

## René Cassin Essay Competition 2015 – shortlisted

Competition judge Daniel Finkelstein of *The Times* comments: “... *intellectually very clear. It perhaps skated over some areas of difficulty but it was very well structured and built to a strong conclusion.*”

### ***Religion and human rights – compatible or conflicting?***

Frederick Powell

Certain forms of “religion” undoubtedly threaten human rights. The Islamic State, for example, is an oppressor, even as its claim to genuinely reflect Islamic religious doctrine is complex and contested. Equally apparent is that religious organisations are integral to social action projects and human rights advocacy in communities across the world. But is it possible to identify any general features of the relationship between religion and human rights? Is it possible to say, for example, that religion is *inherently opposed* to human rights? Or does too much ride on the way those concepts are defined for there to exist a singular or definitive answer to these questions? I will argue that liberal-individualistic conceptions of human rights are bound to regard religion and group rights as a threat. However, I offer some hope of reconciliation, by suggesting ways in which religious doctrine can support the practical objectives of human rights.

As I have already made clear, the purpose of this investigation is not to ask whether religious people actually serve to promote or damage the cause of human rights, but whether, and the extent to which, religious doctrine itself is responsible for any of these effects<sup>1</sup>. Hence, I focus on standardised forms of religious doctrine, considering religious practice only where it bears some connection to its underlying doctrine. Four essential religious tropes are noted<sup>2</sup>: (1) a commitment to the collective; (2) a belief in some higher value or being; (3) an emphasis on tradition; and (4) a willingness or tendency to look beyond the rational. Human rights are understood simply as basic rights and freedoms to which all people are entitled, by virtue of their humanity.

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<sup>1</sup> Of course, this distinction between religious acts and beliefs is an imperfect one since, in most religions, beliefs are transmitted and altered by people.

<sup>2</sup> Not all religious persons or groupings simultaneously display all of these characteristics, and the emphasis placed on these notions differs considerably both between and within religions, but the frequent recurrence of these notions is the basis for the generalisations that I am about to make, the purpose of which is to establish whether religion *per se* is responsible for harming or helping the cause of human rights.

## **The tension between religion and human rights**

Religion, particularly organised religion, is often regarded as a threat to human rights. The collective, transcendental, traditional, and non-rational elements of religious life are charged with infringing the values and interests which human rights seek to protect. In order to assess these allegations, I shall consider the essential elements of religion identified above, and whether they are compatible with human rights.

Firstly, the collective action and consciousness that accompanies religious life is seen as an assault on individual autonomy, a core tenet of human rights. Religion, it is argued, exhorts its followers to sacrifice their independence and individuality to the collective. These sacrifices may assume a variety of forms, including financial (charity), social (communal rituals), and, most controversially, ideational (spiritual obligations). The more that individuals are burdened by communal obligations, the less they are free to pursue their own projects, at least according to the orthodox liberal perspective. But this assumes that religious communal projects are not ones that free individuals would voluntarily choose to pursue. What sets religion apart from all of the other communal projects that exist? After all, many non-religious people pursue collective projects, ranging from families to states and other forms of communal engagement.

Furthermore, it is fanciful to suppose, as liberals frequently do, that collective action should be possible without coercion. Even if this were so, collective action is more likely and effective when it receives added impetus. Individuals might freely choose to cede a measure of independence in exchange for robust communal bonds. Reciprocal arrangements, such as charitable assistance, can sustain individual rights by enjoining individuals to live and work together.

Secondly, the emphasis on tradition and the willingness to embrace non-empirical ideals and explanations (such as the existence of the divine) are perceived as concealing people's 'true' interests, since they cannot readily be resisted or deconstructed.<sup>3</sup> But tradition need not be oppressive, provided that individuals can abandon it when it really matters. Indeed, tradition can help to build strong communities and thereby anchor the ephemerality of the individual experience in ways consistent with human rights.

Ultimately, these criticisms are united by an equation of individual freedom and welfare with the absence of external influences, particularly ones that are not readily comprehensible. Religion thereby infringes human rights by its very existence. Accordingly, all counter-arguments offered thus far can do little more than mitigate the damaging effect of religion on individuals.

## **The compatibilist perspectives**

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<sup>3</sup> Proponents of religious inequality in the name of tradition (think of segregated seating during prayer in Orthodox Judaism, for example) are unlikely to be persuaded by non-religious arguments, however 'rational'. And such arguments may be the last resort for women bent on driving religious change; a consequence of exclusively male rabbinates is a paucity of 'religious' ammunition with which they may take aim at the canon.

The notion that religion and human rights are capable of peaceful coexistence comes in two forms. On the one hand, what I call ‘weak compatibilism’ sees the interaction between religion and human rights as essentially benign; either because religion offers different and non-competing spheres of value; or because, insofar as religion does constrain liberal values, it does so without causing basic human wrongs. Religion, according to this perspective, is capable of adapting to secular-liberal frameworks, without compromising its fundamental tenets. Regardless of how this compliance is achieved - whether it is self-assumed as in the case of the Jewish halakhic law, *dina de-malkuta dina* (דינא דמלכותא דינא), which holds that the law of the country is binding, and, in certain cases, to be preferred to Jewish law<sup>4</sup>, or whether a result of external and coercive imposition - the past three hundred years of western history indicates that mainstream religion is capable of such adaption. In other words, religion can be human rights compatible without being human rights friendly.

On the other hand, ‘strong compatibilism’ sees religion and human rights as capable of forging a more supportive and interactive bond. Religion itself can be a source of human rights. On a scriptural level, human rights can be grounded in religious teachings such as the creation of all human beings in God’s image. Such claims are vulnerable to the charge that they are inherently exclusive, since their power is only accessible to the relevant set of believers. But what they may lack in scope is more than made up for in strength, which is derived from sturdy metaphysical foundations. Arguably, these elude secular conceptions of human rights, a fact noted by the philosopher, Jeremy Waldron<sup>5</sup>. Divinely-ordained human rights possess a special potency, because they provide clear justifications for compliance (‘God wishes it’) and enforcement mechanisms (such as divine reward and punishment). Secular conceptions, by contrast, cannot claim such coherence. Ultimately, they are reducible to assertions, however intuitive, about human nature (e.g., all human beings have inherent dignity) or quasi-objective value (e.g., the right to free speech is universally recognised and therefore axiomatic).

These weaknesses might seem too abstruse to exert practical limitations on human rights, but they do. Firstly, since secular conceptions are grounded in a common humanity, they invariably require self-enforcement, which is notoriously patchy and unreliable<sup>6</sup>. Furthermore, an inability to justify human rights in the face of cultural and moral diversity limits the ability of human rights to deal with practices like female genital mutilation. Religiously grounded versions, by contrast, are not

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<sup>4</sup> The origins of this idea come from Jeremiah's letter to the Babylonian exiles: "seek the peace of the city to which I have exiled you and pray to the Lord in its behalf; for in the peace thereof you shall have peace." (Jeremiah 29:7). For the exiled Jews, their submission to gentile rulers was viewed more as a "pragmatic recognition of brute force" than anything else (Menachem Lorberbaum, 2000). The first to use Jeremiah's message as a basis for laws concerning Jews in foreign lands was the Mar Samuel (ca. 177–257), a Talmudic scholar from Babylonia.

<sup>5</sup> Jeremy Waldron, in a recent paper *The Image of God: Rights, Reason, and Order*, argues that the notion of *imago dei* (creation in God's image) is a favourable foundation for human rights because it avoids many of the pitfalls of secular conceptions of human rights. However, he qualifies this support by observing that this notion may not be equally apt for all forms of human rights, in particular political rights, which may not be so readily reconciled with this formulation.

<sup>6</sup> The failure of the international community to intervene in genocides in Rwanda, Syria, Iraq, and many other areas illustrates that the normative concept of ‘common humanity’ is frequently inadequate to prevent abuses and ensure that these commitments are upheld in an effective manner.

challenged by *the fact* of such difference, since their appeal to universality is normative rather than irreducibly descriptive. They need not pretend that there exists a universal moral consensus in order to legitimate enforcement; the divine will itself provides normative pressure. Disagreement, according to this absolutist conception of human rights, is a sign of moral failure, rather than an innate vulnerability with the formulation of human rights. Religion can therefore provide the moral and linguistic tools to help bridge the compliance gap by making rights more than an aspiration.

Perhaps the 'strongest' approach considers religion's potential impact on human rights in more sociological terms. The former Archbishop of Canterbury, Dr. Rowan Williams, argues that religion is capable of resolving questions about what it means for people to live together - the very essence of rights - by reconnecting convictions about human belonging and mutual recognition.<sup>7</sup> Only by exploring notions of human dignity and human relatedness is it possible to ground rights firmly in habits of empathy and identification with the 'other'. Practically speaking, he highlights the communal patterns which are fundamental to religious existence, and which he regards as capable of fostering the mutual recognition between human beings needed to sustain a meaningful framework of rights. In his own words: "persons and minority groups need to be recognized as belonging to the same moral and civic world as the majority, whatever [their] differences or disagreements". Recognition of common dignity should take priority over the creation of a comprehensive catalogue of claims that might be enforceable. Accordingly, religious freedoms are not merely compatible with human rights, but fundamental requirements. By providing the conditions for human flourishing and understanding, religion dignifies and emboldens the values that human rights seek to protect. Religious bonds, then, can add much-needed weight to legal regulation in this area.

## **Conclusion**

Theoretical conflicts between orthodox conceptions of religion and human rights can be avoided in practice through a closer examination of the ultimate purpose of human rights. Protecting people from unfair treatment is sometimes necessary, but it is less desirable and less effective than tackling the root cause. Namely, the inability of people to 'get along' with each other. What religion offers, therefore, is a unique roadmap to communal harmony and, by extension, the cause of human rights.

## **Bibliography**

Nickel, James, Human Rights, The Stanford Encyclopedia of Philosophy (Winter 2014 Edition), Edward N. Zalta (ed.),

Waldron, Jeremy, The Image of God: Rights, Reason, and Order (November 30, 2010). NYU School of Law, Public Law Research Paper No. 10-85

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<sup>7</sup> Dr. Rowan Williams, speaking before the Ecumenical Centre in Geneva (28th February 2012) in his capacity as Archbishop of Canterbury, on Human Rights and Religious Faith.

Williams, Rowan, Human Rights and Religious Faith (28 February 2012), Speech Transcript, Ecumenical Centre, Geneva.