Human Rights and the Fate of Tolerance

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Original versus Modern Tolerance

The meanings of tolerance nowadays form a complex and ambiguous maze that far exceeds the scope of this essay. To clarify the following pages, however, we propose a preliminary distinction between *original tolerance* and *modern tolerance*.

> By original tolerance we mean the attitude that consists of putting up with, or not preventing, that which should not by law take place. It is motivated by prudence or condescension with regard to human failings. It is a sort of last resource. In any event, it is neither a permission nor an authorization: it is a favor, subject to revocation. As far back as one goes in human history, one finds traces of this elementary social practice.
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> By modern tolerance, we mean the form of tolerance that has developed in modern times and is formulated by Castellion, Spinoza, Locke and in particular Pierre Bayle. To tolerate is to consent to the idea that in the name of freedom, in principle recognized by all, other men think and act according to principles that we do not share or with which we do not agree. In other words, tolerance is the corollary of freedom.

This essay will deal exclusively with modern tolerance. Our intention is to show how this tolerance was progressively included into the different Declarations of Human Rights (and the corollary texts) which sanction it politically. We shall also analyze the opposition it encountered and the setbacks it suffered. The prism of international law singularly highlights the underlying stakes of this notion, which is still of present concern.

The Declaration of Human Rights

In 1787, the king of France finally granted the Protestants an edict of tolerance. It was conceived along the lines of the edicts of the

sixteenth century; the Protestant faith was yet to be considered licit, *it was not supposed to exist*, yet was nonetheless tolerated in the lands of the kingdom since it could not be otherwise. The Protestants still did not have the rights of the Catholics, and their public worship was not free; it was limited to its barest and most simple expression. This form of tolerance no longer corresponds to the human aspirations, since it becomes unbearable to see oneself considered a second-class citizen based solely upon a profession of religious faith different from that of the majority. But this edict was one of the last official acts of a tired regime on the verge of collapse. The convening of the Estates General and the beginning of their work on 5 May 1789 marks the beginning of the French revolution for us and the end of a era. Our interest in this great upheaval lies specifically in the drafting of the Declaration of Human Rights of Man that the deputies decided to insert, after much wavering, at the beginning of the kingdom's Constitution. As we know, the drafting of this declaration took place in the month of August 1789[1] precisely from the 20 to the 26 of August. The most fiercely debated articles were articles X and XI from the sessions held on the mornings of August 22, 23, and 24. After these sessions the atmosphere was exceptionally agitated:

> 'The Assembly was very tumultuous,' noted the national Courier, 'and one would need a whole book to take stock of all the amendments and sub-amendments, particular details, and personal debates.'[2]

The president of the Assembly, the count of Clermont-Tonnerre, exhausted and vexed by the heat of the debates, went so far as to tender his resignation, which was refused. Finally in a little more than two days, a vote was taken on the two articles. These are the two articles of essential interest to us, since they posit *modern tolerance* or the consequence of the freedom of conscience. Rabaut Saint-Etienne and Mirabeau, whose participation in the debates was decisive, insisted on the fact that as far as the freedom of expression was concerned, it was not a matter of tolerance in the traditional sense of the term. The difference of faith and conviction must no longer be accorded as a favor, but granted in the name of a single freedom. Let us cite the contents of these articles:

> Article X: No one must be disturbed for his convictions, even religious ones, provided that their practice does not disrupt the public order established by law.
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> Article XI: The free communication of thoughts and convictions is one of the most precious rights of man; all citizens may therefore speak, write and publish freely, except in the abuse of this freedom in the cases determined by the law.

As for Article X, we note that the word *freedom* does not appear and that the formulation is doubly negative. Rabaut Saint-Etienne proposed writing:

> All men are free in their convictions: every citizen has the duty to profess his faith freely and no one should disturb him because of his religion.

His colleagues did not follow suit, contenting themselves merely with the prohibition of the persecution of convictions – without asserting the freedom; furthermore, they placed a kind of restriction on religious convictions. Certainly they all agreed that these should no longer be persecuted, but such convictions became all the more susceptible to being so. Were this not the case, how should we interpret the need to single out religious convictions with the adverb *even*? Here it is as if we see a residual condescension, the favors of the majority. But we note in particular the fact that the idea of a dominant faith is no longer entirely excluded, although it does not appear specifically in the drafting of article X. We should note here that the Declaration is not exempt from traces of the historical interests of the men who drafted it. Some jurists[3] draw attention to the *miracle* of the Declaration, given that the deputies, in spite of the stormy nature of the debates, had enough foresight to make the articles of the Declaration have bearing not only on a specific epoch, but throughout the centuries as well. Nonetheless, a few *blemishes* still remain. One of them appears in the wording of article X, in the way in which the constituents grant freedom of religion as if it were a favor. To be understood, this formulation cannot be separated from a pressing and serious question in the minds of the men who drafted the Declaration, the question of ascertaining whether or not a civic religion should be established. This is why the *side of the tolerants* quarreled so fiercely with the *side of the clergy*. To understand this struggle, we should recall that the groundwork upon which the members of the Assembly

were working, which is to say the draft of the Declaration known as that of "the sixth division," included a specific mention of an obligatory public faith. In fact, the draft of the sixth division produced three articles on the question of religion:

> Article XVI: Since the law cannot reach unseen offenses, it is up to religion and morality to broach them. It is therefore of utmost importance for the common good that both of these should be respected.
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> Article XVII: The upholding of religion requires a public faith. Hence respect for the public faith is indispensable.
>
> Article XVIII: Any citizen who does not disrupt the established public order should hereafter not be disturbed.

Herein lies the origin of all the reflections that were to follow. After a rough oratory joust, the *side of the tolerants* succeeded in making its adversaries accept that the idea of a civic religion should be placed, were there a specific place for it, in the body of the Constitution of the kingdom and not in the Declaration, which was by nature more universal.[4] Nonetheless some of them extolled the idea of a civic religion as universal.[5] Perhaps, retorted the others, but *the duties* it would immediately imply could not figure into a declaration setting forth *the rights of man*. The necessity of a civic religion was therefore separated from the Declaration of Rights, and articles XVI and XVII of the draft proved null and void. But just after having been shown to the door, civic religion burst forth anew, as we shall explain. The second part of article X: "provided that their practice does not disrupt the public order established by law," must be explicitly tied to the shadow – menacing for some, reassuring to others – of a civic religion. For by the term *public order* we are led to understand – as in article XVII of the sixth division's draft – *public worship*. This means that for the practice of religious convictions to be tolerable (and we are obliged to note that atheism is *still* implicitly condemned), it must not in any way disturb the officially established religion. Is this the influence of Rousseau and the civic religion of *Le Contract social* (the Social Contract)? Certainly not, for all the deputies knew full well that the civic religion under the circumstances would be the Catholic religion, proclaimed the religion of the French State. The deputies of the clergy were fighting in this direction. The count of Castellane underscored in vain, against the preeminence of Catholicism,

that "France in truth is Catholic but the French are not"; he was well aware that the cause was difficult to negotiate. Certainly with the distance of time comes the difficulty of understanding that the restriction of article X was interpreted as a victory for the Catholic or traditional party over the tolerants or innovators. Nonetheless it was in fact in these terms that the press of the time reported the conclusion of the debates:

> 'After having decreed this article,' tells the *Journal des Etats généraux*, for example, 'the members of the Assembly retired tumultuously, some with heavy hearts, at being unable, in spite of their resistance, to prevent it; others, and in particular the members of an order that is not an order, withdrew triumphantly for having passed a decree which, in a century other than our own, could have served as the basis for the Inquisition.'[6]

The idea that the practice of religious convictions could be contrary to the public order is thus considered a victory for Catholicism. In this context, article XI cannot be separated from article X. Debated the day after the memorable session of August twenty-third, to some extent it reestablishes equilibrium by insisting very strongly on *the freedom* of communication and the expression of ideas, using an affirmative wording: "The *free* communication of thoughts and convictions is one of the most precious rights of man: all citizens may therefore speak, write and publish *freely*." Curiously, the deputies did not interpret the restriction of article XI unaminously ("except in the abuse of this freedom in the cases determined by the law") as a victory for the side of the clergy. They felt strongly, in a great majority, that freedom of expression could not be absolute. Only Robespierre and three other deputies pleaded in favor of an unlimited right of expression, relegating the notion of *abuse* to the discretion of the penal code. But this opinion was held only by a small minority. We should therefore ask ourselves why that which is challenged on the one hand (article X) seems taken for granted on the other (article XI). The answer that comes to mind is that the restriction of article X is understood as a paring of freedom whereas that of article XI as a simple limitation necessary to guarantee its exercise in concrete terms. In other words, the *public order* of article X is framed within the perspective of a Catholic religion that continues to lobby against the practice of other religions (especially the Protestant

and Jewish faiths at the time). The *abuse* of article XI is the expression of an opinion that challenges the rights of others (inciting to violence, defamation, lies, etc.). For the people of the time, it is important to differentiate between two entirely different things. For we who no longer live in a world dominated by the Catholic faith, it is a question of a sole and same limitation necessary to freedom. For we must not forget that freedom of conscience and freedom of expression relate as naturally to freedom as parts that fit into the whole that includes them. Freedom, one of the four "natural and indefeasible rights of man," contains within itself the necessary limitation:

> Freedom consists of being able to do everything that does not harm another, just as the exercise of the natural rights of each man is limited only by those that assure the enjoyment of these same rights by others. These limitations can only be determined by the law.

Thus the limitation of freedom is inherent to the essence of freedom, which is another way to say that freedom must be by definition capable of universality, since the absence of universality destroys freedom. This requirement introduces the limitations represented by the real law within the community or political society. Hence one should not be surprised that, in articles X and XI, the law reappears and reminds us of the necessary limitations – without however determining them: only *the* real laws can determine *any given* limitation. For those of us who are detached from the debate of August twenty-third 1789 the limitation of tolerance in article X is perfectly understandable in as far as its necessity is concerned; it does not shock us. The *practice* of a religious principle, which we can legitimately interpret as the act of expression of worshiping,[7] has the requirements of public order as its limitations, meaning the order established by the Republic whereby the freedom of everyone – both individuals and groups – should be respected. The same goes for other, non-religious convictions, such as political or aesthetic opinions: they cannot be absolutely free of any limitations, precisely because of freedom's inherent universality. Some expressions of conviction and some types of practices are harmful either to the community as a whole or for certain individuals in the community (such as children). In this regard, each epoch introduces new restrictions that change the

limitations: "Other times, other customs," as the proverb says. At each moment of the history of a community, what must be tolerated or not in the name of freedom and what surpasses these limits must be reconsidered. This task is given to the legislator, who must, *prudently*, constantly redetermine *the many* limitations of the freedom of expression. But *the* limit will never disappear as such, for this is what guarantees freedom.[8]

Toward a Juridically Restrictive Norm

The Declaration of 1789, by setting forth the principle of freedom and its consequences, was not able to fulfil its function as a Preamble to the Constitution during the French Revolution, since the troubles of the time condemned all the Constitutions (1791, 1793, 1795) to remain inoperative. Since 1946, however, it has been applied rigorously in France and has fulfilled its function. Certainly the constitutionality of the Preamble to the Constitution of 1946 was debated for some time in the juridical world,[9] but the full inclusion of the Preamble into the Constitution in its entirety took place thanks to a decisive argument: article 81 of the Constitution refers explicitly to it. Furthermore, with the new Constitution of 1958, all ambiguity disappeared: the Preamble is partially numbered and included in the first section of the Constitution. The Declaration of the Rights of Man of 1789 is therefore much more than a profession of political faith, it has become a juridically restrictive text. In fact the Constitutional Council passed the laws of the Republic through the filter of the seventeen articles of the Declaration, raised to the status of a *yardstick*. Many times the articles of the law were rescinded or revised after just such an examination.[10] It is noteworthy that the history of the Fifth Republic shows it to have been in favor of more and more democratic recourse to the Constitutional Council. Beginning in the Fifth Republic, only a parliamentary majority could refer to the Council; in other words the verification of the constitutionality of laws was the privilege of the same men who voted. Under the presidency of Valèry Giscard d'Estaing, (1974-1981), a livery of seisin through parliamentary opposition became possible. Finally, on 14 July 1989, president François Mit-

terand proposed that the simple citizen have access to the seisin of the council. This marked evolution toward a greater democracy in institutional appeals indicates that tolerance (written into articles X and XI of the Declaration) must inspire the legislator's actions all the more. Indeed since a legislator's decisions are more subject to the verification of their conformity with the fundamental principles set forth in the Constitution than in the past, it is clear that the demands of tolerance are more strictly imposed on him.

The International Charter

It would, however, be singularly reductive to confine ourselves to the sole example of France. Today the requirements of human rights are written into the legislations of many countries. Furthermore human rights have been considerably elaborated through the development of international law following the Second World War. We shall skip over their concrete presence in various national legislations (even a cursory glance would take much too long), and follow the progress of the references to tolerance in the principle instruments of international law. The first and the most important of these instruments is the Universal Declaration of Human Rights promulgated in Paris on 10 December 1948. Here tolerance is more precisely set forth than in its predecessor of 1789. On the one hand it is the central focus of articles 18 and 19 that correspond very exactly to articles X and XI of 1789; on the other hand, tolerance is expressly affirmed as the goal of education in article 26. Let us first analyze articles 18 and 19:

> Article 18: All persons have the right to the freedom of thought, conscience and religion; this right implies the freedom to change religion or conviction as well as the freedom to practice one's religion or conviction, alone or in a group, in public or in private, through the teaching, practice, worship and the fulfilling of rites.
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> Article 19: All individuals have the right to the freedom of conviction and expression, which includes the right not to be disturbed for one's convictions as well as right to seek, receive and distribute, without boundaries, information and ideas by any means of expression whatsoever.

At first glance, the reader notices the differences and the progress in the determination of tolerance. In article X of 1789, it is only a

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matter of *convictions* and *practices* of these convictions, with no qualifications other than the case of the religious nature of these same convictions. In article 18 of 1948, it is a question of freedom of *thought, conscience and religion*. This last term is associated with the word *conviction*. This association implies that atheism is now recognized and affirmed as a legitimate possibility for humans. It is permissible to be an atheist. As for freedom of thought, it implies the right freely to profess philosophical ideas adopted conscientiously. It is no longer necessary to hide or keep to oneself or to a few close friends choices of a philosophical or metaphysical nature. The idea of *practice* is, furthermore, quite precise. To practice one's religion (or conviction), means first of all to teach it. This right to teach pertains not only to the adepts wishing to deepen their spiritual formation, but also, implicitly, to people outside the religion being taught, to whom the preaching believer undertakes measures in the spirit of proselytism. In as much as these contacts are not imposed they are recognized as legitimate. This means recognizing a fundamental demand of the religions of which the majority are today founded on public preachings and proselytism. Hence the right to worship and practice publicly is explicitly recognized. In short, and perhaps in particular, article 18 clearly accentuates the *personalized* characteristics of the Declaration, since it introduces the fundamental idea that an individual always has the right to change religions should he see fit to do so.

Such an arrangement puts into effect, in the religious context, the fundamental principle of all the Declarations of Human Rights: the primate granted to individual conscience over collective pressure. According to the Declaration, the community is organized in such a way as to make the freedom of individuals a reality. In this frame of mind, the community has the right to impose duties and restrictions on the individuals that compose it. But the ultimate goal remains the personalization of the individual. The community is the means, the personality the ultimate goal. Nonetheless this last idea is deceptive, in as much as it leads one to imagine that once the goal is met the means disappears. Yet here the goal will never be met, since the work of liberating the individual with regard to both external and internal nature (his rough nature as an individual) must be taken up anew during each human generation,

that is, incessantly. The community will therefore always remain the element within which the human individual personalizes himself. Nevertheless *personification*[11] is prized, at least in the modern Western world; it is the ultimate goal. If we transpose this principle into the religious sphere, this would imply that the individual expansion of spiritual life would be considered the ultimate requirement to which everything else is subordinate. Certainly churches and religious communities are implicitly recognized as indispensible: a deep religious life can never be conceived in the absence of a communal framework. To believe is to believe along with others, in a group, by inserting oneself into a given tradition and heritage. The idea of a purely individual faith is an abstraction. But the requirements of the group, of the *ecclesia*, can never include the repression of apostasy. The enrolment into a faith by birth cannot constitute a *destiny*. All spiritual undertakings are open to revision by the individual in the name of freedom.

It is helpful to note that the articulation of this consequence of tolerance with regard to religion constitutes a *high point* of the Declaration. If indeed there is something that religious movements have difficulty admitting, it is the legitimacy of apostasy.[12] The message of salvation that such movements for the most part convey is hard to reconcile with the possibility of a revision or personal evaluation. Often the initiators and founders (the prophets) of religions are situated so high above the rest of humanity that it is difficult to accept, within a religious community, that a simple member of the congregation might place himself above the position of the founder (at least implicitly so), by judging the pertinence of his message. Who believes himself capable of judging what comes from God or the divine? All religions (or almost all) voluntarily welcome the faithful who renounce their first beliefs to join their ranks; it bears witness to the superiority of their beliefs. On the other hand they have difficulty accepting people leaving them. Hence the Declaration articulates a demand that imposes an almost *unnatural* effort on religions. We shall soon have occasion to appreciate the extent to which this requirement of the Universal Declaration drew opposition.

To consider article 19 for a moment, we see a singular movement toward greater precision. First of all, the "free communica-

tion of thoughts and ideas" of 1789 (article XI) becomes the right "to seek, receive and distribute, without boundaries, information and ideas." Thus the Universal Declaration requires tolerance not only of the diffusion of ideas, but also of a citizen's active search for ideas or information that do not come to him through the intermediacy of a customary organ of diffusion. The Declaration argues directly in favor of the abolition of the rule of secrecy, that is, the promotion of clarity, accepted with such difficulty by the organs of powers, whatever they may be. Next it outlines the consequences of its universal extension, since it posits that boundaries should not be considered a potential stopping point for communication. No government can legitimately refuse the introduction of foreign ideas into the country in which it conducts its business. Indeed, the practice of closing off a community to foreign ideas judged potentially subversive is a traditional practice of long standing whose use was (and still is) common. In short the accent is quite clearly placed, in both articles 18 and 19, on the *affirmation of freedom.*

Within the framework of the Declaration, each individual may think freely, adopt a religion, practice it, teach or promote it, and eventually change it. Anyone may, without fearing the inverventionof any power whatsoever, freely communicate thoughts and information, or freely seek them out. From these freedoms for all a corollary is imposed on each individual: *to tolerate the exercise of these freedoms in others*, even if they are found to be distasteful, annoying or even harmful. This last aspect makes the practice of tolerance very difficult and gives it a manifestly moral dimension: to be tolerant is a virtue. As for the restrictive clauses, they are absent in articles 18 and 19. In Articles X and XI of 1789, the limitation on freedom (to practice a religion and to express oneself) is clearly affirmed. In 1948, the men drafting the Declaration no longer thought it necessary to recall the indispensable limitations each time. These limitations have been moved almost to the end of the Declaration (articles 29, line 2), where they are set forth in quite laconic and general terms:

> In the exercise of his rights and the enjoyment of his freedoms, each individual is subject only to the limitations established by the law with the exclusive aim of assuring the acknowledgment of and respect for the rights and

> freedoms of others and in order to satisfy the just requirements of morality, the public order and the general well-being in a democratic society.

At the same time as the limitations are set forth, the aspiration universally to found *democratic* societies is affirmed. And this corresponds in article 26, to the promotion of *education* and the call, this time direct, for tolerance considered as a major educative objective:

> Each individual has the right to education (...) Education must strive for the full blossoming of the human personality (...) It must favor the comprehension, tolerance and friendship among all nations and all racial and religious groups ...

Hence the universal Declaration salutes tolerance and associates it with education along with a few other cardinal virtues. As for tolerance, it is the highest point. After having been conceived in the sixteenth and seventeenth centuries, after having been demanded in the eighteenth century, today it is officially proclaimed and heralded as a requirement to be taught to all humankind. It imposes itself as a requirement for each individual in recognition of the freedom of all. Nonetheless the Declaration in and of itself is nothing more than a profession of faith. Signed by almost all the countries in the world – with a few noteworthy exceptions – and thereby recognized theoretically, the Declaration has no juridical power: nothing guarantees its application. This is indeed a shortcoming, upon which the jurist Jacques Mourgeon insists, since "the insolvency of Power voids the affirmation of rights of every substance and meaning. Be it juridical or material, voluntary or the result of a real obstacle, it reveals the virtuality of the rights affirmed, if not the vanity of their affirmation."[13]

It would, however, be wrong to content oneself with such an observation, for the Declaration of 1948 is a founding *charta* for other international institutions which, for their part, are endowed with a restrictive nature. These include the International Pact On Economic, Social and Cultural Rights, or the International Pact On Civic and Political Rights, both of which were proclaimed in 1966 and put into effect in 1976. The countries that signed agreed to modify their national legislations in terms of the stipulations of these Pacts. In this way a process of control was put into play, as J.-B. Marie notes: "the participating countries agree to make (reports) at various intervals concerning the measures taken and

the progress made in order to assure their respect for the rights recognized in the contract; these reports may be examined by an organization made up of independent experts who make observations or criticisms and are able to ask for precise explanations from a country concerning the way it assures (or does not assure) the enjoyment of the recognized rights."[14] Furthermore, an optional Protocol relating to the International Pact On Civic and Political Rights obliges the signing countries to recognize the intervention of an International Committee of Human Rights in the case of a litigation between the country and a citizen.[15] A relinquishing of sovereignty, as limited as it may be, is always accepted by a country with difficulty. Hence no one will be surprised that the countries signing these Pacts are far less numerous than those signing the Universal Declaration.[16]

International Resistence or the Risk of an Impass

As far as tolerance is concerned, it is remarkable that going from the Declaration to the Pacts represents a marked setback. Particular attention to this point is worthy of note here. We have emphasized, in fact, that the freedom recognized in individuals to change religion constitutes the highest point of the Universal Declaration. In the corresponding article of the Pact On Civic and Political Rights (likewise numered 18), this explicit mention has disappeared. It has been replaced by:

> Each individual has the right to the freedom of thought, conscience and religion; this right implies the freedom to have or adopt a religion or a conviction of choice, as well as the freedom to practice this religion or conviction, etc.

One might say that the difference is insignificant and that *freedom to adopt* is another way to say *freedom to change*. In fact this is not the case, for the freedom to adopt retains only the idea of *entering* into a religious order, it does not include the idea of *exiting*. The double movement associated with the idea of changing has here been cut in half. Furthermore, bitter debates between the representatives of different national delegations are hidden behind these wordings. Pressures were exerted, particularly by the Islamic countries, to restrict if not erase the freedom to change religion, which is nonetheless

inherent to tolerance. Whereas almost all the wording of the Declaration was reused in the International Pacts, it is significant that this one was modified. And this is not all. Apropros of religion, a *Convention on the elimination of all forms of intolerance and discrimination based on religion or conviction* was initiated as early as 1955. It would take twenty-six years of work and negotiations for the Convention to lead to ... a simple Declaration. In 1972, in fact, "The General Assembly (of the United Nations) agreed to grant priority to the elaboration of a Declaration since the adoption of a Convention no longer seemed possible, by reason of a multitude of obstacles of a political nature."[17] This means that a text that would have had a somewhat juridically restrictive nature was officially renounced.[18] Apropros of world religion and the violence it can ignite, which must be combatted, the United Nations was forced to make do with an international declaration. As far as we are concerned, the terms themselves are still altered with regard to the Pact On Civic and Political Rights. What does one read in the Declaration against intolerance that was finally adopted in 1981? It is the following:

> Every individual has the right to the freedom of thought, conscience and religion. This right implies the *freedom to have a religion or any other conviction whatsoever of choice*, as well as the freedom to practice this religion or conviction ...

If we wanted to play guessing games, we would ask: what word is missing? Quickly the reader would notice that the verb *to adopt* has disappeared from the text which, otherwise, faithfully repeats article 18 of the Pact On Civic and Political Rights.[19] This disappearance is not harmless. It suppresses any mention of the idea of entering or leaving a religion. The dynamic gives way to the static: "I have, you have, he has a religion ..." The mention of choice has not disappeared, but any reference to modification or change has been erased. The forces that tend to make religion an individual's *destiny* are in full force here. Of course the specialists on international law insist on the fact that the second paragraph of the same article 1 affirms:

> No one shall be constrained in attaining the freedom to have a religion or a conviction of choice.

The mention of *choice* of religion and the condemnation of constraint seem to imply that the individual has the right to change

religion. This is true. But what counts as far as we are concerned is the effort the delegations made in order to reduce as much as possible (and even to erase) all explicit references to the changing of religion and consequently to combat all that tends to affirm apostasy as an individual right:

> The Western negotiators came up against the opposition of the Islamic countries (forty in all) with regard to a portion of this text. The group's spokesman finally remarked that while they considered the Declaration as a whole an important document, it was no less true that the Coran does not permit a Muslim to change religions.[20]

In fact, their resistance to the text was such that the representative of the Islamic countries finally asked that the text be adopted by the general assembly of the United Nations *without a vote*. Were there a vote, they said, they would not be able to support such a text. In this way reservations became officially formulated in the United Nations with regard to the "possibility of applying any specification or decree of the Declaration that might be in opposition to Islamic law (Chari'a) or any legislation or juridical act founded on Islamic law."[21] The core of the resistence is always the same: the non-dissociation of the political and the religious. In a country where religious dogma and laws are intermixed, tolerance is concretely impossible. It is indeed obvious that one cannot ask religions to accept apostasy as such. All condemn it out of necessity and consider the apostate to be someone on the road to damnation, if he is not already damned. The faithful can pray for his return, but they cannot acknowledge his behavior. If a religion recognized the legitimacy of apostasy, which would admit tacitly that it is not essential to be counted among its ranks, it would weaken itself, rendering itself relative. On closer examination this is not what is being asked in the name of tolerance. It is asking only that each religion renounce the exercise of the power to restrict individuals when these individuals opt for apostasy. The apostates can be blamed among the ranks of the faithful as much as one pleases, as soon as one admits that it is wrong to engage in the slightest pursuit of them, whatever its nature. But in a country where the religious dogmas receive the support and sanction of the civic laws, it is impossible really to prevent persecution. In a way the problem lies here: human rights presume a recognition of a lay

political perspective, above a religious one, in the public space, which guarantees the rights of individuals against the inevitable pressure of different groups. In all the countries in which this separation of the religious and the political has not taken place, the rights of man cannot be recognized in concrete fashion.

This is why on an international scale human rights are not so much admitted as discussed. In the eyes of certain writers, the *tensions* and even the setbacks we have mentioned justify pessismism.

> The Universal Declaration of Human Rights should not create illusions. At the time of its adoption by the United Nations (in December 1948), it reflected an international society of which the great majority of its members,whatever their reserves, accepted personalism. The current majority are followers of Islam, Hinduism, Buddhism or Animism. These currents of civilization, still very powerful, are certainly not negators of certain prerogatives of the individual, but rather situate them in the perspectives of the political relationships that are specific to them and which differ profoundly from ideas of a Christian nature.[22]

This anxiety can be justified by the current tendency, in the Far Eastern countries that are not Islamic, for example, to question "the formal logic of liberalism and individualism of modern Europe," in favor of a "new world order (consisting) of allowing each people and each nation to reaffirm their positions as tied to their historical traditions and regional idiosyncrasies."[23] This basic hostility cannot be overlooked, especially since it is at times underscored by disturbing political demonstrations. In any case it forces us to note that nothing has been done on an international level, that the promotion of the human rights and hence of tolerance which, as we have seen, constitutes one of its central points, remain the focus of a struggle whose stakes are essential. It is not so much a matter of opposing sporadic and even repeated violations of the rights of man, as of fighting against the refusal of a certain number of groups and even governments to accept it in principle. This is the essential point. When the whole world agrees on these fundamental values, the worst will be over. Next it will be necessary to try to reduce, on a daily basis, the rift between words and action, saying and doing. With human rights, on the scale of international relations, things have not really reached this point yet. "The goal of the international contracts," recalls Jean-Bernard Marie, "rests upon values that are perhaps not as universally

accepted by the world as these texts imply. It is not simply a matter of the distance that always separates the ideal from reality which is in question here, but a distance with regard to the principles themselves and the specific norms formulated on a universal level."[24] One must not therefore underestimate the following point: if tolerance is one of the fundamental principles of modernity, this modernity is not one that has been agreed upon on a global level. It is exposed to contradiction and opposition: in short, it is subject to tensions according to which its future and its fate shall unfold. The idea of modernity as the definitive and happy culmination of the history of humanity, has not yet found its way onto the current agenda.

Notes

1. On the Declaration of the Rights of Man and the conditions of its drafting, see, among *others, M.Gauchet, La Révolution des droits de l'homme*, Paris, 1989; J. Morange, *La Déclaration des droits de l'homme et du citoyen*, Paris,1988. As the latter is a jurist, he gives us interesting insights into the juridical signification and bearing of the Declaration, from the time of its proclamation up to our day.
2. Quoted in: M.Gauchet,*La Révolution*, p. 170.
3. Such as J.Morange, *La Déclaration.*
4. Rabaut Saint-Etienne, Mirabeau, Pétion, Bouche and especially Talleyrand expressed such an opinion, with the latter using a remarkable eloquence whose effect was reinforced by his status as a prelate.
5. The marquis of Clermont-Lodève in particular.
6. Quoted in: M.Gauchet, *La Révolution*, p. 172. Marcel Gauchet's text demonstrates very well that at the time the article was generally interpreted as a victory for the clergy. See also B. Kriegel, *La Politique de la raison*, Paris,1994, and in particular, "La Déclaration des droits de l'homme et la liberté de conscience."
7. Of course this is not the only manifestation possible.
8. Hence the radical absurdity of the 1968 slogan of: "Il est interdit d'interdire" (It is forbidden to forbid); this is absurd not only from a logical point of view (if it is forbidden to forbid, it is forbidden to forbid to forbid), but also from the point of view of reason: there is no freedom *imaginable* without the forbidden.
9. The exegesis is powerless to delineate the uncertainty. Alternately, the same assembly, the same parties and, at times, the same orators attributed opposing natures to the Preamble, from a veritable juridical text of a constitutional nature, to a simple profession of political faith (See J. Rivero and G. Vedel, *Les Problèmes économiques et sociaux de la Constitution du 27 octobre 1946*, Paris, 1947).

10. For some examples of the decisions of the Constitutional Council, see J. Morange, *La Révolution*, pp. 108-11.
11. The term comes from E.Weil, *Philosophie politique*, 24, Paris, 1956.
12. Krishnaswami, who in 1955 was commissioned by the sub-committee of human rights of the United Nations to draw up a report on intolerance and discrimination notes: "although religions or convictions favorably welcome – and in certain cases even encourage – the conversion of people belonging to other faiths, it is very difficult for them to admit that their own members convert to another religion. Apostasy is judged harshly; it is often forbidden by their religious codes."
13. See *Les Droits de l'homme*, Paris,1978, p.87.
14. J.-B. Marie, "Le Droit international, une ressource pour lutter contre l'intolérance," in: *L'Intolérance et le droit de l'autre*, Geneva,1992, p. 103.
15. The first article of the optional Protocol reads as folllows: "Every county signing the Pact that also signs the Protocol recognizes that the Committee is competent to receive and examine the communications presented by individuals under its jurisdiction who claim to be victims of a violation, by the signing country, of any of the rights set forth in the Pact."
16. The United States signed (in 1922) only the International Pact on Civic and Political Rights. To our knowledge, the Pact On Ecomonic, Social and Cultural Rights has not yet been signed by the United States.
17. See J. Walkate, "Aperçu historique sur la Déclaration des Nations-Unies sur l'élimination de toutes les formes de l'intolérance et de discrimination," in: *Conscience et liberté*, No.43,1991, p. 14.
18. A Convention, like a Pact, shares a juridically restrictive character; a Declaration, in international law, is a simple profession of faith.
19. It also adds the expression "any ... whatsoever" before and after the word *conviction*. The insertion of the indefinite pronoun here reflects a pressing demand from the countries of the former Communist black to underscore the legitimacy of atheism.
20. See J.Walkate,(note 17 above), p. 15.
21. These observations were formulated by Iraq (in the name of the organizations of the Islamic Conference), Syria and Iran. We should add that certain Eastern European countries and Russia expressed reservations of a similar sort, insisting on the incompatibility of certain specifications of the Declaration with their national legislation.
22. J.Mourgeon, *Les Droits de l'homme*, Paris,1978, p. 55.
23. As suggested by Iwo Kôyama, cited by Bernard Stevens in his article "Ambitions japonaises, nouvel asiatisme et dépassement de la modernité," published in the magazine *Esprit*, No. 213 (July 1995). Iwao Kôyama was one of the leaders of nationalist thought in the 1930s in Japan. His ideas have been revived today, according to Bernard Stevens, by a significant number of Japanese intellectuals.
24. J.-B. Marie, (note 14 above), p. 10.