

David Little: A Modern Calvinist Architect of Human Rights

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Abstract

For the past half century, David Little has done path-breaking work in exploring the religious foundations and dimensions of human rights. While working on a wide interreligious canvas, he has focused in especially on some of the Calvinist foundations of human rights, notably in the work of John Calvin, John Locke, and Roger Williams. This chapter offers an appreciative appraisal of Little's contributions, and shows its place in the emerging scholarship on Calvinism and law and on religion and human rights.

Keywords: David Little; John Calvin; Roger Williams; Puritanism; religion; human rights; religious freedom; Max Weber; hermeneutics; subjective rights; objective right; *ius*; *libertas*; *malum in se*; Karl Vasak; liberalism; secularism

I first read David Little's work nearly thirty years ago in a freshman history class at Calvin College. Among our assigned texts was his sterling 1969 title, *Religion, Order, and Law: A Study in Pre-Revolutionary England*.¹ In 225 pithy pages, he offered a brilliant exploration of the legal, political, and theological mind of seventeenth-century Puritans, and a respectful but critical engagement with *Überhistorian*, Max Weber. This book gave me a good introduction to Little's academic style: sturdy, concise prose, trenchant criticism, close exegesis, engaging synthesis, and historical, theological, and philosophical gravitas. Here, too, was the first sustained treatment of themes that have remained at the center of his academic work: the notion that human rights are essential gifts for all persons to embrace; that religious ideas and institutions are essential allies in the struggle for human rights; and that Calvinists – yes, *Calvinists*, for all their talk of total depravity, covenantal duty, and predestination – were among the chief historical architects of our modern human rights paradigm, anticipating the Enlightenment project by two centuries and anchoring a number of its cardinal teachings on human rights, democratic government, and rule of law in a theological world view. You can imagine

¹ David Little, *Religion, Order, and Law: A Study in Pre-Revolutionary England* (New York and Evanston: Harper & Row, 1969).

the excitement that Professor Little's book stirred in my heart. As a young Calvinist, I was grateful for this blend of history, law, and Calvinist theology, well-inflected as it was with Weberian *Wissenschaft*. And I resolved then and there in 1980: "I want to be like David Little when I grow up."

In preparation for this celebration of Professor Little, I have been reading many of his writings since that prized 1969 title – his dozen monographs, the scores of articles, reviews, and book chapters, the sundry lectures, reports, and interviews. After completing my review of his works, I have resolved anew: "I want to be like David Little." There is so much in his writings from which to learn: his insightful treatment of violence and terrorism, nationalism and foreign policy, just war and just peace-making in such places as Vietnam, Ukraine, Sri Lanka, Tibet, and Iraq;² his deep, constructive engagement with Islam, Buddhism, and other faiths, and his pioneering work with John Kelsay and Barney Twiss on developing the field of comparative religious ethics;³ his strong philosophical defense of a political liberalism that leaves ample room for private and public expressions of religion in all peaceable varieties and in all forums of public life, including notably in political and constitutional debate;⁴ his devastating criticism of secularists as well as of those insensitive to human rights, such as Richard Rorty,⁵ Stanley Hauerwas, and Alasdair MacIntyre.⁶

David Little on Religion and Human Rights

The theme of religion and human rights, one of David's abiding concerns, has dominated his writings since the late 1950s. He has traced cardinal concepts like freedom of conscience and free exercise of religion from their earliest formulations in Stoic philosophy and Roman law, through the writings of Augustine and Aquinas, Luther and Calvin, and their many modern heirs.⁷ He has explored the contributions of

² David Little and Donald K. Swearer, eds., *Religion and Nationalism in Iraq* (Cambridge, MA: Center for the Study of World Religions, 2006); David Little, "Religion and Self-Determination," in *Self-Determination: International Perspectives*, eds. Donald Clark and Robert Williamson (London: MacMillan Press, 1996), 141-55; David Little, *Ukraine: The Legacy of Intolerance* (Washington, DC: United States Institute of Peace Press, 1991).

³ David Little, "Religious Freedom and American Protestantism," in *Politics and Religion in France and the United States*, eds. Alec G. Hargreaves, John Kelsay, and Sumner B. Twiss (Lanham, MD: Lexington Books, 2007), 29-48.

⁴ David Little, "In Defense of Political Liberalism," in *Toothing Stones: Rethinking the Political*, ed. Robert Meagher (Chicago: Swallow Press, 1972), 116-43.

⁵ David Little, "Natural Rights and Human Rights: The International Imperative," in *Natural Rights and Natural Law: The Legacy of George Mason*, ed. Robert Davidoff (Fairfax, VA: George Mason University Press, 1986), 95-97.

⁶ David Little, "The Nature and Basis of Human Rights," in *Prospects for a Common Morality*, eds. Gene Outka and John P. Reeder, Jr. (Princeton: Princeton University Press, 1993), 73-92.

⁷ David Little, Abdulaziz Sachedina, and John Kelsay, "Human Rights and the World's Religions: Christianity, Islam, and Religious Liberty," in *Religious Diversity and Human Rights*, eds. Irene Bloom, J. Paul Martin, and Wayne Proudfoot (New York: Columbia University Press, 1996), 225-37.

respected Calvinists to the Western understanding of human rights and religious freedom, with special focus on John Calvin,⁸ John Locke,⁹ Roger Williams,¹⁰ Isaac Backus,¹¹ and Thomas Jefferson,¹² all of whose ideas he connects to each other and to the Calvinist tradition in fresh and inventive ways. He has written astutely on the vexed questions, for Americans, of how to interpret and apply the First Amendment's call for no government establishments of religion or prohibitions on its free exercise. And he has charted many of the religious sources and dimensions of the modern human rights paradigm, particularly the fundamental international protections of religious freedom – freedom of thought, conscience, and belief, freedom from religious hatred, incitement, and discrimination, and freedom for religious self-determination.¹³

In a moving “Personal Testament,” published in 2002, Little makes clear that his devotion to the field of human rights and religious freedom is not merely a dispassionate academic pursuit.¹⁴ For him it is a profoundly Christian commitment and calling. He was born into a Presbyterian family with roots that go back to the Puritan settlers of Massachusetts Bay in the 1640s. His father and grandfather, and five generations of Littles before them were all Presbyterian ministers well schooled in the theological arts of Geneva and Westminster. Little himself is a devout Presbyterian layman with an iron firm grip on certain “substantive necessary truths” as he calls them, echoing Hilary Putnam.¹⁵

Among the fundamental “necessary truths” that drive his work in the field of religion and human rights are these: that each person is equally created in God's image, and vested with reason and will and inherent and inviolable dignity and freedom;¹⁶ that each person has a moral law written on his or her conscience that serves both as a “private monitor” to motivate, guide, and judge their pursuit of a happy and virtuous life,¹⁷ and a public marker to signal God's sovereign claims upon their inner mind, heart, and soul which no person or institution may trespass;¹⁸ that each person is vested with basic natural rights to discharge the dictates and duties of conscience, both in private

⁸ See, e.g., David Little, “The Reformed Tradition and the First Amendment,” in *The First Freedom: Religion and the Bill of Rights*, ed. James E. Wood, Jr. (Waco, TX: J.M. Dawson Institute of Church-State Studies, Baylor University, 1990), 29-32; see also Little, “Religious Freedom,” 29-34.

⁹ See, e.g., Little, “Natural Rights.”

¹⁰ See, e.g., Little, “Reformed Tradition,” 29-37; Little, “Religious Freedom,” 33-38; David Little, “Roger Williams and the Separation of Church and State,” in *Religion and the State: Essays in Honor of Leo Pfeffer*, ed. James E. Wood, Jr. (Waco, TX: 1985), 3-23.

¹¹ See, e.g., Little, “The Reformed Tradition,” 21-22.

¹² See, e.g., Little, “Religious Freedom,” 37-38.

¹³ See, e.g., David Little, “Conscientious Individualism: A Christian Perspective on Ethical Pluralism,” in *The Many and the One: Religious and Secular Perspectives on Ethical Pluralism in the Modern World*, eds. Richard Madsen and Tracy B. Strong (Princeton: Princeton University Press, 2003).

¹⁴ David Little, “Religion and Human Rights: A Personal Testament,” *The Journal of Law and Religion* 18 (2002-03), 57-58.

¹⁵ Hilary Putnam, *Ethics Without Ontology* (Cambridge, MA: Harvard University Press, 2005), 16.

¹⁶ Little, “Roger Williams,” 8-13.

¹⁷ Little, “Conscientious Individualism,” 232-33.

¹⁸ In “Conscientious Individualism,” 237, Little speaks of the sovereignty of a different king over a different world called the “inner forum,” wherein the “laws of the spirit” reigned supreme.

and in public, both alone and with others in peaceable communities;¹⁹ that our moral intuitions, shaped by these moral laws and natural rights, condemn as just plain evil (*malum in se*) the cruel logic of pain that supports grave and gratuitous assaults on the body through genocide, torture, mayhem, starvation, rape, and enslavement or on the mind through brutal coercion, pervasive mind controls, or hallucinogenic enslavement;²⁰ and, finally, that to protect the “rights of all humans” through both our private actions and political structures is the best way to live by the golden rule and to obey the first and greatest commandment: “to love God and to love our neighbors as ourselves.”²¹

For Little, all these fundamental beliefs are foundational to a regime of human rights. As formulated, they are part and product of the Christian tradition and of his own Calvinist world view. These beliefs, he has shown, have been only gradually uncovered and actualized in the Western tradition and only after centuries of hard and cruel experience. And these beliefs remain aspirational as we continue the work of constructing an ever sturdier human rights regime.

But these are not merely Calvinist, or Christian, or Western beliefs, Little insists. Cast more generically and generously, these beliefs are the cardinal axioms of what it takes to live together as persons and peoples.²² Many other traditions of thought, conscience, and religion have their own way of formulating these fundamental beliefs about human nature, action, knowledge, and interaction, and have their own means of implementing them through personal habits and institutional structures. And they have and will discover them in different ways and at different times in their development. But, all that said, “it is important to remember,” Little writes, “that behind or beneath all the many differences among human beings in culture, religion, outlook, and knowledge, these are indubitable and unifying features that are accessible and applicable to ‘all peoples and all nations’.”²³ It is on the strength of these convictions that Little calls fellow Christians and fellow peaceable believers of all persuasions to engage the regime of human rights fully, and to nurture and challenge this regime constantly to reform and improve itself.

Little calls for nothing less than a comprehensive new “hermeneutic of religion and human rights” -- in the apt phrase of our mutual friend, Abdullahi An-Na'im. This is, in part, a “hermeneutic of confession.”²⁴ Given their checkered human rights records over the centuries, religious bodies need to acknowledge their departures from the

¹⁹ See, e.g., Little, Sachedina, and Kelsay, “Christianity, Islam, and Religious Liberty,” 224-25 for a basic discussion of Roger Williams’ conception of moral duties. See more fully David Little, “Religious Liberty,” in John Witte, Jr. and Frank S. Alexander, eds., *Christianity and Law: An Introduction* (Cambridge: Cambridge University Press, 2008), 249-270.

²⁰ See, e.g., Little, “Natural Rights and Human Rights,” 96-102.

²¹ See, e.g., David Little, “A Christian Perspective on Human Rights,” in *Human Rights in Africa*, eds. Abdullahi Ahmed An-Naim and Francis M. Deng (Washington, DC: Brookings Institution, 1990), 67.

²² Little, “Natural Rights,” 68-69.

²³ Little, “Natural Rights,” 70.

²⁴ The discussion of the three aspects of this new hermeneutic is taken from John Witte, Jr., *God’s Joust, God’s Justice: Law and Religion in the Western Tradition* (Grand Rapids, MI: Eerdmans, 2006), chap. 3.

cardinal teachings of peace and love that are the heart of their sacred texts and traditions. The blood of many thousands is at the doors of our churches, temples, mosques, and synagogues, and this demands humble recognition, expiation, and restitution. This is, in part, a "hermeneutic of suspicion" (in Paul Ricoeur's phrase). Given the pronounced libertarian tone of many current human rights formulations, we must not idolize or idealize these formulations, but be open to new wisdom from our own religious traditions and those of others. This is, in part, a "hermeneutic of religious freedom" – a new way of thinking about the place of religion in public life and public law that goes beyond simple clichés of a wall of separation between church and state, that goes beyond the sterile dialectic of state secularism versus religious establishment, and that goes beyond the notion that religion is merely a private preoccupation of the peculiar and the unenlightened.²⁵ And, this is, in part, a "hermeneutic of history." While acknowledging the fundamental contributions of Enlightenment liberalism to the modern rights regime, we must look for the deeper genesis and genius of many modern rights norms in religious texts and traditions that antedate the Enlightenment by centuries, sometimes millennia.²⁶ We must return to these 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.²⁷

Little's own work illustrates how this four-part hermeneutic of religion and human rights works in the Western Christian tradition, particularly the Calvinist tradition. But he has also outlined comparable efforts for the Islamic,²⁸ Jewish, and Buddhist traditions, which others have developed more fully.²⁹ Let me just touch on a few of the highlights of his argument over fifty years about the Christian and other religious foundations and dimensions of human rights.

The Calvinist Roots of Rights

It takes a bit of contextualizing to appreciate the novelty and boldness of Little's argument, particularly his historical argument about the Christian foundations of human

²⁵ Little discusses the importance of Roger Williams' articulation of the freedom of the conscience, which was instrumental in development of the doctrine of the separation of the church and the state, and likely influenced Jefferson's thinking vis-à-vis Locke in Little, "Reformed Tradition," 21-27.

²⁶ See Little, "Christian Perspective," 59-103.

²⁷ See, e.g., David Little, "Does the Human Right to Freedom of Conscience, Religion, and Belief Have Special Status?" *Brigham Young University Law Review* (2001): 603-10.

²⁸ Little, Sachedina, and Kelsay, "Christianity, Islam, and Religious Liberty," 225-37.

²⁹ See David Little, "Rethinking Human Rights: A Review Essay on Religion, Relativism, and Other Matters," *Journal of Religious Ethics* 27 (Spring 1999).

rights before the Enlightenment. Standard college textbooks – from Little’s youthful days to our own – have long taught us that the history of human rights began in the later seventeenth and eighteenth centuries. Human rights, we often hear, were products of the Western Enlightenment – creations of Grotius and Pufendorf, Locke and Rousseau, Montesquieu and Bayle, Hume and Smith, Jefferson and Madison.³⁰ Human rights were the mighty new weapons forged by American and French revolutionaries who fought in the name of political democracy, personal autonomy, and religious freedom against outmoded Christian conceptions of absolute monarchy, aristocratic privilege, and religious establishment. Human rights were the keys that Western liberals finally forged to unchain themselves from the shackles of a millennium of Christian oppression and Constantinian hegemony. Human rights were the core ingredients of the new democratic constitutional experiments of the later eighteenth century forward. The only Christians to have much influence on this development, we are told, were a few early Church Fathers who decried pagan Roman persecution, a few brave medievalists who defied papal tyranny, and a few early modern Anabaptists who debunked Catholic and Protestant persecution.

Proponents of this conventional historiography have recognized that Western writers since classical Greek and Roman times often used the terms “right” or “rights” (*ius* and *iura* in Latin). But the conventional argument is that, before the dawn of the Enlightenment, the term “right” was usually used in an “objective” rather than a “subjective” sense. “Objective right” (or “rightness”) means that something is the objectively right thing or action in the circumstances. Objective right obtains when something is rightly ordered, is just or proper, is considered to be right or appropriate when judged against some objective or external standard.³¹ “Right” is being used here as an adjective, not as a noun: It is what is correct or proper -- “due and meet” in Victorian English. Thus when pre-seventeenth century writers spoke of the “natural rights” of a person they were really referring to the “natural duties” of a person – the right thing for the person to do when judged by an external standard posed by nature or by natural reason.³² As the great University of Chicago don, Leo Strauss, put it: “Natural right in its classic form is connected with a teleological view of the universe. All natural beings have a natural end, a natural destiny, which determines what kind of operation is good for them. In the case of men, reason is required for discerning these operations: reason determines what is by nature right with regard to man’s natural end.”³³

Enlightenment philosophers, beginning with Hobbes and Locke, Strauss continued, first began to use the term “natural right” in a subjective rather than an objective sense. For the first time in the later seventeenth century, the term “right” was

³⁰ Material in this and the following five paragraphs is drawn from my *The Reformation of Rights: Law, Religion, and Human Rights in Early Modern Calvinism* (New York: Cambridge University Press, 2007), 20-37. Parallel citations to Little’s work are included.

³¹ Little, “Roger Williams,” 17.

³² Little, “Human Rights,” 21-22.

³³ Leo Strauss, *Natural Right and History* (Chicago: University of Chicago Press, 1953), 7.

regularly used as a noun not as an adjective. A “subjective right” was viewed as a claim, power, or freedom which nature vests in a subject, in a person. The subject can claim this right against another subject or sovereign, and can have that right vindicated before an appropriate authority when the right is threatened, violated, or disrespected. The establishment of this subjective understanding of rights is the start to the modern discourse of human rights, we are told. When early Enlightenment figures spoke of “natural rights” or the “rights of man according to natural law,” they now meant what we usually mean by “rights” today -- the inherent claims that the individual subject has to various natural goods like life, liberty, and property. This was “an entirely new political doctrine,” writes Strauss. It was a fundamental shift “from natural duties to natural rights.”³⁴

Strauss’s historical account of rights is much more nuanced than this, as are the later historical accounts of some of his best students. But, particularly when cast into popular secular forms, as it often is, this basic “Straussian” account of the Enlightenment origins of Western rights has persisted, with numerous variations, in many circles of discourse to this day.

One of those circles, ironically, is that of conservative Protestantism, particularly conservative Calvinism. Many conservative Calvinists and other Protestants today still view human rights with suspicion, if not derision.³⁵ Some view human rights as a part and product of dangerous Catholic natural law theories that Calvinists have always purportedly rejected. More view human rights as a dangerous invention of the Enlightenment, predicated on a celebration of reason over revelation, of greed over charity, of nature over Scripture, of the individual over the community, of the pretended sovereignty of humans over the absolute sovereignty of God. These critics view the occasional discussions of natural law and natural rights in Calvin and other early reformers as a scholastic hangover that a clearer-eyed reading of Scripture by later Calvinists happily expunged from the tradition. At a certain level of abstraction, this conservative Protestant critique of human rights coincides with certain streaks of “Straussian” historiography about the Enlightenment origin of rights. Various Straussians dismiss pre-modern Christian rights talk as a betrayal of the Enlightenment. Various Protestants dismiss modern Enlightenment rights talk as a betrayal of Christianity.

Whatever the philosophical and theological merits of these respective positions might be, the historical readings and narratives that support them can no longer be sustained. A whole cottage industry of important new scholarship has now emerged to demonstrate that there was ample “liberty before liberalism,” and that there were many subjective human rights in place before there were modern democratic revolutions fought in their name. We now know a great deal more about classical Roman understandings of rights, liberties, capabilities, powers and related concepts, and their elaboration by medieval and early modern civilians. We can now pore over an intricate

³⁴ Ibid., 182.

³⁵ See Little, “Human Rights,” 13-24.

lattice-work of arguments about individual and group rights and liberties developed by medieval Catholic canonists, philosophers, and theologians, and the ample expansion of this medieval handiwork by neo-scholastic writers in early modern Spain and Portugal. And we now know a good deal more about the immense contribution of the Protestant reformers to the development and expansion of the Western understanding of public, private, penal, and procedural rights. The Enlightenment, it now appears, was not so much a well-spring of Western rights as a watershed in a long stream of rights thinking that began more than a millennium before. While they certainly made their own original and critical rights contributions, too, what Enlightenment philosophers contributed more than anything were new theoretical frameworks that eventually widened these traditional rights formulations into a set of universal claims that were universally applicable to all.

Little was in the vanguard of scholars in the past half century who have excavated some of these earlier historical Christian foundations of human rights and who have shown the heavy dependence of Enlightenment figures from Locke³⁶ to Jefferson³⁷ on these Christian sources. And he was one of the first American scholars to show clearly and concretely the specific contributions of Calvinists to the development of human rights.³⁸ He has always acknowledged the grim and cruel side of the Calvinist tradition – from the mistreatment of witches,³⁹ to the hanging of Quakers, to the lynching of Zulus, let alone the Calvinist tradition's ample penchant for patriarchy, paternalism, and just plain prudishness that still has not ended.⁴⁰ He has done his hermeneutic of confession. And he has also acknowledged the powerful influence of the European and American Enlightenment movements on our understanding of religious and civil rights. But, in exercising his hermeneutic of suspicion, he wants modern liberals and modern Calvinists alike to see what historical Calvinism has wrought.

One major contribution was the Calvinist theory of liberty of conscience, freedom of exercise, and equality of a plurality of faiths before the law.⁴¹ Some of this one finds already in Calvin, Beza, and other early reformers who built on selected Roman, patristic, and medieval Catholic sources.⁴² But it was especially Roger Williams, in the seventeenth century, Little has shown, who pressed this thesis to its more radical conclusions demanding freedom of all peaceable believers to adopt, adapt, or abandon

³⁶ See Little, "Conscientious Individualism," 230-42.

³⁷ See Little, "The Reformed Tradition," 20-28.

³⁸ See, e.g., Little, "Roger Williams."

³⁹ Little, "Personal Testament," 62-63.

⁴⁰ David Little, "Roger Williams and The Puritan Background of the Establishment Clause," in *No Establishment of Religion: America's Contribution to Religious Liberty*, ed. T. Jeremy Gunn and John Witte, Jr. (New York/Oxford: Oxford University Press, 2013), 100-124 .

⁴¹ Much of this section is distilled from my *Reformation of Rights*, chaps. 1-5. Parallel citations to Little's work are included. Little discusses the controversial and transformative approach of Roger Williams and other Presbyterian leaders who advocated tolerance of all religions and atheism in Little, "Religious Freedom," 35-37 and more fully in Little, "Roger Williams and The Puritan Background of the Establishment Clause."

⁴² See Little, "Conscientious Individualism," 230-32.

their faith, to be free from coercion or undue influence of their conscience, and where necessary to be exempt from laws that made demands contrary to the core dictates of conscience.⁴³ This view, together with Roger Williams's own experiment with disestablishment of religion in Rhode Island, would become axiomatic for the later American constitutional experiment, espoused by Puritans, Civic Republicans, Evangelicals, and Enlightenment philosophers alike.

A second major contribution of the Calvinist tradition to the development of Western rights lay in the restructuring of the liberty and order of the church. Calvin himself contributed much to this by combining ingeniously within his ecclesiology the principles of rule of law, democracy, and liberty. Little's Puritan and Presbyterian forbearers drove home the lessons even further.⁴⁴ Calvinists urged respect for the rule of law within the church. They devised laws that defined the church's doctrines and disciplinary standards, the rights and duties of their officers and parishioners, the procedures for legislation and adjudication. The church was thereby protected from the intrusions of state law and the sinful vicissitudes of their members. Church officials were limited in their discretion. Parishioners understood their duties. When new rules were issued, they were discussed, promulgated, and well known. Issues that were ripe for review were resolved by proper tribunals. Parties that had cases to be heard exhausted their remedies at church law. Disgruntled individuals and families that departed from the church left their private pews and personal properties behind them. Dissenting congregations that seceded from the fold left their properties in the hands of the corporate body. To be sure, this principle of the rule of law within the church was an ideal that too often was breached, in Calvin's day and in succeeding generations.⁴⁵ Yet this principle helped to guarantee order, organization, and orthodoxy within the Reformed church.

Calvinists urged respect for the democratic process within the church. Pastors, elders, teachers, and deacons were to be elected to their offices by communicant members of the congregation. Congregations periodically held collective meetings to assess the performance of their church officers, to discuss new initiatives within their bodies, to debate controversies that had arisen. Delegates to church synods and councils were to be elected by their peers.⁴⁶ Council meetings were to be open to the public and to give standing to parishioners to press their claims. Implicit in this democratic process was a willingness to entertain changes in doctrine, liturgy, and polity, to accommodate new visions and insights, to spurn ideas and institutions whose utility and veracity were no longer tenable.⁴⁷ To be sure, this principle did not always insulate the church from a belligerent dogmatism in Calvin's day or in the generations to follow. Yet this principle helped to guarantee constant reflection, renewal, and reform

⁴³ Little, "Religious Freedom," 33-34.

⁴⁴ See Little, "Personal Testament," 57-68.

⁴⁵ See Little, "Personal Testament," 61-64.

⁴⁶ Little, "Personal Testament," 58-59.

⁴⁷ David Little, "Reformed Faith and Religious Liberty," *Church and Society* (May/June, 1986): 7. Calvin believed the church was to be a community guided in its direction by the community voice and that all participation was to be voluntary and consensual.

within the church – *ecclesia reformata semper reformanda*, a reformed church dedicated to perpetual reformation.⁴⁸

And Calvinists urged respect for liberty within the church. Christian believers were to be free to enter and leave the church, free to partake of the church's offices and services without fear of bodily coercion and persecution, free to assemble, worship, pray, and partake of the sacraments without fear of political reprisal, free to elect their ministers, elders, deacons, and teachers, free to debate and deliberate matters of faith and discipline, free to pursue discretionary matters of faith, the *adiaphora*, without undue laws and structures.⁴⁹ To be sure, this principle, too, was an ideal that Calvin and his followers compromised, particularly in their sometimes undue empowerment of the consistory and their brutality toward persistent dissenters like Michael Servetus.⁵⁰ Yet this principle helped to guarantee constant action, adherence, and agitation for reform by individual members of the church.

Calvinists integrated these three cardinal principles into a new ecclesiology. Democratic processes prevented the rule-of-law principle from promoting an ossified and outmoded orthodoxy. The rule of law prevented the democratic principle from promoting a faith swayed by fleeting fashions and public opinions. Individual liberty kept both corporate rule and democratic principles from tyrannizing ecclesiastical minorities. Together, these principles allowed the church to strike a unique perpetual balance between law and liberty, structure and spirit, order and innovation, dogma and *adiaphora*. And together they helped to render the pluriform Calvinist church remarkably resilient over the centuries in numerous countries and cultures.

This integrated theory of the church had obvious implications for the theory of the state. Calvin himself hinted broadly in his writings that a similar combination of rule of law, democratic process, and individual liberty might serve the state equally well. What Calvin adumbrated, his followers elaborated. In the course of the next two centuries, European and American Calvinists wove Calvin's core insights about the nature of corporate rule into a robust constitutional theory of republican government, which rested on the pillars of rule of law, democratic processes, and individual liberty.⁵¹

A third major contribution that Calvin and his followers made to the Western tradition was their healthy respect for human sinfulness, and the need to protect institutions of authority from becoming abusive. Calvinists worked particularly hard to ensure that the powerful offices of church and state were not converted into instruments of self-gain and self-promotion. They emphasized the need for popular election of ministers and magistrates, limited tenures and rotations of ecclesiastical and political

⁴⁸ Little, "A Personal Testament," 57.

⁴⁹ Little, "Reformed Faith," 22-23. An example of the Reformed tradition's movement to separate from civil authorities is found in the appointment of a committee for reviewing "church organization, including the question of church-state relations" by the synods of New York and Philadelphia at the time Jefferson's *Statute for Religious Freedom* was being considered in Virginia.

⁵⁰ Little, "A Personal Testament," 59.

⁵¹ Little, "A Personal Testament," 66.

office, separation of church and state, separation of powers within church and state, checks and balances between and amongst each of these powers, federalist layers of authority with shared and severable sovereignty, open meetings in congregations and towns, codified canons and laws, transparent proceedings and records within consistories, courts, and councils.⁵² And, if none of these constitutional safeguards worked, later Calvinists called for resistance, revolt, and even regicide against tyrants.⁵³ Calvinists were in the vanguard of the great democratic revolutions of France, Holland, England, and America fought in the later sixteenth to later eighteenth centuries.

A fourth major contribution that Calvinists made to the Western tradition was their integrative theory of rights. Early modern Calvinists insisted that freedoms and commandments, rights and duties belong together. To speak of 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 guilt. Early modern Calvinists further insisted that religious rights and civil rights must go together.⁵⁴ Already in Calvin's day, the reformers discovered that proper protection of religious rights required protection of several correlative rights as well, particularly as Calvinists found themselves repressed and persecuted as minorities. The rights of the individual to religious conscience and exercise required attendant rights to assemble, speak, worship, evangelize, educate, parent, travel, and more on the basis of their beliefs. The rights of the religious group to worship and govern itself as an ecclesiastical polity required attendant rights to legal personality, corporate property, collective worship, organized charity, parochial education, freedom of press, freedom of contract, freedom of association, and more. For early modern Calvinists, religious rights and civil rights are fundamentally interdependent.

Finally, early modern Calvinists insisted that human rights are ultimately dependent on religious norms and narratives. Calvin and his early followers used the Decalogue to ground their theories of religious and civil rights; inviolable religious rights were anchored in the first table; fundamental civil rights in the second table.⁵⁵ This would remain a perennial argument in the tradition. Later Calvinists grounded their theories of rights in other familiar doctrinal heads of theology, including the doctrine of the Trinity, the creation, and the resurrection. Some human rights, they argued, are

⁵² Little, "Reformed Faith," 13-17. Little articulated the importance of consensual and voluntary church participation in several strains of Reformed Christianity, including Congregationalists, English Presbyterians led by Thomas Cartwright, and Puritans under Robert Browne, also in England. Cartwright emphasized a representative, self-governing hierarchy, free from interference of the civil authority. In America, John Cotton's instantiation of Calvinism in Congregationalism stressed voluntary participation by each member in church governance, evidencing a clear distinction between church and state.

⁵³ Little, "Reformed Faith," 11-12. John Knox, leader of the Reformation in Scotland who was guided by Calvin's ideal, extended Calvin's notion of freedom of conscience to include violent resistance against secular rulers that repressed this freedom. The Huguenots in France exemplified similar ideas, advocating replacement of rulers who did not execute "God's law," thus standing against idolatry and heresy propagated through the government.

⁵⁴ Little, "Religious Freedom," 35-37.

⁵⁵ See, e.g., Little, "Reformed Tradition," 31; Little, "American Protestantism," 31; Little, "Roger Williams," 13-14.

temporal expressions of what Calvin had called the “eternal rights of God.” These are the rights of God the Father, who created humans in his own image and commanded them to worship him properly and to obey his law fully. They are the rights of God the Son, who embodied himself in the church and demanded the free and full exercise of this body upon earth. And they are the rights of God the Holy Spirit, who is “poured out upon all flesh” and governs the consciences of all persons in their pursuit of happiness and holiness. Human rights, Calvinists argued, are in no small part of the right of persons to do their duties as image bearers of the Father, as prophets, priests, and kings of Christ, as agents, apostles, and ambassadors of the Holy Spirit. As image bearers of God, persons are given natural law, reason, and will to operate as responsible creatures with choices and accountability. They are given the natural duty and right to reflect God’s glory and majesty in the world, to represent God’s sovereign interests in church, state, and society alike. As prophets, priests, and kings of God, persons have the spiritual duty and right to speak and to prophesy, to worship and to pastor, to rule and to govern on God’s behalf. As apostles and ambassadors of God, persons have the Christian duty and right to “make disciples of all nations” by word and sacrament, by instruction and example, by charity and discipline.

Why Religion and Human Rights Need Each Other

All this is not a preamble to an altar call, nor an exercise in Protestant chauvinism. It is instead one small illustration of what a rich hermeneutic of religion and human rights can offer. Comparable exercises are now afoot in other Protestant, Catholic, and Orthodox Christian communities, as well as in various Islamic, Judaic, Buddhist, Hindu, and Traditional communities. A number of religious traditions have begun, of late, this process of engaging or 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 it is now underway, and Little has been has a trailblazer in showing us the way.

But just as Little found resistance to human rights in many quarters of his own Calvinist community, so modern scholars and advocates in other faith traditions have faced resistance, and sometimes violent opposition. It is one thing, many religious skeptics point out, to accept the freedom and autonomy that a human rights regime allows.⁵⁶ This at least gives them unencumbered space to pursue their divine callings. It is quite another thing for religious bodies 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, unduly challenge the structure of religious bodies. While human rights norms teach liberty and equality, many religious

⁵⁶ Material in this section, through the conclusion, is drawn from Witte, *God’s Joust*, chap. 3. Parallel citations to Little’s work are included.

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 – even if they may have earlier religious inspirations. Human rights advocates today regularly describe these norms as our new "civic faith," "our new world religion," "our new global moral language." The French jurist, Karel Vasak, has pressed these sentiments into a full and famous 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.... By recognizing the Universal Declaration as a living document ... one can proclaim one's faith in the future of mankind.⁵⁷

In demonstration of this new faith, Vasak converted the "old trinity" of "liberty, equality, and fraternity" taught by the French Revolution into a "new trinity" of "three generations of rights" for all humanity. The first generation of civil and political rights elaborates the meaning of liberty.⁵⁸ 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. These skeptical arguments, however, presuppose that human rights norms constitute a static belief system born of Enlightenment liberalism. But the human rights

⁵⁷ Karel Vasak, "A 30-Year Struggle," *UNESCO Courier*, November 1977, 29; see also Karel Vasak, "Foreword," in *The International Dimensions of Human Rights*, Karel Vasak, ed. (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*, Christophe Swinarski, ed. (The Hague: Martinus Nijhoff, 1984), 837-45.

⁵⁸ Vasak, "Pour une troisième génération," 837.

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 ancient religious and cultural movements have historically nurtured and which today still needs the constant nurture of multiple communities.⁵⁹

I use the antique term "ius gentium" advisedly -- to signal the distinctive 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 (the *ius gentium*), to civil law (the *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 civil 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.

This antique typology helps us to understand the intermediate place of human rights in our hierarchy of legal 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 communities (more than any other groups) continue to cultivate. And they 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. My 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 in order to assail secretly their spirit and structure. My 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

⁵⁹ See Little, "Rethinking Human Rights."

nurture and challenge the middle axioms of the *ius gentium* with the transcendent principles of the *ius naturale*. This must not be an effort to monopolize the discourse, nor to establish by positive civil 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 sin and salvation, of individuality and community – that will serve constantly to inform and reform, to develop and deepen the human rights ideals now in place.

A number of distinguished commentators have recently encouraged the abandonment of the human rights paradigm altogether – as a tried and tired experiment that is no longer effective, even a fictional faith whose folly has now been fully exposed. Others have bolstered this claim with cultural critiques – that human rights are instruments of neo-colonization which the West uses to impose its values on the rest,⁶⁰ even toxic compounds that are exported abroad to breed cultural conflict, social instability, religious warfare and thus dependence on the West.⁶¹ Others have added philosophical critiques – that rights talk is the wrong talk for meaningful debate about deep questions of justice, peace, and the common good. Still others have added theological critiques – that the secular beliefs in individualism, rationalism, and contractarianism inherent to the human rights paradigm cannot be squared with cardinal biblical beliefs in creation, redemption, and covenant.

Such criticisms properly soften the overly-bright optimism of some human rights advocates. They properly curb the modern appetite for the limitless expansion and even monopolization of human rights in the quest for toleration, peace, and security. And they properly criticize the libertarian accents that still too often dominate our rights talk today. But such criticisms do not support the conclusion that we must abandon the human rights paradigm altogether—particularly when no viable alternative global forum and no viable alternative universal faith is yet at hand. Instead, these criticisms support the proposition that the religious sources and dimensions of human rights need to be more robustly engaged and extended. Human rights norms are not a transient libertarian invention, or an ornamental diplomatic convention. Human rights norms have grown out of millennium-long religious and cultural traditions. They have traditionally provided a forum and focus for subtle and sophisticated philosophical, theological, and political reflections on the common good and our common lives. And they have emerged today as part of the common law of the emerging world order. We should abandon these ancient principles and practices only with trepidation, only with explanation, only with articulation of viable alternatives. For modern academics to stand on their tenured liberties to deconstruct human rights without posing real global alternatives is to insult the genius and the sacrifice of their many creators. For now, the human rights paradigm must stand—if nothing else as the “null hypothesis.” It must be

⁶⁰ See, e.g., Little, Sachedina, and Kelsay, “Christianity, Islam, and Religious Liberty,” n. 1, citing Adamantia Pollis and Peter Schwab, *Human Rights: Cultural and Ideological Perspectives* (New York: Praeger, 1979), 17,

⁶¹ Little, “Rethinking Human Rights,” 152.

constantly challenged to improve. It should be discarded, however, only on cogent proof of a better global norm and practice.

A number of other distinguished commentators have argued that religion can have no place in a modern regime of human rights. Religions might well have been the mothers of human rights in earlier eras, perhaps even the midwives of the modern human rights revolution. Religion has now, for them, outlived its utility. Indeed, the continued insistence of special roles and rights for religion is precisely what has introduced the paradoxes of religion and human rights that now befuddle us. 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. Purge religion entirely, this argument concludes, and the human rights paradigm will thrive.

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 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.

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.

Religion will invariably figure in legal and political life— however forcefully the community might seek to repress or deny its value or validity, however cogently the academy might logically bracket it from its political and legal calculus. Religion must be dealt with, because it exists—perennially, profoundly, pervasively—in every community. It must be drawn into a constructive alliance with a regime of law, democracy, and human rights. And there is no better way to start that exercise than to read the writings of David Little.

