Liberating human rights? Insights from Abdullahi An-Na'im for present day South Africa

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This article highlights the 'paradox' of human rights discourse in our contemporary world, showing that it is increasingly framed as both a liberating tool and an oppressive hegemonic ideology of the West. It draws on the South African context to suggest that this country's own ambiguous experiences, successes and challenges with human rights require a deeper acknowledgement of this paradox in our current times as a starting point. The Sudanese legal scholar Abdullahi An-Na'im offers a mediating way beyond these binary idolisations or denunciations of human rights with three specific strategies recommended in the practical pursuit of a grassroots human rights culture. His call for the active engagement of religious and cultural resources as essential assets for more effective contemporary practice of human rights offer a unique contribution that can help human rights concretise their 'liberating promise'. These strategies are then appropriated for South Africa in its unfinished and urgent task of developing a human rights culture from below.

Human rights discourse is increasingly problematised by scholars around the globe. This article begins with a brief overview of the 'paradox' of human rights, drawing on postcolonial scholars to unsettle the mainstream liberal human rights discourse and then pointing beyond this binary to a social constructionist view of human rights. It suggests that human rights are neither liberating givens, nor something from which South Africa needs to be liberated, but that its discourse may need shaking free from reified ossification into 'top-down' institutional projects that merely reinforce the status quo. In the light of this troubling paradox, my argument foregrounds an increasing scholarly interest in the important role of religion in building a bottom-up grassroots human rights culture and its ambivalent history as both an asset and a liability. It situates South Africa with regard to both human rights and religion, and relates its situation back to the 'paradox' of rights, often framed as a 'gap' between the theory and practice of human rights.

Three strategies from the Sudanese scholar Abdullahi An-Na'im will be employed to better concretise human rights within social movements and the lived realities of the poor. He calls for attention to internal religious and cultural legitimacy for human rights; the need for a methodology of synergy and interdependence between religion and human rights, and the prophetic reclaiming of liberatory hermeneutics for human rights within existing religious traditions.

The article applies these three strategies to the South African context. It suggests that scholars and activists have an important methodological choice to make in terms of how they engage religion and human rights. It argues that South Africa needs to better reclaim its internal prophetic religious voices to offer liberating and legitimate hermeneutics for human rights in order to ensure that religion does not remain a 'missing link' in human rights work. It concludes with the claim that, while this engagement is never easy, it is an essential step to better embed human rights in the concrete lives of the poor and marginalised.

1.   The paradox of human rights

Postcolonial scholars, especially from the South, increasingly question whether human rights do, in fact, offer protection against oppression and dominance or whether they have been co-opted as the "ideological gloss of an emerging Empire" (Douzinas 2007: 7).[1] This foregrounds the seemingly paradoxical nature of rights, often deployed in defence of the powerful and the status quo as easily

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1   Douzinas 2007, Mutua 2002, Shivji 1989.

as they are used to defend the poor and marginalised. Scholars in sub-Saharan African contexts have highlighted this tendency (Mutua 2002, Shivji 1989). Mamdani (2000: 2) calls for a need to go beyond "culture talk" and "rights talk" and speak instead of "languages of protest in relation to power". Others suggest that human rights talk, in fact, forms a main part of the "armoury of imperialism" (Shivji 1989: vii). Nevertheless, Shivji (1989: 50) also points out that, for many Africans, "human rights struggles constitute the stuff of their daily lives".

It is therefore clear that human rights discourse has become problematised with regard to its supposed 'liberating' effects for many of the marginalised in our contemporary world. In the light of this paradox, we must ask with Douzinas (2007: 20) whether human rights are still capable of offering a defence against power, or whether they have merely "become new tools for power". Douzinas (2007: 20) suggests that "human rights were conceived as a defence against the domination of power and the oppression of wealth but have often become an ideology of the rich that is imposed on the poor". However, Mamdani (2000: 4) argues that simply because powerful forces can co-opt human rights discourse as a "normative justification for hegemonic behaviour" does not prevent them from "simultaneously being counter co-opted as a liberating protest narrative by those oppressed by those structures". Nevertheless, those who seek to engage in the justice-oriented realisation of human rights must remain keenly aware of this "double-edged nature" of rights discourse if it is to concretise its current "liberating promise".

Some scholars (Hopgood and Moyn, for example) predict that we are already in the "endtimes" of human rights as "a civilising mission ideology held merely by the 1% elite" (Hopgood 2013: 1) or as humanity's last remaining utopian dream (Moyn 2012: 1). I suggest, however, drawing on Stammers (2013: 1-2), that "we damn human rights at our peril". He reminds us that human rights movements often start in 'bottom-up' settings, but can end up controlled by 'top-down' elites as they succeed and then become institutionalised. Stammers (2013: 1) points out that "it is here that rights become ambiguous in relation to power and can come to serve power rather than challenge it [...] collective 'power to' persistently morphs into forms of 'power over' in institutional settings" which he terms the "paradox of institutionalisation". I endorse his recommendation that both ideas and practices of human rights need to be reshaped rather than rejected, by re-connection to their social movement origins and their "missing histories retrieved" as valuable within the contemporary South African context. This 'paradox' of human rights has led scholars to adopt diverse theoretical approaches.

1.1   Human rights as liberating givens?

Some liberal scholars such as Donnelly[2] (2003: 23-7) and many human rights practitioners can still tend to treat universal human rights as unproblematic givens possessed by all and intrinsically 'liberating' concepts. In this narrative, once these already-agreed principles are written into law, it is merely a question of effectively enforcing them politically through the rights respecting 'good state', as opposed to the rights denying 'bad state'. This approach is common in South Africa where the Constitution symbolised such a fundamental change in society that human rights are still seen as new 'self-evident' truths that can neither be questioned nor critiqued. Lack of realisation is often, in this paradigm, framed only as an 'implementation' challenge. This liberal tradition of rights is increasingly deconstructed as being 'power-blind' and is challenged by empirical realities where increased formal recognition of rights has not always translated into improved living conditions for those on the margins. Ignatieff (2001: 53-95) is one of many scholars to warn against the danger of turning human rights into a new form of idolatrous ideology that merely serves the status quo.

1.2   The need for liberation from human rights?

Some African scholars such as Shivji (1989), Mutua (2002) and Mamdani (2000) react against the view of human rights as 'self-evident' truths, often critiquing human rights through an often Marxist lens, as a "Western", neo-economic liberal, colonial, hegemonic and/or possessive individualistic ideology from which black "Africans" need to be liberated. Mutua (2002: 155) provocatively suggests that:

> International human rights fall within the historical continuum of the European colonial project in which whites pose as the saviours of a benighted and savage non-European world. The white human rights zealot joins the unbroken chain that connects him to the colonial administrator, the bible wielding missionary and the merchant of free enterprise.

While some voices offer a separatist 'African' approach to human rights rather than a wholesale rejection, this is generally done by dismissing the entire 'dominant discourse of human rights' as fundamentally compromised and suggesting, in its place, some form of equally ideological Marxist appropriation of the discourse. Mutua (2002: 126-50) uses post-apartheid South Africa as a

2   It is worth noting that Donnelly's perspective has shifted over recent years to take on board some, but not all, of the criticisms of his liberal approach and to call more clearly for a 'situated universalism'

specific example of the ideological use of human rights, suggesting that, "[i]n the current unabashedly pro-capitalist and anti-redistributive international climate, rights language in South Africa has taken on the colour of oppression in that it primarily has left undisturbed the economic hierarchies of apartheid" (Mutua 2002: 152).

1.3   The liberation of human rights?

Increasingly, however, scholars situate themselves within a third paradigm, seeking to go beyond binary tendencies to idolise or demonise human rights and to acknowledge and mediate the paradoxical tensions of human rights in ways that can contextualise this important discourse within cross-cultural realities.[3] They remain committed to the principle of universality in the human rights movement, but recognise the cultural particularity of all perspectives, including the human rights approach. Ife (2009: 76) suggests that "human rights are constantly being negotiated, defined and redefined at all levels of society, they emerge from our shared and negotiated understandings of what it means to be human and our ways of treating others", warning away from any sort of static essentialisation of rights.

I suggest that this third approach best reflects the empirical realities of the human rights paradox faced in contemporary South Africa by holding in tension both the 'liberating promise' of human rights discourse for the poor and marginalised as well as its more ambivalent ability to be repressive, hegemonic and, at times, even counterproductive. In this model, which Stammers (1999: 1) and Ife (2009: 76) term "social constructionist", there is a call to "decolonise rights" and to critique dominant state-centred models of human rights by broadening the constructive contributions made from the South to this discourse. It stresses the need for people-centred contextual approaches "from below" if human rights are to realise their "emancipatory potential", and it highlights engagement with disciplines such as sociology, theology and anthropology in the shared task of "building a human rights culture" (Ife 2009: 140). Rather than being unchallengeable dogmatic givens, rights become, in an ongoing way, negotiated and dynamic sociopolitical concepts evolving within particular contexts.

I situate my contribution within this third trajectory, utilising the work of the Sudanese human rights scholar, An-Na'im (1990, 1995, 2000, 2005, 2013). His unique contribution is the insistence on an essential link between religion, culture and human rights as the foundation of more effective grassroots practice, especially, but not only, in African contexts (An-Na'im 1990: 229).

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3   An-Na'im 1990, 2012, Douzinas 2007, Ife 2009, Stammers 2009, 2013.

2.   Religion and human rights

Religion and human rights have had a long and deeply ambivalent history (Ghanea 2007, Witte 2011). Some scholars claim an "irreconcilable conflict" between the two (Phillips 2007: 1) or that religion is merely a "liability" in relation to human rights (Kirmani 2014: 1). Many development people still regard religion as an obstacle to progress, rather than as "something that can help build human societies" (Ter Haar 2011: 2).

Nowhere is this truer than in twentieth-century South Africa (Van der Ven et al. 2005) where religious discourses were powerfully employed both for and against human rights claims. Tutu suggests that, without the church, the struggle against apartheid would have been significantly weakened and yet that we must "hang our heads in shame […] when we survey the gory and shameful history of the Church of Christ" (Witte 2011: 1-6). As a result of this ambiguity, it can be tempting to relegate religion firmly to the private sphere and replace it with the new 'secular' values of the Bill of Rights. However, human rights scholars themselves are increasingly suggesting this may, in fact, be a mistake.[4] Morris (2014: 1), working in a Columbian context, asks:

> how many human rights advocates work with people and/or communities who believe in a God or gods? I would argue that they are many. How many human rights advocates (with a few important exceptions) are actually talking about the specifics of those beliefs? I would argue that they are few. This is a mistake, not only for strategic campaigns, but also for the extent to which advocates in such circles – be they believers or non-believers themselves – can understand and effectively work with people of faith. Understanding the people and communities with whom we work is the *foundation of effective practice.*

Shepherd (2009: ix-xxii) reaffirms the complexity of this task, suggesting that it is illusionary to imagine that there is merely "one relationship" between these two internally diverse and dynamic bodies of knowledge. Nevertheless, he highlights the importance of critically probing this relationship in order to gain greater clarity and to provide a basis for action.

South Africa remains a deeply religious country in post-apartheid times (De Gruchy & De Gruchy 2005: 242-5). According to Rule & Mcnwango (2010: 185-97), an estimated 83.5% of South Africans still claim strong commitment to a faith tradition, with Christianity holding the huge statistical majority of over 80%. This report is based on official 2005 figures, although a more recent

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4   An-Na'im 2013, Cox 2014, Freeman 2012, Ter Haar 2011.

smaller international poll (Win Gallup 2012: 6) suggests that this figure may have dropped by up to 19% since then. Both, however, demonstrate significant religious commitment, which can potentially act as a unifying force across multiple cultural contexts. The rise of African Independent Churches (AICs), which often combine so-called traditional cultural practices with religious doctrines, is an empirical reality that, without effective contestation from within, may have deeply socially conservative implications for many (De Gruchy & De Gruchy 2005: 244-6). An empirical study done between 1998 and 2004 with young South Africans (Van der Ven et al. 2005) demonstrated clear interconnections between their religious beliefs and their human rights attitudes, especially with regard to views of their churches. In South Africa, a number of faith-based organisations, institutions and leaders (among others, Boesak, Nolan, Tutu, Chikane, Naude) took a significant role in human rights activism over the anti-apartheid struggle often under the auspices of the South African Council of Churches (SACC). These have been well documented by scholars.[5] However, many of these religious voices have faded significantly from public view under the new dispensation, although Archbishop Emeritus Tutu remains a significant and welcome exception (Tutu 2011). Human rights expression has also taken a strongly 'secular' and legal turn, appropriate in some ways under the new Constitution, but in danger of becoming disconnected from the actual social complexity of many people's lives. Religion and cultural frames still form significant networks of meaning for many of the most vulnerable in South Africa, with the church remaining cross-culturally the most trusted institution at 83% in 2005, according to Rule & Langa (2010: 26-7). Many potentially abusive practices with regard to gender, sexuality, children, violence, disease and traditions have deeply rooted religious and cultural overtones that need serious engagement if behavioural change is to take place. This is why An-Na'im offers important resources around religion and human rights. He encourages an understanding of universal human rights in relation to cultural and contextual particularities (An-Na'im 2001a: 102) and suggests three particular strategies for more effective realisation of rights at grassroots levels, especially within African contexts:

- Securing internal religious and cultural legitimacy within societal frameworks.
- Employing a methodology of synergy and interdependence and not inherent conflict.
- Seeking out 'liberating hermeneutics of human rights' within existing traditions.

These will be unpacked and applied to South Africa, a country to which we now turn.

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5   For an overview, see De Gruchy and De Gruchy 2005.

3.   Human rights in the South African context

Kenyan human rights scholar Mutua (2002: 126) suggests that "the dramatic rebirth of the South African state, marked by the 1994 democratic elections, is arguably the most historic event in the human rights movement since its emergence some 50 years ago". Dubow (2012) and Asmal et al. (2005: 2) suggest that a better understanding and reclaiming of the South African black indigenous grassroots struggle for human rights can counter "European and American-centric ways in which the intellectual history of human rights is often written" (Dubow 2012: 16), by tying human rights into social movements of protest. South Africa has journeyed from abstaining from the 1948 Universal Declaration of Human Rights through decades of costly human rights struggle and grassroots social protest to a globally revered Constitutional Bill of Rights that was a progressive "milestone in the history of human rights" (Liebenberg 2000: 8, Ackermann 2012:1). Subsequent rights-based action continues on many issues, including HIV treatment, sexuality and land. This empirical reality offers a grounded counter to any critique of rights as mere tools of top-down Western imperialism and can help to reground rights struggles within wider people-centred social movements of resistance to injustice. However, Koskenniemi also notes the paradoxical nature of our history, pointing to the human rights emphasis of the South African struggle, leading to strong provisions for protecting human rights placed in the Constitution. He comments caustically, "[e]xamined with hindsight, one of the most important uses of these has been in support of the property rights of white property owners" (Koskenniemi 2010: 53). This highlights the often unforeseen consequences of turning human rights into "institutional projects".

Lawyers, Asmal and Sachs were deeply aware of the 'paradox' that the eventual demand for a Bill of Rights "emanated first from a certain stratum in the ranks of the oppressors rather than from the ranks of the oppressed" (Asmal 1992: 4). There was a deep suspicion and a concern that rights could become a dominating tool and merely "entrench the rights of right holders and the rightlessness of the rightless" (Dubow 2012: 109-12). As a result, they naturalised human rights within the liberation tradition of the day, stating that a rich cultural vein of human rights "lies in the fabric of the liberation movement" (Asmal 1992: 5). Despite this, South Africa's deeply dehumanising legal and social realities clearly create a challenging reality for effective human rights realisation for all in the new dispensation. Many knew that a good Constitution is only ever a beginning and that it is their embodiment in the lived reality of millions of poor black South Africans that is the true test of human rights and not merely their abstract legal guarantee (Sarkin 1998, Seafield 2011). Fourteen years later, Dubow (2012: 159) points to the unfinished task of embedding a "shared culture of human

rights" in South African society and going beyond human rights as an "ideological export model" to develop an approach from below (Chase 2013: 1, Ife 2009: 1-3).

Twenty years after 1994, South Africa remains one of the most unequal societies in the world, with one of the highest GINI coefficients (Alexander 2009: 2). Reports on South Africa from Amnesty International and Human Rights Watch in 2012 and 2013 as well as many scholars (Desai & Padayachee 2011) demonstrate that large parts of its population, especially its children, are still subject to repeated denial of their supposedly guaranteed human rights. These include food insecurity, child labour, basic education, access to quality health care, sexual violence, xenophobia, and unemployment as well as increased police brutality and disregard for civil rights, as epitomised in the recent events of Marikana, and a worrying culture of concealment. There is a growing cynicism and anger as a result of this obscene gap between the promise and implementation of human rights. Desai & Padayachee (2011: 1-2) point to an increasing "crisis of expectations [with] deepening inequality, rising unemployment, the HIV pandemic and violent crime". South African legal scholars reinforce the cry of struggle activist, Alexander (2009: 102): "Why is it that in spite of a constitution [...] in which are enshrined some of the noblest sentiments and insights concerning human rights, we are living in a continued situation where very few of these rights appear to be realised or even realizable in practice? Why is there a disjuncture between the noble ideals and their realisation" (Ackermann 2012, Liebenberg 2000).

Dubow (2012: 11) suggests that South Africa offers a fascinating case study on human rights with wider global application due to the ways in which human rights discourse has been used differently by power and interest groups within one country: "In this way it strongly resists a single history". This context requires us to go beyond over-simplistic postcolonial understandings of human rights as abstract Western hegemonic ideological tools. Human rights were asserted because they were being systematically denied and documents were formulated by those struggling for change, not as an abstract list by powerful victors (Asmal et al. 2005). Recent human rights consultations within South Africa highlight the urgent need to go "beyond the law" in relation to human rights implementation if we are to nurture a grassroots "human rights culture" from below (Viljoen 2012: 1, Dubow 2012: 160).

Many policy scholars suggest that the main challenge in contemporary South Africa is to close the gap between rhetoric and implementation of human rights and that many benefits are not realised in practice due to "lack of power" (Asmal et al. 2005, Alexander 2009, Ackermann 2012). Asmal et al. (2005: 134) call on the ANC to "rededicate itself to the human rights tradition as a living tradition". However, the paradox of human rights highlighted earlier offers a

deeper challenge to think not only in terms of linear 'implementation', but also to continue to 'trouble' the way in which human rights discourse may itself remain in ideological captivity. With the legacy of apartheid hanging, it is the poor and marginalised that are furthest from experiencing human rights as 'liberatory' in the embodied circumstances of their lives. The question is pending as to whether human rights can avoid co-optation as part of a powerful ideology of the status quo. If not, it is likely that the rights framework, on which South Africa has pinned its hopes, will fail as a concrete tool of social transformation (Mutua 2002: 153).

4.   The Southern voice of Abdullahi An-Na'im

Religion and culture have been important frames for An-Na'im's personal engagement with human rights from an early age and he is a global pioneer with regard to developing cross-cultural approaches to human rights praxis that take both religion and culture seriously. He has been an influential mediating voice in the human rights corpus as it has developed over the past few decades (Freeman 2004, 2012). He offers a credible hybrid voice situated between the often polarised grassroots realities of the African continent and elite Western theories of human rights, a stereotyped Islam and the secular trajectory of much human rights academic discourse. He has been unafraid to be seen as a 'heretic' in all these camps; he offers a bridge to those seeking constructive methodologies that go beyond the binary standoffs of religion/secular, local/universal within human rights discourse. Many human rights scholars increasingly identify religion as important, but few have systematically engaged from 'inside' like An-Na'im with it as 'essential' to praxis (Chase 2013, Freeman 2012).

An-Na'im (1990: 2, 2005: 3) is committed to the universal validity of human rights as "claims to which all human beings are entitled by virtue of their humanity, without distinction on grounds such as race, gender, religion, language or national origin". However, he consistently argues that there is no such thing as a "neutral" theory of human rights and that all normative frames are embedded in a set of values that need acknowledgement and engagement (An-Na'im 1995: 229, 2013: 2). For the purposes of this article, three specific strategies will be considered as specifically relevant for the predominantly Christian South African context. An-Na'im (1990: 332) has been a constant advocate for the need to also go 'beyond the law' into the more complex cultural realities of people's lives, and he draws on social anthropology to work with a concept of culture that is dynamic, plural, porous and internally contested as opposed to static, monolithic and bounded. In this way, his work prefigures recent scholarship on a "critical anthropology of human rights" (Goodale 2008: 372-93).

4.1   An-Na'im's approach to human rights

While accepting their modern uniqueness, An-Na'im (2001a: 93) situates human rights in a wider trajectory as the "product of a long history of struggle for social justice and resistance to oppression in all human societies". He problematises power dynamics in this struggle, suggesting that convenient universals are often accepted and inconvenient ones are disputed, and takes postcolonial critics such as Mutua seriously, stating that

> cultural relativists or opponents of universalism have a point that must be taken seriously but not conceded or allowed to defeat the possibility of the universality of these rights. They are right to observe that the notion of universally valid norms is problematic but wrong to conclude that the effort to establish and implement human rights norms should be abandoned (An-Na'im 2000: 2).

Instead, he emphasises the need to develop and implement effective strategies for overcoming this rather than "forfeit the possibility of success" (2000: 2).

An-Na'im's (1995: 50) claim that "the human rights concept needs to find acceptance as a legitimate expression of people's demands and aspirations [leads him to take note of its] effective application in their respective contexts and circumstances". He warns against its use as "pretext for imposing the values of one culture onto others". Instead of being liberating agents in African struggles of independence, modern human rights could sometimes enable leaders to maintain political power and economic privilege without delivering on their promises. He further points out that, "… since conditions for effective legal protection [are] lacking in many African countries, the human rights paradigm is unlikely to have the same liberating power it has in developed Western countries" (An-Na-im 1990: 5, 2001a: 90-3). In this way, human rights, in contrast to their earlier association with decolonisation in Africa, can become associated with re-colonisation. An emphasis on the legal protection of these rights alone is often unable to check the massive violations that occur in the daily lives of the vast majority of people. As a result, people become disillusioned with the human rights concept "but what they should reject is the application of that concept *in the same way* as the West" (An-Na-im 2001a: 102). This disillusionment can breed claims that African societies are bound only by their own cultural and religious norms rather than by international standards of human rights. For An-Na-im (2001a: 102), this requires challenge because it "repudiates the core principle that human rights are due to every human being without distinction". His concern to ensure that human rights discourse remains relevant for the poor has led him to argue for mediating methodologies that go 'beyond the law' into the wider social dimensions of the human person.

5. Three strategies for human rights inculturation

5.1 Internal religious and cultural legitimacy

As his first strategy, An-Na'im (2001b: 1) argues that "human rights need to be 'owned' by different peoples around the world, instead of being perceived as simply another facet of Western hegemony". In order to achieve this, legitimating human rights in local cultures and religious traditions is a matter of vital importance for the survival and future development of the human rights paradigm itself. If the internal and liberatory transformation of religions that he suggests is possible takes place, religion can "also provide moral underpinnings for dynamic and creative developments of the idea to address emerging issues in different settings" (An-Na'im 2001b: 1). This idea is currently generating renewed currency and also resonates with the strong religious and cultural identities found in South Africa (Cox 2014, Morris 2014).

This approach does not suggest that only the aspects of human rights that do not *prima facie* conflict with those traditions can be accepted, but it also seeks to embed human rights as part of the reforming or transforming voices that exist (often as minority voices) within the existing traditions. His voice has challenged the 'secular' orientation of rights discourse to rethink its own biases if it is to work more effectively and pragmatically in Southern contexts where religions and culture remain highly significant parts of people's public worlds (Freeman 2004). For him, that paradox of religion and human rights has to be somehow "married through mediation and negotiation in the concrete context of each society" (An-Na'im 1995, 2000: 16). This enables religions and cultures to become potential 'assets' for human rights implementation and not merely 'liabilities', as some still suggest to this day (Kirmani 2014). It reminds human rights activists to remain aware that that their lenses are culturally and ethically situated and not a neutral 'trump' over other ethical 'ways of seeing'.

5.2 A methodology of synergy and interdependence

Secondly, and building on the call for internal religious and cultural legitimacy, An-Na'im (1990, 1995, 2001b, 2013) offers us a guide to facilitate genuinely constructive engagement between religions and human rights, as well as secularism and culture. This is an important alternative to resigning ourselves to "the damaging belief that they are inherently incompatible" (An-Na'im 2001b: 2). The adoption of a 'methodology of synergy and interdependence' in this engagement opens both dimensions up to some transformation in the light of insights from others. If human rights are to gain the internal cultural and religious

legitimacy essential for its successful practice, he argues that it must be willing to actively take this approach rather than simply demanding unquestioning acceptance (An-Na'im 2013: 8-10). Likewise, he also calls on religious and cultural traditions to be open to this need to transform internally in the light of new social contexts such as human rights. He views this as possible due to the conceptual 'interdependence' of these ideas in the core value of the "inherent dignity and integrity of every being" (An-Na'im 2001b: 1, 1990: 344). He suggests that we do not need to make an overarching choice between secularism, human rights and religion if each is properly understood and carefully interpreted (2005:80) and that the three can work in synergy. An-Na'im points to porous boundaries and potential interconnections for dialogue and action without one overarching system merely 'trumping' all the others by default. But he suggests that we still need to make a methodological choice as to whether to seek to mediate inherent tensions among the three or not. He urges scholars and policymakers to "take responsibility for this rather than to allow further damage to be done by belief in the inherent incompatibility of religion with the others" (An-Na'im 2005: 80).

Finally, it is important to avoid creating a perception that one side of the debate has the power or authority to decide, and the other side is merely obliged or expected to accept that determination. An-Na'im (2013: 16) insists that "both sides may have legitimate interests and concerns in the matter". This de-centering of the automatic 'trumping' value of human rights over all other ethical claims may feel uncomfortable to many schooled in human rights discourse, but it is a risk required for developing genuine cross-cultural universals.

5.3   A liberating hermeneutic for human rights

As his third strategy, An-Na'im (1995: 234-5) suggests that resources can be found in the reclaiming of "prophetic and liberating minority voices" within existing cultural and religious traditions as one concretely effective way to contextualise and legitimise human rights within many ordinary people's lived realities. Human rights norms embody inevitably abstract ideals of human dignity and economic and social justice and, because of this, An-Na'im (2002: 3-4) suggests they often depend on "the religious vision and commitment of specific communities to give them content and coherence and to motivate voluntary compliance with their dictates". The many rituals, norms and practices which religions inculcate could add significant value in developing a thicker life-enhancing culture around the human person in relationship to others. Religious visions and commitments can help "generate the political will to enforce legal norms and implement concrete policies [...] as and when necessary for human rights standards" (2002: 3). Churches in South Africa are often a place where rich and poor, black and white,

leaders and people come together in a shared space. While this space can merely reflect the status quo, it also has significant moral authority to challenge it (De Gruchy 2005 Koopman & Smit 2007). Nevertheless, it cannot be ignored that

> many forms of religion in Africa and elsewhere seem to work contrary to the values of equality, justice and peace contemplated by a human rights paradigm legitimating many forms of violence and injustice, like the oppression of women, abuse of children, persecution of minorities and dissidents within the community of believers and aggression against non-believers'(An Na'im 2002: 4-5).

However, An Na'im argues for an "organic interdependence" between the two that requires reconciliation and mutual support despite these apparent conflicts and tensions. "Human rights regimes in and of themselves cannot offer a panacea for all social problems, they now form a critical part of any solution. On the other hand, while it is clear religions are not easy allies to engage, the struggle for human rights cannot be won without them, particularly in the African context" (An Na'im 2002: 4). This awareness of the deep interdependence between 'thicker' liberating understandings of religion that prioritise the agency and needs of the poor and marginalised and the 'thin' discourse of human rights for the social embodiment of human rights norms in many people's lives is, in my view, An-Na'im's most important contribution, and one that resonates with a deeply religious South African context whose theological narratives have been entwined historically with both legitimating and resisting human rights (Rule & Mcnwango 2010, De Gruchy & De Gruchy 2005).

An-Na'im warns that issues of authority and representation can frustrate the propagation of liberational views for wider support among believers. The dilemma facing religious reformers can be how to "retain credibility as internal agents of change, whilst being critical of the beliefs and practices of their own community of believers" (An-Na'im 2001b: 2). If human rights are tied to a so-called external Western agenda, this can make this task even more difficult.

This approach takes us beyond mere instrumental engagement with the structures of religion into the heart of engagement with religious ideas. It expects theologians within all religious traditions to be engaged in an ongoing 'hermeneutical task' to take into account the contextual and cultural factors or signs of their times such as 'human rights', with which all religions are required, by their own traditions, to theologically grapple in constructive ways.

An-Na'im (1995: 229-42, 2013: 7-17) has focused on developing a liberating Islamic hermeneutics for human rights in his Sudanese context. However, at the same time, he has equipped other scholars to research within their own religious

and cultural traditions and offer further empirical evidence of his thesis. (An-Na'im 1990, 1995). Tough questions emerge, such as whether religions, by virtue of their particularity, are always exclusive of some 'others'; what happens when a human right is placed into direct competition with a core religious value, and the need to challenge certain 'literalist' approaches to Scriptures. However, he demonstrates that important reconciling work can and has been done on these difficult areas by progressive theologians within different traditions. Human rights activists need to be aware that it is often counter-productive to require people to choose between their religion, culture or ideology, on the one hand, and a supposedly neutral universal human rights project, on the other, "because most people would probably opt for the former over the latter [...] For the vast majority of people, no human rights scheme can itself serve as a substitute for religion, culture or ideology. Second, most people would maintain that some conception of human rights is integral to the specific religion, culture or ideology" (An-Na'im 1995: 230). He points to the danger of undermining the legitimacy of a universal human rights project if it is placed in direct competition with what people hold as their comprehensive fundamental value system, and recommends a "strategy of internal transformation of perceptions of the religion, culture or ideology in question in order to reconcile the former with the latter". An-Na'im (1995:230) is not naïve about the difficulties and risks of this approach, and it has been critiqued as potentially giving too much power to status quos within the existing community of interpretation (Ter Haar 2010: 2-4). For An-Na'im (2013:10), the core issue is the "framework of interpretation" used within religious traditions which can always be challenged from within, rather than the mere presence of particular texts that are for or against human rights. He suggests that each religion has an authoritative "framework of interpretation", but this is often contested and that it is the community of believers as a whole, as the living frame of interpretation, that can open doors for change. An anthropological approach like his prioritises the agency of each believer in ways that he claims are deeply compatible with religious faith (An-Na'im 1995: 236). I suggest that this approach can be further applied to South Africa where there is a history of faith-based protest through theologies for human rights that, in time, successfully countered previously dominant religious narratives (De Gruchy 2005).

6.   Relating these strategies to South Africa

An-Na'im's approach may help us better understand one of the reasons why human rights may be currently failing to deliver on their "liberating promise" in South Africa and offer three concrete strategies for nurturing a 'bottom-up' human rights culture at grassroots levels.

The first strategy relates to *internal religious and cultural legitimacy*. Tying human rights claims into the wider existing normative systems provided by religion and culture resonates with the South African context where these both remain significant forces. This can enable debate, contestation and legitimation from within rather than merely imposition as a neutral 'trump' from above. While this process may inevitably be slow at times, I endorse An-Na'im's claim that it has the potential to assist in developing a deeply rooted human rights culture that resonates with South Africa's unique context and takes on an ethical dimension that people can internalise, rather than hovering abstractly above our lived realities in mere legal concepts (Johannes 2004, Viljoen 2012). It is critical however that a dynamic and contestable understanding of both religion and culture is used in this interaction, rather than the static essentialism typical under colonial law. This approach has been recognised by judges within South Africa's constitutional system. In 2000, *Christian Education South Africa v Minister of Education*, Judge Sachs (an atheist himself) stated:

> For many believers, their relationship with God or creation is central to all their activities. It concerns their capacity to relate in an intensely meaningful fashion to their sense of themselves, their community and their universe. For millions in all walks of life, religion provides support and nurture and a framework for individual and social stability and growth. Religious belief has the capacity to awaken concepts of self-worth and human dignity which form the cornerstone of human rights. It affects the believer's view of society and founds the distinction between right and wrong (Van der Vyver & Green 2008: 344).[6]

Respected South African theological scholars honed within the history of anti-apartheid struggle have all engaged creatively in more recent years with human rights in the post-apartheid context in ways that merit further interdisciplinary engagement leading to wider public debate and further embodiment into concrete church practices.[7]

Secondly, a methodology of synergy and interdependence resonates in South Africa, which retains a stronger sense of religion in the public space than much of the West. It is described as a "religiously neutral" rather than a secular state and the role of religions in public life remains prominent in the post-apartheid state (Van der Vyver & Green 2008: 345). An-Na'im's model does not advocate a return to the specific Christian hegemony of decades past or formal religious association with the state. It speaks of a constructive people-centred public engagement

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6   2000 4 SA 757; 2000 10 BCLR 1051 (CC) paragraph 36.
7   De Gruchy 2005, 2011, Smit & Koopman 2007, Villa-Vicencio 2005.

between secularism, religions and cultures for the sake of human dignity, with the human rights ethos embedded at the heart of the new South Africa.

South Africa is in a strong position to utilise An-Na'im's methodology of synergy and interdependence in a way that refuses to allow any one of the aspects to assume a position of automatic superiority over the others. Theological voices within both churches and academies have demonstrated a willingness to engage constructively with issues of human rights as central to the role of the church in the new dispensation (Villa Vicencio 2005, De Gruchy 2005, 2011, Hansen 2007). While the Constitution has legally binding power on human rights issues and, in this narrow sense, can 'trump' claims of culture and religion, empirical evidence shows that many poor and marginalised people do not access the law and that this can clearly limit the law's effectiveness over many people's lives. The need to go beyond the law into complex social realities is essential in the South African context where there is a deeply rooted sense among many communities, justified from years of experience, that the law is oppressive and to be feared, rather than to be trusted and used. This approach also resonates with a desire for respectful collaboration and consultative discussion in multicultural African contexts rather than the more antagonistic legal style still often favoured in the West. South African religious scholar Villa-Vicencio (2005: 236) endorses this approach:

> The ambiguity of the South African human rights struggle gives implicit contextual expression to An Na'im's quest for a self-correcting, complementary culture of human rights. A more careful methodological grappling with his quest for synergy and interdependence can be particularly helpful within emerging democracies such as South Africa where the dangers and hope of change are still fresh and pliable.

This clearly shows the value of this self-correcting approach within South Africa's complex post-apartheid realities.

Thirdly, An Na'im's call for a liberating hermeneutic for human rights urges a reclaiming of "prophetic and liberating voices" within existing cultural, religious and historical traditions that can support and nurture human rights. South Africa has a proud, vocal history of active religious figures whose voices can speak from within to challenge, contest and endorse ongoing struggles for human rights as a deeply indigenous project. We do not have to look far to find prophetic voices in South Africa among faith traditions committed to pioneering liberating contextual theological engagement. For example, inclusive Christian anthropology challenged homophobia using the motif "aliens in the household of God" (De Gruchy & Germond 1997: 3), while contextual bible studies such as the Tamar Campaign offer ways to reframe gender violence (West & Zondi-Mabezeli 2004).

However, it is important to ensure that these liberating hermeneutics for human rights are institutionalised and passed on to new scholars. An-Na'im highlights soberly that human rights are not inherently liberating; we have to construct them consensually from below for them to become the liberating forces they were intended to be. Process matters and makes rights both sociopolitical (not situated above politics) and ethical (not a neutral trump over all ethical systems).

South Africa has a deep history of white supremacy and it is therefore essential that the language of universal rights be separated from an elite understanding of 'rights for whites' that can alienate ordinary black Africans whose normative frames may be deeply embedded in other cultural and religious life worlds (Ife & Tascon 2008: 307-8). This is part of "multiculturalising" the human rights tradition to reclaim its anti-imperial, experimental and emancipatory potential as scholars such as Mutua (2002: xi) have called for. Engaging with human rights in South Africa re-places human rights at the heart of local social movements for change and challenges the idea that human rights were ever simply either Western or liberal. It is a reminder that a human rights culture was most powerful as part of social transformation when it spoke from the periphery or the bottom, using a position of marginality as a prophetic voice of protest. This resonates with concerns expressed in this article that merely institutionalising rights from the top down may continue to favour those already in powerful positions. A liberating hermeneutic of interpretation requires South Africans to nurture a bottom-up human rights culture for those most marginalised.

In South Africa, applying An-Na'im's strategies could involve ongoing formal engagement of human rights organisations and university programmes with faith-based settings (churches, synagogues and mosques) as well as the academies responsible for training their leaders. Programmes such as the Human Dignity project at Stellenbosch University's Department of Theology (Koopman & Smit 2007) and the pioneering Department of Theology and Development at UKZN (De Gruchy & De Gruchy 2005) among others now offer postgraduate opportunities for increased theological teaching and research on human rights, but rarely link with 'secular' human rights programmes even within the same universities. At the local level, human rights organisations could collaborate with faith spaces regarding liturgical celebrations and national days of remembrance to offer resources and discussion. For example, this takes place currently at Rondebosch United Church in Cape Town where the annual advent service is directly connected to the 16 days of activism against violence against women and children and built into an ongoing girl child rights awareness project sensitising

other churches.[8] Faith-based initiatives tailored to engage with human rights issues through contextual Scripture readings, such as the Tamar Campaign (West & Zondi-Mabezeli 2004), which uses the Bible to problematise issues of gender violence, could be mainstreamed into all churches. Improved theological representation at human rights conferences and requiring human rights education to develop improved religious and cultural literacy from all students would all nurture concrete and constructive engagement between religion, culture and human rights principles. These embody a commitment to a methodology of synergy and interdependence that takes seriously the recovery of liberating religious and cultural hermeneutics as allies for human rights grounded in the internal legitimacy of people's social worlds.

7. Conclusion

This article has highlighted the paradox that human rights can function in ways that liberate, but also in ways that can dominate. Douzinas (2007: 100) challenges scholars to think hard about how to retain the "liberating promise" of human rights in ways that do not reduce the thick reality of human life to mere thin legal ciphers. In the light of this paradox, a social constructionist lens can best ensure that human rights remain, in an ongoing fashion, negotiated and subversive, avoid institutionalisation and be effective and legitimate (Stammers 2013, Ife 2009).

An-Na'im offers a practical and subversive voice within Africa that takes critical note of this paradox and develops constructive theoretical strategies to help human rights to fulfil their "liberating promise" more effectively. South Africa has a significant indigenous and "prophetic" history of human rights grounded in social protest that can offer ongoing religious resources for a "liberating hermeneutic for human rights". In this way, human rights can better secure the improved internal religious (and cultural) legitimacy needed for their embodiment in the lives of the poor and marginalised.

For this to take place, however, there is a methodological choice to make in how to engage as scholars and activists within the South. To polarise human rights, cultural and religious frames as inherently conflicting, as some still do (Phillips 2007), may be a costly mistake. A commitment to a methodology of synergy and interdependence, whilst never easy, is an essential part of making

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8   Rondebosch United Church's approach can be accessed on <www.rondeboschunited.org.za> and has been influenced by both John and Steve de Gruchy, showing the possible sustained institutional connection between liberating theological engagement and concrete local church practices. It also holds a formal partnership with Inclusive and Affirming Ministries regarding issues of sexuality and works with young offenders from Pollsmoor prison.

rights real for grassroots communities in Africa. Religion is still a 'missing link' in a great deal of human rights work and is often essential for more effective practice (Freeman 2004, 2012, Cox 2014, Morris 2014). Further engagement with An-Na'im's strategies is recommended in South Africa by all working on human rights to re-engage and pass on liberating religious and cultural voices for our current challenges. This undoubtedly comes with risks requiring careful management, but surely they are risks that need taking.

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