

## Do Human Rights Have Religious Foundations?

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### Abstract

Do human rights have religious foundations? Among philosophers and theologians, the question tends to invite two standard replies. Some accept the boundary between the secular and the religious, and say that the universal protection of freedoms, possessions, and duties associated with human rights extend beyond any religious system. Others are impressed by arguments suggesting that the moral standards within human rights are inherently religious. In this paper I propose a third position. By taking the perspective of relative universalism, I draw a distinction between the conceptualization and implementation of human rights. The former is a historical process that is arguably bereft of religion, while the latter is a dynamic process that often embraces it. This distinction motivates my central thesis: although religion is absent from the normative and historical foundations of human rights, the realization of human rights in some regions of the world today often requires it.

### Keywords

religion; human rights; relative universality; overlapping consensus; dignity

### I. The Problem of Human Rights and Religion

Most human rights theorists are rather suspicious of strictly religious conceptions of human rights. For when it comes to theory, they usually feel more in sympathy with lawyers or philosophers than theologians. As far as possible, too, they try to avoid any reference to religious texts and to restrict themselves to legal documents, if not secular ethics. However, within certain cultural contexts it seems hardly possible to avoid religion. For instance, in Cambodia after the Khmer Rouge, the only way to implement human rights was to frame them in terms of compassion, tolerance, and nonviolence—the values of Theravada Buddhism.<sup>1</sup> In post-apartheid South Africa as well, the practice of human rights took the form of truth and reconciliation, which, inspired by Bishop Desmond Tutu, reflected the Christian values of confession and forgiveness.<sup>2</sup> A theorist who is suspicious of religion may characterize these examples as the mere expression of rights in

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<sup>1</sup> Bryan Turner, 'Violence, Human Rights, and Piety: Cosmopolitanism versus Virtuous Exclusion in Response to Atrocity', in T. Brudholm and T. Cushman (eds.), *The Responses to Mass Atrocity* (New York: Cambridge University Press, 2009), p. 253.

<sup>2</sup> Richard A. Wilson, *The Politics of Truth and Reconciliation in South Africa* (Cambridge: Cambridge University Press, 2000), pp. 119–141.

countries that have not yet adopted human rights initiatives. More probably the theorist will say that expressing rights in religious terms is simply a hermeneutical exercise. Furthermore, albeit that religion sometimes rationalizes human rights, they are by no means rational because of religion.<sup>3</sup>

Recently, the problem of human rights and religion has arisen again in connection with dignity, the inherent value of human beings as such. Some religiously minded theorists say that the very concept of dignity is inescapably religious, and because it serves as the foundational constituent of most human rights documents, human rights rest on an implicitly religious concept.<sup>4</sup> Others object strongly to this mode of argumentation on the grounds that human rights are the result of a revisionary morality or the creation of a new global ethic, one that stems from the Universal Declaration of Human Rights (UDHR) in the twentieth century.<sup>5</sup>

Whether human rights can be said to have religious foundations depends of course on the historical form of ‘human rights’ about which one is speaking. On the one hand, one could speak rather loosely of the international rights that we recognize today as the realization of *human rights* found in the many religious, philosophical and cultural traditions of the world at large. On the other hand, one could speak more narrowly of those international rights as the modern formulation of *human rights* as promulgated by the UDHR only after World War II. Unless stated otherwise, I shall use the term to reference the latter, since human rights were not definitively formed until the UDHR. But does this not beg the very question of this article? Unblushingly, I should say that it does not; and I am in good company for saying so. Even Jacques Maritain, a philosopher and drafter of the UDHR, quipped that the interesting question about human rights is not what they are—they are the rights outlined by the UDHR—but rather why we should all agree to them.<sup>6</sup> In the spirit of Maritain’s observation, this article presumes the same but asks specifically whether we should agree to them for religious reasons.

Let me also say something here about the scope of religion in what follows. Since human rights concern the liberties and duties of individuals, groups, and cultures in relation to the state, most of the subsequent discussion centers on religion and the state. Furthermore, I shall locate my discussion within the philosophical limits defined by scholars who argue for the religious or irreligious value of human rights. For that reason there is a wide diversity of religious positions on

<sup>3</sup> Jerome J. Shestack, ‘The Philosophical Foundations of Human Rights’, 20(2) *Human Rights Quarterly* (1998), p. 206.

<sup>4</sup> Michael Perry, *The Idea of Human Rights: Four Inquires* (Oxford: Oxford University Press, 1998).

<sup>5</sup> Paul Kurtz, *Forbidden Fruit: The Ethics of Secularism* (New York: Prometheus Books, 2008), p. 234.

<sup>6</sup> See John Witte, Jr. and M. Christian Green, ‘Introduction’, in J. Witte, Jr. and M. C. Green (eds.), *Religion and Human Rights: An Introduction* (New York: Oxford University Press, 2011), p. 6.

human rights that I shall not be able to discuss here.<sup>7</sup> My aim is to consider the question: Do human rights have religious foundations?

I wish to provide some clarity to this controversial inquiry. My goal is to show that the conceptual side of human rights is bereft of religion, while the implemental side oftentimes embraces it, especially with regard to religious state actors. To bring this thesis to light, I shall proceed in the following manner. I begin by demonstrating that human rights invoke universal prescriptions that encompass legal and moral rights, not religious doctrine. After that, the theories of relative universalism and overlapping consensus will be used to demonstrate that human rights still allow substantial space for religion at the level of local enforcement. It will then be shown that universal prescriptions and local enforcement comprise the conceptual and implemental foundations of human rights, respectively. Then the central question regarding the place of religion will be discussed in terms of dignity, the history of human rights, and the case of transitional justice in South Africa, Guatemala, and Sierra Leone. It is my hope that clarifying the main issue will be useful for those who would like to maintain a place for religion amid modern perspectives on human rights.

## II. Religion, Morality, and Human Rights

In order to understand more clearly the nature of human rights and its foundations, it is above all necessary to recognize fundamental distinctions between the various sources of deontic prescriptions, that is, statements of obligation and privilege. Such statements are those that contain the word *ought*, as in *the state ought not to torture*. If we wish to speak clearly about the foundation of human rights, we must first determine the origin from which it derives the sense of obligation concerning the state and the individual. The answer may be found by considering three different sources: religious doctrine, legal rights, and moral rights.

A religious doctrine is any belief accepted as being authoritative by a common set of religious persons. Such a view traces the very idea of religious obligation and privilege to religion itself. Religion is to be understood widely enough to cover the family resemblance of ultimate beliefs that may include faith in supernatural agents, ritual practices, or the self-identification with an apparent religious community. What is central to religious doctrine is that its deontic prescriptions are sufficiently framed according to religious authority alone. They

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<sup>7</sup> Indeed, there is wide variety of religious positions on human rights that I shall not be able to address in this article. Some of the most important include: (1) the freedom of religion; (2) the role of religion in limiting the powers of the state; (3) the manner in which religion can meet human rights needs where the state cannot; (4) religion as a system of morality that challenges Western liberalism; (5) indigenous religion and assimilation; (6) intolerance and discrimination based on religion; (6) religion as it relates to individualism and collectivism; (7) the right to solidarity; (8) religious pluralism or toleration; and so forth.

usually take the form of: *person P ought to do X or ought not to do Y because religious source R says so*. Given that religious sources are purportedly derived from supernatural agents, religious doctrine is a system of obligations and privileges stemming from revelation or divine command.

Laws under the guise of religious doctrine are nothing new, of course. The Code of Hammurabi and the laws of Moses set down classic expositions that served as charters of ancient law. However, religious doctrines are not legal rights. As rules of legal systems, legal rights exist in virtue of positive law, where *man-made* laws bestow or remove obligations and privileges upon individuals. If someone has a legal right, he is a right holder in the eyes of some legal system, meaning that he can claim something—whether a liberty, power, or immunity—that in turn places a correlative duty on another.<sup>8</sup> At the risk of circularity, a claim in this sense is simply an assertion of a right, and this in turn entails another's duty to respect that right. The key here is that the prescription is necessarily dependent on some legal system. It generally takes the form of: *person P ought to do X or ought not to do Y because legal source L says so*. Accordingly, all legal obligations and privileges associated with legal rights arise from what a legal system, usually the state, and its officials have prescribed.

Before considering moral rights, I pause here to indicate briefly a caveat related to morals. The central contention in this paper is not whether morals exist or from where they originate, but instead the type of religious framework, if any, undergirds human rights. Whether religion stems from morals, whether morals evolve from religion, or whether morals substitute religion will not be discussed. Here the question to be settled is the deontic foundation of human rights, with which we have still to consider a moral right.

Broadly speaking, a moral right is a fallback in place of kinship, affection, and intimacy in that it is an entitlement to be treated with basic positive regard, if not dignity.<sup>9</sup> More specifically, if person P has a moral right to X, then others have a duty to refrain from interfering with P having or doing X, or even a duty to assist P in obtaining X. Such rights are grounded not only in the interests of the right holder, but the more central considerations of the duties we owe each other. For that reason moral rights may be thought of as the conscience behind legal rights. This makes it clear why they often serve as a platform from which legal rights can be criticized, and also why they are frequently held to *trump* other practical considerations.<sup>10</sup> However, they have little force beyond moral compulsion. Wiktor Osiatynski elaborates on this point as follows:

<sup>8</sup> Shestack, *supra* note 3, p. 203.

<sup>9</sup> Jeremy Waldron, 'When Justice Replaces Affection: The Need for Rights', 11:3 *Harvard Journal of Law and Public Policy* (1988), pp. 628–631.

<sup>10</sup> See Ronald Dworkin, 'Rights as Trumps', in J. Waldron (ed.), *Theories of Rights* (New York: Oxford University Press, 1984), pp. 153–167.

Moral rights usually provide a justified claim to something. They do not, however, provide an effective enforcement mechanism. If one's moral rights have been violated, one can appeal to the conscience of the perpetrator, to universal moral standards, to the voice of public opinion, or to the judgment of history.<sup>11</sup>

The point to notice about this passage is that the deontic force of moral rights dwells in their moral appeal. As prescriptions, they take the form of: *person P ought to do X or ought not to do Y because it is right to do so*. In agreement with W. D. Ross,<sup>12</sup> what makes an act right is known by reflection and intuition, both of which hinge on human reason, that is, the dynamic cognitive process by which human beings recognize truths about the world. Hence, the obligations and privileges of moral rights, though couched in effectual rhetoric, stem from human reason itself.

So what kind of deontic prescriptions do human rights employ? When people talk about human rights, they are apt to talk of rights that they possess by virtue of being human. A right in this sense is a claim, which, as we have seen, is an entitlement to something that places a correlative duty on another. But what is it a claim to and on whom does it fall? According to the preamble of the UDHR, the goal of human rights is to protect everywhere not only freedom but peace and justice with the aim of fostering positive relations between states and individuals. Further, its chief value is to protect human dignity from the tyranny and rebellion of states.<sup>13</sup> Hence, human rights are claims to liberties and protections against the state. Because dignity is asserted by the preamble to elicit the moral compulsion of states, it is a moral right that justifies such compulsion according to dignity. Still, because the UDHR serves as a legal document ensuring human rights for all persons, it also comprises legal rights that universally compel states to treat individuals with certain positive regard.

Once we appreciate the institution of human rights in these terms, we see that there cannot be a universal religious imperative behind them. This point was stressed by Paul Sieghart decades ago, when he wrote “so long as one needs to base one's support for human rights on God . . . one is bound to be on tenuous ground if one is debating with someone who does not believe in God.” Further on, Sieghart expanded the point thus: “It was precisely to overcome this uncertainty that the international community established its agreed legal code—much as scientists and engineers have established internationally agreed standards of measurement.”<sup>14</sup> If human rights were based on religious doctrine, then their

<sup>11</sup> Wiktor Osiatynski, *Human Rights and Their Limits* (New York: Cambridge University Press, 2009), p. 105.

<sup>12</sup> W. D. Ross, ‘What Makes Right Acts Right?’ in J. Rachels (ed.), *Ethical Theory* (New York: Oxford University Press, 1998), p. 284.

<sup>13</sup> Osiatynski, *supra* note 11, p. 26.

<sup>14</sup> Paul Sieghart, *The Lawful Rights of Mankind: An Introduction to the International Legal Code of Human Rights* (New York: Oxford University Press, 1985), p. 31.

obligations would lose value once the state stopped believing in them. To avoid being discredited, the international community based human rights primarily on dignity and the UDHR, a moral right and system of legal rights, respectively.

### III. Relative Universality

Although human rights are universal prescriptions with deontic force, they still allow substantial space for local enforcement. This statement echoes the philosophy of Jack Donnelly and serves as the next premise in my argument.<sup>15</sup> However, before building my case upon it, I wish to clarify and restrict it in ways that prevent misunderstandings and meet objections at the outset. This section is dedicated to that task.

The above statement implies several points. First and foremost, the liberties and protections of human rights apply to all persons by virtue of their being human. Human rights also apply to all states and communities due to the fact that the UDHR has been accepted by virtually all states and further elaborated in a series of widely ratified treaties. Of course, it is precisely because these points concern universal possession and not universal enforcement that much more needs to be said. To be sure, human rights allow space for relativistic practice at the local level in the sense that sovereignty permits states to enforce them as they see fit. This is witnessed by the decisions of state actors and the large body of literature that attempts to make sense of human rights in terms of the Koran, Asian values, and Hinduism. I shall not discuss these explicitly here. But clearly state sovereignty and cultural traditions make human rights practice relative to state and culture. Taken together, human rights are universally possessed but locally enforced.

Now, this notion is likely to be misunderstood in one of three ways. Some might accept relative universality at face value and naively infer that religion everywhere serves as a vehicle for human rights. Such a Panglossian outlook would nevertheless fail to see that groups in many parts of the world today feign religiously inspired human rights initiatives to achieve the very opposite of human rights. Consider by way of example the *yeshivot* movement in Israel. As an outgrowth of Israeli settlement, the *yeshivot* movement was intended to defend the rights of Israelis. Yet over the years, it has become exploitative of religious and democratic institutions, promoting the human rights of Israelites above those of Palestinians, whose full range of movement has been significantly restricted.<sup>16</sup>

<sup>15</sup> See Jack Donnelly, 'The Relative Universality of Human Rights', 29:2 *Human Rights Quarterly* (2007), pp. 281–306.

<sup>16</sup> R. Scott Appleby, 'Religion, Violence, and the Right to Peace', in J. Witte, Jr. and M. C. Green (eds.), *Religion and Human Rights: An Introduction* (New York: Oxford University Press, 2012), pp. 351–352.

While several other examples could be given, my point here is that religion can indeed serve as a local way—and perhaps one of the most effective ways—to realize human rights, but not in all cases.

Others might regard relative universality as a trivial point that is perhaps too obvious to be worth discussing. After all, whatever is found everywhere must be realized somewhere. The problem with this outlook is that it confuses a normative prescription and its practice with an ontological description and its identification. Simply put: human rights are not widespread objects to be found anywhere, but rather universal prescriptions to be practiced somewhere, namely local communities.<sup>17</sup>

Finally, others might take relative universality to mean that it is unreasonable for us to expect other states to adopt the same human rights as our own. A person who adopts this perspective, however, is at the risk of reducing relative universalism to cultural relativism. Accordingly, he or she may infer the following:

If it is valid that there is no universal concurrence as to the meaning of human rights... then provisions of the Universal Declaration of Human Rights in states that do not accept its underlying values are bound to fail.<sup>18</sup>

If so, such a person may be literally rejecting human rights, taking cultural relativism to its logical—or illogical—conclusion: that is, if culture alone provides standards of evaluation, whatever a culture says is right, *is right*. But I am not defending cultural relativism here, for that would require defending the view that human rights are absolutely relative. I wish to say emphatically that relative universalism is not the cultural relativist's view. Cultural relativism commits the following fallacies, among others: it reduces the term *right to culture*, it ignores the fact that cultures change, and it countenances intolerant acts, even abuse. By contrast, what I am defending is the rather simple view that human rights are universal prescriptions that necessarily get instantiated in ways that make sense to local communities.

#### IV. Overlapping Consensus

Another name often used for the local enforcement of human rights is *overlapping consensus*, or the family resemblance of particulars with regard to a universal. It refers to any common concept found in seemingly disparate doctrines. An example

<sup>17</sup> As a sidelight, given the philosophical nature of my discussion, I wish to note here that I shall not deal with some of the more fascinating concepts related to religious perspectives on statehood and governance. For instance, I shall not consider whether government interests are legitimate under religious freedoms, whether religion can improve social cohesion within states, or whether religious organizations have more or less freedoms than secular ones. The present issue is with regard to the relative foundation of religion for human rights, not with regard to its foundation for all matters concerning state governance.

<sup>18</sup> Adamantia Pollis and Peter Swab, *Human Rights: Cultural and Ideological Perspectives* (New York: Praeger Publishers, 1980), p. 1.

from philosophy might be the political conception of justice as fairness found in Rawlsian ethics, Kantianism, and Confucianism. With regard to human rights, overlapping consensus refers to the different modes by which universal prescriptions translate into local cultures but maintain agreement with the universal standard. To lend credence to this point, consider the controversial issue of Asian values. Since the conception of human rights, some intellectuals from Asia have insisted that Asian values are different from those of the West and should be respected.<sup>19</sup> This has usually involved the rejection of so-called *individualistic* human rights in place of communal values inherent to Asian culture. At first blush, the values of the East and the West do seem to diverge over the duties of the state and the rights of individuals. However, Amartya Sen has provided a detailed examination of Asian philosophies to demonstrate that there is an overlapping consensus between human rights and Confucianism, Buddhism, Hinduism, and Islam.<sup>20</sup> What this entails is that there are foundations in Asian cultures on which individuals can and do make culturally relevant claims for human rights. Further, it entails that human rights can manifest themselves on multiple grounds. This is indeed how human rights usually get adopted around the globe: each culture negotiates human rights and local norms to implement the former within the latter.<sup>21</sup>

This bears greatly on the question of religion in at least two ways. First, if different religions share a common consensus with human rights and are necessary for their enforcement, then religion is fundamental to human rights. However, given relative universality, we cannot leave it at that—for that would ignore the universal side of human rights. To illustrate, if enforcing human rights requires religion in (say) Senegal, then religion is fundamental to human rights relative to Senegal. This is simply to say that human rights are universals whose origin is the UDHR, but whose instantiation can take on any number of particular doctrines, even religion. Second, what I have referred to as relative universalism divides human rights into two foundations: conceptual and implemental. The conceptual foundation comprises the universal prescriptions that address the relationship between the individual and the state, including the obligations of the former with regard to the dignity of the latter. The implemental foundation involves enforcing and practicing human rights according to the overlapping consensus of the UDHR and the various legal, political, and moral doctrines of the state. Given these distinctions, we can now refocus our original question to ask the following. Which of the above foundations—the conceptual or implemental—if either—relies on religion?

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<sup>19</sup> Jack Mahoney, *The Challenge of Human Rights: Origin, Development, and Significance* (Malden, MA: Blackwell Publishing, 2007), pp. 104–109.

<sup>20</sup> Amartya Sen, *Development as Freedom* (Oxford: Oxford University Press, 1999).

<sup>21</sup> Richard A. Wilson, 'Culture and Rights: Anthropological Perspectives', in J. Cowan, M. B. Dembour, and R. A. Wilson (eds.), *Culture and Rights* (New York: Cambridge University Press, 2001), p. 6.



I am going to argue that religion belongs to the implemental foundation, which may seem like a trivial point, if my argument has been successful thus far. The implemental bears greatly on human rights insofar as casting human rights as religious principles motivates the believer to pursue them more fully. This is not to say, however, that the conceptual and foundational do not bear on one another. For the casting of human rights norms into religious principles serves both to conceptualize human rights for believers and to motivate them for pursuing human rights more fully.<sup>22</sup>

Still, there is more to be done. Traditionally, religion in human rights has been supported by arguments of two kinds, which I shall call the argument from dignity and the argument from history. In what follows I shall show that these can be dismissed in several ways.

## V. The Argument from Dignity

With regard to the conceptual foundation of human rights, perhaps the most striking case for religion centers on the concept of dignity. To illustrate, consider the conclusion that follows from the following two premises. Firstly, the very idea of human rights is an exposition of the belief that human beings have dignity. This point was aptly expressed by one of the most influential contributors to the UDHR, Dr Charles Malik, when he said: “the Declaration . . . is the definitive explication of the pregnant phrase of the preamble, *the dignity and worth of the human person*.”<sup>23</sup> But, secondly, the notion of dignity is derived from the *Imago Dei* in theology: the doctrine that human beings are created in God’s image and have inherent moral worth accordingly.<sup>24</sup> Thus, dignity makes sense only in light of theology. If so, human rights are meaningless without religion.

Michael Perry has defended a version of this argument. In his remarkable inquiry on human rights, Perry has suggested that the UDHR’s conception of human rights rests on the premise that every human being has dignity. However, the UDHR does not attempt to define dignity, but rather presumes that all human beings possess it, which is problematic. Perry argues: if dignity is the belief that every person has intrinsic worth, dignity is “the conviction that every human being is sacred.”<sup>25</sup> After all, no secular view can justify the belief that all humans possess intrinsic moral worth as such. The only system that can make such a conviction intelligible is religion, making dignity inescapably religious. And if the

<sup>22</sup> Nazila Ghanea, ‘Religion, Equality, and Non-Discrimination’, in J. Witte, Jr. and M. C. Green (eds.), *Religion and Human Rights: An Introduction* (New York: Oxford University Press, 2012), p. 206.

<sup>23</sup> Charles Malik, ‘International Bill of Human Rights’, 5 *United Nations Bulletin* (1 July 1948).

<sup>24</sup> Ethna Regan, *Theology and the Boundary Discourse of Human Rights* (Washington D.C.: Georgetown University Press, 2010), p. 8.

<sup>25</sup> Michael Perry, *The Idea of Human Rights: Four Inquires* (Oxford: Oxford University Press, 1998), p. 11.

foundational constituent of human rights is dignity, then so too are human rights inescapably religious.

Though Perry claims that his view is not meant to defend any particular religious perspective, it raises a common objection made by theologians who support human rights. A recent example might be Jeffry Murphy's argument that human rights are meaningless if dignity is detached from a religious worldview.<sup>26</sup> A similar argument is Max Stackhouse's that if human rights are to have any meaning at all, they must stand above any political authority, which requires the divine.<sup>27</sup> While many others could be mentioned, it is worth noting that several prominent theologians make similar claims based on the belief that the *Imago Dei* is essential to dignity and seems to come from the Judeo-Christian tradition.<sup>28</sup> Lurking here is an important criticism from religiously minded individuals that is very important for the conceptual foundation of human rights: without a secular equivalent to the *Imago Dei*, human rights seem to require religion.

Three difficulties present themselves, however. The first is the faulty presumption that dignity itself must be concretely defined for it to be meaningful. As a first-principle, dignity can remain undefined and still serve as the fundamental postulate for the UDHR. This is no different than first-principles in science or mathematics that go undefined but allow theorists to deduce important theorems. The second difficulty is more significant. Let us suppose that dignity is based on the belief that it is true by virtue of God's word. The problem with this perspective is that it begs too many questions, the most important being what philosophers call the *Euthyphro Problem*: Is the law of God right because God says it is, or does God say it is right because it is indeed right?<sup>29</sup> If one says the former, then it is arbitrary and perhaps inapplicable in the multicultural, secular world. If one says the latter, it can be known by reason, not faith. In either case, a bold appeal to religion must still evoke some form of reason to make it palatable, if not reasonable for non-religious persons. The third difficulty is even more damaging. The use of the term *dignity* in human rights clearly echoes the moral philosophy of Immanuel Kant's kingdom of ends. Kant wrote:

<sup>26</sup> Jeffrie G. Murphy, 'The Elusive Nature of Human Dignity', 9:3 *The Hedgehog Review* (2007), pp. 20–31.

<sup>27</sup> Max Stackhouse, 'Why Human Rights Need God: A Christian Perspective', in E. Bucar & B. Barnett (eds.), *Does Human Rights Need God?* (Grand Rapids, Michigan: Eerdmans Publishing Company, 2005), pp. 25–40.

<sup>28</sup> See David Hollenbach, *The Common Good and Christian Ethics* (Cambridge, MA: Cambridge University Press, 2002); Jurgen Moltmann, *On Human Dignity: Political Theology and Ethics* (London: SCM Press, 1984); and George Newlands, *Christ and Human Rights: The Transformative Engagement* (Aldershot: Ashgate, 2006).

<sup>29</sup> Plato, 'Euthyphro', in J. M. Cooper (trans.), *Plato: Complete Works* (Indianapolis: Hackett Publishing, 1997), pp. 1–16.

Man is regarded as a person, that is, as the subject of morally practical reason... [he] possesses a dignity, an absolute inner worth, by which he exacts respect for himself from all other rational beings in the world.<sup>30</sup>

Kant is thus saying that dignity comes from humankind's capacity for practical reason, that is, self-consciousness. Accordingly, all persons—despite their utility or function—are self-aware to some extent and thus capable of self-legislation, rendering them with an inner worth to be treated as ends, not means to another's ends. Given the UDHR's central message that there are ways of treating human beings that are inconsistent with recognizing them as full members of the human community, and its commitment that such treatment is unjust, it presupposes Kant's notion of dignity.<sup>31</sup> With regard to all of these points the argument from dignity is a nonstarter for religion.

## VI. The Argument from History

However, it is still reasonable to argue that the historical tradition leading up to human rights and especially natural law is replete with religious concepts. And for that reason alone, we can say that religion plays a role in human rights. After all, as historian Paul Gordon Lauren remarks: "Religious belief provided [at least] one source of tributaries into the ever expanding and evolving river of thought about what would eventually be described as international human rights."<sup>32</sup> Of course, the legal source of international human rights begins solely with the UDHR and respective international courts, including the Nuremberg Trials and subsequent international tribunals.<sup>33</sup> Yet the argument from history asserts that one of the conceptual sources of human rights is religion, specifically its influence on the history of individual rights in the West.<sup>34</sup> Put simply: the history of individual rights prior to the UDHR, which included ancient, medieval, and renaissance philosophy, assumed that God was the source of all rights. Furthermore, this tradition informed the thought behind the UDHR, despite its overtly secular depiction. Thus, although seemingly divorced from religion, human rights assume a religious tradition that informs its conceptual foundation.

Provided that the history of human rights does begin before the UN's concept, the above argument is somewhat persuasive. But it faces three problems. Firstly, the intellectual tradition leading to human rights can just as easily be shown to

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<sup>30</sup> Immanuel Kant, *The Metaphysics of Morals* (Cambridge, MA: Cambridge University Press, 1991), p. 230.

<sup>31</sup> Ronald Dworkin, *Taking Rights Seriously* (Cambridge, MA: Harvard University Press, 1978), p. 198.

<sup>32</sup> Paul G. Lauren, *The Evolution of International Human Rights* (Philadelphia: University of Pennsylvania Press, 2003), p. 10.

<sup>33</sup> Antonio Cassese, *International Criminal Law* (New York: Oxford University Press, 2003), pp. 5–14.

<sup>34</sup> Michael Freeman, *Human Rights* (Malden, MA: Blackwell Publishers Inc., 2002), p. 10.

lack the very concept prior to the Age of Revolutions and to promote the exclusion of religion thereafter. Secondly, the argument takes for granted that the history leading to an idea defines it. Of course, such an assumption is false; math, for instance, takes root in Pythagorean religion, but it is certainly not defined by it. Thirdly, the argument is somewhat imprecise: it can be shown that religion has galvanized the implementation of human rights more than it has informed the UDHR. In this section, I wish to lend credence to these criticisms by drawing attention to the rather tenuous historical connection between religion and human rights.

To begin, I would like to couch my discussion within a debate amid historians. If we presume that human rights emerge from the history of individual rights in the West, then we must turn to the history of natural law, the view that moral order is evident in the nature of the cosmos or human beings. If we do this, there is a controversial question that has to be settled. That is: does natural law include rights that are both similar to human rights and religious in origin? This question marks the parting of ways among historians. On the one hand, there is the view that many humanitarian movements, most notably—and almost exclusively—Abolitionism, preceded human rights and stemmed from natural law and Judeo-Christian values.<sup>35</sup> On the other hand, there is the view that growth in moral sensibility throughout history has been the product of economic transformations, namely, the rise of capitalism in the West, which, among other things, led to the humanitarian movements of the nineteenth-century.<sup>36</sup> Though I lack the space to address these views further, I bring them up to illustrate an important point. Perhaps no other religious movement in history contributed more directly to human rights than humanitarianism in the nineteenth-century; but whether it was the result of religion or socio-economic transformation remains an open question. What remains less of an open question is whether the history of natural law includes apparent human rights that stem directly from religion. If we examine the so-called *history of human rights* prior to the UDHR—that is, those points in history often referenced as being religious—the answer is that there is not a direction link.

Turning first to ancient and medieval sources, many theorists consider Sophocles' *Antigone* to be the first instance of human rights in western civilization; but this is a mistake. Sophocles' tragedy is a tragic expression of intractable wills, not rights.<sup>37</sup> A similar disconnection between human rights and religion is just as apparent in Aristotle's *Constitutions* or the Hebrew Bible's *Torah*. Besides countenancing slavery, both failed to provide any notion of universal rights. Consider, too, the letters of St. Paul: although he outlined a theory of universal justice, he

<sup>35</sup> Lauren, *supra* note 32, pp. 35–46.

<sup>36</sup> Thomas L. Haskell, 'Capitalism and the Origins of the Humanitarian Sensibility, Part 1', 90:2 *The American Historical Review* (1985), pp. 339–361.

<sup>37</sup> Freeman, *supra* note 34, pp. 15–16.

nonetheless failed to speak against slavery or the subordination of women.<sup>38</sup> As for stoic philosophy, while Marcus Aurelius and Cicero both promoted universal moral prescriptions, the source of those prescriptions was an inborn power to reason, not the gods.<sup>39</sup> Finally, though the Magna Carta is often considered a milestone toward human rights in the medieval world, the liberties wrested from King John of England applied to barons alone, a far cry from universal rights.<sup>40</sup>

As for the Reformation, historians rightfully point out that Martin Luther's theology opened the door for individual rights. Yet they also point out an equally important fact that damages the argument from history, namely that Luther himself did not endorse universal rights for two reasons. First, Luther worried that universal rights would only encourage the depravity of humankind, compounding the pride and self-centeredness of original sin.<sup>41</sup> Second, Luther endorsed the suppression of lower classes; an often-overlooked fact that is evidenced by his book entitled *Against the Murderous, Thieving Hordes of Peasants*. In that text Luther promoted the open slaughter of peasants who were responsible for the Peasant War of 1524.

Still, the Reformation did not end with Luther. After the first wave of the Reformation, jurisprudence was developed thoroughly by Hugo Grotius. In *The Law of War and Peace*, Grotius built upon the just war theory of Thomas Aquinas to argue that natural law compelled humankind to respect one another, even in war.<sup>42</sup> However, it would be a mistake to see Grotius' theories as religious, for Grotius maintained that natural law did not require religion. He remarked, "What we have spoken about would carry some weight even if we were to suppose that God does not exist or that God takes no interest in human affairs."<sup>43</sup> In a similar vein, it would be a mistake to interpret the contractarian theories of Thomas Hobbes and Jean-Jacques Rousseau as religious, for both made appeals to contracting parties with regard to an earthly suzerain, not a heavenly one. As a final note, it is certainly the case that rights under natural law gained momentum after the Reformation. However, despite Francisco de Vitoria's plea for the rights of natives in Spanish colonies, the language of rights prior to the Enlightenment applied only to a distinct class of Europeans.<sup>44</sup>

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<sup>38</sup> In spite of Paul's view that all people are equal in Christ (Gal. 3.28), in the Letter to Philemon, he shows remarkable lack of concern for the social inequality concerning the slave Onesimus. Paul evidently did not see the need to implement his egalitarian ideal to society at large. For he maintains that slaves should remain slaves, that men should continue to dominate women, and that Christians should as a whole stay in whatever social roles they found themselves.

<sup>39</sup> Lloyd L. Weinreb, *Natural Law and Justice* (Cambridge, MA: Harvard University Press, 1987), p. 39.

<sup>40</sup> Mahoney, *supra* note 19, pp. 6–7.

<sup>41</sup> *Ibid.*, p. 8.

<sup>42</sup> Hugo Grotius, *The Law of War and Peace* (London: University Press, 1853), pp. 5–8.

<sup>43</sup> *Ibid.*, p. 46.

<sup>44</sup> Mahoney, *supra* note 19, p. 8.

Given that the Enlightenment was a purposeful break from religion—and thus, not lending itself to the argument from history—the next important era to consider is the Age of Revolutions. In terms of this era, perhaps no other source is referenced more widely as a religious basis for human rights than the political philosophy of John Locke or its reformulation in the revolutionary literature of Thomas Jefferson and Thomas Paine. At its simplest, Locke argued that human beings enter a social contract to preserve their lives, liberties, and estates.<sup>45</sup> More precisely, Locke argued that in the state of nature—outside of government—everyone has the right to self-defense, which, without laws, leads to perpetual conflict. To prevent such conflict, Locke believed that rational individuals would agree to live under a government that was entrusted with the power to protect their natural rights. It is here that the argument from history seems to carry some weight; for Locke presumed that natural rights were based on laws of nature, which, in turn, were based on the will of God. And from the laws of nature we witness the rights to freedom, self-preservation, and property; rights that historians rightfully mark as watersheds in political philosophy.<sup>46</sup>

But should we consider Locke's theory of rights a predecessor to human rights? If so, is his theory religious in origin? Regarding the former question, Locke certainly preceded human rights when he advocated for the universal protection of individuals from the state in the name of natural law.<sup>47</sup> Regarding the latter question, however, it is possible to disconnect Locke's theory of rights from religion for at least two reasons. First, Locke's appeal to religion could be an artifact of his times. As Michael Freeman points out, Locke, like many of his contemporaries, had to appeal to God in order to find agreement with his readers on issues of rights.<sup>48</sup> Historians have also noted that Locke distinguished between divine and civil law, focusing his theories of rights almost entirely on the latter.<sup>49</sup> Second, Locke's ideas remain logically coherent without reference to God. This is because Locke himself argued that natural law, despite originating with God, is known by reason alone.<sup>50</sup> Logically speaking, then, Locke's theory of rights can be justified according to human reason without invoking the divine. Hence, to connect human rights and religion in light of Locke's philosophy is to establish a rather weak connection that may be unnecessary.

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<sup>45</sup> John Locke, *Two Treatises of Government*, ed., P. Laslett, (Cambridge, UK: Cambridge University Press, 1963).

<sup>46</sup> See Micheline Ishay, *The History of Human Rights: From Ancient Times to the Globalization Era* (Berkeley: University of California Press, 2004), p. 57.

<sup>47</sup> Locke (ed., P. Laslett), *supra* note 45, p. 95.

<sup>48</sup> Freeman, *supra* note 34, p. 10.

<sup>49</sup> Frederick Copelston, *Modern Philosophy: The British Philosophers from Hobbes to Hume* (New York: Doubleday Dell Publishing, 1959), pp. 123–125.

<sup>50</sup> Frederick Copelston, *Modern Philosophy: The British Philosophers from Hobbes to Hume* (New York: Doubleday Dell Publishing, 1959), pp. 123–125.

Yet all of this may be a moot point once we consider the conception of human rights in the twentieth century. For as a matter of fact, human rights officially enter the human repertoire only after the Second World War and the Holocaust. And what religious sympathizers often neglect to consider is that it entered without religion. As we have seen, it was precisely because of the UDHR's universality that it could not—and did not—base human rights on any religious belief.<sup>51</sup>

## VII. Religion and Transitional Justice

Let us now turn to the issue of religion and implementation. It is important here to recognize that because human rights are enforced by states, religion is especially compelling in situations where it can influence the decisions of state actors. In such situations, however, the central factor is not the deontology of religion alone, but rather the dealings of religious actors. This section therefore concentrates on the latter. The logic for doing so is this: Religion can serve as the grounds for implementing human rights only if it rationalizes them for a community, if not compel religious persons or groups to persuade state actors to practice human rights. One situation where we see this happening is the politics of transitional justice, a common occurrence throughout the world since the UDHR. For in terms of the numerous states that have transitioned from authoritarianism to democracies in the latter twentieth century, religion has been the primary step towards human rights initiatives. To bring that fact to light, I wish to reiterate the findings of several researchers to demonstrate that South Africa, Guatemala, and Sierra Leone were compelled toward human rights not by law or secular ethics, but rather the views of religious actors.<sup>52</sup>

The two chief notions that will be used in this section call for some clarification at this point. They are the notions of transitional justice and religious actors. First, *transitional justice* refers to the political process that often follows large scale and sustained human rights violations due to authoritarian regimes or civil war. It usually develops with a peace settlement or regime turnover, whereby the state in question aims at preventing the recurrence of abuse and repairing respective damages.<sup>53</sup> Regardless of the length of the transition period, its core feature is that it attempts to ensure justice and implement human rights. In defining transitional

<sup>51</sup> Freeman, *supra* note 34, p. 10.

<sup>52</sup> See Audrey Chapman and Patrick Ball, 'The Truth Commissions: Comparative Lessons from Haiti, South Africa, and Guatemala', 23:1 *Human Rights Quarterly* (2001), pp. 1–43; Richard A. Wilson, 'Anthropological Studies of National Reconciliation Processes', 3:3 *Anthropological Theory* (2003), pp. 367–387; Daniel Philpott, 'What Religion Brings to the Politics of Transitional Justice', 61:1 *Journal of International Affairs* (2007), pp. 93–110; and Jason A. Klocek, 'How Religious Actors Influence the Politics of Transitional Justice: Truth Recovery and Reconciliation in South Africa and Guatemala' (master thesis, Georgetown University, 2009).

<sup>53</sup> Daniel Philpott, 'What Religion Brings to the Politics of Transitional Justice', 61:1 *Journal of International Affairs* (2007), p. 94.

justice in such a manner, I do not mean to say that it is everywhere the same. For transitional justice has been employed differently in East Germany, Rwanda and Sierra Leone than it has in Argentina, Brazil, Peru, South Africa, and Guatemala.<sup>54</sup> On the one hand, transitional justice may take the form of retribution with the intent of prosecuting and punishing human rights violators. On the other hand, it may take the form of restoration with the intent of repairing and restoring social relationships. Since I am following suit with other scholars who take a rather broad perspective, it will be useful to reserve the term *transitional justice* for the act of confronting past injustices and forging human rights initiatives.

Second, it may be controversial to speak of anyone or any group as a 'religious actor' given that people lack essences and take on a variety of social identities. So I hope the term carries as light an ontological weight as possible. *Religious actors* are persons or bodies that act to influence politics in the name of religion. More specifically, in transitional justice they are generally individuals who employ religion to enact peace, abet legal institutions, reconcile socio-political parties, and synthesize local traditions with human rights.<sup>55</sup> I shall depart slightly from this standard definition to include not only individuals, but also groups and communities, since it is within such social bodies that religious persons yield their greatest influence.<sup>56</sup>

To deny the impact of religious actors would not only overlook their role in transitional politics, but also the fact that they have played an ever expanding part in politics throughout the twentieth century.<sup>57</sup> Conversely, to hold that such actors consistently side with justice would overlook the fact that many religious actors have abused their position or upheld the status quo of suspect regimes. One need only consider here the role of several Mullahs or clerics in Afghanistan over the past two decades. Even today, after the fall of the Taliban, Afghan religious leaders continue to play a small part in the country's transitional justice, mostly due to the fear of being seen as 'bad Muslims' or anti-Mujahedeen.<sup>58</sup>

In any case, we might here wonder what characterizes influential religious leaders? According to Daniel Philpott, there are two qualities. The first is a political theology that stresses horizontal reconciliation within communities, as well as vertical reconciliation with the divine. The second is institutional autonomy from the state, from which the religious actor can garner moral authority during transitional periods.<sup>59</sup> With this in mind, let us now turn to an overview of the role of

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<sup>54</sup> Daniel Philpott, 'When Faith Meets History: The Influence of Religion on Transitional Justice', in T. Brudholm and T. Cushman (eds.), *The Religious in Responses to Mass Atrocity: Interdisciplinary Perspectives* (Cambridge, UK: Cambridge University Press, 2009), p. 179.

<sup>55</sup> Philpott, *supra* note 53, p. 93.

<sup>56</sup> Chapman and Ball, *supra* note 52, pp. 2–3.

<sup>57</sup> Peter L. Berger, 'Secularism in Retreat', 46 *The National Interest* (1997), p. 3.

<sup>58</sup> Ahmad Nader Nadery, 'Peace or Justice? Transitional Justice in Afghanistan', 1 *The International Journal of Transitional Justice* (2007), p. 177.

<sup>59</sup> Philpott, *supra* note 53, pp. 101–102.



influential religious actors in the transitional justice movements of South Africa, Guatemala, and Sierra Leone.

### A. *South Africa*

Since the arrival of the Bartholomew Dias and the Portuguese in 1488, religion and politics went hand in glove in South Africa, especially with regard to apartheid. For the Dutch Reformed Church and Anglican clergy either directly supported or condemned it throughout South Africa's history. However, it was not until the 1980s that apartheid began to crumble due to international and domestic pressure, which locally took the form of the South African Council of Churches and its key figure, Bishop Desmond Tutu. This council served as a political voice for human rights and eventually contributed to the unbanning of apartheid, which was carried out by President F. W. de Klerk in 1990.<sup>60</sup> After Nelson Mandela took office, the Truth and Reconciliation Commission (TRC)—with its chief committee known as the Human Rights Violations Committee—was quickly implemented to assuage the wounds of the former apartheid regime and to investigate human rights violations with the aim of preventing their recurrence.<sup>61</sup>

Religious actors played an immense role in the formation and implementation of the TRC, the most notable of whom being Bishop Tutu. Based on Bishop Tutu's own account, his part in the TRC consisted of nothing short of overseeing the TRC's proceedings and delivering religious counsel to President Mandela himself.<sup>62</sup> Accordingly, Tutu was instrumental in fostering the TRC's Christian values, which, among various roles, is witnessed by the fact that Tutu opened and closed every TRC proceeding with prayer and asked all participants to abide by Christian ethics.<sup>63</sup> Additionally, because of Tutu's close ties with Mandela, the Christian perspectives of the former undoubtedly influenced the political strategies of the latter, especially his commitments to reconciliation and forgiveness. Provided that the TRC is a form of human rights implementation, Tutu's actions serve as a case in point where the universal prescriptions of human rights were employed in terms of Christianity at the local level.

### B. *Guatemala*

Turning elsewhere, the story of transitional justice in Guatemala begins with the democratic success of Juan Jose Arevalo Bermejo, which tragically gave way to the Armas regime after the 1954 coup; a coup that was allegedly undertaken to

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<sup>60</sup> Tristan Anne Borer, *Challenging the State: Churches as Political Actors in South Africa, 1980–1994* (Notre Dame: University of Notre Dame Press, 1998), pp. 63–67.

<sup>61</sup> See E. Doxtander & P. J. Salazar, eds., *Truth and Reconciliation in South Africa—The Fundamental Documents* (Claremont, South Africa: New Africa Books, 2007).

<sup>62</sup> Desmond Tutu, *No Future Without Forgiveness* (New York: Doubleday Press, 1999), p. 74.

<sup>63</sup> Klocek, *supra* note 52, p. 49.

protect the interests of US corporations, and one that ushered in nearly half a century of conflict.<sup>64</sup> Though initially supported by religious state actors, the regime became unpopular for the Catholic Church, especially after the onset of the Guatemalan Civil War (1962–1996). This civil war witnessed vast human rights violations and devastating acts of violence. Among other atrocities, the civil war wrought the disappearance of 500 villages, the deaths of tens of thousands of civilians, and the displacement of nearly one million people.<sup>65</sup> During the conflict, the outcry of Guatemalan religious actors was enough to elicit responses from the Second Ecumenical Council and from Jose Casanova's *Dignitatis Humanae*.<sup>66</sup> Furthermore, the outcry served as a catalyst for a new brand of Catholicism, namely, liberation theology—a viewpoint developed by Dominican priest Gustavo Gutierrez on the Christian duty to protect the poor from oppression.<sup>67</sup> Yet the outcry fell on deaf ears in Guatemalan society until the end of the civil war in 1996. In that year religious actors helped orchestrate peace agreements and the Guatemalan truth commission, a political discourse aimed at reconciliation and forgiveness.

Similar to the case of South Africa, religious actors played an important part in the process of transitional justice, which, according to Jason Klocek, included three activities.<sup>68</sup> Firstly, the Catholic bishops throughout Guatemala single-handedly altered the post-conflict discourse to focus almost entirely on injustices committed and reconciliation initiatives. Secondly, the Protestant churches of Guatemala established the Office of Human Rights of the Archdiocese of Guatemala: an office that not only documented past abuses, but monitored continuing human rights violations and provided legal counsel to victims. Daniel Philpott also stresses the part of Bishop Juan Gerardi, who initiated the Recovery of Historical Memory project, otherwise known as the Guatemalan national truth commission.<sup>69</sup> Finally, religious actors were active in the entire truth recovery process, ranging from the implementation of the truth commission itself to the extension of logistical and legal support to victims of the former regime. This range of activities not only provided the means to enforce human rights, but ended up exposing the truth of the civil war: that is, the chief victims were the Mayans at the hands of the Guatemalan armed forces.

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<sup>64</sup> See Nick Cullather, *Secret History: The CIA's Classified Account of Its Operations in Guatemala, 1952–1954* (Stanford: Stanford University Press, 1999).

<sup>65</sup> Klocek, *supra* note 52, p. 58.

<sup>66</sup> Ethna Regan, *Theology and the Boundary Discourse of Human Rights* (Washington D.C.: Georgetown University Press, 2010), pp. 107–114.

<sup>67</sup> See Gustavo Gutierrez, *A Theology of Liberation: History, Politics, Salvation* (New York: Orbis Books, 1971).

<sup>68</sup> Klocek, *supra* note 52, pp. 65–69.

<sup>69</sup> Philpott, *supra* note 53, p. 102.

### C. Sierra Leone

As a final sketch, consider the case of Sierra Leone. After a decade of civil war (1991–2000), some religious actors—in particular, local Mende chiefs—worked with political authorities not only to establish the Special Court of Sierra Leone, but also the Sierra Leone Truth and Reconciliation Commission. While the former used international law to prosecute individuals who committed human rights violations during the civil war, the latter employed Mende forgiveness rituals to reconcile former soldiers, especially childhood soldiers, with their home communities.<sup>70</sup> Specifically, with the aim of preventing recurrent violence, the commission resembled the *gacaca* courts of Rwanda by requiring former soldiers to return to their community of origin and undergo the following reconciliatory processes.<sup>71</sup> Upon their return, individual soldiers faced a public forum that, if possible, explained the evidence it held regarding the soldier's wartime behavior. If the evidence was found sufficient, the soldier was pronounced guilty and accountable to his community. At that point, the forum allowed the soldier to acknowledge his actions, to express remorse for them, and to appeal to the community for its forgiveness. To reinforce the soldier's communal loyalty, the Paramount Chief overseeing the forum would signal ablution by praying for the soldier—usually mixing Mende with other local religions such as Christianity and Islam—and requesting that the soldier be forgiven, if he renounced his violent behavior and pledged to serve his community.

On the one hand, the truth and reconciliation commission of Sierra Leone mirrors that of South Africa, insofar as both used religion to institute forgiveness and to lay the foundation for future human rights initiatives. On the other hand, Sierra Leone differs from South Africa, since it reconciled soldiers and communities by relying heavily on local religious traditions, namely the Mende forgiveness ritual. That ritual was localized even further by the Mende chief's use of multiple religious prayers during the ceremony. Alexander Betts explains:

While the [South African] TRC procedures lacked roots in local culture and were based upon culturally contingent notions of confession, the reconciliation ceremonies carried out by the Paramount Chief's use of Christian, Islamic and 'traditional' religious prayers contributed to expressions of remorse and appeals for forgiveness.<sup>72</sup>

Indeed, by grounding the process of truth and reconciliation within local religious traditions, the Mende of Sierra Leone made a solid step toward human rights

<sup>70</sup> Dawn L. Rothe and Christopher W. Mullins, 'Building Justice after War: The Use of Multiple Post-Conflict Justice Mechanisms', 35:3 *Social Justice* (2009), p. 89.

<sup>71</sup> Alexander Betts, 'Should Approaches to Post-Conflict Justice and Reconciliation be Determined Globally, Nationally or Locally?' *The European Journal of Development Research* 17:4 (2005), p. 747.

<sup>72</sup> *Ibid.*, p. 754.

amidst the politics of transitional justice, grounding such rights in the values of forgiveness and group service.

#### D. *Final Thoughts*

I conclude, then, that religious actors in South Africa, Guatemala, and Sierra Leone influenced the enforcement of human rights at their local level. Moreover, I do not think it is going too far to say that these cases may in fact find parallels in other states where an authoritative regime or civil war is followed by the implementation of human rights by religiously minded persons. An analysis of the religious actors and the environmental conditions that select for them would be most revealing. For now, I hope that these modest examples illustrate that religion does play an important part in the implementation of human rights, especially in the politics of transitional justice.

Yet in making this argument, I recognize that it is challenged by an immediate shortcoming. Because it is based on the instrumental and thus consequential value of religion, my argument is contingent at best. At its worst, however, it is one that bolsters the place of religion by confirming successful cases, while ignoring the negative ones. To avoid such, I wish to conclude by considering two negative aspects of religion that are apparent during political transitions.

First, reconciliatory processes that draw from religious traditions can and often do lead to negatives consequences. To illustrate this point, we need not look very far: the TRC proceedings of South Africa, in fact, have been criticized for their bleak political outcomes. For instance, Audrey Chapman and Patrick Ball argue that Desmond Tutu, although well intentioned, used religious rhetoric to stress forgiveness and reconciliation above all other political goals, which in turn obfuscated the truth of apartheid and hindered the ultimate purpose of the TRC. This is witnessed by the fact that in TRC hearings, Tutu grouped all South Africans under the banner of God's children, thereby claiming that all were equally harmed by apartheid, and thus all should equally be forgiven. Though apparently moral from a religious perspective, the consequence was that a disproportional number of non-Africans appeared at hearings, while a significant number of Africans were absent. As a result, the TRC actually exacerbated the resentment of many former victims, rather than assuaging them.<sup>73</sup> Richard A. Wilson makes a similar observation, claiming that Tutu made social harmony the *summum bonum* of the TRC. Accordingly, reconciliation in the sense of victim-offender did not take place in South Africa, nor could it have. Wilson thus argues that transitions toward human rights should not begin from the idealistic standpoint of religion, but instead the legitimate means of law.<sup>74</sup>

<sup>73</sup> Chapman and Ball, *supra* note 52, p. 40.

<sup>74</sup> Richard A. Wilson, 'Anthropological Studies of National Reconciliation Processes', 3:3 *Anthropological Theory* (2003), p. 371.

Second, just because religious actors talk about human rights does not entail that they take those rights seriously. Several examples from transitional justice could be drawn to illustrate this point, too. In Argentina, for instance, many local bishops espoused transitional justice and talk of human rights following Argentina's Dirty Wars of 1976 to 1983, while largely neglecting to deploy any persuasive form of political theology. Likewise, the Catholic and Protestant Churches of Czechoslovakia during the late 1980s played virtually no role in the country's political transition, even though much of the culture became imbued with human rights rhetoric.<sup>75</sup> Yet, beyond these examples of transitional justice, religious actors can sometimes speak to the value of human rights, on the one hand, but undertake violent practices, on the other. For instance, while Hindu and Muslim leaders in India have and continue to promote human rights, it has not prevented some religious leaders from both religions to promote violence against the other, such as the communal violence that engulfed Gujarat in 2002. Such examples are not isolated. Buddhist monks in Sri Lanka, too, have claimed appreciation for human rights, while at the same time creating a culture of war against others, namely the Tamil minority.<sup>76</sup> Hence, examples of this sort are perhaps as common as the successful instances of religious actors who genuinely promote human rights.

I propose, then, that when considering the potential role of religion in implementing human rights, we must keep in mind that it is a contingent matter. In some cases religion serves as the fertile ground for human rights initiatives; in other cases it can serve only to bolster the status quo, if not the sterile grounds of injustice. Yet this is not inconsistent with what has been put forth in this article. My central point has not been that religion is necessary for human rights, but quite the contrary. I have argued that human rights do not have religious foundations, although in some cases religion can act as an implemental foundation.

### **VIII. Conclusion**

I wish to close by considering what appears to be another problem for the view put forward. The conceptual and implemental scheme depends upon human rights being relatively universal. For if human rights are universally possessed but locally enforced, we can divide them into conceptual and implemental foundations. However, if we consider the actual drafting of the UDHR, then we find a difficulty: was the UDHR conceptual or implemental? The only logical answer is that it was both. But if that is true, why are the truth commissions in South Africa and Guatemala not also both? What makes the UDHR essentially different?

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<sup>75</sup> Philpott, *supra* note 53, p. 104.

<sup>76</sup> Appleby, *supra* note 16, pp. 349–352.

Of importance here is the already introduced notion of deontic prescriptions. Recall that human rights are a species of both moral and legal rights, for they imply how someone ought to be treated by the state in terms of moral claims and human rights documents. Suppose, then, that some country unknowing of the UDHR forges a document nearly identical to it. That document could certainly carry the same deontic force as the UDHR in its own country, but probably not among the international community. This is because the UDHR would be considered the origin of such ideas simply because it came first. All of this is to say that what makes the UDHR different from other documents—and the history prior to it—is that it was a watershed moment that stands as the surest origin of human rights.

Now consider the coherence of the UDHR based on dignity. Provided that it assumed Kant's notion when addressing the obligations of states, the UDHR must have also assumed the Kantian categorical imperative to treat all persons as ends rather than means. For dignity, as an offshoot of self-consciousness, which all human beings possess, demands that persons be treated as subjects, not objects. With regard to the UDHR, this would entail the deontic prescription that states treat persons as ends-in-themselves. As an implied imperative, this would be sufficient for the conceptual foundation of the universal doctrines outlined in the UDHR and consistent with the language of its preamble. But Kant's notion, though effective as a moral right, is only effectual as a legal right insofar as it is recognized with regard to the UDHR. The UDHR is thus essentially different from the local enforcement of human rights simply because it is the primary legal document on them.

While I believe this dismisses the above problem, the skeptic may nevertheless make two more objections. First, she could argue that the UDHR's notion of dignity is no less metaphysical than religion or natural rights.<sup>77</sup> Though an apt criticism, it must be kept in mind that the universal prescriptions of human rights are not about properties, but rather reasons to treat persons in certain ways. So, the metaphysical objection holds no water here. Second, she could argue that talk of dignity—no matter how essential it is for the UDHR—is still less compelling than religious doctrine.<sup>78</sup> In light of my argument, this objection is not difficult to resolve, for I conceded that religious doctrine is indeed persuasive in situations where it can influence the decisions of state actors. As a result, objections from religion fail to overturn what I have attempted to argue.

To be sure, allow me to recall what has been done. I argued that religion is not found in the conceptual foundations of human rights but rather in its implemental foundations. The purpose of making this argument was to provide some clarity on the problem concerning the place of religion in human rights. To make

<sup>77</sup> Roger Trigg, *Morality Matters* (Oxford: Blackwell Publishing, 2005), pp. 161–162.

<sup>78</sup> Elizabeth M. Bucar and Barbra Burnett, 'Introduction', in E. Bucar & B. Burnett (eds.), *Does Human Rights Need God?* (Cambridge: William B. Eerdmans Publishing Company, 2005), p. 18.

progress on that problem, I attempted to show a number of important factors related to it. I demonstrated first that the deontic force of human rights is garnered from moral rights and legal rights, not religious doctrine. I then showed that the arguments from dignity and history fail to make a definitive case for the significant role of religion in the conceptualization of human rights. Finally, I illustrated that religion plays an important part when implementing human rights, especially in the politics of transitional justice. Though an argument with limited scope, it is my hope that it can still shed some light regarding the religious foundations of human rights.

