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### **Abstract**

*A wide-ranging interview with questions posed by a Chinese theologian interested in Protestant legal and political thought, particularly as inspired by nineteenth-century Dutch leader Abraham Kuyper. This interview, published in both English and Chinese, speaks directly to the value and utility of these Western and Christian teachings on covenant community, human rights, religious freedom, constitutional reform, and political resistance for modern day China.*

**Keywords:** Protestantism; Abraham Kuyper; human rights; China; religious freedom; constitutionalism

### **Freedom and Order: Christianity, Human Rights, and Culture: A Chinese Conversation with John Witte Jr.**

Question:

As a legal expert working in the field of law and religion, you are the recipient of the Abraham Kuyper Prize for Excellence in Reformed Theology and Public Life from Princeton Theological Seminary. You graduated from Calvin College, which has a Dutch Reformed background. Some of your publications relate to the Kuyperian tradition, and you turn to Kuyper’s thinking in the concluding chapter of your book, *The Reformation of Rights: Law, Religion, and Human Rights in Early Modern Calvinism*. How do you appraise the enduring impact of Kuyper and the Kuyperian tradition in your intellectual endeavors?

Witte:

Thank you for your interest in Abraham Kuyper, who was one of the great Christian figures in the nineteenth century and early twentieth century. It’s a fitting time, in 2020, on the centennial of his death, to remember his work and to take stock of the contribution he made to Western legal, political, and social thought and to consider the implications of that thought for the broader global conversation emerging today about the good life, the good society, just politics and laws, and other strong social support structures.

Kuyper has high standing in the broader Protestant world today akin to what his contemporary Pope Leo XIII has in the Catholic world. Kuyper and Leo XIII were transformative figures in the later nineteenth century who reconstructed the earlier teachings of John Calvin and Thomas Aquinas, respectively, into powerful new Protestant and Catholic teachings for church, state, and society. They provide us with an interesting focus for ecumenical conversation and for Western and global conversations.

It was an honor for me to be part of the centennial of Abraham Kuyper Stone Lectures in 1998 at Princeton Theological Seminary. In 1898 Kuyper came to the United States and powerfully laid out his basic worldview – featuring sphere sovereignty; covenant politics; the role of religious reasoning in public and private life; the idea of the Christian vocation in all walks of life; the need to live faithfully with the Bible and the tradition as captured in confession, creed, and catechism. That centennial conference on his 1898 Stone Lectures was an occasion for scholars from a number of different fields to come together and reflect on Kuyper's insights in the context of the late nineteenth century and to analyze and debate whether these insights still edify and endure in our day. I was asked to reflect on Kuyper's work on religious freedom and human rights, a topic that resonated with my own upbringing in the Kuyperian tradition.

I grew up in a Dutch Reformed home in Ontario, Canada. My parents were Dutch immigrants who came to Canada in 1953. I was schooled in Calvinist primary and secondary schools, learned the Heidelberg Catechism, as Kuyper had encouraged, and was taught many of the basic ideas that were part of Kuyper's vision. I went to Calvin College to study with some great Christian scholars of this tradition – Evan Runner, Uko Zylstra, Arie Leegwater, Nicholas Wolterstorff, George Marsden, and others who worked congenially within the Kuyperian tradition, even if they went well beyond Kuyper in setting out their own thought.

So Kuyperianism was part of my formative years as a youth and young college student and continued into my studies in law school as well. Now, some forty years later, Kuyperian thinking remains an important orientation for me. It provides a set of intellectual habits and methodological instincts – particularly the basic respect for scripture, tradition, reason, and experience; the emphasis on social pluralism and sphere sovereignty and the wariness of political, ecclesiastical, or any other kind of monism or monopoly in social organization and authority structuring; the appetite for covenant thinking; and the insistence that everyone operates with a basic worldview, a basic set of founding beliefs, values, or metaphors, even if they remain mostly implicit.

But that said, Kuyperianism tends to be increasingly a background orientation for me, rather than a central part of what I'm about. I am not a philosopher, political theorist, ethicist, or theologian, though I dabble in those fields. I am a lawyer and legal scholar, focused on the history of law and religion.

As a historian, I work on some of the same figures and texts that Kuyper worked on, though I often interpret them differently than did Kuyper or his main legal protégé,

Herman Dooyeweerd. I work closely with some of the same materials from the Protestant tradition in the sixteenth century forward that Kuyper found important and congenial. In recent years, I have worked intensely on contested issues of faith, freedom, and family, all of which Kuyper touched on in his writings, too. But I'm interested in those topics largely as a historian, trying to retrieve and reconstruct the wisdom of the Protestant and broader Christian traditions on fundamental questions of law, politics, and society. I am not, as Kuyper was, a theologian or philosopher trying to extend the Kuyperian worldview to new areas of life, nor a politician seeking to hammer out political platforms. I admire deeply Kuyper and others who do that kind of work; it's just not my vocation.

I also draw more eclectically than Kuyper – and many Kuyperians – from a variety of sources within and beyond the West. I draw widely from Patristic, medieval Catholic, Protestant, and Enlightenment liberal traditions alike. I am keenly interested in dialogue across religious traditions. In the Center for the Study of Law and Religion at Emory University, which I have directed for the past thirty-five years, we have rich conversations between and among Christians, Jews, and Muslims, and sometimes Eastern religions, on fundamental legal, political, and social questions, and I find those deeply refreshing and engaging. In every instance, Kuyperian instincts remain part of who I am, but I cannot pretend to be advancing a Kuyperian project or agenda.

### **Kuyper's Vision in the American Context of Liberty and Pluralism**

Question:

Your article "The Biography and Biology of Liberty,"<sup>1</sup> published in 1999, summarizes Kuyper's appraisal of American principles of religious liberty and religious pluralism, ecclesiastical liberty and confessional pluralism, associational liberty and social pluralism, and political liberty and political pluralism. After twenty years, would you share something more about the implications of Kuyper's theological, social, and political vision in reflecting the American experiment in ordered liberty and ordered pluralism?

Witte:

Kuyper reflected – as a European, a Dutchman, and a Protestant Christian – on what he saw in late nineteenth-century America, and on the extent to which he thought American culture was consistent or inconsistent with the broader Calvinist vision that had inspired the original New England Puritans and their European forebears.

As you know from his *Lectures on Calvinism*, Kuyper often praised American culture and constitutional order as he saw it at the end of the nineteenth century. And he sometimes contrasted, wistfully, the American experiment with Dutch and broader European experience after the French Revolution and Napoleon had conquered and

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<sup>1</sup> See John Witte Jr., "The Biography and Biology of Liberty: Abraham Kuyper and the American Experiment," *AOSIS Open Journals* (1999), <https://www.koersjournal.org.za/index.php/koers/article/view/500>.

destroyed so much of what was considered sound, settled, and even sacred in the Western tradition.

First, Kuyper was particularly impressed with America's robust protection of religious freedom, freedom of conscience, and freedom of religious exercise, and the country's healthy regard for religious and social pluralism. He lauded the American principle of the presumptive equality of all faiths before the law, the disestablishment of religion, and the basic separation of the offices and operations of church and state.

He saw those American principles as more advanced forms and norms of religious freedom than Europe had at the time. I think that assessment continues to be apt today. The American experiment in constitutional freedom continues apace. Protection of religious freedom continues to be important. The United States had a period at the turn of the twenty-first century when religious freedom was increasingly viewed as a second-class right, especially when juxtaposed to sexual liberty, and religious freedom took a beating in the legal academy and in some of the federal court cases. But that time seems to have passed. Under the current United States Supreme Court, America still embraces and endorses religious freedom in a basic way that Kuyper praised in 1898.

Second, Kuyper emphasized and praised America's commitment to associational liberty, or what he called "sphere sovereignty." This was the idea that, standing between the state and the individual, there are many other spheres, structures, or institutions of authority and liberty that are important parts of how to order liberty and structure the rule of law in a given society. Kuyper noted that the family, church, corporation, school, union, and other voluntary associations were important places and communities for a person to enjoy liberty. They were bulwarks against state tyranny, important opportunities for the individual to flourish in externally guided but self-chosen ways. That emphasis on nonstate associations and their respective sovereignty or independence from each other, and especially from the state, was a strong emphasis of Kuyper's in 1898, and he saw this, too, as part of the American cultural and constitutional tradition.

While institutional and social pluralism remain part of American public and private life today, things are also changing rapidly. The institutional and denominational church has lost some of its cultural influence and autonomy, and many churches today are more accommodating of secular culture than Kuyper would find congenial. The traditional marital family has become increasingly fragile and fleeting as a fundamental institution in which a person participates naturally and reflexively. American educational institutions, particularly our public or state-run schools, are failing on many scores, and these public schools, since Kuyper's day, have been constitutionally fenced off from much traditional religious instruction, influence, or integration. Kuyper warned that these plural social institutions must remain strong for the individual to have places to flourish, for the state to have a bulwark against encroachment on individuals, and for the rule of law and protection of liberty to be effective. Those warnings of 1898 are even more apt today.

Third, Kuyper praised the American principle of political pluralism. Rather than having a monarchy or a single state or a single governmental structure, he thought it important to have layers of political authority: from the local clan to the village, to the city, to the county, to the state, and then ultimately to the nation. That idea of “orderly federalism,” as he called it, was part of early Dutch constitutional structure, forged after the sixteenth-century revolt from Spain. In the Union of Utrecht of 1579, the Netherlands created a confederation of seven provinces, each with constituent towns and villages, but together integrated and represented in the Dutch republic, with a representative Estates General drawn from the seven provinces in the day. One of Kuyper’s heroes, the Calvinist jurist and political theorist Johannes Althusius, in his *Politics* of 1603 and 1614, developed a theory of consociation or symbiotic federalism to support this kind of political pluralism.

Kuyper saw American constitutionalism in the nineteenth century as another expression of that same kind of political pluralism and federalism, and he praised it and argued that it was an expression of Calvinist ideas. His emphasis on that was well chosen. While there were many prototypes for American federalism and political pluralism, the historical Dutch republic was certainly one of them (as John Adams emphasized), as was the political pluralism expressed in the covenantal politics of Puritan New England.

The American tradition of federalism and political pluralism continues apace today. In the century since Kuyper lectured, however, the New Deal expansion of the federal government in the 1930s and thereafter, and the rise of the national military state and now the national security state has expanded the American national government to a point that Kuyper would likely find troubling. But Kuyper would likely laud America’s ongoing constitutional commitment to federalism in the Tenth Amendment, which reserves to the states all powers not specifically given to the federal government, as well as to the critical role of state and local governments in sharing the governance of the nation.

Fourth, and finally, Kuyper praised America’s broader commitment to liberties and rights, which he saw as a strong form of traditional Calvinist influence rather than Enlightenment liberal influence alone. In Kuyper’s day, citing the religious sources of human rights and liberties was a controversial idea, but it is now more commonly accepted today in American and broader scholarship. Calvinists did, indeed, contribute to the American constitutional law of basic rights and liberties, as did Enlightenment philosophers, Quakers, Anglicans, republican thinkers, and others in shaping America’s basic ideas about ordered liberty.

Kuyper did sometimes oversell the Calvinist contribution. Calvinism was only one source of influence on American rights and liberties, and not always the most definitive. Moreover, Kuyper tended to draw a quick and easy line from the sixteenth century to late nineteenth-century ideas, arguing that rights talk in Calvin’s Geneva was the same as the rights talk of the United States Constitutional Convention and Congress in 1787 and 1789. That fails to account for the ongoing reforms in Calvinist rights thinking, the

important transitions and seams in the tradition that emerged as later Calvinists responded to persecution, genocide, war, the Inquisition, colonial experiences, and more. My 2007 book, *The Reformation of Rights*, and the sequels to that book map these seams and changes in the Calvinist tradition of rights talk from the sixteenth century forward.

## Religion and Human Rights

Question:

Some of your books have been translated and published in Chinese, including *Religion and the American Constitutional Experiment; From Sacrament to Contract: Marriage, Religion and Law in the Western Tradition; Law and Protestantism: The Legal Teachings of the Lutheran Reformation*; and *The Reformation of Rights: Law, Religion, and Human Rights in Early Modern Calvinism*. Some of your ideas, particularly about Christianity and human rights, have received studies and debates in Chinese academia. I even use your texts, such as *Law and Protestantism* and *The Reformation of Rights*, in my course on religion and society. In *The Reformation of Rights*, you have stressed the significant contribution of early modern Calvinism to the development of human rights and constitutional law or, more broadly, the religious resources of human rights. You also highlight that the human rights norm needs a human culture. How would you explain the issues that are at stake? In other words, in what circumstances can religion contribute to the understanding and practice of human rights?

Witte:

I'm delighted that some of my books are available in Chinese translation, and I'm delighted that Chinese publishers and readers have become so interested in Western history, including the history of topics that are important for the modern world, such as constitutional order, rule of law, ordered liberty, and orderly society. A global conversation about these vital topics is essential to the globalization project.

In turn, it's really important for us in the West to learn from Chinese historians, jurists, philosophers, and others who have written about these same topics, and to hear what their venerable traditions of thought – including Confucian, Buddhist, Taoist, and comparably rich traditions – have said about authority and liberty, political and religious power, culture and society, and more. We must constantly learn from each other. Happily, that has begun to happen, as more fundamental works by historical and contemporary Chinese scholars are translated into English, and as more books emerge comparing Western and Eastern concepts of law, politics, and society. The more we can produce such books in Mandarin and English and other Asian and European languages, the better it will be for all of us.

That said, today it is still hard to have a global conversation about human rights. So many religious and cultural traditions view human rights with suspicion, if not derision. Some are worried that rights are products of Enlightenment liberalism, individualism, and contractarianism, or forms of Western colonialism designed to foment division between the West and the rest. Some condemn human rights as mere self-serving fictions that have produced mythical ideals that no person, society, or state can possibly attain. Some worry that human rights are just new weapons in another cold war, used to demonize and defame the other. These criticisms are real, and they have to be considered in any global conversation about rights.

As a lawyer and legal historian, I see rights talk as a common way to define and defend the law's protection, support, limitations, and entitlements of persons and groups in society as well as the proper relationships between political and other authorities and their respective subjects. Rights are not a modern invention, a seductive new form of liberal exotica crafted by Enlightenment philosophers in manifestation of their new secular theories of individualism, rationalism, and contractarianism. Western lawyers since classical Roman and medieval times have used rights ideas and terms as a plain and uncontroversial way of talking about the claims one legal subject could legitimately make against another, the charges that an authority could legitimately impose upon its subjects, and the procedures that were to be followed in these legal interactions.

These rights were – and still are – applied to different areas of law and life. Family laws, for example, protect the reciprocal rights and duties of spouses, parents, and children at different stages of the life cycle. Social welfare rights speak to the basic human need for food, shelter, health care, and education – especially for vulnerable populations. Free speech and free press laws protect the rights of persons to speak, preach, and publish. Private and public laws protect the person's rights to contractual performance, to property and inheritance, to the safety and integrity of their bodies, relationships, and reputations, along with the procedural means to vindicate these rights when they are threatened or breached by another. Criminal procedural rights are designed to ensure an individual of proper forms of arrest and detention, fair hearings and trials, and just punishments proportionate to specific crimes. Freedom of conscience and the free exercise of religion protect the essential right (and duty) of Christians to love God, neighbor, and self.

As a Christian, I see basic human rights and liberties as natural gifts of God to human beings. The Bible teaches that human beings are created in the image of God. God has given us the gifts of reason, will, and memory; the companionship of other humans (“bone of my bones, flesh of my flesh”); the rights and duties to “be fruitful and multiply,” to “dress and keep” the Garden, to govern and use God's creation; the privilege of hearing and obeying God's basic laws for our lives; and the assurance that we will be judged justly for our faults, be asked to bear responsibility for our failures, and yet assured of grace and mercy in the judgments imposed on us. These are some of the basic ontological and anthropological foundations for concepts of human dignity, rights, and relationships; of responsibility, judgment, and reconciliation that lie at the

heart of a human rights culture. Other religious and cultural traditions, including many in China, will have their own ontological framing, which will be interesting to compare.

The positive law formulations of human rights set out in international human rights instruments, national constitutions, local statutes and cases, and the like are much more contingent. They are attempts to enumerate specifically what these basic conditions of human lives require or entail. They help create expectations of mutual respect for and from other human beings. They help shape the way that we interact with each other, and with authorities in the state, the church, or the family. They help create procedures for enforcement of rules, for vindication of interests, for protection from abuse, for creation of new relationships and actions. In brief, human rights documents help to map some of the basic forms and norms of a human rights culture.

However they are enumerated, human rights norms and cultures depend upon deeper worldviews to be grounded and guided. Religious communities, among other cultural and philosophical communities, provide some of the grounding and grammar for human rights. Even in postmodern liberal societies, religions help to define the shame and regret, restraint and respect, responsibility and restitution that a human rights regime presupposes. They help to lay out the fundamentals of human dignity and human community, and the essentials of human nature, human capacities, and human needs upon which human rights are built. Moreover, religions stand alongside the state and other institutions in helping to implement and protect the rights of persons and communities – especially when the state becomes weak or poorer. Religious communities can create the conditions and sometimes prototypes for the realization of civil and political rights of speech, press, assembly, and more. They can provide a critical, and sometimes the principal, means of education, healthcare, childcare, labor organizations, employment, and artistic opportunities, among other things. And they can offer some of the deepest insights into duties of stewardship and service that lie at the heart of environmental care.

I like to think about human rights as middle axioms of our discourse – halfway between the local civil laws of a particular political community and the higher laws maintained by religious or philosophical communities. This is an idea that Kuyper, as theologian and politician, would have liked. He saw all legal and political structures, including human rights and liberties, as variant from community to community. But he also thought there were certain fundamentals taught to us by higher sources – whether scripture or tradition, creed or confession, that had to be respected by, if not reflected in legal and political structures.

I also like to think about human rights, such as those set out in the Universal Declaration of Human Rights, as a mirror in which every religion and every culture can reflect on itself and see values that may be congenial, complementary, challenging, and sometimes aspirational for them. Every major religious tradition in the twentieth and twenty-first centuries has given its assessment of the Universal Declaration in light of its own texts and traditions and used this exercise both to consider reforms for its own tradition and to offer reforms for the world of human rights. This has been a healthy

and productive interaction, bringing much-needed reforms both to religions and to human rights norms in our day. This method of mutual reform is something that Kuyper would have condoned as well.

Question:

It is illuminating for us to see how the religious ideas and religion institutions can make contribution to the understanding of human rights and its practice.

Witte:

Religion certainly is one factor or dimension of human rights. It's not the only one, but it's an important one. It provides grounding for human rights. For example, the Christian tradition built a number of its basic teachings of human rights on fundamental ideas of the image of God, which vests each person with inherent dignity; on the fundamental ideas that we are prophets, priests, and kings with natural rights to speak, worship, and rule; on the Ten Commandments, which provide a set of duties and rights that we owe to God and to our neighbor – the duties and rights to worship God, to use God's name properly, to honor the Sabbath in accordance with the First Table of the Decalogue; and the duties and rights to honor our parents and respect our neighbor's marriage, household, life, property, and reputation in accordance with the Second Table. The Christian tradition also emphasizes the special duties that we have to the needy, the widow, the orphan, the stranger, who have rights to be cared for. "As much as you do it to the least of these, you do it to me," Jesus reminds us. Those are fundamental axioms on which to build a rights framework.

### **Human Rights in Global Context**

Question:

How do we evaluate religion and human rights in the global context beyond the West?

Witte:

The issue is whether and to what extent do non-Western and non-American traditions think about the role their own religious communities and cultural communities can and should play in the articulation and enforcement of human rights. Here the historian and comparative lawyer in me emphasizes that human rights documents and constitutional bills of rights are not simply commodities that can be exported and imported from one state or region to another. Rights are something that are discovered within and shaped by the soils and souls, the experiences and expectations of the people that put them in place.

Yes, in 1948, the world could and did articulate a Universal Declaration of Human Rights in the aftermath of a world war that had killed sixty million people and featured the horrors of the Holocaust, the gulags, and death camps. The Declaration thus might still provide a useful starting point about the basics of human life and civilization, a common grammar to be considered. But each political community must articulate human rights norms in its own way. No one country provides a paradigm for the rest.

Even the differences between Europe and North America in talking about rights are quite dramatic. There is a much stronger emphasis on second-generation rights in Europe – that is, rights to education, healthcare, economic security, and other social goods – while in the United States there is a much stronger emphasis on first-generation rights – that is, political rights like the right to vote, speak freely, assemble, receive a fair trial, and so on. There is much greater cooperation of church and state in a number of European countries than in the United States, where separation of church and state is a starting premise. Those are differences in two Western traditions that have grown up side by side, almost as cultural twins.

If you have those kinds of differences across the Atlantic, you can expect even stronger differences when you go to the Global South or the Pacific Rim and see how communities there formulate rights. Such differences in formulating rights across political, religious, and cultural traditions have to be respected. We cannot simply take the Bill of Rights set out in the United States Constitution and introduce those to Eastern Europe or Russia after *glasnost* and *perestroika*, or set them down in modern China, and expect them to work at all, or at least in the same way they work in the United States. Human rights norms don't and can't work that way. A given formulation of rights can provide a people or culture with a point of reference, a set of ideals to be considered, a ground for rethinking their own tradition. But not more.

That said, there are some violations of human beings that are so fundamentally wrong that they cannot be abided, regardless of where they take place. No matter where a person comes from, or what they believe in, horrible offenses like genocide, torture, deliberate starvation when resources are at hand, gratuitous killings, systematic rape, maiming, and the like cannot be countenanced anywhere. The law calls these *malum in se* offenses, evils in themselves, which no country or culture can countenance, regardless of how it formulates its rights talk. Those things simply cannot be done to another human being, and when they are done, citizens must protest and revolt, and other countries must react with appropriate firm measures consistent with modern international law. But on less grave matters, nations and local communities deserve a greater margin of appreciation for how they think about, enumerate, and implement rights.

### **Witte's View of Human Rights Compared to Nicholas Wolterstorff's**

Question:

In an interview in South Korea, you strongly recommended Nicholas Wolterstorff's book *Justice: Rights and Wrongs* as "a fundamental rethinking of the rights talk in a justice framework animated by deep Christian vision." The book, you said, examines the ideas of a "moral subculture of rights" and "theistic grounding of rights." Would you share how your approach to human rights from a Calvinist perspective shares commonalities with Wolterstorff's studies in rights? And where do you differ? How do you engage each other with respect to Christian involvement in the human rights discourse in general?

Witte:

I have great respect for Nicholas Wolterstorff, who was a leading philosophy professor at Calvin College when I was there as a student in the late 1970s, before he went on to a distinguished career at Yale Divinity School. Since then, I've had the privilege of working with him on a number of projects, and we have lectured together on occasion as well. His book *Justice: Rights and Wrongs* is a fundamental text, providing a Christian philosophical defense of human rights.

Nicholas is a philosopher; I am a historian. He brings to the task a refined understanding of modern political philosophy, including, notably, Rawlsian liberalism, as well as a refined epistemology and ontology defended in broad biblical, historical, and philosophical terms. I come to the topic as a historian interested in the development of rights talk in the Western tradition.

We share an interest in the understandings of rights and liberties in the Bible and Roman law, in medieval canon law, in early modern Protestant and Catholic circles, and then in the contributions of Enlightenment liberalism. Our projects therefore converge, and Nick draws in some of my work and other people's work that I respect in telling his rights narrative, just as I draw in some of his philosophical reflections on love and rights in drawing out my conclusions. I plan to deal more deeply with his views and those of other modern Calvinists in the sequel to my *Reformation of Rights*.

Nick and I share an understanding that the Bible, while not a textbook of human rights, nonetheless has fundamental ideas in place that are consistent with how we think about rights today. I mentioned those earlier – the Decalogue; the Imago Dei concept; the need to care for the orphan, the widow, the poor, and the needy; the image of persons as prophet, priest, and king; the notion that we are given freedom as children of God, and as rightful heirs of God's gracious promise of salvation. Nick and I share the idea that these biblical concepts can be translated into rights terms – as various church fathers, medieval scholastics, and early modern Protestants and Catholics all elaborated.

We also share the conviction that human rights are not inventions of the eighteenth-century Enlightenment or the twentieth-century human rights revolution but have deep roots in the Western tradition going back to biblical and classical times. The Western tradition of rights, led by patristic, medieval, and early modern Christians,

provided the foundation on which Enlightenment liberalism built. Enlightened liberals, while certainly innovative, did not invent many of the rights we now take for granted; they adopted and adapted these from earlier Christian and classical sources. What Enlightenment liberals did was to place these earlier rights formulations, which were sometimes limited by biblical and Christian theological understandings, into broader and more universal philosophical frameworks. On all these matters, Nick and I converge in our work.

Nick has gone further than I in asking how a contemporary Christian should defend human rights against detractors, both within and without the Christian tradition. That project is still largely ahead for me. I have gone further in trying to answer historians, both within and without the church, who seek to deny the Christian sources and foundations of rights in the West.

Rights skepticism is especially rife in the Protestant world, and Nick answers those critics by showing that rights are actually part of the Protestant tradition. Nick also argues about how a secular or post-Christian or anti-Christian culture can still accept religious formulations of rights, in particular Protestant Christian formulations of rights, and see them as valuable for modern rights discussions rather than as a danger to modern constitutional life. He does so by working out an interesting anthropology of rights based upon the idea that we are all creatures of God, that we enjoy God's love, God's gracious forgiveness of our sins, God's acceptance of us, no matter who we are. And the love that God gives us is a love that all of our neighbors, who are created in the image of God, have to respect in us and we in them. That we are loved and forgiven by God requires that our neighbor look at us and see that same worth in us and respect it. Justice is measured by the extent to which a community respects the worth of all people, and by how much each person in that community respects the worth of his or her neighbor.

Other modern Protestants, particularly Reformed or Kuyperian Protestants, are also at work. One good example is David Little, another brilliant Protestant rights thinker, who focuses not on the inherent good and worth that every person has. He focuses on the opposite – on the deep evils that cannot be done to any person: torture, genocide, cannibalism, child sacrifice, and more. These, for him, provide the template for our most fundamental human rights; they set out the nonderogable, nonnegotiable, nonqualified rights that have to be put in place in every community. His interest is building on the basic right of self-preservation and self-defense that provides the foundation for all other rights. Another, earlier Protestant rights theorist, Swiss theologian Emil Brunner, offered a really interesting idea of rights and justice based in part on his understanding of human nature and its grounding in the natural or created order. And then, of course, we have Kuyper's own formulations, which are an interesting blend of scripture and tradition, old texts and new. Kuyper adds to these formulations a strong emphasis on the rights of the association, especially against an overreaching state.

I find all of those ideas congenial and compatible and will use them to try to articulate a philosophical grounding for rights when I get to the end of my sequels to

*The Reformation of Rights*. That first volume traced the sixteenth-to-eighteenth-century story of law, religion, and human rights in early modern Calvinism. I am now at work on the eighteenth-to-twenty-first century story of Calvinist rights talk and reform in the West, and will write a concluding chapter, or concluding volume, tentatively titled, “Here I Stand: A Protestant Defense of Human Rights for a Post-Christian World.”

## Human Rights in Chinese Context

Question:

In the Chinese context, there has been rich debate on Confucianism and human rights. Some support their compatibility (for example, in terms of a Confucian emphasis on social and communitarian values, the dignity of the self and person, civility, humane concern, and mutual respect). Still, at least one observer suggests that the “[h]uman rights debate in China . . . has generally been motivated by political concerns and concrete human rights violations, so that human rights writings, as a consequence, have a tendency to be very political and polemical in character.”<sup>2</sup> As a Chinese scholar, I am also hesitant to ask how far our own cultural resources (say, Confucianism) engage in and further contribute to the understanding and development of human rights in China effectively. As a foreign observer and human rights expert, how do you evaluate the cultural aspect of human rights and its implications in the human rights discourse in China?

Witte:

Allow me a few necessarily incomplete remarks, some of them echoes of what we discussed before.

First, I don’t know Confucianism well enough to weigh in on the compatibility/incompatibility dialectics. A book I edited five years ago, called *Religion and Human Rights: An Introduction*, includes a chapter by Joseph Chan. He assesses the compatibility/incompatibility dialectic, and then lays out the best case, as he sees it, of how Confucianism can be viewed as compatible with human rights – even if, necessarily, that requires a Confucian to be selective in drawing from the international bill of human rights, and critical of some current global formulations of human rights, particularly the more specific rights pressed by affinity groups in recent years.

It’s worth noting that the distinguished Confucian scholar Peng-chun Chang was a critical player in the human rights committee that drafted the Universal Declaration of Human Rights in 1948. He worked hard to show how the wisdom of the Confucian tradition was conducive to and could contribute to twentieth-century human rights formulations. His ideas are worth holding up, too, and I hope his writings have currency in modern China.

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<sup>2</sup> Marina Svensson, *Debating Human Rights in China: A Conceptual and Political History* (Lanham, MD: Rowman & Littlefield, 2002).

Second, as I said earlier, human rights should not be reduced to a single formulation, nor should they be used as weapons in international discourse and diplomacy. Americans and other Westerners cannot insist on one formulation of human rights and hold every other culture to that formulation. This has happened in some diplomatic exchanges with China; it is not productive. That approach does not take sufficient account of the way various cultures inform and implement human rights on the ground. I'm not saying that America is the best example, or China the best example of a human rights culture. I am saying that each country and its leadership have to have a bit of epistemic humility about their own formulations and how and whether they fit or don't fit other cultures.

But, third, as indicated earlier, I do think it important for every community around the world, including China, to think about what the world articulated as its Universal Declaration of Human Rights in 1948, and to use that as a mirror in which to reflect upon their own traditions, religions, and cultures. China has gone through massive changes over the last generation and has emerged as a world superpower. As China steps into global leadership, it must also engage global instruments like the Universal Declaration of Human Rights that a badly bruised but united world seventy years ago judged to be essential standards for every nation-state to consider. China must judge its own political actions and social structures in light of these standards, and also encourage its own traditions of Confucianism, Buddhism, and Taoism, as well as the growing traditions of Christianity that have emerged in China, to weigh in. That will take time, dialogue, and experimentation, but that will bring its own reforms.

Fourth, regardless of how nation-states like China or the United States judge their own human rights obligations and performance, we academics and religious leaders would do well to articulate the fundamentals of human rights – those fundamental bads and goods that must be a baseline of agreement and of a nation's acceptance into the world community. No nation can systematically torture or starve people, nor commit persons to lifetime imprisonment or death without fair trials and procedures. No nation can violate a people's basic freedoms to believe what they wish to believe. No nation can seek to abolish or destroy fundamental institutions like the family or pulverize other such essential associations. There has to be consistent articulation and agreement on these basic fundamentals, and we academics would do well to continue to push for them. The more exotic rights set out in the Universal Declaration of Human Rights and later human rights instruments are less important than the starting points, which include a basic commitment to liberty, dignity, fraternity, and equality, basic protections of due process, basic understandings of institutions and services like education and health care that are essential to the protection and organization of a good life and a good society. In that sense, religious leaders can be leaders of the global human rights conversation.

Fifth, it's important to separate discussion of the theoretical foundations of human rights and how we can embrace them from empirical questions of rights or their violation in a given context. A serious diplomatic and academic project of trying to articulate the foundations and fundamentals of a human rights culture in China can and should go on,

even if there are continued controversies about particular human rights issues on the ground. We have plenty of human rights violations in America, too, and elsewhere in the West -- not least against various racial, religious, cultural, and ethnic minorities and affinity groups. That focus on fundamentals while wrestling with particulars is how the law on the books and the law in action works. That's how theory and practice work. That's how human rights declarations eventually can become human rights deeds as well.

Finally, I hear the frustration that your question reflects about how to be most effective as a Christian and as scholar in China in bringing about reforms. It might help to think through a few different methods and strategies.

Sometimes, it helps to translate concepts. If "human rights" is an inflammatory term in China today, maybe talking about justice and fairness is better. If talk of individual freedoms, like freedom of speech, religion, assembly, or press is controversial, maybe it's better to talk about the communal discourse we all need to learn to live together. If ideas of federalism are seen as too deeply embedded in Western constitutional and covenantal theories, maybe the Chinese context lends itself better to discuss how to live in local community and national community at once and to have efficient and effective authority structures for each community. Finding neutral terms that allow for the conversation about what others might call human rights is an important translation exercise for academics.

Providing historical and comparative examples might also help provide comfort for those who are oppressed and inspiration for leaders to change their oppressive way. Religious persecution and repression are nothing new for Christians. Christians faced the lions and the catacombs in Rome. Heretics have been burned at the stake. Protestants and Catholics slaughtered each other with a vengeance in early modern times. Both French and American revolutionaries were viciously anti-Catholic. And many Christians today face persecution in China and in many other parts of the world. It's helpful to articulate and compare earlier strategies of resistance, resilience, and reconciliation. It's helpful to remember that all those earlier persecutors died, and their persecutions ended, and yet the church lived on. It's helpful to point out how and why these persecutions ended: Rome eventually accepted Christianity as essential for the survival of the empire. The Roman Catholic Church ultimately realized the scandal and ineffectiveness of torture, inquisition, and stake burning and passed criminal procedural protections against them. Early modern Christians eventually learned the fruitlessness of persecuting each other, and instead learned to live together while granting religious freedom to all peaceable believers, and Western society flourished as a consequence. China might discover the same thing, particularly as the number of Chinese Christians continues to grow.

Being authentic in Christian identity and witness is also key. The church in China needs, first and foremost, to be not a human rights advocacy group, but the body of Christ on earth, which has its fundamental responsibility to abide by scripture, to imitate Christ, to follow the great commission of being disciples, going out to the world and

bringing others to Christ, being examples of cruciform living, being ethical. The political or constitutional reforms or human rights agendas that churches have, or the resistance struggles that they lead, have to be part of that authentic mission and ministry, not a substitute for it. As Dieterich Bonhoeffer said in the midst of the church's resistance to the horrors of Nazism, "We must never forget to maintain our essential calling of being a true Christian church first." When churches grow too preoccupied with pushing political agendas, at the cost of being authentic to their own distinct spiritual calling, they endanger themselves.

All that said, advocacy for religious freedom is one facet of living by the admonition of Acts 5:29 that "we must obey God rather than men." And basic legal protection of religious freedom will bring other human rights in its train. The Western Protestant tradition discovered by hard experience that protection of religious freedom for individuals and groups is the foundation of many other civil and human rights for individuals and groups. Having a basic right to freedom of religion eventually produced freedoms of speech, assembly, and publication, rights to parenting, pilgrimage, and education, and other individual rights. Giving a basic right to a religious group to exist as a licit and legal entity eventually provided the foundation for rights to charity, social welfare, holding corporate property, organizing community, enforcing disciplinary structures, and the like. For the church and its members to pursue religious freedom is not to engage in self-service but to lay the foundation for many other human rights.

Question:

In China today, there are various cases regarding Christian engagement with human rights issues. Some churches in China adopt a public way of resistance, defending church interests in particular. There is also a group of Christian lawyers who aim to defend and protect civil rights in China. Some Christian intellectuals, including some influenced by Calvinist teachings, are involved in public discourse on political and social issues, such as the rule of law, civil society, and church-state relations. Inspired by your work on Christianity and human rights, I am compelled to ponder to what extent these Chinese Christians' efforts can inform and bear certain implications for the progress of "many other human rights" as well as institutional forms in China, which in turn can advance religious and other human rights. Would you, please, offer your observations and ideas in this regard?

Witte:

Building on what I just said, in the Western tradition, especially in the Western Protestant tradition, we came to understand that religious freedom is the first right, the foundational right, the cornerstone right on which many other individual and group rights depend. Again, for the church to seek religious freedom is not necessarily just self-serving. It's often the best way to ensure that other human rights also get protected. Churches engaged in the pursuit of religious freedom for all peaceable believers are serving the broader human rights cause.

Calvinism has a strong tradition of rights advocacy based upon protecting the right to religious freedom first. Calvinist rights reformers – Calvin, Beza, Althusius, Milton, and many others into the eighteenth century – all saw religious freedom as the first right because they saw the duty to obey, worship, and honor God and God’s law as the first duty of humankind.

But this is not just a historical argument or observation. As we look around the world today, empirical studies of the 198 individual nation-states and independent territories show that when and where religious freedom is well protected, other human rights are also well protected; where religious freedom is compromised, abridged or destroyed, other human rights topple as well and grave injustice often obtains. As a consequence, Chinese Christians and others who are pressing for religious freedom are serving a broader and essential human rights cause.

The harder question that Christians have always faced is what to do when the right of religious freedom is not respected. Do we turn the other cheek and become martyrs, as Christ did, and as some martyrs in the tradition have always done? Or do we instead take up arms and fight for God’s cause? Do we lead a revolution, at the risk of many thousands of lives and a generation of disruption? Christians over the centuries have developed stages or layers of resistance, individually and corporately, and Calvinists were particularly instructive in setting out these layers or steps.

A first step of resistance is for the individual and family quietly to pray, read the Bible, and worship God in disobedience of the state’s law. Having house churches that are not licensed by the state but that provide opportunities for worship, charity, education, and close association with others is how groups embrace this first step of resistance theory. Being faithful in and to those communities, being hospitable to members of those communities, making them “zones of liberty” for proper and right Christian living is critical service and witness. We have examples of house churches already in the New Testament, and they flourished despite their repression by the Roman authorities who called them illicit associations.

A second step of resistance is leaving – exercising the right to emigrate when the local authorities don’t allow you to worship in the way that you think is appropriate – and taking your family, labor, taxes, education, expertise, work, and businesses with you to settle in a neighboring area where you are welcome. If enough people leave with all of these goods and services, and especially if they settle in a rival political community, the persecuting authorities at their prior homes will begin to question whether that cost is worth it. Religious persecutors in the past often vacillated between narratives of purity (and consequent repression of dissenters) and utility (relaxing persecution in order to ensure that enough labor, taxes, business, and other good things stay and get done in their community).

A third step of resistance is to push the government by lawsuits, petitions, demonstrations, and grievances – and today also by use of social media – to expose the rights violations, to make them visible to fellow believers who can know they are not

alone in the suffering, and to other folks who can take up their cause in prayer, as well as in diplomatic, political, and legal efforts to have the persecution end. Doing that with humility but with insistence is a third step in rights resistance.

A fourth step is building networks and organizations of resistance and revolt. This is not a step to be taken lightly today for fear of violent reprisal and setback for others. But organizing with other religious freedom and human rights reformers, finding community and common cause with advocacy groups who can litigate, lobby, and mobilize reform efforts from within and without the country short of violence or revolt is a critical step.

One of the keys today is to persuade the state that it is good for them as a state to protect human rights, especially religious freedom. It is important to demonstrate – historically, comparatively, and empirically – that the church has long been and can be a vital ally of the state and can help the state achieve its goals. Many of the things that the state is trying to achieve in education, charity, poor relief, healthcare, fostering public and private morality and more the church has and can help it achieve effectively – at the granular level, on the ground, neighborhood by neighborhood, community by community. Granting religious freedom therefore helps the state achieve greater justice, moral order, and public provisioning. The empirical studies that I mentioned about the consequences of protecting religious freedom around the world make it clear that if a state protects religious freedom, it does better in its statecraft and in its service to all citizens.

So the pitch to the state is: if you want to protect the poor, the needy, the widow, the orphan, the stranger, the sojourner; if you want to put in place basic structures of charity, education and social welfare; if you want to foster public morality and political allegiance, you would be better served by giving freedom to religious communities to help you as a state. That will give churches and other religious communities the freedom to discharge what for them are duties to do these things. That leads to much more effective and efficient governance than seeking to suppress these potential allies or to monopolize governance and provision.

Question:

I also recognize the importance of peaceful dialogue between the citizens and the government, or between the communities and the government, with regard to religious matters and the common good, particularly in China. But should there be more?

Witte:

For the Calvinist tradition, violent revolt and revolution was always a last resort, to be used only after all these stages of resistance were tried. Even then, the Calvinist tradition insisted on various strong procedural steps. If a repressed community was so chronically, pervasively, and persistently repressed and persecuted that it had no other

recourse but to rise up in revolt, Calvin and his followers stressed the need to follow orderly, collective, and constitutionally licit methods. No individual or small group, they argued, could take it upon themselves to make a collective judgment about what the whole community needs and then initiate violent rebellion, possibly triggering a massive reaction by the government in a response that could cost the religious freedom and human rights for everyone. Coordinating resistance with representative leaders from throughout the community was critically important.

Question:

You mentioned earlier the three fundamental aspects of life – faith, freedom, and family. As a way of concluding our conversation, could you please share something more about this from your own understanding of Chinese culture, politics, and society? In other words, is there a difference between these terms in the West and in the East?

Witte:

Unfortunately, I can't answer that properly. I don't know enough about the role that faith, freedom, and family play in Chinese culture and cosmology historically and today. What I can say is that in the West, over the past two thousand years, there have been three things that most people will die for – their faith, their freedom, and their family. Their faith: what they believe to be their fundamental obligations toward God. Their freedom: the most essential condition that they need to live out their faith, their love of God, neighbor, and self. Their family: the sacrificial love, even to death, that we have for our spouse, for our children, for our parents and siblings. In the West, faith, freedom, and family are in that sense the most fundamental. These are three things that people will die for, and they are foundational elements of an orderly society and ordered liberty.

I can't judge whether that formula or something comparable is part of Chinese thinking. I suspect that there are at least parallels to that in Confucian and Buddhist and other cultures, and there are certainly expressions of that in the Chinese Christian cultures that I have encountered. I published a book with a couple of colleagues a decade or so ago called *Sex, Marriage, and Family in World Religions*. We had primary texts from Asian Buddhist, Confucian, and other traditions alongside Judaism, Christianity, and Islam. I was struck by how comparable the teachings are about the family as you read across these great world religions. At least at the intellectual level of official teachings, all these religions emphasize the importance of the family for individual and social flourishing. I suspect that is part of Chinese culture and cosmology, too.

Question:

In the Chinese traditions, we have strong emphasis on the family structure and family-based understanding of community and society. In contemporary China, particularly in urban China, more and more intellectuals have their own individual quest

for the meaning of life and search for the ideal of freedom in its various layers. Some of them come close to Christianity. For me, it seems increasingly important for Chinese society and government to take seriously what freedom and order mean for us in our transitional period. I do hope both the East and the West can learn from each other on these common issues.

Witte:

Amen! The West certainly has something to learn from the rest of the world, as the West experiences the gradual decline in its own commitments to faith, freedom, and family. Maybe a century from now, our successors will be in a very different kind of conversation. An American may be sitting at a Chinese scholar's desk asking his or her advice about how the Chinese operate with their robust new Christian identity, while the West sits with only the memory and residue of its once Christian culture.