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Robert Seiple

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**Santa Clara Journal of
International Law
Symposium Keynote:
Religion and
International Law:
Matching Mission to
Vision**

Robert Seiple*

* Robert A. Seiple is a retired ambassador for international religious freedom. He previously served as president and CEO of Council of America's First Freedom. He was also founder and chairman of the board of the Institute for Global Engagement and has spent much of his career fashioning humanitarian solutions that endure.

I am often asked, “Is this issue of religious freedom, from a global perspective, getting any better?” Since I am an optimist by nature, even though the pessimist generally has more facts, my tendency has been to say “yes,” and to note the specific efforts we have made in the United States, to highlight a few countries where progress has been tangible, and to suggest an overall increase in awareness on the part of the global community with respect to religious freedom.

But then I get the reports from the field, not the status of legal efforts to improve rule of law around the world, but the named individuals who have yet to feel legal, trickle-down justice. For many, like the Shia in Saudi Arabia, Copts in Egypt, Baha’is in Iran, Ahmadis in Pakistan, Christians and Muslims in India, and more, every day is a threat to their survival as cultures and courts have seemingly conspired against their very lives. I fear that the gap between the intellectual exercise of international covenant-making, and the coercive environment in which too many individuals exist, is a gap much wider today than what we experienced 15 years ago. We have more laws, but for many, justice continues to be hope deferred.

I need to tell you something that will be obvious in the course of this paper. I am not a lawyer. It has been my lot in life, however, to fall in with lawyers when it comes to religious human rights. Gratefully, lawyers have led the way on this issue. Their work has been consistently good, persistently applied, and courageously implemented. Lawyers have been toiling in this vineyard long before the faith-based NGOs got involved. Their collective writings are remarkably consistent, transparent, predictable, and fair. These writings are the basis for good law. Can anyone ask for more?

Perhaps. Given the negative statistics in the world, we need to elevate our game to a higher level.¹ I am an activist with a very tangible bottom line. Theology has to touch the ground. Methodology needs to work in the most difficult environments, and the moral courage of our legal efforts needs to match that individual courage that chooses to resist even the threat of death, in order to worship how one pleases, and in whom one believes.

It will be helpful to provide a specific example from the language of human rights law and then put it in the context of those most vulnerable, those who fight for their very lives, each and every day. Legally, we’ve opted for the language of toleration. The persecuted, on the other hand, cry out for respect.

The concept of “toleration” has never taken us where we need to go. Stephen Carter, writing in 1993, saw the problem very clearly:

Tolerance without respect means little; if I tolerate you but do not respect you, the message of my tolerance, day after day, is that it is my forbearance, not your right and certainly not the nation’s commitment to equality, that frees you to practice your religion. You do it by my sufferance, but not with my approval. And since I merely tolerate, but neither respect nor approve, I might at any time kick away the props, and bring the puny structure of your freedom down around your ears.²

1. *See generally* PAUL MARSHALL, *THEIR BLOOD CRIES OUT* (1997) (examining religious persecution in a variety of different countries).

2. STEPHEN L. CARTER, *THE CULTURE OF DISBELIEF: HOW AMERICAN LAW AND POLITICS TRIVIALIZE RELIGIOUS DEVOTION* 93 (1993).

Here's the problem with merely tolerating those who are different from us, the "other" in our midst. It is a mental exercise that always ends with a lower common denominator. Toleration is a form of political correctness, that most shallow form of intellectualism. It is the cheapest act of grace applied to someone we don't particularly like. "I don't like your person, but I will tolerate your presence."

Respect, on the other hand, elevates a common humanity. It is the tangible expression of a changed behavior, humility, and better listening skills. For me, respect begins with the premise that we have all been created in the image of God, created with the spirit of the Divine. Each other's presence is celebrated. Dignity is provided to each person. Respect suggests a deeper commitment to one another, based on our best instincts and highest values. While tolerance is an act of the intellect, respect represents the passion of the heart. It is time that the language of respect dominates our legal discourse.

Respect is uncompromising. Consider how this is reflected in Mary's story. I went to Lebanon right after Lebanon's Civil War, quite properly called a religious war, a war that destroyed over 140,000 lives. Religious conflicts are horrible. They tend to be bloodier, longer lasting, and more unpredictable than any other kind of conflict. When it comes to religion, identity passions run deep.

Mary was only 18 when this war spilled over into her village. A rival militia came into the village that day with guns blazing. In the chaos of the moment, people were in full flight, trying to escape the unrelenting bullets. Mary ran, but tripped over a tree root and fell to the ground. Before she could get up, a young militiaman put a revolver to her head and, knowing that she was a Christian, demanded that she "renounce the Cross or die." Mary's response: "I'm a Christian. I was born a Christian and I will die a Christian."

The pistol exploded in Mary's face. A bullet went through her head just to the left of her chin, exiting through her spine. Instantly, and irreparably, Mary became a quadriplegic. The gunman then bent over Mary, took his knife, and carved a cross on her chest.

The next day the militia made a decision to occupy the village. To do so, however, they had to complete the grisly task of burying all the dead bodies that were killed the day before. When they got to Mary's body, they heard a small groan. Miraculously, Mary was still alive. Just as miraculously, the militia decided to transport Mary's broken body to a nearby hospital.

At the time of my visit, Mary was in a wheelchair, calmly telling me her story. I found this part of the story beyond credibility, and told her so.

"Mary, why would these people, who tried to kill you one day, make sure the next day that you are taken to a hospital?"

Mary's sweet demeanor never changes. "Sometimes God uses bad people to do good things." When I asked her about her assailant, Mary said, "I hope he is still alive. I would like to forgive him face to face."

"Mary, why in the world would you want to do that? He tried to kill you!"

Without any wasted passion, and with all the certainty of a person who has embraced the best of her faith over the worst of religion, Mary replied, "This is what my God did for me. I can do nothing less for a fellow human being."

Mary taught me all I know about religious freedom. Consider the takeaways. Here Mary is, sitting in a wheelchair, an Arab woman held hostage by her own body, and living out her life in an institution. The only thing that has remained intact is her faith and her freedom to practice it. For Mary, it is enough. She refuses to be a victim. She wants no pity. She only seeks to extend grace and mercy — forgiveness — to the “other” in her midst, the one who tried to kill her. She has tremendous respect for that person. Indeed, she wants to share the best of her faith, without compromise, with the one who came so close to totally destroying her life.

Here is the hopefully obvious point: the concept of “toleration” doesn’t begin to fix this situation. Compromise, inclusive language, and non-threatening words may work in a committee’s drafting room, or at a conference such as this, or in the safe confines of an academic environment. But words have meanings, and meanings have consequences. We would never want to cheapen Mary’s story by hobbling it with the politically correct language of toleration. This is a story of respect, a redemptive moment, all too rare in today’s world, and it is respect that takes us to a whole new level of accountability. Our international covenants need to reflect this higher standard.

Respect is also inextricably linked to knowledge. My admonition to all who work in the arena of religious freedom is to *know* your own faith, and to *respect* your neighbor’s faith. Drive this quest for knowledge deep within your belief system. Superficiality doesn’t work very well in our complex and chaotic world. We need to know why we believe (or why we choose not to believe) and what constitutes the verities of that faith. What is the orthodoxy undergirding the faith, the authority behind the sacred texts, the heroes of the faith? Why, in the words of Pascal, do “good men believe it to be true?”

Just as important, however, is our knowledge of our neighbor’s faith, the beliefs of the “other.” It is very difficult to respect something we know so little about. Knowing the neighbor’s faith will require the better listening skills noted earlier, a deeper level of personal humility, and a greater propensity to learn from our neighbor. Quite frankly, this is where Osama bin Laden got it all wrong. He consciously chose an aberrant form of Islam, a truncated and redacted gospel, if you will. He neither understood the richness of Islam, nor respected the faith of others. It has become all too plain, that a misunderstood gospel, a truncated gospel, in the hands of a religious zealot, is very scary indeed. While any religion, practiced at its best, inspires no fear for either governments or individuals, aberrant passions can put an entire world order at risk.

Imagine how the accountability that comes from respect would have changed the Danish cartoon episode.³ Cartoons of the prophet Muhammad were allowed because an editor did not know and a cartoonist did not care. Both knowledge and respect came up short. The importance of the imaging component in the Islamic faith was scoffed at and the mocking cartoons further exasperated the situation.

3. Editorial Cartoons, *Muhammeds Ansigt*, JYLLANDS-POSTEN, Sept. 30, 2005, at 3, available at http://multimedia.jp.dk/archive/00080/Avisside_Muhammed-te_80003a.pdf (A Danish newspaper published a series of twelve cartoons depicting the Islamic prophet Muhammad, which led to violent Islamic protests across the Muslim world).

Operating from a legal framework, the paper was right to claim free speech. It is one thing to be legally right, however, and morally wrong. The lack of sensitivity on the part of the paper was a function of limited knowledge and no respect. The incident continues to fester, and mere “toleration” will not keep this from happening again.

As an important aside, there are interesting parallels with the desire to build a mosque at New York’s “Ground Zero.” Certainly, there is a right to build this mosque anywhere that land can be obtained. We have a rich history in this country for the tangible presence of legally supported religion, but there is something else at stake. Like the printing of the Danish cartoons, there was an initial absence of sensitivity as to how this mosque, at this time, and in this place, would be perceived. The initiative (albeit morphed into many directions as political figures provide sound bites for willing microphones) demonstrated a lack of respect for the “other.” Respect would have dictated another course of action, perhaps ultimately achieving the same result, but with far less collateral damage along the way.

Finally in this regard, we have another example where respect could achieve so much more than an attempt to create a “tolerant” environment: the long running desire to pass “Defamation of Religion” covenants in the United Nations. It has been impossible to get agreement on this issue. The proponents of this issue claim a right not to be offended. The request “not to hurt one’s feelings,” or “to not make me feel bad,” pales in comparison, however, to blasphemy laws that are flawed in their writing and unjust in their implementation. The examples of these laws being used to settle scores, to eliminate commercial competition, to punish enemies, are countless. Similarly, anti-conversion laws are coercive, running counter to the basic tenant of religious freedom, namely, for faith to be authentic it must be freely embraced.

“Defamation” is difficult to define. It also takes us in a negative direction. “Respect” is not only much more positive, but allows for our best instincts and highest values. There is a reason that the Hebrew and Christian Bibles list as the second great commandment to “love your neighbor.” There is a reason that 138 Islamic theologians came together to send their “common word” letter, i.e., love God and love your neighbor, to Pope Benedict following his Regensburg speech in 2006. It was a desire for respect, respect for the “other” and respect for the God who created the ‘other.’ Only good will flow from such respect.

Words like “respect” are important, but this may be the easier exercise when it comes to elevating international human rights law. The motivation behind the words, and the rationale that undergirds the words, are likewise critically important to enduring values like human rights. For example, the landmark Universal Declaration of Human Rights, the 1948 wellspring for all the international covenants to follow, almost never became a reality. Agreement could not be forged on the rationale behind the document, specifically Article 18, religious freedom. Ultimately the drafting group decided to focus on the “what” and to leave the thorny issue of the “why” for another time.⁴ This, then, was a compromise document, reduced to the mission of what the Declaration would do —without a compelling vision for why such activity was necessary. When rationale and motivation are set aside, so too is the

4. W. COLE DURHAM, JR. & BRETT G. SCHARFFS, *LAW AND RELIGION: NATIONAL, INTERNATIONAL, AND COMPARATIVE PERSPECTIVES* 80-81 (2010).

passion needed for implementation, the same passion we find in the field from those most vulnerable, those who risk their ideals and their deeply held values on a daily basis.

A few years ago, my wife and I visited the small village of Keng Kok, Laos. This village was “ground zero” in Laos for religious persecution throughout the 1990’s. Former President Nouhak, a communist hardliner, came from this village. It was well known that the way to get ahead, to build a resume, to establish a career, was to make sure the Christian population of this village was continually harassed, hounded, and yes, persecuted, with impunity.

We were greeted with traditional Laotian hospitality: a meal, gifts, and a Baci ceremony, the tying of “blessing” yarn around our wrists. Against that backdrop we then brought our concerns to the local and district officials. We documented a decade of abuse — the persecution administered to a minority group, a faith minority.

The response from the district official was interesting, but hardly surprising. “We have no religious freedom issues here because we have no more Christians. These Christians decided not to be Christians any longer. No Christians, no religious freedoms issue.” A straightforward argument, but the official felt obliged to continue.

“One day they all decided they didn’t want to be Christians anymore.”

“How many decided this?” I queried.

“One thousand one hundred and thirty-five.”

“All on the same day?”

“Yes,” he continued, “so now there are no more Christians.” Hence, according to him, there were no religious freedom issues.

The official offered one more statement: “Since there are no more Christians, there was no need for a church, so we took the church and turned it into a school for our children.” He seemed to be very pleased with this “best use” approach to local real estate.

What took place in Keng Kok was a classic forced renunciation of faith, complete with dated signatures. A minority population was threatened with pain to the point of death if they would not sign away their faith. Coercive in the extreme, this is the antithesis of religious freedom.

Before we took our leave, we asked if we could see the appropriated church. Interestingly it was one of the largest and best built structures in the village. It was all locked up on the Sunday afternoon of our visit, but we were allowed to walk around the outside. When we came to the back of the church building, we heard familiar singing. To our amazement, and the instant irritation of our communist hosts, there, on a grassy field next to the church, set approximately 60 “no more Christians” engaged in a prayer and praise service. More specifically, we were witnessing a protest demonstration, one that would bring exposure to the lies we had so recently experienced.

As we made our way over to the church service, much to the consternation of our hosts, the pastor and five of his deacons came to greet us. They were dressed in burlap sacks with ashes embedded over the chest. ‘Sackcloth and ashes,’ I thought, ‘this is going to be different!’

“What are you doing?” I asked incredulously.

“We are the face of religious persecution,” came the pastor’s reply. Then followed a litany of complaints, including the forced renunciation exercise and the loss of their church. We

talked for about 15 minutes with our embarrassed hosts desperately imploring us to break off the conversation. Finally, it was time to go.

“Are you able to preach publicly?” I asked while walking back to our cars.

“They don’t want me to, but I told them they would have to put a bullet in my brain to get me to stop.” His final words were a challenge to all of us. “Let the world know that there is a church in Laos, and the gates of Hell have not prevailed against it.” And then, a pointed postscript: “Demonstrate as much courage as you have seen here today.”

There is much more to this story, including a successful ending where the church was returned and a minority religion was protected. But for our purpose, note the contrast between a Universal Declaration of Human Rights without rationale, and the courage at point of implementation that would not be possible without the passionate motivation inherent in the “why” of this congregation’s faith. What if the framers of the UDHR had spent a little more effort trying to capture, even in a collective sense, the driving motivation behind Article 18 of this document? Would it have better withstood the test of time? Would greater hope have been generated for those living out their lives “on the cruel edges of the world?” Would we have been able to avoid the unspoken reality — namely a document that would not command a positive vote in today’s global community? No one can tell for sure, but this would be our hope.

We are now on a slippery slope. As we trace the paper trail of International covenants, we see a disturbing erosion taking place. In the 1981 covenant, for example, the Declaration on the Elimination of all Forms of Intolerance and of Discrimination Based on Religion or Belief does not include language about the right to change one’s faith. This critically important element in religious freedom, namely choice and the freedom to choose, has been left out. Ironically, in order to preserve an absolute of the Islamic religion, a compromise had to be fashioned. Unfortunately, the *de facto* element that remains is coercive. One is no longer free to embrace another faith, a fact that minimizes and diminishes the reality of faith’s authenticity.

Granted, the proponents of the 1981 Declaration take pains to mention that all existing guiding principles from 1948 are still being maintained.⁵ The art of the compromise, however, is now clearer than ever before. Certainly one can appreciate the difficulty of writing documents in a committee setting that need to ultimately be approved by a diversity of governments. But can we also hear the challenging plea of a Laotian pastor: “Demonstrate as much courage as you have seen here today.” Sadly, we have a way to go.

In my exit interview from the State department, Ambassador Thomas Pickering, the third highest-ranking American diplomat at the time, gave me some important insight.

“You know,” he said, “you human rights guys are always on the right side of history. Your philosophical stances allow for righteous indignation given what this world produces. You have earned the right to stand up and beat your chests. But at the end of the day, for credibility’s sake, your programs need to work for those at the bad end of the food chain.”

5. *Id.* at 85.

I never felt that Pickering was arguing for a more sophisticated understanding of compromise. On the contrary, he felt that progress in the field demanded courage at the drafting table, upholding with unyielding respect the inherent dignity of all humankind. I could not agree more. The best of Mary's faith and the courage of a Laotian pastor's stand, cry out for our best efforts, efforts that are uncompromisingly clear, productively implementable, dedicated and devoted to those most vulnerable in our world today.