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Religious Liberties and Religious Tolerance: An Agenda for the Future

*Michael K. Young**

I. INTRODUCTION

The issues relating to religious liberty and its close cousin, religious tolerance, are central not only to the peace, stability and often even quality of civil society, but to the core cluster of values that define the personal, and, in many cases, social identity of individuals within that society. In many societies, religion even plays a central role in determining what the relevant units of that society are. In short, since totalitarian governments are on the way out in many countries around the world, it becomes vitally important to examine social structures and individual and institutional value systems that will undoubtedly come to the fore as those repressive regimes lose their power and influence.

Many have examined these problems from the perspective of the religiously committed. Not surprisingly, the focus has been on how civil society should be structured to allow religions to operate with maximum freedom. The issue of religious tolerance has also been evident, though perhaps as a slightly less central theme.

II. DISTINCTIVE PERSPECTIVES ON CHURCH-STATE ISSUES

I approach this problem from a perspective that may be somewhat different from many others; it is different in two respects that may make my remarks of some passing interest.

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A. Perspective of Non-Western Experiences and Traditions

The first slightly different perspective from which I view this problem derives from my principal field of study, namely, Asia. I have spent much of my career studying Asia, especially Japan. While Japan is not a country upon which we immediately focus when thinking of the relationship between church and state—indeed, it is not a country we even consider very religious—it nevertheless has instructive lessons.

In the first place, the historical connection between government and religion in Japan is deeper and perhaps more complex than in the United States and even Europe. If you examine the origins of the Japanese state, it is clear that the first central, unifying force in Japan was basically a religious one. The first Japanese ruler that in any way exerted a unifying force and rose above the role of merely a clan leader was a queen whose principal, indeed sole, authority for governing was based on her position as head of the indigenous religion. The line of emperors who have reigned over Japan ever since derive their authority in large measure from their position as the divine successors to that queen, and exert their influence in some important part as titular head of the indigenous religion of Japan.¹ Indeed, if one traces the linguistic origins of the words used to describe governmental functions in Japan, words as basic as *politics* and *govern*, one sees that they often derive from words used for conducting religious ceremonies.

All this has important implications because both indigenous and imported religions in Japan have performed important functions in national identity formation, perhaps even more so than in traditional Western religious communities. Since the role of religion in forming national identity is of increasing significance around the world, especially in Eastern Europe and the former Soviet Republics, it becomes useful to examine the experience of countries for which this has been true for at least generations, if not millennia.

The importance of the Asian perspective in terms of international peace and stability also cannot be overstated. Even as recently as the 1930s and 1940s, religion—or at least its Japanese version—was an extremely important political tool, the manipu-

1. See HERBERT H. GOWEN, AN OUTLINE HISTORY OF JAPAN 38-43, 64-66 (1927).

lation of which contributed significantly to the extreme Japanese nationalism of that period and ultimately to Japan's actions leading up to and during World War II.²

In short, as the relationship between religion and state changes during this tumultuous period, we must look to models and experiences in countries other than those that fall within the traditional Western canon for important lessons, both good and bad. This is obvious with respect to Islam. It is less obvious with respect to Asia, but, I believe, just as important.

B. Human-Rights Perspective

The second slightly different perspective from which I consider the topic at issue derives from the fact that my principal exposure to these problems is not through the prism of religious liberties as seen by the churches and their adherents, but rather from the viewpoint of someone who has participated in various international human-rights activities. I have had the opportunity of serving in the U.S. State Department for a few years,³ in which capacity I participated in a number of international negotiations. Some of these negotiations involved human-rights issues, particularly in the context of the Conference on Security and Co-operation in Europe.⁴

In that capacity and in light of subsequent work I have done on international human rights, it seems to me that religious-liberties advocates have four difficult but important tasks ahead of them. These four tasks are: (1) development of a doctrinal basis for religious tolerance and religious liberties, (2) cooperation in order to develop a generally agreed upon framework for religious liberties and religious tolerance, (3) closer cooperation between religious-liberties advocates and international human-rights ad-

2. See Eric N. Weeks, *A Widow's Might: Nakaya v. Japan and Japan's Current State of Religious Freedom*, 1995 B.Y.U. L. REV. 691, 693-95.

3. Ambassador for Trade and Environmental Affairs, 1992-93; Deputy Under Secretary for Economic and Agricultural Affairs, 1991-92; Deputy Legal Adviser, 1989-91. This paper represents my own personal reflections, and nothing herein represents official U.S. government views.

4. The Conference on Security and Co-operation in Europe, now known as the Organization on Security and Co-operation in Europe, is the body charged with implementing the Helsinki process. For one of the most comprehensive studies of this process and the human-rights documents that it has generated, see *THE CONFERENCE ON SECURITY AND CO-OPERATION IN EUROPE* (Arie Bloed ed., 1993) [hereinafter CONFERENCE].

vocates, and (4) development of persuasive arguments and rationales to encourage countries to champion religious liberties and religious tolerance both domestically and internationally. I believe the successful completion of each of these tasks will considerably strengthen the position of religious-liberties advocates and make them appreciably more effective and influential in achieving religious liberties and religious tolerance around the world.

As a preliminary matter, it is important to stress that different individuals in the religious-liberties advocacy community are already undertaking some of these tasks, in some cases with considerable success.⁵ Nevertheless, I think it useful to consider these tasks together because each contributes to successful achievement of the others in important ways. Moreover, in my judgment it is important that everyone in the religious-liberties advocacy community understand all four tasks and contribute in some way to their accomplishment. Let me examine each in turn.

III. ADVANCING THE CAUSE OF RELIGIOUS LIBERTIES AND RELIGIOUS TOLERANCE: FOUR TASKS

A. *Development of a Doctrinal Basis for Religious Tolerance and Religious Liberties*

First, in order to ensure that the religious perspective is taken seriously by governments and the international commu-

5. For example, the conference organized by the Emory Law and Religion Program in October 1994 and resulting publications represent outstanding work on the doctrinal basis of religious human rights. A collection is found in *RELIGIOUS HUMAN RIGHTS IN GLOBAL PERSPECTIVE: RELIGIOUS PERSPECTIVES* (John Witte, Jr. & Johan D. van der Vyver eds., 1996) [hereinafter *RELIGIOUS PERSPECTIVES*] and *RELIGIOUS HUMAN RIGHTS IN GLOBAL PERSPECTIVE: LEGAL PERSPECTIVES* (Johan D. van der Vyver & John Witte, Jr. eds., 1996) [hereinafter *LEGAL PERSPECTIVES*].

Many nongovernmental organizations have been working actively for years to distill consensus on religious human-rights issues. See ROBERT TRAER, *FAITH IN HUMAN RIGHTS: SUPPORT IN RELIGIOUS TRADITIONS FOR A GLOBAL STRUGGLE* (1991).

Forging better links between religious-liberties advocates and other, more secular human-rights organizations, has been a significant focus of efforts at the recently established Program on Religion, Human Rights, and Religious Freedom at Columbia University.

The development of persuasive arguments for religious freedom is, of course, a major objective of scholars working in the field of religious liberty. A recent valuable contribution is W. Cole Durham, Jr., *Perspectives on Religious Liberty: A Comparative Framework*, in *LEGAL PERSPECTIVES*, *supra*, at 1.

nity in general, and to ensure that the religious perspective contributes to the overall international movement for universal human rights, it is imperative that we think clearly and concretely about the fundamental doctrinal basis for tolerance within the various religious traditions and within each specific religion. The potential is great for intolerance both within and between religious communities, as well as between believers and nonbelievers.

Many religions start from the premise that they not only possess truth, but that they possess a particularly important kind of truth. Nonbelievers who spurn this truth may bring down upon themselves all sorts of dire consequences. Indeed, in many religions, acting contrary to this truth is the very definition of evil. The entire purpose of the religion is to reveal this especially important truth.

Not surprisingly, this does not lead easily to a mind-set that is graciously tolerant of those who reject this truth or otherwise adopt other truths. It does not take even a modestly sophisticated knowledge of world history to realize that all too often the affection adherents have for their truth far outstrips their toleration of religious deviation or of the rejection of particular religious tenets. History is littered with the dead bodies of "heretics," "pagans," and "infidels."⁶

Moreover, this is not merely an intellectual or theoretical problem. During the past year, I have directed a program on international human rights and religious liberties at Columbia University. Under the auspices of this program, we have invited ten religious-liberties or human-rights advocates from Eastern Europe and the republics of the former Soviet Union to spend four months at Columbia. I have learned many things from this program, but one of the most startling revelations is the extent to which many of the participants have been reluctant to extend to minority religions all the rights and protections that they would extend to majority religions.

The motivation for such discrimination is not hard to find. Understandably, all feel some affection for their own belief system. More importantly, when that belief system is shared by the

6. For an excellent discussion of this problem in the Christian context, see Brian Tierney, *Religious Rights: An Historical Perspective*, in *RELIGIOUS PERSPECTIVES*, *supra* note 5, at 17.

vast majority of fellow countrymen, the belief system itself begins to play some—possibly a very great—role in the formation of national identity. The effective formation of national identity, moreover, is a particularly important task in many of these countries, as they try to carve out for themselves a distinct national identity after years of oppression and suppression. Hence, the role of the traditional national religion may become particularly important in this regard. Preferences to a particular majority religion are viewed not as discrimination, but rather as an important component of the nation-building process.

Nevertheless, whatever reasons are used to justify such preferences and forms of discrimination, their very existence substantially undermines the goal of true religious liberty and otherwise reduces the efficacy of pleas for religious liberties. In order to create any definition of religious freedom which can be universalized, it is imperative that each religion develop more consistent doctrinal bases for tolerance of other belief systems. Majority religions must work to define a set of principles that they would be just as happy to have applied to them if they were minority religions. Virtually all major religions have internal norms that are similar or equivalent to the "Golden Rule." It is becoming increasingly vital for believers to develop these doctrinal resources within their respective traditions into a coherent, consistent philosophy that can serve as the basis for defending their particular views of the appropriate scope of freedom to be granted to religious beliefs and activities.

This is important both for reasons of self-interest, narrowly defined, and for reasons of effective and successful advocacy. First, virtually every majority religion is a minority religion somewhere else.⁷ Thus, establishing principles that will provide protection for a religion even when it is not the majority religion is important, even for religions that are in a substantial majority somewhere in the world.

Second, and perhaps more importantly, it will not be possible for any definition of religious liberty that does not adequately protect the interests of members of other religions or nonbelievers to gain broad-gauged international support. And without broad-gauged international support, the definition of the appropriate scope and degree of religious freedom will necessarily be

7. See Durham, *supra* note 5, at 1, 2.

left completely to the internal political processes of each country—a result that leaves much to be desired, at least if history is any guide.

Of course, I do not mean to suggest that it is easy to develop a coherent, consistent set of principles defining the appropriate scope of both religious liberties and religious tolerance. Let me give just a couple of examples that highlight some of the difficulties.

One recurrent difficulty is defining religion for purposes of determining who is entitled to entity status and therefore eligible for various advantages granted to religious groups. My aim is not to wade into this incredibly difficult theoretical morass,⁸ except perhaps to note the good sense of the Human Rights Committee's recent reminder that definitions should not be manipulated in discriminatory ways.⁹ Some have discussed the importance of defining religious entities with precision, so the proper degree of protection can be given to the proper entities. Of course, there is something slightly circular about this entire process. That is, in order to arrive at the proper definition of what entities are entitled to religious protection or even to determine whether we need to define religion at all, we must first define the precise scope and nature of protections that we intend to give religious entities once we define them.

If, for example, the fund-raising activities of religious bodies are not taxed or if donations to religious entities earn the donor a tax deduction, then it is terribly important to be precise in the

8. For one of the more recent treatments of this intimidating area in U.S. constitutional law, see John Witte, Jr. & M. Christian Green, *The American Constitutional Experiment in Religious Human Rights: The Perennial Search for Principles*, in *LEGAL PERSPECTIVES*, *supra* note 5, at 497.

9. The Human Rights Committee has stated:

Article 18 protects theistic, non-theistic and atheistic beliefs, as well as the right not to profess any religion or belief. The terms belief and religion are to be broadly construed. Article 18 is not limited in its application to traditional religions or to religions and beliefs with institutional characteristics or practices analogous to those of traditional religions. The Committee therefore views with concern any tendency to discriminate against any religion or belief for any reasons, including the fact that they are newly established, or represent religious minorities that may be the subject of hostility by a predominant religious community.

General Comment No. 22, U.N. GAOR, Hum. Rts. Comm., 48th Sess., 1247th mtg. ¶ 2, U.N. Doc. CCPR/C/21/Rev.1/Add.4 (1993).

definition to make sure that only bodies that are truly religious are defined as religious entities. Otherwise, it becomes much too easy for unscrupulous individuals to avoid taxes simply by creating a nominally religious entity to conduct business or to provide funds for normal, daily expenses. Of course, in the event we do not choose to provide such tax benefits to religions or their adherents, then we can be rather casual in our definition of religion. Taking away such benefits has significant societal costs, and so I am not suggesting that as a solution. Rather, I am only making the point that in determining the appropriate degree of religious liberty, it is imperative to consider the inescapable relationship between the kinds of rights and benefits to which we think a religious entity and its adherents are entitled and the precise group of bodies and individuals entitled to those rights and benefits.

Another example is in the area of proselyting. Given the relationship of proselyting to freedom of belief and expression, I believe individuals generally ought to have a relatively unrestricted right to proselyte. However, the degree to which individuals should be permitted freely to visit other countries for such purposes may raise different concerns for a government. Excluding someone from a country solely for his or her religious beliefs or because he or she intends to propound those beliefs is deeply problematic. Conversely, requiring a country to admit someone merely because they claim an intent to proselyte is also problematic. Accordingly, it is important to find some way to honor the legitimate desire of individuals to promulgate their religion in every corner of the world, while also accommodating the need of governments to regulate the flow of immigration.

None of these problems have easy answers, but it is critical for religions to address these issues in a coherent, consistent, and rigorous fashion and develop answers that can be rationally defended in various domestic and international arenas. If the religious groups themselves do not provide credible solutions in these areas, alternative solutions will be arrived at by secular authorities who may be less sensitive to genuine religious needs.

B. Cooperation in Order to Develop a Generally Agreed Upon Framework for Religious Liberties and Religious Tolerance

The second task for religious-liberties advocates is related to the first. I believe that religions *need to work together* to develop doctrinal, philosophical, and legal answers to the questions posed above. In observing successful international movements, such as the international human-rights movement and the international environmental movement, it is clear there is great strength in unity and cooperation. When a large number of organizations—especially organized religions, which represent large numbers of deeply committed adherents—work together, their power seems to multiply exponentially.

A good example of this is the domestic environmental movement in the United States. From the early 1970s until the mid-1980s, that movement, though comprised of many different organizations, worked very closely together, advocating similar goals and often even employing similar strategies. As a result, the intensity and degree of impact of that movement was almost unprecedented in postwar U.S. history. More recently, the movement has begun to divide on important issues and new environmental initiatives have declined proportionately.

In short, to the extent that religious organizations can develop common goals and work to advance mutually agreed upon agendas, their chances of achieving those goals and their power within the international community will increase exponentially. On the other hand, to the extent religious organizations espouse quite different agendas and goals, especially agendas and goals that might pit one group against another or are capable of being used to pit one group against another, then the likelihood of accomplishing any of those goals will be dramatically reduced. Thus, the second task is to find ways to work together to develop common goals and, once developed, to achieve those goals.

C. Closer Cooperation Between Religious-Liberties Advocates and International Human-Rights Advocates

The third task for religious-liberties advocates is to find better ways to work more closely with the international human-rights community. Frankly, I have been struck by how little dialogue and cooperation occurs between those who champion the

cause of religious liberties and those who advocate international human rights more generally.

At first blush, one might think these two groups would naturally, indeed inevitably, form strong cooperative coalitions. Generally, the international human-rights community has quite effective monitoring mechanisms throughout the world. Moreover, that community has been quite successful in mobilizing political pressure on various governments, both to encourage some governments to pressure other countries to improve their human-rights behavior and to persuade other governments to take steps to improve human rights.¹⁰

The religious-liberties community, on the other hand, also has an important contribution to make to human rights. After all, perhaps the first internationally recognized human right, established in the Treaty of Westphalia, involved religious tolerance. Moreover, for many people, the most central concerns involve their religious beliefs and activities and, perhaps, above all other rights, they want those rights protected. As we have seen throughout history and especially during the past few years, tremendous violations of the most basic human rights frequently occur in conflicts that in some large measure are religiously defined, and such conflicts seem to be increasing in both intensity and number throughout the world. One need only think of Northern Ireland, Lebanon, Bosnia, and Israel, to name some recent flash points. Finally, it is clear that no coherent definition of human rights is possible without a sophisticated understanding of the role religion plays in people's lives and in the societies within which they live. Any articulation of human rights that does not pay adequate attention to the religious issues that make up the life experience and value systems of so many people in the world necessarily rings very hollow and has little chance of achieving even modest acceptance, much less widespread compliance.

Despite the obvious importance of cooperation, the degree of distance between these two communities is striking. Though reli-

10. For example, nongovernmental organizations such as Amnesty International, Human Rights Watch, the International Commission of Jurists, the Lawyers Committee for Human Rights, and the International League for Human Rights are allowed to express their concerns to the U.N.'s Commission on Human Rights. FRANK NEWMAN & DAVID WEISSBRODT, *INTERNATIONAL HUMAN RIGHTS: LAW, POLICY, AND PROCESS* (2d ed. 1996).

gious liberty is central to most people's very being, the international human-rights community often merely lumps it into the category of freedom of thought, belief, or expression. Moreover, the international human-rights community, though often populated by those with a strong religious identification and often even a position in a religious institution, nevertheless rarely seems to draw on the intellectual or logistical resources of the churches in its quest to advance human rights.¹¹

Similarly, the religious-liberties community often mistrusts the strong secular and humanistic thrust of the international human-rights community and eschews either identification with or participation in the movement. Just as religious believers in the United States often mistrust the motivations of the American Civil Liberties Union, so internationally, believers are often skeptical about the real aims of international human-rights norms.¹² Tentative steps have been made by members of both communities, but they often seem too little, too late.

In my judgment, it is imperative that the religious-liberties community and the human-rights community engage in a much deeper, more meaningful dialogue, establish strong ties, and develop much more systematic and institutionalized patterns of interaction. Both communities would benefit substantially.

The international human-rights community could draw on the strong local organizations of many religions, substantially enhancing their ability to monitor and even implement change at the local level. The human-rights community could also profit from the intellectual and philosophical insights that religious-liberties advocates offer. After all, it is hard to imagine anything that goes more to the core of a people than their fundamental beliefs about what defines them, about the moral precepts on which they base their lives, about how they live their lives, about how they raise and teach their families, and about the basic value system they use to define their relationship with their fellow man and the world around them. The international human-

11. I do not want to understate the significant contributions religious groups have made to the elaboration of human rights. Such contributions are discussed in TRAER, *supra* note 5. My point, however, is that all too often the human-rights movement is shaped primarily by secular forces and players, and religious believers are often uncomfortable with, and mistrustful of, interactions with these groups.

12. This is at least part of what lies at the root of Muslim opposition to claims that human-rights norms accepted in the West are genuinely universal.

rights community clearly would be far richer intellectually and much more powerful morally if it included these issues more explicitly and centrally in its human-rights dialogue.

At the same time, religious-liberties advocates could benefit substantially from the powerful and effective lobbying organizations and know-how possessed by the international human-rights community. International human-rights groups tend to be relatively well-organized, strong, vocal, and visible. The human-rights community has also developed very effective platforms from which to argue both domestically and internationally for all kinds of human rights. It would greatly benefit religions if religious-liberties issues were placed on the agenda of the international human-rights organizations and those organizations brought to bear their considerable monitoring and lobbying networks to address those problems. Churches could learn a great deal from the international human-rights community about how to work on the international scene, how to influence governments to expand their religious liberties and to encourage other countries to do likewise, and how to become more effective *international* advocates. In short, both communities would become substantially stronger and more effective if they could find ways to work together.

D. Development of Persuasive Arguments and Rationales to Encourage Countries to Champion Religious Liberties and Religious Tolerance Both Domestically and Internationally

The final task that needs attention is to develop arguments and rationales for religious freedom that are much more directed to government entities and the particular needs and interests of those entities. Part of this analysis entails a somewhat more sensitive examination of what precise protections and benefits should be available to religions across all cultures and through all countries. It is imperative to work on the equally important task of determining how one persuades a government that it is in its interest to grant those protections and benefits.

In accomplishing this task, it is first important to develop arguments regarding religious liberties that are persuasive to governments. These arguments might take two forms. First, some persuasive appeal needs to be made to governments such as the United States and members of the European Union, which

are capable of influencing other countries that are currently revising their laws dealing with religion (or that should be revising their laws). In an earlier era, such arguments might not have been so important because countries had generally agreed that the purely domestic behavior of a country was, by and large, not an issue of concern to other countries. One of the momentous accomplishments of the Helsinki Principles of the Conference on Security and Co-operation in Europe was to place domestic behavior with respect to human rights on an international agenda and to make it an appropriate subject of discourse between countries.¹³ With human rights secured as an appropriate subject of discussion between countries, it is incumbent on the religious-liberties community to also put freedom of religion squarely on the agenda.

This is not an easy task. During my period of service in the U.S. government, I was struck by the relative difficulty of placing issues of freedom of religion high on the human-rights agenda. This was confirmed in more recent conversations in both Washington and Geneva with U.S. government officials deeply involved in human-rights issues. Even when human rights are front and center in the dialogue between two countries, religious freedom seldom surfaces in a prominent way.

Yet reasons why religious freedom should be a central tenet of U.S. and European human-rights policy abound. The potentially destructive effect of religiously based struggles is clear to all. I also strongly suspect that any attempt a government might make to democratize, to provide for a society that is based upon and rewards individual initiative, is doomed to failure if that government does not provide ample scope for people to make religiously based choices and to participate freely in religiously based activities. History also teaches us that without adequate protections for all religions, a state may capture one particular religion and use it as an instrument of state control and oppression, a result that is almost invariably destabilizing in the long run and certainly dehumanizing in the short run.

I could list other reasons why, if the United States and Europe care about the kinds of societies that are developing in countries on their borders and elsewhere in the world, it is critically important to advance the cause of religious liberties. That

13. See CONFERENCE, *supra* note 4, at 65.

is not the purpose of this paper, however. Rather, the purpose is to emphasize that we must be about the task of developing such arguments and then effectively presenting them to the United States and other governments, so that the importance of religious liberties becomes clear to these governments and they, in turn, can champion this cause in the international arena.¹⁴

At the same time we are developing arguments to persuade governments to take up the cause of international freedom of religion, we must also develop the case for each country to establish internally a set of strong but balanced protections for religious belief, organization, and activity. We must show why it is in their interest to foster religious liberties and religious tolerance. We must show why religions are, at best, a weak nation-building device and, in the event religions are used that way, adverse consequences are inevitable. We must show them how to construct a framework for religious liberties that advances national goals, rather than running counter to them. We must show countries how vibrant and free religious communities can make their nation strong and governance easier, rather than the other way around. In short, we must work diligently with these countries to show them how to create frameworks for religious liberties and tolerance that are in their interest. Then, we must work with them to create and implement these frameworks.

IV. CONCLUSION

By my remarks, I do not mean to suggest that these four tasks are currently not on the agenda of religious-liberties advocates. I do think, however, that we all need to be more conscious of these tasks and direct more of our efforts towards their accomplishment. I also think we need to work in a more coordinated fashion, each being conscious of the overall agenda, our particular role in advancing that agenda, and the work others are doing to accomplish their part of the agenda. Only then, do I believe, ideas of religious liberties and religious tolerance will

14. An example of a good start toward this goal is the recent creation of the State Department's Advisory Committee on Religious Freedom Abroad. See Charter of the Department of State Advisory Committee on Religious Freedom Abroad (approved by Patrick F. Kennedy, Acting Under Secretary of State for Management (30 Sept. 1996)).

have a chance of assuming the same prominence in international dialogue and international practice that other human-rights principles have achieved.

