

THE RIGHT TO RELIGION

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1. Introduction

In the so-called 'post-secular' age of today, religions have come back to be determinant. This is not always a blessing, for today a possible global disaster due to religious conflicts keeps looming behind global relationships. In such a situation, modern human rights are in a strategic position to serve as a middle path or a meeting point among different religious interests. Nevertheless, while in the past religious traditions have helped to give birth to the human rights system, today the relationship between the former and the latter is much more complicated. On the one hand, the exercise of religion may well be subject to the evaluation of the human rights, but on the other, human rights need to be reformed in the light of various religious traditions. This essay will explore the complexity of the problem while taking as the basic assumption the belief that religion is not concerned simply with the relationship with God, but also, and above all, with the development of human ideals, with the growth of humanity in general.

2. Human Rights and the Resurgence of Religion

Modern human rights have led to a great awakening of religion around the globe. Ancient faiths once driven underground by autocratic oppressors have sprung forth with new vigour. In the former Soviet Union, for example, numerous Buddhist, Hindu, Jewish, Christian, Muslim, and other religious communities have been revitalized, alongside a host of exotic goddess, naturalist, and personality cults.¹ In postcolonial and post-revolutionary Africa religious groups have come to flourish in both conventional and inculturated forms, alongside a bewildering array of

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¹See John Witte, Jr., et al ed., *Proselytism and Orthodoxy in Russia: The New War for Souls*, Maryknoll, NY: Orbis Books, 1999.

traditional groups.² Many parts of the world have seen the rise of new faiths, like Adventists, Ahmadis, Bahāis, Hare Krishnas, Jehovah's Witnesses, Mormons, Scientologists, among others. Religion, in both traditional and new forms, has become the latest "transnational variable" of globalization.³

On the other hand, the very same human rights have also helped catalyze new forms of religious and ethnic conflict, oppression, and belligerence. In post-reformation Indonesia, as in the former Yugoslavia, new liberties have been converted into licenses to renew ancient hostilities and rivalries, with catastrophic results. In Sudan and Rwanda, ethnic nationalism and religious extremism have conspired to bring violent dislocation, persecution, false imprisonment, forced starvation, and savage abuses of thousands of rival religious believers. North America and Western Europe are no exception, as political secularism and nationalism have combined to threaten sects and cults that do not conform to the dominant culture.

What counts here are not so much the differences of how human rights are conceived as what the resurgence of religion actually means. In reality, the significance of human rights is closely connected with peculiar interests of religious communities within specific contexts. Rooted in such particular contexts, the resurgence of religion becomes a complex phenomenon. The resurgence of religion is not simply a feature of any one religion. Moreover, it is not some lack of development that makes people religious. It occurs in countries with different religious traditions and in countries at different levels of economic development.

In some respects, the global resurgence of religion exposes the larger crisis of modernity. It reflects a deep disillusionment with perspectives that reduce reality only to that which can be perceived and controlled through reason, science, technology, and bureaucratic rationality, leaving out the spiritual or the sacred dimensions of life. There is a greater sensitivity today to the human limits of the "disenchantment of the world" (following Max Weber) among postmodernists, theologians, cultural critics, artists, and activists. They share the same concerns about materialism, the

²See Abdullahi Ahmed An-Na'im ed., *Proselytization and Communal Self-Determination in Africa*, Maryknoll, NY: Orbis Books, 1999.

³See Susanne Hoeber Rudolph et al ed., *Transnational Religion and Fading States*, Boulder, CO: Westview Press, 1997.

environment, and the commodification of everyday life in the global economy, which have resulted in the process of impoverishment of the spiritual dimensions in human life. The third millennium may well be a post-secular one.⁴

In other respects, the global resurgence of religion is the result of the failure of the modern secular state to produce enduring democracy as well as authentic sense of identity. Ernest Gellner has argued that since the period of colonial occupation, the developing countries have been confronted with a dilemma: Should they emulate the West in order to gain equality in power, thus, spurning their own culture? Or, should they affirm their own cultural and religious traditions, thus, remaining materially weak?⁵ In many countries, the desire for a new identity and rapid development was pursued in the first years after independence by emulating the West. But after several decades it proved to be a failure, which was evident in the decline of politics into authoritarianism, patrimonialism, corruption, and even the disintegration of some states. This has happened in Indonesia, Turkey, India, and particularly in Africa, since the 1980s.

The global resurgence of religion also manifests the search for authenticity by way of the “revolt against the West.” The first stage of the revolt was the anticolonial struggle for independence and equality; the second was the struggle for racial equality and economic justice; and, the third, the struggle for cultural liberation.⁶ The latter is a struggle to reclaim the traditional cultural and moral practices. While, externally, the tendency to spurn whatever is foreign grows stronger; internally, the rivalry between existing religious communities confuses ‘foreign’ with ‘other’ or ‘different’. Rival religious communities persecute one another as ‘foreign’ or ‘inauthentic’. This is exacerbated when ethnicity is conflated with religious identity, and religious groups conspire with political leaders. In part, this is a theological war on ‘Truth’; in part, it is a legal war over regulations restricting the constitutional rights of their ‘foreign’ religious

⁴See Scott Thomas, “Religious Resurgence, Postmodernism, and World Politics,” in John Esposito et al ed., *Religion and Global Order*, Cardiff: University of Wales Press, 2000, 38-65.

⁵See Ernest Gellner, *Postmodernism, Reason and Religion*, London: Routledge, 1992.

⁶See Hedley Bull, “The Revolt against the West,” in Hedley Bull et al ed., *The Expansion of International Society*, Oxford: Clarendon Press, 1984, 217-28.

rivals. Beneath a shiny constitutional veneer of religious rights and freedom for all, some countries have come to develop a legal culture of overt favouritism of some faiths and overt oppression of others. On the one hand, this shows a greater sensitivity to religious and cultural values in the formation of social policy, and, on the other, a greater critical awareness of the fact that the so called 'universal' human rights have been globalized without due regard for what is most human and most right in particular countries.⁷

For all these reasons, the global resurgence of religion and the spread of cultural pluralism have become so complex that the notions such as "clash of civilizations," "fundamentalism," or "religious extremism" do not seem to suffice to understand them. What is happening is that a truly multicultural global international society is being formed for the first time in the history of human race, along with its large-scale religious change and socio-cultural effects.

3. The Critique and Challenge of Human Rights

There is a further paradoxical situation today concerning human rights when it is connected to religion. While, on the formal platform, awareness of religious freedom (i.e., the conviction that human beings have an inalienable and personal right to determine their own attitudes toward life, within the limits of public order, without any coercion on the part of civil authority) is growing, the fact is that today freedom and equality are hard to find anywhere. Worse still, human rights paradigm has itself been under severe criticism, both from the philosophico-cultural and the theological points of view.

Some distinguished philosophers have come to see the human rights paradigm as an experiment that is no longer effective, even a fictional faith whose folly has now been fully exposed.⁸ Others have bolstered this claim with cultural critiques, that human rights are instruments of neo-colonization through which the West imposes its values on the rest, even

⁷See Mary Ann Glendon, *Rights Talk: The Impoverishment of Political Discourse*, New York: Free Press, 1991.

⁸See samples and critical analysis of the views of Alasdair MacIntyre, Richard Rorty, Jean-François Lyotard, and others in Max L. Stackhouse and Stephen Healey, "Religion and Human Rights: A Theological Apologetic," in John Witte, Jr. and Johan D. van der Vyver ed., *Religious Human Rights in Global Perspective: Religious Perspectives*, The Hague: M. Nijhoff Publishers, 1996, 485-516.

toxic compounds that are exported abroad to breed cultural conflict, social instability, religious warfare, and, thus, dependence on the West.⁹ There are also other critiques, that rights talk is the wrong talk for meaningful debate about deep questions of justice, peace, and the common good.¹⁰

When philosophico-cultural critiques encroach upon the human rights, theological critiques go the other way round. They corroborate these rights by adding to them some necessary religious basis. Theological critiques point out that, without religion, human rights become too captive to Western libertarian ideals. Many religious traditions – whether Buddhist, Confucian, Hindu, Islam, Orthodox, Reformed, Taoist, or traditional stock – cannot conceive of, or accept, a system of rights that exclude religion. Religion is for these traditions inextricably integrated into every facet of life. Religious rights are an inherent part of rights of speech, press, assembly, and other individual rights, as well as ethnic, cultural, linguistic, and similar associational rights. Without religion, the state is given an exaggerated role as the guarantor of human rights. The simple state-versus-individual dialectic of many modern human rights theories leaves it to the state to protect and provide rights of all sorts. In reality, the state is not, and cannot be, so omni-potent. Numerous “mediating structures” stand between the state and the individual, religious institutions prominently among them. Religious institutions can offer some of the deepest insights into norms of creation, stewardship, and servanthood that lie at the heart of human rights. Besides, religious theories of rights provide a vital rationale for organic linkage between rights and duties. Without them, rights become abstract, with no obvious limit on their exercise.¹¹ Without religion, many rights are also cut from their roots. The right to religion is the mother of many other rights. To

⁹In Indonesia today conflicts between religions (Islam and Christianity, in particular) have often been apprehended in terms of violation of human rights. But some religious communities (mostly the Muslim groups) suspect it to be simply a political game, masterminded by the West, a strategy used by the West to curb Muslims movement. See also critical discussion of this thesis and its manifestations in recent debates about the cultural and moral relativity of human rights, in David Little, “Religion and Human Rights,” *Journal of Religious Ethics* 27, 1 (1999), 151-77.

¹⁰See Glendon, *Rights Talk*.

¹¹See John Witte, Jr. “The Spirit of the Laws, the Laws of the Spirit,” in Max L. Stackhouse et al ed., *The Spirit and the Modern Authorities*, Harrisburg, PA: Trinity Press International, 2001, 86-87.

ignore religious rights is to overlook the conceptual, and historical, source of many other individual and associational rights.¹²

However, acknowledging the religious dimension of human rights is one thing. It is quite another thing for religious bodies to appropriate human rights within their own politics and theologies. Here norms of human rights challenge the structure of religious bodies. While these norms teach liberty and equality, most religious bodies teach authority and hierarchy. While they encourage pluralism and diversity, many religious bodies require orthodoxy and uniformity. While these norms of human rights teach freedom of speech and expression, several religions teach duties of silence and submission. Moreover, they are the creed of a secular faith born of the Enlightenment. The advocates of human rights describe the norms as “civic faith,” “new world religion,” “new global moral language,” etc.¹³ Religions might well have been the mothers of human rights in earlier eras, perhaps even the midwives of the modern human rights revolution, but when their institutions have come to grow bigger and bigger, religions become too expansionistic and monopolistic, too patriarchal and hierarchical, too antithetical, to the very ideals of pluralism, toleration, and equality inherent in a human rights regime.

These paradoxes, in turn, suggest that religion and human rights need to be brought into a closer symbiosis. On the one hand, human rights norms need religious narratives to ground them. The abstract human rights ideals of the good life and the good society depend on the visions and values of human communities and institutions to give them content and coherence. Religion is an ineradicable condition of human lives and human communities. Religions provide many of the sources and scales of values by which many persons and communities govern themselves. Religions help define the meanings and measures of shame and regret, restraint and respect, responsibility and restitution that a human rights regime presupposes. Religions must, thus, be seen as indispensable allies

¹²For the religious individual, the right to believe leads to the rights to assemble, speak, worship, evangelize, educate, and travel. For the religious association, the right to exist invariably involves the right to corporate property, collective worship, organizing charity, parochial education, freedom of press, and even autonomy of governance. Witte, Jr. “The Spirit of the Laws, the Laws of the Spirit.”

¹³Robert Traer, *Faith in Human Rights*, Washington DC: Ethics and Public Policy Center, 1991, 10-11.

in the modern struggle for human rights. To exclude them from the struggle is impossible, indeed, catastrophic!

On the other hand, religious narratives need human rights norms both to protect them and to challenge them. Religious narratives, be they in the form of sacred texts or canons, in fact, say more about commandments and obligations than about liberties and rights. Their theologians and jurists have resisted the importation of human rights as much as they have helped in their cultivation. Their internal policies and external advocacy have helped to perpetuate bigotry, chauvinism, and violence as much as they have served to propagate equality, liberty, and fraternity. The blood of thousands is at the doors of our churches, temples, and mosques. Pogroms, crusades, jihads, inquisitions, and ostracisms have had a devastating effect within and among these faiths. Unless religious traditions are able to rediscover the human rights from within, religions will never succeed in resolving their internal paradoxes and inconsistencies.

4. Human Rights and Their Religious Roots

Human rights are neither new nor secular in origin. In substantial part human rights are the modern political fruits of ancient religious beliefs and practices, such as ancient Jewish constructions of covenant and *mitzvot*, original Qur'anic texts on peace and the common good, medieval Catholic concepts of *ius* and *libertas*, classical Protestant ideals of freedom and law, etc.

Many of the common formulations of individual and collective rights and liberties of today were first inspired neither by a John Locke nor by a James Madison, but by Christian apologists as early as the Patristic era. The most explicit references to general religious freedom among the apologists are found in Tertullian and Lactantius. "It is a matter of both human and natural law," says Tertullian, "that every man can worship as he wishes... It is not in the nature of religion to impose itself by force." Augustine expressed this freedom in a famous formula: "No man can believe unless he wants to" (*credere non potest homo nisi volens*). The Patristic Age contributed some important starting points concerning religious freedom. Among other things are freedom to accept the faith and the refusal of extreme penalties for religious offences.¹⁴

¹⁴See Joseph Lecler, "Religious Freedom: An Historical Survey," in Neophytos Edelby et al ed., *Religious Freedom*, New York: Paulist Press, 1966, 3-20.

In the Middle Ages, in spite of the Church's complete lack of tolerance toward heretics, the medieval canonists and theologians also help a great deal in laying the basic formulations for the modern human rights. Medieval canon law was based, in part, on the concept of individual and corporate rights (*iura*, the plural of *ius*). A good deal of the rich medieval canon law was cast, substantively and procedurally, in the form and language of rights.¹⁵ The basic medieval rights formulations of exemptions, immunities, privileges and benefits, and the free exercise of religious worship, travel, speech, and education have persisted to this day.

Later, during the Protestant Reformation, Martin Luther, John Calvin, Thomas Cranmer and other sixteenth-century reformers, began their movements with a call for freedom from the ecclesiastical regime – freedom of the individual conscience from intrusive canon laws and clerical controls, freedom of political officials from ecclesiastical powers and privileges, etc. The Protestant Reformation permanently broke the unity of law and religion in Western Christendom, and thereby introduced the foundations for the modern constitutional system of confessional pluralism. The Protestant Reformation also broke the primacy of corporate Christianity and gave new emphasis to the role of individual believers with their own dignity. All persons stand equal before God and, therefore, they must stand equal also before God's political agents in the state. Protestant theology provides unique balances between liberty and responsibility, dignity and depravity, individuality and community, politics and pluralism. Such doctrines of the person and society were, then, cast into modern democratic social forms.¹⁶

In the twentieth century, the Vatican Council II (1962-65) in the Catholic Church has played an important role again in the enhancement of the awareness of human rights. In a series of sweeping new doctrinal statements, the Church came to endorse human rights and democratic principles. Every person, the Church taught, is created by God with dignity, intelligence and free will, and has rights flowing directly and simultaneously from his very nature.¹⁷ Such rights include the right to life and adequate standards of living, to moral and cultural values, to religious

¹⁵See R. H. Helmholz, *The Spirit of Classical Canon Law*, Athens, GA: University of Georgia Press, 1996.

¹⁶See John Witte, Jr., "The Spirit of the Laws, the Laws of Spirit," 100-101.

¹⁷*Pacem in Terris* (1963), paragraph 9.

activities, to assembly and association, to marriage and family life, and to various social, political, and economic benefits and opportunities. The Church emphasized the religious rights of conscience, worship, assembly, and education, calling them the “first rights” of any civic order. Governments everywhere were encouraged to create conditions conducive to the realization and protection of these “inviolable rights” and to root out every type of discrimination, whether social or cultural, whether based on sex, race, colour, social distinction, language, or religion. As a corollary, the Church advocated limited constitutional government and separation of church and the state. The vast pluralism of religions and cultures, and the inherent dangers in state endorsement of any religion, in the Church’s view, rendered mandatory democratic forms of government.¹⁸ From then on, the Catholic Church was thereby transformed from a passive accomplice in authoritarian regimes to a powerful advocate of democratic and human rights reform. The new wave of political democratization that has been breaking over the world since the early 1970s, such as those in Brazil, Chile, Poland, Hungary, Ukraine, the Philippines, and elsewhere, owes much of its inspiration to the teaching and activity of the Catholic Church.

In the Jewish tradition, the fundamental source of religious freedom is to be found in God’s intention that humans, of their own free will, seek and serve God. Both God’s omniscience and humanity’s freedom are asserted. The risk of freedom, of course, is its abuse, but the exercise of freedom in faith results in a growth of one’s humanity and in a deepening of one’s sense of oneness with God. Some rabbis were even ready to suggest that God’s power in the world is dependent on humanity’s proper exercise of its freedom.¹⁹ Human beings are granted by God on a fundamental freedom – the freedom “to fear heaven.” It is only in the exercise of this freedom that they can experience God’s presence. All other freedoms that human beings enjoy derive from the fulfilment of this first and primary freedom. For in seeking after God, humans must create society, join in labour with others, pursue peace and make justice secure. God’s word obliges man to achieve justice in society and to pursue peace. God’s covenant was made with the entire people, and not merely with the

¹⁸See *Dignitatis Humanae* (on Religious Freedom) (1965).

¹⁹See Rabbi Arthur Gilbert, “Religious Freedom in Jewish Tradition and Experience,” in Neophytos Edelby et al ed., *Religious Freedom*, 21-36.

elders or the priests. Thus, Judaism taught that the sanctuary and government, the priests and prince, were vessels of God's grace.²⁰

In the Islamic tradition, religious freedom is rather more problematic. While many Muslim states today have a democratic constitution which guarantees freedom of religion, their notion of the exclusive sovereignty of God alone at the centre of human affairs often makes it difficult for Muslims to really appreciate the sovereignty of politics, of economics, of culture, of family, or of nature, apart from God's rule and authority. The "sovereignty" of secular discourse, including that on religious freedom or general human rights, does not have the same weight in Muslim thought that it has, or is claimed to have, in the Western culture.²¹ The Islamic concepts of obedience, service and servanthood to the absolute rule of God are related to doctrinaire defiance of idolatry, of the world's false absolute and of modernization as a self-sufficient autonomous process. In such a framework, particularly in Muslim states, the modern idea of full equality of rights for all citizens without religious distinction is still controversial. Historically, during the Medina period, Muhammad promulgated a constitution in which he offered protection and security to the warring tribes living there. The constitution, usually considered by the Muslims as the "first democratic constitution in the world," indeed, offered a new element of social stratification, one based not on blood and kinship solidarity but on religion and obedience to the Prophet. At the top of the social order was the Prophet himself, followed by his companions (*ashab*), the ranks of emigrants (*muhajirun*), the Medinan helpers (*ansar*), the tributary populations, captives taken in razzias and similar sources, and those waiting to be subdued. Such were the delineations of the new "Pax Islamica."²² In this framework Christianity and Judaism, for example, since they are still considered as basically true, must not be molested and are given a right to freedom and respect within certain limits, that is, as long as they observe the treaty which binds them to Islam and pay their tribute regularly. The Islamic religion cannot be imposed on followers of other religions. Hence, one of the finest sayings of the Qur'an reads:

²⁰Gilbert, "Religious Freedom in Jewish Tradition and Experience," 24.

²¹See Lamin Saneh, "Muhammad in Muslim Tradition and Practice," in Max L. Stackhouse et al ed., *Christ and the Dominions of Civilization*, Harrisburg, PA: Trinity Press International, 2002, 301.

²²Saneh, "Muhammad in Muslim Tradition and Practice," 292.

“There is no coercion in religion; by itself, truth is enough to distinguish it from error.”²³ On the other hand, however, while followers of other religions are free to become Muslims, in reality a Muslim is not free to become a follower of another religion. Such a conversion used to be punishable by death, or at least, today, the convert is subjected to all kinds of threats and social pressures. Today, in many states that have a majority of Muslims, such as Indonesia, Malaysia, and Sudan, the tendency to proclaim Islam as the religion of the state still prevails. While this does not necessarily cause religious discrimination with regard to the non-Muslims, the latter may well fear that this will lead to a legalized return to their condition of being “protected and subjected.” Even in modern Muslim states, other religions are tolerated but not really accepted. Islam remains *the* religion. Thus, the recognition of full equality of rights for all citizens without religious distinction continues to be unresolved.

5. Repositioning Human Rights

The human rights system is, in fact, not a static belief system. It is fluid, elastic, and open to challenges and changes. It is a relative system of ideas and ideals that presupposes the existence of fundamental beliefs and values that will constantly reshape it. It is the *jus gentium* of our times, the common law of nations, which a variety of Hebrew, Greek, Roman, Christian, and Enlightenment movements have historically nurtured in the West, and which today still needs the constant nurture of multiple communities.²⁴

It is beyond doubt that current formulations of human rights are suffused with fundamental libertarian beliefs and values, some of which run counter to the cardinal beliefs of various religious traditions. The modern cultivation of human rights in the West began when both Christianity and the Enlightenment seemed incapable of delivering on their promises. In the middle of the twentieth century there was no second coming of Christ promised by Christians, no heavenly city of reason promised by enlightened libertarians, no withering away of the state

²³Qur’an II, 257.

²⁴The term *jus gentium* is borrowed here from John Witte, Jr., who rightly used the term *jus gentium* to signal the place of human rights as “middle axioms” in our moral and political discourse. See John Witte, Jr. “The Spirit of the Laws, the Laws of Spirit,” 89-90.

promised by enlightened socialists. The modern human rights movement was, thus, born out of desperation in the aftermath of the World War II. It was an attempt to find a world faith to fill a spiritual void. Nevertheless, in the decades following the World War II, a “human rights revolution” erupted. In America and Europe, this rights revolution yielded a powerful grassroots civil rights movement. In Africa and Latin America, it produced agitation, and eventually revolt, against colonial and autocratic rule. At the international level, the Universal Declaration of 1948 inspired new declarations, covenants, and conventions on more discrete rights. Thus, within a generation, human rights had become the “new civic faith” of the post-war world order.²⁵

In the global context of today, the human rights system may well be placed as “middle axioms” in our moral and political discourse. Historically, Hebrew, Greek, Roman, and Christian writers alike spoke of a hierarchy of laws – from natural law (*ius naturale*), to common law (*jus gentium*), to positive law (*ius civile*). The natural law was the set of immutable principles of reason and conscience, which are supreme in authority, and must always prevail in instances of dispute. The positive law was the set of enacted laws and procedures of local political communities, reflecting their immediate policies and procedures. Between these two sets of norms was the *jus gentium*, the set of principles and customs common to several communities and often the basis for treaties and other diplomatic conventions. The contents of the *jus gentium* did gradually change over time and across cultures, as new interpretations of the natural law were offered, and as new formulations of the positive law became increasingly conventional. But the *jus gentium* was a relatively consistent body of principles governing a person and a people.²⁶

As *jus gentium*, human rights law is derived from and dependent on the transcendent principles that religious traditions continue to cultivate. It also informs, and is informed by, shifts in the customs and conventions of various state law systems. Thus, human rights law does gradually change over time: just compare the international human rights instruments of 1948 with those of today. But human rights norms are a relatively stable set of ideals by which a person and community might be guided and judged. For

²⁵See Jacques Maritain, *Man and the State*, Chicago: University of Chicago Press, 1951, 110-11.

²⁶See Witte, Jr., “The Spirit of the Laws, the Laws of Spirit,” 90.

this reason, religious bodies must again nurture and challenge the middle axioms of the *jus gentium* with the transcendent principles of the *ius naturale*. Such an effort, however, must be part of a collective discourse of competing understandings of the *ius naturale* – of competing theological views of the divine and the human, of sin and salvation, of individuality and community – that will serve constantly to inform and reform, and to develop and deepen, the human rights ideals now in place.

6. Conclusion

Being the source of transcendental insights, religions have the responsibility to enhance the higher and deeper understandings of what “becoming more human” is supposed to mean, especially in the changing and conflicting global context. In order to do so, religious bodies must have the courage and openness for self-criticism, a hermeneutic of suspicion, and an awareness of their often self-deceptive defence mechanism; that is, they must be aware of what Derrida calls the “auto-immunization” of religions.