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Introduction

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Abstract

This Article reports on a major international conference in 1994 at Emory on the state of religious rights and liberties around the world today. This report offers a thumbnail sketch of certain core teachings on religious rights and liberties among the Religions of the Book, notably the core guarantees of liberty of conscience, free exercise, and equality of religions. The second section of articles describes the state of religious rights and liberties in select nations and regions today.

Keywords: Religion, human rights, abuse, religious rights, international

On October 6-9, 1994, seven hundred conferees gathered in Atlanta to address the theme of "Religious Human Rights in the World Today." Archbishop Desmond Tutu opened the conference with a challenge to all religious peoples "to confess the gory and shameful history" of their rights abuses and to join the struggle for "peace, reconciliation, tolerance, and respect for the human rights of all peoples and faiths." Fifty distinguished speakers thereafter answered the Archbishop's challenge, taking up the past and potential contributions of their communities to the protection and violation of religious rights and liberties. Jews, Christians, and Muslims, jurists, theologians, and activists, Africans, Europeans, and Americans all shared the same stage and shared their own stories.

The time was ripe for such a cosmopolitan inquiry. For religious rights abuses have reached alarming proportions at the close of the second millennium. Religious nationalism and fundamentalism have conspired to bring violent death and dislocation to thousands of religious believers each year. Political secularism and cynicism have combined to bring civil denial and deprivation to religious believers of all faiths. Temples and mosques are denied entrance to neighborhoods. Churches and charities are denied autonomy of governance. Clerics and charities are denied licenses to minister. Pilgrims and missionaries are denied visas and charters. Natives and refugees are denied access to totems and homelands. Parents and children are denied liberties of education. Employers and employees are denied opportunities to exercise their faiths. To be sure, the collapse of many authoritarian regimes in the past decade has begun to open new venues and avenues for religion to flourish. International and local laws have begun to embrace more generous religious rights provisions. Religious communities have begun to apply their theological learning and moral suasion to the cause of religious rights. But today, by common estimates, more than two billion people still enjoy only partial freedom of thought, conscience, and belief.

It is time for us to take religious rights seriously--to shake off our political indifference and parochial self-interest and to address the plight and protection of people of all faiths. It is time to "exorcise the demons of religious intolerance" that have beset both religious and non-religious peoples around the world and to exercise the "golden rules" of religious rights--doing unto other religious believers and beliefs what we would have done to us and ours. It is time to give new meaning and emphasis to the essential norms of religious human rights--liberty of conscience, religious pluralism and equality, free exercise of religion, non-discrimination on religious grounds, autonomy for religious groups, among other norms.

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The subject of religious human rights--though of ancient vintage--first came to popular prominence in this century after World War II. Several factors contributed to the sudden new interest in the subject: the horrors suffered by Jews and others in Nazi Germany, Stalinist Russia, and Maoist China, the repression of religious missionaries

and emigrants to Africa and Asia, the sudden proliferation of new (or newly prominent) religions demanding protection and treatment equal with that of traditional religions, among other factors. In response, jurists and theologians produced elaborate theories of religious and other human rights. Religious communities issued bold confessional manifestoes on the subject. The United Nations, regional international organizations, and individual states began to outlaw religious discrimination. Non-governmental and inter-governmental organizations were established to monitor the plight of religious minorities, to litigate and lobby on their behalf, and to educate their constituents.

This sudden new interest in religious rights was part of the broader "rights revolution" that erupted in America, Europe, and elsewhere in the 1950s and 1960s. In America, this rights revolution yielded a powerful new grassroots civil rights movement, a welter of landmark civil rights cases and statutes, and an unprecedented outpouring of literature on human rights. In Europe, the revolution produced sweeping constitutional reforms, landmark cases, and the establishment of new rights structures to govern the European community. Internationally, the Universal Declaration of Rights of 1948 offered a grand statement of human rights, which brought forth numerous declarations, covenants, and conventions on more discrete rights. The United Nations established a Human Rights Committee and a number of subcommissions and special rapporteurs on topics such as racial and religious discrimination. Academies and institutes throughout the world produced a prodigious new literature on human rights.

After expressing some initial interest, however, intellectual and political leaders of this rights revolution seemed to consign religion and its rights to the bottom of what Henry Abraham once called "The Honor Roll of Superior Rights." Freedom of speech and press, parity of race and gender, provision of work and welfare, and similar causes captured much of the energy and emoluments of the rights revolution. After the 1950s, academic inquiries and activist interventions into religious rights and their abuses became increasingly intermittent and isolated, inspired as much by parochial self-interest as by universal golden rules. The rights revolution was passing religion by.

This deprecation of religious rights was not simply the product of calculated agnosticism or callous apathy--though there was ample evidence of both. Rights leaders were often forced, by reason of political pressure or limited resources, to address the most glaring rights violations and abuses. Physical abuses--torture, rape, war crimes, false imprisonment, forced poverty--are easier to track and treat than spiritual abuses, and often demand more immediate attention. In desperate circumstances, it is sometimes better to be a Good Samaritan than a good preacher, to give food and comfort before gospels and doctrines. The relative silence of religious communities until recently seemed to lend credence to this prioritization of effort. With the exception of the Roman Catholic Church after the Second Vatican Council (1962-1965) and certain Jewish and ecumenical organizations, most religious groups made only modest contributions to the theory, law, and activism on religious rights. The general theological principles set out in their post-War manifestoes on rights were not converted to specific precepts or programs. Their general endorsement of religious

rights provisions in early international and constitutional texts were not followed by specific lobbying and litigation efforts. Whether mainline religious communities were content with their own condition, or intent to turn the other cheek or look the other way in the face of religious rights abuses, their relative silence did considerable harm to the cause of religious rights and liberties.

The deprecation of religion and religious rights over the past three decades has had several deleterious effects on the rights revolution, and on religious rights themselves.

First, this deprecation has "impoverished" the general theory of human rights embraced by the rights revolution. On the one hand, it has cut many rights from their roots. The right to religion, Georg Jellinek once wrote, is "the mother of many other rights." For the religious individual, the right to believe leads ineluctably to the rights to assemble, speak, worship, proselytize, educate, parent, travel, or to abstain from the same on the basis of one's beliefs. For the religious association, the right to exist invariably involves rights to corporate property, collective worship, organized charity, parochial education, freedom of press, and autonomy of governance. To ignore religious rights is to overlook the conceptual, if not historical, source of many other individual and associational rights. On the other hand, this deprecation of religious rights has abstracted rights from duties. Most religious groups adopt and advocate religious rights in order to protect their 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 within the community, as mandated by a religious canon, creed, and code of conduct. Religious rights provide the best example of the organic linkage between rights and duties. Without the lessons of religion and religious rights readily at hand, leaders of the rights revolution have tended to lose sight of these organic connections and to treat human rights as the abstract (and seemingly boundless) claims of autonomous individuals.

Second, this deprecation of religious rights has sharpened the divide between Western and non-Western theories of rights. Many non-Western traditions, particularly those of Islamic, Hindu, Buddhist, Taoist, and indigenous stock, cannot conceive of, nor accept, a system of rights that excludes religion. Religion is for these traditions inextricably integrated into every facet of life. Religious rights are thus an inherent part of the 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. Since Western notions of rights have tended to dominate international law, many non-Western societies have neither accepted nor adopted the basic human rights instruments of international law.

Third, this deprecation of religion has exaggerated the role of the state as the guarantor of human rights. The simple state vs. individual dialectic of modern human rights theories leaves it to the state to protect rights of all sorts--"first generation" civil and political rights, "second generation" social, cultural, and economic rights, and "third

generation" environmental and developmental rights. In reality, the state is not, and cannot be, so omniscient. A plurality of voluntary associations mediate 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 all rights, including religious rights. They create the conditions (and sometimes the prototypes) for the realization of first generation civil and political rights. They provide a critical (and sometimes the principal) means to meet second generation rights of education, health care, child care, labor organizations, employment, artistic opportunities, among others. They offer some of the deepest insights into norms of creation, stewardship, and servanthood that lie at the heart of third generation rights.

Religions and religious rights must thus be reintegrated into the contemporary field of human rights. To be sure, religions are not easy allies to engage. But the struggle for human rights cannot be won without them. For human rights norms are inherently abstract ideals--universal, even utopian, statements of the good life and the good society. They depend upon the visions of human communities and institutions to give them content and coherence, to provide "the scale of values governing the[ir] exercise and concrete manifestation," in Jacques Maritain's phrase. Religion is an ineradicable condition of human lives and communities; religions invariably provide universal sources and scales of values by which many persons and communities govern themselves. Religions must thus be seen as indispensable allies in the modern struggle to protect human rights and to promote a human rights culture. To exclude them from the struggle is impossible, and indeed catastrophic. To include them--to enlist their unique resources and to protect their unique rights--is vital to enhancing and advancing the regime of human rights.

"[T]he only real hope of people today is probably a renewal of our certainty that we are rooted in the Earth and, at the same time, the cosmos," Czech President Vaclav Havel declared in 1994, after receiving the Liberty Medal. "This awareness endows us with the capacity for self-transcendence. Politicians at international forums may reiterate a thousand times that the basis of the new world order must be universal respect for human rights, but it will mean nothing as long as this imperative does not derive from the respect of the miracle of being, the miracle of the universe, the miracle of nature, the miracle of our own existence. Only someone who submits in the authority of the universal order and of creation, who values the right to be a part of it, and a participant in it, can genuinely value himself and his neighbors, and thus honor their rights as well."

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The two-volume work on *Religious Human Rights in Global Perspective* (Martinus Nijhoff, 1996), born of the Atlanta Conference and excerpted herein, provides the first step toward such integration. The first volume offers religious perspectives on religious rights, focussed on the teachings and practices of the three religions of the Book. The second volume offers legal perspectives on religious rights, focussed on the legal traditions of the Atlantic states.

The rights talk of Christianity, Judaism, and Islam--which is the focus of the first volume and the first set of excerpts herein--lends itself readily to comparative analysis. Each of these religious traditions is a religion of revelation, founded on the eternal command to love one God, oneself, and all neighbors. Each tradition recognizes a canonical text as its highest authority--the Bible, the Torah, and the Qur'an. Each tradition designates a class of officials to preserve and propagate its faith, and embraces an expanding body of authoritative interpretations and applications of its canon. Each tradition has a refined legal structure--the canon law, Halakha, and Shari'a--that has translated its enduring principles of faith into evolving precepts of works. Each tradition has sought to imbue its religious, ethical, and legal norms into the daily lives of individuals and communities. These texts and traditions, ideas and institutions, norms and narratives of Christianity, Judaism, and Islam have much to offer to current discussions of human rights in general, and religious rights in particular.

To be sure, none of these religious traditions speaks 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 they have served to propagate equality, liberty, and fraternity. The blood of thousands is at the doors of churches, synagogues, and mosques--that of dissidents, women, and sojourners, most prominently. The bludgeons of religious pogroms, crusades, jihads, inquisitions, and ostracisms have been used to devastating effect, both within and among these three great faiths. No religion of the Book can begin to address the problem of religious human rights without, what Luke Johnson calls, "metanoia"--frank confrontation with and confession of its dark side. No religious address on human rights can begin without, what Abdullahi An-Na'im calls, "a hermeneutic of human rights"--a method of interpreting sacred texts and traditions that is designed to recover and transplant those religious teachings and activities conducive to human rights.

The ancient teachings and practices of Christianity, Judaism, and Islam have much to commend themselves. Each tradition has produced a number of the building blocks of a comprehensive theory and law of religious human rights today--conscience, dignity, reason, liberty, equality, tolerance, love, openness, responsibility, justice, mercy, righteousness, accountability, covenant, community, among other cardinal concepts. Each tradition has developed its own internal system of legal procedures and structures for the protection of rights, which historically have and still can serve as both prototypes and complements to secular legal systems. Each tradition has its own advocates and prophets, ancient and modern, who have worked to achieve a closer approximation of religious rights ideals for themselves and others.

The legal traditions of the Atlantic--which is the focus of the second volume and the second set of excerpts herein--provide a rich spectrum of legal provisions and practices respecting religious human rights. Civil law, common law, and religious law

traditions on religious rights are variously combined. Constitutions, statutes, and cases embrace widely divergent provisions among and within these countries. Politics, morality and history, economics, demography and custom all profoundly influence both the law on the books and the law in action. Even though most Atlantic nations pay constitutional lip service to the "right to freedom of thought, conscience, and religion," proclaimed by the 1948 Universal Declaration of Rights, their laws and practices respecting religious rights differ dramatically.

These differences are nowhere more evident than in conflicts over so-called "church-state" relations. American leaders, armed with the disestablishment clause of the First Amendment, often urge the separation of church and state, and the cessation of state support for religion. Only the secular or neutral state can guarantee religious liberty, it is argued, and only separation can guarantee neutrality. Canadians, Europeans, Africans, and Latin Americans, for whom a disestablishment clause is largely foreign, often advocate the material and moral cooperation of religious communities and the state. Indeed, a number of religious groups in the former Soviet bloc and sub-Saharan Africa today regard restitution and affirmative state action towards religion as a necessary feature of any religious rights regime--if nothing else, to undo and overcome past confiscation of religious properties and repression of religious peoples. English religious and political leaders argue that continued establishment of the Anglican Church is critical to the preservation of English culture and identity. Catholic groups in Latin America urge cooperation of religious and political bodies to preserve the "Catholicization" of public life. Islamic revivalists in Middle Eastern and north African countries urge the adoption of Shari'a law to enhance the "Islamicization" of their communities. Jewish groups argue similarly about the Halakha to protect the Jewish character of the State of Israel. To cooperate or to separate, to aid or to avoid one another, is a fundamental question confronting, and dividing, religions and states around the Atlantic.

These differences are also evident in application of the core guarantees of liberty of conscience, free exercise, and equality of religions before the law. Countries in Western Europe and the Americas generally regard liberty of conscience as absolute, and equality and freedom of all faiths as essential to the protection of religious rights. In practice, however, religious minorities--whether Jewish, Muslim, Christian, Sikh, Hindu, Rastafarian, Bahi'a, or indigenous--often feel the restrictions, and sometimes the repression, of majoritarian policies and practices. Countries in the Middle East and Africa, with Shi'ite, Sunni, or other Muslim majorities systematically restrict the liberty of conscience and free exercise of religious dissidents, particularly in matters of conversion and corporate organization, and sometimes condone by silence private violence against religious minorities.