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All Human Rights for All

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6.6 Human Rights and Religions – From Monologue to Dialogue

Ingeborg GABRIEL

1 Overlapping Consensus

The relationship between religion(s) and human rights is as multifaceted as it is challenging. Since different religions and religious movements exist which hold rather different views with regard to human rights as part of the legal culture of modernity/Enlightenment, it is difficult to analyse their relationship *in globo*. The following therefore can only be an attempt to draw a map concerning the intellectual challenges lying ahead in this rather new topic. This is nevertheless of increasing importance, since religions have not disappeared as the secularisation thesis predicted, but are rather gaining momentum worldwide (Europe being the exception). Religious communities are important agents in civil society as well as in politics in most countries. Their position *pro* or *contra* human rights therefore matters considerably since particular religions can either contribute to the dissemination of human rights or can be serious adversaries with regard to their global and national acceptance. Historically established religions have had and do have difficulties to accept human rights, though there exists a great deal of overlapping consensus between religious ethics and law and human rights: What it means to be good with, and not to harm others has been the object of deep and long standing reflection in all religions through the ages with regard to individual behaviour (ethics) as well as legal provisions which were and are deemed to be of great importance for the social and political life. The religious writings (Talmud, Bible, Koran, Bhagavad Gita etc. as well as the theological writings interpreting them) contain a wealth of religiously founded reflections on these issues and show the serious concern for them in religious history, the reason for this being that the relationship to God/the Divine was never regarded independently from that with fellow human beings.

2 Areas of Tension between Human Rights and Religions

Human rights as an achievement of modern political philosophy and politics are grounded in an intellectual and religious prehistory. Their historical roots are to be found in the biblical (Judeo-Christian) and philosophical (Greek-Stoic) traditions, with their assertion of the equality and dignity of all human beings as well as in philosophical terms in their participation in the Pneuma

giving life and essence to all beings. Though the history of human rights started in the West, such motives can also be found in all other cultures and religions (see Gabriel, "Human Rights from a Theological Perspective").

The thoroughly modern idea of human rights nevertheless contains several characteristics which are at first sight at odds with religiously founded ethics and law. These differences are a) the demand for a *secular* State, *i.e.*, a political community not legitimised by religion for the sake of non-discrimination of believers of different religions as well as non-believers; b) the emphasis on the individual and his/her rights as compared to the status of the community; c) the prevalence of law over individual moral and ethics, leading to a priority of rights over duties.

ad a) The secular State, *i.e.*, the State the laws of which are not grounded in a particular religion of the State as an invention of Enlightenment constitutes a *novum* in history. Its aim is the rule of law on the basis of equality and non-discrimination of the adherents of believers of different religions as well as of non-believers. The role it gives to religion and the degree to which it bans it from politics varies. In France and in continental Europe (as opposed to the United States), the secular State was the historical outcome of the French Revolution. François Furet, an eminent French historian, described the Revolution as human rights oriented as well as totalitarian, propagating an intolerant form of secularism. *Secularism* thereby constitutes a philosophical belief which is fundamentally critical towards religion in general and is grounded in the conviction that religion is estranging for humans and bad for society as well as made obsolete by the historical progress which moves from religion to exact science (cf. the theory of August Comte). Secularism as a widespread ideological belief is not necessarily connected with the secular State. Where it is (e.g. Turkish secularism), it makes it difficult for religious communities and individuals to accept it, because of its fundamental anti-religious prejudice. Often even the terminology constitutes a hindrance, e.g. when secular as in Arabic means godless and it becomes necessary to use the word civil instead to convey the proper meaning. The first important question therefore is: In which form can different religions accept the secular/civil State? Which theological/ethical preconditions are required and which arguments may be of help in different cases?

ad b) The emphasis given to the individual in human rights culture is one of its specificities. This is often seen to be contrary to a community oriented approach in religions and more generally in non-European cultures. This argument, however, contains a strong ideological element. Legal provisions as well as ethical norms (except group rights) in any culture/religion are to protect the individual from harm that might be done to him/her by others or the political authorities. The argument of community-orientation as it is also found in alternative religiously based human rights declarations (e.g. the Arab Charta of Human Rights 1994/2004; see Marboe, "Islamic Human Rights Regimes") therefore is anti-modern rather than pre-modern. The cri-

tique against modern individualism and the loss of social coherence, as important as it may be, thus must not be confused with the critique of human rights, an argument which moreover most often is brought forward by authoritarian regimes.

ad c) Modern – contrary to traditional – religious ethics gives priority to (legal) institutions which are to be constructed so as to guarantee justice for all citizens. This is not total revision but a change of emphasis. In religious as well as philosophical ethics prior to the age of Enlightenment, individual action and its ethical reflection were given prevalence over the legal order. Therefore also duties ranged before rights. Emphasis was placed on the just person and not on the just legal order. Both forms of justice (individual and legal) obviously do not oppose each other, but the justice of individuals and the justice incorporated in institutions are rather indivisible. Their relationship has been compared to that of ships and a fleet. A good fleet needs good ships. In this case, persons and institutions influence each other stronger than the metaphor suggests, which however rightly stresses their interdependence. An emphasis on either is acceptable, as long as the other pole is not neglected. The lack of moral cannot be made up by good laws, and good individual behaviour cannot replace decent laws. With regard to the relationship of duties and rights, it has to be made clear that this is not directly related to human rights, where indeed rights are prior to duties insofar as those persons who do not act according to their duties (e.g. criminals) do not forego their rights and that this asymmetry is exactly the point of granting them constitutional rights in the first place.

3 The Case of Catholicism

The Roman Catholic Church as a world church rejected human rights, particularly civil and political rights (*inter alia* the right of religious freedom, speech and democratic participation) during the 18th and 19th century in the wake of the French Revolution not wanting to make peace with modern political liberalism. Towards the end of the 19th century, the position changed insofar as social human rights were accepted, which also for other religions constitute less of a stumbling block than political rights. The negative attitude of the Roman Catholic Church towards civil rights left its negative mark on history: Would it have been possible to ward off the ideologically founded totalitarianisms which swept Europe during the 20th century and which killed about 100 million people for ideological reasons had the Catholic Church taken a different position? This question shows the gravity of responsibility in this area also today, not only with regard to the Christian churches, but also for other religions. After first steps during World War II by Pius XII recognising the rights of the person, the UDHR was accepted in 1963 by Pope John XXIII and consequently by the Second Vatican Council (1962-65). The right to religious freedom as the main impediment for the acceptance of the UDHR was addressed in a special document called *Dignitatis humanae*/On Human

Dignity. The title already indicates the direction the argument takes: Religious freedom is seen as being demanded by human dignity and therefore has to be granted as a civil right by the State. The act of religious faith as such must be free and particular religious convictions may not be imposed by the State authorities, even though the State may set limits to religious practice if demanded by the common good and particularly social peace. Individuals have to search for the truth and adhere to it – but religious truth is not a matter of State policy. Moreover, the State is to support the activities of religious communities on an equal basis, hence, *Dignitatis humanae* opts for a cooperative model of church/religion-State relations.

Similar questions (relation religion-State, religious freedom *etc.*) are posed today by the intellectuals and leaders of other denominations and religions. Under which conditions can a religion give up its status as a State religion and transfer the focus of its activities to the level of civil society? For which reasons is this preferable and indeed demanded by its own ethical norms? Why should all citizens be granted civil equality regardless of the religion they profess? Why should men and women be treated as equals? To these and similar questions answers have to be found from within the traditions of the different religions so as to be plausible and acceptable for their believers, this being still an important area of research.

4 Interreligious Dialogue Initiatives

The tension between religious ethics/law and human rights among other things shows the importance of a dialogue between religions on ethical and legal issues, including those of human rights. During the past decades, a great number of such dialogue activities have been initiated (particularly in the wake of 9/11). To be named are among others *The Global Ethic Foundation*, *The World Parliament of Religions*, *World Religions for Peace*, *Project: Interfaith Europe*. *The Vienna Dialogue Initiative* has discussed these issues with believers from different faith traditions, in the latter phase mainly with Muslim scholars, for several decades (cf. Gabriel 2010). These initiatives presuppose, as does this article, that there is ample common ground between the ethical and legal concepts of various religions and human rights and that the discussion of these commonalities as well as the differences can help to create a link between them – to the mutual advantage of both and thereby promote a more peaceful world.

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List of Abbreviations

AAA	American Anthropological Association
ACHR	American Convention on Human Rights
ACP	African, Caribbean and Pacific
AfCHPR	African Charter on Human and Peoples' Rights
AfComHPR	African Commission on Human and Peoples' Rights
AfCtHPR	African Court of Human and Peoples' Rights
AFET	Foreign Affairs Committee of the European Parliament
AFSJ	Area of Freedom, Security and Justice
AHSG	Assembly of Heads of State and Government
AI	Amnesty International
AICHR	ASEAN Intergovernmental Commission on Human Rights
AIDS	Acquired Immunodeficiency Syndrome
AMARC	World Association of Community Radio Broadcasters
AP	Additional Protocol
APRM	African Peer Review Mechanism
ArCHR	Arab Charter on Human Rights (2004)
Art.	Article
ART	Antiretroviral Therapy
ARTIP	Awareness Raising and Implementation of the Istanbul Protocol
ASEAN	Association of Southeast Asian Nations
AU	African Union
AUCCPC	African Union Convention on Combating and Preventing Corruption
BTI	Bertelsmann Transformation Index
CA	Common Article to the Geneva Conventions
CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CAT Committee	Committee against Torture
CCPR	International Covenant on Civil and Political Rights
CDDH	Steering Committee for Human Rights
CDDH-UE	Informal Working Group of the CDDH
CEAS	Common European Asylum System
CED	International Convention on the Elimination of All Forms of Racial Discrimination
CED Committee	Committee on the Elimination of Racial Discrimination
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CEDAW Committee	Committee on the Elimination of Discrimination against Women
CEEC	Central and Eastern European Countries
CERD	International Convention on the Elimination of All Forms of Racial Discrimination
CERD Committee	Committee on the Elimination of Racial Discrimination
CESCR	International Covenant on Economic, Social and Cultural Rights