

Religion and Reason

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Volume 43

New Approaches to the Study of Religion

Volume 2:

Textual, Comparative, Sociological,
and Cognitive Approaches

Edited by

Peter Antes, Armin W. Geertz, Randi R. Warne

Walter de Gruyter · Berlin · New York

Walter de Gruyter · Berlin · New York

2004

Human Rights: An Important and Challenging New Field for the Study of Religion

by

ROSALIND I.J. HACKETT

1. Introduction: Contours and Challenges¹

This chapter corresponds well to the mandate of the present book. It could not have been written twenty years ago, perhaps even ten years ago. That is not to say that the roots of human rights do not reach back into history as long as human beings have struggled for liberty and justice. Nor can it be argued that there has not been a voluminous output of literature on human rights, since the international movement was born out of the disasters of World War II.² But scholarly analysis of the promotion and protection of freedom of religion and belief, and the ambivalent relationship of human rights concepts to religious traditions, only really starts to become apparent in the 1980s—subsequent to the development of specific international human rights instruments (discussed below; see Stahnke/Martin 1998).³

The last decade in particular has seen the emergence of several specialized texts on what Louis Henkin calls the “vexed relationship” between religion and human rights.” Arguably the most influential publication in this regard is the two-volume, *Religious Human Rights*, which resulted from a major multidisciplinary conference on this subject organized by Emory University’s Law and Religion Program in 1994 (Witte/van der Vyver 1996; van der Vyver/Witte 1996). It represented the first attempt to bring together different religious traditions and scholarly disciplines to examine, from an international perspective, the various permutations of the relationship between religion and human rights

1 I wish to express my appreciation to Abdullahi An-Na’im, T. Jeremy Gunn, David Little, Mohamed Mahmoud, J.J. Rosenbaum, and Arvind Sharma for their helpful comments and suggestions on this essay.

2 There were a number of useful publications to mark the fiftieth anniversary of the signing of the Universal Declaration of Human Rights in 1948. See, for example, the special issue of the *Journal of Religious Ethics* 26 (2) 1998; also Baehr/Flinterman/Senders 1999; Evans 1998; Swedish Institute 1998.

3 I have here confined myself to literature in English.

(see Witte 2001 for an update). By the end of the 1990s it now became possible to consult reports on how freedom of religion is understood, protected or denied around the world.⁴ These and the other texts to be discussed in this essay were long overdue given the relative neglect of freedom of religion and belief in the overall human rights regime (Lerner 2000), and, in fact, the general lack of serious treatment of the religious dimension of international relations (Casanova 1994; Haynes 1998; Johnston 1994; Rudolph 1997). The manifold reasons for this orphan status hardly need to be adumbrated for scholars of religion—secularist perceptions of religion as privatized or irrelevant, sensitivity of religion questions, difficulty of achieving consensus and definition, and so on. Yet the rise of religion to prominence on the world stage has added impetus to the growing intellectual interest in religion from a human rights perspective and vice versa.

In this essay I shall examine the contours and contributions of the emerging scholarship on religion and human rights, while pointing to some potentially fruitful areas of investigation for scholars of religion. I am particularly concerned about generating data and analysis on the culture and ethnography of human rights. I shall also argue that the particular skills that religion scholars bring to the table in terms of what Ninian Smart called "worldview analysis," namely, the critical interpretation of sacred symbol, text, space, ritual, object, community, as well as cultural difference and identity (see, e.g. Chidester 1996, 2000: 436; Nye 2000), are highly germane in the analysis of human rights discourse and practice. We should also include here the mobilizing and authorizing power of religious rhetoric (McCutcheon 1997; O'Leary 1994), as well as arguments for the inclusion of secular ideologies (see, especially, Smart 1995). Moreover, the location of religious studies scholarship at the intersection of the humanities and social sciences, together with its focus on religious belief and practice as embedded historical and contemporary realities, can serve to complement, if not healthily challenge, the domination of these questions by legal, political, and philosophical theorists.

A number of international developments in the last few years with regard to freedom of religion and belief have been forcing the hand of scholars to pay more attention to what human rights lawyer and scholar Jeremy Gunn calls "the oldest, newest, and most controversial of rights" (Gunn forthcoming). First, the United States launched a controversial initiative to make religious freedom a central aspect of its foreign policy in the form of the International Religious Freedom Act of 1998.⁵ As a result of this law there is now an

4 See below, note 5. Kevin Boyle's and Juliet Sheen's *Freedom of Religion and Belief: A World Report* was an earlier attempt to document and analyze understandings, protections and violations of the freedom of religion and secular thought (Boyle 1997).

5 See http://www.state.gov/www/global/human_rights/drl_religion.html.

Ambassador-at-Large for International Religious Freedom, an office in the State Department, an Advisory Commission, and annual report on the state of religious freedom worldwide; in addition, the President is required to resort to a range of actions against countries that are major violators of religious freedom (see Gunn 2000; Hackett 2001b; Hackett/Silk/Hoover 2000). Second, a number of European countries have in the last few years imposed or proposed restrictions on newer religious formations ("sects" and "cults") (Barker 2000; Lord 2000; Shterin 2001). These new developments have served to shift the focus onto actual violations of religious freedom by individual states, as well as bringing it closer to "home." The work of sociologist of religion and legal scholar, James Richardson, is paradigmatic in this regard, namely his analysis of state management of religious pluralities and minorities in a number of locations (see, for example, Richardson 1995, 2000).⁶ It is predominantly religious minorities who continue to suffer the worst forms of human rights abuses (cf. Adams 2000).⁷ This greater attention to the realities of religious freedom on the ground is further influenced by the ideas, images and texts which now circulate globally about religious persecution and martyrdom. Evangelical Christian organizations—with their effective publicity and lobbying mechanisms, as well as their growing cyberactivism—have been particularly active in shaping this discourse (see, in particular, Marshall 1997, 2000; Shea 1997).

But there are numerous other ways that the interrelationship between religion and human rights has been, and is being, addressed. As alluded to above, it is oft perceived as a conflictual relationship. In the diplomatic words of leading human rights scholar, Louis Henkin, "[t]he world of religion and the world of human rights have not always coexisted comfortably" (Henkin 2000: 29). This is not just because of the violence and rights abuses committed in the name of religion which it would be all too easy to cite, but also because the multiplicity of traditions and contexts associated with the phenomenon of religion would appear to be at odds with the universalist claims of human rights. This is commonly described as a controversy over "cultural relativism" or even civilizational conflict (Little 2001; Huntington 1993). Several scholars have therefore taken on the task of exploring particular religious traditions to see whether they contain the resources for human rights ideas implicitly or explicitly. Some of these efforts will be examined below.

6 See especially his guest-edited issue of *Social Justice Research*, 12 (4) 1999. The *Nova Religio* issue on "Alternative Religions, the State, and the Globe" (April 2001) and the Dutch publication, *Freedom of Religion: A Precious Human Right* (Naber 2000) also reflect this trend.

7 Although see Sharma's interesting argument that in India it is the religious majority (Hindus) who have suffered most at hands of minorities (Muslims, Christians) (Sharma 2000/2001).

Anthropologists, with whom historians of religion have enjoyed a close affinity over the years, have been far more distrustful of the universalizing discourses of human rights. This suspicion has been fueled by traditional anthropological emphasis on culture, localism, and non- or sub-state actors. Happily there are now anthropologists (see, especially, Wilson 1997), who recognize that human rights ideas are increasingly being appropriated by many indigenous peoples in their struggles for cultural and political self-determination—Sub-Commandante Marcos of Zapatista fame in Mexico being a primary case in point. Anthropologists have much to contribute on the cross-cultural applicability of human rights, and the tensions between global and local formulations of human rights. In fact, group rights, cultural self-determination, and the rights of indigenous peoples and ethnic minorities are currently some of the most hotly debated items on the human rights agenda, as will be seen in a later section.⁸

Finally, we can note another category of scholars—the area, or empirically-oriented tradition, specialists—whose work is taking on a human rights dimension in varying degrees. They tend to examine the way more internationalist conceptions of the freedom to manifest religious belief and practice can transform the dynamics of religion and state, and local power relations in particular contexts. Additionally, there are growing numbers of scholars who, by way of their interests in women's changing religious roles, adopt a human rights framework for analysis (see, e.g., Cooke/Lawrence 1996; Howland 1999).

One of the leading thinkers on religion and human rights, David Little, rejects any pretensions to a single methodological approach because of the sheer complexity of this "inchoate" and "uncertain" area of study (Little 1996). For his own methodology, Little draws on the perspectives he developed as former director of the "Religion, Nationalism, and Intolerance" project at the United States Institute of Peace.⁹ The focus of this project was the free exercise of religion and freedom from discrimination based on religion or belief, as articulated in the first two articles of the 1981 UN Declaration on Intolerance discussed below.¹⁰ His rationale for this perspective is that it highlights two fundamental interests of religious people: "being able to affirm, express, and manifest their convictions, and being able to avoid unfair discrimination or bias on account of religion" (Little 1996: 48). He further distinguishes in the latter right between fundamental belief as a *target* for intolerance as opposed to being

⁸ See, especially, the study by Sri Lankan anthropologist, H.L. Seneviratne, on the political involvement of Sri Lankan Buddhist monks (Seneviratne 2000). See, also Bartholomeusz/de Silva 1998.

⁹ Three studies have resulted so far from the conferences and focus areas: Hibbard/Little 1997; Little 1991; Little 1994; and Hackett forthcoming. See also Little's elaboration of the concept of religious militancy in human rights usage (Little 2000).

¹⁰ Resolution adopted by the General Assembly on November 25, 1981.

a *warrant* or justification for intolerance (Little 1996: 54). This analytical framework is useful for applying to a number of case materials as well as for the basic concepts it introduces, although it perhaps tends to privilege belief over practice, when the latter may more frequently be the cause of conflict between religious groups, and between groups and the state.¹¹

The study of the concepts, practices, and institutions that connect or disconnect religion and human rights may be a relatively new sub-field, but it is nonetheless many-sided. I have chosen to work, in this particular overview, with the following sub-divisions since they seem to represent a certain logical clustering of ideas and approaches: theoretical, legal, theological/philosophical, cultural, contextual and thematic. However, as will be seen with the issues of cultural relativism and women, for example, the various sections should not be seen as bounded categories.

2. Determining Origins and Defining Terms

The history of the human rights movement need not detain us here, but it is interesting to note that its origins and trajectory are contested by both its proponents and opponents.¹² The voices calling for compromise or transcending of divisive interpretive paradigms, viz. East/West, North/South, secular/religious, universalist/relativist are getting stronger—as we shall see in succeeding sections (e.g. An-Na'im 2000d; Booth 1999; Ignatieff 1999; Ong 1999).¹³ Lauren finds a more constructive way of talking about the evolution of the human rights vision by referring to the many "tributaries" of the "ever expanding and evolving river of human rights" (Lauren 1998: 9).

More than fifty years after the drafting and adoption of the historic Universal Declaration of Human Rights in 1948, with its purpose of establishing a "common standard of achievement for all peoples and all nations," human rights parlance has now achieved the status of a "moral *lingua franca* for global politics" (Barbieri 1999: 907; see also Power/Allison 2000: xiii). Although

¹¹ However, Little rightly notes that religious groups frequently formulate and sharpen their beliefs when under attack (Little 1996: 53, n. 20).

¹² Good overview articles on the nature and history of the human rights idea can be found under "human rights" at www.britannica.com. Also highly recommended is Lauren 1998.

¹³ For a good example of the secular vs. religious debate over the "ownership" of human rights, see Henkin 1999; Stackhouse 1999. Tergel's study focuses rather on the cross-fertilization of ideas between the worlds of human rights and religion. He examines the way that particular Christian churches (Lutheran, Catholic, and Reformed) in the second half of the twentieth century have responded creatively to the human rights paradigm, and, in turn, influenced it through their own greater emphasis on social and economic rights (Tergel 1998).

it is worth recalling here the trenchant observation of Michael Ignatieff, one of the most lucid authors and commentators in this area, as to why we live with a "divided consciousness" in relation to human rights: "[w]ithout the Holocaust then, no Declaration. Because of the Holocaust, no unconditional faith in the Declaration either" (Ignatieff 1999: 59; see, also, Ignatieff 2001b).

David Little seeks to offer some conceptual clarity regarding the modern understanding of human rights (Little 1996). He defines a "human right" as (and I summarize his more detailed version) 1) a moral right advanced as a legal right; 2) protecting something of indispensable human importance; 3) ascribed naturally; 4) non-derogable (if primary), or subject to limitations under prescribed conditions; 5) universally claimable by all people against all others, or by certain generic categories of people such as "women" or "children" (Little 1996: 57, n. 34). Martha Nussbaum, who has written extensively on the difference between the language of rights and capabilities or human functioning, does accept that rights possess "a moral resonance that is hard to avoid in contemporary political discourse" (Nussbaum 1997a: 1). But she is far less sanguine about the theoretical and conceptual clarity of rights language. Similarly, Barbieri writes graphically of "the tortured state of contemporary human rights discourse" as "Straussians, neo-Kantians, liberals, critical theorists, pragmatists, and skeptics of various stripes continue to butt heads over the nature of human rights" (Barbieri 1999: 3). He attributes this head-butting of Western scholars to a persistent proclivity for depoliticized, foundationalist ideas, dichotomous interpretations of the universalist/relativist character of human rights, and individualist rather than more communal understandings of the *humanum*. In his widely used textbook on *International Human Rights*, Jack Donnelly goes to the other extreme, preferring to eschew the confusing array of philosophical theories proposed to account for human nature and human rights (Donnelly 1998: 20-22). He describes, in more concrete fashion, human rights as "the social and political guarantees necessary to protect individuals from the standard threats to human dignity posed by the modern state and the modern markets" (and, he could have added, failing states). But it is unlikely that such social scientific minimalism can escape philosophical inquiry. Ecological and environmental rights, which are gradually being edged in by some proponents as a category of human rights, illustrate this type of multi-faceted debate (Rasmussen 1999; Tergel 1998: 23-24).

3. Legal Protection and Interpretation

A number of legal scholars with particular interest in the religion question have helped illuminate the theory and practice of the freedom of thought, conscience, religion and belief in international law. We can simply sketch the main developments here. Details of the fascinating semantic, political, and theolog-

ical wranglings that shaped the emergent legal discourse on these issues can be found in the sources cited below (see, especially, Glendon 2001).

Four major modern instruments are concerned with the protection of freedom and belief. The first is the 1948 Universal Declaration of Human Rights (UDHR), with its most crucial provision, Article 18:

Everyone has the right to freedom of thought, conscience and religion; this right includes the freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his [sic] religion or belief in teaching, practice, worship and observance.¹⁴

The first clause guarantees the right to freedom of thought (and the inclusion of theistic, non-theistic, and atheistic belief is a feature of these international documents), and the second enumerates the specific rights therein. Interestingly, Kevin Boyle and Juliet Sheen aver that this article constitutes a paradigm of the widespread debates over the nature of human rights in general, because it "raises the issue of the universality and indivisibility of rights, of the primacy of international law over national law and religious codes, of individual, minority and collective rights and of the relationship between rights, duties and community" (Boyle 1997: 4).

Then followed the much-cited study in 1959 by Arcot Krishnaswami from India who was appointed by the Subcommission on Prevention of Discrimination and Protection of Minorities to study rights pertaining to religion and belief and to draw up a program of action to eradicate religious discrimination.¹⁵ He concludes that the collective aspect of the freedom to manifest religion or belief was especially important, as it was prone to state intervention and regulation. He notes the particular vulnerability of minorities in this regard (endorsed by Adams 2000). The International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) were adopted in 1966 and ratified in 1976. The ICCPR is the only global human rights treaty with articles on religion and belief that contains measures of implementation (Lerner 2000: 19).¹⁶

14 All of the key documents pertaining to freedom of religion and belief can be found in the helpful publication from the Center for the Study of Human Rights, Columbia University (Stahnke/Martin 1998).

15 Study of Discrimination in the Matter of Religious Rights and Practices, U.N. Sales No. 60. XIV. 2 (1960).

16 Lerner also notes the importance of the General Comment on Article 18 of the Human Rights Committee (HRC) in charge of implementing the ICCPR for the clarification and influence it brings to the issue of freedom of thought, conscience, religion and belief. See Report of the Human Rights Committee, U.N. GAOR 48th Sess., Supp. No. 40, Annex VI, U.N. Doc. A/48/40 (1993).

Finally, in 1981, after years of intensive lobbying and complicated negotiations, came the landmark Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief. It served to elaborate what the 1966 Covenant adumbrated (Witte 2001: 771). Once again the definitional problem emerged, and to placate the non-religious believers the word "whatever" was inserted before the word "belief" in Article 1 (1). Another area of controversy was that of religious conversion, and explicit references to "changing one's religion" were deleted from the text at the behest of Muslim delegations, weakening the document (cf. Sullivan 1988). This key issue will receive further discussion in the section on proselytization below.

Bahiyyih Tahzib, as international legal scholar, is also concerned with detailing the standards regarding freedom of religion or belief in international human rights instruments (Tahzib 1996). Her particular contribution is to assess whether the adoption of a more legally binding convention would offer more effective protection. She concludes that arguments for a separate convention with its own supervisory body have grown less compelling, and prefers the solution of strengthening existing norms and mechanisms (cf. also Lerner 2000: 1-79). Boyle and Sheen acknowledge the considerable agreement that has been reached on the content of these freedoms in international law, notwithstanding the remaining disputes, chiefly over the interpretation of the requirements of these international standards (Boyle 1997: 4-5). They see the more serious reality as the "open repudiation in practice" of norms accepted by the majority of states in the United Nations in binding international agreements. These violations are documented annually in the reports by the U.N. Special Rapporteur on freedom of religion and belief (Evans 1997: 245-61; Lerner 2000: 29-32). For V. Cole Durham it is the nature of the relationship between religion and the state (persistently and problematically described by many scholars in exclusive language as "church-state") which is so formative in accounting for the substantive differences in the achievement of religious freedom around the world (Durham 1996).

There is a growing body of literature on Europe in matters of freedom of religion and belief which is not surprising given its historical significance and a large number of cases in recent times raising difficult questions under Article 9 of the European Convention on Human Rights (ECHR) (C. Evans 2001; M.D. Evans 1997). Europe presents an interesting case because of the emergence of new possibilities of misusing or reducing the constitutionally guaranteed freedom of religion and belief either by governments or by religious groups.¹⁷ Jeremy Gunn regards the Organization for Security and Co-Operation in Europe

¹⁷ Many of these violations, in Europe and beyond, are tracked by Human Rights Without Frontiers, www.hrwf.org and the Centre for the Study of New Religions, www.cesnur.org.

(OSCE) as a "trendsetter" for the way it has raised the profile of religious freedom on the international agenda of participating states and focused critical international attention on their respective practices (Gunn 2001). He attributes this in part to the unique nature of the Helsinki process, as it is known, which allows participating states to criticize each other on their human rights performances.

In closing this section we can return to the landmark U.S. International Religious Freedom Act of 1998, referred to above, for it raises the intriguing question of whether religious freedom is different from, or more special than, other rights. Little finds legal and historical reasons for assigning some kind of special status to religious freedom, while not denying its interdependence with other rights, such as freedom of association, freedom of expression, for example (Little 2001). He points out that it is included among the nonderogable rights contained in Article 4 of the ICCPR. Moreover, he also discusses the special deference that the Human Rights Committee has afforded to the *forum internum* or sovereignty of conscience.¹⁸

4. Compatibility/Incompatibility Arguments

A large portion of the scholarship on the relationship between religion and human rights addresses the issue of their compatibility or incompatibility. For Louis Henkin the idea and morality of religions differ from the human rights ideology principally in terms of sources and bases of authority (Henkin 1998). While acknowledging the shared concept of human dignity, he highlights key differences in contemporary interests and concerns, namely the areas of freedom of religion and religious choice, equality and nondiscrimination, gender distinctions, and capital punishment. He recognizes and hopes for a certain growing *rapprochement* of religion and human rights in the areas of freedom, justice, and peace, but counsels against confusing the functions of religious and human rights organizations. Religious traditions are more totalizing as ideologies, and oriented (notably smaller, minority religions) toward the rights of their own adherents (see also Everett 1996). Henkin further accuses some religious groups as being too narrowly focused on religious rights. There

¹⁸ General Comment No. 22 (48), Article 18. See Stahnke/Martin 1998: 92-94. In fact, Little links the more specific notion of freedom of conscience and religion in Western thought with the intensifying of inner, personal experience in the early Christian church (Little/Kelsay/Sachedina 1988: 13-32; cf. also Reynolds/Durham 1996; Tierney 1996). It was from this point on that the struggle between the conscience and the state began to take shape. He argues that this distinction between the spiritual and the civil or material, the inner and the outer, is foundational to many religions and is constitutive of the response by religious traditions to modern claims about human rights.

is, however, an important parallel, if not correlation, between religious and human rights groups that he does not signal—the fact that both are in the business of juggling ideals and realities, and seek to mediate the dissonance between theory and practice through their various discourses.

The strong foundationalist orientation of the compatibility approach is epitomized in the words of legal historian and law and religion specialist, John Witte, “[h]uman rights are, in substantial part, the modern political fruits of ancient religious beliefs and practices” (Witte 1998: 258). So a favored methodology is the historical plumbing of religious traditions for homologous or proximate categories of thought. Witte makes a strong pitch for a “new human rights hermeneutic” involving:

fresh methods of interpreting ... sacred texts and traditions that will allow [religious communities] ... both to reclaim the long-obscured 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 (Witte 1998: 258).

As outlined above, in terms of theories of origins of the human rights concept, the Protestant tradition is a popular site of investigation. For example, Witte even goes as far to say that the Protestant Reformation was, in part, “a human rights movement” (Witte 1998: 258). But fortunately this hermeneutic exercise has been nothing if not comparative—whether in the form of an ecumenical vision that glosses over differences and adopts the Golden Rule approach (e.g. Tierney 1996: 44), or a variety of religion-specific case studies. These are too numerous to treat here, but some of the general contributions can be briefly noted.

In one of the earliest comparative approaches to the subject, Arlene Swidler’s *Human Rights in Religious Traditions*, the authors consider the concept of human rights from their respective traditions, followed by more general evaluations of this “primary ethical concern” (A. Swidler 1982). This was followed in 1986 by Leonard Swidler’s *Religious Liberty and Human Rights*, which purports to be more centered on the problem of religious liberty “within nations, between nations, and within religions” (L. Swidler 1986). The essays in Leroy Rouser’s 1988 collection, *Human Rights and the World’s Religions* explore the role of religion as ground for belief in rights. There is consensus on the inherent worth and dignity of individual humans, but disagreement, notably from the Buddhist and Confucian perspectives, over whether a theory of rights is the best symbol for that value (Rouser 1988). The study also revealed that different groups emphasized different rights, and, in the case of Hinduism, the interdependence of rights and duties. The primarily European authors in *Human Rights and Religious Values: An Uneasy Relationship* critically examine the potential for religious traditions to justify and support human rights as the common core of a “universal morality” among these traditions (An-Na’im 1995). The 1996 collection of essays edited by Irene Bloom, Paul Martin and Wayne

Proudfoot offers a more nuanced discussion of the role of religion in the evolving tradition of human rights by examining comparatively traditional concepts of personhood, and the dynamic between individual and community in religious communities (Bloom/Martin/Proudfoot 1996). For a trenchant overview of Catholic, Protestant, and Orthodox theological potential for the human rights community, John Witte’s article is an excellent resource (Witte 2001).

Little, Kelsay and Sachedina adopt a different approach by examining the concurrence between Islam and Western Christianity in respect to religious liberty, using a framework that distinguishes between the inner and the outer, the religious and the moral (Little/Kelsay/Sachedina 1988). The case of Islam is often viewed as particularly challenging in terms of whether Islamic law and theology support the modern notion of human rights. The Islamic legal scholar, Abdullahi An-Na’im, has been at the forefront of this exegesis (An-Na’im 1990). He seeks to resolve the tensions between Islamists and their opponents over differing visions of the state, as theocratic or democratic and constitutional, by arguing that “since Shari’a is a historically conditioned *human* interpretation of the fundamental sources of Islam, alternative modern interpretations are possible” and, moreover, imperative (An-Na’im 1996: 353). For an excellent overview of the complex, yet evolving, discourse on Islam and human rights see Mayer 1998, 1999; cf. also Dwyer 1991). Several leading African scholars have also contributed to the debate on the interrelationship of religion and human rights more generally, with their examinations of the concepts of dignity, duties and community in African traditional cultures, and the positive and negative implications of these values for the protection of human rights (see, for example, Deng 1990; Gyekye 1998; Ilesanmi 1995; Wiredu 1990).

5. Culture Matters

Culture both complicates and enriches the whole question of human rights theory and implementation. An-Na’im has been one of the most prominent advocates of the need for human rights to seek cultural legitimacy through internal and cross-cultural dialogue (An-Na’im 1992). The truth-claims and traditions of religious and ethnic groups, large and small, feed into, even exacerbate, the unending debates about universalism and relativism (Steiner/Alston 2000: 323–402; Tilley 2000) or cultural domination and subordination (Mignolo 2000). As legal scholar, S. James Anaya, rightly observes, the growing concern within the international system for peoples or populations identified as indigenous “has arisen as part of a larger concern for those segments of humanity that have experienced histories of colonization and have continued to suffer the legacies of those histories” (Anaya 1996: 43). For example, Kenyan human rights scholar, Makau Mutua, demonstrates forcefully the ongoing discriminations perpetuated by African states against their indigenous religious cultures

(Mutua 1999). Of interest here is the protection offered by Articles 18 and 27 of the ICCPR to ethnic minorities to maintain their language, culture, and religion (although, see Hannum 1996: 69–70; Pritchard 1998: 192, 113).¹⁹ This frequently involves the control of sacred sites, skeletal remains, burial artifacts, and other items of religious and cultural significance.

For some scholars it is the challenge that these indigenous peoples, along with other ethnic minorities, are mounting to the individualistically oriented human rights paradigm that is more preoccupying. The particularism of group identities struggling for independent nationhood shows no signs of abatement (Kroes 2000: 75), though Ted Gurr's study indicates that growing respect for minority rights worldwide is reducing the incidence of ethnopolitical conflict (Gurr 2000). Contemporary debates about citizenship have some valency here (Turner 1997). There is a rich body of literature emerging on "group rights," some of it framed within current discourse on multiculturalism and cultural self-determination, in which religious identity often features prominently—whether it is about Sikhs and crash helmets or Orthodox Jewish rabbis and employment (see, especially, Kymlicka 1995). Hannum points sagaciously to the particular problematic of religious rights since they constitute classic "civil" or "individual" rights and yet are fundamental to the protection of the rights of minority, indigenous, and other groups (Hannum 1996: 110). An-Na'im realistically sees both complementarity and contradiction between individual and collective rights which is to be expected, he avers, "among all rights as instruments of negotiation and mediation of competing claims" (An-Na'im 1998; see also Little 1999).

The polarized universalist vs. relativist view of human rights has been sustained in large part by the proponents of "Asian values" who argue that the communitarianism, authoritarianism, and emphasis on economic development in Asian societies are antithetical to Western liberal conceptions of human rights (see, e.g., Bauer/Bell 1999; De Bary 1998). Daniel Bell tries to chart a middle ground between Western liberal democracy and Asian values of communitarianism and authoritarianism (Bell 2000). Some have rather wanted to expose these cultural reservations for being a "smokescreen" for human rights violations and for not taking account of the dynamic character of the human rights movement (Kelsay 1994: 31–59). Arvind Sharma questions the univocality of the term "universal" (Sharma 2000). He suggests that Eastern religions have a more accepting understanding of the term in contrast to the Western formulation which privileges the missionary religion and yet manages to posit its parochialism as universal. Similarly, An-Na'im stresses the contingency of universalist projects to date while calling for more global participation in the

construction of the human rights ideal (An-Na'im 2000c). He sees one of the greatest challenges as how to be sensitive to believers' positions, while not conceding to their relativist arguments.

A creative contribution to these contentious debates comes from a volume of work by feminist scholars, *Women, Citizenship and Difference*, where they seek to develop models of citizenship as dialogical and relational, and embedded in cultural and associational life, rather than positing an opposition between individualist and communitarian models (cf. also Ong 1999; Yuval-Davis/Werbner 1999). This is described by one contributor as "differentiated universalism" (Lister 1997; cf. Mignolo's notion of "critical cosmopolitanism," Mignolo 2000). The authors argue that the national discourses of citizenship and international discourses of human rights both imply one another; their political and jural instability points to the ongoing negotiation of difference and belonging. Several of the contributions discuss how religious ideas can disguise biased and exclusionary understandings of citizenship, by locating women in the private sphere, for example. Yet they also provide evidence of Muslim women living in diasporic communities carving out new gendered, public spaces for themselves—proclaiming the rights of their persecuted Muslim sisters in Bosnia or Kashmir. In general, it is clear that further study is required of the way many minority groups are factoring religious and cultural rights into their political agendas (cf. Hannum 1996: 72–73), or, in some cases, recasting those claims in religious rights language whether it is Muslims in Europe (Barbieri 1999) or Uzbekistan (An-Na'im 2000a), or revivalist ethnic groups in Kenya (Hackett 2004).

6. Current Topics

6.1. Patterns and Sites of Violation

For a more empirical perspective on the failures and successes of the freedom of religion and belief around the world there are several useful sources to consult, such as Boyle and Sheen's *Freedom of Religion and Belief: A World Report* as well as the annual reports by the U.S. State Department and the U.S. Commission on International Religious Freedom, and the U.N. Special Rapporteur on freedom of religion and belief. Alternatively one could turn to the special reports by human rights organizations such as Amnesty International or Human Rights Watch, or the regular monitoring by organizations such as Human Rights Without Frontiers, Freedom House, or the *Religious Freedom Reporter*.²⁰

¹⁹ See also the UN Draft Declaration on the Rights of Indigenous Peoples, UN Doc. E/CN.4/Sub.2/1994/2/Add.1, 20 April 1994 (Steiner/Alston 2000: 1302–1304).

²⁰ See, in this regard, the excellent set of reports by Human Rights Watch on religious repression in China, e.g. *China: State Control of Religion* (Human Rights Watch/Asia 1997).

These reports reveal the patterns of violation as well as the recurring targets and sites, namely religious minorities, proselytization, women, media and educational institutions. Some of these receive more elaboration in this section.

6.1.1. Proselytization

International law scholar Johan van der Vyver claims that "[t]he right to engage in missionary activity is perhaps the most controversial aspect of religious freedom" (van der Vyver 1999: 128). This is closely linked to the disputed right of changing and exiting one's religion (cf. Barry 2001; Lerner 1998: 482). Sharma argues that we must consider alternative understandings of religious freedom and conversion as in India and Japan, for example, with their differing historical and cultural contexts (Sharma 2000/2001). What is not in dispute is the fact that the religious growth that has accompanied political transformation in many parts of the world has brought in its wake clashes over conversion—whether between rival local groups or between foreign and indigenous groups. This new "war for souls" must be seen in the context of the globalizing forces of democracy and capitalism—perceived as invasive and unwelcome by many communities. It became the focus of a project conducted by Emory Law School's Law and Religion Program. Several valuable publications resulted from a series of meetings and conferences which focused on different regions of the world.

I want to focus briefly on the Africa volume, since that was the one I was involved with and because it illustrates well some of the issues at stake here (An-Na'im 1999b). Arguably the most problematic issue which emerged was the clash between the right of an individual to promote, teach or propagate his or her religion or belief, and the right of a group or people to cultural self-determination and to resist such disruptive incursions (although it should be noted that missionary activity the world over is becoming noticeably more multi-lateral, multidimensional, and multi-directional). In his introduction, An-Na'im rightly insists on the asymmetrical power relations generally inherent in the proselytization exercise in Africa, although he is prepared to admit that this type of interreligious encounter can stimulate cultural exchange and self-critique (An-Na'im 1999a). Casting these disputes in human rights terms leads An-Na'im to posit that an exclusively individual-rights approach is inadequate in such situations and must be complemented by an understanding of collective or group rights. He also suggests that the state should play a mediating role in resolving conflicts between the parties, although non-state actors, such as ecumenical associations, may be instrumental in this regard (see Hackett 1999b on Christian-Muslim relations in Nigeria). Influenced by the record of African states and missionary organizations in "delegitimizing" traditional religious cultures, Mutua opts for the primacy of the right of self-determination (Mutua

1999). However, he does not engage the technicalities, nor the problems, of cultural protection.²¹

In the UN Declaration against Intolerance (1981) article 6 (e) details the freedom "to teach a religion or belief in places suitable for these purposes." The interpretation of a suitable location to teach or propagate one's religion has broadened with the growth of religious revivalism and militancy across Africa, and the expansion of the mass media. Public spaces such as hospitals, offices, and public transport are now regarded as fair game by active proselytizers. The schools are a particularly sensitive site. Tensions often erupt over religious bias and discrimination; states are frequently unable or unwilling to fulfill their obligations to children of minority religions (see, e.g. Hackett 1999a; cf. Evans 1997: 342–62 on the challenges of religious education in Europe). As regards the media, it is their liberalization which has caused an escalation in tensions. Government-controlled print and broadcast media are subject to guidelines ensuring interreligious civility. The commercial radio stations springing up over Africa, and the burgeoning informal media sector (audio and video cassettes, tracts, booklets, etc) are market-driven and thrive on difference (Hackett 1998). They tend to be dominated by evangelical and pentecostal Christians. The human rights community is finally waking up to the influence of the media in promoting both tolerance and intolerance (International Council on Human Rights Policy 2001).

6.1.2. Women's Rights

Turning to the specific, but no less controversial, case of women within the overall picture of religion and human rights, a strong focus of the scholarship has been on the religious traditions themselves. This is hardly surprising given the denial of their rights that many women experience both as citizens and as members of religious communities, and the fact that religious norms frequently underpin social practices of exclusion and domination. This is expressed well by South African feminist theologian, Denise Ackermann, "no freedom of religion without freedom *in* religion" (cited in Villa-Vicencio 1996: 535). Women's rights to equality under state and international human rights law frequently clash with the rights of religious collectivities to self-determination (cf. Sullivan 1992). There are several useful essays which explore religion as source of liberation or repression for women from a variety of textual, historical, legal, cultural and social perspectives (see, for example, Hassan 1996 and Arat 2000 on the rights of women in Islamic communities; also Berger and Lipstadt on Judaism,

21 Little notes that the right to disseminate religion is protected by both individual and group rights. Personal communication, June 24, 2001.

Berger/Lipstadt 1996. For a more general approach, see Cook 1994). The particular challenge of religious fundamentalism is addressed in an excellent collection, *Religious Fundamentalisms and the Human Rights of Women* (Howland 1999).

Several authors consider the possibilities of the human rights framework for women. Martha Nussbaum, in her latest book, *Women and Human Development*, emphasizes the importance of freedom of choice for women within religious systems, but not at the expense of their basic human capabilities (Nussbaum 2000; Hackett 2001a; see, also, Nussbaum 1997b). An-Na'im addresses the conflicts that frequently arise between religious and customary laws and international human rights norms over the equality and freedom of women in matters of land allocation, inheritance, marriage, and divorce (An-Na'im 1994). He suggests that conformity of communal norms with state and international standards is more likely to be achieved through the gradual processes of internal and cross-cultural dialogue. Bahia Tahzib focuses on alleged violations of the right to freedom of religion or belief that are primarily directed against women, concentrating on external freedoms, or the public manifestation of religion (Tahzib-Lie 2000). She examines the traditional practice of female genital mutilation (FGM), and dress codes for women in secular and non-secular societies, and carefully weighs the competing interests of the state and the woman, particularly the "dissenting woman."

6.1.3. Conflict Resolution

While conflict resolution is not always a human rights issue, in that it may not pertain to the rights of individuals or groups with regard to the state, the work of some scholars demonstrates an inclination toward viewing religion as a positive resource for peace and human rights implementation. For example, Arvind Sharma and Harvey Cox suggest that religions can a) enlarge the scope of human rights, particularly with the right to life, b) highlight the interrelations between the various articles of the UDHR, and c) strengthen the concept of human rights (Kelsay 1994: 61-79). John Clayton argues for the capacity of religions to accommodate "defensible difference" and for the capacity of the human rights concept to accommodate "differing views" (Clayton 2000: 125). In his opinion, the language of rights provides a public frame within which disparate communities of interest, religious and nonreligious alike, can differentiate and negotiate "the defensible from the indefensible in our behavior toward others" (Clayton 2000: 124).

Abdullahi An-Na'im has been exploring a more synergistic and interdependent approach to human rights, religion, and secularism—"an overlapping consensus among multiple foundations." He considers this to be more effective in the sustainable realization of human rights in practice than the usual secular

versus religious dichotomy (An-Na'im 2000b). Scott Appleby, in his important work on religion, violence, and reconciliation, sees in human rights discourse a bridge linking the particular to the universal. He considers that "[r]eligious actors engaged in conflict transformation have in 'rights talk' a powerful tool for defusing the explosive elements of first-order religious language and lifting memory, testimony, and experience beyond the merely sectarian" (Appleby 1999: 280). Charles Villa-Vicencio, one of South Africa's most prominent theologians, advocates the need for the (mutual) engagement of cultures and religions in post-apartheid South Africa (Villa-Vicencio 1996: 469). Conflict resolution specialist, Marc Gopin, urges caution in pushing secular, universalist discourses preferring "methods of dealing with religious actors as they currently define themselves" (Gopin 2000: 18). Sumner Twiss, drawing on his skills as comparative religious ethicist, interestingly suggests that consensus among religious traditions over the need for human rights can be translated back into those traditions without requiring the formal language of rights (Twiss 1998: 163). Swidler and Mojzes, both experienced in interreligious dialogue, are more insistent about the need for a formally articulated global ethic to deepen and confirm human rights claims (Swidler/Mojzes 2000). This burgeoning area of conflict resolution and peace studies calls for closer examination of the role of religious actors and the deployment of religious and human rights concepts. It also represents a broadening and a grounding of the field of interreligious dialogue.

7. Conclusion: Lingua Franca, Lingua Sacra?

In closing let me reiterate the salience of our subject matter. One can simply consider claims regarding the persistence of religious intolerance. For example, human rights scholar Hurst Hannum, claims that "state or majority intolerance of religious diversity has perhaps surpassed racial prejudice as the primary motivation behind human rights violations in the world today" (Hannum 1996: 110). Similarly, the United Nations Special Rapporteur on freedom of religion and belief, Abdelfattah Amor, in his 2000 Report, informs us that religious discrimination worldwide has reached "alarming" levels. These developments surely beckon religion scholars of all disciplinary persuasions.

By way of summation, and influenced, in part, by Ken Booth's call to "anthropologize and historicize human rights" (Booth 1999), I propose the following areas for further critical analysis:

a) *Language*: definitions of religion and its component parts, whether "belief" or "manifestation," "individual," "personhood," "group," "community," "freedom"; critique of use of problematic terms, such as "faith," "sect," "cult," "syncretist," in human rights discourse;

- b) *History*: knowledge of patterns of intra- and interreligious conflict and conflict management/resolution may inform current situations (e.g. rituals of reconciliation and remembering);
- c) *Cultural practice*: different translations and appropriations of human rights discourses pertaining to religion and belief, privileging of (particular) religious rights;
- d) *Symbolic capital*: repatriation of cultural property, religious art/literature/performance as expression of human rights (abuses);
- e) *Identity*: disentangling ethnicity and religion, assessing claims of religious identity/discrimination, new strategies of defining difference and staking claims to the public sphere and resources, challenges of religious militancy and fundamentalism to human rights;
- f) *Power relations*: how the normative framework of human rights is reconfiguring religion and state relations at domestic, regional and international levels, (de)differentiating, (de)privatizing or (de)territorializing religious formations;
- g) *Globalization*: how transnational and translocal forces challenge state protection of freedom of religion or belief (e.g. religious hate speech on the Internet, mass mediated messages, movements of peoples, refugees), global flows of information, rights talk, and civil society;
- h) *Modernity*: how human rights ideas might displace traditional religious explanations of inequality and lack of development (e.g. denial of political and economic rights as opposed to witchcraft/satanism accusations);
- i) *Survival*: how religious notions of human dignity and welfare may strengthen the case of the human right to development (e.g. Jubilee 2000);
- j) *Agency*: how human rights ideas and institutions may empower new religious publics, challenging old orders of community and authority (e.g. women, Dalits, indigenous peoples, diasporic communities, apostates, dissenters);
- k) *State practice*: new patterns of state regulation of or support for religious plurality (e.g. state regulation of religious growth and freedom from religious exploitation, religious state creation, civil religion, interreligious dialogue groups);
- l) *Civil society*: new modalities and legitimacies of engagement for religious NGOs, religious critiques of excessive political cooptation to preserve individual and collective rights.

There remains the troubling question of human rights *qua* religion. Are "inflexible attitudes" among believers themselves giving rise to an understanding of "freedom of religion" that does not permit "the right to adhere to a religion which is intolerant of the beliefs of others," as Malcolm Evans argues? He laments further that "'[h]uman Rights' has itself become a 'religion or belief' which is in itself as intolerant of other forms of value systems which may stand in opposition to its own central tenets as any of those it seeks to redress" (Evans 1997: 260). We do not have to look far to find additional characterizations of the human rights movement as a new "civic faith" and "world religion" (Ignatieff

2001a; cf. Küng 1990; Witte 2001: 727–28). Elie Wiesel refers to it as a "world-wide secular religion" (Wiesel 1999: 3). Scholar and advocate of human rights Ken Anderson, acerbically indicts the movement for being governed by an internationalized elite or global New Class which proclaims a transcendent universal order, but whose goal is premised on the interests of global capital. For him, the global NGO movement is nothing less than a "Sunday School of the nations" schooling them in their moral duties (Anderson 1999; cf. rebuttal by Ignatieff 1999).

My goal in this overview has been to try to encourage scholars of religion to contribute to this type of critique, or some of the areas outlined above, in this new and exciting field. If we have human rights not because we are human but to make us human, Ken Booth suggests, then clearly scholars of religion should be paying more attention to this revolutionary discursive and normative strategy of our time.

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