

The State, Toleration, and Religious Freedom

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Abstract

This paper offers a novel account of the rise of religious freedom. Religious and political power have been bound together since pre-history. As a consequence, there was an absence of religious freedom throughout most of history. Even when religious dissidents were not being persecuted for their beliefs, religious practice was not free. We investigate the motivations that led some states to persecute individuals for their religious beliefs and other states to abstain from persecution. We argue that the rise of modern states—states capable of enforcing general rules and the rule of law—made possible religious peace and the eventual rise of religious and other liberal freedoms.

1 Introduction

The relationship between religion and the state is among the most important and contentious themes in world history. It remains important today, whether we are considering political turmoil in the Middle East, or issues such as same-sex marriage and the veil in Western democracies. This chapter will provide an overview of the relationship between religion and the state in Europe from antiquity to the Industrial Revolution. In so doing, we provide a novel account of how the West got religious freedom, one that will help us better understand the present.

Philosophers and political scientists have long recognized that the rise of religious freedom played a crucial role in the rise of liberalism more generally (e.g. Rawls, 1993).¹ Recognition of the right to worship as one pleased was foundational for the appreciation of other important personal liberties. Economic and political freedoms rest on freedom of conscience and freedom of religion (see Schmidtz and Brennan, 2010). However, accounts of the rise of religious freedom have often focused on the intellectual history of religious toleration, focusing on the writings of thinkers such as Pierre Bayle, Baruch Spinoza, and John Locke (e.g. Jordan, 1932, 1936; Lecler, 1960; Zagorin, 2003). Important as these works are, such an approach does not directly address the question of most interest to social scientists which is: what factors ensured that it was in the interest of policy makers to move towards greater religious freedom? In recent years historians have developed nuanced and sophisticated approaches to this question. But they focus either on a single period like early modern Europe (Kaplan, 2007) or on a specific country such as England (Sowerby, 2013) or France (Wilson, 2011). Here we provide a political economy approach to the question of how political and economic institutions changed in such a way so as to give rise to religious freedom. As social scientists, we develop a conceptual framework and then take this framework to historical evidence to see how well it can explain the outcomes that we observe.

A growing literature in the economics of religion studies the relationship between church and state today (Iannaccone, 1998; Barro and McCleary, 2005; Hungerman, 2005). This literature focuses on the effects of a state religion on religiosity. Monopoly state religion have been found

¹The political philosopher Chandran Kukathas provides a statement that can stand in lieu of a definition: 'Liberalism does not care who has power; nor does it care how it is acquired. All that matters is that the members of society are free to pursue their various ends, and that the polity is able to accommodate all peacefully' (Kukathas, 2003, 253). See Tomasi (2012) for a similar view.

to reduce religiosity because monopoly religious providers offer an inferior product in comparison with the competitive religious economies that emerge in the absence of a state religion. Our concern in this chapter is with the evolution of the state and church relationship over the long-course of history from the emergence of early states to around 1800.

In our forthcoming book, *Persecution & Toleration: The Long Road to Religious Freedom* (2018), we seek to build on and go beyond existing accounts of the origins of religious freedom. This chapter summarizes and expands upon the more detailed narrative we provide there. We are not the first to consider these questions. Gill (2008) makes the case for the political origins of religious liberty. Rubin (2017) and Platteau (2017) develop highly consistent accounts of the historical role religion played legitimating authority in the Islamic world. Studying Colonial America, Latin America and the Former Soviet Union, Gill (2008) proposes a rational choice account for why some societies have adopted religious freedom while others have not. We share with Gill (2008) an emphasis on the incentives facing political actors and a skepticism towards ideational accounts of the rise of religious liberty. We go back to antiquity to provide an explanation for why religious and secular authorities were so often such close partners and how this partnership shaped the character of religious toleration in the premodern period.

First we outline the relationship between religion and the state in the premodern era. We describe it as a *conditional toleration* equilibrium. This conditional toleration equilibrium was characterized by an absence of religious freedom and the occasional persecution of religious heterodoxy. We explain how this conditional toleration equilibrium was necessitated by a reliance on identity rules in an world of weak states. We illustrate the nature of this equilibrium by documenting the treatment of Jews in medieval Europe and the persecution of heretics. Next, we examine how this relationship slowly changed in the early modern period as a result of the Reformation and technological and military developments which led to the rise of stronger states. We outline how movements towards religious liberty arose in the Dutch Republic, England, and France. These developments caused the conditional toleration equilibrium to unravel—the conflicts usually known as the wars of religion of this period were symptomatic of this unraveling. Subsequent attempts to establish states that governed via general rules and relied on non-religious sources of legitimacy were what enabled the emergence of religious freedom. We also consider

what this legacy meant for the establishment of religious freedom in the United States. Finally, we conclude by considering the implications of our argument for religious liberty and the rule of law today.

2 *Religious Legitimation and the State*

Why is religion a natural source of political legitimacy? Since the earliest recorded history, religion has been the predominant source of legitimation. Religion is universal in human society. It provides narratives that satisfy the human desire for transcendence. Religious narratives can also make sense of, and hence justify, the way the world works. Religion can support or undermine political authority. In early history, however, the tendency was for religion to validate existing political authority. Early religious deities were powerful beings so that it was natural to associate worldly power as wielded by kings and chiefs, with them (Bellah, 2011, 231-232). Religion became increasingly important in validating political authority as political structures became more complex and stratified. Following the rise of agriculture and the invention of writing, religion came to play a crucial role in supporting political authority in Pharaonic Egypt, Babylon and China.

Anthropologists and psychologists such as Joseph Henrich and Ara Norenzayan speculate that the rise of religions with moralizing ‘high gods’ helped to expand the scope of human cooperation.² High gods can punish bad behavior and thereby prevent individuals from deviating from cooperative ventures. Such high gods can also validate political authority.

An important reason for the ubiquitous role of religion in validating political authority is outlined by Coşgel and Miceli (2009); Coşgel et al. (2012); Greif and Rubin (2015) and Rubin (2017) and this is that religious legitimation is cheap for rulers. Governments faces high costs in governing. It is expensive to pay officials, bureaucrats, soldiers, and tax collectors. It is still more costly to monitor them and to ensure that they are not behaving opportunistically. Providing public goods such as education, roads, or welfare is similarly extremely expensive, and in fact most premodern states were unable to provide many public goods beyond defense and basic law and order (see Johnson and Koyama, 2017). In this context, reliance on religion provides rulers

²Shariff and Norenzayan (2007); Shariff et al. (2009); Atran and Henrich (2010); Laurin et al. (2012); Slingerland et al. (2013); Norenzayan (2013); Purzycki et al. (2016); Norenzayan et al. (2016).

with an easily available and low cost source of political legitimacy.

Religious authorities also played an important role in all premodern societies in providing many of the public goods that states were unable to provide. The Catholic Church in medieval Europe, for instance, provided welfare, healthcare, and education.³ As a consequence, the Church was able to influence their congregations and encourage obedience to the political authorities. In a world where religion is the primary source of legitimacy, the ruling coalition in any society will be comprised of secular and religious authorities. Their position within this coalition will depend on their relative strengths.

The need for religious legitimization had important consequences for premodern polities. In return for providing legitimacy religious authorities could demand services in return from secular rulers. Monotheistic proselytizing religions such as Christianity and Islam have traditionally sought converts and to limit apostasy. One common bargain, therefore, was for a sufficiently strong secular ruler to promise to enforce religious conformity in return for legitimacy. This bargain was usually in the interests of the secular powers too as they did not wish competing religions to generate political instability. This was not, however, the only bargain that could be struck. Weaker rulers might have to obtain legitimacy from the religious authority by granting the religious authority land or resources as occurred in early medieval Europe. As we explain below, however, even when secular authorities did not enforce a religious monopoly, there was no true religious freedom.

Naturally, the ability of a given religion to provide legitimacy to the state varied. Rubin (2017), for instance, argues that Christianity was a less powerful vehicle for religious legitimization than Islam because Christianity emerged as a fringe sect and only became the religion of a powerful empire three hundred years after its founding whereas Islam was formed as a religion that would bind together the Arabian peninsula under a new, powerful, and expansionist state. Platteau (2017) further emphasizes that Islam was more easily instrumentalized by political authorities because of its decentralized character.

The ability of a state to enforce religious conformity will also depend on the level of religious

³Religious organizations excel at the provision of many public goods because they have evolved institutional practices such as strict rituals and rules that enable them weed out free-riders and resolve moral hazard and adverse selection problems. See for a discussion Berman (2009). The canonical model is, of course, Iannaccone (1992).

heterogeneity. A bargain in which the secular authority persecutes religious dissent in return for legitimization from the religious authority may be enforceable in a world where religious beliefs are fairly homogenous. But it may become unenforceable if religious beliefs become more heterogeneous.

3 Conditional Toleration & Identity Rules

The absence of religious freedom does not mean that individuals were routinely persecuted for their religious views. Rather, the situation that characterized the vast majority of premodern societies was one of what we call conditional toleration. Under conditional toleration, there are a range of permitted and prohibited religious views. Individuals generally do not face persecution if they do not stray beyond the bounds or conditions of toleration. These bounds varied by society and over time. Thus the ancient Romans were in general more tolerant than were later Christian Europeans, though they did frequently expel “foreigner” cults, and notoriously persecuted Christians.

Our framework helps elucidate the relationship between the absence of religious freedom and reliance on identity rules in polities reliant on religious legitimacy. Identity rules are rules where either the form of the rule or its enforcement depends on the social identity of the parties involved (e.g. religion, race, or language). In contrast, impersonal rules are rules where both the form of the rule and its enforcement are independent of the identity or status of individuals. Identity rules are inconsistent with the enforcement of the liberal rule of law.

Identity rules differentiate between individuals on the basis of their religion, ethnicity, or class. Reliance on identity rules was ubiquitous throughout the premodern world. Across Europe, for example, the nobility were often exempt from taxation and from the most heinous forms of capital punishment. City dwellers typically had different rights than did peasants. Jews were often prohibited from hiring Christian servants and forced to wear badges or hats to distinguish themselves from the Christian population. In the Middle East, both Christians and Jews paid special taxes and proselytizing to Muslims was punishable by death. In Japan, commoners could be executed by samurai for the smallest perceivable slight. In India each caste had its prescribed role and status in society.

Weak secular authorities both rely on religion as a source of political authorities and on identity rules to govern. In both cases this is a reflection of their weakness. They depend on religious sources of legitimacy because they lack the means to provide the public goods that would provide an alternative source of legitimization. In particular, they lack the administrative and legal capacity to enforce general rules and to ensure legal equality so they rely instead on the least costly form of governance—rules that leverage preexisting religious or ethnic identities.

Identity rules were ubiquitous for a reason—they are a low cost way of providing governance. In medieval Europe Jewish communities were often given the authority to police their own members. Only for capital cases was the punishment carried out by the Christian authorities. Another instance of the role of identity rules in medieval Europe were the guilds. Forming a layer of self-governance between the individual and the state, guilds provided crucial functions for their members.⁴ Merchant guilds played an important role in enforcing contracts and regulating long distance and overseas trade. Craft guilds controlled who could be employed as a skilled worker in any of the major industries including brewing, baking, tanning, smithing, construction, glasswork, and many other more specialized occupations.⁵ Guilds exemplified the importance of identity rules in medieval Europe as the benefits they conferred were for members—outsiders, foreigners, Jews, and women were excluded (Ogilvie, 2011, 2014).

Another example of conditional toleration was the dhimmi system which characterized premodern Islamic empires and became fully developed under the Ottoman empire. Non-Muslims were typically not persecuted or oppressed so long as they paid a special tax—the *jizya*. This tax was often collectively imposed on Christian or Jewish communities within the empire. On the one hand, Christian and Jews were legal and social inferiors to Muslims. Attempts to proselytize to Muslims were punishable by death. On the other hand, these religious minorities were granted considerable autonomy and self-governance, including the right to maintain their own legal systems (Braude and Lewis, 1982).⁶

⁴See Hanawalt (1984); Richardson (2001, 2005); Stabel (2004).

⁵Craft guilds were often based around the worship of a particular patron saint. As Richardson and McBride (2009) document, after the Black Death, guilds came to play an important religious role in establishing chantries that would pray for the soul of a member to speed their soul through purgatory. An important example of a religiously enforced identity rule was the prohibition on usury as discussed in Koyama (2010) and Johnson and Koyama (2018).

⁶As Kurian (2004, 2010) has argued, this choice of legal system gave Christian and Jewish minorities and

In a world of conditional toleration, religious peace was the usual state of affairs but religious peace was always fragile and *conditional*. Persecution could and did occur, and the possibility of religiously inspired violence shaped individuals lives and actions even if it was infrequent. For example, historians often describe Islamic Spain as tolerant. It is certainly true that religious diversity was greater in Islamic Spain than it was in Christian Europe at the time and that religious violence was less frequent or intense. Nevertheless, Islamic Spain was characterized by conditional toleration and persecutions did occur. From the twelfth century onwards, Jews and Christians faced not only discrimination and high taxes but also the periodic threat of violence and expulsion (Fernández-Morera, 2016).

We call it the conditional toleration *equilibrium* because it describes a situation in which none of the constituent players had an incentive to deviate from their actions. As such, it was self-reinforcing: as states become more reliant on identity rules to collect taxes and administer justice, they also faced lower incentives to invest in the fiscal and legal institutions that would lead to higher state capacity. This, in turn, makes them more likely to rely on identity rules and less able to enforce general rules of behavior. Low state capacity and identity rules reinforced one another.

Identity rules are a low cost way of providing order. But reliance on identity rules has pernicious economic consequences. Identity rules functioned because they generated economic rents for insiders. Their cost was that this excluded outsiders and resulted in static inefficiency as measured by deadweight loss triangles. Identity rules also limited the scope of trade and markets. As the scope of the market determines the extent of the division of labor, a reliance on identity rules impeded specialization and deterred innovation, thereby acting as a drag on the ability of an economy to generate economic growth over time. Innovation was the key to the onset of modern economic growth. Innovation did occur under the equilibrium of identity rules and conditional toleration, but the incentives to innovate were subdued, and the ability for new information to disseminate among groups of individuals was limited. In contrast, the industrial revolution was driven by an upsurge in innovative activity which occurred in eighteenth century England, after the dismantling of the identity rule equilibrium (Mokyr, 2009).

economic advantage once trade with western Europe opened up in the eighteenth and nineteenth centuries.

4 *The Treatment of Jews Under the Conditional Toleration Equilibrium*

We have argued that a reliance on religious legitimization and identity rules formed a self-reinforcing equilibrium. The situation of the Jews in western Europe provides a perfect example of this. Jewish communities have existed in Europe since Roman times and their history is extremely well-documented in comparison to any other minority groups. The treatment of the Jews, thus, reveals the conditional toleration equilibrium in all its details.

Following St. Augustine, the Church taught that the Jews were not to be subject to forced conversions or violence but that they were to be maintained in an inferior state so that they could serve as “witnesses” to the errors of their ancestors who had turned away Christ and so that their conversion could herald his Second Coming. In this respect their situation was different from Christian heretical groups.

Jews were often welcomed to settle in towns and cities. They obtained letters of protection from secular rulers and in some cases the terms of settlement were fairly good. But Jews also faced discriminatory laws which prohibited them from carrying weapons and sometimes required that they wear distinguishing clothes or badges. The situation of Jews in medieval Europe thus illustrates the nature of *conditional toleration*. Jews were tolerated but this toleration was conditional.

Throughout the middle ages, Jews had higher levels of human capital than their Christian neighbors and excelled as merchants, doctors, and moneylenders (Botticini and Eckstein, 2012). This determined the nature of the toleration that they obtained. Rulers offered Jews protection from antisemitic violence. In return they exploited the comparative advantage of the Jews in finance and moneylending in order to use Jewish lending to extract rents from the blossoming commercial economy—by taxing its profits (Koyama, 2010). This comparative advantage thus became as much of a curse as a blessing for Europe’s Jews.

In part because of the role they played in this system of fiscal extraction, the positions of Jews became increasingly fragile over time. Pogroms and expulsions became more common, often fueled by tropes such as accusations of blood libels or of host desecration (Stacey, 1998).

Despite promising of protection from secular rulers, persecutions and expulsions became increasingly common after 1300. These expulsions were sometimes carried out by medieval rulers

who wanted to demonstrate their commitment to Christianity or wished to expropriate the Jewish community in one go. But violence against the Jews was also often local and driven by economic shocks.

Anderson, Johnson and Koyama (2017) provide evidence that the conditional toleration equilibrium broke down under economic stress. During lean times, it became harder for rulers to credibly uphold their promise to protect the Jews. Studying periods of colder weather across Europe from 1100 onwards, they show that a one standard deviation decrease in temperature during the growing season was associated with a 50% increase in the baseline probability of persecution.

This medieval equilibrium we have described also faced serious challenges at the end of the middle ages. The Black Death represented a massive demographic and economic shock to medieval society—about 40% of the population died. But it was also a shock to the religious economy of medieval Europe.⁷ Finley and Koyama (2016) focus on the Holy Roman Empire during the period of Black Death, which saw the worst pogroms in premodern history (see Breuer, 1988; Cohn, 2007). They show that the persecution of Jews was more violent in communities governed by bishoprics, archbishoprics, and imperial free cities while Jews were less vulnerable in territories ruled either by the emperor or by one of the major secular electors. They argue this was the case because in areas where the authority of the emperor was contested by local political authorities, rents from Jewish moneylending were more likely to be dissipated. Rulers faced a problem of “overfishing” from the fiscal commons. Local rulers had less of an incentive to protect Jews where these rents were exhausted in the event of a crisis like the Black Death. Looking across all of Europe, Jedwab, Johnson and Koyama (2017) find that Black pogroms were more likely to take place in areas with preexisting antisemitism and when the plague hit a city during religiously sensitive months of the year such around Easter time or after Christmas.

In summary, conditional toleration meant that Jewish communities could survive throughout the Middle Ages and in some cases grow and flourish. But it also left them vulnerable to growing antisemitism and to fiscal exploitation from secular rulers (Baron, 1967). Moreover, though Jewish religious culture flourished at times, conditional toleration impeded the ability of Jewish

⁷See Richardson and McBride (2009).

communities to fully contribute to medieval European culture of civilization. The economic contribution that Jews could have made to the European economy was also stunted by the existence of restrictions and regulations that confined them to a small number of occupations.

The worsening position of Jews in western Europe led to a migration to Poland-Lithuania where, initially at least, they faced less discrimination and persecution (Weinryb, 1972, 51). Nevertheless, the conditions of Jewish settlement in eastern Europe were also characterized by conditional toleration and pogroms and persecutions eventually became a reoccurring feature of Jewish life in eastern Europe as it had been in western Europe.

5 *The Suppression of Heretics in Medieval Europe*

We now use our framework to explain the persecution of religious dissenters in medieval and premodern Europe.

First, we establish that when medieval states were fragmented and weak in the early middle ages (c. 400 AD to 1000 AD), religious dissent was not investigated or punished by secular authorities. During this time the institutional power of the Church was still dispersed and political authority was weak and fragmentary. This fragmentation in political authority was accompanied by a fragmentation in local patterns of religiosity as cults of local saints took central stage in the imaginations of believers. Far from being religiously uniform, early medieval Europe was characterized by a variety of what Peter Brown terms “micro-Christendoms” (Brown, 2013, 13).

Given popular views of a benighted “dark ages,” it is perhaps surprising that there were no heresy trials in western Europe between the end of the Roman empire and 1022 and, even after this, no heresy trials resulted in executions between 1022 and 1143 (Moore, 1987, 13-23). Heresy was an observer dependent phenomenon. It required a state and Church strong enough to encounter and investigate heterodoxy.

After the fall of the Roman Empire, political authority devolved and became local. As a consequence, the legal systems of early medieval Europe were fragmentary and overlapping. Marc Bloch observed that “Each human group, great or small, whether or not it occupied a clearly defined area, tended to develop its own legal tradition”. Family law he noted might be common

to an entire region whereas “agrarian law, on the other hand, conformed to usages, peculiar to their community”. Moreover, “[a]mong the obligations with which they were burdened, some, which they incurred as tenants, were fixed by the custom of the manor whose limits did not always coincide with those of the village’s agricultural lands” (Bloch, 1961, 112). Identity rules became the norm. And reliance on these rules, in turn, impeded the rise of stronger states.

For centuries, then, after the fall of the Roman Empire, both secular authorities and the Church lacked the capacity to impose religious uniformity. While it remained ideologically wedded to religious persecution and the physical punishment of heretics, the Church understood that secular rulers lacked the ability to enforce religious conformity. Instead, the Church relied on persuasion. This attitude not only applied to heretics; it also shaped the Church’s attitudes to those who believed in paganism and in witchcraft.

The period after 1200, however, saw the rise of more powerful states. The rediscovery of Roman Law led to the emergence of a systematic legal system that was capable of handling contract disputes in a way that preexisting Germanic legal system were incapable of doing (Berman, 1983; Bellomo, 1995). Markets expanded and there was a tremendous expansion of cities and urban life.

The new monarchies mobilized religious legitimacy as they sought to build state power. In France, Philip Augustus (1179–1223) developed a “royal religion” in order to forge a more powerful and centralized French monarchy. He advised his successors to “honor God and the Holy Church, as I have done. I have drawn great usefulness from his, and you will obtain just as much” (quoted in Goff, 2009, 552). The combination of reliance on religious legitimacy with an expansion in the scale of the state meant that medieval rulers increasingly were forced to defend religious orthodoxy by campaigning against newly discovered heresies and religious dissenters—giving rise to what Moore (1987) termed the birth of the persecuting society.

As we document in more detail in Johnson and Koyama (2013, 2018), the French monarchy first burnished its Catholic credentials by supporting the war declared by the Papacy against heretics in Languedoc known as the Cathars. Traditional historical accounts view the Cathar heresy as a distinctive dualist religion influenced by eastern heresies and by older Gnostic and

Manichean ideas.⁸

Johnson and Koyama (2013) develop a formal model in which religious legitimacy increases the ability of the state to collect taxes. The ability of the state to obtain religious legitimization, however, depends on the state enforcing religious homogeneity. As rulers come to govern more disparate populations with different religious beliefs, it becomes increasingly costly to enforce religious conformity. This model predicts that attempts by a ruler to build state capacity, and particularly to implement legal centralization can give rise to spikes in religious persecution in the short-run but can give rise to greater religious toleration in the long-run.

Johnson and Koyama (2013) use this model to explain why the expansion of the French state “revealed” the existence of long-entrenched heretics. The administrators and churchmen of northern France encountered a different kind of Christianity in southern France: “Local saints and their festivals, commemorations, and customs were cherished with corresponding fervour. Doctrine, on the other hand, cannot have been at all clearly or precisely disseminated or understood among lay people, and was doubtless subject to a good deal of local variation in its expression” (Moore, 2012, 120). Drawing on evidence from a slightly later period, Emmanuel Le Roy Ladurie noted that the peasants of the region were ignorant concerning many details of Christianity. Guillaume Baille excused his failure to fast by noting that “I do not know what the fast days of the Church are, apart from Lent and Friday” (Ladurie, 1978, 314). Ladurie observes that “[w]hile first communion and marriage acted as rites of passage, other sacraments seem to have been almost unknown in the upland villages. For example, there are no instances of confirmation. There is good reason for this: the Bishop, who would have performed the ceremony, rarely left Pamiers and his inquisitorial tasks, and in any case was not eager to travel among the mountainous areas of his diocese” (Ladurie, 1978, 313). Given this widespread ignorance of doctrine, beliefs and practices naturally deviated from Catholic orthodox. Hence as inquisitors were sent out to investigate “heresy” they naturally “uncovered” it amongst the peasantry.

⁸Traditional historical accounts emphasize that the Cathars believed that the devil had created the material world and that Christ could not therefore have been born in human flesh and have suffered on the cross. Following the writings of contemporary Cistercians chroniclers, historians saw the Cathars as developing a church-like organization in opposition to the Catholic Church. See, for example, Oldenbourg (1961, 28-81), Lambert (1998), Hamilton (1999), and Barber (2000). This view sees the Cathars as decisively influenced by the Bogomil heresy which arose in Macedonia in the tenth century. More recent historical scholarship casts doubt on the existence of Catharism as a distinctive set of beliefs prior to the crusade and the introduction of the Inquisitorial method (e.g. Pegg, 2001).

The French state used the suppression of the Cathar heresy to incorporate Languedoc into France and to strengthen monarchical power. The Church benefited from the suppression of religious dissent and the standardization of religious practices. The losers were those individuals in southern France who followed the Cathar preachers—many of those were killed and many more investigated by the newly established Roman Inquisition.⁹ The beliefs of the heretics found in Languedoc were not cohesive enough, and individuals could be assimilated into the Catholic Church. Medieval heretics, moreover, lacked the technology to widely disseminate their critique of the existing religious order. Church and state were together able to successfully suppress religious dissent. Heretical groups including the Waldensians, the Spiritual Franciscans, and the Lollards were extirpated or driven underground. The bargain between Church and state remained robust.

6 *From Crisis to Religious Freedom: Europe After the Reformation*

The Papacy's moral leadership and reputation was damaged by the relocation to Avignon for much of the fourteenth century where they were seen as pawns of the French crown and as venally corrupt. In the wake of the Black Death, Papal authority took a further blow with the subsequent Great Schism (1378–1417), the defeat of the last major Crusade at Nicopolis in 1396, and the failure of the Conciliar movement to achieve Papal reforms. As a result, there emerged heretical groups like the Lollards and Hussites. They prefigured the Protestant Reformation in challenging the authority of the Catholic Church. The religious equilibrium we described in Section 3 was thus already increasingly fragile before 1500. However, what came after 1517 proved to be a shock on an unprecedented scale.

The Reformation was inaugurated by Martin Luther's attack on the sale of Papal Indulgences contained in his 95 Theses published in 1517. But the scope of the attack on the Catholic Church and the existing order soon went far beyond this. Violence erupted across many parts of Europe giving rise to a series of conflicts in the sixteenth and seventeenth centuries in which religion played an important role. including civil wars in France, the Thirty Years War, the Wars of the

⁹The medieval inquisition was a personal office and not a permanent institution, unlike the later Spanish and Roman Inquisitions (see Kelly, 1989; Kieckhefer, 1995). The inquisitors did not employ torture until 1256.

Three Kingdoms,¹⁰ These conflicts were not solely religious in origin, but they stemmed from the shock that the Reformation had delivered to the medieval religious equilibrium. But what emerged from these crises were states that were on their way to being recognizably modern.

The Reformation was a critical juncture in European history. It shattered the religious and political equilibrium of medieval Europe. Once broken this equilibrium could not be restored. Attempts to recreate the medieval equilibrium, that is, to restore religious unity—such as Louis XIV’s expulsion of the Protestants from France—were doomed to failure (Wilson, 2011). Spanish policies to Jewish and Muslim converts were similarly self-destructive.¹¹

There is no need to explore all of the causes and consequences of the Reformation here.¹² What matters for our account is how Reformation fused with other economic and political developments in Europe. Together these developments shattered the conditional toleration equilibrium.

Several important developments accompanied the Reformation. First, the scope and scale of warfare increased. This necessitated the rise of larger and more powerful states with greater fiscal capacity (Parker, 1976, 1988; Gennaioli and Voth, 2015; Johnson and Koyama, 2017). Second, state consolidation increased perceived, or actual, religious heterogeneity. The rise of stronger and larger territorial states after 1500 meant that rulers governed populations with more heterogeneous religious beliefs. But the rise of the state also led to a greater perception, or realization, of pre-existing religious heterodoxy.

Historians have documented the ignorance of most peasants when it came to the basic fundaments of Christian belief in the middle ages. Absent the legal and administrative capacity to investigate heresy, the potpourri of half-remembered heterodox and orthodox beliefs held by most European peasants went unnoticed by rulers and the Church. This changed after 1500. Groups like the Waldensians who had escaped persecution by fleeing to the mountainous Pays de Vaud region of southwestern France faced renewed and much more effective persecution after 1500. 4,000 of them are said to have been killed in the 1540s (Roelker, 1996, 212).

¹⁰See Nexon (2009). It is largely a misnomer to call these wars “wars of religion” as their cause was typically not solely or predominantly religious (see Cavaugh, 2009).

¹¹See Monter (1994); Roth (1995); Ruiz (2007). For a study of the economic impact of the expulsion of the Moriscos see Chaney and Hornbeck (2016).

¹²For a survey see Becker et al. (2016). Recent synoptic treatments include MacCulloch (2003) and Eire (2016).

Lastly, the Reformation coincided with the discovery of the Americas and the rise of Atlantic trading networks. The opening up of a “new world” unmentioned by either the classics or the bible set in motion intellectual challenges to the status quo (Wooton, 2015). Meanwhile the riches available due to Atlantic trade would eventually strengthen commercial and mercantile elites, particularly in north west Europe (Acemoglu et al., 2005).

The Reformation reinforced and *interacted* with these developments: it weakened the legitimizing powers of the Catholic Church; it increased diversity of religious belief; and it strengthened secular states.

Through the medium of the printing press, reformers like Luther were able to disseminate their critique of the Catholic Church and this shock to the religious beliefs of many Catholics, particularly in the German-speaking lands, gave rise to an increase in religious diversity. The Reformation also offered an opportunity to secular rulers who used it to seize Church lands and strengthen secular states. The financial demands placed on states after the military revolution obliged them to invest in greater fiscal capacity. As states gained fiscal and administrative capacity, they became less reliant on identity rules and increasingly capable of enforcing more general rules. Permanent bureaucracies were established. Systems of taxation and law became more *legible* to use James Scott’s phrase (1999). Finally, rulers turned to economic elites as represented in parliaments as an alternative source of political legitimacy (Rubin, 2017). The net result was an abandonment of the identity rules which had governed the conditional toleration equilibrium.

6.1 The Dutch Republic

Traditional historical accounts all note that it was in the Dutch Republic that moves towards both the establishment of modern states and religious freedom began. The Dutch Republic was the most religiously tolerant state of the seventeenth century, but as we have noted, toleration is not the same as religious freedom. Recent historical accounts note that “as far as religion is concerned, even in the United Provinces state policies were not guided by the notion that diversity was unavoidable or even desirable, but by the conviction that concord was necessary. The existence of various religious sub-cultures was regarded at best as an unforeseen and unfortunate result of

the Reformation and the Dutch Revolt” (van Eijinatten, 2003, 3). Religious toleration was a regrettable policy that had to be pursued because one of the results of the Dutch Revolt was that it left the newly formed Protestant Republic in possession of lands where Catholics remained either as a substantial minority or in places as a local majority.¹³ Religious diversity increased when the Dutch Republic offered permanent protection to Jews, with large numbers of so-called crypto-Jews arriving in 1593. The rights of Jews to practice their religion was codified in 1619. A split within Dutch Protestantism between the Reformed Church as the Arminians further increased the importance of religious toleration as means of ensuring religious peace.

But religious restrictions remained in place in the Netherlands. Bayle, living in the Dutch Republic having had to flee France, was censored for his *Dictionnaire historique and critique*. The Dutch equilibrium came to be known as pillarization. Calvinists, Catholics, Lutherans, and Jews could coexist with one another in the Dutch Republic and the example this set for the rest of the world did help lay the foundations for religious freedom. But the Dutch Republic was not itself a fully religiously free society. It maintained many aspects of the conditional toleration equilibrium. Furthermore, Dutch society ossified and the economy stagnated, particularly after 1750 as the Dutch ceded commercial and economic leadership to England.

6.2 England

England also only gradually progressed towards an appreciation of, first religious toleration, and then, only much later, full religious freedom. Elizabeth I (r. 1558–1603) did not favor “making windows into mens souls”; but she believed in making a single monopoly church compulsory for the entire population. Thus her government founded an Anglican Church that was intended to be broad enough to encompass both Calvinists and those who favored Catholic practices and traditions. Recusants and dissenters were forced to conform or pay hefty fines or face imprisonment. While this appeared to work during her reign it left a troubled legacy that would erupt during the reigns of her successors.

Conflicts between the Anglican Church, crypto-Catholics, Presbyterians, various Puritan denominations, and groups like the Quakers destabilized English politics throughout the 17th

¹³During the seventeenth century Catholics comprised 35% of the population.

century. Religious conflicts within England were greatly exacerbated by the fact that the monarch of Anglican England also ruled Catholic Ireland and after 1603 were also kings of Presbyterian Scotland. From the Bishops War of 1639 which began with Charles I's attempt to impose the Anglian communion on Scotland to Ireland, the Civil Wars that afflicted the British isles were, in many respects, conflicts sparked and exacerbated by religion. The Stuart kings sought to use the Church of England to legitimate their rule but they governed a set of kingdoms that were much more religious diverse than the one that their medieval ancestors had ruled.

The restoration of Charles II in 1660 did not solve these problems. Though he was personally tolerant and skeptical (to the extent that he was religious, he leaned towards Catholicism), his Cavalier Parliament ruthlessly suppressed Protestant dissenters. The Quakers, in particular experienced a harsh persecution: as many as 11,000 were imprisoned between 1660 and 1685 and many fled to America (Marshall, 2006). The laws against Catholics were not lessened and the Popish Plot of 1678 saw mass executions of Catholics for an alleged conspiracy against the crown.

Resolution only came after 1689 with the Glorious Revolution and the Edict of Toleration. Though this brought only partial toleration—and was in fact less tolerant than the Toleration Act passed by James II in 1687 (see Sowerby, 2013), it produced a religious peace in England. This peace was crucial as it allowed space for the state to develop alternative source of legitimization. Over time, the treatment of Catholics and dissenting Protestants improved. Religion gradually receded in prominence from political life.

Intellectual arguments for religious freedom played an important role here. Bayle and Locke wrote influential treatises calling for greater religious toleration. But intellectual arguments do not exist in a vacuum. Bayle and Locke's arguments took on greater relevance in the wake of the backlash against Louis XIV's Revocation of the Edict of Nantes and the dispute over religious toleration in James II's England. Powerful as the arguments made by Bayle and Locke were, their political influence was cemented by the failure of an intolerant Louis XIV to dominate Europe and by the successes of states like the Dutch Republic that were perceived to be religiously tolerant. Had Louis XIV triumphed then it is possible that Bishop Bossuet's critique of Protestantism

might have been as influential as Locke's *Second Letter Concerning Toleration*.¹⁴ This was not the case in part because after 1713 the French model of Catholic absolutism was seen as decisively defeated.

Accidents of history thus played a role together with longer term economic and political developments that meant that by the eighteenth century, the leading European powers were on the way towards establishing modern states, rule of law, and religious freedom. This, necessarily, entailed the abandonment of religious legitimization and identity rules.

Even after 1700, however, progress was gradual and there were countless setbacks. Popular opinion often favored religious repression as evidenced by the Gordon Riots that took place in England in 1780 and saw Protestant mobs devastate predominantly Irish and Catholic slums in London and the repeal of the Jewish Naturalization Act of 1753 (Katz, 1994). Political elites remained more inclined to religious toleration than the population at large. Catholic Emancipation only came in 1828. Jews only obtained the right to sit in Parliament in 1858. These reforms came as part of a package which gradually dismantled the Hanoverian warfare state and greatly liberalized the British political and legal system.

6.3 France

France was also racked by civil war in the late sixteenth century in which religious differences between Catholics and Protestants became intermingled in a conflict between noble families over the French Crown. The Protestant Henri IV was able to bring about peace by converting to Catholicism and signing the Edict of Nantes, which guaranteed the rights of Protestants within France. As in the Dutch Republic, this measure of toleration was successful but it was seen as a regrettable concession, agreed to only because of the costs of religious conflict were too great. Louis XIV therefore sought to re-Catholicise his country. The condition of Protestants was made worse and Louis and his government hoped that they could ensure the conversion of the remaining Protestants. Finally, in 1685 he revoked the Edict of Nantes.

The Revocation was a failure. A far larger numbers of Protestant fled abroad than had been

¹⁴Jacques-Bénigne Bossuet wrote *History of the Variations of the Protestant Churches* in 1688. It contained an influential critique of Protestantism and the tendency for Protestant movements to fragment and a defense of an organized, monopoly church.

anticipated while the remaining Protestants laid low, many only passing as Catholics. Converts had to pay special taxes and their behavior was monitored. It was the responsibility of the intendants to investigate these new converts and to stamp out secret Protestant worship. In theory at least the punishment for obdurate Protestants were harsh: “ranging from death or a life term rowing the King’s galleys to confiscation of property or loss of inheritance rights” (Adams, 1991, 35). But once the attention of the French state was distracted by the War of the Spanish Succession (1701-1714) many Protestants returned to their old religion. Despite the Revocation, a Protestant minority continued to exist. By the 1760s they numbered around 700,000. Although their religion remained illegal until 1787, “administrative laxity mitigated the severity of the laws” (Merrick, 1990, 139). All in all, Louis XIV’s attempt to turn back the clock to the Middle Ages was a dramatic failure.

The failure of all attempts to restore religious unity paved the way for the development of states which no longer relied on religion for legitimacy and which sought to govern by general rules rather than identity rules. In England these developments took place gradually as we have seen. In France they occurred in a rush at the end of the eighteenth century. In 1787 Protestants received religious toleration and in 1791, full legal recognition.

Jews was also emancipated by the French Assembly in that year. Emancipation spread across Europe with French armies during the Revolutionary and Napoleonic wars (Berkovitz, 1989, 111–114). The defeat of Napoleon in 1815, however, saw a reversal in much of Germany (Jersch-Wenzel, 1997). In cities like Frankfurt, Jews were emancipated and then sent back into the Ghetto. Full Jewish emancipation across all of Germany was only completed in 1871.¹⁵ In the Russian empire it only took place in 1917.

It was therefore only gradually over the course of the nineteenth century that the liberal ideal of a rule of law state came close to being established in Britain, France, and Germany. Religious freedom became a key principle for liberal states alongside the right to property and to free expression. However, as history makes clear, as late as 1900 these freedom were fairly recent and fragile. The experience of Europe in the mid-twentieth century demonstrates how easy it was to reverse this process. Jews in some parts of Germany only possessed full rights for approximately

¹⁵Jews were granted partial but not full civic rights in Frankfurt in 1824 (Adler, 1960). The majority of German Jews were effectively emancipated by the 1850s but in Bavaria emancipation was only granted in 1871.

sixty years before the National Socialists returned Germany to a world of conditional toleration and then outright persecution and genocide.

It is possible for liberal societies to revert to a reliance on identity rules rather than general rules. When they do so freedoms such as religious freedom become endangered and we risk returning to a world of conditional toleration.

6.4 North America

We now turn to developments on the other side of the Atlantic. Numerous accounts of the rise of religious freedom give pride of place to the United States. It is true that the American colonies saw important experiments in religious freedom in Rhode Island and Pennsylvania, but from the long historical perspective taken in this chapter, we view the American contribution to the rise of religious freedom as an important but late addition to the major institutional developments which took place in Europe.

The American colonies were founded by Puritan settlers seeking to escape from the imposition of Anglican conformity in the Stuart England. The Puritans themselves did not favor freedom for non-Puritans. Nevertheless, as colonial America came to be peopled by a range of different religious traditions (Anglicans in Virginia, Puritans in Massachusetts, Quakers in Pennsylvania), the value of religious liberty became increasingly apparent. Traditional accounts emphasize the influence of the writings of Locke on America. No doubt Lockean discourse was influential, particularly in elite and enlightened circles. But Locke himself did not argue for the disestablishment of the Anglican Church and other facts on the ground made Americas receptive to Lockean themes. Rather, as Gill argues, it seems that “the primary factors driving the movement to deregulate religion were immigration, trade, internal migration, and the continued growth of pluralism (due to the difficulties in enforcing conformity), which meant a rise in new constituencies demanding tax relief from general religious assessment” (Gill, 2008, 91).

The American experience is consistent with our argument for the rise of religious freedom in Europe and with the model developed in Johnson and Koyama (2013). The main justification for religious freedom in the American context was the desire to protect the church from the state rather than to protect the state from religious influence. Fear of state intervention in religion

that made religious freedom increasingly attractive in late eighteenth century America. In this the American settlers were the inheritors of a long European evolution of economic and political institutions. The authors of the Constitution wanted an institutional framework that would preserve both existing liberties and at the same time ensure that the state was strong enough to ward off foreign powers (Hamilton et al., 1788, 2004).

Placed in its appropriate historical context, what led to the First Amendment was, less the secularism of Thomas Jefferson, but rather the realization that the creation of a powerful federal government posed renew challenges to local religious establishments across America. For Feldman the “motivating political reality that pushed liberty of conscience onto state and then federal agendas: the sudden increase in religious diversity that resulted from bringing the states together into federal union” (Feldman, 2005, 26). “Religious diversity”, he notes “drove this push for a constitutional amendment on religious liberty. The new form of government under consideration was intended to bind together the states into a union that was more complete—‘more perfect’—than under the Articles of Confederation. The resulting bound-together union would contain a degree of religious diversity much greater than existed in any of the several states. Under these conditions, various religious groups worried about the possibility—unlikely, to be sure—of the federal government coming under the control of some other particular denomination” (Feldman, 2005, 43-44). Religious diversity between states both made a national established church impossible and made an explicit statement of religious separation from the state desirable. The guarantee of religious freedom therefore accompanied the birth of a modern state in North America. The establishment of a modern state which was increasingly committed to the enforcement of general rules meant that established churches would wither away in the first half of the nineteenth century and by the end of the nineteenth century America would come to embrace its commitment to religious freedom as a core part of its political system.

7 Concluding Comments

As the rise of religious freedom was a crucial stepping stone to the rise of liberalism in general our argument has implications for our understanding of how states which respect the rule of law emerged in Europe during the early modern period.

North, Wallis and Weingast (2009, 2) describe the rise of modernity as the transition from natural states to open access orders. Natural states limit access in order to generate rents which in turn are used to create political order. Limited access orders, as ongoing work by John Wallis makes clear, rely on personal enforcement and on identity rules—rules where either the form of the rule or its enforcement depends on the social identity of the parties involved (e.g. religion, race, or language). In contrast, impersonal rules are rules where both the form of the rule and its enforcement are independent of the identity or status of individuals. Identity rules are incompatible with the generality norms associated with the rule of law and political liberalism. Open access orders, in contrast, do not depend on personal enforcement or on identity rules.

According to this thesis: the development of the modern state rested on this transition to a political order that was no longer reliant on personal enforcement and on identity rules. Missing from North, Wallis and Weingast (2009), however, is a recognition of the central role played by religion in premodern society. Religion, as we have argued, was crucial to political legitimacy in the premodern world and to the maintenance of political order.

It was rules based on religious identity that played a vital role in maintaining order in Europe for many centuries. Separating individuals into different legal categories was a means of ensuring peace, but it prevented individuals from reaping the benefits that come from trading and sharing ideas across religious boundaries.

Once we recognize the ubiquity of identity rules we can understand why religious freedom is such a recent historical development. It is the product of modernity. Modernity means the possibility of sustained economic growth and the existence of technologies capable of disseminating information rapidly. But modernity also means modern states—states capable of enforcing general rules.¹⁶ Modern states offer a threat to liberalism because they have the power to both crush individual liberties and to suppress intermediate groups and organizations that are independent of the state. But modern states also offer perhaps the only way to ensure that individual rights and freedoms are enforced. Liberal states have to strike a balance between recognizing private individuals and organizations that are separate from the state and ensuring that individuals are treated equally (see Levy, 2015).

¹⁶Of course other aspects of modern societal and economic organization such as the rapid dissemination of information, greater social fluidity, and sophisticated division of labor also played a crucial role.

To substantiate our argument we have offered a bird's eye view of the history of religion and the state in western Europe. We have documented the age old reliance of political authorities on religion as a source of political legitimacy. In western Europe after the Fall of the Roman Empire, this relationship gave rise to a particular medieval equilibrium according to which the Church gave the state religious legitimacy and administrative services in return for land, power, and the enforcement of religious homogeneity.

This conditional toleration equilibrium governed the religious affairs of Europe for more than a millennia. It is still in place in many parts of the world including the Middle East. Rulers ruled on the basis of identity rules: different rules applied to different religious and ethnic groups. These identity rules generated economic rents that helped rulers maintain political power. On occasion reliance on identity rules resulted in large-scale religious violence, but in normal times it helped bring about peace and a form of de facto religious toleration. Nevertheless, it was incompatible with religious freedom and the liberal rule of law, and retarded economic development.

After 1500 successive shocks disrupted the conditional toleration equilibrium. The religious changes brought about by the Reformation interacted with changes in military technology to bring about the rise of larger and more powerful states that were less reliant on religion for political legitimization. As states built their own apparatus for the collection of taxes and the enforcement of laws, they were forced to abandon identity rules and became increasing reliant on more general rules of behavior. This process was a gradual one. It was only the failure of attempts to restore the medieval equilibrium that gave rise to experiments in religious toleration. These were envisioned as temporary and as regrettable acknowledgements of political reality, but they opened the eyes of policymakers to the possibility of a different form of government—one depending on secular rather than religious justifications for rule, capable of governing via general rules and subject to the rule of law.

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