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# “THE GLORIOUS LIBERTY OF THE CHILDREN OF GOD”: TOWARD A CHRISTIAN DEFENSE OF HUMAN RIGHTS

by John Witte, Jr.\*

It will come as a surprise to some human rights lawyers to learn that Christianity was a deep and enduring source of human rights and liberties in the Western legal tradition. Our elementary textbooks have long taught us that the history of human rights began in the later seventeenth and eighteenth centuries. Human rights, many of us were taught, were products of the Western Enlightenment—creations of Grotius and Pufendorf, Locke and Rousseau, Montesquieu and Voltaire, Hume and Smith, Jefferson and Madison. Rights were the mighty new weapons forged by American and French revolutionaries who fought in the name of political democracy, personal autonomy, and religious freedom against outmoded Christian conceptions of absolute monarchy, aristocratic privilege, and religious establishment. Rights were the keys forged by Western liberals to unchain society from the shackles of a millennium of the church’s oppression of society and domination of the state, and centuries of religious warfare. Human rights were the core ingredients of the new democratic constitutional experiments of the later eighteenth century forward. The only Christians to have much influence on the development of human rights, the conventional story goes, were a few early Church Fathers who decried pagan Roman persecution, a few brave medieval writers who defied papal tyranny, and a few early modern

Anabaptists who debunked Catholic and Protestant persecution. But these exceptions prove the rule, according to many human rights scholars: Christianity as a whole, they argue, was an impediment to the development and expansion of human rights—doubly so in our day when religious freedom and other fundamental rights are often counterposed.<sup>1</sup>

It will come as an equal surprise to some Christian readers to learn that their forebearers proved so critical to the development of rights in the Western tradition and now well beyond. A number of Christian theologians and philosophers today—Catholic, Orthodox, and Protestant alike—view human rights with suspicion, if not derision. Yes, these critics acknowledge that Christians from the start embraced the right to religious freedom, at least for the Christian church and its members.<sup>2</sup> Many Christians today lament the myriad persecutions of Christians and others around the world,<sup>3</sup> and the growing tension between religious freedom and sexual freedom in late modern liberal democracies.<sup>4</sup> But many sincere Christians today question seriously whether their spiritual predecessors really had much to do with rights and whether modern human rights ideas faithfully express the moral norms and narratives of the Bible and the Christian tradition. Many view human rights as a dangerous invention of Enlightenment liberal-

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1 See Victoria Kahn, *Early Modern Rights Talk*, 13 *YALE J.L. & THE HUMAN.* 391 (2001); LYNN HUNT, *INVENTING HUMAN RIGHTS: A HISTORY* (2007); Christopher McCrudden, *Human Rights Histories*, 35 *OXFORD J. LEGAL STUD.* 179 (2015); DAVID LITTLE, *ESSAYS ON HUMAN RELIGION AND HUMAN RIGHTS: GROUND TO STAND ON* 57-82 (2016); P. Mackenzie Bok, *Did the Christians Ruin Rights?*, *NEW RAMBLER REVIEW: AN ONLINE REVIEW OF BOOKS* (Feb. 15, 2016), <https://newramblerreview.com/component/content/article?id=122:did-the-christians-ruin-rights>.

2 See ROBERT LOUIS WILKEN, *LIBERTY IN THE THINGS OF GOD: THE CHRISTIAN ORIGINS OF RELIGIOUS FREEDOM* (2019).

3 See CHRISTIANITY AND FREEDOM: HISTORICAL AND CONTEMPORARY PERSPECTIVES (Timothy Samuel Shah & Allen D. Hertzke, eds., 2016); UNDER CAESAR’S SWORD: HOW CHRISTIANS RESPOND TO PERSECUTION (Daniel Philpott & Timothy Samuel Shah eds., 2018).

4 See Helen M. Alvaré, *Religious Freedom versus Sexual Expression: A Guide*, 30 *J.L. & RELIGION* 475 (2015).

ism, predicated on a celebration of reason over revelation, of greed over charity, of nature over scripture, of the individual over the community, of the pretended sovereignty of humanity over the absolute sovereignty of God. These scholars call for better ideas and language to emphasize core virtues like faith, hope, and love, and core goods like peace, order, and community.<sup>5</sup>

These Christian skeptics about rights are not isolated and eccentric cranks. They include leading theologians like Stanley Hauerwas,<sup>6</sup> Oliver O'Donovan,<sup>7</sup> Joan Lockwood O'Donovan,<sup>8</sup> John Milbank,<sup>9</sup> Alasdair McIntyre,<sup>10</sup> Nigel Biggar,<sup>11</sup> Vigen Guroian,<sup>12</sup> and scores of mainline Protestant and Evangelical scholars influenced by Karl Barth's early "Nein!" to natural law and natural rights talk.<sup>13</sup> While many human rights lawyers today dismiss premodern Christian rights talk as a betrayal of liberalism, many Christians today dismiss modern Enlightenment rights talk as a betrayal of Christianity.

However commonplace these positions in popular and academic circles, the historical narratives that have conventionally supported them can no longer be sustained. Over the past few decades, a veritable cottage industry of important new scholarship has emerged dedicated to the history of rights talk in the Western tradition prior to the Enlightenment. We now

know a great deal more about classical Roman understandings of rights (*iura*) and liberties (*libertates*); Anglo-Saxon guarantees of *ryhtes* and *rita(e)*, *freoles* and *freo-doms*; and the ample elaboration of these ancient legal teachings in medieval charters and in civilian and common law jurisprudence. We can now pore over an intricate latticework of arguments about individual and group rights and liberties developed by medieval Catholic canonists, philosophers, and moralists, and their enforcement by ecclesiastical and secular authorities. We can now trace the ample expansion and reform of this medieval handiwork both by neo-scholastic writers in early modern Spain and Portugal, and by Lutherans, Anglicans, and Calvinists on the Continent and in Great Britain and their later colonies. We now know a good deal more about classical republican theories of liberty developed in Greece and Rome and their transformative influence on early modern common lawyers and political revolutionaries on both sides of the Atlantic. We now know, in brief, that the West knew ample "liberty before liberalism"<sup>14</sup> and had many fundamental rights in place before there were modern democratic revolutions fought in their name. It is a telling anecdote that by 1650, almost every right listed 150 years later in the French Declaration of the Rights of Man and Citizen (1789)

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- 5 See MARY ANN GLENDON, *RIGHTS TALK: THE IMPOVERISHMENT OF POLITICAL DISCOURSE* (1991) (early classic statement).
- 6 See Stanley Hauerwas, *How to Think Theologically About Rights*, 30 J.L. & RELIGION 402 (2015); see also STANLEY HAUERWAS, *THE HAUERWAS READER* 90-110, 116-99, 221-66, 318-26, 426-80, 522-35, 556-76, 603-22 (John Berkman & Michael Cartwright eds., 2001).
- 7 See Oliver O'Donovan, *The Language of Rights and Conceptual History*, 37 J. RELIGIOUS ETHICS 193 (2009).
- 8 JOAN LOCKWOOD O'DONOVAN, *The Concept of Rights in Christian Moral Discourse*, in A PRESERVING GRACE: PROTESTANTS, CATHOLICS, AND NATURAL LAW 143-56 (Michael Cromartie ed., 1997); Joan Lockwood O'Donovan, *Historical Prolegomena to a Theological View of 'Human Rights'*, 9 STUDIES IN CHRISTIAN ETHICS 52 (1996).
- 9 John Milbank, *Against Human Rights: Liberty in the Western Tradition*, 1 OXFORD J.L. & RELIGION 203 (2012); John Milbank, *The History of Natural Right*, CHURCH LIFE J. (January 18, 2019), <https://churchlifejournal.nd.edu/articles/the-history-of-natural-right/>.
- 10 See ALASDAIR MACINTYRE, *AFTER VIRTUE: A STUDY IN MORAL THEORY* 69-70 (1984); Mark D. Retter, *The Road Not Taken: On MacIntyre's Human Rights Skepticism*, 63 AM. J. JURISPRUDENCE 189 (2018).
- 11 NIGEL BIGGAR, *WHAT'S WRONG WITH RIGHTS?* (2020).
- 12 Vigen Guroian, *Human Rights and Modern Western Faith: An Orthodox Assessment*, 26 J. RELIGIOUS ETHICS 241 (1998); VIGEN GUROIAN, *RALLYING THE REALLY HUMAN THINGS: MORAL IMAGINATION IN RELIGION, POLITICS, AND EVERYDAY LIFE* (2005); see also *PROSELYTISM AND ORTHODOXY IN RUSSIA: THE NEW WAR FOR SOULS* (John Witte, Jr. & Michael Bourdeaux eds., 1999) (Russian Orthodox rights skepticism).
- 13 See KARL BARTH AND EMIL BRUNNER, *NATURAL THEOLOGY: COMPRISING "NATURE AND GRACE" BY PROFESSOR DR. EMILY BRUNNER AND THE REPLY "NO!" BY DR. KARL BARTH* (Peter Fraenkel trans., 2002); see also STEPHEN J. GRABILL, *REDISCOVERING THE NATURAL LAW IN REFORMED THEOLOGICAL ETHICS* 21-53 (2006) (offering detailed analysis).
- 14 QUENTIN SKINNER, *LIBERTY BEFORE LIBERALISM* (Cambridge University Press 2012) (1988).

and the United States Bill of Rights (1791) had already been defined, defended, and died for by Christians on both sides of the Atlantic.<sup>15</sup>

But Christianity is more than an (oft forgotten) historical voice in the development of modern rights talk. In my view, Christians today should remain part of broader public debates about human rights and public advocacy for their protection and implementation. I agree with some Christian skeptics who criticize the utopian idealism of some modern rights advocates, the reduction of rights claims to groundless and self-interested wish lists, the monopoly of rights language in public debates about morality and law, and the dominant liberalism of much contemporary rights talk. I also recognize that Christian believers and churches will inevitably vary in their approaches to human rights—from active involvement in litigation, lobbying, and legislation, to quiet provision for the poor, needy, and strangers in their midst. In the church, the Bible reminds us, “[t]here are varieties of gifts, but the same Spirit; and there are varieties of service, but the same Lord.”<sup>16</sup>

I further acknowledge that some rights and liberties recognized today are more congenial to scripture, tradition, and Christian experience than others. But a good number of contemporary public, penal, private, and procedural rights and liberties have deep roots in the Christian tradition and reflect the Bible’s ringing admonition that we all enjoy “the glorious liberty of the children of God.”<sup>17</sup> Family laws, for example, protect the reciprocal rights and duties of spouses, parents, and children at different stages of the life cycle. Social welfare rights speak to the basic human need for food, shelter, health care, and education—especially for vulnerable populations. Laws governing speech and the press protect the rights of persons to speak, preach, and publish. Private laws protect rights to contractual performance, property and inheritance, and the safety and integrity of our bodies, rela-

tionships, and reputations, along with the procedural means to vindicate these rights when they are threatened or breached. Criminal procedural rights ensure individuals of proper forms of arrest and detention, fair hearings and trials, and just punishments proportionate to specific crimes. Freedom of conscience and the free exercise of religion protect the essential right (and duty) of Christians to love God, neighbor, and self.

When Christians affirm such rights—in defense of themselves or others—they need not abandon their religious and moral traditions, much less defy their duty to love God and neighbor. Leading rights skeptic Stanley Hauerwas is correct to warn that rights can become a grammar of greed and grasping, of self-promotion and self-aggrandizement at the cost of one’s neighbor and one’s relationship to God.<sup>18</sup> But Christians from the start have claimed their rights and freedoms first and foremost in order to discharge the moral duties of the faith. Claiming one’s religious freedom rights to worship God, to avoid false gods, to observe the Sabbath, and to use God’s name properly enables one to discharge the duties of love owed to God under the First Table of the Decalogue. Claiming one’s rights to life, property, and reputation, or to the integrity of one’s marriage, family, and household gives neighbors the chance to honor the duties of love in the Second Table of the Decalogue—not to murder, steal, or bear false witness; not to dishonor parents or breach marital vows; not to covet, threaten, or violate “anything that is your neighbor’s.”<sup>19</sup> To insist on these Second Table rights can also be an act of love towards one’s neighbors, giving them the opportunity and accountability necessary to learn and discharge their moral duties.

Viewed this way, many rights claims are not selfish grasping at all—even if they happen to serve one’s own interests. Rights claims can reflect and embody love of God and neighbor.

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<sup>15</sup> See generally JOHN WITTE, JR., *THE BLESSINGS OF LIBERTY: HUMAN RIGHTS AND RELIGIOUS FREEDOM IN THE WESTERN LEGAL TRADITION 1-170* (2021); JOHN WITTE, JR., *THE REFORMATION OF RIGHTS: LAW, RELIGION, AND HUMAN RIGHTS IN EARLY MODERN CALVINISM* (2007).

<sup>16</sup> 1 *Corinthians* 12:4-5.

<sup>17</sup> *Romans* 8:21.

<sup>18</sup> Hauerwas, *supra* note 6, at 402–05.

<sup>19</sup> *Exodus* 20:17.

The claims of the poor and needy, the widow and the orphan, the prisoner and the stranger are, in part, invitations for others to serve God and neighbor: “As you did it to one of the least of these . . . you did it to me,” Jesus said.<sup>20</sup> To insist on the rights of self-defense and the protection and integrity of one’s body or loved ones, or to bring private claims and support public prosecution of those who rape, batter, starve, abuse, torture, or kidnap you or your loved ones is, in part, an invitation for others to respect the divine image and “temple of the Lord” that each person embodies.<sup>21</sup> To insist on the right to education and training, and the right to work and earn a fair wage is, in part, an invitation for others to respect God’s call to each of us to prepare for and pursue our distinct vocation.<sup>22</sup> To sue for contractual performance, to claim a rightful inheritance, to collect on a debt or insurance claim, to bring an action for discrimination or wrongful discharge from a job serves, in part, to help others to live out the Golden Rule—to do unto others as you would have them do unto you.<sup>23</sup> To petition the government for due process and equal protection; to seek compensation for unjust taxes or unlawful takings or searches of property; or to protest governmental abuse, deprivation, persecution, or violence—all of these are, in part, calls for political officers to live up to the lofty ideals of justice that the Bible ascribes to the political office. To sue to protect the freedoms of speech and press or for the right to vote is, in part, a call for others to respect God’s generous calling for each of us to serve as a prophet, priest, and sovereign on this earth. And to insist on freedom of conscience and free exercise of religion is to

force others to respect the prerogatives of God, whose loving relationship with his children cannot be trespassed by any person or institution.

These examples, and many others, demonstrate that human rights are not inherently antithetical to Christianity. They are part of the daily currency of life, law, and love in this earthly realm, damaged and distorted as it inevitably is. Rights and their vindication help the law achieve its basic uses in this life—the “civil use” of keeping peace, order, and constraint among its citizens even if by force; the “theological use” of driving one to reflect on one’s failings and turn to better ways of living in community; and the “educational use” of teaching everyone the good works of morality and love that please God, however imperfect and transient that achievement inevitably will be in the present age.<sup>24</sup>

To have and use rights in a fallen world does not mean that Christians must always pursue those rights to their furthest reaches. Just as judges must apply the law equitably, so Christians (and others) must pursue the lawful claim of rights equitably. Christians are often called to turn the other cheek,<sup>25</sup> to forgive debtors,<sup>26</sup> to love enemies,<sup>27</sup> and to settle disputes privately.<sup>28</sup> Such acts of faith can serve important theological and educational “uses” of their own, even without directly engaging the civil law. To love a debtor, defendant, or adversary in such ways is, in part, to “heap burning coals upon his head,”<sup>29</sup> to induce them to respect their neighbor’s person and property, and to urge them to reform their actions. To forgive an egregious felon—as Pope John Paul II forgave his would-be assassin,<sup>30</sup> or as the Amish forgave those who

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<sup>20</sup> *Matthew* 25:40.

<sup>21</sup> *1 Corinthians* 3:16.

<sup>22</sup> *Ephesians* 4:1.

<sup>23</sup> *Matthew* 7:12.

<sup>24</sup> See JOHN WITTE, JR., *GOD’S JOUST, GOD’S JUSTICE: LAW AND RELIGION IN THE WESTERN TRADITION* 263-94 (2006).

<sup>25</sup> *Luke* 6:29.

<sup>26</sup> *Matthew* 6:12.

<sup>27</sup> *Matthew* 5:44.

<sup>28</sup> *1 Corinthians* 6.

<sup>29</sup> *Romans* 12:20-21.

<sup>30</sup> Pope John Paul II publicly forgave and requested that Mehmet Ali Ağca be pardoned for an assassination attempt on May 13, 1981.

murdered their school children<sup>31</sup>—is to echo and embody a form of self-sacrifice at the heart of Christian faith.<sup>32</sup> But such acts of faith are atypical precisely because they are exceptions to the usual rules of an earthly order in which laws must be enforced if they are to be effective, and in which rights must be vindicated for the law to fulfill its appropriate civil uses and maintain a basic level of peace and order.

To say that rights are useful within the state and civil society is not necessarily to recommend the same set or reach of rights within the church. The state is a universal sovereign; the church is more limited in its membership and reach. The state has ultimate coercive power over life and limb; the church has only spiritual power over its members. The state's authority is inescapable for those who live within its borders; the church's authority rests on voluntary membership. Against the state, rights and liberties have emerged as powerful ways to protect the dignity of individuals and the integrity of social institutions from the totalitarian tendencies of those who command political authority. Within the state, rights and liberties have also emerged as an expedient means for citizens and institutions to establish boundaries and bonds with their neighbors, to protect and preserve their property and promises, to negotiate and peaceably litigate their differences, and more. Here, rights are common and useful instruments for social order, peace, and predictability.

By contrast, churches operate by different means and measures of fellowship; different norms for keeping order and peace; and different models of authority and submission, love and sacrifice, caring and sharing. Some basic rules and rights of canon law and ecclesiastical structures are comparable to those of the state. After all, churches are legal entities that deal, in part, in contracts and property, labor and employment, incorporation and procedures for

leadership and members. But rights are less central to spiritual fellowship.

Finally, to say that human rights are useful and important is not to say that rights constitute a freestanding system of morality or to render Christian moral and religious teachings superfluous. Some contemporary scholars do describe human rights as the new religion and catechism of modern liberalism, invented in the Enlightenment to replace worn-out Christian establishments. Indeed, core human rights can take on near-sacred qualities in modern societies. Moreover, ideals like "liberty, equality, and fraternity," or "life, liberty, and property," or "due process and equal protection of the law" often function as powerful normative totems.<sup>33</sup>

Modern human rights norms are better understood, however, as the *ius gentium* of our times—the common law of nations—which a variety of Jewish, Greek, Roman, Patristic, Catholic, Protestant, and Enlightenment movements have historically nurtured in the West, and which today still needs the constant nurture of multiple communities, in the West and beyond. To be sure, many formulations of human rights today are suffused with the fundamental beliefs and values of modern liberalism, some of which run counter to the cardinal beliefs of various religious traditions, including Christianity. But secular political philosophy does not and should not have a monopoly on the nurture of human rights; indeed, a human rights regime cannot long survive under the exclusive patronage of secular philosophy. For human rights are "middle axioms" of political discourse.<sup>34</sup> They are a means to the ends of justice and the common good. But the norms that rights instantiate depend upon the visions and values of human communities for their content and coherence—or, what the Catholic philosopher Jacques Maritain described as "the scale of values governing [their] exercise and concrete manifestation."<sup>35</sup>

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31 Members of the Old Order Amish Community in Barth Township, Pennsylvania, publicly forgave the perpetrator of a mass shooting at the West Nickel Mines School after he murdered five young girls and wounded five more before committing suicide on October 2, 2006.

32 Luke 23:34.

33 See WITTE, *supra* note 24, at 74-77.

34 Robert P. George, *Response*, in *A PRESERVING GRACE: PROTESTANTS, CATHOLICS, AND NATURAL LAW* 157-61 (Michael Cromartie ed., 1997).

35 Jacques Maritain, *Introduction*, in *HUMAN RIGHTS: COMMENTS AND INTERPRETATIONS* (UNESCO ed., 1949).

In order to provide exemplary values and liberating visions, however, Christian believers and churches must embody and exemplify the moral ideas that modern rights and liberties in part reflect and help individuals and institutions to realize. Like other institutions, Christian churches are not immune to the vices of their members and leaders. Yet the gross injustices, negligence, and abuses that infect too many Christian institutions today are inexcusable in light of the divine truths and moral ideals they confess. Think of the clerical abuse of minors. The embezzlement of tithes and gifts. The profligate lifestyle of some clergy. The politicization of theology. The degradation and mistreatment of women. Indifference to the poor and needy. A lack of compassion in matters of sexual orientation. Racially and economically segregated congregations. Inhospitability toward immigrants and foreigners. Wrath. Greed. Sloth. Pride. Lust. Envy. Gluttony. “Therefore you have no excuse ... whoever you are, when you judge others,” the Bible tells us; “for in passing judgment on [another] you condemn yourself, because you, the judge, are doing the very same things.”<sup>36</sup> Our failure as Christians to live up to our own truths and values rightly undercuts our moral authority in the eyes of others. Only by embracing and embodying the truths and values we profess can Christians retain the ability to call out injustices in other social spheres and institutions. Christian communities simply must do more to habitualize, institutionalize, and exemplify respect for basic human rights, especially the rights of vulnerable populations within their midst.

Martin Luther King, Jr. once said that the church “is not the master or the servant of the state, but rather the conscience of the state.”<sup>37</sup> When their own houses are in good order, churches are well situated to play this important prophetic role. Well-ordered churches, in this sense, make for effective thorns in the sides

of complacent societies and states. Healthy and vibrant churches are well situated to serve a number of other important functions within society, too. Christian communities that more fully embody the rights and duties they profess can act as a sort of ballast in otherwise turbulent contexts. Like other religious organizations, they can catalyze social, intellectual, and material exchange among citizens; trigger economic, charitable, and educational impulses; provide healthy checks and counterpoints to social and individual excess; build relationships across racial and ethnic boundaries; diffuse social and political crises and absolutisms by relativizing everyday life and its institutions; transmit cultural traditions, wisdom, and memories; provide leadership and aid amid social crises and natural disasters; form persons in the virtues and skills of civic engagement and shared decision-making processes; provide material aid to the underprivileged and downtrodden; enrich and structure family life and other important relationships; and more.<sup>38</sup> Taken together, these tasks represent a tall order for a community of fallible humans. Yet, as Dr. King reminded his listeners:

If the church will free itself from the shackles of a deadening status quo, and, recovering its great historic mission, will speak and act fearlessly and insistently in terms of justice and peace, it will enkindle the imagination of mankind and fire the souls of men, imbuing them with a glowing and ardent love for truth, justice, and peace. Men far and near will know the church as a great fellowship of love that provides light and bread for lonely travelers at midnight.<sup>39</sup>

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<sup>36</sup> *Romans* 2:1.

<sup>37</sup> MARTIN LUTHER KING, JR., *The Strength to Love*, in *A TESTAMENT OF HOPE: THE ESSENTIAL WRITINGS OF MARTIN LUTHER KING, JR.* 501 (James M. Washington ed., 1986).

<sup>38</sup> See MARTIN E. MARTY, *POLITICS, RELIGION, AND THE COMMON GOOD: ADVANCING A DISTINCTLY AMERICAN CONVERSATION ABOUT RELIGION'S ROLE IN OUR SHARED LIFE* (2000) (note especially chapter 2).

<sup>39</sup> KING, *supra* note 37, at 501.

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