

Draft

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Introduction

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Abstract

This chapter analyzes the interaction of religion and human rights around the world, historically and today. We first describe the place of religion in the modern human rights framework and the formative role played by religious groups in the 1940s to 1960s in defining and defending human rights. We then analyze the kinds of intersecting roles of religion and human rights that are needed to build a more effective human rights culture. Along the way, we address the veritable alphabet of issues that now deeply trouble and divide the world: apostasy, blasphemy, conversion, defamation, evangelization, fundamentalism, genocide, homicide, injustice, and jihad.

Keywords: Religion; Human Rights; Religious Freedom; United Nations; Universal Declaration of Human Rights; Eleanor Roosevelt; Religious Persecution; Apostasy; Blasphemy; Universal Islamic Declaration of Human Rights; Cairo Declaration of Human Rights; Second Vatican Council; Dignitatis Humanae; John Noonan

Introduction

In January 2008, news headlines and human rights websites around the world broadcast the story of a death sentence handed down by a local Afghan court to a 23-year-old journalism student, Sayed Perwiz Kambakhsh, for committing the crime of blasphemy. The student had downloaded and distributed an article from the Internet after annotating it with words deemed to be an insult to the Prophet Mohammed. The article in question was critical of certain Islamic beliefs and practices that were seen as oppressive to women. Kambakhsh had allegedly added to the text some of his own criticisms of Mohammed's teachings on women. The death sentence drew criticism from journalists, human rights activists, and political leaders around the world, inspiring European Parliament President Hans-Gert Pöttering to protest to Afghan President

Hamid Karzai: "The alleged 'crime' of this person would appear to be that he has distributed publications aimed at improving the situation of Afghan women."¹

At the appeal court, Judge Abdul Salam Qazizada, a holdover from the Taliban era, was reportedly antagonistic toward Kambakhsh. In support of the blasphemy charge against Kambakhsh, the court considered as evidence anecdotal reports that the young man was a socialist, was impolite, asked too many questions in class, and swapped off-color jokes and messages with friends. In October 2008, an Afghan appeals court overturned Kambakhsh's death sentence and sentenced him instead to twenty years in prison, presumably due to the considerable international attention to his case and international pressure on the Afghan government.² Kambakhsh began his prison term in March 2009, the same month in which Afghan President Hamid Karzai signed a law specifying circumstances in which Afghan women of the Shi'a Muslim tradition must have sex with their husbands under Muslim family law.³ Interpretations of Islamic law as sanctioning marital rape were just the kinds of abuse of women's rights that the young journalist Kambakhsh was seeking to expose.

Such has been the state of religion and human rights in the fragile new democracy of Afghanistan purportedly liberated from the Taliban and other extremists. This kind of story recurs in endless variations in the Middle East, Africa, the Balkans, and various former Soviet nations and provinces in Eastern Europe, as well as in Central and Southeast Asia. Browse the daily news reports,⁴ study the many briefings of human rights NGOs, pore over the annual reports from the United States Commission on International Religious Freedom⁵ or the United Nations Special Rapporteur on Religious Freedom and Belief,⁶ and it becomes altogether too clear that religion and human rights do not yet coincide in many countries of the world, despite their rosy new constitutional provisions on religious freedom and human rights for all. Apostasy, Blasphemy, Conversion, Defamation, Evangelization—this is the new alphabet of offenses in a number of politically volatile nations around the world.

The alphabet goes on to include Fundamentalism, Genocide, Homicide, Injustice, and Jihad in many other nations. A recent comprehensive study of the 198 countries

¹ "EU Parliament President Calls for Life of Afghan Student to be Spared," [the-parliament.com](http://www.eupolitix.com/EN/News/200801/def9afd4-1ad8-4763-acd4-75b5b316c6e4.htm), 21 January 2008. Accessible at: <http://www.eupolitix.com/EN/News/200801/def9afd4-1ad8-4763-acd4-75b5b316c6e4.htm> (last accessed 4 February 2008).

² "No Death Sentence for Afghan Journalist," *The New York Times*, October 21, 2008.

³ Carlotta Gall and Sangar Rahimi, "Karzai Vows to Review Family Law," *The New York Times*, April 4, 2009.

⁴ For much of this part of the world, see the reports of Forum 18 (www.forum18.org)

⁵ See the collection of annual reports by the United States Commission on International Religious Freedom at (www.uscirf.gov); see also the recent manifesto by the Chicago Council of Global Affairs chaired by R. Scott Appleby and Richard Cizik: *Engaging Religious Communities Abroad: A New Imperative for U.S. Foreign Policy* (Chicago: Chicago Council of Global Affairs, 2010).

⁶ See the annual reports collected at <http://www2.ohchr.org/english/issues/religion/index.htm>.

and self-administering territories in the world today show that more a third of these polities have “high” or “very high” levels of religious oppression, sometimes exacerbated by civil war, natural disasters, and foreign invasion that have sometimes caused massive humanitarian crises. The countries on this dishonor roll include Iran, Iraq, India, Pakistan, Bangladesh, Sri Lanka, Indonesia, Saudi Arabia, Somalia, Yemen, Sudan, Egypt, Israel, Burma, Rwanda, Burundi, the Congo, Chechnya, Uzbekistan, among others.⁷

Even in the more stable constitutional democracies of Western Europe and North America, religion and human rights are facing new changes and conflicts, although usually less violent. Ancient forms of Christian establishment and state favoritism in Scandinavia, England, Ireland, Spain, Italy, and Greece are giving way to new demands for religious pluralism and equal treatment for all. Many West European nations are now beset with urgent new constitutional struggles over the rights and freedoms of swelling populations of new Muslims and other immigrants. A number of European countries have recently passed firm new measures against “sects” and “cults” that set firm restrictions on religious dress, organization, and movement for various religious and cultural groups, including Muslims, Scientologists, and Römer. In Canada, traditional forms of church-state cooperation have given way to strong new equality norms, with particularly bitter contests emerging between same-sex parties and religious organizations. In the United States, the substantial weakening of the First Amendment has shifted many questions of religious liberty from the judiciary to the legislature, and from the federal to the state governments – often leaving religious liberty vulnerable to fleeting local politics and contingent upon a claimant’s geographical location.

The tragic irony of all this is that these new sharp contests of religion and human rights have emerged at the same time that human rights norms respecting religion have become increasingly refined. In part because of the new wave of democratization that has broken over the world since the 1970s, many countries have issued major new constitutional provisions, statutes, and cases on religion, replete with generous protections for liberty of conscience and freedom of religious exercise, guarantees of religious pluralism, equality, and nondiscrimination on religious grounds. These national guarantees have been matched with a growing body of regional and international norms building upon foundational guarantees contained in the 1948 Universal Declaration of Human Rights and successor human rights instruments. Especially in the last 20 years, the international norms of religious freedom and human rights on the books have become remarkably comprehensive and sophisticated.

This underscores an elementary, but essential lesson -- that human rights norms need a human rights culture to be effective. “[D]eclarations are not deeds,” Judge John T. Noonan, Jr. reminds us. “A form of words by itself secures nothing.... [W]ords

⁷ The Pew Forum on Religion and Public Life, *Global Restrictions on Religion*, (December, 2009) (www.pewforum.org)

pregnant with meaning in one cultural context may be entirely barren in another."⁸ Human rights norms have little salience in societies that lack constitutional processes that will give them meaning and measure. They have little value for parties who lack basic rights to security, succor, and sanctuary, or who are deprived of basic freedoms of speech, press, or association. They have little pertinence for victims who lack standing in courts and other basic procedural rights to pursue apt remedies. They have little cogency in communities that lack the ethos and ethic to render human rights violations a source of shame and regret, restraint and respect, confession and responsibility, reconciliation and restitution. As we have gradually moved from the first generations of human rights declarations following World War II to the current generation of more serious human rights implementation, this need for an effective human rights culture has become all the more pressing.

In the sections that follow, we first describe the place of religion in the modern human rights framework, and then analyze the kinds of intersecting roles of religion and human rights that are needed to build a more effective human rights culture. Along the way, we reference a number of the main themes that occupy the authors of the 21 chapters that follow.

Religion and the International Human Rights Framework

The international rights and liberties in vogue today have millennium-long roots in various religious, philosophical, and cultural traditions.⁹ Their definitive modern formulation, however, came with the promulgation of the Universal Declaration of Human Rights in 1948. The Universal Declaration was born out of desperation in the aftermath of World War II. The world had just stared in horror into Stalin's gulags and Hitler's death camps. It had just witnessed the terror of nuclear warfare in Hiroshima and Nagasaki. It had just endured the devastation of sixty million people killed in the bloodiest six years in the history of humankind. It was time to restate the basics of life, freedom, and community. It was time to take up Franklin Roosevelt's call to protect the "four freedoms" of everyone – "freedom of speech, freedom of religion, freedom from want, and freedom from fear."

The United Nations Commission on Human Rights, chaired by Eleanor Roosevelt, took up the task of drafting a definitive declaration on human rights. The drafting committee and the Commission as a whole were broadly inclusive in

⁸ John T. Noonan, Jr., "The Tensions and the Ideals," *Religious Human Rights in Global Perspective: Legal Perspectives*, ed. Johan D. van der Vyver and John Witte, Jr. (The Hague: Martinus Nijhoff, 1996), 594.

⁹ See sources in John Witte, Jr., *The Reformation of Rights: Law, Religion, and Human Rights in Early Modern Calvinism* (Cambridge/New York, 2008), 1-38.

membership. The main drafters included René Cassin (a Jewish jurist from France and later Nobel Peace Prize winner), Peng-chun Chang (a distinguished Confucian scholar from China), John Peters Humphrey (a leading Canadian jurist who was then part of the UN Secretariat and prepared much of the first draft), Charles Malik (a Maronite Christian from Lebanon), and Jacques Maritain (a prominent French Catholic philosopher and France's ambassador to the Vatican). The Commission itself had representation from countries with majoritarian Atheist, Buddhist, Christian, Confucian, Hindu, and Muslim populations, including India, China, the Philippines, the U.S.S.R., Iran, Egypt, Lebanon, Austria, France, the United States, Panama, and Chile. The Commission further drew on bills of rights from around the world and drew from the expert opinions of sundry scholars, advocates, and NGOs of all manner of professions and confessions.

Jacques Maritain, a member of the Declaration drafting committee, was asked how such a diverse group of participants holding such divergent viewpoints could agree to a definitive list of fundamental rights. He replied: "Yes, we agree about the rights *but on condition no one asks us why.*" The goal, he elaborated, was to agree "not on the basis of common speculative ideas, but on common practical ideas, not on the affirmation of one and the same conception of the world, of man, and of knowledge, but upon the affirmation of a single body of beliefs for guidance in action."¹⁰ That "single body of beliefs" was set out in the Preamble and Article 1 of the Universal Declaration, which affirmed that "the inherent dignity and the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world." Respect for human rights and human dignity is essential in all times and places, the Declaration insisted, and must be respected by and for all persons and peoples.

In thirty pithy articles, the Declaration set out the "universal rights" of all human beings: equality and freedom from discrimination; rights to life, liberty, privacy, and security of person; rights to national and cultural identity; freedom from slavery, servitude, and cruel and barbarous treatment; sundry criminal procedural protections; freedom of movement and asylum; rights to marriage and family life with special protections for mothers and children; rights to property; freedom of thought, conscience, religion, opinion, expression, and assembly; freedom to political representation and participation; rights to labor, employment, and social security; rights to healthcare, education, and cultural participation. In the decades after the Declaration, many of these discrete rights became subjects of more elaborate covenants, conventions, and declarations on rights. These international instruments, which fall largely under the vast auspices of the United Nations, were echoed and elaborated in both regional instruments like the 1950 European Charter of Human Rights and the 1969 American Convention on Human Rights. They were further elaborated in the numerous national constitutional provisions and cases issued during the political reconstruction of the world

¹⁰ Mary Ann Glendon, *A World Made New: Eleanor Roosevelt and the Universal Declaration of Human Rights* (New York: Random House, 2001), 77-78 (emphasis added).

after World War II as well as in the many post-colonial democratic revolutions that followed in Africa, Latin America, and South Asia.

The 1948 Universal Declaration and subsequent human rights instruments include both “freedom rights” (speech, press, religion, and the like) and “welfare rights” (education, labor, health care, and more). Later instruments also outline rights to peace, orderly development, and environmental protection.¹¹ As a number of chapters in this volume show, many of these rights have religious sources and dimensions, and religious parties often draw on these sundry rights to protect their religious identities and practices. One of the hallmarks of the modern human rights movement is that human rights are “interrelated,” “indivisible,” and “interdependent.”¹² Freedom rights are useful only if a party’s basic welfare rights to food, shelter, health care, education, and security are adequately protected. The rights to worship, speech, or association mean little to someone starving in the street or dying from a treatable disease. Both freedom and welfare rights are often sacrificed in times of war, emergency, or force majeure.

While religious persons and communities often find refuge in sundry rights claims shared with non-religious claimants, a special category of religious rights and freedoms has also emerged to deal with some of the unique needs of religion. Articles 2 and 18 of the Universal Declaration called these the rights of “thought, conscience, and belief” and the freedom from religious discrimination. Four international instruments, elaborating the Declaration, contain the most critical protections of religious rights and liberties: (1) the International Covenant on Civil and Political Rights (“the 1966 Covenant”),¹³ (2) the United Nations Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief (“the 1981 Declaration on Religion or Belief”),¹⁴ (3) the Concluding Document of the Vienna Follow-up Meeting of Representatives of the Participating States of the Conference on Security and Cooperation in Europe (the “1989 Vienna Concluding Document”),¹⁵ and (4) the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious, and Linguistic Minorities (“the 1992 Minorities Declaration”).¹⁶

The 1966 International Covenant on Civil and Political Rights, a binding treaty accepted by 165 countries today, largely repeats the capacious guarantee of religious rights and liberties first announced in the 1948 Universal Declaration. Article 18 of the 1966 Covenant reads:

¹¹ On these latter rights, see the chapters by Ronald Niezen, Willis Jenkins, and R. Scott Appleby herein.

¹² See the chapter by Ingvill Thorson Plesner herein, citing the World Conference on Human Rights in Vienna, 14-25 June 1993.

¹³ G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp (No. 16) at 52, U.N. Doc. A/6316, 999 U.N.T.S. (Dec. 16, 1966).

¹⁴ G.A. Res. 36/55, U.N. GAOR Supp. (no. 151), U.N. Doc. A/RES/36/55 (Nov. 25, 1981).

¹⁵ 28 I.L.M. 527.

¹⁶ G.A. Res. 47/135, Annex, U.N. Doc. A/Res/47/135/Annex, 18 December 1992.

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.
2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.
3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.
4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

Article 18 distinguishes between the right to freedom of religion or belief and the freedom to manifest one's religion or belief -- what American law labels as liberty of conscience and free exercise of religion respectively. The right to freedom of religion (the freedom to have, to alter, or to adopt a religion of one's choice) is an absolute right from which no derogation may be made and which may not be restricted or impaired in any manner. Freedom to manifest or exercise one's religion (individually or collectively, publicly or privately) may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others. The latter provision is an exhaustive list of the grounds allowed to limit the manifestation of religion. The requirement of necessity implies that any such limitation on the manifestation of religion must be proportionate to its aim to protect any of the listed state interests. Such limitations must not be applied in a manner that would vitiate the rights guaranteed in Article 18.¹⁷

Article 20.2 of the 1966 Covenant calls for States Parties to prohibit "any advocacy of national, racial, or religious hatred that constitutes incitement to discrimination, hostility, or violence." Articles 2 and 26 further require equal treatment of

¹⁷ See the chapters by Paul Taylor and T. Jeremy Gunn herein and Symposium, "The Permissible Scope of Legal Limitations on the Freedom of Religion and Belief," *Emory International Law Review* 19 (2005): 465-1320.

all persons before the law and prohibit discrimination based, among other grounds, on religion.¹⁸

The 1981 Declaration on Religion or Belief elaborates the religious liberty provisions that the 1966 Covenant adumbrated. Like the 1966 Covenant, the 1981 Declaration on its face applies to “everyone,” whether “individually or in community,” “in public or in private.” Articles 1 and 6 of the 1981 Declaration set forth a lengthy illustrative catalogue of rights to “freedom of thought, conscience, and religion” — repeating but also illustrating more concretely the 1966 Covenant’s guarantees of liberty of conscience and free exercise of religion. Article 6 enumerates these rights as follows:

- (a) To worship or assemble in connection with a religion or belief and to establish and maintain places for these purposes;
- (b) To establish and maintain appropriate charitable or humanitarian institutions;
- (c) To make, to acquire and use to an adequate extent the necessary articles and materials related to the rites or customs of a religion or belief;
- (d) To write, issue, and disseminate relevant publications in these areas;
- (e) To teach a religion or belief in places suitable for these purposes;
- (f) To solicit and receive voluntary financial and other contributions from individuals and institutions;
- (g) To train, to appoint, to elect, or to designate by succession appropriate leaders called for by the requirements and standards of any religion or belief;
- (h) To observe days of rest and to celebrate holy days and ceremonies in accordance with the precepts of one’s religion or belief; and
- (i) To establish and maintain communications with individuals

¹⁸ See further the chapter by Steven D. Smith herein on freedom of conscience.

and communities in matters of religion and belief at the - national and international levels.

Further guidance for the protection of a person's freedom of conscience is provided in the 1990 Copenhagen Document which, glossing the 1981 Declaration, recognizes "the right of everyone to have conscientious objection to military service" and calls for "various forms of alternative service ... in combatant or civilian service" "which are compatible with the reasons for conscientious objections to military service."¹⁹

The 1981 Declaration, in Article 5, also dwells specifically on the religious rights of children and their parents. It guarantees the rights of parents (or guardians) to organize life within their household and to educate their children "in accordance with their religion or beliefs." Such parental responsibility within and beyond the household, however, must be discharged in accordance with the "best interests of the child." At minimum, the parents' religious upbringing or education of their child "must not be injurious to his physical or mental health or to his full development." Moreover, the Declaration provides more generically, "the child shall be protected from any form of discrimination on the ground of religion or belief. He shall be brought up in a spirit of understanding, tolerance, friendship among peoples, peace and universal brotherhood, respect for freedom of religion or belief of others, and in full conscience that his energy and talents should be devoted to the service of his fellow men." The Declaration leaves juxtaposed the parents' right to rear and educate their children in accordance with their own religion and beliefs and the state's power to protect the best interests of the child, including the lofty aspirations for the child's upbringing. Despite ample debate on point, the Declaration drafters offered no specific principles to resolve the disputes that would inevitably arise between the rights of parents and the powers of the state operating *in loco parentis*. Some further guidance on this subject is provided by the 1989 UN Convention on the Rights of the Child -- though the issue of parental rights over their child's religious upbringing and welfare remains highly contested.²⁰

As these children's rights provisions illustrate, the 1981 Declaration, like the 1966 Covenant, allows the "manifestation of religion" to be subjected to "appropriate" state regulation and adjudication. The 1981 Declaration permits states to enforce against religious individuals and institutions general regulations designed to protect public safety, order, health, or morals, or the fundamental rights and freedoms of others. It is assumed, however, that in all such instances, the grounds for such regulations are

¹⁹ Document of the Copenhagen Meeting of Representatives of the Participating States of the Conference on the Human Dimension of the Conference on Security and Co-operation in Europe (1990), Principle 18, reprinted in OSCE/ODIHR, *Guidelines for Review of Legislation Pertaining to Religion or Belief* (June, 2004), p. 45.

²⁰ See further the chapter by Barbara Bennett Woodhouse herein and Symposium, "What's Wrong with Rights for Children?" *Emory International Law Review* 20 (2006): 1-239.

enumerated and explicit and that such regulations abide by the international legal principles of necessity and proportionality.

The 1981 Declaration includes more elaborate prohibitions than the 1966 Covenant on religious discrimination and intolerance. Article 2 bars religious “discrimination by any State, institution, group of persons, or person.” And it defines such discrimination as “any distinction, exclusion, restriction or preference based on religion or belief, and having as its purpose or as its effect nullification or impairment of the recognition, enjoyment or exercise of human rights or fundamental freedoms on an equal basis.” All such discrimination based on religion or belief, the Declaration insists, is “an affront to human dignity” and a “disavowal” of the “fundamental freedoms” that form the cornerstone of national and international peace and cooperation. Accordingly, the Declaration calls on all States Parties “to take effective measures to prevent and eliminate” such discrimination “in all fields of civil, economic, political, social, and cultural life,” including rescinding laws that foster discrimination and enacting laws that forbid it.²¹

The 1981 Declaration includes suggested principles of implementation and application of these guarantees. It urges states to take all “effective measures to prevent and eliminate discrimination on the grounds of religion or belief in the recognition, exercise and enjoyment of human rights and fundamental freedoms in all fields of civil, economic, political, social and cultural life.” It urges states to remove local laws that perpetuate or allow religious discrimination and to enact local criminal and civil laws to combat religious discrimination and intolerance.

The 1989 Vienna Concluding Document extends the religious liberty norms of the 1981 Declaration, particularly for religious groups. Principle 16 rounds out the list of enumerated rights guarantees quoted above from the 1981 Declaration:

16. In order to ensure the freedom of the individual to profess and practice religion or belief the participating States will, *inter alia*,

A. take effective measures to prevent and eliminate discrimination against individuals or communities, on the grounds of religion or belief in the recognition, exercise and enjoyment of human rights and fundamental freedoms in all fields of civil, political, economic, social and cultural life, and ensure the effective equality between believers and non-believers;

B. foster a climate of mutual tolerance and respect between

²¹ See further the chapter by Nazila Ghanea herein.

believers of different communities as well as between believers and non-believers;

C. grant upon their request to communities of believers, practicing or prepared to practice their faith within the constitutional framework of their states, recognition of the status provided for them in their respective countries;

D. respect the right of religious communities to establish and maintain freely accessible places of worship or assembly; organize themselves according to their own hierarchical and institutional structure; select, appoint and replace their personnel in accordance with their respective requirements and standards as well as with any freely accepted arrangement between them and their State; solicit and receive voluntary financial and other contributions;

E. engage in consultations with religious faiths, institutions and organizations in order to achieve a better understanding of the requirements of religious freedom;

F. respect the right of everyone to give and receive religious education in the language of his choice, individually or in association with others;

G. in this context respect, *inter alia*, the liberty of parents to ensure the religious and moral education of their children in conformity with their own convictions;

H. allow the training of religious personnel in appropriate institutions;

I. respect the right of individual believers and communities of believers to acquire, possess, and use sacred books, religious publications in the language of their choice and other articles and materials related to the practice of religion or belief;

J. allow religious faiths, institutions and organizations to produce and import and disseminate religious publications and materials;

K. favorably consider the interest of religious communities in participating in public dialogue, *inter alia*, through mass media.

A number of these religious group rights provisions in the Vienna Concluding Document reflect the international right to self-determination of peoples. This right has long been recognized as a basic norm of international law, and is included, among other places, in the 1966 Covenant, the 1989 Child Convention, and the 1990 Copenhagen Document. It has its fullest expression in the 1992 Minorities Declaration. The right to self-determination belongs to “peoples” within plural societies. It affords a religious community to practice its religion, an ethnic community the right to promote its culture, and a linguistic community to speak its language without undue state interference or legal restrictions. Governments are required to secure the interests of distinct sections of the population that constitute a people in the above sense. The 1992 Minorities Declaration clearly spells out that obligation: protect and encourage conditions for the promotion of the concerned group identities of minorities; afford to minorities the special competence to participate effectively in decisions pertinent to the group to which they belong; do not discriminate in any way against any person on the basis of his or her group identity; take actions to secure their equal treatment at law. The Minorities Declaration further provides that: “States shall take measures to create favorable conditions to enable persons belonging to minorities to express their characteristics and to develop their culture, language, religion, traditions and customs, except where specific practices are in violation of national law and contrary to international standards.”²² So conceived, the right to religious self-determination provides religious groups some of the same strong protections afforded to religious individuals under the freedom of conscience guarantee.

The 2007 United Nations Declaration on the Rights of Indigenous Peoples gives specific elaboration of these rights of self-determination for indigenous, aboriginal, or first peoples. Article 12 provides that “Indigenous peoples have the right to manifest, practise, develop and teach their spiritual and religious traditions, customs and ceremonies; the right to maintain, protect, and have access in privacy to their religious and cultural sites; the right to the use and control of their ceremonial objects; and the right to the repatriation of their human remains.” Article 25 provides further that “Indigenous peoples have the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources and to uphold their responsibilities to future generations in this regard”.²³

These are the basic international provisions on religious rights on the books. Various regional instruments, notably the European Charter on Human Rights (1950), the American Convention on Human Rights (1969), and the African Charter on Human and People’s Rights (1981), elaborate some of these guarantees. Further amplification

²² 1992 Minorities Declaration, art. 4.2. See further the chapters by Natan Lerner and Johan D. van der Vyver herein.

²³ *United Nations Declaration on the Rights of Indigenous Peoples*, UN GAOR, A/61/L.67/Annex (2007). See further the chapter by Ronald Niezen herein.

is provided in various religious declarations and treaties involving religious bodies, notably the recent concordats between the Vatican and Italy, Spain, and Israel and in other bilateral treaties between various nations.

A number of religious bodies have also issued important international declarations of human rights, including religious rights and liberties, that have helped to mobilize human rights reflection and activism within these religious communities. Both the Roman Catholic Church and the Islamic world, each claiming well over a billion members worldwide, offer good examples. The Catholic declarations were issued during and after the Second Vatican Council (1962-1965), when the Church came to endorse many of the very same human rights and democratic principles that it had spurned a century before. "Every person," reads the famous Vatican decree *Dignitatis Humanae* (1965), is created by God with "dignity, intelligence and free will ... and has rights flowing directly and simultaneously from his very nature." Such rights include the right to life and adequate standards of living, to labor, education, and healthcare, to moral and cultural values, to religious 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. The church also stressed the need to balance individual and associational rights, particularly those involving the church, family, and school. Governments everywhere were encouraged to create conditions conducive to the realization and protection of these "inviolable rights" and encouraged to root out every type of discrimination, whether social or cultural, whether based on sex, race, color, social distinction, language, or religion. As a corollary, the Church advocated limited constitutional government, disestablishment of religion, and the separation of church and 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 such democratic forms of government. Armed with these new human rights teachings, the Catholic Church has become a critical force in the new democratic and human rights movements in Brazil, Chile, Central America, the Philippines, South Korea, Poland, Hungary, the Czech Republic, Ukraine, and elsewhere.²⁴

The Universal Islamic Declaration of Human Rights (1981) offers another compelling example of a religious community's new embrace of human rights. The foreword of this important document proclaims this instrument to be a "declaration for mankind," invoking a classic Qur'anic passage describing the creation of humanity "into

²⁴ See the chapter by Nicholas Wolterstorff herein; see also J. Bryan Hehir, "The Modern Catholic Church and Human Rights: The Impact of the Second Vatican Council," in *Christianity and Human Rights*, ed. John Witte, Jr. and Frank S. Alexander (Cambridge: Cambridge University Press, 2010), 113-134.

nations and tribes, so that you might come to know one another."²⁵ The Declaration guarantees "freedom of belief, thought, and speech" and, more specifically, a person's "right to freedom of conscience and worship in accordance with his religious beliefs." It condemns actions that "hold in contempt or ridicule the religious beliefs of others or incite public hostility against them," and declares that "respect for the religious feelings of others is obligatory on all Muslims." Above all, it declares, that the "Qur'anic principle 'There is no compulsion in religion' shall govern the religious rights of non-Muslim minorities" and "[i]n a Muslim country religious minorities shall have the choice to be governed in respect of their civil and personal matters by Islamic Law, or by their own laws."²⁶

The more recent 1990 Cairo Declaration on Human Rights contains no articles specifically devoted to religious freedom, but it does cite "race, color, language, sex, *religious belief*, political affiliation, [and] social status" as impermissible bases of discrimination.²⁷ Religious rights are mentioned in a provision on educational rights, as well as in the context of the believer's right "to live in security for himself, his *religion*, his dependents, his honor, and his property."²⁸ At the same time, a provision on free speech limits the applicability of free speech guarantees in cases where such speech would "arouse nationalistic or *doctrinal* hatred or do anything that may be an incitement to any form of racial discrimination."²⁹ In its linkage of religion to race and other categories of identity, the Cairo Declaration, is a precursor to the more recent connections made between religion, race, and ethnicity in the "combating defamation of religions" resolutions that have been introduced by the Muslim member states of the Organization of the Islamic Conference (OIC) at the United Nations in recent years.³⁰ The conflation of religion, race, and ethnicity in those resolutions suggests a potentially narrower ambit of religious freedom than the earlier Universal Islamic Declaration. But it is equally important to recognize that the Cairo Declaration does affirm the fundamental nature of religious rights, even as it hints at the grounds for their restriction.

These international instruments on religion and human rights – and many others that can adduced -- highlight the hottest religion and human issues that now regularly confront national and international tribunals: How to protect religious and cultural minorities within a majoritarian religious culture -- particularly controversial groups like Muslims, Mormons, Bahias, Jehovah's Witnesses, Scientologists, Unification Church

²⁵ Universal Islamic Declaration of Human Rights (London: Islamic Council, 1981), foreword (quoting Qur'an, Sura 49:13). Accessible at: <http://www.alhewar.com/ISLAMDECL.html>, last accessed May 3, 2009.

²⁶ *Ibid.*, Arts. 13, 12, 14, 10

²⁷ Cairo Declaration on Human Rights in Islam, Aug. 5, 1990, U.N. GAOR, World Conf. on Hum. Rts., 4th Sess., Agenda Item 5, U.N. Doc. A/CONF.157/PC/62/Add.18 (1993) [English translation], Art. 1 (emphasis added).

²⁸ *Ibid.*, Art. 22 (emphasis added).

²⁹ *Ibid.*, Art. 18 (emphasis added).

³⁰ On this latter, see the chapter by Carolyn Evans herein.

members, and Indigenous peoples who often bring charges of religious and cultural discrimination. How to define limits on religious and anti-religious exercises and expressions that cause offense or harm to others or elicit charge of blasphemy, defamation, or sacrilege. How to adjudicate challenges that a state's proscriptions or prescriptions run directly counter to a party's core claims of conscience or cardinal commandments of the faith. How to balance private and public exercises of religion, including the liberty of conscience of one party to be left alone and the free exercise right of another to proselytize. How to balance conflicts between the rights of parents to bring up their children in the faith and the duties of the state to protect the best interest of the child. How to protect the distinct religious needs of prisoners, soldiers, refugees, and others who don't enjoy ready access to traditional forms and forums of religious worship and expression.

Many religion and human rights issues involve religious groups, for whom the right to organize as a legal entity with juridical personality is itself often a critical issue. How to negotiate the complex needs and norms of religious groups without according them too much sovereignty over their members or too little relief from secular courts in the event of fundamental rights violations by religious tribunals. How to balance the rights of religious groups to self-determination and self-governance and the guarantees of freedom from discrimination based on religion, gender, culture, and sexual orientation. How to balance competing religious groups who each claim access to a common holy site, or a single religious or cultural group whose sacred site is threatened with desecration, development, or disaster. How to protect the relations between local religious communities and their foreign co-religionists. How to adjudicate intra- or interreligious disputes that come before secular tribunals for resolution. How to determine the proper levels of state cooperation with and support of religious officials and institutions in the delivery of vital social services – child care, education, charity, medical services, disaster relief, among others.

Each one of these issues of religion and human rights issues now commands a whole library of specialty literature, and a whole litany of human rights documents, cases, and field reports to consult. The chapters that follow, particularly in the second section of the volume, provide ample illustration of what is at stake and ample guidance on what more you might read.

The Place of Religion in Human Rights

A number of distinguished commentators have argued that it is just because of all of these thorny problems that religion should have no place in a modern regime of human rights. Religious ideas well have been the sources of human rights in earlier eras; some religious groups might even have helped to inspire the modern human rights revolution. But religion has now outlived its utility. Religion is, by its nature, 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.

Religion is also too dangerous, divisive, and diverse in its demands to be accorded special protection. Religion is better viewed as just another category of private liberty, expression, and association and given no more preference than its secular counterparts. Indeed, to accord religion special human rights treatment is, in effect, to establish it and to discriminate against non-religious parties in the same position. Purge religion entirely, this argument concludes, and the human rights paradigm will thrive.³¹

This argument proves too much to be practicable. In the course of the twentieth century, religion defied the wistful assumptions of the Western academy that the spread of Enlightenment reason and science would slowly eclipse the sense of the sacred and the sensibility of the superstitious. Religion also defied the evil assumptions of Nazis, Fascists, and Communists alike that gulags and death camps, iconoclasm and book burnings, propaganda and mind controls would inevitably drive religion into extinction. Yet another great awakening of religion is upon us—now global in its sweep and frightening in its power.³²

It is undeniable that religion has been, and still is, a formidable force for both political good and political evil, that it has fostered both benevolence and belligerence, peace and pathos of untold dimensions. But the proper response to religious belligerence and pathos cannot be to deny that religion exists or to dismiss it to the private sphere and sanctuary. The proper response is to castigate the vices and to cultivate the virtues of religion, to confirm those religious teachings and practices that are most conducive to human rights, democracy, and rule of law.

Human rights ultimately need religious ideas, institutions, and rights claims to survive and thrive. First, without religion, many rights are cut from their roots. The right to religion, Georg Jellinek once wrote, is “the mother of many other rights.”³³ For the religious individual, the right to believe leads ineluctably to the rights to assemble, speak, worship, proselytize, educate, parent, travel, or to abstain from the same on the basis of one’s beliefs. For the religious association, the right to exist invariably involves rights to corporate property, collective worship, organized charity, parochial education, freedom of press, and autonomy of governance. To ignore religious rights is to overlook the conceptual, if not historical, source of many other individual and associational rights.

Second, without religion, the regime of human rights becomes infinitely expandable. Many religious communities adopt and advocate human rights in order to protect religious duties. A religious individual or association has rights to exist and act not in the abstract but in order to discharge discrete religious duties. For many religions, freedoms and commandments, rights and duties belong together. To speak of

³¹ See the chapter by David Little herein weighing religious and secular justifications for human rights.

³² See the chapter by R. Scott Appleby herein.

³³ Georg Jellinek, *Die Erklärung der Menschen- und Bürgerrechte: ein Beitrag zur modernen Verfassungsgeschichte* (Lipzig: Duncker and Humblot, 1895), 42.

one without the other is ultimately destructive. Rights without duties to guide them quickly become claims of self-indulgence. Duties without rights to exercise them quickly become sources of deep guilty.

Third, without religion, human rights become too captive to Western libertarian ideals. Many religious traditions cannot conceive of, nor accept, a system of rights that excludes, deprecates, or privatizes religion. Religion is for these traditions inextricably integrated into every facet of life. The rights of religion are, for them, an inherent part of rights of speech, press, assembly, and other individual rights as well as ethnic, cultural, linguistic, and similar associational rights. No system of rights that ignores or deprecates this cardinal place of religion can be respected or adopted.

Fourth, without religion, the state is often given an exaggerated role to play 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 omniscient, as the fantastic failures of the twentieth-century Communist states made all too clear. Numerous "mediating structures" stand between the state and the individual, religious institutions prominently among them. Religious institutions, among others, play a vital role in the cultivation and realization of rights. They can create the conditions (sometimes the prototypes) for the realization of first generation civil and political rights. They can provide a critical (sometimes the principal) means to meet second generation rights of education, health care, child care, labor organizations, employment, artistic opportunities, among others. They can offer some of the deepest insights into norms of creation, stewardship, and servanthood that lie at the heart of third generation rights.

The challenge of this new century is to transform religious communities from midwives to mothers of human rights—from agents that assist in the birth of rights norms conceived elsewhere, to associations that give birth to and nurture their own unique contributions to human rights norms and practices. The ancient Abrahamic teachings and practices of Judaism, Christianity, and Islam have much to commend themselves to the human rights regime. As the chapters herein by David Novak, Nicholas Wolterstorff, and Abdullahi An-Na'im illustrate, each of these traditions is a religion of revelation, founded on the eternal command to love one God, oneself, and all neighbors. Each tradition recognizes a canonical text as its highest authority—the Torah, the Bible, and the Qur'an, respectively. Each tradition designates a class of officials to preserve and propagate its faith, and embraces an expanding body of authoritative interpretations and applications of its canons. Each tradition has a refined legal structure—the Halacha, the canon law, and the Shari'a—that has translated its enduring principles of faith into evolving precepts of works. Each tradition has sought to imbue its religious, ethical, and legal norms into the daily lives of individuals and communities. Each tradition has produced a number of the basic building blocks of a comprehensive theory and law of religious rights—conscience, dignity, reason, liberty, equality, tolerance, love, openness, responsibility, justice, mercy, righteousness, accountability, covenant, and community, among other cardinal concepts. Each tradition has developed its own internal system of legal procedures and structures for the

protection of rights, which historically have and still can serve as both prototypes and complements for secular legal systems. Each tradition has its own advocates and prophets, ancient and modern, who have worked to achieve a closer approximation of human rights ideals.

Similarly, the ancient teachings of Buddhism, Confucianism, Hinduism, and Indigenous Religions have much to teach the world about human rights – particularly in their call to strike new balances between individual rights and social responsibilities, between the freedoms of humans and the needs of nature, between the legal order of the world and the cosmic order of the universe. As the chapters herein by Sallie King, Joseph Chan, Werner Menksi, and Ronald Niezen illustrate, Buddhist, Confucian, Hindu, and Indigenous defenses and declarations of rights are beginning to appear. And many members of these religious traditions now often eagerly embrace the freedom of religion and religious self-determination held out by modern human rights and constitutional instruments. But all these Asian and Indigenous traditions have also maintained a healthy skepticism about modern formulations of human rights, and question whether human rights are truly universal or just the hegemonic creations of Western Christianity and Enlightenment liberalism.

The Place of Human Rights in Religion

Human rights skeptics within the Asian religious world often find allies among Western religious believers as well. It is one thing, such religious skeptics argue, for religious believers and bodies to accept the freedom and autonomy that a human rights regime allows. This at least gives them unencumbered space to pursue their divine callings. It is quite another thing for religious communities to import human rights within their own polities and theologies. This exposes them to all manner of unseemly challenges.

Human rights norms, religious skeptics argue, challenge the structure of religious bodies. While human rights norms teach liberty and equality, most religious bodies teach authority and hierarchy. While human rights norms encourage pluralism and diversity, many religious bodies require orthodoxy and uniformity. While human rights norms teach freedoms of speech and petition, several religions teach duties of silence and submission. To draw human rights norms into the structures of religion would only seem to embolden members to demand greater access to religious governance, greater freedom from religious discipline, greater latitude in the definition of religious doctrine and liturgy. So why import them?

Moreover, human rights norms challenge the spirit of religious bodies. Human rights norms, religious skeptics argue, are the creed of a secular faith born of Enlightenment liberalism, humanism, and rationalism. Human rights advocates regularly describe these norms as our new "civic faith," "our new world religion," "our new global moral language." Influential French jurist Karel Vasak has pressed these

sentiments into a full confession of the secular spirit of the modern human rights movement:

The Universal Declaration of Human Rights [of 1948], like the French Declaration of the Rights of Man and Citizen in 1789, has had an immense impact throughout the world. It has been called a modern edition of the New Testament, and the Magna Carta of humanity, and has become a constant source of inspiration for governments, for judges, and for national and international legislators.... [B]y recognizing the Universal Declaration as a *living* document ... one can proclaim one's faith in the future of mankind.³⁴

In demonstration of this new faith, Vasak converted the “old trinity” of “*liberté, égalité, et fraternité*” taught by the French Revolution into a “new trinity” of “three generations of rights” for all humanity.³⁵ The first generation of civil and political rights elaborates the meaning of liberty. The second generation of social, cultural, and economic rights elaborates the meaning of equality. The third generation of solidarity rights to development, peace, health, the environment, and open communication elaborates the meaning of fraternity. Such language has become not only the *lingua franca* but also something of the *lingua sacra* of the modern human rights movement. In the face of such an overt confession of secular liberalism, religious skeptics conclude, a religious body would do well to resist the ideas and institutions of human rights.

Both these skeptical arguments, however, presuppose that human rights norms constitute a static belief system born of Enlightenment liberalism. But the human rights regime is not static. It is fluid, elastic, and open to challenge and change. The human rights regime is not a fundamental belief system. It is a relative system of ideas and ideals that presupposes the existence of fundamental beliefs and values that will constantly shape and reshape it. The human rights regime is not the child of Enlightenment liberalism, nor a ward under its exclusive guardianship. It is the *ius 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 needs the constant nurture of multiple communities around the world. It is beyond doubt that many 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. But liberalism does not and should not have a

³⁴ Karel Vasak, “A 30-Year Struggle,” *UNESCO Courier*, November 1977, p. 29; see also Karel Vasak, “Foreword,” in Karel Vasak, ed., *The International Dimensions of Human Rights* (Westport, CT: Greenwood Press, 1982), xv; id., “Pour une troisième génération des droits de l'homme,” in *Études et Essais sur le Droit International Humanitaire et sur les Principes de la Croix-Rouge en l'Honneur de Jean Pictet*, ed. Christophe Swinarksi (The Hague: Martinus Nijhoff, 1984), 837-845.

³⁵ Vasak, “Pour une troisième génération,” 837.

monopoly on the nurture of human rights; indeed, a human rights regime cannot long survive under its exclusive patronage.

We use the antique term *ius gentium* advisedly -- to signal the place of human rights as "middle axioms" in our moral and political discourse. Historically, Western writers spoke of a hierarchy of laws -- from natural law (*ius naturale*), to common law (*ius gentium*), to civil law (*ius civile*). The natural law was the set of immutable principles of reason and conscience, which are supreme in authority and divinity and must always prevail in instances of dispute. The civil 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 *ius 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 *ius 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 *ius gentium* was a relatively consistent body of principles by which a person and a people could govern themselves.³⁶

This antique typology helps us to understand the intermediate place of human rights in our hierarchy of legal and cultural norms today. Human rights are the *ius gentium* of our time, the middle axioms of our discourse. They are derived from and dependent upon the transcendent principles that religious traditions (more than any other group) continue to cultivate. They also inform, and are informed by, shifts in the customs and conventions of sundry state law systems. These human rights norms do 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.

This antique typology also helps us to understand the place of human rights within religion. Our argument that human rights must have a more prominent place within religions today is not an attempt to import libertarian ideals into their theologies and politics. It is not an attempt to herd Trojan horses into churches, synagogues, mosques, and temples to assail secretly their spirit and structure. Our argument is, rather, that religious bodies must again assume their traditional patronage and protection of human rights, bringing to this regime their full doctrinal vigor, liturgical healing, and moral suasion. Using our antique typology, religious bodies must again nurture and challenge the middle axioms of the *ius gentium* using the transcendent principles of the *ius naturale*. This must not be an effort to monopolize the discourse, nor to establish by positive law a particular religious construction of human rights. Such an effort 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 good and evil,

³⁶ See Brian Tierney, *The Idea of Natural Rights: Studies on Natural Rights, Natural Law, and Church Law, 1150-1625* (Grand Rapids, MI: Eerdmans, 1997).

of individuality and community—that will serve constantly to inform and reform, to develop and deepen, the human rights ideals now in place.

As the opening chapters in this volume illustrate, a number of religious traditions of late have begun the process of reengaging the regime of human rights, of returning to their traditional roots and routes of nurturing and challenging the human rights regime. This process has been incremental, clumsy, controversial, and at times even fatal for its proponents. But the process of religious engagement of human rights is now under way in Christian, Islamic, Judaic, Buddhist, Confucian, Hindu, and Indigenous communities alike. Something of a new “human rights hermeneutic” is slowly beginning to emerge among modern religions.³⁷

This is, in part, a “hermeneutic of confession.” Given their checkered human rights records over the centuries, religious bodies have begun to acknowledge their departures from the cardinal teachings of peace and love that are the heart of their sacred texts and traditions. They have begun to confess that their theologians and jurists have resisted the importation of human rights as much as they have helped in their cultivation, that 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, synagogues, temples, and mosques. The bludgeons of pogroms, crusades, jihads, inquisitions, and ostracisms have been used to devastating effect within and among these faiths. Confession and restitution are essential first steps for any religious community to engage human rights fully.

This is, in part, a “hermeneutic of suspicion,” in Paul Ricoeur’s famous phrase. Given the pronounced libertarian tone of many recent human rights formulations, it is imperative that we not idolize or idealize these formulations. We need not be bound by current taxonomies of “three generations of rights” rooted in liberty, equality, and fraternity. Nor do we need to accept the seemingly infinite expansion of human rights discourse and demands. Rights bound by moral duties, by natural capacities, or by covenantal relationships might well provide better boundaries to the legitimate expression and extension of rights. We also need not be bound only to a centralized legal methodology of articulating and enforcing rights. We might also consider a more pluralistic model of interpretation that respects “the right of the [local] community to be the living frame of interpretation for [its] own religion and its normative regime.”³⁸

³⁷ Abdullahi Ahmed An-Na'im, “Towards an Islamic Hermeneutics for Human Rights,” in *Human Rights and Religious Values: An Uneasy Relationship?* ed. Abdullahi Ahmed An-Na'im, et al. (Grand Rapids: Wm. B. Eerdmans, 1995), 229-242.

³⁸ Abdullahi Ahmed An-Na'im, *Toward an Islamic Reformation: Civil Liberties, Human Rights, and International Law* (Albany, NY: SUNY Press, 1990), 235.

This is, in part, a “hermeneutic of history.” While acknowledging the fundamental contributions of Enlightenment liberalism to the modern rights regime, we must also see the deeper genesis and genius of many modern rights norms in religious texts and traditions that antedate the Enlightenment by centuries, even by millennia. We must return to our religious sources. In part, this is a return to ancient sacred texts freed from the casuistic accretions of generations of jurists and freed from the cultural trappings of the communities in which these traditions were born. In part, this is a return to slender streams of theological jurisprudence that have not been part of the mainstream of the religious traditions, or have become diluted by too great a commingling with it. In part, this is a return to prophetic voices of dissent, long purged from traditional religious canons, but, in retrospect, prescient of some of the rights roles that the tradition might play today.

This is, in part, a “hermeneutic of law and religion.” A century of legal positivism in the Western academy has trained us to think that law is an autonomous discipline, free from the influence of religion and belief. A century of firm laicization and strict separation of church and state has accustomed us to think that our law and politics must be hermetically and hermeneutically sealed from the corrosive influences of religious believers and bodies. An ample body of new scholarship has emerged, however, to show that law and religion need each other, and that institutions like human rights have interlocking legal and religious dimensions.

The universality of human rights has held up “as long as no one asks why” in Maritain’s famous phrase. The various covenants and conventions of international human rights law, as concerns religion, while not always unanimous in their acclamation or uniform in their application have generally been taken to be universal in their aspiration. What happens when increased globalization, communication, and internationalism in the legal sphere brings to light uncomfortable differences of opinion, orientation, and ontology in the religious sphere? Most religions have a stake in asserting the truth of their own beliefs against the apparent falsehood of the beliefs of others. At the level of normative interreligious engagement, refraining from asking the “why” questions may be difficult if not disingenuous, if one purports to want to truly understand and respect religious beliefs and religious diversity. How to have these conversations in a way that is both critical and constructive amid descriptive and doctrinal pluralism remains a crucial challenge for both religion and human rights.

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