



February 2014

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## Recommended Citation

David M. Smolin, *Church, State, and International Human Rights: A Theological Appraisal*, 73 Notre Dame L. Rev. 1515 (1998).  
Available at: <http://scholarship.law.nd.edu/ndlr/vol73/iss5/30>

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# CHURCH, STATE, AND INTERNATIONAL HUMAN RIGHTS: A THEOLOGICAL APPRAISAL†

*David M. Smolin\**

The purpose of this essay is to suggest the attitude that Christianity, as one of the great world religions claiming the allegiance of perhaps a third of humanity,<sup>1</sup> ought to adopt toward the international human rights movement. My thesis is that the Christian church should maintain a clear distinction between her mission and language and those of the human rights movement. The church is called to engage the various ideologies, religions, and powers in this world, an engagement that often includes learning from and appreciating the relative good within non-Christian movements, religions, and ideologies. The church's engagement with these various religions, ideologies, and powers should identify and further common values, goods, and goals based upon our common humanity and congruencies in

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\* Professor of Law, Cumberland Law School, Samford University; Fellow, Southern Center for Law & Ethics. This essay is intended to honor the important work of Professor Glendon on behalf of the Papacy in the field of international human rights by offering a meditation on the question of how the Church (universal and Roman) should respond to the international human rights movement. I am confident that Professor Glendon will appreciate the significance of the question, and the importance of answering it theologically, but of course she cannot be held accountable for any of my proposed answers.

I wish to thank Tom Berg, Gerald Bray, Mary Ann Glendon, Paul Griffiths, Scott Houser, Fisher Humphreys, Desiree Smolin, and John Witte for their review of and comments on prior drafts of this article. I also benefited from the opportunity to present this paper to the January 30, 1998, meeting of the Cumberland Colloquium on Law, Religion, and Culture, and appreciate the comments made by the participants. Finally, I wish to thank Thomas W. Cary for his research assistance.

1 See David B. Barrett, *Annual Statistical Table on Global Mission: 1998*, INT'L BULL. MISSIONARY RES., Jan. 1998, at 26–27. Barrett estimates that as of 1998, 33.2% of humanity were "Christians." *Id.* Barrett is not attempting to measure "true" Christians but all, including nominal, Christians. Those interested in his methodology should examine his *World Christian Encyclopedia*. See WORLD CHRISTIAN ENCYCLOPEDIA: A COMPARATIVE STUDY OF CHURCHES AND RELIGIONS IN THE MODERN WORLD A.D. 1900–2000 (David B. Barrett ed., 1982).

belief and practice; these engagements must not, however, obscure the distinctive claims of the Christian faith.

The breadth of this topic requires some discussion of the relationship of the Christian faith to the political order, and the relationships among Christianity, Western Civilization, other civilizations, and the human rights movement. These are large topics, and thus the treatment given can, at most, sketch a position.

## I. CHRISTIANITY AND THE POLITICAL ORDER

"Varied" is the term that best describes the relationship of the Christian faith to the political order, at least as an historical and theoretical matter. The West, consequent to the Reformation, produced a large variety of Christian attitudes toward the political order, including the paradoxical Lutheran two-kingdoms perspective, which views the state as a necessary but lower kingdom in which Christians may give service, the Anabaptist refusal to be involved in this lower kingdom based on the teaching and example of Jesus, the developing Roman Catholic theories based on natural law and multiple jurisdictions, and the Calvinist confidence that all jurisdictions and spheres could be brought under the sovereignty of God.<sup>2</sup>

Eastern Orthodoxy, by contrast, created the Byzantine and Russian Christian empires in which the church was more or less a department of the state, only to live out much of its subsequent history under Muslim and Communist domination, where its efforts became focused on witnessing to the truth through the liturgy.<sup>3</sup> From the Western viewpoint, the church passed through its age of martyrs within the pagan Roman Empire, through the long and varied history of Christendom characterized by conflicts between East and West, and Papacy and Empire, followed by the splintering of Western Christen-

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2 I have previously offered a summary of the varied Western attitudes toward the state emerging from the reformation. See David M. Smolin, *A House Divided? Anabaptist and Lutheran Perspectives on the Sword*, 47 J. LEGAL EDUC. 28 (1997).

3 See generally 1 KENNETH SCOTT LATOURETTE, *A HISTORY OF CHRISTIANITY* 279-326, 564-94, 608-23 (1975); 2 KENNETH SCOTT LATOURETTE, *A HISTORY OF CHRISTIANITY* 899-922, 1396-1403 (1975). The contemporary Greek Orthodox writer Stanley S. Harakas presents the principle of "symphonia," or church/state cooperation as part of an organic whole, as the preeminent Orthodox church-state ideal, and denies that this ideal was intended to allow the state to dominate the church. See Stanley S. Harakas, *Orthodox Church-State Theory and American Democracy*, 21 GREEK ORTHODOX THEOLOGICAL REV. 399 (1976). The cynicism of the West toward the historical Eastern reality is represented in extreme rhetorical form by Samuel Huntington's remark that "in Orthodoxy, God is Caesar's junior partner." SAMUEL P. HUNTINGTON, *THE CLASH OF CIVILIZATIONS AND THE REMAKING OF WORLD ORDER* 70 (1996).

dom in the Reformation and the subsequent secularization of the political sphere found in modern political theory. This Western perspective obscures, however, both the contrasting Eastern history, in which Islamic Conquest and Russian Empire, rather than Reformation and Enlightenment, play the major political and cultural roles, and the contemporary experience of persecution and martyrdom under which significant Christian populations in China and various parts of the Islamic world live.

The variety of historical and theoretical Christian relationships to the political sphere is an understandable legacy for a religion which has played a major formative role in a variety of civilizations and cultures, including the Byzantine Empire, Western Christendom, Russian Orthodoxy, and Latin America, and has also existed for periods of time as a significant minority religion in a variety of civilizations and cultures, including the ancient Roman Empire, Middle Eastern and Ottoman Islam, Communist Soviet Union, modern China, and various parts of modern Africa and contemporary Korea. The historical, geographical, and demographic scale of Christianity invites variation.

It is understandable if secularized intellectuals in the West generally identify Christianity almost exclusively with the West, as this allows them to reconcile their formative historical narrative of "emancipation" from Christian political and intellectual domination with their embrace of multi-culturalism. Western Christians, however, ought to know better. The West has been formed in significant part by Christianity, but Christianity was not formed by, and is not limited to, the West. Christianity has seen "Christian" and non-Christian empires come and go in various parts of the globe, and is therefore not wedded to any one of them. Of course, it has never been easy for Christians living within a particular empire to imagine that Christianity might transcend the fall of that empire. Roman Christians living during the era of imperial persecution of the church nonetheless often claimed to be patriots and imagined that the fall of the empire would mean the end of the world;<sup>4</sup> Byzantium Christians experienced the long-feared fall of Constantinople to Islam as a catastrophe. But in each instance Christian history went on, both in the locales affected and in other parts of the globe.

The varied Christian relationships to the political order further reflect the politically ambiguous legacy of the Christian scriptures and of Christianity's central figure, Jesus of Nazareth. The Old Testament Jewish people, whose covenant relationship with God is central to the

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4 See HUGO RAHNER, *CHURCH AND STATE IN EARLY CHRISTIANITY* 12-17 (Leo Donald Davis trans., 1992).

Hebrew scriptures, begin with the nomadic family of Abraham wandering through Canaan, pass through exile and then slavery in Egypt, experience liberation from Egypt, wander in the desert, and then conquer Canaan. Once within their "promised land," the Israelite nation passes through several forms of government, including rule by Judges, and two different monarchical dynasties. The splintering of Israel into the northern and southern kingdoms, and the subsequent fall of the northern kingdom, never to be restored, and later of the southern kingdom, underscores that Israel was surrounded by larger, generally much more powerful, pagan empires. Although Solomon's reign brought Israel to its highest level of political and military power, the Hebrew scriptures relativize and partially condemn this reign by regarding the monarchy as a fall into the despotic political pattern of the pagan nations, and Solomon's multiplication of horses, gold, and wives as a direct violation of divine command.<sup>5</sup>

During the Babylonian Captivity of the southern kingdom, the exiles receive prophetic instruction from Jeremiah to "seek the peace and prosperity" of the empire which had devastated their homeland and sacred temple.<sup>6</sup> Daniel attains high political position within pagan Babylon, following in the pattern of Joseph's attainment of high political office within ancient pagan Egypt.<sup>7</sup> When the Mede-Persian Emperor Cyrus fulfills prophecy by allowing the exiles of Judah to return to the land and rebuild the temple and city, most of the Jews actually remain in their land of exile, where they had successfully followed Jeremiah's advice to reproduce, build houses, and settle. Restoration Judah is significantly reduced in military, political, and economic splendor from that of the united Israelite kingdom under David and Solomon—even the institution of a king is lacking. The Hebrew scriptures canonized by Jews and Protestants end their histories with Israel in this reduced estate, living peacefully as a vassal to the great world empires to the East. The Roman Catholic church includes the two books of the Maccabees within its canon, thus including in its sacred history the account of the Jewish Holy War against the

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5 Compare the description of Solomon's multiplication of gold, horses, and wives, and his fall into idolatry, in 1 *Kings* 10:14–29, with the warning in *Deuteronomy* 17:14–20, against such behaviors. The desire of the Israelites for a king like the other nations is portrayed as a rejection of God as their King in 1 *Samuel* 8. 1 *Samuel* 8 further warns that the monarchy will be an oppressive burden for the people, and 1 *Kings* 12 portrays the rebellion of the people against the monarchy and the consequent split into the northern and southern kingdoms as deriving in part from this oppressive burden.

6 *Jeremiah* 29:7.

7 See *Daniel* 2:48; *Genesis* 41:37–45.

Hellenizing pagan king who desecrated the Temple and sought to destroy the Jewish religion.

The varied political lessons which might be gleaned from the Old Testament scriptures are further complicated, for Christians, by the life, ministry, and death of Jesus of Nazareth, and the resulting New Testament scriptures. Jewish hopes for deliverance from the yoke of Rome, and for fulfillment of the grand prophetic promises, rested on the coming messiah. Jesus' disappointment of these expectations is, in terms of Jewish thought of the time, severe enough to make it impossible for most Jews, and especially the Jewish leadership, to regard him as messiah, no matter how many miracles or fulfillments of Old Testament messianic prophecies are assigned to him.<sup>8</sup> Instead of restoring Israel militarily and politically, and re-instituting the Davidic monarchy, Jesus wanders Galilee and Judah preaching, goes to Jerusalem, is crucified, and His followers say, resurrected. The resurrected Jesus teaches groups of disciples and then ascends into heaven, and His followers speak of His death as atoning for the sins of the world and bringing the gentiles into the kingdom of God. Instead of restoring Israel, Jesus predicts the destruction of the Temple. He tells His followers that "all who take the sword will perish by the sword,"<sup>9</sup> and goes to His death without any kind of resistance. Among a Jewish population looking for the right occasion to revolt against Caesar, He admonishes paying taxes, declaring that one should "give to Caesar, what is Caesar's, and to God, what is God's."<sup>10</sup> It would be difficult to devise a more serious disappointment of military and political expectations, and a more decided and determined apoliticism.

Of course, Jesus' teaching applies significantly to social relationships, and thus could be seen, if applied on a large scale, as revolutionizing the political order. If this is His intent, however, it is clear that He chose a markedly non-political way of affecting politics. His claims to be the King of the Jews, and the hoped-for messiah, are accompanied by a rejection of the military and political role that Jewish tradition had assigned to their messianic King.

The varied political institutions, forms, and situations of Old Testament Israel, combined with the apolitical life and ministry of Jesus of Nazareth, make it possible to draw a large range of political implications from Christianity. Those who emphasize the theocratic laws and institutions of monarchical Israel may view the worldwide establish-

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8 See, e.g., SAMUEL SANDMEL, *JUDAISM AND CHRISTIAN BEGINNINGS* 208 (1978) (summarizing rabbinic expectations of the messiah).

9 *Matthew* 26:52 (New King James).

10 *Matthew* 22:21 (New Int'l Version).

ment of a theocratic Christian civilization prior to the return of Christ as the mission of the church in this world.<sup>11</sup> Those who emphasize walking in the ways of Jesus of Nazareth may by contrast seek to live as a separated, defenseless Christian community amidst the varied peoples and political orders of this world.<sup>12</sup> History teaches that the possibilities vary along more than one pole and can be numerous and complex.

My own suggestion would be that the fundamental fact about the Christian faith is that it is not tied to any particular political theory, goal, or circumstance. God's purposes in this age between the two comings of Christ do not mandate one particular form or theory of civil government. Indeed, God's purposes and plan in the church age, like His purposes and plan in regard to Old Testament Israel, are realized through a multiplicity of political forms.

Most Christian political theory, I would suggest, wrongly attempts to prove that a rather narrow set of political arrangements are mandated by the Christian faith. The difficulty is that many confuse Christian *foundations* with Christian *mandates*. Scholars have made a convincing case that various aspects of modern Western political life, including democracy, the rule of law, human rights, separation of powers, limited government, and a capitalist economy, developed in the West from Christian theoretical foundations and the institutional arrangements between church, state, and society.<sup>13</sup> Thus, for the West these political arrangements can be seen as a development of Christendom, that is, developments within a Christian civilization. Many seem to confuse the fact of development within a Christian civilization, and the Christian theoretical foundations for these developments, with the dogmatic necessity of these arrangements.

One antidote to this confusion is to remember that Christianity was also foundational to at least three other civilizations with a reasonably long history: the orthodox Byzantine Empire, Russian Orthodoxy, and Latin America. Political arrangements within these Christian civilizations, however, did not develop in the manner of the West. The West has long regarded Byzantium as a form of caesaropapism in which the emperor effectively reduced the church to a department of

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11 See, e.g., GARY NORTH, UNCONDITIONAL SURRENDER: GOD'S PROGRAM FOR VICTORY 175-228 (2d ed. 1983).

12 See, e.g., JOHN HOWARD YODER, THE PRIESTLY KINGDOM (1984); *The Schleithem Confession of 1527*, in CREEDS OF THE CHURCHES 282 (John H. Leith ed., 3d ed. 1982).

13 See, e.g., HAROLD BERMAN, LAW AND REVOLUTION: THE FORMATION OF THE WESTERN LEGAL TRADITION (1983); BRIAN TIERNEY, RELIGION, LAW, AND THE GROWTH OF CONSTITUTIONAL THOUGHT (1982); John Witte, Jr., *Law, Religion and Human Rights*, 28 COLUM. HUM. RTS. L. REV. 1 (1996).

the theocratic state; the Byzantine pattern, moreover, became characteristic in Russian Orthodoxy. Political despotism remained the norm in Russia and Latin America, until Russia succumbed to atheistic communism and Latin America became influenced by Western trends. The historical events so central to political and cultural development in the West, including the Renaissance, Reformation, and Enlightenment, remained largely peripheral events to Orthodoxy and Latin America.

It would be a large project to analyze the various reasons (cultural, theological, political, historical, economic, geographic, and demographic), why Western Christendom developed political arrangements distinct from those of other Christian civilizations. It is historically clear, however, that Christianity alone does not guarantee the development of Western political arrangements. Thus, it is arrogant for a Western Christian to simply presume that the political arrangements of the West are more consistent with Christian principles than are the political arrangements of other Christian civilizations.

The familiar historical thesis that capitalism or constitutional democracy are particularly developments of Protestantism, even if accepted, does not relieve the dilemma, for it merely underscores the truth that Protestantism is historically a solely Western development. The Reformation, as noted above, left Eastern Orthodoxy, whether in Russia or Muslim-dominated territories, virtually untouched; Latin America also escaped its effects because it was dominated by Roman Catholic Spain. Of course, the modern era of Protestant missions has spread various forms of Protestant Christianity throughout much of the world.<sup>14</sup> Latin America is experiencing its first "protestantization" as millions have left an often nominal Roman Catholicism to embrace a lively (and usually Pentecostal) Protestantism.<sup>15</sup> The dissolution of the Soviet Union has left Russian Christianity open to competition between Western Protestant missionaries and the ancient, but perhaps somewhat compromised, Russian Orthodox church.<sup>16</sup> A large minority of South Koreans are now either Presbyterian or Roman Catholic.<sup>17</sup> As this sort of religious cross-pollination continues, there will be multiple laboratories to test the thesis that Protestantism leads to capitalism and constitutional democracy.

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14 See 2 LATOURETTE, *supra* note 3, at 1078-79, 1294-1345, 1434-53.

15 See HUNTINGTON, *supra* note 3, at 99.

16 See James H. Billington, *The Case for Orthodoxy*, NEW REPUBLIC, May 30, 1994, at 24; Miroslav Volf, *Fishing in the Neighbor's Pond: Mission and Proselytism in Eastern Europe*, INT'L BULL. MISSIONARY RES., Jan. 1996, at 26.

17 See HUNTINGTON, *supra* note 3, at 98-99.



Western Christians knowledgeable of the variety of political arrangements which Christianity has produced appear to adopt a distinctive "developmental" perspective which maintains the belief that Western political arrangements are theologically superior. Under this perspective, the particular circumstances of Western political history providentially were used by God to develop the "correct" form of political order. Once these political arrangements are developed in the hothouse of the West, they are viewed as ripe for transplantation in every other part of the globe. Democracy and human rights become Western Christendom's gifts to the world. A secular corollary to this theory views the events and circumstances as fortuitous, rather than providential, but nonetheless concurs that the political order which developed under uniquely Western circumstances is, once developed, appropriate for all of the cultures, nations, and civilizations of this world.

Westerners, who understandably prefer Western political forms, are naturally sympathetic to this way of thinking. Western Christians thus generally believe that democracy; civil, political, and economic rights; the rule of law; and a capitalist form of economy seem to best "fit" Christian teachings about the dignity and nature of both the individual and society. The religious dignity accorded to every believer in Christ, generally termed the priesthood of all believers, seems filled with democratic and egalitarian implications. The doctrine of the image of God in humanity, which applies to those of all or no faith, seems to demand recognition of human rights. American Christians seem to believe that Christian liberty means not having to bow to any non-elected despot.

Yet, many Americans, Christian and non-Christian, view their society as decaying and sick. High rates of violent crime, juvenile crime, divorce, illegitimacy, abortion, and childhood poverty trouble America. There is a broad perception of a decline in basic virtues like honesty, patience, responsibility, and diligence. America's popular culture surrounds us with images and sounds of sexual immorality, violence, materialism, and narcissism.

It is embarrassing to discover that America's shallow and immoral popular culture is one of its most successful exports. It is troubling to find that America's social ills follow almost immediately upon democratization and liberation from Communism. Western-style popular mass-media, sexual immorality, crime, materialism, pornography, and narcissism seem to spread faster than Christianity in the former Eastern Bloc. It is certainly hard for a Christian to argue, under these circumstances, that "Westernization" is an unmixed blessing.

Indeed, Islamic perceptions of Western culture as "materialistic, corrupt, decadent, immoral," and "godless" seem painfully accurate.<sup>18</sup> An Asian charge that Western democracy produces gutless politicians who lack budgetary discipline seems well-founded.<sup>19</sup> An Asian complaint that American individualism is creating "a massive social experiment tearing down social institution after social institution that restrained the individual," leaving in its wake huge increases in crime, divorce, and illegitimacy which bespeak a "massive social decay," seems well-founded.<sup>20</sup>

It is, of course, easy enough for a politically conservative American Christian to see this social decay as resulting from the abandonment of the "true" American and Western political heritage. America in the nineteenth century without slavery, or America prior to the cultural revolution without Jim Crow, becomes the ideal. America under God could have liberty without licence, democracy without budget deficits, free speech without pornography, familial freedom without sexual revolution. The autonomy-based individualism of the contemporary West can be viewed as rebellion or apostasy from the Christian foundations and discipline that was formative to the West.

This way of thinking, however, does little to prove, particularly to non-Westerners, that the West's political arrangements are inherently superior. Arguing that Western decay has nothing to do with her political systems and social arrangements is unlikely to convince those outside of the West. Certainly, we judge other political systems and cultures by their fruits. Moreover, the incredible speed with which Western social ills follow democratization and Westernization is damning.

Christianity teaches that humankind, although created in God's image, fell into sin, and thus that human beings are intensely and inherently sinful.<sup>21</sup> American political theory has, from the beginning, been an attempt to guard against the abuses of political power caused by human sinfulness through the limitation and division of political power. It seems, however, that different political arrange-

18 HUNTINGTON, *supra* note 3, at 213-14.

19 See Kishore Mahbubani, *The Dangers of Decadence: What the Rest Can Teach the West*, 72 FOREIGN AFF., Sept.-Oct. 1993, at 10 (responding to Samuel P. Huntington, *The Clash of Civilizations*, 72 FOREIGN AFF., Summer 1993, at 22).

20 *Id.*

21 For brief, contrasting, Christian descriptions of the sinful nature of humanity, see CATECHISM OF THE CATHOLIC CHURCH 97-105 (Roman Catholic); ARTICLES OF RELIGION art. IX (Anglican); and WESTMINSTER CONFESSION OF FAITH ch. VI (Calvinist). For a probing analysis of the Pauline doctrine of sin, see HERMAN RIDDERBOS, PAUL: AN OUTLINE OF HIS THEOLOGY 91-158 (John Richard De Witt trans., 1975).

ments vary in their effectiveness at limiting the varied forms of human sinfulness. American separation and limitation of political power may guard more effectively against tyranny than does absolute monarchy, but less well against the social decay produced by rampant individualism. Ultimately, moreover, the structure of government cannot completely evade the effects of human sinfulness. The system of government may, in the end, matter less than the quality of persons produced by the culture and present in the ruling classes.

It is thus extremely doubtful that Christianity demands political democracy; nor is the Christian mission fulfilled by spreading democracy around the world. Human dignity ultimately does not come from political self-rule. Indeed, self-rule is largely a myth, except perhaps in the context of a small entity like a New England town meeting. In any large-scale democracy, there is a division between the rulers, who hold political office, and the ruled, who are required, upon pain of coercive sanction, to obey the decrees of the rulers.<sup>22</sup> The biblical portrayal of authority as residing in offices implies an understanding that it is not really possible, in this world, to abolish the distinction between ruler and subject.<sup>23</sup> Christianity instead demands certain kinds of attitudes, actions, and relationships between subject and ruler. It is the substance of those attitudes, actions, and relationships, rather than a requirement of one particular procedure for identifying rulers, which is the primary concern of Christian ethics. A democratic nation that places a minority in concentration camps, as America did to Japanese Americans during World War II, is not, because it is a "democracy," theologically superior to a monarchy which seeks to defend and protect the ethnic minorities under its jurisdiction. Societal participation in decision-making is desirable, but can be done through consultations with leaders of various organs or parts of society, rather than through a one-person, one-vote electoral system. Even ninety percent of the people do not constitute the "voice of

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22 Prime Minister Vaclav Klaus of the Czech Republic, called "perhaps the most successful parliamentary and party leader in the postcommunist world" by the editors of the *Journal of Democracy*, expressed a similar thought: "Should citizens participate directly or indirectly [in public affairs]? I think that the majority among us are in favor of indirect participation. . . . The advocates of civil society think that it is necessary to increase the role of direct democracy. I disagree. It is an unrealistic idea that is wishful thinking and very hard to implement. Many states around the world consider themselves self-governing, but in reality they are not: self-government is a figment of the imagination." *Civil Society After Communism*, 7 J. DEMOCRACY 11, 19 (Jan. 1996).

23 See, e.g., *Romans* 13:1-6 (civil government); 1 *Timothy* 3:1-13 (qualifications of bishops and deacons).

God," particularly when they call what is evil, good, and what is good, evil.

The social ills rampant in the West may not be inherent to Western political arrangements, but they are obviously an inherent *risk* of Western political arrangements. Westerners generally prefer to live with those risks, even as they disagree about how to minimize their realization.<sup>24</sup> It seems implausible to claim, however, that the Christian faith (or indeed any other faith) *demand*s a set of political arrangements which so often produce and permit such large-scale social decay.

The Hebrew scriptures appear to imply a different "developmental" lesson than that assumed by most Westerners. Every political order adopted by the Israelites appears to have its particular strengths and weaknesses. Political power is exercised in a less oppressive, autocratic, and centralized manner under the charismatic rule of the Judges, and God is acknowledged as the theocratic King of a people without an earthly king. However, this arrangement does not prevent the vicious cycle characteristic of the book, wherein the people fall into sin, come under political oppression from their enemies, cry out to God, and are delivered through the leadership of a divinely-appointed Judge. The resulting peace is temporary, as the people return to their sinful ways after the death of the Judge, and the cycle starts again. The entire period, moreover, is marked by a violence and chaos which is summarized in the famous last line, "In those days there was no king in Israel; everyone did what was right in his own eyes."<sup>25</sup>

The Israelite monarchy possessed the strengths and weaknesses characteristic of strong centralized leadership. The monarchy's strengths included its public projects, military campaigns, diplomatic strategy, and significant religious and national ceremonies. The mon-

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24 The historian Lawrence M. Friedman makes this point in regard to violent crime: "A culture of freedom and openness; a culture of mobility; a culture of individual choice is almost bound to run the risk of high criminality—at least in the twentieth century. Authoritarian societies are often able to keep the lid on a lot better." Lawrence M. Friedman, *Dead Hands: Past and Present in Criminal Justice Policy*, 27 CUMB. L. REV. 903, 925 (1997). For a critique of the helplessness of a certain brand of Western liberalism toward such social ills, as illustrated by Professor Friedman's approach, see David M. Smolin, *The Dilemmas and Methodologies of Academic Political Liberalism: An Analysis of Professor Lawrence Friedman's Response to the Problem of Violent Crime*, 27 CUMB. L. REV. 959 (1997).

25 *Judges* 21:25 (New King James). The recurrent cycle in the book of *Judges* is described within the book in *Judges* 2:6–3:6. See generally RAYMOND B. DILLARD & TREMPER LONGMAN III, AN INTRODUCTION TO THE OLD TESTAMENT 124–25 (1994) (discussing the cycle characteristic of *Judges*).

archy was a grand institutional presence which became a focal point of religious and national aspirations in a way impossible for the sporadic and comparatively modest office of Judge. The monarchy's weaknesses were those inherent in strong centralized leadership: a crushing tax burden on the people, and an aggrandizement of wealth, luxury, and power that led, as it so often does, to the religious and moral fall of the monarch, accompanying intrigues within the palace and royal family, and finally rebellion and political disunity.<sup>26</sup>

The developmental transitions of the Hebrew scriptures from Judges, to monarchy, and after the Restoration to a kingless vassal territory, suggest that the creation and destruction of political arrangements is not designed to point toward any ideal type of political system. Each political arrangement is presented as so riddled with weaknesses as to be inherently unstable. The rule of Judges cannot guard against the tendency of an autonomous people to fall into sin; the monarchy cannot guard against the tendency of autocratic rulers to aggrandize their persons and office and to finally fall to the myriad temptations of power and wealth. Both systems, from a Christian perspective, are types of the messiah, who will be the permanent deliverer (Judge) of Israel from both her enemies and her sins and who, as the permanent Davidic King, will restore the kingdom. Short of a ruler as virtuous and powerful as this messiah, all political systems are destined to decay and fall.

Jesus' preaching about the kingdom of heaven (or kingdom of God) is for Christians a continuation of this typological salvation history.<sup>27</sup> This kingdom, however, is quite ambiguous as a political phenomenon. Jesus tells Pilate that "[m]y kingdom is not of this world. If My kingdom were of this world, My servants would fight . . ."<sup>28</sup> The only human manifestation of His kingdom which Jesus establishes is His church, which under His instructions and example refuses to fight or exercise the sword.<sup>29</sup> Yet, fighting and the sword are, practically and biblically, necessary elements of any political authority in this world.<sup>30</sup> Having rejected the role of military and political leader of a

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26 See 1 *Kings* 3-12 (describing Solomon's reign, idolatry, death, and the rebellion and division which occurred under his son).

27 The many worthy studies of the kingdom of heaven include PETER J. LEITHART, *THE KINGDOM AND THE POWER* (1993); HERMAN N. RIDDERBOS, *THE COMING OF THE KINGDOM* (1962).

28 *John* 18:36.

29 See, e.g., *Matthew* 26:50-53; *John* 18:10-11; *Luke* 22:49-51 (parallel passages on repudiation of sword); *Matthew* 16:13-20 (Jesus speaking of the building of His church); *Matthew* 28:16-20 (great commission).

30 See *Romans* 13:4 (defining civil authority by its possession of the "sword").

nationalist Israelite restoration, Jesus in effect leaves no political instructions, mission, or goals behind him.

The New Testament letters provide some minimalist instructions to Christians about the nature of civil authority. The civil ruler, like church bishops and parents, occupies an office. There is a clear sense that God has established these three offices, and hence that the organizations or spheres which they serve, that of state, church, and family, are ordained by God. The purpose of the state is to punish evil and commend the good, and the furthest reach of its authority is represented by the executioner's sword. Within his sphere, the civil ruler is a servant of God. The implication, of course, is that the civil ruler's jurisdiction is separate from that of church elder or parent. Subjects, children, and church members are admonished to generally respect, honor, and obey the civil rulers, parents, and elders placed over them, except where such obedience would involve disobedience to God.<sup>31</sup>

The Old and New Testaments together imply that rulers are accountable to God to treat those who bear His image with justice and dignity, since they belong by right to God. Hence, civil rulers should seek to govern their subjects with wisdom, rightly applying God's standards of right and wrong to a particular people and circumstance.<sup>32</sup>

History teaches that these minimalist instructions to the civil ruler have been repeatedly violated within every Christian empire. Civil rulers have frequently—even typically—exercised authority over the church. Human beings repeatedly have been abused by the state in ways inconsistent with their dignity as bearers of the image of God. Folly, rather than wisdom, has characterized the public and private lives of many, perhaps most, "Christian" rulers. In a historically-based religion like Christianity, these failings matter. Yet, neither the reign of God nor the unfolding of the history of redemption are stalled by these failures. Christianity progresses, even as the various civilizations and empires established in her name rise and fall.

There is a significant parallel between the instability of the various Old Testament political arrangements prior to the first coming of Christ, and the instability of the various Christian empires and political systems prior to the Second Coming of Christ. In both instances, the message is clear: whatever political system you adopt will be inherently unstable and unable to prevent the religious and moral fall of

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31 See *Romans* 13:1–7 (civil government); 1 *Peter* 2:13–17 (civil government); *Ephesians* 6:1–4 (family); *Colossians* 3:18–21 (family); 1 *Timothy* 3:1–12, 5:17–20 (church); 1 *Peter* 5:1–4 (church).

32 For a more detailed elucidation of the biblical mandate for civil government, see David M. Smolin, *The Enforcement of Natural Law by the State: A Response to Professor Calhoun*, 16 U. DAYTON L. REV. 381 (1991).

rulers, nations, peoples, empires, and civilizations. Different political arrangements possess different sorts of weaknesses, but all systems demonstrate the need for direct political rule by the messiah. Christians, like Jews, have to live with a delay in that rule, as Christ has determined not to take up his direct political rule until the second coming. All those who rule in Christ's name, like those who were types of Christ in the Old Testament, demonstrate by their failures the grave distance between the King of Kings, and his types and regents. It is evident to us today that the voice of the king or emperor is not the voice of God. Somehow, however, we have fallen prey to half-believing the equally vain conceit that the voice of the people is the voice of God.

Our subjective preferences for a particular kind of political system are generally accompanied by the vain hope that the system we prefer will not actualize its inherent weaknesses and instability. If only the Western church had not divided!—but the history of that division follows the age-old story of how religious and moral corruption and oppression haunt centralized authority, and how rebellion and division follow such corruption. If only America had not been corrupted by the cultural and sexual revolution!—but the history of that revolution is the age-old story of the corruption of a people left to their own devices in a time of prosperity. If only slavery and racism had not marred the history of America!—but the history of American racial oppression repeats the age-old story of how dominant groups create theories of racial and social superiority in order to justify themselves and their exploitation of others.

My thesis is, therefore, that there is an inherent instability in all political orders prior to the second coming of the messiah. This thesis suggests that the message of the gospel, and of the kingdom of heaven, must always be kept distinct from whatever human hopes for peace and prosperity are circulating at a particular time or place. The kingdom of God was not fulfilled in the conversion of the Roman Empire to Christianity, the establishment of a Holy Roman Empire, the glories of Byzantium, or the history of Western Christendom. It is the kingdom of heaven, not the United States of America, which is the last, best hope of humankind. Even if the new world order were to create an era of peace and prosperity throughout the world—a doubtful proposition—this would not constitute the kingdom of heaven. Even if the human rights movement were to remold the world in its image, this world order in turn would turn out to have feet of clay.

I am not arguing for the religious or moral equivalence of all political orders. German facism was truly more evil than most contemporary regimes, and its crimes against humanity were an unspeak-

able horror about which we are morally obligated to speak. The Soviet Union was in many respects an evil empire, despite the naivety of many Western intellectuals. The current domination by the democratic West is, compared to other powers which might be dominating the world, relatively benevolent.<sup>33</sup> These differences matter in people's lives; they matter to the work of the church. Most of the differences that matter, however, concern the substantive manner in which power is exercised, rather than the theoretical nature of the system. There is, moreover, no way to get politics "right," in the ultimate sense, until the messiah returns to institute fully His righteous rule.

The role of Christians in the political order obviously depends on the particular circumstances. When Christians constitute a relatively small minority, they often face oppression because their confession that "Jesus is Lord" appears disloyal to the state, and tends to relativize and unsettle the authority structure of the society. Whether in ancient Rome or contemporary China, Christians are unsettling to the authorities because they constitute neither a simple political rebellion, which could be crushed by superior force, nor a distinctive ethnic group willing to acknowledge the absolute authority of the state in exchange for limited cultural autonomy. Although Christians generally claim to be the best of patriots and citizens, the fact that their loyalty to the state is derived from, and limited by, a different authority than that understood or acknowledged in the wider community is unnerving and threatening to the authorities. Under these circumstances, the political role of Christianity is usually limited to seeking toleration and surviving intermittent persecution. An occasional Christian may under such circumstances hold a political office, but Christians on the whole will not be able to affect the political order or substantive laws of the nation. The societal role of Christianity may, however, be much broader, through its missionary and educational activity and the help the church affords to the vulnerable and outcast within the society.

When Christians constitute a sufficiently significant number to actually affect the political order, but still constitute a minority, then Christians may attain formal legitimacy and legality, and hence the right to participate fully in the political order, albeit as minorities. The profession that "Jesus is Lord" will not, in other words, make the

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33 This point is made forcefully by a non-Westerner, Kishore Mahbubani, who wrote: "By any historical standard, the recent epoch of Western domination, especially under American leadership, has been remarkably benign. One dreads to think what the world would have looked like if either Nazi Germany or Stalinist Russia had triumphed in what have been called the 'Western civil wars' of the twentieth century." Mahbubani, *supra* note 19, at 10.



Christian intrinsically suspect. Christians then can seek to peacefully impact the political order in light of the basic truths of the Christian revelation, including the inherent worth and dignity of every human being, and the accountability of the ruler to basic standards of right and wrong. In reality, of course, this ideal has often been compromised, and Christians instead have behaved like a special interest group or ethnic minority seeking the greatest possible share of governmental power, privilege, and largess. When a nation is splintered among several different religious groups, each commanding substantial numbers, resources, and land, a religiously-tinged civil war often results. The challenge for the church in this situation is therefore to act politically in a manner that is clearly directed at the common good.

When Christians demographically dominate the society, then it should follow that the basic truths of the Christian faith ground the political order. The Christian understanding that political authority comes from God, and is therefore accountable to God and His standards, should inform the political order, regardless of the exact form of government. Christian teachings about the dignity of every human being created in the image of God should have a demonstrable effect upon the civil law. Christian understandings of ethics and morality should shape the law, even though, of course, not everything which is "sin" or "wrong" will be the concern of the state. The temptations during such an era will be to identify the "Christian" nation or empire too closely with the kingdom of God, to lose the distinctive mission, voice, and organization of the church within the broader "Christian" nation and society, and to persecute and mistreat non-Christians.

This simplistic summary of the different contexts of Christian political work is intended merely to demonstrate that Christian activity in the political realm can pursue significant goals without claiming to be bringing about the kingdom of God. The political goals of Christians are important because they are a part of the means of expressing God's care for all humanity, and indeed of all creation. The political goals of the Christian must always be provisional and subsidiary, however, because of the recognition that a truly righteous political order will not be established until Christ's return. The primary mission of the church until Christ's return, like Christ's mission during his first coming, is therefore apolitical. This mission of preaching and living the gospel should be expressed primarily through non-political associations and institutions. Any attempt to express the gospel in a primarily political manner during this age can only distort the gospel.

## II. THE NATURE OF THE HUMAN RIGHTS MOVEMENT

The human rights movement suffers from a gap between the comprehensive ideals and authority claimed in its legal documents and scholarly writings, and its generalized inability to enforce or implement those ideals or exercise that authority. The movement presents a curious combination of legal activism and practical impotence.

The United Nations Charter and various human rights conventions portray the nations of the world as liberal democracies guaranteeing the full range of Western-style political and civil rights, while simultaneously promising a wide range of economic, social, and cultural rights, and prohibiting discrimination on the basis of race, color, sex, language, religion, political or other opinion, national or social origin, property, birth, or other status.<sup>34</sup>

Civil and political rights theoretically guaranteed under the major human rights documents include: the right to life, liberty, and security of the person; liberty of movement, including freedom to choose a residence and leave one's country; various rights pertaining to criminal procedure, including the right to be informed of the charges, right to counsel, confrontation of witnesses, right against self-incrimination, appellate review, ban on double jeopardy, and prohibition of *ex post facto* laws; privacy rights in one's family, home or correspondence; freedom of thought, conscience, and religion, including rights to change and manifest one's religion; freedom of opinion and expression; rights of assembly and association; right to marry and found a family; right to own property alone as well as in association; and the right to participate in genuine elections by universal and equal suffrage held by secret ballot.<sup>35</sup>

Economic, social, and cultural rights guaranteed by the major human rights documents include: the right to work, including free choice of employment, just and favorable work conditions, and protection against unemployment; the right to rest and leisure, including periodic paid holidays; a standard of living adequate for the health and well-being of the worker and his family, including the continuous

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34 See U.N. CHARTER (hereinafter CHARTER); Universal Declaration of Human Rights, G.A. Res. 217A, U.N. Doc. A/810 (1948) [hereinafter UDHR]; International Covenant on Civil and Political Rights, G.A. Res. 2200A, U.N. Doc. A/6316 (1966) (entered into force Mar. 23, 1976) [hereinafter CPR]; International Covenant on Economic, Social and Cultural Rights, G.A. Res. 2200A, U.N. Doc. A/6316 (1966) (entered into force Jan 3, 1976) [hereinafter ESCR].

35 See CPR, *supra* note 34, at arts. 6, 9, 12, 14-15, 17-18, 19, 21-23; UDHR, *supra* note 34, at art. 3, 10-13, 16-21.

improvement of living conditions and the right to security in cases of unemployment, sickness, disability, widowhood, or old age; compulsory and free elementary education, progressive implementation of free secondary education, and a system of higher education open to all on a merit basis; the right to form or join trade unions; and the highest obtainable standard of physical and mental health.<sup>36</sup>

The Universal Declaration of Human Rights, adopted by the General Assembly of the United Nations in 1948 and hence initially a non-binding declaration, contains in itself a broad outline of the above-named civil, political, economic, social, and cultural rights. Human rights scholars have maintained that the Declaration, in whole or part, has attained the status of binding international law.<sup>37</sup> The two major human rights conventions are the 1966 International Covenant on Civil and Political Rights, with approximately 136 nations as parties, and the 1966 Covenant on Economic, Social, and Cultural Rights, with approximately 135 nations as parties. Hence, approximately two-thirds of the nations of the world are theoretically bound by the two major conventions, and the entire community of nations is theoretically bound by all or part of the Universal Declaration.<sup>38</sup>

It has been common to refer to the "three generations" of human rights: the first generation being the civil and political rights emphasized by the West, the second generation being the economic and social rights emphasized by Communist and authoritarian states, and the third generation including the rights of development and self-determination emphasized by the de-colonized third world.<sup>39</sup> These Cold War and North-South divisions have not manifested themselves in logical ways. One might expect Western nations to ratify human rights conventions emphasizing civil and political rights, Communist nations to ratify the economic and social conventions, and the de-col-

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36 See ESCR, *supra* note 34, at arts. 7-9, 11-13; UDHR, *supra* note 34, at arts. 22-25.

37 See THOMAS BUERGENTHAL, *INTERNATIONAL HUMAN RIGHTS IN A NUTSHELL* 29-38 (2d ed. 1995). The Universal Declaration of Human Rights, the two major international conventions, the optional protocol to the Convention on Civil and Political Rights, and the human rights provisions of the United Nations charter have been called the "international bill of human rights." *Id.* at 28. The human rights provisions of the United Nations Charter, although characterized as vague, played an important role in internationalizing human rights and providing a legal foundation for their codification and implementation. *Id.* at 23-28. See also *supra* notes 35, 36.

38 See *supra* note 37; see also BARRY E. CARTER & PHILLIP R. TRIMBLE, *INTERNATIONAL LAW, SELECTED DOCUMENTS* 387, 410 (1995).

39 See BUERGENTHAL, *supra* note 37, at 234; Daniel C. Turack, *The Clinton Administration's Response to China's Human Rights Record: At the Half-Way Point*, 3 *TULSA J. COMP. & INT'L L.* 1, 1 (1995).

onized world to ratify only separate human rights documents emphasizing development and self-determination. Instead, many nations (with the marked exception of the United States) have adhered to a wide variety of agreements regardless of their actual political philosophy. For example, it is startling to find North Korea, one of the most authoritarian nations in the world, listed among the parties to both of the major conventions, and hence theoretically bound by the long list of rights given above.<sup>40</sup> China recently has moved toward signing (but not yet ratifying) the two major human rights conventions, and is a state party to the Convention on the Rights of the Child.<sup>41</sup> Thus, China has not found its poor human rights record to be an impediment to signing human rights conventions, and has even specifically promised to guarantee its children freedoms of expression, assembly, association, and religion which it regularly denies to its adults.<sup>42</sup> In practice, this kind of cynical or haphazard ratification of human rights conventions has been common.

A context in which international human rights standards theoretically comprise a legally-binding obligation in most or all of the world, and yet in which those standards are generally treated as practically irrelevant in most of the world, naturally leads to radically different assessments of the significance and future of the human rights movement. From one perspective, human rights are the basis of the new world order, represent the universal aspirations of the peoples of the world, and comprise the leading edge of a progressive wave that will increasingly rule the world.<sup>43</sup> From the opposite perspective, the human rights standards represent the naive and increasingly irrelevant ideals of certain Western and Westernized elites who are recycling their failed Western domestic political agendas as supposedly "universal" international legal principles.

A Christian evaluation of the human rights movement should seek to be balanced. Positively speaking, most of the human rights standards in the major conventions are simply one way of voicing common human hopes for peace, prosperity, justice, and the conditions of political, economic, social, and cultural life under which human beings most easily flourish. The emphasis on the dignity of the human person in the human rights documents can appear consonant with

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40 See CARTER & TRIMBLE, *supra* note 38, at 387, 410.

41 See Frank Ching, *U.S.-China Ties Make Headway*, FAR E. ECON. REV., Apr. 2, 1998, at 35.

42 Convention on the Rights of the Child, GA Res 44/25, U.N. Doc. A/44/736 at arts. 13, 14, 15 (entered into force Sept. 2, 1990) [hereinafter CRC].

43 See, e.g., ROBERT F. DRINAN, S.J., *HUMAN RIGHTS IN THE 21ST CENTURY AND THE ROLE OF AMERICA'S CHURCHES* (1994).

central biblical teaching on humankind as the image of God. The major human rights documents evidence an appreciation of the family as "the natural and fundamental group unit of society . . . entitled to protection by society and the State," which echoes biblical perspectives on the family.<sup>44</sup>

Negatively speaking, the human rights agreements evidence a totalitarian impulse which is profoundly threatening to religious and civil freedom. Human rights documents and scholars postulate the implementation of human rights standards as an ultimate and universal norm which displaces all other values and standards, particularly including religious values and standards. Human rights documents limit basic civil liberties, such as the liberty of individuals and groups to establish and direct educational institutions, to those who support the United Nations and the goals of the human rights movement. The movement's documents thus fail the fundamental test of limited government and political freedom: the requirement that one's political enemies be granted basic political and civil liberties.<sup>45</sup>

The totalitarian impulse within the human rights movement is further developed by the ideological radicalism of the more recent human rights conventions, such as the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the Convention on the Rights of the Child (CRC).<sup>46</sup> The former convention deliberately disregards the public/private distinction so basic to limited government and civil and political freedom. It requires state parties to "modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of . . . customary

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44 See UDHR, *supra* note 34, at art. 16(3); see also CPR, *supra* note 34, at art. 23(1); ESCR, *supra* note 34, at art. 10(1).

45 See, e.g., ESCR, *supra* note 34, at art. 13; CRC, *supra* note 42, at art. 29 (limiting liberty of private education to those who support the United Nations and respect for human rights); Courtney W. Howland, *The Challenge of Religious Fundamentalism to the Liberty and Equality Rights of Women: An Analysis Under the United Nations Charter*, 35 COLUM. J. TRANSNAT'L L. 271 (1997) (arguing for the necessity of religious viewpoints being legally subjugated to "universal" human rights norms and evidencing broad hostility toward religious "fundamentalism" and traditionalism in Buddhism, Christianity, Hinduism, Islam, and Judaism). I tried to describe this "totalitarian" impulse within the international human rights movement at greater length in David M. Smolin, *Will International Human Rights Be Used as a Tool of Cultural Genocide? The Interaction of Human Rights Norms, Religion, Culture and Gender*, 12 J.L. & RELIGION 143 (1996).

46 Convention on the Elimination of All Forms of Discrimination Against Women, G.A. Res. 34/180, U.N. Doc. A/34/46 (1980) (entered into force Sept. 3, 1981) [hereinafter CEDAW]; CRC, *supra* note 42.

and all other practices which are based on the idea of . . . stereotyped roles for men and women."<sup>47</sup>

Human rights scholars have acknowledged that the CEDAW may "permit States to curtail to an undefined extent privacy and associational interests and the freedom of opinion and expression."<sup>48</sup> The CRC similarly appears to reach within the private domain of the family and guarantee children rights against their parents—in areas like access to media—that could give the state broad authority to intrude within the family.<sup>49</sup> It thus seems evident that the human rights movement has in recent years been influenced by Western-based ideologies, such as feminism, which in the Western context have often adopted a socially radical cast.<sup>50</sup>

The positive and negative evaluations of the human rights movement could be summarized in terms of hopes and fears. The human rights movement can inspire the hope that all of humanity can live in peace in a common striving to provide the civil, political, economic, social, and cultural conditions and freedoms most compatible with the dignity and development of each person, family, and culture. The human rights movement can also evoke the fear that, if given real power, it would, like so many modern utopian ideologies, actualize its totalitarian impulse and become deeply oppressive. The desire of the human rights community for centralized international means of enforcing human rights against nation-states makes the movement the natural target of the hopes and fears that attend the concept of a centralized global form of government.

The hopes and fears are real, but premature, as the human rights movement's assessment of its own importance appears wildly exaggerated. The rising international power and assertiveness of Chinese and Islamic civilization and the resurgence of religion around the globe suggests that the Westernized and secularized orientations of the human rights movement will become increasingly less significant over time.<sup>51</sup> The language of human rights has in many respects already been reduced to the role of vacuous platitudes which evoke warm feelings and high ideals but are not intended to contribute to the hard work of settling disputes or governing peoples. It is not that govern-

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47 CEDAW, *supra* note 46, at art. 5(a).

48 THEODOR MERON, HUMAN RIGHTS LAW-MAKING IN THE UNITED NATIONS 66 (1986).

49 See CRC, *supra* note 42, at arts. 13–14, 17.

50 See, e.g., Mary Ann Glendon, *What Happened at Beijing*, FIRST THINGS, Jan. 1996, at 30.

51 See HUNTINGTON, *supra* note 3, at 95–101, 192–98; Régis Debray, *God and the Political Planet*, 11 NEW PERSP. Q. 13 (1994).

ments or peoples actually express much opposition to human rights, but rather that they maintain their right to interpret such rights from within their own states and cultures and adamantly deny any real enforcement power to outsiders.<sup>52</sup> A few principles of the human rights movement, such as the prohibition of genocide or torture, may become increasingly significant postulates of the broader international order, but even there real enforcement is likely to remain sporadic. Political communities such as the United States, with its tradition of judicially-enforceable civil rights, or an increasingly integrated Western Europe, with its regional human rights apparatus, exercise significant authority within their own jurisdictions.<sup>53</sup> The true believers, who desire that the long list of rights named in the human rights documents actually constitute enforceable legal norms throughout the world, will likely remain disappointed.

In the longer term, those who "believe" that the world will be united into a single federation based on a regime of human rights enforceable in the manner of the American Bill of Rights may some day be compared to those who "believed" that aliens from another planet would unite humanity in peace and harmony. Salvation for humanity is unlikely to arise in these sorts of ways. Those who fear that an international group of elites will use the ideology of human rights as a cover for a conspiracy to create a despotic one-world government too willingly accept the self-aggrandizing statements of their adversaries at face value. The enslavement of humanity is unlikely to arise in this fashion. Whether expressed politically or galactically, such grand hopes and fears crudely transpose the real spiritual struggle for this world into fictionalized and literalized forms. The New Testament, by contrast, does envision a grand clash between good and evil, but warns that only God is truly good<sup>54</sup> and that the Christian's ultimate enemies "are not flesh and blood."<sup>55</sup> Human beings, in short, are human beings, neither divine nor demonic, even when they engage in the noblest or most heinous of deeds.

It is true, of course, that the technological revolutions in communications, transportation, information, agriculture, industrial production, and weaponry make the possibility of a unified global empire more palpable than ever before, and the need for a regime for peaceful resolution of international conflicts more pressing than ever

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52 See, e.g., Civic, *supra* note 41, at 285, 318-21 (describing Chinese and Asian approaches to human rights).

53 See MARK W. JANIS, AN INTRODUCTION TO INTERNATIONAL LAW 249-65 (1993) (describing regional human rights system of Western Europe).

54 See Mark 10:18.

55 Ephesians 6:12.

before. Moreover, the great anti-utopian novels of Aldous Huxley and George Orwell lucidly remind us that technology can be used to hone the human capacity to control and enslave other human beings. The horrific enslavement of human beings through a dehumanizing regime of brutality, pain, torture, and oppression, as described by Orwell, or through an equally inhuman exploitation of pleasure, fantasy, drugs, and sexuality, as described by Huxley, have been periodically attempted throughout the twentieth century.<sup>56</sup> The church, indeed, teaches that only in God can freedom from the terrors and temptations of this world be found. The natural, sinful human being is, from a Christian perspective, a slave to his own fears and hopes, pleasures and pains, in a manner which makes him or her quite vulnerable to exploitation.

The exploiters, however, always turn out to be, in turn, slaves to their own vices, pleasures, and fears in a manner that makes them also vulnerable. Alas, this has also been true of the merely human saviors of humanity who in retrospect often appear to do as much evil as good. Thus, the great empires and kingdoms of this world, no matter how diabolically evil and cunning or how well-intentioned, often divide and always fall. The mistrust which so naturally accompanies the human condition makes all the grand human plans, whether for good or evil, subject to a constant tide of division and destruction.

The task of the Christian church in relation to human rights, then, is not, as John Witte suggests, to create a new "human rights hermeneutic" allowing it to support and participate in an international order based on democracy, human rights, and the rule of law.<sup>57</sup> Such an approach runs too great a risk of equating the kingdom of heaven with the new international order and expresses too great an equivalence between Christianity and a regime of democracy, human rights, and the rule of law. The good news of Jesus Christ is not found in the Universal Declaration of Human Rights. The "new world order" anyway appears to have passed away in less than a decade, in favor of the new world disorder, or the clash of civilizations.<sup>58</sup> The church cannot attach herself too firmly to the passing regimes of this world.

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56 See ALDOUS HUXLEY, *BRAVE NEW WORLD* (1932); GEORGE ORWELL, 1984 (*The New American Library of World Literature* 1961).

57 John Witte, Jr., *Law, Religion, and Human Rights*, 28 COLUM. HUM. RTS. L. REV. 1, 15-16 (1996).

58 See generally Huntington, *supra* note 19; HUNTINGTON, *supra* note 3 (both presenting thesis of the "clash of civilizations" as a paradigm for understanding the post-Cold War world).



It is not intrinsically wrong for Christians to participate in the human rights movement as a means of service to others. Indeed, the language of human rights for many Western Christians has become a way of expressing the desire to participate in politics in a way that furthers the common good and is protective of the vulnerable. Christians, as Augustine reminded us, share a common humanity with non-Christians which can allow them to share a "common platform" in temporal matters.<sup>59</sup> American Christians speak the language of the Constitution and the Bill of Rights when they participate in American politics, despite the failure of those documents to express or proclaim the gospel, because they believe that the underlying principles of American government are compatible with Christian truth and further temporal goods. There is no reason that Christians cannot, on an analogous basis, serve humanity through working to further "human rights."

My own view, however, is that the language of human rights will in time prove itself inadequate to the task of expressing Christian concern and compassion for others, even on a political level. The very language of human rights, particularly in our contemporary Western context of narcissism, individualism, social decadence, and religious apostasy, sends the wrong message regarding the relationship of the individual to society and the human person to God. Rights talk has a tendency to disengage rights from responsibilities and freedom from goodness, in a way which is antithetical to the Christian message and profoundly destructive of society.<sup>60</sup> In the American context the concept of rights has become thoroughly infected with an amorality or anti-morality which makes the human "freedom" to defy God and His law into a virtual idol. Although the earlier human rights documents were more balanced in this regard, more recent documents and scholarship illustrate the same American tendency for the language of rights to disintegrate into radical social agendas centering on notions of radical egalitarianism and individual autonomy. The decay of rights talk into radical autonomy, which unfolded over two hundred years of American history, was accomplished in a period of a mere half-century within the human rights movement.

The hope that the language of human rights would serve as a universal language for discourse among those of differing religions, ideologies, and cultures is also likely to be short-lived. Significant Ro-

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59 AUGUSTINE, *THE CITY OF GOD* bk. XIX, pt.17, at 326-28 (Marcus Dods trans., Hafner Pub. Co., 1948).

60 See generally MARY ANN GLENDON, *RIGHTS TALK* (1991) (critiquing excessive individualism of American rights talk).

man Catholic scholars are coming to understand that their own traditional language of "natural law," which was considered a universal language of morality, was itself dependent for its effectiveness on the underlying religious and cultural commonalities of Christendom. Natural law, even though it remains a part of the belief system of Roman Catholicism, has proved itself ineffective as a means of addressing or dialoguing with the wider range of traditions which the contemporary church seeks to address. Indeed, while the modern Roman Catholic church has sought to address all of humanity through a natural law methodology theoretically based upon universally-accessible reason, it has simultaneously faced the embarrassment, as in the instance of contraception, of having to invoke its claimed teaching authority in order to justify its alleged natural law positions to a largely incredulous membership. Thus, the natural law positions of the Roman Catholic church are often highly unpersuasive to its own membership, let alone those of other, or no, religious faith. A church which must rely on unique divine authority to support its "universal natural law" conclusions necessarily appears lost in a web of contradiction. Thus, it is understandable that the discourse of some prominent Roman Catholics, including John Paul II, have moved away from a primarily philosophical natural law method and tone toward a more explicitly biblical language. "Creation-talk," with its more explicit reliance on the creation of humankind by God in His image and under His law, is increasingly replacing or undergirding natural law discourse within Roman Catholicism. Indeed, Roman Catholicism has begun to invoke the dignity of humanity found in the person and redemptive work of Jesus Christ, the second Adam, as a basis for human rights, thus moving toward a greater focus on revelation and redemption, rather than reason and nature.<sup>61</sup> The church, after all, is the special guardian of revelation, not of reason, and speaks with greatest authority and authenticity when she speaks of things within her competence.

Human rights talk is far more flawed than natural law discourse as a means of discourse among persons of different religions, ideolo-

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61 See Russell Hittinger, *Natural Law and Catholic Moral Theology*, in A PRESERVING GRACE 1 (Michael Cromartie ed., 1997); Martin Shupack, *The Churches and Human Rights: Catholic and Protestant Human Rights Views as Reflected in Church Statements*, 6 HARV. HUM. RTS. J. 127, 149-56 (1993). My comments on the Roman Catholic natural law contraception position is not intended to imply substantive disagreement, but only to note the inability of a reason-based natural law methodology to establish the position. Similarly, I certainly am not denying the existence of a universally-valid moral law, but rather am questioning the usefulness of a reason-based natural law discourse to dialogue between Christians and non-Christians.

gies, and cultures. When "human rights" are invoked in the generic sense, the term merely refers to the desire to create conditions in which human persons can flourish. The broad agreement that human rights are an important good thus represents merely a generalized desire for peace, freedom, justice, and prosperity. This apparent agreement obscures, however, substantive religious, ideological, and cultural disagreements on the definitions of the ends and the means for securing them. On the other hand, the human rights documents themselves are frequently far too detailed and specific for a tradition that claims to represent universal morality. Some of the rights articulated in the documents are highly controversial even within the West, and represent essentially the wish-list of certain elites which has never been implemented in any society. Indeed, many of the specific provisions of human rights agreements are violated by the majority of governments and peoples of the world and contradicted by the religious and political beliefs of the majority of the peoples of the world, and thus can hardly be viewed as "universal." It is an odd feature of the human rights movement that although it has failed to successfully implement principles with broader acceptance, such as the bans on genocide, slavery, and torture, it has continued to define ever more specific and controversial additional rights.<sup>62</sup>

Natural law discourse at least has the stability and stature gained through age and cross-cultural affirmations, as the discourse has been a meeting point for the Greek, Roman, and biblical affirmations of a universal morality within the West for over two millennia. Human rights discourse, on the other hand, sounds within a much narrower tradition, that of modern secularized Western political theory. The flaws of human rights discourse thus understandably mirror the flaws of modern Western societies, and the resistance to human rights discourse will likely grow as the non-Western world becomes increasingly assertive in rejecting Western cultural, military, political, and economic dominance.

Christians supportive of the human rights movement may hope that their involvement would save the movement from its worst flaws, such as its tendencies toward social radicalism, amorality, and splintering of rights and responsibilities.<sup>63</sup> It is of course true that with involvement comes some influence, and on that basis alone it makes sense for Christians to participate in the movement. Certainly the participation of the Papacy in major human rights conferences has thus far significantly thwarted the attempts to embrace elective

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62 For a greater elaboration of these arguments, see Smolin, *supra* note 45.

63 See Witte, *supra* note 13, at 11–12.

abortion and sexual freedom as international human rights. The necessity of concerted action to avoid these results merely underscores, however, that the human rights movement is not an appropriate place for the church's primary expression of care for humanity.

It is difficult to imagine a scenario where it would be appropriate for the church to rely principally on human rights language, or the human rights movement, to express its solidarity and concern with all human beings. If Christians were actually in political control of most of the major civilizations of the age, then it would make more sense to adopt a language that was more directly reflective of Christian presuppositions. In such a scenario, the flaws of the human rights movement and language might be readily containable, but the failure of the language to convey Christian presuppositions, and its inherent vagueness, would make it an unattractive and unnecessary vehicle. On the other hand, in the present circumstance in which Christians are minorities in most civilizations and in which traditionalist Christians are numerical and cultural minorities even within once "Christian" civilizations, the capacity of Christians to shape the human rights movement will necessarily be limited. The movement under such circumstances will be perpetually spinning out of control toward actualizing its tendencies toward totalitarianism and social radicalism. The oddness of these combined tendencies toward totalitarianism, individual autonomy, centralization of global authority, and radical egalitarianism, signals the instability of the movement and its direct link to the failed and unstable theories of the political left within the West.

Mother Teresa's Missionaries of Charity do not care for the sick and dying in the name of human rights; they do it in the name of Jesus! Indeed, they believe themselves to be ministering to Jesus Himself, who is present in the sick, abandoned, and dying. Political action in the name of Jesus is more problematic and subject to abuse. Christians need a political language which expresses a complex web of theological truths, including the following: (1) None of the political kingdoms of this world are the kingdom of Jesus Christ, and yet all political authority is given by, and answerable to, God; (2) the church and family are institutionally separate from the state, and should have their separate commissions from God respected; (3) the state must judge according to true standards of good and evil, and yet not all wrongs and sins are within the jurisdiction of the state; (4) all human beings, as the image of God, must be accorded respect and dignity and are in their humanity equal before God; (5) governmental usage of force and coercion are necessary because of the profound sinfulness of humanity, but government is only capable of controlling a portion of the visible effects of that sinfulness and is incapable of

eliminating it; (6) all human beings, as creatures made in the image of God, are inherently answerable to God and His standards, and yet no earthly force can make human beings turn in love and obedience to their Maker and Redeemer.

Human rights is far too unidimensional a language to serve as a universal point of contact between different religions, ideologies, and cultures. Indeed, the languages used for such cross-religious or cross-cultural dialogue must always be shifting in relation to the particular participants and circumstances. There can be, thus, no truly universal or final language that serves as a point of cross-religious agreement or contact, as those points of correspondence and conflict are ever changing. On particular occasions, at particular times, the language of human rights may be appropriate for such dialogue. The church, however, which has spoken to so many cultures through two millennia, should know by now that a discourse as simplistic and flawed as human rights discourse will of necessity be a passing phenomenon. The church has learned to speak the dialect of human rights talk, and she will continue to have frequent occasion to speak it, particularly in the near future. She must always view human rights talk, however, as an alien form of speech. The church's thoughts and primary message must be shaped by her mother-tongue, that of the God-centered biblical narrative of creation, fall, and redemption. However much she expresses her concern for humankind, she must continue to tell the sad truth about humanity's sinfulness, and find her strength and glory in God, rather than in unredeemed humanity.

Indeed, whatever might be said about human rights or human dignity in relation to the political order must pale in comparison to the Christian message of the incarnation, redeeming death, resurrection, and ascension of Jesus Christ. The apparent unbridgeable gap between that which is boundless and that which is finite—the chasm between God and His creature—is bridged for the Christian in the person of Jesus Christ. The Christmas story is not a mere sentimental story of a babe in a manger, but is the mystery of the incarnation, of the omnipotent, omniscient Creator coming to His creation in the form of a limited, finite, vulnerable creature. Christians believe that the man-God Jesus took his very humanity into heaven at the ascension, and that eternity and humanity have been permanently—or more properly, eternally—joined. Even the broad claims of the International Declaration of Human Rights are as nothing in relationship to the claim that human nature has been eternally joined to the divine

nature in the person of Jesus Christ and that through Him human beings may meet God "face to face."<sup>64</sup>

The incarnation cannot be said, moreover, to be a matter of "right" if the term be understood to denote just desserts. If God were to deal with human beings by the measure of legal right, human beings would have the "right" to be cast into the outer darkness. The Christian salvation narrative turns legal rights and wrongs on their head. The guilty are declared innocent and go free. The innocent one is punished for the wrongs of the guilty. The Christian narrative is one of grace fulfilling and then superceding law. God's salvation is an act of unmerited charity.

God seems pleased, moreover, to exalt His work of salvation by placing Jesus and His people within the midst of human poverty and degradation. The faithfulness of Jesus through the ordeal of betrayal, trial, torture, humiliation, and execution has served as a model for innumerable Christians who have glorified God in the midst of persecution. The point, of course, is that the powers of this dark world ultimately can do nothing against Christ's salvation. The rights—built upon grace—which human beings can claim in Christ, through trusting in God's promises, cannot be taken away by anything in this world.

The torture of the protagonist of George Orwell's 1984 illustrates the contrast between a secular theory of human dignity and right, and a Christian one. The novel follows Winston Smith as he, in a very small and largely private way, rebels against the overwhelming authority of an evil authoritarian state and the Party which runs it. When Winston is caught, imprisoned, and systematically tortured, it is made clear to him that he had been under observation during the entire period of his rebellion. Indeed, his rebellion had been encouraged and nurtured because those in authority enjoyed the sense of power they gained by creating and then destroying rebellions. The state's goal in torturing Winston is not merely to make him outwardly recant, but in fact to cause him to embrace with an inner love the despised "Big Brother" who represents the totalitarian state, and to make him regard with contempt, hate, and indifference all which he had loved, particularly his beloved Julia. To break him in this manner, it was necessary to torture him to the point where he could look at four fingers and, at the command of the torturer, see and believe that he saw five fingers. Winston had written that "freedom is the freedom to say that two plus two makes four;" under the doublethink taught by

the Party, however, two plus two could be three, four, five, or all of those at once.<sup>65</sup>

O'Brien, Winston's torturer, explains to Winston that the state completely controls truth because reality only exists in human consciousness. Thus, material reality, the past, the laws of nature, are all manipulable at will by the state. Winston struggles to prove O'Brien wrong—he refers to the age of the earth and the vastness of the universe, to the death of the individual, and to the impotence of man. In a dead universe, however, all of this is irrelevant. So long as the state can control human consciousness, there is nothing that cannot be made true; there is no higher consciousness in which the falseness of the state's manipulations can be known. God is power, says O'Brien, and the torturers are the priests of power. Power is its own end, and the Party is immortal.<sup>66</sup> True power lies "in tearing human minds to pieces and putting them together again in new shapes of your own choosing."<sup>67</sup> The future is "a boot stamping on a human face—forever."<sup>68</sup>

Winston struggles to explain why the Party must someday fail, and, finally, grasping, says that there must be some spirit, in the universe, that will stop them. When asked, however, Winston denies any belief in God—it is, he says, "[t]he spirit of Man" that will stop them.<sup>69</sup> O'Brien is contemptuous, for he knows that mere man can be broken. "If you are a man," he tells Winston, "you are the last man."<sup>70</sup>

Orwell portrays this totalitarian manipulation of truth and love as ultimately successful. Winston is completely broken as a human being. The state succeeds in making him truly love Big Brother and have contempt and indifference toward Julia. He can be made to inwardly believe any lie at the whim of the state. The last man—the spirit of man—is breakable, manipulable, malleable.<sup>71</sup>

Richard Wurmbrand, a Christian who survived years of imprisonment for his faith, tells the story of a young Christian pastor in a Soviet slave labor camp. Life consisted of hard labor, inadequate food, indifference, and beatings; thousands of prisoners died, to be replaced by new prisoners. The prisoners arrested in connection with their religion were treated worse than the rest. Common criminals were made overseers and promised freedom if they mistreated and beat the reli-

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65 See ORWELL, *supra* note 56, at 186-245.

66 *Id.* at 217-18.

67 *Id.* at 220.

68 *Id.*

69 *Id.* at 222.

70 *Id.*

71 See *id.* at 226-45.

gious prisoners. One day a commander inspecting the prisoners asked the young pastor if he still believed in God and Jesus. The young man calmly answered in the affirmative. He was asked if he was not afraid of what would be done to him. The young man replied that two plus two is four, even if you hang all the mathematicians, and that the truths about God would remain "whatever whips and . . . instruments of torture you have."<sup>72</sup>

This young pastor was removed and tortured; Richard Wurmbrand does not know the temporal end of his story, although one can surmise that the pastor probably did not survive. Whether he was broken by his torture, we cannot know.<sup>73</sup> None of us, of course, can know in advance whether we will be so broken by this world as to betray that which we most deeply believe and love. The Christian, however, knows that he is not the last man, and that truth and love do not depend on his success and faithfulness. Even if I am broken, Christ was broken for me, and in Him love and truth, goodness and power, are joined. There is a higher consciousness and a judgement, and although evil often triumphs for a season, its victories are temporary.

Under a secular theory of human rights, built purely upon the dignity of man, human rights only exist if people affirm them to be true. Human rights are left to depend on human constancy—indeed, upon a world governed by a consistent human goodness. Yet, what ground does history give us to believe that human beings would ever bring such a world of consistent goodness into existence? When has goodness and power been consistently joined in this world?

Indeed, if human consciousness is a freak and chance occurrence in a determined and dead universe, and there is no higher source or basis for that consciousness, nor any voice to which humankind must give an accounting, then consciousness itself lacks any necessary correlation to reality and any foundation in either goodness or truth. Consciousness is merely a brute fact in a universe of brute facts; the twisting of human consciousness by other humans is little different than the eating of a fly by a spider or the death of a star. Human consciousness could be as movable as dirt, as programmable as a computer, or as irrelevant as a single invisible molecule within a piece of clear quartz which is embedded within the earth.

It is certainly not the place of the Christian church to aid vain efforts to make humanity morally self-sufficient, nor to assist idolatrous efforts at human self-worship. The calling of humankind is to

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72 Richard Wurmbrand, *Two Plus Two Is Four*, VOICE OF THE MARTYRS, July 1997, at 2.

73 See *id.*



glorify God, not itself; the worth of humanity must be found outside of the merely mortal if it is to be more than a dying voice raised helplessly against a dead, unconscious universe, or a rebellious fist raised vainly against the divine.

It is no wonder that the reach of the human rights movement so often and clearly exceeds its grasp. Although the movement was built upon profound human feelings of horror and remorse in the face of humanity's inhumanity, it has offered no solution except human determination to be good and do better. The early profundity of the movement, built upon the shock of the Holocaust and the Second World War, has given way to the ordinary human processes of political and ideological struggle. The simple human determination to create a better world has given way to the struggle to define, politically and ideologically, who would govern such a world. Thus, the movement has descended, like all merely human efforts to build a single world based on human greatness, into a Tower of Babel.

The theological thesis of this essay is that a truly just world political order will not be established until the second coming of the messiah. Although my secular readers will read this as mythological mumbo-jumbo, its practical import is to significantly deflate the claims and hopes of the human rights movement. Some theologically-conservative Christians have hoped that the church herself might bring about the just rule of Christ before His return; theologically-liberal Christians may tend to view the return of Jesus as a symbolic representation of the spiritual progress of humanity toward a world of true liberty, equality, and justice. Contrary to these hopes, I believe that all the kingdoms of this world, whether ruled by Christian or humanist, Muslim or Marxist, Jew or Buddhist, will remain significantly unjust empires that fail to meet the human desire for true justice. Although I would not dismiss the hope or reality of human progress within history, I would resist efforts to equate such progress with the actual coming of the kingdom of God. The church, which is called to witness to the kingdom of heaven, must never fail to make clear to the peoples of this world the vanity of all hopes for true justice and goodness outside of that kingdom.