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The Globalization of Human Rights and the Socialization of Human Rights Norms

*Christopher Marsh and Daniel P. Payne**

I. INTRODUCTION

The promotion of human rights norms¹ throughout the world by the acceptance of declarations, treaties, trade agreements, and world opinion is very important for holding nations accountable in the global community.² However, such instruments do not guarantee that a nation will institute the legal protections necessary to secure human rights in the first place or to enforce previously adopted human rights laws. The spread of human rights around the world entails more than simply extending the number of states that sign treaties or incorporate human rights protections into their legal systems. Although these agreements are significant because they allow for a nation-state to formally accept human rights as the norm, and for the citizenry to socialize the norm, the true globalization of human rights is a proliferation of the idea that human rights exist, that governments must not infringe upon the rights of their citizens,

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1. Thomas Risse and Stephen Ropp define international norms as "collective expectations about proper behavior for a given identity." Thomas Risse & Stephen C. Ropp, *International Human Rights Norms and Domestic Change: Conclusions*, in *THE POWER OF HUMAN RIGHTS: INTERNATIONAL NORMS AND DOMESTIC CHANGE* 234, 236 (Thomas Risse et al. eds., 1999) (quoting Ronald Jepperson, Alexander Wendt & Peter J. Katzenstein, *Norms, Identity, and Culture in National Security*, in *THE CULTURE OF NATIONAL SECURITY: NORMS AND IDENTITY IN WORLD POLITICS* 33, 54 (Peter J. Katzenstein ed., 1996)).

2. For example, the U.S. State Department annual reports and the International Religious Freedom Act focus on the right of an individual to practice his or her religion of choice without obstruction from various national governments. International Religious Freedom Act of 1998, Pub. L. No. 105-292, 112 Stat. 2787 (codified as amended in scattered sections of 22 U.S.C.); U.S. DEPT OF STATE, ANNUAL INTERNATIONAL RELIGIOUS FREEDOM REPORTS, <http://www.state.gov/g/drl/rls/irf/>. The State Department gives a favorable or unfavorable report based on the degree to which a person is able to practice his religion without obstruction. These reports are valuable because they help shape world opinion regarding a nation's observance of human rights norms.

and that governments must protect these rights from other members of society.

When a society accepts these norms, human rights penetrate beyond the society's legal code and embed themselves into its culture. It is our contention that this is the only way human rights will ever be truly guaranteed. This socialization of norms has profound implications for the promotion of human rights around the world.

This article begins in Part II by discussing the theoretical framework for socialization of human rights norms in a society, focusing particularly on Risse, Ropp, and Sikkink's influential work, *The Power of Human Rights: Institutional Norms and Domestic Change*, and its phases of socialization. Part III examines the socialization of religious human rights, specifically drawing on the historical examples of America, Western Europe, and Russia. Part IV discusses implications of the Risse and Sikkink model and the need for considerations of modernity in the promotion of human rights in today's world. Finally, Part V concludes that culture must evolve synergistically with politics through socialization in order to encourage stable adoption of human rights norms globally.

II. A CONSTRUCTIVIST FRAMEWORK FOR NORM SOCIALIZATION

For much of the post-World War II period, the field of international relations theory has been preoccupied with the theoretical debate between realist and liberal interpretations of international behavior.³ While constructivism⁴ began to penetrate the social sciences in the 1960s, particularly after the publication of Peter Berger and Thomas Luckmann's *The Social Construction of Reality*,⁵ it took until the 1990s for constructivist interpretations to reach the field of international relations.⁶ Once they did, constructivism took

3. See Ted Hopf, *The Promise of Constructivism in International Relations Theory*, 23 INT'L SECURITY 171, 171 (1998).

4. See Nicholas Onuf, *Constructivism: A User's Manual*, in INTERNATIONAL RELATIONS IN A CONSTRUCTED WORLD 58, 58-59 (Vendulka Kabálková et al. eds., 1988) ("Constructivism holds that people make society, and society makes people. This is a continuous, two-way process.")

5. See generally PETER L. BERGER & THOMAS LUCKMANN, *THE SOCIAL CONSTRUCTION OF REALITY: A TREATISE ON THE SOCIOLOGY OF KNOWLEDGE* (1966).

6. See INTERNATIONAL RELATIONS IN A CONSTRUCTED WORLD, *supra* note 4, at ix-x (noting the introduction of constructivism by Nicholas Onuf in 1989 and scholars' subsequent adoption of the title for their approaches).

off like wildfire.⁷ By the late 1990s, constructivism had become the “third debate” in the field and began penetrating most subfields of the discipline, including the study of international human rights.⁸

Jeffrey Checkel, Professor of Political Science at the University of Oslo, argues that “[r]ecent constructivist work on socialization by international institutions and norms marks a considerable advance” in the study of international relations and that this body of research has moved well beyond the neorealist and neoliberal debate over power and interests.⁹ Further, “constructivism argues and empirically documents that the effects of socialization reach deeper” than simply agents’ strategies, penetrating down to “underlying identities and interests.”¹⁰

One of the most influential and groundbreaking works to emerge in this area of literature in the past few years is Risse, Ropp, and Sikkink’s work, entitled *The Power of Human Rights: Institutional Norms and Domestic Change*.¹¹ In the introductory chapter, Risse and Sikkink lay out a theoretical framework for norms socialization, a process whereby human rights norms become internalized, “so that external pressure is no longer needed to ensure compliance.”¹² The three phases of socialization include (1) “adaptation and strategic bargaining;” (2) moral consciousness-raising, argumentation, and persuasion; and (3) “institutionalization and habitualization.”¹³ This framework operates through a five-phase “spiral model” of human rights change: (1) repression and activation

7. See Vendulka Kabálková, *The Twenty Years’ Catharsis*, in INTERNATIONAL RELATIONS IN A CONSTRUCTED WORLD, *supra* note 4, at 25, 42–43, 52–53; John Gerard Ruggie, *What Makes the World Hang Together? Neo-Utilitarianism and the Social Constructivist Challenge*, 52 INT’L ORG. 855, 862 (1998); Jennifer Sterling-Folker, *Competing Paradigms or Birds of a Feather? Constructivism and Neoliberal Institutionalism Compared*, 44 INT’L STUD. Q. 97, 97 (2000).

8. See Kabálková, *supra* note 7, at 52; Vendulka Kabálková, Nicholas Onuf & Paul Kowert, *Constructing Constructivism*, in INTERNATIONAL RELATIONS IN A CONSTRUCTED WORLD, *supra* note 4, at 3, 18–20.

9. Jeffrey T. Checkel, *International Institutions and Socialization 1* (ARENA Working Paper Series, Paper No. 99/5, 1998), available at http://www.arena.uio.no/publications/wp99_5.htm.

10. *Id.*

11. THE POWER OF HUMAN RIGHTS: INTERNATIONAL NORMS AND DOMESTIC CHANGE, *supra* note 1.

12. Thomas Risse & Kathryn Sikkink, *The Socialization of International Human Rights Norms into Domestic Practices*, in THE POWER OF HUMAN RIGHTS: INTERNATIONAL NORMS AND DOMESTIC CHANGE, *supra* note 1, at 1, 11.

13. *Id.*

of international-transnational networks; (2) denial by the oppressing state; (3) tactical concessions by the oppressor; (4) prescriptive status, including the signing of treaties; and finally (5) rule-consistent behavior.¹⁴

This model for globalization of human rights norms has explanatory power and value. Not only can it explain much of what we observe in terms of the respect for human rights in the world today, it can explain various levels of violation and abuse of these human rights as well. In fact, nearly every country in the world can be placed into one of these five phases, making the model quite valuable for cross-national empirical research.¹⁵

However, the Risse and Sikkink model is very linear, even teleological: it has an ultimate destination and there are no points along the way marking possible detours or obstacles to derail movement in the planned direction. While we may be able to place all countries in the world into one of these phases, the fact is that most of the states in phase five did not get there by progressing through the earlier stages. Many countries have reached phase five through human rights movements from primarily domestic sources, which evolved over centuries.¹⁶ Thus, even if governments around the world engage in behavior that would place them in phase four, it is not a foregone conclusion that they will make the final quantum leap to phase five.

Regardless of this shortcoming, the model's theoretical mechanism makes sense and generally stands up to the empirical record for industrializing states and transitioning societies in the age of globalization. Put simply, the Risse and Sikkink model anticipates that governments will adjust their behavior in order to win favor with the international community without necessarily believing in the validity of the norms.¹⁷ Through the process of moral consciousness-raising, argumentation, and persuasion, it is expected

14. *Id.* at 22–31.

15. See Risse & Ropp, *supra* note 1, at 238–42 (discussing the general applicability of the spiral model and summarizing empirical research on socialization processes in areas such as Uganda, Morocco, Indonesia, the Philippines, Chile, Guatemala, and Eastern Europe).

16. For example, most scholars would concede that the majority of western European countries are in phase five, but none would argue that these countries reached rules-consistent behavior by the influence of transnational networks or by simple tactical concessions on the part of these regimes.

17. Risse & Sikkink, *supra* note 12, at 12.

that these regimes will eventually come around to accepting the value and veracity of human rights concepts. The unique contribution of Risse and Sikkink is their recognition that the spread of human rights occurs not simply through compelling regimes to sign treaties and adjust their legal codes, but at the domestic level as well, where transnational actors and advocacy networks spread human rights norms and eventually establish these norms as part of a society's culture.¹⁸

Despite the origins of human rights concepts, which are admittedly very much a Western construct, their proliferation occurs due to the globalization of ideas and the legitimization of these ideas as norms by the international community. It is very important to recognize that this process can occur despite a society being open or closed. In closed societies,¹⁹ dissidents can spread ideas. Consider the impact of Charter 77 in Eastern Europe²⁰ or the influence of dissidents such as Andrei Sakharov in the Soviet Union.²¹ Despite their regimes' best efforts, Charter 77 and Sakharov expressed effective critiques of these regimes and had a profound impact on the *perestroika*²² generation that eventually tore down the Berlin Wall and dismantled the Soviet system. In open societies, these norms are quite easily absorbed by the intellectual class. The eminent sociologist Peter Berger has referred to this as the "faculty club culture."²³ As he describes it, this process involves "the internationalization of the Western intelligentsia, its values and ideologies."²⁴

As one critic has pointed out, the Risse and Sikkink model is based upon the "grand supposition that the norms of the [Universal Declaration of Human Rights] are, indeed, valid moral . . . norms

18. *Id.*; Risse & Ropp, *supra* note 1, at 236–38.

19. Incidentally, closed societies are very difficult to maintain in the era of cell phones, satellite TV, DVDs, and the Internet.

20. Charter 77 was a group of Czech intellectuals that formed a loose association for the support of human rights. *See generally* JANUSZ BUGAJSKI, CZECHOSLOVAKIA: CHARTER 77'S DECADE OF DISSENT (1987).

21. Andrei Sakharov was a top physicist in the Soviet Union who became an advocate for human rights and was placed under house arrest. *See generally* RICHARD LOURIE, SAKHAROV: A BIOGRAPHY (2002).

22. *Perestroika* literally means "restructuring." *See generally* MIXHAIL GORBACHEV, PERESTROIKA: NEW THINKING FOR OUR COUNTRY AND THE WORLD (1988).

23. Peter L. Berger, *The Four Faces of Global Culture*, 49 NAT'L INT. 23, 25 (1997).

24. *Id.*

that are worthy of implementation,” and it leaves entirely open the question of the validity of these norms.²⁵ Risse and Sikkink concede this point when they state that actors might eventually agree on the moral validity of the norm but disagree on which behaviors are violations of it.²⁶ Certainly, this phenomenon is often observed, and those who advocate for international human rights on the basis of promoting legislative measures to protect human rights must sometimes wonder whether or not they are wasting their time. After all, the goal is to reach a stage where it is no longer necessary to externally monitor human rights to ensure compliance.²⁷ The biggest challenge, though, and one that usually occurs at an early stage, is that although human rights may be universal, a certain internationally-recognized “human right” might be deemed alien or incongruent to a particular society’s culture.²⁸ Authoritarian regimes often use this as a justification for a specific violation.²⁹ However, the issue of cultural congruence should not be dismissed so easily.

Risse and Sikkink concede that the three phases of socialization are ideal types and will necessarily vary in terms of their underlying logic or mode of social action/interaction.³⁰ There is the problem, however, of cultural homogenization. Under the Risse and Sikkink model, the inevitable outcome of the argumentation and persuasion process is that societies will buy into the universality of human rights as originally conceived by the West.³¹ Thus, there is no room for other societies to articulate their own conceptions of human rights or to help readjust Western conceptions. It is as if the Universal

25. Johannes Morsink, *The Universal Declaration of Human Rights as a Norm for Societies in Transition*, in HUMAN RIGHTS AND SOCIETIES IN TRANSITION: CAUSES, CONSEQUENCES, RESPONSES 29, 29–30 (Shale Horowitz & Albrecht Schnabel eds., 2004).

26. Risse & Sikkink, *supra* note 12, at 13.

27. *Id.* at 11.

28. This debate has been most prevalent concerning Asian and African values. *See, e.g.*, WM. THEODORE DE BARY, ASIAN VALUES AND HUMAN RIGHTS: A CONFUCIAN COMMUNITARIAN PERSPECTIVE 1158–67 (1998); Ebow Bondzie-Simpson, *A Critique of the African Charter on Human and People’s Rights*, 31 HOW. L.J. 643, 654–56 (1988); Neil A. Englehart, *Rights and Culture in the Asian Values Argument: The Rise and Fall of Confucian Ethics in Singapore*, 22 HUM. RTS. Q. 548, 549 (2000); Amartya Sen, *Human Rights and Asian Values*, NEW REPUBLIC, July 14, 1997, at 33.

29. *See, e.g.*, Englehart, *supra* note 28, at 553–54.

30. Risse & Sikkink, *supra* note 12, at 11–12.

31. Risse and Sikkink base their socialization model on the human rights norms that stem from the principles of the Universal Declaration of Human Rights. *Id.* at 1–3.

Declaration of Human Rights (UDHR)³² emerged in full-bloom from its architects. Is there no room for improvement? Was the context in which it was drafted, dominated as it was by the broader context of the Cold War, the ideal environment for such an important document to come forth? This is not to imply that there are no truly universal human rights. It only throws open the question of whether or not the UDHR perfectly and completely embodies them.

What we today call “universal human rights” are to a great extent the product of Western societies.³³ This fact might slow their spread but should not prevent their eventual adoption in other cultural contexts. The development of the jurisprudential theory of natural law that underlies human rights³⁴ certainly emerged from a particularly Western historical context and was influenced by a number of Western contingencies,³⁵ none of which are likely to be reproduced in other parts of the world.³⁶ However, the initial articulation of these ideas bears little or no relation to their acceptance by other cultures. This is evidenced by the debate in the West today between Christian conservatives, who often reject the idea that natural law emerged from a very Christian interpretation of

32. Universal Declaration of Human Rights, G.A. Res. 217A (III), at 74, U.N. Doc. A/810 (Dec. 10, 1948) [hereinafter UDHR].

33. See, e.g., Jack Donnelly, *Human Rights and Human Dignity: An Analytical Critique of Non-Western Conceptions of Human Rights*, 76 AM. POL. SCI. REV. 303, 303 (1982); Louis Henkin, *The Universality of the Concept of Human Rights*, 506 ANNALS AM. ACAD. POL. & SOC. SCI. 10, 12 (1989). But see Surya P. Subedi, *Are the Principles of Human Rights “Western” Ideas? An Analysis of the Claim of the “Asian” Concept of Human Rights from the Perspectives of Hinduism*, 30 CAL. W. INT’L L.J. 45 (1999).

34. Jack Donnelly, *Human Rights as Natural Rights*, 4 HUM. RTS. Q. 391, 391 (1982).

35. See Donnelly, *supra* note 33, at 305; Henkin, *supra* note 33, at 12. But see F. S. C. Northrup, *Contemporary Jurisprudence and International Law*, 61 YALE L.J. 623, 651 (1952).

36. See, e.g., Abdullahi Ahmed An-Na’im, *Globalization and Jurisprudence: An Islamic Law Perspective*, 54 EMORY L.J. 25, 49 (2005) (“[T]here is a basic similarity in the notion of ‘natural law’ in the Islamic and Western traditions but also significant differences due to the various theological and legal resources that were deployed in support of that idea in context.”); John O. Haley, *Law and Culture in China and Japan: A Framework for Analysis*, 27 MICH. J. INT’L L. 895, 907-908, 911 (2006) (explaining that the Western notion of natural law rights did not develop in China and Japan because of fundamental cultural differences). But see BRIAN TIERNEY, *THE IDEA OF NATURAL RIGHTS* 45-54 (1997) (asserting that “[n]atural rights theories seem to be a distinctively Western invention,” but “such theories have not been characteristic even of Western culture at all times and places”).

rights, and secularists, who embrace natural law while denying the Christian origin of the concepts.³⁷

Risse and Sikkink point out that in the final stage norms must be “taken for granted,” and become part of a person’s “standard operating procedures.”³⁸ This is correct, but the Risse and Sikkink model does not place sufficient emphasis on the actual socialization process. If human rights are to become embedded in the culture, then they must seep down into the level of cognition. Berger argues that, for promulgation purposes, it is not necessary for a social order just to be accepted as truth—it must become “taken for granted;”³⁹ the same can be said about human rights. Berger argued that socialization is successful when the taken-for-granted character of the social world is internalized.⁴⁰ As he stated, “it is not enough that the individual look upon the key meanings of the social order as useful, desirable, or right. It is much better if he looks upon them as inevitable.”⁴¹ In this way, a public good moves beyond a good as such and becomes the “nature of things,” or part of the socially established nomos.⁴² This argument about social order points to a very important cognitive dimension of the process of socialization of human rights norms, one that Risse and Sikkink seem to miss, or insufficiently address.

Fortunately, the Risse and Sikkink model is compatible with sociological literature on this point. From a cognitive and constructivist perspective, an important part of this process, as outlined by Risse and Sikkink, involves legitimization through concession and rhetoric.⁴³ This occurs when a state inadvertently legitimizes human rights norms by employing rhetoric to justify its actions to its populations so as not to be seen as caving in to foreign powers.⁴⁴ The populations of such societies have no way of knowing

37. Brian Tierney, 2006 Annual Hugh and Beverly Wamble Lecture on Religious Liberty at Baylor University: Religion and Natural Rights: Historical Contexts and Contingencies (Sept. 27, 2006); see also TIERNEY, *supra* note 36, at 346–47.

38. Risse & Sikkink, *supra* note 12, at 17 (citing Martha Finnemore & Kathryn Sikkink, *International Norm Dynamics and Political Change*, 52 INT’L ORG. 887 (1998)).

39. PETER BERGER, *THE SACRED CANOPY* 24 (1967).

40. *Id.*; see also ALFRED SCHUTZ, *THE PHENOMENOLOGY OF THE SOCIAL WORLD*, 74 (George Walsh & Frederick Lehnert trans., 1967) (1932).

41. BERGER, *supra* note 39, at 24.

42. See *id.* at 24–25.

43. Risse & Sikkink, *supra* note 12, at 25–28.

44. See *id.* at 16.

that such rhetoric is vacuous, especially if accompanied by improved human rights records, which is most often the case as the regime tries to put on a good show for the international community. In this way, the norm may be accepted and become part of the larger culture that spreads through the process of socialization.⁴⁵ Since future leaders will eventually come from the socialized population, the use of rhetoric as a strategy will be forgotten and the norm will become established. In this way, norms that begin as rhetoric may seep deeply into a society's culture and eventually be taken for granted, even if a state never intended such a result in the first place.⁴⁶

The Risse and Sikink model thus provides a realistic and workable framework for the socialization of human rights norms, despite its linear shortcomings, when considered along with other constructivist sociological literature regarding the promotion of human rights. As Part III will illustrate, the literature's emphasis on the value of synergistic cultural and legal advancement is especially pertinent to the topic of religious human rights norms, an often contentious issue among nations with vastly different interpretations of what it means to be "free" religiously.

III. THE SOCIALIZATION OF RELIGIOUS HUMAN RIGHTS NORMS

While human rights have been promulgated and accepted as normative throughout the world since the inception of the Universal Declaration in 1948,⁴⁷ the reception and instantiation of Article 18,⁴⁸ pertaining to religious freedom, is of the utmost concern to us here. Current events and past history clearly show that religious freedom is one of the most contentious of human rights.⁴⁹ While the rights to life, security, and movement may be just as important, freedom of religious belief is one human right that evokes strong responses from

45. *Id.* at 16–17.

46. *Id.* at 17.

47. Henkin, *supra* note 33, at 13–15.

48. UDHR, *supra* note 32 ("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, practice, worship and observance.")

49. See NATAN LERNER, GROUP RIGHTS AND DISCRIMINATION IN INTERNATIONAL LAW 84–88 (2d ed. 2003); BAHIYIH G. TAHZIB, FREEDOM OF RELIGION OR BELIEF: ENSURING EFFECTIVE INTERNATIONAL LEGAL PROTECTION 165 (Martinus Nijhoff 1996).

both governments and societies.⁵⁰ Since religion is often an extremely strong component of national identity,⁵¹ even among secularists, the recognition of religious freedom as a human right is destined to controversy from the outset.

A quick look around the world illustrates this point. In the developed world, there is still apprehension about allowing equal rights and privileges to new religious movements (NRMs).⁵² Germany and other European countries, for example, still refuse to recognize Scientology as a religion.⁵³ Moreover, in many parts of the world, government bodies are responsible for determining which religious groups are worthy of recognition and which are not.⁵⁴ It is

50. See Lerner, *supra* note 49, at 84 (explaining that “[n]ot only are religious rights being violated, massively at times, but religious or anti-religious hatred and intolerance have frequently been the cause of wide attack upon other fundamental human rights, including the right to life”).

51. See ADRIAN HASTINGS, *THE CONSTRUCTION OF NATIONHOOD: ETHNICITY, RELIGION AND NATIONALISM* 185–209 (1997); see also LINDA COLLEY, *BRITONS: FORGING THE NATION 1707–1837*, at 11–54 (1992); SAMUEL P. HUNTINGTON, *WHO ARE WE?: THE CHALLENGES TO AMERICA’S NATIONAL IDENTITY* 81–106 (2004); INA MERDJANOVA, *RELIGION, NATIONALISM, AND CIVIL SOCIETY IN EASTERN EUROPE: THE POSTCOMMUNIST PALIMPSEST 1* (2002); Mark Juergensmeyer, *Nationalism and Religion*, in *THE SAGE HANDBOOK OF NATIONS AND NATIONALISM* 182, 182–91 (Gerard Delanty & Krishan Kumar eds., 2006); Daniel P. Payne, *The Clash of Civilisations: The Church of Greece, the European Union and the Question of Human Rights*, 31 *RELIGION, ST. & SOC’Y* 261 (2003); Mitja Velikonja, *Slovenian and Polish Religio-National Mythologies: A Comparative Analysis*, 31 *RELIGION, ST. & SOC’Y* 233 (2003); Victor Yelensky, *Globalization, Nationalism and Orthodoxy: The Case of Ukrainian Nation Building*, in *EASTERN ORTHODOXY IN A GLOBAL AGE: TRADITION FACES THE TWENTY-FIRST CENTURY* 144 (Victor Roudometof, Alexander Agadjanian, & Jerry Pankhurst eds., 2005).

52. See *NEW RELIGIOUS MOVEMENTS AND RELIGIOUS LIBERTY IN AMERICA* 1–4 (Derek H. Davis & Barry Hankinds eds., 2d ed. 2003); see also Law No. 2001-504 of June 12, 2001, *Journal Officiel de la République Française* [J.O.] [Official Gazette of France], June 13, 2001, p. 9337; BUREAU OF DEMOCRACY, HUMAN RIGHTS, & LABOR, U.S. DEP’T OF STATE, *INTERNATIONAL RELIGIOUS FREEDOM REPORT 2003: RUSSIA* (2003), <http://www.state.gov/g/drl/rls/irf/2003/24430.htm>.

53. The Church of Scientology is considered a cult in Germany, France, and Greece and has repeatedly suffered harassment from the governments of those countries. BUREAU OF DEMOCRACY, HUMAN RIGHTS, & LABOR, U.S. DEP’T OF STATE, *INTERNATIONAL RELIGIOUS FREEDOM REPORT 2006: GERMANY* (2006), <http://www.state.gov/g/drl/rls/irf/2006/71382.htm>; BUREAU OF DEMOCRACY, HUMAN RIGHTS, & LABOR, U.S. DEP’T OF STATE, *INTERNATIONAL RELIGIOUS FREEDOM REPORT 2006: FRANCE* (2006), <http://www.state.gov/g/drl/rls/irf/2006/71380.htm>; BUREAU OF DEMOCRACY, HUMAN RIGHTS, & LABOR, U.S. DEP’T OF STATE, *INTERNATIONAL RELIGIOUS FREEDOM REPORT 2006: GREECE* (2006), <http://www.state.gov/g/drl/rls/irf/2006/71383.htm>.

54. In the United States, the I.R.S. makes a form of this distinction in deciding which organization is tax-exempt. See, e.g., Douglas Frantz, *Taxes and Tactics: Behind an I.R.S. Reversal—A Special Report*, *N.Y. TIMES*, Mar. 9, 1997, at 1 (examining the I.R.S.’s October

thus clear that in many nations, religious freedom, understood as the individual right of a person to “freedom of thought, conscience and religion,”⁵⁵ has yet to be accepted at the cultural level. However, there are signs that with the formal acceptance of the Universal Declaration, its norms are becoming part of the subjective understanding of cultures throughout the non-Western world at a grassroots level.⁵⁶

Three nations’ histories provide striking case studies about the necessity of cultural adaptation and preparation, along with the adoption of positive law, for successful promulgation of human rights norms.

A. The United States of America

The American situation demonstrates the importance of enculturation of the idea of religious freedom prior to its embodiment in the law. The religious freedom of the individual was not instituted legally in the United States until approximately 200 years after the founding of the original colonies, and even then not all of the states were disestablished religiously until the 1830s.⁵⁷ For religious freedom to become promoted in the United States, a coalition of religious dissenters and Jeffersonian republicans had to persuade national and local governmental officials to accept this principle of religious freedom, which was then drafted into a legal framework that would guarantee equal protection under the law for religious minorities.⁵⁸ Not all of the American citizenry initially embraced such a principle, as was shown in the Federalist reaction against the Jeffersonian presidential campaign of 1800.⁵⁹ A

1993 decision granting the Church of Scientology tax-exempt status reserved for churches in a reversal of a twenty-five-year-old policy); *see also* Strayhorn v. Ethical Soc’y of Austin, 110 S.W.3d 458, 468 (Tex. App. 2003) (holding that comptroller’s use of “Supreme Being” test to determine whether an organization qualifies as a religious organization for tax-exempt purposes was improper under the First Amendment).

55. UDHR, *supra* note 32.

56. Henkin, *supra* note 33, at 13–15.

57. *See* PHILIP HAMBURGER, SEPARATION OF CHURCH AND STATE 213 (2002) (citing Connecticut and Massachusetts as the last remaining establishments and their abolishment in 1818 and 1833).

58. *See id.* at 146–47 (describing Jefferson’s drafting of a Virginia statute to prohibit religious establishment).

59. *See* Frank Lambert, “God—and a Religious President . . . [or] Jefferson and No God”: Campaigning for a Voter-Imposed Religious Test in 1800, 39 J. CHURCH & ST. 769, 769–70

significant plurality of religious dissenters, however, together with republican intellectuals, had socio-culturally accepted the idea and eventually convinced the opposition, leading to the disestablishment of churches throughout the young republic by the early nineteenth century.⁶⁰

The evolution of the American “freedom of religion ideal” and its application to the religious landscape illustrate the need for cultural interpretations of human rights norms to coincide with legal human rights advancements. The Jeffersonian interpretation of religious freedom as “a wall of separation”⁶¹ leading to the concept of the “separation of church and state” was not the primary understanding of religious freedom held by the religious minorities in the young republic.⁶² The religious minorities, clamoring for religious freedom in the late eighteenth and early nineteenth centuries, did not want separation of church and state *per se*, but rather desired equal treatment under the law.⁶³ A plurality of Christian churches had emerged in the United States by the end of the eighteenth century, resulting in the peculiar American development of denominationalism,⁶⁴ and these diverse churches sought equal protection.⁶⁵

(1997) (discussing candidate William Linn’s presidential campaign against Thomas Jefferson). Linn felt that Jefferson was not fit for office because Jefferson was a Deist. *Id.* Linn attempted to find a way around Constitutional guarantees of religious freedom through the use of a “voter-imposed religious test to be won in the arena of public opinion.” *Id.*

60. See THOMAS J. CURRY, *FIRST FREEDOMS* 217–22 (1986).

61. See *Wallace v. Jaffree*, 472 U.S. 38, 91 (1984) (Rehnquist, J., dissenting) (outlining the historical background of Jefferson’s interpretation of the Establishment Clause); *Reynolds v. United States*, 98 U.S. 145, 164 (1878) (attributing Jefferson’s separation metaphor to his letter to the Danbury Baptist Association); see also *Everson v. Bd. of Educ.*, 330 U.S. 1, 8–16 (1947) (surveying the historical development of religious liberties in America).

62. See HAMBURGER, *supra* note 57, at 4–5.

63. See *id.* at 4–5, 9–12.

64. See Roger Finke & Rodney Stark, *How the Upstart Sects Won America: 1776–1850*, 28 *J. for Sci. Study Religion* 27, 29–31 (1989) (comparing the “market share” of religious denominations in 1776 and 1850 through a study of adherence rates); Donald G. Mathews, *The Second Great Awakening as an Organizing Process, 1780–1830: An Hypothesis*, 21 *Am. Q.* 23, 25–26 (noting the revivalist movement’s effect of sparking the organization of new churches “outside the establishment because the revived Christians thought that the visible church should be a holy community based not on geography but repentance and faith in Christ”); Sidney E. Mead, *From Coercion to Persuasion: Another Look at the Rise of Religious Liberty and the Emergence of Denominationalism*, 57 *Church Hist.* 68, 87–88 (1988).

65. See Mead, *supra* note 64, at 78–79, 87–88 (noting that “uniformity was impracticable [after the great revivals’ upheavals, and] two possible paths lay open before the churches: toleration, with a favored or established church and dissenting sects—the path

With such diversity of churches, which does not compare to the proliferation of religious organizations and sects in contemporary America,⁶⁶ the American understanding of church-state relations arrived at the solution of non-establishment of religion at the federal level and eventual disestablishment of churches at the state level, underneath a religious voluntarism culturally promoted through the great revival movements of the eighteenth and nineteenth centuries.⁶⁷ Thus, the American denominational arrangement of churches provided opportunity for all to realize their religious freedom through voluntary participation in the church of their choosing at a cultural level.⁶⁸ Protestant voluntarism, or a “lowest-common-denominator Protestantism,” in which sectarian differences are overlooked and a common core of Christian ethics and morals are upheld, became the established religion of the American republic.⁶⁹ As demonstrated, American “freedom of religion” largely developed socio-culturally prior to its legal realization.

The history of American religious liberties also illustrates the impact on religious rights norms of changing cultural interpretations. Although religious freedoms were initially interpreted as tolerances, the Jeffersonian principle of separation gradually became the American understanding of the First Amendment’s religious liberties, especially during the culture wars of the nineteenth century between Protestants and Roman Catholics.⁷⁰ Even then, the idea of religious freedom as “separation of church and state” was not fully socialized

actually taken in England—or freedom, with complete equality of all religious groups before the law”).

66. See U.S. CENSUS BUREAU, STATISTICAL ABSTRACT OF THE UNITED STATES: 2007, Table 74 (2007), <http://www.census.gov/prod/2006pubs/07statab/pop.pdf> (noting the existence of more than 28 religious bodies with memberships of 750,000 or more).

67. See Mathews, *supra* note 64, at 25–26; Mead, *supra* note 64, at 79.

68. See Mead, *supra* note 64, at 78–79.

69. Alexis de Tocqueville praised American religious voluntarism as one of the institutions of the republic that provided for a vibrant civil society. ALEXIS DE TOCQUEVILLE, DEMOCRACY IN AMERICA 287–301 (J.P. Mayer ed., George Lawrence trans., Anchor Books 1969). This Protestant cultural establishment was undermined in the late nineteenth century with the mass immigration of non-Protestants to the United States. ROBERT T. HANDY, UNDERMINED ESTABLISHMENT: CHURCH-STATE RELATIONS IN AMERICA, 1880–1920, at 16–18 (1991). Eventually, Catholics and Jews as well as Eastern Orthodox immigrants were socialized into the American way of life, adopting a Protestant Evangelical ethos that continues in the lives of Americans to this day. See WILL HERBERG, PROTESTANT—CATHOLIC—JEW 110–11, 256–57 (Anchor Books 1960) (1955); ALAN WOLFE, THE TRANSFORMATION OF AMERICAN RELIGION: HOW WE ACTUALLY LIVE OUR FAITH 215 (2003).

70. See HAMBURGER, *supra* note 57, at 15–17; HANDY, *supra* note 69, at 4–6.

until the mid-twentieth century, when Justice Hugo Black articulated the meaning of the First Amendment using Jefferson's metaphor of a "wall of separation" in the *Everson v. Board of Education* decision of 1947.⁷¹

By the end of World War II, Americans generally understood religious freedom to mean separation of church and state.⁷² The South particularly influenced this understanding of religious freedom as separation, due to the historical, cultural, and theological justification of slavery.⁷³ Religious freedom as separation had thus been socio-culturally internalized in the psychology of the people, reaching a taken-for-granted status by the mid-twentieth century.⁷⁴ Black's decision, then, was simply the articulation of the cultural norm and its elevation to the status of doctrine.⁷⁵ Therefore, American history demonstrates that religious freedom is not just about the ideas of great men and women but is more importantly about the social and historical context in which it was interpreted and realized.⁷⁶

B. Western Europe

European understandings of religious freedom were also conditioned by the historical and cultural contexts of particular European nations. The development of religious freedom in Western Europe coincided with the rise of the nation-state and the various religious wars necessary to actualize such political development.⁷⁷ As nation-states proliferated, the church lost its authority over the human body, and was therefore relegated to the spiritual dimension of the human being.⁷⁸ Additionally, the Lutheran Reformation

71. *Everson v. Bd. of Educ.*, 330 U.S. 1, 18 (1947) ("The First Amendment has erected a wall between church and state. That wall must be kept high and impregnable. We could not approve the slightest breach."); see HAMBURGER, *supra* note 57, at 3.

72. See HAMBURGER, *supra* note 57, at 478, 490-92.

73. See *id.* at 265-67; see also WENDELL BERRY, *THE HIDDEN WOUND* 15 (1989); CHARLES MARSH, *GOD'S LONG SUMMER: STORIES OF FAITH AND CIVIL RIGHTS* 82-115 (1997); CHARLES REAGAN WILSON, *BAPTIZED IN BLOOD: THE RELIGION OF THE LOST CAUSE, 1865-1920*, at 8 (1980).

74. See HAMBURGER, *supra* note 57, at 478, 482.

75. It cannot be forgotten that Justice Black was a Southern Baptist from Alabama.

76. See HAMBURGER, *supra* note 57, at 17.

77. See William T. Cavanaugh, "A Fire Strong Enough to Consume the House": *The Wars of Religion and the Rise of the State*, 11 *MODERN THEOLOGY* 397, 398 (1995).

78. See *id.* at 406 ("The members of a Church cohere as in a natural body, but not to

furthered political development with the doctrine of the two kingdoms, allowing for the bodily submission of the person to the state while continuing the spiritual relationship to the church.⁷⁹ In regard to church-state relations, such a political development accepted the Erastian model, placing the church under the authority of the state, which established national churches.⁸⁰ Thus, cultural developments and political evolution simultaneously influenced each other to result in a changed religious human rights landscape for European nations.

Western European history also illustrates the synergistic relationship between government, culture, and interpretation of religious human rights norms. During the British and French Enlightenments, the oppressive yoke of national churches was overthrown through a series of violent revolutions that began in Britain and spread to America, France, Eastern Europe, and Russia.⁸¹ The idea of religious freedom, therefore, went through a process of development that was acculturated in the body politic, which allowed for its legal support in the European parliaments.⁸² Unlike the religious freedom of the United States, European religious freedom was not necessarily interpreted as separation; rather, religious freedom simply came to mean the right of the individual to associate with one's religion of choice rather than the religion of the sovereign.⁸³ The idea of religious freedom as separation did not occur in Europe as it developed in the United States because of the

one another, for each one depends only on the sovereign" and therefore "[t]he Body of Christ is thereby severely nominalized, scattered and absorbed into the body of the State." (citing THOMAS HOBBS, *LEVIATHAN* 418 (Collier Books 1962)).

79. See Harold J. Berman, *The Spiritualization of Secular Law: The Impact of the Lutheran Reformation*, 14 *J.L. & RELIGION* 313, 315-16 ("The Lutheran 'two kingdoms' doctrine placed the visible institutional church . . . within the earthly kingdom."); William T. Cavanaugh, *The City: Beyond Secular Parodies*, in *RADICAL ORTHODOXY: A NEW THEOLOGY* 182, 188-90 (John Milbank et al. eds., 1999).

80. For different models of church-state relations, see John G. Francis, *The Evolving Regulatory Structure of European Church-State Relationships*, 34 *J. CHURCH & ST.* 775, 780-82 (1992) ("On [the Erastian] model, the state seeks to organize the church as a department of the state.").

81. See generally Cavanaugh, *supra* note 77 (examining the wars of religion of sixteenth- and seventeenth-century Europe).

82. See R.G. Cowherd, *The Politics of English Dissent, 1832-1848*, 23 *CHURCH HIST.* 136, 142 (1954) ("[The Dissenters'] cry was freedom—freedom in religion, freedom in trade, freedom in government. Religious freedom was the only liberal slogan that could equal the Tory cry of 'Church in danger.'").

83. See HAMBURGER, *supra* note 57, at 32, 34-35.

particular cultural, societal, and historical contexts of the European nations, resulting in the existence of different religious rights norms interpretations in Western Europe and the United States.

The Western European understanding of religious rights thus illustrates the necessity of cultural considerations in the promulgation of human rights norms: even nations with similar cultures and human rights understandings can have disparate interpretations of those norms, which suggests that even greater consideration of culture must be made when promulgating religious norms of Western origin among non-Western nations.

Both the American and European examples also illustrate how the norm emerges first culturally and the norm's embodiment into law follows subsequently. The key question is whether or not norm promulgation must occur this way. It appears to us that in the age of globalization the process can be accelerated, but in the end cultural adoption and legal embodiment have to occur more or less simultaneously.⁸⁴ That is, as the norm is becoming enculturated, it is likely that a society will begin to accept certain legal principles connected with it. This process is not necessarily unicausal but is rather synergistic, and both dimensions of the same process feed off of each other.

This implies that the process of norm promulgation can get out of step. Thomas Jefferson stated the ideal pace of legal change:

I am certainly not an advocate for frequent and untried changes in laws and constitutions. . . . [L]aws and institutions must go hand in hand with the progress of the human mind. As that becomes more developed, more enlightened, as new discoveries are made, new truths disclosed, and manners and opinions change with the change of circumstances, institutions must advance also, and keep pace with the times. We might as well require a man to wear still the coat which fitted him when a boy, as civilized society to remain ever under the regimen of their barbarous ancestors.⁸⁵

84. See Rhoda E. Howard-Hassmann, *The Second Great Transformation: Human Rights Leapfrogging in the Era of Globalization*, 27 HUM. RTS. Q. 1 (2005).

85. THOMAS JEFFERSON, *To Samuel Kercheval, Monticello, July 12, 1816*, in THE PORTABLE THOMAS JEFFERSON 552, 559 (Merrill D. Peterson ed., 1975).

This statement also suggests that institutions cannot be forced to advance too far beyond the society in which they are intended to function.

C. Russia

Russia provides an illustrative example of the dangers Jefferson envisioned, where, to use another analogy, Russia's liberal leaders tried "to put the cart before the horse" by enacting legal guarantees that the culture just could not sustain. Beginning with the 1990 "Law on Freedom of Conscience and Religious Associations,"⁸⁶ legal religious equality and a separation of church and state were introduced for the first time in Russian history.⁸⁷ This law "was perhaps an idealistic vision of what Russia might be in theory, but nevertheless an overestimate of what Russia was prepared to be in practice."⁸⁸

In contrast to Western Europe and the United States, "constitutional principles in Russia have been interpreted . . . through the matrix of relationships that create and maintain society."⁸⁹ Russia's 1993 Constitution, which attempted to introduce concepts such as a separation of church and state, was therefore very much a "mixed" document, drawing from the Anglo-American, continental European, and Russian constitutional traditions," and, as such, represented a "collision of legal cultures."⁹⁰

86. *Text of Law of the USSR: "On Freedom of Conscience and Religious Organisations,"* 33 J. CHURCH & ST. 192, 192-201 (1991); see Derek H. Davis, Editorial, *Russia's New Law on Religion: Progress or Regress?*, 39 J. CHURCH & ST. 645, 645-46 (1997) ("The 1990 law actualized Russia's desire to close the door on religious repression and usher in a new era of religious freedom.").

87. See *Soviets Back Law on Religious Freedom*, N.Y. TIMES, Sept. 27, 1990, at A1 ("In the past, religious organizations had no clear legal standing and were unable to make contracts or represent themselves in court. Under the new law, they have the same status as individual citizens.").

88. Derek H. Davis, Editorial, *The Russian Orthodox Church and the Future of Russia*, 44 J. CHURCH & ST. 657, 663 (2002); see Davis, *supra* note 86, at 646 ("Many saw the developments as disruptive, even chaotic, and a threat to traditional notions of Russian unity.").

89. Nikolas K. Gvosdev, *Religious Freedom: Russian Constitutional Principles—Historical and Contemporary*, 2001 BYU L. REV. 511, 511; see Davis, *supra* note 86, at 646 ("A democratic document in every way, the constitution provided for explicit guarantees of basic civil and religious rights.").

90. Gvosdev, *supra* note 89, at 511 (quoting I. Bogdanovskaia, Address at the Fifth World Congress of the International Association of Constitutional Law: Constitutionalism,

As Western religious organizations began to operate in Russia and new religious movements began to emerge, they were met with resistance not only by many of their intended converts but also by government officials and the Russian Orthodox Church; these organizations were seen as presenting a threat to Orthodoxy and even to Russian national identity.⁹¹ This resistance soon resulted in attempts to change the 1990 law, the first of which failed. However, after many regions began to take it upon themselves to enact more restrictive religion laws,⁹² the federal government dealt with the situation in 1997—not by bringing the regional laws into conformity with the 1993 Constitution, but by bringing the Federal Constitution into conformity with the more restrictive regional laws.⁹³

Quite simply, once Russian society was exposed to the post-Communist religious economy, many of the nation's leaders and intellectuals did not like the fact that their religious tradition was faring so poorly in the marketplace, and they sought to restructure the rules of the game.⁹⁴ It appears, therefore, that Western-based

Universalism, and Democracy (July 12–16, 1999)).

91. See Davis, *supra* note 86, at 646 (“The Russian Orthodox Church in particular saw [the developments preceding and culminating in the 1993 Constitution] as leading to religious anarchy, and began leading a movement for greater regulation of religion in Russia.”); Metropolitan Kirill of Smolensk and Kaliningrad, *Gospel and Culture*, in PROSELYTISM AND ORTHODOXY IN RUSSIA 66, 72–76 (John Witte Jr. & Michael Bourdeax eds., 1999) (“Proselytism is the fact of invasion by another culture, even if Christian, but developing according to its own laws and having its own history and tradition.”).

92. See Lauren B. Homer & Lawrence A. Uzzell, *Federal and Provincial Religious Freedom Laws in Russia: A Struggle For and Against Federalism and the Rule of Law*, in PROSELYTISM AND ORTHODOXY IN RUSSIA, *supra* note 91, at 284, 304; see also Marat S. Shterin & James T. Richardson, *Local Laws Restricting Religions in Russia: Precursors of Russia's New National Law*, 40 J. CHURCH & ST. 319 (1998).

93. *Russian Federation Federal Law: “On Freedom of Conscience and on Religious Associations,”* 39 J. CHURCH & ST. 873 (1997) (providing a full English translation of the Russian law); see Wallace L. Daniel & Christopher Marsh, Editorial, *Russia's 1997 Law on Freedom of Conscience in Context and Retrospect*, 49 J. CHURCH & ST. (forthcoming 2007) (manuscript at 7, 11, on file with authors). See generally Arina Lekhel, Note, *Leveling the Playing Field for Religious “Liberty” in Russia: A Critical Analysis of the 1997 Law “On Freedom of Conscience and Religious Associations,”* 32 VAND. J. TRANSNAT'L L. 167 (1999) (providing a synopsis of religious rules in Russian history and a commentary on and examination of the 1993 Constitution's background and content).

94. See Lekhel, *supra* note 93, at 195–96 (“[T]he Church faced an increased competition from foreign missionaries who were experienced and possessed considerable resources for mass evangelization. In addition, the easy registration provisions in the 1990s led to a proliferation of cults that preached violent, socially destructive doctrines.”).

human rights norms were not yet in place in Russia prior to its adoption of the 1993 Constitution, and when the “collision of legal cultures” occurred, it was the law that was changed, not the culture. While in the long run laws may be able to facilitate cultural change, the liberal components of the 1993 Constitution were just not able to generate the necessary cultural changes quickly enough. The good news is that the 1997 law, which is much more restrictive on paper, has not been carried out to its possible extreme, partly in thanks to the Russian Constitutional Court and advocacy networks that have challenged the implementation of some of the law’s provisions, particularly its tedious registration procedures.⁹⁵

IV. CONSIDERATIONS FOR MODERN HUMAN RIGHTS MOVEMENTS

The historical examples of the United States, Western Europe, and Russia illustrate the myopia inherent in expecting the adoption of laws and treaties to necessarily promulgate human rights norms without an accompanying cultural change. In considering this idea, also demonstrated through the Risse and Sikkink constructivist model, it is especially important to note the modern implications of formal religious rights delineations, like Article 18, and their arguably Western norms.

It has been said that religious liberty is the “great gift of America to civilization and the world.”⁹⁶ What kind of religious freedom comprised this gift? The two clauses of the First Amendment guaranteeing the right of religious freedom to the American citizenry⁹⁷ have been interpreted as granting the right of individuals to voluntarily participate in their religion of choice, unobstructed by national governments.⁹⁸ If America and other western cultures have thus promoted their societal norms on an international level to protect individuals from national governments’ intrusion upon religious practice, wisdom suggests consideration of the above-mentioned historical examples, the variety of cultures in today’s

95. Daniel & Marsh, *supra* note 93, at 11–12.

96. SANFORD H. COBB, *THE RISE OF RELIGIOUS LIBERTY IN AMERICA: A HISTORY* 2 (1902).

97. U.S. CONST. amend. 1 (“Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.”).

98. *See supra* note 2.

international landscape, and the concept of modernity in applying societal norms.

We should not expect that all nations will accept the norm as understood in the West, and cultural differences may preclude the adoption of the norm's Western interpretation. Furthermore, a particular nation may not have the social and cultural resources necessary for the acceptance of certain norms, at least in the short run. In regard to religious freedom, we must ask whether such a right as understood in the West can be so easily sustained in a society which has not undergone the West's intellectual and cultural developments. Thus, it might be wishful thinking to expect a nation that has not experienced religious freedom as understood in the West to suddenly guarantee the right of an individual to participate in his religion of choice. We must bear in mind that in America it took 200 years before the concept developed and was legally promoted, another thirty years before complete disestablishment occurred at the state level, and another 100 years before the Court handed down important decisions such as *Everson v. Board of Education*,⁹⁹ *Wisconsin v. Yoder*,¹⁰⁰ and *McCullum v. Board of Education*,¹⁰¹ thus guaranteeing the religious liberty we enjoy today.¹⁰² History demonstrates that only through the enculturation of such human rights norms, which occurs over a period of time, will they be accepted and sustained.¹⁰³

Risse and Sikkink mistakenly expect non-Western nations to accept human rights norms as interpreted by the West. They do not really consider that the norms that are being spread might be incongruent with different cultures and that some cultures might not be prepared for the adoption of the complete human rights agenda. When we speak today of the spread of human rights around the world, we are primarily focusing our attention on less-developed and developing societies. If human rights must first become embedded in the culture, as this Article argues, then these societies must be at the requisite levels of social and economic development that will prepare their cultures for such enculturation of human rights norms. Despite

99. *Everson v. Bd. of Educ.*, 330 U.S. 1 (1947).

100. *Wisconsin v. Yoder*, 406 U.S. 205 (1972).

101. *McCullum v. Bd. of Educ.*, 333 U.S. 203 (1948).

102. *See supra* Part III.A.

103. *See supra* Part III.

what the government does, the society itself might not be prepared to accept such legal norms, and governmental authorities will not be able to support or sustain them. It is not enough to enact a law or treaty promoting Western religious freedoms and hope that a non-Western nation's culture will simply catch up. In order for a society to accept the human rights agenda, it may have had to attain a certain level of modernity in preparation.¹⁰⁴ Consideration of this groundwork's necessity in the promotion of human rights norms further highlights the mistake of expecting nations to adopt norms automatically.

Because some level of modernity may be required as part of a nation's requisite cultural adaptation before it successfully adopts human rights norms, a crucial question arises: What is a modern society? Social scientists have maintained that a modern society is one in which a differentiation has occurred in the society between the various spheres of authority.¹⁰⁵ In this regard, a separation must occur between the religious and political spheres, where each maintains its autonomy.¹⁰⁶ What results is a secularization of society, which social scientists are realizing may not necessarily mean the privatization of religion.¹⁰⁷ But how this differentiation and

104. See SAMUEL HUNTINGTON, *THE CLASH OF CIVILIZATIONS AND THE REMAKING OF WORLD ORDER* 56–78 (1996); Payne, *supra* note 51; Adamantia Pollis, *Eastern Orthodoxy and Human Rights*, 15 *HUM. RTS. Q.* 339 (1993). For a differing perspective, see Vasilios N. Makrides & Lina Molokotos-Liederman, *Introduction: Orthodoxy in Greece Today*, 51 *SOC. COMPASS* 459 (2004); see also Vasilios N. Makrides, *Orthodox Christianity, Rationalization, Modernization: A Reassessment*, in *EASTERN ORTHODOXY IN A GLOBAL AGE: TRADITION FACES THE TWENTY-FIRST CENTURY*, *supra* note 51, at 179. Makrides makes a distinction between modernity and modernization. *Id.* A society can experience modernization without appropriating the values of modernity. *Id.* However, Volker Schmidt argues that such a distinction is untenable. See Volker H. Schmidt, *Multiple Modernities or Varieties of Modernity?*, 54 *CURRENT SOC.* 77 (2006).

105. JOSÉ CASANOVA, *PUBLIC RELIGIONS IN THE MODERN WORLD* 40 (1994); see, e.g., Robert Dell'Oro, *The Market Ethos and the Integrity of Health Care*, 18 *J. CONTEMP. HEALTH L. & POL'Y* 641, 644 (2002); Rebecca R. French, *Lamas, Oracles, Channels, and the Law: Reconsidering Religion and Social Theory*, 10 *YALE J.L. & HUMAN.* 505, 510 (1998) (citing Weber for the prediction of "an evolutionary progression from religious society to a modern society that views science as its religion and then ultimately secularizes science itself" and citing works from contemporary authors who continue this theme); Jacques Lenoble, *Law and Undecidability: A New Vision of the Proceduralization of Law*, 17 *CARDOZO L. REV.* 935, 941, 944 (1996).

106. See CASANOVA, *supra* note 105, at 40; Alfred Stepan, *Religion, Democracy, and the "Twin Tolerations,"* 11 *J. DEMOCRACY* 37 (2000).

107. See CASANOVA, *supra* note 105, at 7; Peter L. Berger, *The Desecularization of the World: A Global Overview*, in *THE DESECULARIZATION OF THE WORLD* 1, 1–18 (Peter L.

secularization occurs depends upon the social context of the particular nation. Not all nations should be expected to undergo the same developmental process experienced neither by Western cultures nor by the United States. Rather, we must look to institutional development in each particular society to determine whether to classify a nation as “modern.”¹⁰⁸ If particular institutions are functioning similarly across cultures, then a standard of modernity can be maintained. In this manner, we can postulate the idea of “varieties of modernity” without losing the concept of modernity, which the popular idea of “multiple modernities” has the tendency of doing.¹⁰⁹

Further, using the concept of “varieties of modernity” opens the possibility for particularistic understandings of human rights according to cultural norms. How is the concept of human rights understood in non-Western cultures? Is the concept of religious freedom understood in the same manner? A paradigmatic framework incorporating varieties of modernity¹¹⁰ allows us to examine a particular nation to determine whether cultural institutions are in place to guarantee human rights that are *similar* to those in the West. Do we expect a particular culture to be Westernized through the adoption of Western institutions that cannot be supported by the culture? Or do we expect the development of similar institutions in a particular culture to bring us closer to the ideal represented by the human rights norm? These considerations of modernity are vital as nations work together to further the development and adoption of international human rights norms in a mutually beneficial relationship with the advancement of their cultures.

V. CONCLUSION

If one listens to various leaders from developing countries, one will hear a whole range of justifications for not protecting certain human rights, such as the assertion that in their culture a uniquely different priority is placed on the rights in question. Such

Berger ed., 1998).

108. Schmidt, *supra* note 104, at 85, 86, 88–89; see Dell’Oro, *supra* note 105, at 644 (stating that “the natural evolution in all advanced industrial nations is toward bureaucracy and institutionalization”).

109. See Schmidt, *supra* note 104, at 80–82.

110. *Id.* at 87–89.

justifications cannot be sustained over the long term, for as development progresses and modernity increases, the norms will spread. This diffusion of norms is not limited to a nation's elites but will come to include the masses and the leadership of the next generation, who will demand their human rights. Governments are run by the people, and the people recognize and accept these rights as just and legitimate. It is thus not enough simply to enact norms into law without socio-cultural support.

The respect of human rights, then, is a complex interactive process, especially during the phases of initial recognition, during which certain actors may accept human rights on principle, while others are not yet convinced and wish to stem the tide. This synergistic perspective on the globalization of human rights and the socialization of human rights norms suggests that culture should not be an insurmountable obstacle to the spread of human rights norms. The key rests with socialization, both at the level of argumentation and at the level of enculturation. Adjustments to a country's legal code alone thus will not effectively guarantee the protection of human rights; changes at the cultural level are just as important. Additionally, legal guarantees cannot move too far beyond a society's culture, for doing so will likely result in a backlash such as that seen in Russia, where the culture demands a regression of the law's promotion of human rights norms.

