

A Primer on the Rights and Wrongs of Proselytism

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I. Introduction

The problem of proselytism is one of the great ironies of the democratic revolution of the modern world. In the last third of the twentieth century, more than 30 new democracies were born around the world. More than 150 major new national, regional, and international instruments on religious liberty were forged -- many replete with generous protections of liberty of conscience and freedom of religious exercise, guarantees of religious pluralism, equality, and non-discrimination, and several other special protections and entitlements for religious individuals and religious groups.¹

On the one hand, the modern human rights revolution has helped to catalyze a great awakening of religion around the globe. In regions newly committed to democracy and human rights, ancient faiths once driven underground by autocratic oppressors, have sprung forth with new vigor. In the former Soviet bloc, for example, numerous Buddhist, Christian, Hindu, Jewish, Muslim, and other faiths have been awakened, alongside a host of exotic goddess, naturalist, and personality cults.² In post-colonial and post-revolutionary Africa, these same mainline

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¹ For a good sampling of international and local legal documents on religious liberty, see Natan Lerner, *Religion, Belief, and International Human Rights* 129-147 (2000); *Religion and Human Rights: Basic Documents* (Tad Stahnke and J. Paul Martin, eds., 1998) [hereafter *Religion and Human Rights*]. For analysis, see Kevin Boyle and Juliet Sheen, *Freedom of Religion and Belief: A World Report* (1997); Malcolm D. Evans, *Religious Liberty and International Law in Europe* (1997).

² *Proselytism and Orthodoxy in Russia: The New War for Souls* (John Witte, Jr. and Michael Bourdeaux, eds., 1999) [hereafter *Proselytism and Orthodoxy*].

religious groups have come to flourish in numerous conventional and inculturated forms, alongside a bewildering array of Traditional groups.³ In Latin America, the human rights revolution has not only transformed long-standing Catholic and mainline Protestant communities but also triggered the explosion of numerous new Evangelical, Pentecostal, and Traditional movements.⁴ Many parts of the world have seen the prodigious rise of a host of new or newly minted faiths -- Adventists, Bahi'as, Hare Krishnas, Jehovah's Witnesses, Mormons, Scientologists, Unification Church members, among many others -- some wielding ample material, political, and media power.⁵ Religion today has become, in Susanne Rudolph's apt phrase, the latest "transnational variable."⁶

On the other hand, in parts of Russia, Eastern Europe, Africa, and Latin America, this human rights revolution has brought on something of a new war for souls between indigenous and foreign religious groups. With the political transformations of these regions in the past two decades, foreign religious groups were granted rights to enter these regions for the first time in decades. In the 1980s and 1990s, they came in increasing numbers to preach their faiths, to offer their services, to convert new souls. Initially, local religious groups -- Orthodox, Catholic, Protestant, Sunni, Shi'ite, and Traditional alike -- welcomed these foreigners, particularly their foreign co-religionists with whom they had lost contact for many decades. Today, local religious groups have come to resent these foreign religions, particularly those from North America and Western Europe who assume a democratic human rights ethic. Local religious groups resent the participation in the marketplace of religious ideas that democracy assumes. They resent the toxic waves of materialism and individualism that democracy inflicts. They resent the massive expansion of religious pluralism that democracy

³ Human Rights in Africa: Cross-Cultural Perspectives (Abdullahi Ahmed An-Na'im and Frances Deng, eds., 1990); Proselytization and Communal Self-Determination in Africa (Abdullahi Ahmed An-Na'im, ed. 1999); *Symposium: The Problem of Proselytism in Southern Africa*, 14 Emory Int. L. Rev. ___ (2000).

⁴ Religious Freedom and Evangelization in Latin America: Linking Pluralism and Democracy (Paul E. Sigmund, ed., 1999)

⁵ New Religious Movements in Europe (H. Meldgaard and J. Aagaard eds., 1997); New Religions and New Religiosity (E. Braker & M. Warburg, eds., 1998); Jonathan Luxmoore and Jolanta Babiuch-Luxmoore, *New Myths for Old: Proselytism and Transition in Post-Communist Europe*, 36 J. Ecumenical Stud. 43-64 (1999).

⁶ Susanne Hoeber Rudolph, *Introduction*, in *Transnational Religion and Fading States* 6 (Susanne Hoeber Rudolph and James Piscatori, eds., 1997).

encourages. They resent the extravagant forms of religious speech, press, and assembly that democracy protects.⁷

A new war for souls has thus broken out in these regions -- a war to reclaim the traditional cultural and moral souls of these new societies and a war to retain adherence and adherents to the indigenous faiths. In part, this is a theological war -- as rival religious communities have begun actively to demonize and defame each other and to gather themselves into ever more dogmatic and fundamentalist stands. The ecumenical spirit of the previous decades is giving way to sharp new forms of religious balkanization. In part, this is a legal war -- as local religious groups have begun to conspire with their political leaders to adopt statutes and regulations restricting the constitutional rights of their foreign religious rivals. Beneath shiny constitutional veneers of religious freedom for all, and beneath unqualified ratification of international human rights instruments, several countries of late have passed firm new anti-proselytism laws, cult registration requirements, tightened visa controls, and various discriminatory restrictions on new or newly arrived religions.

Hence the modern problems of proselytism: How does the state balance one community's right to exercise and expand its faith versus another person's or community's right to be left alone to its own traditions? How does the state protect the juxtaposed rights claims of majority and minority religions, or of foreign and indigenous religions? How does the state craft a general rule to govern multiple theological understandings of conversion or change of religion? These are not new questions. They confronted the drafters of the international bill of rights from the very beginning. But some of the compromises of 1948 and 1966 have today begun to betray their limitations.

II. The Problem of Conversion

One side of the modern problem of proselytism is the problem of competing theological and legal understandings of conversion or change of religion.⁸ How does a state craft a

⁷ See sources in notes 2-4, and further *Symposium: Pluralism, Proselytism and Nationalism in Eastern Europe*, 36 *J. Ecumenical Stud.* 1-286 (1999).

⁸ See the comprehensive study of Natan Lerner, *Proselytism, Change of Religion, and International Human Rights*, 12 *Emory Intl. L. Rev.* 477-561 (1998), updated in Lerner, *supra* note 1, at 80-118, and more briefly Evans,

legal rule that at once respects and protects the sharply competing understandings of conversion among the religions of the Book. Most Western Christians have easy conversion into and out of the faith. Most Jews have difficult conversion into and out of the faith. Most Muslims have easy conversion into the faith, but allow for no conversion out of it, at least for prominent members.⁹ Whose rites get rights? Moreover, how does one craft a legal rule that respects Orthodox, Hindu, Jewish, or Traditional groups that tie religious identity not to voluntary choice, but to birth and caste, blood and soil, language and ethnicity, sites and sights of divinity?¹⁰

On the issue of conversion or change of religion, the major international human rights instruments largely accept the religious voluntarism common among libertarian and Western Christian groups. The 1948 Universal Declaration of Human Rights included an unequivocal guarantee: "Everyone has the right to freedom of thought, conscience, and religion; this right includes the right to change his religion or belief...."¹¹ The 1966 International Covenant on Civil and Political Rights, whose preparation was more highly contested on this issue, became a bit more tentative: "This right shall include to have or adopt a religion or belief of his choice...."¹² The 1981 Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief repeated this same more tentative language. But the dispute over the right to conversion contributed greatly to the long delay in the production of this instrument, and to the number of dissenters to it.¹³ The 1989 Vienna Concluding Document did not touch the issue at all, but simply confirmed "the freedom of the individual to profess or practice religion or belief" before turning to a robust rendition of religious group rights.¹⁴

supra note 1, at 201ff., 221ff.; J.A. Walkate, *The Right of Everyone to Change his Religion or Belief*, 2 *Netherlands Intl. L. Rev.* 146 (1983).

⁹ See respectively, Joel A. Nichols, *Mission, Evangelism, and Proselytism in Christianity: Mainline Conceptions as Reflected in Church Documents*, 12 *Emory Intl. L. Rev.* 563-656 (1998); David Novak, *Proselytism and Conversion in Judaism*, in *Sharing the Book*, supra note *, at 17-44; Donna E. Arzt, *The Treatment of Religious Dissidents under Classic and Contemporary Islamic Law*, in *Religious Human Rights in Global Perspective: Religious Perspectives* 387-453 (John Witte, Jr. and Johan D. van der Vyver, eds., 1996).

¹⁰ See, e.g., Michael J. Sandel, *Freedom of Conscience or Freedom of Choice*, in *Articles of Faith, Articles of Peace* 74-92 (James Davison Hunter and Os Guinness, eds., 1990).

¹¹ Article 18.

¹² Article 18.1.

¹³ Article 1.1.

¹⁴ Principle 16.

Today, the issue has become more divisive than ever as various soul wars have broken out, especially between and within Christian and Muslim communities around the globe.

"A page of history is worth a volume of logic," Oliver Wendell Holmes, Jr. once said.¹⁵ And, on an intractable legal issue such as this, recollection might be more illuminating than ratiocination.

It is discomfiting, but enlightening, for Western Christians to remember that the right to enter and exit the religion of one's choice was born in the West only after centuries of cruel experience. To be sure, a number of the early Church Fathers considered the right to change religion as essential to the notion of liberty of conscience, and such sentiments have been repeated and glossed continuously over the centuries. But in practice the Christian Church largely ignored these sentiments for centuries. As the medieval Catholic Church refined its rights structures in the twelfth and thirteenth centuries, it also routinized its religious discrimination, reserving its harshest sanctions for heretics. The communicant faithful enjoyed full rights. Jews and Muslims enjoyed fewer rights, but full rights if they converted to Christianity. Heretics -- those who voluntarily chose to leave the faith -- enjoyed still fewer rights, and had little opportunity to recover them even after full confession. Indeed, at the height of the inquisition in the fifteenth century, heretics faced not only severe restrictions on their persons, properties, and professions, but sometimes unspeakably cruel forms of torture and punishment.¹⁶ Similarly, as the Lutheran, Calvinist, and Anglican Churches born of the Protestant Reformation routinized their establishments in the sixteenth and seventeenth centuries, they inflicted all manner of repressive civil and ecclesiastical censures on those who chose to deviate from established doctrine -- savage torture and execution in a number of instances.¹⁷

It was, in part, the recovery and elaboration of earlier patristic concepts of liberty of conscience as well as the slow expansion of new Protestant and Catholic theologies of religious voluntarism that helped to end this practice. But, it was also

¹⁵ *New York Trust Co. v. Eisner*, 256 U.S. 345, 349 (1921).

¹⁶ *Persecution and Toleration* (W.J. Sheils, ed., 1984); James Parkes, *The Jew in the Medieval Community: A Study of his Political and Economic Situation* (2d ed., 1976); Solomon Grayzel, *The Church and the Jews in the XIIIth Century* (1933).

¹⁷ See sources and discussion in *Religious Liberty in Western Thought* (Noel B. Reynolds and W. Cole Durham, Jr., eds., 1996).

the new possibilities created by the frontier and by the colony that helped to forge the Western understanding of the right to change religion. Rather than stay at home and fight for one's faith, it became easier for the dissenter to move away quietly to the frontier, or later to the colony, to be alone with his conscience and his co-religionists. Rather than tie the heretic to the rack or the stake, it became easier for the establishment to banish him quickly from the community with a strict order not to return. Such pragmatic tempering of the treatment of heretics and dissenters eventually found theological justification. By the later sixteenth century, it became common in the West to read of the right, and the duty, of the religious dissenter to emigrate physically from the community whose faith he or she no longer shared.¹⁸ In the course of the next century, this right of physical emigration from a religious community was slowly transformed into a general right of voluntary exit from a religious faith and community. Particularly American writers, many of whom had voluntarily left their European faiths and territories to gain their freedom, embraced the right to leave -- to change their faith, to abandon their blood, soil and confession, to reestablish their lives, beliefs, and identities afresh -- as a veritable sine qua non of religious freedom.¹⁹ This understanding of the right to choose and change religion -- patristic, pragmatic, and Protestant in initial inspiration -- has now become an almost universal feature of Western understandings of religious rights.

To tell this peculiar Western tale is not to resolve current legal conflicts over conversion. But it is to suggest that even hard and hardened religious traditions can and do change over time, in part out of pragmatism, in part out of fresh appeals to ancient principles long forgotten. Even those schools of jurisprudence within Shi'ite and Sunni communities that have been the sternest in their opposition to a right to conversion from the faith, do have resources in the Qur'an, in the early development of Shari'a, and in the more benign

¹⁸ The most famous formulation of the right, and duty, of the dissenter to emigrate peaceably from the territory whose religious establishment he or she cannot abide, comes in the Peace of Augsburg (1555), and its provisions are repeated in the Edict of Nantes (1598) and the Religious Peace of Westphalia (1648). See *Church and State Through the Centuries: A Collection of Historical Documents with Commentary 164-198* (Sidney Z. Ehler and John B. Morrall, eds., 1964).

¹⁹ Max L. Stackhouse and Deirdre King Hainsworth, *Deciding for God: The Right to Convert in Protestant Perspectives*, in *Sharing the Book*, supra note *, at 201-230 and further sources on the nineteenth century American experience in my *Religion and the American Constitutional Experiment: Essential Rights and Liberties* 96-100 (2000).

policies of other contemporary Muslim communities, to rethink their theological positions.²⁰

Moreover, the Western story suggests that there are half-way measures, at least in banishment and emigration, that help to blunt the worst tensions between a religious group's right to maintain its standards of entrance and exit and an individual's liberty of conscience to come and go. Not every heretic needs to be executed. Not every heretic needs to be indulged. It is one thing for a religious tradition to insist on executing its charges of heresy, when a mature adult, fully aware of the consequences of his or her choice, voluntarily enters a faith, and then later seeks to leave. In that case group religious rights must trump individual religious rights -- with the limitation that the religious group has no right to violate, or to solicit violation of, the life and limb of the wayward member. It is quite another thing for a religious tradition to press the same charges of heresy against someone who was born into, married into, or coerced into the faith and now, upon opportunity for mature reflection, voluntarily chooses to leave. In that case, individual religious rights trump group religious rights.

Where a religious group exercises its trump by banishment or shunning and the apostate voluntarily chooses to return, he does so at his peril. He should find little protection in state law when subject to harsh religious sanctions -- again, unless the religious group threatens or violates his or his family's life or limb. Where a religious individual exercises her trump by emigration, and the group chooses to pursue her, it does so at its peril. It should find little protection from state law when charged with tortious or criminal violations of the individual.

III. The Problem of Proselytism.

The corollary to the problem of conversion is the problem of proselytism -- of the efforts taken by individuals or groups to seek the conversion of another. On this issue the

²⁰ Farid Esack, *Muslims Engaging the Other and Humanum*, in *Sharing the Book*, supra note *, at 118-144; Richard C. Martin, *Conversion to Islam by Invitation*, in *Sharing the Book*, supra note *, at 95-117; Arzt, supra note 9; Donna E. Arzt, *Jihad for Hearts and Minds*, in *Sharing the Book*, supra *, at 79-94.

international human rights instruments provide somewhat more nuanced direction.²¹

Article 18 of the 1966 International Covenant on Civil and Political Rights protects a person's "freedom, individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice, and teaching."²² But the same article allows such manifestation of religion to be subject to limitations that "are prescribed by law and are necessary to protect public safety, order, health, or morals, or the fundamental rights and freedoms of others."²³ It prohibits outright any "coercion" that would impair another's right "to have or adopt a religion or belief of [his or her] choice."²⁴ It also requires State parties and individuals to have "respect for the liberty of parents ... to ensure the religious and moral education of their children in conformity with [the parents'] convictions" -- a provision underscored and amplified in more recent instruments and cases on the rights of parents and children.²⁵

Similarly, Article 19 of the same 1966 Covenant protects the "freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, or in print, in the form of art, or through any other media of his choice."²⁶ But Article 19, too, allows legal restrictions that are necessary for "respect of the rights and reputation of others; for the protection of national security or of public order (ordre public) or of public health or morals."²⁷ As a further limitation on the rights of religion and (religious) expression guaranteed in Articles 18 and 19, Article 26 of the 1966 Covenant prohibits any discrimination on grounds of religion. And Article 27 guarantees to religious minorities

²¹ Lerner, *supra* note 1, at 80-118; Tad Stahnke, *Proselytism and the Freedom to Change Religion in International Human Rights Law*, Brigham Young University Law Review 251 (1999).

²² ICCPR, Article 18.1, reprinted in Religion and Human Rights, *supra* note 1, at 74 (emphasis added).

²³ *Ibid.*, Article 18.3, reprinted in Religion and Human Rights, *supra* note 1, at 74.

²⁴ *Ibid.*, Article 18.2, reprinted in Religion and Human Rights, *supra* note 1, at 74.

²⁵ *Ibid.*, Article 18.4, reprinted in Religion and Human Rights, *supra* note 1, at 74. See further Convention on the Rights of the Child (November 20, 1989), 28 I.L.M. 1448.

²⁶ *Ibid.*, Article 19.2, reprinted in Religion and Human Rights, *supra* note 1, at 74 (emphasis added).

²⁷ *Ibid.*, Article 19.3, reprinted in Religion and Human Rights, *supra* note 1, at 74.

"the right to enjoy their own culture" and "to profess and practise their own religion."²⁸

The literal language of the mandatory 1966 Covenant (and its amplification in more recent instruments and cases) certainly protects the general right to proselytize -- understood as the right to "manifest," "teach," "express," and "impart" religious ideas for the sake, among other things, of seeking the conversion of another. The Covenant provides no protection for coercive proselytism. At minimum, this bars physical or material manipulation of the would-be convert, and in some contexts even more subtle forms of deception, enticement, and inducement to convert. The Covenant also casts serious suspicion on any proselytism among children or among adherents to minority religions. But, outside of these contexts, the religious expression inherent in proselytism is no more suspect than political, economic, artistic, or other forms of expression, and should, at minimum, enjoy the same rights protection.

Such rights to religion and religious expression are not absolute. The 1966 Covenant and its progeny allow for legal protections of "public safety, order, health, or morals," "national security" and "the rights and reputation of others," particularly minors and minorities. But all such legal restrictions on religious expression must always be imposed without discrimination against any religion, and with due regard for the general mandates of "necessity and proportionality" -- the rough international analogues to the "compelling state interest" and "least restrictive alternative" prongs of the strict scrutiny test of American constitutional law. General "time, place, and manner" restrictions on all proselytizers that are necessary, proportionate, and applied without discrimination against any religion might thus well be apt. But categorical criminal bans on proselytism, or patently discriminatory licensing or registration provisions on proselytizing faiths are prima facie a violation of the religious rights of the proselytizer -- as has been clear in the United States since

²⁸ Ibid., Article 27, reprinted in Religion and Human Rights, supra note 1, at 75. See further Declaration on The Rights of Persons Belonging to National or Ethnic, Religious, and Linguistic Minorities, United Nations General Assembly Resolution 135 (December 18, 1992), Article 2.1, reprinted in Lerner, supra note 1, at 140, and analyzed in *ibid.*, 33-35.

Cantwell v. Connecticut (1940)²⁹ and in the European community since Kokkinakis v. Greece (1993).³⁰

To my mind, the preferred solution to the modern problem of proselytism is not so much further state restriction as further self-restraint on the part of both local and foreign religious groups. Again, the 1966 International Covenant on Civil and Political Rights provides some useful cues.

Article 27 of the Covenant reminds us of the special right of local religious groups, particularly minorities, "to enjoy their own culture, and to profess and practise their own religion." Such language might well empower and encourage vulnerable minority traditions to seek protection from aggressive and insensitive proselytism by missionary mavericks and "drive by" crusaders who have emerged with alacrity in the past two decades. It might even have supported a moratorium on proselytism for a few years in places like Russia so that local religions, even the majority Russian Orthodox Church, had some time to recover from nearly a century of harsh oppression that destroyed most of its clergy, seminaries, monasteries, literature, and icons. But Article 27 cannot permanently insulate local religious groups from interaction with other religions. No religious and cultural tradition can remain frozen. For local traditions to seek blanket protections against foreign proselytism, even while inevitably interacting with other dimensions of foreign cultures, is ultimately a self-defeating policy. It stands in sharp contrast to cardinal human rights principles of openness, development, and choice. Even more, it belies the very meaning of being a religious tradition. As Jaroslav Pelikan reminds us: "Tradition is the living faith of the dead; traditionalism is the dead faith of the living."³¹

Article 19 of the Covenant reminds us further that that the right to expression, including religious expression, carries with it "special duties and responsibilities."³² One such duty, it would seem, is to respect the religious dignity and autonomy of the other, and to expect the same respect for one's own dignity and autonomy. This is the heart of the Golden Rule. It encourages all parties, especially foreign proselytizing groups, to negotiate and adopt voluntary codes of conduct of restraint and respect of the other. This requires not only continued

²⁹ Cantwell v. Connecticut, 310 U.S. 296 (1940).

³⁰ Kokkinakis v. Greece, 260-A Eur. Ct. H. R. (ser. A) 18.

³¹ Jaroslav Pelikan, The Vindication of Tradition 68 (1984).

³² ICCPR, Article 19.3, reprinted in Religion and Human Rights, supra note 1, at 74.

cultivation of interreligious dialogue and cooperation -- the happy hallmarks of the modern ecumenical movement and of the growing emphasis on comparative religion and globalization in our seminaries. It also requires guidelines of prudence and restraint that every foreign mission board would do well to adopt and enforce: Proselytizers would do well to know and appreciate the history, culture, and language of the proselytizee; to avoid Westernization of the Gospel and First Amendmentization of politics; to deal honestly and respectfully with theological and liturgical differences; to respect and advocate the religious rights of all peoples; to be Good Samaritans as much as good preachers; to proclaim their Gospel both in word and in deed.³³ Moratoria on proselytism might provide temporary relief; but moderation by proselytizers and proselytizees is the more enduring course.

³³ See Anita Deyneka, *Guidelines for Foreign Missionaries in the Soviet Union*, in *Proselytism and Orthodoxy*, supra note 2, at 331-340; Lawrence A. Uzzell, *Guidelines for American Missionaries in Russia*, in *ibid.*, 323-330.