Rights and Righteousness
Perspectives on religious pluralism and human rights

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Perspectives on religious pluralism and human rights

A compilation of papers from a conference organised by the Northern Ireland Human Rights Commission and the Irish School of Ecumenics, Trinity College Dublin, 1-2 November 2007, Belfast

Edited by
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February 2010
ISBN 1 903681 85 5

Published by the Northern Ireland Human Rights Commission
in association with the Irish School of Ecumenics

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Foreword

The vision of human rights that developed after the Second World War correctly recognised the importance of human rights as being shared by all people. Human rights are universal, and offer dignity and protection to all. Yet from the very outset, there has been debate on how universal human rights should be understood in relation to cultural diversity and religious pluralism. The unresolved issues from these debates remain with us and are likely to become more complex and more pressing in an increasingly globalised world. How are the rights to freedom of conscience and religious belief best protected? What limits, if any, should human rights set on religious practice and behaviour? How can the rights of majorities and the rights of minorities in pluralist societies be balanced? Negotiating these challenges in constructive and imaginative ways is a key task for the twenty-first century.

This collection of papers reflects a partnership between the Irish School of Ecumenics, Trinity College Dublin and the Northern Ireland Human Rights Commission to promote constructive dialogue and informed analysis around these debates.

Many of the papers were first presented at a conference in Belfast in November 2007. While the authors all speak for themselves, and do not necessarily represent the views of the conference organisers, both organisations are delighted to make their papers available to a wider audience as a way of continuing conversations that affect us all.

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Introduction

Rights and faith in a pluralist society

“Dialogue does not mean that everyone at the table will agree with each other. Pluralism involves the commitment to being at the table, with one’s commitments.”

Diane Eck, Pluralism Project, Harvard University

In November 2007, the Northern Ireland Human Rights Commission joined in a partnership with the Irish School of Ecumenics to consider a vast range of topics raised by the link between religious faith and rights, at a major conference in Belfast. The moment for the conference coincided with the meetings that led up to the adoption by the United Nations of the Universal Declaration of Human Rights (UDHR), whose sixtieth anniversary was marked on 10 December 2008. The conference was called Rights and Righteousness: Religious Pluralism and Human Rights, and it drew its inspiration from a remarkable meeting of scholars who contributed, from their debates in 1947, to the drafting of the UDHR the following year.

Choosing the theme of ‘pluralism’, however, was rooted very much in the current reality of Northern Ireland and these islands of Great Britain and Ireland.

First, there is the historical context out of which Northern Ireland is emerging in the peace process. One of the speakers remarked that despite the evident importance of this topic for Northern Irish history, this was the first time to his knowledge that issues had been addressed. We felt that this was an achievement.

Second, however, the changing demographics of these islands, linked with new global politics, raise issues of pluralism and faith in new ways and affirm that old issues are still live. A recent report to the Human Rights Council by Asma Jahangir, Special Rapporteur on the freedom of religion or belief, concluded that we still face challenges with regard to violence, religious education, religious symbols and the balancing of competing rights, among other issues.

The Special Rapporteur noted that sectarian violence or religiously aggravated offences occurred in Scotland as well as Northern Ireland. She noted the application of counter-terrorism and the adverse influence on the situation of British Muslims, an increase of attacks on Sikhs and Sikh properties following the terrorist attacks of 11 September 2001 and 7 July 2005, and a growing number of anti-Semitic incidents – a 31 per cent rise from 2005 to 2006.

She noted the ongoing controversies with regard to balancing competing rights, for example, of the manifestation of religious

faith with the right to equal provision of goods and services. The Special Rapporteur noted, “Some recent statutory equality provisions are reported to lead to a clash of religious traditions with other strands, for example sexual orientation”.

Many of the issues raised by the Special Rapporteur and others – economic justice, violence against women – were addressed in plenary, workshops and papers at the Rights and Righteousness conference. They were not finally resolved, nor was it expected that they would be.

To meet these challenges and others, we tried to set out the importance of the concept of addressing these issues in the framework of an understanding of ‘pluralism’ and its importance. We worked with the concept as it has been developed in the Pluralism Project at Harvard University. As the Director of that project, Diana Eck has said, “pluralism is not diversity alone, but energetic engagement with diversity. Religious diversity is a given, but pluralism is an achievement”. Pluralism is an achievement because it takes work, but it is worth it. The opposite is diversity without real encounter.

In this context, a word about tolerance: tolerance is good, but what is needed is an active seeking of understanding. Here again, Eck sums up the learning at Harvard on the subject:

“Tolerance is a necessary public virtue, but it does not require Christians, Muslims, Hindus, Jews and ardent secularists to know anything about each other. Tolerance is too thin a foundation for a world of religious difference and proximity. It does nothing to remove our ignorance of each other, and leave in place the stereotype, or half truth, the fears that underlie old patterns of division and violence. In the world in which we live today, our ignorance of each other will be increasingly costly.”

The pluralism project shares an insight – that we are not required to leave our identities and commitments behind when we encounter others. The process on which pluralism is achieved is based on maintaining our identities, but also sharing through dialogue and encounter, give and take, criticism and self-criticism, both speaking and listening.

One of the features of this pluralism is that there is, of course, diversity within traditions as well as among them. This diversity within traditions was marked in workshops and panels on sexual orientation, violence against women, economic justice, the purpose of Sharia law, and thoughtful contributions on the Buddhist contemplative traditions. It was marked in numerous ways in the plenaries by, for example, Humera Khan from An-Nisa who reflected on the challenges of Muslim identity in the public space. More than one intervention raised the issue of freedom of religion within religion, and noted that diversity within traditions can be a mark of vitality and change both for the traditions themselves and the wider society.

As we look back sixty years to the development of the Universal Declaration of Human Rights it is clear that process too was a commitment to being at the table, with one’s commitments. In marking the anniversary of that process with a conference on faith and rights we aimed to continue in the same spirit. The aims of the Rights and Righteousness conference were:

● to consider complementarities and tensions between rights- and righteousness-based approaches to justice, and
● to engage in informed dialogue between educators, clergy, writers, scholars and human rights practitioners.

The conference was intended to be useful to academics and practitioners, and to provide an opportunity for raising and/or responding
to issues for people who might not usually get involved in a conference run by the Irish School of Ecumenics or the Commission. To this end, we tried for a balance between academic papers and more participatory workshops. We also aimed for a balance between reaching new people through an open call for papers, and identifying some people whose contributions, for example in the plenaries, would be helpful. The result was a wide range of topics and interests, although not all the events were suitable for publication (for example, many were more discussion based) and not all contributors subsequently submitted their papers for publication.

The event aimed to encourage open conversation to assist understanding; illuminate rights and righteousness perspectives that can challenge prejudice in a pluralist society; develop shared interests and commitments that lead to social change; and result in a greater level of collaboration between faith groups and human rights organisations.

Considering what ‘a culture of rights’ means in a shared society may not yield agreement. However, we believed it could help to:

- raise awareness of diversity, challenging stereotypes and increasing respect for difference in a society emerging from conflict
- raise awareness of rights and the diversity of views from which they emerged and in which they can still flourish
- explain why agreement may be difficult
- identify rules of engagement for when agreement is not possible, and
- identify common grounds for action for justice where agreement is possible.

Did it work? The participants were enthusiastic, but most affirmed that they wanted this to be the beginning of conversations, not the end.

We hope that the Commission can continue to contribute to a fruitful, engaged dialogue on these issues in the future. The conference and this publication are two resources to further that process. It seems a fitting way to look backwards to the Universal Declaration of Human Rights, and forwards. Although the Declaration was hotly debated at the time, it was also finally agreed for the sake of building a lasting peace based on justice in the world. It set down a template from which we continue to build. In the same spirit, I hope that this publication on Rights and Righteousness will also provide us with some tools from which we will continue to build.

Professor Monica McWilliams
Chief Commissioner
Northern Ireland Human Rights Commission
Faith and rights in the making of the Universal Declaration of Human Rights

Rebecca Dudley

“An international declaration of human rights must be the expression of a faith to be maintained no less than a programme of actions to be carried out. It is a foundation for convictions universally shared by men however great the differences of their circumstances and their manner of formulating human rights: it is an essential element in the constitutional structure of the United Nations.”

The year was 1947. After meetings in Paris, Mexico City and Beirut, a group of scholars committed to peace and human rights made this the opening statement of their report back to the United Nations.

Their conclusions to the Human Rights Commission of the United Nations were intended to clarify the discussion and explore the ground for a constructive agreement for a new charter of rights. With these conclusions, they paved the way for the Universal Declaration of Human Rights, in the General Assembly of the United Nations in December 1948.

The United Nations had asked their Educational, Scientific and Cultural Organisation (UNESCO) to carry out an “enquiry into the theoretical problems raised by such a Universal Declaration”. UNESCO wanted to know about general ‘problems’ of human rights; that is, philosophical contradictions and controversies. It also wanted comment on specific issues; for example, respect for cultural diversity, the social implications of science, the value of objective information, the right to education and the special position of what it called “primitive peoples, dependent peoples, law-breakers, etc”.

The UNESCO submission was not the only submission to the Human Rights Commission of the United Nations. However, it is possible in some instances to see its influence on the final Universal Declaration of Human Rights (UDHR) issued on 10 December 1948 in the General Assembly of the United Nations.

Sixty years on, people talking about human rights tend to take the existence of the UDHR and the United Nations for granted. For the participants in these meetings in 1947, nothing was less certain. Their writings show they might be surprised to know that the world has survived 60 years on. They might be even more surprised to hear that much of the discourse on domestic public policy and international diplomacy is conducted with the language of the human rights for which they

argued. Back then this result was far from clear.

The UNESCO symposium disagreed on whether a statement of common aspirations was possible, and whether it could be effective. Some doubted whether a new United Nations could succeed where the earlier League of Nations had failed. And there was the anxiety that soon the world would be convulsed in another war, that technology harnessed in the atomic bomb, coupled with irreconcilable differences, could lead to mutual annihilation.

A hint of the issues to come, the opening paragraph of their submission to the United Nations borrows language of faith used about rights. The declaration of human rights was for them “an expression of faith”. The implications of the use of religious language about rights still provoke debate today. For example, in 2001, Michael Ignatieff critiqued both the language and the sentiments behind it when he observed, “human rights have become the major article of faith of a secular culture that fears it believes in nothing else”. He asked:

“If human rights is a set of beliefs, what does it mean to believe in it? Is it a belief like a faith? Is it a belief like a hope? Or is it something else entirely?”

In fact, Ignatieff argued that the area of human rights is misunderstood if it is presented as a ‘secular religion’. He argued that human rights as an area is not a creed or metaphysics at all. Rather, support for rights should be built on practical issues: what rights can do for human beings. Here he may share the conclusions of the UNESCO conference participants in 1947, who focused resolutely on practical outcomes. As one participant said: “Yes, we agree on the rights, but on the condition that no one asks us why”.5

In the UNESCO discussions in 1947 some key questions were addressed. These questions helped form the UDHR and they form debates about rights today. For example:

1. Are we born with rights?
2. Are human rights necessarily secular, as some advocates would argue? Or perhaps, as others would argue, is a religious commitment necessary to believe that human beings have an inherent dignity that should be respected?
3. Are rights a function of social processes?
4. Are rights everywhere and everywhere the same?
5. What is the role of cultural and religious traditions in the articulation of rights?
6. What about duties?
7. How can we agree when we differ?
8. Can we agree on practical outcomes?

1. **Are we born with rights?**

The first questions have to do with the basis of rights, and the source of rights. These will be summarised in the next two sections of this background paper as natural rights and rights as the result of social processes.

The natural law and anti-natural law frameworks were apparent in 1947, principally among what might be called a liberal European/US tradition on the one side and socialist and communist thinkers on the other. Jacques Maritain6 made a distinction between the ‘classical’ and ‘revolutionary’ positions, as follows:

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4. See: Ignatieff M (2003) Human Rights as Politics and Idolatry, Princeton University Press, Princeton, pp 53-54. To base the idea of human rights on propositions of human dignity, for example, is controversial: “Some people have no difficulty thinking human beings are sacred, because they happen to believe in the existence of God who created Mankind in His likeness”. However, “People who don’t believe in God must either reject that human beings are sacred or believe that they are sacred on the basis of a secular use of a religious metaphor that a religious person will find unconvincing”.


a) The classical liberal democrat view explicitly accepts natural law: “the requirements of his being endow man with certain fundamental and inalienable rights antecedent in nature, and superior to, society, and are the source from which social life itself, with the duties and rights which that implies, originates and develops”.

b) The “revolutionary” Marxist view explicitly rejects natural law and suggests that “man’s rights are relative to the historical development of society, and are themselves constantly variable and in a state of flux; they are a product of society itself as it advances…”.

Maritain very much agreed with the former position and his imprint is deeply felt on these proceedings.

This debate about the human rights basis in natural law was related to other questions, which were not answered definitively in the UNESCO proceedings. For example, underlying the debate over natural law versus its opponents were other divergent assumptions about the religious foundations of human rights.

2. Are human rights necessarily secular, as some advocates would argue? Or perhaps, as others would argue, is a religious commitment necessary to believe that human beings have an inherent dignity that should be respected?

The scholars expressed profound differences on this point. Some contributors suggested that a religious foundation for belief in inherent dignity was superstitious nonsense. They said that religion itself was a pretext for oppressive ideologies.

Equally scathing from the opposite viewpoint, Maritain argued:

“If there is no God, the only reasonable policy is that the end justifies the means, and to create a society where man shall finally enjoy his full rights, it is today permissible to violate any right of man if this be necessary for the purpose in hand.”

He called this inconsistency “an irony stained with blood”.

In fact, the final version of the UDHR begins, in its preamble, with a ringing endorsement of what has been described here as the natural law position:

“Whereas recognition of the common dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world…”

Article 1 of the UDHR is the answer to the question of whether human beings are born with rights: “All human beings are born free and equal in dignity and rights”.

3. Are rights a function of social processes?

The next issue the UNESCO philosophers and scientists were interested in was the development of rights as a function of the development of social relationships and (partly because of the Marxists) the productive capacity of society. This question led to a debate about how rights had developed in the past. That, in turn, made it very important to reach a common understanding on the history and development of rights. The statement agreed finally by the committee about the development of human rights – civil, political, economic and social – fuses some of the elements of both camps, but is firmly rooted in a commitment to the natural law position about where rights have come from.

Their brief history is quoted at length here:

7. UNESCO (ed) p 76.
“Fundamental rights were rights which regulated man’s relation to political and social groups and are therefore usually referred to as civil and political rights. They had as purpose to protect man in actions which do not derogate from the freedom or well-being of others and to assign to him the exercise of function by which he might exert a proper influence on the institutions and laws of State.8

“As a result of religious movements and the development of national states, a series of freedoms were formulated more and more precisely and insistently from the Renaissance to the eighteenth century: to free man from unwarranted interference with his thought and expression, freedom of conscience, worship, speech, assembly, association and the press. During the seventeenth century, each of these freedoms received eloquent defence on the grounds that, not only that they may be granted without danger to the peace of the State, but also that they may not be withheld without danger.9

“During the 19th century there were to these rights another set of fundamental human rights which grew out of the recognition that to live well and freely man must have at least the means requisite for living and which was made increasingly practicable by the increase of technology and industrialisation in making the means of livelihood potentially accessible to all men. These have come to be called economic and social rights.”10

The lengthy quote is submitted here for two reasons. First, the text shows that the religious freedom and freedom of conscience has shaped the modern human rights movement. Modern conversations that set human rights at odds with religious faith are not showing historical awareness of the profound links between them. Movements for freedom of conscience have been historical drivers for much of the human rights movement in recent centuries.

Second, this brief extract introduces terminology that becomes commonplace to describe different types of rights: civil and political, economic and social.

With regard to economic and social rights, the writers go on to describe how these were first associated with the right to property (ownership and use, private and common ownership, private rights and public responsibility). Later these included education, the right to work (with legal provisions for bargaining and arbitration about rewards of work), protection of health (food and drug administrations for pure food), then grew to forms of social security for maintenance in sickness, old age, infancy, and other forms of incapacity, unemployment.

But, if this wording on the history was a compromise, these reflections also point up sharp differences in the development of rights over time as they are reflected in legal codes of different countries and different histories. Again, the question had to be addressed.

4. Are rights everywhere and everywhere the same?

It is usually affirmed that human rights are universal, that is, that they are for everyone, everywhere. The UNESCO committee concluded that, in spite of the differences

8. UNESCO (ed) p 264.
9. Very interestingly, in light of the Northern Ireland context and modern religious pluralism issues, the British diplomat, EH Carr, suggested: “Neither in Britain nor in the North American colonies was religious tolerance absolute until religion ceased to have serious political implications”, UNESCO (ed) p 21.
10. UNESCO (ed) p 265.
of historical developments over places and time:

“Human rights have become, and must remain, universal. All the rights which we have come slowly and laboriously to recognise belong to all men everywhere without discrimination of race, sex, language or religion. They are universal, moreover, not only because there are no fundamental differences among men, but also because the great society and community of all men has become a relative and effective power, and the interdependent nature of that community is beginning at last to be recognised.”

Note that this position is necessary in order to maintain consistency with the natural law position. If rights are ours because we are human, they must also exist wherever human beings are, regardless of culture or history.

In 1947, this argument was made by Arnold J Lien, a political scientist who added, with some foresight, that rights might be possible to name everywhere, but they would sometimes be harder to claim everywhere:

“[…] while the basic rights must everywhere be the same, the degree to which they can be made operative, and the extent to which they can be fulfilled must vary from one state to another, and continue to vary for quite a long time.”

The process of achieving the rights claimed in the last 60 years has led to further differentiations in the concept of human rights. For example, Marie Benedict Dembour argued in 2007 that human rights scholarship can be divided into at least four camps: those who see human rights as given (the ‘natural scholars’); those who see them as agreed (‘deliberative scholars’); those who see them as fought for (‘protest scholars’); and those who see them as talked about (‘discourse scholars’). The diversity of concepts that may guide a human rights understanding has become more complex in the past 60 years.

5. What is the role of cultural and religious traditions in the articulation of rights?

In 1947, it was argued that any universal declaration of human rights needed to reflect all cultures. Cultural relativism is a fact of life, the scholars argued. In a very modern sounding argument, FSC Northrup, from Yale Law School, argued that a Soviet, Latin American, or African list of rights would all be different (and so it proved in subsequent decades). He argued that an “adequate bill of rights must be conceived not solely in terms of political freedom but in terms of a plurality of cultural values”.

However, he continued, acknowledging difference is not enough if the differences are contradictory. What then, he asks. There has to be in the rights a:

“[…] guarantee also a procedure by means of which people and nations can and must pass beyond their present ideologies when these ideologies so mutually contradict as to threaten the peace of the world.”

In other words, contradictions have to be transcended if they were not to destroy one each other. With other contributors, Northrup looked to the importance of international courts and/or other arbiters to work out some of the contradictions that

15. UNESCO (ed) p 184.
would arise between individuals, institutions and states.

However, in a second area of consensus around cultural differences, writers from Hindu, Confucian, Christian, and Buddhist traditions all agreed that rights were closely linked with responsibilities.

6. What about duties?

The inter-relationship of rights (or something like them in other cultures) and duties (or something like them) is developed from within diverse cultural and religious contexts. The most striking expression of the interaction between rights and duties in a cultural context came from Mahatma Gandhi. During the social upheavals and violence in India that would lead to both decolonisation and partition, he wrote a letter to Julian Huxley, Director General, UNESCO:

“I learned from my illiterate but wise mother that all rights have to be deserved and preserved from duty well done. Thus the very right to live accrues to us only when we do the duty of citizenship to the world. From this one fundamental statement, perhaps it is easy enough to define the duties of Man and Women and correlate every right to some corresponding duty to be first performed. Every other right can be shown to be a usurpation hardly worth fighting for.”

SV Puntambekak developed in more detail a ‘Hindu concept of human rights’ by explaining that there were five essential freedoms (from violence, from want, from exploitation, from violation or dishonour, and from early death and disease). These were to be balanced against five essential ‘virtues’ (absence of intolerance, compassion, knowledge, freedom of thought and conscience, and freedom from fear or despair). Some of the concepts here may not translate directly, as he uses the English language words of ‘virtues,’ ‘controls’, and ‘possessions’ to try to describe the nature of the second five attributes.

From another perspective, Chung-Shu Lo, a philosopher from West-China University, noted that there was not a word for ‘rights’ in the Chinese vocabulary and so it is comprised of two Chinese words for their modern discussions, namely, ‘power and interest’:

“The basic ethical concept of Chinese socio-political relations is the fulfilment of duty to one’s neighbour, rather than the claiming of rights. The idea of mutual obligations is regarded as the fundamental teaching of Confucianism... Chinese ethical teaching emphasised the sympathetic attitude of regarding all one’s fellow men as having the same desires, and therefore the same rights, as one would like to enjoy oneself. By the fulfilment of mutual obligations the infringement of the rights of others should be prevented.”

Despite this conceptual difference, the writer stressed that rights had been claimed, especially for example, an ancient right of the people to overthrow bad rulers (relevant in the then current Chinese context of civil war).

In fact, nearly all the contributors to the UNESCO conference believed that a close interdependence of rights and duties had “long been apparent in moral analysis”, and should be reflected in a final document.

Only one contributor argued strongly against such a course of action. German philosopher, Kurt Riezler wrote:

17. UNESCO (ed) p 167.
18. UNESCO (ed) p 167.
“It is everybody’s duty to recognise the rights of his fellow citizen... If, however, these duties of man would be duties toward the ‘public welfare’ the ‘Society’ and the State, and rights are made conditional on the fulfilment of these duties, the duties will uproot the rights. The rights will wither away... Any bill of rights that makes the rights conditional on duties towards society or the State, however strong its emphasis on human dignity, freedom, God or whatever else, can be accepted by any kind of totalitarian leader.”

Some of the passion in his words might be explained by the context, immediately following the fall of the Third Reich and the Nazis. Like every contributor, he was writing with pressing and immediate issues in mind about what was happening around him.

The language in the final version of the UDHR bears a striking resemblance to the contribution of a French Catholic contributor. Jesuit archaeologist, zoologist and philosopher, Pierre Teilhard de Chardin was concerned with the whole community interacting with the development of the human personality:

“It is not by self-isolation (as one might have thought), but by proper association with all other human beings that the individual can hope to achieve full development of his person ...since we cannot become completely reflexive, except by reflecting ourselves in, and taking reflections from other human beings.”

In the final version of the UDHR, Article 29 reads:

“Everyone has duties to the community in which alone the free and full development of his personality is possible.”

It may be helpful at this point to note the legal form in which the balancing act between the rights of the individual are sometimes considered against a common good. This is known as limiting rights.

Articles 29 and 30 of the UDHR contain a summary of a related debate about the limits of some rights. Article 29 continues:

“In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and general welfare in a democratic society.”

Article 30 of the UDHR amplifies:

“Nothing in this Declaration may be interpreted as implying for any state, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth therein.”

These articles try to balance concerns of those who felt that rights needed to be explicitly balanced against duties and those who felt that this balance was inherent in a balance with the rights of others.

7. How can we agree when we differ?

Everyone agreed that conflicts would arise about the meaning and interpretation of rights. When it did, they felt there were only two choices: peaceful means or means leading to oppression and violence. Italian
philosopher, Benedetto Croce posed the challenge sharply:

“How is agreement to be reached? By the reinvigoration of the current of liberalism, whose moral superiority, power of thought and persuasion and whose political wisdom and prudence will prevail over the other current? Or will it be through a new world war which will bring victory to one or the other side..?”

The context of his writing suggests that he felt his question was a real choice rather than a mere form of words.

8. Can we agree on practical outcomes even if we don’t share an underlying philosophical basis?

Maritain argued that he understood the difficulties, but we must come to an agreement wherever we can:

“[…] rational justifications are at once indispensable, and yet powerless to bring about agreement between minds. They are indispensable because each one of us believes instinctively in the truth, and will only assent to what he himself has recognised as true and based on reason. They are powerless to bring about a harmony of minds because they are fundamentally different, even antagonistic; and why should this surprise us? The questions they raise are difficult and the philosophical traditions to which they are related have long been divergent.”21

So he argued for practical guidelines for action. His argument carried. In conclusion, the UNESCO committee identified problems ‘in principles, interpretations, political and diplomatic problems’ to a universal declaration of human rights.

Nonetheless, they suggested that they could offer an examination of the intellectual basis of a modern bill of rights, suggesting common ground for agreement, and explaining possible sources of differences.22 Throughout, their conclusions remained pragmatic; while it may not be possible to agree on the means, they could agree on the ends:

“The Committee is convinced that the philosophic problem involved in a declaration of human rights is not to achieve doctrinal consensus but rather to achieve agreement concerning rights, and also concerning action in the realisation and defence of rights, which may be justified on highly divergent doctrinal grounds.”23

Agreement on practical outcomes can still be a relevant approach where there are likely to be fundamental disagreements about the means to get there.

Conclusions

We still have these debates, especially when issues of faith and rights are on the table. The UNESCO event was a window into the historical development of rights and some key areas of discussion:

● The universality of rights: Are rights everywhere and everywhere the same? What role do cultural and religious traditions have in the articulation of rights?

● The basis of commitments to rights: Are human rights necessarily secular, as some advocates would argue? Or, is a religious commitment necessary to believe that

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22. UNESCO (ed) p 258.
23. UNESCO (ed) p 263.
human rights have an inherent dignity that should be respected?

- **Reaching common ground on rights:** By what means should we hope to achieve consensus when we differ? Can we agree on practical outcomes even if we do not share an underlying philosophical basis?

In answering these questions, the UNESCO conference participants covered a lot of ground: for example, they discussed the development of civil, political, economic and social rights; the role of religious freedom in the development of rights; the role of culture and religion in expressions of rights; the debate about the relationships between rights and duties; and the debate about rights and limitations on rights. Although the participants couldn’t agree on some of the issues, they nonetheless agreed on a practical outcome to assist in the development of the Universal Declaration of Human Rights.

Discussions on the development of a culture of rights in a pluralist society remain current in Northern Ireland. There are at least four ways in which a conference that happened in 1947 might still be relevant on the sixtieth anniversary of the UDHR.

1. The diversity of views that shaped the emergence of the modern (post 1948) human rights era can challenge stereotypes. Awareness of historical diversity, especially on issues that still concern us, provides a basis for more informed discussions among practitioners today.

2. Some of the language of 1947 is dated. However, there is a striking modernity to some of the arguments: that a true human rights declaration would have to reflect all cultures, for example.

3. The proceedings also offer some framework for an analysis of differences that still emerge today; for example, about whether human rights are derived from human dignity or are constructed as the result of a social process.

4. Underlying the entire proceedings in 1947, there was a passionate conviction – no less relevant now – that conversation is essential if people who are different are to be able to live together in peace.

If the UNESCO committee felt that the conversations in which they were engaged could help prevent further conflict, the organisers of this Belfast conference shared their conviction that constructive discussions about religious pluralism and human rights could help in the task of peace-building.

Two final points underline the challenges for our discussions in this conference. First, rights have not been realised. Belgian political scientist, J Hasearts, in 1947, wrote words that have been echoed by many human rights defenders and advocates since, whether motivated by ‘rights’ or ‘righteousness’:

“Equality has been reduced to the narrow civic equality that we know so well. Political equality has barely begun and economic equality is not considered. Resistance to oppression is hunted down wherever it appears, but oppression itself is flourishing, thanks to the crises which pursue us, and it threatens rights the possessors of which have no means of defending themselves.”

As social analysis, perhaps the tone is very similar to an older source in Hebrew Scriptures. There, an ancient social critic observed:

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24. For example: the use of the word ‘man’ to mean ‘human beings’ is kept in the quotes below, because it took another generation to recognise that women might need particular and proactive measures outlined in the UN Convention on the Elimination of All Forms of Discrimination Against Women.

25. UNESCO (ed) p 97.
“Justice is turned back, and righteousness stands afar off; for truth has fallen in the public squares and uprightness cannot enter. Truth is lacking, and he who departs from evil makes himself a prey.”²⁶

Justice is the concern of both speakers, the continuing lack of it deeply troubling to both.

Second, the organisers of this conference would suggest, with the framers of the UDHR in their diversity and their conviction, that rights are fundamental to peace, human welfare and the common good:

“The fundamental issue of our times is probably to be found in the opposition of two assumptions, made implicitly and explicitly in policies advocated for the determination of the relations of the nations of the world. On the one hand, it is assumed that there are several basic ideologies [...] which are in necessary conflict and opposition and which are dividing mankind into two worlds until one overcomes the other. On the other hand, it is assumed that means can be found by which men of different basic convictions in philosophy, religion, political theory and economic doctrine may cooperate to common ends in a single world of shared values. The first is a solution in which peace and human rights depend on the successful inculcation of a single basic philosophy throughout the world... and failure of efforts towards universal indoctrination in the past ...make it highly probably that pursuit of that solution must lead to war. The second ...might preserve the peace of the world by furnishing the means to reach agreements concerning the equitable solution of problems and the achievement of human welfare and the common good.”²⁷

²⁷. UNESCO (ed) p 41.
Introduction

This is an important conference and I am honoured to be asked to speak at it. I may be wrong but I certainly cannot recall a conference of this nature – a formal exploration of the relationship between human rights and religion over the thirty and more years of conflict here. When I mentioned that fact to several colleagues in Great Britain and France in recent weeks none could quite believe me. Northern Ireland is fixed in the minds of most who are not from these parts as a place where the religions have been at war. How then could the subject of rights and religion fail to be addressed? But, as we know, the truth is rather more complex both here and in other contexts of conflict. Northern Ireland’s problems which have hopefully now moved to a phase of peaceful resolution reflect overlapping ethnic, political as well as religious dimensions. That equally is the case elsewhere where religion is identified as a component of conflict. I will return to the point that there is nothing unique about Northern Ireland in the salience of religion and the experience of conflict.

In this opening session of the conference I intend to do the following:

- Give a brief introduction to some of the international principles and standards that relate to religion and human rights
- Bring out what have been the main issues over time that have arisen over the translation of these standards into practice in the world
- To identify current controversies – reflecting largely those that have been of concern to Ms Asma Janahir, the United Nations expert on the promotion of freedom of religion or belief in the world, and
- To reflect on the growing importance of the theme of the conference – religious pluralism or diversity and human rights.

International human rights principles and standards that relate to religion and human rights

There are many standards that could be discussed and many of them will be raised in the workshops. I shall focus on the Universal Declaration of Human Rights. Next year, 2008 will mark the 60th anniversary of the Universal Declaration adopted by the General Assembly of the United Nations on 10 December 1948.1 It is rightly described as the most influential statement of the human aspiration for peace, dignity, freedom and

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justice ever produced by the United Nations. Article 18 of the Declaration proclaimed freedom of religion and sought to define its scope:

“Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.”

From a human rights perspective, this text should be the centrepiece of any discussion on religious pluralism and human rights. Let me offer here a brief reflection on the concept of religious pluralism. At a minimum, it conveys the sense that there is more than one category of believers in society. That has always been the case but the arrival of newcomers to European societies or larger numbers of them in recent years has made this plurality more obvious. On these islands and in continental Europe, our history has been one of intra-religious differences – Protestant and Catholic. But we now have inter-religious diversity, with adherents of Islam, Sikhism, Hinduism or Buddhism, for example. And we also have beliefs that are not religious, those who are agnostic as well as those who are atheist.

‘Pluralism’ means an approach to that diversity of belief. In human rights terms, it begins with the individual freedom of religion or other belief and the right to live by those convictions. It upholds everyone’s equal freedom to believe or not to believe. To manage diversity of beliefs in society is not alone a Northern Ireland challenge, but a global challenge facing many if not most societies. It is one duty of the democratic state to act as guarantor of the freedom within which the diversity of convictions and beliefs and their institutional expression within society can be secured.

Rebecca Dudley’s excellent paper on UNESCO’s 1947 consultation on the nature of human rights is a good starting point for the themes of the Conference. The paper takes us to the period in the 1940s, when the project of agreeing international human rights standards was first addressed through the newly created United Nations’ Human Rights Commission chaired by Eleanor Roosevelt. It was this body which drafted the Universal Declaration of Human Rights.

The history of that extraordinary period is not alone of interest to professional historians. As Rebecca’s paper makes clear, it is of the greatest importance to us at the current juncture of international affairs. The modern law of human rights was set down in the wake of the Second World War that left over sixty million dead. It was constructed in the shadow of the Holocaust, the sudden and seemingly permanent division of Europe and the constant threat of nuclear destruction of all human civilisation. This Cold War era has passed but recalling it helps remind us that our present 21st century global context with its many crises, including those of poverty, environmental degradation and international terrorism, is not unique. The global security crisis precipitated by the terrorist attacks on the United States on 11 September 2001 has left the world again polarised and insecure. Islam is being invoked by fanatical and violent networks such as al-Qaeda, boosted by new communication technologies, to exploit the anger of millions of the world’s Muslims over long neglected political and economic injustices especially in the Middle East. Extreme or fundamentalist ideas sourced to Islam are being promoted

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within the Muslim populations of European democracies leading to serious tensions between the majority populations and their mostly recent Muslim immigrants.

The Western response in the ‘global war on terror’ which in the United States, at least, has been projected as a never ending confrontation with Islam puts at risk the very values that it seeks to defend. It is imperative that the universal standards on human rights, sustained despite the Cold War, are not jettisoned in this new crisis. The religions of the world and especially the three faiths that have their origins in the Middle East, Judaism, Christianity and Islam, could play an indispensable role in defending the major civilisational advance of the twentieth century – the aspiration for universal and equal human rights. One way in which these religions could contribute is by unequivocally affirming the right of the individual everywhere to religious freedom, and by working together with other religions, to promote the ideal of complete religious freedom in the world as envisaged in the Universal Declaration of Human Rights and its Article 18.

The international human rights movement dates from the end of World War II. The international standards on human rights are built on a US president’s espousal of freedom – the speech of Franklin D Roosevelt to US Congress in 1941 – the famous Four Freedoms Speech made on the entry of the US into the World War II. In this speech, he set out the ideals for which the war was being fought – and the goals for the world after that war: a world where there would be freedom of speech; freedom of religion; freedom from fear and freedom from want. These goals became the foundations of the United Nations Organisation created in 1945. On 24 October (2007), we marked UN Day, the date when the UN Charter came into force.

The idea of universal enjoyment of human rights was included in the goals of the UN as part of a larger vision to which the new international organisation was dedicated – namely a world where succeeding generations would be saved from the scourge of war, a world where peace and security could be guaranteed and where, through economic and social development, freedom from want would be achieved; where all peoples would have the right to determine their own destinies and where the rule of law and international co-operation on these goals would govern international relations.

Time allows only two points about this vision. First, it remains the vision. It may have taken hard knocks over the last 60 years and not least in the post 9/11 era, but the ideal of multi-lateral co-operation through the UN to achieve these interconnected goals of human security, development and universal rights – global social justice, in short – remains vital to support. The full achievement of freedom of religion or belief as a universal right as with all other rights and freedoms is conceivable only in a world in which poverty, powerlessness and despair are eliminated. Human rights cannot stand or be pursued alone.

My second point is to note that the shaping of this larger vision in the mid last century was deeply influenced by religious thinkers and organisations as well as by secular thought and individuals. We do not have more time to develop that subject. But you will notice that Rebecca’s background paper on the UNESCO consultation over the possibility of a Universal Declaration on Human Rights is built on the book edited by Jacques Maritain, the eminent Roman Catholic theologian and natural law philosopher. She suggests convincingly, I think, that the thought of the Jesuit thinker, Pierre Teilhard de Chardin on the significance
of community in the context of rights is reflected in the language of the Declaration. To these contributions should be added the importance of ecumenical Christian commitment to the process which led to the UN Charter, the Universal Declaration of Human Rights and the post-war international order.³

Let me turn now to the Universal Declaration. We might first note that an initial issue which arose in the drafting of that text was the ontological one – whether the Declaration should or should not identify God as the source of rights. The Vatican’s representative in Paris, where the drafting took place, was none other than Angelino Roncalli then papal nuncio to France, later Pope John XXIII. He sought to have reference to the deity included in the Declaration supported by a number of Latin American states but this failed. However, as Rebecca Dudley notes, in effect the issue was buried in the text in its language on inherent rights and human dignity. We must recall it was a document agreed between diplomats, not philosophers. The text was negotiated not only between people of different world regions and cultures but between East and West. The understanding of human rights was at the centre of the ideological competition between the Soviet Union and the western democracies. The often avowedly atheistic ideology of communism was not sympathetic to the idea of religious or other forms of freedom. In Feidhlimidh Magennis’ paper on language rights for the conference, he notes that the UDHR was essentially a compromise statement which sought to hold together various lists of rights emerging from different theoretical bases. This is undoubtedly true, although what is remarkable is how the original compromise has not only survived but has prospered over the last half century. While in its 60th year to be celebrated next year, the UDHR remains far from achieved in the lives of perhaps the majority of human kind and there is little doubt that the ideal of universal rights and freedoms is as potent as it ever was.

### Equality non-discrimination

What was truly revolutionary about the conception of rights as advanced in the UN Charter and the UDHR was not human rights but equal human rights for all individuals everywhere. The nexus between rights and equality of treatment has been the true driver of change in the world over the last half century. We see this in the advances of the campaigns against racial or ethnic discrimination as well as discrimination against women. However, there have been fewer advances in practice in the case of discrimination that is based on religion or belief. It is some form of achievement that discrimination on the basis of religion or belief is outlawed by international law. But, in reality, widespread disadvantage, discrimination, even persecution on grounds of difference in religious commitment is a reality for millions in the world.

### Religion and state

We should also note that neither the Universal Declaration nor any subsequent human rights text addresses directly the question of the relationship between religion and state. There is no requirement that religion and state should be separate. There is a continuum of arrangements in the world from enforced separation (France, Turkey, USA) through historical identification (England, Norway), to negotiated relationships (Latin American states), to

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enforced identification (Iran, Saudi Arabia). But, in practice, the range of relationships between secular power and religions, including in Islamic countries, is diverse and in constant adaptation. As already noted, international human rights standards require the state to be the guarantor of freedom of thought, conscience, religion and belief for all within its jurisdiction.

International standards require that where there is a state or established religion, there ought not to be any disadvantage or discrimination as a result in regards to any other faith or religion. That is clearly a difficult challenge, but arguably not an impossible one if we think of the United Kingdom with its established church and the long evolution of traditions of religion tolerance. But, where there is an established or privileged faith, the protection of religious minorities becomes an important human rights priority. Unfortunately, pressure and persecution of minority faith is a widespread feature in the contemporary world.

**Article 18 Universal Declaration**

This is the core statement on the scope and content of the freedom of religion in international law. It has been repeated in many other international documents of global or regional nature. It is not alone recognition of freedom of religion but of a more complex range of ideas. Indeed, there is only one freedom here – freedom of thought. Freedom of religion is one dimension of that freedom, both for the individual and for communities. But religious belief necessarily includes consequential practical and spiritual action. For this reason, the only expression of freedom of thought that is articulated in the Article is that of religion. The reference to conscience in the Article invokes a Christian derived belief in the existence and the primacy of the individual’s moral being. The reference to conscience also invokes the historical struggles of early Christianity to establish itself within the Roman imperial cult of Caesar; and then in early modern Europe to achieve freedom from allegiance to a state-‘establishment’ of religion imposed by force, whether Catholic or Protestant.

Yet, the rights of conscience are wider than religion. In its more modern connotation, freedom not to believe or commit to any religious dogma came to include the right to refuse to submit to a non-religious ideology as, for example, that of the communist regimes being installed throughout much of Eastern and Central Europe at the time the text was being drafted. It has been invoked also by those refusing to undertake compulsory military service – conscientious objectors.

A further characteristic of the text is that it brings together both individual and collective elements of the freedom of religion. The freedom to be defended is that of the individual and of the community at the same time. It can be useful to see much of the tension between secular and non-secular moral, or religious or spiritual discourse on human rights as resulting from competing preferences between the collective and individual conceptualisations of human rights including freedom of religion.

**Freedom to change religious beliefs**

For many, the crucial test of recognition of the individual conscience is that the individual might be free without community or religious sanction to change beliefs. That element of the freedom was included in the agreed Article 18 of the Universal Declaration. When the freedom ‘to change his religion or belief’ is added to the freedom of religious expression,

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the article appeared to endorse a conception of religious freedom that protected the freedom both of the individual to convert to another religion and for the right of persons of that other religion to seek by argument and example to convert the individual to their faith. What is implied as a core dimension of this freedom, therefore, is the space for competition between religions for new adherents. What was implied equally is the acceptance by religions that the individual had freedom to abandon a religion of birth for no or alternative beliefs.

Such a model of religious liberty was in fact a challenge to many religions, most clearly today, Islam. But the idea of freedom of conscience and the right of the individual to challenge received religious teaching or to choose religious or non-religious convictions was long denied in Christianity especially in its Orthodox and Catholic traditions. Indeed, it was not until 1965 and the Declaration on Religious Freedom of the Second Vatican Council that the Roman Catholic Church accepted this implication of the right to freedom of conscience.

Protestant Christians could see, in this model of religious liberty, opportunity to pursue the injunction of their religion, to evangelise while accepting reciprocal freedom for other faiths or for humanistic beliefs. The position of Muslim countries towards religious freedom, countries which had experienced an era of colonial occupation and continued Western economic dominance, needs to be understood in that context as well as by reference to Islam itself. Islam means the submission of the individual will to the will of God and, in the dominant understanding, the freedom to change religion is inadmissible. While it is a fundamental principle in Islam that there can be no compulsion in matters of religion, Muslims cannot reject Islam for other beliefs whether religious or non-religious. Such an action is the crime of apostasy and is contrary to Islamic law. Although it is considered a crime punishable by death in Muslim majority countries, in practice, there is often no such provision in state law. On the other hand, Islam is a religion that welcomes new believers and enjoins its followers to convert others.

Reflecting on the drafting of the Universal Declaration and subsequent efforts to agree international standards on religious freedom, it can be seen that there were both maximalist and minimalist positions. The maximalist position was endorsed through western Christian pressures, principally from Protestant churches. A strong component of this conception was the right to evangelise others in all countries. Islamic countries focused on combating intolerance particularly towards Islam, and the protection of religious minorities, for which indeed Islam had a proud record, while holding to a clear territorial conception of religion. The tensions between these different conceptions of religious freedom continue to be experienced, not only between Western Christianity and Islam, but also in the relationship between the Eastern Orthodox faith and other religions.

**The UN expert or Special Rapporteur on freedom of religion or belief**

Ms Jahangir’s mandate given her by the United Nations’ Human Rights Council is to promote freedom of religion and belief in the world. She has limited power to change things but she can receive complaints, investigate on the ground, make reports and offer recommendations to governments. She therefore deals, in particular, with violations of this freedom and her annual reports to the UN Human Rights Council offer plenty of examples. Some concerns in her 2007 report, set out below in summary form, will
give a sense of the principal issues over religious freedom in the contemporary world.\(^5\)

**Freedom to choose religion**

Particularly worrying, she states, are cases where the freedom to adopt, change or renounce a religion or belief has been infringed; for example, when state agents try to convert, reconvert or prevent the conversion of persons.

**Registration of religions**

She notes also that great injustices arise from the operation of laws requiring registration of religions and the refusal of registration: “Many believers belonging to religious minorities are not allowed to worship or conduct any religious activities without State approval or prior registration”.

**Violence against believers**

The experience of physical attacks on believers is a recurrent theme in the Special Rapporteur’s annual reports: “Since believers are in a situation of special vulnerability whenever they find themselves in places of worship, States should pay increased attention to attacks on places of worship and ensure that all perpetrators of such attacks are properly prosecuted and tried”.

**Vulnerable groups**

Ms Jahangir identifies as special targets for violence and exclusion a depressing list: women, persons deprived of their liberty, refugees, children, minorities and migrant workers. All, she notes, can be identified as particularly vulnerable groups with regard to their freedom of religion or belief and experience of discrimination.

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abroad. Consequently, States should be encouraged to consider promoting regional or international cultural exchanges in the field of education, for example by concluding agreements relating to such exchange programmes and by providing funding for related grassroots activities.6

**United Kingdom visit**

The Special Rapporteur visited the United Kingdom in June 2007, and she will report on this visit in due course to the Human Rights Council.7 But in a press release after her visit, she noted some concerns, in particular, over the disproportionate impact of anti-terrorism laws on the Muslim population through inter alia “stop and search” powers. She visited Northern Ireland and was, like many other visitors, impressed by the new political environment of co-operation after decades of conflict. She learned of “promising initiatives which seek to cross the sectarian divide among Christians both non political and grass roots levels”. In a sign of the extraordinary changes in Northern Ireland flowing from new arrivals in this period of greater prosperity and peace, Ms Jahangir also reminded us that the rights of religious minorities should not be forgotten. Nor, she noted, should the perspectives “of believers who are dispassionate about their faith and of secularists or humanists as well as of women. While there is no legal discrimination against women, yet many of them are in a vulnerable situation within their own communities. I believe that equality must be all-encompassing and the argument that traditions should override the rights of women is unacceptable”.8

**Religious pluralism and human rights**

The growing importance of the theme of the conference, religious pluralism and human rights, is evident in our age of globalisation which now impacts everyone, everywhere. By globalisation, I mean the trend for day-to-day life to be restricted less and less by national borders and distance. It also means that as distance collapses so we are living closer to the great human diversity of cultures, ethnicities, languages and, of course, beliefs and religions. The need is to accept that diversity, to grow comfortable with its presence in our lives. In other words, pluralism is here to stay. It cannot be reversed.

But on these islands and in continental Europe there remain many challenges. There remain major gaps in understanding between the major religions and cultures coupled with experience of rejection prejudice and discrimination. The controversy over the publication of the Danish cartoons of the Prophet Mohammad, in 2005, exemplified the gulf in understanding on a global scale between Western ideas of freedom of expression and Muslim convictions over the sacredness of their religious leader and the protection that their beliefs should be given. Ultimately, the need is to combat ignorance of the other, to come to accept the other’s beliefs while holding one’s own. Reconciliation in concrete cases, such as over the Islamic veil, is not going to be easy but we need to work to develop principled solutions which begin not just with tolerance, but with acceptance and respect for the faiths of all. Challenges exist not alone in understanding between Islam and

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Christianity but over the relationships between Eastern and Western Christianity as well. In October 2007, Russia’s Orthodox Patriarch, Alexei II, in an address to the Council of Europe warned of a growing separation between human rights and morality that threatens Europe’s cultural identity. During his speech, the Patriarch said European nations risked losing “their own place in history” by failing to uphold “traditional moral principles”. He was particularly concerned over the failure to uphold “traditional moral principles” as exemplified by the acceptance of homosexuality by the European Court of Human Rights.9

The particular inheritance of religious division and distance that Northern Ireland experiences in some respects is but a microcosm of the world. We are not, as was once claimed, a complete historical anachronism – rather, it looks like we face the same challenges as other populations, which comes down to how to live with difference on a foundation of equality and human rights.

So the need for dialogue between all the religions is no different than is the case elsewhere in the world. We should be all interested and, indeed, engaged, not alone at the local level but on a wider basis. Among the few developments that are hopeful, which we should mention, are the continued efforts to build dialogues on an international plane. The United Nations hosted an Iranian initiative, the Dialogue of Civilisations in 2001 after 9/11, and the current Alliance of Civilisations programme co-sponsored by the states of Turkey and Spain.10 These international efforts are explicitly aimed at addressing the mutual suspicion, fear and misunderstanding which has grown between Islamic and Western societies. We should mention also the unprecedented initiative in October 2007 of some 140 Muslim scholars who, by letter to Christian leaders, called for a new dialogue between Christians and Muslims. It has been welcomed by the Archbishop of Canterbury, Rowan Williams and by the Pope.11

Archbishop Rowan Williams commented:

“The theological basis of the letter and its call to ‘vie with each other only in righteousness and good works; to respect each other, be fair, just and kind to another and live in sincere peace, harmony and mutual goodwill’, are indicative of the kind of relationship for which we yearn in all parts of the world, and especially where Christians and Muslims live together. It is particularly important in underlining the need for respect towards minorities in contexts where either Islam or Christianity is the majority presence.”12

Efforts to achieve universal human rights and global social justice can, and should be, one context in which dialogue between the religions as well as those of secular convictions can be pursued, indeed needs to be pursued. At a minimum, the goal should be to fight ignorance of the other which is so often exploited by extremists intent on excluding the truth of the other. But the larger goal should be acceptance of human diversity of beliefs, faiths and convictions.

My overall message is that there should not be any conflict between the idea of rights and the world’s religions. The religions have, and must continue, engagement with the goal of a just world order that the human rights movement shares. In large part, that vision of global justice and peace, which is the task of the United Nations to strive for, derives from the religions.

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Introduction

Rights and righteousness; what an intriguing pathway into discussing religious pluralism and human rights!

I researched both terms in preparation for this conference to see if the two words share a common ancestry. The Oxford English Dictionary defines righteous as: just, upright, virtuous, law abiding. There are so many meanings to the word ‘right’ that I gave up – but just and fair treatment were among them.

Enough common ground to explore whether in the modern world rights (or specifically human rights) and righteousness are interrelated ideas with common roots, or alternatively potential protagonists – staring at each other across a gulf of incomprehension and mistrust.

I thought I would start with righteousness because it is a much less contentious term (I think). If the nineteenth century evangelist and writer, Dr Herbert Lockyer is correct, “the root meaning and essential idea of the term ‘righteousness’ is that of rightness, or being right or just in all things”.1

According to the Bible, in the book of Proverbs: “he who is steadfast in righteousness attains to life” (Proverbs 11.19)

- Psalms 37.29 tells us that “the righteous shall inherit the land, and dwell therein for ever”, and
- Matthew 5.6 proclaims: “blessed are they who hunger and thirst for righteousness, for they will be satisfied”.

Rights, on the other hand, have an altogether different connotation in many people’s minds. The legal theorist, William Edmundson, in his 2004 An Introduction to Rights, describes human rights as rooted in the recognition of “extraordinary, special basic interests” which “sets them apart from... even moral rights, generally”.3

Michael Freeman, in his excellent introductory text book, defines human rights as “just claims or entitlements that derive from moral and/or legal rules”.4

Human rights and duties

The association between human rights and individual interests, or technical legal rules – and by extension with individualism and selfishness – has a long and varied pedigree. Former Archbishop of York, Lord Habgood, spoke for many ecclesiasts when he argued in a lecture at Westminster Abbey in the

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1. Lockyer H (1973) All the Messianic Prophecies of the Bible, Zondervan, Michigan, p 87.
same year the UK Human Rights Act was introduced, that:

“[T]he indiscriminate use of the concept of rights can undermine morality at its very core by focusing attention on what the world owes us, rather than on the network of mutual obligations and shared assumptions which compose the fabric of a healthy society.”

Lord Jakobovits, the late Chief Rabbi, made a similar point when he argued:

“...could it be that the greatest moral failure of our time is the stress on our rights, on what we can claim from others – human rights, women’s rights, workers’ rights, gay rights and so on – and not on our duties, on what we owe to others? In our common tradition, the catalogue of fundamentals on which our civilisation is based is not a bill of rights, but a set of ten commandments, not claims but debts.”

The former Pope, John Paul II, lamented that human rights are being reduced to simple “self-centered demands”. He said, in 2004:

“[O]ver the last 40 or so years... while political attention ... has focused on individual rights, in the public domain there has been a growing reluctance to acknowledge that all men and women receive their essential and common dignity from God and with it the capacity to move towards truth and goodness... detached from this vision ... rights are at times reduced to self-centered demands.”

Cambridge philosophy professor, Onora O’Neill, who has described human rights as the “idol of our age”, warned in the 2002 Reith Lecture that “it was dangerous to be looking at rights without looking at obligations”. And the current Chief Rabbi, Jonathan Sacks, has likewise called for a new politics which would: “think more expansively about the citizen as a bearer of duties, sharing responsibility for the civic order and not merely as bearer of rights […] and the pursuit of claims-as-rights”.

All these commentators might be surprised to learn that they share their exception to championing rights without duties with Karl Marx and Friedrich Engels who complained that: “instead of ‘everyone shall have equal rights’, we would suggest ‘everyone shall have equal rights and duties’.”

While the portrayal of human rights as devoid of responsibilities or mutual obligations – the antithesis of righteousness, perhaps – will resonate with many people, and is regularly touted in the tabloid press – it is largely based on a misconception of the history and nature of human rights, I would suggest, which is as profound a caricature as describing religion as the opiate of the people.

Of course, the idea of human rights is open to misinterpretation and abuse, in theory and practice, just as religions are.

7. Address of John Paul II to the Bishops of the Church in Colorado, Wyoming, Utah, Arizona, New Mexico and Western Texas on their “Ad Limina” visit, 4 June 2004.
Is human rights a secular enterprise?

Virtually every serious modern scholar of human rights traces the roots of the idea that every human life is of equal worth and dignity to the biblical notion that human beings are created in the image of God or the divine; an idea replicated in most of the world’s major religions. It follows that every human being has inalienable value in his, or her, own right which is why no human being should ever be instrumentalised or treated as a means to an end; the foundational idea of human rights.

But many of the early ‘natural rights’ theorists of the European enlightenment went further than expounding this ancient doctrine in new terms. They saw God or the creator as the literal source – and explicit justification – of the idea of ‘natural rights’.

The words of the American Declaration of Independence have echoed down the generations, but reflect for a minute on what they actually say.

“We hold these truths to be self-evident, that all men are created equal; that they are endowed by their creator with certain inalienable rights; that among these are life, liberty and the pursuit of happiness.”

The revolutionaries of the enlightenment may have been in revolt against the apparent divine right of kings and the established church to control their minds, as well as arbitrarily curtail their freedom, but it was to their maker many of them turned for legitimation of their cause. For all his championing of individual rights, Jean-Jacques Rousseau, for example, maintained that religious belief was a necessary foundation of virtue. “It is not enough, believe me”, he wrote, “that virtue should be the basis of your conduct, if you do not establish this basis itself on an unshakable foundation”.

Although their emphasis was on the God-given rights individuals were supposedly born with (well, white, European, Christian men anyway) the moral obligations individuals owe to each other was not entirely absent from the worldview of the early rights theorists. Tom Paine, the famous 18th century English radical (the only one I am aware of who was present at two revolutions and plotted a third), tells us that when the 1789 French declaration of rights was debated in the National Assembly, there was a call for a declaration of duties to go alongside it.

His response:

“[A] declaration of rights is, by reciprocity, a declaration of duties also. Whatever is my right as a man, is also the right of another; and it becomes my duty to guarantee as well as possess.”

The American academic theologian, Michael Westmoreland, whose wife is a Baptist minister, traces the idea of ‘human rights’ as a source of political struggle to the divinely inspired Levellers who emerged during the English Civil War. “Human rights are a Christian heritage”, Westmoreland argues, “and yet, today”, he says, “this concept of basic justice for everyone” is regarded as ‘secular thinking’ by the Christian community itself.

This portrayal of human rights as essentially secular – in the sense of being sceptical or opposed to religious belief – is not uncommon among human rights activists either. It is sometimes worn as a badge of

11. Julie, ou La Nouvelle Heloise (1761).
pride. I know this label can be adopted as an attempt to capture the universal features of human rights, a means of signalling that they are not the property of any particular belief or creed. But I think the term ‘secular’ is simply the wrong word. It can lead to a fundamental misunderstanding of the nature and history of human rights.

Values that drive an idea of global force

The separation between church and state in France and America (and in modern Turkey) has driven this association between human rights and secularism, I believe. But this is to confuse a constitutional arrangement in a few countries with the values which drive an idea of global force.

All over the world, religion has, of course, been one of the prime movers behind campaigns for human rights – often explicitly so. The role of the American and English Protestant churches in anti-slavery campaigns is well known. But there have also been links of equal significance between Hinduism and the embracing of human rights in post-colonial India, Catholicism and liberation struggles in South America, Islam and modern day protests against human rights atrocities in Palestine and Sudan, and between Buddhism and the ongoing struggles in Tibet and Burma, as we have recently been graphically reminded.

In 2000, I wrote a book with the worst judged title in history – _Values for a Godless Age_ – to coincide with the introduction of the Human Rights Act. A snappy title mind you, which helps to sell books, but one I could not use again. Less than a year after it was published came 9/11, and the world felt anything but godless. But the point of my title was not to portray human rights as essentially a _secular_ idea or as a substitute for religion, as some people understandably thought. On the contrary, my intention was to suggest that the way to understand human rights is not, primarily, as _legal_ entitlements for individuals, but as ethical values for a diverse society; values which stem from some of the same insights that guide the great religions.

The Islamic scholar and Iranian law professor, Hossein Merphour, has declared that:

“[…] apart from that aspect of religion which consists of the important duty to spiritually guide and instruct, there are no serious differences or contradictions… between religious teachings and human rights.”

Renee Cassin, one of the prime drafters of the 1948 Universal Declaration of Human Rights (or UDHR), was more specific still. He maintained that the:

“[…] first article in the UDHR that all human beings ‘should act towards one another in a spirit of brotherhood’, corresponds to the injunctions familiar to the Abrahamic religions that we should ‘love thy neighbour as thyself’ and ‘love the stranger for you were strangers once’.”

“We must not lose sight of fundamentals”, Cassin wrote, in noting that “the concept of human rights comes from the Bible”. When the UDHR was finally adopted by the UN, in 1948, Cassin said:

“[…] something new has entered the world … the first document about moral value adopted by an assembly of the human community.”


This perception of human rights as routed in morality is, of course, very different to the portrayal of human rights as steeped in selfishness and individualism.

Tracing the idea of human rights over time

But the link between human rights and morality or, put another way, the link between human rights and the right way to behave, or righteousness, is easier to understand if we trace the evolution of the idea of human rights over time.

This conference is partly timed to celebrate the 60th anniversary of probably one of the most remarkable gatherings of philosophers and writers ever convened – the 1947 UNESCO symposium on human rights. Giants in their field contributed reflections on rights and duties, including Harold Laski, Aldous Huxley and Mahatma Gandhi. Their deliberations fed directly into the drafting of the UDHR the following year. I have read the symposium papers and I have also read the related debates by the UN delegates who drafted the UDHR, and the influence of these UNESCO papers is marked.

One of the most moving passages, which encapsulates modern human rights thinking perfectly in my view, reads as follows:

“[F]aith in freedom and democracy is founded on faith in the inherent dignity of men and women... these rights are claims which all men and women may legitimately make, in their search, not only to fulfil themselves at their best, but to be... capable... of becoming in the highest sense citizens of the various communities to which they belong and of the world community, and in those communities of seeking to respect the rights of others, just as they are resolute to respect their own.”

When I read this, it brought to mind the famous saying by the Talmudic scholar, Rabbi Hillel, a saying which became the source of the song of the partisans – Jewish and non-Jewish – who resisted the Nazis in World War II: “If I am not for myself, who am I? If I am not for others, what am I? If not now, when?”

The backdrop to the UNESCO conference, and the drafting of the UDHR the following year was, of course, very different to that which preceded the first wave of rights in 18th century Europe and America; although it is the latter, more distant era which is more rooted in the consciousness of many of us.

Present in the minds of the post-war drafters were the immediate horrors of the Second World War, the death camps and the persecution and dehumanisation of non-Aryans which led thousands of fellow citizens to “walk on the other side”. The UDHR, and the plethora of human rights declarations and treaties it gave birth to, (including the European Convention on Human Rights, drafted mainly by British lawyers and now incorporated into our law through the Human Rights Act) still sought to protect individual freedoms and liberty against arbitrary power and state tyranny. But the context was new.

If the main target in the ‘first wave’ enlightenment era was to set people free, in the post-war period it was to create a sense of moral purpose for all humankind. In the words of Mary Robinson, the former UN High Commissioner for Human Rights and president of the Republic of Ireland, the UDHR was “an elevating force on the events of our world”.

Since this time, the drafters of international human rights treaties have sought to

establish a framework of ethical values driven not just by the ideals of liberty, autonomy and justice, but also by normative values like dignity, equality and community. Yes, I mean community.

One obvious lesson drawn from the descent into barbarism that had contaminated virtually the whole of Europe (and beyond) in the war, was that the same individuals who require protection from tyranny can also contribute to it. Creating mechanisms to prevent states from abusing the rights of their citizens was crucial, but plainly not enough to guarantee liberty. The thinking was that individuals themselves needed to be inculcated with a sense of moral purpose if there was ‘never again’ to be a genocide like the one unleashed by the Nazis.

Jacques Maritain, one of the contributors to the UNESCO papers, maintained that rights and duties are:

“[…] correlative […] a declaration of rights should normally be rounded off by a declaration of man’s obligations and responsibilities towards the communities of which he is a part, notably the family group, civil society and the international community.”

Likewise, there was considerable debate among the UN delegates who drafted the UDHR about who owed rights and obligations to whom. Was it just the state who owed obligations to individuals who are the sole bearers of rights, or do individuals have duties to the state? In the end, they agreed to a framework rooted in mutual obligations, what we owe each other and the community in which we live (as distinct from what we owe the state).

This is directly reflected in Article 29 of the UDHR, which states simply that “everyone has duties to the community in which alone the free and full development of his personality is possible”.

The wording of this article expresses two intertwined ideas. First, that human rights protection involves an appreciation that all individuals have responsibilities to each other as well as rights that must be protected by the state, as Tom Paine remarked 150 years earlier.

Second – and this was to some degree a departure from the earlier ‘natural rights’ framework – that individuals do not exist in the world as isolated beings but live in societies, or more specifically communities, to which they must act responsibly if they are to develop their true humanity. In this sense the, sometimes, false dichotomy between individual and collective rights can miss the point. Human beings do not flourish in dysfunctional communities so there is no point in granting individuals’ rights if the cost is the demise of the community in which they live. But all communities are not the same, of course, and the responsibilities individuals owe will differ depending on the context.

These communitarian themes – there is no more accurate word for them – partly reflected the political, philosophical and religious backgrounds of the drafters of the UDHR which, in addition to Liberalism, Christian democracy and socialism, included Islam, Judaism, Christianity and Confucianism.17

But the reflections on responsibilities, as well as rights, mainly stemmed from the same mission which influenced so much of the contents of the UDHR. This was not just to set the people free but to find common values in which the liberties of individuals would be respected without weakening the bonds so necessary for human flourishing. It was a different understanding of the concept of freedom. In other words, the earlier

natural rights charters were not simply being replicated in a global bill of rights. In the words of Renee Cassin, the UDHR was not “a mere offshoot of the eighteenth century tree of rights”.\textsuperscript{18}

There is no better illustration of this evolution in the human rights framework than in the contrast between the first amendment of the American Constitution, which declares that “congress shall make no laws prohibiting free speech”, and the responsibilities-driven right to free expression in Article 10 of the European Convention on Human Rights (ECHR). The latter explicitly recognises that the exercise of free expression “carries with it duties and responsibilities”, by individuals as well as states so that the right to free speech can be legitimately limited to protect the rights and reputation of others and various other social goods, like public safety or the prevention of crime.

At the root of the mischaracterisation of human rights as essentially individualistic or egoistic, lies the failure to appreciate that the post-war human rights framework was developed to peacefully and harmoniously address tensions and conflicts between rights – and between individuals and groups – that are inevitable in diverse societies and in the global community. This is the practical purpose – the utility – of human rights.

**Rights as a framework in which to umpire difference**

Protecting individual freedoms from an overweening state is only one element of the post-war vision of rights, therefore. For as well as potential violators, states are given the prime role as protectors of human rights – referees, if you like, between competing needs and interests. Human rights values provide a framework in which to umpire difference.

Case law from the European Court of Human Rights, and our own domestic courts applying the Human Rights Act, provide countless examples of how this framework of competing values plays out in practice.

To give an illustration close to home, when Mark Anthony Norwood, a member of the British National Party, placed a poster in the window of his house which depicted the twin towers in flames with the phrases “Islam out of Britain” and “protect British people” emblazoned on the poster, he was convicted of a “religiously aggravated” offence under the Public Order Act. The European Court of Human Rights found that he could not claim that his right to free speech had been violated because his anti-Islam images were a public attack on all Muslims. The ECHR (Article 17) explicitly prohibits individuals from using human rights as a pretext to violate the rights of others.

But, in this case the attack was against a religious (or some would say ethnic?) group rather than a religious belief. Attacks on ideas or beliefs raise more complex issues.

The European Court of Human Rights has often emphasised that freedom of expression is a fundamental right that applies not only to information and ideas that are inoffensive, but also to those beliefs which offend, shock or disturb, and that pluralism demands tolerance of views critical of religious beliefs.

But the state also has a responsibility to protect the right to freedom of conscience and religion. Despite the enormous value placed on free speech in a democratic society, the European Court of Human Rights refused to interfere when the Austrian state seized copies of a film by the Otto Preminger Institute which satirised Jesus as mentally disturbed and attracted to the Virgin Mary.

\textsuperscript{18} Cassin, above, p 245.
The Court affirmed that even though the devout must tolerate and accept the denial by others of their religious beliefs, the *manner* in which religious beliefs and doctrines are opposed by private individuals can become the responsibility of the state if they inhibit freedom of worship or belief.

The Court declared that governments have a duty, in extreme cases, to prevent portrayals of religious objects that are so provocative as to be a malicious violation of the spirit of tolerance which lies at the heart of the European Convention on Human Rights.

A controversial decision to many, including me, as it clearly involved a considerable incursion into free speech. But it is possible to elaborate on the principles this judgment articulated without supporting censorships or bans (outside the context of incitement to violence or hatred).

Human rights values, such as these, potentially provided a way through the morass that surrounded the so-called cartoon controversy that engulfed Europe and the Middle East in 2005/6. The European editors, who published the Danish cartoons that suggested an association between Islam and terrorism explicitly sought to make a stand against self-censorship in the name of what they saw as a threat to the enlightenment value of free speech.

But self-restraint can be necessary to prevent the demonisation or denigration of minorities in certain contexts, while maintaining a free press. Any serious debate about religious belief or doctrine – which would be protected by the ECHR – was entirely absent from these graphics which caused offense and outrage, not just to those they lampooned. The principles of tolerance and dignity that define plural societies can also provide the basis for necessary and proportionate limitations on free expression.

The exercise of religious freedom does not begin and end with belief, of course. Although human rights law provides *absolute* protection of the right to religious (and non religious) thought and conscience, the *manifestation* of belief can be limited to the extent that is necessary (but not more than that) to protect the fundamental rights of others, and in some circumstances the common good.

This is the doctrine of proportionality which lies at the heart of the post-war human rights framework and the ECHR in particular. While there are some values, like freedom from torture and slavery, which are absolute, most rights are limited or qualified in line with the communitarian approach established by the ‘responsibilities article’ of the UDHR.

Many of you will remember the tale of Shambo, the ill-fated holy bull who lived in a Welsh Hindu temple. When he tested positive for tuberculosis, he was slaughtered under the authority of the Welsh assembly, but only after a bitterly contested case in the domestic courts.

The Court of Appeal ruled that Shambo’s slaughter was potentially a grave and serious breach of the Hindu community’s manifestation of religious expression, but it was a *necessary* limitation on religious freedom to protect public health, making the slaughter regrettable but proportionate.

It is possible to agree or disagree with this decision, of course. But, the point is that in plural societies with diverse beliefs and creeds, it is essential to have a transparent framework of consistent principles – rooted in a search for what is just and fair – to address different, and sometimes directly conflicting, perspectives.

The, sometimes, tortuous debate over the degree to which it is just and fair for religious bodies to opt out of laws prohibiting
discrimination underlines the difficulty of applying such a framework in practice.

There was equal controversy over exempting religious organisations from complying with sexual orientation regulations to avoid conflicting with the “strongly held religious convictions” of (a significant number of) their members, as there was over requiring publicly funded bodies carrying out a public service, like Catholic adoption agencies, to comply with them.

But righteousness in action requires practical solutions to difficult dilemmas. A human rights framework is an attempt to root such solutions in ‘the right thing to do’ rather than simply what the majority want, or what is easier or cheaper to achieve.

What is the justification for such a framework you may ask – who is to say a human rights approach is of more value than any other.

**The justification for a human rights framework**

It is absolutely true that, in contrast to the early ‘natural rights’ theorists, modern human rights charters do not rely on a creator, or God, to justify the ethical value system human rights proclaim. The concept of dignity has replaced the idea of ‘God’ or ‘nature’ as the foundation of ‘inalienable rights’. The essential dignity of all humanity is sufficient to warrant equal treatment, the argument goes, regardless of whether you believe that human dignity stems from a higher being or not.

But, this emphasis on dignity rather than the divine does not mean that human rights are fundamentally individualistic or necessarily secular in orientation. The idea of human rights is rooted in a belief that there is sufficient common ground between all humanity – between men and women of all religions and beliefs and none – to establish a set of bottom-line values rooted in respect for the dignity of everyone.

Human rights are not the same as religious belief of course. There is no truth to promote beyond the inherent dignity of all human beings. No doctrine beyond fair and equal treatment. And human rights are very much rooted in the here and now rather than the afterlife!

The purpose is not to compete with the spiritual values and private convictions heralded by the world religions, but to seek agreement on what values we can share so that we can live together in peace – and mostly in harmony – in a diverse world where people of many creeds and philosophical beliefs share the same political and geographical spaces. The very first article of the UDHR recognises that we humans are more than material beings with definable needs and rights, natural or otherwise. It proclaims that human beings “are endowed with reason and conscience and should act towards one another in a spirit of brotherhood”.

As Rowan Williams, the Archbishop of Canterbury, suggested in October 2007, in the midst of the vexed abortion debate, while we begin with absolute principles, as we confront a “hugely complex world”, we recognise that “clear principles don’t let you off the hook” from tackling “tough decisions where no answer will”, to most of us, “feel completely right, and no option is without cost”. But he warns against getting – 

“[...] to the point where accepting the inevitability of tough decisions that may hurt the conscience has become so routine that we stop noticing that there ever was a strain on the conscience.”

Where human rights and a religious or spiritual framework overlap the most – in

my view – is where they require us to stay in touch with our conscience; to be aware of more than we can see with our eyes – whether this concerns deporting or ‘rendering’ people to places where they will be tortured out of sight, or fundamental questions about end of life decisions that take place in the twilight.

Though many of you who are learned here today may correct me, it is this search of our conscience that I understand to be at the root of the quest for righteousness. That is why I can see, as the dictionary suggests, common roots in the terms ‘human rights’ and ‘righteousness’ and why it is incumbent on us all, I think, to seek to keep these two ideals closely connected as we struggle to do ‘what is right’ in our troubled world.
Human rights and faith in a pluralist society: Northern Ireland¹

Linda Hogan

Introduction

One of the first things that strikes one when reflecting on the title of this session is that Northern Ireland is not very pluralist in terms of religious diversity at all. Although there is a small increase in the numbers of Muslims, Sikhs and Christians belonging to African Independent Churches, in fact Northern Ireland is remarkably homogenous in terms of its religious identity. Thus, it is not so much religious pluralism that creates the social and moral pluralism within society. Rather, I wish to suggest that it is the internal diversity within particular religious traditions and, in the case of Northern Ireland, more specifically internal differences within particular Christian denominations on a host of moral and social issues that is the source of the contested values within Northern society (I want to mention here, as an aside, the phenomenon of secularisation. I do not wish to discuss the issue in detail here, but need to mention it as a factor in the growing moral pluralism).

This internal diversity is evident both in respect of the adequacy/appropriateness of the language of human rights per se, and in respect of many of the most contested moral issues with which the society is grappling (many of them debated in the idiom of and through the framework of human rights). Notwithstanding this issue of the nature and extent of pluralism, which we may take up in the discussion, in this brief presentation I wish to comment on the relationship between human rights and faith and specifically on the relationship between human rights and Christian faith. My paper makes a case for a continuing and closer relationship between Christian faith and human rights – from two different directions: in the first place, I shall suggest that notwithstanding Christianity’s complex and deeply contested relationship with the language of human rights, there is theological and historical warrant for a faith-based engagement with the human rights tradition; in addition, looking from the perspective of human rights discourse, I suggest that recent developments in human rights language over the last century make it more hospitable to religious voices and perspectives and that this needs to continue if human rights politics is to thrive in the future.

Christianity’s complex and contested relationship with human rights language

It is important to note that there is significant internal diversity on the matter of whether

¹. The author is grateful to the IRCHSS for its support of the research project entitled Visioning 21st Century Ecumenism: Diversity, Dialogue and Reconciliation, within which this reflection on human rights and religion is situated.
human rights language has any place in the Christian vocabulary. Moreover, in recent decades, this issue has taken on a denominational hue, so that many of the reformed churches are today associated with a suspicion, sometimes hostility towards the politics of human rights (and towards liberalism more generally), whereas the Roman Catholic church has, over the last four decades adopted rather enthusiastically the language of human rights. Indeed, in Northern Ireland one can see elements of this denominational dynamic in the various submissions to the Human Rights Commission on the Bill of Rights. However, there is a double irony here. In the first place, although the churches of the reformed tradition are now associated with a disengagement from liberalism (and this is something that is widely in evidence in the USA), many of the central tenets of liberalism, of democratic organisation and of individual political rights were articulated and developed by the Christian reformers. One only has to think about many of the fundamental political rights to see how central the churches of the reformed tradition were in their development – for example, the origins of the right to live in a state in which there is no established religion, the right to freely exercise one’s religious beliefs, of the value of tolerance, freedom of conscience and of speech – each of these values and rights were developed in response to the religious reforms of the sixteenth century and were given political expression by Christian reformers. Moreover, although the Roman Catholic Church now uses the idiom of human rights consistently in its political and social ethics, there was a time when it too expressed hostility to the modern concept of human rights. Thus, not only did Pius VI declare that it was anathema for Catholics to accept the 1789 Declaration of the Rights of Man and of the Citizen, saying “this equality, this liberty, so highly exalted by the National Assembly, have then as their only result the overthrow of the Catholic religion”, but Mirari vos also strongly condemned liberalism, individualism, democracy, and also freedom of conscience, of speech, and of the press. Thus, in terms of the Christian denominations we see a trajectory whereby the churches of the reformed tradition began with an enthusiastic embrace of these rights and gradually disengaged from the discourse, whereas Roman Catholicism was very hostile initially and eventually over the centuries began to accept and then embrace the discourse.

We can see, therefore, that the encounter between Christian ethics and liberal human rights discourse has long been a fractious one and all denominations have had phases during which they regarded liberalism to be innately hostile to Christianity, and regarded human rights discourse as a synonym for individualism, secularism and western political imperialism.

However, I want to suggest that the suspicion of human rights within Christianity is unfounded, especially since it was within the Christian theological tradition that the category of human rights originated. In fact, the language of natural rights developed into the language of individual subjective rights and then into the language of human rights, initially within a Christian frame of reference. In saying this, I do not want to claim that contemporary human rights language is a Christian language and must continue to be regarded as such. Rather, in drawing attention to the Christian origins of human rights language, I wish to challenge the view increasingly articulated among Christians,

that human rights categories represent one of the corrupt discourses of modernity and as such should be resisted. In fact, Christians can see in human rights discourse not the rupture of theological tradition, but rather its continuation.

A host of theological debates from the twelfth until the sixteenth centuries indicate that a theological language of rights was generated from within the life of the Christian community and was articulated in response to questions about how the good of the church could be protected, in terms of both the individual members and the corporate body. Moreover, many of these debates confirm that Christian theologians moved effortlessly between the language of rights and the language of biblical texts and saw no conflict in so doing. Rights language was one of the ‘indigenous’ theological languages through which the demands of Christian witness were expressed. It flourished in a religious culture and embodied a fundamental theological belief about human beings as social creatures in a divinely providential universe. Of course, a significant evolution took place between the fifteenth to the eighteenth centuries, and especially in its classical and Enlightenment heydays so that a progressive antagonism developed between the older Christian tradition and the newer voluntarist one. However, the historical developments are not at issue here; rather, I wish simply to suggest that the Christian tradition is a discursive, changing and changeful one. This is evident in relation to human rights, but also in relation to slavery, usury, marriage and divorce, the value to be given to unborn human life, same-sex relationships.

The Christian tradition gives a complex and variegated account of how the good is to be apprehended, understood and embodied in the social context. It cannot simply be read from human nature, or unambiguously from the biblical texts (without an appreciation of how the context of the reader and the context of the text’s composition relate). The language of human rights represents one such traditional, theologically-rooted attempt to capture the notion that humans have an innate dignity that requires protection and that brings with it reciprocal obligations for the individual and for the polity. Of course, the language of human rights should not be absolutised. Rather, it is simply one way of acknowledging the dignity of all human beings and of proposing a mechanism or framework by which that dignity is given protection.

The changing complexion of human rights discourse

The second major point I wish to make relates to the comfort and hope that religious communities can draw from the changing complexion of human rights discourse. Since the Enlightenment, human rights discourse has been presented as the quintessence of neutral universalism. Thus, it was expected that a commitment to liberalism and to human rights would eventually take the place of religious and other comprehensive doctrines. However, this understanding of human rights discourse has been modified significantly in the twentieth century. Thus, contemporary human rights discourse is more properly understood as a process by which situated individuals, carrying with them their comprehensive doctrines, generate a variegated and nuanced consensus on matters of basic justice and constitutional essentials in the global public square. Human rights discourse is thus becoming more communitarian and, therefore, more amenable to religious voices and more hospitable for religious communities.
The background paper for the conference records the infamous remark of Jacques Maritain who, when an observer expressed astonishment that certain champions of violently opposed ideologies had agreed on a list of rights, replied that, yes, they agreed about the rights “but on condition that no one asked them why”. That ‘why’, concluded Maritain, is where the argument begins. However, I wish to suggest that it was really only when human rights discourse welcomed the input of these multiple ‘whys’ and when it reconnected with the diverse moral languages and narrative traditions, including religious ones, worldwide that it really began to flourish. Indeed, one might even conclude that human rights discourse has prospered in the late twentieth century precisely because it has revalorised the role of comprehensive, religious doctrines and, consequently, has come to acknowledge that there are different ways of accounting for why human beings can be said to have universal human rights.

We are formed according to the rationalities of particular traditions and, as a result, are likely to explain why we believe we ought to be immune from these kinds of threats by referring to specific religious or cultural categories. Thus, we relate to human rights discourse from our specific ‘thick’, culturally embedded vantage points. For example, from a Roman Catholic perspective, Hollenbach argues for a new way of grounding human rights “in continuity with [Catholicism’s] ancient stress on virtuous commitment to the good of community”. Moreover, the Buddhist scholar, Andanda Guruge insists that “every single article of the UNDHR – even the labour rights – has been adumbrated, cogently upheld and meaningfully incorporated in an overall view of life and society by the Buddah”. Of course, since these thick, culturally embedded narratives are historically diverse the process of appropriation is inevitably a complicated and sometimes conflictual one.

Nonetheless, the success of human rights discourse thus far has depended, in no small measure, on particular religious and cultural traditions coming to believe that they have a stake in promoting these categories and that the narratives, values and practices of such traditions, far from being marginalised can be harnessed. Moreover, I suggest that the last century has shown that the morality of human rights becomes more, rather than less, durable, when citizens can draw upon their manifold comprehensive doctrines, religious and secular, to ground their moralities of human rights. So it is in amongst the plurality of thick, located and culturally embedded moral traditions, varied communities are identifying principles that they agree are indispensable for our (global) social wellbeing. Thus, I suggest that both political and philosophical justification is best pursued through a discursive process and that the route to a morality of human rights is likely to be found, not in one persuasive doctrine, but in the dialogical engagement of situated, historical communities that are open to internally and externally generated social criticism.

Human rights standards, therefore, need to be understood as a product of mutual recognition, reiteration and immanent critique whereby shared values emerge, not in the reasoned ‘deliberation of autonomous individuals’, disconnected from their communities, but rather through a more complex discourse pursued by persons

whose multiple belongings shape both their capacity and their willingness to engage in global public ethical debate. Understood in this way, human rights categories can respect the communitarian structure of human life and can accord the kind of role to religious communities that resonates with religion’s importance in the lives of countless millions worldwide.
Advancing human rights in the age of counter-terrorism and religious resurgence

Karin Ryan

Introduction

Since its founding in 1986, the Carter Center has worked to support human rights and democratic movements around the globe. President Carter’s approach to these issues during his administration was always to offer support directly to activists that were struggling courageously to advance freedom in their societies. This was not always a simple matter, given the national security priorities that he had to balance during the Cold War. But his personal and public support for such leaders, like the Soviet Union’s Andre Sakharov, served to infuse those movements with confidence and moral support. Standing with those fighting for freedom, while simultaneous handling tough negotiations with the Soviets, was a hallmark of Carter’s administration, though there were notable exceptions, for example, in South East Asia.

Thus, for the Carter Center, a continued focus on supporting human rights movements might be expected. But recent US policies have made this work even more urgent as human rights considerations have receded behind a heightened focus on counter-terrorism.

It was within this context that the Carter Center hosted its first Human Rights Defenders Policy Forum in 2003. Since then, the Center has joined with the New York-based organisation, Human Rights First, to convene an annual gathering to take stock of the challenges facing human rights defenders and to make recommendations to policymakers.

The Carter Center is carrying out this work in the context in which some of the US government’s actions since September 11, 2001 are seen throughout the world as setting back the human rights cause. Its indefinite detention of hundreds of captives at Guantanamo Bay and secret detention facilities, its use of torture during interrogation represent for many an erosion of the principles of human rights, so hard won for activists from Egypt to Russia, from Colombia to Kenya. Its invasion of Iraq, ostensibly to create a democracy in the Middle East, has cast a pall over democratic movements that seek to open their own societies with non-violence and persuasion.

As an American organisation, the Center has faced a particular challenge in trying to help bring a more grassroots perspective to the attention of US policymakers as they consider how best to support democratic and human rights movements. At the same time, we have worked hard to press our government to recommit to the norms of human rights so that our nation can again provide leadership and support to those who seek to build free societies.
The role of faith in protecting human rights

The Carter Center’s Human Rights Defenders Policy Forum took place on 6-7 September 2007, in Atlanta, and brought together human rights activists from the Democratic Republic of the Congo, Sudan, Guatemala, Egypt, Pakistan, Malaysia, and Israel and the occupied Palestinian territories, among others, with leaders of faith communities and policymakers to discuss how the international community can overcome inaction in the face of human rights violations before they escalate into mass crimes. Because of the resurgence of religion as a major social and political force, the issue is sensitive, but vitally important to examine. Because the purpose of the Forum is to provide a platform for those who are on the frontlines of this struggle, it is their words and ideas that the Center wishes to highlight.

At the Forum, we sought to answer the following questions:

- Can people and communities of faith help overcome global inaction when human dignity and rights are violated?
- How can individuals and communities support the work of courageous human rights defenders who risk their lives to speak truth to power?
- Why does the international community fail again and again to respond to these crises before they take on catastrophic dimensions?

For we now know that each of these crises was preceded by many acts of lower level human rights violations. Had we paid attention to the available information and warnings about the slow escalation of violence into genocide or mass crimes against humanity, we could have mobilised international action.

Recently, faith communities have become active in raising awareness in the public and among policymakers about the horrors unfolding in the Sudan, first on the conflict between the North and South, and later on the crisis in Darfur. The impact of this campaign has led to a higher level of diplomatic activity, though the crisis is far from over.

What if people and communities of all faiths were to reach within their traditions to bring forward those teachings that call on believers to stand with the oppressed, and protect and honour human dignity? What might be accomplished if the reawakening of faith that is taking place throughout the globe were accompanied by a heightened commitment to put a stop to human rights violations in many places where they are ignored?

Human rights defenders lead a global community that has been growing since the adoption of the Universal Declaration of Human Rights in 1948 that is devoted to this ideal. This community of activists includes people of all faiths and people who work from a secular or humanist perspective.

The 2007 forum: faith and freedom – the protection of human rights as common cause

President Carter co-chairs the gathering each year with the United Nations’ High Commissioner for Human Rights. During this year’s forum, he reflected on the challenges presented by the participants:

“There is compatibility among Judaism and Islam and Hinduism and Christianity and other others in our commitment to the basic principles of life; peace, alleviation of suffering and so forth. But there is a threat to us, I think in the last few years. We’ve not seen any
progress but deterioration in the global commitment to the protection of human rights. We’ve gone backwards. It would be impossible today for the United Nations General Assembly to draft the Universal Declaration of Human Rights and we clearly pay lip service to it. These are some of the articles that the United States of America and Israel and others profess to observe.

“Article 5: No one shall be subjected to torture, or to cruel inhumane or degrading treatment or punishment.

“Article 7: all are equal before the law and are entitled without any discrimination to equal protection of the law.

“Article 9: No one shall be subjected to arbitrary arrest, detention or exile.

“Article 10: everyone is entitled to full equality, to a full and fair trial or hearing by an independent and impartial tribunal in the determinations of his rights and obligations and of any criminal charge against him.

“Article 15: everyone has a right to a nationality.

“You can tell that I get emotional every time when I read these words, as I do sometimes when I read my bible. But we globally say we are honoring the Universal Declarations of Human Rights, but we are not. We are too subservient or quiet or reticent about demanding that our own governments and others comply with these basic principles.

“I do not want to leave a glowing approbation of religious organizations because in many ways the major religions of the world, in some aspects of their pursuit of God’s will, are the greatest discriminators. And that is among the fundamentalist or the Constantinians who deprive fellow worshipers of freedom of speech and expression of opinion and who deprive women of basic rights. Where are all the primary discriminators against the women? It is in the fundamentalist aspects of religion – Catholicism and the Orthodox Church and in Islam, among the Taliban and others. This ought not to be a sacred reservoir of policy that we human rights activists and spokespersons avoid criticizing. And I think it is the intrusion of fundamentalism that is causing us to violate these articles that I have just described, as we say that that the Geneva Conventions on the treatment of prisoners is no longer applicable to the United States of America.

“When a small group of leaders profess to speak for God and impose their will on others without any conscience and with a firm belief that they’re absolutely right and anyone who disagrees with them must inherently be wrong and also inferior that is a root cause of most of the human rights violations that exist in the world. And we ought to be vigilant against it.”

Every year, the forum hears from human rights activists who are on the frontlines of the struggle for human rights. This year, some of them brought an additional perspective, as they are the ones that are steeped in the conflict over faith and freedom.

Zainah Anwar, the director of the Malaysian group, Sisters in Islam, addressed two issues: whether the concept of human rights is Western, and the tendency to place a higher priority on peace and development over human rights. She said that linking human rights to the West undermines the principle of universality and indivisibility.
“The question before us is really who gets to decide? That in the name of cultural diversity, in the name of multiculturalism, certain human rights can be violated or can be delayed. Who decides when there is a debate about whether the constitution will have a section on fundamental liberties, recognizing every individual as equal before the law, outlawing discrimination on the basis of gender? Yet we find a clause that will give exception to religious and customary laws.”

Anwar spoke about an initiative that will try to bridge religion and the human rights of women:

“We are in the process of launching an international movement for Muslim family law reform within the framework of justice and equality and really bringing a big coalition of women’s groups and scholars working on family law reform.” “We will work within the framework of justice and equality starting with family law but pushing for an Islam that will recognize justice and equality as fundamental to the teachings of the faith. We will do this in a huge coalition of women’s groups that are on the ground, dealing with the impact of injustice and inequality in family law on women.”

Hina Jilani, a leading Pakistani human rights defender reflected on the obstacles that faith communities can be faced with. She said:

“There are faith based groups who are very able in promoting human rights and doing things which sometimes become very difficult for others to do because they have some kind of a structure behind them that enables them to work. However, the problem that I see in many countries is that these groups sometimes belong to the minority faith in that country. And here I see a problem. When you have these groups, if they belong to a particular church in a particular religion, are really playing the numbers game as well. They have a conflict of interest in many ways – they want to retain direct control of the congregation in some ways, and want the communities to be dependent on that structure of the church, rather than the state. And therefore there is an interest in segregating the interests of the community from the larger population. There they make a mistake, and, in fact, in many ways weaken the protection of human rights.”

Jilani continued:

“The other problem is that sometimes in order to exist and to maintain some kind of a peace in which their own community can exist safely, these groups have sometimes promoted the culture of surrender, promoted the culture of submission amongst their own communities and say ‘don’t make waves’, and therefore have disallowed that particular community to fight for their own rights. And I think there, in the context of minorities facing mass atrocities, there can be a problem, especially with the faith based groups.”

(Former) United Nations’ High Commissioner for Human Rights, Louise Arbour co-chaired the Forum for three years. She also expressed concern about the tensions between human rights and religion. She said:

“In my opinion freedom of religion like the linked freedom of conscience and belief belong very profoundly to the private sphere. They enter the public realm when they are linked with freedom of association, freedom of assembly, freedom of expression and then they enter the public domain. What we have seen, since the
enactment of the Universal Declaration with the creation of Jewish state, with the emergence of Islamic republics, with self declared Christian nations, what we see there is governments who in human rights terms are duty bearers, governments asserting themselves as rights holders on the basis of their protected religious identities and enacting laws that they declare unimpeachable because they are dictated by God. And I believe this is an enormous challenge to the very concept of the profoundly private and protected freedom to see it hijacked by states and therefore perverting completely its mission.

"Without being unduly provocative, I will assert that there is no reason to believe at the outset that a political or social action by a faith-based group will inevitably be a positive force. I think at the outset it can end up being a positive or a negative force. I think the role of some members of the Catholic clergy in Rwanda speaks for itself. This is true also the now exposed abuses (sexual abuse, physical abuse) in residential schools throughout North America particularly directed certainly in my own country against indigenous children.

"There are well documented abuses both on the personal and institutional level by members of organized religions. Therefore the test I think will very well be how these initiatives will be addressed by religious groups. I will be keen to see when Zainah launches her Islamic family law reform whether or not other interfaith groups will come together in support of human rights. Whether we’ll see Christian or Jewish based groups call for self examination in their own communities or whether or not religious precepts foster gender equality, rather than take a back seat, letting Muslim groups do that public self-examination, standing aside as though there were no similar questions to be asked in their own communities.”

Reverend Timothy Njoya from Kenya gave a very encouraging example of the possibilities for harnessing the power of faith in the service of human rights. He spoke about his men’s campaign to eradicate violence against women and his long struggle to apply spiritual principles to the struggle for human rights in his country. He said:

"I am not a Christian by faith, only by practice. By faith, I’m a Muslim when I am in Kenya because I preach in the mosques, and I’m also a Hindu because I preach in the temples, galvanizing the Kenyans to come together for struggle. I am an Animist when I am with my people, Africans. In 1990-1997 I brought all those religions together to struggle for the removal of dictatorship and one-party system. We are still struggling for a new constitution in Kenya. I transcend sectarianism and religion because of the way I see all people.”

Gloria White-Hammond heads a group called My Sister’s Keeper. She says the group is:

"[…] an excellent model of how smaller groups of women and men – in our case we are all committed Christians – but how you can come together and leverage our many resources on behalf other communities that face social justice issues, whether we’re talking about here in America or internationally.

"I am firmly persuaded that history will show that a grassroots movement, working in partnership with human rights defenders, amplifying your voices, augmenting your efforts, and working with the powers that be – I’m confident that history will show that
we stopped genocide in Darfur. I just have that faith. Now, as a preacher, I get paid to have faith, but not much. But it is also grounded in some of the things that I have seen along the way. I would say that the biggest challenge in terms of this movement, has been keeping people encouraged – many of the folks involved with this, again, people of faith communities, and other communities as well, are relatively new to the subject of activism.”

Ingrid Mattson, the first woman to be elected President of the Islamic Society of North America (ISNA) stated that:

“It can only be positive if we continue to engage in these actions and advocacy for human rights in coalitions. Because what happens otherwise is that there is a certain element of religious competitiveness or the desire to kind of politicize some of the human rights violations in a way that is counterproductive. In the whole campaign to support the rights of the people of Darfur, we have had a lot of politics involved and it was only when the Save Darfur Coalition was able to take seriously all the voices, including the voices of Arabs who were being demonized in the initial statements, and sort of the caricature of the bad Arab person, it was only until those voices were brought in as ethical voices that this campaign started to have any legitimacy in a broader way and not looked at as just another attempt by America to insert itself in the global human rights campaigns that human rights can best be advanced.”

The hardest case brings questions and hope

One of the starkest examples of an intractable conflict that is both rooted in, and is characterized by, endless assaults on human dignity and rights, is the Israeli-Palestinian conflict. One might argue also, that it is the epicentre of the religious and civilisational claims and counterclaims that the human community must untangle.

Because of President Carter’s historic role in helping to assure Israel’s peace agreement with Egypt, its most formidable enemy before the signing of the Camp David accords, he and the Center have long grappled with this ongoing crisis.

On this issue, the conference heard from a noted Jewish Liberation Theologian, Marc Ellis of Baylor University. Ellis asked:

“Is there a way of joining Jews, Christians and Muslims of conscience in this effort? We must begin by confronting Constantinian Judaism, Constantinian Christianity and Constantinian Islam and the political powers they bless and often represent. But we should not be seduced by the pieties of progressive rhetoric from individuals or institutions. Often they enable the injustice to continue.”

Ellis continued:

“The expulsion of Palestinians in 1948 was the beginning of the unravelling of Palestine. This unravelling continues with the further dispossession and settlement of Palestinian land. Again as in the broader framework of human rights work the violation of human rights typically has a prior political history that...
must be addressed [...]. Today we are confronted with a choice as to which part of the bible and which parts of our history we emphasize and choose. This choice becomes a question of conscience, conscience defined as the movement toward the other which is at the same time a movement toward God.”

For an Israeli who wishes for both peace and justice, the intersection of piety and commitment to human rights has to be approached with scepticism, though not pessimism. Jessica Montel is the director of the Israeli human rights organisation B’tselem. She challenged those gathered to:

“Think of the instrumentalist way that we argue against torture – that torture is not very effective, as a way of selling people against torture. But sometimes torture is effective, I mean in the same way we can couch religion as being all about human rights and tolerance and it’s persuasive. In all of the religions you have a lot of raw material there but also the other story can be told. So I feel like it is the beginning of the conversation how we link these two movements in a way that is not just cynical, it’s actually genuine.”

Mitri Raheb, Palestinian pastor of the Christmas Lutheran Church of Bethlehem reflected on the problems and left those gathered with something to think about:

“The problem is not just a conflict between Israel on the one hand and Palestine on the other side because the international community is not part of the solution – it is part of the problem. Without the military and financial subsidies of the international community Israel cannot continue doing what they’re doing. What the international community is doing in Palestine, is charity, we call it humanitarian assistance. But it is not economic justice. Actually lifting these roadblocks and closures will be much better for us than all the aid – the humanitarian aid. But because the international community is a coward when it comes to Israel, they close their eyes and put their hands into their pockets and give the Palestinians some handouts so that they can survive and they will not have a bad conscience. We have millions of pages documenting the violation of human rights in Palestine.

“Jessica’s skepticism is something I understand and I think we have to take it very seriously. But for me I think it is also not by chance that this meeting is taking place here at the Carter Center. And I can talk to Jessica and try to convince her that we have so much to share – that we can reconcile human rights and faith communities. But I would like to say that actually the best proof that they both belong together and that they are reconciled is the person for whom this center is named. For me, President Carter actually symbolizes a very faithful person, whose human rights commitment comes out of his faith. And I could not but really hear him saying this, just a few minutes ago, that he gets tears when he reads his bible and when he reads the Universal Declaration of Human Rights. I think it is not by chance that in him they are reconciled and belong together. I saw him come to tears about Palestine, and this gives me hope.”
Imam Talib of New York said it all when he spoke to those gathered. He said:

“Human rights violations are sacred life violations. If it is true that mass atrocities begin with the individual then are we not each of us responsible both for the life and rights of every single human being? Dr Martin Luther King Jr once said that the problem with religious leaders is that too often they function like the tail light of an automobile, instead of the headlight.”

Lately, there has been a proliferation of conferences and initiatives that seek to examine the possibilities for the application of spiritual principles and religious conviction to the advancement of human progress. Our experience shows there can be progress in this convergence. This progress will be real and positive when human rights violations, wherever they occur, and however they may be either justified or tolerated, can be understood and rejected. Rejected, I would suggest, because they are the greatest threat to the nobility of God’s most beloved creation – humankind.
Thinking about ourselves: Christian theology and rights discourse in Northern Ireland

Fran Porter

In December 2006, the Northern Ireland Transitional Assembly debated a motion calling for the British Government to withdraw the Equality Act (Sexual Orientation) Regulations (Northern Ireland) 2006 and “leave this issue to be determined by the Northern Ireland Assembly upon restoration”.2 The purpose of these regulations is to “prohibit discrimination on the grounds of sexual orientation in the provision of goods, facilities, services, education, functions of public authorities and the disposal of property”.3

The main arguments drawn upon by those who spoke for the motion were about defects in the process that had resulted in the legislation, the fact that the regulations discriminated against the rights of Christians (and people of other faiths) to freedom of religion and speech, and that the majority of the population of Northern Ireland, a place described by one MLA as the “Bible Belt of the UK”, did not want them. Those who spoke against the motion, and hence in support of the legislation, phrased their arguments in terms of equality, human rights, of combating homophobic attitudes and actions, and as being about inclusion and anti-discrimination. The vote was split 39 for and 39 against the motion and, therefore, was not carried.4

While not the whole picture, this example starkly encapsulates the intersection of two realities that I am concerned with in this paper. One reality is of a majority Christian population in Northern Ireland where around half of the population attend church at least once a week and a further third attend less often,5 and where churches play an important role in the lives of individuals and society. Churches are said to be one of the largest providers of youth activities, are among the few organisations to be cross-generational communities, and are the largest single group within the voluntary sector. This statistical majority, however, no longer translates automatically into wider social, moral and political influence. For the other reality is that, at the same time, Northern Ireland’s civic and legislative agenda is being formed under the influence of a discourse of equality and human rights, both of which are part of the 1998 Belfast Agreement and its subsequent outsourcing. While the 1998 Human Rights

1. This paper was produced while the author was working on the Centre for Contemporary Christianity in Ireland’s Faith in a Plural Society Research Project, made possible by a grant from the Community Relations Council under the EU Programme for Peace and Reconciliation in Northern Ireland and the Border Counties.
Act that incorporated the European Convention on Human Rights into British law is independent of the Belfast Agreement, the inclusion of a strong emphasis on rights within the Agreement, including the process of considering a Bill of Rights for Northern Ireland, contextualises the place of rights in this society. Human rights in Northern Ireland are part of the political settlement of the Belfast Agreement that focuses on equality, inclusion, parity of esteem, and good community relations. One of the reasons that parts of unionism respond negatively to rights is because rights are seen as supporting a nationalist agenda. As one Northern Ireland cleric put it, “Within our Protestant psyche there is a feeling that rights for others is less rights for ourselves, that somehow others can’t have rights unless it’s at our expense”.6

Christian churches do use the language and concepts of human rights, primarily by finding resonance to the language and idea of rights within their religious and theological traditions. In the aforementioned Transitional Assembly debate, Alliance Party MLA Naomi Long, in speaking against the motion and hence in support of the new anti-discrimination regulations, said:

“On a personal note, it grieves me, as a Christian that those of us who profess a personal Christian faith are so often seen to be in the heel-dragging section of the population when it comes to issues of human rights and equality. We ought to be at the forefront of the movement to extend to everyone the same rights that we enjoy. We should extend protections and safeguards under the law to all people, thereby reflecting the inherent dignity, worth and value of every human being, as it is my belief that we are all created in the image of God.”7

In 2003, the Presbyterian Church in Ireland produced a Policy on Asylum Seekers and Refugees that is full of the language of rights: the fundamental human rights of individuals, the need to have human rights standards at the heart of development policy, seeking asylum as a guaranteed human right and not a concession, children’s rights being scrupulously applied by governments, and mindful of local residents’ rights while seeking a compassionate system of accommodation for asylum-seekers.8 The report states that “Theologically and ethically the churches’ concern is rooted in the biblical understanding of the dignity and worth of the human being”.9 The Methodist Church in Ireland subsequently adopted this policy as its own. In 2007, the Church of Ireland produced Guidelines for Interfaith Events and Dialogue that state “All our encounters with people of other faiths must be based on the Christian principles of faith, hope and love. They ought also to be based on respect for human rights, tolerance of difference and openness to new experiences and fresh learning”.10 The Catholic Archbishop, Sean Brady, has described it as thankful that the “inherently Christian principle of the equal dignity and respect which is due to every person is now accepted as a minimum standard of human rights in most Western culture and societies”.11 Further, he believes that a Bill of Rights “will be important in helping Northern Ireland to

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sustain and develop a more diverse and equal society.”

While the churches appropriate the contemporary language of human rights, their worldview does not start with rights. It starts with God, with self-transcendence, and with a story that makes sense of human experience. My argument in this paper is that the way part of that story has been understood and become established within Christian tradition – in terms of the narrative of the self – contributes to the difficulties that Christian theology has in engaging with human rights discourse.

As already indicated, the understanding that human beings are created in the image of God is foundational for Christian faith. This understanding contains two fundamental ideas that Christianity holds together in creative tension. One is that human beings live in a context of self-transcendence; as human beings we derive our existence from the divine being. The other idea is that human beings have innate value because we are made in the image of God; this worth is ascribed to us by God and is an essential part of being human.

Hence, for Christians, the equality that human beings have with each other comes from their commonality in being creatures of the one Creator. The dignity of each human person comes from our being made in the image of God. And the inalienable rights that human beings possess without distinction, for Christians, are rooted in the understanding of God as Creator who bestows innate worth on humanity.

But the Christian narrative of our existence does not stop with humanity’s origins. The creative tension inherent in the understanding of our being created in the image of God is about how we inhabit the fullness of human experience in the consciousness of the transcendent reality of the divine. Put simply, for Christians, the whole of life is to be lived in knowledge of God. As God is personal and not an abstract transcendence, this knowing has profound relational implications in terms of our response to both God and other people. And the Christian story speaks of humanity’s failure to live in right relation – with God, with each other, and with the whole of creation. Known in Christian teaching as the ‘fall’, this doctrine has predominantly been expounded as human beings attempting to usurp the place of God. Humanity’s core sin is pride, refusing to be humbled in the knowledge of the omniscience, omnipresence and omnipotence of the divine. Understood this way, humanity’s basic sin is a disposition that elevates the self in a way that is both repugnant and unacceptable to God and is to the detriment of human flourishing, both individual and social; hence, the emphasis on the giving up of the self in the Christian narrative of redemption that follows the story of the fall.

Following from creation and fall, redemption speaks of the action of God in restoring humanity to right relation – with God, with each other and with creation. Achieved through the life, death and resurrection of Jesus the Christ – the Creator incarnated among the created – redemption is the promise and gift of God. It is gift because it is freely offered and cannot be bought, it is promise because it is not fully realised in the span of a human lifetime. Integral to (much) Christianity is the belief that human existence does not end with death but that there is eternal reality. This belief often has been used by the powerful to impose acquiescence of their situation on people facing poverty,

14. It is not the place here to discuss the perception that such belief is irrational or discredited in the modern (and/or postmodern) world. Ultimately it is a position of faith, but faith is not inevitably synonymous with irrationality.
injustice or oppression, thereby protecting a privileged status quo. But, when not so abused or manipulated, the idea serves as a source of hope that human endeavours to live in right relation are never wasted or meaningless but are participation in the work of redemption.

It is, in part, the conception of the sinful, prideful self which needs to be renounced that makes many Christians uncomfortable with ideologies of individualism that promote self-interest over community concern. Many Christians perceive human rights to be one such ideology. In the words of one Northern Ireland local church leader:

“In the Bible what God deals with is very much a community and the strength of the community and then that filters down to the family and family unit. And the danger of human rights and these kind of things is that it isolates the individual […] you isolate the individual and say the individual is more than the unit… Individuals now can have rights that can overrule the good of society as a whole […] ‘I have a right to this and a right to that’ can begin to impinge upon the good of society, the good of the family, the good of the church […] If society as a whole moves to what I call individualism rather than the corporate good of the unit well then I think we’re in danger of fragmenting.”

Emphasis on the individual is viewed with suspicion, I suggest, because of the theological framework that is concerned about the elevation of the self, and about the offence such elevation causes to God. Similar objections occur with the attention to rights rather than duties or obligations.

However, this predominant emphasis on selfish disposition has been criticised as being an incomplete account of the condition of fallen humanity. Principally, it is seen as an understanding of sin that has come out of an experience of male social, political and ecclesial dominance rather than a female experience of social, political and ecclesial subordination. While not dismissing its value as one possible account of human sin, feminists have pointed out the difference between self-denial and self-negation and that the former is only a (voluntary) possibility from the stance of a positive and proper sense of self. Self-negation, which is the opposite or absence of something regarded as actual, positive, or affirmative, is as much a denial of the image of God as is pride. The core dilemma for many powerless women (and people who live in various states of human diminishment) is not, therefore, a denial of the image of God through disobedience, but through a loss of human agency. The corruption of humanity is seen in the self who does not inhabit the fullness of the image of God, who does not let their God-given worth envelop their humanity. It is not that self-giving ceases to be a part of Christian discipleship for those who manifest fallenness in this manner. However, it may be more apposite to understand that the struggle for just treatment or conditions may be as much a part of recovering right relation with God through self-respectful human agency as is choosing to renounce such claims.


17. As Serene Jones points out, this does not mean that women have no need of repentance or renewal, but rather that it may be that, contrary to usual doctrinal understanding, what is meant by sanctification must come before justification. “With sanctification at the beginning, the first word to meet the woman who enters the doctrine of the Christian life is one that constructs her, giving her the center and the substance she needs to become the subject then judged and graciously forgiven.” Jones S (2000) Feminist Theory and Christian Theology: Cartographies of Grace, Fortress Press, Minneapolis, p 63.
While Christians may be generally more comfortable in working for the rights of others, the articulation of rights for the self does not have to be seen as, and is not necessarily, an act of pride or defiance but can be a witness to God-given human dignity and respect.

Involved in these different notions of the human condition are different conceptions of people and the way they relate, which then impact debates about human society, its organisation and needs. One conception is of people as atomised individuals who form a sense of themselves by separation and boundary marking and, hence, who negotiate relationships in a spirit of competition. And one is seeing people as selves-in-relation, or persons-in-community, where connection and co-operation are a constitutive part of human identity. When competition is the model, then what serves one person must work against another (and, similarly, when translated to the human/divine dynamic, human freedom becomes incompatible with divine will). When co-operation or connection is the overarching model, then what serves one person must be in the interest of another (hence, human agency and self-determination are not of necessity antithetical to divine sovereignty). While the rights-bearing, atomised individual may be a myth – for in reality no person is self-sufficient or self-sustaining – it retains its potency to impact our lives. However, freedom and agency do not have to be understood in terms of a non-relational autonomy either for relationship among human beings or humanity’s relation to God. In one sense, human rights are about negotiating competing needs – they provide an agreed framework within which the inevitable disputes can find resolution. But they do this to ensure human respect and dignity for all in the diversity of our personal and social existence. I suggest that the theological problem in negotiating relationships, in part, comes from difficulties that Christian theology has in consciously holding self-respecting agency with healthy social relations.

Further, the concentration on the atomised individual and sin as particularly relating to individual disposition reduces attention to structural sin, that is, harmful patterns of relating that are replicated in social institutions, cultural mores, and established patterns of society. When emphasis is overwhelmingly on sin as being something committed against God, then the lived realities of being in wrong relation are obscured from view, to the detriment of those most vulnerable and powerless. The extent to which leaders and members of churches in Northern Ireland have understanding of the experiences of those whose well-being is undermined within our context will impact their attitude toward human rights in this society. It seems to me that often it is in the nature of a privileged position not to be able to appreciate the advantages of it. This is why tasting a more so-called ‘level playing field’ may feel more like discrimination than it does about losing unfair advantage. It is interesting that, in respect of the debates around the Sexual Orientation Regulations legislation, Christian groups who have previously held privileged positions in Northern Ireland in various ways are beginning to use the language of rights and claims of discrimination in support of their own positions.18

I am not arguing that Christian theology simply needs to adopt human rights uncritically. What I am suggesting is that churches in Northern Ireland would be better

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able to engage with the human rights debate that exists here if proper attention was paid, not only to the internal rationale for human rights, but to their own theological mindset on the human self. Christian theology has rich resources for addressing social well-being. Its understanding of justice, aligned in biblical narrative with mercy and love, offers much to the matter of human flourishing on both a personal and social level. So too does a Christian understanding of incarnation, whereby, in all the reality of Christ’s life and death, God assumes the standpoint of the powerless and, hence, experiences the oppression of the people. Alongside these resources, reflection on how Christian theology thinks about the self has the potential to enable constructive critical contemporary engagement with human rights discourse by the churches in Northern Ireland.
Rights and religious education in a plural Northern Ireland

Norman Richardson

Introduction

Religion in education is often a contentious area, not least in Northern Ireland. A group of academics once described religion as “one of the darkest regions in education”.1 One of the best known of thinkers in the Religious Education field, the late Dr John Greer of the University of Ulster, once suggested that RE “may easily become part of the process of initiation into the tribalism in Northern Ireland”.2

One of the greatest obstacles to constructive discussion about Religious Education lies in the confused perception that Religious Education (RE) and Religious Instruction (RI) are one and the same thing! It is now almost 20 years since government legislation in Northern Ireland and other parts of the UK replaced “instruction” with “education”, but the two terms are still used interchangeably by some people including in some official documentation and even discussions on case law. By ‘Religious Instruction’, I understand a process of teaching a particular faith as truth – what we may call ‘confessional teaching’. This is entirely appropriate in faith communities, of course, where such teaching is in a voluntary context; in the view of many people, however, this is both ethically and educationally out of place in publicly funded schools. By ‘Religious Education’, I mean processes of learning that are open-ended and inclusive, suitable for people of all backgrounds and justifiable on educational grounds. RI and RE may in some circumstances be complementary, but they are certainly not the same thing.

The term ‘Religious Instruction’ was changed to ‘Religious Education’ in Northern Ireland legislation in 1989, as it had been in England and Wales the previous year. The concept of instructing people in what they should believe no longer seemed appropriate in contemporary educational practice in publicly funded schools, and in many other parts of the UK the realities of life in a plural society were already keenly reflected in the content and methodology of RE syllabuses and classes. In 1989, however, these realities did not feature on the agenda of most legislators or many educators in Northern Ireland, which was quickly evident when the four largest Christian denominations were designated as “persons having an interest in the teaching of Religious Education in grant-aided schools”3 and therefore asked to devise a Core Syllabus for Religious Education. According to some civil servants, this interpretation of the legislation has set a precedent that cannot now be changed!

The debate about the Northern Ireland RE Core Syllabus is not really the main focus of this paper, though it will inevitably be a point of background reference. In summary, the issues are about a ‘Core Syllabus’ devised, and later revised, exclusively by Christian denominations without any reference to members of other faith communities or those who have no religion. Its authors have written of “the essential Christian character of Religious Education” and have described it as “a Christian-centred Core Syllabus”.4 In their original version of the Syllabus, which became official from 1993, they defended their decision to exclude teaching on “other religions”, suggesting that schools might do this as an option if they wished but only as an addition to everything else they had designated.5 A grudging decision to include world faiths in the Revised Syllabus, though at Key Stage 3 only, was agreed with the rider that “the study of the World Faiths will require only a modest amount of teaching time”6. The Syllabus has been opposed by many groups, including educational bodies, inter-faith, humanist and community groups and also by organisations with a human rights remit, but nevertheless it is now in place, as of September 2007, as the new official RE Syllabus for Northern Ireland.

With that background stated, I want in this paper to ask a more fundamental question about Religious Education. Is there a ‘right’ to teaching and learning in relation to religious matters? Is Religious Education in any way justifiable by reference to international human rights instruments? I don’t wish to suggest that Religious Education can only be justified on the basis of human rights principles, but I do believe that such principles can be supportive and helpful in providing added credibility in the discussion.

### Religious education in human rights?

The task is not so straightforward, however, particularly because the term ‘Religious Education’ as such is not to be found in these documents. In 2001, a United Nations’ consultative conference on School Education in relation with Freedom of Religion or Belief, Tolerance or Non-Discrimination7 studiously avoided the term in its official documentation, even though for most of the delegates it was clearly religious education that was being discussed. Concerns about irritating the representatives of nations where RE does not form part of the curriculum of public schools seemed to be paramount on this occasion.

There is, however, a good deal in human rights instruments about religion, about children and about education. Alongside the UN Universal Declaration of Human Rights (1948) and the European Convention on Human Rights and Fundamental Freedoms (1950), two other key documents are the UN Convention on the Rights of the Child (1989) and the UN Declaration on the Elimination of All Forms of Intolerance and Discrimination based on Religion or Belief (1981).

All these significant international human rights documents affirm the right to

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freedom of thought, conscience, belief and religion, including the right of persons to “manifest” their religion (in other words, to have a religion and to express it in various ways, including through teaching) and also to change religion, and states have a responsibility to ensure that these rights, and the rights and freedoms of others, are respected and protected.8

In relation to children and their education, all the key documents affirm the right of children to education and emphasise that their upbringing should be:

“[…] in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin.”9

As the statements on education in the various documents have developed over the past 60 years, an emphasis on the importance of what we might term intercultural education has grown stronger. So, Article 29 of the UNCRC indicates that education should teach children to respect their parents’, their own and others’ cultures and prepare them to live responsibly and peacefully in a free society. Earlier articles in the Convention affirm the right of the child to freedom of expression, including freedom to seek, receive and impart information and ideas of all kinds (Article 13); and that states must respect the right of the child to freedom of thought, conscience and religion (Article 14). In 2001, the UN World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance (2001), while effectively avoiding any wording that might seem to give official approval to ‘religious education’ as such, noted in its preamble the importance of “acceptance of diversity and respect for the right to be different”, and added:

“[E]ducation, in particular at school, should contribute in a meaningful way to promote tolerance and respect for the freedom of religion and belief.”

The document went on to make a number of recommendations, including (in paraphrase):

“[E]ach state should promote and respect educational policies aimed at strengthening the promotion of human rights and the eradication of prejudices, and ensuring respect for and acceptance of pluralism and diversity in the field of religion and belief;”
(paragraph 4)

“[T]hose engaged in teaching are encouraged to cultivate respect for religions or beliefs, thereby promoting mutual understanding and tolerance;”
(paragraph 7b)

“[T]eachers and students should be provided with voluntary opportunities for meetings and exchanges with their counterparts of different religions or belief;”
(paragraph 10d)

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“[S]tates and concerned institutions should study, take advantage of and disseminate best practices on education in relation to freedom of religion or belief, which attach particular importance to tolerance and non-discrimination.” (paragraph 12)

Taken together, these statements seem to provide a strong foundation for educational programmes that promote knowledge, awareness, sensitivity and mutual understanding in relation to the beliefs, values and faiths of different peoples around the world.

Since the initial preparation of this paper, two further documents have been issued in which these principles have been reinforced. In November 2007, the Organisation for Security and Co-operation in Europe produced The Toledo Guiding Principles on Teaching about Religions and Beliefs in Public Schools. This document sets down guidelines for states, emphasising that “students should learn about religions and beliefs in an environment respectful of human rights, fundamental freedoms and civic values”. The 2008 Council of Europe White Paper on Intercultural Dialogue, Living Together as Equals in Dignity, promotes “knowledge and understanding of the major world religions and non-religious convictions” as an important dimension of what it terms “the learning and teaching of intercultural competences”.

This is, in effect, a Religious Education in close relation with, or as a dimension of, intercultural education, and in association with other expressions of values-based learning such as citizenship education, global education, peace education, moral education, personal and social development and, of course, human rights education. If we wish to find links between these principles and actual policy in Northern Ireland, it can be found in the concept of “the promotion of a culture of tolerance” as expressed in the 1998 Belfast Agreement, and in Section 75 of the Northern Ireland Act 1998, which requires public authorities to promote equality of opportunity and good relations in respect of various categories, including persons of different religious belief and racial groups, although schools have so far been excluded from this particular legislation – in my view quite inappropriately. More recently, however, and more specifically, it is spelt out in Section 2.4 of the government policy document, A Shared Future, which states that:

“All schools should ensure through their policies, structures and curriculae that pupils are consciously prepared for life in a diverse and inter-cultural society.”

Contentious issues

There are, however, some other statements to take into account and several key questions which inevitably emerge about how human rights principles are interpreted and how they relate to current practice in Northern Ireland and other places. How can we apply these principles to issues such as the “faith schools” debate; the rights of religious minorities; separate “confessional” religious education in schools; withdrawal from RE on the grounds of conscience; and the questions that have already been raised about a “Christian-centred” Core Syllabus in Northern Ireland?

Probably the most contentious of these issues, not only in Northern Ireland, is that surrounding the existence or establishment of separate schools to cater for members of one particular religious tradition, in which religion will be taught with the purpose of promoting and nurturing a particular faith position. In support of this practice, recourse is usually made to statements such as Article 2 of Protocol 1 of the European Convention, which provides that:

“No person shall be denied the right to education … the State shall respect the right of parents to ensure such education and teaching in conformity with their own religions and philosophical convictions.”

And Article 5.2 of the UN Declaration on the Elimination of all Forms of Intolerance and of Discrimination Based on Religion and Belief (1981), which provides that parents have the right “to organise the life within the family in accordance with their religion or belief”; and in particular that:

“Every child shall enjoy the right to have access to education in the matter of religion or belief in accordance with the wishes of his parents […] and shall not be compelled to receive teaching on religion or belief against the wishes of his parents […] the best interests of the child being the guiding principle.”

It may well seem that this is actually in contradiction to the principles outlined above which emphasise the importance of learning about religion in order to develop respect for one’s own and others’ beliefs, if it is accepted that parents can simply demand that children do not receive any religious teaching other than on their own beliefs. How can religious teaching in publicly funded schools which only focuses on one religion and actively promotes faith in that religion possibly meet the requirements of the intercultural purposes of education which are so clearly expressed elsewhere in human rights instruments? If children are withdrawn from religious education classes (which parents have a long-held legal right to do in Northern Ireland and other parts of the UK), how will they gain any understanding of, or respect for, different religions and beliefs? Further, if children are educated in religiously separate schools, how will they have the opportunities freely to express and discuss their views and to explore the beliefs of others through encounter with them?

This is a complex and often very emotive debate and deserves much fuller treatment, but I think that the traditional interpretation of these statements by some religious or secular groups has often missed the point. Surely these statements are seeking to protect the rights of parents and children to their own culture and religion, particularly in circumstances where states have denied such rights to some or even all groups or have even sought to force them to adhere to an alternative belief system. To go beyond this and assume a right to separate religious schools is, I suspect, a step beyond what was originally intended.

This is made a little clearer in the wording of one of the recommendations from the 2001 UN Consultative Conference, which emphasises the right “not to receive religious instruction (emphasis added) inconsistent with his or her own convictions” (paragraph 4). The negative association of the term ‘religious instruction’ is very interesting at this point, because it comes in a paragraph which has first and foremost recommended that states should promote educational policies to ensure “respect for and acceptance of pluralism and diversity in the field of religion and belief”. There seems to be a clear distinction here, not apparent in other documents, between religious education and religious instruction, the former being desirable, the latter clearly questionable in this context.
In discussion of case law relating to these clauses, it has been pointed out that while there is a clear objection to, and prohibition of, any attempt at indoctrination, “parents may not object to religious education which provides information on religions in a general, objective or comparative manner”.\textsuperscript{13} A similar distinction was clearly understood in a 1976 ruling of the European Court on Human Rights in relation to Kjeldsen v Denmark:

“The second sentence of Article 2 of the [1st] Protocol of the ECHR does not prevent States from imparting through teaching or education information or knowledge of a directly or indirectly religious or philosophical kind. It does not even permit parents to object to the integration of such teaching or education in the school curriculum, for otherwise all institutionalised teaching would run the risk of proving impracticable [...]”\textsuperscript{14}

Nonetheless, we live in a world where confessional teaching and separate educational provision does exist within many school systems, and where it will probably persist. In such circumstances, I would suggest that, at the very least, separate faith-related schools have an even greater responsibility to ensure that the way in which religion is taught meets the requirement of the intercultural principles. My concern, however, is that as long as there is such separation, and as long as there are opt-out conscience clauses giving precedence to the rights of parents to withdraw their children, even from soundly educational RE, it will remain difficult to persuade people of the educational value of the subject in any context, not just in situations of confessional separateness. There will always, I fear, be a whiff of suspicion around the motives of the religious educator, even when it is quite unjustified.

**Standards for an educational religious education**

With these principles and difficulties in mind, what are we to make of a Religious Education Syllabus, such as that in Northern Ireland, which has been devised by some representatives of one particular religious tradition (Christianity), which takes a single-faith approach (as was the case up to 2007) or which, even now, sets severe limits to the teaching of religious pluralism and argues that Religious Education should be Christian-centred, taking no account of the views of members of other faiths (as is the case with the current Revised Northern Ireland Core Syllabus)? Having failed to influence this decision even through the process of an Equality Impact Assessment,\textsuperscript{15} there is still a body of opinion that is determined to challenge and change what appears to be a quite inadequate Syllabus in terms of preparation for life in the 21st century, on the basis of human rights principles, equality legislation and, perhaps most importantly of all, on the basis of an inclusive philosophy of education.

What, then, should educational RE be like? Should it simply be an imparting of clinical, objective, “neutral” religious knowledge – what some in France (where school RE does not feature) have termed “le fait religieux” – religious fact? The difficulty with this is that religion is more than just about knowledge – it quickly impinges on attitudes, values and


\textsuperscript{14} Ulitz, p 120.

feelings. Any subject needs to be taught and learned in a way that is appropriate to its nature, and religion is no exception. Nevertheless, I believe that it is possible to do this in a fair and balanced manner, in such a way that people of all backgrounds and persuasions can be participants and learners. Perhaps this is a representation of the balance between what the RE guidelines and framework in England and some other places call “Learning About Religion” and “Learning From Religion”. These are the skills that I hope those of us who are engaged in the training of RE teachers are actively promoting.\(^\text{16}\)

I close with five standards for religious education in schools proposed by a leading German writer on RE, Friedrich Schweitzer. He proposes that:

- RE must and can be taught in line with the criteria and quality of general education;
- RE is of relevance to the public and must be taught as a contribution to general education;
- RE must include both inter-denominational and inter-religious education which is in line with the increasingly pluralist situation in many countries;
- RE must be based on children's right to religion and religious education, which will involve child-centred approaches;
- RE teachers must be professionals – i.e. they have reached a level of academic understanding, self-reflexivity and critical self-awareness in relation to their own beliefs and backgrounds.\(^\text{17}\)

There is, I believe, a value and validity in religious education which I think can be justified or reinforced with reference to human rights values. While there remain serious disagreements around how it should be taught and in what kind of context – separate or inclusive – I believe that these principles offer a basis for a common discourse and also place a responsibility on educators in all kinds of schools to teach in a way that promotes mutual awareness and respect for difference. This is a worthwhile goal, but in Northern Ireland we still have some considerable distance to travel.


\(^\text{17}\) Schweitzer F (2006) 'Let the Captives Speak for Themselves! More dialogue between religious education in England and Germany', British Journal of Religious Education, 28:2, 149. Schweitzer’s proposals have been reinforced by the more recent publication of the ‘Toledo Guiding Principles’, referred to above.
The contribution of rights and righteousness to a peaceful society in Northern Ireland

L Philip Barnes

Introduction

In his introduction to an empirical cross-cultural study of the beliefs, values and attitudes of young people in Britain, Bishop Alan Smith, endorsed the earlier findings of Wilkinson and Mulgan, who identified a “deep seated rejection of society’s central institutions”, “an historic political disconnection” and a “potentially explosive alienation” among young people. Smith then raised the question of the causes of such alienation among young adults, which he answered by summarising the conclusions of a number of social commentators:

“Some point to the Thatcherism of the 1980s (“There is no such thing as society”), to increased personal wealth after a long period of peace, to the stress on individual rights (as exemplified by the European Convention on Human Rights, which came into force in Britain on 2 October, 2000) and by the government’s introduction of, for example, Patients’ Charters in the National Health Service. The emphasis has been consistently on individual rights rather than civic duties.”

What is noteworthy in this summary is the inclusion of a “stress on individual rights” as one of the chief causes of the alienation of young people from society and its institutions. That this appropriation of blame is expressed without any hint of exaggeration or irony, and is passed over without further comment indicates the extent to which new Labour’s dream of building “a new human rights culture for the UK” is one that is not only not widely shared but one that is increasingly regarded by some commentators as contributing to social malaise.

Rights and criticisms

There is an influential body of academic opinion that believes that the emphasis upon individual rights, as endorsed, for example, by the Human Rights Act 1998 in Britain, is inimical to social cohesion and to the creation and maintenance of social trust between individuals and between communities. This particular contemporary criticism of the discourse of rights echoes Jeremy Bentham’s earlier nineteenth century view that rights often clash with utility, that is, they protect actions and behaviour that undermine the

1. A longer version of this paper, which contains an expanded philosophical critique of the discourse of rights, has been published in Panorama: An Intercultural Journal of Interdisciplinary Ethical and Religious Studies, 19 (2007) pp 40-52.
public good. Bentham believed that unless there is a law conferring it, there is no right – a right recognises an independently existing moral claim. To speak of rights otherwise was for him “nonsense on stilts”. On this understanding, morality has priority over rights. It is in terms of pre-existing morality that laws and, therefore, rights can be criticised. The situation is now often reversed in that rights activists often advance a claim on the basis that it is a right and should be recognised in law. Although critical voices are rarely sounded with regard to appeals to rights in social debates in Northern Ireland, criticism of rights is commonplace in contemporary social and political philosophy. One of the most sceptical voices, and influential, is that of Alasdair Maclntyre, who affirms that there is no such thing as rights, “and belief in them is one with belief in witches and in unicorns”. Central to Maclntyre’s rejection of universal rights is the contention that those forms of human behaviour, which presuppose notions of some ground to entitlement, such as the notion of a right, always have a highly specific and socially local character: a right presupposes the existence of a particular type of social institution or practice as a necessary condition of its intelligibility. Simply put, rights are not universal because the moral commitments that the discourse of rights seeks to express are intimately related to particular traditions of thought and belief, situated as these are within specific communities of practice.

A plausible case can be made for the view that current preoccupation with the extension and multiplication of rights actually contributes to the increasing scepticism in which rights are held. A consequence of this is that the scepticism that is properly shown to some (claimed) rights, freedoms and privileges becomes attached to fundamental rights as well.

Even if an adequate foundation can be found for human rights in human nature, it is unlikely that such a basis is capable of extending to incorporate all the rights that international agreements and declarations enumerate; in fact some of the rights enumerated in international declarations are probably best interpreted as expressing aspirations, which enjoy only a limited and partial justification from any credible account of human nature alone. Politically and pragmatically it would be better to define a list of basic freedoms and entitlements and desist from pursuing other kinds of privilege, freedom and desire through the language of rights. An essential minimum of basic human rights offers better prospects of justification either by reference to some single normative conception of human nature or by reference to some kind of overlapping consensus among disparate worldviews than an extensive and “untidy” collection of rights that reflect the shifting fashions and aspirations of contemporary liberal Western thinkers. In addition, social reform in democratic societies such as Northern Ireland where fundamental rights are already protected by law is probably best pursued without reference to rights and entitlements. Again there are ironies in current practice, in that those who often speak of the democratic character of the “new” post-Belfast Agreement Northern Ireland are often the same people who bypass debate and dialogue and pursue legal means of instituting their own particular vision of social reform: an appeal to human rights and to legal action often signals the refusal to engage in the kind of deliberative inclusive politics that are constitutive of a successful and fully functioning democracy. To utilise

the language of rights in many contexts simply serves to stultify debate, discourage dialogue and posit forms of social life that are adversarial, litigious and encouraging of self-assertive individual and community behaviour. The purpose of much of the remainder of this paper will be to illustrate and support these critical observations by reference to an actual debate within Northern Ireland, that of calls to introduce multi-faith religious education to Northern Ireland.

The case for multi-faith religious education in Northern Ireland

“Policy ‘may be breach of human rights law’ Religious education comes under fire –

“The current religious education policy in the vast majority of Northern Ireland’s schools is contrary to recent equality and human rights legislation here [in Northern Ireland], it was claimed today.”

This newspaper report refers to the Northern Ireland Inter-Faith Forum’s call for the inclusion of a (compulsory) study of world religions within the Northern Ireland curriculum, which it expressed in a single page document that was widely circulated to educational authorities, institutions and political representatives in the early months of 2001. The essential argument is that an exclusively Christian religious education programme may be “contrary to recent equality and human rights legislation”. On one reading this issue is historical, for the new revised Core Syllabus for Religious Education in Northern Ireland does make provision for a study of two world religions for all pupils at Key Stage 3, albeit a limited and introductory study. But on another reading the issue is still relevant, because the new policy patently falls short of the Inter-Faith Forum’s proposals, which is for the British model of multi-faith religious education to be instituted in schools (by British model is meant a form of religious education in which a range of different religions is taught to all pupils at each of the four key-stages of their education). Consequently, the threat of legal action by the Inter-faith Forum on the basis of equality and human rights legislation remains.

Human rights are the moral currency of the age and therefore it is not surprising that a case for multi-faith religious education should be pursued on this basis. Yet framing and pursuing educational reform in this way invites a number of questions. First, does recent specific legislation in Northern Ireland relating to equality and human rights (as is claimed by the Inter-faith Forum) provide a legal means of successfully challenging exclusively Christian content in religious education? Second, by extension, whatever the case with regard to recent legislation in Northern Ireland, could the situation in Northern Ireland be challenged on the basis of European Human Rights legislation, which since 1998 has been incorporated into British law? Third, and finally, is educational reform best pursued on this basis? It is the third issue that is most relevant to our discussion, and our focus will fall on it, but only after answers are given to the first two questions.

Does recent specific legislation in Northern Ireland relating to equality and human rights (as is claimed by the Inter-faith Forum) provide a legal means of successfully challenging exclusively Christian content in religious education? Interestingly, there is tentativeness about the Inter-Faith Forum’s appeal:

“We believe that an approach to R.E. which focuses on one religious tradition, however numerically dominant, is…

contrary to the spirit of recent legislation in Northern Ireland relating to Equality and Human Rights (especially Section 75 of the Northern Ireland Act 1998 which requires public authorities to have due regard to the need to promote equality of opportunity and good relations between persons of different religious belief).” [emphasis added]

The appeal is that an exclusively Christian form of religious education in schools, while perhaps not contrary to the letter of the law, may well be contrary to the spirit of the law. What does the law state? The pertinent portions of the legislation are faithfully represented in our quotation from the Inter-Faith Forum’s open letter: there is a statutory duty on public authorities to promote both equality of opportunity and good relations between persons of different religious belief. Within the Northern Ireland context, “equality of opportunity” in education is normally interpreted to mean access to education of a form appropriate to the individual within the context of the provisions of the state. For example, that those with learning difficulties have a right to remedial help, that selection criteria for individual schools are fair and non-discriminatory, that at a managerial level no arbitrary distinctions between different types of schools in terms of funding or provision are appropriate, and so on. The thrust of the statutory requirement to further good relations between persons of different religious belief is clearly intended to caution against institutional prejudice and for institutions to be mindful of promoting positive values and attitudes toward those who embrace “minority” values and who are perceived as “different” in particular institutional settings. The requirement of the legislation is not exacting – “have regard to the desirability of promoting good relations”.

It requires no more than a general approval of positive efforts to foster good community relations within society. Schools in Northern Ireland of whatever type, (Catholic) Church or state, would have little difficulty in affirming such a commitment; many go beyond having a positive regard for promoting good relations and actually promote and pursue good relations. In addition, the fact that a particular individual’s or group’s religious convictions is not included in the school curriculum as a subject for study by everyone or by particular constituencies of pupils would not seem to compromise efforts elsewhere by the school to advance good community relations. Exclusively Christian religious education in itself is unlikely to be regarded as contrary to the spirit of the legislation.

Would an appeal to European human rights legislation further the Inter-Faith Forum’s aim of undermining exclusively Christian religious education? The first thing to note is that European human rights legislation is more concerned with the right to freedom of worship than with tailoring education to the needs of religious minorities. Nevertheless, Article 2 of the Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocol Number 11, does provisionally extend some hope of support to the Inter-Faith Forum’s position. It states:

“No person should be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions.”

On a straightforward reading, this might seem to give parents the right to a form

of religious education of their choice. Unfortunately, and possibly for good reason, legal matters are rarely straightforward. The context in which this article is typically interpreted by the courts is that of the school and the right of parents to send their children to religious schools that reflect family commitments (though the legislation also extends to curriculum matters). This, in turn, has to be interpreted in the light of the European Court of Human Rights’ ruling that there is no obligation on the different nation states to “establish at their own expense or to subsidise education of any particular type”.10 In other words, the right of parents to choose schools that reflect their religious convictions is the right to choose within the existing public options. Further, the duty to “respect” parents’ convictions does not put state/public authorities under a duty to comply with such convictions. There is, in effect, no absolute right for parents to have their children educated in accordance with their religious or philosophical convictions in public institutions; only a right to have such convictions “respected”. In the Northern Ireland case, legal provision for a parental right of withdrawal, coupled with the non-confessional nature of religious education in state schools, that is, the schools chiefly attended by all those who do not identify themselves as Roman Catholics, provide support to the notion that parents’ religious and philosophical convictions are “respected”. Moves to undermine exclusively Christian content from religious education on the basis of European human rights legislation would have few prospects for success given current interpretations of the law.

Finally, and crucially, the question may be asked: is educational reform of religious education best pursued on the basis of an appeal to equality and human rights legislation? Much turns here on what is meant by “best pursued”. One can imagine cases where recourse to the law to obtain certain educational “goods”, should be pursued by such means. If, for example some segment of the population was excluded from education or from particular educational services on the basis of arbitrary decisions or criteria that reflected prejudice, it would surely be appropriate to invoke existing legislation to bring about change or indeed to campaign for new legislation to effect change. Yet, it is difficult to see how exclusively Christian content for pupils in religious education is discriminatory in any sense to which equality and human rights legislation might or should apply. In Northern Ireland, 96 per cent of the population claims to be Christian, and only 0.39 per cent belongs to some other religious tradition. Northern Ireland is becoming more religiously plural, and this should be reflected in religious education, but the nature of this increasing pluralism is chiefly that of religious indifference, commitment to individual and idiosyncratic versions of Christianity, and the pursuit of alternative spiritualities, rather than the pluralism associated with the growth in numbers of adherents of other “world” religions. In any case, the prescribed content for religious education by the Core Syllabus, as the name implies, provides only part of the content of religious education; schools are required to supplement it with their own selection of material, which may include material from religions other than Christianity.

What considerations should bear on the selection of curriculum content in schools in Northern Ireland? Presumably, the curriculum should be relevant to the social needs of society and to the educational needs of pupils, where these encompass spiritual, social, emotional, cognitive, and cultural needs. The curriculum should

introduce pupils to the different dimensions of human creativity and experience, and it should provide them with the skills and aptitudes to make a positive contribution to society as well as secure their own economic futures. The same considerations will apply to the selection of content in religious education. What knowledge and understanding of religion is relevant to pupils’ lives and experience? What skills will they require to evaluate and to choose between the different religious and non-religious options that are culturally available to them? What contribution can religious education make to social education, in a context where religious division and sectarianism within Christianity has until recently issued in religious conflict?

The point I want to stress by raising these questions is that the curriculum is determined by a variety of considerations and seeks to fulfil a range of different aims. There are a variety of “goods” that schools attempt to achieve and any curriculum has to maintain a balance between competing aims and goods.

These considerations offer a different and broader perspective to that of an appeal to human rights from which to consider the issue of world religions in Northern Ireland education. Different emphases may be placed on the different aims of religious education and there may be different estimates of the relevance of empirical research. The evidence and the arguments have to be considered, as relevant, appropriate, convincing, or otherwise. Insight can also be gained from other national contexts and situations. For example, there is mounting evidence that the British model of multi-faith religious education has not been particularly successful in developing community cohesion and respect between religious communities.11

The obvious conclusion to draw is that there is no simple right or wrong in this matter. Yet, it is precisely this binary opposition that characterises legal judgements, including legal judgements made on the basis of appeals to human rights. The language of rights can give an absoluteness to claims (in that, the converse of a right may sometimes be a wrong) and therefore tends to work against accommodations and compromises of the kind that are essential to a properly functioning civil society in which there are contrasting ideas, commitments and interpretations of what is good for the individual and for society. In relation to religious education, it may be good to teach about other religions, but it is also good to challenge racism and intolerance, to cover material that is relevant to pupils’ experience and aptitude, to provide some depth of knowledge and understanding of religion, and so on. Should there be an end to the Christian monopoly of content in religious education? This is a subject on which there is room for debate and argument, for dialogue with others and for openness to new insights and evidence. Such debate and dialogue is central to the democratic process and contrasts with attempts to determine the curriculum by a legal decision on the basis of human rights legislation. Debate and the process of working towards consensus are thwarted by attempts to precipitate educational reform through legal means.

I have concluded elsewhere on the basis of a discussion of the arguments and evidence that there is a reasonable case for the inclusion of some teaching about world religions within Northern Ireland’s schools, but this case falls short of endorsing a British model of multi-faith religious education where a range of religions are taught at each key stage, as would appear to be the position and aspiration

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of the inter-Faith Forum. My findings are broader and more extensive than this, but it is not necessary to repeat them in this context. My conclusions express my weighing of the evidence and my apportioning of emphasis on the different aims of education. Others will disagree, but it is better for education and for the future of democratic society that such disagreements can be debated, with the hope that consensus will emerge, than foreclosed by an undemocratic judicial decision. What is true for debates in education is equally true for debates in social policy more widely: social reform is best pursued democratically, through dialogue, debate and argument and not through the courts.

**Conclusion**

Nothing that I have said detracts from the importance of human rights, where rights express fundamental moral convictions that should be shared across the nations. An obvious example of a right in this sense is the right to freedom of worship, and implicit in this is the further right to change and revise one’s religious commitment – these are rights still denied in some countries. But, in a jurisdiction where fundamental human rights are guaranteed, as in Northern Ireland, social reform is probably best pursued through deliberation, debate and dialogue, and not through appeals to human rights (where the right to which an appeal is made is not fundamental or where some degree of artificial or ideological manipulation is required to give a fundamental right some application). Moral convictions and commitments have priority over rights and in most cases debates are more fruitfully conducted and couched in the language of morality and the language of the good, rather than in the language of rights – accommodations between competing goods can be effected through dialogue and debate, whereas the bare assertion that something is right, with the corollary on occasions that anything different is wrong, precipitates strife and oppositional politics. Further, recourse to rights through the courts on matters that do not clearly breach fundamental privileges and freedoms are probably best viewed as anti-democratic and contrary to the spirit of inclusion and equality. A judicial decision brings an end to dialogue and discussion, and renders further deliberation pointless. It follows from what has been said that a focus upon morality and fundamental moral values and convictions in education is preferable to a focus upon rights, and is also more likely to advance the cause of creating a participative, respectful and peaceful society in Northern Ireland.

Let me conclude by engaging in a provocative thought experiment. Consider the difference between a commission in Northern Ireland on human rights and a commission concerned with social cohesion. The protection and furtherance of human rights constitute the task of the former organisation; the protection and furtherance of human rights have a role to play in the latter institution but that role is subsumed under the task of furthering the common good and effecting reconciliation between individuals and communities in society. The thrust of my paper is that the latter institution is preferable to the former; moreover, that the latter institution is what is most relevant to the needs of society in Northern Ireland.

Language rights and the development of the Catholic human rights tradition

Feidhlimidh T Magennis

Introduction

The provision of a legislative framework for the Irish language in Northern Ireland continues to be something of a political football. The St Andrews Agreement, which led to the restoration of the power-sharing Executive, made provision for such a framework. In autumn 2007, the (then) Minister of Culture, Arts and Leisure, Mr Edwin Poots, decided not to proceed with legislation at this time. The Minister’s statement noted that a majority of those who contributed to the consultation were in favour of rights-based approach to legislation.\(^1\) In fact, there has been a substantial effort to lobby for such an approach which is reflective of a wider culture of rights advocacy within the peace process in Northern Ireland. The particular issue of language rights thus provides an interesting case study through which one can review the underlying ideologies of rights discourse, and then consider how a Catholic approach to human rights could contribute to the debate over rights in Northern Ireland. It is the aim of this paper to review the arguments in favour of language rights as they have been articulated by some of the key players in the Irish language debate. A comparison with similar debates in Canada will help to identify the ideological framework underpinning such advocacy. Having outlined that ideological framework, it will be compared with recent developments in Catholic human rights thinking.

Irish language rights and freedom

A key contributor and advocate of a rights-based approach to support the Irish language has been the umbrella group, POBAL. Formed in 1998, it is an umbrella group for a wide range of Irish language organisations, mainly in Belfast but also throughout Northern Ireland. It seeks to provide a forum within which a strategic approach for the promotion of the language can be developed. Following consultation among its members and input from a range of experts, POBAL published its proposals for an Irish Language Act in January 2006. This document serves as the main articulation of POBAL’s proposals for legislation and as the basis of later contributions to DCAL’s consultation in 2007. Within this document,\(^2\) Dr Colin Williams has written a paper on ‘Indigenous language rights and legislation’ that outlines the arguments for language

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From the outset, it is clear that language rights are considered to be expressions of freedom, both positively and negatively expressed:

“Arguments for language awareness, for freedom of individual expression, for the right to be protected as a language group and to be able to promote one’s preferred language in dealing with, for example, local government or the legal system, have long figured in the discourse pertaining to community development and welfare rights.”

There is little explicit discussion of the sources of such rights, or of their nature. Instead, the rights being considered are more often expressed in terms of demands upon, or duties required of the state. Indeed Parts II and III of the POBAL document make a detailed presentation of the duties deriving from the “specific linguistic rights for individuals.”

There are several assertions that language issues now form part of the “equality agenda”, implying that language rights form part of a wider debate on equality. Together, these points suggest that a liberal human rights tradition is being invoked here, which places freedom to choose at the core of its concept of justice. The individual citizen has fundamental freedoms of choice and action which must be respected and protected from inhibition by others and the state. Thus, “[i]ndigenous language rights must be considered both in terms of freedom to promote a particular language within specific domains and in terms of freedom from neglect, denial and discrimination.”

Such rights imply commensurate duties on others. At the same time, in accordance with liberal theory, the exercise of those rights is subject to ensuring that the rights of others are not impeded at the same time; but there is little discussion of this point in William’s argument.

Instead, however, there is a strong focus on the benefits that language rights would bring to society. Some benefits are couched in terms of the improved socio-economic well-being of the individual speakers, while others are presented as benefits to society: increased diversity and pluralism are presented without debate as social goods.

It is interesting to note that communal benefits are discussed in relation to society as a whole, rather than in terms of the linguistic community. There is very little sign of communalism in this presentation. There is discussion of the development and survival of language groups, but the argument is not presented in terms of the rights of a community. At one point, there is a clear attempt to disassociate the language rights debate in Celtic regions from those in Canada or Belgium: “in the latter cases, bilingualism is a necessary bridge between two historically mutually unintelligible language communities, whereas Gaelic, Irish and Welsh speakers today function as fluent bilinguals. Thus, the imperative for Celtic contexts are recognition, equality of treatment and choice”. This is an interesting move in the argument as it closes down the consideration of the debate in Canada, for example, between individual and community rights; and it also re-enforces the liberal context of this argument with its emphasis on three key values of liberal discourse. Communal rights and goods are not to the fore in this presentation: any social good

6. Williams, p 11.
7. Williams, p 12.
8. Williams, p 11.
examined is something that would ensue from the exercise of individual rights. Such an emphasis creates an interesting tendency in the document. We find little discussion of the identity of the linguistic community. Even when discussing the need to protect indigenous languages, the argument is not couched in terms of the preservation of that linguistic community and its distinctive identity. The key reason put forward for protecting languages in their historic homelands is the preservation of linguistic diversity. Williams may be attempting to avoid what might be classified as nineteenth century nationalism with its “one nation, one language” model; he does lean towards a vision of a multi-cultural, linguistically diverse Europe. At a later point, he does claim that Irish in Northern Ireland has not been afforded support by the state comparable to the indigenous Celtic languages of Wales, Scotland and the Republic of Ireland. This is an old nationalist complaint but reworked in the language of equality and entitlement – the framework is liberalism, not nationalist communalism. But in avoiding the nationalist tinges of communalism, he has also ignored the interesting debates of Canada and elsewhere concerning the attempts to wed together liberal and communal rights in one legislative framework. As a result, his conceptual model for language rights in Northern Ireland is a liberal one which has little time for other influences or acknowledgements. And that leaves an interesting challenge for this rights-based approach to language legislation. If bilingualism is the social good that holds together the various advantages of language rights legislation, why should that legislation protect one particular language? If diversity and tolerance are hallmarks of a mature society, it may be fair to say that absence of due recognition would give rise to conflict. But would recognition of one indigenous language (Irish) rather than another (Ulster-Scots) be a sensible way to proceed? Williams seems to ignore rights for other non-indigenous languages on the basis that linguistic diversity is achieved by protecting those linguistic groups in their homelands. But does this not leave these proposals open to the challenge that Northern Ireland is not the indigenous homeland of the Irish language? A key notion of liberal political theory is that the state should be neutral with regards to the different values advocated by the competing understandings of human nature and well-being. Does not a legislative framework to recognise one minority language among others suggest a non-neutral stance? If bilingualism is the goal to be sought, does it matter which second language is protected or promoted? This rights-based approach to promoting the legal status of Irish draws heavily on the dominant model of rights discourse in secular liberal democracies. It appeals to key values of such democracies – diversity, tolerance, respect. It does appear to be in tune with current thinking and political developments in the European Union. But in the end, its claim that Irish (rather than any other language) is to be given protection rests on a contingent historical fact: “Irish is the historical national language of Ireland and thus cold logic suggests that it should be recognised within its own unique spaces”. Leaving aside the accuracy of that statement of fact, the so-called logic is really the importation of another argument from outside the liberal model. Can this argument stand on its own liberal feet?

10. Williams, p 15.
11. Williams, p 16.
The Canadian debate

The language rights debate in Canada has centred on the perceived clash between two types of rights enshrined in the Charter of Rights and Freedoms. While most of the named rights are recognisably the product of a liberal approach to rights that expresses the rights of the individual, language rights are seen as the intrusion of communal rights. Philippe Coulombe offers an insightful analysis of the language rights debate in Canada by exploring the impact of competing versions of liberalism and communalism. He argues that one subtle impact of the Charter of Rights and Freedoms, which sought to enshrine the duality of French and English in the public sphere, was the promotion of a crude version of liberalism in the public consciousness that insists on individual rights, state neutrality and places the core value of equality and freedom at the heart of public life. Such a move has undermined an older balance between individualism and the promotion of communal goods, among which language rights were predominant. He argues for a qualified form of liberalism that would allow community rights to co-exist alongside of individual rights. A key notion in his argument is the concept of “situated citizen”.12

He makes the observation that in a liberal framework of rights, it is important to validate any claim in order that it be duly recognised as a right. That process of validation will examine two aspects of the claim: what we have rights to, and the nature of the claimant. It is the second aspect that lies at the heart of the debate about individual and communal rights – while it is recognised that individuals have rights because of the inherent value of the individual, in what manner can it be asserted that a community has inherent value? Coulombe argues that the mainstream ideology, liberalism, cannot consider communities as rights-holders because they are not moral agents, that is, entities with an inherent value that makes them self-originating sources of valid claims. Instead, a weaker form of community rights should be considered which located value in the individuals making up the community, what Michael Hartney calls value-individualism; “only the lives of individual human beings have ultimate value, and collective entities derive their value from their contribution to the lives of individual human beings”.13

Jean-Bernard Marie makes an interesting comment in this respect that marks a further shift away from a conflict between individual rights and communal rights:

“[T]he central subject of human rights as embodied in the basic international texts is still quite definitely the irreducible human person. We are not speaking, however, of the solitary, isolated individual, but of an essentially ‘relating’ and predominantly social being, who is always to be found in a group or community situation. And while it may be possible to speak of ‘individual rights’, it is only because of the ‘individuality’ of the subject of human rights, and not because those rights can be conceived as restricted to an imaginary vacuum, as it were, in which the individual evolves in splendid isolation. Strictly speaking, ‘individual’ rights do not exist in the sphere of human rights any more than do ‘collective’ rights, or rather, all rights are individual because held by individuals and all are collective by the process of their recognition, their mode of existence and their means of protection.”14

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Community rights are those rights we claim as members of a particular community. What we commonly call individual rights are those claimed by members of a liberal society. In both cases, the rights arise from the goods that are being claimed. There are some goods that are shared and cannot be exercised in solitude (for example, freedom of association) and the exercise of which is central to the definition of community membership and identity. When such criteria are met, the good is usually claimed by individuals as community members.

“What is involved in community rights are the communal goods of community members. In the end, all our rights are claimed as community members if we think of liberalism as also reflecting a conception of community. The difference is whether a right is rooted in liberal community or rooted in belonging in a particular community of identity.”

These attempts to resolve the debate over individual and communal rights is an interesting illustration of the pervasive influence of liberalism and its associated assumptions about the individual and society. Liberalism is the dominant ideology of a particular community, albeit one which sees itself as the default position for the modern world. Liberalism and universality have become so intimately tied in this ideology that what is not universal is illiberal, what is communal is illiberal – when really what is branded as illiberal are those things not characteristic of liberal political community. We are in danger of a skewed vision of rights if we fail to see the particularity of liberal thought. Can an alternative foundation for rights discourse be found, other than liberalism’s principle of the freedom of the individual moral agent?

The development of a Catholic theory of rights

An attempt to qualify liberal political thought has taken place within the development of a Catholic understanding of rights theory. This development has aimed to incorporate the insights of liberalism while remaining, in certain respects, at tension with it. As a result, the Catholic Church is in the position to make a unique contribution to the debate: “The church’s foundational theory of rights, emphasis on the limits and responsibilities of freedom, and insistence on the need to understand rights with [in] the larger context of human dignity and development of the human person, all pose challenges to secular and non-foundational theories of human rights”.

The last two hundred years has seen a revolution within Catholic social teaching and its understanding of human rights in particular. Having once been one of the most anti-modern of Christian communities, the Church has come to engage with liberal political thought and to construct its own liberal political theology. This development has moved forward unsteadily until it was fully embraced at the Second Vatican Council. This was not the baptising of a liberalism premised on the individual’s right to unlimited freedom, but the establishment of a distinctive Catholic liberalism which sees authentic freedom directed towards truth. John Paul II, the foremost proponent of this

15. Coulombe, p 47.
Catholic approach, stated in *Centesimus Annus* that:

“...freedom attains its full development only by accepting the truth. In a world without truth, freedom loses its foundation and man is exposed to the violence of passion and to manipulation, both open and hidden. The Christian upholds freedom and serves it, constantly offering to others the truth which he has known.”

The Catholic tradition of human rights rests on a series of foundational principles. This, at once, distinguishes it from liberal theories that base rights on the procedural value of freedom and eschew the identification of any particular view of the good of human existence. The Church’s foundation principles can be listed as follows:

1) Human rights emerge from human dignity. John XXIII put the point thus, in *Pacem in Terris*: “Any well-regulated and productive association of men in society demands the acceptance of one fundamental principle: that each individual man is truly a person. His is a nature, that is, endowed with intelligence and free will. As such he has rights and duties, which together flow as a direct consequence from his nature. These rights and duties are universal and inviolable, and therefore altogether inalienable.”

2) Human rights are communal, not individualistic. They exist to foster the common good since full human flourishing can be achieved only by self-donation to others.

3) Human rights are teleological. They enable people to move towards truth, faith and the proper ends of life. Quite unlike most liberal understandings of freedom which are procedural, the Catholic tradition posits particular goods or moral ends towards which freedom must be oriented and exercised.

4) Human rights must be understood theologically. This point moves further than the last: to embrace the conviction that revelation provides us with the ultimate end of human life, salvation.

5) Human rights encompass both political and economic rights.

6) Protection of human rights is inseparable from the culture of life.

At the same time, in its effort to enumerate and affirm a range of rights that flow from these principles, there has been a recognition that human dignity and freedom are conditioned by physical and biological needs, realised in social interaction and association, and structured by the historically changing patterns of national and international institutions. This has led to a twofold differentiation of the conditions of human dignity: a division of rights by sector or kind, and a division according to the way their content is mediated by social interaction and by the institutional structures of society. According to the first, rights claims are differentiated by distinguishing different dimensions or sectors of the human personality which must be respected if individuals are to live with dignity. The latter division is useful for the current debate as it allows us to move from human rights (rights which are fundamental and universal) to rights afforded in particular legislative frameworks (such as language rights). “Personal rights”, which belong to every human being in an unmediated way, must be protected if human dignity is to be protected. The necessity to provide for these personal rights in social interaction and communal life gives rise...
to “social rights”, the conditions for the preservation of the well-being of the person in social interdependence. Finally, other claims are formulated in explicitly institutional terms and are called “instrumental rights”.

Following an analysis of conflicts between rights claims, Hollenbach21 notes that the debates are mostly cast in terms of trade-offs between one or more personal rights, or in other words, between the major sectors within which the dignity of individual persons is either realised or threatened. He argues that this approach underplays the interconnections between the various sectors of rights. In a second move, he notes that human rights policy has tended to focus on the establishment of personal rights and procedural or instrumental rights in an attempt to balance the freedoms of the individual in relation to the institutions of the state or economy. This second approach is also limited because it fails to pay sufficient attention to the interconnections between personal rights or the multiple social impacts of large-scale institutions. These interconnections and multiple impacts only come into view when the whole set of social rights is made the focus of concern:

“The issue is not trade-offs between personal rights but rather the subordination to both personal rights and instrumental rights to the set of rights which mediate and guarantee human dignity socially.”22

This is particularly the case, he argues, in societies that are undergoing rapid social change because social rights are specifications of the conditions which make participation in the life of society possible. The implementation of social rights makes the difference between social privilege and marginalisation:

Adequate human rights policies must give priority to protecting the full set of social rights of all persons. It will accomplish this by limiting personal privilege and by structuring political, economic and cultural institutions in ways which open them to the participation of all.23

An analysis of *Pacem in Terris* suggests that social rights include: the rights to food, clothing, shelter, rest and medical care; the right to political participation; the rights to nationality and to migrate; the rights of assembly and association; the rights of adequate working conditions and a just wage; the right to found a family or to live singly; the right to procreate; the right to profess religion privately and publicly; the rights to freedom of expression and to education. These rights deal with three basic forms of human interaction and interdependence. First, they make it explicit that basic human needs can only be met in community. Second, they concern the exercise of personal freedom in interaction with others. Third, they guarantee respect for those relationships which bind human beings to each other. Together, these rights provide societal support for interpersonal and group bonds necessary for human dignity. Hollenbach concludes that rights policy must be shaped to counteract marginalisation in these three areas, and so identifies a set of ethical standards for evaluating the effort to implement and institutionalise rights:

“1) The needs of the poor take priority over the wants of the rich
2) The freedom of the dominated takes priority over the liberty of the powerful
3) The participation of marginalised groups takes priority over the preservation of an order which excludes them.”24

24. Hollenbach, p.204.
Conclusion

The controversy over legal provisions for the use of the Irish language in Northern Ireland has provided an interesting opportunity to see whether recent developments of Catholic human rights discourse can provide a route beyond the impasse. The demands for rights-based legislation were examined and found to reflect liberal rights theory. Language rights were couched as rights of the individual rather than as community rights. The result was an argument for bilingualism rather than protections for Irish. Those making the argument in this context may have been attempting to avoid the Canadian controversy over language rights where the validity of community rights has been challenged by those who hold to a liberal approach to rights discourse. We have seen that one way out of that impasse has been to argue that community rights are actually individual rights. While this approach permits the claim for language rights within an amended or expanded liberal discourse, it highlights a blind spot in liberalism, namely that it too is a community and its supposedly universal rights are unconsciously community rights after all.

Catholic rights theory does offer another approach to the debate. By founding rights discourse in an anthropology, it unashamedly embraces rights as personal and social, because the human person is individual and communal. In fact, a Catholic approach to rights places the social dimension centre-stage and provides several criteria for evaluating the moral imperatives for rights implementation. Such an approach may offer a sounder foundation for the advocacy of a rights-based approach to the Irish language that sees public support for its use as a contribution to the common good.
The place and scope of human rights in the governance of the Roman Catholic Church

Michael McNamara

While the Roman Catholic Church is a strong advocate of human rights in the world, the place and scope of human rights in the governance of the Church itself remains far from clear.

Professor Rik Torfs has commented that human rights today can be seen as the absolute cornerstone of legal systems in Western democracies, describing them as “more or less what Divine Law used to be in the history of the Church”. Like the essential characteristics of Divine Law, they have a higher position that positive norms, they do not change (although they may be enumerated they are not created and they may not be revoked), and, most importantly for the purposes of this paper, they are universal. Originally applied exclusively in vertical relationships between individuals and the state, they later came to be applied horizontally in relationships between individuals, and even between individuals and churches.

This permeation of human rights into virtually all legal relationships has profound repercussions for all churches, including the Roman Catholic Church, both in the regulation of the internal order of the Church and the relationship between the internal order of the Church and civil law.

The formulation of the duties and rights of the Christian faithful in the 1983 Code of Canon Law can be seen as a manifestation of the possible influence of human rights based approach in Canon Law or at least scope for its development. Book Two of the 1983 Code deals with the Obligations and Rights of All the Christian Faithful.

- These include the rights to proclaim the divine message of salvation (c. 211)
- the right to express needs and desires and to manifest opinions on ecclesial issues (c. 212, §§2-3)
- the right to worship according to one’s rite and to follow one’s own spiritual life (c. 214)
- the right to associate (c. 215), the right to a Christian education (c. 217)
- the right to legitimate academic freedom of inquiry and expression (c. 218)
- the right to freedom from coercion in choosing a state of life (c. 219)
- the right to privacy and a good name and reputation (c. 220), and
- the right to vindicate and defend one’s rights, to be judged according to the law applied with equity (c. 221 §§1-2) and not

1. The beginnings of this overt championing of human rights can be seen in the Papal Encyclical, Pacem in Terris, of 1963 and the Vatican II documents such as the pastoral Constitution of the Church in the Modern World, Gaudium et Spes, and the Declaration on Religious Freedom, Dignitatus Humanae.
be punished except in accord with the law (c. 221 §3).

However, these rights and duties must be understood within their theological context, that of the Church as the community of faith established by Jesus Christ as the sacrament of salvation until the fulfilment of the kingdom of God through the return of Christ. In this context, the Church cannot be considered the equivalent to civil society where rights arise from and foster an adversarial relationship between the individual and state authority. The Church, as founded by Christ, focuses on a personal faith relationship with God, not on rights. Therefore, any ecclesiastical activity, including the exercise of obligations and rights, must be viewed in terms of its fostering the salvific purpose and mission of the Church.

Given this understanding of the Church as a community, it is not surprising that the common good plays a central role in the canonical discussion about rights. One of the most crucial differences between the two approaches is the manner in which rights are regulated within the Church for the sake of the common good. For example, Canon 223 §1 states that the Christian faithful must take account of the common good of the Church in exercising their rights. Canon 223 §2 provides that ecclesiastical authority may regulate the exercise of rights in the interests of the common good, it does not give any indication of the manner in which this should, or may, be done.

This notion of the common good is found in a slightly different form in the European Convention on Human Rights, in which several rights may be restricted. For example, freedom of thought, conscience and religion guaranteed by article 9.1 can, as one reads in article 9.2, be subject to limitations in the interest of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedom of others.

While the Code of Canon Law is silent on the manner of the regulation of rights, the European Convention on Human Rights generally only accepts limitations prescribed by law and necessary for protecting values in a democratic society. This requirement that there be a law, which by its nature is of general and prospective application, which formulates the limitation is an important guarantee of real protection of rights.

However, in Canon Law rights can be regulated by law, by issuing a particular law for diocese, for example, but also through the use of ad hoc administrative measures, directly focusing on a concrete situation.

The right to freedom of religion itself provides a good example of the differing nature of rights in the civil sphere and rights in the Church. The European Court of Human Rights has stated:

“[A]s enshrined in Article 9, freedom of thought, consciousness and religion is one of the foundations of a ‘democratic society’ within the meaning of the convention. It is in its religious dimension, one of the most vital elements that go to make up the identity of believers and their conception of life, but it is also a precious asset for atheists, agnostics, sceptics and the unconcerned. The pluralism indissociable from a democratic society, which has been dearly won over the centuries, depends on it.”4

The Roman Catholic Church has advocated freedom of religion,5 as has the World Council of Churches, which is comprised of 349 churches, including most of the world’s Orthodox churches and Anglican,

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Baptist, Lutheran, Methodist and Reformed churches. Yet within any church, freedom of religion is not possible. While it may be argued that all persons should be free to choose to adhere to a religion or belief system of their choice, or indeed none at all, once one chooses to adhere to a religion, one must accept the central tenets of that religion. The 2002 heresy trial within the Church of Ireland of the former Dean of Clonmacnoise and rector of Trim and Athboy, Very Rev Andrew Furlong, after he published his belief that Jesus was not divine on a parish website is but one example of this. Any interference with the right of religious communities to require this is itself an interference with the right to freedom of religion of that group.

The European Court of Human Rights has generally been reluctant to allow interference in the internal organisation of churches. In holding that the internal organisation of a denomination fell within a manifestation of religion in the cases of Serif v Greece, Agga v Greece and Supreme Holy Council of the Muslim Community v Bulgaria, the Court ruled that this precluded the respective governments from interference by seeking to determine their leadership. However, where procedural rights are involved and a process of Church Law has civil repercussions, the degree of deference shown by the Court appears to be considerably less. In the case of Pellegrini v Italy, the applicant’s marriage was annulled by a decision of the Vatican courts which was declared enforceable by the Italian courts. As the Vatican has not ratified the Convention, the application was lodged against Italy. The Court held that Italian courts, before authorising enforcement of the decision annulling the marriage, were required to satisfy themselves that the proceedings before the ecclesiastical courts fulfilled the guarantees of Article 6 of the Convention.

The Florence Court of Appeal had held that, the circumstances in which the applicant had appeared before the Ecclesiastical Court and the fact that she had subsequently lodged an appeal against that court’s judgment, were sufficient to conclude that she had had the benefit of an adversarial trial. The Court of Cassation held that, in the main, ecclesiastical court proceedings complied with the adversarial principle. However, the European Court of Human Rights was not satisfied by these reasons.

The European Court criticised the fact the applicant had not had the possibility of examining the evidence produced by her ex-husband and by the “so-called witnesses”. The Court reiterated that the right to adversarial proceedings, which is one of the elements of a fair hearing within the meaning of Article 6 § 1, means that each party to a trial, be it criminal or civil, must in principle have the opportunity to have knowledge of and comment on all evidence adduced or observations filed with a view to influencing the court’s decision.

It was deemed irrelevant that, as the nullity of the marriage derived from an objective and undisputed fact, the applicant would not in any event have been able to challenge it. It was for the parties to a dispute alone to decide whether a document produced by the other party or by witnesses’ calls for their comments. What was at stake was the litigants’ confidence in the workings

10. Pellegrini v Italy (2002) 35 ECHR 44.
11. Article 6 requires that “[i]n the determination of his civil rights and obligations . . . everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law”.

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of justice, which is based on, *inter alia*, the knowledge that they have had the opportunity to express their views on every document in the file.

The position was no different with regard to the assistance of legal representation. Since such assistance was possible, even in the context of the summary procedure before the Ecclesiastical Court, the applicant should have been put in a position enabling her to secure the assistance of a lawyer if she wished. In the Court’s opinion, given that the applicant had been summoned to appear before the Ecclesiastical Court without knowing what the case was about, that court had a duty to inform her that she could seek the assistance of a lawyer before she attended for questioning.

In those circumstances, the Court considered that the Italian courts breached their duty of satisfying themselves, before authorising enforcement of the Roman Rota’s judgment, that the applicant had had a fair trial in the proceedings under Canon Law. Therefore, there had been a violation of Article 6 § 1 of the Convention.

Closer to home, in *Buckley v Daly*, in the High Court of Justice in Northern Ireland, Campbell J drew on case law which permits courts to interfere with the rules of a voluntary association to protect a civil right or interest which is said to be infringed by their operation. The court proceeded to examine whether the plaintiff had been incardinated into a diocese under Canon Law. It is important to note in this regard that he was not content to accept the determination of the ecclesiastical authorities themselves on that matter.

This line of reasoning, I believe, has important repercussions for all churches seeking to discipline adherents and, particularly, clergy. Any such procedure is likely to have impact upon their “rights and freedoms” in the civil sphere – such as the right to earn a living in an occupation freely entered into or the right to a reputation, as protected by Article 6.

Therefore, it would seem to this author that an increasing awareness of rights within the Roman Catholic Church and other Christian churches is inevitable, whether as a result of an increased awareness of rights by the Christian faithful, its reception from civil law or, as a result of having been foisted upon them by civil courts. The Code of Canon Law could provide a rich juridical basis for a rights-based approach to the governance of the Church, albeit one which was been scarcely examined by Canonists or secular lawyers. Current trends in the Roman Catholic Church to maintain a separation between the two and, indeed, to view Canon Law as a branch of theology rather than law, do not bode well for the smooth evolution of such an approach.

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13. The right to earn a living in an occupation freely entered into is protected by Article 1 paragraph 2 of the European Social Charter. The right to a reputation is recognised to fall within the protection afforded by Article 6 of the Convention.
The attractiveness of religious liberty to those who hate it

Filip Spagnoli

Religious extremism

This paper examines the relationship between religious liberty and religious extremism. The expression, ‘religious extremism’, does not only or even mainly refer to terrorism, jihad or sectarianism. Those are only the more flagrant instances of religiously inspired human rights violations. All religiously inspired human rights violations are covered here by the concept of religious extremism.

Two other remarks may help to avoid misunderstandings. First, this paper by no means focuses exclusively on Islam. Although most news stories about religious extremism nowadays tend to highlight rights abuses in Islamic countries, history shows that such abuses are not the monopoly of any religion. Second, the existence of religiously inspired human rights violations does not prove that religion, as such, is necessarily incompatible with human rights. This paper does not make this claim. We should be well aware that rights abuses can be inspired by many different ideologies, religious and secular. Moreover, there is ample evidence that the historic evolution of human rights was and still is underpinned by religious motivation. The incompatibility of religion and human rights is the exception. It is limited to some interpretations of some practices of religions. Religion is above all a matter of practice. And conviction and belief can never harm human rights, which is why they benefit from absolute protection by human rights.

Religious liberty

Regarding the concept of religious liberty: what is it and why is it so important? Religious liberty is a human right among other human rights. It contains the freedom of belief, the freedom to practice and promote a freely chosen belief, both in private and in public. It is also the freedom to change belief and the freedom to have no belief at all (the freedom to be non-religious, or the freedom from religion).

Religious liberty is in general words the right to be protected against religious coercion and persecution. One can and does discuss this definition. There is a lot of literature about the precise meaning of religious liberty. I just assume that we can use the definition given here as a working definition for the purpose of this paper.

By protecting people against religious coercion, the right to religious liberty promotes a diverse and plural society, even beyond the field of religion. If there can be diversity and debate in something as important as religion, why not in other fields? So religious liberty functions as an example and a benchmark. It promotes diversity and
debate in general, and hence it promotes other human rights – such as freedom of speech – which can occupy the free public space created by religious freedom. Religious liberty, in the same manner, promotes tolerance. If people can be tolerant – or, better, can be forced to be tolerant – in religious matters, it will be easier to enforce tolerance in other fields.

As a consequence, religious liberty is of importance to everyone, including non-religious persons, and not only because it protects them against the imposition of a religion. It also allows them, and everyone else, to live in a world of diversity, tolerance and human rights. Religious liberty is therefore an integral part of the system of human rights and of crucial importance to a plural world. It is a prerequisite for the whole system of human rights, but also vice versa. Freedoms of speech, of assembly and of association are religious freedoms as well and are prerequisites for religious liberty strictu sensu.

The attitude of religious extremists towards religious liberty

The relationship between religious liberty and religious extremism is ambivalent. On the one hand, we see that religious extremists, especially those living in democracies, use or better abuse religious liberty to justify certain religious practices and norms which violate human rights. On the other hand, and more generally, religious extremists do not like religious liberty. They are universalists. They want to impose their norms on others and do not want others to enjoy religious liberty. Unbelievers do not deserve freedom because they oppose the laws of God, the only God and the God of all human beings. Man does not have the freedom to violate the laws of God.

Religious universalists naturally try to take over the machinery of the state, because then they can use the law, the police, the judiciary, state education, etc, to bring back the “lost sheep”, against their will if necessary.

“[R]eligiously wrong - a motive of legislation which can never be too earnestly protested against. Deorum injuriae Diis curae. Injustices to the gods are the concern of the gods. It remains to be proved that society or any of its officers holds a commission from on high to avenge any supposed offense to Omnipotence which is not also a wrong to our fellow creatures. The notion that it is one man’s duty that another should be religious was the foundation of all the religious persecutions ever perpetrated, and, if admitted, would fully justify them. [...] a determination not to tolerate others in doing what is permitted by their religion, because it is not permitted by the persecutor’s religion. It is a belief that God not only abominates the act of the misbeliever, but will not hold us guiltless if we leave him unmolested.”

Universalism is of course inherent in most major religions. However, religious extremists go beyond the normal religious tendency of promoting universality by persuasion and voluntary conversion. They try to achieve universality by taking away the religious liberty and other human rights of their opponents. They use force and violence, sometimes even terror and war. Even the members of their own groups often suffer rights abuse because of the objective of universality (for example, punishment for apostasy).


2. Perhaps not in Judaism.
(By the way, universalism is not an exclusively religious phenomenon. We can also find it in many non-religious worldviews such as capitalism and communism. We can observe that these other worldviews also tend to violate human rights if they take their universalism too seriously. One could even claim that the ideology of human rights is a kind of universalism. Fortunately, this ideology cannot permit itself to violate human rights for the sake of its universalism, because that would be self-destructive.)

First-level protection against rights violations by religious extremists

I’ve mentioned above, that there is a two-way causation, unity and interdependence in the system of human rights (by the way, this is a recurrent feature in the system, even in parts of it unconnected to religious liberty). This unity can help to solve the problem of the violation of religious liberty by religious extremists and the violation of other human rights justified by religious liberty. Religious extremists can violate human rights in two ways:

- either internally in their own groups, again in two ways:
  - for example, certain religious practices such as gender discrimination, forced circumcision, etc. These practices are often justified as falling under the protection of religious liberty;
  - or by prohibiting exit-attempts – often as a consequence of the previous type of violation – and taking away the freedom of religion in the sense of the freedom to change one’s religion;
- or externally, in their practices directed at outsiders (for example, forced conversion, terrorism, holy war, etc). These practices can violate only the freedom of religion of outsiders, or also their other human rights.

Now, all these practices cannot and should not benefit from the protection offered by religious liberty. No single human right, including the freedom of religion, can justify human rights violations. Human rights have to be balanced against each other and must be limited when they produce human rights violations. Limiting rights for the sake of other rights or the rights of others is a normal practice in the system of human rights. This system is not a harmonious whole. Rights can be contradictory. Take the right of privacy of a public figure trumping the right of freedom of expression of a journalist. Or the right to life of people in a crowd trumping the freedom of speech of one of them wanting to yell “FIRE!” without good reason.

In the case of religious liberty: one could argue that the right to equal treatment and non-discrimination of women, the right to life of apostates and the religious freedom of adherents of other religions trump the right to some religious practices which would normally enjoy protection under the religious liberty articles.

Second-level protection against rights violations by religious extremists

This first-level protection implies, of course, the enforcement, often by force, of human rights against the will of religious extremists. A better protection would be based not on external force but on internal motivation. The central thesis of this paper is the following: notwithstanding the hostility shown by extremists with regard to religious liberty and other human rights, they can be persuaded that they have tactical reasons to accept religious liberty and human rights in general, even if their religious views tell them otherwise. This thesis is based on the force of self-interest as a universal human motivation. It therefore excludes the ultra-extremists who blow themselves up for their religion. They have forsaken
self-interest and cannot be convinced to take a course of action based on self-interest. However, they are a minority even among extremists (some of them probably have not forsaken self-interest but are forced to do what they do). So let us concentrate on the other extremists.

There is reason to believe that societies are becoming more and more diverse, culturally and religiously. As a consequence of migration and globalisation, states are becoming collections of religious sub-communities. This increased diversity of societies means that religious sub-communities need the protection of religious liberty and other human rights. Even the extremists among them, those who want to coerce, can one day, when the demography has changed, be coerced by the opposing extremists. Therefore, they can be tempted to adopt religious liberty and human rights for their own long-term protection even if these contradict their religious beliefs and practices and their universalist claims. At first sight, a universalist religious extremist may not consider religious liberty and the freedom and equality of all religions as being in his self-interest, or even in the self-interest of the adherents of the other religions. On the contrary, it is in his interest that a maximum number of people convert to his religion. From the point of view of salvation, this is also in the unconscious interest of the people to be converted. He may claim that the latter not only should lose their religious liberty, but also their other rights, and perhaps even their life.

But rejecting the religious liberty and other rights of others means destroying the state mechanisms which he may one day need to defend himself against other extremists who immigrate or become stronger through other means. After all, globalisation means that everyone can become a minority everywhere.

It makes sense for a strong majority with universalist claims to reject the rights of minorities, but only in the short-term. In the long term, it’s much more rational to keep the human rights protection mechanisms intact, if not out of conviction, then tactically in order not to cut off the branch one may need to sit on in the future.

Even the protection of human rights internally in a group makes tactical sense. Here it is not a question of counting on reciprocal respect, if necessary enforced by your own reluctant example or by enforcement mechanisms kept intact by your own groups’ respect for them. Respect for the rights of the members of your own group also helps to maintain a rights enforcing state which can help protect you against other groups.

Of course, this reasoning requires rationality and objective analysis of self-interest on the part of religious extremists, which is perhaps utopian.

**Inclusive and exclusive norms**

We can put all this in another way by making the distinction between inclusive and exclusive norms. Inclusive norms are norms such as tolerance, freedom of speech, etc. They try to protect plurality and hold different people with different convictions together. Exclusive norms try to win a competitive struggle with other norms and try to exclude difference. For example, homosexuality is a sin. Religious norms are often exclusive norms, but not always (think of caritas for instance) and many exclusive norms are not religious at all (racism for example).
Someone who is attached to an exclusive norm will try to change people, to persuade, convert, perhaps even impose or force. So, exclusive norms may lead to rights violations or violations of inclusive norms. In that case, inclusive norms should, in my view, take precedence. However, for religious people, the commands of God clearly trump human rights. However, it is easier to protect inclusive norms against exclusive norms if religious communities have internalised inclusive norms and only promote, rather than impose, their exclusive norms. In doing so they guarantee that the inclusive norms are alive and well when the exclusive norms of other sub-communities start to manifest themselves. Even extremists may be convinced that this is a rational approach.

3. To stay with my example on homosexuality: there are “clubs”, if you can call them that, in the US where people help homosexuals to “convert” to heterosexuality.
The right to religiously neutral governance

Jeroen Temperman

The relevance of state-religion identification under international law

The global framework of universal human rights protection, particularly as far as the promotion of the rights of religious minorities and women’s rights is concerned, suffers from a lack of consensus and decisiveness on the question: what form of domestic political organisation can actually take these fundamental rights adequately into account?¹ Though it has been globally acknowledged that democratic governance is an indispensable characteristic of political organisation as far as compliance with human rights is concerned,² virtually all other aspects of domestic political organisation are issues for the individual states to freely determine a position and state practice upon. One of these other facets of political organisation is formed by the field of what can be referred to as ‘state-religion identification’, that is, the degree and type of interrelation between the state and religion.³ Worldwide state practice shows an enormous variety of perceptions of the adequate relationship between the state and religion. Some states are explicitly secular, other countries are clear examples of ‘religious states’, while still others exhibit the many conceivable alternatives in between or indeed ‘beyond’ these two extremes – one could readily claim that there are as many different systems in this respect as there are states.

International human rights law is fairly indifferent as to the question of state-religion identification. Human rights law does not explicitly identify a specific form of state-religion identification as a necessary institutional structure to comply with human rights norms.⁴ Moreover, the existence and deliberate preservation of regimes of state-religion identification that reflect preferential treatment of a single

2. Vienna Declaration and Programme of Action, World Conference on Human Rights, Vienna, 25 June 1993, UN Doc A/CONF 157/24 (Part I) at 20 (1993), paragraph 8: “Democracy, development and respect for human rights and fundamental freedoms are interdependent and mutually reinforcing … The international community should support the strengthening and promotion of democracy ….”
4. The ideal of secularism or of separation of state and religion is not a legal notion of public international law since it is in not required by any international agreement. It must be added that such notions could hardly be regarded as principles of customary international law either, since no necessary unequivocal state practice is emerging, let alone a considerable opinio juris sive necessitatis, that is, a global consensus on the necessity of legal recognition and implementation of the given principles.
religion does not ipso facto qualify as a violation of human rights law6 (the question is, though, if this position is tenable).6

Notwithstanding these considerations, a state of non-secularity does raise some concern with respect to questions of human rights compliance in the eyes of the UN Human Rights Committee (the monitoring body of the UN Covenant on Civil and Political Rights)7, as it has stated:

“The fact that a religion is recognized as a state religion or that it is established as official or traditional or that its followers comprise the majority of the population, shall not result in any impairment of the enjoyment of any of the rights under the Covenant, including … [the right to freedom of thought, conscience, and religion and the rights of members of ethnic, religious and linguistic minorities], nor in any discrimination against adherents to other religions or non-believers. In particular, certain measures discriminating against the latter, such as measures restricting eligibility for government service to members of the predominant religion or giving economic privileges to them or imposing special restrictions on the practice of other faiths, are not in accordance with the prohibition of discrimination based on religion or belief and the guarantee of equal protection of the law without any discrimination] …”

Moreover, in carrying out its role of monitoring state parties to the International Covenant on Civil and Political Rights, it does occasionally seem determined to ascertain whether a state is genuinely secular or whether state and religion are truly separated. The Human Rights Committee has, in fact, asked state parties to the ICCPR critical questions concerning their relationship between the state and religion. Occasionally, the Committee considers the existence of an official religion as potentially undermining human rights norms.9

Human rights law and the doctrine of subsidiarity

The International Covenant on Civil and Political Rights, or any other human rights treaty for that matter, does not identify a ‘best practice’ for states to manage state-religion affairs with a view towards ensuring full compliance with everyone’s human rights. Particularly the rights of religious minorities and women’s rights are undermined by this lack of vigorousness. One might find it at the least remarkable that, for instance, the Convention on the Elimination of All Forms of Discrimination Against Women does not mention the word ‘religion’ once,10 given that religious doctrine and belief form the basis or background of a substantial share in the present practices of discrimination against women.

8. Human Rights Committee, General Comment No 22: The Right to Freedom of Thought, Conscience and Religion (Article 18), CCPR/C/21/Rev/Add 4 (1993), paragraph 9 (hereinafter General Comment 22). It is noteworthy that the Human Rights Committee does observe the potential risk of an official or predominant religion undermining the rights of religious minorities and non-believers, yet it fails to recognise the fact that regimes of religious establishment undermine compliance with women’s rights.
A plausible legal-political rationale for this all lies in the following. States show their commitment to respect fundamental rights by signing up to international conventions. These conventions, however, do not make explicit in detail what kind of internal political organisation is necessary for the effective protection of human rights norms. The ‘High Contracting States’ have to comply with international human rights which are codified on established international fora, but these fora have no clear competence on the question how to organise – to that end – the state internally. On the contrary, a vital condition for the ultimate impact and preservation of these international norm-setting institutions is a great deal of subsidiarity. States that ratify human rights conventions have a free hand in the means by which they seek to achieve the set standards. Paradoxically, a ‘better’ human rights convention, in terms of a more intrusive one, will result in a relatively low rate of state consent, which will ultimately affect the legalistic universality of the convention in question. Any demand that regards the state’s form of political organisation is destined to be considered exceptionally intrusive, since political organisation is typically considered to belong to the untouchable spheres of state sovereignty. Conversely, a ‘worse’ convention (in the sense of a less interfering one) will plausibly result in a high rate of state consent and is therefore bound to be more universal. Drafting human rights conventions therefore involves dangerously balancing on this thin line between drafting provisions with teeth and aiming at a maximum degree of universality in terms of worldwide applicability.\textsuperscript{11}

These considerations do by no means demonstrate that there is a – naïve – global consensus that any type of domestic political organisation will suffice as far as the upholding of human rights is concerned. The way the state defines its relationship to religion is undeniably of crucial importance to the issue of guaranteeing equal respect for everyone’s human rights. The fact that the tenets of international law, or of human rights law particularly, have not identified a specific form of state-religion identification as a prerequisite in relation to effective human rights compliance, nor specific forms of state-religion identification as \textit{ipso facto} human rights violations does not follow from research into the matter but is the result rather of a sensitive political compromise.

The question that emerges is, how does the mode of state-religion identification of a state affect the scope for full compliance with human rights?

\section*{State-religion identification and human rights compliance}

\subsection*{The state-religion identification spectrum}

The spectrum of state-religion relationships encompasses different forms of positive state identification with religion; for example, forms that approximate a coincidence of the state and religion or weaker forms such as established religions, state supported religions or forms of state acknowledgement of religion. It also includes different forms of state-religion relations in the European Court of Human Rights.\textsuperscript{11} Evans C and Thomas CA (2006) ‘Church-state relations in the European Court of Human Rights’, Brigham Young University Law Review 3, pp 699-706. European Convention for the Protection of Human Rights and Fundamental Freedoms, 4 November 1950, ETS No 5, 213 UNTS 222 (entered into force 3 September 1953).

\textsuperscript{11} Within the European context, Evans and Thomas argue something similar with respect to the European Convention for the Protection of Human Rights and Fundamental Freedoms: “At the time that the ECHR was drafted, a number of member states had established churches, including the United Kingdom, Sweden, and Norway. If the ECHR had prohibited establishment, then it is quite possible that significant states would not have ratified the ECHR or would have included substantial reservations to their acceptance. These states included important supporters of the ECHR, such as the United Kingdom, which maintains its established church to this day and would likely oppose any attempts to include establishment as a rights violation”. Evans C and Thomas CA (2006) ‘Church-state relations in the European Court of Human Rights’, Brigham Young University Law Review 3, pp 699-706. European Convention for the Protection of Human Rights and Fundamental Freedoms, 4 November 1950, ETS No 5, 213 UNTS 222 (entered into force 3 September 1953).
of state identification with secularism; for example, French-style separation based on the laïcité doctrine, American ‘wall of separation’ notions and concepts of disestablishmentarianism based on the First Amendment doctrine or secularity notions which, rather than underscoring the importance of exercising political authority free from religious fallacy, seek to emphasise the necessity of the autonomy of religious institutions (that is, religious organisations free from governmental interference). The spectrum finally encompasses forms of identification that go beyond such rigid bipartite classification into secular/religious; for example, ‘indifferent states’ (states which leave the religious question undecided), states that seek state control over religion, or states that adopt a downright antagonistic stance vis-à-vis religion.12

Religious and secular zealotry

In order to substantiate the claim that human rights violations are inevitable under certain regimes of state-religion identification, two examples will be elaborated upon in more detail – one to be placed on the extreme religious and the other on the extreme secular side of the state-religion identification spectrum.

(i) Religious laws as ipso facto human rights violation

One of the principal characteristics of states with a strong positive identification with a single religion or religious denomination is reflected by the substantial degree to which the legislative, executive and judicial branches of the state are subjected to religion – in other words, the political organisation of these states is permeated with religious laws. Such is usually constitutionally guaranteed by provisions to the effect that “no law shall be contrary to religious laws” or “all laws shall be based on religious laws”, symptomatically in conjunction with a variety of constitutional provisions forcing the legislative, executive and judicial branches of the state to comply with that demand.13

Human rights scholarship has been rather persistent in criticising religious laws by pointing out the fact that the tenets of the religious laws in question, that is, as regards content, might, when legalised or judicially enforced, qualify as human rights violations. Depending on the exact content and implications, the application of a specific religious rule might amount to a breach of the right to freedom of religion or of the equality/non-discrimination principle (or of both), or of any other human right as enshrined in human rights law (possibly in conjunction with the right to freedom of religion or the equality/non-discrimination


13. The constitutions of some states that identify with Islam provide expressly that no law shall be contrary to Islamic principles or Shari’a law and put constitutional safeguards in place to enforce that command; for example: Afghanistan, Algeria, the Maldives, Iraq, Pakistan and Saudi Arabia. See articles 3 and 131 of the Constitution of the Islamic Republic of Afghanistan (2004); articles 9 and 171 of the Constitution of the People’s Democratic Republic of Algeria (1976); article 2, paragraph 1, and article 89 of the Constitution of the Republic of Iraq (2005); article 43 of the Constitution of the Republic of Maldives (1996); articles 203D and 227, paragraph 1, of the Constitution of the Islamic Republic of Pakistan (1973); articles 7–8, 11, 23, 55, 57 and 67 of the Basic Law of Government of Saudi Arabia (1992). Some constitutions provide that Shari’a law (and/or Islamic principles) is to be the sole, principal or main source for legislation and put constitutional safeguards in place to enforce that command; for example: Bahrain, Egypt, Kuwait, Mauritania, Oman, Qatar, Somalia, Syria, United Arab Emirates, and Yemen. See articles 2, and 5–6 of the Constitution of the Kingdom of Bahrain (2002); articles 2 and 11 of the Constitution of the Arabic Republic of EGYPT (1971); article 2 and article 18, paragraph 2, of the Constitution of the State of Kuwait (1962); preamble and article 94 of the Constitution of the Islamic Republic of Mauritania (1991); articles 2 and 11 of the Basic Law of the Sultanate of Oman; Royal Decree No 101/96 (1996); articles 1, 51, 74, 92 and 119 of the Permanent Constitution of the State of Qatar (2003); article 8, paragraph 2, of the Transitional Federal Charter of the Somali Republic (2004); article 3, paragraph 2, of the Constitution of the Syrian Arab Republic (1973); articles 7 and 12 of the Provisional Constitution of the United Arab Emirates of 1971 (which was subsequently made permanent by Constitutional Amendment no 1 of 1996); and articles 3, 7, 22, 31, 48 and 59 of the Constitution of the Republic of Yemen (1994).
principle). The victims of these violations are predominantly (but not only) members of religious minorities and women. 14 So far underemphasised, however, is the fact that the very subjection of an individual to the religious rules of the establishment amounts ipso facto to a human rights violation.

The International Covenant on Civil and Political Rights provides that all persons are equal before the law and that they are entitled without any discrimination to the equal protection of the law; in this respect, any discrimination on the ground of religion made by laws is expressly prohibited. 15 The freedom to manifest one’s religion or belief (including non-theistic and atheistic beliefs), as enshrined in the same treaty, can only be limited if limitations are prescribed by law and necessary to protect public safety, order, health, morals or the fundamental rights and freedoms of others: the protection of the state endorsed version of religion is not a legitimate ground for limitation. 16 Moreover, limitations based on the protection of morals cannot be justified on the basis of a reference to the exclusive morality of a single religious tradition. 17 Consequently, any instance of compulsory application/ enforcement of religious laws constitutes a human rights violation. The subjection of individuals to state sanctioned interpretations of religious laws (and to the derivative jurisdiction of religious Courts) runs counter to the principles of freedom of religion in conjunction with the non-discrimination principle. 18 This seems a fortiori the case if the person involved does not adhere to the religion from which the religious laws derive (that is, members of religious minorities or non-believers); it can be argued, however, that also compulsory application of religious laws to adherents of the state sanctioned religion is contrary to human rights law. Only explicit personal consent to the application of religious laws – that is, on a case-by-case basis – could arguably obviate a degree of the illegitimacy of the application of religious laws. The fact

14. Far from being exhaustive, the following might give some insights into the substantial human rights violations resulting from the application of religious laws. Apostasy/conversion prohibitions violate everyone’s right to freedom of religion (article 18 of the ICCPR). Granting non-Muslims an inferior legal and social status (Dhimma) violates the rights of members of religious minorities (articles 26 and 27 of the ICCPR). Women’s rights are restricted or equality between men and women is undermined by religious laws in the following ways. Regulations that are said to derive from Islamic law pertaining to marriage are expressly discriminatory in Algeria, Bahrain, Iran (NB: Iran is not a party to CEDAW), Kuwait, Pakistan, Saudi Arabia, United Arab Emirates and Yemen. The status of married women, under these laws is symptomatically one of disparity which runs counter to the principle of equality in marriage and family situations (article 16 of CEDAW). The prohibition, aimed at Muslim women, to marry non-Muslim men violates the rights of women to freely choose a spouse (for example: Algeria, Bahrain, Kuwait, Pakistan, United Arab Emirates and Yemen; article 16, paragraph 1(a) of CEDAW); the same holds true if a woman has to convert to Islam in order to be able to marry a Muslim man (for example: Saudi Arabia) – in addition, such demands violate her equal right to freedom of religion and the prohibition of coercion in religious affairs (article 18, paragraph. 1 and 2 of ICCPR. See also: Tahzib-Lie BG (1999) ‘Women’s equal right to freedom of religion or belief: An important but neglected subject’, in Howland CW (ed) Religious Fundamentalisms and the Human Rights of Woman, Palgrave, New York, 117 on women’s equal right to freedom of religion. The practice and state endorsement of polygamous marriages (for example: Algeria, Syria, United Arab Emirates and Yemen) also violates women’s rights to equality with men (article 5 in conjunction with articles 15 and 16 of CEDAW). Religious personal status laws on divorce and child custody that restrict or neglect the rights of women violate (for example: Bahrain, Syria, Qatar (NB: not a party to CEDAW) and the United Arab Emirates) the principle of equal rights at and after the dissolution of a marriage (article 16, paragraph 1(c) and (d), of CEDAW; such regulations can be particularly harsh with respect to non-citizens, that is: usually non-Muslim, women. Religious dress rules violate the prohibition of coercion in religious matters – if enforced regardless of the religious affiliation of the individual it additionally constitutes a violation of the right to freedom of religion proper (for example: Iran and Saudi Arabia). Religious laws favouring male heirs in adjudicating their inheritance claims and/or denying or restricting women’s inheritance claims – usually legally curtailed by half – (for example: Algeria, Egypt, the Maldives, Oman and Syria) violate women’s equal economical rights; such regulations are occasionally particularly discriminatory vis-à-vis non-Muslim women (for example: Algeria, Kuwait and Qatar) or women adhering to specific Muslim sects (article 2 in conjunction with article 5 and article 16 of CEDAW; for example: Bahrain and Kuwait). Religious regulations which consider the testimony of a woman not equal to that of a man – usually the testimony of a woman is worth half that of men, that is: the testimonies of two women is required to equal that of one man (either as a general rule or with regard to certain subject matters only) – violate women’s right to equal treatment in all stages of judicial procedures (article 15, paragraph 2, of CEDAW: for example: Kuwait, the Maldives, Mauritania, Saudi Arabia and Qatar). Religious laws that render the religion of the child automatically as Islamic by virtue of the child having a Muslim father – thus regardless of the religion of the mother – violate women’s equal right as parents in deciding upon matters relating to their children (article 16, paragraph 1(d), of CEDAW; for example: Algeria, Saudi Arabia and Qatar).

15. Article 26 of ICCPR.

16. Article 18, paragraph 3 of ICCPR.

17. Human Rights Committee, General Comment 22, paragraph 8, on allowed and illegitimate limitations.

18. Article 18 in conjunction with article 26 of ICCPR.
that in this scenario, in effect, different laws will apply to different people – invariably – runs counter to the tenor of the equality/non-discrimination principle as enshrined in international human rights law.  

(ii) Prohibition of religious political parties as ipso facto human rights violation

One of the principal characteristics of states with a strong identification with secularism is reflected by the substantial degree to which the entire legislative, executive and judicial branches of the state are subjected to secularism (and occasionally to atheism or antagonism vis-à-vis religion). The political organisation of these states is constructed in such a manner so as to eradicate the role of religion in the public domain. Some states have, to that end, constitutionally codified an absolute ban on religious political parties.

These prohibitions run counter to human rights law as the right to freedom of association in conjunction with the right to freedom of religion and the non-discrimination/equality principle allow each individual to found such a political party. Even if it could be argued that one of the grounds for limitation – namely, the interests of national security or public safety, public order, the protection of public health or morals and the protection of the rights and freedoms of others – could be invoked in the context of the state’s interest in upholding the secularity of the state, it is hard to see how such a rigid measure could be considered necessary in a democratic society. In a genuine democratic state, constitutional safeguards are in place so as to ensure that laws and regulations that are ultimately adopted in the political process are designedly non-discriminatory and to ensure that, should laws be discriminatory in effect, effective remedy procedures are in place to indemnify the disadvantaged people and to cease and avoid further discriminatory practices in this respect. In other words, it seems implausible that the toleration of religious political parties within the political discourse necessarily eventuates in discriminatory laws or state practices – that is, as long as the right constitutional safeguards are in place.

These safeguards should first and foremost aim at dismantling any religiously based discriminatory intent within the political consultation process itself; in addition, it is essential that the Constitution protects against the possible (‘democratic’) subjection of the state to a single religion proper – which is best guaranteed by constitutionally codifying a so-called non-establishment clause. If a political party adopts a program which is inclined towards religious zealotry and if it for instance plans to replace the secular nature of the state by a regime of established religion,
and/or plans to press for laws and practices which run counter to human rights law, such a party can under circumstances be dissolved – yet always on a case by case basis and not by virtue of a generic, sweeping constitutional prohibition; never subject to a decision by the executive, but by a (constitutional) Court; never before the party is actually founded, but only once it can be concluded that democratic or human rights principles are violated or are likely to be violated on the basis of its agenda or actions.25

Conclusion: the right to religiously neutral governance

Singling out these two issues – religious laws and the prohibition of religious political parties – is by no means intended to claim that there are no other urgent human rights related questions pertaining to the state-religion identification spectrum: there are many. The two analysed issues can arguably be considered to be among the most objectionable; a large amount of other issues ought to be tackled through human rights scholarship.

At the religious end of the spectrum, topics to be highlighted include: religious reservations to human rights treaties; establishment of religion as ipso facto human rights violation; constitutional theism and official acknowledgment of God-notions; religious qualifications for holding public office; religious inaugurations of public offices (‘religious oaths’); compulsory religious education; the widely ignored right to freedom of religion of the child; and the compulsory mention of one’s religious affiliation on IDs.

At the secular end of the spectrum, topics to be flagged include: forms of secularism as deliberate/disguised state control over religion; secularity as express ground for limiting human rights; bans on religious education/compulsory secular education; and the objectionable policies regarding registration of religious groups and anti-sect policies.

In conclusion, the absence of a considerable degree of state neutrality with respect to religious issues has a detrimental effect on human rights compliance. Human rights violations are inevitable whenever states usurp authority to enforce a state sanctioned view on the so-called ‘right belief’ or to rigidly enforce a state of secularism or atheism. As human rights law empowers the individual to decide for him or herself what to believe and as human rights law forbids states to make legal or pragmatic distinctions on the basis of such personal religious affiliation, any form of excessive identification of the state with religion or secularism will inevitably run counter to human rights principles. Non-discrimination/equality principles in conjunction with the right to freedom of religion or belief as enshrined in international human rights law require the state to deal with its subjects in a neutral, that is, a non-preferential or non-discriminatory, manner. In short, the state should respect everyone’s right to religiously neutral governance.

Afterword

Righteousness: A word profile

Johnston McMaster

Introduction

Righteousness sounds like a word from past times, belonging to earlier centuries and past its sell-by-date. The negative connotation is of bad religion characterised by the stereotypical Pharisees. The latter image is a caricature of otherwise good people invented by the more legally minded among us to justify our own righteousness.

Now recognised as a classic of Scottish literature is James Hogg’s *The Private Memoirs and Confessions of a Justified Sinner*. When published in 1824, it met with hostility from its reviewers. As a novel, it was seen as a dangerous polemic against religion and was therefore pushed off the literary map until its rediscovery in 1947. The book, republished again in 2008, is a masterpiece and a scathing critique of organised religion in Scotland of the early eighteenth century. This key Scottish text is a profound study of bad religion, of self-righteousness as displayed by one of God’s elect. Robert Wringhim presents his religious CV:

“I kept myself also free of the sins of idolatry, and misbelieve, both of a deadly nature; and upon the whole, I think I had not then broken, that is absolutely broke, above four out of the ten commandments; but for all that, I had more sense to regard either my good works, or my evil deeds, as in the smallest degree influencing the eternal decrees of God concerning me, either with regard to my acceptance or reprobation. I depended entirely on the bounty of free grace, holding all the righteousness of man as filthy rags, and believing in the momentous and magnificent truth, that the more welcome was the believer at the throne of grace.”

Robert regards himself as one of God’s elect, justified by God, and no behaviour on his part can ever change that. Even the murder of his brother can be rationalised as doing God’s will and removing evil from the earth. Robert counts himself a righteous person but is an example of the worst kind of self-righteousness. Unfortunately in a society where religious practice is still relatively high, righteousness has this negative and off-putting profile. Can an exclusively religious word be rescued?

Hebrew scriptures

Righteousness is a key word in the Hebrew Scriptures, but it is never a standalone word. It is always used within a cluster of interrelated and interchangeable words. More significantly, righteousness is closely

associated with a larger idea at the heart of Israel’s experience and thinking. This is the radical social vision which Israel knows as covenant, the relationship between God and Israel which called the people to envision and live as an alternative socio-economic and political community. Israel’s community was to be radically different from the elitist, hierarchical and oppressively structured society of communities around them. The covenant alternative was to be based on more egalitarian, equitable, just, compassionate and caring community relationships.

Righteousness is to be understood in relation to this covenant vision. The covenantal cluster of words are justice, righteousness, steadfast love and peace. They are the key covenantal words, the core values at the heart of Israel’s community vision and praxis. The Hebrew scriptures do not use one without the others. To understand righteousness, therefore, is to give attention to justice, steadfast love which is committed, social solidarity and peace which is the total well-being of human and environmental relationships.

Righteousness could be translated as right relations. It is essentially a relational word rooted in the covenantal vision of a radically different community characterised by distributive and restorative justice, social solidarity, compassion and holistic well-being. It is also an ethical term referring to the kind of people who are committed to sustaining and enhancing community health and well-being. Righteousness, or right relations, is a communitarian ethic which is expressed especially through solidarity with the poor and marginalised of society.

Israel’s communitarian ethic of righteousness was derived from the very character of God. Abraham Heschel, the twentieth century Jewish scholar in his classic work on the Hebrew prophets, asserts that the justice and righteousness of God are “an a priori of biblical faith …given with the very thought of God”, inherent in God’s essence and identified with God’s ways.2 “For the Lord is righteous; he loves righteous deeds…” (Psalm 11 v 7). This is who God is in Godself, active in putting relationships right, especially for the victims of economic poverty and social oppression. Righteous people, therefore, do righteous deeds and engage in the same socially radical activity.

Heschel draws an interesting distinction between the inseparable pair, justice and righteousness. After underlining that justice (Mishpat) and righteousness (Tzedakah) are in parallelism, he suggests that “justice is a mode of action, righteousness a quality of the person”. Furthermore, righteousness implies kindness and generosity. “Justice may be legal; righteousness is associated with a burning compassion for the oppressed”.3

Israel’s poetry sketches this in theo-ethical terms. Classic examples are Psalms 15, 24, 37 and, especially, 112 v 4-9. The righteous are gracious and merciful and practice justice. They distribute freely and give to the poor.

Righteousness is core to Israel’s prophets who “use the term specifically concerning the care of the poor, so that it has an economic component, but more generally ‘righteousness’ refers to taking responsibility for the community”4.

Israel’s poetry and prophets contrast the wicked with the righteous, not in any narrow self-righteous way. The wicked are those who are greedy, grasping, socially egoistic and whose lifestyle is neglect or denial of

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3. Heschel, p 256.
the poor, victimised and oppressed, and therefore destructive of community.

**Christian scriptures**

Righteousness is also a pervasive idea in the Christian scriptures. The Sermon on the Mount, in Matthew 5-7, is set in the context of economic exploitation and a lengthy economic depression. The Matthean Jesus teaches an active compassion and merciful justice that liberates the poor from poverty and restores them into community. Matthew 6 v 1-18 deals with the “practice of piety” which is really the “practice of righteousness or justice” (Dikaiosyne). The same word is used in the call to “strive first for the Kingdom of God and his righteousness” (Mt 6 v 33). The reign of God, central to all that Jesus was and did, is the reign or kingdom of right relations, social justice, active solidarity and liberating action with the victims of life and its domination systems.

Again, righteousness in the Christian scriptures is used within a cluster of words centred on God’s kingdom or reign. These are peace, justice, righteousness, deliverance or salvation, or liberation.

Paul is on a similar wavelength, especially in his Letter to the Romans. Paul has been distorted by a Western individualistic reading which has turned him into an advocate of the self-righteousness scathingly attacked by James Hogg. But Romans requires a more contextual and social reading. Paul is dealing with relationships and righteousness as right relations. His use of the word ‘Dikaiosyne’ is essentially about the social dimension to God’s justice. Paul is not only rooted in his Hebrew scriptures, he closely connects justification, righteousness and justice, all as social and relational terms, and even more so as social experiences. Paul’s social vision is of a “new world through the power of God’s justice – a justice that ends division, binds people together, and promotes all on the same level...”.

**Rights and righteousness**

Far from being a negative word with the profile that Hogg’s character, Robert Wringhim, gave it, a self-righteous, superior, holier than thou, ever so strict but inconsistent Christian; righteousness is a positive word at the heart of all that God is and does in the world. It shapes, with the cluster of words to which it belongs, a communitarian ethic, a way of life actively bringing about restored social relationships and committed to building a community of peace (Shalom). The particular investment alongside the poor, victimised, marginalised and oppressed that righteousness implies, means that the pursuit of human rights is inseparable from the righteous life and righteous deeds called for by the Judeo-Christian scriptures.

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