# Human Rights Futures

*Edited by*

Stephen Hopgood
*SOAS, University of London*

Jack Snyder
*Columbia University, New York*

Leslie Vinjamuri
*SOAS, University of London*

Sabatini, Christopher. "Meaningless Multilateralism." *Foreign Affairs*, August 8, 2014. www.foreignaffairs.com/articles/south-america/2014–08-08/meaning less-multilateralism.

Satterthwaite, Margaret L. "Rendered Meaningless: Extraordinary Rendition and the Rule of Law." *The George Washington Law Review* 75, no. 5–6 (2006): 1333–420.

Scahill, Jeremy. *Blackwater: The Rise of the World's Most Powerful Mercenary Army*. New York: Nation Books, 2007.

Scheinin, Martin. *Report of the Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms While Countering Terrorism* (December 28, 2009). UN Doc. A/HRC/13/37.

Scheppele, Kim Lane. "International Standardization of National Security Law." *The Journal of National Security, Law & Policy* 4 (2010): 437–53.

"The Migration of Anti-constitutional Ideas: The Post-9/11 Globalization of Public Law and the International State of Emergency." In *Migration of Constitutional Ideas*, ed. Sujit Choudhry Cambridge: Cambridge University Press, 2006: 347–73.

Shkolnikov, Vladimir. "Missing the Big Picture? Retrospective on OSCE Strategic Thinking on Central Asia." *Security and Human Rights* 20 (2009): 294–306.

Simmons, Beth. *Mobilizing for Human Rights: International Law in Domestic Politics*. New York: Cambridge University Press, 2009.

Singh, Amrit. *Globalizing Torture: CIA Secret Detention and Extraordinary Rendition*. New York: Open Society Justice Initiative, 2013. www.opensocie tyfoundations.org/reports/globalizing-torture-cia-secret-detention-and-extr aordinary-rendition.

Soldatov, Andrei, and Irina Borogan. *The New Nobility: The Restoration of Russia's Security State and the Enduring Legacy of the KGB*. New York: PublicAffairs, 2010.

Sullivan, Gavin, and Ben Hayes. *Blacklisted: Targeted Sanctions, Preemptive Security and Fundamental Rights*. Berlin: European Center for Constitutional and Human Rights, 2011. www.ecchr.eu/en/documents/pub lications/ecchr-publications/studies-and-reports/articles/blacklisted-targe ted-sanctions-preemptive-security-and-fundamental-rights.html.

Walker, Christopher and Alexander Cooley. "Vote of the Living Dead." *Foreign Policy*, October 31, 2013. https://foreignpolicy.com/2013/10/31/vote-of-the-living-dead.

8    # Governing Religion as Right

*Elizabeth Shakman Hurd*

1    ## Three Approaches to Religion and Rights

Today, all states, including secular states, regulate religious affairs.[1] There is no religion without government involvement in some form.[2] While the comparative study of state religious governance is well established,[3] the role of transnational forms of governance in relation to religious lives and practices is less well understood. This is especially the case when it comes to international human rights. There are two prominent approaches to religion and international human rights, described here as the curatorial model and the foundations model. They are not mutually exclusive. The former is characterized by a sense that international rights advocacy – though embedded in power and never neutral – does its own thing, separate from religion. In Benjamin Berger's felicitous phrasing, law is seen as the curator,

---

[1] "State secularism does not imply the withdrawal of the state from religious matters, but on the contrary it consists of the state assuming the role of the ultimate regulator of religious affiliations and arbiter of religious claims": Nandini Chatterjee, "English Law, Brahmo Marriage, and the Problem of Religious Difference: Civil Marriage Laws in Britain and India," *Comparative Studies in Society & History* 52, no. 3 (2010): 524–52, 537.

[2] Even the Stasi Commission, an investigative body created by the French National Assembly to debate the principle of *laïcité*, observed that, "the secular state ... cannot be content with withdrawing from all religious and spiritual matters." Quoted in Talal Asad, "Trying to Understand French Secularism," in *Political Theologies: Public Religions in a Post-Secular World*, edited by Hent de Vries and Lawrence E. Sullivan (New York: Fordham University Press, 2006): 494–526, 524, n80.

[3] Winnifred Fallers Sullivan and Lori G. Beaman, eds. *Varieties of Religious Establishment* (London: Ashgate, 2013); Vincent Goossaert and David A. Palmer, The Religious Question in Modern China (Chicago: University of Chicago Press, 2012); Markus Dressler, *Writing Religion: The Making of Turkish Alevi Islam* (Oxford: Oxford University Press, 2013); Nandini Chatterjee, *The Making of Indian Secularism: Empire, Law and Christianity 1830–1960* (New York: Palgrave Macmillan, 2011); Hussein Ali Agrama, *Questioning Secularism: Islam, Sovereignty, and the Rule of Law in Modern Egypt* (Chicago: University of Chicago Press, 2012); Joan W. Scott, *Politics of the Veil* (Princeton: Princeton University Press, 2007); Linell E. Cady and Elizabeth Shakman Hurd, eds., *Comparative Secularisms in a Global Age* (New York: Palgrave MacMillan, 2013).

and not a component, of cultural pluralism.[4] Law, including human rights law, stands above the fray of cultural difference. This curatorial perspective on religion and rights is appealing to many liberal internationalists. Human rights and religion, in this view, are like oil and water. Their respective practitioners are engaged in different normative discourses and live in different worlds. In curatorial discourse, the right to religious freedom takes its place in an array of universal rights that are seen as pragmatic global norms of human solidarity and extensions of the tradition of liberal theorizing summed up in Rawls' famous dictum, "political, not metaphysical."[5] Human rights and religion are presumed to operate in separate spheres, reflecting and re-instantiating what Robert A. Yelle has referred to as the "charter myth of modern law." As Yelle explains, this myth

describes a progressive growth of freedom, above all freedom of and from religion, following the European wars of religion in the sixteenth and seventeenth centuries. Despite periodic relapses into barbarism, this narrative affirms an irreversible progress. Never again will we return to the evil old days, when religion oppressed the individual conscience and became the cause of violence and war.[6]

Though Yelle and others have shown persuasively that the myth of modern law's freedom from religion is itself the product of particular historical, political, and theological developments, the curatorial model nonetheless retains its allure, particularly in international law and political science debates and among human rights advocates. At the international level it is associated with a powerful consensus surrounding the need for legal protections for religious freedom, guarantees for religious minority rights, and adherence to international legal standards embodied in the International Covenant on Civil and Political Rights and the Universal Declaration of Human Rights (UDHR).[7] Talal Asad captures the

sweeping power of this discourse in his discussion of the UDHR, suggesting that in this case *"the rule called law* in effect usurps the entire universe of moral discourse." It does so by privileging the state's (or associations thereof) norm-defining function, "thereby encouraging the thought that the authority of norms corresponds to the political force that supports them as law."[8] In presuming a direct convergence between the rule of law and social justice, the curatorial model effaces the distinction between them.

In a second approach to religion and rights, the foundations model, different religious traditions are seen as complementing or, more strongly, serving as the source or foundation of the modern rights tradition. As in the curatorial model, there are many approaches in this vein and they are not necessarily compatible.[9] An example is a project housed at the Berkley Center at Georgetown, entitled "Christianity and Freedom: Historical and Contemporary Perspectives," which builds on a long history of attempts to cement and to celebrate a foundational connection among Christianity, human rights, pluralism, and freedom.[10] Charles Malik, a Lebanese philosopher, diplomat, and one of the authors of the UDHR, was among the earlier and more influential representatives of this view on religion and rights. In 1968 he observed that

there is nothing that has been proclaimed about human rights in our age, nothing, for instance, in our Universal Declaration of Human Rights, which cannot be traced to the great Christian religious matrix ... Even those in our own day who carry on a non-religious or even on an anti-religious basis the burden of human rights with such evident passion and sincerity ... owe their impulse, knowingly or unknowingly, to the original inspiration of this tradition.[11]

This conviction is carried forward not only in the Berkley Center's project and others like it, but also among theologians such as Max

[4] Benjamin L. Berger, "The Cultural Limits of Legal Tolerance," in *After Pluralism: Reimagining Religious Engagement*, eds. Pamela E. Klassen and Courtney Bender (New York: Columbia University Press, 2010): 98–123, 100.

[5] "By avoiding comprehensive doctrines [i.e., basic religious and metaphysical systems], we try to bypass religion and philosophy's profoundest controversies so as to have some hope of uncovering a stable overlapping consensus." John Rawls, Political Liberalism (Cambridge: Harvard University Press): 151–2.

[6] Robert A. Yelle, "Moses' Veil: Secularization as Christian Myth," in Winnifred Fallers Sullivan, Robert A. Yelle, and Mateo Taussig-Rubbo, eds., *After Secular Law* (Stanford: Stanford University Press, 2011): 23–42, 23.

[7] This consensus is reflected in the activities and reports of the UN Office of the Special Rapporteur for Freedom of Religion or Belief, which focuses on ensuring state compliance with international and regional human rights conventions including the 1948 Universal Declaration of Human Rights (Article 18), the European and American human rights conventions of 1950 and 1978, the two human rights conventions of 1976, the 1981 UN Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on

Religion or Belief, and regional human rights instruments such as the 1986 African Charter on Human and Peoples Rights and the 1990 Cairo Declaration on Human Rights in Islam.

[8] Talal Asad, "Redeeming the 'Human' in Human Rights," in *Formations of the Secular: Christianity, Islam, Modernity* (Stanford: Stanford University Press, 2003): 138 (emphasis in original).

[9] Abdullahi An-Naim, for instance, has attempted to establish the compatibility of Islamic law and tradition with international human rights; see his *Islam and Human Rights (Collected Essays in Law)*, Mashood A. Baderin and Abd Allah Ahman Naim, eds. (London: Ashgate, 2010). See also the essays collected in Thomas Banchoff and Robert Wuthnow, eds., *Religion and the Global Politics of Human Rights* (Oxford: Oxford University Press, 2011) and John Witte and M. Christian Green, eds., *Religion and Human Rights: An Introduction* (Oxford: Oxford University Press, 2012).

[10] http://berkleycenter.georgetown.edu/rfp/themes/christianity-freedom-historical-and-con temporary-perspectives.

[11] Cited in Samuel Moyn, *The Last Utopia: Human Rights in History* (Cambridge: Belknap Press, 2010): 127.

Stackhouse, for whom human rights cannot survive absent a religious foundation. In his words, universalizing values "are likely to fade over time if they are not anchored in a universal, context-transcending, metaphysical reality."[12] Melani McAlister has contextualized this claim, observing that, "according to Stackhouse, history showed that Christianity was more likely than other religions to encourage pluralism. On this logic, then, political support for Christianity – even for Christian dominance – was actually support for both human rights and religious freedom for all."[13] Like the curatorial approach, the foundations approach is also influential in contemporary international political and public policy discussions. The founding document of American evangelical activism in the mid-1990s, the "Statement of Conscience of the National Association of Evangelicals Concerning Worldwide Religious Persecution," draws on a variation of it in describing religious freedom as a God-given human right that occupies a privileged position above other rights claims. In the words of the NAE, which led the campaign for the passage of the International Religious Freedom Act of 1998,[14] it is "our responsibility, and that of the government that represents us, to do everything we can to secure the blessings of religious liberty to all those suffering religious persecution."[15]

Both the curatorial and foundations approaches to religion and rights are well represented in contemporary governmental and non-governmental international religious freedom advocacy. Their combined strength helps to explain the power and persuasion of a political movement that, while largely spearheaded by the United States, is increasingly globalized, as discussed in my book *Beyond Religious Freedom*.[16] Both approaches depict religious freedom as a stable and fundamental human right that can be measured and achieved by all political collectivities, no matter how reluctant or recalcitrant they may be initially.[17] It is a matter of persuading peoples and governments to understand and comply with a universal norm.[18] States and societies are positioned on a spectrum of progress, either inclined toward the achievement of religious freedom or slipping backward into religious persecution and violence.[19]

My work adopts a different starting point on the relation between religion and rights. Far from occupying an autonomous sphere independent of religious affairs, or representing the historical realization of any particular tradition, human rights advocacy is a particular mode of governing social difference that, like other social forms, implicates religion in complex and variable ways. Religious rights are a form of religious governance. This is what I call the "governance approach" to religion and rights. Rather than a stable and universal norm that stands above the fray, the deployment of religious rights is a technique of governance that authorizes particular forms of politics and regulates the spaces in which people live out their religion in specific ways.[20] It is a particular mode of governing social difference through (religious) rights.[21]

This form of governance impacts both politics and religion. Governing social difference through religious rights singles out individuals and groups for legal protection as religious individuals and faith communities. The discourse of religious rights and freedoms describes, defines, and governs individuals and groups in religious or sectarian terms rather

---

[12] Max Stackhouse, "Why Human Rights Needs God: A Christian Perspective," in *Does Human Rights Need God?*, eds. Elizabeth M. Bucar and Barbra Barnett (Grand Rapids: William B. Eerdmans, 2005): 39 (25–40), quoted in Melani McAlister, "US Evangelicals and the Politics of Slave Redemption as Religious Freedom in Sudan," *South Atlantic Quarterly* vol. 113, no. 1 (Winter 2014): 87–108, 93.

[13] McAlister, "US Evangelicals and the Politics of Slave Redemption as Religious Freedom in Sudan," 93.

[14] IRFA authorizes American attempts to sanction and cultivate forms of religion, religious subjects, and forms of state religious administration that align with US political, economic, and strategic interests. The legislation established an Office on International Religious Freedom in the State Department headed by an Ambassador-at-Large for International Religious Freedom, which prepares an annual report on the status of religious freedom in every country in the world with the exception of the United States. It also created an independent watchdog agency, the US Commission on International Religious Freedom (USCIRF), to oversee implementation of the Act, and a Special Adviser to the President on International Religious Freedom at the National Security Council. *International Religious Freedom Act of 1998*, HR 2431, 105th Cong., 2nd Sess. (1998).

[15] Quoted in Elizabeth A. Castelli, "Theologizing Human Rights: Christian Activism and the Limits of Religious Freedom," in *Non-Governmental Politics*, eds. Michel Feher with Gaëlle Krikorian and Yates McKee (New York: Zone Books, 2007), 675 (673–87).

[16] Parts of this chapter are adapted from *Beyond Religious Freedom: The New Global Politics of Religion* by Elizabeth Shakman Hurd. © 2015, Princeton University Press. Reprinted by permission. For an introduction to the institutionalization of international religious freedom advocacy see E.S. Hurd, "Religious Freedom, American-style," *Quaderni di Diritto e Politica Ecclesiastica*, no. 1 (April 2014): 231–42.

[17] H. Knox Thames, Chris Seiple and Amy Rowe, *International Religious Freedom Advocacy: A Guide to Organizations, Law, and NGOs* (Waco: Baylor University Press, 2009).

[18] Thomas F. Farr, "Religious Freedom Abroad," *First Things* (March 2012): 21–3.

[19] Reflecting this logic, the IRFA legislation attributes a failure to achieve religious freedom to a lack of social and cultural maturity: "In many nations where severe violations of religious freedom occur ... there is not sufficient cultural and social understanding of international norms of religious freedom," *International Religious Freedom Act of 1998*, Sec. 501.

[20] Pamela Slotte, "The Religious and the Secular in European Human Rights Discourse," *Finnish Yearbook of International Law* 21 (2010): 1–56, 54. See also Saba Mahmood and Peter G. Danchin, "Immunity or Regulation? Antinomies of Religious Freedom," *South Atlantic Quarterly* Vol. 113, no. 1 (2014): 129–59.

[21] This argument is adapted from *Beyond Religious Freedom: The New Global Politics of Religion* by Elizabeth Shakman Hurd. © 2015 New Jersey: Princeton University Press. Reprinted by permission.

than on the basis of other affinities and relations – for example, as groups based on political leanings, geographical ties, neighborhood affiliations, kinship networks, generational ties, or socioeconomic status. In positing religion as prior to these other identities and affiliations, the religious rights model heightens the sociopolitical salience of whatever the national or international authorities designate as religion. This accentuates religious–religious and religious–secular divisions, leading to what the historian Sarah Shields describes as a particular "ecology of affiliation"[22] organized around and articulated through religious difference.

Governing social difference through religious rights also shapes how states and other political authorities distinguish groups from each other, often in law. This shapes both political and religious practice. Politically, advocacy for religious rights singles out groups and authorities as "religions" and locates them on a playing field in which they are presumed to represent a common type – religious groups – and to operate as equals. It also shapes religious possibilities, consecrating groups as discrete faith communities with identifiable leaders and neatly bounded orthodoxies. Those groups are both presupposed and produced as static bodies of tradition and convention that lend themselves to becoming objects of state and transnational legal regulation, and government engagement and reform. Official spokespersons are called forth to represent these faith communities, strengthening leaders that enjoy friendly relations with the political authorities and empowering groups that "look like" religions to those in power. In a religious landscape populated by faith communities, not only are particular hierarchies and orthodoxies reinforced, but dissenters, doubters, those who practice multiple traditions, and those on the margins of community are made illegible or invisible. On a political landscape governed through religious rights and freedoms, many violations of human dignity and justice fail to register at all, languishing beneath the threshold of national and international recognition as limited resources are devoted to rescuing persecuted religionists and defending faith communities that have achieved legal and political legibility and legitimacy. These selection dynamics inhere in the process and the politics of enforcing a right to religious freedom and cannot be remedied through a more sophisticated understanding of religion or religious community. Certain questions recur: Which religions to protect? Which leaders to engage?

This chapter elaborates on various aspects of these claims to develop a case for a governance perspective on the relation between religion and

---

[22] Sarah Shields, "Mosul, the Ottoman Legacy, and the League of Nations," *International Journal of Contemporary Iraqi Studies* Vol. 3, no. 2 (2009): 217–30, 218.

rights. It does so through a combination of empirical illustrations and theoretical discussion. Two criteria govern the selection of the empirical focal points. The first is the extent to which the lives of individuals and groups have been, and continue to be, shaped by the social, political, and religious possibilities and realities that are produced through efforts to globalize and legalize a right to religious freedom. The second, as discussed in detail in *Beyond Religious Freedom,* is the degree to which a particular case illustrates the analytical salience of distinguishing between discourses on religion as authorized by those in power and a broader field of social and religious practice and modes of coexistence. The first section, on the global political production of religious difference, draws on an extended discussion of the predicament of the Rohingya of Myanmar. The second section, on the creation of a landscape populated by faith communities and the effects on those excluded from such designations, draws on examples from the Central African Republic, Guatemala, India, and South Sudan. Throughout, I operate on the assumption that neither religion nor religious freedom is a stable, fixed quantity that can be used as either a dependent or independent variable. Stabilizing a definition of "religion" or "religious" for the purposes of assigning causal significance and drawing generalizable conclusions is impossible. Instead, the questions to be addressed include: What is accomplished in specific contexts when social difference is conceived and governed by those in positions of authority through religious rights and freedoms? What does it entail to govern religion as right? What political practices, social relations, and religious possibilities are enabled, and disabled, through such an approach? Exploring these questions leads me to join those contributors to this volume who have expressed skepticism about the project and promise of universalizing human rights. The promotion of religious rights, I argue, naturalizes the very lines of difference it is meant to soften or transcend, creating, in the process, new forms of social friction defined by and through religious difference.

## 2    The Religious Rights Imperative

Legal guarantees for religious rights are mechanisms of global governance that shape the religious and political fields in which they are deployed in at least three ways. First, lodged within a religious rights regime is the imperative to define identity in religious terms: "Are you *this* or are you *that*?" You need to know what you are to know how you fit in. Individuals with multiple affiliations or mixed backgrounds and dissenters from protected religions are uneasily accommodated in the rubrics of strict religious–secular identity and difference demanded by the logic of

religious rights. Those who do not identify with orthodox versions of protected religions or beliefs fall between the cracks. Families that include multiple traditions under the same roof must choose a side. Such "in between" individuals and groups find themselves in an impossible position: either they must make political claims on religious grounds, or they have no ground from which to speak.[23] This occurred in Bosnia in the 1990s, when individuals who described themselves as atheists before the war woke up to find themselves identified – and divided – publically and politically, by a newly salient religious identity.[24]

Second, governing religion as right creates a social ecology of affiliation that presupposes and produces hard-and-fast religious identities that trump other modes of being and belonging. Singling out religion from among the many different given and chosen human ties naturalizes and normalizes religious–religious and religious–secular divides. Individuals and groups are identified publically and politically along those divides, rather than on the basis of other ties that bind, whether socioeconomic, geographic, familial, professional, or generational. To posit discrete religious communities as the defining features on the political landscape lends agency and authenticity to groups that are designated as religions, helping to create the world that religious rights discourse purports merely to describe. These groups come to occupy what Elizabeth Castelli describes as "the full terrain of the thinkable vis-à-vis freedom."[25] Governing citizens as Christians, Muslims, or Hindus conjures a collective imagining of fixed, stable categories of religious affiliation and confers upon them social and political currency. To the extent that individuals who had been marked by many affinities come to be identified by and through these particular categories of law and public discourse, the possibility of cross-cutting, non-sectarian forms of politics diminishes. Religions are transformed or remodeled into tractable, alienable commodities, in the sense described by Jean and John Comaroff in their work on the commodification of ethnicity and Samuli Schielke in his critique of world religions as entities with agency.[26]

Third, governing through religious rights reduces complex social, historical, and political histories and inequalities to a problem of religion. As Michael Peletz has argued in reference to the concept of Islamization, this "discourages recognition of the complexity of the phenomena to which it is purportedly relevant."[27] The logic of religious rights and freedoms collapses social, economic, historical, political, and geographical factors into an emphasis on religion, obscuring other causes of discrimination and social tension and deflecting attention away from caste, class, colonial history, economic justice, land rights, and other factors.

The international response to the crisis involving the Rohingya in Myanmar illustrates the complex dynamics that follow the invocation of religious rights as a mode of international legal governance. A population of roughly 1,000,000 people living primarily in Northwestern Burma bordering Bangladesh, the Rohingya claim Burmese citizenship but are effectively stateless, having been denied citizenship by the Burmese state, classified by the government as "Bengali immigrants," and subjected to "persecution, discrimination and intrusive restriction on their rights to marry and have families."[28] Though many have lived in Rakhine (formerly Arakan) state for generations,[29] the Burmese state does not recognize them as one of the country's 135 ethnic groups, and the Rohingya have suffered a long history of exclusion and government-sponsored oppression. As journalist Kate Hodal explains, "Large-scale Burmese government crackdowns on the Rohingya – including Operation Dragon King in 1978, and Operation Clean and Beautiful Nation in 1991 – forced hundreds of thousands to flee to Bangladesh. Thousands of others have left for Thailand, Malaysia, and Indonesia, many of them by boat."[30] State-sanctioned violence has worsened in recent years, with many Rohingya driven out of their villages, separated from their families, and confined to squalid refugee camps. Those who remain in their villages cannot leave, even to go to the hospital.[31] The capital of Rakhine state,

---

[23] Castelli, "Theologizing Human Rights," 684.

[24] David Campbell, *National Deconstruction: Violence, Identity and Justice in Bosnia* (Minneapolis: University of Minnesota Press, 1998).

[25] Castelli, "Theologizing Human Rights," 684.

[26] For the Comaroffs the commodification of ethnicity "has the curious capacity to conjure a collective imagining and to confer upon it social, political, and material currency – not to mention 'authenticity,' the spectre that haunts the commodification of culture everywhere." John L. Comaroff and Jean Comaroff, *Ethnicity, Inc.* (Chicago: University of Chicago Press, 2009), 10; Samuli Schielke, "Second Thoughts about the Anthropology of Islam." ZMO Working Papers 2 (2010): 4–5.

[27] Michael Peletz, "Malaysia's Syariah Judiciary as Global Assemblage: Islamization, Corporatization, and Other Transformations in Context," *Comparative Studies in Society and History* 55, no. 3 (2013): 603–33, 626.

[28] Sophia Akram, "Cutting Borders: Ethnic Tensions and Burmese Refugees," *Fair Observer*, September 19, 2013, www.fairobserver.com/article/cutting-borders-ethnic-tensions-and-burmese-refugees.

[29] A document on Burmese languages dating to 1799 refers to "Rooinga as 'natives of Arakan [Rakhine],' but it is widely believed that most Rohingya came over from Bangladesh around 1821, when Britain annexed Myanmar as a province of British India and brought over migrant Muslim laborers." Kate Hodal, "Trapped Inside Burma's Refugee Camps, the Rohingya People Call for Recognition," *The Guardian*, December 20, 2012, www.guardian.co.uk/world/2012/dec/20/burma-rohingya-muslim-refugee-camps.

[30] Ibid.

[31] Jonathan Head, "The Unending Plight of Burma's Unwanted Rohingyas," BBC News, June 30, 2013, www.bbc.co.uk/news/world-asia-23077537.

Sittwe, had a population of about 73,000 Rohingya, which as of 2014 had dwindled to 5,000 confined in one heavily guarded neighborhood. According to anthropologist Elliott Prasse-Freeman, referring to the Rakhine (or Arakanese) majority population in Rakhine state, "local media, citizen bloggers, Buddhist monks all rallied around the Rakhine. Or more accurately, rallied *against* the Rohingya," describing them as illegal immigrants, a threat to Buddhism, a threat to security, and "simply aesthetically unpleasant." A refrain heard often from Prasse-Freeman's Burmese acquaintances was "'they are not like us; we cannot accept them.'"[32]

Most international commentators describe the Rohingya as a persecuted Muslim minority and call for the protection of Burmese Muslims.[33] In 2012, the US Commission for International Religious Freedom called for religious freedom for the Rohingya and identified them as persecuted Muslims. Many journalists and academics also rely on a religious persecution narrative to describe their plight. The Rohingya, it is said, lack religious rights. However, the Rohingya are not excluded from Burmese society exclusively with religious slurs, but also with racist and other dehumanizing terms. Prominent monks leading the charge to democratize Myanmar have turned against the Rohingya, blocking humanitarian assistance and calling for their social and political exclusion along the lines of what some have compared to apartheid in South Africa or racial segregation in the Southern United States.[34] A leaflet distributed by a monks' organization described the Rohingya as "cruel by nature." Ko Ko Gyi, a democracy activist and former political prisoner, has stated that the Rohingya are not Burmese. A loosely organized Buddhist activist group composed of monks and laity called "969," and its most prominent spokesperson, a Mandalay-based monk named U Wirathu, call for the social and economic exclusion of the Rohingya from Burmese society.[35] Claiming to work on behalf of the

---

[32] Elliott Prasse-Freeman, "Scapegoating in Burma," *Anthropology Today* Vol. 29, no. 4 (August 2013): 2–3, 2.

[33] "As Myanmar has liberalized, outsiders who had called for the US to overthrow the military dictatorship and install Aung San Suu Kyi have turned their attention to the plight of the Muslims, especially the Rohingya. They castigate Myanmar's current government and insist on making protection of Muslims a condition for better relations with the West." David I. Steinberg, "Myanmar: Buddhist-Muslim Tensions," *Sightings*, July 24, 2014, https://divinity.uchicago.edu/sightings/myanmar-buddhist-muslim-tensions-%E2%80%94-david-i-steinberg.

[34] Head, "The Unending Plight."

[35] In an interview, Wirathu explained that in his organization's name, 969, "the first 9 stands for the nine special attributes of the Lord Buddha and the 6 for the six special attributes of his Dhamma, or Buddhist Teachings, and the last 9 represents the nine special attributes of Buddhist Sanga [monks]. Those special attributes are the three Gems of the Buddha. In the past, the Buddha, Sangha, Dhamma and the wheel of Dhamma were Buddhists' sign. And the same goes for 969; it is another Buddhist sign." "Interview:

"religious rights and freedoms" of the majority Buddhist population of Myanmar, 969 reportedly "enjoys support from senior government officials, establishment monks and even some members of the opposition National League for Democracy (NLD), the political party of Nobel peace laureate Aung San Suu Kyi."[36] A representative of the Burmese Muslim Association compared the movement to the Ku Klux Klan.[37] Another 969 affiliate, the Organization for the Protection of Nation, Race and Religion – or, in the Burmese acronym, Ma Ba Tha, is also led by well-known Buddhist monks and oriented around pro-Buddhist, pro-Burman activism.

Discrimination against the Rohingya is complex and multifaceted: it is ethnic, racial, economic, political, religious postcolonial, and statist.[38] It is impossible to isolate any one of these factors as the definitive cause of a particular act of violence or discrimination. To identify the Rohingya as a persecuted religious minority suggests that a lack of religious rights is the main obstacle standing in the way of equality for the Rohingya. It singles out religion from the web of discriminatory forces in which the Rohingya are suspended. Identifying religious difference as uniquely motivating the violence against them – and, implicitly, religious rights as the solution to it – diverts attention from their comprehensive exclusion from Burmese state and society, historically and in the present. It masks the economic and political interests that profit from the Rohingya's subordination and repression. It subordinates to religious difference the state-sponsored violence, political and economic disagreements among the governing elite concerning the speed and content of proposed reforms, anti-immigrant and xenophobic basis of the discrimination, and economic insecurities and regional power dynamics accompanying Burma's tentative opening to global trade and foreign investment.

But the problem runs deeper. When international human rights advocates depict the violence in Myanmar as fundamentally religious in nature, and call for religious rights as the legal remedy, this reinforces 969's narrative, which insists that *these* lines of religious difference are indeed

---

Nationalist Monk U Wirathu Denies Role in Anti-Muslim Violence," *The Irrawaddy*, April 2, 2013, www.irrawaddy.org/interview/nationalist-monk-u-wirathu-denies-role-in-anti-muslim-unrest.html.

[36] According to one account, "the 969 movement is controlled by disgruntled hardliners from the previous junta, who are fomenting unrest to derail the reforms and foil an election landslide by Suu Kyi's NLD." Andrew R.C. Marshall, "Myanmar Gives Official Blessing to Anti-Muslim Monks," *Reuters*, June 27, 2013, www.reuters.com/article/2013/06/27/us-myanmar-969-specialreport-idUSBRE95Q04720130627.

[37] Cited in ibid.

[38] For a more comprehensive account of the many factors contributing to the Rohingya's exclusion from Burmese society, see the discussion in chapter 3 of *Beyond Religious Freedom*.

the most salient aspect of this profound societal and human crisis. In this case, promoting religious rights effectively strengthens the hand of a violently exclusionary set of nationalist movements that depend for their existence on perpetuating the perception of hard-and-fast lines of Muslim–Buddhist difference and immutable ties among majoritarian constructions of Buddhism, race, and Burmese national identity. In these circumstances, the logic of governing through religious rights for-tifies those most committed to excluding the Rohingya from Burmese society and polity, and forfeits their chances of achieving equality. For their opponents, the Rohingya are subhuman. As Prasse-Freeman notes, "those who are killed are arguably not even killed *as* an identity group, but rather as so much detritus falling outside of a group, and hence outside of the political community entirely."[39] By reinforcing their status as *Muslims* rather than as Burmese citizens or as human beings, international efforts to govern religion as right in these circumstances make it less likely that the Burmese government – or the democratizing monks – will include the Rohingya in Burmese state and society as citizens and humans, rather than as Muslims.

In a 2013 lecture at the Council on Foreign Relations, former US ambassador to Nigeria John Campbell urged his audience not to describe recent violence in Nigeria as religious violence: "Are people [in Nigeria] being killed because they're Muslim, herders, or Hausa? It is often very hard to say."[40] Are the Rohingya being killed because they're Muslim, because they're immigrants, or because they're perceived as an economic or political threat to the former junta or other national or regional economic interests? Are Syrians being killed because they are Christian, regime supporters, or had been employed by or are related to a particular leader of the resistance? It's hard to say. Many factors lead to discrimination and violence: local histories, class disparities, disputes over natural resources, immigration status, urban–rural tensions, family grievances, oppressive governance, outside interventions, colonial lega-cies, land disputes, and economic rivalries. When social tension, dis-crimination, and violence are reduced to a problem of religious intolerance or religious persecution – and well-intentioned legal and political remedies subsequently reproduce and retrench those very lines of difference – the complex and multidimensional tapestry of human sociality and history is lost from sight. The multifaceted pro-blems faced by persecuted groups become more difficult to address.

[39] Prasse-Freeman, "Scapegoating in Burma," 3.
[40] Ambassador John Campbell, Africa Update Panel Presentation, *Seventh Annual Religion and Foreign Policy Summer Workshop*, New York, June 25, 2013.

In the case of the Rohingya and other imperiled groups, governing through religious rights heightens the sociopolitical salience of whatever the authorities designate as religion: in this case, a hierarchical reading of entrenched Buddhist–Muslim difference. Rather than defanging 969 and its allies, this intensifies religious divisions while deferring and subduing the potential of alternative, cross-cutting movements that may be in a position to challenge the entrenched political and economic interests that profit most from the Rohingya's exclusion.

Governing religion as right shapes politics. Though the dynamics vary depending on context,[41] religious rights presuppose and produce lines of difference between religions, and between religion and non-religion, eclipsing other axes of being and belonging, and, in some cases, contri-buting to the very tensions these strategies are meant to tame or mitigate. Governing religion as right also shapes religion and religious possibilities. The rise to international prominence of a global religious rights mandate is transforming the experiences and self-understandings of groups around the world who are increasingly pressured to constitute themselves legally as discrete faith communities with clear boundaries, identifiable leaders, and neatly defined orthodoxies.[42] These aspects of governance, and in particular the political productivity of governing religion as right, are obscured from view in analyses which take for granted either the assump-tion of a distanced neutrality, which underlays the curatorial model, or the assumption of fixed and stable religious "traditions" that exist outside of politics and law, as in the foundations model. Exploring a second aspect of governing religion as right, the next section turns to the dynamics of empowerment and exclusion that shape the experiences of those who are subject to these legal distinctions and designations.

## 3    Empowerment and Exclusion

Under a regime of religious rights, becoming and being a "religion" bestows political benefits. Governing religion as right funnels individuals into discrete faith communities, empowers those communities and their spokespersons, and marginalizes other modes of solidarity. It hones in on religious identity as stable and singular, compelling those who identify

[41] For a discussion of several of these contexts, and an effort to unsettle the assumption that religious freedom is a singular achievement and that the problem lies in its incomplete realization, see the essays collected in Winnifred Fallers Sullivan, Elizabeth Shakman Hurd, Saba Mahmood, and Peter G. Danchin, eds., *Politics of Religious Freedom* (Chicago: University of Chicago Press, 2015).
[42] On the implications of the global religious rights imperative for Alevi communities in Turkey see my article "Alevis under Law: The Politics of Religious Freedom in Turkey," *Journal of Law and Religion* 29, no. 3 (September/October 2014): 416–35.

with several traditions to choose one above the others. Boundaries solidify. Lines between groups become more salient – a process described by the political theorist William Connolly as a modern drive to overcode the boundaries between groups.[43] Governing through religious rights overcodes the boundaries between religions, and also between religion and non-religion.[44] It produces discrete faith communities, perpetuating the notion that such communities are, in Martin Stringer's words, "coherent enough that individuals and leaders within [them] could more easily influence others within the community than those outside." It endows these communities with agency and authenticity. As Stringer explains, the "assumption of strong boundaries and clear identities within the community" means that "rather than breaking down these boundaries the policy aims to work within them and to build on the assumed solidarity of the community itself."[45]

Under a religious rights regime, established faith communities require representatives and spokespersons. A religious rights framework elicits individuals authorized by themselves or others to speak in the name of these communities. Their representatives meet with governments, nongovernmental organizations, international organizations, and other power brokers, becoming the objects of religious engagement and outreach. Governments and other authorities expect and encourage leaders to step forward. As recent US and UK foreign religious outreach activities illustrate, these dynamics contribute to shaping a broader political field in which some religious groups are empowered and others are excluded. The USAID Program Guide on Religion, Conflict and Peacebuilding informs practitioners:

Engagement with top religious leadership is critical to engagement at the local level. Without buy-in at this level, leaders at the local level may be reluctant to participate in the program even if they are interested and personally supportive of the program. As a result, organizing at the community level requires a great deal of groundwork and relationship building with senior leaders.[46]

The United States relies on religious leaders to secure access to local populations and to garner support for American strategic objectives in

---

[43] William E. Connolly, *The Ethos of Pluralization* (Minneapolis: University of Minnesota Press, 1995), 167.
[44] On the concept of "non-religion" see the work of the Nonreligion and Secularity Research Network at http://nsrn.net.
[45] Martin D. Stringer, *Discourses on Religious Diversity: Explorations in an Urban Ecology.* Farnham: Ashgate, 2013, 137.
[46] United States Agency for International Development, "Religion, Conflict and Peacebuilding: An Introductory Program Guide," Office of Conflict Management and Mitigation, Bureau for Democracy, Conflict, and Humanitarian Assistance (Washington, DC: 2009): 11.

conflict and post-conflict situations. In 2005, a Pentagon contractor paid Sunni religious scholars in Iraq $144,000 to assist in its public relations campaign. The contractor, "the Lincoln Group," was paid to "identify religious leaders who could help produce messages that would persuade Sunnis in violence ridden Anbar Province to participate in national elections and reject the insurgency."[47] Such programs would likely violate the Establishment Clause if undertaken domestically in the United States because they are sect-preferential.[48] As Jessica Hayden explains, "these programs are differentiated from domestic faith-based initiatives in that beneficiaries of US funds are not chosen in spite of their religious affiliations, but rather *because* of their ties to a specific religious group."[49] The British Foreign & Commonwealth Office (FCO) also pursues religious outreach as part of its external religious freedom programming, encouraging its 270 diplomatic posts to "consult local religious leaders" to determine whether "religious believers [are] able to publicise their religious information and promotional materials without unreasonable interference by the authorities."[50]

The point is neither to condemn nor to celebrate these activities, but rather to understand the assumptions about religion, religious community, and religious authority that underlie them. In this case, as Stringer points out, religions are presumed to be entities with agency, strong boundaries, and clear identities within the community, reflecting the assumptions of what I call the foundations approach to religion and rights, and occluding the processes through which particular authorities and groups become publically and politically recognizable as "religions." In an interesting reversal of these selection dynamics, governing religion as right also results in a politics of *non*-recognition for individuals and groups that fail to qualify as religions. While empowering those who qualify as faith communities and their spokespersons, governing through religious rights renders politically invisible less established religions, collective ways of life, and modes of belonging that do not qualify as religious. Non-traditional religions, unprotected religions, and non-religions are pushed into the wings. Violations of

---

[47] David S. Cloud and Jeff Gerth, "Muslim Scholars Were Paid to Aid US Propaganda," *New York Times*, January 2, 2006, www.nytimes.com/2006/01/02/politics/02propaganda .html?_r=0.
[48] Although, of course, in practice, and despite the official First Amendment jurisprudence, there is a long history of cooperation and collaboration between law enforcement officials and religious authorities in the United States, as is occurring at the time of this writing in Ferguson, Missouri.
[49] Jessica Powley Hayden, "Mullahs on a Bus: The Establishment Clause and US Foreign Aid," *The Georgetown Law Journal*, Vol. 95 (2006): 171–206.
[50] UK Foreign and Commonwealth Office. "Freedom of Religion or Belief – How the FCO Can Help Promote Respect for This Human Right." June 2010. www.gov.uk/govern ment/uploads/system/uploads/attachment_data/file/35443/freedom-toolkit.pdf, 17.

human dignity that fail to register as religious infringements languish beneath the threshold of national and international recognition as the international community dedicates limited resources to rescuing perse-cuted religionists. To see these exclusionary dynamics requires expanding the field of vision beyond the curatorial and foundational constructions of (what counts as) religion, religious rights, and religious freedom to encom-pass a broader field of religiosities, histories, and forms of sociality. It requires apprehending local practices and histories on their own terms, particularly to the extent that they appear as unintelligible or illegible from within the normative understandings of religion that underlie the curatorial and foundations approaches and dominate UN and other international discussions and debates on international human rights.[51]

The K'iche', a Maya ethnic group living in the Western highlands of Guatemala, represent a case in point. Perhaps the most well-known K'iche' is indigenous rights activist Rigoberta Menchú, who won the Nobel Peace Prize in 1992. Tensions between the K'iche' community and the Guatemalan state have increased in recent years as 87 Maya communities in the department of El Quiché, represented by the K'iche' People's Council (KPC), unanimously rejected the mining and hydro-electric projects proposed for Guatemala in the wake of the North American Free Trade Agreement and other treaties. Foreign commer-cial companies responded to those rejections with offers to reward the KPC with a higher percentage of profits, failing to understand that, as Dianne Post observes, "the reason these projects were rejected is not monetary but is linked to the refusal to allow destruction of the earth for religious and cultural reasons."[52] The KPC's refusal to acquiesce in these projects has led to discrimination and violence, including massive violations of K'iche' cultural heritage and land rights facilitated by collusion among multinational mining corporations, the police, and the Guatemalan state.

The K'iche' are unable to portray these abuses as violations of religious rights or freedoms. As described by scholars of indigenous religion in other contexts,[53] K'iche' attachment to the land does not register legally as religious, making it difficult (and perhaps impossible) for them to avail

---

[51] For an analysis of the decontextualized treatment of religion in the monitoring practices of five UN human rights treaty bodies between 1993 and 2010 and the tensions between those practices and various domestic legal frameworks, see Helge Årsheim, *Legal Forms of the Religious Life*, PhD Dissertation, Faculty of Theology, University of Oslo, 2014.

[52] Dianne Post, "Land, Life, and Honor: Guatemala's Women in Resistance," *Fair Observer*, October 5, 2013, www.fairobserver.com/article/land-life-honor-guatemala-women-resistance.

[53] Greg Johnson, *Sacred Claims: Repatriation and Living Tradition* (Charlottesville: University of Virginia Press, 2007).

themselves of national or international legal protections for religion, religious rights, or religious freedom. Their claims are invisible to orga-nizations, actors, and legal instruments focused on the legal realization of religious rights and freedom, because, in an important sense, they are perceived as having no (recognizable) religion.[54] The 2012 State Department International Religious Freedom Report for Guatemala con-firms that there were "no reports of abuses of religious freedom" in the country. When cast in terms of religion as right (to believe or not to believe), violations of K'iche' religio-cultural heritage fall below the thresh-old of political and juridical legibility.

Similar dynamics have emerged in the Central African Republic (CAR) where, in 2010, the US State Department's Religious Freedom Report observed that as many as 60 percent of the imprisoned women in the country had been charged with "witchcraft," which is considered a criminal offense by the government. The State Department's report concluded that the CAR government "generally respected religious freedom in practice," and gave the CAR a good ranking overall. Discrimination against African traditional religion does not count as religious discrimination. Women imprisoned for witchcraft cannot suf-fer from violations of religious freedom because, in the eyes of the government and the authors of the religious freedom report, they have no religion. Like the K'iche', the imprisoned women in the CAR fail to appear on the persecuted religious minority radar screen because abuses of their cultural practices do not count as violations of the right to believe or not to believe protected by international instruments and advocates for religious freedom.

Individuals who identify with multiple religions also find themselves in a legally precarious position under legal regimes that govern religion as right. While the new state of South Sudan guarantees a list of religious rights for its minority citizens, including its Muslim population, the government has struggled with the question of religious representation because there, as elsewhere, it is often difficult to classify citizens as believers or non-believers as part of a single faith tradition.[55] As is the case in a lot of African countries, many South Sudanese practice both African traditional religions and Christianity or Islam, and do not distin-guish sharply between these and other traditional practices. As Noah

---

[54] Tisa Wenger, *We Have a Religion: The 1920s Pueblo Indian Dance Controversy and American Religious Freedom* (Chapel Hill: The University of North Carolina Press, 2009).

[55] Noah Salomon and Jeremy F. Walton, "Religious Criticism, Secular Criticism, and the 'Critical Study of Religion': Lessons from the Study of Islam," in *The Cambridge Companion to Religious Studies*, ed. Robert A. Orsi (Cambridge: Cambridge University Press, 2012), 403–20, 406.

Salomon explains, "to think of such 'traditional' practices as distinct confessions does not represent the reality of South Sudanese who may identify as Christians and at the same time see no contradiction in maintaining these rites and rituals."[56] Under a regime of religious rights, those who identify with several traditions either are compelled to choose between (now, suddenly different and discrete) religious traditions and their appointed faith leaders or are rendered religiously invisible – even as officially recognized religions gain newfound political standing. This contributes to a striated political field organized by and governed through particular forms of religious difference. The South Sudanese government's Bureau of Religious Affairs, for example, which registers faith-based organizations, rejects Christian organizations whose constitutions "do not line up with Biblical chapters or verses," according to one inspector in the bureau interviewed by Salomon. In these circumstances, as Rosalind Hackett explains, "African indigenous or traditional religions are hampered by being part of a generalized and heterogeneous category with no clear designation or centralized leadership." Moreover, though indigenous religions are what Hackett aptly describes as "religious freedom misfits," it is not possible to simply assimilate them into international protections because, as she explains, "recent moves to grant institutional, protective space to indigenous expressions of 'spirituality' not only essentialize and objectify traditional forms of belief and practice but also translate and recast them to appeal to cultural outsiders who formally or informally adjudge these rights' claims."[57]

As C. S. Adcock has shown in her work on early twentieth-century India, and as Hackett's research also suggests, translating particular actions and forms of political struggle into the language of religion, religious rights, and religious freedom is not costless. It silences alternative social, political, and religious projects and possibilities. In *The Limits of Tolerance*, Adcock explores the history and politics of *shuddhi*, a ritual form of purification in India that was treated as religious but signified more broadly within a ritual politics of caste. Broadening the canvas, she demonstrates that the identification of shuddhi as religious proselytizing and conversion was not inevitable and carried significant implications for the politics of caste. By delinking debates over Indian secularism from the

---

[56] Noah Salomon, "Freeing Religion at the Birth of South Sudan," *The Immanent Frame*, April 12, 2012. http://blogs.ssrc.org/tif/2012/04/12/freeing-religion-at-the-birth-of-south-sudan/.

[57] Rosalind I. J. Hackett, "Traditional, African, Religious, Freedom?" in Sullivan et al., *Politics of Religious Freedom*, 90–1, 96. See also David Chidester, *Wild Religion: Tracking the Sacred in South Africa* (Berkeley and Los Angeles: University of California Press, 2012) and Makau Mutua, *Human Rights: A Political and Cultural Critique* (Philadelphia: University of Pennsylvania Press, 2008).

politics of caste, the translation of shuddhi into the language of religion deflected attention from its central role in the struggle against the micro-politics of exclusion by low caste groups of all religious backgrounds. Designating shuddhi as religious conversion, or as "making Hindus," thus effaced the complex politics of caste, erased the political complicity of the Gandhian ideal of Tolerance in these forms of exclusion, and, in deflecting attention away from the uncertainties surrounding Untouchables' religious identity, helped to establish a representative politics structured around a Hindu constitutional "majority" and Muslim "minority," laying the groundwork for current tensions.[58]

Like other human rights guarantees, religious rights are a particular and contextually variable technique of governance located firmly within and not outside of history. Governing religion as right requires the authorities, such as religious studies scholars, constitutional experts, and government officials,[59] to make determinations about what constitutes religion and non-religion, who counts as a legitimate religious subject or association, and who is authorized to represent these communities. These processes entrench religious–religious and religious–secular lines of difference and division by enforcing the interests and identities of groups that are defined in religious terms. They strengthen those in a position to determine what counts as religion, and whose religion counts most. They participate in what the ReligioWest project research team describe as the "formatting" of religion.[60] States and other authorities mold religions into static bodies of tradition and convention, transforming them into objects of national and international legal regulation and reform. Practices that fall outside of or that defy the tradition as defined by the religious-freedom-defining authorities are pushed aside.[61] Forms of popular religion that have "little

---

[58] Adcock, *Limits of Tolerance*, 14, 20, 121, 145, 163. As Adcock concludes, "Tolerance supported a 'secular majoritarianism' that served to disempower and minoritize non-caste-Hindus by a combined strategy of encompassment and exclusion." Ibid., 168. Ussama Makdisi has argued along related lines that the discourse of sectarianism under the Ottomans in late nineteenth-century Mount Lebanon "masked a final restoration of an elitist social order in Mount Lebanon and marked the end of a genuinely popular, if always ambivalent, participation in politics." Ussama Makdisi, *The Culture of Sectarianism: Community, History, and Violence in Nineteenth-Century Ottoman Lebanon* (Berkeley: University of California Press, 2000), 147.

[59] For an analysis of the role of Japanese political theorists, constitutional scholars, and scholars of religion in the construction of new theories of religious freedom as a human right in US-occupied Japan, see Jolyon Thomas, *Japan's Preoccupation with Religious Freedom*, PhD thesis, Department of Religion, Princeton University, 2014.

[60] The ReligioWest research project was directed by Olivier Roy and based at the European University Institute in Fiesole. www.eui.eu/Projects/ReligioWest/Home.aspx.

[61] An example is the tense relationship between the Catholic Church and the Southern Italian popular religion of Italian Harlem's Catholic community, as described by Robert Orsi, who observes that the Church's "cultural distaste for the immigrants amounted to

to do with the Church," do not "look like religion," or are deemed politically undesirable or unorthodox for whatever reason (e.g., because they challenge caste hierarchies, threaten entrenched material interests, or cast doubt on the legitimacy of social order in new ways) are cast out as "pagan and primitive."[62] Those who do not choose to speak or act as Christians, as Hindus, as Jews, or as unbelievers are rendered inaudible. Amahl Bishara comes close to making this argument when she writes that to identify Christian Palestinians *as* Christians is "not inviting to those Christian Palestinians who do not choose to speak or act as Christians."[63]

These dynamics of empowerment and exclusion inhere in the logic and practice of governing through religious rights nationally or internationally. They cannot be mitigated or transcended through the adoption of a more informed understanding of religion or a more effective regime of rights implementation. Critics of the politics of multicultural recognition have developed these insights in other contexts.[64] Patchen Markell diagnoses the binding quality of recognition and challenges its equation with justice, asserting that the conception of justice employed by recognition obscures the dynamics of subordination.[65] The politics of recognizing faith communities and their leaders correspondingly contributes to fixing particular politically authorized religious differences while subduing alternative forms of subjectivity and agency. Analyzing the legal and affective practices and social effects of liberal multiculturalism in Australian indigenous communities, Elizabeth Povinelli has shown that the liberal insistence, in the name of cultural or religious diversity, that colonized subjects identify not with the colonizer but with authentic traditional culture serves to reinforce liberal regimes of governance rather than opening them up to difference.[66] In the case at hand, individuals and groups who resist or subvert the secular–religious and religious–religious taxonomies and hierarchies instantiated through religious rights are sidelined. In a discussion of the politics of international attempts to protect

---

an existential rejection of their whole value system." Robert A. Orsi, *The Madonna of 115th Street: Faith and Community in Italian Harlem, 1880–1950*, 3rd edition. (New Haven: Yale University Press, 2010), 189.

[62] "The people knew, of course, that the leaders of the American church downtown frowned upon their devotion, upon this public display of a Catholicism that was viewed as pagan and primitive." Ibid., 220–1.

[63] Amahl Bishara, "Covering the Christians of the Holy Land," *Middle East Report* 267 (Summer 2013): 7–14, 14.

[64] On recognition as a political good, see the classic statement by Charles Taylor, *Multiculturalism and "The Politics of Recognition": An Essay with Commentary* (Princeton: Princeton University Press, 1992).

[65] Patchen Markell, *Bound by Recognition* (Princeton: Princeton University Press, 2003).

[66] Elizabeth Povinelli, *The Cunning of Recognition: Indigenous Alterities and the Making of Australian Multiculturalism* (Durham: Duke University Press, 2002).

the rights of sexual minorities, Joseph Massad has shown that the "Gay International"[67] reifies boundaries and risks imposing Western sexual ontologies and categorizations in diverse contexts.[68] Adapting Massad's terms, one could say that governing religion as right conjures and grants legal personality to "religions" while sidelining diverse and multiform practices that cannot or refuse to be assimilated into this normative frame.

## 4    Religion and Politics After Religious Rights?

National and international efforts to govern religion as right are often defended as the answer to how to co-exist peacefully, prosper economically, and thrive politically.[69] Celebrated as the key to emancipating individuals and minority communities from violence, poverty, and oppression, religious rights are heralded as the solution to political and economic backwardness, the tyranny of immoderate and archaic forms of religion, and the violence and despair associated with societal ills from women's oppression to economic desperation to environmental degradation. Communities around the world are seen as in need of transformative social engineering to create the conditions in which secular states and their religious subjects become tolerant, believing or non-believing consumers of free religion, willing practitioners of faith-based solutions to collective problems, and, more often than not, compliant defenders of American and/or international security.[70] Guarantees for religious rights are said to ensure an ideal balance between allegiance to the state and to (reformed) religion under law.

Today, scholars and practitioners working in the intersections between religion, law, human rights, and international relations are subject to considerable pressure to offer a prescription for how to live together peacefully with social and religious difference. For many, the discourse

---

[67] "It is these missionary tasks, the discourse that produces them, and the organizations that represent them that constitute what I call the *Gay International*." Joseph A. Massad, "Re-Orienting Desire: The Gay International and the Arab World," *Public Culture*, Vol. 14, no. 2 (Spring 2002): 361–85, 362.

[68] "In contradistinction to the liberatory claims made by the Gay International in relation to what it posits as an always already homosexualized population, I argue that it is the discourse of the Gay International that both produces homosexuals, as well as gays and lesbians, where they do not exist, and represses same-sex desires and practices that refuse to be assimilated into its sexual epistemology." Ibid., 363.

[69] There are many examples. See, for instance, Thomas F. Farr, *World of Faith and Freedom: Why International Religious Liberty Is Vital to American National Security* (Oxford: Oxford University Press, 2008).

[70] William Inboden, "Religious Freedom and National Security," Hoover Institution Policy Review, no. 175 (October/November 2012), www.hoover.org/publications/policy-review/article/129086.

of religious rights and freedoms has persuasively presented itself as the solution. Powerful forces, including the law, incentivize individuals and groups to articulate demands for justice, equality, and dignity in the languages of religious rights and freedoms. It is understandable that some perceive that they have no alternative but to seek protections on these grounds. If being or becoming a persecuted religionist makes it more likely that development aid will be forthcoming or asylum will be granted, then it should not be surprising to see a rise in persecuted religionists.

In exploring the politics of governing religion as right, my intention is neither to judge those individuals or groups who find themselves in difficult circumstances nor to undermine those who are working to assist them. It is, rather, to insist on the importance of pulling back from the immediate situation to tell a larger story about the politics of governing religion as right. To return to the questions posed in the Introduction, governing through religious rights presupposes and elicits an emphasis on religion and religious difference as exceptionally threatening forms of social difference that need to be kept in check by the authorities (the logic of sectarianism) while obscuring complex social, economic, and political histories and inequalities, as well as alternative religiosities. It elevates established voices and institutions of protected groups that enjoy good relations with state and transnational authorities, while marginalizing individuals and groups that fall into the gray areas between contemporary formations of the secular and the religious (the logic of empowering faith communities). As I discuss elsewhere, it privileges and protects a particular understanding of religion as the right to choose and enact one's belief or non-belief (the logic of the free religious marketplace).[71] Before concluding that religious persecution is the culprit – and that legal guarantees for religious rights is the solution – it is worth weighing the costs of locking into a narrative that protects religion in law, posits religion as a stable and coherent category in legal and policy analysis, and privileges religion as a basis for protecting human flourishing.

One might object that the governance perspective on religious rights raises more questions than it answers. Is it not the case that any legal or political practice that invokes a categorical group distinction, whether gender, racial, linguistic, ethnic, or national, will re-inscribe the very markers of difference that it is intended to moderate or transcend? In what sense is this dilemma of recognition unique to the category of religion? There are resemblances between some of the dynamics

[71] See my essay "Believing in Religious Freedom" in *Politics of Religious Freedom.*

associated with the category of religion and other markers of identity. Yet different categories invoke different histories and shape sociopolitical landscapes in distinctive ways. Religion is not just any category. It has a history. To invoke religious rights is to invoke this history, including a long and complex genealogy emerging in the contentious and often violent history of church-state religions in Europe at the time of the founding of the modern state system, and forged through the histories of colonialism and other forces of capitalist modernity, as David Chidester, Nandini Chatterjee, Jean and John Comaroff, and many others have shown.[72] The history and politics of governing religion as right are hidden from sight in both the curatorial and foundations approaches to religion and rights. In assuming a position of neutrality above the cultural fray, the former fails to acknowledge the ways in which rights advocacy actively shapes and transforms the fields of religious and political practice and possibility in which it is deployed. In presuming the stability and boundedness of particular religious traditions, the latter fails to acknowledge the dynamic, shifting, and exclusionary political pressures and processes through which particular communities and orthodoxies are designated as "religions," and particular leaders authorized to speak on their behalf.

There are no authorities in contemporary international relations that are equipped to declare what is or is not "religion" with such a degree of certainty as to permit the enactment of international laws and regulations that discriminate among people and groups on that basis.[73] There are no shared criteria that enable one to identify and delimit the sphere of religion in a manner neutral to all religions.[74] Inventing a more inclusive mechanism of international legal protection by increasing the number or diversity of groups represented, or by exchanging a focus on religion as belief for a more inclusive model of religion as communal practice or ethics, does not offer a solution. A new and improved "International Religious Freedom 2.0" will repeat and re-instantiate a modified version of the same exclusionary logic.

[72] See Chatterjee, "English Law, Brahmo Marriage, and the Problem of Religious Difference: Civil Marriage Laws in Britain and India;" David Chidester, *Savage Systems: Colonialism and Comparative Religion in Southern Africa* (Charlottesville: University of Virginia Press, 1996); Jean and John Comaroff, *Of Revelation and Revolution: Christianity, Colonialism, and Consciousness in South Africa*, Vol. 1 (Chicago: University of Chicago Press, 1991).

[73] Winnifred Fallers Sullivan, "The Ambassador of Religious Freedoms," *The Sunday Edition with Michael Enright*, CBC Radio, February 24, 2013, www.cbc.ca/thesundayedition/shows/2013/02/24/ambassador-of-religious-freedoms/

[74] Jakob de Roover, "Secular Law and the Realm of False Religion," in *After Secular Law*, 43 (43–61).

There is no single policy prescription that emerges from this discussion of the politics of governing religion as right. This diagnosis may not sit well with many liberal internationalists and others for whom human rights have come to represent the last best hope for humankind. Different versions of both the curatorial and foundations models are likely to retain their appeal for some time across the political spectrum, particularly among legal scholars and practitioners, political scientists, and human rights advocates. Those interested in thinking more critically about the politics of international human rights can attempt to inform and enrich policy discussions, or, perhaps, try to convince political scientists and others to think more expansively about social freedom and the complex histories of human rights. A different, but arguably no less important, ambition is to avoid reproducing, in the guise of protecting human flourishing, the very normative distinctions and discourses that are most in need of interrogation and politicization. Religious rights fall in this category. Governing social difference through religious rights authorizes particular understandings of what it means to be religious, and what it means for religion to be free. Naturalizing the lines of difference they are intended to manage or tame, these projects risk exacerbating the very social tensions, forms of discrimination, and inter-communal discord they claim to be uniquely equipped to transcend. Far from a settled norm and achievable social fact that tames violence and mitigates insecurity, to govern religion as right is a historically specific and contextually variable mode of managing social difference. Other approaches will yield different results.[75] None will be perfect.

---

[75] For a "bottom up" history of the improvised arrangements through which early modern Europeans sometimes coexisted peacefully across lines of difference, see Benjamin J. Kaplan, *Divided by Faith: Religious Conflict and the Practice of Toleration in Early Modern Europe* (Cambridge: Belknap, 2007).

# 9    The Vernacularization of Women's Human Rights

*Sally Engle Merry and Peggy Levitt*

How do human rights travel around the world? They are created through diverse social movements in many parts of the world and crystallized into a form of symbolically universal law under the supervision of the UN and its human rights organizations. This law-like form is then reappropriated by myriad civil society organizations and translated into terms that make sense in their local communities. This is the process of vernacularization: the extraction of ideas and practices from the universal sphere of international organizations, and their translation into ideas and practices that resonate with the values and ways of doing things in local contexts. Local places are not empty, of course, but rich with other understandings of rights, the state, and justice. Some of the most important actors in this process are women's non-governmental organizations (NGOs) that translate human rights ideas into terms that make sense to them. This article explores the way NGOs vernacularize women's human rights discourse in four cities. Human rights constitute a valuable political resource in many of these situations, although their adoption is influenced by unequal North/South resources. This is an empirical study of an existing social process, not one of advocacy, but advocates adopt the strategies we are describing.[1]

The process of vernacularization converts universalistic human rights into local understandings of social justice. While considerable scholarship on human rights sees universalism and relativism as oppositional,

---