

The Concept of Human Rights in Judaism, Christianity and Islam

Key Concepts in Interreligious Discourses



Edited by
Georges Tamer

Volume 2

The Concept of Human Rights in Judaism, Christianity and Islam



Edited by
Catharina Rachik and Georges Tamer

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Preface

The present volume in the book series “Key Concepts in Interreligious Discourses” (KCID) contains the results of a conference on the concept of human rights in Judaism, Christianity and Islam held at the Friedrich-Alexander-Universität Erlangen-Nürnberg on December 15–16, 2016. The conference was generously funded by the Hanns Seidel Foundation, which I wish to thank for its manifold and continuous support of our investigation of interreligious discourses in the service of social cohesion and mutual understanding among people of different faith.

The conference and book series “Key Concepts in Interreligious Discourses” (KCID) belong to the main projects of the Bavarian Research Center for Interreligious Discourses (BaFID). The main aim of the Center is the study of the fundamental ideas and central concepts in Judaism, Christianity and Islam in order to uncover their reciprocal connections and reveal similarities and differences between these three religions. In this way, BaFID endeavors to deepen peaceful relationships between religious communities by communicating obtained research results. In addition to the published volumes, particularly salient selections from each volume are made available online in Arabic, English and German on BaFID’s website.

In this fashion, BaFID fulfills its aspirations not only by reflecting on central religious ideas amongst a small group of academic specialists, but also by disseminating such ideas in a way appealing to the broader public. Academic research which puts itself at the service of society is vital in order to counteract powerful contemporary trends towards a form of segregation rooted in ignorance, and to strengthen mutual respect and acceptance amongst religions. Such a result is guaranteed due to the methodology deployed by the research center, namely the discursive investigation of the concepts, as documented in the present volume on the concept of human rights.

I wish to thank Dr. Albrecht Döhnert, Dr. Sophie Wagenhofer and their assistants at the publisher house De Gruyter for their competent caretaking of this volume and the entire book series. I would also like to thank Dr. Samuel Wilder for his language assistance in preparing the volume.

Georges Tamer
Erlangen, March 2022

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Heiner Bielefeldt

Introduction: Human Rights and Religion(s)

1 Exploring a Multifaceted Relationship

Since World War II, human rights have become the central reference of an international normative consensus.¹ Already the *UN Charter* demands “respect for human rights and for fundamental freedoms of all without distinction as to race, sex, language or religion” as one of the main aspirations of the newly constituted world community.² While this reference remains rather abstract, the *Universal Declaration of Human Rights* (UDHR), issued by the General Assembly on 10 December 1948 represents the historical and political breakthrough at the international level.³ The preamble starts with the due “recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family”, thus setting the tone for the rest of the document. Article 1 summarizes the normative profile of human rights by proclaiming: “All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.” The remaining articles spell out a broad range of specific rights, which include civil and political as well as economic, social and cultural rights. The right to freedom of religion or belief (article 18) is of particular significance for the present chapter. It reads as follows: “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.” In the subsequent decades UDHR served as the main reference document for the development of legally binding human rights conventions, including the 1966 *International Covenant on Civil and Political Rights*, which in article 18 confirms and further specifies the right to freedom of religion or belief.

1 This article follows in large parts chapter 9 by Bielefeldt, Heiner/Wiener, Michael, *Religious Freedom Under Scrutiny*, Philadelphia: University of Pennsylvania Press, 2020. I would like to express my profound gratitude to Penn Press for the permission to use the text for this introduction.

2 United Nations, *United Nations Charter*, article 1, para. 3, <https://www.un.org/en/about-us/un-charter/full-text> (accessed on 28.02.2022).

3 United Nations Dag Hammarskjöld Library (ed.), *General Assembly Resolution 217 A*, December 10, 1948, <http://www.un.org/en/sections/documents/general-assembly-resolutions/> (accessed on 28.02.2022).

While human rights are immediately binding upon States, which under international law are supposed to function as formal guarantors of these rights, their underlying normative ethos permeates societal groups as well, including religious communities. In particular, if religious communities wish to exercise an impact on public political life, they must clarify their own attitude towards human rights. This presents a number of challenges, which religious communities have to face. As I will point out, the liberating spirit does not always fit easily with all elements of the traditional ethical teachings of many religions. The need for clarification, however, also rests on the side of human rights. Obviously, the normative consensus that human rights represent remains precarious. Apart from the proverbial cleavage between normative aspirations and stubborn realities, which has always existed, the very idea of human rights has recently come under renewed pressure. Whereas in the past, criticism of human rights often came from the political left, objections against human rights nowadays often manifest themselves in the language of “traditional religious values”.⁴ This is one of the reasons, why it is also in the interest of human rights to clarify the relationship towards religion.

In this introduction, I first describe some *prima facie* affinities and conflicts between the human rights approach and religions (sections 2 and 3). In order to explore that relationship more systematically, I then analyze one of the core functions that define the human rights approach, namely shaping peaceful co-existence of people of different religious or belief-related orientations by empowering human beings (section 4). This empowerment function explains the specific normative authority that human rights claim, including when dealing with religious communities, as well as certain limitations inherent in the human rights approach. The introduction concludes with describing freedom of religion or belief as a custodian right against the danger of turning human rights into an object of idolatry (section 5).

2 Affinities

Human rights language abounds with religious ideas, metaphors and concepts. The 1776 *Declaration of Independence* invokes God as the ultimate guarantor of fundamental rights: “We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable

⁴ See below, section 3 of this introduction.

rights [...].”⁵ The French Revolution’s *Déclaration de droits de l’homme et du citoyen* (1789), while not explicitly presupposing a divine authority, contains the notion of sacredness, which occurs twice in the text. According to the preamble, the authors “have resolved to set forth in a solemn declaration the natural, inalienable and sacred rights of man.” Article 17 qualifies property as a “sacred and inviolable right”.⁶ Kant, otherwise known as the intellectual epitome of Prussian sobriety, venerates human rights as the “apple of God’s eye”.⁷ In his essay on enlightenment, he warns that “to give up enlightenment altogether, either for oneself or for one’s descendants, is to violate and to trample upon the sacred rights of man.”⁸ A century later, Émile Durkheim declares human rights to be part of a quasi-religious sacralization of the individual, which he thinks belongs to the most important moral achievements of the modern era.⁹ Drawing on Durkheim’s thoughts, Hans Joas recently published a book titled *The Sacredness of the Person*.¹⁰

The peculiar closeness to religious language is no coincidence. Notions like “inalienability” or “inviolability” illustrate that human rights exceed the usual pragmatic functions of law. They touch upon existential questions of human life: the inherent dignity of every person, the unconditioned conditions of any normative interaction, the self-understanding of human beings as responsible agents, the ultimate foundations of morality and law, i.e. issues that have also been a traditional domain of various religions. Human rights norms enjoy an elevated rank within the sphere of law. They are not rights like any rights, which people may possess or not possess, appreciate or ignore, acquire or abandon, because what is at stake in human rights is no less than the humanness of the human being. This warrants their qualification as “inalienable rights”. Some human rights standards, like the ban on torture or the prohibition of infringements into the person’s inner nucleus of faith-formation, command an apodictic

5 Cf. Ushistory.org (ed.), *US Declaration of Independence of 1776*, www.ushistory.org/declaration/document (accessed on 28.02.2022).

6 Cf. The History Guide (ed.), *French Declaration of the Rights of Man and the Citizen*, August 1789, <http://historyguide.org/intellect/declaration.html> (accessed on 28.02.2022).

7 Kant, Immanuel, “Toward Perpetual Peace,” in: Mary Gregor (ed.), *The Cambridge Edition of the Works of Immanuel Kant. Practical Philosophy*, 311–52, Cambridge: Cambridge University Press, 1996, 325: footnote.

8 Kant, Immanuel, “What is Enlightenment?,” in: Mary Gregor (ed.), *The Cambridge Edition of the Works of Immanuel Kant. Practical Philosophy*, 11–22, Cambridge: Cambridge University Press, 1996, 20.

9 Cf. Durkheim, Émile, *Les formes élémentaires de la vie religieuse*, Paris: Félix Alcan, 1912.

10 Joas, Hans, *The Sacredness of the Person. A New Genealogy of Human Rights*, Washington D.C.: Georgetown University Press, 2013.

respect without any justifiable exceptions or limitations, even in situations of emergency. These and other prohibitions demarcate the “red lines”, which a State must never cross, regardless of the political circumstances. It is no coincidence that these prohibitions have been qualified as “absolute” norms, thus again carrying a predicate that seems to stem from the religious sphere.

One can describe the affinities between human rights and religion from the opposite angle. Some of the principles and concepts that define the human rights approach – human dignity, justice, liberation and equality – resonate profoundly within religious and philosophical traditions.¹¹ The most frequently cited Biblical metaphor accounting for the special rank of human beings is man’s and woman’s creation “in the image and likeness of God”.¹² The book of Genesis concludes that shedding human blood is taboo.¹³ In Psalm 8, the singer admires the sublime beauty of the nightly sky, which makes him simultaneously aware of his frailty and his special calling within the whole of creation. He turns to God wondering: “What is man that you are mindful of him, and the son of Adam that you care for him.”¹⁴ Psalm 8 in a way anticipates Kant’s observation that “the starry heavens above me” and “the moral law within me” together “fill the mind with ever new and increasing admiration and reverence.”¹⁵ Another famous Biblical reference is Israel’s escape from slavery. The exodus provides a powerful narrative, which already inspired the first generations of abolitionists in their fight against slave trade and slavery. “Let my people go” – this refrain of a famous gospel song has become the banner of numerous liberation movements to the present day.

Such motives are not a monopoly of the Biblical tradition. The Qur’ān acknowledges man’s role as God’s vicegerent (*khalifa*) on earth,¹⁶ which is the reason why even the angels have to bow before Adam.¹⁷ According to sura 33, the human being has taken from God a trust (*amāna*), which the mountains and the heavens, representing the most powerful cosmic elements, had previously re-

11 For an overview cf. Swidler, Arlene (ed.), *Human Rights in Religious Traditions*, New York: The Pilgrim Press, 1982.

12 Gen 1:27.

13 Gen 9:6.

14 Pss 8:5 English standard version.

15 Kant, Immanuel, “Critique of Practical Reason,” in: Mary Gregor (ed.), *The Cambridge Edition of the Works of Immanuel Kant. Practical Philosophy*, 133–272, Cambridge: Cambridge University Press, 1996, 269. This dictum, which sums up Kant’s whole philosophy, has been carved in his tombstone.

16 Sura 2:30.

17 Sura 2:34.

jected.¹⁸ This Qur'ānic verse describes the simultaneous awareness of human frailty and human calling, roughly analogous to Psalm 8. The Qur'ān furthermore warns that whoever kills a man acts as if he killed the whole of humanity,¹⁹ thus ascribing to each individual human being a worth above any utilitarian calculation.

The possibilities to invoke substantial affinities between human rights and religions are manifold and accommodate a broad variety of religious traditions.²⁰ From this observation, it is only a small step to postulating that human rights and religions move in the same direction concerning their basic normative aspirations. It has been a popular assumption that the ethical principles underlying human rights stem from the Jewish-Christian tradition. Some commentators have defined human rights as “Christian values” in a modern guise.²¹ The authors of the *Universal Islamic Human Rights Declaration* of 1981, in turn, contend that human rights directly stem from the Qur'ān.²² Others take a more ecumenical approach by pointing to substantive overlaps between all the major religions and modern ideas of dignity and rights.²³ Incidentally, it is not only religiously interested people who wish to demonstrate similarities between the ethos of various religions and modern standards of human rights; many human rights advocates, too, strive to solidify human rights norms further by invoking a broad normative consensus traceable to the authoritative scriptures and traditions of the world religions.

18 Sura 33:72.

19 Sura 5:32.

20 I limit myself to a few examples from the Bible and the Qur'ān for the simple reason that I know these religious texts better than other scriptures or traditions.

21 Cf. Fikentscher, Wolfgang, “Die heutige Bedeutung des nicht-säkularen Ursprungs der Grundrechte,” in: Ernst-Wolfgang Böckenförde/Robert Spaemann (eds.), *Menschenrechte und Menschenwürde. Historische Voraussetzungen – säkulare Gestalt – christliches Verständnis*, 43–73, Stuttgart: Klett-Cotta, 1987.

22 The Universal Islamic Declaration of Human Rights (1981) proclaims in its foreword: “Islam gave to mankind an ideal code of human rights fourteen centuries ago.” Cf. <http://www.alhewar.com/ISLAMDECL.html> (accessed on 28.02.2022). See also Bielefeldt, Heiner, “‘Western’ versus ‘Islamic’ Human Rights Conceptions? A Critique of Cultural Essentialism in the Discussion on Human Rights,” *Political Theory* 28 (2000), 90–121.

23 Cf. Little, David/Sachedina, Abdulaziz A./Kelsay, John, “Human Rights and World’s Religions: Christianity, Islam and Religious Liberty,” in: Nazila Ghanea (ed.), *Religion and Human Rights. Why Protect Freedom of Religion or Belief and Models for Protection of Freedom of Religion or Belief?*, 57–83, New York: Routledge, 2010.

3 Conflicts

Those who postulate a harmonious relationship between human rights and religious traditions have to face a number of serious challenges, however. Gender-related rights are the most obvious area of conflict. The equality of men and women is deeply anchored in numerous human rights documents, starting with the *UN Charta* and not ending with the 1979 *Convention on the Elimination of All Forms of Discrimination Against Women* (CEDAW). This collides with traditional gender roles, which are often justified in the name of religion. The potential for conflicts increases steeply once we add the more recent claims of non-discrimination based on sexual orientation and gender identity.

Freedom of religion or belief is another contentious issue. Owing to its universal nature, freedom of religion or belief necessarily provides space also for critics, dissenters, converts, the members of schismatic movements, sceptics, agnostics and various minorities. For some believers this is not easy to accept. Especially the right to change one's religion remains a provocation. Doesn't this mean to place the individual and his or her personal preferences above divine laws? If so, doesn't this illustrate the "Promethean" spirit of human rights, in the name of which man rebels against his creator? The significance of such fundamental objections for understanding ongoing reservations against human rights can hardly be overemphasized. Apart from the more specific areas of contestations, e.g. in the area of gender rights, it is *the human rights approach as such* that has frequently caused suspicion, anxiety and opposition, given its emancipatory thrust epitomized in notions of empowerment, liberation and equal respect for all.

In the case of the Catholic Church, the history of open resistance started as early as in 1791, when Pope Pius VI in his *Breve Quod Aliquantum* condemned the French Revolution's human rights declaration as a deviation from the right path as defined by the Church. The official polemics culminated in the notorious *Syllabus Errorum* (1864), in which Pius IX castigated human rights among other grave errors of modernity. The conflict gradually ebbed away towards the turn of the century and came to an official end in the encyclical *Pacem in terris* (1963) through which John XXIII acknowledged human rights among the hopeful "signs of the time".²⁴ The Protestant churches, too, had their complicated historical encounters with human rights. A century ago, church historian Ernst Troeltsch deconstructed the popular idea that human rights have their origins

²⁴ Cf. Hilpert, Konrad, *Menschenrechte und Theologie: Forschungsbeiträge zur ethischen Dimension der Menschenrechte*, Freiburg: Herder, 2001, 390 ff.

in the Protestant Reformation. He pointed out that, unlike some of the marginalized “step children” of the Reformation, i.e. spiritualists, sectarians and free-churches, the mainstream Protestant churches only gradually overcame their initial reluctance towards the modern concept of equal rights of freedom for all.²⁵ Reservations against human rights continue to be strong within the family of Orthodox Churches. Representatives of the Russian Orthodox Church have repeatedly associated human rights with “Western” ideas, which they think should not spread on Russian soil.²⁶ Obviously, there are also numerous human rights conflicts in Islamic societies. Some Islamist intellectuals construe an antagonism between “rights of man” and “rights of God”. Others oppose human rights as part of what they consider a “Westoxication”, i.e. an alleged Western subversion aimed at undermining collective Islamic identities.²⁷ Those holding such views, frequently call for authoritarian policies against human rights orientated civil society organizations, which they stigmatize as fifth columns operating in the service of alien and hostile forces.

In the view of many traditionalist critics, human rights reflect an anthropocentric ideology centered on the idea that “man is the measure of all things”.²⁸ In addition to this come concerns that individual freedom could erode communitarian loyalty. Others lament what they consider a one-sided emphasis on legal claims, to the detriment of duties and responsibilities. Such conservative reservations often manifest themselves in the language of “traditional religious values” which have been pitted against the emancipatory spirit of modern human rights. An example is the discussion on traditional values, which culminated in the adoption of two resolutions by the UN Human Right Council in 2009 and 2012. The resolution of September 2012 carries the title *Promoting Human Rights and Fundamental Freedoms through a Better Understanding of Traditional Values of Humankind*.²⁹ One of the problems of this resolution is that it fails to define the crucial term “traditional values”, which remains entirely nebulous. Critics of the resolution fear that the amalgamation of human rights standards

²⁵ Cf. Troeltsch, Ernst: *Die Soziallehren der christlichen Kirchen und Gruppen*, Tübingen: J. C. B. Mohr, 1912.

²⁶ Cf. Willems, Joachim: “Die Russisch-Orthodoxe Kirche und die Menschenrechte,” in: Heiner Bielefeldt (ed.), *Jahrbuch Menschenrechte 2009. Schwerpunkt: Religionsfreiheit*, 152–65, Wien: Böhlau, 2008.

²⁷ Cf. Mayer, Ann E., *Islam and Human Rights: Tradition and Politics*, Boulder: Westview, ⁵2012.

²⁸ This motto has been ascribed to the Ancient Greek sophist Protagoras.

²⁹ Cf. United Nations Human Rights Council (ed.), *Resolution 12/3*, October 1, 2009, www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session12/Pages/ResDecStat.aspx (accessed on 28.02.2022).

with undefined “traditional values” will cause a loss of normative clarity. They furthermore point to the fact that the Russian Federation, a State not known for a pro-human rights agenda, acted as the driving force pushing the “traditional values” agenda, with support of the Russian Orthodox Church.

In 2008, the Moscow Patriarchate issued a document on its understanding of human rights. While cautiously endorsing the notion of human rights, the document contains a number of far-reaching reservations. Even the idea of human dignity receives a surprising anti-egalitarian turn. While the Moscow Patriarchate generally acknowledges everyone’s dignity as a divine gift, the document at the same time stresses the need for “restoring a person to his appropriate dignity”.³⁰ Drawing on a terminological distinction established by the early Church Fathers, the Moscow Patriarchate differentiates between the being created “in the image of God”, which includes all human beings, and the “likeness of God”, which has been lost through man’s fall and thus requires active efforts for restauration. This suggests that the dignity of the individual exists in different measures, depending on the degree of living in accordance with the moral teachings of the Church.

The *Cairo Declaration on Human Rights in Islam* adopted by the OIC in 1990 displays a similar ambiguity. After proclaiming that all humans are equal in their dignity, the document adds that “the true religion is the guarantee for enhancing such dignity along the path to human integrity.”³¹ Here again, dignity appears to be an attribute which can be increased by acts of piety and religious compliance. Instead of providing the normative basis for everyone’s equal dignity and equal rights, the term dignity thus assumes a meritocratic, i.e. anti-egalitarian meaning. This is not the only stumbling block. The 1990 Cairo Declaration fails to recognize equal rights of men and women. Another striking feature is the absence of freedom of religion, which the Cairo Declaration replaces by a prohibition “to exploit the poverty and ignorance” of people with the intention to convert them to any religion or belief other than Islam.³² This formulation does not merely fall short of article 18 of the UDHR and article 18 of the ICCPR; it actually turns their meaning upside down. Finally, the 1990 Cairo Declaration stipulates that all the

30 Cf. The Russian Orthodox Church. Department for External Church Relations (ed.), *The Russian Orthodox Church’s Basic Teachings on Human Dignity, Freedom and Rights*, 2008, <https://old.mospat.ru/en/documents/dignity-freedom-rights/> (accessed on 28.02.2022).

31 Article 1 of the Cairo Declaration of Human Rights in Islam. Cf. University of Minnesota Human Rights Library (ed.), *Cairo Declaration of Human Rights in Islam*, Aug. 5, 1990, U.N. GAOR, World Conf. on Hum. Rts., 4th Sess., Agenda Item 5, U.N. Doc. A/CONF.157/PC/62/Add.18, 1993 [English translation], <http://hrlibrary.umn.edu/instreet/cairodeclaration.html> (accessed on 28.02.2022).

32 Cf. article 10 of the Cairo Declaration.

rights enumerated in the document remain subject to the Islamic sharia.³³ It is therefore fair to say that the Cairo Declaration, in its version of 1990, is even further remote from the UN human rights standards than the document of the Moscow Patriarchate. What both have in common is a tendency to counter the emancipatory spirit of human rights by the primacy of traditional religious values and religious laws. One should take note, however, that the Organization for Islamic Cooperation (OIC) updated the Cairo Declaration in 2021. The new version differs substantially from the text of 1990 and is much more in line with international human rights standards.

In the face of ambiguous positions and ongoing religious opposition, sceptics have wondered whether human rights and religions could ever fully fit together. Such scepticism, which historically mainly came from religious traditionalists, has also become popular in humanist circles who consider the continued influence of religious communities as a main obstacle to a consistent implementation of human rights. The analysis of specific conflicts, for example around gender-related emancipation, culminates in the diagnosis of an allegedly unbridgeable gulf between human rights and religion(s) in general.

It is worth noting in this context that the term “humanism” carries very different connotations, depending on the context in which it is used. In the German context, there is still a strong tendency to associate “Humanismus” to Christian intellectuals like Erasmus of Rotterdam or Thomas Moore, who strived for a new synthesis of Christian theology and philanthropic classical philosophy. From this angle, there is no inherent contradiction between religious and humanistic positions.³⁴ In English, by contrast, the term “humanism” usually signifies a more critical attitude towards religion. Humanists in this understanding often subscribe to anti- or post-religious belief systems, at times based on a thoroughly scientific worldview. Julian Huxley, first president of the British Humanist Association and one of the founders of the International Ethical and Humanist Union, promoted an atheistic worldview, to which he contributed from his scientific background as an evolutionary biologist. Richard Dawkins, author of the best-seller *The God Delusion*,³⁵ likewise comes from evolutionary biology. Through his books, Dawkins exercises a strong influence among humanist circles, not only in Britain.

33 Cf. articles 24 and 25 of the Cairo Declaration (version of 1990).

34 Many of the “humanistic gymnasia” in Germany are actually run by the Catholic Church. While in German language this observation holds no surprise, in English it sounds like a fully-fledged oxymoron.

35 Dawkins, Richard, *The God Delusion*, London: Bantam Press, 2006.

Now, it is obviously tempting to associate “human rights” with “humanism”. For both terms have a common linguistic root, which at the same time points to a common interest to acknowledge the central place human beings occupy in ethical practice. Yet this common linguistic root can also cause confusion when leading to narrowly humanistic ownership-claims through which the human rights concept itself would take on a post-religious or anti-religious flavor. Some humanists actually claim that their own human rights commitment is from the outset more consistent than that of faith-based organizations, because the latter have to struggle with possible contradictions between their Holy Scriptures, on the one hand, and modern human rights documents, on the other. Obviously, non-religious humanists do not have this problem. However, to conclude that humanists are generally better suited for promoting human rights than the followers of the various religions would amount to a particularly “humanistic” superiority claim, which would be no less corrosive for a broad acceptance of human rights than exclusive Christian or other religious ownership claims on human rights.

4 Shaping Pluralism by Empowering Human Beings

The two complementary perspectives on the relationship between human rights and religions – the emphasis on affinities and the stress on conflicts – are based on correct observations from which they both draw problematic consequences. It is true that some of the basic ideas underlying human rights have existed in the ethical teaching of various religions, possibly since centuries or millennia. Human dignity may be the most obvious example. Moreover, many religious believers show strong commitment for the cause of human rights, without in the least feeling schizophrenic. This observation defies abstractly antagonistic constructions of the relationship between human rights and religions. On the other hand, those who assume that human rights and religions per se move in the same direction may fail to take differences and conflicts seriously enough. Even the normative affinities between human rights and religions, to which we have pointed above, cannot be taken for granted; they must be carved out actively, which requires embarking on reform projects towards innovative exegesis, hermeneutics and critical theology.

Critics who place all the emphasis on normative tensions between human rights and religions likewise capture an important aspect of that complicated relationship. They may base their scepticism on conflicts concerning gender-issues

as well as different attitudes towards emancipation and equality in general. However, such conflicts do not necessarily display a zero-sum-logic such that one side could only win what the other side loses. Turning existing tensions into an abstract either-or-dichotomy would amount to denying, from the outset, any possibility of a meaningful normative rapprochement between the ethos of religions and the modern idea of human rights. As result of such dichotomized views, human rights commitment would remain reserved to a comparatively small circle of religiously distanced humanists.

In order to overcome both harmonious amalgamations and abstract dichotomizations, it is useful to reflect on the specific function that human rights have in facilitating fair coexistence among people living in pluralistic societies. Historically, human rights developed in response to experiences of structural injustice, often linked to conflict-driven pluralization processes. In Europe,³⁶ much of this happened in the wake of the Protestant Reformation, which had led to an irredeemable schism within Occidental Christendom. Instead of trying to restore confessional homogeneity of the territorial State, which had caused bloodshed for more than a century, human rights represent a paradigm shift towards the *recognition of pluralism*. This recognition goes way beyond the early modern politics of tolerance, because it no longer takes one predominant confession – Catholicism, Lutheran or Reformed Protestantism – as the standard against which to condone or “tolerate” others. Rather, human rights appreciate the pluralism of religions and beliefs as something inherently valuable. This is an innovative approach. Strictly speaking, however, the appreciation of pluralism is not due to the various religious or belief systems themselves; rather, it relates to *human beings*. The guiding idea underpinning the human rights approach is to empower human beings to find their own ways in the area of religion and belief, as long as this is compatible with the equal freedom of others.

The empowerment-function of human rights is more than just a procedural device for managing the existing diversity of convictions, positions, beliefs, ethos forms etc. It rests on a substantive normative insight, namely, the due respect for the *potential of responsible agency inherent in all human beings*. This constitutes the special rank of human dignity, which must be accorded to all human beings equally. Normative claims and obligations of any kind, ranging from personal promises or civil law contracts to constitutional norms and international conventions, necessarily presuppose that human beings have the potential of responsible agency. Even those individuals who actually fail to live up to the expectation

³⁶ The reference to a particular history, namely European history, does not imply that Europe provides the binding model, which people from other parts of the world should merely emulate.

of responsible conduct are usually held “responsible” for their shortcomings.³⁷ This illustrates the indispensable nature of this presupposition; it has an axiomatic status as the point of departure of any normative interaction whatsoever. Accordingly, the recognition of the potential of responsible agency – and thus of human dignity – does not depend on empirical qualities or skills of this or that individual; it defines a fundamental status position, which is to be respected in all human beings equally, simply because they are “members of the human family”, to cite from the preamble of the UDHR.³⁸ Human dignity can only be a universal and egalitarian concept – or it fails to make any sense.

5 Authority, Not Idolatry of Human Rights

What follows from these observations for understanding the relationship between human rights and religions? In order to be able to set the normative framework of free and equal coexistence under the condition of an irreversible pluralism, human rights cannot be just another belief-system – as if they were located at the same level as Christianity, Islam, Hinduism or atheism. If they were simply juxtaposed to the various religions or belief systems, e.g. as a new humanist quasi-religion or “civil religion”, human rights would merely enlarge the existing pluralism instead of being able to *shape* pluralistic coexistence normatively by providing a binding framework for all. The predicament would get even worse, if human rights were thought to provide the mere smallest common denominator amidst the ethical teachings contained in various religious traditions. This would amount to reducing them to a dependent variable of the various existing religious and ethical teachings and strip them of any normative authority vis-à-vis religious communities. However, to place human rights “above” religions or beliefs would also lead to alternative impasses. Claiming an unqualified normative superiority for human rights would imply that religions and beliefs would end

³⁷ We have to leave out a discussion of borderline cases, in which the potential of responsible agency may appear questionable. The axiomatic status of the ascription of human dignity requires that even such cases must be covered by respect for human dignity. Cf. Bielefeldt, Heiner, *Auslaufmodell Menschenwürde? Warum sie in Frage steht und warum wir sie verteidigen müssen*, Freiburg: Herder, 2011.

³⁸ Cf. Waldron, Jeremy/Dan-Cohen, Meir (eds.), *Dignity, Rank, & Rights. With comments by Wai Chee Dimock, Don Herzog, & Michael Rosen*, Oxford: Oxford University Press, 2015, 33: “So that is my hypothesis: the modern notion of *human* dignity involves an upwards equalization of rank, so that we now try to accord to every human being something of the dignity, rank, and expectation of respect that was formerly accorded to nobility.” (Emphasis in the original.)

up as mere “sub-confessions”, as it were, under the allegedly all-encompassing and superior human rights framework. It is not likely that many religious believers worldwide would accept such a subordinated role of their faith and their ethos. In addition, such an abstract hierarchy with human rights being on top of the pyramid would undermine the appreciation of diversity, which, as pointed out before, is one of the core functions of human rights.

It is impossible to “locate” human rights one-dimensionally vis-à-vis religions or beliefs. Whatever place one might choose, the result appears fraught with a dilemma. Human rights can neither be located “besides” or “below” religions, nor do they throne “above” them. It does not make sense to reduce them to the smallest common denominator “amidst” various religious traditions and their ethical teachings, nor do human rights come from “outside”, i.e. as an alternative belief system aimed at replacing the authority traditionally claimed by religions or beliefs. What all these one-dimensional attempts to define the relationship between human rights and religions have in common is that they fail to consider the place that *human beings* have within that equation. As already mentioned, the human person is the ultimate right’s holder within the framework of human rights. When describing the relationship between human rights and religions, we thus must again insert human beings as the common focus of both.

By institutionalizing due respect for the dignity, freedom and equality of human beings, human rights claim a *specific authority*, which is reflected in their qualification as “inalienable rights”. This authority manifests itself also vis-à-vis religious communities, which themselves cannot remain outside of the binding framework of human rights. Above all, human rights require the elimination of any coercion between or within religious communities, including threats directed against dissidents, internal critics or converts. Under international human rights law, it falls upon the State to guarantee such strict non-coercion in this field, if need be by employing enforcement mechanisms, in line with rule of law principles. A litmus test of non-coercion is everyone’s right to abandon a religious community and turn to another religion or to no religion, which is one of the few absolute guarantees of international human rights law. Apart from preventing violence occurring within and between religious communities, freedom of religion or belief also requires tackling all forms of *structural* religious coercion and discrimination. This implies repealing the criminalization of apostasy, proselytism or public critique of religion, even if deemed “blasphemous” by some. Far-reaching reforms may also be necessary in the area of family laws, which in quite a number of countries reflect traditional religious hegemonies as well as traditional gender roles, often with discriminatory implications in the intersection of both sex/gender and religion. School curriculums may also

need a general overhaul, if they fail to reflect the religious and belief-related pluralism that has emerged in the country.

Reform policies enacted with the intention to eliminate direct, indirect and structural forms of religious coercion and discrimination have met with resistance by some religious communities or parts of them. Conservative criticism of human rights is often driven by fear for the future of traditional religious beliefs, values and identities in society. The perception may even be that the State uses the rhetoric of human rights to enforce a doctrinal anthropocentric worldview or a comprehensive humanistic value system, to the detriment of traditional religious beliefs, values and practices. However, this would be a profound misunderstanding. Human rights do not propagate a particular worldview or ideology. They do not follow Ludwig Feuerbach's belief that God is a mere product of human imagination and the projection of unfulfilled mundane yearnings,³⁹ a conjecture already a century earlier formulated by David Hume.⁴⁰ Nor do human rights establish a quasi-religious "cult of human reason". The idea is not to combat religions as "the opium of the people"⁴¹ or replace them by some kind of post-religious doctrine. Indeed, turning human rights into an object of idolatry – a global civil religion or a humanist quasi-religion – would obfuscate their normative profile and ultimately undermine their authority.

Human rights are rights of equal freedom for all. Taking freedom seriously, however, requires respect for people's most different freely adopted orientations, including their freedom to stick to theocentric, cosmocentric and other non-anthropocentric religious worldviews. Freedom of religion or belief *inter alia* protects voluntary acts of surrendering oneself to God, i.e. positions that stand in the starkest possible contrast to an anthropocentric attitude. Of course, people are likewise free to hold anthropocentric views, if that strikes them more plausible. The important point is that they have broad freedom in this entire field. Moreover, just as human beings are free to adopt a humanistic ("post-religious") value system, they are free to shape their lives in accordance with traditional religious norms and values, as long as this is compatible with the equal freedom of others. For example, believers are free to understand and practice religious fast-

39 Cf. Feuerbach, Ludwig, *Vorlesungen über das Wesen der Religion*, Leipzig: Otto Wigand, 1851, 241.

40 Cf. Hume, David, *The Natural History of Religion*, edited with an introduction by H.E. Root, Palo Alto: Stanford University Press, 1956, 29: "There is a universal tendency among mankind to conceive all beings like themselves [...]."

41 Cf. Marx, Karl, *A Contribution to the Critique of Hegel's Philosophy of Right: Introduction*, trans. Allan McKinnon, vol. 3, *Collected Works*, New York: International Publishers, 1976.

ing rules as a strictly-binding divine command, provided they refrain from coercively imposing such rules on others.

The normative aspiration to shape pluralistic coexistence by enshrining respect for everyone's equal freedom implies that the specific authority, which human rights claim in order to fulfil this function, is from the outset a limited one. It is a *non-doctrinal authority*, which presupposes a spirit of *modesty*, i.e. a clear awareness of its inherent limitedness. For example, human rights do not – and cannot – compete with the Bible, the Qur'ān or any other holy book, nor do they contain any answers to the existential questions of human life.

Michael Ignatieff is right when insisting that human rights should not be termed a secular religion: “It is not a creed; it is not a metaphysics. To make it so is to turn it into a species of idolatry: humanism worshipping itself.”⁴² In spite of the historical significance that the UDHR can claim, it is not a sacred text. While providing binding normative standards for living together, human rights do not aim to replace the religious ethos in society or to remove community-based religious ceremonies, rites and liturgies. Turning the UN High Commissioner for Human Rights into a “high priest” of a worldwide civil religion would merely mock and undermine his position.

Authority and modesty are two sides of the same coin, because they both originate from the empowerment-function that human rights take on behalf of everyone's equal freedom. It is only with a clear awareness of their specific function – and thus of their inherent limitedness – that human rights can unfold the authority they need to be able to shape pluralist coexistence normatively. It is an authority best exercised in a “listening mode”, i.e. in tandem with sensitivity to people's freely articulated wishes, needs, vulnerabilities and possibilities, not least in the field of religions and beliefs. Human rights would actually forfeit their specific authority when posing as an object of quasi-religious veneration, as Ignatieff warns. This danger is not merely hypothetical, since there are examples of a lack of modesty in human rights semantics. Freedom of religion or belief therefore has an important role to play, in that it keeps the entire system of human rights open for accommodating the broad range of free manifestations of people's profound convictions, thereby at the same time clarifying that human rights themselves are neither a crypto-religion nor a post-religious comprehen-

⁴² Ignatieff, Michael (ed.), *Human Rights as Politics and Idolatry*, Princeton: Princeton University Press, 2001, 53.

sive belief system.⁴³ The right to freedom of religion or belief can serve as a critical reminder in this regard.

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43 This reflection draws on John Rawls, who in his *Political Liberalism* proposes a distinction between the legally binding concept of "political justice", on the one hand, and a multiplicity of "comprehensive doctrines", on the other. This differentiation is supposed to facilitate a broad endorsement of the guiding idea of political justice within a pluralistic society, which is characterized by a rich diversity of religious or non-religious worldviews, philosophies etc. His main point is that the guiding idea of political justice is *inherently limited* in its scope by having its focus on basic normative issues of fair coexistence and cooperation. Only on the understanding of such inherent limitedness can the idea of political justice claim a practical priority over the various existing worldviews ("comprehensive doctrines"). Whereas the idea of political justice claims a clear priority at the level of politics and law, the various comprehensive doctrines may in many ways exceed the realm of political justice. Rawls's purpose is the facilitation of an "overlapping consensus", which accommodates a broad variety of religions, philosophies and worldviews whose holders may nonetheless be able to endorse the main principles of political justice that normatively govern societal coexistence and cooperation.

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Michael J. Broyde and Shlomo C. Pill

The Concept of Human Rights in Judaism

In contemporary Western societies, human rights encompass a broad constellation of material moral needs and interests that are guaranteed to all people simply by virtue of the fact that they are people.¹ Religious and normative traditions, including Judaism and Jewish law recognize and protect many of these currently accepted human rights.² Indeed, religious legal traditions tend to be rather good at respecting and enforcing a broad range of *material* human rights and *material* human dignity. As explained below, Judaism recognizes the inherent equality and dignity of all people; respects natural liberty and autonomy; protects rights to life, bodily integrity, health, property, education, basic food, housing, and healthcare; and provides important legal rights closely resembling contemporary ideas of due process in the courts. One might even argue that religious traditions are more effective than modern, secular state systems at ensuring many basic material human needs because religious traditions are not mired by bureaucracy, political concerns, and commitments to various forms of free-market capitalism which leave significant segments of society vulnerable and without basic human needs like adequate food, housing, healthcare, and education.

Where religions often do a poor job at protecting human rights – and where modern states and non-state organizations tend to better succeed – is in the realm of recognizing and protecting less tangible, inchoate rights, especially the range of rights associated with freedom of religion, conscience, association, and the right to dissent from prevailing societal norms and values. One of the core human rights widely recognized by states and international conventions is the right to freedom of religion, and more particularly, the right to freely choose to not practice or believe in a particular faith, or any faith at all. The United States Constitution provides that “Congress shall make no law respecting an

1 For important recent scholarship providing useful overviews of the history, substance, and evolution of Western human rights discourses, see Stearns, Peter N., *Human Rights in World History*, New York: Routledge, 2012; Kao, Grace Y., *Grounding Human Rights in a Pluralist World*, Washington: Georgetown University Press, 2011.

2 For an overview of human rights valued by Judaism, see Konvitz, Milton R., *Judaism and Human Rights*, New York: Norton, 1972; Broyde, Michael J./Witte, John Jr. (eds.), *Human Rights in Judaism: Cultural, Religious, and Political Perspectives*, New York: Jason Aronson Publishers, 1998. On human rights in the Islamic and Christian traditions, see Witte, John Jr./Van der Vyver, Johan D., *Religious Human Rights in Global Perspective*, Grand Rapids: Eerdmans, 1996; Baderin, Mashood et al., *Islam and Human Rights: Advocacy for Social Change in Local Contexts*, New Delhi: Global Media Publications, 2006.

establishment of religion or prohibiting the free exercise thereof.”³ The *Commonwealth Charter of Human Rights*, a non-binding aspirational statement of normative commitments adopted by over thirty Commonwealth countries, likewise affirms a commitment to religious freedom as an essential expression of human freedom. It states: “We emphasize the need to promote tolerance, respect, understanding, moderation and religious freedom which are essential to the development of free and democratic societies, and recall that respect for the dignity of all human beings is critical to promoting peace and prosperity.”⁴ The United Nations’ *Universal Declaration of Human Rights* similarly affirms that “[e]veryone 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.”⁵

Religious freedom, as John Witte has put it, embraces “the principle of liberty of conscience by foreclosing government from coercively prescribing mandatory forms of religious belief, doctrine, and practice.”⁶ This principle, however, is not often associated with normative faith systems.⁷ Yet, a large part of what makes religions what they are is their strong normative claims about correct practice and dogma to the exclusion of all others. Even when religious leaders do acknowledge the possibility that practitioners of other faiths may be believing and worshipping in a way that is essentially legitimate, such tolerance does not typically extend to members of their own religious communities that express dissent and autonomy in belief or practice by rejecting prevailing norms.⁸ Religions, especially nomos-centric faiths in which religious virtue is measured principally in terms of one’s conformity to a wide-ranging and comprehensive set of behavioral norms, prescribe correct and unacceptable modes of conduct in both public and private life. The scriptures and teachings of such traditions, moreover, typically include a wide range of penalties and consequences – some imposed by

³ United States Senate (ed.), *Constitution of the United States*, amend. 1, https://www.senate.gov/civics/constitution_item/constitution.htm (accessed on 14.06.2022).

⁴ The Commonwealth (ed.), *Charter of the Commonwealth*, art. IV, <https://thecommonwealth.org/charter> (accessed online 14.06.2022).

⁵ United Nations (ed.), *Universal Declaration of Human Rights*, art. 18, <https://www.un.org/en/about-us/universal-declaration-of-human-rights> (accessed on 14.06.2022).

⁶ Gunn, Jeremy/Witte, John Jr., (eds.), *No Establishment of Religion: America’s Original Contribution to Religious Liberty*, Oxford/New York: Oxford University Press, 2012.

⁷ Cf. the introduction in Witte/van der Vyver (eds.), *Religious Human Rights*, xvii–xxxv.

⁸ Cf. Novak, David, “Religious Human Rights in Judaism,” in: Michael J. Broyde./John Jr. Witte (eds.), *Human Rights in Judaism: Cultural, Religious, and Political Perspectives*, 1–34, New York: Jason Aronson Publishers, 1998, 7–11.

temporal religious authorities and others by God – for religious infractions. Often, harsh punishments are prescribed for those who leave the faith expressing heretical or blasphemous ideas or who convert out by affirmatively adopting the tenets and practices of another religion.⁹

This article explores the practice of religious freedom within the rabbinic legal tradition.¹⁰ It focuses on the extent to which rabbinic law – despite being a system of religious standards that makes strong prescriptive claims about exclusively correct practices and beliefs – has recognized the right of Jews to autonomously dissent from settled religious norms without attempting to coerce conformity and compliance with Jewish law. While rabbinic law

⁹ Cf., e.g., Elon, Menachem (ed.), *The Principles of Jewish Law*, Jerusalem: Keter Publishing House, 1975, 529; Affi, Ahmed/Affi, Hassan, *Contemporary Interpretation of Islamic Law*, Leicester: Troubador Publishing, 2014, 1–28; Helmholz, Richard H., *The Spirit of Classical Canon Law*, Athens: University of Georgia Press, 2010, 360–65.

¹⁰ Jewish law (called *halakhah* in Hebrew) is the term used to denote the entire subject matter of the Jewish legal system, including public, private, and ritual law. A brief historical review will familiarize the new reader of Jewish law with its history and development. The Pentateuch (the five books of Moses, the Torah) is the historical touchstone document of Jewish law, and according to Jewish legal theory was revealed to Moses at Mount Sinai. The Prophets and Writings, the other two parts of the Hebrew Bible, were written over the next 700 years, and the Jewish canon was closed around the year 300 B.C.E. From the close of the canon until 250 C.E. is referred to as the era of the *tanna'im*, the redactors of Jewish law, whose period closed with the editing of the Mishnah by Rabbi Judah the Patriarch. The next five centuries was the epoch in which the two *Talmuds* (Babylonian and Palestinian) were written and edited by scholars called *amoraim* (“those who recount” Jewish law) and *savoraim* (“those who ponder” Jewish law). The Babylonian Talmud is of greater legal significance than the Palestinian Talmud, and is a more complete work. The post-*talmudic* era is conventionally divided into three periods: the era of the *ge'onim*, scholars who lived in Babylonia until the mid-eleventh century; the era of the *ri'shonim* (the early authorities), who lived in North Africa, Spain, Franco-Germany, and Egypt until the end of the fourteenth century; and the *aharonim* (the latter authorities), which encompass all scholars of Jewish law from the fifteenth century up. From the period of the mid-fourteenth century until the early seventeenth century, Jewish law underwent a period of codification, which led to the acceptance of the law code format of Rabbi Joseph Caro, called the *Shulḥan 'Arukh*, as the basis for modern Jewish law. Many significant scholars – themselves as important as Rabbi Caro in status and authority – wrote annotations to his code which made the work and its surrounding comments the modern touchstone of Jewish law. The most recent complete edition of the *Shulḥan 'Arukh*, Vilna: Rom, 1896, contains no less than 113 separate commentaries on the text of Rabbi Caro. In addition, hundreds of other volumes of commentary have been published as self-standing works, a process that continues to this very day. For a more literary history of Jewish law, see Elon, Menachem, *Jewish Law: History, Principles and Sources*, Philadelphia: Jewish Publication Society, 1993; and for a shorter review of the literary history of Jewish law, see Stone, Suzanne Last, “In Pursuit of the Counter-text: The Turn to the Jewish Legal Model in Contemporary American Legal Theory,” *Harvard Law Review* 106 (1992), 813–94.

makes strong assertions about correct religious practice and belief, and unabashedly affirms that Jews are obligated to observe such standards, it generally does not seek to coerce members of societies regulated by Jewish law to uphold their purely personal religious obligations. Instead, Jews living in Jewish communities governed by rabbinic law and rabbinic decisors are left free to be as religiously observant or non-observant as they wish. Social or formal legal sanctions were traditionally brought to bear only – though not always – if individual dissent from rabbinic laws threatened the well-being and cohesion of society or caused material harm to other individuals. This article uses several examples from various areas of rabbinic law to show that in practice rabbinic jurisprudence creates substantial space for religious dissent and religious freedom even within the confines of a rabbinically-regulated religious society.

This paper has five sections following this introduction. The next section reviews general human rights in Judaism without a sole focus on religious freedom. The next section dives into the legal sources of human rights in Judaism. The third and fourth sections explore the relationship between law and enforcement in the Jewish tradition, both civil and criminal. The fifth section synthesizes sections two, three, four and five into a grander theory of religious freedom in the Jewish tradition.

1 Human Rights in Judaism – General Overview

Many scholars have noted that Judaism does not speak in the language of rights – human rights or otherwise – and instead couches norms in the language of duties and obligations.¹¹ Nevertheless, the norms and values of Jewish law evince a strong commitment to many of the core protections typically enshrined in Western human rights discourses, and in some cases, the rabbinic tradition goes further in its robust respect for human life, health, property, and dignity.

The principle of inherent individual equality, which forms the necessary moral and logical starting point for any complex system of universal human rights, is enshrined in the Mishnah, the foundational second-century text of Jewish law that reflects the sum of rabbinic thinking over the previous several centuries.¹² The Mishnah ponders the reason God created only a single human being

¹¹ Cf. Novak, “Religious Human Rights in Judaism,” 5–6; Broyde, Michael J., “Introduction: Rights and Duties in the Jewish Tradition,” in: Daniel Pollack (ed.), *Contrasts in American and Jewish Law*, New York: Yeshiva University Press, 2001, xxiii. See also Glendon, Mary Ann, *Rights Talk: The Impoverishment of Political Discourse*, Michigan: Michigan University Free Press, 1991.

¹² See supra note 10.

again the problems of significant anti-Semitism.¹⁷² The universalistic tendencies of the Jewish tradition are most popular and accomplished in a society in which the Jew functions consistent with his or her faith without fear of trial or attack. The communitarian competent naturally seems much more valuable to society when it is embattled. This is not unique to the Jewish tradition.

We suspect that how open the human right of religious freedom in the Jewish tradition will be in the future depends very much on these four issues, with a particular emphasis on the final factor – the rise of anti-Semitism. Jew hatred reinforces and justifies Jews’ emphasizing more particularistic streams of the Jewish tradition, and a sustained rise of antisemitism will likely result in the human rights tradition of the Jewish texts being naturally less present in Jewish discourses.¹⁷³ That would be a shame and a return to the historically more common antisemitic model of the last centuries, but seems to be a political possibility, sadly enough.

7 Conclusion

The foregoing overview of classical rabbinic approaches to the coercive enforcement of Jewish law norms suggests something very important about Jewish law approaches to human rights. Judaism, like many other faith traditions does a fairly good job at recognizing and prescribing the protection of various material human rights such as rights to life, property, education, housing, clothing, fair employment conditions, freedom of contract, and equal treatment under law. At the same time, rabbinic practice maintained a fairly robust respect for private religious conscience and dissent from Jewish ritual norms. Unlike some other religious-legal traditions that sought to compel compliance with their own ritual norms, and punished religious dissent with force, in practice Judaism largely avoided doing so. Ritual misconduct was sanctioned, but typically only when and because it had the effect of harming other people or the community. Rather

¹⁷² See, e.g., American Jewish Committee (ed.), *The State of Antisemitism in America 2021*, <https://www.ajc.org/AntisemitismReport2021> (accessed on 01.03.2022).

¹⁷³ The ideas of these last few chapters are derived from a few works we have written, including: “Religious Alternative Dispute Resolution in Israel and Other Nations with State-Sponsored Religious Courts: Crafting a More Efficient and Better Relationship Between Rabbinical Courts and Arbitration Law in Israel,” *Touro Law Review* 36, 4 (2021), 901–42; and “Privatizing the Temple Mount *Haram es-Sharif* and the Western Wall (*Kotel*),” *Journal of Law, Religion and State* 10 (2020), 23–47, https://www.broydeblog.net/uploads/8/0/4/0/80408218/jlrs_adv_broydezeligman.pdf (accessed on 01.03.2022); as well as the many other works cited in this article.

than seeking to directly force Jews into religious compliance, rabbinic practice focused on using ordinary tools of membership and association to cultivate Jewish communities of like-minded Jews who were at least publically respectful of the norms and values of rabbinic law. In doing so, rabbinic authorities largely succeeded in carving out what can be viewed as a sphere for private freedom of religion and conscience within a normative Jewish framework.

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Clare Amos

The Concept of Human Rights in Christianity

Introduction

“No one interested in where human rights came from can afford to ignore Christianity.”¹ There is a sort of double paradox about the relationship between Christianity and the development of human rights.² If one goes back in history even a century or so Christianity cannot necessarily be seen as a natural bedfellow of what would now be called “human rights” – indeed there are only too many instances from the Constantinian era until recent times when the opposite could be illustrated.³ The distinctive vision of voluntary suffering and vulnerability – following in the pattern first followed by Jesus Christ himself – which lies at the heart of the Christian faith, seems to place a fundamental question-mark as to whether it is appropriate for those who call themselves Christian to be eager to claim “rights” for themselves. And yet it is undoubtedly true that the formal development of international human rights structures and ideology in the middle of the 20th century owed much to the work of Christian thinkers, theologians and political activists, both Protestant and Roman Catholic, whose work and vision was undergirded by their religious motivation and commitment. However paradoxically the standards that these thinkers sought to implement as normative for all humanity were not by and large⁴ viewed by them as distinctively “Christian”. Rather they were intended to be rooted “in a shared moral basis taken to be universally common to all people, a basis [...] described as “secular” or perhaps “pluralistic” in present day parlance.”⁵ A corollary is that there has

1 Moyn, Samuel, *Christian Human Rights*, Philadelphia: University of Pennsylvania Press, 2015, 169.

2 I am grateful to Skylar Salim, intern in the WCC Interreligious Department for some months in 2016–17 who assisted me with some initial research for this chapter.

3 There is a notable (and probably accurate) remark by Paul Zagorin which would horrify many contemporary Christians, that “Of all the great world religions past and present, Christianity has been by far the most intolerant”, Zagorin, Paul, *How the Idea of Religious Toleration Came to the West*, Princeton: Princeton University Press, 2003, 1.

4 Though this may be more true for the Protestant rather than the Roman Catholic figures involved in the discussions that led to the UDHR.

5 Little, David, “Foreword,” in: John Nurser (ed.), *For all Peoples and all Nations. The Ecumenical Church and Human Rights*, Geneva: WCC Publications, 2005, xi.

been comparatively little reflection done on theological resources stemming from a distinctively Christian framework. The history of human rights from a Christian perspective has been the object of far more reflection than the theology. A further corollary is perhaps that now that the apple has been eaten, Pandora's box has been opened and the genie has been let out of the bottle, the implications of modern understandings of human rights have taken the western world at least considerably further down a number of roads than some Christians would necessarily have wished to travel.

This chapter seeks to “tell the story” of key moments of Christian involvement in human rights, including Christian involvement in the formal development of human rights structures in the mid-20th century onwards. It will inevitably be selective and partial. Interwoven with this, it will also seek to explore some aspects of the Christian theological underpinning of human rights – noting that the story and the theology in fact resonate with and challenge each other. Finally, some suggestions will be offered for drawing on central motifs of Christian theology as a tool for Christian theological engagement with human rights.

1 The Christian Faith, Human Dignity and Human Rights

Perhaps the single most important contribution that Christianity has made to the development of human rights is to link human rights and human dignity. This linkage is now such a common assumption, made of course even in the preamble to the Universal Declaration on Human Rights (“Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family [...]”) that it can be difficult to realize that originally the two concepts of “human rights” and “human dignity” were not necessarily viewed as virtually co-terminous. For example, the *Declaration of the Rights of Man and of the Citizen* promulgated in 1789 as part of the French Revolution had nothing explicit to say about human dignity, and indeed the progress of the revolution might suggest that not all that much attention was paid to the concept. The US Declaration of Independence in 1776, with its stirring call that “all Men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty, and the pursuit of happiness” does not use the actual word “dignity” either, although that concept does not seem to be very far away.⁶

⁶ The famous reflection of Alexander Hamilton in 1775 comes closer still. “The sacred rights of

charist can open up some interesting reflection on social and economic rights. The discussion in 1Corinthians about the Eucharist also offers some suggestive hints: the importance of generosity, the disgrace for Christians of eating in front of others who go hungry (1Corinthians 11:21), the need to forgo standing on one's "rights" if this jeopardises the wellbeing of the community (1Corinthians 10:23–29), the powerful words that speak of being one body. The idiom of the Eucharist also transcends time: "As often as you eat this bread and drink this cup you proclaim the Lord's death until he comes." (1Corinthians 11:26). We are encouraged to take the past seriously, and yet also look for a new future, that takes account of the fact that the Body of Christ transcends the generations – and that the future also has its rights.

George Newlands, seeking to tease out what he also feels to be the rather neglected study of the relationship between Christology and human rights writes:

Christians believe, as characterised in the incarnation of Jesus Christ. They bring the way of Jesus Christ, as an icon of humanity as God intends it, to the table for consideration. They believe that all human beings are created to be fulfilled in the image of God, and to be fulfilled with dignity and well being. They do not wish to impose this vision on others. But they offer it in the belief that it has infinite value for the human future.¹⁰⁴

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Patricia Prentice and Abdullah Saeed

The Concept of Human Rights in Islam

Human rights as we know them today are a modern notion. They were formalized, internationally, in the 20th century in the adoption of the United Nations Declaration of Human Rights by the General Assembly. Since then, they have become an integral part of the international discourse on states' obligations and responsibilities towards their citizens, as well as providing standards to ensure human beings are treated according to their inherent human dignity.

While human rights are a relatively recent concept, it is possible to find principles and norms that serve a similar purpose, as well as the notion of "rights" in older traditions. This chapter explores these roots in Islamic tradition and, in particular, how Muslims engage with human rights today. Beginning with a discussion of the Arabic term for rights and its theological and philosophical basis, it traces the development of human rights from the sacred texts of Islam to the creation of so-called "Islamic human rights instruments" in the 20th century.

Muslim nations and scholars have not been immune from the influence of the modern preoccupation with human rights and, as a result, a great body of literature has developed, particularly in the last twenty years. Within this, two approaches can be observed. There are those scholars who take a defensive approach to human rights, rejecting compatibilities between international human rights law and Islamic law. There are also those who take a harmonistic approach, finding commonalities between the two. Today, many of those who take a harmonistic approach are engaged in the project of finding ways to reconcile Islamic law and international human rights law. These scholars, predominantly academics, living in both Muslim-majority societies and in the West, are interested in identifying places where the Islamic and international legal traditions are seemingly incompatible, and working out how to reconcile these perceived differences. The chapter identifies the protagonists involved in this project, the tools and methods they are using to address differences between the two legal systems and where the tensions lie. Finally, the chapter explores very briefly some of the commonalities between the human rights discourse in Islam and parallel discourses in other monotheistic religious traditions, particularly Judaism and Christianity.

rights come from a religious and moral framework, although they differ with respect to what this framework entails.

Within each tradition there are also doctrines and historical practices that are not easily reconciled with contemporary international human rights standards. Many of the tensions concern how people who are not members of their communities are defined and treated²¹⁹ and the specific rights and freedoms granted to non-believers – those who do not follow orthodox beliefs or practices – and others who traditionally had a lesser status within the community, such as women or slaves.²²⁰ Each tradition appears to be undergoing a similar process of determining in what circumstances such doctrines and rulings were laid down, whether they are in fact mutable or immutable aspects of the tradition, and how core beliefs concerning human beings may be applied in the different circumstances of the 21st century.

These commonalities provide a basis for dialogue between the three religious communities. Each tradition recognizes that human beings share inherent human dignity that is God-granted and cannot be taken away by human authorities. Each tradition upholds the belief that human beings were created by God and share fundamental equality with each other on this basis. Each tradition recognizes the sanctity of life and that there should be penalties for the taking of a life. On this basis, there is great scope for solidarity concerning the promotion and protection of human rights around the world and potential for joint action to address human rights violations that threaten human beings' inherent, God-given dignity. J. Paul Martin argues that engagement with the international human rights system is useful in this regard because it provides common “standards, language and institutions” that can assist “religiously and culturally diverse societies to deal with common [...] social problems.”²²¹ Thus international human rights standards provide an important framework for dialogue and action that can bring together the three monotheistic religious traditions.

6.4 Concluding Remarks

Islam, like the other monotheistic religious traditions, recognizes a concept of human rights. While the notion of *ḥaqq* is not as developed, nor as expansive as its equivalent within international human rights law (primarily because it

²¹⁹ Martin, J. P., “The Three Monotheistic World Religions and International Human Rights,” *Journal of Social Issues* 61, 4 (2005), 831.

²²⁰ *Ibid.*

²²¹ *Ibid.*, 829.

evolved in a very different historical context), there are elements that the two concepts share that can form a basis for a common discourse around rights. In addition, the Qur'an upholds the inherent dignity of human beings and strongly emphasizes the pursuit of social justice as a divine mandate. Islamic law, like international human rights law, places the onus on governments to ensure the safety, security and rights of their citizens, while at the same time acknowledging that state power may be legitimately curtailed. Indeed, no ruler may act with impunity if they exercise power in a way that is outside their mandate or in a way that violates their covenant with their citizens.

Muslim-majority states' engagement with the international human rights system has, at times, been fraught with difficulties. Many states have been criticized by human rights treaty monitoring bodies, such as the HRC and CEDAW, for failing to promote and protect human rights standards in their jurisdictions. Some commentators also perceive attempts to create so-called Islamic human rights instruments as further evidence that some Muslim states are unwilling to engage with the international human rights system or to uphold its standards. Yet attempts to create a binding Islamic human rights treaty under the auspices of the Organization of the Islamic Cooperation have been met with little enthusiasm by its member states.

Muslim states' engagement with the international human rights system, at least in the case of some states, is likely to remain ambivalent for the foreseeable future. However, most Muslim states are continuing to engage with the international human rights system. There are many examples of states reforming their domestic laws to take into account human rights standards in particular areas or of national courts referring to international human rights law in their decision making. Moreover, emerging Muslim scholarship on human rights is finding ways to reinterpret or put aside aspects of classical Islamic law that are contrary to international human rights law, removing further obstacles that may prevent Muslim states' engagement with the international system. The work of scholars such as An-Na'im, Baderin, Wadud, Kamali and others demonstrates that there are compatibilities between Islamic and international human rights law and that incompatibilities can be addressed in a way that is both authentic to Islamic legal tradition and cognizant of international standards.

The concept of rights within Islamic tradition and the resources that can be found in the Qur'an and the traditions of the Prophet Muḥammad that are compatible with the contemporary notion of rights also form a basis upon which Muslims can engage with other religious traditions around human rights issues. Like Islam, both Judaism and Christianity recognize the inherent dignity of human beings. They recognize that all human beings were created by God and come from the same human family and are all equal at a fundamental level.

All three traditions recognize the sanctity of life; that effort must be made to protect life and that those who take away life must be appropriately and lawfully punished. These commonalities provide important scope for mutual engagement around human rights issues and the potential for joint initiatives involving the three traditions.

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Suggestions for Further Reading

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Georges Tamer and Catharina Rachik
Epilogue

1 Introduction

As Heiner Bielefeldt states in his introduction to this volume, human rights encompass the inherent dignity, equality and freedom of all humans and form a normative consensus on the international stage. They also include the right to religious freedom and belief, which entails the right to change one's religion or belief, as well as to manifest one's religion or belief in teaching, practice, worship, and observance. Especially the right to religious freedom shapes the relationship between religions and human rights.

The *Universal Declaration of Human Rights* (UDHR) of 1948 issued by the General Assembly became the major reference for subsequent developments of human rights conventions. Since human rights are immediately binding upon states as their formal guarantors under international law, religious communities must formulate their attitude towards them. The liberating spirit of human rights as a modern concept has posed a major challenge to religions and their traditional ethical teaching.

In regard to the relationship between human rights and religion, affinities as well as conflicts can be observed. The language of human rights is enriched with religious ideas, metaphors, and concepts. Formulations and terms of human rights documents, like "inviolability" exhibit a religious reference. The closeness of religious language and human rights is not a coincidence: human rights go beyond the sphere of rights for they touch upon existential questions of man. Human dignity, human responsibility and the moral framework are topics of various religious traditions as well as of the modern human rights discussion. The ethos that underlies the modern concept of human dignity is also to be found in the Tanakh, Bible and the Qur'ān.

Through these various examples, which postulate a harmony between both human rights and religion, the assumption could be made that both follow the same goals and are built upon equal normative aspirations. Both acknowledge human dignity and inviolability. This motivated various agents of different religious communities to state that human rights are born out of religious traditions. At the same time, representatives of the human rights approach are interested in emphasizing overlaps of both concepts as they underline the extent of the normative consensus of human rights.

But we have to acknowledge that these affinities are basic and that there are conflicts between the religions relevant in the present context and human rights. The dichotomy arises out of questions and claims in regard to gender equality, gender identity, sexual orientation as well as religious freedom and belief. Especially these emancipatory aspects of the human rights approach clash with traditional religious values. In this context, critics of the human rights approach hold it to be an anthropocentric ideology, in which the human would be the measure of all things and would stand above religious systems. This contradicts traditional religious thinking in which humans are subordinate to their creator. Reservations against human rights are still noticed especially in some circles of the orthodox churches as well as Islamic contexts.

The core function of the human rights approach is the empowerment of human beings for shaping peaceful coexistence between various religions and belief systems. History has shown that human rights developed in circumstances of conflict-driven pluralization processes. In this way, they represent a paradigm shift towards the *recognition of pluralism*. For human rights, it is not only to tolerate other religions but to recognize the inherent value of religious pluralism. But human rights are more than a device to enforce diversity because they recognize the potential responsible agency and dignity of all humans, so they are the beginning point of any normative interaction.

This empowerment function shows the specific normative authority claimed by human rights, but also the existing limitations of the human rights approach. Therefore, the question here is where the concept of human rights is to be located towards religious systems. It cannot be a one-dimensional view. One problem would be the perception of human rights as a part of religious or belief systems, because it would mean to tie them to a specific belief, hence they would lose their universal claim. But the placement of human rights at the same level of other religions or above them would cause problems as well. It would mean that they add to religious pluralism and not *shape* it. This means that we should not perceive the concept of human rights as a belief-system or ideology, but rather as a normative framework, in which the human is located in the center granting him freedom and dignity independently from his religious affiliation. Institutionalizing human rights also means granting them a specific authority and since humans are located in the center, it involves everybody, also religious communities. Human rights as a normative framework also limits their specific authority because they are not at the same level as the Tanakh, Bible or the Qur'ān. They do not provide answers for existential questions of human life. The underlining of human rights not being a crypto-religion or religious belief system also hints at the modesty of their function. They are limited to the necessary aim to normatively shape pluralistic coexistence.

Tracing the relationship between religion and human rights in the three monotheistic faiths, the following questions arise: To what extent do the holy scriptures and classical (antique and medieval) sources in Judaism, Christianity and Islam deal with human rights and what language do they use? What kind of discourse has emerged in the three traditions and how did they engage in actively shaping a human rights concept? What kind of rejections and reservations are there towards the human rights concept? Which exegetical and theological methods were developed in the respective traditions for further discourse?

In the following, we deal with these and other questions concerning the relationship between human rights and the three monotheistic religions to discover commonalities and differences within their traditions.

2 Human Rights and Judaism

In Judaism we can observe that there are a variety of concepts which can be derived from traditional sources suggesting acknowledgement of a broad range of human rights. While many scholars have pointed to the emphasis on duties and obligations in Judaism, these are intertwined with protections and entitlements similar to modern human rights discourses. In some cases, the Rabbinic tradition goes even further because it built a strong basis of protection and respect for human life, health, property, and dignity.

Concepts of human dignity and equality are found in the book Genesis of the Torah. Here it is the Creation Narrative which serves as a starting point for a discussion of human rights. The most famous verse hinting at innate human dignity is that God created humans – both man and woman – in his image (Gen 1:26–28). This passage also affirms the special rank of humans which, in turn, correlates to certain fundamental rights and duties they have towards each other. It invokes not only the dignity of humans but also their equality. The Mishna reflects this by the teaching of Rabbi Tanhuma, that if humans would mistreat each other, they would mistreat God, since humans reflect the divine. The creation narrative also includes a passage reflecting the descending of all humans from just a single human. Already, Jewish texts of Late Antiquity are asking for the reason, why the human population derived from just one human and not an entire race. The answer by the Rabbis was that this way humans would have one common ancestor and nobody would be entitled to more respect or rights than the other. In other words, this passage underlines human equality further. This is enforced by another biblical teaching which became a Golden Rule in Judaism: to love one's neighbor as one loves oneself.

Among these basic concepts of dignity and equality some concepts are closely connected to human rights in Jewish law: Thus, the inviolability of human life is affirmed early in the Torah and is reinforced by a strict prohibition on murder. Jewish law prescribes that a Jew must passively allow him or herself to be killed rather than kill another without just cause. Most rights can be deduced from positive obligations, for example the expansive obligations the Torah prescribes towards the poor speak for the right to life and dignity. Rabbinic law formulated obligations to establish communal charity and welfare funds to provide for the poor, and developed a broad range of duties in this sense to exercise equal treatment. This conception includes the provision of material needs for every person in the community: It starts with the protection of vulnerable groups, the protection of immigrants and non-citizens over to the duty of paying wages to workers on time. These duties also hint at the strong conception of justice in Judaism.

In Jewish law there is a basic guarantee and protection of one's autonomy. In Jewish thought the restriction of this autonomy requires the consent of the individual citizen. That means that no legislation can be imposed on the people without their majority consent. The status of natural liberty is illustrated by the interpretation of the acceptance of the Torah: Without the human consent the law could not have been imposed on them, according to Rabbinic teaching.

However, when it comes to rights related to religious freedom, gender or association, the matter becomes more complex and complicated. This is due to the strong normative claims about correct practice and observance of religious rules. There may be tolerance towards practice of other religions, but within religious communities that kind of tolerance is usually not extended when members deviate from certain norms. The Torah asks for observance of ritualistic norms from its community: It thus prohibits work on Sabbath, prohibits idolatry and includes regulations for animal sacrifices. Many regulations affect the relationship between the individual and God as well as the religious observance in the private sphere and prescribe punishments for breaking these rules.

But by critically examining classical Rabbinic sources analysis shows that Rabbis carved out significant space within Jewish communities for individual freedom. A broad range of examples from Antiquity to the Middle Ages show, that this kind of religious freedom was acknowledged in its general refusal to coerce Jews to conform to ritual norms. Even if the Rabbis had the power and authority to enforce punishment in cases where ritual law by individuals was not observed, they decided not to do so. Jewish law was more concerned with policing good relations between people than ensuring proper human relationships with God. Even if the Torah prescribed punishments for these transgressions, the Rabbis decided not to exercise punishment in cases, where there was no

harm to others or the community, since law prescriptions gave them the flexibility.

In conclusion, this means that there was individual freedom of religion and conscience within a normative Jewish framework because sinful acts by humans were not prosecuted. Examples of these can be shown in relation to Rabbinic law enforcement in civil matters, like in cases of the practice of usury or private sexual offenses if all parties involved consented. Although it is strictly forbidden by the Torah and severe punishments are prescribed for such cases, Rabbis decided not to act upon them. Things were different when religious sins affected others. An example would be the adequate education of children, especially of religious contents to be able as an adult to function in a Jewish community, but also to be able to live his or her life in a secular environment. Since this has an impact on others, the Rabbis chose not to leave much freedom for parents and enforced education for children. Despite these examples, observation of religious law by individuals was important to the Rabbis. Even though they did not choose severe corporal punishments, they had other means like distancing the sinners socially, using economic restrictions or at last banishing them from the community. But these means applied only when people sinned in a public manner.

This analysis can serve as a basis for further discussion in modernity about individual religious freedom. Especially when it comes to the topic of living a dignified life within a community, Jewish law provides a strong basis, because it demands from its members good treatment of each other, charity, and responsibility. In the private sphere, individuals were free to observe religious rules or ignore them. One could state that this reflects a caring community with enough individual freedom. How Jewish communities cope with that complex tradition shows the example of modern Israel. Here, the challenge is the balance between democratic values and traditional religious values. When it comes to rights of religious freedom in Israel, there are still many challenges: the recognition of pluralistic Jewish faith in the diaspora; the question of religious prayer at and on the Temple Mount; the recognition of conversion to Judaism and being Jewish, and the confrontation of anti-Semitism in diasporic communities. Especially the last point will have a significant impact on the relationship of Judaism and religious freedom and its presence in future discourses.

3 Human Rights and Christianity

The relationship between Christianity and human rights has two faces: On the one hand, there are many examples from the Constantine era until the present where “rights” were not observed, a circumstance rooted in the concept of the

self-sacrificial suffering of Christ. On the other hand, the development of the human rights concept in the 20th century was actively shaped by Christian theologians of both protestant and catholic origin. Though their work was characterized by religious commitment and motivation, they aimed at implementing a universal or secular basis of human rights thinking for all humanity, and not a distinctively Christian basis. But when it comes to “new” human rights, like gender equality, same sex relationships, rights of women, or abortion, these topics remain a challenge for a lot of Christian communities, especially in Roman Catholic and Orthodox circles.

The important contribution Christianity made to the development of human rights is the linkage between human rights and human dignity, which is reflected in human rights documents. This linkage was a result of global political circumstances, especially during and after the time of totalitarian regimes and the horrors of the second world war and was made by Roman Catholic and Protestant activists and representatives. When it comes to the question of the extent that Christianity played in the modern international reflection on human rights, views differ. The question here is whether the human rights language can be completely detached from the religious sphere.

The theological underpinning of the connection between human rights and human dignity is drawn directly from the biblical account of the creation narrative in Genesis 1:26–28. The central motif hinting at innate human dignity is that humans were “created in the image and likeness of God”. It also underlines the special rank of humans as God’s representatives. In turn, to ignore this status of humans and their dignity would also mean to ignore God’s goal of creation and his dominion. Even if this passage has motivated different interpretations as regarding rights and duties connected to it, it has been the primary cornerstone of the engagement of Christians in the human rights debate. But the human rights debate has motivated theologians to explore that passage in more broader terms. In relation to women’s rights Genesis 1:26–28 has been recently drawn on to underline that it is both male and female who are created in God’s likeness and image and that they are equal. Furthermore, the statement that humans are acting as God’s representatives on earth not only gives them rights but also responsibilities, for the creation as well as for each other. From a Christian point of view this means that people have the duty of expressing justice, compassion, faithfulness and love. But the understanding of the human being as the likeness and image of God is likewise a commandment and a legal principle, as well as a right and responsibility. This becomes apparent in Genesis 9:6 with the prohibition of murder and bloodshed, which is linked to the principle of right to life.

The engagement of different churches in the human rights development and discourse, as well as the theological contributions made for this reason, must be

seen in the context of global political and social changes on the one hand, and on the other hand in regard to the historical development of these respective movements. For the Protestant representatives their initial focus on religious freedom can be best explained from the fight for rights and freedom which is deeply anchored in these movements themselves historically. Freedom of religion played a major role in the involvement of the ecumenical movement in the human rights discourse, but this focus shifted due to international circumstances like Socialism or the struggle against racism and became rather a means by which other rights could be promoted, and not the center. On theological terms the motif of *imago dei* still was in the center of the engagement with human rights, but the theological question on how “the Fall” influenced the rank of humans remained. It was mainly answered through the person of Christ, who was viewed to have restored human dignity through his actions. The Christological underpinning of human rights became the center of the theological debate. Human rights were seen as being strongly connected with human duties and responsibilities. Recently, the topic of religious freedom was given more attention due to the situation of Christians in the Middle East. But a systematical theological reflection on human rights is still to be expected.

Within the Roman Catholic Church there has been a major change towards the attitude of human rights since the 19th century. Although the language of human dignity is already to be found in theological texts from the 7th century onwards, its linkage to human rights was made in 1942 by Pope Pius XII’s as a reaction to historical events. It mirrored the theological thinking of the Roman Catholic theologian Jacques Maritain who held the view that human rights are anchored in natural law. A broad change in the attitude towards human rights came with the writing *Pacem in terris* 1958 by Pope John XXIII which includes a qualified affirmation of the UDHR. It also contains the right to freedom of worship and religion which shows a clear change in Catholic thinking. But rights were seen always in connection with duties. Subsequent documents of the Second Vatican Council reinforce this view and further promote the importance of human rights, especially of religious freedom as being central to human dignity. Here, human dignity is deduced from natural law as well as scriptural revelation. The document *Dignitatis Humanae* includes the statement that freedom is an essential aspect of God’s dealing with humanity in Christ, so any coercion in religion would be inimical to the Christian faith. Also, in the Roman Catholic church there has been a shift in emphasis of certain rights. In the present, Pope Francis especially focusses and promotes the rights of the poor, and the importance of religious freedom is emphasized particularly due to the situation of churches in the Middle East. The theological discussion connected to human rights revolves around the motif *imago dei*, the incarnation, the redemption by Jesus

and the connection of eschatology and human rights. In general, the view towards human rights of the Roman Catholic Church is still traditional. When it comes to rights of women, abortion, or same sex relationships there is still resistance and unease.

Within Orthodox Christianity (Chalcedonian and non-Chalcedonian churches), sources show that different views are being held towards human rights with various theological underpinnings. There are affirmations as well as reservations. The Ecumenical Patriarchate located in Istanbul has recently shown an open attitude towards human rights. It released the document *For the Life of the World* which is affirmative of the language of human rights, especially of the “creation of humanity in Gods likeness and image” and its relationship between freedom, liberty and human rights. A cautious attitude towards the basis of human rights is apparent in the writings of the Archbishop of Albania, Anastasios. Here, the motif *imago dei* is interpreted differently because there is a difference between likeness and image. The likeness is not a fact but a possibility for humans. According to this view, freedom means something different since it is about the achievement of inner freedom. In general, especially in contexts such as the Middle East where the Christian churches are a minority, the human right of “freedom of religion” seems to be linked in the minds of Orthodox religious leaders to the freedom of the church as a corporate body rather than the individual. Regarding the orthodox Church of Russia, recent documents dealing with human rights show ambiguity towards them and in some points contradict each other. Here, the central motif is *imago dei* as well, but with different interpretations. The last of these documents puts the theme human dignity in the center but underlining the connection to responsibility. A wide variety of human rights are acknowledged, but the focus lies on the need of the community. A clear human rights-statement of the church is still missing.

4 Human Rights and Islam

Traditional sources of Islam demonstrate that there is acknowledgement of a broad range of human rights in Islam. A fundamental basis is provided by the Qur’ān acknowledging and emphasizing the inherent dignity of all humans. Moreover, a special rank of humans is underlined because God created humans to be his vice-regent on earth and the angels were asked to bow before Adam (Q 17:70; 2:30). This human dignity is interconnected with human equality which is also found in the Creation-narrative of the Qur’ān. Since all humans descended from Adam as a common ancestor, they are seen as equal. This human image serves as a basis in connection to other more particular rights granted to hu-

mans: The Qur'ān establishes a broad concept of justice between humans including the prohibition of unjust bloodshed and prohibition of murder. Humans are asked to establish justice on earth, justice is placed right next to piety (Q 5:9), and God forbids injustice (Q 16:90). Interconnected with the theme of justice is the protection of the poor which is emphasized throughout the scripture encompassing the right of individuals of a due share of wealth (Q 51:19). Also, the theme of human freedom is addressed by the Qur'ān to the extent that humans can make their own decisions and even have the right refusing to believe in God (Q 18:29). Moreover, the Qur'ān underlines that there is no coercion in faith (Q 2:256) and humans are free to voice their opinion. Of course, this freedom is bounded by several duties the Qur'ān imposes on humans. Additional documents referring to the historical circumstances of the Qur'ānic revelation, like the farewell-sermon of Muhammad, show that equality is further emphasized. According to these sources, humans must be granted equality regardless of their racial, ethnic, or linguistic backgrounds. Believers of other monotheistic faiths, like Jews, were granted protection and keeping their religion in the constitution of Medina.

Like Judaism, rights and duties in Islam are closely connected and cannot be regarded as independent legal concepts. Any right an individual has corresponds to a religious duty. In classical Islamic law (*fiqh*) various concepts were developed not only to impose duties on the community, but scholars like Ibn Nujaym (d. 1563) developed a pre-modern concept of human rights. The formulated rights were the right to ownership, contractual rights, rights of parents, guardians, rights of the husband, rights of the wife, rights of children, and the rights of the neighbor. These principles can serve as an important basis for modern human rights debates in Islam. Another legal source for a discussion on human rights are the formulations of the five necessities in classical texts which comprise protection of life, intellect, religion, property, and family. But all these rights were limited to Islamic lands and the applicability of the shari'a. Inside the abode of Islam all residents enjoyed legal protection. Non-Muslims within the abode of Islam enjoyed a protected status, but historical sources show that their treatment varied in different eras and under different historical circumstances and that they were not regarded as fully equal to Muslims in that they had to pay a poll tax.

Engaging with different methods formulated by Islamic law led to fruitful discourse on human rights in modernity. The first is the distinction in classical law between the rights of God and the rights of people, which balances private and societal interests and granting individuals freedom. Second, through the formulation of purposes of shari'a (*maqāṣid*) the list of protected rights can be expanded. The use of reason has been another fruitful tool to analyze sources in

this regard. Scholars like Mashood Baderin defined justice and the protection of human dignity and life as the key principles of the *sharī'a*.

In the modern era, the history of many majority Muslim countries is connected to the experience of colonialism and their struggle to develop their own identity after gaining independence. A variety of Muslim scholars and thinkers engaged in discussions about European ideas, enlightenment, and Islamic reform. But in this historical framework, Muslims felt pressured to accept Western ideas and perceived them as something foreign and as part of the colonial agenda. Moreover, when it came to the discussion of human rights there was and still is an ongoing debate as to what extent these ideas are compatible with Islamic rules and concepts. By the end of the 20th century all Muslim majority states had at least incorporated some basic human rights into their constitutions. But the content of Islamic human rights documents shows a clear reaction to the outside pressure which most Muslim majority states felt of incorporating Western ideas of human rights.

Documents of Islamic human rights formulations show acceptance and the importance of human rights and even declare them to be part of the Islamic religion from its very beginnings, as in the case of the *Universal Islamic Declaration of Human Rights* (UIDHR) and *Cairo Declaration on Human Rights in Islam*. In conclusion, Islamic states and organs have to protect and uphold them. But the same documents show concentration on duties and obligations and moreover, a limitation of the scope of human rights by binding them to the *sharī'a*. Rights of children received extra attention by the Islamic Conference of Foreign Ministers in 2005, but the document was criticized for failing to conform with international human rights standards. Despite this criticism it shows the efforts of Muslim majority countries to participate in the international human rights discourse. The problem remains of exercising and including human rights in these states in reality.

In a broader sense the engagement of different Muslim representatives and scholars in the human rights debate can be categorized into two approaches: One is a defensive approach, which rejects the human rights approach as such, because it is perceived as a Western concept which cannot be reconciled with Islamic values. Moreover, human rights are deemed to be part of a colonial and anti-Islamic agenda. Some advocates of this approach simply favor Islamic formulations of human rights over Western formulations, or hold the view that Islam already supplied humanity with the necessary human rights. One example of this on a state level is the refusal to accept women rights conventions by explaining these conventions would be contrary to the *sharī'a*. Others argue that Islamic values stand above Western secular concepts or that classical Islamic law cannot be reinterpreted in modernity.

Furthermore, there is a harmonistic approach arguing that Islam and human rights are very different but can be reconciled by using different methods of interpretation such as independent reasoning. Especially when it comes to rights of women, sources must be reinterpreted because they emerged in a different historical context. Representatives of this approach underline certain qualities of Qur'ānic concepts, for example that the Qur'ān emphasizes social justice, human dignity and equality.

In the contemporary Islamic debate on human rights, problematic areas such as rights concerning women, the rights of the child, freedom of expression and freedom of religion, can be identified. One matter for debate remains polygamy in Islam, and there are many efforts constraining this practice by the reinterpretation of classical sources. When it comes to religious freedom, the issue of apostasy is the most complicated one since traditional Islamic thinking doesn't usually entail such a practice. But because norms regarding apostasy are not solely based on the Qur'ān and Sunna, they are not immutable and there is room for interpretation, according to some scholars. Moreover, it is pointed out that the Qur'ān and Muhammad advocated freedom of belief and religion, so also Muslims in contemporary states should have the possibility to freely choose their religion.

5 Commonalities and Differences

Judaism, Christianity and Islam share a basic concept of the human being as the zenith of creation. In all three religions, the Creation Narrative serves as a starting point. Although the stories in the Bible and in the Qur'ān differ, it comes to the same basic idea: humans possess inherent dignity because they are “created in the image and likeness of God”, according to the Bible, and declared God's vice-regent on earth, according to the Qur'ān. Here, the angels are asked to bow before Adam, which reminds of statements in the Letter to the Hebrews (Heb 1:6) granting man a higher rank than the angels. That God created the humans in his image is reported in a ḥadīth and, thus, became part of the Islamic conception of man.¹ Furthermore, equality among humans is secured, according to the three traditions, because the human race stems just from one human.

From a religious point of view, the special state of the humans can be considered as the foundation of the modern concept of human rights. However, all

1 Al-Bukhārī, *al-Jāmi' aṣ-Ṣaḥīḥ*, Isti'dhān 1, Bāb ba'd as-Salām, no 6, 227, cf. Melchert, Christopher, “God Created Adam in his Image,” *Journal of Qur'anic Studies* 13, 1 (2011), 113–24.

three religions agree that with rights come duties and responsibilities. These duties require, primarily, from the believer religious observance, which is intrinsically connected to founding and living in a good and just community, where members take care of each other. Giving charity and protecting the poor is an important cornerstone of the monotheistic religions. The prohibition of bloodshed and murder further underlines this point. Here also, the monotheistic traditions are closely connected: Surah 5:52 states that if someone kills another human being it would be as if he or she would have killed the whole world. This verse echoes the Talmud, where a similar statement is found.² The interconnect-edness of rights and duties is also emphasized in non-religious discourses. Just recently, Aleida Assmann pointed to the importance of the connection of human rights and duties as a reminder that rights cannot exist without duties and that this point is inevitable for shaping a pluralistic society in modernity.³

The contributions included in this volume show clearly that human rights are intensely debated within each one of the three religions, which led to the production of documents on human rights from the perspective of the respective religious communities. But one must critically ask to what extent these documents are regarded as binding when it comes to political decisions which affect the rights of individuals or communities. In reality, human rights are not observed in many countries, which is mostly due to unfavorable political circumstances. However, what role do religious leaders play in such cases in order to enforce respect for and implementation of human rights? What, rather, can be observed is that religious authorities, based on theological convictions, strive to elaborate particularities of human rights that are appropriate to them and to implement them in their respective contexts.

Although all three religions offer a common basis for human rights, as mentioned above, they include at the same time restrictions of individual rights concerning gender, sexuality and children, to name just a few examples. Especially religious freedom or women rights remain in all three religions a matter of debate. Even if one can state that Rabbinic law offers a certain individual freedom in the private sphere – the same could be said about Islamic law – this freedom is very narrow and doesn't necessarily agree with the modern idea of freedom. Even if religious authorities would choose not to prosecute certain ritual transgressions, religious obligations remain and collide with the modern principle of individual freedom. Another point of dissent between the modern concept

² bSanhedrin 37a.

³ Assmann, Aleida, *Menschenrechte und Menschenpflichten. Schlüsselbegriffe für eine humane Gesellschaft*, Wien: Picus, 2018.

of human rights and traditional religious views is that the sinner is usually deprived of certain rights and has, in some societies, still to expect societal exclusion, which in pre-modern societies had a huge impact on one's life.

In addition to the Creation Narrative, in Christianity the Incarnation Doctrine offers a further theological foundation of human dignity, which is also basic for the development of the concept of human rights. From a traditional Christian point of view, the question arises here whether non-Christians, who do not believe in the incarnation and, thus, in the human dignity restored by it, could enjoy the same restored state which Christians enjoy, according to that view. An inclusivist position, according to which Christ's redemption has a universal effect, would certainly affirm this. However, the Creation Narrative in Genesis remains the cornerstone of the human rights debate in Christianity. In that way, a common basis for further discussion on human dignity and equality is given across the three religions. Nevertheless, theological differences emerge when one dives deeper into the Narrative of Creation and the Fall of Adam and Eve: For Christians, this was a challenge to the question, if humans in some sense have to earn their dignity back. In the Qur'ān, the Fall does not have the severe theological consequences developed in Christianity.

The prominent position of the human beings in the created world remains the firm basis, common to the three religions, for the development of human rights. This is also the foundation of interreligious discourses on it, in order to discuss many still open questions. This remains relevant, especially when looking at the historical development of human rights. The history of the emergence of human rights documents shows that especially Protestant and Roman Catholic Christians participated in developing them. Because of global political circumstances, other religious communities, like the Russian church, were not able to do the same. Moreover, Islamic countries deem them as something Western. As a consequence, these communities tend to hold a rather defensive view towards the *Universal Declaration of Human Rights* and prefer to formulate human rights based on their own cultural and religious traditions. This shows the need for a new interreligious discourse which cannot be bound to religious issues themselves.

Although each of the three religions has developed its own conception of man with specific nuances, the shared basis in the discourse makes it possible to discuss the fundamental question of how the emancipatory concept of human rights can be reconciled with religious profound views of man, whereby the latter subordinates the individual to the community and speaks of man's duties to God and fellow human beings rather than of human rights. In addition to this tension, the universality of human rights across cultures and religions presents another problematic area that can only be addressed discursively if solu-

tions to the difficulties it raises should be sought. One of these difficulties is that the desired implementation of human rights in the world must suffer serious disruptions if, in the process of implementation, cutbacks would have to be made in favor of religious and cultural particularities. Is it possible to formulate a human rights charter which is not anchored in certain basic cultural and religious belief? Would different interpretations of human rights have to be permitted in the various religious communities and cultural circles, leading to different practices? Or should the same human rights – not reshaped by the religions according to particular interests – apply across regions and religions to one humanity, so that they can have a universally valid guiding function that moves societies to be shaped according to them?⁴ In order to make progress on these and other questions towards a better world, Judaism, Christianity and Islam, in discourse with one another, must come up with constructive proposals which appeal not only to their followers but also to secular people. This should be possible, not in order to eradicate religious and cultural particularities, but to create a humane basis on which diversity and difference can grow and flourish in a peaceful world.

Finally, the overview of the engagement of the three faiths showed that there is still much work to do from an exegetical and theological point of view. Human rights in the New Testament are not fully explored yet, and the same could be said about the Qur’ān and the Hebrew Bible. Since each one of the three religions demonstrates that there is much room for the interpretation of the traditional sources, fruitful discourse can, thus, revolve around the development of hermeneutical methods which can be utilized in a useful human rights debate currently and in the future.

⁴ For a discussion on these questions see Amesbury, Richard, “Inter-Religious Declarations of Human Rights: Grounding Rights or Constructing ‘Religion’?,” *Religion and Human Rights* 5 (2010), 43–64; Twiss, Summer/Grelle, Bruce (eds.), *Explorations in Global Ethics: Comparative Religious Ethics and Interreligious Dialogue*, New York: Routledge, 2000; Schreiner, Peter, “European Institutions, Human Rights and Interreligious Education,” in: Manfred L. Pirner/Johannes Lähnemann/Heiner Bielefeldt (eds.), *Human Rights and Religion in Educational Contexts. Interdisciplinary Studies in Human Rights*, vol. 1, 273–83, Switzerland: Springer, 2016; Lehmann, Karsten B., “Construction of the Concept of Religion in the United Nations’ General Assembly: From Human Rights to Dialogue and Harmony,” in: Stanley D. Brunn/Roland Kehrein (eds.), *Handbook of the Changing World Language Map*, vol. 1, 2761–76, Switzerland: Springer, 2020.

List of Contributors

Clare Amos was head of the interreligious office at the World Council of Churches, Geneva, specialising in relations with Judaism and Islam, until her retirement in 2018. She has an academic background in both interreligious concerns and biblical studies, and before moving to Geneva in 2011 was Director of Theological Studies at the Anglican Communion Office in London. Currently she holds the honorary role of Director of Lay Discipleship in the Church of England Diocese in Europe. Her commentary on Genesis, *Birthpangs and Blessings: A Commentary on the Book of Genesis* (Sacristy Press, Durham) was published in 2022 and she has contributed a chapter to the forthcoming publication *The Covid Pandemic and the World's Religions: Challenges and Responses* edited by Dan Cohn-Sherbok and George Chrystides (Bloomsbury Press).

Heiner Bielefeldt has been Full Professor of Human Rights and Human Rights Politics at the University of Erlangen-Nuremberg since October 2009. Before taking the newly established chair for Human Rights, he was Director of the German Institute for Human Rights (based in Berlin) which is the officially accredited national human rights institution of Germany. Bielefeldt's research interests, above all, include different interdisciplinary facets of human rights theory and practice. Between 2010 and 2016, he also served as the United Nations Special Rapporteur on freedom of religion or belief.

Michael J. Broyde is professor of law at Emory University School of Law, the director of the SJD Program, and Berman Projects Director at the Center for the Study of Law and Religion at Emory University. He is also a core faculty member at the Tam Institute of Jewish Studies at Emory. His most recent books include *Setting the Table: An Introduction to the Jurisprudence of Rabbi Yechiel Mikhel Epstein's Arukh HaShulhan* (Academic Studies Press, 2021, co-authored with Shlomo Pill of the Center for the Study of Law and Religion), *Sex in the Garden: Consensual Encounters Gone Bad in Genesis* (Wipf & Stock, 2019), and *Sharia Tribunals, Rabbinical Courts, and Christian Panels: Religious Arbitration in America and the West* (Oxford Press, 2017).

Shlomo C. Pill is senior lecturer at Emory University School of Law and the Paul and Marion Kuntz Scholar in Law and Religion at the Center for the Study of Law and Religion at Emory University. His work focuses on Jewish and Islamic law, jurisprudence, and American constitutional law with a focus on religious liberty issues. Pill's articles have been published in the *Buffalo Law Review*, *Mississippi Law Journal*, *Harvard Journal of Racial and Ethnic Justice*, *Pepperdine Dispute Resolution Journal*, *Touro Law Review*, and other academic and popular outlets. His recent book, *Setting the Table: An Introduction to the Jurisprudence of Rabbi Yechiel Mikhel Epstein's Arukh Hashulhan* (with Michael J. Broyde) was published by Academic Studies Press in January 2021.

Patricia Prentice is a researcher with a particular interest in social cohesion and religious communities. She has worked in Australia and overseas in the government, academic and not-for profit sectors, including in Cairo, Egypt, working for an organisation specialising in Arab-West Understanding and in Geneva, Switzerland for a human rights advocacy group. Pat-

ricia has managed research projects in Indonesia, Singapore and Pakistan and written on various topics, including Islam and human rights, intercultural marriage, Islamophobia, Islam and Australian values, and stories of resilience from Australia's religious communities during the COVID-19 crisis. She is a researcher at the National Centre for Contemporary Islamic Studies at the University of Melbourne.

Catharina Rachik is currently research associate at the Friedrich-Alexander-Universität Erlangen-Nürnberg (FAU) where she coordinates the book-series "Key Concepts in Interreligious Discourse". Before she joined the "Bavarian Research Center for Interreligious Discourses" she has been research associate and coordinator in the "Center for Islamic Theology" at the University of Münster. She gained her M.A. in Islamic Studies at the University of Münster. She is writing her dissertation about "Moses in the Qur'an". Her research focuses on Qur'anic Studies and Tafsir (Classical and Modern), the Qur'an in Late Antiquity, Prophet stories in the Qur'an, as well as on the field of Islamic art.

Abdullah Saeed is currently the Sultan of Oman Professor of Arab and Islamic Studies and Redmond Barry Distinguished Professor at the University of Melbourne. Among his key publications are *Human Rights and Islam* (Edward Elgar, 2018), *Reading the Qur'an in the Twentieth Century: Towards a Contextualist Approach* (Routledge, 2014), *The Qur'an: an introduction*, (Routledge 2008), *Approaches to the Qur'an in Contemporary Indonesia* (edited, Oxford, 2005); *Islamic Banking and Interest: A Study of the Prohibition of Riba and its Contemporary Interpretation* (EJ Brill, 1996).

Georges Tamer holds the Chair of Oriental Philology and Islamic Studies and is founding director of the Bavarian Research Center for Interreligious Discourses at the Friedrich-Alexander-Universität of Erlangen-Nürnberg. He received his Ph.D. in Philosophy from the Free University Berlin in 2000 and completed his habilitation in Islamic Studies in Erlangen in 2007. His research focuses on Qur'anic hermeneutics, philosophy in the Islamic world, Arabic literature and interreligious discourses. His publications include: *Zeit und Gott: Hellenistische Zeitvorstellungen in der altarabischen Dichtung und im Koran*, 2008; the edited volumes *Islam and Rationality. The Impact of al-Ghazālī* (2015); *Hermeneutical Crossroads: Understanding Scripture in Judaism, Christianity and Islam in the Pre-Modern Orient* (2017). He is the editor of the *Erlanger Jahrbuch für Interreligiöse Diskurse*.

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