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RICHARD AND HELEN DEVOS CENTER FOR RELIGION AND CIVIL SOCIETY

## About the Author

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This paper is one in a series of essays on the natural law and natural rights foundations of internationally recognized human rights. The “First Principles of International Human Rights” essays propose reforms of the human rights movement for the increased protection of the fundamental and inalienable rights of all people.

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# Religious Freedom in International Human Rights Law

*Daniel Philpott*

**E**fforts to mitigate religious repression profit immeasurably from the status of religious freedom as a genuine human right. This status derives enormous credibility from the prominent presence of religious freedom in the Universal Declaration of Human Rights (UDHR), which stands as the founding charter of human rights. Today this status is threatened by arguments from Western scholars and practitioners that religious freedom is not a distinct human right, that it is not a universal human right, and that it ought to be curtailed by newly emergent claims on behalf of sexual orientation and gender identity. This status is bolstered, therefore, by new arguments, rooted in natural law and in the concept of religion, that religious freedom is a universal, moral, pre-political human right.

Few human rights are violated as widely today as is religious freedom. The Pew Research Center has reported consistently for a decade that about three-quarters of the world's population lives under regimes that violate religious freedom at high levels. In China and Nigeria, religious freedom is ever more endangered, while in Burma, Egypt, Syria, Uzbekistan, and many other places it remains beleaguered.<sup>1</sup>

One who wishes to confront, criticize, and seek to mitigate this repression, which spans regions, religions, ideologies, and cultures, will want to assert with confidence and credibility that religious freedom is indeed a human right. This confidence and credibility are immensely fortified by the prominent presence of religious freedom in the Universal Declaration of Human Rights (UDHR) of 1948,<sup>2</sup> which stands as the founding charter of human rights; was developed and expanded in the subsequent human rights tradition; and has been appealed to thousands of times, all over the world, by dissidents, framers of constitutions, activists, victims, lawyers, and diplomats.

Even more so, advocates of religious freedom will gain confidence and credibility from being able to say not only that the nations of the world have declared that religious freedom is a human right and agreed to abide by this right in binding legal conventions, but also that religious freedom is a human right *prior to* and *apart* from such agreements—a right to which everyone, everywhere is entitled by virtue of being human.

The need for this credibility and confidence has become ever greater at the present moment, when, apart from being violated on the ground, religious freedom is being called into question within some of the very quarters from which human rights have received their strongest support: scholars of law and politics, international lawyers and diplomats, and policymakers in developed democracies. They question religious freedom on several grounds, three of which this essay will examine. To wit:

- One criticism is that “religious freedom is not special,” meaning that it is indistinct from other rights like freedom of speech, expression, and conscience, and thus does not warrant being considered a right of its own.
- A second line of skepticism holds that religious freedom is not a universal human right, but is rather the product of discourses and power in the modern Western world.
- A third criticism does not question religious freedom as a universal human right, but rather calls for its sweeping and unprecedented curtailment on behalf of newly emergent claims for sexual orientation and gender identity.

The time is ripe, then, for a fresh defense of religious freedom as a universal human right. Such a defense rests on natural law, particularly on an important feature of natural law—basic goods—of which religion is one. This essay begins with a look at religious freedom’s place in the Universal Declaration of Human Rights, its evolution in human rights law, and its advocacy on the part of states and nongovernmental organizations (NGOs). The following section presents the core defense of the human right of religious freedom on the basis of natural law. Then, the essay looks at the three contemporary challenges to the human right of religious freedom just enumerated and offers a response to these challenges on the basis of a natural law defense of religious freedom. Finally, it offers recommendations for the promotion of religious freedom.

## A Declaration of Universality

Historian Johannes Morsink, in his thorough and authoritative history of the origins and formation of the UDHR, tells of a debate among the drafters over whether the document would be a mere declaration, as it turned out to be, or an international legal convention, which is binding among states and endowed with powers of oversight, enforcement, or adjudication. Without such legal powers, some drafters argued, the document would have no teeth.<sup>3</sup>

**The UDHR.** Ironically, Morsink points out, the declaratory status of the UDHR may have been crucial to its remarkable historical influence as a set of principles that could be endorsed and invoked without having to engage legal machinery. The UDHR, adopted by the United Nations General Assembly on December 10, 1948, has been “the moral backbone and source of inspiration” of an entire body of human rights law, including some “two hundred assorted declarations, conventions, protocols, treaties, charters, and agreements” and several regional conventions and organizations; is referenced by some 60 domestic constitutions, of which at least 26 grant the UDHR superiority over domestic legal systems;<sup>4</sup> is the founding reference point of organizations dedicated to promoting human rights; has been invoked by dissidents and victims; is taught by schools and universities around the world; and has been embraced by religious bodies, not least the Catholic Church, which includes some 1.3 billion members worldwide.

Religious freedom acquired great global prestige by being included in the UDHR. It is the subject of Article 18, while religion is also included in the list of distinctions by which human rights ought not to be denied in Article 2. Here is Article 18 in full:

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.

The article is brief and concise—edited down from a much longer draft version—and, like the preamble, packed with content. Characteristic of the UDHR as a whole, it accords this right to “everyone”—that is, each human being. Religion is presented as one of a trio of protected activities, along with thought and conscience, a juxtaposition that would persist in human rights law, where “freedom of religion or belief,” for instance, is often found.

This partnering has not stood in the way of religion receiving distinct protection, and religious freedom's inclusion with thought, conscience, and later, belief, underline the critical importance of inward assent in the rationale for religion's protection.

Inward assent also underlies the freedom to change one's religion—to exit a religion, join a religion, or reject religion altogether. The Article then closes with an enumeration of several dimensions of religion, all of which suffer violation in reality and any of whose omission serves to justify the violation of religious freedom. When authorities construe religion solely as a private matter, they purport to justify the violation of its public expression; when they construe it merely as an individual matter, they aim to justify the suppression of its communal expression; when they ignore religion's manifestation in teaching, practice, worship, or observance, they pave the way for quelling any of these dimensions.

The UDHR, including Article 18, was the product of strenuous efforts to achieve consensus across geography, culture, and religion over a period of two years. A U.N. Human Rights Commission, consisting of representatives of 18 countries, was charged with producing an international bill of rights, while a drafting committee, made up of representatives of eight countries, worked closely together in composing the document. Among the members of the commission were a Chinese Confucian, a Lebanese Catholic, a Soviet Communist, an Indian Hindu, and members hailing from Australia, Iran, the Philippines, and other countries. During the fall of 1948, all 58 members of the U.N. General Assembly met regularly in some 150 meetings to negotiate the document.<sup>5</sup> Finally, the UDHR passed with 48 members voting in favor, eight members abstaining, and two absent.<sup>6</sup>

Was religion, and Article 18 in particular, an obstacle to consensus? The drafters sought to minimize religious controversy while maintaining the robustness of the human right of religious freedom. Morsink explains that “the drafters went out of their way to avoid having the Declaration [UDHR] make a reference to God or to man's divine origin.”<sup>7</sup> The most difficult controversies encountered in the drafting of the UDHR can be seen in the eight abstentions. Six of these eight were communist states, including the Soviet Union, two Soviet republics, and three Eastern European communist bloc states, all of which spoke in one voice. Religion was not their stated objection, though, but rather threats to their sovereignty. A seventh, South Africa, likewise feared empowerment of international condemnation of its practices of Apartheid.

During the drafting process, the Soviet Union had proposed that Article 18 include language spelling out the right not to believe any religion, but

the proposal was rejected on the argument that such a right was already implicit in freedom of thought.<sup>8</sup> The only country to abstain on the basis of religion was Saudi Arabia, who saw Article 18's clause about the right to change one's religion as contrary to Muslim teachings about apostasy and a cover for Christian missionary activity. Other Muslim delegates, though, supported the change, including one from India and one from Pakistan.<sup>9</sup> On the whole, it is remarkable how little religion or religious freedom stood in the way of passing the UDHR.

**Subsequent Developments.** Since 1948, religious freedom has expanded its presence in international law. The International Covenant of Civil and Political Rights of 1966<sup>10</sup> renders human rights a binding legal obligation and sets forth religious freedom in its own Article 18. Religious freedom's most expansive articulation in international law came in the Declaration on the Elimination of All Forms of Intolerance and of Discrimination,<sup>11</sup> proclaimed by the U.N. General Assembly in 1981, which spells out the widest array of dimensions of religious freedom of any of the international human rights documents. Like the UDHR, though, the 1981 declaration is just that—a declaration of principles and not a legally binding convention. In 1986, a United Nations mandate established what came to be called the Special Rapporteur on the Freedom of Religion or Belief,<sup>12</sup> whose task is to identify obstacles to freedom of religion or belief and to propose ways to overcome them. Four people have held the position since. Religious freedom also appears in the constitutions of about 90 percent of the world's sovereign states, a shared legal status that buttresses the principle's universality, though in many cases does not correspond to actual practice.<sup>13</sup> Still, for all of these developments, religious freedom remains what one advocacy group calls an “orphaned right,” one that enjoys far fewer legal mechanisms to promote and protect it than comparable human rights.<sup>14</sup>

**The International Religious Freedom Act (IRFA).** Partly compensating for this weakness is the rise of religious freedom in the foreign policies of developed democracies in the past two decades. The prototype is the policy of the United States, which the U.S. Congress established through the IRFA in 1998.<sup>15</sup> Advocated first by evangelical Protestant Christians who sought to combat the global persecution of Christians that emerged after the Cold War, and then by a broad coalition of Protestants, Catholics, Jews, and Muslims, the law was passed by the U.S. Senate 98–0 and established an architecture for the pursuit of religious freedom in U.S. foreign policy.<sup>16</sup> The law established an Ambassador-at-Large for International Religious Freedom, an Office for International Religious Freedom in the U.S. State Department, and an independent U.S. Commission on International



Religious Freedom (USCIRF). Both the State Department office and the Commission issue annual reports on religious freedom around the world; the State Department office recommends action against violator states, and the Secretary of State may designate some of these as Countries of Particular Concern.

In 2016, the Frank R. Wolf International Religious Freedom Act strengthened the IRFA by establishing “entities of particular concern” to cover non-governmental actors like the Islamic State, creating a list of “designated persons” who violate religious freedom, and expanding the scope of protection to non-theistic beliefs and the non-practice of religion. In 2018, U.S. Secretary of State Mike Pompeo hosted a Ministerial to Advance Religious Freedom, which brought together foreign officials from 106 countries and several hundred civil society leaders to form networks and consensus on religious freedom, an event that was repeated in 2019 and is scheduled to take place a third time in 2020.<sup>17</sup> A recent important development was the signing of an executive order by President Donald Trump to prioritize religious freedom in U.S. diplomacy, foreign assistance, and the training of foreign service officers on June 2, 2020.<sup>18</sup>

Following the United States’ lead, the European Union, Canada, the United Kingdom, Austria, Germany, Italy, the Netherlands, and Norway have adopted religious freedom into their foreign policies through diverse mechanisms and initiatives. Canada retreated, though, shuttering its Office of Religious Freedom in March 2016. Buttressing the international promotion of religious freedom is also the work of NGOs and transnational actors, which span religions and, for the most part, remain robustly non-partisan. Added to this are the numerous religious bodies that promote religious freedom.<sup>19</sup>

So if religious freedom’s place in international law is firmly ensconced but weak relative to other human rights, the foreign policies of democratic states and the work of NGOs lend support to religious freedom that rivals and even exceeds that which other human rights enjoy. Still, over the decades since the UDHR was proclaimed, controversies have ensued over religious freedom and have increased in recent years. During the Cold War, religious freedom was a bone of contention and promoted by the United States through measures such as the Jackson–Vanik Amendment of 1974, which called for the emigration of Jews from the Soviet Union.

**The UIDHR.** Religious freedom also remained controversial among the world’s Muslims. Disputes between Muslim-majority countries and the United States, particularly over the freedom to change one’s religion and belief, stalled the adoption of the 1981 declaration for two decades and

explain why this declaration never became a legally binding instrument. Deepening division still, several Muslim-majority countries, among them Egypt, Pakistan, and Saudi Arabia, promulgated the Universal Islamic Declaration of Human Rights (UIDHR) in 1981,<sup>20</sup> whose name mimicked the UDHR, but whose *raison d'être* was to establish an alternative to the dominant tradition—that sharply *curtails* religious freedom in substance.

This document articulates religious freedom but adds “within the limits prescribed by the Law,” meaning Sharia Law, and implies a prohibition of spreading ideas declared to be false by the standards of Islam.<sup>21</sup> In 1990, the Cairo Declaration of Human Rights in Islam<sup>22</sup> was adopted by foreign ministers of the Organization of the Islamic Conference (OIC) (now the Organization of Islam Cooperation)—and contained no article on religious freedom at all. During the 2000s, several Muslim-majority member states of the United Nations sponsored resolutions condemning “defamation of religion,” which most Western states rejected as sanctioning blasphemy laws that sharply restricted the speech and religious practices of non-Muslims and Muslim dissenters.

**Resolution 16/18.** Important developments in this debate came on March 24, 2011, when the U.N. Human Rights Council unanimously adopted Resolution 16/18,<sup>23</sup> which called on member states to promote religious freedom and the protection of religious minorities, while also undertaking measures to combat religious intolerance. This measure did not deliver the OIC the victory that it was looking for, yet allowed the OIC to claim that its position had support at the U.N. In July of that same year, the U.N. Human Rights Committee adopted General Comment 34 on the International Covenant on Civil and Political Rights (ICCPR),<sup>24</sup> which held that “[p]rohibitions of displays of lack of respect for a religion or other belief system, *including blasphemy laws*, are incompatible with the Covenant.” This measure was a more distinct defeat for the OIC’s campaign. Efforts to advance a defamation resolution, however, continue to this day.<sup>25</sup> Religious freedom remains a controversial principle among Muslim religious and political leaders around the world—and accounts for one of the strongest strains on a universal consensus on the human right of religious freedom.

Again, voices in the West have also come to call into question the human right of religious freedom in recent years. Three major strands of this criticism have arisen, which are taken up below. All of these controversies, all placing strain on the human right of religious freedom, call for a renewed defense of this right’s universal validity.

## An Argument for Universality

As the UDHR was being drafted, the United Nations' Educational, Scientific and Cultural Organization (UNESCO) formed a Committee on the Theoretical Bases of Human Rights, which brought together leading scholars of the day to consider conceptual issues underlying the UDHR, especially that of its universality: Can it be said that the rights that the UDHR enumerates and the principles that the preamble articulate are universal and common to the many belief systems found among the 58 members of the United Nations?<sup>26</sup>

**Jacques Maritain.** Among these scholars, perhaps the most influential in defending the UDHR was the French philosopher, Jacques Maritain. Maritain is widely known for his quip, "We agree about the rights, *provided we are not asked why.*" In his 1951 book, *Man and the State*, Maritain elaborated his insight thus:

How is an agreement conceivable among men assembled for the purpose of jointly accomplishing a task dealing with the future of the mind, who come from the four corners of the earth and who belong not only to different cultures and civilizations, but to different spiritual families and antagonistic schools of thought? Since the aim of UNESCO [United Nations Educational, Scientific, and Cultural Organization] is a practical aim, agreement among its members can be spontaneously achieved, not on common speculative notions, but on common practical notions, not on the affirmation of the same concept of the world, man, and knowledge, but on the affirmation of the same set of convictions concerning action. This is doubtless very little, it is the last refuge of intellectual agreement among men. It is, however, enough to undertake a great work; and it would mean a great deal to become aware of this body of common practical convictions.<sup>27</sup>

The agreement of the world's states on human rights did not require a foundation in a single philosophical school of thought or religion, Maritain argued. Imposing such a requirement would render such an agreement next to impossible.

Maritain did not leave matters there, however. A few pages later, he took a different tack, asserting that "from the point of view of intelligence, what is essential is to have a true justification of moral values and moral norms." He then declared that "[t]he philosophical foundation of the Rights of man is Natural Law."<sup>28</sup> Why did Maritain make such a strong claim for natural law, using the definite article, "*the* philosophical foundation," putting forth

a “true justification,” and calling it essential? Do human rights depend on a particular theory or tradition of thought after all? If so, what, then, do we make of his often-quoted quip, “provided we are not asked why”?

Broadly speaking, Maritain’s claims are not contradictory. One can argue that convincing nations to sign a mutual declaration on human rights does not require that this declaration espouse a particular philosophical or religious justification for human rights, while also arguing that natural law is essential for making sense out of human rights. But why is natural law essential? If it is essential, how can we affirm this without demanding that human rights agreements be tethered to a philosophical doctrine?

An answer to these questions lies in the insight that natural law is not first and foremost a philosophical doctrine. Rather, it is simply the moral law that every human being knows through the exercise of her rationality. The popular 20th-century writer, C. S. Lewis, argued in his classic, *The Abolition of Man*, for what he called the Tao, which is the moral law that people across time and place have affirmed—norms commending beneficence, fairness, and respect for elders and condemning lying, adultery, and murder, for instance. In the appendix of the book he supports the claim with evidence from a wide variety of cultures.<sup>29</sup> The breadth and width of these norms are known through basic, shared human capacities.

Human rights, likewise, are not first and foremost the conclusion of a philosophical argument, but rather are entailed in the natural law itself. This answer departs somewhat from Maritain’s argument in that it does not assert natural law as the “philosophical foundation for human rights.” Natural law theory is not one of many doctrinal options for grounding human rights (albeit the option that Maritain thinks is the best one). Rather, human rights are simply a part of the natural law itself. Were there no natural law, we would not be merely lacking a good philosophical argument for human rights, rather, there would be no human rights at all. No natural law, no human rights.

**Human Rights and Natural Law.** In what sense are human rights a part of the natural law? Only a brief explanation is possible here, mindful that the connection between natural law and human rights is explored in other papers in this series. Human rights are entitlements that every human being justly asserts vis-à-vis every other human being (including every group of human beings and the state).<sup>30</sup> The ground of these entitlements is the dignity, or inestimable worth, of the human person. Because human rights belong to every human being and are grounded in the inherent worth of the person, they are natural rights—and not rights that depend for their validity on law, culture, or institutions. The rights that people justly assert

logically correspond to obligations on the part of other human beings. If a person has a human right not to be tortured, everyone else has an obligation not to torture him, and so on. These obligations are binding on everyone, can be known by everyone, and are thus equivalent to the universal norms that make up the natural law.<sup>31</sup>

The key elements of this argument are found in the UDHR's preamble, beginning with its rich opening sentence: "Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world." The word "recognition" conveys an acknowledgement of something that is true prior to and apart from the document and whose validity is not conferred or bestowed by the document. What is recognized first is dignity and the inherent and universal character of this dignity, meaning that it belongs to human beings; is not given or taken away by a state or institution; and is not dependent upon the culture, mores, or religion of this or that time or place.

Similarly, that human rights are "inalienable" and held "equally" by all human beings also means that rights are attached to essential features of being human, or human nature. That rights are connected to universal moral norms is implied by their "foundational" connection to justice, which consists of moral norms and by the next sentence's link between contempt for human rights and "barbarous acts" that can only be judged to be such by the standards of moral norms. While the preamble to the UDHR does not espouse a doctrine of natural law, or any doctrine at all, it does assert natural rights, the rights that I have argued are embedded in natural law.

None of this implies that philosophical arguments are unimportant. If human rights are embedded in natural law, theories of natural law can help people to understand what the natural law consists of, how people know it, how it furthers human flourishing, how precisely it entails rights, and how it can survive the criticism of skeptics.<sup>32</sup> People do not need theory in order to grasp natural law, but can benefit from it nonetheless, much as a person can operate a car without an owner's manual or a mechanic's education, yet profit from both.

Scholars have articulated numerous theories of natural law over the centuries and continue to do so today. The argument at hand does not depend on any one theory of natural law. However, a defense of the human right of religious freedom benefits greatly from one concept found in certain natural law theories—that of basic goods. The concept is most prominent in, though not exclusive to, the thought of a school known as the New Natural Law theory.<sup>33</sup>

**Basic Goods and New Natural Law.** What are basic goods? As old as Aristotle is the insight that there are some goods that humans pursue as instrumental to other good or ends, and other goods that humans pursue for their own sake.<sup>34</sup> Goods sought for their own sake, which New Natural Law theorists call basic goods, include knowledge, life, health, play, work, aesthetic appreciation, friendship, and others.<sup>35</sup> Basic goods are dimensions of human fulfillment; to realize them is to flourish. They direct the will, are grasped through intelligence, and are intrinsically valuable. Therefore, they enhance the human dignity that arises from free will and intelligence. To violate a basic good is to violate a dimension of a person's dignity, and so human beings have rights to pursue and enjoy these goods. Basic goods contribute to human rights by specifying the aspect of human flourishing that each particular human right promotes and protects. For instance, behind the right to life, the right not to be tortured, and the right to an education are, respectively, the basic goods of life, health, and knowledge.

Let us now turn to the human right of religious freedom. Can religious freedom be tied to human dignity, and thus human rights, through basic goods? If so, then we would say that the human right of religious freedom protects a human good, one that contributes to and is constitutive of human flourishing. But what is that good? Religion, I propose.

**Defining Religion.** What, then, is religion? Here we confront a challenge. Many scholars are skeptical that a coherent, universal phenomenon called religion exists. Some think that it is impossible to define religion both broadly enough to include what people think of as the major religions of the world and narrowly enough to exclude phenomena that people usually conceive of as something other than religion, such as nationalism. Other skeptical scholars believe religion to be a modern Western concept that colonizers have imposed on non-Western peoples.<sup>36</sup> Still others view religion as little more than superstition, irrational and prone to violence.<sup>37</sup>

Other scholars, however, regard religion as meaningful, definable, and universal.<sup>38</sup> One of these is Martin Riesebrodt, the late scholar of religious studies at the University of Chicago, who, in his 2010 book, *The Promise of Salvation*, proposed a way to think about religion that he believed could elude the objections of other scholars and zero in on what religions are about.<sup>39</sup> His approach is simply to focus on what people do when they practice religion, why they do it, and what they hope to gain from it. In contrast to scholars who treat religion as a system of beliefs, a referent to ultimate meaning or the realm of the sacred, Riesebrodt centers upon practices, which he believes are common to every religion and integral to how ordinary practitioners of religion understand what they are doing.



Sociologist Christian Smith of the University of Notre Dame, a scholar of religion, was persuaded that Riesebrodt had proposed a promising view of religion and undertook to refine it further.<sup>40</sup> Here is Smith's modification of Riesebrodt's view, formulated as a definition:

Religion is a complex of culturally prescribed practices, based on premises about the existence and nature of superhuman powers, whether personal or impersonal, which seek to help practitioners gain access to and communicate or align themselves with these powers, in hope of realizing human goods and avoiding things bad.<sup>41</sup>

Again, practices are the central phenomenon: Reading sacred texts, prayer, worship, burning incense, and scores of other behaviors that have meaning in the context of an ongoing community.<sup>42</sup> What most pivotally distinguishes these practices according to Smith is their orientation toward superhuman powers, entities that practitioners believe are neither fashioned by nor dependent on humans. These powers might take the form of "God, gods, spirits, higher beings, holy, numinous, ultimate concern, and sacred," but might also be impersonal powers, as are found in dharmic religions, including Hinduism, Buddhism, Sikhism, and Jainism.<sup>43</sup> Religions also involve beliefs, implicit or explicit affirmations about superhuman powers and what these powers require of humans.<sup>44</sup> Finally, critical to ordinary people's experience of religion are the benefits they hope to gain and the evils they hope to avoid by way of the practices through which they seek to align themselves with superhuman powers. These range from healing an illness, to success on an examination, to help in living virtuously, to enlightenment, to redemption from sin, to union with God. They are the kinds of things in which everyone has an interest.

Smith, drawing upon Riesebrodt, argues that this way of thinking about religion identifies the important features that major world religions share, rules out phenomena like Marxism and nationalism that are not religion, and describes why people find religion appealing. Any one religion, of course, will say far more about the character of the superhuman power and about how humans rightly relate to it. The concept at hand, though, describes religion as a shared human phenomenon.

Smith's and Riesebrodt's concept of religion is quite similar to that which New Natural Law theorists argue is a basic good. *Mutatis mutandis*, these theorists understand religion to be harmony with a transcendent (more than human) source of meaning and of benefits of the most important sort.<sup>45</sup> Seeking this harmony, or right relationship, is a basic good, one that

humans seek for its own sake. That religion is sought for its own sake is not contradicted by the fact that people seek benefits through religion. Religion is not separate from and instrumental to these benefits, rather the benefits are part and parcel of the experience of religion. A person does not become a Christian in order to gain heaven as if gaining heaven is a separate phenomenon from being a Christian. Rather, gaining heaven is what a Christian experiences through her faith. All of the benefits gained and evils avoided through religious practices, as well as the broader right relationship with a superhuman power that enfolds these benefits, amount to the basic good of religion.

As a basic good, religion manifests human dignity. To violate a person's practice or expression of religion is to violate an intrinsically valuable aspect of his flourishing. In New Natural Law thought, moral norms arise from the requirements of respect for basic human goods. Here the moral norm is that no person, political faction, militant group, community, or government may interfere with a person's practice of religion, including that practice in collaboration with others in a religious community. Implied in this moral norm is a right of religious freedom that every person justly exercises vis-à-vis every other person and group, including the state. It is a natural right, a human right that is entailed in the natural law itself.

**Interior Commitment.** Integral to the right of religious freedom, and implicit in Smith's definition of religion and in religion as a basic good, is another feature of virtually all religion—interior commitment. From religion to religion, this commitment involves the will, the heart, the enlightened mind, sincerity, authenticity, and purity of motivation. Religions also call for criteria for outward conformity to moral norms, dietary laws, rituals, and other activities, but usually these are also to be performed with sincerity and the right motivation.

This interior commitment cannot be coerced. Were a person to conform outwardly to religion out of fear of harm or for social gain, the commitment would not be genuine. So, too, the search for religious truth and the ability to reject religious commitment out of conscience is also entailed in religious freedom. The early Christian writer, Lactantius, made this point early in the fourth century:

Torture and piety are widely different.... For if you wish to defend religion by bloodshed and by tortures, and by guilt, it will no longer be defended, but will be polluted and profaned. For nothing is so much a matter of free-will as religion; in which, if the mind of the worshipper is disinclined to it, religion is at once taken away, and ceases to exist.<sup>46</sup>



Almost 17 centuries later, Abdurrahman Wahid, a Muslim and the first president of Indonesia following the fall of the dictatorship of Suharto in 1998, argued quite similarly:

The fact that the Qur'an refers to God as "the Truth" is highly significant. If human knowledge is to attain this level of Truth, religious freedom is vital. Indeed the search for Truth (i.e., the search for God)—whether employing the intellect, emotions, or various forms of spiritual practice—should be allowed a free and broad range. For without freedom, the individual soul cannot attain absolute Truth, which is, by its very nature, unconditional Freedom itself.

Intellectual and emotional efforts are mere preludes in the search for Truth. One's goal as a Muslim should be to completely surrender oneself (islām) to the absolute Truth and Reality of God rather than to mere intellectual or emotional concepts regarding the ultimate Truth. Without freedom, humans can only attain a self-satisfied and illusory grasp of the truth, rather than genuine Truth itself (haqq al-haqiqi).<sup>47</sup>

If religion is a basic, intrinsic dimension of human flourishing, and if its authentic practice must be free, then it is unjust to coerce, prevent, or unduly restrict it, and justice requires that it be protected by law. This is the essence of the human right of religious freedom. Put slightly differently, religious freedom means that nobody, alone or in community, should pay a penalty for the practice of her religion.

Religious freedom is not an absolute right. It does not grant people license to do anything they wish in practicing their religion. The UDHR, the ICCPR, the 1981 declaration, and important statements of the right such as the Catholic Church's landmark declaration of 1965, *Dignitatis Humanae*, make this point.<sup>48</sup> The ICCPR's Article 18, for instance, says, "Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others."

Controversies, of course, abound, both in human rights law on a global scale and in the constitutional traditions of countries, regarding the boundaries and extent of these limitations. Sorting out these controversies, finding the right balance between religion and other goods, is the subject of entire fields of academic study and traditions of case law. Broadly, a New Natural Law approach would hold that the practice of religion is morally restricted by instances in which it violates the basic goods of others, just as nobody ought to violate the good of religion in another person by way of advancing another basic good.

The task here is the more modest one of pointing to a basis for thinking that religious freedom is a universal human right. It is important that religious freedom enjoy this status if it is then to be balanced against other rights. Increasingly, though, this status is being questioned.

## Challenges to Universality

In those countries and sectors of the international community that honor a right to religious freedom, who view it as a human right or civil right that merits being upheld in the law, disputed questions center around the proper nature of government support for, or establishment of, religion; whether religious freedom grants religious citizens exemptions from otherwise applicable laws; and to what degree, in what ways, and for what reasons religious freedom is to be limited or restricted by other goods and principles.

These debates presuppose a commitment to religious freedom and, broadly, to religion as a good. If religious freedom were not valued in the first place, then there could not be controversies about how religious freedom is to be balanced against other considerations. The debate shifts to a new plane, then, when religious freedom, and even religion itself, are called into question. Of course, numerous regimes over the past two centuries have sought to suppress religious freedom and even eradicate religion out of a conviction that religion is socially pernicious.<sup>49</sup> However, when religious freedom and even the value of religion itself are called into question within the very countries and communities that have upheld the human right of religious freedom over the years since the UDHR articulated it in 1948, a new and worrisome trend unfolds for advocates of religious freedom. Let us look at three strands of this trend and how a natural law defense of religious freedom would respond.

**Disfavoring Religion.** One strand consists of legal scholars and philosophers within the liberal tradition who argue against the special status of religion in the law, holding that it merits no special protection or support from the government that is not accorded to secular moral beliefs and ethical commitments. With respect to the First Amendment to the United States Constitution, they would object to protections for the “free exercise” of religion that are not extended to other beliefs, and to prohibitions on the establishment of religion but not on other commitments or communities. With respect to establishment, their proposal might actually entitle religion to receive support from the government with fewer qualifications and questions—say, in matters of education or the provision of social services—and in this sense does not disfavor religion.<sup>50</sup> Conversely, though, in liberal democracies with established religions, their proposal would strip these religious communities of their privileged status.<sup>51</sup>

What is consistent across the different versions of these arguments is that religion does not merit distinct favor, protection, support, or exemptions. “What If Religion Is Not Special?” asks law scholar Micah Schwartzman.<sup>52</sup> Religion may well receive protection and support, but only as a member of a larger class of phenomenon such as speech, expression, belief, conscience, or the like. To give religion a separate status, they generally argue, would be unfair.<sup>53</sup>

These scholars direct their arguments toward constitutional liberal democracies, especially the United States, and not toward international law. Their arguments, though, contain implications for human rights. Logically, they would call into question the place of religion in Article 18 of the UDHR and of the ICCPR, as well as much of the 1981 declaration. If religion deserves no special protection or support, then human rights law would be left upholding freedom of belief or conscience alone. As a result, the many ways in which the practice—and not just expression—of religion is protected in law would lose their justification. To take just one example, religious schools and charities might lose the freedom to hire and fire employees on the basis of their adherence to the norms of that religion.

What does the natural law case for the human right of religious freedom outlined above make of this argument? Most directly, it would question these scholars’ common characterization of religion as a matter primarily of beliefs. Were religion little more than beliefs, it would indeed be difficult to argue for its special status, at least on grounds of natural reasoning. Apart from the claims of a particular religious tradition, on what grounds would religious beliefs have more warrant to protection than secular beliefs? Criteria such as ultimacy or transcendence would have a hard time ruling out some set of non-religious doctrines or even establishing their superiority to other criteria. Scholars such as Cécile Laborde consider religion to involve not only beliefs but also associative qualities, as well as certain practices, but here again the conclusion is the same: None of these features earns religion the right to be privileged over secular analogues.<sup>54</sup>

In the natural law argument at hand, though, there is in fact something distinctive about the phenomenon of religion: It entails right relationship between humans and a superhuman power. From this relationship flows the central role of *practices*, which aim to secure this relationship as an intrinsic good and to derive benefits from it. Beliefs are important because they properly express the character of the superhuman power, the practices that bring about right relationship with this power, and the actions that are consistent with this right relationship.

No religion, however, is about beliefs alone. Rather, beliefs attend the practices and the right relationship with the divine. This combination of right relationship, practices, and beliefs is indeed distinct from convictions, ethical doctrines, moral beliefs—and even from other communities formed around secular beliefs. An orientation toward a superhuman power makes religion different and a basic good, an intrinsically valuable dimension of flourishing. As argued, this good, and the practices and the beliefs that are entailed in it, exercised individually or in community, are the basis for the norm that protects it—the right to religious freedom that is found in the international human rights documents and the vast majority of domestic constitutions. Nothing in this argument denies that non-religious beliefs and individual conscience also deserve forms of protection, as they commonly receive through rights of conscience, belief, and speech. In New Natural Law thought, they are connected to the exercise of the good of knowledge. But they do not amount to the good of religion, which merits a right of its own.

**The Privileging Religion Critique.** A second strand of skepticism of religious freedom’s universality is a variant of the first one, also holding that religious freedom privileges religion as belief and also criticizing the status given to religious freedom, though in this case, the focus is on international law and the foreign policies of Western democracies. Composed mostly of post-modern scholars who look askance at claims of universality and heavily suspect the role of power in sustaining these claims, this strand asserts that religious freedom law and policy wrongly empowers some forms of religion over others. “The identification of religion and faith communities with a right to freedom of belief and believers,” writes political scientist Elizabeth Shakman Hurd, “leaves little room for alternatives in which religion is lived relationally as ethics, culture, and even politics but without, necessarily, belief and, as a matter of command, not freedom.” The advocacy of religious freedom, she argues, “endows those authorities with the power to pronounce on which beliefs deserve special protection or sanction.”<sup>55</sup>

Behind these scholars’ criticism is an interpretation of history that holds that religious freedom emanates from a certain way of conceiving religion that arose at a particular time and place in global history, namely through the Protestant Reformation, which incubated a version of Christianity that is individualized, creedal, and belief-oriented. Believing that religion is a matter of inner conviction, early modern thinkers such as John Locke argued that it cannot be coerced, and thus, birthed religious freedom into modern politics and eventually into modern human rights law, these critics argue.

Reflecting their post-modern convictions, these critics also argue that religious freedom is a manifestation of Western power and imposed on non-Western countries in colonialist fashion. It is no coincidence that the United States, a country founded in a Protestant and Enlightenment milieu, and now the world's most powerful, took the lead in shaping the UDHR and was the first country to develop a religious freedom foreign policy. These critics focus on Islam, in particular, as the target of this imposition and tend to view religious freedom as a tool of the West in its rivalry with Islam in general and in the war on terrorism in particular, especially since the attacks of September 11, 2001. Religious freedom, they argue, is not prominent within or adaptable to Islam, and so it is not surprising that Muslims resist it. By and large, they are unsympathetic to the pursuit of religious freedom.

Here again, a natural law defense of religious freedom takes issue with religion conceived of as belief, conceptualizing religion instead as right relationship with a superhuman power. Riesebrodt and Smith show that religion thus conceived has been practiced across an extraordinarily wide array of cultures, geographic locales, and historical epochs.<sup>56</sup> Nor is the concept of religion the product of the modern West. Long predating the Reformation, thinkers like Cicero, Augustine, Lactantius, Tertullian, and Thomas Aquinas wrote of religion as a natural human phenomenon.<sup>57</sup>

Riesebrodt makes the case that most religions, both ancient and modern, have conceived themselves as one among several religions, thus picturing religion as a general phenomenon.<sup>58</sup> The principle of religious freedom, too, finds vivid expression centuries before Protestantism in the early Christian thinkers, Tertullian and Lactantius, as well as in a wide array of religious communities, including the Catholic Church, Judaism, Islam, Hinduism, and others. For that matter, countries in the modern West, including predominantly Protestant countries—which we ought to expect to be paragons of religious freedom—have included egregious violators of religious freedom, as well as strong promoters.

Germany under the anti-Catholic *Kulturkampf* of Otto Von Bismarck (1872–1878), France under the Third Republic (1870–1940), and England prior to the relaxation of harsh restrictions on Catholics and non-Conformists in the first half of the nineteenth century, for instance, were all purveyors of sharp curtailments of religious freedom. Finally, human rights law, which these critics claim to be shaped by religion as belief, does not conceive religion either as mere belief or as the activity of the lone individual, but also as practice and communal action, and thus does not bear the image of the influence claimed to have shaped it.

**Restricting Religious Freedom for Emergent Claims.** A third challenge to religious freedom does not directly question its universality but purports to restrict its traditional scope significantly in the name of allegedly competing universal principles. This is the challenge to religious freedom posed by newly emergent claims regarding sexuality and abortion. Like the first challenge, this one expands developments within constitutional liberal democracies to the international plane.

The challenge is exemplified by a recent report to the U.N. Human Rights Council by the U.N. Special Rapporteur on Freedom of Religion or Belief, Ahmed Shaheed, based on information gathered from 42 countries and several consultations that took place around the world between May and December 2019.<sup>59</sup> In it, the rapporteur argues that women, girls, and LGBT+ persons around the world experience widespread violence, human rights abuses, and unjust discrimination through the actions of states and non-state actors, as well as through the standing laws and policies of states.<sup>60</sup> What misdeeds does he cite in particular? Some are actions that the human rights community has long condemned as harmful, including female genital mutilation, marital rape, early and forced marriage, polygamy, dowry killings, beatings, coercive gender reassignment surgery, and personal status law that prevent women from leaving violent relationships.

In addition, though, the rapporteur cites religiously grounded actions and norms that deny the sorts of claims that have attained legal standing recently in developed democracies, including rights based on sexual orientation and gender identity, as well as ones that have attained status in the past half-century or so, namely “sexual and reproductive rights,” including to abortion and contraception. He asserts that the right to freedom of religion or belief belongs to individuals, not religions, and in the ensuing paragraphs writes favorably of arguments against deferring to the autonomy of religious institutions in matters where they allegedly discriminate on the basis of sex, sexual orientation, and gender identity.<sup>61</sup> He cites the conclusions of several international legal bodies that sex-based discrimination, which is prohibited in major human rights conventions, includes “gender” discrimination, which he says is discrimination arising from “socially constructed roles, behaviours, activities and attributes,” and includes sexual orientation and gender identity.<sup>62</sup>

**Sexual Orientation and Gender Identity.** Essentially, the Special Rapporteur would globalize truncations of religious freedom of the sort that have arisen in developed democracies whereby religious schools, universities, and charities, as well as merchants and medical professionals, are prohibited from hiring and conducting their activities in a way that adheres to traditional beliefs about sexuality, marriage, and life.<sup>63</sup>



How would a natural law defense of religious freedom, and of human rights in general, regard the Special Rapporteur's claims? New Natural Law thought offers a particular defense of norms regarding sexuality, marriage, and life that converge with the norms of virtually every historical civilization and have only recently been challenged by certain international bodies: The sexual act is properly exercised only in marriage, which by definition is between man and woman; marriage, a form of friendship, and life are the basic goods that sexual acts instantiate; persons with sexual attractions towards members of the same sex merit compassion and respect, but these attractions should not be the basis for a person's identity or made the basis for legal discrimination claims; and, every person is born a man or a woman, defined by reproductive capacities, and to alter these capacities is a form of mutilation—not a basis for identity. Finally, abortion is the taking of human life (a basic good), which begins at the moment of conception, as the scientific community overwhelmingly affirms.<sup>64</sup>

From this standpoint, the acts of violence and forms of abuse that fall under the human rights prohibitions found in the human rights documents to which states actually have agreed are ones that New Natural Law, any natural law thought, or any proponent of human rights, would also prohibit. These acts—female genital mutilation, marital rape, and so on—violate the goods of life, of health—including bodily integrity—and of marriage. In addition, any human rights violations committed against people who identify as LGBT+, including forms of violence and draconian punishments (based on status or identity) that indeed exist in many countries, ought to be condemned and can be condemned on the basis of existing human rights law. This set of victims may be identified as part of a pattern, just as human rights organizations condemn other patterns of violations.

To assert, however, that religious justifications for laws and policies based on traditional norms about sex, gender, and marriage—and the actions that religious organizations (religious communities, schools, charities, nongovernmental organizations (NGOs), etc.) and religious individuals (merchants, teachers, etc.)—undertake in accordance with these norms now amount to unjust discrimination or a violation of human rights amounts to an unprecedented curtailment of religious freedom in international law. To hold that the internal governance of religious organizations according to traditional norms is now rightly subject to government scrutiny, and even regulation, is an especially harsh claim in light of long-standing religious freedom norms.

It threatens the ability of religious communities to organize themselves, hire and train their leaders, and conduct their activities according to their basic teachings and the ability of their leaders and members to

live according to their consciences. The report also opposes provisions in domestic law that protect the conscience rights of health care providers who are unwilling to perform abortions or supply contraception.<sup>65</sup> In these proposed measures, the good of religion is being violated in the name of principles that have no foundation in basic goods, are not found in natural law, and lack universal support.

**Misallocation of Consent.** Nowhere in any internationally recognized human rights convention or declaration that actual states have signed or assented to can be found the words sexual orientation or gender identity. It is only certain international legal committees, commissions, and global organizations that have sought to interpret existing language in conventions and declarations—most frequently, sex discrimination—so as to mean sexual orientation, gender identity, or the like. But this interpretation is not what the states who signed or ratified these agreements consented to, and it runs afoul of the norms and laws of the overwhelming majority of states. Today, only 28 out of 193 U.N. member states (or 15 percent) have laws permitting “same sex marriage.” Almost nowhere in international law can there be found a right to abortion, whereas the right to life holds pride of place in the major human rights documents—as well as in humanitarian law.<sup>66</sup> The Special Rapporteur’s report, along with the efforts of those who aim to impose onto international law these novel interpretations, then, amount to what Pope Francis has called “ideological colonization.”<sup>67</sup> Rights based on sexual orientation or gender identity and a right to abortion are inconsistent with natural law, virtually nonexistent in international law, and do not constitute a just or legally valid restriction upon religious freedom.

## Recommendations

In order to strengthen the human right of religious freedom in the policies of states and international organizations, and the consensus of humankind in actual practice around the world, the following five recommendations are offered.

1. **States and their leaders ought to act consistently on behalf of religious freedom at home and abroad.** The promotion of the international human right of religious freedom is weakened when states and their leaders promote it inconsistently at home and abroad. Too often, leaders are willing to defend religious freedom only to the extent that it corresponds to their political or ideological position, while sacrificing it in other instances. In recent years in the West,



for instance, religious freedom has been denied to Christians and traditional Jews and Muslims who wish to follow traditional norms of sexuality and marriage in running their institutions, as well as to Muslims who wish to build a mosque or Muslim women who wish to wear a headscarf (as in France). Religious freedom, however, belongs to people of all faiths and no faith, and is jeopardized for everyone when it is denied to anyone.

2. **States who have not adopted the promotion of international religious freedom as a foreign policy priority ought to do so, and states who already promote religious freedom ought to strengthen this promotion.** The more states that take up religious freedom, the stronger and more credible it will be as a universal human right. Strong promotion means appointing an official to promote religious freedom and granting her high status in the foreign policy ministry or department, establishing an office of religious freedom, granting funding to the promotion of religious freedom, requiring diplomats stationed in other countries to promote religious freedom, training foreign service officials in religious freedom, and promoting religious freedom through foreign aid.
3. **U.N. member states and their representatives in the United Nations and other international bodies ought to oppose vigorously efforts to insert into international treaties, conventions, and declarations interpretations that the signing parties did not agree to and that threaten religious freedom.** These efforts are carried out by determined activists who do *not* speak for the world's nations and who have gained control of bodies such as the committees that oversee the international conventions, such as the Convention on the Elimination of Discrimination Against Women. The U.N. member states who signed the agreements ought to vigorously oppose such nonconsensual impositions and insist that these bodies be constituted by persons committed to acting faithfully to the norms of international agreements.
4. **Advocates of religious freedom around the world ought to form a transnational network in the pursuit of religious freedom.** Religious freedom as a universal human right will be more credible and robust the more it is promoted by a coalition of actors who mirror its universality. The wide range of actors who promote religious

freedoms around the world ought to coordinate their efforts even more deliberately. These actors include heads of state and top foreign policy officials, ambassadors and embassy officials, members of parliaments, the U.N. Special Rapporteur (notwithstanding the criticism above), human rights organizations, NGOs dedicated to religious freedom, religious leaders, and business leaders. Networked together, they could act more powerfully to oppose governments and societal actors who violate religious freedom. The recent ministerials held by the U.S. Ambassador-at-Large for International Religious Freedom Sam Brownback and U.S. Secretary of State Mike Pompeo are efforts to build such a network, as is the work of the All Party Parliamentary Group for International Freedom of Religion or Belief.<sup>68</sup>

5. **Scholars, teachers, and religious leaders ought to teach and promote natural law as a basis for human rights in general and for the human right of religious freedom in particular.** Although the human right of religious freedom does not depend on any one justification in order to secure consensus, it does depend upon a consensus of states and people who support it. Natural law can contribute to such a consensus by supplying a justification for this human right that all persons can grasp through the exercise of their reason, does not depend upon the claims of particular religious traditions, yet is compatible with the claims of most religious communities.

## Conclusion

What emerges from this essay are two urgent respects in which advocates of religious freedom are met with the task of promoting the universality of this human right. First, it is critical that they formulate ever more sound and persuasive grounds for holding that religious freedom is a true human right—one to which every person is entitled by virtue of his or her humanity and not dependent upon its appearance in a document or institution. This is a task for scholars, especially in the fields of philosophy, jurisprudence, and religious studies. Second, advocates of religious freedom are challenged to make efforts to deepen the universal popular legitimacy of the human right of religious freedom by promoting it through international institutions, national institutions, NGOs, the international law community, universities, modes of popular communication, and other forums. The human right of religious freedom, then, demands to be deeply grounded and widely accepted.

## Endnotes

1. Pew Research Center, *A Closer Look at How Religious Restrictions Have Risen Around the World*, July 15, 2019, <https://www.pewforum.org/2019/07/15/a-closer-look-at-how-religious-restrictions-have-risen-around-the-world/> (accessed July 27, 2020).
2. United Nations, "Universal Declaration of Human Rights," December 10, 1948, <https://www.un.org/en/universal-declaration-human-rights/index.html> (accessed July 27, 2020).
3. Johannes Morsink, *The Universal Declaration of Human Rights: Origins, Drafting, and Intent* (Philadelphia, PA: University of Pennsylvania Press, 2000), pp. 13–20.
4. *Ibid.*, p. 20. On domestic constitutions, Morsink cites Hurst Hannum, "The Status of the Universal Declaration of Human Rights in National and International Law," *Georgia Journal of International and Comparative Law*, Vol. 25, Nos. 1–2 (1995/ 1996). For two major references to the UDHR by popes, see Pope John XXIII, "Pacem in Terris," Encyclical letter, April 11, 1963, [http://www.vatican.va/content/john-xxiii/en/encyclicals/documents/hf\\_j-xxiii\\_enc\\_11041963\\_pacem.html](http://www.vatican.va/content/john-xxiii/en/encyclicals/documents/hf_j-xxiii_enc_11041963_pacem.html) (accessed July 27, 2020), and Pope John Paul II, "Redemptor Hominis," Encyclical letter, March 4, 1979, [http://www.vatican.va/content/john-paul-ii/en/encyclicals/documents/hf\\_jp-ii\\_enc\\_04031979\\_redemptor-hominis.html](http://www.vatican.va/content/john-paul-ii/en/encyclicals/documents/hf_jp-ii_enc_04031979_redemptor-hominis.html) (accessed July 27, 2020).
5. Morsink, *Universal Declaration*, pp. 4 and 28.
6. Mary Ann Glendon, *A World Made New: Eleanor Roosevelt and the Universal Declaration of Human Rights* (New York: Random House, 2001), p. 170.
7. Morsink, *Universal Declaration*, p. 263.
8. *Ibid.*, pp. 20, 26, and 260–261.
9. Glendon, *A World Made New*, pp. 70, 154, and 168.
10. United Nations, "International Covenant of Civil and Political Rights," December 16, 1966, <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx> (accessed July 27, 2020).
11. United Nations, "Declaration on the Elimination of All Forms of Intolerance and of Discrimination," November 25, 1981, <https://www.ohchr.org/EN/ProfessionalInterest/Pages/ReligionOrBelief.aspx> (accessed July 27, 2020).
12. United Nations, "Special Rapporteur on Religious Intolerance," Res. 1986/20.
13. Jonathan Fox reports that 158 state constitutions, 91.9 percent of those that he studied, contain religious freedom clauses. See Johnathan Fox, *Political Secularism, Religion, and the State: A Time Series Analysis of Worldwide Data* (Cambridge, U.K.: Cambridge University Press, 2015), pp. 220–221. A less positive, but still significant, result comes from the Pew Research Center, which shows that 74 percent of 147 countries had explicit provisions for religious freedom in their constitutions. See Pew Research Center, "Global Uptick in Government Restrictions on Religion in 2016," June 21, 2018, p. 68, <http://www.pewforum.org/2018/06/21/global-uptick-in-government-restrictions-on-religion-in-2016/> (accessed July 27, 2020).
14. All Party Parliamentary Group on International Religious Freedom, *Article 18: An Orphaned Right*, 2013, <https://appgfreedomofreligionorbelief.org/in-parliament/reports/> (accessed July 27, 2020).
15. International Religious Freedom Act of 1998, H.R. 2431, 105th Cong., 2nd Sess., <https://www.congress.gov/bill/105th-congress/house-bill/2431> (accessed July 27, 2020).
16. For the rise of the coalition behind religious freedom, see Allen D. Hertzke, *Freeing God's Children: The Unlikely Alliance for Global Human Rights* (Lanham, MD: Rowman and Littlefield, 2006).
17. Plans for the third ministerial are uncertain on account of the COVID-19 pandemic.
18. See Daniel Philpott, "Ignore the Optics. Trump's Executive Order Could Jump-Start the Cause of Religious Freedom," *America*, June 9, 2020, <https://www.americamagazine.org/politics-society/2020/06/09/trump-executive-order-global-religious-freedom> (accessed July 27, 2020).
19. Consider, for instance, the Religious Freedom Institute, the Institute for Global Engagement, Hardwired Global, and the International Center for Law and Religion Studies at the J. Reuben Clark Law School at Brigham Young University. For a list of NGOs and links to their websites, see NGO Committee on Religious Freedom or Belief, "Members," <https://www.unforb.org/members/> (accessed June 6, 2020).
20. Organization of the Islamic Conference, "Universal Islamic Declaration of Human Rights," September 1, 1981, <http://www.alhewar.com/ISLAMDECL.html> (accessed July 27, 2020).
21. See Declan O'Sullivan, "The Interpretation of Qur'anic Text to Promote or Negate the Death Penalty for Apostates and Blasphemers," *Journal of Qur'anic Studies*, Vol. 3, No. 2 (2001), pp. 63–93.
22. United Nations, "Cairo Declaration on Human Rights in Islam," August 5, 1990, [https://www.ohchr.org/EN/Issues/Education/Training/Compilation/Pages/2TheCairoDeclarationonHumanRightsinIslam\(1990\).aspx](https://www.ohchr.org/EN/Issues/Education/Training/Compilation/Pages/2TheCairoDeclarationonHumanRightsinIslam(1990).aspx) (accessed July 27, 2020).
23. United Nations, "Combating Intolerance, Negative Stereotyping and Stigmatization of, and Discrimination, Incitement to Violence and Violence Against, Persons Based on Religion or Belief," Res. 16/18, [https://www2.ohchr.org/english/bodies/hrcouncil/docs/16session/A.HRC.RES.16.18\\_en.pdf](https://www2.ohchr.org/english/bodies/hrcouncil/docs/16session/A.HRC.RES.16.18_en.pdf) (accessed July 27, 2020).

24. United Nations, "International Covenant on Civil and Political Rights: Comment 34," CCPR/C/GC/34, September 12, 2011, <https://undocs.org/pdf?symbol=en/CCPR/C/GC/34> (accessed July 27, 2020).
25. On these efforts, see The Legal Project, "Defamation of Religions," <https://www.legal-project.org/issues/defamation-of-religions> (accessed July 27, 2020).
26. See Glendon's description of the establishment of this committee in Glendon, *A World Made New*, pp. 50–51.
27. Jacques Maritain, *Man and the State* (Chicago, IL: University of Chicago Press, 1951), pp. 77–78 (emphasis in original).
28. *Ibid.*, p. 80.
29. C. S. Lewis, *The Abolition of Man* (San Francisco, CA: HarperOne, 2015).
30. On rights as entitlements, see Leif Wenar, "Rights," in Edward N. Zalta, ed., *The Stanford Encyclopedia of Philosophy Archive*, Spring 2020, <https://plato.stanford.edu/archives/spr2020/entries/rights/> (accessed July 9, 2020).
31. While human rights, or natural rights, entail a corresponding obligation, it is not the case that all natural obligations entail a corresponding right. Some do, but not all. Some natural law obligations—such as charity or beneficence, for instance—are wide obligations, meaning that they are open-ended with respect to their discharge and are not owed in a strict sense to their recipients.
32. Not all natural law scholars endorse human rights or natural rights, although many do. The argument here is that if one endorses human rights, then one also endorses natural rights and natural law because human rights implies both. Some scholars, though, may allow that human rights, were they to exist, implies natural rights and natural law, yet are skeptical that there are human rights in the first place. See for instance, the work of Alasdair MacIntyre, who famously compared natural rights to witches and unicorns in his book. Alasdair MacIntyre, *After Virtue* (Notre Dame, IN: University of Notre Dame Press, 1984), p. 69.
33. For major general statements of the school, see Germain Grisez, *The Way of the Lord Jesus: Volume One: Christian Moral Principles* (Chicago, IL: Franciscan Herald Press, 1983); John Finnis, *Natural Law and Natural Rights* (Oxford, U.K.: Oxford University Press, 1980); John Finnis, *Aquinas: Moral, Political, and Legal Theory* (Oxford, U.K.: Oxford University Press, 1998); and Germain Grisez, Joseph Boyle, and John Finnis, "Practical Principles, Moral Truth, and Ultimate Ends," *The American Journal of Jurisprudence*, Vol. 2 (1987), pp. 99–151. The moniker "New Natural Law" is arguably problematic and probably derives from the work of one of the school's chief critics. See Russell Hittinger, *A Critique of the New Natural Law Theory* (Notre Dame, IN: University of Notre Dame Press, 1987). Still, given the prevalence of the label, the author uses it here. For a natural law theorist who is not normally identified with the new natural law theory but also endorses basic goods, see Mark C. Murphy, *Natural Law and Practical Rationality* (Cambridge, U.K.: Cambridge University Press, 2001).
34. Aristotle, *Nicomachean Ethics*, Robert C. Bartlett and Susan D. Collins, trans. (Chicago, IL: University of Chicago Press, 2011), Book 1, pp. 1–25.
35. On basic goods, see Finnis, *Natural Law and Natural Rights*, pp. 59–99; Finnis, *Aquinas*, pp. 79–86; and Grisez, *Christian Moral Principles*, pp. 115–140.
36. See, for instance, several of the pieces in, and the general thesis of, Winnifred Fallers Sullivan, Elizabeth Shakman Hurd, Saba Mahmood, and Peter G. Danchin, eds., *Politics of Religious Freedom* (Chicago: University of Chicago Press, 2015).
37. Christopher Hitchens, *God Is Not Great: How Religion Poisons Everything* (New York: McClelland, 2007); Richard Dawkins, *The God Delusion* (New York: Houghton Mifflin, 2006); Daniel C. Dennett, *Breaking the Spell: Religion as a Natural Phenomenon* (New York: Penguin, 2006); and Sam Harris, *The End of Faith: Religion, Terror and the Future of Reason* (New York: W.W. Norton, 2004).
38. In addition to Martin Riesebrodt and Christian Smith, who are discussed *infra*, see Kevin Shilbrack, *Philosophy and the Study of Religions* (Malden, MA: Wiley Blackwell, 2014); Kathleen Brady, *The Distinctiveness of Religion in American Law: Rethinking Religion Clause Jurisprudence* (Cambridge, U.K.: Cambridge University Press, 2015); and William P. Alston, "Religion," *Encyclopedia of Philosophy*, Vol. 7 (New York: Macmillan, 1972).
39. Martin Riesebrodt, *The Promise of Salvation: A Theory of Religion*, Steven Rendall, trans. (Chicago: University of Chicago Press, 2010), p. xi.
40. Christian Smith, *Religion: What It Is, How It Works, and Why It Matters* (Princeton, NJ: Princeton University Press, 2017).
41. Smith, *Religion*, p. 22.
42. Smith compiles a remarkable list of over 100 of these practices on p. 29 of *Religion*.
43. *Ibid.*, pp. 23–25. Smith points out that these same religions contain diverse beliefs about the character of superhuman powers.
44. *Ibid.*, pp. 30, and 44–46.
45. Finnis and Grisez both argue that religion is a basic good. Finnis, *Natural Law and Natural Rights*, pp. 89–90. Others who belong to their school of thought also make this case. See Christopher Tollefsen, "Religious Liberty, Human Dignity, and Human Goods," in Timothy Samuel Shah and Jack Friedman, eds., *Homo Religiosus? Exploring the Roots of Religion and Religious Freedom in Human Experience* (Cambridge, U.K.: Cambridge University Press, 2018), pp. 230–242; and Joseph Boyle, "The Place of Religion in the Practical Reasoning of Individuals and Groups," *American Journal of Jurisprudence*, Vol. 43 (1998), pp. 1–24.
46. Lactantius, *Divine Institutes*, Alexander Roberts, Sir James Donaldson, and Arthur Cleveland Coxe, eds. (Publisher and Date: Not Available), p. 246.
47. Kyai Haji Abdurrahman Wahid, "Foreword: God Needs No Defense," in Paul Marshall and Nina Shea, eds., *Silenced: How Apostasy and Blasphemy Codes Are Choking Freedom Worldwide* (Oxford, U.K.: Oxford University Press, 2011), p. xx.

48. Pope Paul VI, "Dignitatis Humanae," December 7, 1965, [http://www.vatican.va/archive/hist\\_councils/ii\\_vatican\\_council/documents/vat-ii\\_decl\\_19651207\\_dignitatis-humanae\\_en.html](http://www.vatican.va/archive/hist_councils/ii_vatican_council/documents/vat-ii_decl_19651207_dignitatis-humanae_en.html) (accessed July 27, 2020).
49. Monica Duffy Toft, Daniel Philpott, and Timothy Samuel Shah, *God's Century: Resurgent Religion and Global Politics* (New York: W.W. Norton, 2011), pp. 50–74.
50. See Christopher L. Eisgruber and Lawrence G. Sager, *Religious Freedom and the Constitution* (Cambridge, MA: Harvard University Press, 2007).
51. Examples of democracies with established religions are Denmark, England, Iceland, Israel, and Malta.
52. Micah Schwartzman, "What If Religion Is Not Special?" *University of Chicago Law Review*, Vol. 79, No. 4, pp. 1351–1427.
53. See also Cécile Laborde, *Liberalism's Religion* (Cambridge, MA: Harvard University Press, 2017); Winnifred Fallers Sullivan, *The Impossibility of Religious Freedom* (Princeton, NJ: Princeton Press, 2005), pp. 155–159; and Brian Leiter, *Why Tolerate Religion?* (Princeton, NJ: Princeton University Press, 2012).
54. See Laborde, *Liberalism's Religion*, pp. 1–12.
55. Elizabeth Shakman Hurd, "Believing in Religious Freedom," in Winnifred Fallers Sullivan et. al., eds., *The Politics of Religious Freedom*, p. 51. This post-modern view is the orienting conception of this volume, though essays by Robert Hefner, Samuel Moyn, and Nandini Chatterjee are exceptions. See also Elizabeth Shakman Hurd, *Beyond Religious Freedom: The New Global Politics of Religious Freedom* (Princeton, NJ: Princeton University Press, 2015); and Saba Mahmood, *Religious Difference in a Secular Age: A Minority Report* (Princeton, NJ: Princeton University Press, 2015).
56. Riesebrodt, *The Promise of Salvation*, p. xiii.
57. Tertullian and Lactantius frequently use the word "religion" as something that could denote several different religions. See Tertullian, *Apology and De Spectaculis*. *Minucius Felix: Octavius*, T. R. Glover and Gerald H. Rendall, trans., Loeb Classical Library edition (Cambridge, MA: Harvard University Press, 1931); Lactantius, *Divine Institutes*, Anthony Bowen and Peter Garnsey, trans. (Liverpool, UK: Liverpool University Press, 2004). See Thomas Aquinas, "Question 81: Of Religion," in *Summa Theologica*, Volume III, Fathers of the English Dominican Province, trans. (Notre Dame, IN: Ave Maria Press), pp. 1522–1528.
58. Riesebrodt, *The Promise of Salvation*, pp. 26–30.
59. United Nations Human Rights Council, *Report of the Special Rapporteur on Freedom of Religion or Belief*, February 27, 2020, <https://www.ohchr.org/EN/Issues/FreedomReligion/Pages/Annual.aspx> (accessed July 27, 2020).
60. LGBT+ is the term that the report uses and refers to people who identify as lesbian, gay, bisexual, and transgender, as well as persons of additional sexual orientations and gender identities.
61. United Nations Human Rights Council, *Report of the Special Rapporteur on Freedom of Religion or Belief*, §§ 49–50.
62. *Ibid.*, § 64. He cites statements by the U.N. Human Rights Committee, the CEDAW Committee, the CERD Committee, the CAT Committee, Special Procedures mandates, and regional human rights systems.
63. A good survey of these truncations is Paul Marshall, "Western Christians' Responses to Denials of Religious Freedom," in Daniel Philpott and Timothy Samuel Shah, eds., *Under Caesar's Sword: How Christians Respond to Persecution* (Cambridge, U.K.: Cambridge University Press, 2018), pp. 428–455.
64. Steve Jacobs, "I Asked Thousands of Biologists When Life Begins. The Answer Wasn't Popular," *Quillette*, October 16, 2019, <https://quillette.com/2019/10/16/i-asked-thousands-of-biologists-when-life-begins-the-answer-wasnt-popular/> (accessed June 15, 2020).
65. United Nations Human Rights Council, *Report of the Special Rapporteur on Freedom of Religion or Belief*, §§ 44–45.
66. Sonia Elks and Rachel Savage, "Factbox: Same-Sex Marriage Rights Around the World," Reuters, May 27, 2020, <https://www.reuters.com/article/us-global-lgbt-marriage-factbox-trfn/factbox-same-sex-marriage-rights-around-the-world-idUSKBN2331KM#:~:text=%2D%20Same%2Dsex%20marriage%20is%20legal,South%20Africa%2C%20Spain%2C%20Sweden%2C> (accessed July 27, 2020). An exceptional place where abortion appears in international law is the United Nations, "The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa," (the Maputo Protocol) [https://www.un.org/en/africa/osaa/pdf/au/protocol\\_rights\\_women\\_africa\\_2003.pdf](https://www.un.org/en/africa/osaa/pdf/au/protocol_rights_women_africa_2003.pdf) (accessed August 17, 2020). It was signed in 2003, and Article 14 calls state parties to "protect the reproductive rights of women by authorising medical abortion in cases of sexual assault, rape, incest, and where the continued pregnancy endangers the mental and physical health of the mother or the life of the mother or the fetus."
67. See Andrea Gagliarducci, "The Holy See Slams U.N. Report on Religious Freedom," *Catholic News Agency*, March 4, 2020, <https://www.catholicnewsagency.com/column/the-holy-see-slams-un-report-on-religious-freedom-says-it-is-an-attack-to-religious-freedom-4128> (accessed June 15, 2020).
68. All Party Parliamentary Group for International Freedom of Religion or Belief, "Who Are We?" <https://appgfreedomofreligionorbelief.org/> (accessed July 9, 2020).



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