The relationship between Freedom of Religion or Belief (FoRB) and Democracy: An exploratory analysis

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Dissertation submitted in fulfilment of the requirements for the degree *Master of Arts* in Political Studies at the North-West University

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ABSTRACT

The 21st century is witnessing a global decline in the protection of religious freedom. The 21st century is also witnessing a rise in religiously motivated violence. Western liberal democracies are responding to this with tighter controls and management of religious groups and communities. This study explores the theoretical relationships between FoRB and democracy by constructing a philosophical and historical background and creating a theoretical framework for the understanding of individual rights encompassing a liberal democracy. By attempting to trace the development of the idea of individual rights, a tripartite relationship between liberal democracy, individual rights and ultimately the right to Freedom or Religion or belief becomes clear throughout the study. These relationships also indicate that the world is experiencing not only a decline in the protection of FoRB, but also a retreat in liberal democracy.

Key words: Religious Freedom, Human Rights, Democracy, Liberal Democracy, Persecution

OPSOMMING

Die 21ste eeu word gekenmerk deur 'n wêreldwye afname in die beskerming van vryheid van geloof en oortuiging. Verder gaan die 21ste eeu gebuk onder 'n toename in geloofsgemotiveerde geweld. Westerse liberale demokrasieë reageer om die beurt hierop met strenger beheermaatreëls en die bestuur van geloofsgroepe en -gemeenskappe. Hierdie studie ondersoek die teoretiese verhoudings tussen geloofsvryheid en demokrasie deur die uiteensetting van 'n filosofiese en historiese agtergrond om sodoende 'n raamwerk te skets waarbinne liberale demokrasie, wat gekenmerk word deur individuele regte, uiteengesit kan word. Deur die ontwikkeling van die idee van individuele regte uit een te sit word 'n drievoudige verhouding tussen demokrasie en godsdiensvryheid blootgelê. Hierdie verhoudings dui daarop dat die wêreld nie slegs 'n afname in die beskerming van godsdiensvryheid beleef nie, maar ook dat demokrasie wêreldwyd, soos 'n gety, terugtrek.

Sleutelwoorde: Godsdiensvryheid, Menseregte, Demokrasie, Liberale Demokrasie, Vervolging

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LIST OF ABBREVIATIONS

ECtHR: European Court of Human Rights

EIDHR: The European Initiative for Development and Human Rights

FIDH: International Federation of Human Rights

FoRB: Freedom of religion or belief

ICCPR: International Covenant on Civil and Political Rights

IHR: International human rights

NGO: Non-governmental organization

OHCHR: The Office of the High Commission of Human Rights

UDHR: Universal Declaration of Human Rights

Chapter 1 An introduction to freedom of religion and belief and democracy

1.1 Background and orientation

According to Farr (2014), evidence suggests that the early 21st century is witnessing a "rapid, worldwide decline in religious freedom"; a decline that he describes as a global crisis and the 'symptoms' of which vary from physical abuses to the privatization of religion. Pew Forum (2015) showed with data collected between 2012 and 2013 that religious minorities were targeted by government restrictions and hostile behaviour in 61% of the countries in the world. Data also suggest that in 2011, 74% of the world's population was living in countries with government restrictions on religion.[1]

Woodberry (2011:1) believes that human behaviour is influenced by, among other variables, religious, moral and cultural factors and that the root of a possible decline in religious freedom lies with a failure to understand and respect the "religious nature of man" and our need for a system of religious freedom that is "valued in culture and protected in law" (Bielefeldt, 2013:37; Farr, 2014). According to Grim (2009:39), a study done by the Hudson Institute's Center for Religious Freedom, shows that freedom of religion and belief (FoRB) in countries correlates statistically with the presence of other basic human rights, freedoms and with the successful enjoyment of democracy.

Wherever FoRB is present, according to the United States Commission on International Religious Freedom (2005:4), it forms the "cornerstone" of a stable democratic society where human rights are respected and valued. Benson (2013:122) refers to the Canadian Supreme Court, stating that FoRB is a "fundamental right" and represents a major triumph for a democratic society. Farr (2012) cites empirical work of the sociologists Brian J. Grim and Rodger Finke who contend that religious freedom correlates strongly with the "longevity and consolidation" of democracy and the "absence of violent religious extremism".

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[1] Pew Forum (2013) specifically found that government restrictions on religion and social hostilities involving religion in 2011 were the highest in the Middle East and North Africa.

1.2 Freedom of religion or belief as a human right

According to the United States Commission on International Religious Freedom (2005:4), freedom of thought, conscience and religion or belief not only protects the human rights of religious minority groups, but also the rights of individuals within majority religions. FoRB is, therefore, vital to the world's strategic and humanitarian interests. Religion and FoRB within the context of human rights remain contested concepts and no universally accepted definition exists, according to Marshall (2013b:8, 11). Any attempt at defining religion may lead to theoretical exclusions. Bielefeldt (2013:39) warns that a broad conceptualization of FoRB could in turn give rise to many trivialities because no clear line of distinction exists. Bielefeldt (2013:39) believes that a ruling by the European Court of Human Rights [ECtHR] proposes good guidelines for an understanding FoRB. The court stated that for a person's beliefs to qualify as a belief, the conviction "must display a certain level of cogency, seriousness, cohesion and importance".

1.2.1 Religion and freedom of religion or belief

Farr (2014) argues that religion is a "universal human search for a greater-than-human source of being and ultimate being". Yet, according to Marshall (2013b:8), situations in which no deism or theism exist could also constitute a 'belief' or religion, for example in the case of Confucianism. Marshall (2013b:8) also makes reference to instances where movements such as communism and fascism have been described as "political religions". In his discussion of the definition of religion, Abbink (2014:85) cites the work of Kenneth Burke, who defines religion as "equipment for life" and Clifford Geertz, who famously defines religion as "systems of symbols." For the purpose of this study, Abbink's (2014:85) twofold definition of religion forms the basis of understanding that firstly, religion is a deep and collective commitment that shapes communities and therefore should be understood as identity politics. Secondly, religion is "the recognition of an invisible order or reality" that shapes humans and their behaviour. For the purpose of this study religion, and therefore FoRB, is studied from a human rights perspective and subsequently understood within the framework of the religious nature of man (Abbink, 2014:85, Marshall, 2013:8, Bielefeldt, 2013:39, Farr, 2014). This angle is discussed at length throughout the literature review.

Freedom, according to Bielefeldt (2013:40), is a main feature of human rights. In an understanding of FoRB within a human rights approach, humans should be empowered to "freely find their own ways" (Bielefeldt, 2013:40). Farr (2014) submits that religious freedom is one of the freedoms that humans should be empowered with in order for individuals and society to "flourish". What Farr (2014) refers to as human flourishing, can also be understood as social wellbeing, according to Grim (2009:39).

But how would we begin to define FoRB? Firstly, FoRB can best be understood in relation to the Universal Declaration of Human Rights Article 18 (1981), namely that everyone, on account of being human, has the right to "freedom of thought, conscience and religion". According to the UDHR (1948), this right includes "freedom to change their religion or belief and freedom, either alone or in community with others and in public or private to manifest their religion or belief in teaching, practice, worship and observance". As mentioned above, FoRB still remains underdeveloped within a human rights context. A very important reason for the conceptually contested nature of FoRB is that it encompasses a very wide range of different human rights and should be studied as a set of human rights ranging from freedom to engage in religious practices such as dress code and diet, to freedom of conversion (Marshall, 2013:11). Benson (2013:122) also argues that FoRB is not just the right to have beliefs privately, but the right to "engage in the public dimensions of manifestation, declaration and teaching."

1.2.2   Democracy and freedom of religion or belief

Audi (1997:1) believes that the relationships between freedom of religion or belief (FoRB) and democracy has become, at least in the 20th and 21st century, one of the most important political and philosophical considerations of its time, especially considering that religious fundamentalism, at least in some of its forms, has proven to be a threat to democracy[2]. Van Beek (2010:34) in this regard points out that religion was integral to the

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[2] Fundamentalism, according to Shirrmacher (2013:13), is a "militant truth claim" that emanates from a "non-disputable, higher revelation, people, values or ideologies." In his definition, Shirrmacher (2013:15) recognizes that both non-state and state actors can be fundamentalist in nature and that Islamic states can be recognized as fundamentalist as far as defection from Islam can result in the threat of death, state punishment, severe civil consequences or expulsion from the family. According to the United States

thought of theorists who developed modern democratic thought, like John Locke, whose views are by some regarded as "explicitly religious", Jean Jacques Rousseau and Emmanuel Kant. Shirrmacher (2013:14) and Yadav's (2013:6) both refer to the work of Max Weber, who proposed that one of the most significant advances of the modern state is that the state alone can claim monopoly on legitimate physical force or the use of violence. This places violence out of the reach of individual religious and worldview communities, but in cases where the state cannot provide protection for its subjects, non-state actors will take over the role of distributing violence (Yadav, 2013:6). In the 21st century, the leading trend is that these non-state actors are very often fundamentalist religious groups.

The relationships between FoRB and other human rights have also been linked to important historical breakthroughs in the study of human rights in general (Bielefeldt, 2013:34). The relationships between FoRB and democracy are so inextricably linked that failure to understand and ensure the longevity of these relationships can threaten basic human freedoms and make a full consolidation of liberal democracy unlikely (Bielefieldt, 2003:34). The European Initiative for Democracy and Human Rights (EIDHR) (2015) argues that it is only when human rights are respected that individuals can effectively enjoy democracy. Bielefeldt (2013) supports this statement and argues that FoRB contributes to the development of pluralistic societies. Audi (1997:1) emphasizes that both democracy and FoRB are philosophical ideals that are worth preserving.

Audi's view is supported by international agreements like the Universal Declaration of Human Rights (UNDHR), the International Covenant on Civil and Political Rights (ICCPR) and the United Nations' Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief. Regional agreements like the African Charter on Human and People's Rights and the European Convention on Human Rights and the above-mentioned European Initiative for Democracy and Human Rights (EIDHR), also support this claim. However, Audi (1997:1) surmises that the dual preservation of democracy and FoRB has proven challenging with politically active religious groups being

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Commission on International Religious Freedom (2005:16), several countries that establish Islam as the state religion do not guarantee freedom of religion or belief and this, according to HRC, violates the ICCPR.

convinced that some freedoms are religiously forbidden. This causes some scholars of religion and politics alike to argue that religious freedom and democracy are at worst irreconcilable, and at best conflicting in values.

1.2.3 Democracy, freedom of religion or belief and religious violence

According to Diamond (1997:14), democratic commitments can be "easily trampled" during a state's struggle to preserve its monopoly over the use of force. If states cannot minimize, curb and punish non-state violence, which as mentioned is often inflicted or incited by religious militant groups, it is indicative of a possible collapse or breakdown of the democracy (Diamond, 1996:14). In the absence of a legitimate state authority that monopolizes physical force, religious extremist groups use violence in an attempt to legitimize their ideologies and worldviews.

There has also been a paradigm shift on the preservation or protection of FoRB after the 9/11 attacks and the subsequent war on terror (Torfs, 2011:17). Pew Forum (2012) data show that between 2010 and 2011, restrictions on religion increased in all five of the world regions. More notably, however, Pew Forum (2012) data confirm that countries with high restrictions on religion also show high instances of social hostility involving religion. Therefore, as restrictions on religion rise in the West in an attempt to fight religiously motivated violence, in the East to preserve certain traditional religions, especially in the case of Islamic States, violent instances of social hostilities occur more often. Grim (2009:43) warns that social or government restrictions on FoRB create a "religious violence cycle". He (Grim, 2009:43) explains that social restrictions on FoRB lead to government restrictions on FoRB and that together, government and social restrictions cause an empirical increase in the level of religiously motivated violence, which in turn results in even higher social and government restrictions on FoRB, or a "religious violence cycle".

It is clear that the paradigm shifts that Torfs (2013:18) makes note of, has caused a more narrow definition of FoRB and that this shift has led to the weaker protection of FoRB and more notably, higher restrictions on FoRB. The new Trump administration is a case in point. Farr (2014) believes that this is especially notable in Western democracies where a belief that religion will endanger democracy is a "malevolent" and concerning idea made famous by John Rawls. This narrow definition and "malevolent" idea has also led to

decision makers reconsidering its limitations, rather than focussing on the protection of FoRB. Van Beek (2010:35) cites Tocqueville, who believed that democracy is a secularized form of Christianity and specifically Protestantism, and that remnants of this echoes throughout Enlightenment and the Reformation. It is in fact very clear that religion has, to a large extent, influenced the thought of democratic scholars like Tocqueville, and as mentioned earlier, John Locke, Jean Jacques Rousseau and Emmanuel Kant.

Bielefeldt (2003:34) also recognizes that some theorists assume that some "abstract antagonisms" exists between FoRB and other human rights, such as freedom of expression, to name but one, and that these theories are dangerous misconceptions that hold serious consequences, not only for the respect of FoRB, but also for human rights in general. In a narrower definition of FoRB, its universalist nature is often overlooked. This holds serious consequences for the conceptual understanding of FoRB as not only a universalistic and individual right, but also a collective political and civil right (Bielefeldt, 2003:35; Torfs, 2012:18). At the same time, however, religion, according to Grim (2009:38), is implicated in many of the 21st century's security issues. Millions of people have been either killed or displaced due to religiously motivated conflict or violence.[3]

Religious freedom and the protection thereof do hold certain paradoxes, especially in its relationship with democracy. Lane and Ersson (2003:107) argue that "four impossibilities" make democracy improbable. One of these "impossibilities", is the "existence of a higher law than the will of the people". In other words, in a theocracy, as in the case of Islamic states, where Sharia is regarded as the rule of law, the existence of democracy is improbable (Lane & Ersson, 2003:10). In the case of countries like Pakistan and Iran, strictly Islamic states, or in the case of countries where Islam is regarded as the state religion, like Somalia, research shows more intolerance towards minority religions (Open

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[3] According to Djadi (2014), 3.3 million Nigerians have been internally displaced due to the conflict due to the Boko Haram insurgency. This means that Nigeria has the largest population of internally displaced people due to conflict in Africa. According to the UNHCR (2015), 59.5 million people were displaced in 2014 due to persecution, violence, general conflict and human rights violations. More than half (53%) originating from only three states, namely the Syrian Arab Republic, Afghanistan and Somalia. This is the highest figure in the 21st century. According to Lindberg (2008:v), religious conflicts are significantly more intense and violent, killing 40.6% more people in a single conflict year than conflicts without a religious nature. Religious conflicts are also two-and-a-half times less likely to be terminated.

Doors South Africa, 2015; Freedom House, 2014). Pew Forum (2012) also concludes that countries where government policies or actions favour one religion over others, show the highest instances of social hostilities involving religion. This, according to Bielefeldt (2013:36), could be explained by so-called anti-universalistic policies, which through the inclusion of only certain religions, in effect, excludes and threatens the minority. Research conducted over the past 25 years in 191 countries by Freedom House reveals that only 81 of the 191 countries worldwide can be considered free, meaning that citizens enjoy a broad range of political and civil freedoms.[4] The question becomes quite clear: At this point in time when the world is considered the most democratic it has ever been (i.e. after the Third Wave of democracy), why does research suggest less freedom for individuals and society and not more? And, does the noticeable increase in government restrictions on FoRB and religious violence and increasingly more human rights abuses suggest a correlation between democratization, human rights and more specifically FoRB? The data do, but how can we understand these correlations or relationships philosophically and theoretically?

1.3 Problem statement

It is clear that evidence first speaks to the relationship between FoRB and human flourishing, or in other words, the effective enjoyment of a broad range of civil and political liberties. Second, available research speaks to the relationship between restrictions on FoRB, whether social or government restrictions, and religiously motivated violence. Third, from the above-mentioned rationale it is reasonable to deduct that research on FoRB and its relationship with democracy remains underdeveloped. Finally and most importantly, data show a global decline of FoRB and, therefore, a global increase in religiously motivated violence.

What are the causes of the global decline of FoRB? Farr (2014) argues that in most countries where religious persecution is on the rise, FoRB has never been accepted or developed in law or culture. Second, Western democracies are increasingly placing

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[4] Of the 81 countries labelled as "free", 75 were majority Christian countries (Karatnycky, 1998). Therefore, according to Karatnycky (1998), a strong relationship between Christianity and democracy exists. According to Karatnycky (1998), majority Christian countries are five-and-a-half times more likely to be democratic than their non-democratic counterparts.

restrictions on religion. Farr (2014) sees the root of this as the rise of militant secularism.[5] Bielefeldt (2013:49) and Van Beek (2010:33) posit that many people associate religion with unpleasant phenomena or as an obstacle to democracy. Some formulations of authoritarian ideas of state-imposed harmony argue for 'negative freedom of religion' or 'freedom from religion'. The right to do something and the right not to do something is in essence, inextricably linked. It is, however, this right 'from religion', that, when seen in isolation "purge(s) the public sphere from any visible manifestations of religious practices or symbols", as is the case in France (Bielefeldt, 2013:50). Benson (2013:123) writes that law is being used in many instances to "attack and undermine" respect for religious associations and that religious viewpoints are in some cases stigmatized as "backwards", "sexist", "homophobic" and in some cases even "violent" in nature. In a "militant secularism", also termed "constitutional theocracy" or "political theology" (Benson, 2013:113), law and the constitutional state seek, in some forms, to "usurp the role of religious associations" and by doing so, try to dominate thought.

Lane and Errson (2003:107) theorize, like many scholars, that democracy is a secular type of regime and that religions therefore interfere with democracy. If one considers Lane and Errson's (2003:107) theorization, the question should be asked: did democracy lead to the secularization of the world in the 21st century? According to Lindberg (2008:2), the modernization and secularization theories that dominated thought in the 1950's and 1960's, predicted the demise of religion.[6] Berger (1999:3) submits that modernization has had "some secularising effects", but that societal secularization and secularization of the individual cannot be linked. Grim (2009:37) affirms that people all over the world still want to be able to practise their religion freely. Grim (2009:37) makes this deduction from Pew Global Attitudes Survey (2007).[7] Berger (1990:2) and Lindberg (2008:2) furthermore believe that the assumption that we live in a secularized world is false and that modernization and secularization theories were wrong. According to Berger (1999:2), the world is as religious as it ever was. This theory is also supported by Grim (2012:21), who

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[5] Militant secularism can be defined as the rejection of religion or the insistence that it move out of public life (Farr, 2014).

[6] Huntington (2002, 2003) opposed this view by arguing that religion, amongst other cultural identities, will after the end of the Cold War and will come to the forefront of civilizational identities (Lindberg, 2008:2).

[7] On average 93 per cent of people interviewed in 34 countries worldwide indicated that it is important to them to live in a country where they can freely practice their religion (Grim, 2009:37).

references data from the World Religion Database at Boston University that indicate that more people are affiliated with religion today than 50 years ago.[8] Furthermore, according to Van Beek (2010:35), Western liberalism is an extension of Christianity rather than secularity and the term 'secular' was originally a part of Christian vocabulary.

Woodberry (2011:1) is of the opinion that most theories about democracy in the available body of research fail to understand the importance of religion. Historical and quantitative research "consistently suggests that countries with more Protestants (Christian denomination) are more democratic and have more democratic transitions (Woodberry, 2011:1). Van Beek (2010:33) also argues that democracy has been most effectively enjoyed in the parts of the world that were shaped by Western Christianity.[9] Democracy cannot be understood without considering its religious roots, and any attempt at understanding democracy should account for its relationship with religion. Growing religiously motivated violence in the 21st century to the extent of civil war and the gross violations of basic human rights, not only suggests the possible breakdown of democracy, but it is also symptomatic of the weak protection of human rights by democratic governments. Although it is commonplace to associate the protection of human rights and freedoms with the effective enjoyment of democracy, the indissoluble nature of human rights is often overlooked.

Therefore, this study takes as its point of departure that a relationship exists between religious freedom and democracy, the enjoyment of which is affected by an increase in religiously motivated violence across the world and the subsequent weaker protection of other basic human rights. This dissertation therefore asks the question: What are the relationships between religious freedom and democracy and what are the implications of these relationship(s) for democracy?

Therefore, the primary focus of the dissertation is to explore the theoretical relationships between FoRB and democracy and to analyse the implications of these relationships for the successful enjoyment of democracy.

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[8] Nearly nine-in-ten people or 88% of people worldwide are affiliated with a religion (Grim, 2012:21).

[9] Protestantism, according to Van Beek (2010:33), played the most important role in nurturing liberal democracy in the West.

1.4 Research questions

The research attempts to answer the following questions:

1.4.1 What are the different theoretical perspectives on FoRB as a basic human right?

1.4.2 What intrinsic relationships exist between FoRB and human rights and what are the theoretical misconceptions of FoRB?

1.4.3 What are the theoretical relationships between FoRB and democracy?

1.4.4 Do the relationships between FoRB and democracy have implications for the successful implementation of democracy? If it does, what are these implications?

1.5 Research objectives

In an effort to answer the questions above, the study aims to reach the following objectives:

1.5.1 to explore the different theoretical perspectives on FoRB as a basic human right;

1.5.2 to investigate the intrinsic relationships between FoRB and human rights and the possible theoretical misconceptions of FoRB;

1.5.3 to analyse the theoretical relationships between FoRB and democracy; and

1.5.4 to analyse the implications of the relationships between FoRB and democracy for the successful implementation of democracy.

1.6 Methodology

The proposed dissertation has two goals. The first is to analyse the theoretical framework for understanding and studying FoRB and the second is to explore the theoretical relationship(s) between FoRB and democracy. Therefore, in an attempt to understand the afore-mentioned, this dissertation addresses questions arising from social

phenomena and their context and is approached as a qualitative study (Snape & Spencer, 2003: 5). The first and second objective of the dissertation is to discuss the different theoretical perspectives and possible misconceptions of FoRB. The dissertation takes the shape of a theoretical and literature-based study. Theory, according to Berg and Lune (2014:20), can be understood as "statements that explain the relationship between two or more concepts or phenomenon".

In an attempt to discuss freedom of religion or belief, this dissertation argues that religion or the religious nature of man, shapes human behaviour and consequently shapes society (Abbink, 2014:85; Marshall, 2013:8; Bielefeldt, 2013:39; Farr, 2014). The study takes a post-structuralist, phenomenological approach to understanding the phenomena of human rights, religion, democracy and FoRB. (Snape & Spencer, 2003:9). By taking a post-structuralist approach, the dissertation aims to analyse the theoretical framework for the understanding freedom of religion or belief and its possible relationships to democracy, and does not claim that the findings are necessarily a universal truth.

The third objective of the dissertation is approached by comparing theoretical data. To achieve this, an interdisciplinary approach is employed by making use of the research of theologians, democratic thinkers and researchers, international and regional legislation and agreements, for example the UNDHR and the ICCPR, and human rights research, specifically FoRB research and, to a lesser extent, sociological and anthropological research. The research of non-academic researchers, particularly associated with or employed by non-governmental organizations (NGOs) or so-called 'think tanks', offer valuable contributions to the response to this objective.

The fourth objective is approached as a deductive analysis of the theoretical research. By drawing comparisons between the concepts of democracy and FoRB, the dissertation aims to explore possible implications for the successful enjoyment of democracy based on the found theoretical relationships, making reference to current world events, governments, policies and decision making.

1.7   Chapter overview

The dissertation is divided into five chapters. Chapter 1 serves as an introduction. This chapter introduces the key theoretical concepts of human rights, freedom of religion or

belief, religion and democracy. It further deals with the problem statement, research objectives and methodology.

Chapter 2 explores concepts that are central to the understanding of FoRB. The chapter defines the concepts of human rights and religion by tracing its philosophical and theoretical development from Ancient Greece to contemporary times. It continues to explore the different theoretical underpinnings of the above-mentioned extensively and thereby creates a foundational hypothesis or point of departure for understanding FoRB (Chapter 3) and democracy (Chapter 4).

Chapter 3 explores the conceptualization of FoRB, its development and basic underpinnings and its relationship to human rights as set out in the Universal Declaration of Human Rights. The chapter also explores the possible misconceptions of FoRB and relationships between FoRB and other basic human rights that are perceived as 'antagonistic' by some scholars. Chapter 3 furthermore investigates the horizontal and vertical restrictions and violations of FoRB.

Chapter 4 focuses firstly on a broad discussion of democracy, and more specifically, liberal democracy, exploring democracy as a form of government that is ultimately justified by the principle of equality and the respect for the moral standards of all individuals (Torqueville as cited by Van Beek, 2010:32). The conceptual divide between liberalism and democracy is also discussed to form an important – and maybe even new – understanding of democracy's relationship to human rights. During this discussion, specific focus is placed on the relationship(s) between democracy as a form of government and human rights as set out by the Universal Declaration of Human Rights, suggesting a tripartite relationship between democracy and FoRB.

Chapter 5, as the concluding chapter, presents the theoretical findings of the relationships between FoRB and democracy and the possible implications for the successful implementation of democracy. This is achieved by exploring the theoretical possibilities of a breakdown, success or consolidation of democracy in instances where FoRB is in place compared to instances where FoRB is violated or denied. This is achieved with a brief analysis of current (2016–2017) world events, governments, policies and legislation, suggesting that the 'Third Wave' of democracy, might only be symptomatic of a larger 'tide' of democracy.

Chapter 2 Understanding the philosophical and theoretical underpinnings of freedom of religion or belief

2.1 Introduction

Waldron (2013:152) believes that democracy cannot exist without certain important human rights, a sentiment echoed by many human rights and democracy scholars. Democracy and human rights are a matter of empowerment: working together they empower ordinary individuals as voters to make certain choices about how they want to live their lives (Waldron, 2013:158). The purpose of Chapter 2 is to attempt to define central concepts in the relationship between FoRB and democracy. As a basic human right established by Article 18 of the Universal Declaration of Human Rights (1948), FoRB remains a contested concept. Human rights as a concept also remains elusive and difficult to define. Yet, this chapter attempts to first create an understanding of human rights by focussing on the development of human rights as a concept. This development is traced from the origins of the idea of natural right in ancient Greek society through to the first modern ideas on natural rights, made famous by the likes of Thomas Hobbes, John Locke and Jean-Jacques Rousseau. These thinkers are, coincidentally, also famous for their contributions to the study of liberal democracy.

Throughout the discussion on the philosophical and historical development of the concept of human rights, it becomes clear that the idea of humans having some sort of natural right has always been rooted in metaphysical understandings of humans living in a relationship with a deity (gods or God). Philosophers recognize that the idea of human rights finds its origins first in religion and second, possibly linked to religion, in the dignity and inherent worth of those belonging to the human family. Yet, what are human rights that people have a right to them and how can we justify the legal protection of these rights? This chapter suggests that in order to answer this question, a distinction has to be made between *objective* or *legal* rights and *subjective* or *moral* rights. This distinction is also traced back to its philosophical roots and proves to be one of the most important contributors to the development of human rights into the contemporary understanding of *individual* human rights. Human rights philosophers describe this process as the "ontology of the individuation of man". In this chapter, human rights is also historically linked to liberal democracy.

Furthermore, in an attempt to paint a picture of FoRB, religion is also theoretically investigated. Religion is also a contested concept and the study of religion has not enjoyed much attention in the discourses of international relations, human rights, democracy, or even political science. The study of religion, some might argue, has been restricted to discourses within religious studies. It is therefore very challenging, to say the least, to formulate a definition pleasing to both religious and secular scholars. Another complicating factor is the diversity of international religions. More than 10 000 religions have been identified, with another two religions developing daily. Therefore, for the purpose of understanding FoRB within its expected relationships with democracy, religion is discussed within the discourse of sociology of religion. Its two major approaches, namely *substantive* and *functionalist,* forms the framework for the discussion. Furthermore, it's within the *monotheistic* and *polytheistic* traditions that an attempted framework for a definition is formulated. This dissertation is, however, of the opinion that it is within its relationship to identity formation, culture, power and in practice that religion can be best understood.

It is only when a broad understanding of religion has been developed that one can attempt to define and explore the concept of FoRB. Religious freedom is one of the first and oldest human rights. There are a few central themes and possible relationships between FoRB and democracy that become prominent when examining human rights and religion. The first is the centrality of the individual, or **individuality**. Furthermore, **human dignity** grounds the idea of natural rights, the concept of human rights, religion and FoRB (Chapter 4). Some scholars argue for a metaphysical grounding insofar as human dignity is dependent on the creation of humans in the "image of God". Strongly tied to this is the theme of **equality** of humans in relation to one another and before the law. It also involves the equality that human rights attempts to establish and the equality of people within a democratic system. Another repeating theme throughout the discourse of human rights, sociology of religion and FoRB is that of **freedom**. The final theme that is strongly present within human rights discourse and that of religion is that of **morality**. These themes or relationships are further explored throughout Chapter 3 and Chapter 4.

2.2 Defining human rights

According to Ibhawoh (2013:338), the violation of human rights represents the "most extreme manifestation of political violence", and this violence produces collective trauma

that societies find necessary to "commemorate and memorialize". Ibhawoh (2013) argues that it is the increase in human rights violations, along with this growing need for societies to "commemorate and memorialize" that leads to the growing interest in human rights scholarship. But there are many theoretical and practical considerations when attempting to answer the question of what exactly human rights are and what its "recognition and protection" involves (Beitz, 2009:49; Griffin, 2011:1; Tasioulas, 2012:17).

Stretching across the discourses of international relations, law, political philosophy, sociology and ethics alike, to mention only a few, it is important to first narrow the exploratory scope. Highlighting the importance of narrowing the exploratory scope, Ibhawoh (2013:348) describes the complexity of human rights scholarship as follows:

> "The idea of human rights is at once an historical product of the modern age and the outcome of cumulative human experiences; an assertion of individual liberties but also an affirmation of collective entitlements; a means of breaking down the impunity of rulers but also a way of forging relationships; a resource for civil repair but also a transcendent norm of resistance; an effect of power and resistance but also a form of freedom and discipline. The complexity of the human rights idea is that it can play all these roles".

While some human rights scholars, activists and practitioners argue that a more "eclectic understanding of the term" with a focus on the conceptualizations of rights in both Western and non-Western societies is necessary, this study traces the "philosophical foundations of modern notions of human rights to natural law and Western liberal traditions" (Ibhawoh, 2013:338). The study furthermore takes a human rights, and therefore, normative approach in its exploration of FoRB and its anticipated relationship(s) to democracy (Tasioulas, 2012:17). When the term 'human rights' is used, the adjective 'human' is also "used in a normative sense" and suggests a certain "anthropology" (i.e. understanding of what it means to be human) (Hosěk, 2016:44). Different religions have very different conceptions of what it means to be human (differing anthropologies) and this creates a theoretical pitfall for the understanding of human rights, but more so for the later exploration of FoRB. Hoffman (2014:43) affirms that the concept of human nature forms the "empirical justification of international human rights" and without understanding the relationship between human nature and human rights, no conceptual basis for any or

all moral, political and legal processes in the legislating of human rights would exist.[10] Monteiro (2014:1) adds that the concept of human nature – what it means to be human – is often used in contemporary human rights discourse to define what is meant with the concept of human rights and what qualifies as acceptable human rights, as well as the scope and actual content of human rights.

Where some scholars argue for an "evolutionary" definition of human rights that hinges on the continuing ideas that "have historically underlined notions of liberty and justice in various societies", others argue for an "essentialist and historically specific definition of human rights", arguing that the "idea of human rights is uniquely founded on post-Second World War developments" and more specifically on the adoption of the UDHR in 1948 by the United Nations (Ibhawoh, 2013:338). Ibhawoh (2013:338) identifies seven "defining episodes" in the development of human rights scholarship that are worth mentioning, albeit not explored in detail, namely "ancient religious and secular humanism; Western legal, philosophical traditions and enlightenment liberalism; 18th century Euro-American political revolutions; the antislavery movement; the Holocaust and the Universal Declaration of Human Rights (UDHR) epoch; anticolonial movements; and the universalization agenda of the 1970s".

Since it is not viable to address all the possible understandings and definitions of human rights or human nature in this dissertation, the focus is primarily on creating a framework for the understanding of human rights within a Western liberal perspective by first tracing the philosophical development of the individuation of man and the idea of human rights (or the "evolutionary" development of IHR) by exploring ancient religious and secular humanism and Western philosophical traditions with a brief mention of Enlightenment liberalism; and second by exploring the historical development of human rights discourse post-Second World War and the Universal Declaration of Human Rights (UDHR).

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[10] Without a plausible justification for the "unrestricted, universal and egalitarian validity of human rights", theorists would, according to Hoffman (2014:43), be confronted with the "awkward situation of not being able to justify why that, what we mourn, is a mournful violation of human rights at all."

2.2.1 The philosophical development of rights: objective (legal) versus subjective (moral) rights

The concept of human rights is deeply rooted in ancient philosophy and religious traditions. There is a profound connection between the metaphysical ideas central to most religions and their conceptions of the individual and individual dignity (Monteiro, 2014:1; Ramcharan, 2009:13; Arat, 2006:2). This connection can be traced back further than the Magna Carta of 1215 to early modern natural rights thinking. Throughout the philosophical development of human rights, the questions about rights have been primarily concerned with the nature and existence of rights (Herbert, 2002:xi).

The preamble to the Universal Declaration of Human Rights (UDHR) of 1948 and Article 1 make it clear that international human rights (IHR) are both *legal* and *moral* rights (Randall, 2013:3; Donnelly, 2013:11). As *legal* rights, IHR can be considered *entitlements* or *titles* "protected by the rule of law" (Randall, 2013:3; Copan, 2013:11), and as *moral* rights, these entitlements belong to every person because of the sole fact of their belonging to the human species. Furthermore, as *moral* rights, human rights are mainly expressed in philosophical arguments and belief systems, both religious and secular (Arat, 2006:2). According to Campbell (2013:1), human rights can be understood as the most fundamental and *moral* claims that "human beings can justifiably make on or against each other." It is therefore clear that the understanding of the concept of human rights is *morally* charged. This *moral* nature of human rights is rooted in the idea that all humans form part of the "human family" and have features in common that transcend gender, tribe, caste, religion or nation. This conceptualization leads to the argument of scholars like Campbell (2013:2), who argues that IHR's existence does not depend on any *legal* or institutional recognition, including the recognition of right holders themselves.

According to Monteiro (2014:2), 17th century scholars Edmund Burke and Jeremy Bentham also argued that "substantial rights can only exist within the framework of an existing *legal* system" and that this framework provides the basis for the understanding and enforcement of these "substantial" rights. Until the middle of the 20th century, states as sole subjects under international law, were the only role players in possession of any basic rights (Schmahl, 2015:1). As "objects" of international law, rights were "conferred" to individuals by their states, and individuals were therefore only protected from "foreign states" and not from any arbitrary interference from the state of which they were a citizen.

Randall (2013:4) therefore argues that the legal nature of human rights implies a departure from the Westphalian tradition. Like Schmahl (2015:1), Randall (2013) questions the assumption that states are the "exclusive subjects and concern" of international law. According to Johns (2016:39), IHR depend on the authority of nation-states, while calling this authority into question. Yet, this "departure from the Westphalian tradition" moves the concept of objective or legal rights towards a more liberal democratic principle of individuality.

The philosophical history of human rights has been a theoretical struggle for a "fair balance between the function of government and the rights of the citizens" (Stebek, 2008:156). Curran (2013:26) refers to this as "the dilemma of good governance", an argument that, according to him, is articulated by the theories of Thomas Hobbes. Throughout this chapter it becomes clear that past and present day scholars agree: to define and understand human rights and the history of international human rights (IHR), a very important distinction between *objective* or *legal* and *subjective* or *moral* rights has to be taken into consideration (Herbert, 2009; Mayr, 2012; Beitz, 2009; Monteiro, 2014; Randall, 2013; Donnelly, 2013). *Objective* rights are understood as those rights fixed in law or determined by nature, God, or simply by the universal demands of justice and/or fairness. *Subjective* rights are the freedom(s) of the individual and the priority of their interests. This distinction was first made by Roman law scholar, Michel Villey, in a series of articles published in 1962 with the title *Leçons d'Histiore de la Philosophie du Droit* (Herbert, 2002:xiii). However, the development of this distinction can be traced back to ancient Greek thinking. The investigation into ancient Greek thinking and conceptions of law throughout Section 2.1 allows this dissertation to trace a utilitarian interpretation of the theoretical origin of contemporary human rights (Stebek, 2008:157).

2.2.1.1 Ancient rights: the development of the idea of natural right

Naturalistic views on human rights, according to Beitz (2009:48), conceive human rights as objects that inherit their main features from natural rights found in European political and *legal* thought in the early modern period.[11]. Lewis (2009:278) argues that although in

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[11] John Simmons, as quoted by Beitz (2009:48) and echoing the definition of Campbell (2013:2), defines natural rights as "those rights that can be possessed by persons in a state of (human) nature (i.e. independent of any legal or political institution, recognition or enforcement).

some ways different, medieval natural law and classical natural rights are members of a larger family of pre-modern natural right ideas. The philosophical development of the idea of natural rights and the later pre-modern natural rights suggests that political practice in aristocratic times was based on virtue, and later, with the development of democracy, shifted to rights, but rights underwritten by religion (Lewis, 2009:279). The idea of natural law or natural rights has been debated among Western philosophers since ancient Greece, where debates flowed from the law of the gods and the idea of justice (Ramcharan, 2009:19). Stebek (2008:162) relates that ancient Greeks "conceived their laws as having a religious origin". Ancient laws were believed to be disclosed by the gods and were enforced by spiritual leaders.[12]

Gradually, the notion of 'divine' law, was "personified" in two conceptions (goddesses) of ancient Greek theology, namely *Themis* and *Dike* (Herbert, 2002:1; Stebek, 2008:162).*Themis*[13] is conceptualized as the conveyor of judicial assembly and the advice from gods to the leaders on the higher principles of natural order. *Dike*[14], on the other hand, is conceptualized as the "eternal natural order and the expression of divine will". In Greek theology both words, *Themis* and *Dike*, can be translated into English as the word "right" within the context of what is considered *objectively* right (Herbert, 2002:1). In Homeric Greece, prior to 1200 BC, the family as the locus of authority served as the origin of all rights. All rights were considered *objective*, in other words determined by *law*, nature, or in this case, *Themis (god),* and regarded as "a right way of life in which one participated".[15]

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[12] Ancient Babylonian law and Roman law are also regarded as having a religious origin (2008:156-168).

[13] Although Themis no longer has a place in religious practice, she is symbolized in the United States of America's as a blindfolded woman with a scale in the one hand and a sword in the other (Burnett, 1987:79).

[14]*Dike*, the goddess of justice and vengeance, is considered by some theorists and historians as the daughter of Themis and Dike (Herbert, 2002:1).

[15] "The rights belonging to the individual Greek were nothing more than the assurances he had that he was partaking in the objectively right way of life, by living in a way that fulfilled the expectations of his own tribe and its ancestral gods. The theological substructure of this Homeric *objective* right contains with it, the conceptual basis for comprehending the eventual demise of Homeric *objective* right and its replacement by a revolutionary new conception of *objective* rights, a concept that heralded the

Prior to the Trojan War, a series of migrations[16] changed the conception of the locus of rights and the source of right. The theological basis for *objective* rights changed abruptly and the *polis* (city state) became the source of order and right (Herbert, 2002:10). The unity within these new cities was political and not ancestral, and the conceptualization of rights started to reflect this[17]. Citizens of the *polis* had no political rights yet, but with a king or *archon* presiding over the interests of citizens, political right in itself, was introduced. The *polis* now provided a space within which individuals could, for the first time, come into being as individuals (Herbert, 2002:13).

2.2.1.2 Stoic rights

The champions of egalitarianism are found in stoicism, which stretched from 366–246 BC to 121–189 AD (Herbert, 2002:35). Although Garrett (2008:77) argues that positions associated with human rights today are in "sharp contrast" with classical stoicism, he does acknowledge that "there is an obvious line of influence extending from the stoic doctrine of natural law, perhaps via Roman law, through natural law teaching among the scholastics, to early modern natural lawyers, and from them first to natural rights thinking and then to human rights discourse." For the stoics, to live in accordance with nature meant to live as part of a "moral world order" and to create a human legacy that was rational and social (Ramcharan, 2008:19). Reality to the stoic was synonymous with the material universe.

In other words, the stoic believed in "the existence of a universal and worldwide law" (Arat, 2006:4). Ramcharan (2009:19) explains that this "knits together in a common social bond every being which possesses reason, whether god or man." Stoicism also found its way

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appearance of a radically new way of the life, the more democratic life within the *polis"* (Herbert, 2002:6).

[16] Northern tribes were said to have migrated south through what we know today as Hungary, Romania, former Yugoslavia, Albania, Bulgaria and into Northern Greece. In a chain reaction, this forced the tribes in these regions to also migrate further south and the *polis* was a defensive Greek measure to counter the invasions from the North. Members from different clans or tribes joined together to create new, larger and more complex cities.

[17] To unify the *polis,* one king or *archon* was chosen to preside over the interests of the *polis* (Herbert, 2002:13).

to ancient Rome, and according to the Roman philosopher and statesman Cicero, this natural law, believed to be "universal and worldwide", showed no regard for the personal aspirations or abilities of the individual. Ramcharan (2009:20) holds that Cicero also advocated that the source of this one eternal and "immutable law" applicable to all peoples at all times, was God. From this stoic account of nature and man, Cicero discovered a truth that could have no place in natural right as it was understood by Plato and Aristotle. He discovered the essential equality of all men (Arat, 2006:4; Ramcharan, 2009:19; Herbert, 2002:36)[18].

Early Roman history followed in the footsteps of early Greek history and Romans "borrowed" the idea of natural law from the Greeks (Stebek, 2008:164). Prior to 452 BC, Rome had no developed set of laws. The law was secularized with the establishment of the Twelve Tables in 450-401 BC (Ramcharan, 2009:11; Stebek, 2008:164), which was open to interpretation by Roman jurists [19]. One of these jurists – and an important one for the purpose of this study – was Garius. Garius established what later became the distinction between *ius gentium* (or *jus gentium*: the law of nations) and *ius naturale* (or *jus naturale*: natural law). '*Ius*' or '*jus*' can be translated to both "right" and "law" in English. During the ancient Roman jurist Garius's times, the two terms referred to the written law or unwritten law. The unwritten law was also regarded as 'natural' law, simply because it was institutionalized through the opinions of all men (Herbert, 2002:42; Ramcharan, 2009:20).

2.2.1.3 The Christian concept of rights

The conception of classical natural rights associated with the political thought of Plato and Aristotle informed the Christian tradition (Lewis, 2009:278). However, the relationship between Christian theology and the idea of universal human rights, is historically and conceptually complex. Some argue that to make a Christian claim for universal human rights and for FoRB plausible, a universal basis of morality, such as the "stoic notion of

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[18] Through nature's complete disregard for man and his physical abilities, all men are "equalized". It is this character of natural law that anticipates the modern idea of natural right (Herbert, 2002:36; Ramcharan, 2009:19).

[19] All the rights enjoyed by a citizen of Rome were therefore derived from and were concessions made by Roman jurists and in effect by Rome itself (Ramcharan, 2009:20)

'natural law'", is "legitimate" and "necessary" (Hosěk, 2016:46). It is clear that theology (religion) played a significant part in the conceptualization of notions about natural right and justice in ancient Greek thinking, yet there was no conceptualization of the natural right of the individual reflecting modern subjective right that formed a part of Roman consciousness. For the Roman, natural right only existed when, much like the stoic, the individual saw himself as part of nature, "relinquishing that which he had no power over" (*ius naturale*) or when they submitted themselves to the "authority of custom" (*ius gentium*), which dominated Roman juridical consciousness (Herbert, 2002:49).

According to Ramcharan (2009:15), all great religious and philosophical systems view the individual in his or her relationship with the community, but before Rome's encounter with Judaism, there was no basis for the idea of individuality or any physical or metaphysical explanation that would justify the natural right of individuals as a part of a bigger society. This changed when Rome encountered the Hebrews through the expansion of its empire. Once seen as a Jewish desire for a unified theocratic nation, Judaism, through the suppression of Babylonia, Persia, Macedonia and finally Rome, transformed into a Judaic Christianity (Herbert, 2002:50). Although accepting of Rome's authority, Christians, whose only concern was the salvation of their souls and not their physical bodies, refused to acknowledge the divinity of Caesar. This led to the fierce persecution of Christians. The new "spiritual bond" between Christians severed all political ties to their own nations. Rome was gradually overwhelmed by Christianity (Zagzebski, 2009:11). It is through these developments that Roman juridical conceptions of *ius naturale* acknowledged the importance of the individual, preparing the way for the first appearance of a subjective concept of right.

In 337 AD, Constantine converted to Christianity and when his sons later also adopted Christianity and established a Christian Empire – perhaps in an attempt to protect Roman hegemony and the unity of the Empire – the Roman concept of *ius naturale* came into conflict with the Jewish Law of Moses or Mosaic Law (Tierney, 1998:34). The early church fathers reconciled *ius naturale* with Mosaic law by first identifying the *ius naturale* with the Apostle Paul's[20] (New Testament) idea of natural or unwritten law, echoing stoicism, and

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[20] "They show that what the law requires is written on their hearts, while their conscience also bears witness" (Romans 2:15)

identifying it with conscience and therefore giving it what Herbert (2002:52) refers to as a "moral twist". Later on, the Catholic doctrine of natural law rested in a belief in a law of God above all human laws (Ramcharan, 2009:20). *Ius naturale* became "internalized" and man's nature "spiritualized". According to Herbert (2002:52), it also became difficult to maintain *ius naturale* alongside *ius gentium*, if *ius naturale* "came from God".

Hall (2009:236) argues that the concept of rights did not develop solely from religious or secular sources and the notion of rights is "not a biblical idea". According to Hall (2009:235-236), there is no ancient Hebrew word for the notion of positive rights and the closest references to rights was "acquired rights" based on Mosaic legislation. The contemporary idea of individual or autonomous "self-based right" is nowhere to be found in the Old Testament (Bible).[21] It is not until the "obliteration" of feudal economies and the development of early market economies that rights began to develop and spread. Only in 16th century England, and even more so after the Reformation, did the modern idea of rights begin to proliferate. The idea of human rights without substantiation in theology or without "reference to the transcendent guarantee of human dignity, is an extremely vulnerable concept" (Kormáková as cited by Hošek, 2016:46). Literature thus far suggests only an incomplete and flawed conceptualization.

2.2.1.4 Seventeenth century secularization and conceptualizations of rights

Throughout the first half of the 17th century, the West underwent a process of secularization (Tierney, 1998:36; Herbert, 2002:75). Religious and political wars that were a part of the aftermath of the Protestant Reformation were rife in Europe. Times were changing and previous accounts of *objective* rights that had survived into the 17th century, no longer shaped the interactions of men. The endless wars throughout the 15th and 16th centuries created an environment that needed a new concept of right to stabilize social and political life. Ramcharan (2009:6) shares that it was during this time that Hugo Grotius, a Protestant Dutch statesman and jurist, published *De Jure Belli ac Pacis* in 1625, making a clear break from natural law or "higher" justice derived from the Holy Scriptures. Yet, this 'break' from natural or "divine" law was still influenced by ancient Greek and Roman natural law (Arat, 2006:6). Hall (2009:236) argues that Grotius was

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[21] "Rights are never autonomous in the Old Testament, never rooted in humanity – always derivative from God on his social economy" (Hall, 2009:235).

the first theorist to "assign rights as ground in a man's social nature" and that this makes him "the actual discoverer of natural rights".

Grotius wrote that "the madness of the world has not been restrained by concern for" diminishing the injustices of war. The church had lost all its moral authority and Grotius sought a secular solution, invoking an idea of a secularized natural law, once again an idea echoing stoic philosophical thought. Natural right and *ius naturale* (or the law of nature) were "freed from their theological groundings". Herbert (2002:75) and Hall (2009:236) maintain that this places Grotius among the 17th century philosophers regarded as the authors of the modern idea of subjective natural rights. The priority of *objective* right was being undermined by among other things the Protestant Reformation, and the individual was being pushed to the foreground. The doctrine that held that salvation was justified by faith rather than by works meant that neither sacraments nor the aristocracy (priests) who administered them were necessary for man's salvation – a revolutionary idea in comparison to Catholic teachings. The individual was now on his own and becoming increasingly central. Yet, "God remained the supreme and unquestioned authority" (Herbert, 2002:75).

Ramcharan (2009:20) shows how Hobbes made the transition from the law of nature to natural rights by formulating the theory of a social contract between human beings in a state of nature and a sovereign. It is through Hobbes' famous argument for the natural equality of all men that the modern, *subjective* account of natural right, has its first full development (Herbert, 2002:90; Curran, 2013:25). According to Arat (2006:5), Hobbes defined the state as an entity "that was created by social contract to protect individuals' right to life and to provide security."

According to Hobbes, human beings had given overwhelming power to the sovereign through their contract with him, creating what some scholars perceive to be in conflict with individual human rights. Yet, according to Curran (2013:27) and Ramcharan (2009:20), Hobbes believed that individuals needed only to surrender 'invasive' rights and if the state of nature prevailed, humans had the right to defend themselves and advance their interests. Mitchell (1996:123) and Curran (2013:33) believe that Hobbes' discussion of sovereign authority and individual submission can be interpreted as a discussion of the biblical foundation of these concepts. They are of the opinion that Hobbes tried to comprehend the meaning of, among other things, religious freedom within the constraints

of thought during the Reformation. For Hobbes and his contemporaries – as a product of the times they were living in – the idea of reason and the will of God was naturally attached to the exploration of morality and law (Curran, 2013:33). But Hobbes' theory of rights is secular and some doubt the sincerity of his Christian beliefs. Scholars like Tuck (cited by Curran, 2013:34) also argue that Hobbes' theory of rights owes much to that of Hugo Grotius' theory of natural law and natural rights (Tuck contradicts himself, as Grotius' theory was still influenced by his Protestant Christian faith).

Yet it was John Locke who further developed Hobbes' idea of a social contract and built on his conceptual foundations (Ramcharan, 2009:21; Arat, 2006:5). According to Locke, within the context of a social contract, the sovereign rules with the consent of the governed. If that consent is withdrawn, the sovereign no longer has the right to rule. Locke's *Second Treatise of Government* placed the theory of natural rights, right at the forefront of emerging liberal political philosophy as a part of the theory of government (Curran, 2013:33). Donnelly (1999:82) argues that Locke presented herewith the first fully developed "natural rights theory fundamentally consistent with later human rights ideas." Locke's "obvious foundational theological premises" of his theorization on natural law, is often overlooked. He provides a striking contrast with Hobbes, both in terms of his theory of rights and his own Christian beliefs (Curran, 2013:33). According to Waldron (2002:20), equality was very important to Locke as a moral and political premise. He believed basic equality to be grounded in theology. He saw it "as perhaps the most important truth about God's way with the world in regard to the social and political implications of His creation of the human person". Locke felt that the role of the state was to protect individuals' "God-given" rights to "life, liberty, and estate" in a representative capacity (Arat, 2006:5). According to Reynolds and Durham (1996:17), Locke has long been recognized as an important contributor, not only to liberal thought and social contract theory, but also to "the framing of modern conceptions of religious freedom".

Jean-Jacques Rousseau also advanced the theory of the social contract in the *Social Contract*, written in 1792 (Arat, 2006:5; Ramcharan, 2009:21). He considered the contract an agreement entered into by individual members of society in "an original state of nature" where all men enjoy equal rights. By entering this agreement, the "sovereign" is created and all members subjected themselves to the "general will". This "general will" is the will of the majority, since all were equal and all rights are equal. The general will is

synonymous with the law (Ramcharan, 2009:21). According to Reynolds and Durham (1996:161), Rousseau believed both religion and politics to be fundamental dimensions of social life. However, the core principle of Hobbes' definition of 'right', which laid the foundation for our contemporary understanding of human rights, is individual liberty or freedom, and rights are therefore freedoms (Curran, 2013:28). Locke and Rousseau's social contract theories equalized mankind and created fertile soil for the development of *subjective* rights that form the cornerstone of modern and contemporary human rights. The contemporary Western understanding of human rights is therefore focused on the individual[22] and the interests of individuals (Herbert, 2002:iii; Waldron, 2013:152).

2.2.2 The historical development of human rights

Contemporary conceptualizations of "rights" and human rights grew out of the social and political crises that characterized ancient Greece (Herbert, 2002:1). Arat (2006:3) claims that ancient and classical philosophies created certain notions of "ethical or right behaviour" that have served as "building blocks for the development of a more sophisticated human rights concept". After what is described as a "hiatus" in the 19th century, human rights discourse went through a period of rapid development during the 20th century. Developments in international law for example led to the broadening of the term 'human rights' and brought the intention of the term to the forefront of human rights thinking and debate (Griffin, 2011:12). Human rights developed as a set of moral codes, expressed in philosophical or religious texts or legal codes to organize social life and maintain order.

According to Ramcharan (2009:22), the doctrine of natural rights broke onto the American and international scene in a "dramatic way" with the *American Declaration of Independence* on 4 July 1776, which spoke of "unalienable rights of the individual". *The French Declaration of the Rights of Man and the Citizen* of 1789 furthermore internationalized natural rights by claiming these rights for all human beings. The

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[22] *"Today's demand for a respect for rights is a general recognition of the limits beyond which society must not go in sacrificing the individual's welfare for its own conception of the common good. The practical, philosophical viewpoint that dominates rights theory today is the world of the "truth" of our moral ideals. What has been produced by the contemporary liberation of rights from all metaphysical and ontological baggage is a poly-directional moral activism"* (Herbert, 2002:xiii).

declaration institutionalized the principle of sovereignty of the people and the restrictions on citizens' freedom of action could only be established by law. The "dramatic effect" of the *American Declaration of Independence* and the *French Declaration of the Rights to Man and the Citizen* was that the philosophical arguments of Edmund Burke, Thomas Paine and Jeremy Bentham, which were in favour of natural rights, passed into national policy documents with international significance (Ramcharan, 2009:22).[23]

2.2.2.1 The Universal Declaration of Human Rights (UNHR) and the classification of human rights

Although the idea of rights has existed for a long time, the notion of rights belonging to each person by virtue of being human, is a new development. This idea only gained worldwide acceptance after the Second World War with the establishment of the United Nations Charter in 1945 and later in the United Nations' Universal Declaration of Human Rights in 1948 (Arat, 2006:2; Schmahl, 2015:2). After the atrocities of the Holocaust, human rights were removed from the domestic jurisdiction of states and were considered universal so that individuals could no longer be victims of arbitrary interference or exercise of state power (Schmahl, 2015:2). Arat (2003:14) reminds us that the Universal Declaration of Human Rights (UNHR) is technically not legally binding, although it was designed to "serve as a legislative program for the world" (Schmahl, 2015:2). This "legislative world program" failed due to the Cold War, until the two opposing blocks agreed upon and adopted two binding human rights conventions in 1966, namely the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESR). Today the UNHR along with the ICCPR and the ICESR together form the International Bill of Human Rights (Schmahl, 2015:2)[24].

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[23] Bentham, for example, strongly opposed the idea of natural rights and argued that rights did not exist outside of government (Ramcharan, 2009:23).

[24] After 1966, even more international human rights treaties were created under the United Nations 'brand', including the *1965 Convention on the Elimination of All Forms of Racial Discrimination*, the *1979 Convention on the Elimination of All Forms of Discrimination against Women*, the *1984 Convention against Torture*, the *1989 Convention on the Rights of the Child* and the *2006 Convention on the Rights of Persons with Disabilities* (Schmahl, 2015:3).

Over the years, the International Bill of Human Rights has transformed and developed into a "potent legal instrument" and it has been incorporated into many treaties and national laws. Consisting of a preamble and thirty articles, the Declaration proclaims in Article 1 that "All human beings are born free and equal in dignity and rights" and in Article 2 that "Everyone is entitled to all the rights and freedoms set forth in this Declaration without distinction of any kind". Although the UDHR does not provide explicit classification of rights, the rights listed are placed into five categories, namely *civil*, *political*, *economic*, *social* and *cultural.* They are furthermore categorized into three dimensions, namely *first generation* rights, *second generation* rights and *third generation* rights. However, these dimensions or classifications can only serve as "guidelines" to determine "better material content and the justiciability of individual rights" according to Schmahl (2015:6).

Civil rights (Article 3–20) include the right to life, liberty and security of the person (Article 3) and freedoms and rights that cannot be restricted or violated are specified. Among these *civil rights* is Article 18, which guarantees the right to freedom of thought, conscience and religion (Arat, 2003:15).[25] *Political rights* on the other hand refer to the right to participate in the government of one's country and includes Article 21, namely the right to vote in free and regular elections. According to Arat (2003:15), freedoms of opinion, expression, assembly and association, categorized under civil rights, can also be considered political rights because they encompass the ideas of participation in government. *Economic* and *social rights* centre on social security and identify rights in the areas of work, basic needs and education. Arat (2003:15) points out that these rights would protect "dignity and enable the development of the person." Finally, *cultural rights* include the right to freely participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement. According to Arat (2003:16), the UNHR also notes

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[25] The right to freedom from slavery and servitude (Article 4); the right to freedom from torture and cruel and inhuman or degrading treatment or punishment (Article 5); the right to freedom from arbitrary arrest, detention, or exile (Article 9); the right to fair and public trails, and to be presumed innocent until proven guilty, to defence, and to freedom from undue penalties (Articles 10-12); the right to privacy (Article 12) and to freedom of movement within and between countries (Article 13); the right to own property (Article 17) and the right to freedom of thought, conscience, and religion (Article 18) and to freedom of opinion and expression (Article 19); and the right to freedom of peaceful assembly and association (Article 20).

that rights cannot be realized without the understanding of individuals' duties to their communities and the rights of others.

Apart from the contested classifications of *first generation* (civil and political rights), *second generation* (social, economic and cultural rights), and *third generation* (or solidarity rights) rights, no agreed-upon hierarchy of human rights exists (Masferrer, 2013:39; Randall, 2013:3; Schmahl, 2015:6)[26]. Human rights cannot be "unambiguously put into one of the categories or dimensions", since they "partly overlap on substantive issues" and are "partly based on different assumptions" (Schmahl, 2015:2, 6). Randall (2013:3) calls *first generation* rights negative rights (or defensive rights) and points out that they are "considered a child of 17th and 18th century liberalism" and are associated with the tradition of the enlightenment (Schmahl, 2015:3). According to Stoilov (2003:88), *first generation* rights derive from John Locke's definition of the notion of property to include "life, liberty and estate". Their role is to protect every individual against the "arbitrary interferences with his privacy and life" from the state.[27]

Whereas *first generation* rights protect the rights of the individual, *second generation rights* or social rights "usually contain an obligation for the state to ensure a minimal level of material existence to its citizens" (Schmahl, 2015:3). These social rights originate from 19th century socialism (Randall, 2013:3). Social, economic and cultural rights originated alongside the development of public education networks and health care systems. Such rights, according to Stoilov (2003:89), "require the intervention of the state for the purpose of providing favourable social conditions for human flourishing". These rights are, however, limited in as far as they can be enforced by the courts (Schmahl, 2015:3).

Stoilov (2003:89) declares that *third generation rights* furthered the range of human rights and indicates that the "list of generally accepted human rights" is not unchanging or unchangeable. According to Randall (2013:3) and Schmahl (2015:4), third generation rights have been under discussion since the era of decolonization that started in the

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[26] "…dividing up human rights into dimensions results neither in dogmatically discrete categories, nor can it be the basis for conclusions on the creation of an objective hierarchy of human rights norms" (Schmahl, 2015:6)

[27] "First generation rights ensure autonomy and security of the person in the area of personal and property relations, as well as the opportunity to exert influence on government" (Stoilov, 2003:89).

1970s. These are considered collective rights. According to Schmahl (2015:4), they include the right to peace and security, the right to development, the right to a habitable environment and participation in the common heritage of mankind. The emergence of third generation rights relates to the ongoing changes of an individual's environment and have given rise to the need to "protect the individual as a consumer, as well as to protect his privacy etc." (Stoilov, 2003:89). These rights "consist mainly of demands from the developing world upon the developed world" (Schmahl, 2015:5). Human rights are universal, interrelated and mutually dependent and any other categorization or hierarchy of "groups of human rights" will undermine this character of human rights (Schmahl, 2015:6).

2.2.2.2 The universality and inalienability of human rights

Ramcharan (2008:55) argues that because human rights have developed over centuries with its roots in all of the major world religions, and because these principles have been "codified" in the UDHR and other covenants and treaties across Africa, the Americas, Asia and Europe, the idea of the universality of human rights is obvious. Arnold (2013:1) sees the protection of autonomy, dignity and freedom of the individual as a vital aspect of national, regional and international communities. Human rights, according to him, are indispensable as instruments for the protection of human beings, but also as instruments for the protection of world peace. When human rights are violated, international peace is threatened and it can only be upheld "if democracy, rule of law and, in particular, human rights are observed." Arat (2006:1) avers that what is specifically special about human rights, is that the term "human rights" reflects the universalism in its modern expression. These "rights" belong to all *human* beings on the sole criterion of being *human*.

The concept of universal human rights, according to Stoilov (2003:88), stems from natural law theory. Arnold (2013:1) holds that contemporary conceptions of human rights correspond with the contemporary developments of both national and international law, and it is within this correspondence that the protection of human beings and their basic rights have become increasingly significant. Yet, the universality of human rights remain a highly contested notion. This is specifically due to the difficulty in defining "universality" (Arnold, 2013:1). According to Arnold (2013:1), the universalism of human rights is an ideological concept that "presently constitutes a pillar of public awareness in the world, despite the many reported and unreported human rights violations."

Stoilov (2003:87), Arnold (2013:3) and Soriano (2013:582) agree that the *World Conference on Human Rights*, held in Vienna in 1993, asserted the "universality formula" when 171 out of 172 states came to the conclusion that "all human rights are universal, indivisible, interdependent and interrelated." This assertion, according to Stoilov (2003:87), stems from the perception that the universality of human rights is somehow a prerequisite for their existence. Arnold (2013:4) tells how this ideological concept has been transformed into international normative structures in the form of the UN Covenants and specific regional human rights instruments, with safeguarding systems in America, Africa, and with the European Convention of Human Rights (ECHR). These covenants and treaties establish rights for all individuals. Yet, according to Donnelly (2000:85), the obligations they create are only enforceable within states. States only have international human rights obligations towards the people living within their borders.

According to Donnelly (2000:85), human rights are "supervisory mechanisms that monitor relations between states and citizens." This state-centric conception has deep historical roots within social contract theory. Donnelly (2000:85) suggests that the modern state, has become the "principal threat to the enjoyment of human rights and the essential institution for their effective implementation and enforcement." He explains:

> "The immense power and reach of the modern state makes controlling it central to the realisation of any plausible conception of human dignity. The human rights strategy of control has had two principal dimensions. Negatively, it prohibits a wide range of state interferences in the personal, social and political lives of citizens, acting both individually and collectively. But beyond carving out zones of state exclusion, human rights place the people above and in positive control of their government. Political authority is vested in a free citizenry endowed with extensive rights of political participation."

He continues to discuss why the modern state is the necessary and central institution needed for the effective implementation of human rights:

> "The state, however, precisely because of its political dominance in the contemporary world, is the central institution available for effectively implementing internationally recognised human rights. 'Failed states', such as Somalia, suggest that one of the few things as frightening in the contemporary world as an efficiently repressive state is no state at all. Human rights are thus not only concerned with preventing state-based wrongs. They also require the state to provide certain goods, services and opportunities. Although obvious for most economic and social rights, the essential positive role of the state is no less central to many civil and political rights."

According to Ramcharan (2008:56), all UN member states commit to the principle of universality contained in the Charter and the UDHR by the very act of joining the

organization[28]. Yet, disagreement about the universality of specific human rights contained within the UDHR still exist. Ramcharan (2008:59) mentions that a debate about FoRB as a right, is one such example. Specifically, the right to change one's religion or belief[29]. There is continuous reaffirmation of consensus over the universality of human rights, such as the cited *Vienna World Conference on Human Rights*, the *Millennium Declaration* and the outcome document of the *Summit of World Leaders* in 2005 (Ramcharan, 2008:60). Donnelly (2013:9) emphasizes that human rights have become international legal rights and that, in an ideal world, these rights would remain out of sight and out of mind because of their accepted and institutionalized universality.

The concepts of the universality and inalienability of human rights is ultimately rooted in the equality of all humans. According to Copan (2013:11), secularists and theists agree on the notion of "inalienable rights", but ask the question of on what grounds a claim of "inalienable rights" can be made. In other words, on what grounds can one argue that all human beings are equal? Copan (2013:11) argues that human rights are "anchored in the prior status human beings have" and that this status of "dignity and worth" requires "metaphysical grounding" to make sense, a metaphysical grounding that naturalism does not account for. Copan (2013:11) submits that biblical theism offers a "metaphysical foundation for human sanctity", namely the creation in "the image of God". Arat (2006:2) agrees that one could argue that all world religions have a "humanist dimension" that supports human rights. The notion of a Creator that created all people on earth "implies that all peoples deserve dignity and respect" and because all humans were created by a Creator, they are inherently equal. Copan (2013:11) argues that it is this worth,

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[28] The bases of the universality of human rights, according to Ramcharan (2008:59) are: "(1) all human beings claim their inherent human rights; (2) The common humanity of all human beings and the inherency of rights; (3) the formal affirmation and reaffirmation of human rights in consensual processes of authoritative decision-making bodies such as the GA and world conferences on human rights."

[29] According to Ramcharan (2008:59), when a right is contested, "recourse may be had to the principle of inherency", in other words, one should enjoy a right from the very nature of common humanity. "The example of the right to change one's religion or belief may be cited. One can understand religions or laws prohibiting religious proselytizing or forbidding campaigns to convince people to change religions. But if an individual decides to change her or his religion or belief, how can this be forbidden by any religion or law? The universality of the right to change one's religion or belief would therefore, rest in the principle of inherency."

"bestowed" on the human race that serves as the "requisite ontological foundation" for human dignity and worth. The absence then, or abuse of human rights, could point to the fact that inherently, those committing these human rights abuses still do not accept that all human are equal in dignity and worth, be it state, group or individual.

The reality of the implementation of human rights is quite different from the theories discussed thus far. What universality or inalienability of human rights can we speak of when hundreds of millions of people are denied access to a number of different civil, political, social and economic rights? (Stoilov, 2003:96). The inequality of rights is manifested globally. Stoilov (2003:96) laments the fact that inequality is "ironically" growing at a time when the "triumph of democracy and open market was supposed to usher in a new age of freedom and opportunity." Although the universality of human rights is not the subject of inquiry of this dissertation, Stoilov (2008:96) here points out a very important contestation within contemporary human rights discourse that could have significant implications for the effective enjoyment of democracy worldwide.

2.2.3 Towards a definition of contemporary human rights

The philosophical development of rights from ancient Roman times, through to the conceptualizations of Thomas Hobbes, John Locke and Jean Jacques Rousseau, makes it clear that equality, freedom and human dignity are three of the main underlying principles that connote contemporary human rights. It is therefore these principles of equality, freedom and human dignity that resonates strongly with the political equality "enshrined in the idea of democracy" and with the idea that a democracy cannot be successful without certain important human rights (Waldron, 2013:157). This matter is further discussed in Chapter 4. Donnelly (2000:84) points out that contemporary conceptions of human rights reflect a long process of social and political struggle that might easily have turned out differently. The list of authoritatively recognized human rights could possibly change in response to changes in our understanding of human dignity, the emergence of new threats, and social learning concerning the institutions, practices and values necessary to realize that dignity.

Contemporary human rights are still understood and contested within their *moral* and *legal* nature. As mentioned, scholars like Jeremy Bentham strongly believe that human rights cannot exist outside of government (Ramcharan, 2009:23). Scholars on the

opposite side of the spectrum, like Campbell (2013:2) believe that the existence of human rights' depends on any *legal* or institutional recognition. Yet, the discussion on the philosophical development of rights clearly shows that the contested nature of human rights as *moral* or as *legal* rights, is as old as the idea of rights itself. Although the idea, content and scope of human rights and the nature of human rights remain contested concepts, scholars agree that the *moral* **and** *legal* nature of human rights have to be accounted for. Arat (2006:2) explains this as follows:

> "[Human rights] derive from moral and ethical sources and can enjoy legal and political support. Human rights, both moral and legal, are promoted to ensure the dignity of every human being without discrimination. As moral rights, they are inherent rights to which each human being is entitled. As legal rights they are established in local, national, and international laws and enforced by governments and intergovernmental organisations. Expressed in ethical codes and customs or articulated in legal documents, which are all subject to change, human rights have never had a 'fixed' content and evolved over time."

For the purpose of this study, human rights is understood as rooted in human nature and an offspring of natural right. Human rights are also understood within their *moral* and *legal* nature as freedoms protecting the individual and individual interests for the purpose of human flourishing, and as far as possible, international, regional and national peace, security and stability. Human rights is a system where everyone has the same rights and where these rights carry the same weight, encompassing the meaning of democratic enfranchisement (Waldron, 2013:149). Human rights is also, as Campbell (2013:1) suggests, the most fundamental and moral claims that "human beings can justifiably make on or against each other." Copan (2013:11) relates that human rights scholar John Warwick Montgomery describes rights as titles. Rights are therefore not self-standing, they are relational titles. This realization of rights also invokes certain 'duties' or 'obligations' by title holders towards each other (Arat, 2006:1). In other words, an individual's right to religious freedom only exists within a framework where other individuals have the same right to religious freedom. Individuals therefore have an obligation towards other rights holders to acknowledge and respect their rights. According to Donnelly (2000:11), apart from the contested history and changing nature of human rights, human rights are still "deeply rooted social constructions that shape our lives." They reflect the vision of human dignity and efforts to implement this vision in contemporary international society. This attempt is accepted by almost all states as authoritative. Human rights have become a central, "perhaps even defining" element within the social and political landscape of the early 21st century world.

2.3 Defining religion

As discussed in Chapter 1, religion is for the purpose of this dissertation understood as a deep and collective commitment that shapes communities. It should therefore be understood as identity politics (Abbink, 2014:85). According to Zagzebski (2009:1), religion has existed as long as humankind. Any effort to explore the relationship(s) between FoRB and democracy, should establish an understanding of the concept of religion. Sweet (2012:162) believes that a definition of religion is not necessary for an understanding of religious freedom, but this research departs from the view that it is useful to understand what religion is when embarking on a discourse about people having freedom to it and freedom from it. This section pursues a brief, but broad discussion towards a definition of religion, its importance within FoRB and its relationship with democracy. First, it is important to highlight that this study takes a Western liberal approach and therefore does not attempt to explore the entirety of religious scholarship.

According to Olson (2003:15), the *study* of religion has its roots in the Enlightenment period in Western history and thought. Gill (2003:20) adds that the academic and secular study of religion has been constrained by bounding criteria and as such has not enjoyed adequate development. The academic study of religion has also often failed to acknowledge exactly what it is. According to Gill (2003:22), the academic study of religion is just that: academic, Western and intellectual. Bergunder (2014:247) is of the opinion that an attempt to define religion as a "subject" has been a major undertaking of the discourse from the beginning – but with no conclusive results.

2.3.1 Exploring substantive and functionalist definitions

Cipriani (2011:103) is of the view that the contested nature of religion is due to debates around the distinctive approaches in the study of religion, namely substantive approaches and functional approaches. The substantive approach, according to Cipriani (2011:103), is grounded in the work of Durkheim, where "beliefs and practices" are considered the foundation of "moral communities" or the church. McLachlan (2014:380), however, warns that substantive definitions are criticized by scholars as being "too theistic". Functional approaches, such as that of Luckmann (and according to some scholars also that of Durkheim, (McLachlan, 2014)) focus on "symbolic universes" as "socially objictified systems of meaning" that through "social processes" lead to the formation of what

Luckmann describes as "the Ego" and the "transcendence of biological nature". Functional approaches are criticized for being "too vague" because any socially objectified system of meaning can become "under the eyes of the functionalist, a religion" (McLachlan, 2014:380).

Bruce (2011:111) submits that functionalist definitions define religion based on its consequences. He (Bruce, 2011:111) contends that Durkheim's functional definition gives religion the distinguishing feature of uniting people in a "common consciousness". The Marxist view of religion defines religion as an instrument used by the elite to oppress the masses and a means used by the masses to console themselves within their oppression.[30]The problem with these definitions is that, rather than offering a definition of the subject matter itself, functionalist definitions offer only a description of the consequences or origins of religion. By taking a substantive approach in defining religion, Bruce (2011:113) believes he is able to formulate "theories with considerable theoretical scope".

2.3.2 Exploring polytheistic and monotheistic definitions of religion

According to Meister (2009:6), people who can be considered religious make up the majority of the world's population, with "nonreligious" people consisting of only 15 per cent. Contemporary studies no longer view religion within regional constraints, but as a global phenomenon that Meister (2009:6) describes as "ubiquitous". Religion is globalizing with a strong presence of Eastern religions in Western countries and vice versa. Benson Saler (cited by Burgunder, 2014:249) offers the most comprehensive polytheistic definition of religion. Much like a family where members of the family share certain traits, but remain individuals and still part of the family, Saler (2000) argues that religion has to be understood as a set of "features" or "clusters of features". Saler (2000) identifies 15 features referring to this approach as an anthropological definition of religion.

A religion only has to have one of these 15 defining features to be considered as part of the "family" of "religion". However, Burgunder (2014:249) sees the problem with defining religion as the demarcation of what is *not* considered a religion, a problem echoed by

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[30] "Religion is the sigh of the oppressed creature, the heart of a heartless world, just as it is the spirit of a spiritless situation. It is the opium of the people" (Karl Marx as cited by Bruce, 2011:11)

Bielefeldt (2013:39) as referred to in Chapter 1 of this dissertation. A conclusive definition therefore risks being too broad (exclusive) or too narrow (inclusive) and that is why, among other reasons, scholars have not been able to agree on one definition of religion.

A monotheistic definition on the other hand, according to Saler (2000:87), stipulates that one or more distinguishing feature of the phenomenon has to be present for it to be regarded as bounded by the definition. Monotheistic religions include for example Judaism, Christianity and Islam. Meister (2009:9) makes a further distinction among monotheists, namely between *theists* (who believe that God is distinct from the world and yet actively involved in the world), *deists* (who believe that God is distinct from the world, but not actively involved in it) and *pantheists* (who believe God to be co-dependent with and permeating the world). Historically, monotheistic religions believe that there is only one all-powerful, all-knowing and omnibenevolent God.

2.3.3 Concepts or "practical applications" in defining religion

Woodhead (2011:121) argues that religion can be understood within its five practical applications: **(1) religion as culture** *(religion as belief, meaning, cultural order, values, discourse, ideology and as tradition and memory)*; **(2) religion as identity** *(religion as identity claim and as organizational belonging)*; **(3) religion as relationship** *(religion as social relations, and as super-social relations)*; **(4) religion as practice** *(religion as ritual and embodiment, as quotidian practice and as popular or folk religion)* ; **(5) religion as power** *(religion as 'compensator' and 'capital', religious resources and religious, economic and political power)*. Each "practical application" is briefly discussed and motivated from Woodhead (2011).

2.3.3.1 Religion as culture

According to Woodhead (2011:123), religion as belief is one of the most popular contemporary conceptions of religion. Being religious within the conception of religion as belief means that one believes certain things and accepts certain doctrines. In more specified definitions of religion, this means believing in the existence of supernatural beings or forces. Post-Second World War sociology of religion reinforces this account under the influence of positivism by reducing religion to "quantifiable items such as membership and assent to propositional beliefs". According to Woodhead (2011:123), legal accounts also often take a belief-based view of religion. She makes specific

reference to what is often the case in the USA by citing Sullivan, where religion is defined in terms of "sincerely-held religious, moral or ethical beliefs as asserted in an authoritative sacred text and classical formulations of doctrine and practice".

Sociological and anthropological interpretations of religion argue that religion is "a system of meaning" that "covers the whole of life" (Woodhead, 2001:124). A definition offered by the sociologist Peter Berger defines religion as "a system of meaning of making sense of the world". He believes that in order to function humans make use of religion to create "cognitive order" in the "disorderliness" of the world (Woodhead, 2001:124). This, according to Berger, is a social achievement and not an individual undertaking and therefore, it creates cultural order. According to the work of Weber and Durkheim (cited by Woodhead, 2001:125), religion "shapes, symbolises, stabilises and sanctifies shared values".

On the other hand, scholars influenced by Foucault view religion as a discourse rather than culture or values (Woodhead, 2011:126). This is done by studying religious literature, sermons, magazines, artefacts, novels and tracts, rather than quantifiable data like church attendance and surveys. As previously mentioned, Marxist approaches argue that religion "mystifies" and changes social, economic and political life. Marx and Weber even go as far as suggesting that religion "drugs" societies to bring about change, and in this way, it can be regarded as an ideology (Woodhead, 2011:127). Some approaches to religion from scholars like Danie`le Hervieu-Le´ger (1993) and Grace Davie (2002) define it as a matter of tradition, with the ability to bring the past to life in the present (Woodhead, 2011:127).

2.3.3.2 Religion as identity

The idea that religion is a way of creating and maintaining communities or "social bonds" is an idea made popular by Durkheim (cited in Woodhead, 2011:127). Woodhead writes:

> "For Durkheim religion and society are inseparable. Religion is the place where a society holds up an image of itself, reaffirms it bonds, renews its emotional ties, marks its boundaries, sets itself apart and so brings itself into being. In Durkheim's famous definition, religion names the 'beliefs and practices' relative to what is sacred and 'set apart' which unite into a 'single community' those who adhere to them."

The sociologist Hans Mol in his publication *Identity and the Sacred* (1976) develops a concept of religion that builds on that of Durkheim (religion as 'social bonds'). Mol argues that the search for one's individual identity is a basic anthropological need that is satisfied in religion (Woodhead, 2011:128). The concept of "religious identity" is often used for explanatory purposes, to, for example, explain the increasing visibility of religion in "secular Europe" as a reassertion of religious identity. It seems that the assumption is that individuals and groups have a need to define who they are and that this is done "by asserting both 'sameness' and 'difference'. In this way religion can be regarded as a source of identity like ethnicity, gender and sexuality, to name but a few" (Woodhead, 2011:129). Even more specific than this, religion is furthermore considered as a matter of "social belonging" (Woodhead, 2001:129). This concept has dominated the sociology of religion, especially in Europe, by scholarships' preoccupation with collecting data relating to church membership and attendance etc. (Woodhead, 2001:129).

2.3.3.3 Religion as relationship

Religion binds people in certain ways and this overlaps with the idea of religion playing an integral part in the shaping of social or individual identity (Woodhead, 2011:130). Small-scale studies of religious groups, organizations, institutions and local networks have often been focussed on their characteristic forms of social relations. Sociology of religion has "drawn a sharp line between social relations between living human beings and social relations with ancestors, gods, God and other 'supernatural' beings" because social science "is best equipped to deal with empirically observable social relations". Yet, this ignores the fact that relationships with "non-empirical" beings are often central, or at least very important in social life. These relationships are, however, culturally and symbolically accessible. This is why Woodhead (2011:131) argues that the study of religion should account for "super-social relations".

2.3.3.4 Religion as practice

Ethnographical approaches to studying religion within anthropology also account for religion as "being lived out" as much as being a phenomenon of text and thought

(Woodhead, 2011:132). Religion as "ritual" is often found in anthropological studies.[31] Some approaches to religion identify religion with ritual and even with society itself. Some sociologists of religion call for the study of religion to include conceptualizations of religion as "lived religion" or "everyday religion".[32] The concept of *religion as daily practice* falls within the context of an "ethnographic, participant observer approach which involves deep immersion in particular spaces of social life" (Woodhead, 2011:134).

According to Woodhead (2011:134), the concept of religion as daily or "*quotidian*" practice, emphasizes that religion may never be "formally, textually, articulated at all, but operates at the level of habitual practices and the regulation of emotions." Although many approaches taken from the study of *folk or popular religion* developed into the methods used in the study of religion as daily practice, the study of folk religion that characterized much of the European and American religious discourse has come under scrutiny for emphasising "elite" religion and for a tendency to ignore changes in the nature of religion and "its ability to adapt to the conditions of modern and late modern societies" (Woodhead, 2011:134). As mentioned before, Sweet (2012:161) believes that a definition of religion is not necessary for the understanding of religious freedom. He argues that most definitions of religious freedom understand it within a context of religion as practice – "how people engage it, present it, associate and act on it" etc.

2.3.3.5 Religion as power

The influence of secularization theories that emphasize the loss of religion's social power leads to the neglect of the concept of *religion as power* (Woodhead, 2011:134). Yet, according to Woodhead (2011:134), "power lies at the heart of religion, which typically offers a relationship with some form of higher power or powers which can be drawn down

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[31] "Thus ritual is said to engage individuals in orchestrated and formalized social performances, serving to co-ordinate bodily movements in synchronized and harmonious ways which may have the effect of reinforcing and intensifying certain emotions and commitments and banishing others" (Woodhead, 2011:132).

[32] Woodhead (2011:133) cites Orsi, who calls for religion to be conceptualized as it manifests in individuals' and communities' everyday lives. Orsi (1997:9) argues that religion should be studied "as it is shaped and experienced in the interplay among venues of everyday experience… in the necessary and mutually transforming exchanges between religious authorities and the broader communities of practitioners, by real men and women in situations and relationships they have made and that have made them".

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into the mundane world".[33] The concept of religion as power can be seen as complimentary to the concepts of religion discussed thus far. The contemporary account of religion as power draws on economic metaphors of "reward" and "compensation" on the one hand and "capital" on the other (Woodhead, 2011:134). In this way religion is represented as a resource that has instrumental uses and can be exchanged by individuals. Stark and Bainbridge (as cited by Woodhead, 2011:134) define religion within the context of power as "'human organizations primarily engaged in providing general compensators based on supernatural assumptions" with a compensator being the belief "that a reward will be obtained in the distant future or in some other context which cannot be immediately verified". Another body of theory from the work of Bourdieu and popularized by Robert Putnam, promotes the idea that religion is powerful because it is able to foster 'social capital' (Woodhead, 2011:134). Putnam (as cited by Woodhead, 2011:134) argues that social capital is "foundational to civic virtue and communal health". This suggestion that religion is a source of social capital has even influenced social policy and applied social theory.

Some scholars, influenced by social movement theory, draw attention to religion's organizational resources. According to Gramsci (as cited by Woodhead, 2011:135) religion can contribute to the emergence of "counter-hegemonic ideologies" because "religious groups are semi-autonomous from other social institutions and create a free space where alternative perspectives can be discussed." Religious groups often have material resources – buildings etc. – which offer physical means for gathering, debating and organizing, as well as trained leaders who command authority. Religions are also used to bringing people together in mass gatherings, with networks that are often global and that allows them to call on resources and support from beyond national level (Woodhead, 2011:135).

Weber (as cited by Woodhead, 2011:136) claims that religion also played a role in the rise of capitalism in Protestant parts of Europe. He believed that religion had the power

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[33] "Religion indicates where power really lies (in forces of both good and evil), and allows people to enter into relation with it by understanding it, revering it, worshipping it, appeasing it, drawing upon it, manipulating it, railing against it, meditating upon it, making offerings to it, and falling in love with it" (Woodhead, 2011:134).

to cause economic change by motivating people to engage in "highly moralized forms of action which had the unintended consequence of energising and legitimating capitalist production and capital accumulation" (Woodhead, 2011:136). This is a sentiment echoed by Smelser (1995:73), who argues that economics rests on persuasion, analogies and metaphors, and religion is among these. Weber regarded religion as a force that upheld the status quo rather than driving social change. His discussion of charismatic authority also accounts for religion's capacity to "challenge traditional forms of authority" (Woodhead, 2011:136). Woodhead (2011:137) affirms that recent studies of partnerships between government and religious communities in, among other things, welfare services and counter-terrorism, suggest a new form of state-religion relationships

2.3.4   Towards a contemporary definition of religion

According to Zagzebski (2009:1), religion is universal, like art, morality and music and like these practices, Zagzebski is "doubtful" that it can be defined with precision. Nearly 10 000 religions have been identified, with an estimated two new religions developing daily (Sweet, 2012:160). Bruce (2011:107) suggests that no agreed-upon definition of religion is possible because "religion does not exist" and that it is "a post-modern social construction". Meister (2009:6), however, offers the following definition of religion: "a religion involves a system of beliefs and practices primarily centred around a transcendent Reality, either personal or impersonal, which provides ultimate meaning and purpose to life". With the concepts of "a system of beliefs", "a transcendent reality" and "human attitudes of concern, meaning and purpose", forming some of the central themes within every religion.

Zagzebski (2009:2) echoes this definition by emphasizing that religion is a "human practice" that involves distinctive emotions, acts and beliefs. Furthermore, religion "fosters a sense of the sacred". Domingo (2013:429) believes that historically, religion has exhibited three distinct features, namely an institution or church, a religious creed and a moral code. Bruce (2011:113) defines religion as consisting of "beliefs, actions and institutions which assume the existence of supernatural entities with powers of action, or impersonal powers or processes possessed of moral purpose." The discussion of the concepts that are foundational to this study and the process of defining religion reveals quite clearly that any attempt to define religion will most likely be unsuccessful, or at the very least, very complicated. Yet, some central themes within the study of religion become

clear. In both the substantive and functionalist approaches it would seem that theorist agree on themes or conceptions of individual and shared consciousness or "experiences" of shared "systems of beliefs or symbols" of an alternative reality that manifests in turn in individual and/or collective emotions and/or actions (rituals). It also seems clear that both monotheistic and polytheistic definitions share the above-mentioned characteristics, with the major difference being a single distinguishing feature of religion versus many distinguishing features of religion. Domingo (2013:492) also points out that religion can be considered both a private and a public phenomenon, and it operates differently in each of these spheres.

For the purpose of this dissertation, religion first assumes an individual and collective consciousness or belief. Second, religion supposes certain natural and super-natural relationships among and within religious communities, members of religious communities and between individuals and religious communities with an alternative reality (whether this is manifested in the relationship with a deism or not). Third, through a personal and shared commitment, religion shapes a sense or search for self, manifesting in culture and cultural practices. Finally, religion, by fostering personal and shared beliefs and/or values, commitments and rituals, moulds, shapes and changes the personal and social reality of individuals, communities and the larger society. So, as discussed in Chapter 1 and supported by the discussion throughout Section 2.2, it proves most useful to understand religion within a simple and practical twofold definition as firstly a deep individual or collective commitment that shapes communities that therefore should be understood as identity politics, and secondly, the recognition of an alternative (whether visible or invisible) reality that shapes humans and their behaviour. In the words of George (2015:8), "the religious quest is a constitutive part of our humanity—an aspect of our flourishing as the kind of creatures we are, namely, rational, intelligent, and free actors".

2.4 Conclusion

Perhaps it is the contested nature of both human rights and religion, their features and different manifestations in culture, worldviews and philosophical ideals, that make their relationships, at least to some, so obvious, and yet so difficult to exactly pinpoint. This study takes an exploratory approach to understand – at least to some degree – the different theoretical approaches and philosophies of human rights and religion. The discussion in this chapter does make clear that further study or more specific clarification

and theoretical agreement on both concepts is needed. What is very apparent from the discussion is that human rights can be considered to have either developed from the idea of natural right or, as other scholars argue, alongside liberal democracy. Although the specificity of its origin is still highly contested, the philosophical foundations are not. Human rights are a double-edged sword with moral and legal consideration and implications. It also becomes very clear throughout the discussion, that human rights do play an increasingly important role – albeit that this role is ever-changing – in the successful enjoyment of not only democracy, as will be discussed in Chapter 4, but also in human flourishing

The same is true for religion, the right to religion and the right from religion. Religion or the right to choose, change, practice and observe one's personal beliefs plays an increasingly important role in the human experience. Although religion does not enjoy the political scholarship it should, especially in the 21st century, it remains a multi-faceted and contested concept. It is very difficult to define, if at all possible. From the above discussion, it can, however, be deduced that further exploration is necessary – and particularly in secular scholarship. Religion may be best understood within its relationship to culture, identity-formation and as power, rather than being studied or understood as a subject matter. According to Sullivan (2015:15), religious studies has had "a mostly tangential relationship to interrogating the politics of religious freedom", so much so that she argues that the recent emergence of religious studies contributed to the "celebration of religious universality and diversity" of religious freedom and to "legitimating" religion as a "space distinctively free of politics". Historically, religion has always been closely associated with politics and the exercise of power. She also argues that most religious studies scholars are advocates of religious freedom.

The idea of human rights finds its origin in ancient Greek religion and it wasn't until the 17th century that the idea of human rights was secularized by, perhaps ironically, a Protestant Dutch statesman, Hugo Grotius, considered by some as the author of the modern idea of subjective natural rights. Human rights scholarship, much like liberal democracy, was furthered by the scholarship of John Locke, Jean-Jacques Rousseau and Thomas Hobbes, whose work, some argue, had strong religious roots. Common themes that echo throughout this chapter and in human rights discourse and the limited religious discourse is that of human dignity, equality, freedom and morality. Throughout

the development of the modern idea of human rights, both religious and secular influences and moments in time play a significant part in shaping the philosophical foundations of natural right into what we today understand as subjective, individual, universal and inalienable human rights, protected by law, at least in theory. The worldwide current abuse of human rights by both state and non-state actors are threatening to reverse established and developing democratic institutions and ideals.

As mentioned in the introduction of this chapter, democracy and human rights are considered by Waldron (2013:158) as a matter of empowerment, working together to empower ordinary individuals as voters to make certain choices about how they want to live their lives. This chapter would, however, like to add to Waldron's (2013:158) idea by arguing that *human rights, democracy and the freedom of religion or belief empower individuals as voters to make choices about how they want to live their lives*. Chapter 3 attempts a deeper exploration of FoRB to ultimately analyse the theoretical relationships between FoRB and democracy. This is accomplished by exploring the different theoretical approaches to FoRB towards a coherent definition of FoRB, but also focussing briefly on the supposed misconceptions of FoRB, and perhaps most importantly, the restrictions and abuses of FoRB.

Chapter 3 Understanding freedom of religion or belief as a basic human right of integral importance to democracy

3.1 Introduction

Even in its earliest conceptualizations in Western history, religious freedom was an "unstable concept". Sullivan *et al.* (2015:5) propose that it is "the result of what Ian Hunter termed 'a circumstantial casuistry' of historically embedded political concepts' as opposed to a principled commitment to the separation of church and state". The history of religious freedom includes theories about what exactly can be considered as religion (Sullivan *et al.*, 2015:7). Indeed, in contemporary discourse, as stated in Chapter 2, it is unclear what religion exactly *is*. Sullivan *et al.* (2015:7) argue that religion "brings together a vast and diverse, even shifting, set of social and cultural phenomena that no longer convincingly underwrite and justify legal action in its name". The nature of the academic study of religion complicates the understanding of religion as a concept, and historians, sociologists and anthropologists approach the subject matter of religion very differently. Protecting religion or religious freedom in law – according to Sullivan *et al.* (2015:7), invites discrimination because it is a "deeply ambiguous legal standard in domestic and international law, one that is often dependent on parochial anthropological and philosophical understandings of the human and human society".

Sullivan *et al.* (2015:5) describe the history of religious freedom as "emerging in a very specific early modern European context, establishing the foundation of political secularism" through the separation of state and church and "making the state indifferent" or "neutral" towards religion. Since religious freedom's origin in 17th century political thought, it has continued to expand "its ambit of toleration to all religions – far beyond its initial mandate to institute peace across Christian denominations" (Sullivan *et al.*, 2015:5). VanDrunen (2012:136) appeals to natural law (whether implicit or explicit) as a way to communicate that religious freedom is not a uniquely Christian concern, but a universal concern. Many scholars argue today that religious freedom is "the *key* to emancipating individuals and communities" from conflict, human rights abuses and/or oppression and poverty (Sullivan *et al.*, 2015:1). "Indeed, the gospel of religious freedom is often said to lead comprehensively to democracy, greater civil and political liberty, and prosperity" Sullivan *et al.* (2015:1) write.

Soriano (2013:581) describes religious freedom as "an achievement without which there could be neither social peace or harmonious association among the various existing religious expressions in society – including atheists and agnostics." Domingo (2013:430) argues that religious freedom has its origins in Protestantism and was founded on a "concrete idea of religion". Erasmus (2016) believes that the question of religious freedom and how to implement it as part of law and policy has become a pressing matter for individual countries and for regional agreements, or as he puts it, "clubs of nations" like the European Union, and the African Union, who are identified as "forces for good in the world". This is due to an age of unprecedented abused blasphemy laws and regimes, like that of China, Iran and Turkmenistan, that deal brutally with "dissent in metaphysical matters". According to Leiter (2013:x), it is important to recognize that as much as religion has been a source of war and persecution, it has also been the source of resistance to injustice and movements for social and moral progress. Sullivan *et al.* (2015:7) also aver that supposed and "significant" relationships exists between FoRB advocacy, "economic liberalization and the 'free market' model of religious growth".

According to Kalanges (2012:55), religious freedom did not become a legal reality until recently. Prior to 2000, no systematic collection of data concerning religious freedoms had been collected and very few studies focussed on determining religious freedom's origins and consequences (Finke, 2013:297). In the modern interpretation of FoRB, the "deployments of religious freedom" is "multiple and contradictory" and used to "identify the virtuous and condemn the oppressor, at times used on behalf of women and minorities, and at others to serve narrow sectarian interests of missionaries, governments and religious authorities" (Sullivan *et al.,* 2015:7).

According to Finke (2013:298), the study of religious freedom is of substantive and theoretical importance to scholars of religion because it has far reaching implications, not only for religion, but also for theoretical discussions regarding, among other things, civil liberties and social conflict. It is only since 2000 that a "flurry" of data and a new body of research has begun to emerge. The theoretical understanding of FoRB is therefore very broad. Sweet (2012) suggests that religious freedom be understood within three models, namely, 'religious tolerance', 'religious liberty' and 'FoRB as a human right' and Section 3.2.2 discusses Sweet's model of religious freedom (2012) briefly. Marshall (2013) argues that it would prove easier to define religious freedom by studying the violations thereof

than it is to attempt to define its features. This chapter incorporates both approaches – attempting to define or at least to facilitate a broad understanding of the concept of FoRB, along with a short discussion on the restrictions of religious freedom by both state and non-state actors. This discussion aims to highlight introductory considerations regarding the relationships between FoRB and democracy, as well the importance of FoRB for democracy. Further features of FoRB and democracy that enjoy a brief introduction in Chapter 4 and further elaboration in Chapters 4 and 5, is the democratic principles of free and fair elections, rule of law and an independent judiciary, all of which show strong statistical correlations with the presence of FoRB.

3.2   Towards a definition of freedom of religion or belief

According to Richardson (2015:1), religious freedom as a concept is socially constructed and contested. Its "fairly recent" history includes the Treaty of Westphalia (1648), the US Constitution (1789) and the UNHR (1948), as well as the European Convention on Human Rights (1953). All of these documents attempted to curb violence and end conflict. These documents, Richardson (2015:1) believes, represent efforts to create political compromises that will allow for peaceful coexistence in pluralistic societies. According to Hurd (2015:48), Talal Asad presents his theory of belief on a "new religious psychology", which can be traced back to the emergence of the state in 17th century Europe. His theory that belief "should not be coerced because it affronts the dignity of the individual, and cannot be coerced because it is located in the private space of the individual mind" is also at the core of John Locke's theory of toleration. Recent developments, however, offer huge challenges to FoRB in that that these same developments are also responsible for the spread of religious freedom. Among these developments is the collapse of the Soviet Union and many Central and Eastern European nations subsequently joining the Council of Europe under the authority of the European Court of Human Rights (ECtHR).

According to Sullivan *et al.* (2015:5), FoRB is "not a single, stable principle existing outside of history or spatial geographies", but "an inescapably context-bound, polyvalent concept unfolding within divergent histories in differing political orders". But why freedom of religion *or belief* and not merely religion? Sherwood (2015:34) believes that this is "an awkward" response to secularization and that the phrase suggests that there are certain requirements for a secular belief to be considered legitimate when measured against the concept of religion. Sherwood (2015:33-34) writes:

> "In being forced to come up with a secular cognate, religion is demoted, humiliated, pluralised, negated – and yet still sovereign. It still functions as the key coordinating concept, or at least the concept allowed to reign over the strange shadow state and outland of belief (the land that no other sovereign concept wants to rule). Religion remains the primary reference point for, and guardian of, the category of belief. The phrase 'religion or belief' suggests that a secular belief must meet the high requirements set by religion, and this around that particular religious assertion 'I believe'. The phrase 'religion or belief' rejects a turn from the singularity of a state religion and monotheism not polytheism but to poly-representational societies."

These criteria, Sherwood (2015:36) argues, is that (i) "the belief must be genuinely held"; (ii) it cannot be considered a belief if it is a mere opinion formulated with available information; (iii) the belief must be "a belief as to a weighty and substantial aspect of human life"; (iv) "it must attain a certain level of cogency, seriousness, cohesion, and importance" (Chapter 1); (v) finally, it must be respected in a democratic society and "not incompatible with human dignity and not in conflict with the fundamental rights of others".

According to Hurd (2015:47), the UK Foreign and Commonwealth Office argues that a belief is also protected depending on its "cogency, seriousness, cohesion and importance". The word 'religion', Hurd (2015:47) claims, is commonly associated with a "transcendent deity or deities" who is interested in "human destiny", whereas the term 'belief' does not "necessarily involve a divine being", although it does connote a sense of "cogency, seriousness" etc.. Religion or belief is a mode of thinking that Sherwood (2015:29) regards as something that is not necessarily chosen. Sherwood (2015:29) argues that it should be understood as "exceeding the individual operating as an incontestable given such as sexuality or the colour of his or her skin"[34]. Yet, because belief is also understood as a "thought" and "thoughts can change", it is at risk of "collapsing back into something far less concrete and less worthy of legal protection than a category like race" and evidence suggests that religion is a "far less robust category" in law than that of gender, sexual orientation, race etc. (Sherwood, 2015:29).

Konvitz (2003:3) reminds us that the rise of the Nazi regime brought with it a concern with religious freedom that was felt "widely and intensely". With the rise of this infamous regime, it became apparent that the Nazi's "were bent on world conquest" and on

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[34] "Believing is understood as a form of agency that, paradoxically, takes us beyond decision to the point where it becomes that from which I cannot dissociate myself, that which cannot be wrenched apart from me except by violence—and hence a given, like sexuality or race" (Sherwood, 2015:29).

displacing all religions through the means of a racist ideology. As a reaction on the events that characterized World War II, US President Franklin Roosevelt proclaimed religious freedom as one of the "Four Freedoms" in his Annual Message to Congress in the State of the Union Address on 1 June 1941. He formulated it as the "freedom of every person to worship God in his own way – everywhere in the world".[35] According to Konvitz (2003:4), there is less religious freedom in the world today than there was in 1941 during Roosevelt's "Four Freedoms"-speech. The "cardinal foundation" of the right to FoRB as Soriano (2013:590) describes it, is first and foremost the innate human dignity of the individual. It is the human dignity of an individual that is denigrated when restricted or hindered in their freedom to choose their religion or the exercising thereof in observance, teaching and worship.

According to Sweet (2012:157) and Soriano (2013:581), religious freedom is a principal right and freedom in western democracies and it is enshrined in international declarations of fundamental human rights and international treaties. Article 18 of the Universal Declaration of Human Rights declares that "*everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance*". Yet, according to Marshall (2013:11), there is no agreed-upon definition for religious freedom, and it could possibly prove more useful to define it by describing the violations of religious freedom. The difficulty in defining religious freedom stems from the fact that religious freedom cuts across a broad range of human rights. Domingo (2013:431) maintains that the original idea of religious freedom as a "concrete idea of religion" presupposes a monotheistic (Abrahamic) definition of religion, namely the existence of one God. According to John Locke (as cited by Domingo, 2013:431): "'We are capable of knowing certainly that there is a God' and that 'there is an eternal, most powerful and most knowing being; which whether anyone pleases to call God, it matters not.'" On this basis, Domingo (2013:431) defines religious freedom as the "political freedom required to accomplish the duty of rending to God what human beings as creatures owe him according to justice…"

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[35] The other three "freedoms" included, "freedom of speech and expression – everywhere in the world; freedom from want and; freedom from fear" (Konvitz, 2003:3).

Finke (2013:299) defines religious freedom as the "unrestricted practice, profession and selection of religion". According to Domingo (2013:429), the right to religious freedom can be regarded as "one of the greatest and most valuable achievements of modernity". Yet, as a result of increased globalization, Western secularism led to the questionability of the existence of a god and this in turn led to the diversification and the shapeshifting of religious freedom globally (Domingo, 2013:431). The idea that religious freedom should protect theistic and non-theistic religions, as well as other kinds of religious and nonreligious communities and creeds, has enjoyed worldwide recognition and adoption in international law. Hurd (2015:48) argues that this recognition and protection of international religious freedom as a universal "norm" in international law "hinges upon a religious psychology that relies on the notion of an autonomous subject who chooses beliefs and then enacts them freely". Therefore, FoRB can also be considered, at least theoretically, as a universal human right (Soriano, 2013:585). This notion is, however, still challenged by cultural relativism.

3.2.1 Liberal and anti-liberal views of freedom of religion or belief

Soriano (2013) distinguishes between two views of FoRB that are of importance for the purpose of this study, namely the liberal (*less government*) and anti-liberal (*more government*) views of religious freedom or FoRB. The liberal view, he argues, rests on the autonomy of the individual, whereas the anti-liberal view of religious freedom rests upon the assumption that the state should protect religious freedom, because "religion is a good thing". The liberal view of religious freedom or FoRB is rooted in three thematic principles. First, in the dignity of the human person, second in the freedom of the individual and third in the autonomy of the individual.

Soriano (2013:590) argues that the state should protect FoRB because individuals have the right to choose their beliefs and to live in accordance with their conscience, whether this is dictated by religious, agnostic or atheistic beliefs. This further means that the individual has the right to believe or not to believe what they choose. Disbelief in this context can therefore also be understood as "some form of belief". Furthermore, this right to choose, within liberal thought, can be understood within the context of the autonomy of the individual conscience. According to the liberal tradition, the right to choose is one of the most fundamental rights of those belonging to the human family. Soriano (2013:590) argues that these liberal views of religious freedom is echoed in the work of,

among others, John Locke. Locke (1689) for example writes in *A Letter Concerning Toleration*:

> "I esteem that toleration to be the chief characteristic mark of the true Church… The business of true religion is quite another thing. *It is not instituted in order to the erecting off an external pomp, no to the obtaining of ecclesiastical dominion, nor to the exercising of compulsive force, but to the regulating of men's lives, according to the rules of virtue and piety…* If the Gospel and the apostles may be credited, no man can be a Christian without charity and without that faith which works, *not by force*, but by love."

The anti-liberal view of religious freedom, which Soraino (2013:590) sees as resting on the assumption that the state should protect FoRB, merely because "religion is a good thing", presents varied theoretical and practical difficulties. First, if religion is considered a "good thing", what constitutes a religion? Soriano (2013:590) believes that a liberal, pluralistic and secular state does not have the means to provide a definition of what is considered a religion without making exclusions and that only a "theocratic state would be able to do this". The anti-liberal idea of religious freedom would therefore only permit a single understanding of moral good, in contrast with political liberalism, and this would restrict the religious freedom of the individual. "The anti-liberal view of religious freedom" according to Soriano (2013:590), is therefore, "a return to the confessional state or to the religious view of religious freedom". Furthermore, collective consensus, whether it is atheism, Islam, Christianity or secularism, as illustrated for example in the regimes of Mao Zedong, Hitler, Stalin and that of atheist China, pose a threat to individual consciousness.

Marshall (2013:11, 12) suggests six elements as forming part and parcel of the understanding of religious freedom, namely (1) freedom for believers to engage in religious practices, including but not limited to dress code, diet and prayer; (2) freedom to gather for worship; (3) the freedom of religious organizations or institutions to decide on their governance and rules; (4) the freedom of religious groups to create and maintain private and "distinctive social organizations"; (5) the freedom to any human right involving religious claims or rights (for example freedom of speech); and finally, (6) freedom from discrimination or persecution on the grounds of religion. Furthermore, Sweet (2012:157) suggests that FoRB be understood within three "models" of religious freedom that are briefly discussed in the section below.

3.2.2 Sweet's (2012) three defining models of freedom of religion or belief

In an attempt to understand the concept of religious freedom, it is important to consider Sweet's (2012:158) three models of conceptualization. These three models are *religious toleration*, *religious liberty* and *FoRB* or *the right to freedom of religion or belief*. All three models of religious freedom connote distinguishing and underlying values of either religion and/or freedom that acts as justification of religious freedom and is briefly discussed. In a more general justification of religious freedom, Sweet (2012:174) suggests that religious freedom should be defined and studied not merely as a freedom of opinion or belief, nor solely as a freedom to affirm certain teachings or doctrines or solely as a freedom of conscience, but as a freedom to all the above-mentioned. It is a freedom that allows one to seek the truth and to commit oneself and one's life to that truth or way of life. "If we wish to understand religious freedom, the focus should be on looking at it in terms of its function; what does this freedom – or what do calls to this freedom – seek to do?" Sweet (2012:175) here argues that religious freedom is not a matter of engaging in belief or action, "but to be [or to become] a certain kind of person".

3.2.2.1 Religious tolerance

According to Leiter (2013:5), '*religious tolerance*' has long been the paradigm of the "liberal ideal of toleration of group differences" as emphasized by the constitutional descriptions in Western democracies and the theoretical discourse "justifying these practices". Leiter (2013:8) defines toleration as follows in the words of English Philosopher Bernard Williams:

> "A practice of toleration means only that one group as a matter of fact puts up with the existence of the other, differing, group… One possible basis of such an attitude… is a virtue of toleration, which emphasizes the moral good involved in putting up with beliefs one finds offensive… If there is to be a question of toleration, it is necessary that there should be some belief or practice or way of life that one group thinks (however fanatically or unreasonably) wrong, mistaken or undesirable."

Sweet (2012:162) defines '*religious tolerance'* as the permission extended by authorities that allow individuals to practice their religion free from interference, regardless if these religions are regarded as "false or evil" by said authorities. Sweet (2012:170) argues that '*religious tolerance*' is found in contexts where religion ("or dominant ideology or concept of the good life") is not only *not* a right, but also subject to "concerns about public order and the interests of the state or the community". During the Roman Empire, and after that

for a very long time, religious freedom has only been understood within the constraints of *'religious tolerance'*. Religious beliefs and practices were 'tolerated' by the Roman Empire, as long as it posed no threat to the imperial rule. Yet, persecution of Christians and other religious minority groups by the Roman emperors Nero (64), Decius (250-251) and Galerius (303) occurred periodically, until religious freedom was extended to all by Constantine (Sweet, 2012:162).

'*Religious toleration*' of different religious groups was also present during the reign of the Ottoman Empire (1299-1922) and religious persecution wasn't "normally acceptable". The justification of this tolerance was practical, and in the 19th century religious differences could only be tolerated – nothing more. Through much of the 20th century many examples show that religion was at best being tolerated (Sweet, 2012:165).[36] In this view *religious tolerance* is not so much a moral human right as a "mutual nonaggression pact" (George, 2015:8).

3.2.2.2 Religious liberty

A second "model" of religious freedom, according to Sweet (2012:165), is *'religious liberty'*. Religious freedom is, in the opinion of Reynolds and Durham (1996:9), the oldest and the deepest of the rights "embedded in modern constellations of liberty". *Religious liberty* as a model of religious freedom is said to be found in a community or state where one religion is not privileged and a diversity of religions are present. This means that in contrast with *religious tolerance*, no claim can be made by the state against any religion or religious groups as being 'false' or 'evil'. Religious groups are allowed to practice their religion free from state interference. Some of the first examples of religious freedom can be described as 'religious liberty' (Sweet, 2012:165). The view of religious freedom as 'religious liberty' has become common place in Western democracies. Religious freedom

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[36] Article 38 of *The Constitution of the Peoples Republic of China* for example, states that "citizens of the Peoples Republic of China enjoy freedom of religious belief" and that "no state organ, public organization or individual may compel citizens to believe in, or not believe in, any religion." Yet, in Article 51 of the same constitution it asserts that "no one may make use of religion to engage in activities that disrupt public order" and that citizens "in exercising their freedoms and rights may not infringe upon the interests of the state, of society or the collective" (Sweet, 2012:164). The Chinese government furthermore have identified a number of religious groups as "threatening public order" and the state also prohibits religious groups to have strong ties with foreign organizations.

as 'religious liberty' is typically observable in contexts where a range of values regarding the individual and the relationship between the individual and the community, are accepted and the state therefore doesn't define or limit the practice of religion. It is also observable in contexts where no dominant religion or view of the "good life" is institutionalized. An argument for religious liberty is largely based on "modern empiricist epistemology" and this view is justified on the grounds that there is certain "*prima facie*" goods in the exercise of religion (Sweet, 2012:170).

3.2.2.3 The right to freedom of religion or belief

Sweet (2012:167) considers FoRB or a *right to freedom of religion or belief* as a third model of religious freedom. The difference between this model and the previously discussed models is that religious freedom in this case is regarded as a "right" one has a claim to and that should be respected and protected by law and institutions. Sweet (2012:167) defines FoRB as "a right to entertain, hold, believe, to act on that belief, to associate with others and to proselytize and so on…" A strong commitment to democracy, constitutionalism and rule of law, as well as the fundamental value of the individual and the right of these individuals to pursue "their own good", is observable in contexts where FoRB is institutionalized.

The justification of FoRB as a right stems from the recognition that "human beings owe devotion to their religion" and that this carries moral weight and value in itself. The claim of FoRB as a right can furthermore be justified in three ways (Sweet, 2012:172). First, FoRB can be recognized as a *political right*, because of its presence in constitutions, laws and charters, specifically that of Western democracies like Taiwan, South Africa and Canada, to name only a few. This means that a claim to FoRB is a claim for the law to be respected. Second, FoRB can be justified as a *moral right*, regardless of the constitutional or legal recognition. Based on moral consequences, one could argue that it serves a purpose in communities and that it is consistent and supports values and principles that are present in the community and that it therefore do not "disrupt public order". Third, FoRB can be justified as a *fundamental human right* or what Sweet (2012:172) refers to as a "natural privilege". This justification may be done on the grounds of the "inherent dignity" and of the "equal and inalienable rights of all members of the human family" as stated in the UDHR. FoRB can also be justified on the grounds of it being freedom that is

necessary for human flourishing or the pursuit of the "good life" and as a consequence of having free will (Sweet, 2012; Bielefelt, 2013; Farr, 2014).

FoRB can be understood as both a right to believe and a right to act (Sweet, 2012:167; Marshall, 2013:12; Finke, 2013:297). It is also connected with a broad range of other rights, including Article 19 of the UDHR, namely the right "to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers". The UDHR's impact has been significant. The UDHR calls on all states to recognize FoRB as a basic right, even those regimes who fail to implement it in practice. In the UDHR, the justification or basis of FoRB is grounded in the dignity and worth of every individual human being and regarded as applying equally to every person on account of being human. Many religious denominations also recognize FoRB as a basic human right.

The UDHR affirms that the recognition of these rights grounded in human dignity is necessary for "social progress and better standards of life" and to the "free and full development of one's personality" as well as for the "freedom, justice and peace in the world" (Sweet, 2012:169). Religious freedom means nothing less than the freedom of individuals to be who they truly are as human beings (George, 2015:8). George (2015:9) furthermore defines religious freedom as the right to "ponder life's origins, meaning and purpose; to explore the deepest questions about human nature, dignity, and destiny; to decide what is to be believed and not to be believed; and, within the limits of justice for all, to comply with what one conscientiously judges to be one's religious obligations – openly, peacefully, and without fear".

Could freedom from religion be a possible fourth model of religious freedom? George (2015:9) believes that it is essential in the exercise and protection of FoRB that people's right to believe nothing at all is safeguarded along with their FoRB. This model of religious freedom is contested by Sweet (2012:169), who defines freedom from religion as the freedom from having to subscribe to a religion. Sweet (2012:169) believes that the correct way to approach freedom from religion is as an insistence on other freedoms, namely freedom of speech, association and conscience.

3.3 Understanding restrictions and violations of freedom of religion or belief

3.3.1 Vertical restrictions and violations of freedom of religion or belief

Research done by the Politics of Religious Freedom Project (2015) suggests that one should be "cautious" when describing violence or discrimination as religious, either in origin or in nature. Sullivan *et al.* (2015:3) warn that "while a particular group may appear to be discriminated against on the basis of an attributed identity commonly denominated as religious, it is also the case that the motivations for discrimination are multiple, complex and often inaccessible". The same can, however, be said for race, sexual orientation etc. And yet, more than five billion human beings live in countries where their governments restrict their fundamental right to freedom of religion or belief. Such restrictions range from discriminative legislation and rules to imprisonment, torture and murder (George, 2015:203). After reviewing the constitutional guarantees of religious freedom in multiple countries, Finke (2013:299) found what he describes as "a wide gap between promise and practice". Only nine per cent of states failed to provide constitutional protection for FoRB, whereas 86 per cent of states had at least one law restricting religious freedoms and 38 per cent had four or more such restrictive laws. According to Pew Forum (2014), as cited by George (2015:10), 75 per cent of the world's population live in countries where governments restrict their basic right to FoRB. These supposed "blind spots" are, according to Sullivan *et al.* (2015:4), produced by "a politics of religious freedom" and persecution can for example be seen in the recent history of Myanmar, also known as Burma. A population of about 800 000 Rohingya people have been categorized by the Myanmar government as "Bengali immigrants" and are denied Burmese citizenship, this being only one example of many affecting a multitude of peoples.

The United States Commission on International Religious Freedom (USCIRF) identifies four reasons for these (state) restrictions on religious freedom, namely *state hostility*, *state sponsorship*, *state enforcement* and finally, *state failure* (George, 2015:10)*. State hostility* involves the government actively persecuting people due to their beliefs, as is the case in North Korea. *State sponsorship* can be understood as the state actively promoting propaganda, often of a violent, extremist nature, which includes hostility to the religious freedom of others. Saudi Arabia can be used in this case as an example of *state sponsorship. State enforcement* on the other hand refers to the government applying

restrictive laws, such as anti-blasphemy laws, like in the case of Pakistan. Finally, *state failure* refers to a government's neglect to protect those who are targeted for their religious beliefs (George, 2015:10).

According to Finke (2013:300), one of the most common reasons for these restrictions on religious freedoms is the state's relationship with the dominant religion or group. States, in an attempt to enhance political stability, often form relationships with the dominant religion to ensure greater political support, more control over the dominant religion and "ideological compliance" (Gill as cited by Finke, 2013:300). The research suggests that when states form relationships or "alliances" with dominant religions, restrictions on FoRB will increase. States may also restrict religious freedom without having said relationships with dominant religions or religious groups. An example of this is communist governments like that of Mao Zedong, who proposed atheistic ideologies. Yet, even when states do not hold any opposing ideologies, research shows that religious freedom is increasingly restricted by the state when a religious group's teachings is viewed as a political threat. These two examples can be understood within the USCIRF's description of *state sponsorship* and *state enforcement*.

Finke (2013:301) furthermore found that when social and cultural pressures against specific religious groups arise, a state's restrictions on religious freedom also rise. This can be seen to fall within the USCIRF's description of the *state's failure* to protect the religious freedom of religious minorities or even the *state's enforcement* of restrictive and discriminative legislation. Egypt and Pakistan are examples of states that enforce anti-blasphemy or anti-defamation legislation, with religious minorities suffering the most under these laws (George, 2015:11). In other cases, the state often "allows" restrictions to arise because it lacks the motivation or the ability to protect religious freedoms (Finke, 2013:302). The cases of Myanmar (or Burma), Egypt, Iraq, Nigeria, Pakistan and Syria are all examples of states that are unable or unwilling to protect their citizens against religious violence.

3.3.2   Horizontal restrictions and violations of freedom of religion or belief

As mentioned, the state is often spurred on by social and cultural pressures to restrict religious freedom. So, to fully understand these sources, one has to look beyond the state at non-state actors, whether religious, social or cultural groups, who restrict religious

freedom. Finke (2013:303) found that when secular, cultural and religious groups are mobilized against religious minorities, restrictions on religious freedoms increase. These groups, either part of formal political alliances or often acting independently from government, incite violence on religious groups. In some cases, the national and cultural identities that are against certain religions are so much a part of the fibre of these identities that ensuring religious freedom can mean that the cultural identity as whole is being challenged. The dominant religion or cultural histories of nation, can play a very important role in groups justifying the denial of religious freedoms to other religious minorities (Finke, 2013:303).

Yet, the influence of non-state actors or social, cultural, secular or religious groups on the restrictions placed on minority religious groups, can also be regarded as a state's failure to protect the FoRB of citizens. In Egypt, for example, Cairo has failed to protect the rights of religious minorities of Coptic and other Christians, Baha'is, Shi Muslims and "dissident" Sunni Muslims. The rise of the self-proclaimed Islamic State in Iraq is a major consequence of the Iraqi government's failure to protect the lives and freedoms of religious minorities (George, 2015:12).

George (2015:9) considers religious freedom as being central to human "personhood" and that is why violations of religious freedom violate the "core of our humanity" and do enormous harm to the "well-being of societies". They harm societies in the following ways: First, politically, because religious freedom abuses correlate statistically with the absence of democracy and the presence of other human rights abuses. Second, they harm societies economically, because religious violence destabilizes communities and marginalizes religious minorities, causing the displacement a massive, able and talented workforce and "robbing a nation of added productivity, and reducing that nation's ability to fight poverty and to create abundance for its citizens" (George, 2015:10). Third, the violations of religious freedom harm societies morally. Religion "moulds" character and where it is denied, among other things, character diminishes. Finally, violations of religious freedom harm nations socially, causing distrust, violence and insecurity. It is because of this multiplicity of political, economic, social and cultural consequences of the abuse of FoRB that prominent scholars like Malcolm Evans have joined other experts in support of the "legal globalisation of the rights of believers and non-believers" as not "only

an option" but "a necessity in order to prevent the further erosion of the position" of believers and non-believers in many countries (Hurd, 2015:50).

3.4 Misconceptions of freedom of religion or belief as a human right

According to Bielefeldt (2013:49) and Van Beek (2010:33), many people associate religion with unpleasant phenomena or as an obstacle to democracy. But Finke (2013:301) argues that "virtually all of the freedoms listed in the UN's Universal Declaration of Human rights can offend or threaten a cultural majority". It is for this reason that all rights need state support to protect the associated freedoms and religious freedom is no exception. Finke (2013:301) says that "like other freedoms, protecting religious freedoms can be both inconvenient and costly". One of the perceived misconceptions of religion, and therefore in effect of FoRB, is that an antagonistic relationship exists between religious belief and democracy. Some label these perceived misconceptions as "undemocratic moments" in religious belief (Mookherjee, 2011:1). Mookherjee (2011:2) suggests that much of contemporary democratic theory and practice has been concerned with "the fear that supporting religious identities in the public sphere will ultimately heighten political insecurity, especially after acts of terrorism across the globe". It is this fear of public or civic disorder and political insecurity that motivate democrats to argue that religious differences can only flourish if public debate "is governed by rational secular norms" (McConnell as cited by Mookherjee, 2011:2).

Waldron (2013:149) argues that it is "analytically weird" that some scholars argue that supposed antagonistic relationships exists between democracy and human rights, like that of religious freedom. Any supposed antagonisms, according to him, is challenged by the fact that democracy itself is institutionalized as a human right. Yet, religious freedoms are very often "nullified by other clauses" of the same constitutions. Finke (2013:302) references Article 2 and 3 of the 2004 Afghan constitution to support his claim. It reads that all religions "are free to exercise their faith and perform their religious rites within the limits of the provisions of law", whereas Article 3 states that "no law can be contrary to the beliefs and provisions of the sacred religion of Islam". Finke (2013:310) warns that religious freedoms can be regarded as "extensions" or even "redundancies" of other freedoms. Article 18 of the UNHR, for example, overlaps with Article 19. The freedom to hold, teach and to change one's religious beliefs as an individual or as part of a group "may be viewed as a more specific example of the freedom of opinion and expression".

Likewise, the freedom to practice one's religion publicly "overlaps" with the freedom of peaceful assembly and association as stipulated in Article 20.

Mutch (2016:18), however, argues that it is "wrongheaded to insert into fundamental laws a special right for a particular interest grouping, such as religion, at the expense of other interests" and that there is no reason why constitutions should not enshrine freedom from religion as a basic human right. He laments that "it is becoming increasingly fashionable to argue that freedom from religion is just as important to Western heritage as freedom of religion". Freedom from religion, he argues, is "as much a child of the Enlightenment, if not more so, than freedom of religion". Religious freedom's relationship to sexual orientation rights is of particular relevance in the 21st century. According to Shipley (2015:250), this is because "representations of 'religion' in the public sphere, often when conservative religious opponents vocally respond to rights based on gender of sexual orientation, become translated more broadly into the notions that to be religious is to be anti-feminist or anti-homosexual." Shipley (2015:260) notes some cases in Canada that questions the consequence of the relationship of religious freedom rights with sexual orientation equality rights for the beliefs and practices of educators, including same-sex parented teaching in the curriculum, marriage rights and equal treatment for same-sex couples.

Kofi Anan (2016) in a keynote address argued that it is undeniable that religions have been used to "exclude, persecute and even to kill 'the other". Yet, religions have inspired many secular states' laws and customs and have provided "humanity with ethical codes and spiritual guidance and comfort".[37] Anan (2016) argues that religion, pluralism and democracy "are not incompatible" and that "should be mutually reinforcing foundations of healthy, stable and prosperous societies" because "faith have provided humanity with ethical codes and spiritual guidance and comfort". Along with race, gender, language, social origin and property, religion is "assured of receiving all human rights" (Finke, 2013:311).

Despite some similarities between FoRB and other rights or freedoms, the enforcement of FoRB is complicated by its relationship to the religion of the larger society. This is

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[37] "As I have often said, the problem is not the faith, but the faithful. Religion can be harnessed for the good, but also misused" (Anan, 2016).

because religions are formal institutions with the potential to mobilise support and alliances with the state. As mentioned, state support for a specific religion does have the potential to result in increased restrictions and subsequently more social hostilities. Religion also appeals to a shared history and can therefore deny religious freedoms to competing religious groups and justify violence. Finke (2013:311) argues that religion is often "so infused within the institutions, history, and identity of a nation that ensuring religious freedoms of all is perceived as challenging the cultural identity as a whole." Ultimately, religious freedoms rely on the state and other institutions, much like other human rights, for support and protection. When the state is unable to provide this protection, restrictions will increase. Research shows that restrictions on religion will not curb conflict and that FoRB serves to "defuse potential violence" (Finke, 2013:311).

3.5   Conclusion

Much like IHR, and to no surprise, religious freedom or FoRB can be considered to be both *legal* and a *moral* in nature. Scholars argue that it can be considered a fundamental human right, either arguing the fact that its origin can be linked to that of natural rights, or by arguing that religion or belief is inherently tied to the human experience or at least to human dignity (Sweet, 2012:172). Chapter 3 concludes that scholars have found that in contexts where FoRB is institutionalized, in other words protected and guaranteed by law and accepted and experienced within civil society, a strong commitment to democracy, constitutionalism and rule of law and to the fundamental value of the individual and the individual's right to choose how to live their life, is observable. FoRB can therefore be justified on the grounds that it is a freedom that is necessary for human flourishing or the pursuit of a 'good life'.

Although religious freedom is a contested concept among disciplines and even peers, fundamentally it can be understood as both a right to believe and a right to act (Sweet, 2012:167). The investigation into the relationships between FoRB and other basic human rights can therefore conclude that FoRB can be connected to a broad range of other basic human rights and although possible antagonistic relationships might exist between FoRB and other human rights, this could also be the case for any other human right in the UDHR within the context of pluralistic societies. Theoretical misconceptions is therefore, rife and should be studied with caution, always considering one human right within its relationship to all other basic human freedoms. Many Western democracies and religious

denominations, whether monotheistic or polytheistic, also consider FoRB a basic human right that applies equally to every person on account of being human and grounded in the dignity and worth of every individual.

Sweet's (2012) three 'models' offer a comprehensive understanding of religious freedom, distinguishing between mere tolerance and a legal right to religious freedom. It can be argued that in situations where mere toleration of religion is encouraged, religious violence, however difficult or complex to identify, is prevalent. It is only in contexts where religious freedom is protected, guaranteed and institutionalized that individuals can fully enjoy this right and can translate to a fuller enjoyment of democracy. This suggests that in cases where the state or other actors attempt to remove religion from the public sphere, like in the case of France with new legislation about religious expressions in dress code, religious restrictions could lead to social hostilities involving religion. This brings us to the question of freedom from religion. This chapter's discussion on the phrase of *religion or belief* clarifies that both believers and non-believers are protected by FoRB. Not believing in some metaphysical being is also considered a *belief*. Not believing in anything can constitute a belief.

According to George (2015:9), religious freedom is central to human "personhood" and that is why it can be argued that violations of religious freedom violate the "core" of humanity, harming societies ***politically***, due to a statistical absence of democratic institutions, ***economically*** by destabilizing communities and marginalizing religious minorities, ***morally*** by diminishing 'character' or human capital, and finally ***socially***, by causing distrust and violence (George, 2015:10). In other words, abuses of religious freedom harm not only individuals or religious groups, but society as a whole. In an increasingly globalising world, the impact will be – and is – felt globally. This analysis of religious freedom reveals some very important relationships between FoRB and democracy, hinting towards theoretical relationships pertaining to elections and rule of law.

Apart from a statistical absence of democratic institutions, violations of religious freedom theoretically also include the absence of other basic human rights. Violations of religious freedom often include violations of freedom of expression and freedom of speech, for example. But, more importantly, this absence of democratic institutions and other basic human rights, including religious freedom, could indicate a possible breakdown in democracy. In the next chapter, a stronger focus is placed on democracy, specifically liberal democracy, within its relationship to human rights and specifically FoRB.

Chapter 4 The relationships between freedom of religion or belief and democracy

4.1 Introduction

The democratic form of governance has "fascinated" scholars since ancient Greece (about 2 500 years ago) (Fleck & Hanssen, 2006:115) and yet, according to Soriano (2013:582) and Diamond (2016:151), democracy is declining worldwide[38]. Diamond (2016:151) furthermore argues that democracy has "lost its appeal" by not delivering on the promise of freedom, security and economic growth to emerging democracies. This chapter argues that these "promises" have been conceptualized since ancient Greece, throughout Enlightenment scholarship, both the American and the French revolutions, and ultimately modern democratic thought.

According to Diamond (2016:153), democracies are "more protective of human rights" and "less violent" towards their peoples, with citizens enjoying higher life expectancies than people living under "other forms of government". Furthermore, they are more "likely to develop market economies, and these economies are more likely to be stable and prosperous". Mookherjee (2011:2) believes that it is the democratic principles of equality, fairness and due process that makes democracy so attractive to its supporters. Scholars like Soriano (2013:582) furthermore argue that FoRB and freedom of expression are the "touchstones" of democracy. Therefore, it could be argued that due to the supposed decline of democracy, FoRB is coming under increasing crossfire. This chapter argues that FoRB is fighting off both friendly (state) and enemy fire (non-state actors).

Liberal democracy, however, only became a part of the "accepted political landscape" at the beginning of the twenty-first century (Fukuyama, 2012:3). The change of political system also brought about huge social transformation driven by among other things, access to education, communication technologies and cheap travel, in other words globalization (Fukuyama, 2011:3). Scholars refer to these transformations as the 'third

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[38] According to Diamond (2016:151), democracy broke down in 27 countries between 2000 and 2015 after a period of "democratic flourishing" after the Cold War. Countries that experienced a breakdown in democracy include Kenya, Russia, Thailand and Turkey. According to Freedom House (2013), in 2012 more countries registered declines in political rights and civil liberties rather than gains in this regard.

wave' of democracy – a term coined by Samuel Huntington. Yet, approximately one in five countries that democratized in the late 1990s reverted back to authoritarianism or saw a "significant erosion of democratic institutions" (Fukuyama, 2012:4). This subsequently led to a worldwide decline in democracy that in the beginning of the second decade of the twenty-first century saw the "reversal of democratic gains" made in countries such as Russia, Venezuela and Iran. Countries that seemed to be making a transition from authoritarian governments neither became fully democratic and never fully reverted back to authoritarianism, they are stuck in what Thomas Carothers calls the "gray zone" (Fukuyama, 2012:4). This dissertation argues that democratization should be understood as a tide, rather than a supposed 'wave of democracy'. It spreads and reverts with an ebb and flow throughout history. There are times where its spread is more likely, and intense times of a breakdown in democratic institutions.

Liberal democracy is more than majority voting in elections or other isolated democratic institutions. Fukuyama (2011:4) defines liberal democracy as "a complex set of institutions that restrain and regularize the exercise of power through law and a system of checks and balances". This includes *1. Institutions or accepted practices and processes such as, but not limited to free and fair and regular elections; 2. Restraining and regularising the exercise of power i.e. an independent judiciary and finally; 3. Law and a system of checks and balances, also understood as the rule of law*.

This chapter attempts to argue for the above central theoretical argument. As such, a distinction between liberalism and democracy is first and foremost of great value in creating a conceptual framework against which to measure the central theoretical argument. It is only within the context of a liberal democracy with its emphasis on liberal tenets like a separation of state and civil society, that any conceptualization of rights, human rights and specifically FoRB can be framed and understood. Furthermore, the chapter makes it clear that although in some cases the relationships might be a little unclear, their existence is undeniable and deserves even further investigation and exploration. What does remain as true as ever – in fact since the beginning of democratic thought – is that the concept of democracy is highly contested and this remains problematic for any relational investigation. This chapter argues that a tripartite relationship exists between FoRB and liberal democracy and that the 'moments of

collision' occur with free, fair and regular elections, the rule of law and an independent judiciary.

4.2 Conceptualizing democracy

Liberal democracy, it is argued, was an inevitable and logical development of the principles of political liberalism and is enshrined in the rule of law, separation of power and government by consent (Pennock, 1950:13-16). Democracy, Pennock (1950:13-16) argues, like political liberalism, is considered by many as more than a theory of government, ultimately it is a "way of life" and it represents the "full development of the stoic-Christian concept of the essential moral equality of men"[39]. Liberal democracy found a natural support from two philosophies, namely natural rights (as discussed in Chapters 2 and 3) and utilitarianism. Where utilitarian scholars like James Mill held that it is "the purpose of government to maximize the happiness of each individual" and that the best assurance for good government is to "give each man an equal share of political power, through the device of representative government", natural rights on the other hand relies on self-evidence or revelation. Liberal democratic theory in its classical form also tends to be what Pennock (1950:17) refers to as "atomistic" – overemphasising the rights of individuals at the expense of duties and society and competition at the expense of cooperation.

As deduced from Chapter 2, the concept of human rights developed from a conflict between subjective rights or the rights of the individual and objective human rights, in other words law or legislation. What we today understand as human rights therefore developed from a conflict related to how to enforce law without constraining or limiting the freedom of the individual. The specific liberties or natural rights that were insisted upon can be found in the numerous bills of rights – English, American, and French – all proclaimed and frequently cast in constitutional form during the 17th and 18th centuries. First, there were limitations as to the sphere of government. Chief among these were the right to freedom of religious belief and observance; the right to freedom of speech and of the press and freedom of assembly (Pennock, 1950:14).

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[39] Pennock (1950:16) argues that it was only after the dismantling of "ecclesiastical authority", which privileged only a few, that individual freedom became a realistic possibility.

Democracy, according to Held (1993:15), developed from a conflict regarding whether it (democracy) should be "some sort of popular power" or "an aid to decision-making". It is this conflict that has given way to the development of three "models of democracy" that have developed since ancient Greece. These models have become what we today understand as contemporary liberal democracy. In addition, Held's (1993) models of democracy aids this study in forming a broad conceptualization of democracy. Held (1993), much like his contemporaries, traces democratic thought back to the direct or participatory democracy as found in the ancient Greek city states. The second 'model' of democracy developed as a result of the Enlightenment from the 17th century and 18th century in what we today conceptualize as liberal or representative democracy – the focus of this study. Finally, the Industrial Revolution and Marxism gave way to a third and highly contested model of democracy in the form of a one-party democracy.

The city states of Ancient Greece have long dominated modern political thought as "the fundamental source of inspiration for democracy", albeit the fact that recent historical discoveries show that city states existed in Mesopotamia long before the establishment of city states in Athens (Held, 1993:16). According to Tridimas (2015:102), the direct democracy associated with ancient Greece developed from the "Cleisthenes" (or Kleinsthenes) reforms that saw the transference of policy-making power from the land-owning aristocracy to the Athenian *demos,* who consisted of the educated adult men of Athens. The word 'democracy' has its origins in the Greek word *demos,* which means "rule by the people", (Fleck & Hanssen, 2016:116) and the contested concept of democracy is therefore considered to be a brainchild of the early Greeks. Most scholars agree that Athenian city states do not provide an accurate model of democracy as it is understood within contemporary discourse (Bollen, 1993:1; Fleck & Hanssen, 2016:115; Woodberry, 2011:7). This is largely because, according to Birch (1993:45), the Greeks had no understanding of individual human rights, which is woven into any contemporary understanding of democracy that we may have today. Yet it is the political values or "ideals" of Athens that are integral to western political thinking, namely equality, liberty, rule of law and justice that makes ancient Greek democracy a good "starting point" for the understanding and conceptualization of democracy (Held, 1993:16).

4.2.1 Direct democracy: the case of Ancient Greece

Democracy, according to Robinson (2004:1), is one of the "most astonishing and compelling inventions" of the ancient Greeks. Even though earlier civilizations allowed "popular involvement in decision making", the Greeks were responsible for conceptualizing and implementing a system where even complex societies could supposedly govern themselves. This system was called *demokratia,* which directly translated means 'people power'. According to Taigan (2014:1), the emergence of democracy is usually associated with the Cleisthenes' (or Kleisthenes') constitution of Athens, which came into force in 508/7 BC. Detailed descriptions by historians and thinkers such as Herodotus (484?-425 BC), Thucydides (460-395 BC), Plato (428-348 BC), Aristotle (384-322 BC), and Plutarch (45-125) indicate that the Athenian regime became the first reference of classical democracy (Tridimas, 2015:102). As the first direct democracy, the ancient Athenian democracy came to an end in 322 BC after it was defeated by Macedon (Tridimas, 2015:102). During her reign, the Athenian democracy was a dominant naval power that fought in many wars, but was ultimately "eclipsed" by the rise of empires, stronger states and military regimes (Held, 1993:16). Yet, since Aristotle, who strongly criticized democracy as a form of government, democratic scholarship has followed in his footsteps, tracing the development of democracy in an attempt to understand how it works, when it works and how to get it to work in a way that ensures stability and peace (Bollen, 2009:368; Fleck & Hanssen, 2006:115; Tilly, 2000:1; Woodberry, 2011:7).

According to Taigan (2014:6), Athens experienced "both aristocracy and oligarchy, good and bad tyrannies, and political confusion with disloyalty, assassinations and foreign interventions". Against the background of a permanent state of war and struggle for power with neighbouring powers, neither regime provided political or economic stability. So, in an attempt to stabilize the state and create a system of social consent, Athenian leaders "introduced elements of political participation by the people" which, according to Tiagan (2014:6), "finally resulted in radical democracy". Its main distinction from any other form of political rule up to that point was the systematic participation of all citizens in political life and their active work in legislative, executive and juridical bodies (Taigan, 2014:5). In ancient Athens, the "citizens" (excluding women, children, resident immigrants and slaves) constituted one fifth of the population and they had a "direct voice" in matters of

justice and war (Meany & Mounk, 2014:24). The most important social, political and philosophical questions were discussed in the People's Assembly. It had a quorum of 6 000 and met for a whole day nearly every week. Large juries – with 201, 501 and more jurors – were tasked with "important political functions like evaluating the legality of actions" and would meet "almost every day". Interestingly enough, Taigan (2014:6) writes that elections were seen as an attribute of oligarchy (rule by the elite) and were consequently avoided, except in the case of nominating military generals and the officials responsible for water supply and the "highest" financial officers. In the opinion of Taigan (2014:8), Athens had "outstanding lawgivers and philosophers". The first European laws, for example, were written in 621 BC by Draco and the laws of Solon of 594 BC became a basis of the Athenian state. Together with the Cleisthenes' constitution they "inspired the first Roman law of the Twelve Tables of 450 BC", which later formed the "centrepiece" of the Roman Republic (Taigan, 2014:8).

According to Robinson (2004:1), the basic premise of *demokratia* of ancient Greece is "not very different from that which still animates democracies today: that in a given community the ordinary citizens should collectively hold the sovereign power to administer all public affairs for the common good." Robinson (2004:1) theorizes that the Greek democratic ideal "went a step farther" than its contemporary counterpart, allowing people to govern "directly" and "fill offices themselves". Although elected and representative leaders and bodies played important roles, they did not "dominate government policy-making" the way they do in today's version of democratic thought and practice. Most importantly, freedom and equality were invoked as "abiding principles of democratic institutions". According to Meany and Mounk (2014:25), meeting in public to discuss decisions was not unique to the Greeks and several societies across the world deliberated in similar ways, although nothing on this massive scale has been tried in the modern world. Held (1993:23) believes that the "classical participatory model" or the radical direct democracy as found in ancient Greece cannot easily be adapted to "stretch across space and time". Held (1993:23) is of the opinion that it is within the context of city states and due to "social exclusivity" that its development was successful. For more than 200 years, political thinkers have conceded that because time and space make a direct democracy "impractical", representative institutions are "unavoidable" (Meany & Mounk, 2014:25). A direct or participatory democracy, as found in the ancient Greek *polis,* and its more "republican" or "oligarchic" brother, Rome, didn't differentiate between the state and

society. The *demos* or citizens were both the "subjects of political authority" and the "creators" of law.[40] The *demos* could only "fulfil themselves and live honourably in and through the *polis*" (Held, 1993:15). In both Athens and Rome, the state had a "unique priority" over individual citizens and that is perhaps why, in ancient Greece and later in the Italian city states of Renaissance republicanism, citizenship meant active participation in public affairs (Held, 1993:15).[41] The rise of Christianity shifted the "source of authority and wisdom" from citizens or the *demos* to "other-worldly representatives". Therefore, during the Middle Ages "Christian Europe" depended on "two theocratic authorities", namely the Roman Catholic Church and the Holy Roman Empire and no other "theoretical alternative" to their power and rule existed.

According to Robinson (2004:4), there are many similarities between the basic principles of ancient democracy and its contemporary counterpart, but it would be wrong to believe that "modern democracy simply evolved out of its Greek predecessor or that the legacy of *demokratia* has been cherished throughout Western history". For most of both ancient and modern history, Greek democracy was and is viewed as having a "bad reputation" and influence. Greek philosophers found popular government flawed, and according to Robinson (2004:4), Roman observers believed *demokratia* to be an "irresponsible Greek innovation" and few ancient observers "expressed positive views".

Democratic government faded and disappeared from the cities of the Roman Empire and *demokratia* became a distant memory as merely a "Greek curiosity" as the Roman world gave way to the Middle Ages. However, throughout the Renaissance the topic of *demokratia* was revived. Yet democracy, especially as found in ancient Greece, was viewed as "disorderly, ill-guided and unjust" during this time. According to Robinson (2004:4), "intellectuals of the French and American revolutions found more to condemn than to embrace about it". American federalists specifically avoided the Athenian democratic model when devising their constitution and preferred the "perceived stability and balance" of the Roman Republic. But during the nineteenth century, democratic scholarship took a turn. George Grote, an English liberal who produced the *History of*

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[40] "The Athenian concept of citizenship entailed their taking a share in these functions, participating directly in the affairs of 'the state'" (Held, 1993:15).

[41] Held (1993:15) argues that modern democratic thinkers would argue this active involvement to be "most undemocratic".

Greece in 1846–1856, was instrumental in the process of changing the negative stigma around Athenian democracy.[42] At the same time, modern forms of democracy started "flourishing" all across the West. Ever since this turn toward modern democracy, ancient Athenian democracy has been a "popular subject" of historians and political scientists.

4.2.2   Democratic enlightenment: liberal or representative democracy

During the 16th century a need to separate church and state became apparent due to the "divisive force" of religion. It is during this time that political authority, law and rights became a "preoccupation of European political thought from Italy to England". As a result of these developments, modern liberal and liberal democratic theories have sought to consolidate the state's sovereign power with limits to that power. It was within this time that it was argued that states "must have a monopoly of coercive power" to create a society where trade and commerce, religion and family life can "prosper". It was exactly this "monopoly of coercive power" that led to the development of Enlightenment criticism. Since Hobbes, arguments have sought to "balance might and right, power and law, duties and rights". However, Held (1993:18) intimates that theorists accepted that by granting the state "a regulatory and coercive capability" citizens could be, and were, "deprived" of their political and social freedoms. Representative democracy was "the key institutional innovation" to overcome the problem with "ensuring both authority and liberty". The aim of Enlightenment criticism, according to Bohman (2005:353), was "a comprehensive goal of human emancipation" wherein the individual is freed from serving the state's interests and a focus is placed on individual self-interest.

After the Enlightenment and Reformation, the "dominant tradition of political science since 1945" or contemporary democracy, aimed to create a stable and democratic government, safe from international threats. Bourke (2008:10) argues that Western political culture and more specifically Anglo-American politics was "explained in terms of the normative attractions of democracy". Enlightenment theorists like Burke and Locke offered a historical perspective on our understanding of democracy, but throughout contemporary discourse "the word itself became a pretext for ideological endorsement rather than a

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[42] "Grote's *History* proved to be influential in Europe and in America, and classical scholars showed an increasing willingness to consider ancient popular government in a more positive light" (Robinson, 2004:4)

term for an historical rooted process", at least in some of its conceptualizations (Bourke, 2008:10).[43] Bourke (2008:10) therefore argues that to "reverse the negative consequences" of abstracting democracy, the features of democratic regimes, as they were historically understood before "it became a name for an achievement rather than an object for description", is to reconstruct the features of democratic regimes. This study argues that such a reconstruction should start with the fundamental values of democracy.

Yet, we find ourselves in a situation where a growing clash between theological and secularist perspectives. This conflict heralds the continuous reconsideration of the Enlightenment, along with the Renaissance and the Reformation, as "the single most important topic" of "crucial significance" to the contemporary study of politics and philosophy (Israel, 2011:19-20). Postmodernist thinkers argue that the Enlightenment's "abstract universalism" was destructive and "responsible for the organized mass violence of the French Revolution" and the later horrors of imperialism, communism and Nazism in the 19th and 20th centuries. Others argue that "the assumption that humanity is 'infinitely malleable' provided the intellectual inspiration for attempts by totalitarian states to eradicate every trace of individuality from their subjects". Some insist that the Enlightenment "reduced complex moral dilemmas to a superficial level" that eradicated long-existing and "deeply felt community differences and values". Yet, Israel (2011:21) believes that the Enlightenment was the "most important and profound intellectual, social, and cultural transformation of the Western world since the Middle Ages and the most formative in shaping modernity". The Enlightenment should therefore be understood as "an intellectual movement and as a mainstream socio-economic and political history".

Ibhawoh (2013:342) argues that Enlightenment liberalism is central to discourses about the origins of human rights and emphasizes its importance to the wave of the "Euro-American revolutions of the 18th century and the documents they inspired". Enlightenment liberalism and human rights alike were based on the notion of "the autonomous man endowed with certain inalienable rights" (Ibhawoh, 2013:342). Ever since the UDHR in 1948, international politics has been influenced by the discourses rooted in natural rights philosophy and commonly associated especially with Locke (Lind, 2006:63). According

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[43]According to Bourke (2008:10), post-war American political science and political theory treat democracy as a "trans-historical norm" that is "distinguishable from its contingent political content".

to Lind (2008:63), Locke was always very careful not to mention his precursor, Thomas Hobbes, yet Locke followed Hobbes in "rooting social and political order" in the natural rights of individuals within a state of nature. Locke specifically emphasized that "the absence of settled laws, enforced by government, make the state of nature one of 'disorder', 'uncertainty', and 'anarchy'" from which individuals will flee to "a commonwealth created by a social contract" (Lind, 2008:64).

According to Held (1993:18), the "liberal concern with reason, law and freedom of choice could only be upheld" through the recognition of the "political equality of all individuals". This equality would ensure a peaceful society in which "people would be free to pursue their private activities and interests" and a state that through popular vote would "do what was best in the general of public interest". Liberalism would provide "the key" to "resolving the fundamental distinction between managerialist approaches and the participatory emphasis of civil society" (Van Til, 2015:16). It is through liberalism that democracy becomes "more than a theory of government", but a "principle by which we seek to conduct aspects of our daily lives" (Lohmann as cited by Van Til, 2015:16). Locke believed that the legitimacy of authority lies in the "extent to which it collaborates with individuals" to allow them to "be themselves more effectively" (Hoff, 2015:1)[44].

While many scholars emphasize the Athenian and the 17th and 18th century Enlightenment roots of democracy, religious factors, according to Woodberry (2011:7), were also very important and enlightenment theorists incorporated many legal and institutional innovations from religious movements.[45] Woodberry (2011:8) points out that most Enlightenment democratic theorists, like John Locke, Jean-Jacques Rousseau and Hugo Grotius, "came from Calvinist families and/or educations" and were responsible for secularising "ideas previously articulated by Calvinist theologians and jurists". Hobbes' and Locke's social contract theories are "secular versions" of the Puritan covenant and

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[44] Locke argues that the freedom of the individual, albeit fundamental, needs to be "supported, expanded, developed, and empowered by an infrastructure that in turn transforms the nature and operation of that very individual in its freedom" (Hoff, 2015:6).

[45] "… arguments for political pluralism, electoral reform, and limitations of state power were originally framed in religious terms" (Woodberry, 2011:8)

"Locke's ideas about the equality of all people is explicitly religious".[46] Black (1998:473) quotes Locke (Treatise 69) when he writes that "the state has a duty to respect freedom of the understanding on matters of religion" and argues that we should all have the "freedom of our minds". Yet, according to Black (1998:476), Locke believed that people had no innate beliefs and that the "understanding" referred to, "happen through religious teachings". Broers (2009) agrees that Locke's political theory is inspired by equality and it is equality that forms the foundation of political participation within society and any state for that matter, and that equality is "a requisite in maintaining a safe and stable nation."

4.2.3   A Marxist conception of democracy

Society used to be organized tribally. Nineteenth century anthropologists documented the customs, laws, religious practices and maybe most importantly, kinship of communities. It is these kinship structures and the evolution of large "corporate" kin groups into smaller voluntary family-based structures through contractual unions between men and women that shaped a "general pattern" of societies. This evolution or "shift" was termed by Henry Maine as the "shift from status to contract". Where early societies ascribed status to individuals through tribal association, family, marriage partners, occupations and religious beliefs, in modern societies, individuals can voluntarily and "freely contract with one another" shaping different and new types of social relationships (Fukuyama, 2012:231).

It was Max Weber who criticized a "sharp break between traditional and modern societies". Where traditional societies were characterized by extensive kinship ties and restrictions on the free market due to religion or kinship, modern societies were "individualistic, egalitarian and market-oriented" and "structured by legal forms of authority" (Fukuyama, 2012:233). Weber believed that modernity only emerged in the

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[46] According to Broers (2009), Locke writes in his *Second Treatise of Government* that "in races of mankind and families of the world, there remains not to one above another, the least pretence to the elder's house", which according to him, communicates the "truths of nature" and "mainly that God is the creator and he did not grant superiority to any individuals in modern day society, as was often argued in the past". Locke describes the state of nature as one "of equality, wherein all the power and jurisdiction is reciprocal, no one having more that another; there being nothing more evident, that that creature of the same species and rank, promiscuously born to all the same advantages of nature, and the use of the same faculties, should also be equal one amongst another without subordination or subjection" (Locke, Treatise, 8 as cited by Broers, 2009)

West and that it took root in the sixteenth and seventeenth centuries, "encompassing the Protestant Reformation and the Enlightenment". Marxists therefore tend to see the rise of individualism driven by economic change, but Weberians believe that Protestantism was the main driver of individualism. Fukuyama (2012:233) challenges both Marxists and Weberian views and argues that the rise of individualism in the West far predates the sixteenth and seventeenth century. Fukuyama (2012) argues that capitalism was the consequence of change in social relationships rather than the cause. These symptoms of change were already visible as far back as the thirteenth century when, under law, women had the ability to "own and bequeath" property, an indicator of a change in tribal association.

According to Fukuyama (2012:332), Marxists understand the state to be an extension of civil society. They argue that political "emancipation is only a step towards human emancipation", in other words, true democracy can only flourish if both the state and society are fully democratized. Yet, in the Marxist view, liberal democracy is failing by its own values or "promises", which are political participation, accountable government and "freedom to protest and reform". Although the road to emancipation for individuals was marked by "the struggle of liberalism against tyranny, and the struggle by liberal democrats for political equality", for Karl Marx and Friedrich Engels (and the Marxist tradition) "liberty, equality and justice" can't be realized by the "free struggle for votes together with a 'free' struggle for profit". The Marxists criticism is this: that the afore-mentioned 'free struggle for profit' or capitalism creates class inequalities and "massive restrictions on real freedom". Held (1993:23) believes that in industrial societies marked by an economic, social or political divide, liberal democracy would not succeed "on a large scale". Held (1993:23) also sharply criticizes Marxist views, arguing that the "centrality of class" and a "conception of politics rooted in production" underestimates the contributions that other forms of social structure, like collectivity, identity, interest and knowledge, make to politics.[47]

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[47] "A system encompassing the formation of movements, pressure groups and/or political parties with independent leaderships to help press their cases – appears both necessary and desirable" (Held, 1993:23).

Fukuyama (2012:224) argues that the state cannot be the vehicle for the "pursuit of the common good or public interest" in class societies, because liberal democracy is ultimately "enmeshed in the struggles of civil society". According to Held (1994:23), changes in Central and Eastern Europe in the late eighties provide evidence of this. An emphasis on political and civil rights and a competitive party system created a process of 'rolling back the state' and "freed civil society from state domination". Certain "liberal tenets", like the central role of the state and "an 'impersonal structure of public power', a constitution to help guarantee and protect rights and a diversity of power centres within and outside the state, as well as mechanisms to promote debate among divergent political platforms", are necessary for the effective enjoyment of democracy. This adds up to the liberal notion of the 'separation of power' or the 'separation of state from civil society', which, according to Held (1994:24), is an "essential element of any democratic political order."

4.3   Defining liberal democracy

Churchill (1994:5-7) argues that in order to develop a scientific understanding of liberal democracy independent from our own individual value and belief systems, some degree of "definitional uncertainty" should be expected and accepted. Liberal democracies, he argues, much like the definitions offered by anthropologists like Saler (p. 29 Chapter 2), should be defined and subsequently understood in the light of "family resemblances". Not all family members share exactly the same features and traits, but they do in fact have some in common. These features include limitations on majoritarian power and protection of individual civil and political rights, an association with capitalism, but in support of some "aspects of a welfare state", and neutrality "among competing conceptions of 'the good life' up to the point where individual interests conflict with the protected rights of others" (Churchill, 1994:7)

According to Bourke (2008:15), democracy can "only be understood as historical in all its dimensions" and is subject to institutional changes and changes in ideological perspectives. From the beginning, the term 'democracy' has played two key roles. First, it is used as "a means of identifying a regime form" and secondly "as an ideological slogan". In the 20th century "the word was shared by two great powers that divided the world – a bearer at once of consensus and division" (Bourke, 2008:15). Til (2015:37)

defines liberalism as an ideology or worldview that values "democracy, freedom (liberty), equality (justice), fraternity (solidarity), the pursuit of happiness, pluralism (diversity) and human rights", as well as explores the "ever-open ever-possible futures of their rediscovery and advance". According to Habermas (1994:1), liberal democracy "accomplishes the task of programming the government in the interest of society, where the government is represented as an apparatus of public administration, and society as a market-structured network of interactions among private persons".

Bollen (1993:369) defines liberal democracy as "the degree to which political liberties and democratic rule exist in a country". He describes political liberties and democratic rule as the "two dimensions" of liberal democracy. Tilly (2000:3) defines a regime as democratic "insofar as it maintains broad citizenship, equal citizenship, binding consultation of citizens at large with respect to governmental activities and personnel, as well as protection of citizens from arbitrary action by governmental agents." Hay (2005:136) offers a more aggressive definition of democracy. According to him, one can only find a "sustainable democratic order" in a "liberal, representative democracy, where political parties mobilise public opinion and alternate in power to ensure accountability". This "includes combining institutions with reinforcing political culture that together guarantee the rule of law while ensuring that policy follows the considered preferences of public sentiment".

According to Hay (2005:133), there are two "conflicting" views dominating (American) democratic scholarship and subsequent international relations. The first view is that democracy is a form of counter-terrorism. The second view of democracy which became more popular post-9/11, is that democracy is a "moral obligation" and the "only means of securing peace in a world where tyranny abroad threatens peace at home" (Hay, 2005:133). Traditional or liberal theories of democracy have typically understood democracy as a form of governance that allows for the greatest conditions of human freedom (Gould, 1988:31). Freedom within the context of traditional or liberal theories of democracy has been understood as the "liberty of individuals" to choose how they want to live their lives without "external constraint". In other words, in these conceptions of democracy, it is interpreted as a form of political rule in which equal liberty is maximized and the constraints necessary for social order are "self-imposed" through a process of mutual consent. Yet, some argue that traditional and liberal theories of democracy have

a "limited conception" of freedom, as this freedom does not extend beyond political decision-making.

4.3.1 An exploration of liberal democracy: the liberalism in liberal democracy

Traditionally, supporters of liberal democracy tend to focus merely on the cog-work of democratic government, rather than the citizen's involvement in and experience thereof. The focus traditionally falls on principles and procedures, neglecting exploration of, among other things, the relationship between formal versus "actual" rights. It includes treating citizens as free and equal and state practices that do not treat citizens as either; concepts of the state and independent authority and state involvement in "the reproduction of inequality of everyday life" and; notions of political parties as structures for "bridging the gap" between the state and civil society and other power centres that political parties and their leaders cannot reach. According to Held (1993:24), ignoring these elements of democracy is to risk establishing it within the context of political, economic and social inequality.

Yet, Rhoden (2015:561) argues that liberal democracy is a hybrid concept and that liberalism is often confused with democracy. However, for a liberal democracy to flourish, Rhoden (2015:561) argues that "the liberal must be accepted and embraced in the same way that the democratic has been, if we are to ever make sense of the various paths of transition form more authoritarian regimes." Liberal, in his view, was never necessarily a part of democracy.[48] Democracy without rights, he continues, "or without some form of liberalism, produces one of the most wanton forms of government known to people". Yet, "without some form of institutional brakes and constitutional liberties, very little can stop a *demos* from placing into power a tyranny of the majority."

Rhoden (2015:565) argues that when democracy is once again understood as "rule by the people", it in no way includes the concepts of executive rule of law, judicial independence, civil liberties, property rights, religious freedom, media independence or minority rights. These concepts that are considered inalienable rights in contemporary times and that are often taken for granted in liberal democracies, "are in no way a

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[48] "Democracy by itself, without that pesky adjective in front of it that so many of us are loath to say, is a frightening thing" (Rhoden, 2015:561).

fundamental aspect of democratic rule itself". Instead, they are a "modern addition to democracy" and fundamental aspects forming the core of liberalism. Locke can be accredited with "at least five areas of importance" when it comes to liberalism. These are government and the rule of law as trustee, property rights, religious toleration, individualism and the consent to being ruled. The core meaning of liberalism always held these fundamental principles or elements, although they have been "abused" over the years, much like democracy (Rhoden, 2015:566). Other scholars or political thinkers who also echo these ideas are Hobbes, Smith, Mill and de Montesquieu. All contemporary nation states have "both a democratic component and a liberal component" and no "purely democratic or purely liberal regime" in the modern world exists. As Figure 4.1 suggests, some might be more liberal than democratic and some might be more democratic than liberal (Rhoden, 2015:567).

Rhoden (2015:568) illustrates this relationship as follows:
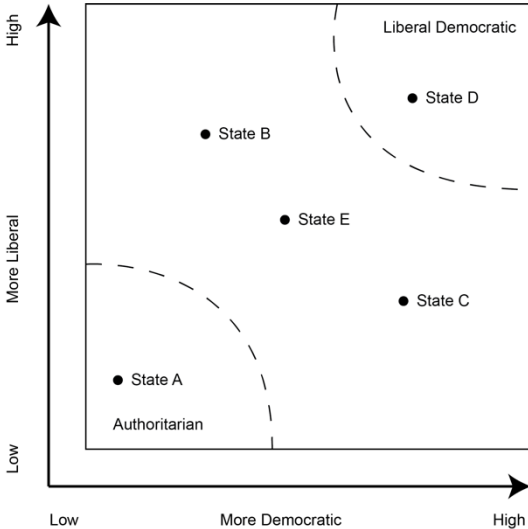
Figure 4.1 A model of liberal democracy (Rhoden, 2015:568)

What would "normally" be called a liberal democracy would be those nation states that populate the top right of the graph (State D), while states that are considered authoritarian would populate the bottom left (State A).

It is all too true that liberal democracy involves more than a periodic vote (Held, 1993:25). But what came first, liberalization (institutionalized values and rights) or democratization (processes, principles and procedures)? Rhoden (2015:569) argues that it is an "empirical fact" that when an authoritarian regime starts to open itself to more civil freedoms such

as freedom of association, freedom of speech and freedom of press and more freedom regarding property rights, the liberalization process is not complete, because the longevity of these "new liberal freedoms" is not guaranteed, even after democratic elections are held. Even after a few rounds of successful democratic elections are held and "people begin to expect that they will continue to have a say in who will lead their government", liberal consolidation is not guaranteed, because "it takes much longer to consolidate than democracy".[49] In the contemporary world, "the liberalization process begins before democratization and continues after democratic consolidation". By always emphasizing "more democracy, not less", scholars "misinterpret" the challenges inherent to establishing the liberalism in liberal democracy (Rhoden, 2015:569). If democratic life only involves a periodic vote, citizens' activities will be confined to the "private realm of civil society" and few to no opportunities will exist for individuals to act as citizens or as "participants in public life". Held (1993:25) therefore proposes that democracy should be understood as a double-sided process/phenomenon – allowing citizens "to establish themselves 'in their capacity of being citizens'". Rhoden (2015:571) states very strongly that "*liberalism is the concept that makes democracy viable in the modern world as a governmental regime type **and all forms of modern democracy have a liberal component***".

4.3.2   The effective enjoyment of democracy: the democracy in liberal democracy

Christiano (2002:32) argues that democracy implies a certain "commitment to equality" as demonstrated by equality in the voting process and the equality of all citizens to actively participate in discussions or decision making. "Egalitarian theories" further attempt to construct an understanding of democracy founded on the principle of the equality of individuals, acknowledging conflicts of interests and beliefs in society, and arguing that because of these inherent conflicts, each person may demand an equal share in political rule. This egalitarian conceptualization of democracy should, according to Christiano (2002:32), also include and explain the importance of the convictions of citizens and the role of public discussion in democracy. Democratic decision making is more than each individual voting on their preference, but how these preferences are

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[49] "In this sense, getting democracy right, is much easier that getting liberalism right" (Rhoden, 2015:569).

formed by and within society, due to social interaction. Individuals should be enabled to critically reflect on and improve these preferences, interests and ideals.

According to Hyland (1995:163), one of the "great puzzles of contemporary political thought" is the "utter poverty" of the normative analysis of democracy. The problem arises from the fact that, according to him, democracy is perceived as the only "politically correct form of government". In the case of the normative study of democratic thought, many contemporary theorists argue that democracy "merely involves a commitment to a certain method of resolving normative conflict between 'tolerance', 'majority-rule', 'adherence to a constitution' or some variant or combination of the mentioned norms". When viewed in this way, the democratic system is understood as essentially "relativistic" and "cannot tolerate non-relativistic attitudes". Therefore, Stankiewicz (1980:11) feels that 'freedom' and 'equality' are no longer norms with an understandable content for a conceptual framework against which to measure all societal norms. They are merely recognized as little more than private sets of values.

Robert Dahl's empirical treatment and description of democracy is regarded by Bealey (1988:1) as the "best summarized" by referring to it as synonymous with polyarchy. Polyarchy is based on opportunities for all citizens to formulate preferences for governmental action, to communicate these preferences to others and to the government, and furthermore for these preferences to be considered equal. Polyarchy or democracy exists where both public contestation and inclusiveness are present. These concepts imply many freedoms, freedoms that are too often restricted in democracies. Bealey (1988:2) argues that while democracy increases everyone's freedom of expression, it does not necessarily increase people's freedom of action. He controversially argues that under democratic decision making, minorities will be guaranteed their say, "but will not get their way". Dahl claims that the study of democracy has been fed by diverse and different views and that this has resulted in the theory being "a jumble of theory and practices that are often deeply inconsistent" (Hyland, 1995:36).

Electoral democracy, *liberal* democracy, *majoritarian* democracy, *participatory* democracy, *deliberative* democracy and *egalitarian* democracy all bring scholars to the same conclusion: ***democracy means rule by the people***. This seems to be an element

of the usage of the word that stretches as far back as the Classical age. Bollen (1993:1208) believes that much of the contemporary world agrees that democracy or rule by the people is a desirable goal. When all the adjectives are removed, the "core concept appears amidst the detritus of ineloquent inexactitude and misguided aspiration for those who wish to burden democracy with a tawdry governmental utopianism". It is this form of democracy – naked and bare – that encompasses the real "spirit" of the regime type.

"Democratic life" can only flourish if it is reconceived as "a double-sided phenomenon" (Held, 1993:25). One side is concerned with the reformation of state power (rule by the people) and one side is concerned with the "restructuring of civil society" (liberalism/ liberalization). Held (1993:25) furthermore argues that a "democratic life" like this would entail the institutionalized division between state and civil society so that individuals can make decisions "free of the inequalities and constraints which can be imposed by and unregulated system of private capital as Marx foresaw". Rhoden (2015:571) proposes that the construction of a regime that is both "more liberal and more democratic" will always be challenging because these two concepts will always have "points of conflict". As more and more people are given the opportunity to, as Rhoden (2015:571) writes, "enter the field and voice their opinion", politics and "politicking" reach new and deeper levels of contestation.

Throughout the nineteenth and twentieth centuries, democratic theory has tended to assume a 'symmetrical' relationship between decision makers and the recipients of political decisions. According to contemporary theorists, contemporary representative structures are "insufficiently responsive to their citizens" and the political process should be made more "transparent and intelligible" and "more open to the "heterogeneous wants and needs of 'the people'". Regional and global interconnectedness have been playing a more significant role in nation-states responding to these needs, and the process of governance could in actual fact "escape the reach of the nation-state" (Held, 1993:26). Often national communities do not make and/or determine decisions for themselves (as nations) and government decisions reach far beyond influencing only its citizens. Some recent examples include increased national interest rates, which in turn stimulate economic changes in other countries. Similarly, persecution of minorities by nation-states or state supported actors (and even non-state actors) has caused a refugee crisis, with the largest group of refugees and internally displaced people in recent history, totalling

more than 65.3 million forcibly displaced people worldwide (UNHCR, 2017). Decisions, along with policies on issues as diverse as investment, arms procurement and HIV/AIDS, are typically regarded as falling within the legitimate domain of authority of a sovereign nation-state. Yet, in a world of regional and global interconnectedness, there are major questions to be asked about the coherence, viability and accountability of national decision-making entities themselves. Democracy should be articulated through the equal rights of individuals and the equal right of individuals to participate in discussions and decision making, to have access to information and decisions that affect them and to express their own personal views and opinions (Hyland, 1995:101).

The basic structure of a liberal democracy is the "restricted surrender of freedom" in that any individual's freedom is restricted by the corresponding rights of another individual. This means that rights imply "correlative obligations" to rightfully exercise rights within the boundaries of the corresponding obligation to respect others' rights (Hyland, 1995:107). It is within a democratic tradition that governmental decisions are subject to "popular control by those bound by the decisions", which will help to ensure that the power of authoritative decision making will not be abused or infringe on people's freedom. It is the ability to participate in this decision making that one is subject to that protects the priority of individual freedom (Hyland, 1995:101).

To summarize, it would be accurate to argue that democracy is a contested concept, ranging from being understood as an ideology, a regime type to a complex system of processes and institutions. Historically, democracy can be understood as the study of how to protect individual freedom within an environment that creates political stability and peace for all, an ever-changing balance between freedom and government. However, it is within the analysis of the adjective 'liberal' that we unlock the most important analysis for the purpose of this study. Rhoden's (2015) argument of liberal democracy as a "hybrid concept" may be the most important consideration in understanding the relationships between FoRB and democracy. In its simplest form – without all the complicating adjectives – democracy is understood as rule by the people. What constitutes rule, how the people should rule and who the people actually are, is not the focus of this dissertation.

4.4 Democracy and human rights

According to Meckled-Garcia (2014:681) and Arnold (2013), democracy and human rights form the two pillars of contemporary liberal thought and of the modern state. Soriano (2013:586) proposes that the foremost purpose of the liberal democratic state is to protect human personhood and their "unalienable rights". Furthermore, the principle of democratic legitimacy is one of the foundational principles of international human rights law "and the contemporary world order" (Ramcharan, 2008:75). Some scholars even go as far as to claim that democracy is a basic human right (Waldron, 2013:149). The World Conference on Human Rights declared that democracy, development and respect for human rights are interdependent and mutually reinforcing.[50] According to Louis Henkin, as quoted by Ramcharan (2008:75), the *International Covenant on Civil and Political Rights* includes the right to democracy and member states of the ICCPR committed themselves to the principles of democracy.

Lagon and Schultz (2012:29) further state that democracy is an "almost inevitably necessary" requirement for the protection of human rights, albeit, in their opinion, not sufficient. Furthermore, according to Lagon and Schultz (2012:29), human rights cannot be enforced without accountability, which in turn is impossible without the "fixtures of democracy", like free and fair elections, free press and an independent judiciary and the rule of law. Soriano (2013:582) argues that without democracy, civil rights and religious freedom do not exist. He says that "democracy is the substrate that permits the exercise of religious freedom and the other fundamental rights of the human person". Ultimately, Soriano (2013:589) avers that the state "cannot revoke nor restrict human rights at its own pleasure because *it* was not the author of those rights" and that rights "are innate, whether from a rational point of view (natural rights) or a metaphysical or religious view."

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[50] According to Ramcharan (2008:77), Louis Henkin argued that "the human rights ideology and the law of human rights represented in the [ICCPR] include, I believe, a right to democracy in the sense of constitutional democracy and its elements – authentic popular sovereignty, respect for individual rights, the rule of law, due process of law and commitment to the principle of justice. I think that these principles of justice were what those who drafted the Covenant contemplated and what states that became parties to the Covenant committed themselves to abide by."

According to Waldron (2013:149), human rights connote what the content of law should be, whereas democracy connotes what should be done when there's disagreement about the content of the law. Human rights are therefore understood by some scholars, like Waldron (2013), as the heart of democratic enfranchisement where individuals have the right to be understood as part of a "system" where all individuals have the same rights and their rights carry equal weight before the law. According to Arnold (2013:6), states undergoing transformation, whether from authoritarian regimes or even dictatorships, have adopted models and "inspiration" from human rights "from either experienced democratic constitutions or from international human rights systems (especially regional systems) to effectuate" their transitions to pluralistic democracies.

On 16 September 1997, for example, the *Council of the Inter-Parliamentary Union*, adopted the *Universal Declaration on Democracy* (Ramcharan, 2008:79). This declaration stated that "strengthening the democratization process and representative institutions will greatly contribute to achieving peace and development in the world." As an ideal, democracy aims to preserve and promote the dignity and fundamental rights of the individual, to achieve social justice and foster economic and social development within communities, as well as to strengthen the cohesion of societies and to enhance national tranquillity with the aim of creating a climate that is "favourable" for international peace. On 27 April 1999, the Clinton administration of the United States of America secured what is described as "a victory" during the Commission on Human Rights (CHR) when it negotiated a resolution confirming democracy as a fundamental human right (Resolution 1999/57). The resolution was adopted by 51 votes and the CHR affirmed that democracy "fostered the full realization of human rights and vice versa" (Ramcharan, 2008:82). A United Nations seminar on democracy, held in 2005, noted that the concepts of rule of law, human rights and democracy form a triangle, though not an "equilateral one". This means that when a state's institutions break down, democratic institutions and the rule of law have to be re-established to ensure respect for human rights and basic freedoms (Ramcharan, 2008:83).

4.5 Democracy and freedom of religion or belief

According to research reports by Freedom House (2014), religious persecution is most rife in countries within the "10/40 Window"[51], namely North Africa and the Arabian Peninsula (Middle East). The situation is much different when these countries are compared to their Western democratic counterparts. Soriano (2013:582) argues that Western democratic, and moreover, "Christian states" offer "better conditions for the exercise of religion related public liberties". States that are described as "non-democratic" on the other hand are notorious for serious violations of FoRB and the persecution of religious minorities. Woodberry (2011:8) furthers this argument by stating that Christian states, or moreover, Protestant states, offer the greatest success of democratic development and consolidation. According to him, the Protestant English and Scottish Enlightenments (that weren't anti-Christian) spread and flourished.[52] According to Woodberry (2011:8), "careful historical work" shows that religious factors were "crucial to the emergence and stabilisation of democracy in Europe."

Soriano (2013:582) states that it must be understood that religious freedom and democracy are, as he states, "inseparable". Empirical data agree. FoRB may be considered a "legacy of liberal thought" that played a remarkable role in the American Revolution and ultimately became a determining factor in the establishment of the U.S. Constitution and later influenced the constitutional development of more Western democracies. Religious freedom can therefore, according to Soriano (2013:582), easily be associated with the establishment of the liberal and democratic state. We need not believe that religious freedom is *the*, or one of the "first freedoms" (Chapter 2) or even "the most important freedom", as some of its supporters claim, to recognize its importance within human rights discourse (Lagon & Schultz, 2012:30). Religious freedom can in this

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[51] According to Soriano (2013:581), citing the work of McAllister, the "10/40 Window" refers to the parts of the Eastern hemisphere and the European and African parts of the Western hemisphere, that are located between ten and forty degrees north of the equator.

[52] The Catholic French Enlightenment was anti-Christian and anti-Catholic and stable democracy did not follow its spread. The same is true for the French Revolution, which "devolved into violence" and led to both totalitarianism and democracy (Woodberry, 2011:9).

sense be described as "intertwined with other fundamental freedoms" when considered under the broad classification of "freedom of conscience".

Soriano (2013:602) argues that the future of FoRB depends "in large part" on the future of democracy around the world. He argues that religious pluralism is "wholesome" and it holds no threat for individual freedoms or for the democratic state. In a democratic and pluralistic state, all religions can coexist in peace. This is because, according to him, differences need not be eliminated, unified or homogenized for the enjoyment of social harmony. This is also in part because studies have shown that religious freedom and tolerance contributes to the reduction of social conflict, because religion, and more specifically Christianity, poses a threat to authoritarianism (Soriano, 2013:596; 601).

Political liberalism and democracy, according Soriano (2013:589), benefit the state by supporting not only the economy, but also individuals. He further argues that it is a liberal democratic system that provides the best means or "conditions" for "peaceful association among all religions and religious professions." It is the principles and values of political liberalism, rooted in Judaic-Christian legacy, that are the "antidotes for tyranny and oppression". Soriano (2013:589) and Van Til (2015:18) quote the sentiments of Ortega y'Gasset:

> "The political form that provides the greatest desire for association is liberal democracy… Liberalism, it should be remembered, is the supreme generosity: it is the right that the majority grants to the minority."

Democracy is typically understood as a way of ensuring that the state delivers on promises of civil liberties. One of the key ways in which democracy aims to ensure this is through free, fair and regular elections. The research of Finke (2013:302) and his colleagues suggests that when democratic features like free, fair and regular elections, good governance and an independent judiciary is present, state restrictions on religious freedom decline. This suggests an empirical relationship between democracy and FoRB. Free, fair and regular elections do not, however, when viewed independently, ensure the effective enjoyment of religious freedom. This is because a majority can agree on the restrictions of minority religions and because some actions can therefore, not be legitimated by majority decision (Waldron, 2013:157).

Finke (2013:303) believes that an independent judiciary is of integral importance for holding the state accountable and for the protection of freedoms. The reason for this is

that an impartial and independent judiciary offers guarantees of minority rights when these rights are stipulated and protected by law. Data show that when religious freedoms are supported by an independent judiciary, restrictions on religious freedom decline. Farr (2013:37) furthermore states that religious freedom plays a significant role in the consolidation of democracy, in economic development, as well as social harmony.[53] Further studies show that countries that protect religious freedom tend to be more secure and stable than those that do not, and nations that do not protect religious freedom run the risk of "providing fertile ground" for war, poverty, terror and extremism (George, 2015:9).

4.6   Democracy and freedom of religion or belief: a relational tripartite

Liberal democracy therefore encompasses the liberal values of equality, freedom and fraternity, and more specifically, as mentioned in Section 4.3.2, the executive rule of law, judicial independence, civil liberty and an array of civil and political rights, among which **religious freedom**, media independence, or minority rights. It furthermore encompasses rule by the people. Literature seems to suggest that a complex relationship exists between specifically liberal democracy and FoRB. Both liberal democracy and religious freedom include elements of: 1. Free and fair election processes (and the freedom to choose), 2. Independent judiciary or justice mechanisms; and 3. Rule of law and/ or constraints. A brief discussion of these three liberal tenets or democratic institutions follows below to draw linkages between liberal democracy and FoRB.

4.6.1 Free and fair elections: pluralism and political participation

According to Kofi Annan (2016), the relationship between religion, pluralism and democracy is "the most important issue of our time". Elections have become almost universal since the end of the Cold War, but in many countries around the world, even countries considered liberal democracies, freedom and democracy are actually declining, or in the words of Kofi Annan (2016) himself, "in retreat". Where elections are intended to

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[53] Farr (2013:37) references the work of Brian Grim, stating that "the empirical data are clear [that] religious freedom is part of the ʻbundled commodity' of human freedoms that energize participation in civil society by all religious groups, which is conducive to the consolidation of democracy and to socioeconomic progress."

be mechanisms for the peaceful "arbitration of political rivalries", they in fact very often become fuel to the fire of political violence. According to the Kofi Annan Foundation (2016), the core of these paradoxes "are elections without integrity". "Elections without integrity cannot provide the winners with legitimacy, the losers with security and the public with confidence in their leaders and institutions" and this makes states "fragile", encouraging groups to find alternative and often violent "expression of their discontent" (Kofi Annan Foundation, 2016).

According to Habermas (1994:2), the liberal view of the nature of the political process is that "the political process of opinion- and free will-formation in the public sphere and in parliament is determined by the competition of strategically acting collectives trying to maintain or acquire positions of power. Success is measured by the citizens' approval, quantified as votes, of persons and programs". It is democracy that allows individuals equal opportunity to "advance their concerns" when decisions that they are subject to are made. According to Christiano (2002:32), democracy is a "deeply egalitarian method of organising social decision making". Voter turnout is crucial to the conceptualization of liberal democracy (Bollen, 2009:369). Low turnout can signal alienation and feelings of low political efficacy. High turnout can lead to the election of legislators more representative of the general population. Yet voter turnout is distinct from liberal democracy and should be studied as a separate concept as well. Bollen (2009:369) quotes Moon *et al.* (2006):

> "Broad political participation is a core feature of democracy and crucial for its durability. Participation helps to shape collective identity, as well as achieve social justice and equality across class, gender, and ethnic cleavages. No measure of democracy can be considered an accurate representation of its basic character without directly including participation as a significant component".

In *The Law of Peoples*, John Rawls describes a kind of society – benevolent absolutism – that honours human rights, but that does not give members "a meaningful role in the making of political decisions". This is a statement that Rawls' contemporary peers criticize, because it is not obvious that a society can honour human rights as rights without securing for individual members some measure of just this kind of political freedom (Riker, 2014:369). In increasingly diverse societies, the Kofi Annan Foundation (2016) argues that the only way to avoid conflict and ensure that all religions and believers are able to practice their faith freely, is to ensure that "religion is tempered by the principle of pluralism" enshrined in the idea of free, fair and regular elections. In a recent keynote

address, Kofi Annan (2016) made reference to the acclaimed study of Amy Chua, a Yale University professor, on the rise and fall of history's dominant empires from Ancient Persia, Rome and the Tang Empire in China, wherein she credits their success to pragmatic pluralism. It was pluralism, Annan (2016) argues, that allowed these empires to integrate "a wide variety of peoples into their political systems whereas their downfall can be credited to their "embrace of intolerant and exclusionary attitudes". Democracy is the system best suited for securing and sustaining pluralism in today's world. True democracy "enshrines the rights and liberties of all individuals in law and institutions, regardless of race, gender, or religion, and gives everyone a voice." But democracy, they argue, is not just about elections – and contemporary theorists are in agreement – but rather about institutions and the rule of law, which guarantees the rights of its citizens and respect for and protection of religious freedom.

4.6.2 An independent judiciary

Ninety percent of nations in the world today offer legal assurances of FoRB, but despite these assurances, religious freedoms are very often denied. Eighty-six per cent of all nations have restricting laws on religious practice and 75 per cent openly discriminate against minority religions (Finke, 2014:687). Legal and legislative actions are in Finke's (2014:687) words "the most obvious violations of the promised freedoms". Very few overviews of restrictions on religious freedoms attempt to uncover the sources of these restrictions. As explored in the previous chapter, denying religious freedoms has "powerful political and social consequences" (Finke, 2014:688). A series of recent studies show that restricting FoRB is associated with "higher levels of physical persecution and open discrimination against religions and an increase in religiously motivated violence".

When, for example, one attempts to understand the rise of fundamentalism in Egypt, Syria, Iran and Algeria, the importance of allowing religions to "enter into public discourse and the cultural conversations" is stressed by Moaddel (cited by Richardson, 2015:2). Whether movements are and were pro-democracy or pro-theocracy, "past work has shown that religious movements are often instrumental in political change". That being said, due to an overwhelming growth in religious diversity and a variety of societal, economic and political causes, courts of law are evaluating religious groups on a "regular basis" to "determine if they should be allowed to function, or what they can and cannot do" (Richardson, 2015:2). Therefore, some pluralistic societies are pressured by the

international environment to "manage or regulate religion", which at the core amounts to limits on FoRB. This "management or regulation" is often justified as necessary for "maintaining peaceful coexistence of religious groups" to avoid religiously-based violence. However, empirical data show that it is specifically this "management and regulation" that incites religiously-based conflicts.

According to Gibler and Randazzo (2011:696), "conventional wisdom asserts" that an independent judiciary provides many positive benefits to democracy. They make reference to a dispute over the 2004 Ukrainian presidential election, which was peacefully resolved by and intervention from the Ukrainian Supreme Court. Viktor Yanukovych, a pro-Russian candidate, was claiming victory during cries of election fraud from citizens and international election observers. Fearing the eminent violence, the Ukranian Supreme Court ordered a new election, which was won by the pro-Western candidate, Viktor Yushchenko. An independent judicial system can assist in maintaining the rule of law and protecting individual rights within democracies. Still, despite a "normative importance", scholars struggle to operationalize judicial independence and debates on the role of an independent judiciary within democratic and democratizing regimes continue. Gibler and Randazzo (2011:696) argue that courts reflect ruling interest, providing a "mild, consultative check on executive and legislative power" and protecting minority rights. Judicial independence only exists when a neutral third party resolves conflict (Shapiro as cited by Gibler & Randazzo, 2011:696).

According to Finke & Martin (2014:687), judicial independence is difficult to establish, because some argue that it is only elite interests that are represented. The legal structure of a state can prevent religious groups from being able to function in various ways, ranging from tax to registration (Richardson, 2015:2). However, the legal structure can also "facilitate the functioning of religious groups." In the case of Western Europe, most nations will not attempt to declare religious groups or practices illegal. Whereas France attempts to limit public religious activities, most Western European nations take a more tolerant approach. In Central and Eastern Europe, "non-favoured religious groups" are more often blatantly limited, but these efforts are now "subject to monitoring by the ECtHR". In the United States, a more "subtle passive secularist approach to religion is taken" (Kuru, 2013). However, religion and religious groups are still "managed" in some ways the USA.

A series of major court decisions in the USA "seem to have resulted in more protection of religious freedom for minority faiths". It was predicted 25 years ago by an appeals court judge, Richard Posner (1987), that when more dominant religions are managed, more "room for other faiths to developed and even prosper" is created. This leads Finke (2015:687) to his theories of an increased judicialization of religious freedom in the USA and elsewhere in the West. This presents the dilemma: judicialization is necessary for the protection of FoRB and other democratic interests, and yet, worldwide, although FoRB is protected in almost all national constitutions, the judicialization of FoRB leads to increasing restrictions on FoRB.

4.6.3 Rule of law

According to Hoff (2015:3), authoritative mechanisms that organize human social life, such as law and government, can and should be extensions of ourselves, the media we can use to be ourselves and to pursue what concerns us:

> "law, in its true notion, is not so much the limitation, as the direction of a free and intelligent agent to his proper interest, and prescribes no farther than is for the general good of those under that law… The end of Law is not to abolish or restrain, but to preserve and enlarge freedom."

If the government is guided by the priority of preserving and enlarging the freedom of the individuals who they govern, then, in as much as we individuals are committed to that freedom, we are in fact implicitly committed to them and their authority over us is essentially non-coercive; therefore, they are the kind of authoritative body to which we would in principle consent (Hoff, 2015:3). According to Lind (2016:24), Locke emphasizes that the absence of settled laws enforced by government makes the state of nature one of "disorder", "uncertainty" and "anarchy" form which individuals flee to the "sanctuary" of a commonwealth created by a social compact. Lind (2016:24) further points out that the Lockean commonwealth exists primarily to defend the community against violence from without and within.

Within the context of human rights, rights protected not only in international law, but also guaranteed in national constitutions, FoRB being one such right, it isn't difficult to conclude that within the democratic institution of rule of law, FoRB should be considered as integral to democracy. Human rights and FoRB therefore connote exactly what the above author means when he says that law is not limitation, but a direction enabling the

individual to pursue their interests for "the general good of those under that law". FoRB in essence enlarge freedom in a non-coercive way. According to Broers (2009), Locke believed that "before there is a government and a nation, man lives in a state of nature where he is guided by die laws of nature as God intended". Broers (2009) refers to Locke's *Treatise 8* and writes that Locke's entire social contract theory is rooted in the fact that all people come from an original state of perfect freedom. An original rule of law. The concept of FoRB and its relationship to rule of law is also closely related to the democratic institution of individuals who are equal before the law. Again, this echoes the theme of equality and is strongly rooted within human rights discourse and liberal democratic theory.

4.7   Conclusion

Democracy and religion, much like liberalism, individualism and egalitarianism, seem to have the same roots. These concepts walk the evolutionary road to contemporary discourse hand-in-hand from Ancient Greece, maybe even earlier, through towards modern contemporary discourse. Research suggest that if scholars want to understand this relationship – and this dissertation would argue that it is of utmost importance for the future success and survival of democracy that they do – a multi-disciplinary approach and a study that predates Ancient Greece, should be furthered. That the answer might lie with the earliest of societies or in tribal associations and ancient religion. Interestingly enough, scholars like Fukuyama argue that a liberal understanding of democracy – i.e. human beings viewed as equal before the law with equal inherent human dignity and a claim to a certain set of rights – developed when relational interactions changed from a tribal, familial or societal construct, however primitive it might have been, to a voluntary social contract between men and women – i.e. what we understand today to be modern marriage – albeit a changing phenomenon. Capitalism and a free market system was a consequence of these smaller and institutionalized contracts.

In reaction to the question of what came first, individuation, liberalization or democratization, Hyland (1995) argues that democratization can only strengthen and consolidate with the consolidation of liberalization – a process that takes much longer than democratization. Although it might be a chicken and egg theorization, Hyland's (1995) theory could explain the breakdown in modern democracy across the world due to a retreat of liberalism. It could be a drawback of the democratic tide due to a lack of

the consolidation of liberalization. It is however, in instances of liberal democracy, that empirical data suggest a more holistic enjoyment of human rights, democratic institutions, and with that religious freedom.

Empirical data also suggest inextricable relationships between the democratic institutions of free, fair and regular elections, an independent judiciary and rule of law and religious freedom within a society. Where a breakdown of these institutions are visible, religious freedom abuses are also noticeable. In turn, where religious freedom abuses are noticeable, a breakdown in democracy will follow. Again, strong themes of individuality, equality, morality and freedom echo throughout the discussion on democracy. So, on the question of whether FoRB, and by extension human rights, might have clearer relationships with liberalization, data also suggest clear causal relationships between liberal democracy and FoRB.

The most noticeable relationships between FoRB and democracy lie within the liberal democratic institutions of elections, an independent judiciary and rule of law. Both democracy and FoRB allow individuals equal opportunity to advance their interests when they are involved in the decisions they are subject to. It is because democracy and FoRB are "deeply egalitarian" in the way they organize social decision making (Christiano, 2002:32). Ninety per cent of nations in the world today offer legal assurances of FoRB and FoRB is also assured and protected in international human rights law. Despite the rule of international and national laws, 86 per cent of nations still have laws restricting religious freedom. But, while the rule of law has the power to restrict FoRB, it also has the power to facilitate the functioning of religious groups. This is only possible if the judicialization of religious freedom is done responsibly and through an independent judiciary. Elections, rule of law and an independent judiciary is therefore integral to the successful enjoyment of not only democracy but of FoRB.

So, apart from either a breakdown or better consolidation of democracy, what empirical consequences do these supposed relationships between liberal democracy and FoRB hold for the successful enjoyment of democracy? Does it boil down to something as simple as creating an environment where people can choose the way they want to live their lives within a governable model and securing this freedom? These questions receive more attention in the concluding chapter.

Chapter 5 Conclusion

5.1 Introduction

Religion is diversifying worldwide due to unprecedented immigration and displacement, among other globalizing phenomena. Traditional societies worldwide are coming in to contact with 'new' religions, cultures, ethnic groups daily (Richardson, 2015:3). Considered alongside the fact that the world is more religious today than it was 50 years ago (Grim, 2012:21) and that religion has therefore not "faded away" due to democratization or secularization as some earlier philosophers predicted (Richardson, 2015:3; Berger, 1999:2; Lindberg, 2008:2), and that the world is witnessing a worldwide decline in the protection of religious freedom and a rise in religious discrimination, the recipe seems to suggest the antithesis of human rights, with definitive and possibly detrimental implications for democracy.

Yet, due to the growth in religious diversity, religious extremism and the war on terror, governments and courts of law "are evaluating religious groups on a regular basis" (Richardson, 2015:3). This 'evaluation' ranges from monitoring specific groups, special tax exclusions or the lack thereof, strict 'registration' criteria and the privatization of religion to extreme government restrictions on FoRB. According to Pew Forum (2015), data collected between 2012 and 2013 show that religious minorities were targeted by government restrictions and hostile behaviour in 61% of the countries worldwide. Some religiously pluralistic societies are "being called on to 'manage' or 'regulate' religion", which by definition, restricts FoRB (Richardson, 2015:3). This management of religion is "justified" as "maintaining peaceful coexistence of religious groups" and a preventative measure in "avoiding religiously-based conflicts" (Richardson, 2015:3). Due to the conflicting and biased values of leaders and consequently constitutions and legislation, "the resultant legal structure can absolutely preclude a religious group from being able to function, lay down rigorous criteria for registration and participation that allow over discrimination against groups, or exert control over and monitor religious groups in various ways" (Richardson, 2015:3). The legal structure can – and should – do the opposite, namely **protect and guarantee religious freedom for all religious and non-religious minorities and majorities**.

Western countries have vastly different approaches to legislating and institutionalizing or not institutionalizing religious freedom. France, for example, limits public religious activities overtly. Central and Eastern European countries "limit the activities of non-favoured religious groups". In the United States, until recently, a more subtle "passive secularism" approach to religion was taken, where, even before the Trump administration, religion and religious groups were managed in terms of tax-exempt status. More recently, major controversies have erupted in America and worldwide about the meaning of religious freedom. Today, Hurd (2015:45) argues that religious freedom is a "story of the need for the US government to convince others – particularly Muslims – that they should endorse a particular model of religious freedom in order to organize and democratize politics and society".

The Human Rights Committee is tasked with monitoring member states' implementation of the International Covenant on Civil and Political Rights concerning religious freedom (Hurd, 2015:46). Religion or belief in this context includes "theistic, nontheistic and atheistic beliefs as well as the right not to profess any religion or belief". Legal scholar Malcolm Evans argues that "it is the freedom to believe and to manifest beliefs, subject only to those limitations strictly necessary to protect the rights and interests of others, which is the subject of human rights protection, and not the beliefs themselves" (Hurd, 2015:46).

The problem with this definition, however, is that it conceptualizes a 'belief' only as a subject matter removed or separated from the human being. Human rights and FoRB scholars argue that a person's beliefs are a part of human consciousness, or as suggested in Chapter 1, part of the nature of man. This dissertation argues that how one chooses to define religious freedom, is beside the point. The fact remains that albeit, a contested concept, **all human rights scholars agree on one thing**: a person should have the freedom to decide how a person wants to live their lives as far as possible. This includes FoRB, freedom of expression, the right to vote, equality under the law, the right to or not to identify with a specific gender and choose one's life partner. These are a few examples from a whole (growing) list of civil and political liberties.

The problem lies with reconciling this individual freedom with a system that allows for governing people in a way that creates societal and world peace and stability. Throughout this literature study, it becomes clear that scholars also agree on this: democracy is the

only system that allows for the greatest reconciliation of personal freedom and societal stability. Albeit not a perfect recipe, some would argue that history does show that liberal democracies provide the best circumstances for personal freedom and political stability, if only for a limited amount of time, *because literature suggests that religious freedom is declining worldwide. Literature also suggests that democracy is retreating worldwide.* More and more consolidated democracies are experiencing an institutional collapse of democratic values and consolidating democracies are reverting to previously authoritarian systems. Although there is probably more to this alleged retreat than merely the relationships between democracy and religious freedom, in the current international climate with religious extremism on the rise and the subsequent retreat of democracy, it would be detrimental to democracy, human rights, FoRB and humanity in general not to consider these relationships and their implications or to ignore the role of religion in the human experience entirely. Some states, and specifically Western liberal democracies, seem to treat religion as the "weird uncle" at a family gathering. Maybe if we ignore it for long enough, it will go away. But, like the "weird uncle", religion, it seems, is here to stay. It is time we start taking notice of religion and religious freedom.

5.2   The different theoretical perspectives on freedom of religion or belief

The primary focus of this dissertation was to explore the theoretical relationships between FoRB and democracy and to analyse the implications of these relationships for the successful enjoyment of democracy. This exploration started with the unpacking of the different theoretical perspectives on FoRB as a basic human right. Approaching the understanding of contemporary human rights from both a philosophical and a historical perspective required tracing the development of the idea of humans having intrinsic human rights solely because of their humanity, back to ancient Greek thinking. Philosophically, the subjective idea of human rights is strongly rooted in religious beliefs, first in Greek mythology, stoicism and later on in Judaism. It is during the Enlightenment and the Reformation that the subjective idea of rights took on the form of studied subject matter with the work of liberal democratic theorists like John Locke and Thomas Hobbes, arguably the most influential human rights philosophers.

Historically, it is only after the "secularization of rights" in the 17th century that human rights enjoyed scholarship in a way that more closely resembles contemporary human rights discourse. With the establishment of the Universal Declaration of Human Rights

and the subsequent classifications of human rights, twentieth century scholars continually dived deeper into the meaning of rights, human rights and the different classifications of human rights. It is only in the early 2000's that religious freedom has enjoyed more investigative scholarship, although the majority is by religious scholars.

No exploration of FoRB would be complete without some understanding of religion and belief. Secular studies of religion are not pursued as much as religious studies. The clearest explorations of religion lie within the discourse of sociology and anthropology. What remains the most relevant for this study is that religion plays and will continue to play an important role in human experience. The human's search for meaning and purpose will almost definitively constitute some sort of religion – be it monotheistic, polytheistic, deistic or devoid of any "higher power" or belief. Even not believing is a belief. These sometimes sacredly held beliefs or religions shape the way a human person sees, understands and interacts with the world. It is inextricably linked to human consciousness.

So, based on an understanding of the idea of human rights and the fact that it is philosophically rooted in religion or belief and that religion or belief is an integral part of the nature of man, the dissertation attempted to explore the different theoretical perspectives of FoRB. The different theoretical perspectives take on two different natures. Some scholars argue that religious freedom is a basic and unalienable human right and other scholars argue that religious freedom is a right that requires management and monitoring. This is to be expected. In a time of unprecedented migration, forced displacement and refugee crises, we see the influx of people with contradicting worldviews, religions or beliefs like never before. Nation states and societies are confronted with groups of people who look, think and act different and even contradicting to their traditional norms, and different is almost always perceived as threatening. These two polar perspectives of FoRB can also be understood as liberal and anti-liberal views. FoRB can furthermore also be understood within certain categorizations (degrees of) or models: mere toleration; as something one has freedom to and finally as a right an individual person or group has a claim to. But FoRB can perhaps, as some scholars would argue, be best understood from instances where it is restricted and violated. According to recent data, this happens in 61% of countries worldwide, Western democracies included.

5.3 The relationships between freedom of religion or belief, other basic human rights and the possible theoretical misconceptions of freedom of religion or belief

The second objective of this dissertation was to investigate the intrinsic relationships between FoRB and other basic human rights. Although it was not done explicitly, such intrinsic relationships did show clearly from the discussion. FoRB has intrinsic relationships with other basic human rights such as freedom of expression, the right to vote, right to life, liberty and personal security, equality before the law and depending on interpretation, with most of the basic human rights as outlined in the UDHR. However, it can also be argued that FoRB contradicts certain basic human rights. An example mentioned throughout the study was that of sexual orientation. The UDHR does not explicitly mention sexual orientation or gender identity, although human rights law includes a broad interpretation of the rights of the LGBT community (Amnesty International, 2017). Yet, some religions hold certain marital practices to be confined only to heterosexual couples, which is contradictory to human rights law. However, the misconception in this instance is that LGBT rights and religious rights are conflicting. It is, however, not the case when considering that when a person has the right to something, they intrinsically also have the right from something.

Having the right to religious freedom means also having the right from religious freedom. Having the right to LGBT rights also means having the right from LGBT rights. LGBT couples, in this instance, do still have a right – in some constitutions – to be legally married, whereas religious groups still have the right to confine marriage practices to heterosexual couples. Ultimately it is not a case of either or, but a case of both of these rights being equal before the law. The proposed South African Hate Crimes and Hate Speech Bill could threaten this parallel nature of human rights. It is when one human right is favoured above another that one right becomes contradictory to another. Ultimately, religious leaders could be restricted in what they are allowed to or not allowed to say in their private gatherings. These trends of protecting one right above another is evident worldwide and in most Western democracies, and is perhaps a theme for further study. The conclusion of this objective is that theoretical misconceptions of FoRB are rife and that a clearer understanding of its relationship to other human rights should be pursued.

5.4 The theoretical relationships between freedom of religion or belief and democracy

The third objective of this dissertation was to analyse the relationships between FoRB and democracy. Throughout the study the exploration was aimed at a liberal interpretation of democracy, and a breakthrough rests on these two concepts being separated. 'Liberal' is an adjective to democracy. All understandings of democracy boil down to one thing: democracy means rule by the people. Of course, there are many theories about what 'the people' means and what constitutes 'rule'. The basic principle of democracy is that the people rule. Liberalism, however, entails the basic themes of individuality, human dignity, equality, morality and freedom. These are human rights themes, and as such, FoRB themes. This discovery is profound in that, as illustrated in Figure 4.1, the more liberal a country becomes, the more democratic it becomes and vice versa.

Another finding was that liberal consolidation and democratic consolidation are not the same thing. Many new democracies are struggling to consolidate – South Africa might be one example of this – and Rhoden (2015:568) argues that this is due to a process lacking in liberal consolidation. This boils down to the following conclusion: liberty, equality, individuality, human dignity, morality and freedom and other liberal values hold the key to the successful implementation of democracy. This includes human rights values and FoRB values. Theoretically, FoRB and democracy – at least the successful implementation of democracy – have these liberal values in common. Further, **empirical** relationships exist between FoRB and democracy, the democratic ideals of free and fair elections, an independent judiciary and the rule of law. Researchers argue that the presence of FoRB correlates statistically with higher voter turn-out, a judiciary that remains free from government interference and the rule of law, as well as the successful implementation of democracy in general. FoRB and democracy are furthermore not only philosophically linked, but also historically. The work of John Locke and Thomas Hobbes attest to this. This relationship can be traced even further back to the city states of ancient Greece.

5.5 The implications of the relationships between freedom of religion or belief and democracy

The final objective of the study was to understand the possible implications of the above-mentioned relationships between FoRB and democracy. Although no clear empirical deductions can necessarily be made, a few theoretical considerations do become evident. If we accept that the presence of FoRB correlates statistically with the success democracy, and we accept that the presence of FoRB correlates with the presence of other basic human rights and we consider this alongside that fact that the world is more religious than ever and that there's a worldwide decline in the protection of FoRB, we can argue that democracy is being threatened by the weak and declining protection of FoRB. We can argue that human rights protection is being threatened by the weak and declining protection of FoRB.

If we furthermore argue that intrinsic relationships exist between liberalism and FoRB, then the same can be said for liberal consolidation. If liberal consolidation fails, democratic consolidation will be unsuccessful. This may be an exaggerated conclusion, but if countries are democratizing without successfully consolidating – whether liberal consolidation or democratic consolidation – Huntington's third wave of democracy may rather be a tide of democracy. Countries experience a democratizing moment in history without ever fully consolidating liberal ideals and then revert to previous governing systems, whether authoritarian or another system entirely. This creates an ebb and flow of democracy, never fully ensuring its successful enjoyment and legally protected and culturally institutionalized, human rights always wavering.

The relationships between FoRB and democracy are clear. Themes of individuality, equality, morality, human dignity and freedom echo throughout the philosophical development of the idea of right in the first city states of ancient Greece, human rights discourse, liberalism and contemporary democratic thought. Further relationships are observable within the democratic institutions of elections, rule of law and an independent judiciary. The implications of these relationships are significant and could theoretically either result in the successful enjoyment of democracy or the breakdown of democracy.

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