

The Religious Foundations of Human Rights: A Perspective from the Judeo-Christian Tradition and Hinduism

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Abstract

Human rights, as perceived in international law, have been said to simply reflect western thought, not embracing values of non-western cultures. This issue is important since the underlying idea of human rights rests on the assumption that they are universal. It is therefore critical that this argument be addressed. This paper examines the foundation of human rights from a religious perspective. It analyses the Judeo-Christian tradition and Hinduism with regard to three fundamental aspects of human rights: the concept of human rights, equality and religious freedom. The paper concludes that religion does provide a theory for human rights and, as an examination of Hinduism makes clear, this foundation of rights does not only reflect western opinion. Furthermore, religious thoughts on human duties can contribute to the development and promotion of human rights. This is an important step towards developing awareness that it may be possible to talk of the religious foundations of human rights on a universal basis.

1. Introduction

Many theories have been developed to explain the foundations of human rights. According to the legal (or positivist) view of human rights, all human rights stem from the law and nothing else. For example, the source of human rights would be found in the Universal Declaration of Human Rights (UDHR)¹. Natural law theory (or Natural Rights theory), in contrast, bases the foundations of human rights, and in particular human freedom and equality, on the understanding that they have a natural, universal and an eternal aspect. There is also the religious theory which places human rights within the context of a moral vision. The issue is an important one since many have asserted that these foundations of human rights are essentially western ideas, ideas that do not embrace or reflect principles of non-western cultures. This view is espoused in the context of the universality and cultural relativist debate.

This paper examines the religious foundation of human rights. The aim is to examine how two major world religions, the Judeo-Christian tradition and Hinduism, provide for a

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¹ Adopted and Proclaimed by United Nations General Assembly Resolution 217(III)A, 10 December 1948, A/810 at 71.

theory of human rights. It argues that there is a relationship between the Judeo-Christian tradition and international principles of human rights. Furthermore, through analysing aspects of Hinduism, the paper attempts to demonstrate that the idea of human rights is not simply limited to the Judeo-Christian heritage. This will be done through an examination of three important concepts of human rights. Firstly, one will examine the concept of human rights and human duties. Human dignity and worth, as stressed in the UDHR, is a common feature of both traditions and in this context the two concepts of rights and duties should be seen as complementing each other. Secondly, the concept of equality is analysed to see whether this fundamental right has foundations in both traditions and thus be used to further support the idea of universal human rights. Finally, the right to religious freedom is examined. It must be noted from the beginning that the term 'human rights' as such is not found in these religions but that the religions provide for a theory of human rights.

2. Human Rights and Human Duties

The idea of human rights can be seen as early as the French Declaration of Human Rights of 1789, and the American Bill of Rights of 1791. However, the Charter of the United Nations (1945) initially asserted the international recognition of human rights: 'to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women...'² These rights were enumerated in the UDHR and elaborated in the two later Covenants.³ In addition human rights are guaranteed constitutionally around the world, including in the Indian Constitution. This leads some scholars to suggest that the roots of human rights are deeply embedded within various religious and cultural traditions of the world.⁴

In order to understand whether human rights do have a religious origin it is necessary to briefly look at how they are defined under international law. The UDHR recognises in its preamble the inherent dignity and equal and inalienable rights of all members of the human family. In its very first Article it is stated: '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.'⁵

² Preamble of the United Nations Charter. Signed at San Francisco on 26 June 1945.

³ Namely, the International Covenant on Civil and Political Rights 1966, 999 UNTS 171 (ICCPR) and the International Covenant on Economic, Social and Cultural Rights 1966, 993 UNTS 3 (ICESCR). The United Nations (UN) has adopted some 50 additional declarations and conventions concerning human rights. See UN website: www.un.org.

⁴ See Subedi, 'Are the Principles of Human Rights "Western" Ideals? An Analysis of the Claim of the "Asian" Concept of Human Rights from the Perspectives of Hinduism', (1999) 30 *California Western International Law Journal* 46; and, Sucharitkul, 'A Multi-Dimensional Concept of Human Rights in International Law', (1987) 62 *Notre Dame Law Review* 305 at 306.

⁵ Article 1, UDHR.

This means that all individuals possess human rights.⁶ They are general rights that arise from no special undertaking beyond membership in the human race.⁷ One does not need to do anything other than be born a human being and therefore human rights are not determined by virtue of any social action. Intrinsic to the notion of human rights is the idea that all humans equally hold them.⁸ This equality is understood in terms of a dignity equally inherent in each individual. So human rights language talks of the intrinsic value of human beings, which is equally common to all simply by virtue of them being human.⁹

This is the basic and essential understanding of universal human rights as perceived in international law. However, one will see below that a similar kind of idea can be found within the Judeo-Christian tradition and Hinduism.

A. Judeo-Christian Tradition

The central understanding of the human being within the Judeo-Christian tradition starts with the idea that God was the creator of all things. He created man in his own image: ‘Let us make man in our image, after our likeness ... So God created man in his own image, in the image and likeness of God he created him; male and female he created them.’ (Genesis 1:26-27, 5:1, 9:6).

This supports the idea of rights that all enjoy by virtue of their common humanity. By virtue of reflecting the divine image, absolute worth is accorded to human beings.¹⁰ This gives all human beings a special status, a unique value, or as Lorberbaum states in his article, his dignity.¹¹ Therefore the human being has absolute and inviolable worth. A human being is not to be valued for what society can do with him, he is not a means to an end. Being created in God’s image is to be understood ‘in the sense of God bestowing dignity and honour upon man’.¹² This is explained in Psalm (8:5) where it is stated ‘You have made him but a little lower than the angels, and have crowned him with glory and honor.’ This means that every human being is to be treated with love and respect.

Thus in Hebrew thought human life possessed intrinsic value by virtue of its divine endowment. The Jewish understanding of human rights is entirely a function of the

⁶ Ritter, ‘Human Rights: Would You Recognise One If You Saw One? A Philosophical Hearing of International Rights Talk’, (1997) 27 *California Western International Law Journal* 265 at 272. See also Donnelly, ‘Human Rights, Individual Rights and Collective Rights’, in Berting et al (eds), *Human Rights in a Pluralist World: Individuals and Collectivities* (Westport: Meckler, 1990) 39 at 43.

⁷ As quoted in Donnelly, ‘Human Rights and Human Dignity: An Analytic Critique of Non-Western Conceptions of Human Rights’, (1982) 76 *The American Political Science Review* 303 at 306.

⁸ Ritter, supra n. 6 at 272. See also Ritter, ‘Human Rights: The Universalist Controversy. A Response to Are the Principles of Human Rights “Western” Ideas? An Analysis of the Claim of the “Asian” Concept of Human Rights from the Perspectives of Hinduism, by Dr. Surya P. Subedi’, (1999) 30 *California Western International Law Journal* 71 at 79.

⁹ Ritter, *ibid.* at 79.

¹⁰ *Ibid.* at 85.

¹¹ Lorberbaum, ‘Blood and the Image of God: On the Sanctity of Life in Biblical and Early Rabbinic Law, Myth, and Ritual’, in Kretzmer and Klein (eds.), *The Concept of Human Dignity in Human Rights Discourse*, (The Hague; London: Kluwer Law International, 2002) 55 at 56.

¹² Psalm Chapter 8, Verses 5-6. See Kaplan, ‘Human Relations and Human Rights in Judaism’, in Rosenbaum (ed.), *The Philosophy of Human Rights: International Perspectives* (London: Aldwych Press, 1980) 53 at 55.

absolute value of humanity granted to every person.¹³ This belief within Judaism provides an explanation as to why human beings are given certain basic rights.

In the New Testament, the Son of God, in the person of Jesus Christ, perfected divine regard for the human being.¹⁴ Through Christ humanity is freed from sin and as a result of the Fall, redeemed before God, and exists in a state of grace.¹⁵ So it is in Christ that the image of God, obscured and blurred by sin, is restored. The human being has supreme value with infinite worth; he is not a bearer of borrowed values. So the Christian understanding of human rights is entirely a function of the value divinely granted to humans through Christ.¹⁶ This is absolute and universal. The absolute value of a person pre-exists any social differences, all are seen as equal, and as a result the value is universal. All have sinned and fall short of the glory of God; they are justified by his grace as a gift, through the redemption which is Jesus Christ, who is to be received by faith (Romans 3:21-25).

The origin of human rights language in the Judeo-Christian tradition therefore starts with the idea of the creation of man in the image of God, and is therefore absolute, and the state of grace, which is universal. This is the reason why it is important to recognise the dignity of every human being regardless of any social differences. Dignity is inherent. Human rights law provides for a way to recognise the respect for dignity. The importance of this can be seen through the numerous constitutions which have guaranteed its position.¹⁷

As an example, the idea of inherent rights and dignity as explained in religious terms can be seen to have implications on the law of euthanasia. It has been stated by the European Court of Human Rights, that the right to life under Article 2 of the European Convention of Human Rights (ECHR), does not include the right to die.¹⁸ Christianity condemns suicide and regards it as self-murder. Christians were encouraged to endure suffering with the help of God's grace rather than to seek to put an end to their lives.¹⁹

However, this does not mean that religion can provide for a theory of human rights in all aspects. For example, whereas the Bible claims all have dignity, including the foetus, the law has not recognised so. In Psalm 139:13 it is stated 'thou didst knit me together in my mother's womb' and in Jeremiah 1:5 and Isaiah 49:1 it is written 'Before I formed you in the womb I knew you, and before you were born I consecrated you...' This suggests that life starts early in the womb. This will have implications in the area of the right to life.

¹³ Ritter, *supra* n. 8 at 85.

¹⁴ *Ibid.* at 86.

¹⁵ *Ibid.*

¹⁶ *Ibid.* at 87.

¹⁷ For example Article 1 of the German Basic Law states 'Human Dignity is inviolable'. Similar provisions on human dignity can also be found in the preamble to the Irish Constitution of 1937, Article 41 of the 1947 Italian Constitution and also the Israeli Basic Law of 1992. See further Starck, 'The Religious and Philosophical Background of Human Dignity and its Place in the Modern Constitutions', in Kretzmer and Klein, *supra* n. 11 at 55.

¹⁸ See *Pretty v United Kingdom* 2002-III 155; (2002) 35 EHRR 1, see paras 34-43.

¹⁹ Ferngren, 'The Imago Dei and the Sanctity of Life: The Origins of an Idea', in McMillan, Engelhardt and Spicker (eds.), *Euthanasia and the Newborn* (Dordrecht; Lancaster: D. Reidel Publishing Company, 1987) 23 at 37.

The fact that this Biblical viewpoint is not represented in law (i.e. abortion is allowed), means that not all aspects of human rights can be explained by a Biblical theory.²⁰

It is because of the high value placed on human beings and the dignity given that all are given certain basic rights. However, there is another important, and in one's opinion far stronger, aspect to the Judeo-Christian thought. This is the idea of duties towards all. The fact that divine regard is given to all humans means that one should act with respect towards one another. If one looks closely at the UDHR, the concept of duties can be found. In Article 29 it is stated that: 'Everyone has duties to the community in which alone the free and full development of his personality is possible.'²¹

The Judeo-Christian tradition provides a more comprehensive theory for human duties than human rights. Novak has argued that Judaism more closely resembles a system of duties rather than rights.²² He identified that there is no equivalent term of 'rights', the closest is 'permission'. There are, however, corresponding terms to 'duty', in terms of 'commandments' (*misvot*) and 'obligations' (*hovot*). All persons are bearers of basic and inalienable human rights, as long as they perform a set of minimum human duties. So, for example, when one is moving along the path from stranger to Jew, the more duties he performs the more rights he is entitled to.²³ These duties are known as the Noachide laws and include, for example, the prohibition of theft and blasphemy. Similarly, there are the 'Ten Commandments', which prescribe a series of duties that each person owes to others. This suggests that although the idea of rights has been much of the focus, it is the concept of duties which is expressly stated and encouraged in the religious text. In this context it seems rights are simply the reciprocals of these divinely ordained moral duties.²⁴ For example, one person's duty not to kill or steal can give rise to another person's right to life or property.

There is also a further reason which may explain why we can find the notion of duties to the community in Western rights talk. This is the idea that people are not just created as individuals who are to live alone. They are created to live in communion with other people and subdue the earth.²⁵ The greatest duty, which may be drawn out in this context, is the duty to one's neighbour: Thou shalt love thy neighbour (Mark 12:31, Matthew 22:39 and Leviticus 19:18). However it does not present a right for the neighbour to be loved, love must be given unconditionally. Within Christianity it is taught that instead of demanding rights, one should give them up freely.²⁶ Our attitude should be the same as that of Jesus

²⁰ See *Baby-Boy case*, Inter-American Commission of Human Rights, case 2141 (United States of America), Resolution No 23/81, 6 March 1981, (1981) 2 *Human Rights Law Journal* 110 in which the Inter-American Commission of Human Rights did not recognise the rights of the unborn. However, one should particularly note the dissenting opinion in which reference was made to the Biblical ideas of the sanctity of all life.

²¹ Article 29(1), UDHR.

²² Novak, 'Religious Human Rights in the Judaic Tradition', provided online by the Emory University School of Law at: www.law.emory.edu/EILR/volumes/spring96/novak.

²³ Fishbane, 'The Image of the Human and the Rights of the Individual in Jewish Tradition', in Rouner, (ed.) *Human Rights and the World's Religions*, Volume 1 (Notre Dame, Indiana: University of Notre Dame Press, 1988) 25.

²⁴ Witte, 'Law, Religion and Human Rights', (1996) 28 *Columbia Human Rights Law Review* 1 at 27.

²⁵ De Blois, 'The Foundations of Human Rights: A Christian Perspective', in Beaumont (ed.), *Christian Perspectives on Human Rights and Legal Philosophy* (Carlisle: Paternoster Press, 1998) 12 at 18.

²⁶ Matthews 5:39-44, talking in the context of retaliation.

Christ: willingness to give up our rights in order to obey God and serve people - a servant's attitude.²⁷ This means that the Christian's greater concern is not self-regard but regard for the true well-being of others in the form of duties.

It can be seen how the most fundamental and basic Christian teaching of, for example, the responsible participation of individuals in the common good, has been transformed into basic rights in law. However, the retention of duties to the community in the UDHR suggests that it is not only rights that every person has but also the call for every person to their social responsibility.²⁸ This is the duty towards others which is so stressed in the religious texts. This aspect is particularly important within the context of Hinduism.

B. Hinduism

Within Hinduism a different view to that in law is maintained towards the idea of human rights. There is more emphasis on the concept of human duties as opposed to human rights. This proposes a serious challenge to the claim that human rights are universal and are recognised in all major religious traditions in the world.

In Hinduism, like Judaism, there is no word for 'rights'.²⁹ The closest word to 'rights' is *adhikara*, which relates to the idea of 'just claim'. However this concept is not used alone. It is used in the context where one has performed some act, or performed a duty.³⁰ In Sanskrit this understanding relates to the central concept of *Dharma*, the central doctrine of Hindu thought. This word is derived from the root *dhr* and means to uphold, sustain and nourish. It is a comprehensive term, which includes duty, morality, ritual, law, order and justice. For example, it can be used in a ritualistic context to mean the religious duties, or it can be used to mean the duties of the different castes (*varna-dharma*), or it can refer to those duties that are common to all irrespective of class.³¹ Professor Kane considers the conception of *dharma* as embracing the whole life of man.³² It is a mode of life or a code of conduct, which regulates a man's work and activities as a member of society and as an individual. It is intended to bring about the gradual development of man and to enable him to reach the goal of human existence.³³

The concept of *dharma* also refers to the structure of reality. It is the way in which the cosmos, the whole universe, or the balance in the cosmos is maintained. It holds together in a systematic manner the integrity and progression of life in the universe.³⁴ Hindu thought starts with the cosmos and work its way in to the individual.³⁵ At the human level, it involves self-regulation and social regulation. It is the duty of society and each

²⁷ Philippians 2:5-11, talking on Christ's attitude of servanthood.

²⁸ As a result we have the duty to help those in need, such as widows and orphans (James 1:27).

²⁹ Pandeya, 'Human Rights: An Indian Perspective', in Ricoeur (ed.), *Philosophical Foundations of Human Rights* (Prepared by UNESCO and the International Institute of Philosophy, 1986) 267.

³⁰ Ibid.

³¹ Sharma, *Hinduism and Human Rights, A Conceptual Approach* (New Delhi: Oxford University Press, 2004) at 14.

³² As stated in Nanda, 'Hinduism and Human Rights', in Werner (ed.), *Human Rights and Humanitarian Law: The Quest for Universality* (The Hague, Boston: M. Nijhoff, 1997) 29 at 30.

³³ Ibid.

³⁴ Rao, 'Practitioners of Hindu Law: Ancient and Modern', (1998) 66 *Fordham Law Review* 1185 at 1186.

³⁵ See Sharma, *supra* n. 31 at 36.

individual to maintain this larger cosmic framework of which they are a part.³⁶ As Rama Jois has said, since *dharma* regulates the mutual obligations of the individual and society, it is to be protected in the interest of both the individual and society.³⁷ It is not to be destroyed if peaceful co-existence and prosperity is to remain.

If this idea is looked at in the human rights context, since all humans are working towards maintaining the cosmos, i.e. they have a duty, it would appear that the concept of rights would not serve any purpose. Therefore, on a preliminary examination of Hinduism the concept of human rights is not relevant. However, a further analysis reveals a situation where the notion of right may be found.

The social structures and underlying social visions of human dignity in traditional India rests not on human rights but on social duties (*dharma*).³⁸ Persons are seen first as bearers of duties, not rights, and whatever rights one does have rest on the discharge of duties.³⁹ Some have argued that these duties are specified in terms of castes, which are defined solely in terms of birth. The caste system, which will be discussed further below, assumes that there are differences in the status and nature of human beings. This makes it necessary for people to be governed by different norms of behaviour appropriate to their station in life.⁴⁰ The universal application of a common set of rights for all people is not part of the cosmology.⁴¹ However, the caste system is merely a socially created institution as opposed to a religiously held principle and therefore the idea of a hierarchical structure of human beings may be overcome.

The main point to remember in this respect is that within Hinduism the focus is upon duties. Such duties include truthfulness and non-stealing. So, for example, the duty to tell the truth then means one would have the right to be told the truth. Sharma, in his text, has noted that the ability to practice these common duties is a special feature of being human, a sign of human worth and dignity.⁴² All humans are to be accorded dignity since they are equally working towards the goal of maintaining the cosmos, whether it is within the socially created caste duties or not. All Hindus are working to achieve spiritual liberation.⁴³ In addition, human beings are said to be the best poised for salvation and therefore human worth can be signified as truly universal.⁴⁴

Although the duty towards others is the fundamental underpinning of Hindu thought, examples within Hinduism exist of rights talk (or *adhikara* as Hindus use the term). The word *dharma* can be translated into a term meaning 'rights' when used in the context of a crisis (*apad-dharma*). For example, the concept of rights exists if one looks at the duties of the king (*raja-dharma*). It is the king's duty to protect all and also assist in times of *apad-*

³⁶ See Subedi, supra n. 4 at 53, quoting Younger, *Introduction to Indian Religious Thought* (Philadelphia: Westminster Press, 1972) 35-6.

³⁷ As stated in Nanda, supra n. 32 at 31.

³⁸ Donnelly, *Universal Human Rights in Theory and Practice* (Ithaca: Cornell University Press, 1989). See, in particular, Chapter 7 on Human Rights and Cultural Values: Caste in India.

³⁹ Ibid.

⁴⁰ Donnelly, supra n. 7 at 309.

⁴¹ Ibid.

⁴² Sharma, supra n. 31 at 14.

⁴³ A higher goal of the individual is to reach spiritual liberation, see further the chapter on religious freedom in Sharma, *ibid.*, 12.

⁴⁴ Sharma, *ibid* at 14.

dharma. However, there is no right for the subjects to be ruled over fairly or justly⁴⁵ (just like the idea that a neighbour does not have a right to be loved within the Judeo-Christian tradition). As a result they cannot enforce their rights. However, the *Mahabharata*, a Hindu religious text, grants the people to ‘gird themselves up and kill a cruel king, who does not protect his subjects, who extracts taxes and simply robs them of their wealth.’⁴⁶ There is a right (*adhikara*) to rebel against a king if he does not fulfil his duty to protect the people. This is a clear example of how the concept of human rights can be interpreted within the context of human duties.

The concept of human rights as seen in the Judeo-Christian tradition is by virtue of being created in God’s image and the state of grace that gives all human beings inherent worth. In human rights language this translates to certain basic rights. However, this is not to be understood as meaning there are no duties within this tradition. This can be seen from the fact that individuals are created to live in communion with others and have a duty to love their neighbours. The Hindu tradition focuses on the whole, that is, the cosmos, and individuals are seen within this cosmos to maintain it. They have duties which, if fulfilled, carry rights. Therefore, human rights are not inherent but rather to be worked towards by the fulfilment of duties. Furthermore, it has been seen how rights can be read into the concept of *dharma*, especially in times of *apad-dharma*. Therefore, the idea of rights is not totally redundant within Hindu thought. It is simply that Hindu thought places Article 29 of the UDHR prior to any other Article. This is the main difference between Western rights talk and principles within the Hindu tradition.

The approach that international human rights law has taken places the fundamental idea of dignity in a rights-based context. It is submitted that this founding principle can be better recognised in a rights *and* duty based system. In this regard, a better recognition and interpretation should be given to the concept of duties as found in Article 29 of the UDHR. Mahatma Gandhi expressed that ‘...all rights to be deserved and preserved came from duty well done. Thus the very right to live accrues to us only when we do the duty of citizenship of the world’.⁴⁷ This would mean that all rights in the UDHR would be correlated with duties.⁴⁸ Some Indian scholars have taken the idea of duties further and have said that Article 29 of the UDHR should be the guiding principle and all other Articles to be subordinated to this one.⁴⁹ However, one submits that there needs to be a balanced approach in law, an approach whereby both rights and duties find a place. The concept of duty cannot stand alone without the correlative concept of rights, one can only have a binding obligation to do his duty when the other has a right upon him. In this context, if one looks at Hinduism’s focus on duties rather than rights, its character can be reformulated as follows: Hinduism tends to accord greater recognition to the rights that others have in relation to us as compared to the rights we have in relation to them.⁵⁰ Concern for the common good enhances human rights by teaching those virtues that include respect for the human dignity of each and every person. So, for example, one would have a right to life

⁴⁵ Ibid. at 146.

⁴⁶ *Mahabharata* (*Anusasanaparva* 61.32-33).

⁴⁷ Sharma, *supra* n. 31 at 17.

⁴⁸ One can find in Sharma’s book in Appendix II the approach Hindus would take towards the UDHR.

⁴⁹ Pandeya, *supra* n. 29 at 274.

⁵⁰ Sharma, *supra* n. 31 at 34.

but would also have a corresponding duty to protect life. Rather than focusing solely on ‘I have this right’ or ‘we have this right’ it is time to start thinking about one’s duties, ‘I have this duty’ or ‘we have this duty’. It is this kind of thinking which is stressed in both religious traditions, and it is this type of thinking which can contribute to the further development and promotion of human rights on a universal level.

3. Equality

The UDHR guarantees the equal rights of all human beings, all are born with equal dignity. Ronald Dworkin has proposed ‘the egalitarian plateau’. This refers to the equal intrinsic value, of dignity, of each person, and thus everyone is to be treated with equal respect and be given equal rights.⁵¹ He has argued that the doctrine of equal human worth has its origin in ‘our’ religious heritage.⁵²

A. *Judeo-Christian Tradition*

Man being created in the image of God accounts for the strongest argument for the equality of all human beings and the idea of rights that all enjoy by virtue of their common humanity.⁵³ The rights concerning equality correspond to the position which is granted to man by God in creation and then again in the redemption.⁵⁴ The creation establishes male-female interdependence and the interrelatedness of all people as their brothers’ keepers (Genesis 2:20-24; 4:9-14).⁵⁵ This means that all believers are equally members of the body of Christ (1 Corinthians 12:26-27) and their oneness in Christ transcends racial, national, social and sexual differences (Galatians 3:28).⁵⁶ As a result of this strong argument, all forms of discrimination are to be rejected. This can be seen as implemented in human rights law through, for example, the non-discrimination principle in Article 14 of the ECHR and Article 2 of the ICCPR.

The Bible stresses that we are all equal because all of us have one father, one God has created us (Malachi 2:10). God loves us each equally and unconditionally, and wants his children to love each other.⁵⁷ So each person is equal simply by virtue of God’s gracious love. The prophets Amos, Micah and Isaiah speak of God’s concern being universal and of a universal kingdom wherein all people enjoy peace and prosperity.⁵⁸ There is also equality

⁵¹ Dworkin, ‘The Original Position’, (1973) 40 *University of Chicago Law Review* 40, as stated in Pojman, ‘On Equal Human Worth: A Critique of Contemporary Egalitarianism’, in Pojman and Westmoreland (eds), *Equality Selected Readings* (New York: Oxford University Press, 1997) 282.

⁵² Dworkin, *ibid.* at 295.

⁵³ Kooijmans, ‘Protestantism and the Development of International Law’, (1977) IV *Académie de Droit International Recueil des Cours Collected Courses* at 89.

⁵⁴ See in particular Brunner, *Justice and the Social Order*, 2nd edn (London: Lutterworth, 1945), in particular chapters 5 and 7.

⁵⁵ Montgomery, *Human Rights and Human Dignity* (Edmonton, Alberta, Canada: Canadian Institute for Law, Theology and Public Policy, 1995) at 209.

⁵⁶ *Ibid.*

⁵⁷ Pojman, *supra* n. 51 at 296.

⁵⁸ For example, Isaiah 2; 19:21-25; 60:1-5; Micah 4:2, as stated in Pojman, *supra* n. 51 at 295.

in sinfulness between humans, ‘all have sinned and fall short of the glory of God’ (Romans 3:23).⁵⁹ All have been redeemed by the death of Christ, and hence all are brothers. The man who believes in Him knows ‘neither Jew nor Greek, neither bond nor free, neither male nor female’, but in faith all are one in Jesus Christ.⁶⁰

As noted above, the equal worth of all human beings finds its place in human rights law. The understanding that we are of one flesh, formed by and infused with the same divine Spirit is so strong that it has also meant that we should love our enemies. For example, it has been said that: ‘If your enemy be hungry give him bread to eat and if he be thirsty give him water to drink.’⁶¹ The principle is also extended to sinners: condemnation of sin should be accompanied by love and respect for the sinner (John 8:1-11).⁶² This demonstrates the significance and extent of the equality principle in religion.

Since the Bible held that all human beings were brothers descended from the same parents, the fact that slavery existed and why it took so long to abolish is difficult to understand. For example, in France the equal rights granted to the blacks by the Declaration of the Rights of Man and Citizens were rescinded within months, and slavery was re-established.⁶³ One response may be that Christ has said, ‘My kingdom belongs not to this world...my kingdom is not from here’ (John 18:36). This has been interpreted to suggest that human equality does not have implications for the quality of life on earth.⁶⁴ Another response was to locate the slaves as creatures that had incurred God’s wrath. For example, the Biblical association of blackness with the descendents of Ham, Noah’s bad son who did not cover Noah’s naked body, may be seen as a reason for the justification of the trading of many African slaves.⁶⁵ However, the importance of the single origin for all humanity and as a result the equal worth of all human beings meant that these fallen people could be brought back into the fold. So, we have in the Bible that ‘slavetraders’ are lawless people⁶⁶ and that one should accept his converted slave as a brother in the Lord.⁶⁷ It is the understanding of the equal worth of all of God’s creatures that has been carried forward and its importance can be seen in international standards such as Article 5 of the UDHR which prohibits slavery and slave trade.

It can be seen that human beings are equal, for all have the same supreme destiny, the Kingdom of God, and the same dignity; they are equal in that everyone is responsible to God. This principle has been recognised in international human rights law, all have the same rights to be recognised as persons. For example, the equal worth of human beings finds its expression in equality in respect of the material means people need for their

⁵⁹ As stated in De Blois, supra n. 25 at 19.

⁶⁰ Galatians 3:28.

⁶¹ Book of Proverbs 25:21. See also Matthew 5:43-44: ‘Love your enemies and pray for those who persecute you that you may be sons of your Father in heaven.’

⁶² As stated in De Blois, supra n. 25 at 20.

⁶³ Sharma, supra n. 31 at 37-8.

⁶⁴ Villa-Vicencio, ‘Christianity and Human Rights’, (1999-2000) 14 *Journal of Law and Religion* 579.

⁶⁵ In Genesis 9:20-29 Noah cursed Ham and said he would always be a slave in his brothers’ service. See Loomba, *Colonialism/Postcolonialism* (London: Routledge, 1998) at 105. Although not expressly stated in the Bible, the definition of the name ‘Ham’ can be hot, dark or black. See *Index and Concordance of the Holy Bible: Authorised King James Version* (Bible House, North Carolina, 1976) at 91.

⁶⁶ 1 Timothy 1:10.

⁶⁷ Philemon 16. As stated in De Blois, supra n. 25 at 19.

subsistence and development.⁶⁸ Kaplan, in his article, has stated that people should give to each other according to their needs.⁶⁹ This means particular concern for the welfare of the deprived, those whom either social practice or personal circumstances make especially needy. Social resources need to be expended to promote social justice and not to perpetuate injustice.⁷⁰ This can be seen in Ecclesiastes 4:1, where it was said; ‘I saw the tears of the oppressed and they had no comforter and on the other side of their oppressors there was power.’ In another verse it is said; ‘Our desire is not that others might be relieved while you are hard pressed, but that there might be equality.’⁷¹

This further demonstrates the principle of the equal worth of human beings. There is a duty to protect people, for example, that are in need. Women and children are especially to be protected.⁷² This can be seen in Article 25 of the UDHR where it is stated that motherhood and childhood are entitled to special care and assistance. However, more interestingly in this context is the concern for the poor and just social relations, which is stressed in the Bible.⁷³ For example, the difference in the economic functions of employer and employee does not justify significant differences in the standard of living: ‘you shall not sleep on cushions while your servant sleeps on straw.’⁷⁴ In addition, livelihood must be provided to those who are unable to provide for themselves: ‘If your brother has become poor and his hand fails, you shall uphold him, even if he be a stranger.’⁷⁵ There are no exceptions to the right to a decent livelihood.⁷⁶ So the equal worth of all human beings means to help those who are in need. This can explain the development of economic, social and cultural rights in international human rights law. These religious principles are found within human rights law and justify the right of all members to social security⁷⁷ and the right to an adequate standard of living.⁷⁸

So it can be summarised that a relationship may be found with the idea of equality in human rights language and within the Judeo-Christian tradition. The fact that we have one father, one creator of all and we all were created in his image is the founding principle of the intrinsic equal worth of all. This means that even one’s enemies and the sinners should be loved. Furthermore, the fact that economic needs must be acknowledged and fulfilled can be found in both religion and law.

B. Hinduism

When Dworkin said that the doctrine of equal human worth has its origin in ‘our’ religious heritage, it is most likely that he is referring to the Christian tradition. However, the

⁶⁸ De Blois, supra n. 25 at 21.

⁶⁹ Kaplan, supra n. 12 at 75.

⁷⁰ Kaplan, supra n. 12.

⁷¹ 2 Corinthians 8:13-15.

⁷² As a result we have the duty to help those in need, such as widows and orphans (James 1:27).

⁷³ De Blois, supra n. 25 at 21.

⁷⁴ Talmund, Kadushin 22; Kaplan, supra n. 12 at 76.

⁷⁵ Leviticus 25:35.

⁷⁶ Kaplan, supra n. 12.

⁷⁷ As stated in Article 22, UDHR and Article 9, ICESCR.

⁷⁸ Article 25, UDHR.

fundamental concept of equality identified within the Judeo-Christian tradition may also be found in Hindu thought. Before a discussion of this it is important to recognise and address the misperceptions that much of society has of the socially constructed caste system.

Caste is defined as a group of persons characterised by hereditary membership which ranks the different groups as relatively superior or inferior to one another.⁷⁹ Four castes have been constructed, *Brahmans*, *Ksatriyas*, *Vaisya* and *Sudras* and can be translated as the priestly, warrior, agriculturalist and trading, and servicing classes respectively. In addition there were the *untouchables* who formed a separate group at the bottom, and with whom contact was considered polluting.⁸⁰ Each of the groups is to have certain duties dependant on their birth. Max Weber has written that Hinduism did not possess a universally valid ethic, for the religious and moral code (*dharma*) of each caste was different.⁸¹ Each caste had a *dharma* corresponding to its position on the caste scale. The failure to perform one's caste duty would constitute a violation of *dharma*.

Since this thinking draws a sharp moral distinction between human beings in different castes, it seems in stark contrast to the view in the Judeo-Christian tradition with its firm belief in the inherent equality and worth of all simply from being created in the divine image. As an example, upper caste Hindus frequently restricted temple entry so as to keep untouchables out of the temple. As a result of such inequality, many people from the lower castes have turned to alternative religions such as Christianity and Buddhism. This implies that all human beings are not seen as (inherently) equal. It is difficult to envision a universal principle of equality when Hindu thought maintains the caste system. The caste system is clearly in violation of international human rights law with its emphasis on the inherent equal worth of all human beings.

However, the idea of a 'caste system' as a hereditary aspect that lasts through generations is not expressly identified within the original religious texts. The caste system was an idea that was taken out of the religious context and expanded upon in a philosophical context, in particular in *The Laws of Manu* (or the *Manusmriti* which translates into the guidelines for man).⁸² The *Manusmriti* is a book which interprets the *Vedic* scriptures. Since each caste was created to serve a specific purpose or duty, it was an effective system to organise society, a division of labour. The ideas in original *Vedic* scriptures incorporate the principle of equality. This is demonstrated by a verse in *Rigveda*, where a poet exclaims, 'I am a reciter of hymns, my father is a physician, and my mother grinds corn with stones.'⁸³ This means that one can be whatever he desires and is not restricted by his 'caste' as understood by many. Equality of all human beings was reiterated in the *Vedic* period, no one was superior or inferior, all were considered as equal 'like the spokes of a wheel of the chariot connecting its rim and the hub'.⁸⁴

A deeper meaning of equality is found within the Hindu religion. This embraces the idea of harmony and fraternity among all human beings, the equality of all human souls.⁸⁵

⁷⁹ Donnelly, supra n. 38 at 127.

⁸⁰ Sharma, supra n. 31 at 51-2.

⁸¹ As stated in Smith, *India as a Secular State* (Princeton: Princeton University Press, 1963) at 293.

⁸² See in particular 11.132 and 12.55 in the *Laws of Manu*.

⁸³ *Rig-Veda* IX, 112.3, as cited in Nanda, supra n. 32 at 34.

⁸⁴ As cited in Nanda, supra n. 32 at 35.

⁸⁵ Subedi, supra n. 4 at 54.

According to *Vedanta* philosophy, the souls in every human being is the same, therefore, all human beings should be treated as such.⁸⁶ This is because God is present in all that exists: 'God covers all that moves in the Universe'.⁸⁷ Hinduism believes in universal brotherhood and since God permeates every being, there is unity and equality in diversity: 'A Seer is he who sees the immutable in the body of all mortals; and, realizing that the same being equally exists everywhere, he attains salvation as he does not slay others bringing death to his own self.'⁸⁸

This means that there is inherent equality in all human beings, an idea which is also reflected within the Judeo-Christian tradition. It can therefore be said that a religious theory for the principle of equality as expressed in international human rights law can be found. This is so within the Judeo-Christian tradition and Hinduism. The caste system is clearly in violation of international human rights law with its emphasis on the inherent inequality of persons based upon duties of one based on their caste. However, if one adopts the foundational concept of equality, the original idea in religious texts, then the caste system as understood in other texts can be and must be disregarded. The principle of equality as stated in human rights law does also have a foundation within Hinduism.

4. Freedom of Religion

One of the most fundamental freedoms recognised is the freedom of religion. Under Article 18 of the UDHR: '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.'

If one uses the view espoused by Sharma, freedom of religion can take many meanings. According to him freedom of religion can mean being able to choose one's religion; freedom from religion, in the sense of not being placed under any obligations to follow any religion; freedom to religion, in terms of being free to organise and engage in religious activities such as freedom to propagate; and finally freedom to change ones religion.⁸⁹

A. Hinduism

The importance of freedom of religion, as stated in the UDHR, can be found within Hinduism. In Hinduism one can start with the concept of *dharma*. As explained in earlier chapters, *Dharma* means, at the human level, the order inherent in man, the ethical life.⁹⁰ It is the duty of every individual to make out this order in order to bring about unity

⁸⁶ Subedi, *ibid* at 65.

⁸⁷ *Isa Upanishad*, verse 1. See also *Bhagvadgeeta*, chapter IX, verse 4, talking in the context of knowledge and chapter XIII, verse 16, talking in the context of the Supreme Truth.

⁸⁸ *Bhagvadgeeta*, ch. XIII, verses 27-28, as cited in Nanda, *supra* n. 32 at 32.

⁸⁹ Sharma, *supra* n. 31 at 101.

⁹⁰ Barnabas, 'Religious Freedom and Human Rights', in Nirmal, *Human Rights in India, Historical, Social and Political Perspectives* (New Delhi: Oxford University Press, 2002) at 145.

throughout the world. The Dharmic scheme gives freedom to every individual, to make out this order and this includes religious freedom. Through being free to practice religion, individuals would acquire mental, emotional and spiritual stability. They may reach spiritual liberation (*moksha*). This refers to the higher level of reality, man's essential self.⁹¹ The material reality is looked upon as an illusion and the ultimate truth lies beyond it.⁹² The law of *Karma* (action and reaction) means one's action in the previous life will bear an influence in one's next life, the cycle of *Samsara*, or reincarnation. The purpose of a human life is to reach the highest spiritual goal, that is, to escape from this cycle of material reality. The only way one can reach liberation from the cycle is for the individual to attain complete realisation of the nature of the self, that is, identity with the Supreme Being.⁹³ One must be free to experiment and discover the truth in order to find this identity. Therefore religious freedom is identified as an important aspect.

The freedom to follow one's own religion necessarily requires tolerance and respect for other religions. The nature of Hindu religion is conducive to religious tolerance. Hinduism recognises that the goal of attaining realisation with the nature of self can be reached through many paths. All traditions which help an individual to lift his soul to the Supreme Being are held up as worthy of adherence.⁹⁴ RadhaKrishnan addressed this issue, stating that since different people realised God in different ways, all were recognised.⁹⁵ All religions can be instruments of personal realisation. The nature of this tolerance derives from the belief that the Supreme or Ultimate Reality is without name, form, personality or qualities.⁹⁶ In the *Rig Veda*, the most ancient of the Sanskrit scriptures,⁹⁷ it is written 'The real is one, the learned call it by various names ...'. Similar attitudes are also stated in the *Bhagavad-Gita*, in particular in Chapter 4 it is stated 'Whoever approaches me in whatever manner, I accept him. All paths men are struggling through lead unto Me.'⁹⁸ Vedanta philosophy further expounds on this tradition with its insistence upon the one absolute truth expressed through manifold manifestations.⁹⁹ The doctrine of having *ishta-devata* (chosen deity) invites individuals to select from a variety of Gods which satisfy their spiritual learning.¹⁰⁰

Hinduism can therefore be seen to provide for a theory of human rights in the context of religious freedom. Being free to practice religion and discover the truth in order to reach liberation is the primary reason. Furthermore, Hinduism is seen as promoting religious freedom through its liberal tolerant attitude towards other faiths. This conception of one absolute truth expressed through many ways is a prime example of the freedom of thought, conscience and religion under Hinduism.

⁹¹ Supra n. 81 at 26.

⁹² Birodkar, *Religious Tolerance and Secularism in India*, chapters available at: http://hindubooks.org/sudheer_birodkar/hindu_history/secularroots.html.

⁹³ Ibid. See also Lobo, *Human Rights in Indian Situation* (The Commission for Justice, Peace and Development Catholic Bishops' Conference of India, 1991) at 21.

⁹⁴ Sharma, supra n. 31 at 97.

⁹⁵ RadhaKrishnan, *The Hindu View of Life* (New York: Macmillan, 1927) at 19, as cited by Sharma, *ibid.*

⁹⁶ Smith, supra n. 81 at 27.

⁹⁷ Ibid. at 147.

⁹⁸ *Bhagvadgeeta*, Chapter IV, verse 11, as stated in Nanda, supra n. 32 at 33.

⁹⁹ Smith, supra n. 81 at 147. See also Sharma, supra n. 29 at 98.

¹⁰⁰ Smith, *ibid.* at 27.

B. Judeo-Christian Tradition

The Christian notion of religious freedom starts from the presupposition that all individuals are free and responsible. They are to respond to the creator and are asked to fulfil neighbour love in free, spontaneous responsibility.¹⁰¹ Individuals have been given freedom from the Law provided by grace in the person of Jesus Christ.¹⁰² It is granted by God and received in faith and love. The acceptance of the love of God has to be a free act since God can only have communion with a free being.¹⁰³ It is only in freedom that an individual can do God's will as a loving creature that obeys his own free will. In addition, the ultimate source of truth is God himself. His truth is revealed to the seeker through inspiration and scripture. The believer is assisted in understanding God's truth through personal revelation, fellow believers and through the church.¹⁰⁴ This pursuit of the truth can only be reached by guaranteeing freedom of religion and conscience even if as a result the individual may fall into error.¹⁰⁵

Religious freedom is grounded in the order of personal life rather than the order of society, that is, it belongs to the individual person. There should be freedom to proclaim the gospel and for individuals to find their eternal destiny through faith in the Lord Jesus.¹⁰⁶ This means that the gospel cannot be forced on anyone. This can be found in the Bible where Christ said: 'Behold, I stand at the door, and knock: if any man hear my voice, and opens the door, I will come in and eat with him and he with me' (Revelation 3:20). This statement supports the contention that individuals have a choice and cannot be forced by anyone, in particular by the state. Since Jesus never forces himself on anyone, neither can the state.

With regards to religious tolerance within the Judeo-Christian tradition, in the Biblical period ancient Israelites were encouraged to view the Gods of other peoples as non-entities. In this respect ancient Israelite faith was exclusivist in orientation.¹⁰⁷ Jews contend that they are God's chosen people and partners in a special covenant. However, foreign people were not condemned for their pagan practices.

A similar attitude seems to have been followed in the Christian tradition. Christians affirm the uniqueness of their faith and its superiority.¹⁰⁸ Since they believe Jesus Christ was the Son of God, they view themselves as the heirs of the one and only true religion. Man can only be a good or godly man through following Christ: 'I am the way and the truth and the life. No one comes to the Father except through me.'¹⁰⁹ However, this does

¹⁰¹ Rendtorff, 'Christian Concepts of the Responsible Self', in Rouner, *supra* n. 23 at 38.

¹⁰² Ritter, *supra* n. 13 at 88.

¹⁰³ *Supra* n. 54 at 55.

¹⁰⁴ Mack, 'Religious Human Rights and the International Human Rights Community: Finding Common Ground without Compromise', (1999) 13 *Notre Dame Journal on Law, Ethics and Public Policy* 455 at 481.

¹⁰⁵ Since individuals also have a right to fall into error. Brunner, *supra* n. 54 at 57. See also Lobo, *Human Rights in Indian Situation* (The Commission for Justice, Peace and Development Catholic Bishops' Conference of India, 1991) at 13.

¹⁰⁶ De Blois, *supra* n. 25 at 22.

¹⁰⁷ Cohn-Sherbok, 'Jewish Religious Pluralism' (1996) 46 *Cross Currents* 326.

¹⁰⁸ Smith, *supra* n. 81 at 151. See also Cohn-Sherbok, *supra* n. 107.

¹⁰⁹ John 14:6.

not mean they are intolerant of other faiths. Calvinists have recognised that as a result of our fall into sin and as a fruit of redemption we now live in a religiously divided world and religious freedom must be assured of every faith in an equal way.¹¹⁰

A further reason why one may find a relationship between Christianity and the right to religious freedom as stated in law comes from the idea that Christians are under a clear duty to manifest their faith, rather than treat it merely as a matter of private belief.¹¹¹ Hence, one can see how during colonial times, the Christian faith was spread dramatically around the world. The duty laid down by Jesus on all believers is to tell others of their beliefs and the authority of the Bible as the word of God by which the individual can learn of the truth.¹¹² The gospel is to be preached to the ends of the earth.¹¹³ The Bible has given this freedom to proselytise and educate religiously (Matthew 28:18-20).

The discussion of religious freedom within Hinduism and Christianity does provide a theory for the right to freedom of thought and religion as stated in Article 18 of the UDHR. Such freedom is important in both traditions in order for an individual to reach salvation.

5. Conclusion

From the above discussion two major conclusions can be made. Firstly, religion can provide a theory of human rights and secondly, this foundation is not just limited to Western ideas. By placing two major religious traditions side by side, one finds that each of these forms its own pattern in which rights find a place. Within the Judeo-Christian tradition, the idea of human rights can be explained by the creation of life. All are created in God's divine image and have one Father. Therefore all have inherent dignity. All are born equal and are free, responsible beings. Within Hinduism similar ideas of equality and freedom can be identified. All are equal within their souls since God is present in all. All have an equal chance to be whatever they desire to be and are not restricted in any way by their caste. Similarly, all are free in order to attain the highest spiritual goal. If one looks at the foundation of human rights from a religious perspective it will become apparent that human rights do not simply have origins in Western thought. The idea of humans having rights can be explained by the Judeo-Christian tradition as well as Hinduism. This is a step towards developing awareness that it may become possible to talk of the religious foundation of human rights along a universal basis.

Through an examination of the religious theory of human rights another idea has emerged. This is the idea of duties. Human rights, by definition, talk of rights. These rights, as reflected in law, are based on individual interests and are placed prior to any social duties or obligations. Although aspects of rights may be identified within Hinduism, more emphasis is placed upon social duties. A similar line of thinking is also to be found in the Judeo-Christian tradition with its emphasis on duties towards others. In this context it

¹¹⁰ Montgomery, *supra* n. 55 at 205.

¹¹¹ See Leigh, 'Towards a Christian Approach to Religious Liberty', in Beaumont (ed.), *supra* n. 25, 31.

¹¹² In comparison, within Judaism, although convinced that they are God's people, they do not seek to convert others to Judaism.

¹¹³ De Blois, *supra* n. 25 at 22.

is submitted that taking into account human duties can further enhance the concept of human rights. Maintaining a system whereby there are only rights is too self-centred. However, by adopting an interpretation which would include duties there would be respect not only for individual rights but also for the rights and dignity of every person. This would mean taking a broader interpretative approach than is currently maintained towards the meaning of human rights under international law. Such an approach would embrace not only inherent human rights but also certain basic inherent social duties.