

The Blessings of Liberty: Human Rights and Religious Freedom in the Western Legal Tradition

JOHN WITTE JR

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In February 2022, the Australian House of Representatives sat until 5.01 in the morning to debate proposed anti-religious discrimination legislation sponsored by the government. The Bill failed to pass, over concerns that it might allow religious groups to discriminate against children who identify as transsexual. In 2020 and 2021, across the world, in both hyper-secular and deeply religious societies, public religious worship was suspended by legislation for several months as part of efforts to slow the spread of the COVID-19 virus. For the first time in living memory, Christians could not celebrate the death and resurrection of Jesus together at Easter. Recently, the Indian Government suspended the ability of Mother Teresa's Missionaries of Charity to receive donations from outside India, triggering debate around the world, including in the United Kingdom Parliament. Shortly thereafter, the ban was lifted. It seems that, in many parts of the world, the proper interplay between sovereign power and religious freedom continues to be an issue of significant public importance, triggering debate, and even violence.

But, if we moderns are tempted to consider that this is an issue unique to our own time and place, then Professor John Witte Jr of Emory University School of Law is here to set us right. In his masterful *The Blessings of Liberty*, Professor Witte puts our current debates around religious freedom in their proper historical context. Drawing on examples from across the history of the West, he explains how the tension between the state's demand for all-encompassing obedience in every sphere of human existence as the undisputed sovereign power has long butted up against individuals' demands that they be able to believe their religious beliefs and practise their religious lives, corporately and individually, free of interference by that sovereign state.

The principal claim of this book is that modern human rights discourse ('rights talk') and legal practice have their roots in the Christian view of humanity as being the pre-eminent part of God's creation, ordered towards the worship of God in this world, and salvation in the next. It is from the covenants God made with the Jewish people, and ultimately with all of humanity on Calvary, that the modern understanding of human beings being the possessors of inalienable rights originates. Human rights, Witte argues, did not spring *ab origine* from the Enlightenment, as some modern secularists argue, but in fact trace their lineage at least two millennia before that time.

Christians across various denominational traditions have expressed scepticism about the value of modern rights talk, and have highlighted the

challenges it poses to traditional Christian understandings of the human person and the societies we inhabit. The well-trodden examples include abortion, same-sex marriage, religious expression in government organisations and schools, and, more recently, the treatment of transsexual people. These Christian critics contend that modern human rights are either too thin—you should not need international human rights instruments to tell you that genocide is bad—or too thick because human rights have baked into them modern secularist assumptions about humanity.

Witte meets these critics by arguing that human rights, sourced from the Christian tradition, in fact are essential for Christians, indeed all religious people, to carry on the practice of their religious faith. Christians need the human rights of freedom of religious worship, expression and organisation in order to discharge their obligation to worship God and to attain their salvation. In turn, Christians should uphold other human rights as an act of charity to their neighbours, whether religious or not. For example, the modern rights claim that every person should be fed, watered, housed and provided for, at least to a modest standard, is both an emanation of, and instantiation in the secular law of, Christ's commandment (oft-repeated in the Gospels) that Christians are to provide for the poor, the sick, the hungry and the homeless.

The contention of this book is not that human rights constitute a free-standing moral framework which can guide all human beings in their conduct, whether as a replacement for Christian morality or otherwise. Rather, those rights inform and are informed by the moral lives of Christians, and give some expression to the truths which they hold to be true.

This book, by its own admission, draws principally on Christian, particularly Protestant Christian, examples across North America and Europe to develop its thesis. Witte takes us through the Old and New Testaments, the Church Fathers, Magna Carta (as received on both sides of the Atlantic), colonial Massachusetts, natural law theory in Protestant theology, right through to the European Court of Human Rights and the European Court of Justice in the modern day. (Did you know that in colonial Massachusetts, an early bill of rights even protected animals from cruel punishment by humans?) Drawing on these rich seams of legal history and theology, he draws clear links between the modern conceptions of human rights and their historical progenitors. Although there is some reference to Roman Catholic and Eastern Orthodox theologians and theorists, as well as non-Christians, they are not the focus. That is not a criticism. The Protestant tradition provides a clear path for Witte to develop his thesis, especially in the United States with her Protestant foundations. Also, a book can only be so long.

If one criticism can be levelled at this book, it is that at times it elides the distinction between 'human rights' and rights *simpliciter*. At least in common parlance, the modern conception of human rights generally refers to

entitlements such as the right to life, the right to due process, freedom of association, or a right to a clean environment. Whether or not the right to be able to enforce a contract before a court can be characterised as a ‘human right’ is debatable. The book is at risk of talking past secular and religious critics if it does not engage with what those critics consider to be ‘human rights’. However, definitional debates are found as much in academic discourse, as they are in school debating societies.

Students of this area will be familiar with Witte’s work, and so some of it will not come as a surprise to the initiated reader. Indeed, this book draws heavily on some essays which have been published elsewhere in the past. It does, however, provide the novice (of which this reviewer is one) with a digestible entrée into the area of human rights and religious freedom. It is required reading for any person with any interest in this area of study.

One minor typographical point: regnal numbers. The conventions adopted in this book are a little odd, at least to a British reader. First, King George IV was said to be on the throne in 1792. Clearly it should be George III; even the Regency did not start until 1811. In certain places, monarchs are referred to in the form ‘II Edward’ and elsewhere as ‘King Edward’ (without number) or ‘King Henry VIII’ (with number) or ‘Elizabeth I’ (without ‘Queen’). It is submitted that the better approach is to have the regnal number always follow the monarch’s name (not precede it) and to ditch ‘King’ or ‘Queen’ on second and subsequent references to the same sovereign.

The index is very good. It might be improved by removing references to court cases into a free-standing table of cases with citations, placed either amongst the introductory material or before the index.

This book is a springboard. It lays the groundwork for a certain positive Christian understanding of human rights and their importance. It is clear that Witte will develop in his next work a more fulsome justification of the contention that human rights and Christianity are self-reinforcing, and that Christians would do well to respect and integrate human rights into their view of society. At least he has promised this much in his conclusion. Witte has spent much of his academic career contributing to the discourse on human rights, with a particular focus on the space for religious experience in that discourse. This book—full of beautiful expressive writing, drawing on a wide religious and secular vocabulary—is a very important contribution to that ongoing discourse. Readers should read this book now, in anticipation of the sequel which will hopefully soon follow.

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