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STUDENT ARTICLES

RELIGIOUS HUMAN RIGHTS AND THE INTERNATIONAL HUMAN RIGHTS COMMUNITY: FINDING COMMON GROUND—WITHOUT COMPROMISE

MICHELLE L. MACK*

PROLOGUE: THE PERSONAL AND PROFESSIONAL DILEMMA

As a Christian advocate for religious human rights, I am acutely aware of the religious justifications for my position. However, as a Christian advocate for religious human rights, I am also aware that many who share my religious beliefs do not share my concern for human rights. Furthermore, as a Christian advocate for religious human rights, I am likewise aware of the criticism and hostility my Christian perspective engenders within some segments of the secular human rights community.

Individuals on both “sides” of the debate may be accused of a lack of understanding or tolerance for the perspective of the other. For example, concerning my commitment to human rights advocacy, one Christian asked me: “How did you get involved with those communists?” Similarly, upon learning of some of my conservative Christian beliefs, co-workers in a secular human rights organization shuddered to think that I might have anything in common with “the ‘religious right’ bigots.”

* B.A., Wheaton College, Illinois, 1993; J.D. Candidate, 1999, LL.M. Candidate, 2000, Notre Dame Law School. I dedicate this Note to all persons living—and dying—under conditions of religious persecution throughout the world, and to all who dedicate their efforts to the promotion and protection of religious human rights. I also wish to express my appreciation to my parents, Wesley and Margaret Mack, for their examples of love, faith, compassion, and Christian witness in all settings; to Professors Paolo Carozza, Steven Smith, and Rev. John Pearson, C.S.C., for their insightful suggestions regarding this Note; and to Garth Meintjes, Associate Director of The Center for Civil and Human Rights, for his example of commitment to justice, and for the opportunity to remain active in the promotion of human rights, while here at Notre Dame Law School.

I do not attribute these extreme reactions to each Christian or non-Christian who knows of my dedication to the field of human rights, or even to the majority of those I have encountered. Indeed, perhaps more troubling and more frequent than presumptive conclusions are the blank stares—Christians who ask, with sincere ignorance, “What do you mean by human rights?” or “Why should I care?”¹—or secular human rights advocates who stare at me in questioning disbelief, amazed to meet in me a species they presumed to be either extinct or non-existent.²

Finding my identity in both “camps,” mine is a uniquely difficult position—truly a “personal and professional dilemma.”³ As Kent Greenawalt has pointedly stated:

With some uncertainty and tentativeness, I hold religious convictions, but I find myself in a pervasively secular discipline. My convictions tell me that no aspect of life should be wholly untouched by the transcendent reality in which I believe, yet a basic premise of common legal argument is that any reference to such a perspective is out of bounds.⁴

How, therefore, should I rely on my religious convictions and seek support from within my community of faith, and at the same time work in a field seemingly dominated by either secularists or those of a more liberal or nominal religious perspective, without ostracizing myself from either side? My faith is immutably inte-

1. In my personal experience, Christians are becoming not only more aware of, but also more active in advocacy of human rights, especially with regard to the persecuted Christian church around the world. See discussion, *infra* Part II.B, III.C.

2. A parallel may be drawn between the traditional secular human rights community and academia, as described by Sanford Levinson: “[M]y life in the elite legal academy has been basically devoid of contact with committed Christians, especially evangelical Protestants. One can count literally on the fingers of one hand the number of publically visible Protestant evangelicals who hold tenured positions at America’s ‘leading’ law schools.” Sanford Levinson, *Some Reflections on Multiculturalism, “Equal Concern and Respect,” and the Establishment Clause of the First Amendment*, 27 U. RICH. L. REV. 989, 996 (1993). Relating this observation to the human rights community, must we assume that very few committed Christians are active participants in the field of human rights? Or is it more likely that the committed Christians who are involved opt not to discuss their faith or the religious rationale for their involvement? My concern that the latter is the case contributes to my motivation for writing this Note.

3. KENT GREENAWALT, *RELIGIOUS CONVICTIONS AND POLITICAL CHOICE* 5 (1988) [hereinafter GREENAWALT, *RELIGIOUS CONVICTIONS*]. In describing his dilemma, Greenawalt asks the following questions: “How far am I appropriately guided by religious perspectives in my political decisions? How far are the reasons I put forward for my actions, in terms of political advocacy, appropriately religious?” *Id.* at 9.

4. *Id.* at 5.

gral to who I am, what I do, where I go, and how I live. Any suggestion that I put aside my faith and limit my decisions and self-expression to secular reasoning and terminology, I consider impossible.

Perhaps rather than consider my position a difficult one, I should regard it as privileged. When met with presumptions, misconceptions, or lack of understanding on either side, my dual identity—Christian and human rights advocate—might serve to educate, to familiarize, or to “humanize” or put a face to an as-of-yet unencountered or misunderstood phenomenon. Perhaps by drawing from both perspectives I can in some small way help to bridge the chasm between the factions. More significantly, I may succeed in identifying “common ground” that will help move the pursuit of religious human rights one step closer to both justice and truth.⁵

I. INTRODUCTION

The primary purpose of this Note is to explore the extent to which it is either possible or effective for me to rely upon and express my identity as a Christian, as I advocate in the secular arena for the promotion and protection of religious human rights. In order to reach this objective, I first discuss the issue of religious human rights from a general perspective. Part II, therefore, provides a foundational explanation of the meaning of “religious human rights,” and then discusses the current status and protection of these rights. Part III moves to a discussion of the relationship between the traditional international human rights community and religious advocates of religious human rights. My intent is to provide for the reader an understanding of the setting in which I find myself—often caught in the gap between the two sectors. Part III also identifies the causes of the current lack of collaboration between the two groups, and discusses what both sectors have to offer, both to one another and to the promotion of religious human rights.

Parts IV and V turn from this objective analysis of the field of religious human rights to what may be the most distinctive and potentially most helpful element of this Note—a subjective con-

5. Concerning justice and truth, Greenawalt states: “The appropriate place of all these sorts of grounds turns partly on the possibility of resolving political problems on the basis of shared premises of justice and shared criteria for determining truth.” *Id.* In this statement, Greenawalt challenges the presumption that justice and truth are merely a desired end result; greater potential for success follows when these commonly shared principles are integrated as part of the solution.

temptation regarding my role as a Christian in this field. Part IV describes the religious, and more specifically, the Christian justification or basis for the promotion and advocacy of religious human rights. Part V then considers whether I must “secularize” my views in order to be an effective advocate for religious human rights, or whether I may (or more strongly, whether I *should*) continue to synthesize my religious rationale into my public expression, as I work within the secular human rights community.

My conclusion is that I must fully retain both identities—and further, the two must be fully integrated into both my private reasoning and public expression. In order to be an effective advocate to those who do not share my religious perspective, I must learn to express what I believe in secular terms. I should not, however, hide behind this necessarily secularized language or deny that mine is a uniquely Christian perspective. Doing so will only further entrench the misconceptions and presumptions that currently prevent the Christian and the secular advocates from truly working *together* to fight oppression and seek justice.

I believe that only through the total integration of my Christian foundation with my attempts to identify shared common ground will my efforts be truly effective—in the short-term by gaining support from both sides and in the long-term by increasing understanding to help forge a partnership better able to fight for justice and the elimination of religious persecution.

II. RELIGIOUS HUMAN RIGHTS

A. *What are “Religious Human Rights”?*

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

Universal Declaration of Human Rights⁶

Religious liberty, also referred to as freedom of religion or religious human rights, is expressly recognized or protected in every major international human rights instrument.⁷ Indeed,

6. Universal Declaration of Human Rights, Article 18, G.A. Res. 217 A (III), U.N. Doc. A/810, at 71 (1948), *reprinted in* BASIC DOCUMENTS ON HUMAN RIGHTS 21, 25 (Ian Brownlie ed., 1992) [hereinafter BASIC DOCUMENTS].

7. Freedom of religion is provided for in the following: Articles 1(2) and 55(c) of the U.N. Charter, Article 18 of the 1948 Universal Declaration of Human Rights, Article II of the Convention

freedom of religion as a fundamental right is included in covenants—international and domestic—signed to by almost every nation, worldwide.⁸ Although the level of protection afforded religious rights may vary from country to country,⁹ “the denial of religious liberty is almost everywhere viewed as morally and legally invalid.”¹⁰

The focus of inquiry concerning whether an act of persecution is religious persecution *per se* is whether the victim's religious belief (or non-belief)¹¹ is a significant component of the persecution suffered. This inquiry extends more deeply than simply whether the persecuted individual is a religious person. For example, the following instances of abuse do not constitute reli-

on the Prevention and Punishment of the Crime Genocide, Article 9 of the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms, Article 1 of the 1950 UNESCO Convention Against Discrimination in Education, Article 4 of the 1965 International Convention on the Elimination of all Forms of Racial Discrimination, Article 18 of the 1966 International Covenant on Civil and Political Rights, Article 12 of the 1969 American Convention on Human Rights, Principle VII of the 1975 Final Act of the Helsinki Conference on Security and Cooperation in Europe, Article 8 of the 1981 African Charter on Human and Peoples' Rights, Article 7 of the International Convention on the Elimination of All Forms of Discrimination Against Women, Article 1 of the 1981 Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, and Article 14 of the 1989 Convention on the Rights of the Child.

Irwin Colter, *Jewish NGOs and Religious Human Rights: A Case Study*, in RELIGIOUS HUMAN RIGHTS IN GLOBAL PERSPECTIVE: RELIGIOUS PERSPECTIVES 235, 235-36 (Johan D. van der Vyver & John Witte, Jr. eds., 1996) [hereinafter RELIGIOUS PERSPECTIVES].

8. See Jimmy Carter, *Preface*, in RELIGIOUS HUMAN RIGHTS IN GLOBAL PERSPECTIVE: LEGAL PERSPECTIVES ix (Johan D. van der Vyver & John Witte, Jr. eds. 1996) [hereinafter LEGAL PERSPECTIVES].

9. The various levels of protection in different countries may depend on elements such as the following:

[T]he stability of political regimes, the nature and history of traditional relationships between church and state, the degree of religious pluralism at the local level, the nature of the dominant religion or religions and its (their) internal commitment to religious liberty and toleration, the history of interactions between religious groups, and a variety of other factors.

W. Cole Durham, Jr., *Perspectives on Religious Liberty: A Comparative Framework*, in LEGAL PERSPECTIVES, *supra* note 8, at 1, 2.

10. James E. Wood, Jr., *An Apologia for Religious Human Rights*, in RELIGIOUS PERSPECTIVES, *supra* note 7, at 455, 456.

11. “[I]t is now generally accepted that ‘religion or belief’ includes theistic, non-theistic, and atheistic beliefs.” ELIZABETH ODIO BENITO, ELIMINATION OF ALL FORMS OF INTOLERANCE AND DISCRIMINATION BASED ON RELIGION OR BELIEF para. 13, U.N. Doc. E/CN.4/Sub.2/1987/26 (1987).

gious persecution: the death of hundreds of thousands of Tutsi Christians in Rwanda, where the genocide was ethnically based;¹² the murder of priests and nuns engaged in human rights work in Central America, where political affiliation determined who would be subject to persecution;¹³ and the discrimination of members of the Tamil minority in Sri Lanka, who are discriminated against, not because of their religious beliefs, but because of their ethnicity.¹⁴

Religious identity alone will seldom be the only indicator of religious persecution, given that "religion is usually intertwined with ethnic, political, territorial and economic concerns."¹⁵ Therefore, to determine whether discrimination or persecution is a violation of a religious human right, one must ask the question: If the victim were of a different religion or held other beliefs, would he or she still be the subject of the persecution?¹⁶ If yes, the persecution is not a violation of religious human rights

12. See PAUL MARSHALL, *THEIR BLOOD CRIES OUT* 250-51 (1997).

13. See *id.* at 251.

14. See David Little, *Studying "Religious Human Rights": Methodological Foundations*, in LEGAL PERSPECTIVES, *supra* note 8, at 45, 55.

15. Paul Marshall, *The Persecution of Christians in the Contemporary World*, Presentation to the Advisory Committee to the Secretary of State on Religious Freedom Abroad (July 2, 1997) (on file with author) [hereinafter Marshall, ACRFA Presentation].

In the same way that factors other than religion may indicate religious persecution,

[r]eligious persecution is often an indicator that other human rights are also at risk. Violations of religious freedom often signal other human rights violations. Religious persecution creates a climate of fear and intolerance, gives license to authoritarianism, embitters and sometimes radicalizes persecuted groups, encourages irredentist tendencies among religious minorities and majorities who fear the violation of their rights by others, and foments instability.

ADVISORY COMM. ON RELIGIOUS FREEDOM ABROAD, INTERIM REPORT TO THE SECRETARY OF STATE AND TO THE PRESIDENT OF THE UNITED STATES 14 (Jan. 23, 1998) <http://www.state.gov/www/global/human_rights/980123_acrfa_interim.html> [hereinafter ACRFA REPORT ON RELIGIOUS FREEDOM].

Other human rights violations often associated with religious persecution include the following:

[T]he right to life, liberty and security of the person; the right to freedom from torture or cruel, inhuman or degrading treatment or punishment; the right to freedom from discrimination; the right to a fair and public hearing by an independent and impartial tribunal; the right to freedom of movement and residence; the right to freedom of opinion and expression; freedom of assembly and association; and the right to privacy.

Johan D. van der Vyver, *Introduction*, in LEGAL PERSPECTIVES, *supra* note 8, at xi, xlv.

16. See Marshall, ACRFA Presentation, *supra* note 15.

per se, although this in no way diminishes the severity of the violation in question.¹⁷

It is important to recognize that religious human rights speak to both negative and positive freedoms. Religious liberty is most commonly considered a negative freedom, protecting against forced conversions or coerced adherence to certain beliefs.¹⁸ However, the positive freedoms protected by religious liberty—that is, the freedom to engage in activity or actions as required by religion's precepts¹⁹—are far more prevalent on a daily basis. Therefore, in the same way that religious human rights standards forbid persecution on the basis of a victim's identity as a religious person, persecution limiting positive freedoms must also be prohibited. Religious freedom must necessarily guarantee the freedom to choose a religion (or no religion at all) and to live according to the dictates of that religion. In summary, "[r]eligious human rights require the equality of all religions, as well as irreligion, before the law, and that, according to the law, a citizen neither enjoys advantages nor suffers disadvantages because of one's religious faith or identity."²⁰

One unanswered question thus far is this: To what universal standard of freedom of religion, if any, should all countries be held?²¹ As the answer to this question is a work in progress and is outside the scope of this Note, it is sufficient here to recognize

17. "[N]ot for a second should we forget that it is real persecution and that real people, Christians and others, suffer it." MARSHALL, *supra* note 12, at 250.

18. See Tamás Földesi, *The Main Problems of Religious Freedom in Eastern Europe*, in LEGAL PERSPECTIVES, *supra* note 8, at 243, 261 (as a negative freedom, religious freedom "expresses the conviction that the citizen need not belong to a church or religion, or conversely, that no one is compelled to identify with certain ideologies, ideas, or convictions").

19. Discussed in the context of Christianity, "[s]ince religious freedom involves the freedom to live out one's religion, it is also a question of what Christians' faith leads them to be and to do, so that their actions rather than their identity can become the object of others' rage." MARSHALL, *supra* note 12, at 251.

20. Wood, *supra* note 10, at 455. Describing both positive and negative freedom, Wood states:

By religious human rights are meant the inherent right of a person in public or in private to worship or not to worship according to one's own conscience, understanding, or preferences; to profess and to propagate one's faith; to join in association with others of like faith; and to change one's religious identity—all without hindrance, molestation, or discrimination.

21. According to Marci A. Hamilton, it is "intelligent" to acknowledge that a definitive answer to this question is impossible, although every contribution and deliberation on the topic aids in the progress towards an answer. See Marci A. Hamilton, *Slouching Toward Globalization: Charting the*

that scholars have recommended the following “essential rights and liberties” as the minimum standards of religious freedom:

[L]iberty of conscience and non-discrimination on grounds of faith; free exercise of religion; accommodation of pluralism in the sense of confessional and institutional diversity; equality of all religions before the law; separation of church and state in order to protect religious bodies and believers from state interference in their internal affairs and private religious lives (respectively); and disestablishment of religion, foreclosing government from singling out any particular religion for preferential treatment.²²

B. *Current Global Status of Religious Human Rights*

Despite what appears to be near-universal expression of commitment to religious human rights, the frequency—and severity—of religious persecution worldwide is staggering.²³ Although it is impossible to determine with certainty the exact numbers of people persecuted for their faith or religious affiliation, it is unquestioned that “violations of freedom of religion and belief, including acts of severe persecution, occur with fearful frequency.”²⁴

Religious freedom is violated in a myriad of ways. A recent report by the U.S. State Department’s Advisory Committee on Religious Freedom Abroad enumerated the most common kinds

Pitfalls in the Drive to Internationalize Religious Human Rights, 46 EMORY L.J. 307 (1997).

22. van der Vyver, *supra* note 15, at xi, xlv (summarizing recommendations made in John Witte, Jr. & Christy Green, *The American Constitutional Experiment in Religious Human Rights: The Perennial Search for Principles*, in LEGAL PERSPECTIVES, *supra* note 8, at 497).

23. “[F]reedom of religion remains the most persistently violated human right in the annals of the species. Indeed, religious intolerance has generated more wars, misery and suffering than any other type of discrimination or bias.” Colter, *supra* note 7, at 236 (citation omitted). Indeed, it is ironic to note:

[T]he very century that has witnessed the emergence of religious liberty and religious human rights as norms in international law and virtually universally recognized in principle has been the very century in which religious rights and religious liberty have [been] repeatedly and flagrantly violated on a wholesale scale throughout most of the world.

Wood, *supra* note 10, at 481.

24. ACRFA REPORT ON RELIGIOUS FREEDOM, *supra* note 15, at 8. “There is a wealth of evidence to indicate that intolerance and discrimination based on religion or belief subsists in the contemporary world, and indeed that in some areas prejudice and bigotry have given rise to outright hatred, persecution and repression.” BENITO, *supra* note 11, at para. 45.

of violations of religious freedom in the last decade, including the following: physical attacks, including torture and extra-judicial killings; detention or imprisonment; restrictions on freedom of expression; forced exile; destruction of places of worship; limits on religious publications; and prohibitions on membership, worship, or religiously mandated observances.²⁵

The persecution of Christians specifically has gained recent public attention.²⁶ It is currently estimated that between 200 and 250 million Christians are actively persecuted for their faith,²⁷ while a further 400 million live under "non-trivial restrictions" on their religious liberty.²⁸ Specific reports of persecution of Christians come from a variety of sources, including mission boards, churches, individuals, government officials, and secular human rights organizations. These accounts vary in degree and circumstances, and include, but are not limited to, the following acts of persecution: kidnappings and slavery resulting in forced conversions;²⁹ arbitrary arrest, prolonged detention, torture, and "reform-through-education" of clergy and church members;³⁰ prohibitions against proselytization;³¹ punishment of converts,

25. See ACRFA REPORT ON RELIGIOUS FREEDOM, *supra* note 15, at 10-11. For a detailed description of religious persecution in specific countries, as well as the action taken by the U.S. Government in response to the persecution, see BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR AFFAIRS, U.S. STATE DEP'T, UNITED STATES POLICIES IN SUPPORT OF RELIGIOUS FREEDOM: FOCUS ON CHRISTIANS 9-54 (July 22, 1997) <http://www.state.gov/www/human_rights> [hereinafter U.S. STATE DEP'T, FOCUS ON CHRISTIANS].

26. For a comprehensive catalogue of present-day persecution of Christian believers, see generally MARSHALL, *supra* note 12; NINA SHAE, IN THE LION'S DEN (1997); U.S. STATE DEP'T, FOCUS ON CHRISTIANS, *supra* note 25.

27. See MARSHALL, *supra* note 12, at 253. Marshall defines "persecution" as "the denial of any of the rights of religious freedom," such as situations where people are systematically imprisoned for their faith. *Id.* at 248-49.

28. See *id.* at 253. Marshall defines "non-trivial restrictions" as *harassment*, where people "suffer from legal impediments and are interfered with by the authorities or others, and face arbitrary arrest and possible physical assault," *id.* at 249, or *discrimination*, "where people may have basic freedom of worship and other forms of religious freedom, but where the law places them at a consistent civil and economic disadvantage for exercising such freedoms," *id.*

29. See, e.g., SHAE, *supra* note 26, at 31 (regarding Sudan); U.S. STATE DEP'T, FOCUS ON CHRISTIANS, *supra* note 25, at 48 (regarding Sudan).

30. See, e.g., MARSHALL, *supra* note 12, at 75-80 (regarding China); U.S. STATE DEP'T, FOCUS ON CHRISTIANS, *supra* note 25, at 18 (regarding China).

31. See, e.g., U.S. STATE DEP'T, FOCUS ON CHRISTIANS, *supra* note 25, at 14 (regarding Bhutan); *id.* at 15 (regarding Brunei); *id.* at 19 (regarding China); *id.* at 31 (regarding Iran); *id.* at 35 (regarding Kuwait); *id.* at 41 (regarding Nepal); *id.* at 42 (regarding Pakistan); *id.* at 49 (regarding Tunisia); *id.* at 51 (regarding United Arab Emirates); *id.* at 52 (regarding Uzbekistan).

including arrest, torture, and the death penalty;³² and compulsory registration and regulatory control of churches and religious groups.³³ In addition to these "severe" means of overt discrimination against Christians, reports of more subtle and indirect persecution likewise abound.³⁴

Considering current awareness of the frequency of religious persecution and the "openness" with which such persecution is conducted, why does it continue unabated? Perhaps the inability to adequately address the issue is due, in part, to the fact that "no topic has divided mankind more."³⁵ The root causes of religious intolerance and persecution³⁶ are perpetual and pervasive: "ignorance and lack of understanding, conflicts in religiosity, exploitation or abuse of religion or belief for questionable ends, developments of history, social tensions, government bureaucracy and the absence of dialogue between those holding different religions or beliefs."³⁷

Despite the prevalence of religious persecution, religious human rights have been neglected; secular society and the traditional human rights community typically emphasize instead the "more tangible encroachments on human dignity, such as tor-

32. See, e.g., SHAE, *supra* note 26, at 44 (regarding Egypt); *id.* at 40 (regarding Saudi Arabia); *id.* at 35 (regarding Sudan).

33. See, e.g., Marshall, *supra* note 12, at 80-84 (regarding China); U.S. STATE DEP'T, FOCUS ON CHRISTIANS, *supra* note 25, at 44 (regarding Russian Federation); *id.* at 46 (regarding Singapore); *id.* at 48 (regarding Syria); *id.* at 52 (regarding Vietnam).

34. As described by Pope John Paul II:

Today, besides prison, concentration camps, forced labour camps^U and expulsion from one's country, there are other punishments less well known but more subtle: not violent death, but a kind of civil death; not only isolation in prisons or in camps, but social discrimination or permanent restriction of personal liberty. There are today hundreds and thousands of witnesses to the faith, all too often ignored or forgotten by public opinion, whose attention is drawn elsewhere. They are often known to God alone. They suffer daily hardships, in various parts of every continent.

BENITO, *supra* note 11, at para. 158 (quoting Pope John Paul II, discourse given at Lourdes, 4 August 1983, Working Paper submitted to the seminar by the Holy See (HR/GENEVA/1984/WP.4, p.5)).

35. Natan Lerner, *Religious Human Rights Under the United Nations, in LEGAL PERSPECTIVES*, *supra* note 8, at 80, 100 (citation omitted).

36. See generally, Durham, *supra* note 9, at 1, 3-7 (analogizing these root causes—the cultural and religious divides that contribute to religious persecution—to "vast tectonic plates beneath the surface of the earth that account for continental drift and that cause earthquakes where they collide." *Id.* at 4).

37. BENITO, *supra* note 11, at para. 164 (summarizing what appear to be "among the most important root causes of intolerance and discrimination in the matter of religion and belief").

ture, disappearances, and the like."³⁸ And yet, as awareness of religious persecution grows, "[r]eligious human rights deserve more than to remain a neglected chapter in the universal endeavors to ensure observance of and respect for human rights."³⁹

III. RELIGIOUS ADVOCATES AND THE SECULAR HUMAN RIGHTS COMMUNITY

What is required to successfully confront the enigmatic problem of religious persecution, "is a notion of religious freedom that can be shown to be grounded as a shared value within [all] religious and secular traditions. But achieving any kind of consensus in this area . . . remains a remarkably difficult endeavor."⁴⁰ Who then will best succeed in this effort? At first glance, cooperation between traditional (*i.e.*, secular) international human rights organizations and religious advocates appears to be a natural, necessary, and perhaps inevitable occurrence. Both sides have much to offer and both have made significant inroads in this field. Any coalition formed between the two groups most certainly could be mutually beneficial and have greater effect than their respective individual efforts.

To this point in the struggle for religious freedom, however, there has been little collaboration between the two sectors. Rather, the relationship appears to be non-existent, at best, or strained and counterproductive, at worst. In order to encourage cooperation, it is important, first, to explore the reasons for this tension. It is likewise helpful to recognize what both sides have to offer, in terms of their respective strengths and successes, both

38. Durham, *supra* note 9, at 1; *see also*, James Finn, *The Cultivation and Protection of Religious Human Rights*, in LEGAL PERSPECTIVES, *supra* note 8, at 163. Describing the lack of attention paid to religious freedom, Finn states:

Even those who assert that religious freedom is, in philosophical and religious terms, the first freedom must acknowledge that one would not know that on the basis of the public attention given to religious rights compared to that given a number of other human rights. In the world of human rights theorists, activists, and advocates most attention is given to violations based on race, gender, and class; on national, ethnic, and linguistic groupings.

Id.

39. Lerner, *supra* note 35, at 134. As one author states: "It is time for us to take religious rights seriously—to shake off our political indifference and parochial self-interest and to address the plight and protection of people of all faiths." John Witte, Jr., *Introduction*, in RELIGIOUS PERSPECTIVES, *supra* note 7, at xviii.

40. Durham, *supra* note 9, at 7.

to each other and to the religious human rights endeavor as a whole.

A. *Fundamental Differences*

One reason for the lack of collaboration between the “secular” and the “religious” groups may be the obvious differences in foundational framework and mandate.⁴¹ Generally speaking, traditional secular human rights organizations actively promote a broad range of international human rights norms, using a variety of well-developed techniques. Although these organizations vary widely in size, scope, methodology, and regional or national affiliation, they share a common desire to protect human rights, putting aside potentially divisive racial, political, economic, or religious allegiance or identification.⁴² “While individual members of these organizations may be deeply religious or spiritual, most often such organizations offer mission statements that reflect a secular moral purpose encompassing a vision of human and social cooperation—with strict neutrality as to religion or belief.”⁴³

Consistent with this secular foundation, human rights organizations historically have tended to explicitly dismiss religious freedom as outside their mandate,⁴⁴ to deprecate religious rights in favor of other human rights,⁴⁵ or to consider religious free-

41. The description of “secular” and “religious” human rights organizations for the purposes of this article is based on generalizations related to the field of religious human rights, and may or may not be applicable in other contexts.

42. See Michael Roan, *The Role of Secular Non-Governmental Organizations in the Cultivation and Understanding of Religious Human Rights*, in LEGAL PERSPECTIVES, *supra* note 8, at 135, 147.

43. *Id.*

44. See *id.* at 158. Inattention to religious human rights stands in contradiction to the fact that “most, if not all, secular human rights [organizations] base their mandates on the Universal Declaration of Human Rights—which includes the right to freedom of religion or belief” *Id.* at 157-58.

45. In their defense, much of this deprecation by traditional human rights organizations has *not* been a result of “calculated agnosticism or callous apathy,” but rather,

[r]ights leaders were often forced, by reason of political pressure or limited resources, to address the most glaring rights violations and abuses. Physical abuses—torture, rape, war crimes, false imprisonment, forced poverty—are easier to track and treat than spiritual abuses, and often demand more immediate attention.

Witte, *supra* note 39, at xxxii. Consider, as well, the fact that most human rights organizations are overcommitted, suffer from under-funding, and that “there are more than enough other human rights violations in the world to fill their time.” MARSHALL, *supra* note 12, at 203.

dom merely a subset of a category of more consequence—the freedom of thought, conscience, or belief. These tendencies have a two-fold effect: first, many instances of religious persecution are neither documented nor reported; second, if religious persecution *is* investigated, the uniquely religious motivation or nature of the persecution is commonly disregarded.⁴⁶ As a result, although instances of persecution of Christians and other religious individuals may be reported or considered, the magnitude or extent of *religious* persecution world-wide is underestimated and difficult to prove statistically.

Primary responsibility for the documentation and promotion of religious human rights is thus left to the efforts of religious organizations and individuals that call for greater protection against religious persecution worldwide. It is impossible to consider these advocates as a unified whole, as they vary in religious affiliation, ideology, and political perspective. The common denominator, however, is a distinctly religious motivation in seeking to promote religious human rights.⁴⁷ Currently, the most vocal or visible of the religious advocates in North America tend to speak out in support of the persecuted Christian church specifically, although not exclusively. They assert that worldwide persecution of the Christian community has been under-reported, and that through their present efforts to increase awareness of persecuted Christians, freedom for all religions is fostered.

B. *Presumptions and Misconceptions*

In addition to the fundamental differences described above, tension between secular and religious human rights organizations may be attributed to presumptions or misconceptions which arise as a result of these differences. The presumptions made by the secular about the religious, and by the religious about the secular, result in alienation and lack of collaboration.

Consider first the traditional human rights community. In light of its secular, religiously neutral foundation, this community looks with distrust at the belief, held by most religious organizations, in moral absolutes and ultimate truth. Furthermore,

46. See MARSHALL, *supra* note 12, at 203. This disregard may take one of two forms: (1) victims of religious persecution will often be categorized by gender, profession, ethnic origin, or other neutral category, but rarely as Christian or “religious”; (2) overtly religious oppression or persecution may be described as ethnic or territorial conflict with little attention given to the religious dimensions of the repression. See *id.* at 203-05.

47. For discussion of the uniquely Christian justification for religious human rights, see *infra* Part IV.

for a secular community established upon liberalism's ideal of autonomous choice, the religious view that faith is not a voluntary choice is both foreign and threatening. In addition, past intolerance on the part of many religions makes it difficult for the human rights community to accept the religious advocates' assertion that they seek religious freedom for *all* religions. Finally, also based on the historical position of many religions, human rights organizations assume that consensus on the issue of women's rights, especially reproductive rights, is impossible. These and other presumptions prevent the human rights community from entering into meaningful dialogue with religious organizations.

The traditional human rights community is not alone in the error of presumption. Religious organizations—or perhaps more accurately, “conservative” religious organizations—appear unable to escape the classic yet antiquated “left/right” characterization of the human rights struggle. This vestige of the Cold War mentality carries with it much of the hostility and distrust prevalent in that era. As a result, some sectors of the religious community mistrust the “strong secular and humanistic thrust of the international human rights community,”⁴⁸ and thus choose not to identify with or participate in the human rights movement as a whole.

The presumptions and misconceptions for which both sectors are worthy of blame prevent meaningful dialogue and collaborative effort concerning religious human rights. Should this be a cause for concern? This result is only problematic if dialogue and collaboration would indeed help further the cause of religious freedom. It is to this issue that I now turn.

C. *Achievements and Offerings*

Putting the tensions and problems to one side, a pragmatic inquiry into the relationship between the two communities involves the question of what each side brings to the fight against religious persecution—what have they accomplished and what do they have to offer? The most obvious contribution from the traditional human rights organizations is depth of experience. They offer the strength of their monitoring mechanisms, their

48. Michael K. Young, *Religious Liberties and Religious Tolerance: An Agenda for the Future*, 1996 BYU L. REV. 973, 983 (1996). Young draws the analogy that in the same way the religious community, and particularly evangelical Christians in the United States, often mistrust the motives of the American Civil Liberties Union, so “believers are often skeptical about the real aims of the international human rights norms.” *Id.*

visibility and voice, their means of influence, and their valuable experience in international advocacy. The concern remains whether they are willing to apply these precious resources specifically to the field of religious human rights.⁴⁹

In addition to this wealth of "functional" or experiential assistance, the traditional human rights community offers to the religious community an important lesson described by Charles Taylor as "unity-across-difference"⁵⁰—that is, an unconditional affirmation of universal human rights, not dependent on categorization such as gender, culture, or religion.⁵¹ Taylor accurately attributes to Christianity a rich history of Gospel-inspired acts of conscience in response to injustice and suffering, a sentiment later integrated into both secular and political culture.⁵² And yet, in Taylor's opinion, the fullness of the rights culture couldn't be realized under Christendom because Christianity was incapable of radical unconditionality—unable to accept, for example, "full equality of rights for atheists, or people of a quite alien religion, or those who violate what seems to be the Christian moral code."⁵³

49. That is not to say that the secular human rights community has done nothing to advance the cause of religious human rights. On the contrary, as early as 1945, non-government organizations worked to create United Nations human rights norms regarding the recognition and protection of the freedom of religion or belief. See Roan, *supra* note 42, at 135. In addition, human rights organizations often provide information concerning religious persecution; this information, however, is commonly gathered while monitoring human rights generally. Reports focussing specifically on religious freedom, such as Amnesty International's 1993 report on religious intolerance in Saudi Arabia, are "a rather rare document for a secular NGO." *Id.* at 151 (referring to AMNESTY INT'L, SAUDI ARABIA: RELIGIOUS INTOLERANCE, THE ARREST, DETENTION, AND TORTURE OF CHRISTIAN WORSHIPPERS AND SHI'A MUSLIMS (1993)). Prior to this report, publications by Amnesty International rarely focused on the right to freedom of religion or belief, and violations of a religious nature were more frequently noted in one or two pages of a 200-page report. See *id.*

50. Charles Taylor, *A Catholic Modernity?* 8, Address at Marianist Award Lecture (Jan. 25, 1996) (Transcript available from the Office of the President, University of Dayton, Ohio).

51. See *id.* at 11.

52. See *id.* at 23 (imputing to Christianity a "habit of mobilizing for the redress of injustice and the relief of suffering world-wide").

53. *Id.* at 11. Taylor hastens to clarify that this failure was not due to narrow bigotry or zealous intolerance, "as many militant unbelievers say," *id.*, but rather to the unsuccessful "project of Christendom: the attempt to marry the faith with a form of culture and a mode of society," *id.* at 11-12. This project, in Taylor's opinion, was doomed to failure, because human society inevitably involves elements dangerous for religion: coercion, pressure of conformity, and the sacrifice of high ideals for narrow interests. See *id.* at 12. Taylor also emphasizes that Christendom is not alone in this weakness, but that "the attempt to put some secular philosophy in the place of the faith—

Thus, the religious community must learn from what it “got wrong” and what the traditional human rights community “got right.” By way of illustration, it is sometimes true that a parent must learn from his child a lesson that is simply an extension of or improvement upon what the parent originally taught the child. Similarly, it is necessary for the religious community to recognize, with humility, past failures and to learn anew how to exercise, unconditionally and universally, compassion and conscience in the face of injustice and human suffering.

In the same way that the pursuit of religious human rights can benefit from the contributions of the secular community, the religious community has much to offer the enterprise of religious human rights. The recent attention given to the plight of the persecuted Christian church is just one example of the ability of religious organizations to promote dialogue among various sectors of society which traditionally are either not aware of or concerned about human rights issues.⁵⁴ Within the United States, the increase in awareness and promotion of religious human rights has resulted in various responses, including the establishment of the Advisory Committee on Religious Freedom Abroad;⁵⁵ the proposed Freedom from Religious Persecution

Jacobinism, Marxism—has scarcely led to better results (and in some cases, spectacularly worse).” *Id.*

54. Human rights organizations should draw on the strength of the local-level communication, commitment, and infrastructure that already exists and is active in religious communities. As stated by the Advisory Committee on Religious Freedom Abroad:

Religious groups, across the spectrum, offer various forms of involvement in combating violations and promoting religious freedom and other universal human rights. As institutional organizations—whether large, trans-denominational entities, or small, local churches, synagogues, mosques, or temples—they each play a crucial role in highlighting the issue Many religious groups are conducting important work to assist victims of religious persecution and other human rights violations, monitor and report on human rights violations, educate and defend universal human rights, including the right to religious freedom, mediate conflicts, and promote reconciliation.

See, ACRFA REPORT ON RELIGIOUS FREEDOM, *supra* note 15, at 34.

55. The Committee was formed in November 1996, with the following mandate: “To serve the Secretary of State and the Assistant Secretary for the Bureau of Democracy, Human Rights and Labor, in an advisory capacity with respect to significant issues of religious freedom, intolerance, and reconciliation abroad as agreed upon by the Committee and the Department of State.” *See* ACRFA REPORT ON RELIGIOUS FREEDOM, *supra* note 15, at 4. Within this purpose, the broad tasks assigned to the Committee are the following:

[T]o call attention to problems of religious persecution and other violations of religious freedom, and religious intolerance abroad and

Act;⁵⁶ a joint *Statement of Conscience and Call to Action*, put forward by the National Association of Evangelicals (NAE);⁵⁷ and the U.S. State Department report, *United States Policies in Support of Religious Freedom: Focus on Christians*.⁵⁸

Beyond the specific accomplishments of religious organizations, religion itself has a significant impact on the field of human rights in three ways. First, given that religion touches all aspects of humanity, an understanding of religion is essential to any attempt to understand the global community. Certainly, "[a]ny 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."⁵⁹

Second, specific to religious human rights, the tenets of every major world religion contain "explicit teachings of tolerance and condemnation of religious coercion and disrespect for religious views other than one's own."⁶⁰ Furthermore, "[a]n apologetics for religious human rights is not only to be found in the sacred writings of the major religions of the world, but is also

advise on how to end them; and to provide information on how to bring about reconciliation in areas of conflict, especially conflicts where religion is a factor, and promote respect for human rights, so that religious freedom can be fully enjoyed.

Id. at 4-5. In 1998, this Committee released its first INTERIM REPORT TO THE SECRETARY OF STATE AND THE PRESIDENT OF THE UNITED STATES. See generally, ACRFA REPORT ON RELIGIOUS FREEDOM, *supra* note 15.

56. This proposed Act was introduced in 1997, see Freedom from Religious Persecution Act of 1997, H.R. 2431, 143d Cong. (1997), and in 1998, see Freedom from Religious Persecution Act of 1998, H.R. 2431, 144th Cong. (1998) (also referred to as the International Religious Freedom Act of 1998).

57. In its *Statement of Conscience and Call to Action*, the NAE called for specific reforms by the United States government to fight religious persecution, and also pledged the following:

To end our own silence in the face of suffering of all those persecuted for their religious faith. To address religious persecution carried out by our Christian brothers and sisters whenever this occurs around the world. To withhold assistance by our member denominations to those countries that fail to take action to end religious persecution. To do what is within our power to the end that the government of the United States will take appropriate action to combat the intolerable religious persecution now victimizing fellow believers and those of other faiths.

Reprinted in SHAE, *supra* note 26, at 101-02.

58. See U.S. STATE DEP'T, FOCUS ON CHRISTIANS, *supra* note 25.

59. Young, *supra* note 48, at 982.

60. Wood, *supra* note 10, at 457.

directly linked to the nature of religion.”⁶¹ To effectively accomplish the essential task of integrating religious concerns into the traditional human rights agenda, secular human rights organizations should turn to the religious advocates for direction and foundational guidance.

Finally, and most importantly, religion offers a unique and significant contribution toward the depth of philosophical foundation essential to the protection of human rights. Consider the following statement by Vaclav Havel:

Politicians at international forums may reiterate a thousand times that the basis of the new world order must be universal respect for human rights, but it will mean nothing as long as this imperative does not derive from the respect of the miracle of being, the miracle of the universe, the miracle of nature, the miracle of our own existence.⁶²

Although the framers of the Universal Declaration of Human Rights in 1948 voiced a powerful consensus concerning the dignity of the human person and the rights and freedoms necessary to protect that dignity,⁶³ they did not, however, “spell out fully the moral and philosophical reasons undergirding universal human rights.”⁶⁴ As a result, the promotion of human rights generally was, and continues to be, vulnerable to attack, confusion, and purposeful distortion. For example, the concept of universal human rights has been weakened by the following: inconsistent application, complaints of cultural imperialism or imposition, emphasis of political rights at the expense of economic and social rights, denial of “truth” as indispensable to the affirmation of human rights, a distorted concept of rights without attendant duties, and the claimed defense of national interest or state sovereignty.⁶⁵ In response to these attacks, the time has come “for giving a fuller account of the human rights pro-

61. *Id.* at 463.

62. VACLAV HAVEL, OUR QUEST FOR MEANING IN A POST-MODERN WORLD (July 4, 1994 Speech on Receipt of the Liberty Medal), reprinted in PHILADELPHIA ENQUIRER, July 6, 1994, at A17.

63. “The Declaration marked a decisive moment in the moral, cultural, and political history of the world. It gave powerful testimony to a widespread longing for freedom, justice, peace, and solidarity.” *On Human Rights. The Universal Declaration of Human Rights Fifty Years Later: A Statement of the Ramsey Colloquium*, FIRST THINGS, Apr. 1998, at 18, 18 [hereinafter *On Human Rights*].

64. *Id.* at 21. “The agreement among nations was tenuous; the conflict between democratic and totalitarian forms of government was intense. In view of the circumstances, the measure of moral and philosophical coherence that was achieved is remarkable.” *Id.*

65. For an excellent description of these and other attacks on the concept of universal human rights, as well as a comprehensive analysis of how

ject, for clarifying its scope, strengthening its foundations, and keeping it on a straight path."⁶⁶

Specific to the field of religious human rights, one author notes:

Despite an almost universal commitment to religious human rights . . . there is *no universal consensus* as to their intellectual or philosophical basis. While religious human rights or religious liberty in broad principle have come to be widely endorsed in both national constitutions and in international law, there is no universal consensus as to their rational or philosophical basis. To be sure, there are important political and practical reasons for arguing the case for religious rights and religious liberty, . . . but even those political or practical reasons need ultimately to be rooted in some philosophical principles and not depend primarily, not to mention solely, on political expediency.⁶⁷

Without a comprehensive foundation on which to build consensus, endorsement, or action in support of religious human rights, decisions as to their promotion and protection will be made on an *ad hoc* basis, with little predictability and no safeguard against purely political decisions. In the absence of a conceptual framework, what protects against decisions made according to what is "politically expedient" or "economically beneficial"? Upon what criteria or by what standard will decisions be made? The protection of religious human rights is too weighty a responsibility to entrust the endeavor to such uncertainty.

For human rights, and specifically religious human rights, to be universally and consistently protected, an agreed upon coherent philosophical account about what rights must be supported and why is imperative. The religious justification for human rights provides what is arguably the most appropriate and definitive foundational framework for the pursuit of religious human rights.⁶⁸ The following section describes several elements of this uniquely religious framework.

biblical principles contribute to the moral and philosophical foundation of religious human rights, see generally *id.*

66. *Id.* at 21-22.

67. Wood, *supra* note 10, at 456 (emphasis added).

68. This is due, in part, to the fact that the majority of people around the world espouse some degree of what may be considered religious belief. Considering the sheer numbers of people of faith around the world, one author writes:

[I]t is [not] understandable how the United Nations could become so trapped in its secular discourse that it would persist in its refusal to deal with the fact that for millions of human beings whose

IV. THE CHRISTIAN JUSTIFICATION FOR SUPPORT OF RELIGIOUS HUMAN RIGHTS

The deep roots of human rights ideals are rooted nowhere else than in the biblical tradition, for it is here that we find the decisive unveiling of a perspective in which moral first principles demanding the respect for the neighbor are made known to humanity by a reality that is universal and absolute. . . . This [reality] is an ethical God, the source and norm of a kind of justice and righteousness and contends against what we often find as we look around the world.

Max L. Stackhouse & Stephen E. Healey⁶⁹

On a very personal level, my faith and religious convictions are the motivation and justification for my support of religious human rights. I consider it my duty as a Christian to oppose injustice and fight oppression.⁷⁰ Beyond my personal motivation, however, I also believe that the very concept of human rights originated in religious belief. For me, as “[f]or many religious persons, certainly, the idea of human rights simply does not make sense, it does not exert a claim, apart from, cut off from, the Gospel vision of the world and of our place in it—or from some equivalent religious vision.”⁷¹

What, then, do I consider to be the uniquely Christian (or religious) justification for the support of religious human rights? First, all human life is sacred, created by God. Second, the right to religious freedom is a God-given right, rooted in the sanctity of life. Third, by its very nature, religion is a voluntary act; true faith cannot be coerced. Fourth, religious freedom allows for and facilitates the pursuit of ultimate truth. Finally, Christianity’s own moral principles demand a response of respect for human rights.

lives are rooted in belief rather than unbelief, human rights become meaningful only when they are placed within the framework of their belief system.

Riffat Hassan, *Rights of Women Within Islamic Communities*, in RELIGIOUS PERSPECTIVES, *supra* note 7, at 361, 365-66.

69. Max L. Stackhouse & Stephen E. Healey, *Religion and Human Rights: A Theological Apologetic*, in RELIGIOUS PERSPECTIVES, *supra* note 7, at 485, 492.

70. See Desmond Tutu, *Preface* to RELIGIOUS PERSPECTIVES, *supra* note 7, at ix. “Any person of faith has no real option. In the face of injustice and oppression it is to disobey God not to stand up in opposition to that injustice and that oppression.” *Id.* at xi.

71. MICHAEL J. PERRY, THE IDEA OF HUMAN RIGHTS 39-40 (1998) [hereinafter PERRY, HUMAN RIGHTS].

A. *Sanctity of Human Life—the “Ethic of Dignity”*

The foundation of all human rights is the inherent dignity of the human person, as expressly stated in the Universal Declaration of Human Rights,⁷² the International Covenant on Civil and Political Rights,⁷³ and the International Covenant on Economic, Social and Cultural Rights.⁷⁴ The reliance of human rights documents on the principle of inherent human dignity has been described in the following way:

The idea of human rights that informs these various international human rights documents (and many others) is, then, in part, the idea that there is something about each and every human being, simply as a human being, such that certain choices should be made and certain other choices rejected; in particular, certain things ought not to be done to any human being and certain other things ought to be done for every human being.⁷⁵

This view that our actions toward one another should be governed by an understanding of the inherent dignity of each individual has been described as an “ethic of dignity.”⁷⁶ Under this principle, in response to the dignity of each human person, “we should not just respect such a person but . . . we should have a deep reverence for that person.”⁷⁷

Yet to believe in the inherent dignity of the human person, it is foundationally necessary to believe in God.⁷⁸ The ethic of dignity is fundamentally linked to, and indeed finds its origins in,

72. G.A. Res. 217 A (III), U.N. Doc. A/810, at 71 (1948), *reprinted in* BASIC DOCUMENTS, *supra* note 6, at 21.

The Universal Declaration is clear: it acknowledges the rights which it proclaims but does not confer them, since they are inherent in the human person and in human dignity. Consequently, no one can legitimately deprive another person, whoever they may be, of these rights, since this would do violence to their nature. All human beings, without exception, are equal in dignity.

POPE JOHN PAUL II, RESPECT FOR HUMAN RIGHTS: THE SECRET OF TRUE PEACE (Jan. 1, 1999) (Message of His Holiness for the XXXII World Day of Peace) [hereinafter POPE JOHN PAUL II, XXXII WORLD DAY OF PEACE].

73. G.A. Res. 2200 (XXI), 21 U.N. GAOR, Supp. (No. 16) 52, U.N. Doc. A/6316 (1967), *reprinted in* BASIC DOCUMENTS, *supra* note 6, at 125.

74. G.A. Res. 2200 (XXI), 21 U.N. GAOR, Supp. (No. 16) 49, U.N. Doc. A/6316 (1967), *reprinted in* BASIC DOCUMENTS, *supra* note 6, at 114.

75. PERRY, HUMAN RIGHTS, *supra* note 71, at 12.

76. See Wolfgang Huber, *Human Rights and Biblical Legal Thought*, in RELIGIOUS PERSPECTIVES, *supra* note 7, at 47, 55.

77. Tutu, *supra* note 70, at x.

78. As stated by R.H. Tawney: “The essence of all morality is this: to believe that every human being is of infinite importance, and therefore that no consideration of expediency can justify the oppression of one by another. But

the Judeo-Christian view that human life is sacred⁷⁹—that life is a gift from God, that we were created by Him, and furthermore, that we were created in His image.⁸⁰ “Human dignity is not dependent on the disposition of other humans, nor on the powers of society or the state. The human person in his or her limited time is granted an unending dignity that is not product of human efforts but rather a pure, unearned gift of God.”⁸¹

Outside of this religious justification, it is difficult if not impossible to convincingly articulate a rationale in support of the concept of the dignity and sanctity of the human person.⁸² And yet, “[t]o suggest that the idea of human rights is ineliminably religious . . . is *not* to deny that one can take human rights very seriously indeed without being religious.”⁸³ Those who do not believe in God or do not espouse to a religious world view understandably claim that for them, the sanctity of human life is not ineliminably religious, but rather, that theirs simply is a deeply held moral or philosophical belief.⁸⁴

Religious persons are not alone, however, in their belief that the concept of human dignity is ineliminably religious. One secular author, who insists that for him, it is “very difficult—perhaps impossible—to embrace religious convictions,” nevertheless claims that “the liberal theory of rights requires a doctrine of human dignity, preciousness and sacredness that cannot be utterly detached from a belief in God or at least from a world

to believe this it is necessary to believe in God.” J.M. WINTER & D.M. JOSLIN, R.H. TAWNEY’S COMMONPLACE BOOK 67 (1972).

79. See generally, Huber, *supra* note 76 (discussing the origins of the “ethic of dignity”).

80. See *Genesis* 1:26, 27.

81. Huber, *supra* note 76, at 55.

82. As Michael J. Perry has concluded: “There is no intelligible (much less persuasive) secular version of the conviction that every human being is sacred; the only intelligible versions are religious.” PERRY, HUMAN RIGHTS, *supra* note 71, at 11.

83. *Id.* at 35.

84. See Ronald Dworkin, *Life is Sacred: That’s the Easy Part*, NEW YORK TIMES MAG., May 16, 1993, at 36 (“We almost all accept . . . that human life in all its forms is sacred For some of us, this is a matter of religious faith; for others, of secular but deep philosophical belief.”); cf. PERRY, HUMAN RIGHTS, *supra* note 71, at 37 (explaining that secularists will respond as follows: “The conviction that every human being is sacred cannot be inescapably religious, for if it were, how could we—we who are not religious, and who may even look at religion as always and everywhere little more than a childish superstition—defend the idea of human rights?”).

view that would be properly considered religious in some metaphysically profound sense."⁸⁵ The same author concedes:

[T]he idea that fundamental moral values may require [religious] convictions is not one to be welcomed with joy [by nonreligious enthusiasts of the liberal theory of rights]. This idea generates tensions and appears to force choices that some of us would prefer not to make. *But it still might be true for all of that.*⁸⁶

In conclusion, therefore, both religious and secular theorists agree that the concept of the dignity and sanctity of the human person finds its origins in religion and is most defensible through religious justification.

B. *Religious Human Rights are God-Granted*

Following the premise that the inherent dignity of the human person originates from our creation by God, the logical conclusion is that God likewise created (or more accurately, *conferred*) all human rights.⁸⁷ To comprehend fully the magnitude of this statement, consider first that the Universal Declaration of Human Rights did not confer human rights on humanity. The Declaration merely *acknowledged* the existence of the rights enumerated in its text, "since they are inherent in the human person and in human dignity."⁸⁸ All rights "have their source

85. Jeffrie Murphy, *Afterword: Constitutionalism, Moral Skepticism, and Religious Belief*, in CONSTITUTIONALISM: THE PHILOSOPHICAL DIMENSION 239, 248 (Alan S. Rosenbaum ed., 1988), *quoted in* PERRY, HUMAN RIGHTS, *supra* note 71, at 41.

86. *Id.*, *quoted in* PERRY, HUMAN RIGHTS, *supra* note 71, at 41 (emphasis and edits in original).

87. See *On Human Rights*, *supra* note 63, at 20 ("All human beings are endowed with basic rights by God, in whose image they are created. These rights and their corresponding obligations are indispensable aspects of the universal moral law."); cf. POPE JOHN XXIII, PACEM IN TERRIS: ENCYCLICAL OF POPE JOHN XXIII ON ESTABLISHING UNIVERSAL PEACE IN TRUTH, JUSTICE, CHARITY, AND LIBERTY (1963) ("When the promotion of the dignity of the person is the guiding principle, and when the search for the common good is the overriding commitment, then solid and lasting foundations for building peace are laid.")

88. POPE JOHN PAUL II, XXXII WORLD DAY OF PEACE, *supra* note 72.

The Universal Declaration is clear: it acknowledges the rights which it proclaims but does not confer them, since they are inherent in the human person and in human dignity. Consequently, no one can legitimately deprive another person, whoever they may be, of these rights, since this would do violence to their nature. All human beings, without exception, are equal in dignity.

in the transcendent dignity of the human person created by God."⁸⁹

The inherent dignity of the human person, therefore, is the cornerstone for all human rights generally, and for religious human rights specifically. As stated by the Catholic Church, in the 1965 *Declaration on Religious Liberty*:

This Vatican Council declares that the human person has a right to religious freedom. This freedom means that all men are to be immune from coercion on the part of individuals or of social groups and of any human power [T]he right to religious freedom has its foundation in the very dignity of the human person as this dignity is known through the revealed word of God and by reason itself.⁹⁰

Furthermore, religious freedom is not merely one of a number of rights bestowed upon humanity by our Creator; it is the cornerstone of other human rights. "Because religion most directly addresses the foundation of human dignity, religious freedom is the source and safeguard of all rights and freedoms."⁹¹

89. *Documentation: Christianity and Democracy*, FIRST THINGS, Oct. 1996, at 30, 33 [hereinafter *Christianity and Democracy*].

90. *Declaration on Religious Liberty*, in THE DOCUMENTS OF VATICAN II 681 (1996) [hereinafter *Declaration on Religious Liberty*].

91. *On Human Rights*, *supra* note 63, at 19. As stated by Pope John Paul II:

The importance of religious freedom leads me to stress once more that the right to religious freedom is not merely one human right among many others; rather, it is the most fundamental, since the dignity of every person has its first source in his essential relationship with God the Creator and Father, in whose image and likeness he was created, since he is endowed with intelligence and freedom.

POPE JOHN PAUL II, IF YOU WANT PEACE, RESPECT THE CONSCIENCE OF EVERY PERSON (Jan. 1, 1991) (Message of His Holiness for the XXIV World Day of Peace) (internal quotations omitted) [hereinafter POPE JOHN PAUL II, XXIV WORLD DAY OF PEACE].

Although beyond the scope of this Note, scholars have commented on the relationship between religious human rights specifically and the more general field of human rights. Not only are religious human rights considered the "cornerstone" to all human rights, but many of the justifications or rationales in support of religious human rights likewise support human rights generally. See generally Martin E. Marty, *Religious Dimensions of Human Rights*, in RELIGIOUS PERSPECTIVES, *supra* note 7, at 1, 3 ("Protect religious beliefs, exercises and organizations . . . and you are likely to be extending other rights further."); Michael J. Perry, *The Idea of Human Rights: Is the Idea of Human Rights Ineliminably Religious?*, in PROBLEMS AND CONFLICTS BETWEEN LAW AND MORALITY IN A FREE SOCIETY 79 (James E. Wood, Jr. & Derek Davis eds., 1994) ("If the conviction that every human being is sacred is inescapably religious, it follows that the idea of human rights is ineliminably religious, because the conviction is an essential, even foundational, constituent of the idea."); Wood, *supra* note 10, at 455 (stating that religious human rights "lie at the heart of the struggle for human rights around the world and involve the very sanctity of the human person. An apolo-

C. *Voluntariness of Religion*

The third uniquely religious argument for religious human rights moves from the discussion of what God has granted, to a defense of religious freedom based upon the very nature of religious faith itself. To be sincere and legitimate, religious faith cannot be coerced—it must be both voluntary and personal.⁹² Intolerance, therefore, is “religion’s worst adversary.”⁹³ Without the promotion of religious human rights and religious freedom, authentic religion itself is in peril. This justification is uniquely religious, resting squarely “on a religious idea about our relations with God.”⁹⁴

From the Christian perspective, God requires sincere faith. “No intellectual ingenuity, no organized institution, no kind of compulsion and no power of persuasion can change the fact that God deals with men as free and responsible beings and that he expects from them an uncoerced response.”⁹⁵ As explained in scripture, “without faith it is impossible to please God, because anyone who comes to him must believe that he exists and that he rewards those who earnestly seek him.”⁹⁶

Not only is faith required to please God; without faith, any religious observance is nothing more than “going through the motions.” Although it is possible to force an individual to perform certain rites or rituals, faith itself cannot be forced.⁹⁷ As John Locke stated in his *Letter Concerning Toleration*: “[T]rue and saving religion consists in the inward persuasion of the mind, without which nothing can be acceptable to God. And such is the nature of understanding, that it cannot be compelled to the belief of anything by outward force.”⁹⁸

gia for religious human rights also stands to strengthen the cause of human rights in general.” *Id.* at 455. Indeed, “basic to all human rights are religious rights, without the guarantee of which . . . all other human rights are in peril.” *Id.* at 475).

92. “An imposed faith is a contradiction in terms [F]aith must be free if it is not to destroy itself.” Augustin Leonard, *Freedom of Faith and Civil Toleration*, in *TOLERANCE AND THE CATHOLIC* 113 (1955).

93. Wood, *supra* note 10, at 463.

94. *Id.*

95. A.F. CARRILLO DE ALBORNOZ, *THE BASIS OF RELIGIOUS LIBERTY* 74 (1963).

96. *Hebrews* 11:6.

97. In the words of Milton, “to compell outward profession . . . is to compell hypocrisie, not to advance religion.” John Milton, *A Treatise of Civil Power in Ecclesiastical Causes*, in *JOHN MILTON: SELECTED PROSE* 296, 311 (Patrides ed., 1985).

98. JOHN LOCKE, *THE SECOND TREATISE OF GOVERNMENT AND A LETTER CONCERNING TOLERATION* 127 (Gough ed., 1946). The Catholic Church has

D. Pursuit of Truth

The fourth uniquely religious justification for the protection of religious human rights rests on the realization that the pursuit of ultimate truth may most effectively, and perhaps only, be undertaken in a context of religious freedom. This rationale is most defensibly a religious one, given that it requires a fundamental belief in objective truth and in humankind's ability to pursue that objective truth.

This rationale does not assume that a lack of freedom will *destroy* truth. Objective truth—God's truth—cannot be destroyed; it exists, regardless of one's freedom to pursue it. The salient question is whether the seeker is afforded the freedom of inquiry required to pursue the truth, to understand it, and then to apply it to daily life.

From a Christian perspective, the ultimate source of truth is God Himself.⁹⁹ His truth is revealed to the seeker through inspiration and scripture. The believer is assisted in understanding God's truth through personal revelation enabled by the Holy Spirit, through fellow believers, and through the church. Of course, God has the power to reveal His truth to a seeker despite constraints, even in a situation devoid of religious freedom.¹⁰⁰ However, the pursuit of truth is best facilitated by freedom of inquiry and religious freedom.

The seeker, therefore, should be given the opportunity to inquire, to study, to discuss, and to share his findings with others.

Truth is to be sought after in a manner proper to the dignity of the human person and his social nature. The inquiry is to be free, carried on with the aid of teaching or instruction, communication, and dialogue. In the course of these, men explain to one another the truth they have discovered, or think they have discovered, in order thus to assist one another in the quest for truth.¹⁰¹

similarly declared: "[O]f its very nature, the exercise of religion consists before all else in those internal, voluntary, and free acts whereby man sets the course of his life directly toward God. No merely human power can either command or prohibit acts of this kind." *Declaration on Religious Freedom*, *supra* note 90, at 681.

99. "The guarantee that objective truth exists is found in God, who is Absolute Truth; objectively speaking, the search for truth and the search for God are one and the same." POPE JOHN PAUL II, XXIV WORLD DAY OF PEACE, *supra* note 90.

100. "In creating the person, God wrote on the human heart a law which everyone can discover." *Id.*

101. *Declaration on Religious Freedom*, *supra* note 90, at 680-81.

Such freedom of inquiry will have a two-fold effect: First, this freedom will allow truth to prevail over falsehood. Second, on a more personal level, these exercises will permit the seeker to take a step closer to fully comprehending the truth, understanding its application, and integrating it into daily life.

E. *Living by Christianity's Moral Standard*¹⁰²

The moral principles of Christianity command us¹⁰³ to love and serve, not to judge or condemn—this is what it means to be a “Christian,” to be “like Christ.” To be consistent with the teachings of Christianity, therefore, a believer should try, as far as humanly possible, to love and serve all fellow human beings. The promotion and protection of the human rights of all individuals logically flows from this principle of Christianity.

God commands Christians: “Love one another as I have loved you,”¹⁰⁴ and “Love your neighbor as yourself.”¹⁰⁵ He also instructs us to love our enemies,¹⁰⁶ a task much more difficult than loving those who love us in return. In addition, Christians are called to love and serve “the least of these,” a term Christ used to refer to those who are hungry, thirsty, strangers, without clothing, sick, or in prison.¹⁰⁷ The ramifications of our action or inaction take on greater significance when we realize that God will consider whatever we do (or do not do) to help those in need to be something we did (or did not do) for Him.¹⁰⁸

In what is commonly referred to as the “Golden Rule,” Christ instructed His followers to “do to others as you would have them do to you.”¹⁰⁹ In the same passage, He also commanded: “Do not judge, and you will not be judged. Do not condemn,

102. The painful reality is that the Christian Church has often not lived up to its own moral standards in the area of religious tolerance. The same may be said of most major religions. Despite the errors of the past, however, the Church can still have a legitimate and influential role in the promotion of religious human rights. Indeed, “Christianity has over the past three centuries slowly worked itself to a principled position of religious toleration and freedom.” Luke Timothy Johnson, *Religious Rights and Christian Texts, in RELIGIOUS PERSPECTIVES*, *supra* note 7, at 65, 69.

103. Given my Christian identity, throughout this section I refer to Christians personally, as “we” or “us.”

104. See *John* 13:34; see also *John* 15:12, 17.

105. See *Leviticus* 19:18. Christ answered the question, “Who is my neighbor,” through the Parable of the Good Samaritan. See *Luke* 10:25-37 (teaching that my “neighbor” is any person I see who is in need of my help).

106. See *Luke* 6:27-36; see also *Matthew* 5:43-48.

107. See *Matthew* 25:31-46.

108. See *id.*

109. *Luke* 6:31; see also *Matthew* 25:31-46.

and you will not be condemned.”¹¹⁰ The commandments to love and not to judge *do not* mean that we as Christians must embrace all religious diversity or pluralism as legitimate “truth.” Furthermore, these instructions *do not* mean that I cannot disagree or oppose views I consider untruthful or incorrect. As a Christian, I must still attempt to discern right from wrong. These instructions *do* mean, however, that I must not be hypocritical; I must examine my own life for truthfulness and consistency. More personally, these instructions mean that my efforts to live by the moral demands of Christianity serve as a foundation for my understanding of religious freedom as a fundamental human right.

To live by the moral demands of Christianity means simply this: to “give urgent priority to all who are in need, especially the poor, the oppressed, the despised, and the marginal.”¹¹¹ Christians, therefore, must support human rights, not because the state (or the international community) requires us to, but because as God’s representatives on this earth, we are “witnessing to the transcendent dignity of the human person Therefore, the witness of the churches should reflect an unwavering adherence to a single standard in the judgment of human rights.”¹¹²

V. RELIGIOUS RATIONALE IN THE SECULAR ARENA

[W]ithout the emphasis of religious liberty in a society that is secular by definition, those who see a religious foundation for the human rights a secular society such as ours affirms have no entry into this moral discourse of the public square. The task of religious believers who wish to enter this moral discourse (although there are quite a few who regard such entry more dangerous to their religious integrity than beneficial to it and thus opt for sectarian seclusion)

110. Luke 6:37

111. *Christianity and Democracy*, *supra* note 89, at 30. As taught by Pope John Paul II:

Faith teaches us that every person has been created in the image and likeness of God. Even when man refuses it, the heavenly Father’s love remains steadfast; his is a love without limits. He sent his Son Jesus to redeem every individual, restoring each one’s full human dignity. With this in mind, how can we exclude anyone from our care? Rather, we must recognize Christ in the poorest and the most marginalized As the parable of the rich man, who will remain forever without a name, and the poor man called Lazarus clearly shows, in the stark contrast between the insensitive rich man and the poor in need of everything, God is on the latter’s side. We too must be on this same side.

POPE JOHN PAUL II, XXXII WORLD DAY OF PEACE, *supra* note 72.

112. *Christian and Democracy*, *supra* note 89, at 34.

is to persuade others that a religious foundation for human rights can respect the realm of the secular where so many of these rights are exercised far better than "secularism" can respect the realm of the religious.

David Novak¹¹³

Having described my foundational position regarding the religious justifications for the promotion and protection of religious human rights, I now return to the pivotal issue of this Note: What role should this religious rationale play in my efforts of advocacy in the secular arena? Although it is not possible for me, as a Christian, not to *rely* on my religious rationale, must I "secularize" the manner in which I *express* my views in order to be effective? Or alternatively, will remaining consistent with my religious identity enable me to do more to further the cause of religious human rights in the long-term?

This section considers opposing positions on this issue. First, I focus on the perception described by David Novak, above—that is, because of my religious foundation for human rights, I will be refused entry into the moral discourse of secular society. As a result of this "secular myopia," I will be either marginalized or discredited completely. I next describe, however, why, in theory at least, a full expression of religious rationale and identity should be both expected and welcomed in secular debate. After considering these two perspectives, I conclude that in order to help the cause of religious human rights in the long-term, I must act without compromise—when I enter the "public square," I must both retain and reflect the unique religious rationale upon which my position is founded.

A. *The Current Challenge: Forced Secularization of Religious Rationale*

A generation ago, it was *taboo* to openly discuss sex, politics, or religion. Today's society has lost its inhibitions regarding sex or politics; but often, religion is still a subject to be avoided. Perhaps the potential listener believes religion to be of no consequence.¹¹⁴ Perhaps he simply has no personal experience with

113. David Novak, *Religious Human Rights in Judaic Texts*, in RELIGIOUS PERSPECTIVES, *supra* note 7, at 175, 200.

114. Religion is often considered "like building model airplanes, just another hobby; something quiet, something private, something trivial." STEPHEN L. CARTER, *THE CULTURE OF DISBELIEF: HOW AMERICAN LAW AND POLITICS TRIVIALIZE RELIGIOUS DEVOTION* 22 (1993). See generally, John Pickering, *Christian Soldier in a Secular City: An Evangelical's Culture Shock*, WASH. POST, May 12, 1996 at C01. Pickering, an evangelical Christian, describes his

or knowledge of religion, no point of reference from which to understand its complexities. Or perhaps the explanation is more insidious—the potential listener discounts the devoted religious believer as weird, crazy, or even fanatical.¹¹⁵

In order to keep the “fanatical religious believer” out of public debate, secular society developed the following unwritten rules of propriety: “Public decisions must be made by arguments that are public in character. A public argument is transsubjective. It is not derived from sources of revelation or disposition that are essentially private and arbitrary.”¹¹⁶ It follows, therefore, that the private and subjective nature of religion legitimizes secular theorists’ attempts to privatize religion, to banish it from the “public square.”¹¹⁷ Richard John Neuhaus describes the dilemma of the religious participant in secular public debate as follows:

For an event to be *legitimately* public, it must be secular. If it is touched by religion, that is to be viewed as a private and somewhat idiosyncratic factor. . . . One “happens to be” religious, but it is not a factor that warrants public consideration. Public consideration of the religious beliefs of others is an invasion of privacy. The public assertion of one’s own beliefs is an imposition upon carefully sterilized space.¹¹⁸

The justification for such rules may be, as mentioned above, that religion is considered trivial, that it is not understood, or

entrance into the secular realm as follows: “I’ve found that the more I progress intellectually and professionally, the more I encounter people—often friends—who find it a little odd, even threatening, when they discover my religious identity.” *Id.*

115. According to Stephen Carter, “Our culture seems to take the position that believing deeply in the tenets of one’s faith represents a kind of mystical irrationality.” CARTER, *supra* note 114, at 6-7. In the words of Rawls: “To subordinate all our aims to one end . . . still strikes as irrational, or more likely as mad.” JOHN RAWLS, *A THEORY OF JUSTICE* 554 (1971).

116. RICHARD JOHN NEUHAUS, *THE NAKED PUBLIC SQUARE* 36 (1984). The specific context Neuhaus considers is the participation of the “religious new right” in what he identifies as the “naked public square,” a public arena deliberately void of argument based on morality or religion. Although not discussed specifically, his perception of secular public discourse is applicable to the position of the religious human rights advocate.

117. See Richard Rorty, *Religion as Conversation-Stopper*, in 3 *COMMON KNOWLEDGE* 1, 2 (1994) (Secular theorists consider it “bad taste to bring religion into discussions of public policy.”).

118. NEUHAUS, *supra* note 116, at 103 (emphasis in original). By this description, Neuhaus is not articulating what he believes the situation *should* be; he is merely describing the current context in which religious persons find themselves.

that religious devotees are considered fanatics. An alternative explanation may originate from the assumption that religious debate on controversial political issues is divisive, or that the religious participants are unable to "gain a critical distance on their religious beliefs—the kind of critical distance essential to truly deliberative debate."¹¹⁹ Finally, the preclusion of religion may arise from the sentiment that the "legitimacy" of a public decision is suspect if that decision is based upon grounds that are not "publicly accessible."¹²⁰

Whatever the justification, the religious advocate who attempts "to enter the political arena making public claims on the basis of private truths"¹²¹ is assured that he can expect to be misunderstood, ignored, marginalized, or discredited for his reliance on something other than "public reason." Thus, although the religious believer is permitted to *rely* on his religious convictions in making private decisions, he is not permitted to publicly *express* himself in religious terminology.¹²²

What then is the religious believer to do, if he hopes to be successful and convincing in public debate? He is encouraged to hide his religious beliefs and argue in nonreligious terminology

119. MICHAEL J. PERRY, RELIGION IN POLITICS: CONSTITUTIONAL AND MORAL PERSPECTIVES 45 (1997) [hereinafter PERRY, RELIGION].

120. For discussions concerning "publicly accessible" grounds, see generally, JOHN RAWLS, POLITICAL LIBERALISM (1993); Abner S. Greene, *The Political Balance of the Religion Clauses*, 102 YALE L.J. 1611 (1993); Lawrence B. Solum, *Constructing an Ideal of Public Reason*, 30 SAN DIEGO L. REV. 729 (1993). Cf. GREENAWALT, RELIGIOUS CONVICTIONS, *supra* note 3, at 219 (suggesting that reliance on religious convictions is not necessarily suspect, but rather, is simply self-defeating). Greenawalt states: "In a very religious but extremely tolerant society, public airing of particular religious views might work well, but in actuality such discourse promotes a sense of separation between the speaker and those who do not share his religious convictions and is likely to produce both religious and political divisiveness." *Id.*

121. NEUHAUS, *supra* note 116, at 36.

122. See GREENAWALT, RELIGIOUS CONVICTIONS, *supra* note 3, at 12 ("Though reliance on religious convictions may be appropriate . . . argument in religious terms is often an inapt form of public dialogue."). Illustrating his contention that "one's complete grounds for action may differ from one's public justification or advocacy," Greenawalt recounts the following:

I explained my position and advocated it in a manner that made no use of my religious beliefs, any comprehensive view, or any nonaccessible ground. I appealed to considerations that I thought would be taken as relevant by all those with whom I had joint responsibility for the decision. . . . I understood the difference between making a directly religious argument and making arguments that had wider applicability.

KENT GREENAWALT, PRIVATE CONSCIENCES AND PUBLIC REASONS 137 (1995) [hereinafter GREENAWALT, PRIVATE CONSCIENCES].

alone.¹²³ To alleviate any discomfort with this strategy of securing agreement by what appears to be overt deception, the tactic is more palatable when considered nothing more than a modest attempt to find "common ground"—a principle of effective persuasion practiced daily by those who seek to influence or convince.

We do not expect a speaker to reveal all the personal judgments that have led him to his position; we expect him to put forward considerations that will appeal to others. Effective argument appeals to grounds that the audience will accept. If the audience includes many people who do not share one's religious convictions, the most effective persuasion will rely on other than narrow religious arguments.¹²⁴

The intent, therefore, is not to deceive or to create a *false* rationale more convincing or acceptable than the religious rationale upon which the religious advocate relies.¹²⁵ Rather, the advocate utilizes an effective method of persuasion whereby arguments

123. Not only must the religious believer limit self-expression to a neutral, non-religious vocabulary; he also must not reveal any trace of a purely religious motivation or imperative:

Those wishing to avoid charges of improperly bringing religion into the public square must be careful in the way they characterize their political goals. Particular positions cannot be presented as institutionally required or as theologically right. Instead, they must appeal to more general political or social interests. The advocacy of positions, in short, must be accomplished without the passion or vehemence of religious imperative.

William P. Marshall, *The Other Side of Religion*, 44 HASTINGS L.J. 843, 861 (1993).

124. GREENAWALT, RELIGIOUS CONVICTIONS, *supra* note 3, at 220-21. In his more recent book, Greenawalt suggests that the decision to rely on more "accessible" grounds is consistent with a principle of reasonability: "It *may be reasonable*, independent of one's own particular views about religion and ethics, to emphasize the importance in a pluralist society of public discussion in terms of grounds that are accessible to others." GREENAWALT, PRIVATE CONSCIENCES; *supra* note 122, at 128 (emphasis in original).

125. Although, generally speaking, deception is not the intended objective, some theorists may advocate overt deception as a means by which to achieve *fairness* for everyone:

The agnostic point of view is a device (like the veil of ignorance) for securing everyone's agreement. It keeps the contracting parties ignorant about certain details of their situation so that they are willing to make concessions. The most important thing to hide from the parties is information about their goals in life. . . . If I am ignorant about my own ends the safe bargain is one that is fair to everybody, because when the veil is lifted I could be anybody. As you might expect, the best way to be fair to everybody is to maximize freedom. That lets each person pursue her own goals.

JOHN GARVEY, WHAT ARE FREEDOMS FOR? 55-56 (1996).

based upon "common ground," while still consistent with religiously held beliefs, will be more easily understood or accepted by the listener.

By identifying neutral ground in common with his secular counterparts, the religious believer may succeed in garnering their support. Indeed, from this perspective, there is little chance of success *without* "secularizing" the religious rationale or objectives.¹²⁶

[C]itizens of extremely diverse religious views can build principles of political order and social justice that do not depend on particular religious beliefs. The common currency of political discourse is nonreligious argument about human welfare. Public discourse about political issues with those who do not share religious premises should be cast in other than religious terms.¹²⁷

Kent Greenawalt reassures the religious believer that it should not be difficult to "secularize" religious views, given that "[a]ny religious morality is likely to include many elements that are found in secular moralities and that can most plausibly lay claim to being self-evidently true, universally accepted, or demonstrable on the basis of accessible reasons."¹²⁸

In the context of religious human rights, the religious rationale in support of religious freedom¹²⁹ obviously "relies upon reasons that only some people find convincing."¹³⁰ Given the current hostility to religion in the "public square," it is not surprising that the religious advocate feels constrained to "secularize" his views before entering the fray. It is easy to identify adequate "secular" or neutral grounds, for "everyone has a reason to support some degree of religious freedom."¹³¹ From this perspective, the task of the religious advocate is to identify and capitalize upon secular reasons, in order to gather support for

126. In Greenawalt's opinion:

If one is to suggest a principle about reasons for political decisions that is more than a corollary of religious and ethical views concerning the validity of methods of reason, then one must present grounds for the political principle that have appeal to persons of religious and ethical views different from one's own. . . . The need for breadth of appeal is especially great if the principle one invokes depends on reciprocity of performance.

GREENAWALT, PRIVATE CONSCIENCES, *supra* note 122, at 128.

127. GREENAWALT, RELIGIOUS CONVICTIONS, *supra* note 3, at 216.

128. *Id.* at 70.

129. For a discussion of what I consider to be the uniquely religious rationale in support of religious freedom, see *supra* Part IV.

130. GARVEY, *supra* note 125, at 54.

131. *Id.* at 55.

decisions that will fit within the agendas or objectives of all participants in the pursuit of religious human rights.

B. *A Viable Alternative: Admission of Religious Rationale*

Turning from this discouraging perception of reality, I must ask a very obvious question: Is it absolutely necessary for the religious advocate to secularize his views in order to participate in the public arena? One can imagine a radically different paradigm, in which the religious advocate for religious human rights is not only *permitted* to openly articulate his religious rationale; he is both *expected* and *encouraged* to do so.¹³²

The ideal of a more permissive environment holds a great deal of theoretical appeal. First, consider the modest claim that religious believers simply should be allowed to be themselves. On the one hand, this is merely a matter of practicality: "People have great difficulty trying to face particular political issues free of the push of their religious or other comprehensive views."¹³³ For most religious believers, faith is central to identity. Indeed, as a Christian I consider my faith integrally woven into the very fabric of who I am—my faith defines me. From personal experience, I can attest to how difficult it is to remove that element of faith from any public discourse or debate in which I am engaged.¹³⁴ If my very identity inherently arises out of my faith, what of me remains after my religious rationale is forcibly removed?

Furthermore, as a matter of fairness, why can secular society exact from me a suspension of the most significant portion of my identity as a price of admission into the arena of public debate?¹³⁵ I am permitted to *rely* on my religious convictions in

132. Steven Smith states the position of the religious believer, who calls this alternate paradigm: "The religious citizen supports not two severable propositions but rather the single, complex proposition that secular and religious influences must both play a part in public decisions." Steven D. Smith, *Separation and the "Secular": Reconstructing the Disestablishment Decision*, 67 TEX. L. REV. 955, 1010 (1989).

133. GREENAWALT, PRIVATE CONSCIENCES, *supra* note 122, at 138.

134. In the words of David Novak, if forced to choose between allegiance to faith and attachment to any temporal or earthly affiliation, "my religious engagement is existentially prior to my engagement in any polity (the two only being identical when the Kingdom of God finally comes)." Novak, *supra* note 113, at 177.

135. "[E]fforts to craft a public square from which religious conversation is absent . . . will always in the end say to the religionists that they alone, unlike everybody else, must enter public dialogue only after leaving behind that part of themselves that they may consider most vital." STEPHEN CARTER, *THE DISSENT OF THE GOVERNED* 90 (1998).

making my decisions.¹³⁶ Why then, simply because I make my decisions on the basis of faith, am I forbidden to *express* the true foundation for these decisions?

Clearly, it is neither fair nor equitable to force me to reject or conceal my true justification, when an individual who decides on the basis of economic considerations, scientific evidence, or other permissible "publicly acceptable" grounds, is freely permitted to express reliance on those grounds.¹³⁷ Even secular theorist Richard Rorty, who seeks to keep religion out of the public square through the "privatizing of religion,"¹³⁸ insists that there is "hypocrisy . . . in saying that believers somehow have no right to base their political views on their religious faith, whereas we atheists have every right to base ours on Enlightenment philosophy. The claim that in doing so we are appealing to reason, whereas the religious are being irrational, is hokum."¹³⁹

Beyond these principles of practicality and fairness, the admission of religious rationale into the secular arena is further supported by obvious error in the "accessibility" argument, described above. The perspective set forward in the preceding section proposed that only those reasons that are "accessible" to the public at large are legitimately public reasons,¹⁴⁰ and concluded that religious grounds cannot be considered "publicly accessible." However, religion is no less accessible—and indeed, may be *more* accessible—than many other views permitted into the public square.

"Accessibility," it turns out, has little to do with the beliefs, values, and reasons that the actual citizens in a democracy do in fact understand and use. . . . Complex scientific calculations and abstruse philosophical notions may be

136. "[O]rdinary citizens should feel free to rely on convictions informed by religious and other similar views when they consider difficult political issues." GREENAWALT, PRIVATE CONSCIENCES, *supra* note 122, at 7.

137. "In a democracy that is free and robust, an opinion is no more disqualified for being 'religious' than for being atheistic, or psychoanalytic, or Marxist, or just plain dumb. . . . Religion in public is but the public opinion of those citizens who are religious." Richard John Neuhaus, *A New Order of Religious Freedom*, FIRST THINGS, Feb. 1992, at 13.

138. See Rorty, *supra* note 117, at 2.

139. *Id.* at 4; see also GREENAWALT, PRIVATE CONSCIENCES, *supra* note 122, at 101 ("If Kantian claims are to be allowed in the political process, explicit religious claims cannot fairly be excluded.").

140. Rawls identified public reasons as "presently accepted general beliefs and forms of reasoning found in common sense, and the methods of science when these are not controversial." JOHN RAWLS, POLITICAL LIBERALISM 224 (1993), quoted in Ronald Dworkin et al., *Lecture Transcript, The Fifth Annual Fritz B. Burns Lecture: Euthanasia, Morality, and the Law*, 30 LOY. L.A. L. REV. 1465, 1470.

“accessible” even though ordinary citizens may find them foreign or implausible, but religious values that are widely accepted (and understood even by many citizens who do not accept them) are not. “Accessibility” becomes little more than an appealing catchword denoting the theorists’ preferred mode of political discourse.¹⁴¹

In the same way that nonreligious grounds may be “inaccessible,” the “divisiveness” argument against religious expression is also defeated; nonreligious grounds may be either equally as divisive or more divisive than religion. “To be sure, religion often has been divisive, leading to sectarian conflict and persecution. But there also have been many divisions over political values not considered religious, and many of these divisions also have caused strife.”¹⁴² In this way, both the accessibility and the divisiveness arguments for the exclusion of religious rationale prove too much; “in each case, secular as well as religious belief appears to fit the criterion.”¹⁴³ Therefore, neither is an acceptable basis on which to exclude religious rationale from public debate.

Beyond these responses to the claims made by those wishing to exclude religion, independent arguments likewise justify the inclusion of religious rationale in public debate on religious human rights. The first is the conclusion, arrived at in Part III, that the religious viewpoint provides a much-needed foundational framework for the field of religious human rights.¹⁴⁴ “The task of the religious believer—Jewish, Christian or Muslim—is to provide a better foundation for the moral claims of a secular realm where the vast majority of whose citizens profess religious belief, and indeed, see their very allegiance to that secular realm

141. Smith, *supra* note 132, at 1015. This understanding of accessibility will not come as a surprise to many religious people, who “do not think that their fundamental convictions are less than fully accessible; they suppose these convictions can be established on grounds that are subject to general rational evaluation.” GREENAWALT, PRIVATE CONSCIENCES, *supra* note 122, at 39 (emphasis in original).

142. Greene, *supra* note 120, at 1616 n.23. Greene’s explanation continues: “The organized nature of some religions might make it more likely that groups of people will have power to act against dissenters, but there are plenty of organized nonreligious groups that take controversial political positions.” *Id.*; see also PERRY, RELIGION, *supra* note 119, at 47-48 (“To be sure, religious discourse in public . . . is sometimes quite sectarian and therefore divisive. But religiously based moral discourse is not necessarily more sectarian than secular moral discourse. It can be much less sectarian.”).

143. Greene, *supra* note 120, at 1616.

144. For a full discussion of this conclusion, see Part III.C, *supra* (discussing the essential contribution the religious community is capable of making to the human rights enterprise—a comprehensive depth of philosophical framework).

as itself being religious."¹⁴⁵ To attempt to preserve and protect religious human rights on purely secular grounds is both illogical and ineffective; therefore, admission of religious rationale to the public debate is essential.

Even if secular advocates do not agree that the religious rationale should serve as the foundation for religious human rights, the introduction of religious language into political discussion should be permitted as an alternative, at the very least. It is patently illogical to prohibit a religious advocate from entering the debate concerning religious freedom, simply due to the religious nature of his argument.¹⁴⁶

Yet there is more at stake than fairness. According to the logic of either the free marketplace of ideas or of religious freedom itself, *truth* will emerge only if all voices are permitted to enter the debate. As Michael Perry has stated:

Rather than try to do the impossible—maintain a wall of separation between the religiously based moral discourse that inevitably and properly takes place in public culture on the one side and the discourse that takes place in public political debate on the other side—we should simply welcome the presentation of religiously based moral arguments in *all* areas of our public culture, *including* public debate specifically about contested political choices. Indeed, . . . we should not merely welcome but *encourage* the presentation of such arguments in public political debate—so that we can test them there."¹⁴⁷

Clearly, some arguments, whether religious or secular, will "have more to offer than others, and . . . accordingly are entitled to more attention and public consideration."¹⁴⁸ Yet, in the marketplace of ideas, truth will emerge if we allow *all* views and opinions into public debate, whether or not we understand them or agree with them.¹⁴⁹ "We do not have (and we should not have) so secure a notion of public consensus, or such stringent require-

145. Novak, *supra* note 113, at 177.

146. Related to the context of public discourse in the United States, one author states that the principle of religious equality requires "that we fully protect the free exercise and free speech rights of all religious believers, including their right to attempt to influence the law and public policy." Daniel Conkle, *Different Religions, Different Politics: Evaluating the Role of Competing Religious Traditions in American Politics and Law*, 10 J.L. & RELIGION 1, 2 (1993).

147. PERRY, RELIGION, *supra* note 119, at 47 (emphasis in original) (parenthetical notations deleted).

148. Conkle, *supra* note 146, at 2.

149. John Stuart Mill describes the concept of truth emerging from a free marketplace of ideas as follows:

ments of fairness in debate, as to exclude any view from having its effect on the marketplace of ideas."¹⁵⁰

C. *The Conclusion: No Compromise*

As a Christian advocate for religious human rights, I cannot¹⁵¹—indeed, I *must not*—alter my identity in order to enter

We have now recognized the necessity . . . of freedom of opinion, and freedom of the expression of opinion, on four distinct grounds; which we will now briefly recapitulate.

First, if any opinion is compelled to silence, that opinion may, for aught we can certainly know, be true. To deny this is to assume our own infallibility.

Secondly, though the silenced opinion be an error, it may, and very commonly does, contain a portion of truth; and since the general or prevailing opinion on any subject is rarely or never the whole truth, it is only by the collision of adverse opinions that the remainder of the truth has any chance of being supplied.

Thirdly, even if the received opinion be not only true, but the whole truth; unless it is suffered to be, and actually is vigorously and earnestly contested, it will, by most of those who receive it, be held in the manner of a prejudice, with little comprehension or feeling of its rational grounds. And not only this, but, fourthly, the meaning of the doctrine itself will be in danger of being lost, or enfeebled, and deprived of its vital effect on the character and conduct: the dogma becoming a mere formal profession. Inefficacious for good, but cumbering the ground, and preventing the growth of any real and heartfelt conviction from reason or personal experience.

JOHN STUART MILL, *On Liberty*, in *ESSAYS ON POLITICS AND SOCIETY* 213, 257-58 (Robson ed., 1977).

150. Jeremy Waldron, *Religious Contributions in Public Deliberation*, 30 *SAN DIEGO L. REV.* 817, 842 (1993). Waldron explains what is at stake:

Even if people are exposed in argument to ideas over which they are bound to disagree—and how could any doctrine of public deliberation preclude that?—it does not follow that such exposure is pointless or oppressive. For one thing, it is important for people to be acquainted with the views that others hold. Even more important, however, is the possibility that my own view may be improved, in its subtlety and depth, by exposure to a religion or a metaphysics that I am initially inclined to reject. . . . [W]e all have at one time or another, [had the experience] of having argued with someone whose world view was quite at odds with our own, and of having come away thinking, "I'm sure he's wrong, and I can't follow much of it, but, still, it makes you think . . ." The prospect of losing that sort of effect in public discourse is, frankly, frightening—terrifying, even, if we are to imagine it being replaced by a kind of "deliberation" that, in the name of "fairness" or "reasonableness" (or worse still, "balance") consists of bland appeals to harmless nostrums that are accepted without question on all sides.

Id. at 841-42.

151. The impossibility of forced concealment of religious rationale has been analogized to a form of moral "schizophrenia." See NEUHAUS, *supra* note

the public debate.¹⁵² Whether or not it is recognized or respected by secular society, my faith has a profound impact on my life, my work, my decisions, and my advocacy.¹⁵³ I enter "the public square, then, not as an anonymous citizen but as a person shaped by 'other sources' that are neither defined by nor subservient to the public square."¹⁵⁴

A number of factors lead to my conclusion, that I not conceal my religious rationale and identity when I enter the public debate. First and foremost, the Bible itself instructs me not to. Christ described believers as the "light of the world," as a "city on a hill" that cannot be hidden. The light of our faith is something we are instructed to "shine before men."¹⁵⁵

The reasons why I must not conceal my faith go further than biblical admonition, however. As explained in the previous section describing the current challenge, I recognize that if I enter the public arena with my religious identity and rationale in full view, I will likely be ignored, criticized, or maligned. However, if because of this threat I choose to be silent about my true motivation and personality, regardless of any short-term success or agreement that may result, I am diminishing my cause in the

116, at 125 (In the public square, "[t]he assertion of a moral claim is [considered] an 'imposition' upon a presumably value-free process. Morally serious people, however, cannot divide themselves so neatly. Democracy does not require and cannot survive such a schizophrenic demand.").

152. Referring to a religious person's involvement in secular debate, Neuhaus concludes: "Although she may not speak in the political arena in the same way she speaks in church, the moral political actor is the same person in both situations." *Id.* at 125.

153. Using the work of Martin Luther King, Jr., as an example, it is interesting to note that secular society often incorrectly assumes the following:

[M]atters of *public* significance must be sanitized of religious particularity. It regularly occurred that the klieg lights for the television cameras would be turned off during Dr. King's speeches when he dwelt on the religious and moral-philosophical basis of the movement for racial justice. They would be turned on again when the subject touched upon confrontational politics. In a luncheon conversation, Dr. King once remarked, "They aren't interested in the *why* of what we're doing, only in the *what* of what we're doing, and because they don't understand the *why* they cannot really understand the *what*."

Id. at 98 (emphasis in original).

154. *Id.* at 128.

155. In the gospel of Matthew, Jesus instructed:

You are the light of the world. A city on a hill cannot be hidden. Neither do people light a lamp and put it under a bowl. Instead they put it on its stand, and it gives light to everyone in the house. In the same way, let your light shine before men, that they may see your good deeds and praise your Father in heaven.

Matthew 5:14-16.

long term. As Neuhaus has eloquently stated: "By divesting ourselves of authoritative moral referents that are external to ourselves, such as religion proposes, we have acquiesced in the judgment that there is no moral appeal beyond the individualistic pursuit of interests."¹⁵⁶ My acquiescence merely perpetuates the problem.¹⁵⁷

Much of the animosity and criticism between the religious and the secular human rights communities may be attributed to mutual ignorance or misunderstanding.¹⁵⁸ As a Christian in a predominately secular arena, I may be able to have some influence, to educate, or to clear up some of the misunderstandings the secular community has of Christians. And yet, I can only hope to have this effect if I enter the arena and engage in the fray, while not yielding to the pressure to conceal my religious roots.

In Neuhaus' perspective concerning the absence of religion from the public square, "[a]t one level, it can be said that the prevailing situation is extremely nondemocratic. At another level, more closely related to sociological theory, it must be said that the situation cannot be sustained. . . . The broken conversation between religion and the business of the *polis* must be re-established."¹⁵⁹

When I say that I must not conceal my religious identity or convictions, that is not a license for either dogmatic or judgmental behavior on my part. I can also only hope to have the positive

156. NEUHAUS, *supra* note 116, at 126.

157. Edward Luttwak describes "the problem" as follows:

Policy makers, diplomats, journalists, and scholars who are ready to over-interpret economic causality, who are apt to dissect social differentiations more finely, and who will minutely categorize political affiliations, are still in the habit of disregarding the role of religion, religious institutions, and religious motivations in explaining politics and conflict, and even in reporting their concrete modalities. Equally, the role of religious leaders, religious institutions, and religiously motivated lay figures in conflict resolution has also been disregarded—or treated as a marginal phenomenon hardly worth noting.

This does not necessarily have anything "to do with personal attitudes toward religion" but with "a learned repugnance to contend intellectually with all that is religion or belongs to it—a complex inhibition compounded out of the peculiar embarrassment that many feel when faced by explicit manifestations of serious religious sentiment."

Edward Luttwak, *The Missing Dimension, in RELIGION: THE MISSING DIMENSION OF STATECRAFT* 8, 9-10 (1994), *quoted in* MARSHALL, *supra* note 12, at 198.

158. *See supra* Part III.

159. NEUHAUS, *supra* note 116, at 99.

effect described above if I strike a difficult balance—I must seek and promote the truth, in humility and love. Furthermore, I am not claiming that every discussion or decision will require me to actively identify myself as a Christian, pull out my Bible, or speak in religious terminology. While my Christian identity and religious rationale should be an integral component of my work in the secular human rights community, I also should be sensitive in discerning occasions when it is both appropriate and necessary for me to express myself in terms of my faith.

I concede that there may be times where in order to obtain support and agreement on a particular point or for a specific endeavor, I will have to resort to seeking neutral (*i.e.*, secular) “common ground.” Finding common ground is indeed an essential key to effective advocacy. It is not essential, however, to assume that I have no choice but to “secularize” my views each time I enter a public debate. Indeed, finding common ground might similarly mean finding a religious rationale with which my nonreligious counterparts can agree. Or it may mean arriving at a common decision that is consistent with *both* the religious and the secular justification.

The words of Lawrence Solum, written in the context of public debate over euthanasia, shed light on the context of religious human rights as well:

When we debate the legal issues raised by euthanasia and physician-assisted suicide, we can search for common ground, rather than focus on the questions that divide us. This is not to say that we can or should disregard our most fundamental beliefs about ultimate matters when we debate euthanasia in public. It is to say that we should *search for the ways in which our deepest beliefs converge and overlap with those of our fellow citizens. . . .* The belief in the sanctity of human life, the belief that suffering should be alleviated, and the belief that human dignity requires freedom and self-determination—these are values that are widely shared. . . . A patient and respectful search for agreement using the common resources of our shared public reason may repay us with understanding and reconciliation.¹⁶⁰

Therefore, although it may be necessary at times to seek common neutral ground in order to win support, I must also both retain and reflect the unique religious rationale on which my position is founded. I do so with the hope of persuading others

160. Dworkin et al., *supra* note 140, at 1472 (portion quoted written by Lawrence Solum) (emphasis added).

that a religious foundation for religious human rights is not only viable but is, as I believe, a more effective philosophical framework upon which to frame the efforts of both communities.

*EPILOGUE: "COMMON GROUND FOR MUTUAL SUPPORT"*¹⁶¹

Despite their difficult and paradoxical relationship, religion and human rights must not only be reconciled, but indeed support each other. This can and should be achieved, I believe, through efforts on both sides of the issue. Secular human rights advocates, on the one hand, must transcend an attitude of indifferent tolerance of religion to a moral recognition of religious faith and serious engagement of religious perspectives. Those who take religion seriously, on the other hand, must see human rights as integral to their belief or concern, rather than as a purely secular system to be accommodated.

Abdullahi Ahmed An-na'im¹⁶²

The challenge we face, as advocates of religious human rights, is an increasingly demanding one.

The growth of religious pluralism is worldwide and constitutes one of the major challenges facing all the religions of the world today. The increasing presence of multiple faiths in secular societies makes religious isolation impossible and interfaith encounters inevitable. . . . The call for recognition of religious human rights in the world community needs to be sounded by the religions themselves as well as by instruments of national and international law. . . . Religious liberty, like world peace, is not only a moral imperative worthy of universal support around the world, it also needs to be seen as essential for the creation of a world community and may well prove to be crucial in the survival of the human family.¹⁶³

Although the task is daunting, there is hope. Yet, only in working together will we be equal to the task. As the statement of Abdullahi Ahmed An-na'im, above, indicates, religion and secular human rights must not only be reconciled but must support one another in order to succeed in the challenge before us.

161. Abdullahi Ahmed An-na'im, *Islamic Foundations of Religious Human Rights*, in RELIGIOUS PERSPECTIVES, *supra* note 7, at 337, 341 (identifying the need for both secular human rights and religion to seek "common ground for mutual support").

162. *Id.* at 340-41.

163. Wood, *supra* note 10, at 482.

As a Christian advocate for religious human rights, in order to be effective in the short term, I must attempt to discern the occasions when neutral common ground is necessary. And yet, to help build a foundation for long-term mutual understanding and cooperation, I must both retain and openly display my Christian identity and religious rationale. It is my hope that by doing so, I can in some small way help to bridge the chasm between the factions. More importantly, I hope to identify "common ground" which will advance the enterprise of religious human rights one step closer to both justice and truth.

In order for religion and human rights to be reconciled and support one another, the search for common ground is not my task alone. My secular counterparts also must act—they must be willing to take the difficult step of "suspension of disbelief," to listen to the religious rationale with an open mind, and to learn from what it has to offer. In this way, together we will be strengthened to fight the evils of injustice and religious intolerance, and together we will eagerly anticipate the day of universal respect for religious human rights.

