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**“To Serve Right and to Fight Wrong”
Why Religion, Human Rights, and Human Dignity Need Each Other**

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Abstract

Pope Benedict XVI argued convincingly that Christianity and other religious communities not only laid the foundations for modern human rights, but remain essential allies in the struggle for human rights for all. Theories of human dignity without religious mooring, claims of rights without reciprocal moral duties, and public deliberation without religious voices included are all impoverished, the Pope argued. Religion and human rights, in particular, need each other. This Article offers an appreciative review of the Pope's arguments and then offers further arguments about the necessary interaction of religion and human rights.

Keywords: Pope Benedict XVI; Religion and Human Rights; Religious Freedom; Human Dignity; Foundations of Rights; Second Vatican Council; United Nations; Religion in Public Life; Law and Religion

The Modern Context

"A sense of the dignity of the human person has been impressing itself more and more deeply on the consciousness of contemporary man," Pope Paul VI declared in his preface to *Dignitatis Humanae* (1965). "And the demand is increasingly made that men

¹ Director, Center for the Study of Law and Religion, Emory University, Atlanta. The quote in the title is from Address of His Holiness Benedict XVI, Reichstag Building Berlin (22 September 2011), ¶2.

should act on their own judgment, enjoying and making use of a responsible freedom, not driven by coercion but motivated by a sense of duty."²

This was an historic statement about human dignity, signaling a momentous swing in the pendulum of world opinion. Only two decades before, the world had stared in horror into Hitler's death camps and Stalin's gulags where all sense of humanity and dignity had been brutally sacrificed. In response, the world had seized anew on the ancient concept of human dignity, claiming this as the "ur-principle"³ of a new world order. The Universal Declaration of Human Rights of 1948 opened its preamble with classic words: "recognition in the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice, and peace in the world."⁴

By the mid-1960s, church and state alike had translated this general principle of human dignity into specific human rights precepts. In *Dignitatis Humanae* and several other documents produced during and after the Second Vatican Council (1962-1965), the Roman Catholic Church took some of the first decisive steps. Every person, the Church now taught, is created by God with "dignity, intelligence and free will ... and has rights flowing directly and simultaneously from his very nature."⁵ Such rights include the right to life and adequate standards of living, 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. It urged the abolition of discrimination on grounds of sex, race, color, social distinction, language, or religion.⁶ Within a decade, various Ecumenical groups, some Protestants, and a few Orthodox Christian groups crafted comparable comprehensive declarations on human rights and human dignity.⁷

Not only the world's churches, but also the United Nations and several nation-states issued a number of landmark documents on human dignity and human rights in the 1960s. Foremost among these were the two international covenants promulgated by the United Nations in 1966, each of which confirmed the belief in the "inherent dignity" and "the equal and inalienable rights of all members of the human family," and

² Walter M. Abbott and J. Gallagher, eds., *The Documents of Vatican II* (Herder & Herder, 1966), 675.

³ Louis Henkin, et al., *Human Rights* (New York, Foundation Press, 1999), 80.

⁴ Ian Brownlie, ed., *Basic Documents on Human Rights*, 3d ed. (Oxford University Press, 1992), 21.

⁵ *Pacem in Terris* (1963), paragraph 9, in Joseph Gremillion, ed., *The Gospel of Peace and Justice: Catholic Social Teachings Since Pope John* (Orbis Books, 1976), 203.

⁶ *Ibid.*; *Documents of Vatican II*, 675.

⁷ See sources in John Witte, Jr. and Frank S. Alexander, eds., *Christianity and Human Rights: An Introduction* (Cambridge University Press, 2011).

the belief that all such "rights derive from the inherent dignity of the human person."⁸ The International Covenant on Economic, Social, and Cultural Rights (1966) posed as essential to human dignity the rights to self-determination, subsistence, work, welfare, security, education, and cultural participation. The International Covenant on Civil and Political Rights (1966) set out a long catalogue of rights: to life and to security of person and property, freedom from slavery and cruelty, basic civil and criminal procedural protections, rights to travel and pilgrimage, freedoms of religion, expression, and assembly, rights to marriage and family life, and freedom from discrimination on grounds of race, color, sex, language, and national origin. Other international and domestic instruments issued in the later 1960s took close aim at racial, religious, and gender discrimination in education, employment, social welfare programs, and other forms and forums of public life -- viewing such discrimination as a fundamental betrayal of the "dignity and equality inherent in all human beings."⁹

So matters stood a half century ago. Today, the concept of human dignity has become ubiquitous to the point of cliché -- a moral trump frayed by overuse, a general principle twisted by repeated manipulation. We now read regularly of the dignity of luxury, pleasure, and leisure; the dignity of identity, belonging, and difference; the dignity of ethnic, cultural, and linguistic purity; the dignity of sex, gender, and sexual preference; the dignity of aging, dying, and death. At the same time, the corpus of human rights has become swollen to the point of eruption -- with many recent rights claims no longer anchored in universal norms of human dignity, natural justice, or the common good, but aired as special aspirations of an individual or a group.

Even more worrisome is that the place of religion in human rights, and the protection of religious freedom as an essential first principle of any just legal order is become increasingly contested today. Religion, many critics now argue, is too expansionistic and monopolistic, too patriarchal and hierarchical, too antithetical to the very ideals of pluralism, toleration, and equality to be useful for a modern human rights regime. Religion should be treated 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 to discriminate against non-religious claimants in the same position. Purge religious freedom entirely, this argument concludes, and the human rights paradigm will thrive better.¹⁰

Pope Benedict's Challenge

⁸ *Basic Documents on Human Rights*, 114, 125.

⁹ See documents in *ibid.*, 148, 162, 169.

¹⁰ See Mary Ann Glendon, "Religious Freedom: A Second Class Right?" *Emory Law Journal* 61 (2012): 971-90.

Pope Benedict XVI challenged this alarming new trend and called church, state, and the world back to the founding human rights principles of the mid-twentieth century. Standing in Westminster Hall in 2010 – on the very spot where Thomas More had stood a half millennium before in sacrificial defense of freedom -- the Pope praised the British common law tradition of democracy, human rights, and the rule of law, with its guarantees of liberty, equality, and due process of law. But he then warned Parliament that religion “is not a problem for legislators to solve, but a vital contributor” to the cultivation of a “better understanding” and more “effective implementation” of a just legal and political system. The Pope challenged “the increasing marginalization of religion, particularly of Christianity” in England and the West more generally. He challenged “those who advocate that the voice of religion be silenced” or privatized. He challenged the growing campaign to rid the public square of its religious symbols, ceremonies, and speech. All this deprecation of religion, the Pope declared, comes from a massive “failure to appreciate not only the rights of believers to freedom of conscience and freedom of religion, but also the legitimate role of religion” in public life and public law.¹¹

This new deprecation of religion also fails to appreciate the essential role of religion in building and maintaining the modern legal regime of human rights, the Pope continued in his address to the Parliament of Germany in 2011. “In history, systems of law have almost always been based on religion.” And in the West, this has been especially true in the development of the law of human rights. Already early Church Fathers like Origen claimed the freedom of association, speech, and conscience. Later Fathers like Ambrose and Augustine claimed the freedom of the clergy and laity alike “to serve right and to fight against wrong,” whether perpetrated by a tyrannical monarch or a tyrannical majority. Medieval and early modern writers like Thomas Aquinas and Francisco de Vitoria combined reason and nature, Greek philosophy and Roman law to build much of the basic architecture of public, private, penal, and procedural laws and rights. These early intellectual achievements, the Pope declared, opened up “the path that led via the Christian Middle Ages and the juridical developments of the Age of Enlightenment all the way to the [Universal] Declaration of Human Rights [of 1948] and to our German Basic Law of 1949, with which our nation committed itself to ‘inviolable and inalienable human rights as the foundation of every human community, and of peace and justice in the world’.”¹² (This Protestant historian must add that early modern Lutherans, Calvinists, Anglicans, and Anabaptists played vital roles in this development of human rights and rule of law as well.¹³)

¹¹ Address of His Holiness Benedict XVI, Westminster Hall (17 September 2010), ¶¶ 3, 6, 7.

¹² Address at Reichstag Building Berlin, ¶¶ 2-5. See also his Address for the Collège des Bernardins, Paris (12 September 2008) and his Address at the University of Regensburg (12 September 2006) on the Christian foundations of Western culture.

¹³ See my *The Reformation of Rights: Law, Religion and Human Rights in Early Modern Calvinism* (Cambridge University Press, 2007); id., *Law and Protestantism: The Legal Teachings of the Lutheran Reformation* (Cambridge University Press, 2002).

But Christianity and other religious traditions are not just an historical source of our modern norms of human rights, the Pope argued in 2008 address to the United Nations General Assembly. Religion was not just the scaffolding that was used to build the edifice of human rights edifice, and should now be taken down lest the full view of this new legal structure be obstructed. To the contrary, the Pope argued, religion remains an essential part of the foundation and infrastructure of the modern human rights regime. For religious communities teach and insist on the most fundamental “idea of the person as image of the Creator” which is “the absolute and the essence of freedom.” It is on the foundation of the inherent dignity of “the human creature” that the world could agree to issue the Universal Declaration of Human Rights in 1948 despite the vast differences among modern cultures and faiths. “The rights recognized and expounded in the *Declaration* apply to everyone by virtue of the common origin of the person, who remains the high-point of God’s creative design for the world and for history.”¹⁴

To ignore that essential foundation of human dignity – and the religious communities that uniquely support this anthropology -- is to destroy its “inner unity” of the Universal Declaration and to move human rights inevitably “towards the satisfaction of simple interests, often particular interests.” It is to destroy the “commonly held sense of justice built primarily upon solidarity among the members of society” and to replace it with a “narrowly utilitarian” concern for private happiness and the attainment of personal desire. It is to destroy its common commitment to the Golden Rule -- “Do unto others as you would have done unto you” – to a narrowly legalistic notion of “applying correct procedures.” And it is to separate the essential connection between human rights and human responsibilities.¹⁵

Human rights are ultimately too important and intricate a gift of God to humanity to be left to only for individuals to pursue or for individual states to protect, even with the backing of the United Nations. Human rights also require the continued nurture and challenge of the world’s faith communities. The Pope put it thus to the UN General Assembly:

[A] vision of life anchored in the religious dimension can help to achieve this, since recognition of the transcendent value of every man and woman favours conversion of heart, which then leads to a commitment to resist violence, terrorism and war, and to promote justice and peace. This also provides the proper context for the inter-religious dialogue that the United Nations is called to support.... It pertains to the nature of religions, freely practiced that they can autonomously conduct a dialogue of thought and life.... Their

¹⁴ Address of His Holiness, United Nations General Assembly, New York (18 April 2008), ¶¶5-6.

¹⁵ *Ibid.*, ¶¶6-8.

task is to propose a vision of faith not in terms of intolerance, discrimination, and conflict, but in terms of complete respect for truth, coexistence, rights, and reconciliation.¹⁶

It is for this reason, among others, that religious freedom is so vital to the entire apparatus of human rights today, the Pope concluded. Not only is religious freedom the bedrock of other rights, but the free exercise of religion is essential for the maintenance of other rights. “It is inconceivable that believers should have to suppress a part of themselves – their faith – in order to be active citizens. It should never be necessary to deny God in order to enjoy one’s rights. The rights associated with religion are all the more in need of protection if they are considered to clash with a prevailing secular ideology or with majority religious positions of an exclusive nature.”¹⁷

As a Protestant, interested in the religious foundations and dimensions of human rights and the robust protection of religious freedom, I agree wholeheartedly with the Holy Father that religion and human rights need each other. On the one hand, human rights norms need religion. There is, of course, some value in simply declaring human rights norms of “liberty, equality, and fraternity” or “life, liberty, and property”—if for no other reason than to pose an ideal against which a person or community might measure itself, to preserve a normative totem for later generations to make real. But, ultimately, these abstract human rights ideals of the good life and the good society depend on the visions and values of human communities and institutions to give them content and coherence—to provide what Catholic philosopher Jacques Maritain once called “the scale of values governing [their] exercise and concrete manifestation.”¹⁸ It is here that religion must play a vital role. Religion is an ineradicable condition of human lives and human communities. Religions invariably provide many of the sources and “scales of values” by which many persons and communities govern themselves. Religions inevitably help to define the meanings and measures of shame and regret, restraint and respect, responsibility and restitution that a human rights regime presupposes. Religions must thus be seen as indispensable allies in the modern struggle for human rights. To exclude them from the struggle is impossible, indeed catastrophic. To include them, by enlisting their unique resources and protecting their unique rights, is vital to enhancing the regime of human rights and to easing some of the worst paradoxes that currently exist.

Conversely, religion needs human rights norms both to protect them and to challenge them. There is, of course, some merit in religious believers and groups quietly accepting the current protections of a modern human rights regime—the guarantees of liberty of conscience, freedom of exercise, rights to religious self-determination, and the

¹⁶ Ibid., ¶10.

¹⁷ Ibid., ¶11.

¹⁸ Jacques Maritain, “Introduction,” in UNESCO, *Human Rights: Comments and Interpretations* (New York: Columbia University Press, 1949).

like. But passive acquiescence in a secular scheme of human rights ultimately will not prove effective. And failure to press the unique rights claims of religious believers and communities will eventually leave many religious beliefs, practices, and communities too vulnerable. Religious communities must reclaim their own voices within the secular human rights dialogue, and reclaim the human rights voices within their own internal religious dialogues. Religious communities must be open to a new human rights hermeneutic--fresh methods of interpreting their sacred texts and traditions that will allow them to reclaim their essential roots and roles in the cultivation of human rights. Religious traditions cannot allow secular human rights norms to be imposed on them from without; they must (re)discover them from within.

Both theses – that human rights need religion, and that religion need human rights – are controversial. The next two sections seek to defend both theses.

Religion in Human Rights

A number of distinguished commentators have argued that religion should have no place in a modern regime of human rights. Religious ideas may well have been the sources of human rights in earlier eras, they allow. Some religious groups might even have helped to inspire the modern human rights revolution that began with the promulgation of the Universal Declaration of Human Rights (1948). But religion, these religious skeptics argue, has now outlived its utility. Even Judaism, Christianity, and Islam do not speak unequivocally about human rights, and none has amassed an exemplary human rights record over the centuries. Their sacred texts and canons say much more about commandments and obligations than about liberties and rights. Their theologians and jurists have resisted the importation of human rights as much as they have helped in their cultivation. 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, temples, and mosques. The bludgeons of pogroms, crusades, jihads, inquisitions, and ostracisms have been used to devastating effect within and among these faiths. They must now move aside.

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.

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 norms 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.”¹⁹ 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, and often the 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 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.

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

¹⁹ Georg Jellinek, *Die Erklärung der Menschen- und Bürgerrechte: ein Beitrag zur modernen Verfassungsgeschichte* (Lipzig: Duncker and Humblot, 1895), 42.

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.

Human Rights in Religion

My converse thesis is that human rights must have a more prominent place in the theological discourse and institutional practice of modern religions. Many would consider this second thesis to be as misguided as the first. It is one thing, such human rights 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, these 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, these 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." The influential French jurist Karel Vasak 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.²⁰

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. 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 peace, orderly development, and environmental protection 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 monopoly on the nurture of human rights; indeed, a human rights regime cannot long survive under its exclusive patronage.

I 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

²⁰ Karel Vasak, "A 30-Year Struggle," *UNESCO Courier*, November 1977, p. 29; 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 Swinarski (The Hague: Martinus Nijhoff, 1984), 837-845.

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.

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. 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 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 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, 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 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.²¹

This is, in part, a “hermeneutic of confession.” Given their checkered human rights records over the centuries, religious bodies have begun to acknowledge their

²¹ See examples in John Witte, Jr. and M. Christian Green, *Religion and Human Rights: An Introduction* (Oxford: Oxford University Press, 2012).

departures from the cardinal teachings of peace and love that are the heart of their sacred texts and traditions. Christian churches have taken the lead in this process—from the Second Vatican Council’s confession of prior complicity in authoritarianism, to the contemporary church’s repeated confessions of prior support for apartheid, communism, racism, sexism, fascism, and anti-Semitism.

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.

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.

And 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. The reality is that law and religion need each other, especially in the vital regime of human rights.

All four of these hermeneutics are brilliantly exemplified in Pope Benedict XVI’s five lectures analyzed in this volume. One can find comparable such statements from Chief Rabbi Lord Jonathan Sacks and His Holiness the XIVth Dalai Lama, among others.²² If other religious leaders around the world would also take seriously the challenge of religion and human rights, the world might slowly develop a new

²² See their articles in the symposium issue, “The Pursuit of Happiness in Interreligious Perspective,” *Journal of Law and Religion* 29 (2014): 5-123.

“concordance of discordant canons” and actions about the most fundamental value of human persons and peoples – their inherent and inviolable human dignity.