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Human Rights and Orthodox Christianity: Learning from our Differences

by John Witte, Jr.

Orthodox Christians have long been wary about the modern regime of human rights, given its common association with liberalism, libertinism, and individualism; its insistence on separating church and state, if not secularizing society altogether; its disastrous effects on post-Soviet Russia; and its growing attacks on majority and minority religions alike. His All-Holiness Ecumenical Patriarch Bartholomew of Constantinople, however, has recently encouraged his followers to see that rights and liberties are God's gifts to humanity, even if they have sometimes become prodigal and dangerous when not well rooted and routed. Rights and liberties, the Patriarch has recently argued, ultimately depend on Christian and other ontological beliefs and values for their grounding and reformation. Particularly Orthodox theologies of conversion and theosis, symphonia and society, church and state, sacrifice and martyrdom, silence and love have much to offer to modern human rights around the world—as illustrated in the opening story in this article about an encounter with Moscow Patriarch Alexei II.

Keywords: Patriarch Bartholomew; Patriarch Alexei II; Orthodox Christianity; Russian Orthodoxy; proselytism; human rights; religious liberty; freedom of speech; freedom of silence; church-state relations; symphonia; liberalism; individualism

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Human Rights and Orthodox Christianity

Learning from our Differences

John Witte, Jr.

Patriarch Alexei II and the Freedom of Silence

In 1995, I had the privilege of joining a small group of human rights advocates who had a forty-five-minute appointment with Patriarch Alexei II, the religious leader of the Russian Orthodox Church.[1] The meeting—long and difficult in planning—was designed to foster a frank discussion about the problem of proselytism in post-glasnost Russia.

With Mikhail Gorbachev's liberating policies of *glasnost* and *perestroika* in the late 1980s, various Western missionary groups had poured into the long-closed Soviet Union to preach their faiths, to offer their services, to convert new souls. Initially, the Russian Orthodox clergy and laity had welcomed these foreigners, particularly their foreign co-religionists, with whom they had lost contact for many decades. But soon the Russian Orthodox came to resent these foreign religions, particularly those from North America and Western Europe, that assumed a democratic human rights ethic. Local religious groups resented the participation in the marketplace of religious ideas that democracy assumes. They resented the toxic waves of materialism and individualism that democracy inflicts. They resented the massive expansion of religious pluralism that democracy encourages. And they resented the extravagant forms of religious speech that democracy protects.

Led by Patriarch Alexei, the Russian Orthodox Church had turned to the state to protect them, much as a millennium of Orthodox church leaders had done as part of the constitutional and cultural system of *symphonia*. They called for new statutes and regulations restricting the constitutional rights of their foreign religious rivals—through firm new antiproselytism laws, cult registration requirements, tightened visa

1. This text is drawn in part from my chapter in Norman Doe and Aetios Nikiforos, eds., *Legal Thought and Eastern Orthodox Christianity: The Addresses of Ecumenical Patriarch Bartholomew* (London: Routledge, 2023), 59–68 and is used herein with permission. The opening section on the meeting with Patriarch Alexei is included in John Witte, Jr., *Table Talk: Short Talks on Law and Religion* (Leiden: Brill, 2023; open access), 12–14. For a bit more about Orthodox law and theology, see Paul Valliere and Randall A. Poole, eds., *Law and the Christian Tradition in Modern Russia* (London: Routledge, 2022); John Witte, Jr. and Frank S. Alexander, eds., *Modern Orthodox Teachings on Law, Politics, and Human Nature* (New York: Columbia University Press, 2007); and John Witte, Jr. and Michael Bourdeaux, eds., *Proselytism and Orthodoxy in Russia: The New War for Souls* (Maryknoll, NY: Orbis Books, 1999).

controls, and various other discriminatory restrictions on non-Orthodox and non-Russian religions. The Russian Parliament had already enacted the first of these proposed restrictions before our meeting and had several bills pending.

Our little group of human rights lawyers and scholars, led by my colleague Harold J. Berman, a fluent Russian speaker and expert on Russian law and religion, was there to try to persuade the Patriarch and Parliament to abandon this restrictive campaign, and to embrace free speech and free exercise rights for all parties—Orthodox and non-Orthodox, Russian-born and foreigners alike.

The Patriarch and his entourage came into the room where we had gathered. We all stood and bowed in respect. "God bless you, my brothers and sisters," he said through an interpreter. "Let's take a moment for prayer." For the next forty-four minutes—I timed it—we all stood in absolute silence. The Patriarch had his eyes tightly shut and was swaying slightly throughout. Then the Patriarch fell to his knees, we with him, as he prayed aloud: "Oh Lord, who taught us by word and by deed, by silence and by suffering, teach us all how better to live out your final commandment: 'Go ye, therefore, and make disciples of all nations.'" The Patriarch then stood, faced us, and said: "God bless you, my brothers and sisters." And he left, and his entourage with him.

There we stood. Dressed in our best suits, primed with our best arguments for freedom of speech and religion, armed with strong letters from political and religious leaders who opposed the Orthodox Church's political protectionism, we were utterly defeated by the power of silence by a religious leader. Rarely have I heard a more powerful sermon or speech. Rarely have I seen such a moving expression of freedom of speech. Rarely have I been more convinced by the wisdom of the ancient prophecy: "For everything there is a season and a time ... a time to keep silent and a time to speak" (Ecclesiastes 3:1, 7b).

Here was a poignant glimpse into one of many distinct features of the Orthodox Christian tradition: its celebration of spiritual silence as its highest virtue—not just for hermits and monastics, but for every member of the church. This was a sobering lesson for us busy Western Christians, particularly Protestants, to hear. We are always so busy getting on with the Lord's work—with our singing and praying, teaching and preaching, billboards and crusades, relentlessly sharing the Gospel in word and deed, in person and on screen. Silence and meditation, the Patriarch taught us, are virtues and gifts to be enjoyed, forms of worship to be exercised. There is a reason the Bible says, "Be still, and know that I am God" (Psalm 46:10).

This was also a sobering lesson for us constitutional lawyers, brought up to believe that an open and robust marketplace of ideas, including religious ideas, was the best way to find truth. We were all weaned on John Milton's famous panegyric to freedom of speech in his *Areopagitica* (1644), which argued that the best antidote to bad speech is good speech, and the best pathway to religious freedom was allowing an open contest between truth and falsehood, between old dogmas and new beliefs. In forty-five short minutes, the Patriarch taught us all a rather different way of thinking about the freedom of speech and the freedom of silence.

Ontological Differences Between Orthodoxy and Western Liberalism

"Ontological differences!" In 1997, that was the phrase His All-Holiness Ecumenical Patriarch Bartholomew of Constantinople used to explain the Orthodox Church's reticence about embracing the human rights reforms that Western churches were advocating for the newly liberated Soviet Union and Eastern Europe.[2] "The Orthodox Church is not a museum church," the Patriarch explained. "It is a living church which, although keeping the old traditions from the very beginning, nevertheless understands very well the message of every new era, and it knows how to adapt itself." The "message" of the modern era is Enlightenment liberalism, libertinism, materialism, scientism, individualism, and human rights. While Eastern Orthodoxy has resisted this modern message, Western Christianity has come under its "shadow." Hence the "ontological differences" between the churches and cultures of the East and the West. "Since the Enlightenment, the spiritual bedrock of Western civilization has been eroded and undermined. Intelligent, well-intentioned people sincerely believed that the wonders of science could replace the miracles of faith. But these great minds missed one vital truth—that faith is not a garment to be slipped on and off; it is a quality of the human spirit, from which it is inseparable." "There are a few things [the West] can learn from the Orthodox Church," the Patriarch declared—not least "that, paradoxically, faith can endure without freedom, but freedom cannot long abide without faith."[3]

Twenty years later, in his 2017 Berlin Lecture on "Orthodoxy and Human Rights," Patriarch Bartholomew echoed and elaborated some of these same themes.[4] He continued to argue that human rights were shaped by the eighteenth-century Enlightenment, with its false "optimistic anthropology," "its forgetfulness of sins, its rationalism, individualism and autonomism." The Patriarch repeated common Orthodox worries that the 1948 Universal Declaration of Human Rights was a "smug" "humanistic manifesto" and a secular "Trojan horse" filled with dangerous modernist ideas that threatened the heart and soul of Orthodox faith, family, morality, and nationhood. And he repeated recent warnings that the newly liberated Orthodox Churches of the Soviet bloc and Eastern Europe were being forced to compete with Western missionizing faiths in an open marketplace of religious ideas, without having the experiences or resources needed to compete.[5]

In this same 2017 Lecture, however, the Patriarch also pushed beyond these "ontological differences." He now stated that human rights ideals of liberty, equality, dignity, and fraternity had been "rooted in Christian culture" before the Enlightenment and

2. Patriarch Bartholomew, "Address of His All Holiness Ecumenical Patriarch Bartholomew *Phos Hilaron* 'Joyful Light,'" Georgetown University, October 21, 1997, https://www.oocities.org/trvalentine/orthodox/bartholomew_phos.html. See further John Chryssavgis, ed., *Speaking the Truth in Love: Theological and Spiritual Exhortations of Ecumenical Patriarch Bartholomew* (New York: Fordham University Press, 2010).

3. Ibid.

4. Patriarch Bartholomew, "For Human Rights: HAH Lecture at the Headquarters of the Konrad Adenauer Foundation in Berlin," June 1, 2017, http://arhiva.spc.rs/eng/his_allholiness_patriarch_bartholomew_germany.html. See further John Chryssavgis, ed., *In the World, Yet Not of the World: Speaking the Truth in Love: Social and Global Initiatives of Ecumenical Patriarch Bartholomew* (New York: Fordham University Press, 2022).

5. Ibid.

could still be "nourished from that deep Christian freedom, freedom through faith, expressed in selfless love." He stressed that faith and freedom together could "mobilize forces of solidarity in man and spur him on the fight against justice and for a more humane world." He urged all Christians to embrace "solidarity, peace and reconciliation and ... protection of fundamental human rights." He encouraged his fellow Orthodox Christians not to reject modernity altogether, but to embrace its promise of individual freedom while also demonstrating the "power of social freedom." He further encouraged the Orthodox faithful not to equate modernity with secularism alone, but to appreciate the diverse "political, social, and economic realities" of the modern world. And he encouraged the Orthodox faithful to look beyond the separatism, secularism, and *laïcité* of some Western laws and appreciate that some modern Western nations still established Christianity and shared the Orthodox appreciation for "the close relationship between Church, people, and state." "Human rights will remain a major concern for mankind in the future," the Patriarch concluded, and it is an "essential priority for our churches, together with their commitment to the implementation of human rights, to be the place of that freedom at the core of which is not the claiming of individual rights, but love and the *diakonia*, the freedom that is not a work of man but a gift from God."[6]

Patriarch Bartholomew's growing appreciation for the mutually beneficial interaction of Christianity and human rights offers new hope for deeper Christian ecumenism and broader religious collaboration in support of human rights around the world. The "ontological differences" between Western and Eastern Christians remain real and require continued conversation to foster better mutual understanding. The next two sections of this chapter take up two areas of difference today but concludes with a couple illustrations of what Western churches and human rights advocates "can learn from the Orthodox Church," as Patriarch Bartholomew put it.

Baptism, Mission, and Conversion

Let's go a little deeper into the ontological differences over "baptism, mission, and conversion" that had led to our group's meeting with Patriarch Alexei in 1995. Ironically, it was the liberation of traditional Orthodox lands in the 1990s that highlighted one area of intense "ontological difference" today—that between Eastern and Western Christian views of baptism, mission, and conversion. Mikhail Gorbachev's campaigns of *glasnost* and *perestroika* in the late 1980s soon led to the implosion of the Soviet Union and eventual dissolution of Soviet bloc lands from the Baltics to the Balkans. Russia and several Eastern European countries threw off their Communist yokes and created new Western-style constitutions and ratified many of the most progressive international human rights instruments. The Russian Constitution of 1993, with its sweeping embrace of rights and liberties, was a model that a number of former Soviet nations followed.[7]

This rapid political transformation not only liberated local Orthodox and other churches, but also opened these societies to foreign religious groups, who were granted

6. Ibid. See further discussion in A.G. Roeber, *Orthodox Christians and the Rights Revolution in America* (New York: Fordham University Press, 2023).

7. Michael Bourdeaux, *Gorbachev, Glasnost, and Gospel* (London: Hodder & Stoughton, 1990).

rights to enter these regions for the first time in decades. After 1990, these foreign missionaries came in increasing numbers to preach their faiths, to offer their services, to share their literature, to build new schools, to establish new charities, and to convert new souls. Initially, Orthodox and other local religious groups welcomed these foreigners, particularly their co-religionists abroad, with whom they had lost real contact for many decades. But local Orthodox leaders soon came to resent these foreign missionaries, particularly those from North America, Western Europe, South Korea, and elsewhere who entered in large numbers to preach their gospels and compete for souls. The long-trammeled Russian churches had none of the training, resources, experiences, or expectations needed to participate in an open marketplace of (religious) ideas, and too little time to prepare themselves.[8]

A new war for souls thus broke out in these regions—a war to reclaim the traditional Orthodox souls of these newly opened societies and a war to retain adherence and adherents to the Orthodox Church. In part, this was a legal war—as local Orthodox leaders pressured their political leaders to adopt statutes and regulations restricting the constitutional rights of their foreign religious rivals. Beneath shiny constitutional veneers of religious freedom for all and unqualified ratification of international human rights instruments, several Orthodox-majority countries in the 1990s and early 2000s passed firm new anti-proselytism laws, cult registration requirements, tightened visa controls, and various discriminatory restrictions on new or newly arrived religions. Those policies have continued in some Orthodox-majority lands of Eastern Europe today, driving beleaguered religious minorities and foreigners to seek protection from the European Court of Human Rights.[9]

In part, this has been a theological war between fundamentally different theologies about the nature and purpose of mission. Western Christians, particularly Evangelicals, assume that in order to be saved every person must make a personal, conscious commitment to Christ—to be born again, to convert. Any person who has not been born again, or who, once reborn, now leads a nominal or non-Christian life, is a legitimate object of evangelism—regardless of whether and where the person has already been baptized. The principal means of reaching that person is through proclamation and demonstration of the Gospel. Any region that has not been open to the Gospel is a legitimate "foreign mission field"—regardless of whether the region might have another majority Christian church in place. Under this definition of mission, traditional Orthodox lands, where the Communist yoke had long suppressed the Gospel, are prime targets for Christian witness.[10]

The Orthodox Church, too, believes that each person must come into a personal relationship with Christ in order to be saved. But such a relationship comes more through birth than rebirth, and more through regular sacramental living than a one-time conversion. A person who is born into the Orthodox Church has by definition started

8. John Witte, Jr., ed., "Soul Wars in Russia: The Problem of Proselytism in Russia," special issue, *Emory International Law Review* 12 (1998): 1–738; John Witte, Jr., ed., "Pluralism, Proselytism and Nationalism in Eastern Europe," special issue, *Journal of Ecumenical Studies* 36 (1999): 1–286.

9. See cases in John Witte, Jr. and Andrea Pin, "Faith in Strasbourg and Luxembourg: The Fresh Rise of Religious Freedom Litigation in the Pan-European Courts," *Emory Law Journal* 70 (2021): 587–661.

10. Witte and Bourdeaux, eds., *Proselytism and Orthodoxy,*108–226.

theosis—the process of becoming "acceptable to God" and ultimately "coming into eternal communion with Him." Through infant baptism, and later through the Mass, the Eucharist, the icons, and other services of the Church, a person slowly comes into fuller realization of this divine communion.[11] Proclamation of the Gospel is certainly a legitimate means of aiding the process of *theosis*—and is especially effective in reaching those not born into the Orthodox Church. But, for the Orthodox, "mission does not aim primarily at transmission of moral and intellectual convictions and truths, but at the ... incorporation of persons into the communion that exists in God and in the Church."[12]

This theology has led the Orthodox Church to quite a different understanding of the proper venue and object of evangelism. Traditional Orthodox lands are hardly an open "mission field" that other Christians are free to harvest. To the contrary, this territory and population are under the "spiritual protectorate" of the Orthodox Church. Any person who has been baptized into the Orthodox Church is no longer a legitimate object of evangelism—regardless of whether that person leads only a nominal or non-Christian life. Only if that person actively spurns the Orthodox Church, or if they are excommunicated, are they open to the evangelism of others.

This is an important theological source of the Orthodox clergy's complaints about the proselytizing activity of many Western churches in their traditional homelands. They are not only complaining about improper methods of evangelism—the bribery, blackmail, coercion, and material inducements used by some groups; the garish carnivals, flashy billboards, and expensive media blitzes used by other faiths. They are also complaining about the improper presence of missionaries—those who have come not to aid the Orthodox Church in its mission, but to compete with the Orthodox Church for its own souls on its own territory.[13]

Human rights norms alone will ultimately do little to resolve this fundamental theological difference between Orthodox and Western Christians. "In seeking to limit the incursion of missionary activity we often are accused of violating the right to freedom of conscience and the restriction of individual rights," Russian Orthodox Patriarch Alexei explained in 1997 during the height of the soul wars in Russia. "But freedom does not mean general license. The truth of Christ which sets us free (John 8:32) also places upon us a great responsibility, to respect and preserve the freedom of others. However, the aggressive imposition by foreign missionaries of views and principles which come from a religious and cultural environment which is strange to us, is in fact a violation of both [our] religious and civil rights."[14] The Orthodox Church must be as free in the exercise of its theology of baptism, mission, and conversion as Western Evangelicals wish to be. Both groups' rights, when fully exercised, will inevitably clash.

The thirty-year war for souls in traditional Orthodox lands requires a theological resolution as much as a human rights resolution. Interreligious dialogue, education, and

11. Ibid., 31–77.

12. Joel A. Nichols, "Mission, Evangelism, and Proselytism in Christianity: Mainline Conceptions as Reflected in Church Documents," *Emory International Law Review* 12 (1998): 563–650, at 624.

13. See Harold J. Berman, "Freedom of Religion in Russia: An Amicus Brief for the Defendant," in *Proselytism and Orthodoxy in Russia: The New War for Souls*, ed. John Witte, Jr. and Michael Bourdeaux (Maryknoll: Orbis Books, 1999), 261–83.

14. Quoted in Witte and Bourdeaux, eds., *Proselytism and Orthodoxy*, 22–23.

cooperation sound like tried and tired remedies, but these are essential first steps. Self-imposed guidelines of prudent and respectful mission work by Western Christians are essential steps as well: know and appreciate Orthodox history, culture, and language; avoid Westernization of the Gospel and First Amendmentization of politics; deal honestly and respectfully with theological and liturgical differences; respect and advocate the religious rights of all peoples; be Good Samaritans before good preachers; proclaim the Gospel in word and deed.[15] Such steps will slowly bring current antagonists beyond competing caricatures into a greater mutual understanding and a greater unity in diversity.

The ultimate theological guide to resolve the deeper conflict over mission and conversion, however, must be a more careful balancing of the Great Commission and the Golden Rule. Jesus called his followers to mission: "Go therefore and make disciples of all nations. ..." (Matt. 28:19). But Jesus also called his followers to exercise restraint and respect: "Do unto others, as you would have done unto you" (Matt. 7:12). If both sides in the current war for souls would strive to hold these principles in better balance, their dogmatism might be tempered and their conflicts assuaged.

Church, State, and Nation

A related ontological difference between Eastern and Western Christianity is reflected in the Orthodox Church's attitude toward the state. The Orthodox Church has no concept akin to the Western dualistic constructions of two cities, two powers, two swords, two kingdoms, two realms—let alone a "high and impregnable wall of separation between church and state."[16] The Orthodox world, rooted in the ancient Roman and Byzantine Empires, views church and state as an organic community, a veritable *symphonia* of religion, politics, society, language, ethnicity, and national culture.[17]

For many centuries, this organic unity of church, state, and nation gave the Orthodox clergy a unique spiritual and moral voice in traditional Orthodox societies, and unique access to the power, privilege, and protection of the political authorities. It allowed the Orthodox clergy to lead and comfort Orthodox lands in times of great crisis —during the Hun, Mongol, Magyar, and Ottoman invasions, the Napoleonic Wars, the Turkish genocide, the great World Wars, and more. It allowed the Orthodox church to heal and teach these societies through its schools and monasteries, its literature and preaching. It also allowed the Orthodox clergy to nourish and inspire the people through the power and pathos of its liturgy, icons, prayers, and music.

But this organic unity also subjected the Orthodox Churches to substantial state control over their polities and properties, and substantial restrictions on their religious ministry and prophecy. It also required them to be obedient and supportive of the political authorities. In return for their subservience, the Orthodox clergy could turn to the state to protect them against religious outsiders and competition. A poignant

15. See examples in ibid., 185–96, 323–40.

16. See John Witte, Jr., "Facts and Fictions About the History of Separation of Church and State," *Journal of Church and State* 48 (2006): 15–46.

17. See John McGuckin, *The Ascent of Christian Law: Patristic and Byzantine Formulations of a New Civilization* (Yonkers, NY: St. Vladimir's Seminary Press, 2012).

illustration of this is offered by Joachim, the Patriarch of Moscow at the turn of the eighteenth century. In a 1690 testament, the Patriarch implored co-Tsars Ivan and Peter "never to allow any Orthodox Christians in their realm to entertain any close friendly relations with heretics and dissenters—with Latins, Lutherans, Calvinists, and Tatars." He further urged the tsars to pass a decree "that men of foreign creeds who come here to this pious realm shall under no circumstances preach their religion, disparage our faith in any conversations or introduce their alien customs derived from their heresies for the temptation of Christians." "Such was the position of the Muscovite Church," leading Russian historian Firuz Kazemzadeh concludes, "and such, in essence, it has remained" not only in Russia but in many parts of the Orthodox world today.[18]

We can easily read the recent Orthodox church-state alliances in fighting against foreign missionaries and faiths as yet another act in this centuries-long drama. And, in turn, we can see the sad condonation of the current Moscow Patriarchate in Russia's outrageous war in Ukraine as the necessary price for the Orthodox church to pay for Putin's ongoing protection and patronage.

With this "ontological difference," too, simple invocations of religious freedom norms, American-style separatism, or French-style *laïcité* will do little to assuage these conflicts between East and West. Western Christians must appreciate that their own long history of church-state relations featured a variety of constitutional forms and norms, some of them rather close to the *symphonia* of Orthodox lands. They must also remember the adage of Oliver Wendell Holmes, Jr. that "[t]he life of the law is not logic but experience."[19] Constitutional laws are not commodities to be imported or exported *en masse* to other nations. These laws must grow out of the souls and soils of the people who create and live under them, who breathe into them their own cultures and experiences, their own *Volksgeist.* Western formulations of human rights, religious freedom, and church-state relations cannot and should not be fully duplicated or imitated in Orthodox lands. Indeed, the sobering lesson learned during the heady days of *glasnost* and *perestroika* was that the full-scale importation of these Western constitutional norms created a toxic compound that these long-closed societies had little capacity to absorb. The better course for Orthodox lands is to use Western constitutional and human rights norms as a valuable resource and inspiration for gradually reconstructing a better constitutional order for the protection of individual and institutional religious freedom for all their people.

What Western Christianity Has Contributed to Human Rights

Orthodox Christians, in turn, must appreciate that modern norms of human rights and religious freedom are not simple creations of the Western Enlightenment nor a ward under the exclusive patronage of its secular liberal values. A veritable cottage industry of recent new scholarship has documented the long history of rights talk before the En-

18. Firuz Kazemzadeh, "Reflections on Church and State in Russian History," in *Proselytism and Orthodoxy in Russia*, ed. Witte and Bourdeaux, 227–38, at 236; see further Robert P. Geraci and Michael Khodarkovsky, eds., *Of Religion and Empire: Missions, Conversion, and Tolerance in Tsarist Russia* (Ithaca, NY: Cornell University Press, 2001).

19. Oliver Wendell Holmes, Jr., *The Common Law* (Boston: Little, Brown, 1881), 1.

lightenment. We now know a great deal more about classical Roman understandings of rights (*iura*), liberties (*libertates*), capacities (*facultates)*, powers (*potestates*), and related concepts, and their elaboration by medieval and early modern civilians. We can now pore over an intricate latticework of arguments about individual and group rights and liberties developed by medieval Catholic canonists and moralists. We can now trace the ample expansion and reform of this medieval handiwork by neo-scholastic writers in early modern Spain and Portugal and by Lutheran, Anglican, and Calvinist Protestants on the Continent and in Great Britain and their colonies. We now know a good deal more about classical republican theories of liberty developed in Greece and Rome, and their transformative influence on early modern common lawyers and political revolutionaries on both sides of the Atlantic. We now know, in brief, that the West knew ample "liberty before liberalism"[20] and had many fundamental rights in place before there were modern democratic revolutions fought in their name. It is a telling anecdote that by 1650, almost every right listed 150 years later in the French Declaration of the Rights of Man and Citizen (1789) and the United States Bill of Rights (1791) had already been defined, defended, and died for by Christians on both sides of the Atlantic.[21]

To be sure, some modern human rights advocates have deprecated and sometimes denied these Christian roots, and many current formulations of human rights are suffused with fundamental liberal beliefs and values, some of which run counter to cardinal Christian beliefs. But liberalism does not and should not have a monopoly on the nurture of human rights. The law of human rights norms is the *ius gentium* of our times, the common law of nations, which a variety of Jewish, Greek, Roman, Patristic, Catholic, Protestant, and Enlightenment movements have historically nurtured in the West, and which today still needs the constant nurture of multiple communities, in the West and beyond. For human rights are "middle axioms" of political discourse.[22] They are a means to the ends of justice and the common good, and they depend upon the visions and values of human communities for their content and coherence—or what the Catholic philosopher Jacques Maritain once described as "the scale of values governing [their] exercise and concrete manifestation."[23]

It is here that Christianity and other religious communities have, can, and should play a vital role—even in modern liberal societies. Religion is a dynamic and diverse, but ultimately ineradicable, condition and form of human community. Religions invariably provide some of the sources and "scales of values" by which many persons and communities govern themselves. Religions help to define the meanings and measures of shame and regret, restraint and respect, responsibility and restitution that a human rights regime presupposes. They help to lay out the fundamentals of human dignity

20. Quentin Skinner, *Liberty Before Liberalism* (Cambridge: Cambridge University Press, 2012).

21. See John Witte, Jr., *The Blessings of Liberty: Human Rights and Religious Freedom in the Western Legal Tradition* (Cambridge: Cambridge University Press, 2021).

22. Abdullahi Ahmed An-Na'im, "Towards an Islamic Hermeneutics for Human Rights," in *Human Rights and Religious Values: An Uneasy Relationship?* ed. Abdullahi Ahmed An-Na'im et al. (Grand Rapids, MI: Eerdmans, 1995), 229–42; Robert P. George, "Response," in *A Preserving Grace: Protestants, Catholics, and Natural Law,* ed. Michael Cromartie (Grand Rapids, MI: Eerdmans, 1997), 157–161.

23. Jacques Maritain, "Introduction," in *Human Rights: Comments and Interpretations*, ed. UNESCO (New York: Columbia University Press, 1949).

and human community, and the essentials of human nature and human needs upon which rights are built. Moreover, Christianity and other religions stand alongside the state and other institutions in helping to implement and protect the rights of a community—especially in transitional societies, or at times when a once-stable state becomes weak, distracted, divided, or cash-strapped. Churches and other religious communities can create the conditions (sometimes the prototypes) for the realization of first-generation civil and political rights of speech, press, assembly, and more. They can provide a critical (sometimes the principal) means to meet second-generation rights of education, health care, childcare, labor organizations, employment, artistic opportunities, among others. And they can offer some of the deepest insights into norms of creation, stewardship, and servanthood that lie at the heart of third-generation rights.

What Orthodoxy Can Teach Us About Human Rights

Orthodox churches, too, have immense spiritual resources and "scales of values" that hold great untapped promise for modern human rights. These spiritual resources lie, in part, in Orthodox worship—the passion of the liturgy, the pathos of the icons, and the power of spiritual silence. They lie, in part, in Orthodox church life—the distinct balancing between hierarchy and congregationalism through autocephaly; between uniform worship and liturgical freedom through alternative vernacular rites; between community and individuality through a trinitarian communalism, which is centered on the parish, on the extended family, on the wizened grandmother (the "babushka" in Russia). These spiritual resources lie, in part, in the massive martyrdom of millions of Orthodox faithful in the twentieth century—whether suffered by Russian Orthodox under the Communist Party, by Greek and Armenian Orthodox under Turkish and Iranian radicals, by Middle Eastern Copts at the hands of religious extremists, or by North African Orthodox under all manner of fascist autocrats and tribal strongmen.[24]

These deep spiritual resources of the Orthodox Church have no exact parallels in modern Catholicism and Protestantism, and most of their implications for law, politics, and society have still to be drawn out. It would be wise to hear what an ancient church, newly charred and chastened by decades of oppression and martyrdom, considers essential to the regime of religious freedom. It would be enlightening to watch how ancient Orthodox communities, still largely centered on the parish and the family, will reconstruct social and economic order and attendant rights. It would be prudent to see how a culture, more prone to beautifying than to analyzing, might transform our understanding of culture. It would be instructive to listen to how a tradition that still celebrates spiritual silence as its highest virtue might recast the meaning of freedom of speech and expression. It would be illuminating to feel how a people who have long cherished and celebrated women's religious experience and faith—the wizened babushka of the home, the faithful remnant in the parish pews, the living icon of

24. James H. Billington, "Orthodox Christianity and the Russian Transformation," in *Proselytism and Orthodoxy in Russia*, ed. Witte and Bourdeaux, 51–65.

of the Assumption of the Mother of God—might elaborate the place of women and the meaning of women's rights in church, state, and society.[25]

Patriarch Bartholomew was certainly wise to remind us that "[t]here are a few things" that Western churches and states "can learn from the Orthodox Church." We would do well to listen and learn as Orthodox churches embrace more fully the global ecumenical project, and as Orthodox-majority lands come into greater contact with the rest of the world. Particularly on questions of law, religion, and human rights, the world needs new wisemen from the East.

25. Ibid.; see also Aristotle Papanikolau, *The Mystical as Political: Democracy and Non-Radical Orthodoxy* (Notre Dame, IN: University of Notre Dame Press, 2012).

John Witte Jr., J.D. (Harvard), Dr. Theol. h.c. (Heidelberg), is Robert W. Woodruff Professor of Law, McDonald Distinguished Professor of Religion, and Faculty Director of the Center for the Study of Law and Religion at Emory University. A specialist in legal history, human rights, religious freedom, family law, and law & religion, he has published 325 articles, 19 journal symposia, and 45 books. His major books include: *Law and Protestantism* (Cambridge, 2002); *The Reformation of Rights* (Cambridge, 2007); *Christianity and Law* (Cambridge, 2008); *The Sins of the Fathers* (Cambridge, 2009); *Christianity and Human Rights* (Cambridge, 2010); *Religion and Human Rights* (Oxford, 2012); *From Sacrament to Contract,* 2d ed. (Westminster John Knox, 2012); *No Establishment of Religion* (Oxford, 2012); *The Western Case for Monogamy over Polygamy* (Cambridge, 2015); *Christianity and Family Law* (Cambridge, 2017); *Church, State, and Family* (Cambridge, 2019); *The Blessings of Liberty* (Cambridge, 2021); *Faith, Freedom, and Family* (Mohr Siebeck, 2021); *Religion and the American Constitutional Experiment,* 5th ed. (Oxford, 2022); *In Defense of the Marital Family* (Brill, 2023); *Table Talk* (Brill, 2024); and *The Oxford Handbook of Christianity and Law* (Oxford, 2024).

Some of Witte's writings have appeared in sixteen languages, and he has delivered more than 450 public lectures throughout the world. Recent lectures include the Franke Lectures at Yale, the Pennington Lectures at Heidelberg, the Jefferson Lectures at Berkeley, the Beatty Lectures at McGill, the Cunningham Lectures at Edinburgh, the McDonald Lectures at Oxford, the True Lectures at Notre Dame, and the Gifford Lectures at Aberdeen.

With $27 million of funding raised from the Pew, Ford, Lilly, Luce, and McDonald foundations, and other benefactors, Witte has directed 20 major international projects on democracy, human rights, and religious liberty; on marriage, family, and children; and on law and Christianity—collectively yielding nearly 400 new volumes and journal symposia. He is editor of *Emory Studies in Law and Religion* (Eerdmans) and *Cambridge Studies in Law and Christianity* (Cambridge), and he coedits the *Journal of Law and Religion*, *Brill Research Perspectives on Law and Religion,* the Spanish *Colección Raíces del Derecho* (Aranzadi), and the Chinese *Law, Religion and Culture Series* (Bouden House). Witte has won dozens of awards and prizes for his teaching and research, including induction into the Royal Academy of Jurisprudence and Legislation in Spain and the American Academy of Arts and Sciences.