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For: *Annual of the American Society of Christian Ethics* 26 (1998): 257-262

Law, Religion, and Human Rights:
An Historical Protestant Perspective

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The Protestant Reformation was, in part, a human rights movement. Prior to the sixteenth century, there was one universal Catholic faith and Church, one universal system of canon law and sacramental life, one universal hierarchy of courts and administrators centered in Rome that ruled throughout much of the West. Martin Luther, John Calvin, Thomas Cranmer, Menno Simmons, and other sixteenth-century reformers all began their movements with a call for freedom from this ecclesiastical regime -- freedom of the individual conscience from intrusive canon laws and clerical controls, freedom of political officials from ecclesiastical power and privileges, freedom of the local clergy from central papal rule and oppressive princely controls. "Freedom of the Christian" became the rallying cry of the early Reformation. It drove theologians and jurists, clergy and laity, princes and peasants alike to denounce canon laws and ecclesiastical authorities with unprecedented alacrity, and to urge radical constitutional reforms.

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 Anglican Reformation nationalized the faith through the famous Tudor Acts of Uniformity (1536 and 1559) of the Church and Commonwealth of England. Citizens of the Commonwealth were required to be communicants of the Church of England, subject to the final authority of the Monarch. The Toleration Act (1689) extended a modicum of rights to Protestant dissenters, but it was not until the Jewish and Catholic Emancipation Acts of 1829 and 1833 that the national identity of the Church and Commonwealth of England was finally broken.

The Lutheran Reformation territorialized the faith through the principle of *cuius regio, eius religio* (whosever region, his religion) established by the Peace of Augsburg (1555). Under this principle, princes or city councils were authorized to prescribe the appropriate forms of Evangelical or Catholic doctrine, liturgy, and education for their polities -- with religious dissenters granted the right to worship privately in their homes or to emigrate peaceably from the polity. After decades of bitter civil war, the Peace of Westphalia (1648) extended this privilege to Calvinists as well, rendering Germany a veritable honeycomb of religious plurality until the nineteenth century.

The Anabaptist Reformation communalized the faith by introducing what Menno Simmons called the *Scheidungsmaurer* -- the wall of separation between the redeemed realm of religion and the fallen realm of the world. Religious communities were ascetically withdrawn from the world in small, self-sufficient, intensely democratic communities, governed internally by biblical principles of discipleship, simplicity, hospitality, charity, and Christian obedience. When such communities grew too large or too divided, they deliberated colonized themselves, eventually spreading the

Anabaptists from Russia to Ireland to the further frontiers of North America.

The Calvinist Reformation congregationalized the faith by introducing rule by a democratically elected consistory of pastors, elders, and deacons. In John Calvin's Geneva, the consistory was still appointed and held broad personal and subject matter jurisdiction over all members of the city. By the seventeenth century, however, Calvinist communities throughout Europe and North America reduced the consistory to an elected, representative system of government within each church. These consistories featured separation among the offices of preaching, discipline, and charity, and a fluid, dialogical form of religious polity and policing centered around collective worship and congregational meetings.

The Protestant Reformation also broke the primacy of corporate Christianity and gave new emphasis to the role of the individual believer in the economy of salvation. This was true even in the more intensely communitarian traditions of Anglicanism and Anabaptism. The Anglican Book of Common Prayer was designed, in Thomas Cranmer's words, as a "textbook of liberty." The daily office of the lectionary, together with the vernacular Bible, encouraged the exercise of private devotion outside the church. The choices among liturgical rites and prayers within the Prayer Book encouraged the exercise of at least some clerical innovation within the church, with such opportunities for variation and innovation increasing with the 1662 and 1789 editions of the Prayer Book.

The Anabaptist doctrine of adult baptism gave new emphasis to a voluntarist understanding of religion, as opposed to conventional notions of a birthright or predestined faith. The adult individual was now called to make a conscientious choice to accept the faith -- metaphorically, to scale the wall of separation between the fallen world and the realm of religion to come within the perfection of Christ. Later Free Church followers converted this cardinal image into a powerful platform of liberty of conscience, free exercise of religion, and separation of church and state -- not only for Christians but eventually for all peaceable believers. Their views had a great influence on formation of the constitutional protections of religious liberty in eighteenth and nineteenth century North America and Western Europe.

The Lutheran and Calvinist branches of the Reformation laid the anthropological basis for an even more expansive theory and law of liberty and rights. Classic Protestant theology teaches that a person is both saint and sinner. On the one hand, a person is created in the image of God and justified by faith in God. The person is called to a distinct vocation, which stands equal in dignity and sanctity to all others. The person is prophet, priest, and king and responsible to exhort, minister, and rule in the community. Every person, therefore, stands equal before God and before his neighbor. Every person is vested with a natural liberty to live, to believe, to serve God and neighbor. Every person is entitled to the vernacular Scripture, to education, to work in a vocation.

On the other hand, the person is sinful and prone to evil and egoism. He needs the restraint of the law to deter him from evil and to drive him to repentance. She needs the association of others to exhort, minister, and rule her with law and with love. Every person, therefore, is inherently a communal creature. Every person belongs to a family, a church, a political community.

Lutheran and Calvinist groups in Europe and North America eventually cast these theological doctrines into democratic forms designed to protect human rights. Protestant doctrines of the person and society were cast into democratic social forms. Since all persons stand equal before God, they must stand equal before God's political agents in the state. Since God has vested all persons with natural liberties of life and belief, the state must ensure them of similar civil liberties. Since God has called all persons to be prophets, priests, and kings, the state must protect their freedoms to speak, to preach, and to rule in the community. Since God has created persons as social creatures, the state must promote and protect a plurality of social institutions, particularly the church and the family.

Protestant doctrines of sin were cast into democratic political forms. The political office must be protected against the sinfulness of the political official. Political power, like ecclesiastical power, must be distributed among self-checking executive, legislative, and judicial branches. Officials must be elected to limited terms of office. Laws must be clearly codified, and discretion closely guarded. If officials abuse their office, they must be disobeyed; if they persist in their abuse, they must be removed, even if by force.

In the past, these Protestant teachings helped to inaugurate several of the great Western revolutions fought in the name of human rights and democracy. They were the driving ideological forces behind the revolts of the French Huguenots, Dutch pietists, and Scottish Presbyterians against their monarchical oppressors in the later sixteenth and seventeenth centuries. They were critical weapons in the arsenal of the revolutionaries in England, America, and France. They were important sources of inspiration and instruction during the great age of democratic construction in later eighteenth and nineteenth century America and Western Europe. In this century, Protestant ideas of human rights and democracy helped to drive the constitutional reformation of France, Germany, Italy, and Iberia in the post-War period, and some of the human rights and democratic movements against colonial autocracy in Africa and fascist revival in Latin America.

These cardinal Protestant teachings and practices have much to offer to the regime of human rights in the twenty-first century. Protestant theology avoids the reductionist extremes of both libertarianism that sacrifices the community for the individual and socialism that sacrifices the individual for the community. It also avoids the limitless expansion of human rights claims by grounding these norms in the creation order, divine callings, and covenant relationships. On this foundation, Protestant theology strikes unique balances between liberty and responsibility, dignity and depravity, individuality and community, politics and pluralism.

To translate these theological principles into human rights practices is perhaps the greatest challenge facing the Protestant churches in the immediate future. The Protestant tradition needs to have its own Vatican II, its own comprehensive and collective assessment of its future role in the human rights drama. Of course, Protestant congregationalism militates against such collective action, as do the many ancient animosities among Protestant sects. But this is no time, and no matter, for denominational snobbery or sniping. Protestants need to sow their own distinct seeds of human rights while the field is still open. Else,

there will be little to harvest, and little room to complain, in the next century.