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LAW, RELIGION, AND HUMAN RIGHTS

A Historical Protestant Perspective

John Witte Jr.

ABSTRACT

The author discusses the sixteenth-century Protestant Reformation as a human rights movement. The Reformation not only laid the groundwork for religious human rights but also created the platform for the more expansive conceptions of individual liberty that shaped the political development of the West. The continuing importance of the churches in the human rights movement is affirmed.

KEY WORDS: *civil liberties, human rights, Protestant Reformation, religious pluralism*

I START WITH THE CONVICTION THAT RELIGION AND HUMAN RIGHTS need each other. On the one hand, human rights norms need religious narratives to ground them. To be sure, there is some value in simply declaring human rights norms of liberty, equality, and fraternity—if for no other reason than to pose an ideal against which a 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 upon the visions and values of human communities to give them content and coherence. 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 persons and peoples govern themselves. Religions inevitably define the meanings and measures of shame and regret, restraint and respect, responsibility and restitution that a human rights régime presupposes. Religions must thus be seen as indispensable allies in the modern struggle for human rights. To exclude them from the struggle is impossible, and, indeed, catastrophic. To include them—

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to enlist their unique resources and to protect their unique rights—is vital to enhancing and advancing the régime of human rights.

On the other hand, religious narratives need human rights norms to challenge them. There is, of course, some value in religions simply accepting current human rights protections—the guarantees of liberty of conscience, freedom of exercise, and equality of faiths before the law. But passive acquiescence in a secular scheme of human rights ultimately will not do. Religious communities must reclaim their voice in the secular human rights dialogue, and must reclaim the human rights voice in their own internal religious dialogues. For, contrary to conventional wisdom, the theory and law of human rights is neither new, nor secular in origin. Human rights are, in substantial part, the modern political fruits of ancient religious beliefs and practices—ancient Jewish constructions of covenant and *mitzvot*, ancient Qu’rānic texts on peace and the common good, Roman Catholic canon law concepts of *ius* and *libertas*, classic Protestant ideals of freedom and conscience. Religious communities must be open to a new human rights hermeneutic—fresh methods of interpreting their sacred texts and traditions that will allow them both to reclaim the long-observed roles that their traditions have played in the cultivation of human rights in the past and to lay claim to familiar principles and practices within these traditions that are conducive to the development of human rights in the future.

The Protestant tradition provides a poignant illustration of this complex interdependence of religion and human rights. The Protestant Reformation was, in part, a human rights movement. Prior to the sixteenth century, there was one universal Catholic faith and Church, one universal system of canon law and sacramental life, one universal hierarchy of courts and administrators centered in Rome that ruled throughout much of the West. Martin Luther, John Calvin, Thomas Cranmer, Menno Simmons, and other sixteenth-century reformers all began their movements with a call for freedom from this ecclesiastical régime—freedom of the individual conscience from intrusive canon laws and clerical controls, freedom of political officials from ecclesiastical power and privileges, freedom of the local clergy from central papal rule and oppressive princely controls. “Freedom of the Christian” became the rallying cry of the early Reformation. It drove theologians and jurists, clergy and laity, princes and peasants alike to denounce canon laws and ecclesiastical authorities with unprecedented alacrity, and to urge radical constitutional reforms.

The Protestant Reformation permanently broke the unity of law and confession in Western Christendom, and it thereby introduced the foundations for the modern constitutional system of confessional pluralism. The Anglican Reformation *nationalized* the faith through the famous

Tudor Act of Uniformity (1559) of the Church and Commonwealth of England. Citizens of the Commonwealth were required to be communicants of the Church of England, subject to the final authority of the monarch. The Toleration Act (1689) extended a modicum of rights to Protestant dissenters, but it was not until the Jewish and Catholic Emancipation Acts of 1829 and 1833 that the national identity of the Church and Commonwealth of England was finally broken.

The Lutheran Reformation *territorialized* the faith through the principle of *cuius regio, eius religio* (whose region, his religion) established by the Peace of Augsburg (1555). Under this principle, princes or city councils were authorized to prescribe the appropriate forms of Evangelical or Catholic doctrine, liturgy, and education for their polities—with religious dissenters granted the right to worship privately in their homes or to emigrate peaceably from the polity. After decades of bitter civil war, the Peace of Westphalia (1648) extended this privilege to Calvinists as well, rendering Germany a veritable honeycomb of religious plurality until the nineteenth century.

The Anabaptist Reformation *communalized* the faith by introducing what Simmons called the *Scheidungsmaurer*—the wall of separation between the redeemed realm of religion and the fallen realm of the world. Religious communities were ascetically withdrawn from the world in small, self-sufficient, intensely democratic communities, governed internally by biblical principles of discipleship, simplicity, hospitality, charity, and Christian obedience. When such communities grew too large or too divided, they deliberately colonized themselves, eventually spreading the Anabaptists from Russia to Ireland to the furthest frontiers of North America.

The Calvinist Reformation *congregationalized* the faith by introducing rule by a democratically elected consistory of pastors, elders, and deacons. In John Calvin's Geneva, the consistory was still appointed and held broad personal and subject-matter jurisdiction over all members of the city. By the seventeenth century, however, Calvinist communities throughout Europe and North America had reduced the consistory to an elected representative system of government within each congregation. These consistories featured separation among the offices of preaching, discipline, and charity, and a fluid, dialogical form of religious polity and policing centered around collective worship and congregational meetings.

The Protestant Reformation also broke the primacy of corporate Christianity and gave new emphasis to the role of the individual believer in the economy of salvation. This was true even in the more intensely communitarian traditions of Anglicanism and Anabaptism. The Anglican Book of Common Prayer was designed, in Thomas Cran-

mer's words, as a "textbook of liberty." The daily office of the lectionary, together with the vernacular Bible, encouraged the exercise of private devotion outside the church. The choices among liturgical rites and prayers within the Prayer Book encouraged the exercise of at least some clerical innovation within the church, with such opportunities for variation and innovation increasing with the 1662 and 1789 editions of the Prayer Book.

The Anabaptist doctrine of adult baptism gave new emphasis to a voluntarist understanding of religion, as opposed to conventional notions of a birthright or predestined faith. The adult individual was now called to make a conscientious choice to accept the faith—metaphorically, to scale the wall of separation between the fallen world and the realm of religion to come within the perfection of Christ. Later Free Church followers converted this cardinal image into a powerful platform of liberty of conscience, free exercise of religion, and separation of church and state—not only for Christians but eventually for all peaceable believers. Their views had a great influence on the formation of constitutional protections of religious liberty in eighteenth- and nineteenth-century North America and Western Europe.

The Lutheran and Calvinist branches of the Reformation laid the anthropological basis for an even more expansive theory and law of liberty and rights. Classic Protestant theology teaches that a person is both saint and sinner. On the one hand, a person is created in the image of God and justified by faith in God. The person is called to a distinct vocation, which stands equal in dignity and sanctity to all others. The person is prophet, priest, and king, and responsible to exhort, minister, and rule in the community. Every person, therefore, stands equal before God and before his neighbor. Every person is vested with a natural liberty to live, to believe, to serve God and neighbor. Every person is entitled to the vernacular Scripture, to education, to work in a vocation.

On the other hand, the person is sinful and prone to evil and egoism. He needs the restraint of the law to deter him from evil and to drive him to repentance. She needs the association of others to exhort, minister, and rule her with law and with love. Every person, therefore, is inherently a communal creature. Every person belongs to a family, a church, a political community.

Lutheran and Calvinist groups in Europe and North America eventually cast these theological doctrines into democratic forms designed to protect human rights. Protestant doctrines of the person and society were cast into democratic social forms. Since all persons stand equal before God, they must stand equal before God's political agents in the state. Since God has vested all persons with natural liberties of life and belief, the state must assure them of similar civil liberties. Since God

has called all persons to be prophets, priests, and kings, the state must protect their freedoms to speak, to preach, and to rule in the community. Since God has created persons as social creatures, the state must promote and protect a plurality of social institutions, particularly the church and the family.

Protestant doctrines of sin were cast into democratic political forms. The political office must be protected against the sinfulness of the political official. Political power, like ecclesiastical power, must be distributed among self-checking executive, legislative, and judicial branches. Officials must be elected to limited terms of office. Laws must be clearly codified, and discretion closely guarded. If officials abuse their office, they must be disobeyed; if they persist in their abuse, they must be removed, even if by force.

In the past, these Protestant teachings helped to inaugurate several of the great Western revolutions fought in the name of human rights and democracy. They were the driving ideological forces behind the revolts of the French Huguenots, Dutch pietists, and Scottish Presbyterians against their monarchical oppressors in the later sixteenth and seventeenth centuries. They were critical weapons in the arsenal of the revolutionaries in England, America, and France. They were important sources of inspiration and instruction during the great age of democratic construction in later eighteenth- and nineteenth-century America and Western Europe. In the present century, Protestant ideas of human rights and democracy helped to drive the constitutional reformation of France, Germany, Italy, and Iberia in the postwar period, and some of the human rights and democratic movements against colonial autocracy to Africa and fascist revival in Latin America.

These cardinal Protestant teachings and practices have much to offer to the régime of human rights in the twenty-first century. Protestant theology avoids the reductionist extremes of both libertarianism, which sacrifices the community for the individual, and socialism, which sacrifices the individual for the community. It also avoids the limitless expansion of human rights claims by grounding these norms in the creation order, divine callings, and covenant relationships. On this foundation, Protestant theology strikes unique balances between liberty and responsibility, dignity and depravity, individuality and community, politics and pluralism.

To translate these theological principles into human rights practices is perhaps the greatest challenge facing the Protestant churches in the immediate future. The Protestant tradition needs to have its own Vatican II, its own comprehensive and collective assessment of its future role in the human rights drama. Of course, Protestant congregationalism militates against such collective action, as do the many ancient

animosities among Protestant sects. But this is no time, and no matter, for denominational snobbery or sniping. Protestants need to sow their own distinct seeds of human rights while the field is still open. Else, there will be little to harvest, and little room to complain, in the next century.