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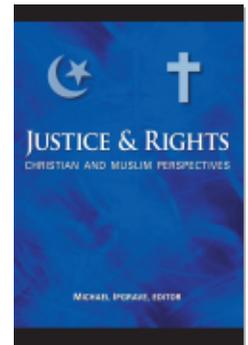
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The Barmen declaration can be seen as a direct response to one distorted pattern of political implementation of Luther’s “two kingdoms” doctrine—that led by the party of the German Christians, headed by Bishop Ludwig Müller. In opposition to his subordination of church to state, the resistance party within the German churches, uniting theologians of Calvinist and Lutheran confessions, came together to agree to a text drafted by Karl Barth (1882–1968) that, while accepting the principle that spiritual and temporal governments were united as coming from God, emphasized the possibility of their disjunction also. In the context of Germany in the 1930s, indeed, this possibility had become an undoubted reality. Over the centuries, the interpretation of Luther’s distinction of “gospel” and “law” had shifted with the gradual process of secularization, so that the latter had come to be seen as the positive law of the state rather than God’s

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law. This enabled the state to usurp more and more of the realm Luther had designated for the church, so that Christianity could be restricted to a “spiritual” space only. Under Nazi rule, this could be expressed in the slogan “Christ for the soul, Hitler for the people.”

It is to this challenge that the Barmen declaration responds, by asserting the integrity of the church as mandated by God. The influence of Barthian theology is strong, with the assertion of Christ’s authority over all aspects of life and the rejection of any sense of revelation in creation or in history other than the word of God in Jesus Christ; indeed, for this reason it was criticized by some leading Lutheran theologians.²² The primacy of the text’s focus on the ordering of the church is shown by its very form as a successive condemnation of seven “false doctrines” (*falsche Lehre*)—in other words, an anathematization of heresy.²³ Theologians of the confessing church such as Dietrich Bonhoeffer thus insisted that, following its proclamation, they were no longer an “opposition” within the church, but rather constituted the church itself: “The Barmen Declaration was a true confession to the Lord Jesus effected through the Holy Spirit. . . . [I]ts character is one that shapes and divides the Church.”²⁴

The Barmen declaration has proved an inspiration for Christians in other situations of state-imposed oppression: The idea of “confessing church,” for example, resonated strongly in apartheid-era South Africa. As against the mere possibility of passive disobedience, its theological stance seemed to many to provide a basis for active resistance. At the same time, it is a text closely related to the particular context of 1930s Germany, and questions will always be raised about the propriety of borrowing language from that time to apply to another.²⁵ It remains true that, despite its undoubted emphasis on ecclesial integrity, the Barmen declaration also points to a church faithfully and freely discharging its divine commission as being a sign of hope of the transformation that God intends and that he can bring to the realm of the state also.

I An Appeal to the Evangelical Congregations and Christians in Germany

The Confessional Synod of the German Evangelical Church met in Barmen, May 29–31, 1934. Here representatives from all the German Confessional Churches met with one accord in a confession of the one Lord of the one, holy, apostolic Church. In fidelity to their confession of faith, members of Lutheran, Reformed, and United Churches sought a common message for the need and temptation of the Church in our day. With gratitude to God they are convinced that they have been given a common word to utter. It was not their intention to found a new Church or to form a union. For nothing was

farther from their minds than the abolition of the confessional status of our Churches. Their intention was, rather, to withstand in faith and unanimity the destruction of the Confession of Faith, and thus of the Evangelical Church in Germany. In opposition to attempts to establish the unity of the German Evangelical Church by means of false doctrine, by the use of force and by insincere practices, the Confessional Synod insists that the unity of the Evangelical Churches in Germany can come only from the Word of God in faith through the Holy Spirit. Thus alone is the Church renewed.

Therefore the Confessional Synod calls upon the congregations to range themselves behind it in prayer, and steadfastly to gather around those pastors and teachers who are loyal to the Confessions.

Be not deceived by loose talk, as if we meant to oppose the unity of the German nation! Do not listen to the seducers who pervert our intentions, as if we wanted to break up the unity of the German Evangelical Church or to forsake the Confessions of the Fathers!

Try the spirits whether they are of God! Prove also the words of the Confessional Synod of the German Evangelical Church to see whether they agree with Holy Scripture and with the Confessions of the Fathers. If you find that we are speaking contrary to Scripture, then do not listen to us! But if you find that we are taking our stand upon Scripture, then let no fear or temptation keep you from treading with us the path of faith and obedience to the Word of God, in order that God's people be of one mind upon earth and that we in faith experience what he himself has said: "I will never leave you, nor forsake you." Therefore, "Fear not, little flock, for it is your Father's good pleasure to give you the kingdom."

II Theological Declaration Concerning the Present Situation of the German Evangelical Church

According to the opening words of its constitution of July 11, 1933, the German Evangelical Church is a federation of Confessional Churches that grew out of the Reformation and that enjoy equal rights. The theological basis for the unification of these churches is laid down in Article 1 and Article 2 (1) of the constitution of the German Evangelical Church that was recognized by the Reich Government on July 14, 1933:

- Article 1. The inviolable foundation of the German Evangelical Church is the gospel of Jesus Christ as it is attested for us in Holy Scripture and brought to light again in the Confessions of the Reformation. The full powers that the Church needs for its mission are hereby determined and limited.
- Article 2 (1). The German Evangelical Church is divided into member Churches (*Landeskirchen*).

We, the representatives of Lutheran, Reformed, and United Churches, of free synods, Church assemblies, and parish organizations united in the Confessional Synod of the German Evangelical Church, declare that we stand together on the ground of the German Evangelical Church as a federation of German Confessional Churches. We are bound together by the confession of the one Lord of the one, holy, catholic, and apostolic Church.

We publicly declare before all evangelical Churches in Germany that what they hold in common in this Confession is grievously imperiled, and with it the unity of the German Evangelical Church. It is threatened by the teaching methods and actions of the ruling church party of the "German Christians" and of the church administration carried on by them. These have become more and more apparent during the first year of the existence of the German Evangelical Church. This threat consists in the fact that the theological basis on which the German Evangelical Church is united has been continually and systematically thwarted and rendered ineffective by alien principles, on the part of the leaders and spokesmen of the "German Christians" as well as on the part of the church administration. When these principles are held to be valid, then, according to all the Confessions in force among us, the Church ceases to be the Church and the German Evangelical Church, as a federation of Confessional Churches, becomes intrinsically impossible.

As members of Lutheran, Reformed, and United Churches we may and must speak with one voice in this matter today. Precisely because we want to be and to remain faithful to our various confessions, we may not keep silent, since we believe that we have been given a common message to utter in a time of common need and temptation. We commend to God what this may mean for the interrelations of the Confessional Churches.

In view of the errors of the "German Christians" of the present Reich Church government which are devastating the Church and also therefore breaking up the unity of the German Evangelical Church, we confess the following evangelical truths:

1. "I am the way, and the truth, and the life; no one comes to the Father, but by me" [John 14:6]. "Truly, truly, I say to you, he who does not enter the sheepfold by the door, but climbs in by another way, that man is a thief and a robber . . . I am the door; if anyone enters by me, he will be saved" [John 10:1, 9].

Jesus Christ, as he is attested for us in Holy Scripture, is the one Word of God which we have to hear and which we have to trust and obey in life and in death.

We reject the false doctrine, as though the Church could and would have to acknowledge as a source of its proclamation, apart from and besides this one Word of God, still other events and powers, figures and truths, as God's revelation.

2. “Christ Jesus, whom God has made our wisdom, our righteousness and sanctification and redemption” [1 Cor. 1:30].

As Jesus Christ is God’s assurance of the forgiveness of all our sins, so, in the same way and with the same seriousness he is also God’s mighty claim upon our whole life. Through him befalls us a joyful deliverance from the godless fetters of this world for a free, grateful service to his creatures.

We reject the false doctrine, as though there were areas of our life in which we would not belong to Jesus Christ, but to other lords—areas in which we would not need justification and sanctification through him.

3. “Rather, speaking the truth in love, we are to grow up in every way into him who is the head, into Christ, from whom the whole body [is] joined and knit together” [Eph. 4:15, 16].

The Christian Church is the congregation of the brethren in which Jesus Christ acts presently as the Lord in Word and sacrament through the Holy Spirit. As the Church of pardoned sinners, it has to testify in the midst of a sinful world, with its faith as with its obedience, with its message as with its order, that it is solely his property, and that it lives and wants to live solely from his comfort and from his direction in the expectation of his appearance.

We reject the false doctrine, as though the church were permitted to abandon the form of its message and order to its own pleasure or to changes in prevailing ideological and political convictions.

4. “You know that the rulers of the Gentiles lord it over them, and their great men exercise authority over them. It shall not be so among you; but whoever would be great among you must be your servant” [Matt. 20:25, 26].

The various offices in the Church do not establish a dominion of some over the others; on the contrary, they are for the exercise of the ministry entrusted to and enjoined upon the whole congregation.

We reject the false doctrine, as though the Church, apart from this ministry, could and were permitted to give itself, or allow to be given to it, special leaders vested with ruling powers.

5. “Fear God. Honour the emperor” [1 Pet. 2:17].

Scripture tells us that, in the as yet unredeemed world in which the Church also exists, the State has by divine appointment the task of providing for justice and peace. [It fulfils this task] by means of the threat and exercise of force, according to the measure of human judgment and human ability. The Church acknowledges the benefit of this divine appointment in gratitude and reverence before Him. It calls to mind the Kingdom of God, God’s commandment and righteousness, and thereby the responsibility both of rulers and of

the ruled. It trusts and obeys the power of the Word by which God upholds all things.

We reject the false doctrine, as though the State, over and beyond its special commission, should and could become the single and totalitarian order of human life, thus fulfilling the Church's vocation as well.

We reject the false doctrine, as though the Church, over and beyond its special commission, should and could appropriate the characteristics, the tasks, and the dignity of the State, thus itself becoming an organ of the State.

6. "Lo, I am with you always, to the close of the age" [Matt. 28:20]. "The Word of God is not fettered" [2 Tim. 2:9].

The Church's commission, upon which its freedom is founded, consists in delivering the message of the free grace of God to all people in Christ's stead, and therefore in the ministry of his own Word and work through sermon and sacrament.

We reject the false doctrine, as though the Church in human arrogance could place the Word and work of the Lord in the service of any arbitrarily chosen desires, purposes, and plans.

The Confessional Synod of the German Evangelical Church declares that it sees in the acknowledgement of these truths and in the rejection of these errors the indispensable theological basis of the German Evangelical Church as a federation of Confessional Churches. It invites all who are able to accept its declaration to be mindful of these theological principles in their decisions in church politics. It entreats all whom it concerns to return to the unity of faith, love, and hope.

8.2 Writings of Imam Khomeini

Seyed Amir Akrami

The religious state in Iran was born out of a particular interpretation of Islam put forward by Ayatollah Khomeini (1902–89). Although his idea of *vilāyat-e-faqīh* (the “Governance of the Jurisconsult”)²⁶ was not in itself a unique one in Shī‘ism, or in some ways even in Sunnī Islam, Khomeini’s interpretation, expansion, and implementation of it represented a radical departure.²⁷

Shī‘ite theories of governance in relation to religious leadership in Iran are diverse and can be seen to have evolved over four main periods. From the tenth to the sixteenth centuries, the development of *fiqh* was predominantly focused on personal life, with little or no elaboration on the relationship between religion and politics. From the sixteenth to the nineteenth centuries, though, hints of the doctrine of *vilāyat-e-faqīh* begin to appear, under the Safavid and Qajar dynasties, though tensions with the ruling authorities mean that these were never fully developed. In the early twentieth century, the constitutional movement saw new concepts introduced into Iranian political thought, with a critical attitude manifested toward religious despotism. The fourth phase of evolution is the *vilāyat-e-faqīh* theory as promoted by Khomeini in his writings and speeches, mostly before the Iranian Revolution of 1978–79, and then to some extent implemented by him following that event.²⁸

Khomeini’s theory rests on two main assertions. First, if Islam, as a divine law, is to be implemented, this will require the establishment of a government that can put the law into practice. Political power must thus be subordinated to Islamic precepts, criteria, values, and regulations. Second, following the occultation of the twelfth imam, there is no divinely guided and infallible spiritual leader in succession to the Prophet.²⁹ Islamic government in this period must therefore involve the guardianship or governance of just jurisconsults (*fuqahā*), who have all the rights and responsibilities that the Prophet and the imams had at their times; this is the doctrine of *vilāyat-e-faqīh*. Khomeini stresses that the spiritual qualities of the just *faqīh* should function as a safeguard against his abuse of the

power entrusted to him: Being morally just, in Islamic terminology, means being free from pursuing one's own worldly material desires.

Article 5 of the Constitution of the Islamic Republic of Iran refers to the idea of the "Guardianship of the juriconsult," giving the leadership of the nation to "the just and pious *faqīh*."³⁰ However, the doctrine has been criticized by many scholars, among whom the most prominent is Ayatollah Hosein 'Ali Montazeri, Khomeini's originally intended successor.³¹ Although Montazeri supported the inclusion of *vilāyat-e-faqīh* in the constitution, he maintained that it led to many unintended negative practical consequences, contending that the absolute concentration of power in the hands of the *faqīh* opened the door to dictatorship and overburdened one person with the weight of its business. He suggested both that the *faqīh* should be elected, not appointed, and that the exercise of *vilāyat* should be limited to supervision, not active interference. In practice in postrevolutionary Iran, the need to find a way of mediating between the elected Parliament and the Council of Guardians has meant that the principle of *maṣlahā*, "public good," is increasingly invoked to ensure successful government.³²

*Islamic government is necessary for the implementation of Islamic law*³³

A body of laws alone is not sufficient for a society to be reformed. In order for law to ensure the reform and happiness of man, there must be an executive power and an executor. For this reason, God Almighty, in addition to revealing a body of law (i.e., the ordinances of the Sharī'a), has laid down a particular form of government together with executive and administrative institutions.

The Most Noble Messenger (peace and blessings be upon him) headed the executive and administrative institutions of Muslim society. In addition to conveying the revelation and expounding and interpreting the articles of faith and the ordinances and institutions of Islam, he undertook the implementation of law and the establishment of the ordinances of Islam, thereby bringing into being the Islamic state. He did not content himself with the promulgation of law; rather, he implemented it at the same time, cutting off hands and administering lashings and stonings. After the Most Noble Messenger, his successor had the same duty and function. When the Prophet appointed a successor, it was not for the purpose of expounding articles of faith and law; it was for the implementation of law and the execution of God's ordinances. It was this function—the execution of law and the establishment of Islamic institutions—that made the appointment of a successor such an important matter that the Prophet would have failed to fulfill his mission if he had neglected it. For after the Prophet, the Muslims still needed someone to execute laws and establish the institutions of Islam in society, so that they might attain happiness in this world and the hereafter.³⁴

By their very nature, in fact, law and social institutions require the existence of an executor. It has always and everywhere been the case that legislation alone has little benefit: legislation by itself cannot assure the well-being of man. After the establishment of legislation, an executive power must come into being, a power that implements the laws and the verdicts given by the courts, thus allowing people to benefit from the laws and the just sentences the courts deliver. Islam has therefore established an executive power in the same way that it has brought laws into being. The person who holds this executive power is known as the *vali-e-amr*.

The Sunna and path of the Prophet constitute a proof of the necessity for establishing government. First, he himself established a government, as history testifies. He engaged in the implementation of laws, the establishment of the ordinances of Islam, and the administration of society. He sent out governors to different regions; both sat in judgment himself and appointed judges; dispatched emissaries to foreign states, tribal chieftains, and kings; concluded treaties and pacts; and took command in battle. In short, he fulfilled all the functions of government. Second, he designated a ruler to succeed him, in accordance with divine command. If God Almighty, through the Prophet, designated a man who was to rule over Muslim society after him, this is in itself an indication that government remains a necessity after the departure of the Prophet from this world. Again, since the Most Noble Messenger promulgated the divine command through his act of appointing a successor, he also implicitly stated the necessity for establishing government.

It is self-evident that the necessity for enactment of the law, which necessitated the formation of a government by the Prophet (upon whom be peace), was not confined or restricted to his time, but continues after his departure from this world. According to one of the noble verses of the Qur'ān, the ordinances of Islam are not limited with respect to time or place; they are permanent and must be enacted until the end of time. They were not revealed merely for the time of the Prophet, only to be abandoned thereafter, with retribution and the penal code of Islam no longer to be enacted, or the taxes prescribed by Islam no longer collected, and the defense of the lands and people of Islam suspended. The claim that the laws of Islam may remain in abeyance or are restricted to a particular time or place is contrary to the essential creedal bases of Islam. Since the enactment of laws, then, is necessary after the departure of the Prophet from this world, and indeed, will remain so until the end of time, the formation of a government and the establishment of executive and administrative organs are also necessary. Without the formation of a government and the establishment of such organs to ensure that through enactment of the law, all activities of the individual take place in the framework of a just system, chaos and anarchy will prevail and social, intellectual, and moral corruption will arise. The only way

to prevent the emergence of anarchy and disorder and to protect society from corruption is to form a government and thus impart order to all the affairs of the country.

Both reason and divine law, then, demonstrate the necessity in our time for what was necessary during the lifetime of the Prophet and the age of the Commander of the Faithful, 'Alī ibn Abī Ṭālib (peace be upon them)—namely the formation of a government and the establishment of executive and administrative organs.

In order to clarify the matter further, let us pose the following questions: From the time of the Lesser Occultation down to the present (a period of more than twelve centuries that may continue for hundreds of millennia if it is not appropriate for the Occulted Imam to manifest himself), is it proper that the laws of Islam be cast aside and remain unexecuted, so that everyone acts as he pleases and anarchy prevails? Were the laws that the Prophet of Islam labored so hard for twenty-three years to set forth, promulgate, and execute valid only for a limited period of time? Did God limit the validity of His laws to two hundred years? Was everything pertaining to Islam meant to be abandoned after the Lesser Occultation? Anyone who believes so, or voices such a belief, is worse situated than the person who believes and proclaims that Islam has been superseded or abrogated by another supposed revelation.

*Islamic government involves the governance of the jurisconsult*³⁵

The qualifications essential for the ruler derive directly from the nature and form of Islamic government. In addition to general qualifications like intelligence and administrative ability, there are two other essential qualifications: knowledge of the law and justice.

After the death of the Prophet (upon whom be peace), differences arose concerning the identity of the person who was to succeed him, but all the Muslims were in agreement that his successor should be someone knowledgeable and accomplished; there was disagreement only as to his identity.

Since Islamic government is a government of law, knowledge of the law is necessary for the ruler, as has been laid down in tradition. Indeed such knowledge is necessary not only for the ruler, but also for anyone holding a post or exercising some government function. The ruler, however, must surpass all others in knowledge. In laying claim to the Imamate, our Imams also argued that the ruler must be more learned than everyone else. The objections raised by the Shi'ī '*ulamā'*' are also to the same effect. A certain person asked the caliph a point of law and he was unable to answer; he was therefore unfit for the position of leader and successor to the Prophet. Or again, a certain act he performed was contrary to the laws of Islam; hence he was unworthy of his high post.

Knowledge of the law and justice, then, constitute fundamental qualifications in the view of the Muslims. Other matters have no importance or relevance in this connection. Knowledge of the nature of the angels, for example, or of the attributes of the Creator, Exalted and Almighty, is of no relevance to the question of leadership. In the same vein, one who knows all the natural sciences, uncovers all the secrets of nature, or has a good knowledge of music does not thereby qualify for leadership or acquire any priority in the matter of exercising government over those who know the laws of Islam and are just. The sole matters relevant to rule, those that were mentioned and discussed in the time of the Most Noble Messenger (upon whom be peace) and our Imams (upon whom be peace) and were, in addition, unanimously accepted by the Muslims, are: first, the knowledgeability of the ruler or caliph, i.e., his knowledge of the provisions and ordinances of Islam; and second, his justice, i.e., his excellence in belief and morals.

Reason also dictates the necessity for these qualities because Islamic government is a government of law, not the arbitrary rule of an individual over the people, or the domination of a group of individuals over the whole people. If the ruler is unacquainted with the contents of the law, he is not fit to rule; for if he follows the legal pronouncements of others, his power to govern will be impaired, but if, on the other hand, he does not follow such guidance, he will be unable to rule correctly and implement the rules of Islam. It is an established principle that “the *faqīh* has authority over the ruler.” If the ruler adheres to Islam, he must necessarily submit to the *faqīh*, asking him about the laws and ordinances of Islam in order to implement them. This being the case, the true rulers are the *fuqahā* themselves, and rulership ought officially to be theirs, to apply to them, not to those who are obliged to follow the guidance of the *fuqahā* on account of their own ignorance of the law.

Of course, it is not necessary for all officials, provincial governors, and administrators to know all the laws of Islam and be *fuqahā*; it is enough that they should know the laws pertaining to their functions and duties. Such was the case in the time of the Prophet and the Commander of the Faithful (peace be upon them). The highest authority must possess the qualities mentioned—comprehensive knowledge and justice—but his assistants, officials, and those sent to the provinces need know only the laws relevant to their own tasks; on other matters they must consult the ruler.

The ruler must also possess excellence in morals and belief; he must be just and untainted by major sin. Anyone who wishes to enact the penalties provided by Islam (i.e., to implement the penal code), to supervise the public treasury and the income and expenditures of the state, and to have God assign to him the power to administer the affairs of His creatures must not be a sinner. God says in the Qur’an: “My covenant does not embrace

the wrong-doer" [al-Baqara 2:124]; therefore, He will not assign such functions to an oppressor or sinner.

If the ruler is not just in granting the Muslims their rights, he will not conduct himself equitably in levying taxes and spending them correctly and in implementing the penal code. It becomes possible then for his assistants, helpers, and confidants to impose their will on society, diverting the public treasury to personal and frivolous use.

Given the contingencies with which Islam has surrounded the operation of this principle, it cannot harm anyone. Particular attributes have been set down as necessary for the "holder of authority" (*vali-e-amr*) and the *faqīh*, and they are attributes that prevent him from going astray. If he utters a single lie, or takes a single wrong step, he forfeits his claim to governance. The whole purpose of the clause in the Constitution relating to the governance of the *faqīh* is to prevent tyranny and despotism.³⁶

8.3 The Second Vatican Council on Religious Freedom

Carolyn Evans

The Declaration on Religious Freedom, *Dignitatis humanae*, was one of the most influential documents to emerge from the Second Vatican Council of 1962–65. *Dignitatis humanae* argues strongly that the freedom to follow one’s conscience in religious matters is a God-given right that states should uphold even if, in the view of the Catholic Church, a person’s conscience is in error.³⁷

In October 1958 Cardinal Angelo Giuseppe Roncalli was elected pope. He took the name John XXIII, making a self-deprecating joke that all the other popes named John had had brief reigns.³⁸ He too was expected to be a transitional pope. Already an old man and of generally traditional views, his pontificate was expected to last only a couple of years and to be a relatively uneventful period of rebuilding in the church.

In the event, he did hold office for only five years before he died, but that period saw a great transformation begin within the Catholic Church.³⁹ John XXIII saw the need for the church to be open to change and renewal—*aggiornamento*, as he called it—to enable it to respond to the “signs of the times.” The change came in many ways, but one of the most important steps taken by John was the calling of a council of all the bishops of the Catholic Church throughout the world—which at the time included more than two thousand men.⁴⁰ There had only been twenty-one such general councils in the whole of the church’s history, and their purpose was often to condemn error, to strength doctrine, or to reinforce the hierarchy. The First Vatican Council, for example, held in 1869–70, proclaimed the doctrine of papal infallibility, thus reinforcing the hierarchy of the church.

But neither John’s personality nor his theology was inclined toward condemnations or the calling down of anathemas, and he warned the church and the world against prophets of doom. He wanted a more positive council that would engage with the many real problems that the world and the church were facing, giving guidance and encouragement to the people of God.⁴¹

At the time that the council was called, the official position of the church was still one that was opposed to religious liberty. The maxim that there is no right in error was held by a strong group within the Vatican, and the church more generally. Anti-Semitism was still a problem, with several bishops condemning John's moves toward a closer relationship with the Jewish community by arguing that Jews were guilty of deicide because of the Jewish people's role in the crucifixion two thousand years earlier.⁴² When John proposed a Commission for Christian Unity and allowed observers from other Christian churches to sit in on council discussions, he caused white-lipped fury among the more traditional grouping in the Vatican.⁴³

Against this backdrop of centuries of hostility to religious freedom and condemnation of even mild ecumenical movements toward other Christian groups—let alone people of other faiths such as Muslims—the work of the Vatican Council on religious freedom begun under John XXIII and completed under Pope Paul VI was truly extraordinary.⁴⁴

Set in the context of international law, however, it was a belated (if important) recognition of developments that were already well established elsewhere. It is instructive to compare briefly *Dignitatis humanae*, as the primary document that emerged from the council dealing with religious freedom, with the first major international instrument that specified a right to religious freedom, Article 18 of the Universal Declaration of Human Rights.

Article 18 sets out the right to religious freedom in these terms: "Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either along or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance."⁴⁵

There are a number of similarities between the two documents. Both were drafted after years of contestation, debate, and redrafting in times that were both difficult and hopeful. The Universal Declaration was accepted by the General Assembly in 1948—a time of hope for a peaceful world after the travails of two world wars, but also a time in which the Cold War was beginning to exercise its malign influence on international politics.⁴⁶ The Second Vatican Council began during a time when the Cold War had become hot during the Cuban missile crisis and when the threat of nuclear annihilation was a very real one for many people. Yet there was also some hope that the Kennedy and Khrushchev governments might be able to move to a period of better relations than had existed in the past between the two superpowers. Both documents therefore were not mere intellectual exercises or abstract documents but were created with a sense of some urgency as a response to the complex times in which they were written. They were

composed with a desire to build on that which was hopeful in the world and to play a part in resolving the serious problems that faced humanity.

They were both also written—despite the contrary sometimes being claimed of the Universal Declaration—by people from a wide variety of countries and after much international consultation.⁴⁷ This was particularly important in the case of *Dignitatis humanae* because the traditional sources of power within the Vatican—who under normal circumstances wielded enormous power and influence over developments within the church—found that the wider body of bishops had a far more liberal view of religious freedom than did the traditionalists. Some participants, such as many of the American bishops, had experienced the benefit of living as a religious minority in a country where religious freedom was valued and wanted to remind the bishops from Catholic countries of the importance of such liberty.⁴⁸ American bishops were loath to take the hypocritical position that they were deserving of religious toleration as a minority in a predominantly Protestant country but that predominantly Catholic countries were justified in oppressing the liberty of the Protestant or other religious minorities who dwelt there.

Thus both documents were a product of their times and the people who drafted them. It is useful to compare them in a little more detail in relation to a few key issues: first, the source of the right to religious freedom; second, the nature of that right, particularly its implications for religious truth; and third, the questions of who bears obligations and who benefits from religious freedom.

First, the philosophical debate over the source of human rights generally or religious freedom specifically within the international community has proved enduring and has resulted in some concern about the moral strength of the foundations of the international legal system for the protection of human rights. It is sometimes noted that in the United Nations context we can all agree about human rights as long as we do not have to explain why we agree.

By contrast, the drafters of *Dignitatis humanae* had the benefit of a far more cohesive philosophical outlook than did the drafters of the Universal Declaration. *Dignitatis humanae* confidently and regularly makes reference to the divine underpinnings of religious freedom. Yet the document is consciously aiming to reach beyond a narrowly Catholic audience—though the extent to which it succeeds is more questionable. The key passage about the source of religious freedom is the second paragraph of Article 2: “The council further declares that the right to religious freedom has its foundation in the very dignity of the human person as this humanity is known through the revealed word of God and by reason itself.” In this passage we see the duality of its underlying reasoning—reasoning that is partly religious and partly secular. *Dignitatis humanae* places the dignity of the human person as the foundation of the right to religious freedom (a similar position to

that of the Universal Declaration, which begins with a recognition of “the inherent dignity and of equal and inalienable rights of all members of the human family”). But, unlike the Universal Declaration, it gives two explanations for human beings’ possessing this dignity. The first is that the word of God has revealed this inherent dignity. *Dignitatis humanae* points to the example of Jesus and the apostles in their ministry. Article 11 notes that “Christ is at once our Master and our Lord and also meek and humble of heart. In attracting and inviting his disciples He used patience. He wrought miracles to illuminate his teaching and to establish its truth, but His intention was to rouse faith in His disciples, not to exert coercion on them.” He was not a political messiah and rejected temporal authority. The apostles too rejected force or deception in making converts, and thus *Dignitatis humanae* concludes confidently that in “faithfulness therefore to the truth of the Gospel, the church is following the way of Christ and the apostles when she recognizes and gives support to the principle of religious freedom.” The source of the right is thus clear and, for believers, strong.

However, for those who are not believers in God or indeed in this particular understanding of God, this justification of religious freedom appears to be no foundation at all. For them, therefore, and following in the well-established natural law tradition of the church, comes the role of reason. Even those without the faith that allows them to accept the divine origins of human dignity should be able through reason alone to come to the same conclusion. It must be said that the way in which such reason operates or details of what it reveals are far sketchier than those about the theological underpinnings of this dignity.⁴⁹

Second, this conception of religious freedom, with its strong reliance on religious doctrine, was hard for many of those outside the Catholic (or at least Christian) community to accept as convincing. But the conception was also hard for many of the more traditional thinkers within the church itself.

The individual drafters of the Universal Declaration did hold particular religious or philosophical beliefs, but it was acknowledged (after some debate) that the declaration itself could not refer to God or to any particular religious belief. The Universal Declaration is agnostic on whether there is a God or gods and whether any particular religion is true. It would have been impossible to draft a concept of religious freedom that implicitly or explicitly gave priority or approval to a particular religious belief in a document that was intended to be for all peoples of all faiths in all countries and was drafted by people with a variety of beliefs, including the strong atheist lobby from the Soviet states.

For the Catholic Church, however, there could be no such separation of the personal religious beliefs of those taking part in the council and the outcomes of that council. The church could not be expected to remain agnostic about the true religion or to say that any religious belief is the equal of any other. To even sug-

gest that would be to undermine the most basic teachings of the church. So the traditionalists argued that there was no point and much danger in allowing people to search for the truth in matters of religion. The truth was known—it was an objective fact—and thus it was better for people not to be confused by any suggestion from religious or secular authorities that other religions might have some value or validity.⁵⁰

Again, we can see two strands of reasoning in response to these concerns—one religious, the other more secular. The first is to emphasize that “true” religion is not a matter of compulsion. Indeed compulsion undermines the capacity for an authentically religious response. There is a moral obligation to seek religious truth, and man is “bound to follow his conscience in order that he may come to God, the end and purpose of his life” (Article 3).⁵¹ As Article 2 puts it, people cannot discharge the obligation to seek the truth “unless they enjoy immunity from external coercion as well as psychological freedom.” So the human conscience must be given a sphere in which to operate with integrity—otherwise the strength of the beliefs that result will be diminished. In some of the most famous words in the declaration, the council states that “the truth cannot impose itself except by virtue of its own truth, as it makes its entrance into the mind at once quietly and with power.”⁵²

The other key element of the reasoning is that religious freedom is not about undermining religious truth. Instead it “has to do with immunity from coercion in civil society. It therefore leaves untouched traditional Catholic doctrine on the moral duty of men and societies towards the true religion and toward the one Church of Christ.”⁵³ The final sentence proved very controversial outside the church, but for those within the church, the council neatly sidestepped some controversial issues.⁵⁴ In the moral realm, the truth of the teachings of the church remains untouched. The declaration is primarily juridical—it is about the proper role of the state and the impropriety of coercion rather than about the truth or falsity of any particular religious belief.⁵⁵ In both *Dignitatis humanae* and other documents of the church developed around this time, most importantly John’s encyclical *Pacem in Terris*, there is a growing recognition by the church that a certain degree of freedom in civil society, together with a government that respects human rights, is the best environment in which human beings can respond to God.⁵⁶ Long connected with monarchies and authoritarian governments, the church was slowly accepting the need for democracies and limited scope to state power.⁵⁷

This juridical turn assists some of those who might otherwise find it difficult to accept a doctrine that seemed to give equal status to all religions. It situates itself in what is described as the recently developed doctrine of popes on the “inviolable of rights of the human person and the constitutional order of society.” (While it does recognize that changes in the world have been part

of the impetus for the developments in religious freedom within the church, the authorities cited are almost exclusively religious and draw heavily on papal encyclicals.)

Controversially for those accustomed to conceptions of religious freedom that rely on separation of church and state, the council also concluded that the government “ought indeed to take account of the religious life of the citizenry and show it favor, since the function of government is to make provision for the common welfare.”⁵⁸ While no particular religion was to be favored, religion itself was valuable and deserved promotion (not merely protection) by the state for the benefit of all. For those who hold to the importance of separation of church and state, this admittedly somewhat vague injunction is very disturbing. It suggests that the juridical turn is only partial and that the commitment of the church to religious truth means that it will want the state to give too much protection to religions at the expense of other beliefs.⁵⁹

Third, the conception of the constitutional order of society that underlies the juridical turn in *Dignitatis humanae* is broader and more inclusive than that in the Universal Declaration. This is one way in which the church moved ahead of the international community rather than simply catching up.⁶⁰ Traditional international law concepts hold that states are the subject of international law. Indeed, states are bound to adhere to human rights obligations, and individual human beings benefit from those rights.⁶¹ We see something similar in domestic constitutional systems, for example, the First Amendment of the U.S. Constitution, which says that “Congress shall pass no law” interfering with religious liberty or establishing a religion. These types of conceptions of religious freedom leave untouched many important social institutions outside the state. *Dignitatis humanae*, however, in Article 6, is much broader and deeper in its conception of what is required to create a society in which people can achieve their own perfection in following God. It states that the “care of the right to religious freedom devolves upon the whole citizenry, upon social groups, upon the government, and upon the Church and other religious communities, in virtue of the duty of all toward the common welfare, and in the manner proper to each.”⁶² In many societies today religious freedom and the capacity to live out one’s religious beliefs with integrity is threatened by other religious groups, by private social or commercial forces, and by civil unrest that does not always originate with the government. In those circumstances, the recognition that respect for the religious freedom of all people is the responsibility of all people and not just governments is of great significance.

If the church learned from the international community about the issue of religious freedom more generally then, this is an area in which the international community can learn from the church. The communal aspect of religious freedom,

the sense of religion as a communal enterprise and of society as more than a set of individuals, imbues *Dignitatis humanae* and allows it to deal with religious freedom in a more sophisticated and challenging manner than does the Universal Declaration, which is primarily concerned with the state and the individual.⁶³

Within *Dignitatis humanae* religious freedom is not merely a right but has an element of duty.⁶⁴ Given conditions of religious freedom, people have an obligation to search in good faith for the answers to religious questions. They must act in good faith and follow their conscience where it leads them and respond to God in a manner that is free from fear of punishment from the state or other individuals. It is not freedom for the sake of simply shrugging off burdensome obligations but freedom in which obligations can be taken on as a matter of conscience rather than compulsion.⁶⁵ As Cardinal Newman put it, “Conscience has rights because it has duties.”

The Universal Declaration sets out the freedom clearly with a greater appeal to universality and perhaps with less ambiguity than *Dignitatis humanae* sometimes engages in. *Dignitatis humanae*, however, sets out a far richer sense of the purpose for the freedom and the communal context in which it will be lived out. It is also an example of one way in which a religious community could embrace religious freedom without compromising its stance on religious truth. These, I believe, are its most significant and enduring contributions.

*Declaration on Religious Freedom, Dignitatis Humanae
On the Right of the Person and of Communities to Social and Civil Freedom in
Matters Religious*⁶⁶

1. A sense of the dignity of the human person has been impressing itself more and more deeply on the consciousness of contemporary man, and the demand is increasingly made that men should act on their own judgment, enjoying and making use of a responsible freedom, not driven by coercion but motivated by a sense of duty.⁶⁷ The demand is likewise made that constitutional limits should be set to the powers of government, in order that there may be no encroachment on the rightful freedom of the person and of associations. This demand for freedom in human society chiefly regards the quest for the values proper to the human spirit. It regards, in the first place, the free exercise of religion in society. This Vatican Council takes careful note of these desires in the minds of men. It proposes to declare them to be greatly in accord with truth and justice. To this end, it searches into the sacred tradition and doctrine of the Church—the treasury out of which the Church continually brings forth new things that are in harmony with the things that are old.

First, the council professes its belief that God Himself has made known to mankind the way in which men are to serve Him, and thus be

saved in Christ and come to blessedness. We believe that this one true religion subsists in the Catholic and Apostolic Church, to which the Lord Jesus committed the duty of spreading it abroad among all men. Thus He spoke to the Apostles: “Go, therefore, and make disciples of all nations, baptizing them in the name of the Father and of the Son and of the Holy Spirit, teaching them to observe all things whatsoever I have enjoined upon you” [Matt. 28:19–20]. On their part, all men are bound to seek the truth, especially in what concerns God and His Church, and to embrace the truth they come to know, and to hold fast to it.

This Vatican Council likewise professes its belief that it is upon the human conscience that these obligations fall and exert their binding force. The truth cannot impose itself except by virtue of its own truth, as it makes its entrance into the mind at once quietly and with power.

Religious freedom, in turn, which men demand as necessary to fulfill their duty to worship God, has to do with immunity from coercion in civil society. Therefore it leaves untouched traditional Catholic doctrine on the moral duty of men and societies toward the true religion and toward the one Church of Christ.

Over and above all this, the council intends to develop the doctrine of recent popes on the inviolable rights of the human person and the constitutional order of society.

2. This Vatican Council declares that the human person has a right to religious freedom. This freedom means 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 wise 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.

The council further declares that the right to religious freedom 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.⁶⁸ This right of the human person to religious freedom is to be recognized in the constitutional law whereby society is governed and thus it is to become a civil right.

It is in accordance with their dignity as persons—that is, beings endowed with reason and free will and therefore privileged to bear personal responsibility—that all men should be at once impelled by nature and also bound by a moral obligation to seek the truth, especially religious truth. They are also bound to adhere to the truth, once it is known, and to order their whole lives in accord with the demands of truth. However, men cannot discharge these obligations in a manner in keeping with their own nature unless they enjoy immunity from external coercion as well as psychological freedom. Therefore the right to religious freedom has its foundation not in the subjective disposition of the person, but in his very nature. In consequence, the right to this im-

munity continues to exist even in those who do not live up to their obligation of seeking the truth and adhering to it and the exercise of this right is not to be impeded, provided that just public order be observed.

3. Further light is shed on the subject if one considers that the highest norm of human life is the divine law—eternal, objective and universal—whereby God orders, directs and governs the entire universe and all the ways of the human community by a plan conceived in wisdom and love. Man has been made by God to participate in this law, with the result that, under the gentle disposition of divine Providence, he can come to perceive ever more fully the truth that is unchanging. Wherefore every man has the duty, and therefore the right, to seek the truth in matters religious in order that he may with prudence form for himself right and true judgments of conscience, under use of all suitable means.

Truth, however, is to be sought after in a manner proper to the dignity of the human person and his social nature. The inquiry is to be free, carried on with the aid of teaching or instruction, communication and dialogue, in the course of which men explain to one another the truth they have discovered, or think they have discovered, in order thus to assist one another in the quest for truth.

Moreover, as the truth is discovered, it is by a personal assent that men are to adhere to it.

On his part, man perceives and acknowledges the imperatives of the divine law through the mediation of conscience. In all his activity a man is bound to follow his conscience in order that he may come to God, the end and purpose of life. It follows that he is not to be forced to act in manner contrary to his conscience. Nor, on the other hand, is he to be restrained from acting in accordance with his conscience, especially in matters religious. The reason is that the exercise of religion, of its very nature, consists before all else in those internal, voluntary and free acts whereby man sets the course of his life directly toward God. No merely human power can either command or prohibit acts of this kind.⁶⁹ The social nature of man, however, itself requires that he should give external expression to his internal acts of religion: that he should share with others in matters religious; that he should profess his religion in community. Injury therefore is done to the human person and to the very order established by God for human life, if the free exercise of religion is denied in society, provided just public order is observed.

There is a further consideration. The religious acts whereby men, in private and in public and out of a sense of personal conviction, direct their lives to God transcend by their very nature the order of terrestrial and temporal affairs. Government therefore ought indeed to take account of the religious life of the citizenry and show it favor, since the function of government is to make provision for the common welfare. However, it would clearly transgress

the limits set to its power, were it to presume to command or inhibit acts that are religious.

4. The freedom or immunity from coercion in matters religious which is the endowment of persons as individuals is also to be recognized as their right when they act in community. Religious communities are a requirement of the social nature both of man and of religion itself.

Provided the just demands of public order are observed, religious communities rightfully claim freedom in order that they may govern themselves according to their own norms, honor the Supreme Being in public worship, assist their members in the practice of the religious life, strengthen them by instruction, and promote institutions in which they may join together for the purpose of ordering their own lives in accordance with their religious principles.

Religious communities also have the right not to be hindered, either by legal measures or by administrative action on the part of government, in the selection, training, appointment, and transferal of their own ministers, in communicating with religious authorities and communities abroad, in erecting buildings for religious purposes, and in the acquisition and use of suitable funds or properties.

Religious communities also have the right not to be hindered in their public teaching and witness to their faith, whether by the spoken or by the written word. However, in spreading religious faith and in introducing religious practices everyone ought at all times to refrain from any manner of action which might seem to carry a hint of coercion or of a kind of persuasion that would be dishonorable or unworthy, especially when dealing with poor or uneducated people. Such a manner of action would have to be considered an abuse of one's right and a violation of the right of others.

In addition, it comes within the meaning of religious freedom that religious communities should not be prohibited from freely undertaking to show the special value of their doctrine in what concerns the organization of society and the inspiration of the whole of human activity. Finally, the social nature of man and the very nature of religion afford the foundation of the right of men freely to hold meetings and to establish educational, cultural, charitable and social organizations, under the impulse of their own religious sense.

5. The family, since it is a society in its own original right, has the right freely to live its own domestic religious life under the guidance of parents. Parents, moreover, have the right to determine, in accordance with their own religious beliefs, the kind of religious education that their children are to receive. Government, in consequence, must acknowledge the right of parents to make a genuinely free choice of schools and of other means of education, and the use

of this freedom of choice is not to be made a reason for imposing unjust burdens on parents, whether directly or indirectly. Besides, the right[s] of parents are violated, if their children are forced to attend lessons or instructions which are not in agreement with their religious beliefs, or if a single system of education, from which all religious formation is excluded, is imposed upon all.

6. Since the common welfare of society consists in the entirety of those conditions of social life under which men enjoy the possibility of achieving their own perfection in a certain fullness of measure and also with some relative ease, it chiefly consists in the protection of the rights, and in the performance of the duties, of the human person.⁷⁰ Therefore the care of the right to religious freedom devolves upon the whole citizenry, upon social groups, upon government, and upon the Church and other religious communities, in virtue of the duty of all toward the common welfare, and in the manner proper to each.

The protection and promotion of the inviolable rights of man ranks among the essential duties of government.⁷¹ Therefore government is to assume the safeguard of the religious freedom of all its citizens, in an effective manner, by just laws and by other appropriate means.

Government is also to help create conditions favorable to the fostering of religious life, in order that the people may be truly enabled to exercise their religious rights and to fulfill their religious duties, and also in order that society itself may profit by the moral qualities of justice and peace which have their origin in men's faithfulness to God and to His holy will.⁷²

If, in view of peculiar circumstances obtaining among peoples, special civil recognition is given to one religious community in the constitutional order of society, it is at the same time imperative that the right of all citizens and religious communities to religious freedom should be recognized and made effective in practice.

Finally, government is to see to it that equality of citizens before the law, which is itself an element of the common good, is never violated, whether openly or covertly, for religious reasons. Nor is there to be discrimination among citizens.

It follows that a wrong is done when government imposes upon its people, by force or fear or other means, the profession or repudiation of any religion, or when it hinders men from joining or leaving a religious community. All the more is it a violation of the will of God and of the sacred rights of the person and the family of nations when force is brought to bear in any way in order to destroy or repress religion, either in the whole of mankind or in a particular country or in a definite community.

7. The right to religious freedom is exercised in human society: hence its exercise is subject to certain regulatory norms. In the use of all freedoms the moral

principle of personal and social responsibility is to be observed. In the exercise of their rights, individual men and social groups are bound by the moral law to have respect both for the rights of others and for their own duties toward others and for the common welfare of all. Men are to deal with their fellows in justice and civility.

Furthermore, society has the right to defend itself against possible abuses committed on the pretext of freedom of religion. It is the special duty of government to provide this protection. However, government is not to act in an arbitrary fashion or in an unfair spirit of partisanship. Its action is to be controlled by juridical norms which are in conformity with the objective moral order. These norms arise out of the need for the effective safeguard of the rights of all citizens and for the peaceful settlement of conflicts of rights, also out of the need for an adequate care of genuine public peace, which comes about when men live together in good order and in true justice, and finally out of the need for a proper guardianship of public morality.

These matters constitute the basic component of the common welfare: they are what is meant by public order. For the rest, the usages of society are to be the usages of freedom in their full range: that is, the freedom of man is to be respected as far as possible and is not to be curtailed except when and insofar as necessary.

8. Many pressures are brought to bear upon the men of our day, to the point where the danger arises lest they lose the possibility of acting on their own judgment. On the other hand, not a few can be found who seem inclined to use the name of freedom as the pretext for refusing to submit to authority and for making light of the duty of obedience. Wherefore this Vatican Council urges everyone, especially those who are charged with the task of educating others, to do their utmost to form men who, on the one hand, will respect the moral order and be obedient to lawful authority, and on the other hand, will be lovers of true freedom—men, in other words, who will come to decisions on their own judgment and in the light of truth, govern their activities with a sense of responsibility, and strive after what is true and right, willing always to join with others in cooperative effort.

Religious freedom therefore ought to have this further purpose and aim, namely, that men may come to act with greater responsibility in fulfilling their duties in community life.

9. The declaration of this Vatican Council on the right of man to religious freedom has its foundation in the dignity of the person, whose exigencies have come to be fully known to human reason through centuries of experience. What is more, this doctrine of freedom has roots in divine revelation, and for this reason Christians are bound to respect it all the more conscientiously. Revelation does not indeed affirm in so many words the right of man

to immunity from external coercion in matters religious. It does, however, disclose the dignity of the human person in its full dimensions. It gives evidence of the respect which Christ showed toward the freedom with which man is to fulfil his duty of belief in the word of God and it gives us lessons in the spirit which disciples of such a Master ought to adopt and continually follow. Thus further light is cast upon the general principles upon which the doctrine of this declaration on religious freedom is based. In particular, religious freedom in society is entirely consonant with the freedom of the act of Christian faith.

10. It is one of the major tenets of Catholic doctrine that man's response to God in faith must be free: no one therefore is to be forced to embrace the Christian faith against his own will.⁷³ This doctrine is contained in the word of God and it was constantly proclaimed by the Fathers of the Church.⁷⁴ The act of faith is of its very nature a free act. Man, redeemed by Christ the Savior and through Christ Jesus called to be God's adopted son [cf. Eph. 1:5], cannot give his adherence to God revealing Himself unless, under the drawing of the Father [cf. John 6:44], he offers to God the reasonable and free submission of faith. It is therefore completely in accord with the nature of faith that in matters religious every manner of coercion on the part of men should be excluded. In consequence, the principle of religious freedom makes no small contribution to the creation of an environment in which men can without hindrance be invited to the Christian faith, embrace it of their own free will, and profess it effectively in their whole manner of life.

11. God calls men to serve Him in spirit and in truth, hence they are bound in conscience but they stand under no compulsion. God has regard for the dignity of the human person whom He Himself created and man is to be guided by his own judgment and he is to enjoy freedom. This truth appears at its height in Christ Jesus, in whom God manifested Himself and His ways with men. Christ is at once our Master and our Lord [cf. John 13:13] and also meek and humble of heart [cf. Matt. 11:29]. In attracting and inviting His disciples He used patience [cf. Matt. 11:28–30; John 6:67–68]. He wrought miracles to illuminate His teaching and to establish its truth, but His intention was to rouse faith in His hearers and to confirm them in faith, not to exert coercion upon them.⁷⁵ He did indeed denounce the unbelief of some who listened to Him, but He left vengeance to God in expectation of the day of judgment [cf. Matt. 11:20–24; Rom. 12:19–20; 2 Thess. 1:8]. When He sent His Apostles into the world, He said to them: "He who believes and is baptized will be saved. He who does not believe will be condemned" [Mark 16:16]. But He Himself, noting that the cockle had been sown amid the wheat, gave orders that both should be allowed to grow until the harvest time, which will come at the end of the world [cf. Matt. 13:30 and 40–42]. He

refused to be a political messiah, ruling by force [cf. Matt. 4:8–10; John 6:15]. He preferred to call Himself the Son of Man, who came “to serve and to give his life as a ransom for the many” [Mark 10:45]. He showed Himself the perfect servant of God [cf. Isa. 42:1–4], who “does not break the bruised reed nor extinguish the smoking flax” [Matt. 12:20].

He acknowledged the power of government and its rights, when He commanded that tribute be given to Caesar: but He gave clear warning that the higher rights of God are to be kept inviolate: “Render to Caesar the things that are Caesar’s and to God the things that are God’s” [Matt. 22:21]. In the end, when He completed on the cross the work of redemption whereby He achieved salvation and true freedom for men, He brought His revelation to completion. For He bore witness to the truth, but He refused to impose the truth by force on those who spoke against it [cf. John 18:37]. Not by force of blows does His rule assert its claims [cf. Matt. 26:51–53; John 18:36]. It is established by witnessing to the truth and by hearing the truth, and it extends its dominion by the love whereby Christ, lifted up on the cross, draws all men to Himself [cf. John 12:32].

Taught by the word and example of Christ, the Apostles followed the same way. From the very origins of the Church the disciples of Christ strove to convert men to faith in Christ as the Lord; not, however, by the use of coercion or of devices unworthy of the Gospel, but by the power, above all, of the word of God [cf. 1 Cor. 2:3–5; 1 Thess. 2.3–5]. Steadfastly they proclaimed to all the plan of God our Savior, “who wills that all men should be saved and come to the acknowledgment of the truth” [1 Tim. 2:4]. At the same time, however, they showed respect for those of weaker stuff, even though they were in error, and thus they made it plain that “each one of us is to render to God an account of himself” and for that reason is bound to obey his conscience [Rom. 14:12; cf. Rom. 14:1–23; 1 Cor. 8:9–13; 10:23–33]. Like Christ Himself, the Apostles were unceasingly bent upon bearing witness to the truth of God, and they showed the fullest measure of boldness in “speaking the word with confidence” before the people and their rulers [Acts 4:31; cf. Eph. 6:19–20]. With a firm faith they held that the Gospel is indeed the power of God unto salvation for all who believe [cf. Rom. 1:16]. Therefore they rejected all “carnal weapons” [cf. 2 Cor. 10:4; 1 Thess. 5:8–9]: they followed the example of the gentleness and respectfulness of Christ and they preached the word of God in the full confidence that there was resident in this word itself a divine power able to destroy all the forces arrayed against God [cf. Eph. 6:11–17] and bring men to faith in Christ and to His service [cf. 2 Cor. 10:3–5]. As the Master, so too the Apostles recognized legitimate civil authority. “For there is no power except from God,” the Apostle teaches, and thereafter commands: “Let everyone be subject to higher authorities . . . He who resists authority resists God’s ordinance” [Rom. 13:1–5; cf. 1 Pet. 2:13–17]. At the same time, however, they did not hesitate to speak out

against governing powers which set themselves in opposition to the holy will of God: "It is necessary to obey God rather than men" [Acts 5:29; cf. Acts 4:19–20]. This is the way along which the martyrs and other faithful have walked through all ages and over all the earth.

12. In faithfulness therefore to the truth of the Gospel, the Church is following the way of Christ and the apostles when she recognizes and gives support to the principle of religious freedom as befitting the dignity of man and as being in accord with divine revelation. Throughout the ages the Church has kept safe and handed on the doctrine received from the Master and from the apostles. In the life of the People of God, as it has made its pilgrim way through the vicissitudes of human history, there has at times appeared a way of acting that was hardly in accord with the spirit of the Gospel or even opposed to it. Nevertheless, the doctrine of the Church that no one is to be coerced into faith has always stood firm.

Thus the leaven of the Gospel has long been about its quiet work in the minds of men, and to it is due in great measure the fact that in the course of time men have come more widely to recognize their dignity as persons, and the conviction has grown stronger that the person in society is to be kept free from all manner of coercion in matters religious.

13. Among the things that concern the good of the Church and indeed the welfare of society here on earth—things therefore that are always and everywhere to be kept secure and defended against all injury—this certainly is pre-eminent, namely, that the Church should enjoy that full measure of freedom which her care for the salvation of men requires.⁷⁶ This is a sacred freedom, because the only-begotten Son endowed with it the Church which He purchased with His blood. Indeed it is so much the property of the Church that to act against it is to act against the will of God. The freedom of the Church is the fundamental principle in what concerns the relations between the Church and governments and the whole civil order.

In human society and in the face of government the Church claims freedom for herself in her character as a spiritual authority, established by Christ the Lord, upon which there rests, by divine mandate, the duty of going out into the whole world and preaching the Gospel to every creature.⁷⁷ The Church also claims freedom for herself in her character as a society of men who have the right to live in society in accordance with the precepts of the Christian faith.⁷⁸

In turn, where the principle of religious freedom is not only proclaimed in words or simply incorporated in law but also given sincere and practical application, there the Church succeeds in achieving a stable situation of right as well as of fact and the independence which is necessary for the fulfillment of her divine mission.

This independence is precisely what the authorities of the Church claim in society.⁷⁹ At the same time, the Christian faithful, in common with all other men, possess the civil right not to be hindered in leading their lives in accordance with their consciences. Therefore, a harmony exists between the freedom of the Church and the religious freedom which is to be recognized as the right of all men and communities and sanctioned by constitutional law.

14. In order to be faithful to the divine command, “teach all nations” [Matt. 28:19–20], the Catholic Church must work with all urgency and concern “that the word of God be spread abroad and glorified” [2 Thess. 3:1]. Hence the Church earnestly begs of its children that, “first of all, supplications, prayers, petitions, acts of thanksgiving be made for all men . . . For this is good and agreeable in the sight of God our Saviour, who wills that all men be saved and come to the knowledge of the truth” [1 Tim. 2:1–4]. In the formation of their consciences, the Christian faithful ought carefully to attend to the sacred and certain doctrine of the Church.⁸⁰ For the Church is, by the will of Christ, the teacher of the truth. It is her duty to give utterance to, and authoritatively to teach, that truth which is Christ Himself, and also to declare and confirm by her authority those principles of the moral order which have their origins in human nature itself. Furthermore, let Christians walk in wisdom in the face of those outside, “in the Holy Spirit, in unaffected love, in the word of truth” [2 Cor. 6:6–7], and let them be about their task of spreading the light of life with all confidence [cf. Acts 4:29] and apostolic courage, even to the shedding of their blood.

The disciple is bound by a grave obligation toward Christ, his Master, ever more fully to understand the truth received from Him, faithfully to proclaim it, and vigorously to defend it, never—be it understood—having recourse to means that are incompatible with the spirit of the Gospel. At the same time, the charity of Christ urges him to love and have prudence and patience in his dealings with those who are in error or in ignorance with regard to the faith.⁸¹ All is to be taken into account—the Christian duty to Christ, the life-giving word which must be proclaimed, the rights of the human person, and the measure of grace granted by God through Christ to men who are invited freely to accept and profess the faith.

15. The fact is that men of the present day want to be able freely to profess their religion in private and in public. Indeed, religious freedom has already been declared to be a civil right in most constitutions, and it is solemnly recognized in international documents.⁸² The further fact is that forms of government still exist under which, even though freedom of religious worship receives constitutional recognition, the powers of government are engaged

in the effort to deter citizens from the profession of religion and to make life very difficult and dangerous for religious communities.

This council greets with joy the first of these two facts as among the signs of the times. With sorrow, however, it denounces the other fact, as only to be deplored. The council exhorts Catholics, and it directs a plea to all men, most carefully to consider how greatly necessary religious freedom is, especially in the present condition of the human family. All nations are coming into even closer unity. Men of different cultures and religions are being brought together in closer relationships. There is a growing consciousness of the personal responsibility that every man has. All this is evident. Consequently, in order that relationships of peace and harmony be established and maintained within the whole of mankind, it is necessary that religious freedom be everywhere provided with an effective constitutional guarantee and that respect be shown for the high duty and right of man freely to lead his religious life in society.

May the God and Father of all grant that the human family, through careful observance of the principle of religious freedom in society, may be brought by the grace of Christ and the power of the Holy Spirit to the sublime and unending and “glorious freedom of the sons of God” [Rom. 8:21].

8.4 Two Islamic Declarations on Human Rights

Fikret Karcic

The Universal Islamic Declaration of Human Rights (UIDHR), a compilation of human rights in Islam, was adopted in 1981 by the Islamic Council, a London-based nongovernmental organization. In terminology and format, it is similar to the United Nations' Universal Declaration of Human Rights (UDHR) of 1948; indeed, it was seen by its compilers as a Muslim equivalent to the UDHR. Conceptually, it is characterized by using Islamic law (Sharī'a) as a controlling standard for individual and collective rights. The Cairo Declaration is a document adopted by the Organization of the Islamic Conference (OIC) in 1990. It is a political and legal document, expressing the stand of OIC member states with regard to human rights in Islam; it emerged as a consequence of increased interest in human rights in the Muslim world in the 1980s and with the intent to produce a Muslim equivalent to relevant international codifications of human rights, which were seen by some in the Muslim world as a product of Western culture. Like the UIDHR, the Cairo Declaration uses the Sharī'a as a framework for the interpretation of the rights and freedoms that it stipulates but is less ideologically charged.

During the second part of the twentieth century, and especially from the 1980s onward, many Muslim scholars became engaged in a debate over the relationship between human rights and Islam. This development was generated both by the emergence of human rights discourse in the modern world and by the inclusion of human rights protection clauses in the constitutions of many Muslim countries. As has been observed by Heiner Bielefeldt, four basic positions were taken in this debate.⁸³

First, there is what may be called the "Islamization" of human rights, based on the view that human rights have always been part of the Sharī'a, as divine law provides an absolute foundation for the protection of rights and duties of every person. According to this position, there is a distinctively Islamic concept of human rights, in certain aspects different from a Western one. This position, which can also be labeled as "essentialist," has found expression in a number of official

and semiofficial documents, among which are the two presented here—the Universal Islamic Declaration of Human Rights (UIDHR) and the Cairo Declaration on Human Rights in Islam. In these documents, the Sharī‘a is both the frame of reference and the guideline for interpretation of codified text.

Second, some scholars adopt pragmatic approaches, allowing leniency in the praxis of the application of the Sharī‘a. For instance, in this perspective, the validity of certain institutions such as polygamy may remain unchallenged, but in practice their application is restricted to a certain degree to meet a human rights standard of equality.

Third, there is also a position characterized by liberal reconceptualization. Some Muslim scholars propose a reinterpretation of the Sharī‘a in order to bring its provisions into line with contemporary developments. However, their attempts are very often controversial and lack both inner consistency and acceptance by the majority.

Finally, some adopt a clearly secular stance, calling for the secularization of law and the relegation of religion to the realm of private life. This position, however, is not popular and is seen to endorse the acceptance of the Western scheme of human rights into Muslim society.

In terms of this schema, the two texts presented here both adopt an “essentialist” position. UIDHR in its preamble provides that the Holy Qur’ān and the Sunna are the legal and moral frameworks within which human institutions and relations are established. Human rights are decreed by divine law and consequently cannot be curtailed, abrogated, or disregarded by human authorities; moreover, duties and obligations have priorities over rights. The Cairo Declaration stipulates that fundamental rights and freedoms in Islam are an integral part of the Islamic religion. As divine commandments, contained in the revealed books of God, their observance is an act of worship. Every person is individually responsible for their safeguarding, and the Umma is collectively responsible.

Thus these two Muslim documents give great significance to human rights; they are divine commandments, contained in revealed books—an expression that indicates common ground among the revealed religions vis-à-vis human rights. One might infer that human rights, as provided for in the revealed texts, constitute what the Romans called the *lex aeterna* (eternal laws) of humanity. Classical Muslim scholars identified such values as *al-darūriyyāt* (“necessities”), which had to be protected in every human society—these included life, religion, dignity, property, and progeny.⁸⁴ In addition, human rights are defined as an integral part of the religion of Islam and their observance as an act of worship. Another distinctive feature of an Islamic perspective is the view that duties and obligations have priority over rights, though this is not further elaborated here.

With respect to possible limitations imposed on human rights, UIDHR provides that the only limitations shall be such “as are enjoined by the Law for the purpose of securing the due recognition of, and respect for, the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare of the Community.”⁸⁵ In fact this is an “Islamized” version of the formulation in the UDHR, with “law” interpreted as “the Sharī‘a,” and “a democratic society” replaced by “the Community (Umma).”⁸⁶ The Cairo Declaration briefly states in Article 24 that “all rights and freedoms stipulated in this Declaration are subject to Islamic Sharī‘a,” and adds that the Sharī‘a is also the only source of reference for the explanation or clarification of any of the articles of the declaration.⁸⁷ Provisions like this open questions as to the identity of the authoritative interpreters of the Sharī‘a and consequently can lead to different interpretations of these documents.

*The Universal Islamic Declaration of Human Rights*⁸⁸

This is a declaration for mankind, a guidance and instruction to those who fear God. [Āl ‘Imrān 3:138]

Foreword

Islam gave to mankind an ideal code of human rights fourteen centuries ago. These rights aim at conferring honour and dignity on mankind and eliminating exploitation, oppression and injustice.

Human rights in Islam are firmly rooted in the belief that God, and God alone, is the Law Giver and the Source of all human rights. Due to their Divine origin, no ruler, government, assembly or authority can curtail or violate in any way the human rights conferred by God, nor can they be surrendered.

Human rights in Islam are an integral part of the overall Islamic order and it is obligatory on all Muslim governments and organs of society to implement them in letter and in spirit within the framework of that order.

It is unfortunate that human rights are being trampled upon with impunity in many countries of the world, including some Muslim countries. Such violations are a matter of serious concern and are arousing the conscience of more and more people throughout the world.

I sincerely hope that this *Declaration of Human Rights* will give a powerful impetus to the Muslim peoples to stand firm and defend resolutely and courageously the rights conferred on them by God.

This *Declaration of Human Rights* is the second fundamental document proclaimed by the Islamic Council to mark the beginning of the 15th

Century of the Islamic era, the first being the *Universal Islamic Declaration* announced at the International Conference on The Prophet Muhammad (peace and blessings be upon him) and his Message, held in London from April 12 to 15, 1980.

The *Universal Islamic Declaration of Human Rights* is based on the Qur'ān and the Sunna and has been compiled by eminent Muslim scholars, jurists and representatives of Islamic movements and thought. May God reward them all for their efforts and guide us along the right path.

Salem Azzam, *Secretary General*⁸⁹

O men! Behold, We have created you all out of a male and a female, and have made you into nations and tribes, so that you might come to know one another. Verily, the noblest of you in the sight of God is the one who is most deeply conscious of Him. Behold, God is all-knowing, all aware. [al-Ḥujurāt 49:13]

Preamble

Whereas the age-old human aspiration for a just world order wherein people could live, develop and prosper in an environment free from fear, oppression, exploitation and deprivation, remains largely unfulfilled;

Whereas the Divine Mercy unto mankind reflected in its having been endowed with super-abundant economic sustenance is being wasted, or unfairly or unjustly withheld from the inhabitants of the earth;

Whereas Allah (God) has given mankind through His revelations in the Holy Qur'ān and the Sunna of His Blessed Prophet Muhammad an abiding legal and moral framework within which to establish and regulate human institutions and relationships;

Whereas the human rights decreed by the Divine Law aim at conferring dignity and honour on mankind and are designed to eliminate oppression and injustice;

Whereas by virtue of their Divine source and sanction these rights can neither be curtailed, abrogated or disregarded by authorities, assemblies or other institutions, nor can they be surrendered or alienated;

Therefore we, as Muslims, who believe

(a) in God, the Beneficent and Merciful, the Creator, the Sustainer, the Sovereign, the sole Guide of mankind and the Source of all Law;

(b) in the Vicegerency (*Khilāfa*) of man who has been created to fulfil the Will of God on earth;

(c) in the wisdom of Divine guidance brought by the Prophets, whose mission found its culmination in the final Divine message that

was conveyed by the Prophet Muhammad (Peace be upon him) to all mankind;

(d) that rationality by itself without the light of revelation from God can neither be a sure guide in the affairs of mankind nor provide spiritual nourishment to the human soul, and, knowing that the teachings of Islam represent the quintessence of Divine guidance in its final and perfect form, feel duty-bound to remind man of the high status and dignity bestowed on him by God;

(e) in inviting all mankind to the message of Islam;

(f) that by the terms of our primeval covenant with God our duties and obligations have priority over our rights, and that each one of us is under a bounden duty to spread the teachings of Islam by word, deed, and indeed in all gentle ways, and to make them effective not only in our individual lives but also in the society around us;

(g) in our obligation to establish an Islamic order:

(i) wherein all human beings shall be equal and none shall enjoy a privilege or suffer a disadvantage or discrimination by reason of race, colour, sex, origin or language;

(ii) wherein all human beings are born free;

(iii) wherein slavery and forced labour are abhorred;

(iv) wherein conditions shall be established such that the institution of family shall be preserved, protected and honoured as the basis of all social life;

(v) wherein the rulers and the ruled alike are subject to, and equal before, the Law;

(vi) wherein obedience shall be rendered only to those commands that are in consonance with the Law;

(vii) wherein all worldly power shall be considered as a sacred trust, to be exercised within the limits prescribed by the Law and in a manner approved by it, and with due regard for the priorities fixed by it;

(viii) wherein all economic resources shall be treated as Divine blessings bestowed upon mankind, to be enjoyed by all in accordance with the rules and the values set out in the Qur'an and the Sunna;

(ix) wherein all public affairs shall be determined and conducted, and the authority to administer them shall be exercised after mutual consultation (*shūrā*) between the believers qualified to contribute to a decision which would accord well with the Law and the public good;

(x) wherein everyone shall undertake obligations proportionate to his capacity and shall be held responsible *pro rata* for his deeds;

(xi) wherein everyone shall, in case of an infringement of his rights, be assured of appropriate remedial measures in accordance with the Law;

(xii) wherein no one shall be deprived of the rights assured to him by the Law except by its authority and to the extent permitted by it;

(xiii) wherein every individual shall have the right to bring legal action against anyone who commits a crime against society as a whole or against any of its members;

(xiv) wherein every effort shall be made to

(a) secure unto mankind deliverance from every type of exploitation, injustice and oppression,

(b) ensure to everyone security, dignity and liberty in terms set out and by methods approved and within the limits set by the Law;

Do hereby, as servants of Allah and as members of the Universal Brotherhood of Islam, at the beginning of the Fifteenth Century of the Islamic Era, affirm our commitment to uphold the following inviolable and inalienable human rights that we consider are enjoined by Islam.

I Right to Life⁹⁰

(a) Human life is sacred and inviolable and every effort shall be made to protect it. In particular no one shall be exposed to injury or death, except under the authority of the Law.

(b) Just as in life, so also after death, the sanctity of a person's body shall be inviolable. It is the obligation of believers to see that a deceased person's body is handled with due solemnity.

II Right to Freedom⁹¹

(a) Man is born free. No inroads shall be made on his right to liberty except under the authority and in due process of the Law.

(b) Every individual and every people has the inalienable right to freedom in all its forms—physical, cultural, economic and political—and shall be entitled to struggle by all available means against any infringement or abrogation of this right; and every oppressed individual or people has a legitimate claim to the support of other individuals and/or peoples in such a struggle.

III Right to Equality and Prohibition against Impermissible Discrimination⁹²

(a) All persons are equal before the Law and are entitled to equal opportunities and protection of the Law.

(b) All persons shall be entitled to equal wage for equal work.

(c) No person shall be denied the opportunity to work or be discriminated against in any manner or exposed to greater physical risk by reason of religious belief, colour, race, origin, sex or language.

IV Right to Justice⁹³

(a) Every person has the right to be treated in accordance with the Law, and only in accordance with the Law.

(b) Every person has not only the right but also the obligation to protest against injustice; to recourse to remedies provided by the Law in respect of any unwarranted personal injury or loss; to self-defence against any charges that are preferred against him and to obtain fair adjudication before an independent judicial tribunal in any dispute with public authorities or any other person.

(c) It is the right and duty of every person to defend the rights of any other person and the community in general (*hisba*).

(d) No person shall be discriminated against while seeking to defend private and public rights.

(e) It is the right and duty of every Muslim to refuse to obey any command which is contrary to the Law, no matter by whom it may be issued.

V Right to Fair Trial⁹⁴

(a) No person shall be adjudged guilty of an offence and made liable to punishment except after proof of his guilt before an independent judicial tribunal.

(b) No person shall be adjudged guilty except after a fair trial and after reasonable opportunity for defence has been provided to him.

(c) Punishment shall be awarded in accordance with the Law, in proportion to the seriousness of the offence and with due consideration of the circumstances under which it was committed.

(d) No act shall be considered a crime unless it is stipulated as such in the clear wording of the Law.

(e) Every individual is responsible for his actions. Responsibility for a crime cannot be vicariously extended to other members of his family or group, who are not otherwise directly or indirectly involved in the commission of the crime in question.

VI Right to Protection against Abuse of Power⁹⁵

Every person has the right to protection against harassment by official agencies. He is not liable to account for himself except for making a defence to the charges made against him or where he is found in a situation wherein a question regarding suspicion of his involvement in a crime could be *reasonably* raised.

VII Right to Protection against Torture⁹⁶

No person shall be subjected to torture in mind or body, or degraded, or threatened with injury either to himself or to anyone related to or held dear by him, or forcibly made to confess to the commission of a crime, or forced to consent to an act which is injurious to his interests.

VIII Right to Protection of Honour and Reputation⁹⁷

Every person has the right to protect his honour and reputation against calumnies, groundless charges or deliberate attempts at defamation and blackmail.

IX Right to Asylum⁹⁸

(a) Every persecuted or oppressed person has the right to seek refuge and asylum. This right is guaranteed to every human being irrespective of race, religion, colour and sex.

(b) *al-Masjid al-Ḥarām* (the sacred house of Allah) in Mecca is a sanctuary for all Muslims.

X Rights of Minorities⁹⁹

(a) The Qur'ānic principle "There is no compulsion in religion" shall govern the religious rights of non-Muslim minorities.

(b) In a Muslim country religious minorities shall have the choice to be governed in respect of their civil and personal matters by Islamic Law, or by their own laws.

XI Right and Obligation to Participate in the Conduct and Management of Public Affairs¹⁰⁰

(a) Subject to the Law, every individual in the community (*umma*) is entitled to assume public office.

(b) Process of free consultation (*shūrā*) is the basis of the administrative relationship between the government and the people. People also have the right to choose and remove their rulers in accordance with this principle.

XII Right to Freedom of Belief, Thought and Speech¹⁰¹

(a) Every person has the right to express his thoughts and beliefs so long as he remains within the limits prescribed by the Law. No one, however, is entitled to disseminate falsehood or to circulate reports which may outrage public decency, or to indulge in slander, innuendo or to cast defamatory aspersions on other persons.¹⁰²

(b) Pursuit of knowledge and search after truth is not only a right but a duty of every Muslim.¹⁰³

(c) It is the right and duty of every Muslim to protest and strive (within the limits set out by the Law) against oppression even if it involves challenging the highest authority in the state.¹⁰⁴

(d) There shall be no bar on the dissemination of information provided it does not endanger the security of the society or the state and is confined within the limits imposed by the Law.

(e) No one shall hold in contempt or ridicule the religious beliefs of others or incite public hostility against them; respect for the religious feelings of others is obligatory on all Muslims.¹⁰⁵

XIII Right to Freedom of Religion¹⁰⁶

Every person has the right to freedom of conscience and worship in accordance with his religious beliefs.

XIV Right to Free Association¹⁰⁷

(a) Every person is entitled to participate individually and collectively in the religious, social, cultural and political life of his community and to establish institutions and agencies meant to enjoin what is right (*ma'rūf*) and to prevent what is wrong (*munkar*).

(b) Every person is entitled to strive for the establishment of institutions whereunder an enjoyment of these rights would be made possible. Collectively, the community is obliged to establish conditions so as to allow its members full development of their personalities.

XV The Economic Order and the Rights Evolving Therefrom¹⁰⁸

(a) In their economic pursuits, all persons are entitled to the full benefits of nature and all its resources. These are blessings bestowed by God for the benefit of mankind as a whole.

(b) All human beings are entitled to earn their living according to the Law.

(c) Every person is entitled to own property individually or in association with others. State ownership of certain economic resources in the public interest is legitimate.

(d) The poor have the right to a prescribed share in the wealth of the rich, as fixed by *Zakāt*, levied and collected in accordance with the Law.

(e) All means of production shall be utilised in the interest of the community (*umma*) as a whole, and may not be neglected or misused.

(f) In order to promote the development of a balanced economy and to protect society from exploitation, Islamic Law forbids monopolies, unreasonable restrictive trade practices, usury, the use of coercion in the making of contracts and the publication of misleading advertisements.

(g) All economic activities are permitted provided they are not detrimental to the interests of the community (*umma*) and do not violate Islamic laws and values.

XVI Right to Protection of Property¹⁰⁹

No property may be expropriated except in the public interest and on payment of fair and adequate compensation.

XVII Status and Dignity of Workers¹¹⁰

Islam honours work and the worker and enjoins Muslims not only to treat the worker justly but also generously. He is not only to be paid his earned wages promptly, but is also entitled to adequate rest and leisure.

XVIII Right to Social Security¹¹¹

Every person has the right to food, shelter, clothing, education and medical care consistent with the resources of the community. This obligation of the community extends in particular to all individuals who cannot take care of themselves due to some temporary or permanent disability.

XIX Right to Found a Family and Related Matters¹¹²

(a) Every person is entitled to marry, to found a family and to bring up children in conformity with his religion, traditions and culture. Every spouse is entitled to such rights and privileges and carries such obligations as are stipulated by the Law.

(b) Each of the partners in a marriage is entitled to respect and consideration from the other.

(c) Every husband is obligated to maintain his wife and children according to his means.

(d) Every child has the right to be maintained and properly brought up by its parents, it being forbidden that children are made to work at an early age or that any burden is put on them which would arrest or harm their natural development.

(e) If parents are for some reason unable to discharge their obligations towards a child it becomes the responsibility of the community to fulfil these obligations at public expense.

(f) Every person is entitled to material support, as well as care and protection, from his family during his childhood, old age or incapacity. Parents are entitled to material support as well as care and protection from their children.

(g) Motherhood is entitled to special respect, care and assistance on the part of the family and the public organs of the community (*umma*).

(h) Within the family, men and women are to share in their obligations and responsibilities according to their sex, their natural endowments, talents and inclinations, bearing in mind their common responsibilities toward their progeny and their relatives.

(i) No person may be married against his or her will, or lose or suffer diminution of legal personality on account of marriage.

XX Rights of Married Women¹¹³

Every married woman is entitled to:

- (a) live in the house in which her husband lives;
- (b) receive the means necessary for maintaining a standard of living which is not inferior to that of her spouse, and, in the event of divorce, receive during the statutory period of waiting (*'idda*) means of maintenance commensurate with her husband's resources, for herself as well as for the children she nurses or keeps, irrespective of her own financial status, earnings, or property that she may hold in her own rights;
- (c) seek and obtain dissolution of marriage (*khul'*) in accordance with the terms of the Law. This right is in addition to her right to seek divorce through the courts.
- (d) inherit from her husband, her parents, her children and other relatives according to the Law;
- (e) strict confidentiality from her spouse, or ex-spouse if divorced, with regard to any information that he may have obtained about her, the disclosure of which could prove detrimental to her interests. A similar responsibility rests upon her in respect of her spouse or ex-spouse.

XXI Right to Education¹¹⁴

- (a) Every person is entitled to receive education in accordance with his natural capabilities.
- (b) Every person is entitled to a free choice of profession and career and to the opportunity for the full development of his natural endowments.

XXII Right of Privacy¹¹⁵

Every person is entitled to the protection of his privacy.

XXIII Right to Freedom of Movement and Residence¹¹⁶

- (a) In view of the fact that the World of Islam is veritably *Umma Islamia*, every Muslim shall have the right to freely move in and out of any Muslim country.
- (b) No one shall be forced to leave the country of his residence, or be arbitrarily deported therefrom without recourse to due process of Law.

Explanatory Notes

I. In the above formulation of Human Rights, unless the context provides otherwise:

- (a) [T]he term "person" refers to both the male and female sexes.
- (b) [T]he term "Law" denotes the Sharī'a, i.e.[,] the totality of ordinances derived from the Qur'ān and the Sunna and any other laws

that are deduced from these two sources by methods considered valid in Islamic jurisprudence.

2. Each one of the Human Rights enunciated in this declaration carries a corresponding duty.

3. In the exercise and enjoyment of the rights referred to above every person shall be subject only to such limitations as are enjoined by the Law for the purpose of securing the due recognition of, and respect for, the rights and the freedom of others and of meeting the just requirements of morality, public order and the general welfare of the Community (Umma).

The Arabic text of this Declaration is the original.

Glossary of Arabic Terms

Hisba—Public vigilance, an institution of the Islamic State enjoined to observe and facilitate the fulfillment of right norms of public behavior. The *Hisba* consists in public vigilance as well as an opportunity to private individuals to seek redress through it.

Idda—The waiting period of a widowed or divorced woman during which she is not to re-marry.

Khilāfa—The vicegerency of man on earth or succession to the Prophet, transliterated into English as the Caliphate.

Khul'—Divorce a woman obtains at her own request.

Ma'rūf—Good act.

Munkar—Reprehensible deed.

Sharī'a—Islamic law.

Sunna—The example or way of life of the Prophet (peace be upon him), embracing what he said, did, or agreed to.

Umma Islamia—World Muslim community.

Zakāt—The “purifying” tax on wealth, one of the five pillars of Islam obligatory on Muslims.

*The Cairo Declaration on Human Rights in Islam*¹¹⁷

The Member States of the Organization of the Islamic Conference:¹¹⁸

Reaffirming the civilizing and historical role of the Islamic Umma which God made the best nation that has given mankind a universal and well-balanced civilization in which harmony is established between this life and the hereafter and knowledge is combined with faith; and the role that this Umma should play to guide a humanity confused by competing trends and ideologies and to provide solutions to the chronic problems of this materialistic civilization;

Wishing to contribute to the efforts of mankind to assert human rights, to protect man from exploitation and persecution, and to affirm his freedom and right to a dignified life in accordance with the Islamic Sharī'a;

Convinced that mankind which has reached an advanced stage in materialistic science is still, and shall remain, in dire need of faith to support its civilization and of a self-motivating force to guard its rights;

Believing that fundamental rights and universal freedoms in Islam are an integral part of the Islamic religion and that no one as a matter of principle has the right to suspend them in whole or in part or violate or ignore them in as much as they are binding divine commandments, which are contained in the Revealed Books of God and were sent through the last of His Prophets to complete the preceding divine messages thereby making their observance an act of worship and their neglect or violation an abominable sin, and accordingly every person is individually responsible—and the Umma collectively responsible—for their safeguard;

Proceeding from the above-mentioned principles, declare the following:

Article 1

(a) All human beings form one family whose members are united by submission to God and descent from Adam. All men are equal in terms of basic human dignity and basic obligations and responsibilities, without any discrimination on the grounds of race, colour, language, sex, religious belief, political affiliation, social status or other considerations. True faith is the guarantee for enhancing such dignity along the path to human perfection.

(b) All human beings are God's subjects, and the most loved by him are those who are most useful to the rest of His subjects, and no one has superiority over another except on the basis of piety and good deeds.

Article 2

(a) Life is a God-given gift and the right to life is guaranteed to every human being. It is the duty of individuals, societies and states to protect this right from any violation, and it is prohibited to take away life except for a Shari'a-prescribed reason.

(b) It is forbidden to resort to such means as may result in the genocidal annihilation of mankind.

(c) The preservation of human life throughout the term of time willed by God is a duty prescribed by Shari'a.

(d) Safety from bodily harm is a guaranteed right. It is the duty of the state to safeguard it, and it is prohibited to breach it without a Shari'a-prescribed reason.

Article 3

(a) In the event of the use of force and in case of armed conflict, it is not permissible to kill non-belligerents such as old men, women and children. The wounded and the sick shall have the right to medical treatment; and prisoners of war shall have the right to be fed, sheltered and clothed. It

is prohibited to mutilate dead bodies. It is a duty to exchange prisoners of war and to arrange visits or reunions of the families separated by the circumstances of war.

(b) It is prohibited to fell trees, to damage crops or livestock, and to destroy the enemy's civilian buildings and installations by shelling, blasting or any other means.

Article 4

Every human being is entitled to inviolability and the protection of his good name and honour during his life and after his death. The state and society shall protect his remains and burial place.

Article 5

(a) The family is the foundation of society, and marriage is the basis of its formation. Men and women have the right to marriage, and no restrictions stemming from race, colour or nationality shall prevent them from enjoying this right.

(b) Society and the State shall remove all obstacles to marriage and shall facilitate marital procedure. They shall ensure family protection and welfare.

Article 6

(a) Woman is equal to man in human dignity, and has rights to enjoy as well as duties to perform; she has her own civil entity and financial independence, and the right to retain her name and lineage.

(b) The husband is responsible for the support and welfare of the family.

Article 7

(a) As of the moment of birth, every child has rights due from the parents, society and the state to be accorded proper nursing, education and material, hygienic and moral care. Both the foetus and the mother must be protected and accorded special care.

(b) Parents and those in such like capacity have the right to choose the type of education they desire for their children, provided they take into consideration the interest and future of the children in accordance with ethical values and the principles of the Sharī'a.

(c) Both parents are entitled to certain rights from their children, and relatives are entitled to rights from their kin, in accordance with the tenets of the Sharī'a.

Article 8

Every human being has the right to enjoy his legal capacity in terms of both obligation and commitment. Should this capacity be lost or impaired, he shall be represented by his guardian.

Article 9

(a) The quest for knowledge is an obligation, and the provision of education is a duty for society and the State. The State shall ensure the availability of ways and means to acquire education and shall guarantee educational diversity in the interest of society so as to enable man to be acquainted with the religion of Islam and the facts of the Universe for the benefit of mankind.

(b) Every human being has the right to receive both religious and worldly family, the school, the university, the media, etc., and in such an integrated and balanced manner as to develop his personality, strengthen his faith in God and promote his respect for and defence of both rights and obligations.

Article 10

Islam is the religion of unspoiled nature. It is prohibited to exercise any form of compulsion on man or to exploit his poverty or ignorance in order to convert him to another religion or to atheism.¹¹⁹

Article 11

(a) Human beings are born free, and no one has the right to enslave, humiliate, oppress or exploit them, and there can be no subjugation but to God the Most-High.

(b) Colonialism of all types being one of the most evil forms of enslavement is totally prohibited. Peoples suffering from colonialism have the full right to freedom and self-determination. It is the duty of all States and peoples to support the struggle of colonized peoples for the liquidation of all forms of colonialism and occupation, and all States and peoples have the right to preserve their independent identity and exercise control over their wealth and natural resources.

Article 12

Every man shall have the right, within the framework of Sharī'a, to free movement and to select his place of residence whether inside or outside his country and, if persecuted, is entitled to seek asylum in another country. The country of refuge shall ensure his protection until he reaches safety, unless asylum is motivated by an act which Sharī'a regards as a crime.

Article 13

Work is a right guaranteed by the State and Society for each person able to work. Everyone shall be free to choose the work that suits him best and which serves his interests and those of society. The employee shall have the right to safety and security as well as to all other social guarantees. He may neither be assigned work beyond his capacity nor be subjected to compulsion

or exploited or harmed in any way. He shall be entitled—without any discrimination between males and females—to fair wages for his work without delay, as well as to the holidays, allowances and promotions which he deserves. For his part, he shall be required to be dedicated and meticulous in his work. Should workers and employers disagree on any matter, the State shall intervene to settle the dispute and have the grievances redressed, the rights confirmed and justice enforced without bias.

Article 14

Everyone shall have the right to legitimate gains without monopolization, deceit or harm to oneself or to others. Usury (*ribā*) is absolutely prohibited.

Article 15

(a) Everyone shall have the right to own property acquired in a legitimate way, and shall be entitled to the rights of ownership, without prejudice to oneself, others or to society in general. Expropriation is not permissible except for the requirements of public interest and upon payment of immediate and fair compensation.

(b) Confiscation and seizure of property is prohibited except for a necessity dictated by law.

Article 16

Everyone shall have the right to enjoy the fruits of his scientific, literary, artistic or technical production and the right to protect the moral and material interests stemming therefrom, provided that such production is not contrary to the principles of Sharīʿa.

Article 17

(a) Everyone shall have the right to live in a clean environment, away from vice and moral corruption, an environment that would foster his self-development; and it is incumbent upon the State and society in general to afford that right.

(b) Everyone shall have the right to medical and social care, and to all public amenities provided by society and the State within the limits of their available resources.

(c) The State shall ensure the right of the individual to a decent living which will enable him to meet all his requirements and those of his dependents, including food, clothing, housing, education, medical care and all other basic needs.

Article 18

(a) Everyone shall have the right to live in security for himself, his religion, his dependents, his honour and his property.

(b) Everyone shall have the right to privacy in the conduct of his private affairs, in his home, among his family, with regard to his property and his relationships. It is not permitted to spy on him, to place him under surveillance or to besmirch his good name. The State shall protect him from arbitrary interference.

(c) A private residence is inviolable in all cases. It will not be entered without permission from its inhabitants or in any unlawful manner, nor shall it be demolished or confiscated and its dwellers evicted.

Article 19

(a) All individuals are equal before the law, without distinction between the ruler and the ruled.

(b) The right to resort to justice is guaranteed to everyone.

(c) Liability is in essence personal.

(d) There shall be no crime or punishment except as provided for in the Sharī'a.

(e) A defendant is innocent until his guilt is proven in a fair trial in which he shall be given all the guarantees of defence.

Article 20

It is not permitted without legitimate reason to arrest an individual, or restrict his freedom, to exile or to punish him. It is not permitted to subject him to physical or psychological torture or to any form of humiliation, cruelty or indignity. Nor is it permitted to subject an individual to medical or scientific experimentation without his consent or at the risk of his health or of his life. Nor is it permitted to promulgate emergency laws that would provide executive authority for such actions.

Article 21

Taking hostages under any form or for any purpose is expressly forbidden.

Article 22

(a) Everyone shall have the right to express his opinion freely in such manner as would not be contrary to the principles of the Sharī'a.¹²⁰

(b) Everyone shall have the right to advocate what is right, and propagate what is good, and warn against what is wrong and evil according to the norms of Islamic Sharī'a.¹²¹

(c) Information is a vital necessity to society. It may not be exploited or misused in such a way as may violate sanctities and the dignity of Prophets, undermine moral and ethical values or disintegrate, corrupt or harm society or weaken its faith.¹²²

(d) It is not permitted to arouse nationalistic or doctrinal hatred or to do anything that may be an incitement to any form of racial discrimination.¹²³

Article 23

(a) Authority is a trust; and abuse or malicious exploitation thereof is absolutely prohibited, so that fundamental human rights may be guaranteed.

(b) Everyone shall have the right to participate, directly or indirectly in the administration of his country's public affairs. He shall also have the right to assume public office in accordance with the provisions of Sharī'a.

Article 24

All the rights and freedoms stipulated in this Declaration are subject to the Islamic Sharī'a.

Article 25

The Islamic Sharī'a is the only source of reference for the explanation or clarification to any of the articles of this Declaration.

Notes to Part III

1. Roosevelt enunciated the "four freedoms" in a state of the union address on January 6, 1941. The other three were freedom of expression, freedom from want, and freedom from fear. UDHR was adopted by the UN General Assembly in December 1948.
2. See generally Nazila Ghanea, ed., *The Challenge of Religious Discrimination at the Dawn of the New Millennium* (The Hague: Martinus Nijhoff, 2004). It was the Oslo Coalition, a group established in 1988, that led a campaign to change this focus, resulting in a change in the mandate holder's title to "Special Rapporteur on the Freedom of Religion or Belief," thus highlighting the broader question of freedom of religion and belief and treating it as a primary focus.
3. The locus classicus of this remains the decision of the commission in *Arrowsmith v. UK*, App. 7050/75 (1978), 19 *Decisions and Reports*, 5.
4. *Begum v. Denbigh High School*, [2006], UKHL 16 (March 22, 2006), Lord Hoffman, para. 50 (and see also at para. 54). See also Lord Bingham, paras. 23 and 25, and Lord Scott, para. 89.
5. See, e.g., *Wingrove v. UK*, November 25, 1996, *ECHR* 1996-V, and, for a recent example, *LA v. Turkey*, App. 42571/98, Judgment of September 13, 2005. These are all cases in which freedom of expression has been curbed in order to protect the religious sensibilities of others (thus disproving