The Principle of Religious Liberty and the Practice of States: Seek and Ye Shall Find a Violation of Human Rights Obligations

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Available at: http://elibrary.law.psu.edu/psilr/vol6/iss2/5
The Principle of Religious Liberty and the Practice of States: Seek and Ye Shall Find a Violation of Human Rights Obligations

Scott Burr's thesis is a valid one. Government agencies in the West have expressed greater emphasis upon human rights and religious freedom than ever before. The recent meetings of "Human Rights Experts" since 1975 are indicative of this point.

If this emphasis is indicative of an improved view of human dignity and freedom of law, it is also indicative of an increase of governments' "inhumanity to man, which makes countless (millions) mourn."

It was the deplorable treatment of prisoners of war and the disregard for wounded combatants that led to the formulations of the Geneva Convention of 1864. Subsequent conventions, treaties, resolutions and accords may lead us to the conclusion that their affirmations are for human rights because of their violations.

Most of us in the U.S. presume that our country's Constitution is a universal one that declares the truth about human rights known to everyone in every culture. Yet, a glance at the history of the past 200 years would seem to uphold a case for the expansion of violations rather than a decrease of them. Henry Wallace once termed this century as "the century of the common man." Yet has the common man ever been treated so cruelly as he has been in every area of our planet Earth? Along with charters of human rights we have to acknowledge the reality of tyrants and terrorism, of prison camps and holocausts, of slavery and Gulags, of dehumanizing bureaucracies and destructive state ideologies. The optimism of 200 years ago is rarely to be noticed in the mass media of our times. Perhaps the basic problem was stated by Professor Alexis Pavlov, the Soviet delegate to a meeting of the United Nations held in Paris in 1948. He was protesting against the inclusion of the statement, "men are created in the image and likeness of God." These are the words of his protest: "In my country the postulate that man is created in the image of God is much disputed and is sometimes even regarded as reflecting a certain social backwardness . . . . Freedom and equality are not inherent by birth but are a product of social structure."
It is against such a background that we may evaluate the progress achieved by law since 1948.

Foreword by Rev. Dr. Ernest Gordon*
O God, the heathen have come into thy inheritance; they have defiled thy holy temple; they have laid Jerusalem in ruins. They have given the bodies of thy servants to the birds of the air for food, the flesh of thy saints to the beasts of the earth. They have poured out their blood like water round about Jerusalem, and there was none to bury them.¹

I. Introduction

On January 6, 1983, Soviet KGB agents searched the home of Baptist youth leader Janis Rozkalns and found more than forty Bibles, various religious writings, the United Nations Declaration of Human Rights, a copy of the Helsinki Final Act, and a letter from a Swedish Bible Society. Rozkalns was arrested. An attorney from a human rights watchgroup was sent to Riga, Latvia to observe the trial and to protest against what appeared to be the inevitable sentencing of Rozkalns to prison, despite a provision in the Soviet Constitution that guarantees freedom of religion.² The trial was postponed until after the lawyer had left. A British attorney attempting to attend the re-scheduled trial was denied a visa by the Soviet Embassy. Rozkalns was convicted of anti-Soviet agitation and propaganda in, what local Christians termed, a “show trial,” which was broadcast on Soviet television and widely reported in the press. He was sentenced to five years in a strict regime labor camp and three years internal exile.³

In January 1984, Rozkalns was sent to Perm Camp 37 in Siberia. The 2,600 mile trip took nearly three months as he passed from one holding cell to another during the transit. Formerly a tuberculosis patient, he arrived at the camp a gravely ill man suffering from acute pneumonia.⁴

Despite the deprivations and punishments endured, Rozkalns struggled for human rights and religious freedom, even while imprisoned. Because of these activities and the fact that he was unable to fulfill his work quota, due to ill health, Rozkalns has spent a total of six months in isolation cells. Contrary to Soviet law, he has been deprived of packages sent by relatives. Those that he has received were withheld for almost three months until the food contents had rotted. Medicines taken to him by his wife have been confiscated.

². See infra note 181.
³. Response, Jan.-Feb., 1987, at 1, col. 1. Response is a publication of Christian Response International (CRI), the U.S. national affiliate of Christian Solidarity International, Zurich, Switzerland. The organization monitors religious rights throughout the world and acts on behalf of prisoners of conscience.
⁴. Id. at 2, col. 1.
Recently, in a letter to his wife, Rozkalns asked her to tell his two infant children "the whole truth — where I am, why and for what reason. It doesn’t matter that they are little, for this is the world they, too, will have to live in for a time."

It is the gruesome tales of human beings like Janis Rozkalns, who have endured great hardship because of their religious beliefs, that have compelled one observer to declare that the "twentieth century is pre-eminently the century of religious persecution." Indeed, for citizens throughout the world, manifestation of religious beliefs can be hazardous. In the 1980s, governments imprison, torture, and even execute people because of their religious beliefs or affiliations, despite prohibitions against religious intolerance embodied in both domestic and international law.

The roots of this religious intolerance are complex and varied, but often have a political dimension. Some governments seek to achieve greater political independence and increase nationalist sentiments, and thus wish to sever bonds between domestic religious groups and foreign branches and leaders. To accomplish this end, some governments assume powers to approve candidates for positions of religious leadership, to control enrollment in religious training institutions, and to prohibit admission of new members to particular religions. Officials have even declared some religions legal and some illegal. When majority religious groups align themselves with government authorities and label minority groups as heretical, they create a climate for repression. In turn, when minority religious groups voice opposition to unfair and discriminatory government policies, the authorities have subjected their leaders and members to

5. Id. at 2, col. 2. The Baptist faith in the Soviet Union has never risen above the status of an illegal "religious cult." Because of this situation, many Baptists are imprisoned under circumstances similar to those of Rozkalns. See infra notes 200-05 and accompanying text.
8. See, e.g., Amnesty Report, supra note 7, at 7 (discusses the steps taken by the government of the People's Republic of China to control religious affairs and pressure the churches to sever their links abroad).
9. See, e.g., id. at 8 (discusses the restrictions the government of Czechoslovakia placed on priests before they can practice).
10. See, e.g., id. (discusses bars to education in Czechoslovakia).
11. See, e.g., id. at 3 (discusses Albania's efforts to become a completely atheist state).
12. See, e.g., infra notes 140-178 and accompanying text.
severe repression. This problem has been called "one of the great and most urgent challenges now confronting our world."

This Comment will examine the theological and legal bases for the claim that religious freedom is a fundamental human right. It will assess the progress that has been made since 1948 in recognizing, upholding, and enforcing the rights of all people to practice their religion, whatever its tenets, whatever their beliefs. Specifically, the pertinent international legal instruments that are accepted by the members of the United Nations will be discussed. Through a comparative analysis of the constitution, legislation, and case law of the United States, the United Kingdom, the Republic of India, and the Union of Soviet Socialist Republics, the modern practice of states will be derived. The weaknesses of the current international law will be discussed, and proposals for bridging the gap between states' verbal assertions of adherence to international law and their actual conduct in the area of religious freedom will be posited.

II. The Principle of Religious Liberty as a Fundamental Human Right

How long, O Lord? Wilt thou be angry for ever? . . . Pour out thy anger on the nations that do not know thee, and on the kingdoms that do not call on thy name!

The concept of religious liberty is a relatively recent phenomenon in international law. It is rooted in the concept of "liberty of conscience," a phrase that came into use after the sixteenth century, and appeared most prominently during the seventeenth, eighteenth, and nineteenth centuries. While long advocated by individuals and by the free churches of the Radical Reformation, religious liberty did not become legally guaranteed until the modern era.

The major advance toward religious liberty in the modern world has not come so much from the Church as from constitutions, legislatures, and courts of law. The emergence of new states and a new national spirit undermined the predominant influence of religious authority in the political as well as the spiritual spheres. Gradually,

13. See, e.g., infra notes 180-215 and accompanying text.
religious liberty was proclaimed to be both a natural and divine right. But the enlightenment philosophy went beyond the achievement of religious liberty, indeed, it transcended it. What was demanded was liberty of conscience, the right to think and act according to one's independent judgment. As John Milton said, "Given me the liberty to know, to think, to believe, and to utter freely, according to conscience, above all other liberties." In the twentieth century, churches and states throughout the world have joined together in supporting religious liberty, at least in principle, as a fundamental human right.

A. The Theological Basis of the Right

In all international legal instruments setting forth human rights, no references are made to any theological basis for the existence of such religious rights. The legal texts and related documents usually allude to the basis of human rights only by reciting that they are based on the "inherent dignity of the human person." The documents do not explain why the person has such inherent dignity so as to justify a claim to religious rights. Indeed, there is not even a theological reference given for the right to freedom of religion itself. Theology appears to play only a small part in the process of making and enforcing international human rights.

Some commentators suggest, however, that without a sound theological basis, a human right to religious freedom can never be effectively realized. The great religions of the world have recognized the need for a theologically based commitment to such a right in the nature of mankind, not simply a sociologically or positivistically rooted right. There is a sense that unless such a right can itself be grounded beyond human commitments and processes, it will be an ephemeral and elusive commitment, subject constantly to the vagar-

19. Id. at 173.
ies of capricious legal systems and the wills of states.

In the Declaration on Religious Freedom adopted by the Vatican II Council in 1965, the Catholic Church pronounced that “the human person has a right to religious freedom,” which “has its foundation in the very dignity of the human person as this dignity is known through the revealed word of God and by reason itself.” Elaborating on this freedom, the Declaration states that “all men are to be immune from coercion on the part of individuals or of social groups and of any human power, in such ways that no one is to be forced to act in a manner contrary to his own beliefs, whether privately or publicly, whether alone or in association with others, within due limits.” With this Declaration — “an effort of the Church to catch up with the recognition of a right previously asserted in secular, Protestant, Jewish and other religious traditions” — it has been observed that “for the first time in many centuries, Christians are unanimous in formally proclaiming the universality and inviolability of religious freedom. They all agree that it is the right of every man and every religious confession.” A comparable trend is also observable in the non-Christian world. As one commentator has put it, “In Judaism, in Islam, in Marxism, and in other religious or secular movements, there have been formulated claims of ultimate truth and of the special status that truth entails both for the believer and the non-believer, on the one hand, and arguments for the freedom of thought, conscience and religion of all men, on the other.”

Today there is a recognized theological basis for a claim to a human right to religious liberty. This foundation is necessary to buttress a claim to a legal right. Now that it has been seen that such a basis exists, the legal concept of religious liberty as a human right in


23. A. CARRILLO DE ALBORNOZ, supra note 21, at 170; L. JANSSENS, supra note 22, at 146.

24. A. CARRILLO DE ALBORNOZ, supra note 21, at 171; L. JANSSENS, supra note 22, at 147.

25. A. CARRILLO DE ALBORNOZ, supra note 21, at 170-71; L. JANSSENS, supra note 22, at 146-47.


27. A. CARRILLO DE ALBORNOZ, supra note 21, at 155. For the Declarations on Religious Liberty issued by the World Council of Churches in 1948 and 1961, see id. at 189-99. The 1948 Declaration pronounced at the outset: “The rights of religious freedom herein declared shall be recognized and observed for all persons without distinction as to race, color, sex, language, or religion, and without imposition of disabilities by virtue of legal provision of administrative acts,” id. at 189-90. It then proceeded to declare that “Every person” has “the right” to “determine his own faith and creed,” to “express his religious beliefs in worship, teaching and practice, and to proclaim the implications of his beliefs for relationships in a social or political community,” and to “associate with others and to organize with them for religious purposes.” Id. at 190-91.

28. Abram, supra note 26, at 45.
international law can be examined. Theology and the legal concept of a human right are not strangers. As Pope John Paul II has prophetically noted, "with the recognition and protection of religious freedom, the basis is laid for fostering and developing all other human rights that contribute to guaranteeing the dignity of the whole human person." 29

B. The Legal Basis of the Right

Internationally, the legal status of religious liberty has been forwarded, both in principle and practice, through diplomatic exchanges and the promulgation and ratification of treaties, and conventions among and between states. 30 In the nineteenth century, with sovereign states identifying with different religious traditions, it became common in the drafting of treaties to include provisions granting the right of religious expression to nationals of each contracting party in the territory of the other. 31 Since these foreign nationals were often identifiable by both their nationality and religion, it was inevitable that specific safeguards were provided for freedom of conscience, worship, and religious work upon the same terms as nationals of the state of residence. 32

The Treaty of Berlin in 1878 at the close of the Russo-Turkish War, with its provisions for equal minorities, is illustrative of the role that international agreements have played in advancing the cause of religious liberty. 33 Other treaties in the nineteenth and


30. In a major study on religious liberty more than a generation ago, M. Searle Bates observed, "International law and religious liberty grew in intimate association." M. BATES, supra note 16, at 485. Bates found that a substantial majority of the writers of general treaties on international law specifically referred to religious liberty in their documents. Id. at 475-76.

31. Id. at 477-84.

32. Id. Krishnaswami noted:
   Even before the concepts of freedom of thought, conscience and religion was recognized in national law — and partly because it had not been so recognized — the practice evolved of making treaty stipulations ensuring certain rights to individuals or groups professing a religion or belief different from that of the majority in the country.

A. Krishnaswami, supra note 7, at 11.

33. The text of the Treaty of Berlin, signed July 13, 1878, is reprinted in 2 Key Treaties for the Great Powers, 1814-1914, at 551-77 (M. Hurst ed. 1972). Pursuant to the treaty, the newly established states of Bulgaria, Montenegro, Romania, Serbia, and the Sublime Porte undertook to ensure religious freedom to all their inhabitants. Id. Thus in regard to Bulgaria, the Treaty provided in Article 5:

The difference of religious creeds and confessions shall not be alleged against any person as a ground for exclusion or incapacity in matters relating to the enjoyment of civil and political rights, admission to public employments, functions, and honours, or the exercise of the various professions and industries in any locality whatsoever . . . .
twentieth centuries have provided guarantees of religious liberty and include: the American Treaty with Japan in 1858; the General Act Relating to African Possessions signed at Berlin in 1885; and the Minorities Treaties of 1919-23. An increasing number of states throughout the world have voluntarily entered into constitutional and treaty commitments to secure religious liberty for their own citizens as well as for foreign residents.

I. International Measures.—The contemporary human rights movement and specifically, the proscription against religious discrimination are chiefly a product of the barbarian excesses of World War II and, in consequence, the emergent concept that there are “minimum standards of civilized behavior.” Because of the War and the

The freedom and outward exercise of all forms of worship are assured to all persons belonging to Bulgaria, as well as to foreigners, and no hindrance shall be offered either to the hierarchical organization of the different communions, or to their relations with their spiritual chiefs.

Id. at 555-56. Similar provisions were incorporated in Article 27 (regarding Montenegro), Article 35 (regarding Serbia), and Article 44 (regarding Romania). Id. at 564-71. Additional obligations were imposed upon the Ottoman Empire in Article 62:

All persons shall be admitted, without distinction of religion, to give evidence before the tribunals;

Ecclesiastics, pilgrims, and monks of all nationalities travelling in Turkey in Europe, or in Turkey in Asia, shall enjoy the same rights, advantages, and privileges . . .

The right of official protection by the Diplomatic and Consular Agents of the Powers in Turkey is recognized both as regards the above-mentioned persons and their religious, charitable, and other establishments in the Holy Places and elsewhere . . .

The monks of Mount Athos, of whatever country they may be natives, shall be maintained in their former possessions and advantages, and shall enjoy, without exception, complete equality of rights and prerogatives.

Id. at 575.

35. Id.
36. Id.
37. 1 THE INTERNATIONAL DIMENSIONS OF HUMAN RIGHTS 82 (K. Vasak ed. 1982).
38. See infra notes 39-65 and accompanying text. In addition to inserting provisos into peace treaties, states have often inserted provisions guaranteeing religious freedom into bilateral treaties of amity, commerce, and regulation. See M. Bates, supra note 16, at 477-87, 542-43. This type of protection was particularly favored by Great Britain and the United States. For example, in order to ensure religious freedom for Americans abroad, the United States included such protective clauses in the treaties of friendship and commerce with the Netherlands (1972), with Sweden (1782), and with Prussia (1785). Id. at 845. Article 9 of the treaty with Prussia stipulated: “The most perfect freedom of conscience and of worship is granted to the citizens or subjects of either party within the jurisdiction of the other, without being liable to molestation in that respect for any other cause than an insult on the religion of others.” Id. at 485-86.

Comparable protection against religious discrimination was provided for in the bilateral treaties concluded by the United States with, respectively, China, Japan, Siam, the Congo, Germany, Ecuador, Honduras, Austria, Norway, Poland, Finland, Liberia, and Iraq. Id. at 479, 486. The protection offered by these treaties was “reciprocal” and extensive, providing for “freedom of public worship, with due reservation of proper requirements, for foreigners to enjoy the same rights and benefits as nationals, including residence, travel, and the right to hold property for religious purposes, with express or implied right to conduct religious, educational, and philanthropic work.” Id. at 486.
formation of the United Nations, a variety of documents, declarations, and treaties dealing with human rights have been promulgated and adopted.

a) United Nations Charter.—In those provisions of the United Nations Charter concerned with discrimination, religion is consistently specified, along with race, sex, and language, as an impermissible ground of differentiation. The United Nations capacity to prevent such discrimination, however, is restricted by its lack of power to enact and enforce laws. Article 2, paragraph 7 states: “Nothing contained in the present Charter shall authorize the U.N. to intervene in any matters which are essentially within the domestic jurisdiction of any State.” Article 55(c) and Article 56 impose a duty upon member signatories to take joint and separate action in cooperation with the organization to promote “universal respect for, and observance of, human rights and fundamental freedom for all without distinction as to race, sex, language, or religion.” The Charter neither includes nor permits the organization to take other measures to effectuate this duty. Consequently, a citizen’s complaint to the organization or its Human Rights Committee is futile if his State has failed to provide him in its domestic law with the rights guaranteed by the Charter. Currently, no international legal entity exists that can remedy this infringement of rights.

39. U.N. Charter, art. 1, para. 3; art. 13, para. 1(b); art. 55(c); art. 62, para. 2; art. 76(c).
40. At the San Francisco Conference of 1945, it was proposed, notably by Latin American delegations, that detailed guarantees of freedom of conscience and religion be incorporated in the Charter; however, these proposals were not accepted. A. Krishnaswami, supra note 7, at 12. Instead, by repeatedly employing the familiar formula of “human rights and fundamental freedoms for all, without distinction as to race, sex, language or religion,” the Charter established a more general norm prohibiting discrimination. See Charter provisions, infra note 42. This policy was first implemented in the post-World War II peace treaties concluded in 1947 by the Allied powers with Bulgaria, Finland, Hungary, Italy, and Romania. Each state pledged to undertake “all measures necessary to secure all persons under [its] jurisdiction, without distinction as to race, sex, language, or religion, the enjoyment of human rights and of the fundamental freedoms, including freedom . . . of religious worship . . .” Treaty of Peace with Bulgaria, Feb. 10, 1947, Art. 2, No. 643, 41 U.N.T.S. 21; Treaty of Peace with Hungary, Feb. 10, 1947, Art. 2, No. 644, 41 U.N.T.S. 135; Treaty of Peace with Romania, Feb. 10, 1947, Art. 1, No. 645, 42 U.N.T.S. 3; Treaty of Peace with Finland, Feb. 10, 1947, Art. 6, No. 746, 48 U.N.T.S. 203. See also Treaty of Peace with Italy, Feb. 10, 1947, Art. 19(4), No. 747, 49 U.N.T.S. 3 (with a slight variation in wording from the preceding provisions).
41. U.N. Charter, art. 2, para. 7.
42. U.N. Charter, art. 55, para. (c).
43. See P. Sieghart, The International Law of Human Rights 51-2 (1983). Sieghart examines the debate over the binding effect of the Charter. As the constituent statute of an intergovernmental organization, the U.N. Charter has the status of a multilateral treaty. Sieghart contends that it is now almost universally agreed that the Charter obligation is binding in international law on all U.N. members, and is direct and unqualified. Id.
44. If an individual complains that his own national state has infringed the rights that the Declaration seeks to guarantee him, his complaint is doomed to remain in the wilderness outside the pale of international law so long as there is no international legal entity that can
b) Universal Declaration of Human Rights.—In order to explain the U.N. Charter’s comprehensive prohibition of discrimination, in December 1948, the United Nations General Assembly adopted the Universal Declaration of Human Rights “as a common standard for all peoples and all nations.”\(^46\) Article 2 of the Declaration specifies religion as one of the impermissible grounds of differentiation.\(^46\) This general prohibition of discrimination is made more explicit in Article 18, which states: “Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship or observance.”\(^47\) Article 1, proclaiming that all human beings are “endowed with reason and conscience and should act towards one another in a spirit of brotherhood,”\(^48\) further asserts a belief in the ability of human beings to act reasonably and in unison in achieving a better state for humankind. In order to implement this aspiration, Article 26(2) urges that education be directed to “promote understanding, tolerance and friendship among all nations, racial or religious groups . . . .”\(^49\)

c) International Covenants on Human Rights.—During the more than three decades since the adoption of the Universal Declaration, the Commission on Human Rights has sought to clarify and delineate the elements of the right to religious freedom, and to incorporate these elements in an international declaration or legally binding convention.\(^50\) In December 1966, the General Assembly unanimously adopted the International Covenant on Civil and Political Rights. \(^51\)
Rights and the International Covenant on Economic, Social and Cultural Rights; they represent, in effect, the achievement of the "international bill of rights" contemplated by the Assembly when it adopted the Universal Declaration of Human Rights.

In the International Covenant on Civil and Political Rights, religion is included in both the general provisions against discrimination in the enjoyment of all human rights under Article 2(1), and in the equal protection clause under Article 26. The prohibition of discrimination is regarded to be of such overriding importance that states are forbidden to practice discrimination on the ground of religion where derogations from their obligations would otherwise be justified by "public emergency" under Article 4(1). In Article 18(1), the basic content of the right so emphatically protected is defined by prescribing complete freedom of choice regarding rectitude:

Everyone shall have the right to freedom of thought, conscience and religion. This right shall include 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.

Article 18(2) further insulates this right by providing protection against coercion that would "impair" an individual's "freedom to have or to adopt a religion or belief of his choice." Article 18(3) then expresses the recognition that religious freedom, like other rights, "may be subject to such limitations as are prescribed by law and are necessary to protect public safety, health, or morals, or the fundamental rights and freedoms of others." In addition, Article 24(1) provides that the special protection accorded to children is to be effected without discrimination on account of religion, and Arti-

51. Civil and Political Covenant, supra note 20.
52. Economic, Social, and Cultural Covenant, supra note 20.
53. See supra note 45.
54. Civil and Political Covenant, supra note 20, at art. 2, para. 1.
55. Id. at art. 26.
56. Article 4 reads:
In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situations, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.

Id.
57. Id. at art. 18, para. 1.
58. Id. at art. 18, para. 2.
59. Article 18(3) reads: "Freedom 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 fundamental rights and freedoms of others." Id.
60. Article 24(1) provides: "Every child shall have, without any discrimination as to
Article 27 specifically includes religious minorities as a protected minority group.\(^{61}\)

Similarly, the International Covenant on Economic, Social, and Cultural Rights contains, in Article 2(2), a comprehensive guarantee that the rights stipulated in the Covenant will be exercised without discrimination on the ground of religion.\(^{62}\) Article 13(1) amplifies this guarantee by proclaiming that education be directed to “enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups . . . .”\(^{63}\)

\textit{d) Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief.}—The Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief was adopted by the U.N. General Assembly on November 25, 1981, without a vote.\(^{64}\) It represents the culmination of over twenty years of work by the Human Rights Commission’s Sub-Commission on the General Prevention of Discrimination and Protection of Minorities. Its drafting was part of an effort to institutionalize the commitment of the United Nations to human rights and to transform these principles into legal obligations.\(^{65}\) While the Declaration’s substantive provisions are not bind-

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\(^{61}\) Article 27 stipulates: “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 the group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.” \textit{Id.}\(^{62}\)


\(^{63}\) \textit{ECONOMIC, SOCIAL, AND CULTURAL COVENANT, supra note 20, at art. 2(2).}

\(^{64}\) \textit{Id.} at art. 13(1).

\(^{65}\) In 1962, the General Assembly requested a declaration and convention on religious intolerance. At the same time the General Assembly also called for similar instruments on racial discrimination. Although the latter were completed by 1965, the religious intolerance drafts were not acceptable. (U.N. Docs. A/6347; A/7777; A/7930; A/8330; A/9322; A/9/34; E/CN. 4/1145). In December 1972, the Assembly decided to “accord priority to the completion of the Declaration on the Elimination of All Forms of Religious Intolerance before resuming consideration of an international convention on this subject.” G.A. Res. 3027, 21 U.N. GAOR Supp. (No. 30) at 72, U.N. Doc. A/8730 (1972). From 1974 on, the Assembly set up a working group at each session of the Commission on Human Rights in order to speed up the work. In 1979, the Assembly “noted with regret” that the Commission had so far adopted only the title and preamble of a declaration. U.N. Doc. A/C.3/33/SR. 67. See G.A. Resolutions 1781 (XVII) (1962), 3027 (XXVII) (1972), 3069 (XXVIII) (1973), 3267 (XXIX) (1974), 31/138 (1976), 32/143 (1977), and 33/106 (1979). The representative of the Holy See pointed out, in the Third Committee, that although the question had been discussed
ing, they represent the most comprehensive and unambiguous codification of the idea of religious liberty to date.66

The eight article Declaration proclaims that all people have “the right of thought, conscience and religion.”67 Article 1 declares in broad and inclusive terms that this right exists “individually or in community” and “in public or private.”68 Like the earlier international instruments, it secures a person’s right to “manifest his religion in worship, observance, practice and teaching”69 subject only to limitations prescribed by law and those that are “necessary to protect public safety, health or morals or the fundamental rights and freedoms of others.”70

Finally, the Declaration states that “no one shall be subject to discrimination by any State, institution, group of persons or person on grounds of religion or other beliefs.”71 Such discrimination is to be “condemned as a violation of . . . [the] human rights and fundamental freedoms” that are set forth in the Universal Declaration of Human Rights and the International Covenants on Human Rights.72 States are to act to prevent and eliminate such discrimination “in the recognition, exercise, and enjoyment of human rights and fundamen-

for a third of the century and a consensus regarding the necessity for a convention existed, almost no progress had been achieved, and “it was evident that certain forces were trying to prevent the declaration from becoming reality.” CARDINAL CHELLI, U.N. Doc. A/C.3/33/ SR.60, para. 115 (1979). The draft declaration was finally completed and recommended for adoption in March of 1981. COMM. ON HUM. RTS. 20 (XXXVII), 10 Mar. 1981. By resolution, the General Assembly requested that the Secretary General disseminate widely, as a matter of priority and in as many languages as possible, the text of the Declaration. G.A. 37/187 (18 Dec. 1982).

66. The Declaration serves as a valuable guide for the interpretation of existing international instruments, as it contains provisions that give more detailed content to the right to freedom of religion or belief in these instruments. The international instruments relating thereto should therefore be read as a body.

67. DECLARATION ON RELIGIOUS INTOLERANCE, supra note 64, at art. 1, para. 1. Article 1 declares:

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include 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.
2. No one shall be subject to coercion which would impair his freedom to have a religion or belief of his choice.
3. Freedom to manifest one’s religion or belief 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 fundamental rights and freedom of others.

68. Id.
69. Id.
70. Id.

71. Id. at art. 2, para. 1. Article 2, para. 2, operationally defines the expression “intolerance and discrimination based on religion belief” to mean “any distinction, exclusion, restriction or preference based on religion or belief and having as its purposes or as its effect nullification or impairment of the recognition, enjoyment or exercise of human rights and fundamental freedoms on an equal basis.” DECLARATION ON RELIGIOUS INTOLERANCE, supra note 64, at art. 2, para. 2.

72. Id. at art. 3.
tal freedoms in all fields of civil, economic, political, social and cultural life” by enacting or rescinding legislation where necessary. Article 5 deals extensively with the religious instruction of children, and grants the parents or legal guardians of children the exclusive right to “organize the life within the family in accordance with their religion or belief.”

Article 6 carefully spells out the specific freedoms encompassed in the right to freedom of thought, conscience, religion or belief. They include the freedom to worship and establish places of worship; the freedom to establish charitable institutions; the freedom to acquire necessary articles and materials to perform religious rites and customs; the freedom to issue and disseminate relevant publications, to teach religion in “suitable places,” to solicit and receive voluntary contributions, and to train and designate leadership; the freedom to observe days of rest and celebrate holidays, and the freedom to establish and maintain communications with individuals and communities at both the national and international levels. These rights and freedoms are to be adopted by the signatory nations through their own domestic legislation. Further, the Declaration is not to be understood as a restriction or derogation of any right defined in the Universal Declaration of Human Rights and the International Covenants on Human Rights. This Declaration, along with its predeces-
sors, and regionally-adopted treaties,\textsuperscript{79} establishes conclusively that religious liberty is regarded as a fundamental human right, which must be guaranteed to all people and protected by all states.

III. The Practice of States: A Comparative Analysis

\textit{Why should the nations say, "Where is their God?"} Let the avenging of the outpoured blood of thy servants be known among the nations before our eyes!\textsuperscript{80}

Where human rights are concerned, commentators frequently note that a wide gap may exist between a state's verbal assertions that it upholds the human rights of its nationals and its actual behavior.\textsuperscript{81} While the principle of religious liberty has recently become recognized in international law as a basic human right that no sovereign state has the authority to abridge, it is necessary to inquire whether states have given anything more than mere "lip service" to this right in order to establish its present status. To assess the modern practices of states, the countries of the United States, the United Kingdom, the Republic of India, and the Soviet Union will be examined. A review of the status of religious freedom evidenced in these states is enlightening for several reasons: the important role they play politically in today's world; the presence of many different and diverse religious groups in each nation; the differing methods of repression, if any, each nation utilizes; and, the emulation of their civil rights and liberties policies by other states.

In a theoretical framework, freedom of religion implies freedom

\textsuperscript{79} On the regional level, the principle of religious freedom is embodied both in general proscriptions banning discrimination that include religion as a prohibited ground of differentiation, and in particular prescriptions that give substance to the freedom of thought, conscience and religion. Thus, the European Convention on Human Rights includes religion in Article 14 as among the impermissible grounds of differentiation, and spells out the content of the freedom of religion in Article 9. \textit{See European Convention on Human Rights}, Sept. 3, 1953, 213 U.N.T.S. 222. Similarly, the American Declaration of the Rights and Duties of Man proclaims, in Article 2, that "[a]ll persons are equal before the law and have the rights and duties established in this Declaration, without distinction as to race, sex, language, creed or any other factor." \textit{O.A.S. Off. Rec. OEA/Ser. L/V/II. 23, doc. 21, rev. 6} (1948). Article 1(1) of the American Convention on Human Rights expressly forbids discrimination on account of religion, and this principle is reinforced by the equal protection clause of Article 24; furthermore, Article 27(1) provides that a state may not take measures that involve religious discrimination, even during an emergency. The provision on the freedom of thought, conscience, and religion is found in Article 12. \textit{O.A.S.T. No.} 36, at 1, \textit{O.A.S. Off. Rec. OEA/Ser. L./V/II. 23, doc. 21, rev. 2} (1969). \textit{See also Article V and Basket III of Helsinki Accords, signed August 1, 1975, 37 Dept. of State Bull. 323 (1975); African Charter on Human and Peoples' Rights, adopted June 27, 1981, O.A.U. Dec. CAB/LEG/67/3 Rev. 5, 21 \textit{Int'l. Legal Materials} 58 (1982).

\textsuperscript{80} \textit{Psalm} 79:10.

to act as well as freedom not to act, according to a wide spectrum of conviction. The data provided by judicial systems characterizes the limits of religious freedom by determining which activities may rightly be called religious. Court cases involving religious freedom are precipitated by some form of coercion, whether in the form of preventing certain activities or in the form of forcing behaviors on the unwilling. The public health, order, morals, or education of society, however, may set aside the guarantees of religious liberty. These tenets provide the structure for this analysis.

A. Case Study: United States

The political system of the United States is extremely tolerant of religion, respecting the command of the first amendment of its constitution that it shall not abridge the free exercise of religion. No individual can be denied a government job simply because he belongs to a particular faith or does not believe in God at all. Arti-

82. According to THE STATESMAN'S YEAR-BOOK 1986-87 (1986), as of 1982, the number of churches and religious believers were:

<table>
<thead>
<tr>
<th>Denominations</th>
<th>Local</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Local Churches</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Protestant bodies</td>
<td>310,284</td>
<td>76,754,009</td>
</tr>
<tr>
<td>Roman Catholic Church</td>
<td>24,071</td>
<td>52,088,774</td>
</tr>
<tr>
<td>Jews</td>
<td>3,500</td>
<td>5,725,000</td>
</tr>
<tr>
<td>Eastern Churches</td>
<td>1,632</td>
<td>3,859,668</td>
</tr>
<tr>
<td>Old Catholic, Polish/Armenia</td>
<td>427</td>
<td>924,861</td>
</tr>
<tr>
<td>Buddhists</td>
<td>62</td>
<td>100,000</td>
</tr>
<tr>
<td>Miscellaneous</td>
<td>1,135</td>
<td>150,747</td>
</tr>
<tr>
<td>1982 totals</td>
<td>341,111</td>
<td>139,603,059</td>
</tr>
</tbody>
</table>


83. The first amendment reads: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances." U.S. CONST. amend. I. The constitutions of many states also explicitly provide for freedom of religion. For example, the Pennsylvania Constitution provides the following:

Section 3. All men have a natural and indefeasible right to worship Almighty God according to the dictates of their own consciences; no man can of right be compelled to attend, erect or support any place of worship, or to maintain any ministry against his consent; no human authority can, in any case whatever, control or interfere with the rights of conscience, and no preferences shall ever be given by law to any religious establishments or modes of worship.

Section 4. No person who acknowledges the being of a God and a future state of rewards and punishments shall, on account of his religious sentiments, be disqualified to hold any office or place of trust or profit under this Commonwealth.

PA. CONST. art. I, § 3 and § 4.

Article VI, section 3 of the Constitution states that "... no religious Test shall ever be required as a Qualification to an Office or public Trust under the United States." In addition, the laws of many states make it illegal for employers, trade unions, landlords, or real estate brokers to discriminate against anyone on account of his religion.

The United States Supreme Court has been an avid defender of the first amendment's free exercise clause. The extent to which it is prepared to protect religious belief can be seen in a number of its decisions. Many of these decisions have been compelled by the complaints of minority religious groups. One such group is the Jehovah's Witnesses. In the case of Cantwell v. Connecticut, for example, a Jehovah's Witness appealed his conviction by a Connecticut court for various crimes, including breach of the peace. Cantwell had walked through a Catholic neighborhood in New Haven, Connecticut and asked passers-by if he could play his records for them. When somebody would agree to hear him, he started a phonograph. The records contained violent attacks on the Roman Catholic Church; one Catholic listener testified that he felt like hitting Cantwell, while another pedestrian told Cantwell to get off the street before something happened to him. The Supreme Court held that convicting Cantwell for violating a state statute that prohibited the solicitation of money for religious purposes unless approved by a state official violated his right to freely practice his religion. The Court noted that the freedom of religion protects not only mild pleading on behalf of one's views, but even some exaggeration, falsehood and vilification of one's opponents.

In West Virginia State Board of Education v. Barnette, the Court also held that a state could not compel Jehovah's Witnesses to salute the flag in school when to do so would be in violation of their religious beliefs. Similarly, in Wooley v. Maynard, the Court stated that Jehovah's Witnesses living in New Hampshire may tape over that part of their license plates that proclaims "Live Free or Die," for forcing them to display this slogan unconstitutionally in-

85. U.S. Const. art. VI, § 3.
86. See, e.g., CAL. LABOR CODE § 1412 (Deering 1984); N.Y. EXEC. LAW § 296 (Consol. 1981); PA. STAT. ANN. tit. 43, § 955(a) (Purdon 1964).
87. See, e.g., CAL. TRADE UNIONS CODE § 1411 (Deering 1984).
88. See, e.g., CAL. HOUSING CODE § 35700 (Deering 1984); N.Y. PUB. Hous. LAW § 223 (Consol. 1984); PA. STAT. ANN. tit. 43, § 955(h)(4) (Purdon 1964).
89. See, e.g., CAL. BUS. & PROF. CODE § 10177 (Deering 1984); N.Y. EXEC. LAW § 296 (Consol. 1981); PA. STAT. ANN. tit. 43 § 959 (Purdon 1964).
90. 310 U.S. 296 (1940).
91. Id. at 303, 309.
92. Id. at 310.
93. 319 U.S. 624 (1943).
fringed upon the rules of their creed.95

The most delicate problems in the United States involving freedom of religion, however, have arisen when an act commanded by one's faith violates state or federal legislation intended to promote health, safety, morality, or education, and not when state action tends to stamp out religious dissent.96 An outstanding example of this is presented by anti-polygamy laws. The Mormon religion permits its male adherents to have more than one spouse. In Utah, the federal government, in Reynolds v. United States,97 prosecuted a Mormon for being polygamous.98 As a defense to his prosecution, Reynolds claimed that his conduct was protected by the free exercise clause of the first amendment.99 Relying heavily on the writings of Thomas Jefferson, the Court concluded that the free exercise clause protects only religious beliefs and not actions motivated by those beliefs.100 In the Court's view, if religiously motivated actions were protected, every man could become a law unto himself.101

Although the government has often been the victor in court battles addressing the conflict between unorthodox religious practices and the state's power to promote the health, safety, education, and morality of its citizens, it has also encountered defeat on a number of occasions.102 Because without some compelling state interest, there can be no legitimate governmental intrusion into religious affairs either for purposes of investigation or regulation, the government has often had its hands tied when combatting unattractive religious practices.

As a general rule, the truth or falsity of religious beliefs or doc-
trines lies beyond the competence of civil authorities. One well-publicized example involves the Amish, a group who believes among other things, that education beyond the eighth grade level is dangerous because it would expose their youth to worldly influences. In the case of Wisconsin v. Yoder, Wisconsin claimed that its interest in compulsory education for all children within the state was compelling enough to override any impingement on Amish parents’ free exercise of religion. The Court recognized that “[p]roviding public schools rank[ed] at the very apex of the function of the state.”

The Court noted that this strong interest in universal education, however, was not “totally free from a balancing process when it impinge[d] on fundamental rights and interests, such as those specifically protected by the Free Exercise Clause of the First Amendment . . . .”

Upon weighing the interests of the Amish with those of the state, the Court found that “enforcement of the State’s requirement of compulsory formal education after the eighth grade would gravely endanger if not destroy the free exercise of . . . [the Amish] beliefs.” Since the Amish had met the burden of demonstrating the adequacy of their alternative mode of continuing informal vocational education, the Court held the compulsory school attendance law had been unconstitutionally applied to the Amish.

104. Writing for the majority, Justice Douglas stated in United States v. Ballard, 322 U.S. 78 (1944), that the first amendment prohibits the courts from examining the truth of religious representations:

The (first) amendment embraces two concepts — freedom to believe and freedom to act. The first is absolute but, in the nature of things, the second cannot be. Freedom of thought, which includes freedom of religious belief . . . embraces the right to maintain theories of life and death and of the hereafter which are ranked heresy to followers of the orthodox faiths . . . . Men may believe what they cannot prove. They may not be put to the proof of their religious doctrines or beliefs. Religious experiences which are as real as life to some may be incomprehensible to others. Yet the fact that they may be beyond the ken of mortals does not mean that they can be made suspect before the law. Many take their gospel from the New Testament. But it would hardly be supposed that they could be tried before a jury charged with the duty of determining whether these teachings contained false representation. The miracles of the New Testament, the Divinity of Christ, life after death, the power of prayer are deep in the religious convictions of many. If one could be sent to jail because a jury in a hostile environment found these teachings false, little indeed would be left of religious freedoms . . . . The religious views espoused by [the Ballards] might seem incredible, if not preposterous to most people. But if these doctrines are subject to trial before a jury charged with finding their truth or falsity, then the same can be done with the religious beliefs of any sect . . . . When the triers of fact undertake that task, they enter a forbidden domain.

Id. at 86-87 (citations omitted).

106. Id. at 213-15.
107. Id. at 213.
108. Id. at 214.
109. Id. at 219.
110. Id. at 235, 236.
It appears, however, that since 1982 the United States Supreme Court has halted further expansion of the protection afforded by the free exercise clause, and may even have cut back the scope of that protection in its decision in *United States v. Lee*.\(^{111}\) In *Lee*, an Amish employer failed to pay social security taxes because he believed that such payment and receipt of benefits would violate the Amish faith.\(^{112}\) Although Congress had provided Amish employees with an exemption from paying social security taxes, the Court held that neither the exemption nor the free exercise clause would exempt the Amish employer from paying the tax. The Court concluded that the soundness of the social security system was of such an overriding governmental interest as to justify the limitation on religious liberty.\(^{113}\)

Justice Stevens noted in a concurring opinion:

> The Court's attempt to distinguish *Yoder* is unconvincing because precisely the same religious interest is implicated in both cases, and Wisconsin's interest in requiring its children to attend school until they reach the age of 16 is surely not inferior to the federal interest in collecting these social security taxes.\(^{114}\)

Thus, it appears that *Lee* has called a halt to the movement expanding the protection afforded by the free exercise clause of the first amendment. With the promotion of William Rehnquist to Chief Justice and the recent appointments of conservatives Antonin Scalia and Anthony Kennedy to the Supreme Court, it is likely that the state will gain greater power to limit religion where state interests are involved.\(^{115}\) It still appears to be true, however, that "[t]he essence of all that has been said and written on the subject is that only those interests of the highest order . . . can overbalance legitimate claims to the free exercise of religion"\(^{116}\) in the United States.

### B. Case Study: United Kingdom

Like that of the United States, the British government is generally very tolerant of minority religious groups.\(^{117}\) Although it was not until 1858 that Jews who refused to swear that they were Christian

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111. 455 U.S. 252 (1982).
112. *Id.* at 257.
113. *Id.* at 256-61.
114. *Id.* at 263 (Stevens, J., concurring).
117. According to *The Statesman’s Year-Book* 1986-87, at 1330 (1986), as of June 1984, there were 40,448 churches and chapels open in the United Kingdom. Of them, the membership is as follows:
could sit in Parliament\textsuperscript{118} and not until 1871 that they could attend Oxford and Cambridge Universities,\textsuperscript{119} it was as early as 1883 that Chief Justice Coleridge said that Christianity was no longer automatically the law of Britain, and that one could thus criticize the Christian faith without being guilty of blasphemy.\textsuperscript{120} The Oaths Act of 1888 allowed atheists to take their seats in Parliament and when witnesses in court to affirm rather than swear unto God.\textsuperscript{121} The House of Lords, in 1917, made it clear in \textit{Bowman v. Secular Society}\textsuperscript{122} that a bequest to a society that "promote[s] . . . the principle that human conduct should be based upon natural knowledge, and not upon supernatural belief, and that human welfare in this world is the proper end of all thought and action" is valid.\textsuperscript{123}

In 1966, the Home Office, which controls the London police, stated that it doubted that the offense of blasphemy would ever be prosecuted in modern times. In 1978, however, in the case of \textit{R. v. Lemon}\textsuperscript{124} the editor and publisher of a newspaper were convicted of this offense. They had published a poem accompanied by a drawing

\begin{tabular}{ll}
\textbf{Denomination} & \textbf{Members} \\
Methodist & 487,972 \\
Independent Methodist & 3,972 \\
Wesleyan Reform Union & 3,331 \\
United Reform & 133,512 \\
Baptist & 166,975 \\
Calvinistic Methodist & 85,041 \\
Moravian & 4,000 \\
Society of friends & 18,045 \\
Roman Catholic & 4,208,696 \\
Unitarian & 8,000 \\
Protestant Episcopal & — \\
\end{tabular}

In 1985, there were about 333,000 Jews in the U.K. with about 295 synagogues. Of the countries examined in this Comment, the United Kingdom is the only nation that has its own state church, the Church of England. The established Church of England is Protestant Episcopal and is the faith of the majority of Britains. The Queens is, under God, the Supreme Governor of the Church of England, with the right, regulated by statute, to nominate the archbishops. \textit{Id.} at 1329.

Unlike most states, the United Kingdom does not have a single document, such as the Constitution of the United States, which defines the system of government, outlines the functions to be performed by the institutions of government, and states the rights and obligations of citizens. The United Kingdom has an "unwritten" constitution in the sense that some major forms of political behavior are not enshrined in acts of Parliament or are not binding in a legal manner. In addition, there are no basic laws or codes that can be altered only by a special amendment procedure. All laws in the U.K., no matter how important they are from a constitutional point of view, can be changed in the same way, that is by a simple majority in British Parliament. The Parliament has ratified the human rights covenants. R. \textit{LILICH, supra} note 82.

\begin{footnotesize}
\begin{enumerate}
\item\textsuperscript{118} M. \textit{CURTIS, 17 CONSTITUTIONS OF THE COUNTRIES OF THE WORLD — UNITED KINGDOM} 14 (A. Blaustein & G. Flanz eds. 1983).
\item\textsuperscript{119} \textit{Id.} at 15.
\item\textsuperscript{120} R. V. Ramsay \textit{v.} Foote, 15 Cox. Crim. Cas. 231, 238 (1883).
\item\textsuperscript{121} \textit{OATHS ACT, 51 & 52 Vict.,} c. 46 (1888).
\item\textsuperscript{122} [1917] A.C. 406.
\item\textsuperscript{123} \textit{Id.}
\item\textsuperscript{124} [1978] 3 All E.R. 175 (C.A.); [1979] 1 All E.R. 898 (H.L.).
\end{enumerate}
\end{footnotesize}
illustrating its subject matter that purported to describe in explicit detail acts of sodomy and fellatio with the body of Christ immediately after his death and that ascribed to him promiscuous homosexual practices during his lifetime. The Court of Appeal upheld the conviction and the House of Lords approved the decision.128

Similar to the practice in the United States, when there has been a conflict in Great Britain between an individual or group's free exercise of religion and the public health, order or morals, the former has given way. For instance, if a person prosecuted for criminally neglecting someone in his care by refusing to give him necessary medicine, the person refusing treatment cannot raise as a defense that he objected to the use of the medicine on religious grounds. In R. v. Senior,128 a father was convicted under the Prevention of Cruelty to Children Act of 1894 for failing to provide medical aid and medicine to his child, even though he knew him to be dangerously ill. The defendant was in all other respects a loving parent, but refused to obtain medical assistance because he was a member of a religious sect that objected to physicians and drugs.127

Britain has also been troubled by the question of whether something is "religious."128 In the case of Henning v. Church of Jesus Christ of Latter Day Saints,129 the question was whether the Mormon temple in Godstone, Surrey, was entitled to a property tax exemption as a place of public worship. There was no doubt that Mormon chapels were places of religious worship; but the temple, unlike the Mormon chapels, was not open to the public, nor even to all Mormons. People entering the temple had to possess certain requisite spiritual qualities. The court held that the temple was not entitled to the tax exemption since it was really a private sanctuary for sacred rites rather than a place of public worship.130 In a more recent example, the Ethical Cultural Society was denied a property tax exemption for one of its halls, since the group does not believe in a Supreme Being.131

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125. Id. See also Ahmad v. Inner London Education Authority, [1978] 1 All E.R. 574 (C.A.) (court refused to construe statute to allow a Moslem teacher, without losing pay, to miss class to pray on Friday at a mosque).
126. [1899] 1 QB. 283.
127. Id. at 283-84.
128. This definitional problem frequently occurs whenever a statute grants or takes away benefits from a "religious" group. The best known situation in the United States involves conscientious objection to war. The relevant statute exempted from the draft only religious conscientious objectors. However, the U.S. Supreme Court, in an example of tolerance, extended the exemption to clearly felt conscientious objection to war on secular grounds. Welsh v. U.S., 398 U.S. 333 (1970).
130. Id. at 367.
131. See The Times (London), Feb. 20, 1980, p. 14; compare Washington Ethical Soc'y v. District of Columbia, 249 F.2d 127 (D.C. Cir. 1957) (U.S. court declared Ethical Culture property exempt from tax, holding that belief in or teaching of a Supreme Being or supernatu-
Until recently, the most profound exception to the policy of official religious tolerance in the United Kingdom could be found in Northern Ireland. With respect to local affairs, this region was until 1972 largely governed by its own Parliament. In response to the violence between Catholics and Protestants, Britain took over direct responsibility for the administration of Northern Ireland. The "Stormont" legislature, which had sought to maintain the "Protestant ascendancy" in Ulster, subjected Catholics to certain subtle disabilities, although they worshipped openly and without hindrance. There was a property qualification for voting in elections to local council in Northern Ireland: to vote one had to be an owner or a renter or a spouse of an owner or renter. This effectively disqualified many Catholics from participating in and influencing affairs of state. On the whole, Catholic families in Northern Ireland are larger than Protestant families because of the objection of Catholics to the use of birth control. Because of the growth of the Catholic population without a concurrent increase in wealth, many Catholics have been disenfranchised by the property requirements. For this reason, the town of Derry, as an example, which is two to one Catholic, had in 1969 thirteen thousand Protestant voters to only nine thousand Catholic voters. The Protestants also maintained their dominance over local government by use of gerrymandering, throwing most Catholic voters into a few election districts. In addition, the local authorities often favored Protestants over Catholics when it came to allocating municipal jobs and apartments in public housing.

These government measures helped to breed the distrust and bloodshed that plagues Belfast and other Ulster communities. Although a number of proposals have been proffered in the last decade to set up a new political structure in Northern Ireland, little progress has been made. In the meantime, what began ostensibly as a civil rights campaign in 1968 by an illegal organization, the Irish Republican Army, has escalated into a full-scale offensive designed to overthrow British rule. At times, counter-measures have required the services of over twenty-thousand regular troops. As of 1981, over 2,000 persons had been killed as a result of the sectarian violence. The

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133. R. Vincent, supra note 82, at 121.
134. The Derry City Council consisted of 12 Unionists (formerly the major political arm of Ulster Protestantism) and only 8 Nationalists (the then major party of the Northern Irish Catholics). David Holden, A Bad Case of the Troubles Called Londonderry, N.Y. Times Mag. 10 (Aug. 3, 1969).
135. R. Vincent, supra note 82, at 125. See generally L. de Paor, Divided Ulster (1970); J. Darby, Conflict in Northern Ireland (1976).
136. The Statesman's Yearbook, supra note 82, at 1349.
legal discrimination is gone; but, on the unofficial level, Protestants and Catholics continue to battle to the death.

The situation of Northern Ireland poignantly demonstrates the difficulty in diffusing the historical intolerance of two religious groups in a country that has a predominant state religion — Protestant. While the modern British government has come to respect and protect the adherents of all religions, the prejudices and fears of minority religion participants has not been easily overcome through state assurances.

C. Case Study: India

In contrast to the United States and Great Britain, India explicitly declares in its constitution that it is a secular state. The Indian Constitution deals with the right to freedom of religion extensively in Article 25 through Article 39. The provisions on the right to freedom of religion read:

25. Freedom of conscience and free profession, practice and propagation of religion.—(1) Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion.

(2) Nothing in this article shall effect the operation of any existing law or prevent the State from making any law —

(a) regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice;

(b) providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus.

26. Freedom to manage religious affairs.—Subject to public order, morality and health, every religious denomination or any section thereof shall have the right —

(a) to establish and maintain institutions for religious and charitable purposes;

(b) to manage its own affairs in matters of religion;

(c) to own and acquire movable and immovable property; and

(d) to administer such property in accordance with law.

27. Freedom as to payment of taxes for promotion of any particular religion.—No person shall be compelled to pay any taxes, the proceeds of which are specifically appropriated in payment of expenses for the promotion or maintenance of any particular religion or religious denomination.

28. Freedom as to attendance at religious instruction or religious worship in certain educational institutions.—(1) No religious instruction shall be provided in any educational institution wholly maintained out of State funds.

(2) Nothing in clause (1) shall apply to an educational institution which is administered by the State but has been established under any endowment or trust which requires that religious instruction shall be imparted in such institution.

(3) No person attending any educational institution recognized by the State or receiving aid out of State funds shall be required to take part in any religious instruction that may be imparted in such institution or to attend any religious worship that may be conducted in such institution or in any premises attached
It provides that, so long as religions function within their respective legitimate spheres, the Constitution will be religiously neutral in regard to them.\textsuperscript{139}

India is in reality, however, much less secularized than either the United States or United Kingdom, with religion playing an important role in the lives of a majority of Indian citizens.\textsuperscript{140} Because of this, India lives under the constant threat of civil war between rival religious groups.\textsuperscript{141} Aware of this fact, the Indian government is generally tolerant towards claims of freedom of religion, but there are noteworthy exceptions to this general orientation.

The provisions pertaining to the cultural and educational rights of Indian citizens provide:

29. Protection of interests of minorities.— (1) Any section of the citizens residing in the territory of India or any part thereof have a distinct language, script or culture of its own shall have the right to conserve the same.

(2) No citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them.

30. Right of minorities to establish and administer educational institutions.—(1) All minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice.

[(1-A) In making any law providing for the compulsory acquisition of any property of an educational institution established and administered by a minority, referred to in clause (1), the State shall ensure that the amount fixed by or determined under such law for the acquisition of such property is such as would not restrict or abrogate the right guaranteed under that clause.]

(2) The State shall not, in granting aid to educational institutions, discriminate against any educational institution on the ground that it is under the management of a minority whether based on religion or language.

\textbf{INDIA CONST. arts. 25-30.}

139. But see infra notes 172-78 and accompanying text for an example of the government’s willingness to resort to violence when one religion’s adherents seek to gain political supremacy.

140. See supra note 138. The drafters of the Constitution believed that in a multi-religious community, secularism was consistent with a true democratic spirit. Indian secularism is not anti-God or anti-religion. It recognizes the fact that religion serves a very important purpose in human life. But it subscribes to the fundamental Hindu philosophical tenet that all religions have elements of truth and no religion can claim a monopoly of truth. M. Pylee, \textit{India’s Constitution} 121 (1967); P. Gajendragadkar, \textit{The Constitution of India: Its Philosophy and Basic Postulates} 40-41 (1969).

India, like the United Kingdom, has voted in favor of the Declarations discussed and has ratified both Human Rights Covenants. R. Lillich, \textit{supra} note 82. The principle religions in the 1971 census were:

<table>
<thead>
<tr>
<th>Religion</th>
<th>Members</th>
</tr>
</thead>
<tbody>
<tr>
<td>Hindu</td>
<td>453,200,000</td>
</tr>
<tr>
<td>Moslem</td>
<td>61,400,000</td>
</tr>
<tr>
<td>Christians</td>
<td>14,200,000</td>
</tr>
<tr>
<td>Sikhs</td>
<td>10,300,000</td>
</tr>
<tr>
<td>Buddhists</td>
<td>3,800,000</td>
</tr>
<tr>
<td>Jains</td>
<td>2,600,000</td>
</tr>
</tbody>
</table>

\textbf{THE STATESMAN’S YEARBOOK, \textit{supra} note 82, at 635.}

141. There has been a historical conflict between Hindus and Moslems. See generally M. Pylee, \textit{supra} note 140; \textit{Economist}, Sept. 30, 1978, at 70; \textit{N Y Times}, Aug. 15, 1980, at A3, \textit{Notes on Church and State Affairs}, 25 \textit{J. of Church and State} 381 (1983); and also infra notes 172-78 and accompanying notes.
Article 25 of the Constitution provides for freedom of conscience and free profession, practice and propagation of religion. Similar to the practice in both the United States and Great Britain, this freedom may be restricted when confronted with concerns over public order, morality and health. Express provision is made in Article 25 for these limitations. In addition to this limitation, the freedom of religion provided in Article 25 does not affect the operation of any existing law or prevent from making any law — (a) regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice; and (b) providing for social welfare and reform; or (c) throwing open Hindu religious institutions of a public character to all classes and sections of Hindu.

Article 26 guarantees to every religious denomination, and to every sect, branch, or splinter group, the freedom to manage its own religious affairs. This freedom includes the right (a) to establish and maintain institutions for religious and charitable purposes; (b) to manage its own affairs in matters of religion; (c) to own and acquire movable and immovable property; and (d) to administer such property in accordance with the law. This freedom again is subject to limitation when public order, morality and health require but, unlike the freedom guaranteed by Article 25, is not subject to the other provisions. The rights embodied in Articles 25 and 26 must be read along side Articles 14, 15 and 16, which prohibit discrimination on the ground of religion, thus providing an additional safeguard for religious freedom.

142. INDIA CONST. art. 25, para. 1.
143. Id. at art. 25, paras. 2(a) and (b).
144. Id. at art. 26, para. (a) through (d).
145. Id.
146. These articles respectively provide:

14. Equality before law.—The State shall not deny to any person equality before law or the equal protection of the laws within the territory of India. INDIA CONST. art. 14.

15. Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth.—(1) The State shall not discriminate against any citizen on grounds only of religion . . . .

(2) No citizen shall, on grounds only of religion . . . . be subject to any disability, liability, restriction or condition with regard to —

(a) access to shops, public restaurants, hotels and places of public entertainment; or
(b) the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public . . . .

INDIA CONST. art. 15.

16. Equality of opportunity in matters of public employment.—(1) There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State.

(2) No citizen shall, on grounds only of religion . . . . be ineligible for, or discriminated against in respect of, any employment or office under the State . . . .
Despite the Indian Constitution's comprehensive grant of religious freedom, there have been a number of situations in which religious groups have claimed that a particular state or the national government, acting under its power to promote public health, welfare, and order, have treated them too repressively. Relying on Articles 25 and 26, the state of Madras in 1951, passed an Act enabling a public commissioner to superintend and administer religious endowments of Hindu temples to make sure that the temples were properly maintained. The commissioner had the right to enter temples and, under certain circumstances, to dismiss trustees of religious institutions and appoint others in their places — or even to start administering the temple directly through one of his assistants. The trustees of the temple had to submit reports to the commissioner and receive his permission before any sale or mortgage of the immovable property of the temple could be permitted. Furthermore, surplus temple funds could be spent only in accordance with the purposes listed in the Act, and particular expenditures for these purposes had to be approved by a deputy commissioner.

In *Shirur Math* the Supreme Court of India sustained some, and invalidated other parts of this Act. The temple priests asserted that the Act was invalid, pointing to Article 26(b), which gives each religious denomination the right "to manage its own affairs in matters of religion." The Court held unconstitutional those parts of the law that gave the commissioner an unrestricted right of entry and complete control over surplus income, required the temple heads to appoint a manager for the secular affairs of the institution, obliged the temple to pay up to five percent of its annual income to compensate the state for the services the government rendered, and granted the state the right to administer its property in accordance with law. However, it upheld those sections of the Act allowing the commissioner to modify the budget of Hindu religious institutions, and said that he could regulate temple expenditures on religious ceremonies even though it was the religious denomination that had the right to determine what ceremonies were essential to the faith. In 1959, Madras passed a new law providing for the retention of a state's power to prevent the abuse of temple funds, but limiting the right of entry and giving the temple priests control over

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147. The Republic of India is composed of 24 States and 7 centrally administered Union Territories. *The Statesman's Yearbook*, supra note 82, at 644.
149. *Id.*
151. *Id.* at 284.
152. *Id.* at 286.
153. *Id.*
surplus funds.

In the case of Devaru v. State Mysore, a sect of the Gowda Sarawath Brahmins argued that an Act providing that untouchables "shall be entitled to enter any Hindu temple and offer worship therein in the same manner and to the same extent as Hindus in general" was unconstitutional under Article 26(b), which granted each religious denomination "the right to manage its own affairs in matters of religion." The Court noted that Article 25(2)(b), which allows the state to throw open Hindu religious institutions of a public character to all classes and sections of Hindus, and Article 26(b) were in literal conflict. To resolve this conflict, the Court held the Act valid insofar as it required the Hindu temples to admit untouchables most of the year but unconstitutional as to prohibit the Brahmins from excluding untouchables and other members of the general public from the temples while its most sacred ceremonies were being held.156

Additionally, another example of repression arises out of the Hindu belief that the humble cow is a sacred animal. Most Indian states have passed cow slaughter bans under the protective umbrella of Article 48.157 In Quarashi v. Bihar, the Indian Supreme Court was confronted squarely with the question of whether these bans were an unconstitutional infringement of the rights of Moslems to freely practice their religion by sacrificing cows on their festival of Bakr Id. The Court, in upholding this legislation, put itself in the position of a group of Moslem theologians. It found, first of all, that it is the duty of every free Moslem to offer a sacrifice on Bakr Id. However, the Court observed that the sacrificed animal does not have to be a cow, even though Indian Moslems had been sacrificing this particular animal from time immemorial. The Court reasoned that the religious requirements of Bakr Id can be satisfied by the slaughter of a goat for one person or a camel for seven persons. While it is true that a family might not be able to sacrifice seven goats, the Court concluded that the compulsion to sacrifice a cow is economic, not religious. Since cow slaughter on Bakr Id was not made obligatory by Islam, its prohibition under an otherwise valid law was held not to have infringed the religious liberties of Moslems.158

Another event, which to some Indian Moslems seemed to re-

155. Id. at 267-68; see INDIA CONST. art. 26(b) supra note 138.
156. Id. at 269.
157. INDIA CONST. art. 48 reads: "The State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country."
159. Id.
present serious repression of their religious liberties, involved Aligarh Moslem University, the intellectual center of Indian Moslems, and before Pakistan’s independence, the source and intellectual center for the movement to develop a separate Moslem state in Pakistan. In 1951, the Indian government passed a law providing that non-Moslems could become members of the University “Court,” the institution’s governing body, and gave the president of India the authority to appoint the vice-chancellor, the real head of the University. Hindu extremists were interested in erasing the Moslem character of the University but the government was motivated simply by a desire to insure that the University would adhere to the provisions of the constitution that prohibited institutions receiving state aid to require religious instruction of any student or to discriminate in admissions on account of religion, caste or language.\textsuperscript{160}

In 1965, a riot erupted against the secularist Moslem Vice-Chancellor of the University. The rioters were conservative Moslem students protesting a proposal that would have had the effect of reducing the percentage of Moslems in the medical and engineering colleges. The Vice-Chancellor was injured, and the Indian Minister of Education, himself a secularist Moslem, had the union cabinet pass an ordinance that reduced the power of the University Court and vested greater authority in the hands of the government-selected Vice-Chancellor.\textsuperscript{161} Thus, the effect of the 1951 and 1965 reforms were to put Aligarh University under secular control.

The Moslems who wanted to return Aligarh Moslem University to Moslem control brought suit in court to have the 1951 statute and the 1965 decree declared invalid. They relied on Article 30(1) of the Indian Constitution, which gives religious and linguistic minorities “the right to establish and administer educational institutions of their choice.”\textsuperscript{162} Their contention was that this statute and decree deprived the Moslem minority of the right to administer its own educational institution. The Indian Supreme Court, however, upheld the constitutionality of these laws.\textsuperscript{163} It found, first, that under Article 30(1), the only educational institutions that minorities have the right to administer are those that they have established. The predecessor of the Aligarh Moslem University, a college created under the auspices of another university, may have been set up by Moslems, but the establishment of Aligarh University took place when it was raised from college to university status, the result, the Court con-

\textsuperscript{160} See Wright, \textit{Muslim Education in India at the Crossroads: The Case of Aligarh}, 39 \textit{Pac. Aff.} 50 (1966).
\textsuperscript{161} \textit{Id.}
\textsuperscript{163} \textit{Id.} at 672-73.
tended, of an act of the Indian government in 1920, although admittedly passed at the request of India’s Moslems. Therefore, Aligarh Moslem University, the Court concluded, was established by the government of India and not the Moslem community; the Moslem community thus had no constitutional right to continue to administer it.\footnote{164}

To obtain political support, Prime Minister Desai, in 1978, decided to let the University revert to Moslem control. Nonetheless, Hindu-Moslem tension still exists, making Moslems feel like second class citizens, due in large part to such factors as the cow slaughter legislation, the severe unemployment among educated Moslems, and the significant under-representation of Moslems in government service.\footnote{165}

Although Article 25(1) of the Indian Constitution grants all persons the right to propagate as well as practice religion, Christianity, which is a proselytizing faith unlike Hinduism, has been restricted from growing in India.\footnote{166} During the years of British rule in India, Christianity became the religion of a significant number of Indians, due to the efforts of European missionaries. As a result, today Christian missionaries are viewed as agents of western imperialism, and so are suspect in certain Hindu and radical quarters.\footnote{167} In 1955, there were over 5,700 foreign missionaries in the country, but by 1972 there were only 3,000.\footnote{168} Several states have passed “anti-conversion” bills aimed mainly at Christian missionaries.\footnote{169} Various Christian evangelists have been arrested under these laws, which have been sustained by the Indian Supreme Court on the theory that the right to propagate one’s religion implies the right to give an exposition of its tenets but not the right to convert.\footnote{170} Moreover, Hindu fanatics have beaten Christian missionaries; local governments have jailed converted Christians and have further refused to allow Christians to build churches.\footnote{171}

The most recent sectarian conflict is occurring in the state of Punjab, considered the homeland of most of India’s thirteen million Sikhs.\footnote{172} The Sikhs have sought greater political autonomy for the

\footnotesize
\begin{itemize}
  \item \footnote{164}{\textit{Id.} at 670.}
  \item \footnote{165}{\textsc{N.Y. Times}, Oct. 25, 1973, at 2; \textsc{97 New Statesman}, Jan. 26, 1979, at 110; \textsc{N.Y. Times}, Aug. 28, 1980, at A5; \textit{Notes on Church-State Affairs}, 25 \textsc{J. of Church and State}\ 381 (1983).}
  \item \footnote{166}{\textit{See infra} notes 167-71 and accompanying text.}
  \item \footnote{167}{\textsc{M. Bates, supra note 15, at 271; \textit{Lesser, The Evangelization Crisis in India}, 211 \textsc{The Cath. World} 166, 168 (1970); \textit{The Tablet} (London 233:144, Feb. 10, 1979).}}
  \item \footnote{168}{\textit{Liberty}, July-Aug., 1972, at 23.}
  \item \footnote{169}{\textit{See Liberty, Nov.-Dec., 1970, at 18.}}
  \item \footnote{170}{\textit{See, e.g., Rev. Stanislaus v. State of M.P.}, [1977] 1 \textsc{S. Ct. Cas.} 677.}
  \item \footnote{171}{\textit{Lesser, supra note 167, at 166-171; \textit{The Statesman}, May 21, 1979, at 1.}}
  \item \footnote{172}{“Sikhism” is a Hindu religious sect founded in Northern India about 1500 B.C. and is based on the belief in one God, and on the rejection of the caste system and of idolatry.}
\end{itemize}
Punjab state and greater security for Sikhs as a religious minority in predominantly Hindu India. In the summer of 1984, Sikh militants defied the Indian government and seized control of the Golden Temple at Amritsar, the Sikh's holiest temple. The Indian Army sealed off the temple and three days later drove the Sikh militants out. Upwards of a thousand people were killed and 1450 were arrested. Four months later, Prime Minister Indira Gandhi was assassinated by Sikh extremists who claimed their act was in revenge for the attack in the Golden Temple. Widespread rioting followed, causing over 1,000 deaths. Over 4,500 citizens were preventively detained under the state's National Security Act. Among those were Sikh priests and religious preachers, detained for making "objectionable" or "inflammatory speeches." Finally, in 1986, the Sikhs declared the independence of Punjab as the nation of Khalistan.

Although India continues to be beset by sectarian strife, the government has chosen not to remedy the conflicts by prohibiting the religious practices of one or more religious groups. Instead, India has sought to unite its religiously heterogenous population by sedulously accommodating them. In this way, the government hopes that its people will be bound together by the feeling that, whatever their religions may be, Indian people belong to one brotherhood of Indian citizens. However, this policy of tolerance is tempered with the understanding that government action will be swift and severe if a religious group attempts to use violence to achieve supremacy.

D. Case Study: Union of Soviet Socialist Republics

There is probably no place in the world where the struggle between church and state is played out so persistently, with such strong ideological viewpoints, and through such elaborate mechanisms, as it is in the Soviet Union. In the U.S.S.R. there is a widely institutionalized and elaborate system of "atheization" of the population that has now matured through a seventy-year history. Because it is an extreme case of secularization, the poignancy and clarity of the conflict make evident many dimensions only dimly perceived in the countries already discussed.
The number of religious groups in the U.S.S.R. is large and diverse. These include: Russian Orthodox, Moslem, Georgian Orthodox, Roman Catholic, Armenian Apostolic, Protestant, and Jewish. Article 52 of the Soviet Constitution expressly grants citizens the rights "to profess or not to profess any religion and to conduct religious worship or atheistic propaganda," but excludes the right to conduct "religious propaganda" or what believers regard as preaching and teaching religious beliefs. The proliferation of religion is viewed as counter-productive to the success of communism as it poses a threat to the state's goal of securing the total allegiance of its subjects.

Despite the Soviet Union's attempt to eradicate religious devotion, religious groups still exist, both openly and through underground networks. A plurality of the believers adhere to the tenets of the Russian Orthodox Church. The fate of Russian Orthodoxy under Russian communism has been a checkered one and its future remains difficult to predict. Former Premier Nikita Khrushchev closed two-thirds of the 20,000 churches opened after World War II, and the decline has continued ever since. In 1974, figures leaked by the government's Council on Religious Affairs suggested that 7,500 churches were open, 1000 of them were not in use. Currently, six monasteries and ten convents survive, down from 69 in 1985, and several hundred before 1917.

The Russian Orthodox Church was disestablished by the Bolsheviks in 1918, soon after they had come to power. The churches were required to forfeit their right to own buildings. Lenin mandated that: protection for freedom of religion and belief included freedom not to profess any religion, to have atheistic beliefs and to propagandize them without restrictions; no one should be subject to discrimination on religious grounds or for holding atheistic beliefs; freedom of conscience presupposed the inadmissibility of using religion to the prejudice of the State, society or its citizens; education was secular in many countries and schools were separate from the church; and no provision of the Declaration could permit interference in the internal affairs of States. 1981 U.N.Y.B. 880.

The Soviet Union made no reference to religion in its census, so it is not known with any degree of certainty how many adherents its religious groups and sects have. The government tends to play down the number of believers in God in the U.S.S.R., while foreign observers sympathetic to religion imply that this number is substantial.

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181. U.S.S.R. CONSTITUTION art. 52 reads:

Citizens of the U.S.S.R. are guaranteed freedom of conscience, that is, the right to profess or not to profess any religion, and to conduct religious worship or atheistic propaganda. Incitement of hostilities or hatred on religious grounds is forbidden.

In the U.S.S.R. the church is separated from the state, and the school from the church.


184. LIBERTY, supra note 183, at 19.

185. Id.

186. Id.
that churches not instruct children, even if their parents desired religious training. Religious activity was restricted to churches registered with the states. 187 During the 1920s, thousands of church leaders were imprisoned and murdered by the government. In the 1930s, Stalin closed more than 10,000 churches, and denied registration to new ones as was required by law. During the purges of the 1930s, scarcely a priest or pastor remained actively at his post; most who tried were imprisoned. 188

During World War II, the Soviet regime needed the support of the Russian Orthodox Church in the struggle with Germany. Despite antagonistic relations with the government, Orthodox churches asked their parishioners to go to the defense of the country. In September 1943, Russian Orthodoxy was rewarded for its support in the form of less repression. It was allowed to elect its own patriarch and open a few seminaries; it received recognition as a judicial person; and it was given back some churches that had been previously shut down. 189

After 1955, the Church leaders helped Soviet foreign policy by holding frequent meetings with Christian leaders in the West. However, in 1959, for reasons that are not very clear, the Khrushchev government began a new era of massive repression of the Church. 190 By 1962, it was estimated that only half the Orthodox churches existing in 1959 were still open. Monasteries and seminaries were closed, and some church officials and priests were jailed for economic crimes or for preaching religious doctrines considered to endanger the public welfare. 191 This particular persecution ended in 1964, and the Orthodox Church and the Soviet state now exist in an uneasy modus vivendi. 192

In addition to the Russian Orthodox Church, the Roman Catholic Church also exists in an uneasy state within the Soviet Union. The Soviet Union and the Roman Catholic Church are natural enemies for several reasons. Both are international movements that at times claim that their world view is the absolute truth. Furthermore, the Communist Party believes that the Catholicism of Soviet nationalists hinders their acceptance of communist philosophy. 193 Between 1919 and 1925, the government imprisoned numerous members of the Catholic hierarchy. Further, the massive repression that hit the

188. Liberty, supra note 183, at 19.
189. Id.
190. Supra note 183.
191. Id.
Russian Orthodox Church between 1929 and 1932 did not spare the Catholic Church. After World War II, the Soviet government jailed or exiled about half of the Catholic clergy in Latvia and Lithuania, and put to death over a thousand Ukranian Catholic priests. Following Stalin's death, most of the priests exiled in the immediate postwar period received amnesty, together with most other political prisoners.\footnote{194}

In Lithuania, the Roman Catholic Church has proved remarkably durable, both in membership and structure.\footnote{195} Though they freely conduct Mass, Catholic priests in Lithuania are frequently arrested for teaching catechism to children and preparing them for First Communion.\footnote{196} Government officials in the Soviet Socialist Republic close the churches at will. Since 1972, the underground publication \textit{Chronicle}, in an unbroken stream of information that the authorities have been unable to suppress, has informed the world about religious persecution in Lithuania.\footnote{197}

In addition to the Catholics in Lithuania, Ukranian Catholics in 1983, influenced by the Polish Pope in Rome, began to present their case to the Soviet government and the world. Isoyf Terelya and others formed the “Action Group for the Defense of the Rights of Believers and the Church.”\footnote{198} In 1984, more than 900 people surrendered or burned their passports in an organized act of civil disobedience.\footnote{199}

While many Roman Catholics have been persecuted for their beliefs, the religious group most persecuted is the Baptists.\footnote{200} State
persecution has caused Baptists and evangelicals to scatter to remote areas of the country and has divided the Baptist church.\(^{201}\) In 1961, the government forced the All-Union Council of Evangelical Christians and Baptists (AUCECB) to accept new regulations limiting the rights of the church to evangelize, even in the context of official services.\(^{202}\) Failure of the Baptist leadership to offer effective resistance to these measures led to the emergence of an independent opposition group, the Reform Baptists. This group has shown a high degree of organization and determination in the face of what is now more than a quarter of a century of state opposition. As a result, the AUCECB has received such concessions as being allowed to print the Baptist edition of the Bible in limited quantities.\(^{203}\)

The Reform Baptists, although not differing from the AUCECB on theological grounds, are more assiduous proselytizers and demand less state control over individual Baptist churches. Much of their conduct is in clear violation of the Soviet criminal law.\(^{204}\) For example, believers have been arrested, and approximately one half are cases involving “dissenting” Baptists. As of October 1986, there were 400 known cases of religious believers being imprisoned for participating in so-called unauthorized religious ceremonies. U.S. State Dept., Human Rights and Soviet-American Relations, Current Pol'y No. 882, at 2 (1986).

201. Lucey, supra note 183, at 17.
203. Id.
204. There exists six articles of the Soviet criminal codes which make it possible for Soviet authority to ignore the constitutional and other legal devices for protecting human rights. They are:

*Article 64:* Defines as an act of treason “flight abroad or refusal to return from abroad to the U.S.S.R.”.

*Article 70: Anti-Soviet Agitation and Propaganda.* Agitation or propaganda carried on for the purpose of subverting or weakening the Soviet regime or committing particular, especially dangerous crimes against the state, or the circulation, for the same purpose, of slanderous fabrication which defame the Soviet state and social system, or the circulation or preparation or keeping, for the same purpose, of literature of such content, shall be punished by deprivation of freedom for a term of 6 months to 7 years, with or without additional exile for a term of 2 to 5 years, or by exile for a term of 2 to 5 years.

*Article 72: Organizational Activity Directed to Commission of Especially Dangerous Crimes against the State and also Participation in Anti-Soviet Organizations.* Organizational activity directed to the preparation or commission of especially dangerous crimes against the state, or to the creation of an organization which has as its purpose the commission of such crimes, or participation in an anti-Soviet organization, shall be punished in accordance with Articles 64-71 of the present code.

*Article 142: Violation of Laws on Separation of Church and State and of Church and School.* The violation of laws on the separation of church and state and of school and church shall be punished by correctional tasks for a term not exceeding one year or by a fine not exceeding 50 roubles.

*Article 190-1: Circulation of Fabrications known to be False which Defame Soviet State and Social System.* The systematic circulation in an oral form of fabrications known to be false which defame the Soviet state and social system and, likewise, the preparation or circulation in written, printed or any other form of works of such content shall be punished by deprivation of freedom for a term not exceeding 3 years, or by correctional tasks for a term not exceeding one year, or by a fine not exceeding 100 roubles.

*Article 227: Infringement of Person and Rights of Citizens under Appear-
ple, they refuse to register with the state. By teaching Bible classes, by preaching in public places, and by claiming that this world is not of much importance, they have been held to have violated Article 227.208

Perhaps the most beleaguered of the officially recognized religious communities are the Jews. When the Bolsheviks came into power one of the customs of the Russian Empire they wished to eradicate was anti-Semitism.206 But even during the early days of Bolshevism, overtly religious Jews suffered from disabilities similar to those afflicting other religious groups. Jewish religious schools were closed in the 1920s, and periodic efforts were made to prevent Jews from keeping the Sabbath and celebrating festivals such as Passover or Yom Kippur.207 In 1959, a new campaign against Judaism commenced, with the state closing down many synagogues and punishing persons who baked matzot.208 A campaign against “speculators” in the early 1960s was anti-Semitic: Jewish offenders were labelled by the government, and a majority of those eventually executed were Jews.209

As of 1986, only sixty-nine synagogues remained open, compared with 5,000 in 1917. The mass imprisonment of rabbis in the 1930s as Nazi spies and the government’s refusal to allow a yeshiva to train new rabbis until 1956 have led to a serious shortage of trained religious leaders.210 Except for the publication of a few calendars and prayer books in 1956, no Jewish literature has been printed since 1917.211 The study of the Hebrew language is prohibited as a “Zionist” activity.212

Many Soviet Jews desire to emigrate to Israel, but the Soviet Union does not want to lose the services of its Jewish scientists, antagonize allied Arab states, or see other minority groups clamoring to leave. Initially, it allowed only a few hundred Jews to exit each
year. In 1979, an all-time high of 51,300 Jews were allowed to leave.\textsuperscript{213} Since then, however, Jewish emigration has dropped to 800 or fewer per month.\textsuperscript{214}

All the laws discussed apply to all religious groups in the U.S.S.R. In essence, these laws limit rights of churches and synagogues to conduct religious services and also prevent them from proselytizing, performing traditional rites, forming discussion groups, and conducting religious instructional classes. They thus become weapons that the Soviet state can use against religious groups.\textsuperscript{215} In addition, the government holds power over religious groups because no congregation may be organized without its consent and since the churches are dependent on the state for permission to print literature, acquire real estate or personal property. However, the most potent device the polity uses against persons who have religious beliefs and wish to display them publicly is a very simple one: no member of the Communist Party may participate in religious ceremonies.\textsuperscript{216} Since political power and professional success require Party membership, Soviet citizens who wish to be overtly religious are almost automatically denied access to important offices and jobs.\textsuperscript{217}

The Soviet Union's present position on freedom of religion is best characterized as simple but systematic repression. Although believers are left alone on the whole, they are denied entry into positions of responsibility. Moreover, Jews and Reform Baptists at one time or another, even during periods of moderation, have been the victims of persecution and have had severe limitations placed on the exercise of their faith.\textsuperscript{218}

\textsuperscript{213} R. Vincent, supra note 82, at 81 n.37; see generally S. Baron, supra note 196, at 316-321.

\textsuperscript{214} N.Y. Times, March 31, 1987, at A23, col. 5 (reported less than 100 Jews were allowed to emigrate during each of the first three months of 1987); but see Schweid, Some Progress on Rights Seen, The Sentinel, Carlisle, Pa., Oct. 31, 1987, at B7, col. 1 (reports that during the latter part of 1987, 700 to 800 Jews were leaving monthly, 13,000 Jews have been waiting since the 1970s, and of the 1,500 Jews who applied in 1987 for exist visas, 200 have been granted).


\textsuperscript{216} The Soviet Union Through Its Laws, supra note 182, at 210.

\textsuperscript{217} See, e.g., "Let the Sighing of the Prisoner Come Before Thee" 5 O. 31-33 (1984) (discusses cases of employment discrimination on the basis of religious belief).

\textsuperscript{218} In recent months Soviet Premier Mikhail Gorbachev has hinted at relaxation of government restrictions regarding worship and emigration. See Liberty, supra note 183, at 17, 27 and N.Y. Times, supra note 215, at 1. The Soviet government has become increasingly concerned with the media's representation of religious persecution within its boundaries. The government believes it can effect favorable deals with the West by efficiently manipulating constraints on Western decision-makers. Whether the verbal assertions of a freer society will result in a sustained policy of a tolerant religious practice or is just a temporary cosmetic tactic, only time will determine. It is worth noting, however, that for the first time in more than fifty years, Kosher food is now available in Moscow, imported in regular shipments from Hungary. N.Y. Times, Nov. 21, 1987 at B3, col. 1. For the first time in forty years, the Russian Orthodox church has been allowed to receive Bibles from abroad. The Stockholm-based Institute for Translation of the Bible has announced that it has been permitted to ship 10,000
E. Observations

Although seven years have passed since the adoption by consensus of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, the practices against which the Declaration was directed are still evident in varying forms and degrees. However, the principle of religious liberty at least in some modified form, has been affirmed by most every national government as a part of its law. The outright denial of religious liberty is now viewed everywhere, with the exception of Albania, as morally and legally unacceptable. Guarantees of religious liberty, even if highly restricted, now appear in most states' constitutions, including those of socialist governments that often espouse anti-religion and commitment to atheism. While there is a wide divergence between the religious freedom proclaimed in the constitutions of states and the international instruments regarding religious liberty and its implementation by governments, the truth is that even in those countries in which religious liberty is by no means descriptive of actual conditions, the principle of religious liberty now has normative value.

IV. Strategies for Closing the Gap Between Principle and Practice

Let the groans of the prisoners come before thee; according to thy great power preserve those doomed to die! Return seven-fold into the bosom of our neighbors the taunts with which they have taunted thee, O Lord!

Two approaches have been proposed within the international community for bringing the practices of states into accord with the principle of religious liberty. One approach emphasizes the creation of a covenant; the other emphasizes education.

A. Creating a Covenant

The drafting of a convention on the elimination of all forms of religious intolerance and discrimination based on religion or belief


221. See, e.g., UKRAINIAN S.S.R. CONST. arts. 32, 50; CZECHOSLOVAK CONST. art. 32; U.S.S.R. CONST. art. 52.

222. Psalm 79:11-12.
has been suggested as a logical follow-up to the 1981 Declaration. Such a convention could incorporate the principles and rules of the Declaration on Religious Intolerance, including a definition of religion, a prohibition against discrimination on grounds of religion or belief, and a definition of religious groups. It could also include provisions setting forth: (1) the right not to have a religion or belief; (2) the right to change religion or belief; (3) the right to free access to holy places; and (4) the right of parents, as the primary sources of moral education for children, to provide them with instruction on religion or belief without state or other external interference. Further, the convention might include implementation machinery patterned along the lines established in the International Covenant on Civil and Political Rights, or other instruments such as the International Convention on the Elimination of All Forms of Racial Discrimination and the Convention on the Elimination of All Forms of Discrimination against Women.

While the drafting of a convention would appear to be the next logical step to further establish the principle of religious liberty in international law and to force states to conform their conduct to the aspirations expressed in the Declaration on Religious Intolerance through the use of a legally binding instrument, some profound limits and weaknesses presently exist in the international documents in this area that must be recognized. First, it is important to note that not all states have ratified the International Covenant on Civil and Political Rights. Thus, the competence of the Human Rights Commission to hear victims' complaints and the Optional Protocols that provide for enforcement have largely been ignored.

Second, the only true method to ensure that all citizens are free to practice their religion is for individual states to guarantee it to their people through domestic legislation. As has been seen, most countries do afford such rights in their national law. The problem of

223. See supra notes 45, 65 and accompanying text.
224. See, e.g., THE SOVIET UNION THROUGH ITS LAWS, supra note 182, at 211 (Jews are a separate race/nationality in the U.S.S.R.); see also 1981 U.N.Y.B. 880-1 (discusses conflicts between states in the drafting of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief).
225. CIVIL AND POLITICAL COVENANT, supra note 20, at art. 48, 49 (ratified by individual states and in effect after thirty-five have notified Secretary-General).
226. 660 U.N.T.S. 195, part III (elaborate procedures including requirement of ratification by 27 states before effective, right to make reservations, and procedures for denunciation).
229. See infra notes 236 and 238 and accompanying text.
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religious persecution does not, however, derive from transparently anti-religious legislation. In fact, as illustrated by the practice of the Soviet Union, one mark of a sophisticated totalitarian state is that it postures its regulations concerning religious practice in neutral, non-religious terms.  

Only primitive states are so bold as to openly assault religious liberty. Therefore, formal protections of religious liberty provided in a convention might well be helpless against a state’s concern with the alleged detrimental effects of religious practice on the welfare of the nation. Consequently, it is necessary to probe beyond the formal protections of religion afforded by the state and question criminal and administrative laws and procedures that effectively limit religious liberty.

Third, the limits placed on religious liberty because of concern over “public order, health, and morals” provide a further leaky valve through which religious liberty can flow. Given, for example, the use by the U.S.S.R. of mental hospitals for treating dissidents, it does not take much imagination to see that the use of the concept of “health” can be quite elusive in an Orwellian future. Likewise, in the United States, some jurisdictions have adopted conservator statutes that may be used to attack new religions and that employ psychological jargon to describe the commitments and, often, counter-culture ideals of the convert. These statutes, designed to permit and pro-

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230. See supra note 205 and accompanying text.
231. AMNESTY INT’L REPORT, supra note 206, at 3; Schweid, supra note 209; A State Program of Physical and Psychological Abuse, AMNESTY INT’L BULL. no. 6 (Fall 1985).
232. See, e.g., sections 1800 and 1801 of the California Probate Code which states:
   If the need therefor is established to the satisfaction of the court and the other requirements of this chapter are satisfied, the court may appoint:
   (a) A conservator of the person or estate of an adult, or both.
   (b) A conservator of the person of a minor who is married or whose marriage has been dissolved.

CAL. PROBATE CODE § 1880 (West 1981).

Subject to Section 1800:
(a) A conservator of the person may be appointed for a person who is unable properly to provide for his or her personal needs for physical health, food, clothing, or shelter, except as provided for such person as described in subdivision (d).
(b) A conservator of the estate may be appointed for a person who is substantially unable to manage his or her own financial resources or resist fraud or undue influence, except as provided for such person as described in subdivision (d). Substantial inability may not be proved solely by isolated incidents of negligence or improvidence.
(c) A conservator of the person and estate may be appointed for a person described in subdivisions (a) and (b).
(d) A limited conservator of the person or of the estate, or both, may be appointed for a developmentally disabled adult.
  (1) Such limited conservatorships shall be utilized only as necessary to promote and protect the well-being of the individual, shall be designed to encourage the development of maximum self-reliance and independence of the individual, and shall be ordered only to the extent necessitated by the individual's proven mental and adaptive limitations.
  (2) The conservatee of the limited conservator shall not be presumed
vide for deprogramming, are frighteningly similar to the Soviet
“treatment” of dissidents. Like “health,” the “public order” ex-
ception is another subterfuge for religious intolerance. Indeed, the
tendency of an autocratic state or agency is always to find its own
interest self-authenticating, compelling and prevailing.

Fourth, any future convention must not permit the principle of
religious liberty to descend to mere religious toleration. Religious lib-
erty is more than mere permission to use a piece of property upon
which religious persons may carry out their lives; rather, it is the
right to participate fully and vigorously in a public life in which their
values and beliefs play a vital part. This means that religious liberty
does not rest on the irrelevance of religion, but on the relevance of
faith, moral life, conscience, and commitment to the life of the state.
There is, in effect, a powerful state interest in protecting religious
life even when a function of that life is to call the state’s policies and
practices into question.

Fifth, in order for any convention to be successful it must be
enforceable. Presently, international law provides that each state
must voluntarily incorporate the right to religious freedom into its
national legislation and assure its adherence. General interna-
tional protection currently rests upon the Covenant on Civil and Po-
litical Rights and its Optional Protocol. The Protocol enables the
Human Rights Committee to receive and consider claims of alleged
to be incompetent and shall retain all legal and civil rights except those
which by court order have been designated as legal disabilities and have
been specifically granted to the limited conservator.

The intent of the Legislature, as expressed in Section 4501 of the
Welfare and Institutions Code, that developmentally disabled citizens of
this state receive services resulting in more independent, productive, and
normal lives and that such services shall be the underlying mandate of
this division in its application to adults alleged to be developmentally
disabled.

CAL. PROBATE CODE §§ 1801 (West 1981). See also OKLA. STAT. ANN. tit. 58, § 851 (West.
Supp. 1987) which states:

When it is represented to the court upon verified petition of any relative or
friend, that any person is insane, or from any cause mentally incompetent to
manage his property, the court shall cause notice, by any means deemed proper
to the judge, to be given to some known near relative of such alleged insane or
incompetent person who is not the petitioner, of the time and place of hearing
the case, not less than five (5) days before the time so appointed, and such in-
sane or incompetent person, if able to attend, must be produced before the court
on the hearing. The relative to be given such notice shall be designated by the
judge. If there be no known relative, near or remote, or if the whereabouts of all
relatives be unknown or unascertainable from available sources, the petition
shall so allege.

For discussion of case law, see Annotation, Validity of Guardianship Proceeding Based
on Brainwashing of Subject By Religious, Political, or Social Organization, 44 A.L.R. 4th 1207
(1986).

233. See supra note 232.
235. See supra note 77 and text.
victims of violations of religious freedom. After reaching a conclusion, on the basis of materials submitted by the individual complainant and by the state, the Committee communicates its views to parties. Thus, only individuals themselves, and not the groups or organizations of which they may be members are permitted to deal with the Committee. This forecloses the participation of organizations that have been established with the special aim of protecting people whose human rights have been violated. Such organizations are more capable than any individual can possibly be at finding necessary materials, researching legal questions, conducting preliminary investigations, contacting the Committee, and initiating procedures that protect human rights. Their activities could be especially significant when a victim of a violation has reason to abstain from complaints to agencies of the United Nations because of some peculiar conditions in his country. But owing to the defect of the present general covenants, organizations seem juridically unable to help a victim, and individuals themselves generally seem too weak to actually use their formal opportunities for redress. This fact creates an urgent need for change and any future convention should address it. A duty should be imposed upon the Committee to act on petitions of non-governmental organizations and groups, in addition to its existing obligation to act on individuals' petitions.

Finally, any future covenant should expressly encourage states to use non-military force to coerce other states into honoring the right of religious freedom. The use of non-military economic force for the purpose of enforcing human rights is not a breach of international law, but is a fulfillment of the obligations arising under the

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237. For example, Amnesty International, Christian Response International, Keston College Research and Study Center, Baptist World Alliance, World Jewish Congress, and International League for Human Rights, are such organizations.

238. Such a provision could be based on either the European Convention, supra note 79, art. 25 or the American Convention, supra note 79, art. 61. According to the European Convention, the Commission may receive petitions addressed to the Secretary-General of the Council of Europe from any person, non-governmental organization, or group of individuals claiming to be the victim of a violation by one of the contracting parties of the rights set forth in the Convention. The right to bring a case before the Court, however, belongs to the Commission and contracting parties only, and not to individuals, their groups, or organizations. European Convention, supra note 79, at art. 48. The American Convention introduces the same rule for the Inter-American Court. See American Convention, supra note 79, at art. 61, para. 1. But the jurisdiction of the Inter-American Commission differs in some ways. Proceedings in the Commission can also be initiated by any person or group of persons complaining of violations of the Convention by states parties even if other persons beside themselves were victims of violations. Id. at art. 44. Similar complaints from a non-governmental entity, however, may be received only on the condition that it has been “legally recognized in one or more member states” of the Inter-American Organization. Id.
The world community, through the United Nations Security Council, has the right to assert and maintain international obligations and world order. The Security Council, therefore, would be well within its powers if it characterized any gross violation of religious freedom as a “breach” of, and a “threat” to, world peace, and in contravention of international law. Upon such characterization, the Council would have the authority to invoke Article 41 of the Charter against the violators, and demand that other signatory states implement whatever measures the Council decided were necessary. Of course, the problem that is always encountered when seeking to invoke the power in the Security Council, is that many of the states that violate the right to religious freedom are supported by member states possessing veto power.

B. Domestic Initiative and Self-Education

An alternative and/or complimentary approach to the drafting of a separate convention is to concentrate on urging states, themselves, to adopt appropriate constitutional, legislative, judicial, and administrative measures to ensure that all rights set forth in the Declaration on the Elimination of All Forms of Religious Intolerance and Discrimination Based on Religion or Belief be adequately and fully protected by national law. National court decisions are more likely to ensure religious freedom than the mere existence of legal provisions in domestic law that may not be effective in practice.

Arguably, a separate convention on the elimination of religious intolerance is not strictly necessary because standards are already firmly established at the international level, although they are not always followed. The binding obligations assumed by states under the International Covenant on Civil and Political Rights are explicit in this area. Opponents of a new convention dedicated solely to religious freedom argue that states should be encouraged to ratify the International Covenant on Civil and Political Rights and its Optional Protocol, which requires periodic reporting by all states, instead of imposing on them the heavy burden of adhering to yet another reporting system established by a separate convention.

Using this approach in combination with political pressure, an extensive mass media campaign would be used to educate individuals

239. The U.N. Charter prohibits the threat of the use of force only when such methods violate the Charter or the purposes espoused by the Charter. U.N. CHARTER, art. 2, para. 4. However, the promotion of human rights is one of the major purposes underlying the Charter. U.N. CHARTER, art. 1, para. 3.

240. U.N. CHARTER, art. 41 provides: “The Security Council may decide what measures not involving the use of armed force are to be employed to give effect to its decisions, and it may call upon the Members of the United Nations to apply such measures.”

241. See supra notes 55-61 and accompanying text.
RELIGIOUS FREEDOM everywhere of the international standards protecting their right to religious freedom. States and United Nations agencies should distribute texts of the international instruments on human rights as widely as possible. Furthermore, international standards for the protection of freedom of religion or belief should be kept under continuous review in light of experience.\footnote{242}

This strategy for eliminating religious intolerance and securing religious freedom for all people is the method that the member states of the United Nations are presently employing.\footnote{243} In 1986, the Human Rights Commission, by a vote of twenty-six to five, with twelve abstentions, established the position of rapporteur on religious intolerance.\footnote{244} It is the ongoing duty of the rapporteur to examine incidents and governmental actions world-wide that are inconsistent with the provisions of the Declaration on the Elimination of Religious Intolerance and to recommend remedial measures.\footnote{245}

V. Conclusion

It is regrettable that, at the end of the twentieth century, religious intolerance and bigotry should remain, as they have over the centuries, a prime cause of division within and between states. Religious liberty belongs to the realm of domestic and international law. The existing state of religious freedom is known all over the world. Any suggestions about its improvement must be attentively studied and seriously discussed. But it would be a gross mistake to think that even perfect law would alone ensure the desired results, without other methods and means. Unfortunately, contemporary history knows many instances when states, which have ratified existing international covenants and declared recognition of human rights in domestic law, have disregarded their own duties and obligations. Under such circumstances, neither established legal regulation nor introduced legal protection will have any effect.

In modern times, however, the movement in favor of religious liberty is so authoritative and influential that even the most impudent transgressors try to conceal the criminality of their behavior,

\footnote{242} As was discovered in the comparative analysis, even in those states that have ratified and supported all the legal instruments in this area, religious liberty as articulated in the 1981 Declaration is not fully or always realized.


\footnote{244} \textit{United Nations, Dept. of State Bull.} Oct. 1986, at 62.

\footnote{245} \textit{Id.}
and, as often as not, are compelled to capitulate under the pressure of irrefutable exposure and universal blame.\textsuperscript{446} This opens the way to efficacious help to victims of inhumane activity when law has become powerless to attain its designated goals. Those states that have made violations of religious freedom their everyday policy must be surrounded by universal contempt. And if the joint efforts of progressive humanity do not re-educate confirmed state violators, they will at least be able to diminish the number or mitigate the force of violations. Together with legal regulations, sooner or later this will bring the success so necessary for the Rozkalns\textsuperscript{447} of this world and so important for humankind.

\begin{quote}
Then we thy people, the flock of thy pasture, will give thanks to thee forever; from generation to generation we will recount thy praise.\textsuperscript{448}
\end{quote}

\textit{Scott A. Burr}

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\textsuperscript{246} See supra note 219.

\textsuperscript{247} As a result of world-wide attention and increased pressure, the Soviet Union released ninety-four prisoners of conscience in February 1987. The release had much to do with international politics and the clamor raised by concerned organizations and persons in the West. Prayer vigils, letters, congressional representations, and demonstrations all played a part in convincing the Soviets that the release of prisoners of conscience would win them good will, or at least, a lessening of international bad press. As this Comment was prepared for print it was announced by the Christian Rescue Effort for the Emancipation of Dissidents that Janis Rozkalns was among those "political" prisoners released. No further details are known at this time about his release. \textit{Creed Report}, supra note 198, at 28; see also \textit{The Sounds of Freedom}, supra note 208, at 52; \textit{A Day in the Depths of the Gulag}, supra note 208, at 52.

\textsuperscript{248} \textit{Psalm 79:13}. 

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