

## **Religion and the Human Rights Movement**

**By Jean-Paul Marthoz and Joseph Saunders<sup>1</sup>**

Is there a schism between the human rights movement and religious communities? Essential disagreements appear increasingly to pit secular human rights activists against individuals and groups acting from religious motives. The list of contentious issues is growing: on issues such as reproductive rights, gay marriage, the fight against HIV/AIDS, and blasphemy laws, human rights activists and religious groups often find themselves on opposing sides. As illustrated by the Muslim headscarf debate in France and Turkey, controversies linked to religion also have confused many in the human rights movement and even led some activists to express strong reservations about certain public expressions of religious conscience.

Western Europe, the most secularized continent in the world, has been in the eye of the storm. The controversy that hit the European Union in October 2004 around the proposed appointment to the European Commission of Italian conservative Catholic Rocco Buttiglione illustrates some of the issues at stake. Unperturbed by the furor he was arousing, the candidate for Commissioner on Justice, Freedom, and Security—who in that function would have been in charge of fighting discrimination—affirmed in front of bewildered members of the European Parliament that “homosexuality is a sin” and that “the family exists to allow women to have children and be protected by their husbands.” Although he insisted that he would nonetheless uphold the equality of all citizens, he was invited to withdraw his candidacy by the Commission’s president-elect.

In November 2004 the religiously inspired murder of Theo Van Gogh, a well-known Dutch journalist and filmmaker who two months earlier had released a controversial film on violence against women in Islamic societies, triggered an infamous cycle of violence, leading to the burning of mosques and Christian churches. These traumatic events in a country that prides itself for its tolerance placed the issue of religion, and more

particularly Islam, in the center of public controversy. While many Dutch people of all faiths and communities demonstrated against revenge attacks and discrimination, one prominent official responded with a suggestion to revive, in the name of coexistence, a 1932 blasphemy law.

### **The Challenge**

“Fifty years after its proclamation,” writes Michael Ignatieff, “the Universal Declaration of Human Rights has become the sacred text of what Elie Wiesel has called a ‘worldwide secular religion.’”<sup>2</sup> The growth of the human rights movement has given it the confidence to take on controversial issues and extend the promise of the Universal Declaration on Human Rights (UDHR) in areas that it had previously neglected.

This “new frontier,” however, is colliding with the “return of the religious” in many societies, with what French political scientist Gilles Kepel has called “God’s Revenge,”<sup>3</sup> featuring the reassertion of more dogmatic or conservative forms of beliefs inside and outside of mainstream religious denominations.

While it would be inappropriate for the human rights community to advocate for or against any system of religious belief or ideology and wrong to judge or interpret the principles of any religion or faith, it would be equally mistaken for the human rights groups to turn away from human rights violations or appeals for discrimination made in the name of religious principle or law.

Defining how to engage with religious communities thus has become one of the major challenges for the human rights movement. To paraphrase Ignatieff, human rights cannot truly go global unless it goes deeply local, unless it addresses plural philosophies and beliefs that sometimes collide with or appear to resist its appeal to universal norms. If international human rights standards have a claim to universality their relevance must be demonstrated in all contexts, and especially where religion determines state behavior.

This essay argues that the human rights movement needs to be able to provide clearer answers to the hard questions presented by the demands of believers and by religious organizations seeking direct political influence.

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<sup>2</sup> Michael Ignatieff, *Human Rights as Politics and Idolatry* (Princeton: Princeton University Press, 2001), p. 53.

<sup>3</sup> Gilles Kepel, *La Revanche de Dieu. Chrétiens, juifs et musulmans à la reconquête du monde* (Paris: Le Seuil, 1991).

On the one hand, rights activists should more aggressively stand up for religious freedom and the rights of believers in secular and religious societies alike; on the other, they should directly oppose pressures from religious groups that seek to dilute or eliminate rights protections—for women, sexual minorities, atheists, religious dissenters, and so on—that such religious groups view as inconsistent with fundamental religious teachings and deeply held beliefs. Human rights groups should oppose efforts in the name of religion to impose a moral view on others when there is no harm to third parties and the only “offense” is in the mind of the person who feels that the other is acting immorally.<sup>4</sup>

### **A Global Phenomenon**

Questions of how the human rights movement should engage with religious communities are particularly difficult because they occur in a highly volatile context marked by the rise of “fundamentalism,” religious extremism, the fusion between religion and ethnic identity in many armed conflicts,<sup>5</sup> and the worldwide impact of terrorism in the name of God and responses to it.

The rolling news flows in the global village have given these phenomena increased visibility and potency. Attacks against Christians in Pakistan or against Muslims in India, new incidents of anti-Semitism in Western Europe, and hate crimes against Muslims in the U.S. or Europe immediately take on a global dimension. The worldwide ripples of the “headscarf” controversy in France—street demonstrations in Arab countries, diplomatic disavowal, and even crude pressure through the abduction in Iraq of two French journalists<sup>6</sup>—have vividly underscored the sensitivity of religious issues in the global village.

Religion indeed plays a pervasive and often powerful role in global affairs. Problems of a religious nature often implicate international security as much as they do human rights. In a trend reminiscent of King Louis XIV’s 1649 proclamation declaring French protection of the Maronite community in Lebanon, or of the 19<sup>th</sup> century European powers’ “humanitarian interventions” against the Ottoman Empire to “protect

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<sup>4</sup> As emphasized in the next essay in this volume, defense of the same basic principle is essential to safeguarding the dignity and humanity of lesbian, gay, bisexual, and transgender people, whether efforts to restrict their rights are made in the name of religion or of tradition, culture, or societal values.

<sup>5</sup> See Harold R. Isaacs, *Idols of the Tribe, Group Identity and Political Change* (Cambridge, Massachusetts: Harvard University Press, 1989).

<sup>6</sup> The group that abducted Georges Malbrunot, Christian Chesnot, and their Syrian driver initially sought repeal of the French law on conspicuous religious signs.

persecuted Christians,” religious freedom and the fate of religious minorities have assumed an increasingly prominent place in international diplomacy.

In 1998, under pressure from Christian groups and representatives of a number of other faiths, the U.S. Congress passed the International Religious Freedom Act. The law established an Office of International Religious Freedom in the State Department and an independent, bipartisan Commission on International Religious Freedom, and tasked them with monitoring and reporting on the incidence of religious persecution around the world. Based on the annual reporting of these bodies, the U.S. president can take diplomatic and economic measures against “countries of particular concern,” making one particular right—freedom of religion—a unique yardstick of foreign relations.

The religious/human rights equation and its role in global politics are made still more complex due to major differences among democracies concerning the place of religion in public life. The gap between a “post-religious Europe” and the United States is particularly significant and not without consequences for the priorities and approaches of the international human rights movement. A 2002 survey by the Pew Forum on Religion and Public Life concluded that, among wealthy nations, the United States stands alone in its embrace of religion. Fifty-nine percent of the U.S. population surveyed stated that religion played an important role in their life, against 30 percent in Canada, 33 percent in Great Britain, 21 percent in Germany, and 11 percent in France.<sup>7</sup>

The differences extend to the very definition of religion itself. In France, Belgium, Germany, and Argentina, for example, some religious groups that are considered legitimate religious denominations in the United States have been denounced as “sects” or “psychological cults,” as a threat to the foundations of democratic freedom, and, as a result, subjected to what the groups see as unwarranted discrimination or harassment. Such differences, mostly raised within the context of OSCE (Organization for Security and Cooperation in Europe) meetings, have been approached with great unease by the various components of the international human rights movement.

## ***History***

Some in secular circles would suggest that history has come full circle. To them, the human rights movement is the product of the Enlightenment and, as such, part of a determined attempt at reducing the power of religion over state and society. Today,

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<sup>7</sup> “Among Wealthy Nations...U.S. Stands Alone in its Embrace of Religion,” The Pew Research Center for the People & the Press, December 19, 2002, p. 2.

however, it is resurgent religious movements that are challenging the place of human rights.

In some countries, in France in particular, the history of the human rights movement is intimately linked to *laïcité* (secularism), to the roll back of the Catholic Church and the separation between church and state. The Dreyfus affair at the end of the 19<sup>th</sup> century was the symbol of this clash and the founding moment for the French League of Human Rights (Ligue des Droits de l'Homme, LDH). The controversy around the role of the official Church in supporting Petainism<sup>8</sup> during the Second World War deepened this mutual suspicion. In Spain, the ideological marriage between the Catholic Church and the Franco dictatorship generally led, until the early sixties, to a chasm between the democratic opposition and Catholicism.

History, however, also tells another story. In other countries religion was the prime mover behind campaigns for human rights. The role of U.S. and English Protestant churches in the anti-slavery campaigns, in the Congo reform movement,<sup>9</sup> and in solidarity with Armenian victims in the late days of the Ottoman Empire belong to the best chapters of the history of the human rights movement.<sup>10</sup> The “social teachings” of the Catholic Church in the late 19<sup>th</sup> century also created a context that allowed committed Christians to press actively for social justice and contributed to the development of strong labor unions and mutual help associations that fought for social and economic rights.

In South Asia, Hinduism was the inspiration of Mahatma Gandhi’s long march for the liberation of India. Since the occupation of Tibet by China in 1949-51, a religious figure—the Dalai Lama—has been guiding the Tibetans’ struggle for freedom, pushing for a democratic, self-governing Tibet “in association with” China.

In the 1950s and 1960s the human rights movement grew in part thanks to the involvement of leading religious groups and individuals. Although the Church took a cautionary approach, Catholic intellectuals (first among them Catholic writer *par excellence*

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<sup>8</sup> Maréchal Pétain, a former First World War hero, ruled France during the German occupation. His government, based on an ultra conservative Catholic ideology, collaborated with the enemy and in the deportation of Jews. Although many Catholics took part in the Résistance and the Catholic hierarchy protested the deportations, especially after the July 16 round-up of 12,884 Jews at the Velodrome d’Hiver, the image of the Church was tainted in many liberal circles.

<sup>9</sup> Adam Hochschild, *King Leopold’s Ghost* (Boston: Houghton Mifflin Co., 1998).

<sup>10</sup> Suzanne Moranian, “The Armenian Genocide and American Missionary Relief Efforts,” in Jay Winter. ed., *America and the Armenian Genocide of 1915* (Cambridge (U.K.): Cambridge University Press, 2004), pp. 185-213.

François Mauriac), journalists, and activists played a prophetic role in the fight against the use of torture and “disappearances” by the French army in the Algerian war of independence, invoking their faith to combat what they considered brutal attacks against human dignity.

The civil rights movement in the United States was powerfully inspired by religious figures, among whom Martin Luther King, Jr., stands as an icon, and was in many cases supported by mainstream Christian and Jewish denominations.

After the 1964 military coup in Brazil a significant part of the Catholic Church, centered around Bishop Dom Helder Camara, inspired by the teachings of the Second Vatican Council (1962-1965) and of mainstream Protestant denominations, became a vibrant defender of human rights. Political coups in Bolivia, Chile, and Uruguay in the 1970s and civil wars in Central America in the 1980s often placed the official Church, or at least some of its most powerful voices, on the side of the human rights movement. The Servicio Paz y Justicia founded in 1974 in Argentina by 1980 Nobel Peace Prize laureate Adolfo Perez Esquivel, the Vicaria de Solidaridad in Chile, and the Tutela Legal in El Salvador were focal points of the human rights struggle.

San Salvador Archbishop Oscar Arnulfo Romero’s last sermon in March 1980, with his passionate plea to the army and National Guard to “disobey an immoral law”—“Brothers, you come from your own people. You are killing your own brother peasants when any human order to kill must be subordinate to the law of God which says, “Thou shalt not kill”—stands out as one of the most powerful documents of the Latin American human rights struggle.

In the 1980s in the Philippines, the Catholic Church was one of the major actors in the overthrow of the Marcos dictatorship. In Eastern Europe, particularly in Poland with its strong Catholic Church and in East Germany with the Lutheran Church’s support of independent pacifists and dissidents, religious organizations joined in the fight against state authoritarianism and repression. In the 1970s, in the wake of the ratification of the Helsinki Accords,<sup>11</sup> Jewish organizations and individuals in particular played a decisive

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<sup>11</sup> The Helsinki Accords were the result of the final act of the Conference on Security and Cooperation in Europe held in Helsinki (Finland) in 1975 between the NATO Countries and the Soviet bloc. The civil rights section of the agreement, the so-called third basket, committed the participating states to respect human rights and fundamental freedoms.

role in Eastern Europe and the USSR in the defense of dissidents and fundamental freedoms of expression, belief, and movement.<sup>12</sup>

In the 1980s and 1990s, in South Africa, Jews, Christians, and Muslims fought apartheid, in alliance with secular or even Marxist-inspired organizations such as the South African Communist Party and the African National Congress.

During all these decades of struggle and “speaking truth to power,” the international human rights movement was also strongly inspired by religious figures, like Joe Eldridge, of the Methodist church, director of the Washington Office on Latin America (WOLA): “My father always said that we were children of God,” he confided. “My motivation fundamentally emerges from a religious perspective. Having been given life, I believe that we are called to do things that edify life.”<sup>13</sup>

### **Convergence**

In the 1970s and 1980s, religious and human rights groups shared many objectives, reflecting a common conviction of the universality of the human rights message and its grounding in the traditions of most religions, philosophies, and civilizations. Religion-based traditionalism seemed on the wane and “culturalism,” the black-boxing of cultures as exclusivist identity-referents,<sup>14</sup> was not allowed to tyrannize human rights.

Conferences sponsored by UNESCO in the early 1990s on the theme of inter-religious dialogue<sup>15</sup> and, to a great extent, the 1993 U.N.-sponsored World Conference on Human Rights in Vienna—its recognition of the universal character of human rights—were high points of this convergence between the human rights movement and mainstream religious communities. Most in the secular human rights movement agreed that there was indeed a faith-based commitment to human rights.

This convergence was also helped by the priorities imposed on the human rights movement by the brutality of government repression. In Latin America in particular,

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<sup>12</sup> See Jeri Laber, *The Courage of Strangers: Coming of Age with the Human Rights Movement* (New York: Public Affairs, 2002).

<sup>13</sup> Margaret E. Keck and Kathryn Sikkink, *Activists beyond Borders* (Ithaca, New York: Cornell University Press, 1998), p. 91.

<sup>14</sup> Ken Booth, “Three Tyrannies,” in Tim Dunne and Nicholas J. Heeler, eds., *Human Rights in Global Politics* (Cambridge (U.K.): Cambridge University Press, 1999), p. 33.

<sup>15</sup> In particular the conference organized by UNESCO on the contribution of religions to the “culture of peace,” held in Barcelona in December 1994.

civil and political rights were an immediate question of life and death while issues more likely to separate rights and religious communities were confined to the sidelines: most opted for a “coexistence of differences” on flash points like sexuality or abortion. In Mexico, for instance, the bishop of the state of Chiapas, Mgr. Samuel Ruiz, could join with secular human rights activists on civil and political rights issues, and even on social justice concerns implicating rights to health and housing, while retaining his more traditionalist positions on issues like sexuality and reproductive rights.

## **Clouds**

Some clouds, however, were already looming over this human rights euphoria. There was always, of course, some underlying tension. As human rights scholar Louis Henkin has phrased it: “The world of religion and the world of human rights have not always coexisted comfortably. Religion, and some particular religions, have not been comfortable with human rights as an autonomous ideology that is not necessarily rooted in religion. The human rights ideology, on the other hand, has resisted the claims of some religions to disregard the claims of other religions. Some religions have invoked religious dogma to justify distinctions based on religion, gender, or sexual orientations, distinctions that may be contrary to the human rights idea.”<sup>16</sup>

Throughout the “human rights decades,” moreover, churches were not always unanimous in their human rights commitment and there were always factions that fought back or hindered the rise of the human rights movement, sided with military or authoritarian regimes, or were otherwise complicit in human rights abuse. Most of these factions were politically and ideologically conservative and they were dogmatically doctrinaire. They stuck to an interpretation of religious teachings especially in matters of individual morality and social mores at odds with the trajectory of the human rights movement. They were seen as adversaries by all members—secular and religious—of the human rights movement.

Terrorism in the name of Islam, the Dutch Reformed Church’s support for the apartheid regime in South Africa, the Argentinean Catholic hierarchy’s passivity or tacit

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<sup>16</sup> Louis Henkin, “Human Rights: Ideology and Aspiration, Reality and Prospect,” in Samantha Power and Graham Allison, eds., *Realizing Human Rights: Moving from Inspiration to Impact*, (New York: St. Martin’s Press, 2000), p. 29. Ironically, some religious groups have resisted freedom of conscience—religious or otherwise—in some contexts. Prominent examples include refusal to respect the rights to reject religious orthodoxy, to change one’s religion, to become atheist, or to proselytise. Such rights are protected by a number of human rights provisions, including article 18 of the UDHR. “Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practise, worship and observance.”

support for brutal military regimes in the 1970s, the killing of Yitzhak Rabin by a Jewish religious militant, and the support provided by some right wing evangelical churches to leaders of Latin American most brutal regimes—like former Guatemalan president Efraín Ríos Montt, an ordained minister of the Gospel Outreach/Verbo evangelical church—are among the most prominent examples of the use, or misuse, of religion to justify flagrant human rights abuses.

### **Religious “Blowback”**

In the 1960s, when secularism was seen by many as inevitable, part of the unstoppable march of progress, and organized religious communities appeared to be sidelined as a political force, especially in the Western world, French writer and minister of Culture André Malraux challenged that orthodoxy, declaring in oracular fashion that “the twenty-first century will be either religious or not be” (*“le 21<sup>e</sup> siècle sera religieux ou ne sera pas”*).

Malraux’s view seems to have been confirmed in much of the world today: Western Europe excepted, religion has made a strong comeback. “The reemergence of religious discourse,” writes Sara Maitland, “seems to have caught many of us on the hop: baffled, irritated and uncomprehending. For over 250 years, Western democratic thinking has argued, and even fought for, the secularization of the public domain and the political arena... By the second half of the last century, indeed, one might have thought the battle was won... What I see instead is a faltering, a loss of faith, in the whole Enlightenment project.”<sup>17</sup>

While some have welcomed this development as a necessary counterbalance to the excesses of materialism and individualism, others have warned that this religious revival would subvert universal values, sow particularist and divisive attachments, and trigger a broader backlash. Many people have responded, in short, with the same alarm with which they greeted Samuel Huntington’s controversial thesis on the lasting power of and inevitable “clash” between the world’s major civilizations.

The reasons for this religious comeback are manifold. It expresses both renewed individual quests for meaning in a secularized, materialistic world and a more collective search for identity in a world engaged in the uncertainties and insecurities of globalization and diversity.

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<sup>17</sup> Sara Maitland, “In Place of Enlightenment,” *Index on Censorship*, April 2004, p. 8.

In some instances, the reemergence of religion also reflects in part the failure of the states, especially in the developing world, to provide and guarantee fundamental human rights for the majority of their populations. As political scientist Vali Nasr has phrased it: “There is a direct correlation between the scope and nature of religious activism and the decline of the secular state as a functioning political system and as an intellectual construct.... In Kemalist Turkey, Pahlavi Iran... secularism never permeated deep into society... and with little to show in the form of veritable development, the values that sustained these states came under attack.”<sup>18</sup>

The growing political influence of religious communities also has been linked to the “theologization” of state power. In some countries, ruling elites have used particular religious interpretations to shore up their power and maintain the social and political status quo. Saudi Arabia and Iran are prominent examples.

When religion is merged with the state, human rights suffer. Asma Jahangir writes that, in Pakistan, “the judicial institutionalization of Islam has taken a particularly heavy toll on the rights of women and religious minorities, and critics of discriminatory laws are branded un-Islamic or traitorous.... The creed of National Islamization has been used as a stick to beat all emancipatory and human rights movements.”<sup>19</sup>

In Uzbekistan, the government has claimed a monopoly on the interpretation of Islam and has jailed those who diverge from its version of Islam on charges that such “independent” Muslims are attempting to subvert or overthrow the constitutional order. Although the government has used the pretext that such individuals are colluding with terrorism, in the vast majority of cases the suspects have not been charged with terrorism or any other form of violence.<sup>20</sup>

In Egypt, the government—citing the contrary dictates of Islamic law—has made reservations to both the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the International Covenant on Civil and Political Rights (ICCPR), evading its obligation to protect women’s rights.<sup>21</sup>

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<sup>18</sup> Vali NASR, “Religion and Global Affairs: Secular States and Religious Oppositions,” SAIS Review, Summer-Fall 1998. Volume XVIII, Number Two, The Paul H. Nitze School of Advanced International Studies, The John Hopkins University, Washington, pp. 34-5.

<sup>19</sup> Asma Jahangir, “Human Rights in Pakistan: A System in the Making,” in S. Power and G. Allison, eds., *Realizing Human Rights*, pp. 168-9.

<sup>20</sup> Human Rights Watch, “Creating Enemies of the State: Religious Persecution in Uzbekistan” New York: Human Rights Watch, 2004.

<sup>21</sup> Human Rights Watch, “Divorced from Justice: Women’s Unequal Access to Divorce in Egypt,” December 2004.

In Nigeria, twelve state governments in the north have added criminal law to the jurisdiction of Shari'a (Islamic law) courts since 2000,<sup>22</sup> raising a number of serious rights concerns and stirring controversy in a country where religious divisions run deep and where the federal constitution specifies that there is no state religion. Shari'a has been in force for many years in the north, where the majority of the population is Muslim, but, until 2000, its scope was limited to personal status and civil law. Human rights concerns arising in application of religious law in those contexts have been exacerbated by the turn to Shari'a in criminal law matters.

Human Rights Watch research confirms that Shari'a in Nigeria has been manipulated for political purposes, and that this politicization of religion has led to human rights violations.<sup>23</sup> Application of Shari'a in criminal cases in the twelve states has been accompanied by amputation, floggings, the death penalty, discrimination against women, and systemic due process failures. Since 2000, at least ten people have been sentenced to death; dozens have been sentenced to amputation; and floggings are a regular occurrence in many locations in the north. These issues were given world wide prominence through the highly publicized cases of two women, Safiya Hussaini and Amina Lawal, who were condemned by Shari'a courts to death by stoning for alleged adultery. Although the death sentences eventually were overturned, the cases highlighted how Shari'a could be used to justify flagrant human rights violations.

### ***The Threat to Free Speech***

Religious authorities have long tried to “discipline” free speech when it runs counter to religious teachings or dogmas. The paradigm case in recent years is the Salman Rushdie case. On February 14, 1989, following the 1988 publication of Rushdie's book *The Satanic Verses*, the political and spiritual leader of Iran, the Ayatollah Khomeini, issued a religious edict calling on “all zealous Muslims to execute the author of the book as well as those publishers who were aware of its contents, so that no one will dare to insult Islam again.” The case illustrates the difficulty some religious communities have in reconciling their deeply held beliefs with the right to freedom of expression, which “is applicable not only to ‘information’ or ‘ideas’ that are favorably received or regarded as

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<sup>22</sup> Human Rights Watch, “Political Shari'a?”, Human Rights and Islamic Law in Northern Nigeria,” September 2004. Human Rights Watch does not advocate for or against Shari'a per se, or any other system of religious belief or ideology, and takes no position on what constitutes “proper Shari'a.”

<sup>23</sup> Human Rights Watch research in northern Nigeria also revealed patterns of fundamental human rights violations which are not peculiar to Shari'a but typify the human rights situation in Nigeria as a whole. For example, systematic torture by the police, prolonged detention without trial, corruption in the judiciary, political interference in the course of justice, and impunity for those responsible for abuses occur not only in the context of Shari'a cases, but are widespread in cases handled by the parallel common law system.

inoffensive or as a matter of indifference, but also to those that offend, shock or disturb the State or any sector of the population.”<sup>24</sup>

Although the call for murder was rejected by many mainstream Islamic religious leaders, who condemned it as violating Islamic teachings of mercy, most of these same leaders did not defend Rushdie’s right to freedom of expression and asked for the banning of the book. Others, of course, supported the fatwa.

The Rushdie case demonstrated the resonance of the accusation of blasphemy inside of Islam. The responses of leaders of other religions, however, were hardly exemplary. Although they strongly condemned the call for murder, many expressed some sympathy for the Muslim world’s indignation, forming what French philosopher Alain Finkielkraut called “the Holy Alliance of Clergies.”<sup>25</sup>

The conflict between free speech and religion, indeed, is not limited to Islam. Two years before the Rushdie case, with far less publicity, an Austrian court acting on a complaint submitted by the Catholic diocese of Innsbruck had prohibited the Otto Preminger Institut from showing the film *The Council of Love*, based on Oskar Panizza’s controversial (and allegedly strongly anti-Catholic) theater play. The judges referred to article 108 of the Austrian Penal Code banning “religious denigration.” In 1994, to the profound dismay of free speech defenders, the sentence was endorsed by the European Court of Human Rights, relying on a provision of the European Convention on the “rights of others.” The ECHR has tended indeed to show far more deference to state interference in freedom of expression where the speech has a religious or moral content than is the case with political or other forms of speech.

The Catholic Church has strongly expressed its hostility toward other books, plays, and films that it considers “collective defamation.” In September 2004, Dan Brown’s best selling novel *The Da Vinci Code* was banned in Lebanon after complaints from Catholic leaders that it was “offensive to Christianity.” “There are paragraphs that touch the very roots of the Christian religion, said the president of Lebanon’s Catholic Information Center. They say that Jesus Christ had a sexual relationship with Mary Magdalene... Christianity is not about forgiveness to the point of insulting Jesus Christ.”<sup>26</sup>

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<sup>24</sup> European Court of Human Rights, *Handyside against United Kingdom*, December 7, 1976.

<sup>25</sup> Cited in *Le Monde*, October 25, 1989.

<sup>26</sup> “Da Vinci Code banned in Lebanon,” BBC News online, September 16, 2004.

Political correctness in the name of protecting religious sensitivities can have a similarly chilling effect on free speech. In response to the murder of filmmaker Theo van Gogh by a Muslim Dutch citizen of Moroccan origin, the Dutch justice minister, Piet Hein Donner, proposed enforcing a 1932 law banning “scornful blasphemy.” In a parliamentary address said to have “horrified Holland’s free-thinking intelligentsia,”<sup>27</sup> the minister said that the law was needed to curb “hateful comments” that were destabilizing the country. As Brussels Free University professor Guy Haarscher has written in another context, “Instead of protecting individuals in their right to adhere to different conceptions of the Good, [a] society [that caters to political correctness] incurs the risk of depending increasingly on organized groups capable of imposing hypocrisy and the domination of the most conventional ‘thought.’”<sup>28</sup>

### **“Religious Wars”**

Religion has been a part of bloody conflicts that have engulfed dozens of countries in the last fifteen years. In Ireland, Cyprus, the Balkans, Rwanda, Burma, Sri Lanka, Nigeria, Sudan, Israel/Palestine, the Philippines (Mindanao), and Indonesia, individuals acting in the name of religion have played an important role in crystallizing group hatred and violence.<sup>29</sup>

Human Rights Watch has insisted that religion is more properly seen as a tool used by those seeking power than a “root cause” of conflict in such cases,<sup>30</sup> and analysts have pointed out that “despite the perception that religion is always a complicating factor in disputes, religion also includes the tools that may be necessary to break the cycle of conflict.”<sup>31</sup> Others counter, however, that in some particularly intractable confrontations “it is the religious factor, not the conflict of interests, that threatens to prevent a settlement,” leading to the continuation of the cycle of violence and human rights abuses.

Religion also has been thrown into the maelstrom of terrorism in national and international contexts, from attacks against abortion clinics in the United States to

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<sup>27</sup> Ambrose Evans-Pritchard, “Blasphemy law revival upsets the Dutch elite,” *The Daily Telegraph*, November 18, 2004.

<sup>28</sup> Guy Haarscher, *La laïcité* (Paris: Presses Universitaires de France, Collection Que sais-je?, 2004), p. 93.

<sup>29</sup> Malise Ruthven, *Fundamentalism: The Search for Meaning* (Oxford (U.K.): Oxford University Press, 2004), p. 3.

<sup>30</sup> Human Rights Watch, *Slaughter Among Neighbors: The Political Origins of Communal Violence*, (New Haven: Yale University Press, 1995).

<sup>31</sup> “The Power of Religion,” *The Fletcher Forum of World Affairs*, Winter/Spring 1996, Medford, MA, p. vii.

religiously justified suicide bombings in Israel.<sup>32</sup> After 9/11 in particular, politically motivated “fundamentalist” fervor and terror seem to go hand in hand on a global scale and immediately evoke images of suicide bombings, hostage takings, and beheadings.

While such extreme or violent expressions of religious beliefs do not in themselves create particular dilemmas—mainstream religious groups typically join rights groups in denouncing such attacks on civilians as crimes against humanity—they can exacerbate tensions between human rights and religious groups, as has occurred in the abortion debate in the United States, in Israel following suicide bombings, and between some rights groups and Islamist organizations after 9/11.

### ***Tensions Today***

Many common issues continue to be defended together by secular human rights groups and religious groups. In Western Europe and in the United States, the resolute defence of the rights of asylum seekers and economic refugees by mainstream churches as well as their advocacy in favor of global justice continue to offer wide spaces for cooperation. In the global South, in actions complementing the work of secular NGOs, many religious organizations are moving to the forefront of social and economic rights by providing social services to the poor as a response to local government retrenchment and insufficient international development assistance.

However, on other issues at the crossroads of religious dogma and human rights ideology, of personal moral conviction and public health, the points of divergence are growing. The attention given by the secular human rights movement to issues linked to freedom of speech, gender, and sexuality and sexual orientation—always inherent in the human rights ideal, but of growing prominence today—increasingly clashes with the positions taken by many religious groups. Religious humanitarian organizations and secular human rights groups can, however, be on the same wave length when they denounce ethnic cleansing in Darfur and demonstrate together in front of Sudanese embassies.

The question of women’s reproductive rights is a case in point. As Georgina Ashworth has summed up the issue: “Religious fundamentalists, whether in the United States or the Islamic and Hindu worlds, now constitute enormous political forces ranged against women’s enjoyment of their human rights, especially their reproductive rights. Not only do they persecute and make outcasts of proponents of toleration, they also threaten the

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<sup>32</sup> Human Rights Watch, *Erased In A Moment: Suicide Bombing Attack Against Israeli Civilians* (New York: Human Rights Watch, 2002).

livelihoods and even the security of anyone courageous enough to stand up for women's self determination."<sup>33</sup>

Another case in point is the use of condoms in HIV/AIDS prevention. In the Philippines, the Catholic Church, which, as noted above, played an important role in ousting Marcos, has become increasingly hostile to the human rights movement when it advocates for sexual education and condom distribution in AIDS prevention campaigns. The Philippines government has relayed these positions by actively impeding measures that would prevent this deadly disease, chiefly by hampering access to condoms and to scientifically-based information on HIV/AIDS. The Bush administration, following the opinions of U.S.-based conservative religious congregations, has stopped funding the donation of condoms or other contraceptive supplies to the country, preferring instead programs emphasizing abstinence and marital fidelity.

These policies clash with international human rights standards. The International Covenant on Economic, Social and Cultural Rights (ICESCR), ratified by the Philippines, obliges state parties to take steps "necessary for... the prevention, treatment and control of epidemic... diseases," including HIV/AIDS, which is deemed to include access to condoms and complete HIV/AIDS information. The ICCPR establishes the right to information and all major human rights treaties recognize the right to life, which is implicated by policies that interfere with access to life-saving technologies.<sup>34</sup>

The growing tensions between religious and rights communities also have led religious leaders at times to subdue their antagonisms and rivalries to defend common approaches on what they consider shared tenets of faith. The coalition between the Holy See and the International Islamic Conference, for example, has been evident in U.N. conferences on population issues<sup>35</sup> and women's rights.<sup>36</sup> This new prominence of so-called "ethical issues" has created an at times impious convergence among representatives of some mainstream religions; states that are serious human rights abusers, like Saudi Arabia, Iran, or Sudan; and, in many cases, the Bush administration.

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<sup>33</sup> Georgina Ashworth, "The Silencing of Women," in Tim Dunne and Nicholas J. Wheeler, eds., *Human Rights in Global Politics* (Cambridge (UK): Cambridge University Press, 1999), p. 273.

<sup>34</sup> Human Rights Watch, "The Philippines: Unprotected, Sex, Condoms, and the Human Right to Health," May 2004.

<sup>35</sup> Mark Herstgaard, "The Holy War against Birth Control," *Mother Jones*, March/April 2003.

<sup>36</sup> G. Ashworth, "The Silencing of Women," p. 268.

## ***Working with “Fundamentalists”?***

While the human rights movement has an obligation to oppose efforts aimed at using religion to justify laws and public policies that contravene rights standards, it is also critical for the movement to recognize that religious fundamentalism does not always collide with secular human rights standards. Many fundamentalist movements, for example, are deeply involved in helping people’s access to food, housing, health care, and other social services. “Such commitments position many militant religious movements ambiguously, and positively from a human rights standpoint, in relation to social and economic human rights.”<sup>37</sup> On foreign policy issues, although often displaying selective outrage, Christian evangelicals have been active in generating support for victims in conflicts such as those in southern Sudan and Darfur.

These examples challenge the human rights movement to define policies and strategies on how to associate with groups that are sometimes part of the same campaigns and sometimes actively hostile to human rights principles, depending on the issue or the context.

Within significant parts of the secular liberal movement there is a clear dividing line: on the one hand, those who echo French revolutionary Danton’s (in)famous phrase, “No liberty for the enemies of liberty” and want to restrict the civil and political rights (including freedom of expression, association, and assembly) of members of religious groups believed to pose a threat to a rights-respecting political order; on the other hand, those who in the name of freedom of religion and free speech have chosen to defend, like Voltaire, “the right of every man to profess, unmolested, what religion he chooses.” While human rights groups have generally sided with the latter position, some have been tempted to make an exception when it comes to religious movements seen as intrinsically hostile to the liberal political order.

Terrorism in the name of God has exacerbated these debates. In the 1990s, when violent Islamic movements seemed bent on overthrowing secular governments in Algeria or Egypt, and more generally after the terrorist attacks of September 11, 2001 in the United States, October 12, 2002 in Bali, and March 11, 2004 in Spain, the commitment to protect the rights of everyone, including alleged terrorists, not to be tortured or “disappeared” has been under heavy attack, even from quarters usually associated with the human rights community.

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<sup>37</sup> John Kelsay and Sumner B. Twiss, eds., *Religion and Human Rights* (New York: The Project on Religion and Human Rights, 1994), p. 27.

Suddenly human rights groups advocating for consistent standards on human rights are being accused by some secular groups, with whom they cooperated on press freedom or gender issues, of “being soft” on religious extremism and of risking sacrificing other rights, especially women’s rights, and even democracy, by standing up for the rights of terror suspects. Human rights groups need to respond forcefully that the choice is not one between, on the one hand, an “anything goes” approach to terror in which civil liberties are among the first victims and, on the other, the creation of an archipelago of fundamentalist Islamic states that systemically violate women’s and other basic rights. The real challenge is finding ways to preserve basic rights in efforts to combat terror in order to strengthen the appeal of liberal, rights-respecting societies.

### **The “Headscarf” Battles**

The law banning “conspicuous religious signs” in public schools adopted in France in 2004, as well as the prohibition of headscarves for academics and students in Turkish public universities, illustrate many of the tensions described above. In both countries, the battle of the veil has divided the human rights movement, especially advocates of women’s rights. How to defend freedom of belief, women’s autonomy, and the right to education without promoting an often politicized agenda and the undermining of a broader range of rights by religious groups is indeed a challenging question for the human rights movement.

In France, the debate on “religious conspicuous signs”—coming on the heels of tense controversies around migration, Islamophobia, anti-Semitism, and terrorism—has polarized public opinion and cut across traditional political alignments. The headscarf controversy raises the crucial issue of the place of Islam in the French Republic. This is not only because France’s growing Muslim communities are seen as diverging from the mainstream on thorny questions like religious conversion, homosexuality, or divorce, but also because their very existence seems to call into question the long accepted tenet that life in a Western democracy will increasingly secularize adherents of all faiths.

The intensity of the debate, however, has expressed much more than hostility toward Islam. Supported by many other denominations and most significantly by the Catholic Church, the headscarf has been seen as a direct challenge to the founding principles of the French Republican model born in the French Revolution and forged through the merciless church/secular battles of the 19<sup>th</sup> century that led to the strict separation between state and religion, the privatization of faith, and the proclaimed “preeminence of Reason.” The “headscarf issue” thus has forced French authorities to confront the very nature of the Republic and to reconsider the concept of *laïcité* (secularism) and to ponder over its adequacy and relevance in an increasingly multicultural society.

In its assessment of the legislation shortly before its passage, Human Rights Watch concluded that the law infringed the internationally recognized right to freedom of religion, but identified the need to reconcile seemingly contradictory concerns. “Human Rights Watch recognizes the legitimacy of public institutions seeking not to promote any religion via their conduct or statements, but the French government has taken this a step further by suggesting that the state is undermining secularism if it allows students to wear religious symbols.” As we concluded: “[P]rotecting the right of all students to religious freedom does not undermine secularism in schools. On the contrary, it demonstrates respect for religious diversity, a position fully consistent with maintaining the strict separation of public institutions from any particular religious message.”

### ***The Turkish Case***

Some interesting lessons on an issue whose complexity should be duly recognized by the human rights movement can be gleaned from the less publicized example of Turkey.<sup>38</sup> In that country, women wearing the headscarf are not permitted to register as university students, enter university campuses, or enter examination rooms. Those observed wearing the headscarf in class are warned about their behavior, and if they persist in wearing it are suspended or expelled.

In recent interviews, many women told Human Rights Watch they were heartbroken that their hopes for a career in medicine, science, teaching, or the arts were permanently blighted. Women have also been detained, humiliated, ill-treated, and prosecuted. The authorities say that the scarf is a flag of aggressive political Islam that threatens the secular order of Turkey and the rights and freedoms of other Turkish women, but most women affected by the ban say that they wear the scarf as an expression of Islamic religious piety.

Modern Turkey’s legislation on the subject of clothing began with a 1923 decree on dress, signed by Mustafa Kemal Atatürk, founder of the republic. Those who see themselves as Atatürk’s most faithful heirs seek to bar women from education because of their choice of dress, but Atatürk himself took a relaxed position on the headscarf. He was frequently photographed on public business with his first wife, who covered her head. He wrote: “The religious covering of women will not cause difficulty.... This

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38 Much of the discussion of the case of Turkey that follows is a slightly revised version of text written by Jonathan Sugden, Human Rights Watch Turkey researcher. It first appeared in “Memorandum to the Turkish Government with Regard to Academic Freedom in Higher Education, and Access to Higher Education for Women who Wear the Headscarf,” Human Rights Watch, June 29, 2004.

simple style [of headcovering] is not in conflict with the morals and manners of our society.”

Students denied access to education have been unable to secure a remedy through the Turkish courts. And the June 29, 2004 decision of the European Court of Human Rights (ECtHR) in *Leyla Sabih v. Turkey* has only made matters worse. The court’s judgment reflects the same fears expressed by those who support the headscarf ban: that recognizing the rights of devout Muslims threatens the rights of others. But Turkish society is moving ahead of this zero-sum philosophy of despair—in the day-to-day tolerance of difference that you can see on the street, and in the solidarity shown when civil society organizations with a largely Muslim membership stand up for non-Muslim rights (as Mazlum-Der has done) and organizations with a largely secular membership stand up for the right to wear the headscarf (as the Turkish Human Rights Association has done).

Various political groupings have exploited the headscarf issue in order to curry support from their respective devout or secular constituencies. Pınar İlkkaracan, coordinator of a local non-governmental organization working on women’s rights, told Human Rights Watch in 2003 that this is an issue open to easy political manipulation: “We as Women for Women’s Human Rights (WWHR) are against any attempt that aims at imposing restrictions and regulations on women’s dress code. Therefore, WWHR has made a number of statements condemning the ban on the [headscarf] at the universities, which violates the human right of female students for education. But this issue is being exploited by the political parties on both sides of the question.... Men in power should not use women’s bodies for a battlefield—and that is what is happening in many parts of the globe.”

It is not a condition of fundamental rights that those who enjoy them must hold tolerant and liberal opinions, but it is a fact that much of the resistance to the headscarf is inspired by a fear of what might happen if the tables were turned, and an outright Islamist regime were making the rules. A fairly widespread suspicion among Turkey’s secular population is that the religious parties have a master plan of eliminating secularism by “salami tactics,” and that the headscarf is the first slice. They fear that tolerance shown on this issue will be followed by a ramping up of demands, and they quote the proverb, “If you give the devil the little finger, he will soon take the whole hand.” The alarm felt by those who see the headscarf as the thin end of a dangerous wedge has been aggravated by a catalogue of attacks by Islamic extremists directed specifically at people who have criticized the wearing of the headscarf at universities.

Human rights groups working on the headscarf issue must address these threats. Human Rights Watch did so in 2004 by calling on Turkish authorities to acknowledge the long and sorry history of state failure to protect women from gender-based violence and discrimination, and commit itself to programs to remedy continuing shortcomings in that protection. We also recommended that any new legislation on higher education include provisions to offer reassurance to those who feel their rights could be put at risk by a change of policy with regard to the headscarf. Such provisions might be legislative or regulatory safeguards for the rights of women who choose not to wear the headscarf, as well as strong public endorsements of women's freedom to dress according to their own free choice. But the most important gesture the government could make would be actively to seek out civil society groups representing women and gather their views through the broadest possible consultation before changing the headscarf law.

A convincing consultation would give opponents of the headscarf an opportunity to express their strong reservations and to suggest safeguards or undertakings that the government could make to protect society against the erosion of civil liberties—and in particular, women's civil liberties—that the opponents fear would result from a lifting of the headscarf ban. By listening to the concerns of women from all sides of the argument, the government may be able to break away from the pessimistic zero-sum game and move toward a genuine pluralism that allows women to make their own free choice whether to wear the headscarf or not.

### ***Combating, Convincing, or “Integrating”***

The secular human rights movement sometimes sees conservative religious movements as an artifact of history and itself as contemporary, ahead on the “infinite road of human progress and modernity.” Some suggest that it runs the risk, echoing “culturalist” approaches purporting to establish a hierarchy between societies and philosophies, of seeing itself as superior and antagonistic to other cultures and norms. Rather than trying to enshrine the human rights project into different faiths and cultures, of trying to legitimize human rights norms within religions and not alongside or against them, human rights activists might be tempted to dismiss such faiths and cultures as obstacles to economic or human rights modernity.

Is the “liberal” human rights movement in fact implicitly imperialistic, striving “to replace existing religious traditions with some of ‘new faith?’”<sup>39</sup> “Secular humanists, like religious believers,” warns Professor Diane Orentlicher, “must take care lest a

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<sup>39</sup> John Kelsay and Sumner B. Twiss (Ed), *Religion and Human Rights*, The Project on Religion and Human Rights, 1994, New York, p.119.

worshipful faith in human sanctity blind them to their own capacity for fallibility. Even a secular humanism is susceptible to harmful immoderation if unchecked by critical self scrutiny.”<sup>40</sup>

Such “arrogance,” where it exists, can reflect a desire to sidestep the complexities of some issues. The headscarf issue is in this context a “wake up call” for a human rights movement comfortably embedded, especially in continental Europe, within secularism; the different facets of the controversy test its capacity to understand complex societal processes and individual quests. A woman (re)veiling herself does not necessarily equate with submission. If based on affirmative and free choice, it can be an expression of liberation and self-assertion. Ignoring or despising traditional cultures and religious beliefs can cripple the best-intentioned attempts at promoting political reform and respect for fundamental human rights.

Similarly the human rights movement must examine why fundamentalism has been raising expectations in so many parts of the world. Political authoritarianism, economic prostration, social inequities, cultural alienation, and unresolved international conflicts all call for renewed action on civil and political as well as economic, social, and cultural rights.

### ***The Way Forward***

Understanding and engaging does not mean retreating into a more conventional and consensual mode. Confronted with a growing assertion of religion in private life, the increased political power of religions, and the rise or revival of religious conservatism, the human rights community must step up with a clear message and a distinctive voice. To paraphrase Edward Saïd, it must be “someone whose place it is publicly to raise embarrassing questions, to confront orthodoxy and dogma (rather than to produce them) and whose *raison d’être* is to represent all those people and issues that are routinely forgotten or swept under the rug.”<sup>41</sup>

There is still space for convergence and coalitions between human rights and religious communities. On some basic freedoms and rights this is already a reality: most secular human rights groups and religious groups have united in combating hate crimes and discrimination against Muslims in the wake of the September 11 attacks and the ensuing

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<sup>40</sup> Diane Orentlicher, “Relativism and Religion,” in M. Ignatieff, *Human Rights as Politics and Idolatry* (Princeton: Princeton University Press, 2001), p.147.

<sup>41</sup> Edward Saïd, *Representations of the Intellectual* (New York: Pantheon Books, 1994), p. 11.

war on terror. Most have reasserted the absolute duty to protect civilians in armed conflicts.

These alliances should not be sacrificed lightly. In recognition of the importance of religious conscience for many people, the human rights movement should do more to defend religious freedom. In that spirit Human Rights Watch has been defending the fundamental rights of independent Muslims in Uzbekistan, Christians in Iraq, Jews in Iran, Jehovah's witnesses in Georgia, and Mennonites in Vietnam. Such commitment should include the defense of the rights of "fundamentalists," i.e., including those who would threaten liberal conceptions of rights if they were in power, so long as they do not physically attack or otherwise impinge on the rights of non-believers.

At the same time, however, the human rights movement should not sacrifice its most valued principles and objectives in order to protect its good relations with religious communities. Human rights defenders should not shirk in particular from insisting on a distinction between private religious morality and religiously motivated public policy that infringes rights. Public expression and political mobilization of religious groups or believers on matters of rights are legitimate. When private religious morality imposes itself on society and threatens to change public policy in a way detrimental to rights, however, the human rights movement should speak out and draw the line.