 392, arts. 13, 15-16 ("The rights of a man are limited by the rights of others, by the security of all, and by the just demands of the general welfare and the advancement of democracy.").

\textsuperscript{394} See American Convention, supra note 336, arts. 13, 15-16.
law. The American Convention's principal weakness is that its purported religious liberties remain essentially untested. Nevertheless, the American Convention potentially protects religious liberty more fully than the European Convention or U.N. human rights instruments.


The African Charter's religious liberty provisions are much weaker than those of the American Convention. The Organization of the African Commission on Human and Peoples' Rights (the African Commission) is the legislative body in charge of implementing the African Charter. Unfortunately, the African Commission has found numerous obstacles in attempting to implement the Charter's human rights protections. The developmental challenges and human rights abuses in Africa are among the most severe in the world. Although any member-state of the Organization of African Unity (OAU) may charge another with violations of the terms of the African Charter, as of October 1991, none had done so. Individuals have no right to petition the African Commission unless a majority of the OAU approves a petition. Furthermore, reflecting the overall political aversion to exposing themselves to binding judgments in the field of human rights, African countries did not provide for the establishment of an African court on human rights in the African Charter.

In addition, the limitations clauses in the African Charter apply more broadly than in any other human rights document. Article 8 of the African Charter provides that "freedom of conscience, the profession and free practice of religion shall be guaranteed. No one may, subject to law and order, be submitted to measures restricting the exercise of these freedoms." Accordingly, the African Charter may be interpreted to permit greater derogation from freedom of thought and belief than other regional human rights instruments, which place narrower limitations on such freedoms. Limitations clauses also appear in Article 9 ("Every individual shall have the right to express and disseminate his opinions within the law"); Article 10 ("Every individual shall have the right to free association provided that he abides by the law"); and Article 11 ("Every individual shall
have the right to assemble freely with others, . . . subject only to necessary restrictions provided for by law in particular those enacted in the interest of national security, the safety, health, ethics and rights and freedoms of others." Only the African Charter's non-discrimination provisions contain language which could be interpreted meaningfully to protect religious minorities. Specifically, Article 3(2) provides that "[e]very individual shall be entitled to equal protection of the law." In addition, Article 60 of the African Charter directs the African Commission to "draw inspiration from international law on human and peoples' rights," and Article 61 directs it to "take into consideration, as subsidiary measures to determine the principles of law, other general or special international conventions . . . ." Thus, jurists seeking to construe the African Charter broadly contend that the African Charter does not "diminish human rights obligations that states have accepted pursuant to other international conventions," e.g., the ICCPR, the UDHR, and the Religious Declaration. Unfortunately, the OAU has more often focused on the limitations of the African Charter than its potential.

4. Middle East Documents on Human Rights

The Islamic countries of the Middle East have never adopted any binding regional human rights instruments, and the existing non-binding agreements are of little significance for religious minorities. The Arab League's Permanent Arab Regional Commission on Human Rights, formed in 1968, was the Middle East's first foray into regional human rights enforcement. Apart from publicizing certain human rights violations in Israeli-occupied territory, the Commission has been largely dormant. Few Arab attorneys even know that the Commission persists.

The non-binding Cairo Declaration, adopted by the Organization of the Islamic Conference in 1990, is more visible. Only Saudi Arabia and Iran strongly endorse it, however. Article 10 of the Cairo Declaration provides, "Islam is the religion of unspoiled nature. It is prohibited to exercise any form of compulsion on man or to exploit his poverty or ignorance

402. African Charter, supra note 337, arts. 9, 10, 11 (emphasis added).
403. See id. arts. 2, 3, 19.
404. Id. art. 3(2). Cf. Article 2 ("Every individual shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in the present Charter without distinction of . . . religion . . . or other status."); Article 19 ("All peoples shall be equal; they shall enjoy the same respect and shall have the same rights. Nothing shall justify the domination of a people by another.").
405. Id. arts. 60, 61.
407. See Donnelly, supra note 342, at 92.
408. See Donna E. Arzt, Heroes or Heretics: Religious Dissidents Under Islamic Law, 14 Wis. Int'l L.J. 349, 395 (1996); see also Donnelly, supra note 342, at 92 (the Permanent Arab Commission on Human Rights "has been notably inactive, except for occasional efforts to publicize human rights violations in Israeli-occupied territory.")
409. See Arzt, supra note 408, at 395.
410. See supra note 338.
411. See Arzt, supra note 408, at 361.
in order to convert him to another religion or to atheism.\textsuperscript{412} Although this suggests, on its face, that coercion in pursuit of religious conversion is prohibited, Article 10 must be viewed in the context of another provision in the Cairo Declaration providing that it is based solely on the Shari'a.\textsuperscript{413} When viewed in this light, Article 10 prevents the use of compulsion or exploitation to convert someone from Islam to another religion or atheism, not vice-versa.\textsuperscript{414}

Other Cairo Declaration provisions that also appear to operate unilaterally in favor of Muslims include Article 22(b) ("everyone shall have the right to advocate what is right, and propagate what is good, and warn against what is wrong and evil according to the norms of Islamic Shari'a")\textsuperscript{415} and Article 22(a) ("everyone shall have the right to express his opinion freely in such manner as would not be contrary to the principles of the Shari'a.")\textsuperscript{416} The Cairo Declaration does not expressly reference the rights of non-Muslims and noticeably fails to provide for "freedom of thought, conscience and religion," unlike the U.N. international human rights instruments.\textsuperscript{417}

The Islamic Declaration\textsuperscript{418} offers little more protection for religious minorities; it prohibits as much as it promises. On the one hand, Article 13 of the Islamic Declaration guarantees that "everyone person shall have the right to freedom of conscience and worship in accordance with one's religious beliefs,"\textsuperscript{419} and Article 12(e) provides that "no one shall hold in contempt or ridicule the religious beliefs of others or incite public hostility against them."\textsuperscript{420} Article 10 (Rights of Minorities) adds, "the Qur'anic principle 'There is no compulsion in religion' shall govern the religious rights of non-Muslim minorities."\textsuperscript{421} Article 10 further provides that "in a Muslim country, religious minorities shall have the choice to be governed in respect of their civil and personal matters by Islamic Law or by their own laws."\textsuperscript{422}

On the other hand, Article 12(a) provides that every person may express his thoughts and beliefs "so long as he remains within the limits prescribed by the Law [Shari'a],"\textsuperscript{423} and that "no one . . . is entitled to disseminate falsehood or to circulate reports which may outrage public decency, or to indulge in slander, innuendo or to cast defamatory aspersions on other persons."\textsuperscript{424} Accordingly, the Islamic Declaration can be

\textsuperscript{412} Cairo Declaration, \textit{supra} note 338, art. 10.
\textsuperscript{413} \textit{See} Arzt, \textit{supra} note 408, at 361.
\textsuperscript{414} \textit{Id.}
\textsuperscript{415} Cairo Declaration, \textit{supra} note 338, art. 22(b).
\textsuperscript{416} \textit{Id. art. 22(a)}.
\textsuperscript{417} \textit{Id. art. 13}.
\textsuperscript{418} Cairo Declaration, \textit{supra} note 338, art. 22(b).
\textsuperscript{419} \textit{Id. art. 12(e)}.
\textsuperscript{420} \textit{Id. art. 10}.
\textsuperscript{421} \textit{Id.}
\textsuperscript{422} \textit{Id.}
\textsuperscript{423} \textit{Id. art. 12(a)}.
\textsuperscript{424} \textit{Id.} See also ANN ELIZABETH MAYER, ISLAM AND HUMAN RIGHTS: TRADITION AND POLITICS 87-88 (1991).
interpreted less as a guarantee of religious liberty than a ground for criminalizing religious expression.\(^{425}\)

V. Challenge for the Future

The challenge for the future is for the members of the U.N. Security Council to develop effective policies both domestically and internationally that will ensure at least basic liberties for religious minorities. The first priority should be relatively non-controversial. The Security Council must enforce *jus cogens* against genocide, slavery, and torture. This step alone would eliminate some of the worst violations of human rights that religious minorities suffer. In the process, the Security Council would revitalize international law by encouraging respect for its most basic guarantees.

Enforcement would require military intervention only as a last resort and, then, only in keeping with just war principles of utility, proportionality, noncombatant immunity, and military necessity.\(^{426}\) In other words, intervention would hinge upon just cause, use of violence as the last resort, limited objectives, probability of success, and just use of force.\(^{427}\) Short of humanitarian intervention, the Security Council can freeze assets and curtail economic, military, technical, and development assistance, credit, trade, foreign investment, insurance, and licenses. When coordinated, such non-military actions can have devastating effect. In the United States, the International Religious Freedom Act of 1998 provides a good first step toward this objective.\(^{428}\) Although it may be overly optimistic to hope for coordinated sanctions with respect to China, the Sudan and other killing fields in the Third World should be relatively easy targets for cooperative sanctions.

The model for engaging China and perhaps the rest of the Asian Tigers, as well as strategically important Middle Eastern countries, ought to be constructive linkage, such as the United States practiced in relation to the Soviet Union in the late-1980s.\(^{429}\) The Clinton Administration's "pol-

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\(^{425}\) One commentator speculates that it was because of the Islamic Declaration's limitation clauses that the Islamic Council refused to sanction the Ayatollah Khomeini for ordering the execution of author Salmon Rushdie in a 1989 *fatwa*. See *Arzt*, supra note 408, at 362.


\(^{428}\) See Pub. L. No. 105-292, 22 U.S.C.A. § 6401-6481. The Act establishes reporting requirements on religious persecution, establishes an Ambassador at Large on international religious freedom, and requires the President to choose from a menu of penalties to sanction countries violating religious freedom, unless he certifies that the United States has a national interest in waiving the penalty. Unfortunately, in the latest budget President Clinton submitted to the United States Congress, he did not provide funding for the International Religious Freedom Act, which he signed into law on October 27, 1998.

icy of constructive engagement with China has not produced any substantial results in the human rights field. Since 1994, when the Clinton Administration de-coupled Most Favored Nation status from human rights practices, "there has been a significant regression rather than progress on every human rights question." In China we can count more political prisoners and more summary executions, and there is evidence of "a more brutal regime in Tibet, [and] tighter controls on political and religious expression. . . ." In fact, the U.S. State Department reported in 1996 that "all public dissent against the party and the government was effectively silenced by intimidation, exile, the imposition of prison terms, administrative detention, or house arrest. No dissidents were known to be active at the year's end."

In contrast, realization of the human rights objectives the United States sought to achieve in the Soviet Union depended on linkage (or at least perceived linkage) to objectives Moscow coveted, whether arms control, trade, or a state visit. Containment was also key. The Reagan Administration learned, much to its own surprise, that U.S. and Soviet objectives were often complementary. So far the Clinton Administration has not explained why the same policies are not essential to achieve progress in human rights in China and other foreign policy objectives in the Far East. Meanwhile, Washington's courtship of China has alarmed long-time allies in East and South Asia, including Japan, Taiwan, and India, which alone are capable of counterbalancing China. In contrast to these countries, as a communist nation China will never be a dependable ally for a liberal democracy:

It is high time for all starry-eyed dreamers to realize that the nature of communism is one and the same the whole world over, that it is everywhere inimical to the national welfare, invariably striving to destroy the national organism in which it is developing, before moving on to destroy adjacent organisms. No matter what the illusions of detente, no one will ever achieve a stable peace with communism, which is capable only of voracious expansion. Whatever the latest act in the charade of detente, communism contin-

(1994); Constructive Engagement, supra note 127. As was true during the period of detente with the Soviet Union, constructive engagement also includes increased military, economic, social, and cultural exchanges, official visits, and cooperation in a host of economic and political undertakings. See Robert A. Manning, Clinton and China: Beyond Human Rights, 38 Orbis 193, 197 (Spring 1994); Madeleine K. Albright, The Testing of American Foreign Policy, 77 FOREIGN AFF. 50, 57-58 (1998).


431. Id. at 2 (statement of Christopher H. Smith, Representative).

432. Id.

433. Id. at 86 (statement of T. Kumar, Advocacy Direction for Asia & Pacific, Amnesty International USA).


435. See Jacoby, supra note 434, at 1085-86.

ues to wage an incessant ideological war in which the West is unfailingly referred to as the enemy. Communism will never desist from its efforts to seize the world, be it through direct military conquest, through subversion and terrorism, or by subtly undermining society from within.\textsuperscript{437} Accordingly, the United States should buttress its long-time allies in the Far East to counter-balance and contain China, rather than complicate their security and force India and others into a nuclear arms race.\textsuperscript{438}

To address oppression of religious minorities that falls short of violating \textit{jus cogens}, the Security Council also should begin to develop an international normative consensus favoring a limited list of key religious liberties.\textsuperscript{439} This Article suggests that freedom to choose and change one's religion is a basic right of both freedom of belief and freedom of expression.\textsuperscript{440} A new international convention guaranteeing this right without derogation is essential to advance religious liberty. Other important, but secondary religious liberties, including freedom of religious speech (e.g., proselytizing speech), assembly, and education,\textsuperscript{441} may be advanced over a longer period, subject to a compelling interest exception.

The compelling interest test is admittedly American in origin. To be "compelling" within the meaning of this test, "[o]nly the gravest abuses, endangering paramount interests, give occasion for permissible limitation."\textsuperscript{442} Similarly, "only those interests of the highest order and those not otherwise served can overbalance legitimate claims to the free exercise of religion."\textsuperscript{443} "Important" interests or "reasonable means of promoting a legitimate public interest" do not qualify.\textsuperscript{444} Furthermore, a government cannot properly consider its policy compelling when (1) it fails to pursue that policy uniformly with respect to all, or very nearly all, analogous situations of non-religious private conduct; or (2) the policy does not constitute "the least restrictive means" of achieving the compelling interest.\textsuperscript{445} This type of interest is much more substantial than those currently justifying departures from religious liberties guaranteed in international covenants.

As set forth above, limitations clauses in U.N. covenants commonly provide that free religious expression may be subject to such limitations as

\textsuperscript{437} Solzhenitsyn, supra note 268, at 820.
\textsuperscript{438} See generally Carpenter, supra note 436.
\textsuperscript{439} Modesty of objective generally makes compliance more likely. See Amstutz, supra note 427, at 119.
\textsuperscript{440} See supra Part IV.A.1-2.
\textsuperscript{441} See supra Parts II.B.2 and IV.A.1-2.
are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.\footnote{446} The limitations clauses in certain regional human rights instruments, such as the African Charter, the Cairo Declaration, and the Islamic Declaration, are even broader.\footnote{447} Regimes seeking to suppress religious minorities invariably invoke these provisions by characterizing religious minorities as threats to national security and moral miscreants, as well as by pointing to internal, generally applicable laws compelling limitations on religious liberty. Ironically, neutral, generally applicable laws like the Shari'a not expressly intended to discriminate against religious minorities, but nonetheless imposing serious repercussions (including death) on them, would now be upheld by the U.S. Supreme Court following its decision in Employment Div., Ore. Dept. of Human Res. v. Smith.\footnote{448}

In contrast, a compelling interest test presumptively excludes justifications for violations of religious liberty on grounds of subversion, order, immorality, or disrespect for religion or a religious figure, while permitting the state to demonstrate compelling reasons for departing from this rule to address internationally recognized problems like terrorism, sectarian violence, and female genital mutilation. An international compelling interest test could provide, for example, "Every individual shall have the unrestricted right to freedom of religious speech, assembly and education alone or in community with others and in public or private, subject only to a compelling governmental interest recognized as legitimate under international law." In keeping with the ordinary compelling interest rule, any proposed limitation on religious liberty would have to meet two tests: the liberty limited would have to be uniformly limited with respect to all, or very nearly all, persons, regardless of faith, and the limitation would have to constitute "the least restrictive means" of achieving the interest.\footnote{449} Then, and only then, can the international community ensure that a regime's purported interest in preserving national security, order, health or some other value is not a mere subterfuge for oppressing religious minorities.

\footnote{446} See supra Part IV.A.2.  
\footnote{447} See supra Part IV.B.3-4.  
\footnote{448} 494 U.S. 872 (1990). Many scholars of the First Amendment religion clauses agree that prior to the Smith decision, the U.S. Supreme Court applied the compelling interest test to determine when the state could burden the religious expression of individuals. See, e.g., Laycock, supra note 444, at 217-18 and n.15. After Smith, the Court asks in most instances whether a law burdening religious expression is neutral and generally applicable to determine whether it is constitutional. 494 U.S. at 878-79. Countries such as those within the "de facto/limited expression" and "both/limited expressions" cells of Appendices 1 and 2 routinely pass laws (e.g., based on Shari'a) not expressly intended to limit religious expression, but with the effect of outlawing or seriously interfering with minority religious expression.  
\footnote{449} See supra note 439 and accompanying text.
Conclusion

Depending on how freely states permit individuals to practice their religion, religion can be a powerful tool for either liberation or subjugation. As John Locke put it, “It is not the diversity of opinions [or religions] (which cannot be avoided), but the refusal of toleration to those that are of different opinions . . . that has produced all the bustles and wars that have been in the Christian world upon account of religion.”\footnote{John Locke, A Letter Concerning Toleration 105 (Mario Montuori trans. \\& ed., 1963).} The same could be said of regions dominated by Islamic, Hindu, Confucian, and Marxist beliefs: wherever religious and ideological intolerance flourishes, it is associated with egregious violations of \textit{jus cogens} under international law and other human rights abuses.

This Article has hypothesized that religious liberty and the provision of fundamental human rights are ultimately inseparable. Cross-national research strongly supported this hypothesis and demonstrated that establishments of religion and the type of religion practiced have, at best, secondary linkages with human rights practices. International legal instruments also suggested that the international community will never ensure free association without permitting religious minorities to meet, free speech without allowing religious speech, nondiscrimination and due process without granting religious minorities equal substantive and procedural rights under the law, democracy without allowing religious minorities to vote and run for office, indigenous rights without protecting indigenous religions, the rights of parents and children without protecting their right to sectarian education, and women’s rights without ensuring their freedom to follow or reject religious teachings and customs.

As religion reasserts itself as the central organizing principle for international politics in the next century, extending religious liberty will also be critical for geo-strategic reasons. Promoting international religious liberty would, among other things, eliminate a potential justification for external intervention on behalf of co-religionists, moderate fundamentalist and nationalist movements by removing some of the impetus to their organization and terror, and stem secessionist movements based on religious differences. Once more, religious liberty would ensure the continued viability of the international rule of law itself, undermine religious absolutism and ensure continued normative progress, and, finally, enable individuals to choose a fundamental orientation toward the world. In the final analysis, an international order enabling individuals to choose their religious convictions based on persuasion rather than compulsion is the only one likely to prevent geo-religious exploitation and preserve fundamental human rights.
## Appendix 1: Typology of State-Religion Relationships, 1991

<table>
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<th>Establishment</th>
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<td>United Kingdom (93) (p), Finland (99) (p), Greece (87) (o), Norway (97) (p), Sweden (98) (p)</td>
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<td>Sudan (18) (i), India (54) (h), Indonesia (34) (i), Guatemala (62) (c), Singapore (60) (b), Syria (30) (l), Thailand (62) (b), Turkey (44) (i)</td>
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<td>Bolivia (71) (c), Costa Rica (90) (c)</td>
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## Appendix 2: Typology of State-Religion Relationships, 1983

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