

Cambridge University Press

978-1-107-09036-1 - Religion and Public Policy: Human Rights, Conflict, and Ethics

Edited by Sumner B. Twiss, Marian Gh. Simion, and Rodney L. Petersen

Excerpt

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Part ONE

NORMATIVE PROSPECTS: Human Rights Ideas and Religious Ethics

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1.

David Little: A Modern Calvinist Architect of Human Rights

John Witte, Jr.

I first read David Little's work nearly thirty years ago in a freshman history class at Calvin College. Among our assigned texts was his sterling 1969 *Religion, Order, and Law: A Study in Pre-Revolutionary England*.¹ In 225 pithy pages, he offered a brilliant exploration of the legal, political, and theological mind of seventeenth-century Puritans, and a respectful but critical engagement with *Überhistorian* Max Weber. This book gave me a good introduction to Little's academic style: sturdy, concise prose, trenchant criticism, close exegesis, engaging synthesis, and historical, theological, and philosophical gravitas. Here, too, was the first sustained treatment of themes that have remained at the center of his academic work: the notion that human rights are essential gifts for all persons to embrace; that religious ideas and institutions are essential allies in the struggle for human rights; and that Calvinists—yes, *Calvinists*, for all their talk of total depravity, covenantal duty, and predestination—were among the chief historical architects of our modern human rights paradigm, anticipating the Enlightenment project by two centuries and anchoring a number of its cardinal teachings on human rights, democratic government, and rule of law in a theological world view. You can imagine the excitement that Little's book stirred in my heart. As a young Calvinist, I was grateful for this blend of history, law, and Calvinist theology, well-inflected as it was with Weberian *Wissenschaft*. And I resolved then and there in 1978: "I want to be like David Little when I grow up."

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In preparation for this celebration of Little, I have been reading many of his writings since that prized 1969 title—his dozen monographs, the scores of articles, reviews, and book chapters, the sundry lectures, reports, and interviews. After completing my review of his works, I have resolved anew: “I want to be like David Little.” There is so much in his writings from which to learn: his insightful treatment of violence and terrorism, nationalism and foreign policy, just war and just peace-making in such places as Vietnam, Ukraine, Sri Lanka, Tibet, and Iraq;² his deep, constructive engagement with Islam, Buddhism, and other faiths, and his pioneering work with John Kelsay and Sumner Twiss on developing the field of comparative religious ethics;³ his strong philosophical defense of a political liberalism that leaves ample room for private and public expressions of religion in all peaceable varieties and in all forums of public life, including notably in political and constitutional debate;⁴ his devastating criticism of secularists as well as of those insensitive to human rights, such as Richard Rorty,⁵ Stanley Hauerwas, and Alasdair MacIntyre.⁶

David Little on Religion and Human Rights

The theme of religion and human rights, one of Little’s abiding concerns, has dominated his writings since the late 1950s. He has traced cardinal concepts like freedom of conscience and free exercise of religion from their earliest formulations in Stoic philosophy and Roman law, through the writings of Augustine and Aquinas, Luther and Calvin, and their many modern heirs.⁷ He has explored the contributions of respected Calvinists to the Western understanding of human rights and religious freedom, with special focus on John Calvin,⁸ John Locke,⁹ Roger Williams,¹⁰ Isaac Backus,¹¹ and Thomas Jefferson,¹² all of whose ideas he connects to each other and to the Calvinist tradition in fresh and inventive ways. He has written astutely on the vexed questions, for Americans, of how to interpret and apply the First Amendment’s call for no government establishments of religion or prohibitions on its free exercise. And he has charted many of the religious sources and dimensions of the modern human rights paradigm, particularly the fundamental international protections of religious freedom—freedom of thought, conscience, and belief, freedom

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from religious hatred, incitement, and discrimination, and freedom for religious self-determination.¹³

In a moving “Personal Testament,” published in 2002, Little makes clear that his devotion to the field of human rights and religious freedom is not merely a dispassionate academic pursuit.¹⁴ For him it is a profoundly Christian commitment and calling. He was born into a Presbyterian family with roots that go back to the Puritan settlers of Massachusetts Bay in the 1640s. His father and grandfather, and five generations of Littles before them were all Presbyterian ministers well schooled in the theological arts of Geneva and Westminster. Little himself is a devout Presbyterian layman with an iron firm grip on certain “substantive necessary truths” as he calls them, echoing Hilary Putnam.¹⁵

Among the fundamental “necessary truths” that drive his work in the field of religion and human rights are these: that each person is equally created in God’s image, and vested with reason and will and inherent and inviolable dignity and freedom;¹⁶ that each person has a moral law written on his or her conscience that serves both as a “private monitor” to motivate, guide, and judge their pursuit of a happy and virtuous life,¹⁷ and a public marker to signal God’s sovereign claims upon their inner mind, heart, and soul which no person or institution may trespass;¹⁸ that each person is vested with basic natural rights to discharge the dictates and duties of conscience, both in private and in public, both alone and with others in peaceable communities;¹⁹ that our moral intuitions, shaped by these moral laws and natural rights, condemn as just plain evil (*malum in se*) the cruel logic of pain that supports grave and gratuitous assaults on the body through genocide, torture, mayhem, starvation, rape, and enslavement or on the mind through brutal coercion, pervasive mind controls, or hallucinogenic enslavement;²⁰ and, finally, that to protect the “rights of all humans” through both our private actions and political structures is the best way to live by the golden rule and to obey the first and greatest commandment: “to love God and to love our neighbors as ourselves.”²¹

For Little, all these fundamental beliefs are foundational to a regime of human rights. As formulated, they are part and product of the Christian tradition and of his own Calvinist worldview. These beliefs, he has shown, have been only gradually uncovered and actualized in the Western tradition and only after centuries of hard and cruel experience. And these beliefs

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remain aspirational as we continue the work of constructing an ever sturdier human rights regime.

But these are not merely Calvinist, or Christian, or Western beliefs, Little insists. Cast more generically and generously, these beliefs are the cardinal axioms of what it takes to live together as persons and peoples.²² Many other traditions of thought, conscience, and religion have their own way of formulating these fundamental beliefs about human nature, action, knowledge, and interaction, and have their own means of implementing them through personal habits and institutional structures. And they have and will discover them in different ways and at different times in their development. But, all that said, “it is important to remember,” Little writes, “that behind or beneath all the many differences among human beings in culture, religion, outlook, and knowledge, these are indubitable and unifying features that are accessible and applicable to ‘all peoples and all nations’.”²³ It is on the strength of these convictions that Little calls fellow Christians and fellow peaceable believers of all persuasions to engage the regime of human rights fully, and to nurture and challenge this regime constantly to reform and improve itself.

Little calls for nothing less than a comprehensive new “hermeneutic of religion and human rights”—in the apt phrase of our mutual friend, Abdullahi An-Na’im. This is, in part, a “hermeneutic of confession.”²⁴ Given their checkered human rights records over the centuries, religious bodies need to acknowledge their departures from the cardinal teachings of peace and love that are the heart of their sacred texts and traditions. The blood of many thousands is at the doors of our churches, temples, mosques, and synagogues, and this demands humble recognition, expiation, and restitution. This is, in part, a “hermeneutic of suspicion” (in Paul Ricoeur’s phrase). Given the pronounced libertarian tone of many current human rights formulations, we must not idolize or idealize these formulations, but be open to new wisdom from our own religious traditions and those of others. This is, in part, a “hermeneutic of religious freedom”—a new way of thinking about the place of religion in public life and public law that goes beyond simple clichés of a wall of separation between church and state, that goes beyond the sterile dialectic of state secularism versus religious establishment, and that goes beyond the notion that religion is merely a private preoccupation of the peculiar and the unenlightened.²⁵ And, this is, in part, a “hermeneutic of history.” While acknowledging the

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fundamental contributions of Enlightenment liberalism to the modern rights regime, we must look for the deeper genesis and genius of many modern rights norms in religious texts and traditions that antedate the Enlightenment by centuries, sometimes millennia.²⁶ We must return to these religious sources. In part, this is a return to ancient sacred texts freed from the casuistic accretions of generations of jurists and freed from the cultural trappings of the communities in which these traditions were born. In part, this is a return to slender streams of theological jurisprudence that have not been part of the mainstream of the religious traditions, or have become diluted by too great a commingling with it. In part, this is a return to prophetic voices of dissent, long purged from traditional religious canons, but, in retrospect, prescient of some of the rights roles that the tradition might play today.²⁷

Little's own work illustrates how this four-part hermeneutic of religion and human rights works in the Western Christian tradition, particularly the Calvinist tradition. But he has also outlined comparable efforts for the Islamic,²⁸ Jewish, and Buddhist traditions, which others have developed more fully.²⁹ Let me just touch on a few of the highlights of his argument over fifty years about the Christian and other religious foundations and dimensions of human rights.

The Calvinist Roots of Rights

It takes a bit of contextualizing to appreciate the novelty and boldness of Little's argument, particularly his historical argument about the Christian foundations of human rights before the Enlightenment. Standard college textbooks—from Little's youthful days to our own—have long taught us that the history of human rights began in the later seventeenth and eighteenth centuries. Human rights, we often hear, were products of the Western Enlightenment—creations of Grotius and Pufendorf, Locke and Rousseau, Montesquieu and Bayle, Hume and Smith, Jefferson and Madison.³⁰ Human rights were the mighty new weapons forged by American and French revolutionaries who fought in the name of political democracy, personal autonomy, and religious freedom against outmoded Christian conceptions of absolute monarchy, aristocratic privilege, and religious establishment. Human rights were the keys that Western liberals

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finally forged to unchain themselves from the shackles of a millennium of Christian oppression and Constantinian hegemony. Human rights were the core ingredients of the new democratic constitutional experiments of the later eighteenth century forward. The only Christians to have much influence on this development, we are told, were a few early Church Fathers who decried pagan Roman persecution, a few brave medievalists who defied papal tyranny, and a few early modern Anabaptists who debunked Catholic and Protestant persecution.

Proponents of this conventional historiography have recognized that Western writers since classical Greek and Roman times often used the terms “right” or “rights” (*ius* and *iura* in Latin). But the conventional argument is that, before the dawn of the Enlightenment, the term “right” was usually used in an “objective” rather than a “subjective” sense. “Objective right” (or “rightness”) means that something is the objectively right thing or action in the circumstances. Objective right obtains when something is rightly ordered, is just or proper, is considered to be right or appropriate when judged against some objective or external standard.³¹ “Right” is being used here as an adjective, not as a noun: It is what is correct or proper—“due and meet” in Victorian English. Thus when pre-seventeenth-century writers spoke of the “natural rights” of a person they were really referring to the “natural duties” of a person—the right thing for the person to do when judged by an external standard posed by nature or by natural reason.³² As the great University of Chicago don, Leo Strauss, put it: “Natural right in its classic form is connected with a teleological view of the universe. All natural beings have a natural end, a natural destiny, which determines what kind of operation is good for them. In the case of men, reason is required for discerning these operations: reason determines what is by nature right with regard to man’s natural end.”³³

Enlightenment philosophers, beginning with Hobbes and Locke, Strauss continued, first began to use the term “natural right” in a subjective rather than an objective sense. For the first time in the later seventeenth century, the term “right” was regularly used as a noun not as an adjective. A “subjective right” was viewed as a claim, power, or freedom which nature vests in a subject, in a person. The subject can claim this right against another subject or sovereign, and can have that right vindicated before an appropriate authority when the right is threatened, violated, or disrespected. The establishment of this subjective understanding of rights

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is the start to the modern discourse of human rights, we are told. When early Enlightenment figures spoke of “natural rights” or the “rights of man according to natural law,” they now meant what we usually mean by “rights” today—the inherent claims that the individual subject has to various natural goods like life, liberty, and property. This was “an entirely new political doctrine,” writes Strauss. It was a fundamental shift “from natural duties to natural rights.”³⁴

Strauss’s historical account of rights is much more nuanced than this, as are the later historical accounts of some of his best students. But, particularly when cast into popular secular forms, as it often is, this basic “Straussian” account of the Enlightenment origins of Western rights has persisted, with numerous variations, in many circles of discourse to this day.

One of those circles, ironically, is that of conservative Protestantism, particularly conservative Calvinism. Many conservative Calvinists and other Protestants today still view human rights with suspicion, if not derision.³⁵ Some view human rights as a part and product of dangerous Catholic natural law theories that Calvinists have always purportedly rejected. More view human rights as a dangerous invention of the Enlightenment, predicated on a celebration of reason over revelation, of greed over charity, of nature over Scripture, of the individual over the community, of the pretended sovereignty of humans over the absolute sovereignty of God. These critics view the occasional discussions of natural law and natural rights in Calvin and other early reformers as a scholastic hangover that a clearer-eyed reading of Scripture by later Calvinists happily expunged from the tradition. At a certain level of abstraction, this conservative Protestant critique of human rights coincides with certain streaks of “Straussian” historiography about the Enlightenment origin of rights. Various Straussians dismiss pre-modern Christian rights talk as a betrayal of the Enlightenment. Various Protestants dismiss modern Enlightenment rights talk as a betrayal of Christianity.

Whatever the philosophical and theological merits of these respective positions might be, the historical readings and narratives that support them can no longer be sustained. A whole cottage industry of important new scholarship has now emerged to demonstrate that there was ample “liberty before liberalism,” and that there were many subjective human rights in place before there were modern democratic revolutions fought

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in their name. We now know a great deal more about classical Roman understandings of rights, liberties, capabilities, powers and related concepts, and their elaboration by medieval and early modern civilians. We can now pore over an intricate latticework of arguments about individual and group rights and liberties developed by medieval Catholic canonists, philosophers, and theologians, and the ample expansion of this medieval handiwork by neo-scholastic writers in early modern Spain and Portugal. And we now know a good deal more about the immense contribution of the Protestant reformers to the development and expansion of the Western understanding of public, private, penal, and procedural rights. The Enlightenment, it now appears, was not so much a well-spring of Western rights as a watershed in a long stream of rights thinking that began more than a millennium before. While they certainly made their own original and critical rights contributions, too, what Enlightenment philosophers contributed more than anything were new theoretical frameworks that eventually widened these traditional rights formulations into a set of universal claims that were universally applicable to all.

Little was in the vanguard of scholars in the past half century who have excavated some of these earlier historical Christian foundations of human rights and who have shown the heavy dependence of Enlightenment figures from Locke³⁶ to Jefferson³⁷ on these Christian sources. And he was one of the first American scholars to show clearly and concretely the specific contributions of Calvinists to the development of human rights.³⁸ He has always acknowledged the grim and cruel side of the Calvinist tradition—from the mistreatment of witches,³⁹ to the hanging of Quakers, to the lynching of Zulus, let alone the Calvinist tradition's ample penchant for patriarchy, paternalism, and just plain prudishness that still has not ended.⁴⁰ He has done his hermeneutic of confession. And he has also acknowledged the powerful influence of the European and American Enlightenment movements on our understanding of religious and civil rights. But, in exercising his hermeneutic of suspicion, he wants modern liberals and modern Calvinists alike to see what historical Calvinism has wrought.

One major contribution was the Calvinist theory of liberty of conscience, freedom of exercise, and equality of a plurality of faiths before the law.⁴¹ Some of this one finds already in Calvin, Beza, and other early reformers who built on selected Roman, patristic, and medieval Catholic