

Draft

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## The Rights and Limits of Proselytism in the New Religious World Order

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### Abstract

*This Article describes the modern paradox of religious rights -- the sudden awakening of religion and religious freedom around the globe versus the tragic escalation of religious rights abuses born of local bigotry and creedal clashes. This paradox lies in part in competing understandings of the rights and rites of conversion and the role that local political communities can play in preventing or facilitating the same. Some communities regard the right to change one's religion as an essential principle of religious freedom that the state must protect. Others regard it as a calculated insult to the rights of the religious community whose interests the state must support. The paradox also lies in part in competing understandings of the rights and wrongs of proselytism - particularly the clash between one party's claims to free exercise rights to share the faith versus another party's rights to freedom of conscience and religious self-determination. This Article suggests measures drawn from the Western story of religious rights to mitigate the problem of conversion and to soften the tensions between the religious rights of individuals and groups. This Article further argues that while peaceable proselytism is protected by international human rights law, resolving the modern problem of proselytism will require more self-restraint from proselytizers than legal limitations from government.*

**Keywords:** proselytism, religion, human rights, international law, freedom of conscience, freedom of expression, freedom of speech, baptism, conversion, religious self-determination, soul wars,

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<sup>1</sup> This chapter represents work in progress on a monograph tentatively entitled, *Religion and Human Rights: Foundations and Frontiers*. It draws in part on John Witte, Jr., "A Dickensian Era of Religious Rights," *William and Mary Law Review* 42 (2001): 707-770; id., "A Primer on the Rights and Wrongs of Proselytism," *Cumberland Law Review* 31 (2001): 619-629.

## A “Dickensian Era” of Religion and Human Rights

“It was the best of times, it was the worst of times, it was the age of wisdom, it was the age of foolishness, it was the epoch of belief, it was the epoch of incredulity, it was the season of Light, it was the season of Darkness, it was the spring of hope, it was the winter of despair.”<sup>2</sup> Charles Dickens penned these famous words to describe the paradoxes of the late eighteenth-century French Revolution fought for the sake of “the rights of man and citizen.”<sup>3</sup> These same words aptly describe the paradoxes of the world revolution fought two centuries later in the name of human rights and democratization for all.

The world has entered something of a “Dickensian era”<sup>4</sup> in the past three decades. We have seen the best of human rights protections inscribed on the books, but some of the worst of human rights violations inflicted on the ground. We have celebrated the creation of more than thirty new constitutional democracies since 1980, but lamented the eruption of more than thirty new civil wars. We have witnessed the wisest of democratic statecraft and the most foolish of autocratic belligerence. For every South African spring of hope, there has been a Yugoslavian winter of despair, for every Ukrainian season of light, a Sudanese season of darkness.

These Dickensian paradoxes of the modern human rights revolution are particularly striking when viewed in their religious dimensions. 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.<sup>5</sup> In post-colonial and post-revolutionary Africa, these same mainline religious groups have come to flourish in numerous conventional and inculturated forms, alongside a bewildering array of Traditional groups.<sup>6</sup> In Latin America, the human rights revolution has not only transformed long-

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<sup>2</sup> Charles Dickens, *A Tale of Two Cities* (London: Chapman & Hall, 1859), 1.

<sup>3</sup> “Declaration des droits de l’homme et du citoyen,” in Léon Duguit, *Les Constitutions et Les Principales Lois Politiques de la France Depuis 1789* (Paris: Librairie Générale de Droit et de Jurisprudence, 1952), 1.

<sup>4</sup> The phrase is from Irwin Cotler, “Jewish NGOs and Religious Human Rights: A Case Study,” in *Human Rights in Judaism: Cultural, Religious, and Political Perspectives*, ed. Michael J. Broyde and John Witte, Jr. (Northvale, NJ: Jason Aronson, 1998), 165.

<sup>5</sup> See John Witte, Jr. and Michael Bourdeaux, eds., *Proselytism and Orthodoxy in Russia: The New War for Souls* (Maryknoll, NY: Orbis Books, 1999); Zoe Knox, *Russian Society and the Orthodox Church: Religion in Russia after Communism* (New York: Routledge, 2005).

<sup>6</sup> Abdullahi Ahmed An-Na’im and Francis M. Deng, eds., *Human Rights in Africa: Cross-Cultural Perspectives* (Washington, DC: Brookings Institution, 1990); Abdullahi Ahmed An-Na’im, ed., *Proselytization and Communal Self-Determination in Africa* (Maryknoll, NY: Orbis Books, 1999);

standing Catholic and mainline Protestant communities but also triggered the explosion of numerous new Evangelical, Pentecostal, and Traditional movements.<sup>7</sup> 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. Religion today has become, in Susanne Rudolph's apt phrase, the latest "transnational variable."<sup>8</sup> Religious pluralism has become the latest local reality for all but the most insular communities.

One cause and consequence of this great awakening of religion around the globe is that the ambit of religious rights has been substantially expanded. In the past three decades, more than 200 major new statutes and constitutional provisions on religious rights have been promulgated—many replete with generous protections for liberty of conscience and freedom of religious exercise, guarantees of religious pluralism, equality, and nondiscrimination, and several other special protections and entitlements for religious individuals and religious groups.<sup>9</sup> These national guarantees have been matched with a growing body of regional and international norms, notably the 1981 *UN Declaration on Religious Intolerance and Discrimination Based Upon Religion and Belief*, the 1992 *UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities*, and the long catalogue of religious-group rights set out in the 1989 *Vienna Concluding Document* and its progeny.<sup>10</sup>

On the other hand, this very same world human rights revolution has helped to catalyze new forms of religious and ethnic conflict, oppression, and belligerence that have sometimes reached tragic proportions. In the former Yugoslavia and Chechnya, for example, local religious and ethnic rivals, previously kept at bay by a common oppressor, have converted their new liberties into new licenses to renew their ancient

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Symposium: "The Problem of Proselytism in Southern Africa," *Emory International Law Review* 14 (2000): 491-1303.

<sup>7</sup> Paul E. Sigmund, ed., *Religious Freedom and Evangelization in Latin America: The Challenge of Religious Pluralism* (Maryknoll, NY: Orbis Books, 1999).

<sup>8</sup> Susanne Hoeber Rudolph, "Introduction," to Susanne Hoeber Rudolph and James Piscatori, eds., *Transnational Religion and Fading States* (Boulder, CO: Westview Press, 1997), 6.

<sup>9</sup> See analysis in Natan Lerner, *Religion, Secular Beliefs, and Human Rights: 25 Years After the Declaration* (Leiden/Boston: Martinus Nijhoff, 2006), with sample documents collected in Ian Brownlie and Guy S. Goodwin-Gill, ed., *Basic Documents on Human Rights*, 5<sup>th</sup> ed. (Oxford: Oxford University Press, 2006) and in Tad Stahnke and J. Paul Martin, eds., *Religion and Human Rights: Basic Documents* (New York: Center for the Study of Human Rights, Columbia University, 1998).

<sup>10</sup> Tore Lindholm, W. Cole Durham, Jr., and Bahia G Tahzib-Lie, *Facilitating Freedom of Religion or Belief: A Deskbook* (Leiden: Martinus Nijhoff, 2004); Malcolm D. Evans, *Religious Liberty and International Law in Europe* (Cambridge: Cambridge University Press, 1997); Bahia G. Tahzib, *Freedom of Religion or Belief: Ensuring Effective International Legal Protection* (The Hague: Martinus Nijhoff, 1996); *Religious Human Rights in Global Perspective*, ed. John Witte, Jr. and Johan D. van der Vyver, 2 vols. (The Hague/Boston/London: Martinus Nijhoff Publishers, 1996).

hostilities, with catastrophic results.<sup>11</sup> In Sudan, Rwanda, Burundi, and the Central African Republic, ethnic nationalism and religious extremism have conspired to bring violent dislocation or death to hundreds of rival religious believers each year, and persecution, false imprisonment, forced starvation, and savage abuses to thousands of others.<sup>12</sup> In France, Belgium, Germany, and Austria, political secularism, laicization, and nationalism have combined to threaten civil denial and deprivation to a number of believers, particularly “sects” and “cults” of high religious temperature or of low cultural conformity. In the United States, political messianism and Evangelical fundamentalism have together embraced a “clash-of-civilizations” ethic that has encouraged bigotry against minorities at home and belligerence against the “axis of evil” abroad. In several communities from Asia to the Middle East, Christian, Jewish, and Muslim minorities have faced sharply increased restrictions, repression, and more than occasional martyrdom.<sup>13</sup> And, in many parts of the world today, barbaric Islamicist terrorists have waged a destructive jihad against all manner of religious, cultural, and ethnic enemies, real and imagined.

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. This is the most recent, and the most ironic, chapter in the modern Dickensian drama. 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. Beginning in the early 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 encourages. They resent the extravagant forms of religious speech, press, and assembly that democracy protects.<sup>14</sup>

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<sup>11</sup>Julie A. Mertus, *Kosovo: How Myths and Truths Started a War* (Berkeley: University of California Press, 1999); Paul Mojzes, *Yugoslavian Inferno: Ethnoreligious Warfare in the Balkans* (New York: Continuum, 1995); Michael A. Sells, *The Bridge Betrayed: Religion and Genocide in Bosnia* (Berkeley, University of California Press, 1996).

<sup>12</sup>Francis M. Deng, *War of Visions: Conflict of Identities in the Sudan* (Washington, DC: Brookings Institution, 1995), 9-31.

<sup>13</sup>T. Jeremy Gunn, *Dieu en France et aux États-Unis: Quand les mythes font la loi* (Paris: Berg International, 2005); T. Jeremy Gunn, “Religious Freedom and *Laïcité*: A Comparison of the United States and France,” *Brigham Young University Law Review* (2004): 419-506.

<sup>14</sup> Symposium: “Pluralism, Proselytism and Nationalism in Eastern Europe,” *Journal of Ecumenical Studies* 36 (1999):1-286.

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 indigenous faiths. In part, this is a theological war, as rival religious communities have begun 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 unqualified ratification of international human rights instruments, several countries of late passed firm new anti-proselytism laws, cult registration requirements, tightened visa controls, and various other discriminatory restrictions on new or newly arrived religions. Indeed, several parts of the non-Western world seem to be on a new dawn of fundamentalist Islamic and Christian religious establishments.<sup>15</sup>

While some non-Western nations seem poised to reestablish old forms of religion, some Western nations seem ready to establish new forms of secularism. In the 1990s, France, Germany, Belgium, and Austria passed firm new anti-cult legislation that targeted a large number of new and traditional religious groups with a tone approaching xenophobia.<sup>16</sup> In more recent years, France, Belgium, and Turkey have begun to press aggressive new state policies of “laicization” and “secularization” that have resulted in growing restrictions on minority religious schools, charities, and sanctuaries, and stronger policing of culturally different or deviant behavior.<sup>17</sup> The recent sensational Muslim headscarf cases in France and Turkey are only one illustration of bigger issues that culturally-different religious minorities are now facing in many parts of Western Europe as well as in Canada and other Commonwealth countries. The 2004 judgment of the European Court of Human Rights against the Turkish Muslim woman who sought religious freedom to wear her headdress in a public university has only encouraged

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<sup>15</sup> See examples in Gabriel A. Almond, R. Scott Appleby, and Emmanuel Sivian, *Strong Religion: The Rise of Fundamentalism Around the World* (Chicago: University of Chicago Press, 2003); Abdullahi Ahmed An-Na'im, *African Constitutionalism and the Contingent Role of Islam* (Philadelphia: University of Pennsylvania Press, 2006); W. Cole Durham, Jr. and Silvio Ferrari, eds., *Laws on Religion and the State in Post-Communist Europe* (Leuven: Peeters, 2004).

<sup>16</sup> The most comprehensive is the *Endbericht der Enquete-Kommission Sogennante Sekten und Psychogruppen*, Deutscher Bundestag 13. Wahlperiode Drucksche 13/10950 (June 6, 1998). See *New Religions in Global Perspective: A Study of Religious Change in the Modern World*, ed. Peter B. Clarke (New York: Routledge, 2006); Elisabeth Arweck and Peter B. Clarke, *New Religious Movements in Western Europe: An Annotated Bibliography* (Westport, CT: Greenwood Press, 1997); *International Perspectives on Freedom and Equality of Religious Beliefs*, ed. Derek H. Davis and Gerhard Besier (Waco, TX: Baylor University Press, 2002).

<sup>17</sup> See analysis in Symposium, “The Frontiers of Religious Liberty: A Comparative Law Celebration of the 25<sup>th</sup> Anniversary of the 1981 UN Declaration on Religious Intolerance,” *Emory International Law Review* 21 (2007): \_\_\_.

Nation-States to tighten their restrictions on religious and cultural minorities as part of a broader effort to create national solidarity on secular grounds.<sup>18</sup>

Variants on some of these same patterns are beginning to emerge in the United States as well. Using the vaunted principle of “separation of church and state,” several recent federal courts have struck down public displays and expressions of religion as violations of the First Amendment establishment clause. This has renewed concerns among some commentators that American courts have embarked on a new campaign to privatize religion and to “establish a religion of secularism.”<sup>19</sup> At the same time, the U.S. Supreme Court’s dramatic weakening of the First Amendment free exercise clause in the case of *Employment Division v. Smith* (1990) has left religious and cultural minorities highly vulnerable to local prejudice.<sup>20</sup> To be sure, the United States Congress and various state legislatures have stepped into this breach by passing a number of special statutory protections for religious minorities.<sup>21</sup> But several federal agencies, notably the IRS and INS, have not dealt kindly with religious and cultural groups who have proved critical of mainline religions or majoritarian politics, or aggressive in their attempts to expand their unpopular faith.

Hence the modern problem of proselytism: How does the state balance one person’s right to exercise his or her faith versus another person’s right to liberty of conscience, one group’s right to religious expression and another group’s right to religious self-determination? How does the state protect the juxtaposed rights claims of majority and minority religions, or of foreign and indigenous religions? How does the state balance its need to create national solidarity and peace with its duty to respect minority cultures and their need to dissent? 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

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<sup>18</sup> Re *Sahin v. Turkey*, App. No. 44744/98 (Eur. Ct. H. R. June 29, 2004), available at <http://www.echr.coe.int/Eng/Judgments.htm>. See analysis of this and related cases in Lerner, *Religion, Secular Beliefs, and Human Rights*, 181-200; Natan Lerner, *Group Rights and Discrimination in International Law*, 2d ed. (The Hague/Boston: Martinus Nijhoff, 2003). For comparative analysis of recent limitations and restrictions on religious freedom in Europe, see Symposium, “The Permissible Scope of Legal Limitations on Freedom of Religion and Belief,” *Emory International Law Review* (2005): 465-1320.

<sup>19</sup> The phrase was made popular in a dissenting opinion by Justice Potter Stewart in *Abington School District v. Schempp*, 374 U.S. 203, 313 (Stewart, J., dissenting). See further John Witte, Jr., “Facts and Fictions About the History of Separation of Church and State,” *Journal of Church and State* 48 (2006): 15-46. A telling recent example is *Faith Center Church v. Glover*, \_\_\_ F. 3d. \_\_\_ (9<sup>th</sup> Circ., 2006), which denied the right of a religious group to public worship in a public library open to other groups with arguments that the “separation of church and state ... serves the salutary purpose of protecting civil society from the excesses of the zealous” that can only lead to “alienation and social unrest.” *Ibid.*, \_\_\_ (Karlton, J. concurring).

<sup>20</sup> 494 U.S. 872 (1990).

<sup>21</sup> See analysis of recent statutory protections of religious freedom in “to be published”, *New York Times* (2006): \_\_\_ and broader patterns in John Witte, Jr., *Religion and the American Constitutional Experiment*, 2d ed. (Boulder/London: Westview Press, 2005).

from the very beginning. But some of the compromises of 1948 and 1966 have today begun to betray their limitations.

### 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.<sup>22</sup> How does a state craft a 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: indeed, to convert out of Islam is a capital crime.<sup>23</sup> 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?

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...*" (Art. 18.1). 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 freedom to have or adopt *a religion or belief of his choice...*" (Art. 18.1) 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. 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.

Today, this issue over the right to convert has become more divisive than ever as various soul wars have broken out, especially between and within Christian and Muslim

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<sup>22</sup> See Lerner, *Religion, Secular Beliefs, and Human Rights*, 119-168; J.A. Walkate, "The Right of Everyone to Change his Religion or Belief," *Netherlands International Law Review* 2 (1983): 146.

<sup>23</sup> Joel A. Nichols, "Mission, Evangelism, and Proselytism in Christianity: Mainline Conceptions as Reflected in Church Documents," *Emory International Law Review* 12 (1998): 563-656; David Novak, "Proselytism and Conversion in Judaism," in *Sharing the Book: Religious Perspectives on the Rights and Wrongs of Proselytism*, ed. John Witte, Jr. and Richard C. Martin (Maryknoll, NY: Orbis Books, 1999), 17-44; Donna E. Arz, "The Treatment of Religious Dissidents under Classic and Contemporary Islamic Law," in *Religious Human Rights*, 1:387-453.

communities around the globe. These tensions have been exacerbated by the U.S.-led wars on terror in Afghanistan and Iraq. Some hardline Christian and Muslim fundamentalists have cast these wars as “crusades” not to end terror but to conquer Islamic cultures and convert Muslim souls. This image has only been encouraged by the sensational media case surrounding the Christian conversion of an Afghani man, Abdul Rahman, in the spring of 2006. Rahman had converted from Islam to Christianity and was seeking to gain custody of his two daughters. His wife’s family counterclaimed that he was unfit to gain custody because of his crime of conversion. Following the 2004 Constitution, which declares the supremacy of Islamic law, an Afghani court not only denied Rahman custody of his daughters, but sentenced him to death for his crime of conversion contrary to Islamic law. Mr. Rahman was able to escape death only because of the intense media exposure of his case and diplomatic intervention at the highest levels. But he had to leave his daughters in Afghanistan and seek asylum in Italy.<sup>24</sup> Other converts to Christianity from Islam have not fared nearly so well, human rights watch groups regularly report.

"A page of history is worth a volume of logic," Oliver Wendell Holmes, Jr. once said.<sup>25</sup> And, on an intractable legal issue such as this, recollection might 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.<sup>26</sup> 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. 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.<sup>27</sup>

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<sup>24</sup> See report in “Kabul Judge Rejects Calls to End Trial of Christian Convert,” *New York Times* (Mar. 24, 2006), A3; “Italy Grants Asylum to Afghan Christian Convert,” *New York Times* (Mar. 30, 2006), A14.

<sup>25</sup> *New York Trust Co. v. Eisner*, 256 U.S. 345, 349 (1921).

<sup>26</sup> Brian Tierney, “Religious Rights: An Historical Perspective,” in *Religious Human Rights*, 1:17-46.

<sup>27</sup> Perez Zagorin, *How the Idea of Religious Toleration Came to the West* (Princeton: Princeton University Press, 2003); R.W. Davis, ed., *The Origins of Modern Freedom in the West* (Stanford: Stanford University

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 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.<sup>28</sup> 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.<sup>29</sup> 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 Christian 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 policies of other contemporary Muslim communities, to rethink their theological positions.<sup>30</sup>

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

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Press, 1995); *Religious Liberty in Western Thought*, ed. Noel B. Reynolds and W. Cole Durham, Jr. (Grand Rapids: Wm. B. Eerdmans, 1996).

<sup>28</sup> 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 Sidney Z. Ehler and John B. Morrall, eds., *Church and State Through the Centuries: A Collection of Historical Documents with Commentary* (Newman, MD: Burnes & Oates, 1964), 164-198.

<sup>29</sup> Max L. Stackhouse and Deirdre King Hainsworth, "Deciding for God: The Right to Convert in Protestant Perspectives," in *Sharing the Book*, 201-230.

<sup>30</sup> See discussion by Farid Esack, Richard C. Martin, and Donna E. Arzt, in *Sharing the Book*, 79-144.

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.

### **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 international human rights instruments provide somewhat more nuanced direction.

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*" (Art. 18.1). 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" (Art. 18.3). It prohibits outright any "coercion" that would impair another's right "to have or adopt a religion or belief of [his or her] choice" (Art. 18.2). It also requires states 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" (Art. 18.4). This latter provision is underscored and amplified in more recent instruments and cases on the rights of parents and children, most notably the 1989 UN Convention on the Rights of the Child.<sup>31</sup>

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<sup>31</sup> Convention on the Rights of the Child (November 20, 1989), 28 I.L.M. 1448; Symposium, "What's Wrong with Rights for Children?" *Emory International Law Review* 20 (2006): 1-239.

Similarly, Article 19 of the 1966 Covenant on Civil and Political Rights 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*” (Art. 19.2). 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” (Art. 19.3). 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 state discrimination on grounds of religion. And Article 27 guarantees to religious minorities “the right to enjoy their own culture” and “to profess and practise their own religion.” These latter guarantees are amplified by the 1992 Declaration on the Rights of Persons Belonging to National or Ethnic, Religious, or Linguistic Minorities. Distilling the international principle of “religious self-determination,” the 1992 Declaration recognizes that “the promotion and protection of the rights” of religious minorities is “an integral part of the development of a society as a whole and within a democratic framework based on the rule of law.” Accordingly, it calls upon states to respect and to pass implementing legislation that protects and promotes the rights of cultural, religious, and linguistic minorities “to enjoy their own culture, to profess and practice their own religion, and to use their own language, in private and in public, freely and without interference or any form of discrimination.”<sup>32</sup>

The literal language of the mandatory 1966 Covenant (and its amplification in more recent instruments and cases) thus 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 and indigenous cultures. 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. If Coca Cola can hustle its fizzy sugar water and Hollywood can broadcast its violent movies in an area of the world, then religious communities must be able to express their religious convictions as well.

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

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<sup>32</sup> Preamble and arts. 1-2, reprinted by the Office of the United Nations High Commissioner for Human Rights, at <http://www.ohchr.org/english/law/minorites.htm>. See similar protections in the Indigenous and Tribal Peoples Convention (1989), arts. 3.2, 5(a)-(c), at <http://www.ohchr.org/english/law/indigenous.htm>. See further Johan D. van der Vyver, *Leuven Lectures on Religious Institutions, Religious Communities, and Rights* (Leuven: Peeters, 2004), 67-90.

and minorities. But all such legal restrictions on religious expression must always be imposed without discrimination against any religion in violation of Article 26, 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 *Cantwell v. Connecticut* (1940)<sup>33</sup> and in the European community since *Kokkinakis v. Greece* (1993).<sup>34</sup>

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, and its amplification in the 1992 Convention on Minorities, 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 just after *perestroika* and *glasnost* 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 has the right to 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.”<sup>35</sup>

Article 19 of the Covenant reminds us further that that the right to expression, including religious expression, carries with it “special duties and responsibilities” (Art. 19.3). 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

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<sup>33</sup> *Cantwell v. Connecticut*, 310 U.S. 296 (1940). See analysis in Howard O. Hunter and Polly J. Price, “Regulation of Religious Proselytism in the United States,” *Brigham Young University Law Review* 537 (2001).

<sup>34</sup> *Kokkinakis v. Greece*, 260-A Eur. Ct. H. R. (ser. A) 18.

<sup>35</sup> Jaroslav Pelikan, *The Vindication of Tradition* (New Haven: Yale University Press, 1984), 69.

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 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.<sup>36</sup> Moratoria on proselytism might provide temporary relief; but moderation by proselytizers and proselytizees is the more enduring course.

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<sup>36</sup> See Anita Deyneka, "Guidelines for Foreign Missionaries in the Soviet Union," in *Proselytism and Orthodoxy in Russia*, 331-340; Lawrence A. Uzzell, "Guidelines for American Missionaries in Russia," *ibid.*, 323-330.

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