

Human Rights as the Negation of Religious Ethics

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Abstract

The present paper takes as its moniker an assertion of that theologian-cum-state theorist, Georg Wilhelm Friedrich Hegel. Hegel saw the Reformation as a moment of transition from dogma to reason in religion, concomitant with the establishment of the modern secular state in Europe. This paper will argue that whereas human rights appear as the ethical content or desire of the rational state, they do not offer a simple corollary or complement of religion; indeed they tend to reverse or negate principles that are central to most major religions. The argument is straightforward: I suggest that core religious symbologies of obligation and community—the obligation of one toward another and the community in God—are vacated in human rights. Human rights transform relations of obligation into systems of ownership and debt (I am no longer obliged to you; rather you are indebted to me). They idealise a relation between the state and the individual that is fundamentally hostile to notions of community. The argument proceeds under four headings: first I look at ‘freedom’—drawing on Hegel for the thesis that human rights be read as a vehicle of religious ethics in a secular state. Second, I refer to Freud and Levinas for the sense of the divine expressed through (or manifest in) guilt and ‘obligation’; I contrast briefly the religious expression of these notions with that found in human rights discourse. Third, a section on ‘community’ argues that this is not merely ignored in human rights discourse, it is actively undermined. Finally, I look at the contemporary practice and theory of human rights envisaged as a system of self and sovereignty channelled through ‘law’ and the state. The argument does not assume incompatibility between human rights and religion as matters of personal belief—it does however identify rivalry between the normative directives on behaviour and self-understanding that inform each as a matter of practice.

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Introduction

This paper revisits the many contiguities between human rights and certain core religious tenets as signs not of complementarity but of conceptual hostility. As I hope will become clear, this is not merely a thought experiment. Human rights, of course, belong firmly and demonstrably within the Western secular tradition, but this fact does not in itself pose an obstacle to complementarity. To the contrary, religions might benefit from the presence of familiar symbology, norms and imperatives mutually illustrated in a secular setting—we might expect a full correspondence between the private norms of religion and public norms of human rights. But what if, beyond their likely derivation from religious normativity, human rights tend also to supersede or occlude religion altogether? What if human rights reposition this familiar set of norms in such a way that if we were to commit ourselves to them, we would slowly close the door on faith? These are the questions I wish to explore in the present paper. My thesis does not assume that we must find incompatibility between human rights and religion in practice nor that the two cannot co-exist side-by-side or be mutually supportive. It states rather that the horizon of human rights—a distant horizon, indeed one that is unlikely ever to be reached—is a world wherein religion is not only unnecessary but maybe even unfeasible. Guided in the main by Hegel and Freud, I will approach this topic under four headings—freedom, obligation, the community, and law.

1. Freedom

Hegel speaks of the accession of religion to rationality as the triumph of freedom. In his 1827 lectures on the philosophy of religion, he identified three stages of progress towards reconciliation between religious and what he calls ‘worldly’ concerns.¹ These are, first, a ‘stage of immediacy (or of the heart)’ which is typified in the devotion to God of the individual, monasticism, asceticism, possibly mysticism. The second stage is that ‘in which the church is dominant’, which Hegel characterises as ‘a condition of “unfreedom”’. For Hegel, in this stage, ‘the ruling principle is that humanity is not at home with itself’—the dominant motifs are of unholiness, servitude—and where the world and religion coincide there is dissonance, corruption, contradiction. Finally, the third stage is that of ‘ethical life’ wherein, Hegel says, ‘the principle of freedom has penetrated into the worldly realm itself, and the worldly, because it has been thus conformed to the

1. See: Hegel, in: Houlgate (ed), 1998: 481-507; citations at 7-507.

concept, reason and eternal truth, is freedom that has become concrete.' 'The ethical', he says, 'is an obedience in freedom, a free and rational will, an obedience of the subject towards the ethical. Thus it is in the ethical realm that the reconciliation of religion with worldliness and actuality comes about and is accomplished.'

By ethical life, of course, Hegel means the life of a citizen of a modern state, which he calls, in *The Philosophy of Right*, 'the realized ethical idea'.¹ By embedding ethical values within civic structures, by making them a matter of education, habit and law—each of which Hegel emphasises as concrete achievements of the state—by positioning individuals as responsible thinking and acting beings who must freely decide to live an ethical life—that is the freedom to choose one's own constraints—and by providing the means to do so, the state concretises and energises the (dialectical) relation between the secular and the religious. Freedom is attained only when the religious and secular are closely intertwined in a state that has rationalised the ethical impulses of religion and released them from coercion or dogma.

Human rights, a generally later innovation, appear credibly as an expression of the ethics with which Hegel was concerned. They are also replete with claims to freedom—freedoms that, like Hegel's, appear to stem from constraint. A core—indeed, perhaps *the* core—freedom, from this perspective, is freedom of religion. Freedom of religion is, however, highly unusual among human rights in that it is the fruit of the hard-won hard-law treaties concluded to end desperate and bloody wars—notably the 1555 Peace of Augsburg and the 1648 Treaty of Westphalia. One such, the Union of Utrecht, led many Jews to move to the Netherlands where their freedom of worship was protected—this is the immediate context for Bento Spinoza's passionate defence of freedom of religion in the *Tractatus Theologico-Politicus*. Precisely this subordination of religion to the state—which is also the necessary condition for freedom of religion—underpins the Westphalian system, and fulfils very concretely Hegel's notion of the reconciliation of the religious in the secular state.² Freedom of religion comes with a constraint that cuts to the heart of faith—it axiomatically denies religious authority over political activity. In this, freedom of religion is similar to, and provides the model for, other civil liberties: their full enjoyment is offered only in the private sphere. More to the point, freedom of religion has nothing whatever to say about worship—it says only that

1. See: Hegel, 1996: 240.

2. Hegel, however, was no supporter of the Westphalian terms, which in his view dismembered the German state. See: Hegel, 1956: 436-7.

attempts to physically impose any form of worship on others will be resisted by the state. Freedom of religion is merely, in other words, a negative ethic; the constraint operates from without. Clearly we cannot speak of human rights as somehow simply embodying or embedding religious norms, which are generally positive, in a secular environment. The relation is more complex.

So: a first inquiry might be into the kind of freedom found in the fuller menu of human rights we now have—replete with mechanisms of assertion and vocabularies of condemnation—and in particular the relationship between freedom and constraint constructed therein. On two accounts, a human rights ethic may appear inadequate to the normative platform Hegel expects of the contemporary state. On one hand, human rights do not appear to offer a sufficient account of the ethics of the self—indeed, they invite a separation between morality and ethics, freeing the individual from a concern for his personal conduct, other than its mere lawfulness. The human rights ethical regime reserves moral (and legal) censure for interpersonal violations. With regard to the self, the regime is silent—that is to say, insofar as guidance on the care of the self is available, it must be sought elsewhere—in the economic or the private sphere. Thus pornography, to take one of many possible examples, is reframed as a question of freedom of expression rather than of moral rectitude. Yet an ethical system that has little to say about the conduct of the self—except where it infringes upon others—must surely risk vacuity. On this account, human rights as ethics err on the side of liberty; they neglect the constraints necessary to responsible freedom in the Hegelian sense. Grounded predominantly in notions of personal liberation, they effectively transfer responsibility from the individual to the state.

A second account, however—a paradoxical corollary of the first—might find human rights *deficient* in its guarantees of freedom. The great virtue of the state in Hegel's view was its capacity to reign in the extremist tendencies of civil society, the possible deleterious effects of dissipated wealth maximising behaviour. The state provides a counterweight to the pursuit of self-interest through its function of serving all; it provides a platform for solidarity among the disparate groups that make up civil society. Human rights, however, have not evolved as an ethical means to achieve solidarity in this way. They have instead provided a reliable means to *limit* the state's redistributive reach. Human rights associate casually with critiques of an oppressive or paternalist state, and lend themselves readily to its curtailment. They respond poorly to ethical demands of care, love,

or solidarity, which Hegel regarded as so important to tame or mitigate the destructive directives of an unrestrained individual ethic.

The following two sections pursue these two accounts in more detail, looking in turn at notions of obligation and of community.

2. Obligation

In Freud's speculative and (by his own admission) incomplete account of the origins of monotheism, God is constructed to replace a supreme father figure killed by the clan. Horrified by their crime, but unwilling to reinstate the absolutist domination of their murdered father, the brothers instead replace him symbolically with a totem or animal, a figure that over time evolves into the symbol of the godhead.¹ With the dominating personality replaced by figurative representation, they institute among themselves an equality of status—the religious community. In Freud's account, this original crime—this 'original sin'—is repressed in what (despite himself) Freud terms a collective unconscious. In a classic instance of the return of the repressed, Moses, who introduces a full-fledged monotheistic faith among the Jews, is himself later murdered, as is, later again, Jesus. In each case, the murder has a different signification, but in each it is allied—or alloyed—with notions of guilt, of debt and of obligation. As always, repression is coextensive with guilt. In the first case, the murder of the father, the guilt is shared: the obligation is owed primarily to the other members of the clan individually. In the second, the obligation is owed to Moses himself, the bringer of faith now murdered; and it was this debt that was finally paid by Jesus by means of his death, at least in Saint Paul's influential reading as reinterpreted by Freud.

Freud's admittedly schematic argument reminds us of the centrality of guilt and debt within monotheistic religions in all varieties—a centrality that is just as evident in the standard biblical story that casts knowledge itself as original sin. The great merit—and key psychological insight—of his account is to trace the edifice of religion, its rationalities and irrationalities alike, back to guilt and obligation. Obligation is owed to God, to his messengers and representatives, finally to one another. Render unto Caesar that which is Caesar's, says the Lord, render unto God that which is God's. We owe an obligation to our fellow man because God is in him, because of our inferiority to God, because we are guilty of

1. See: Freud, in: Freud, 1985: 237-386, especially 324-8. This notion is first elaborated in his essay 'Totem and Taboo', in *ibid.*

original sin, because of our debt to Christ, because of, in its later formulations—that Hegel would prefer—His love for us, because, finally, God is love.

A similar insight can be found in the work of Emmanuel Levinas.¹ Although Levinas's philosophy is heavily structured around themes and terms derived directly or indirectly from religious faith, like Freud his impetus is to locate these themes in human life and experience, not in a revealed word of God. In Levinas, obligation begins in the original contact or moment of communication between the self and another, in the contact between one face and another—in his famous characterisation—a contact that compels the subject to respond, that calls up an obligation, that triggers the awakening to consciousness as itself an ethical moment, an awakening to ethics, where ethics is the occasion of conduct towards the other—the obligation to our fellow man. More even than Freud's or Hegel's, Levinas's account jibes with the biblical; together however the critical point is the association of ethics and obligation that appears in all three. The ethical life is one in which we fulfil our obligations to others.

How very different is the human rights universe! Of course human rights are concerned with obligation. Yet in the first instance, obligations are held not by the individual at all, but by the state—for human rights are always, finally, held against the state: it is the state that must guarantee them; here is the primary locus of obligation. It is not ridiculous to characterise the obligation not to kill, for example, as reducible to obligations on the state to police the streets, to administer justice, to maintain prisons. In the very law-centred world that human rights produces, these are precisely the categories sought for human rights enforcement. But in the second instance too—even if I am under an obligation, albeit already an indirect obligation—not to kill you, this turns out on inspection barely to be grounded in a moral duty towards you. It is certainly not because of my love for you or for God, or of my debt to God or indeed any aspect of the relation I may or may not have towards Him. It is because of *your* right to life. Under the spell of human rights we become bearers of rights first of all, and duties only second if at all. If you offend me, I do not reach out to you in a spirit of love, or forgiveness, nor even in a spirit of judgement and vengeance. Least of all do I 'turn the other cheek'. I take down your name, seek witnesses, call my lawyer, assert my rights. So: much as the notion of debt recedes into the background of the ethical

1. See generally: Levinas, 1998.

obligation commanded by religion, occluded instead by visions of love or awe before God, in human rights, by contrast, debt increasingly runs to the foreground. My rights are manifest as *your* debt to me. Rather than acting from self-negation or poverty, I act out of self-assertion and property.¹ The individual is no longer conceived of as herself the agent of ethical right, but is instead rendered a passive recipient of state-initiated restitution. Rather than submitting before the divine, the subject of human rights imagines herself instead as a *source* of the divine, as worthy of divine intervention—in the guise of the state—against a perceived violator or enemy. My rights are my property—your obligation is *owed* to me. One can hardly imagine an ethical system more inimical to the religious spirit.

3. Community

For Hegel, ‘the community itself is the existing Spirit, God existing as community ... The Spirit as existing and realizing itself is the community.’ In Hegel’s writing there is no contradiction between this community—the centrality of which appears in every religion—the individual and the state; these three are mutually supportive, running through his tripartite structure: family-civil society-state. As in so much else, the Hegelian position, or something very similar (we might assume), has been absorbed into mainstream thinking on the state and religion. We can—certainly in theory—be members of both a religious group and of the state without either one placing unnecessary strains on the other, both nevertheless touching at numerous points of mutual investment—we may bring our beliefs to the polling booths, and will hope our representatives institute policies reflective of our values. But we do not force the point, except perhaps when it comes to the education of our children—the most obvious and resurgent point of tension between the secular state and the religious community.

The simple point to make about the community viewed through a human rights lens is that it is invisible or irrelevant. There are two fundamental subjects of the world according to human rights—the individual and the state—and we owe to Costas Douzinas the observation that these two are, in human rights discourse, reflections of one another at least since Hobbes. A long-term struggle to extend

1. John Finnis therefore misunderstands Hobbes’s state of nature when he remarks that where everyone has a right to everything one may as well say that no-one has a right to anything. Hobbes understood—as Finnish apparently did not—that having rights fundamentally involves assertiveness; the two conditions are radically dissimilar. See: Finnis, 2001: 208.

the benefits of human rights from the individual to 'the community' and to 'social goods' rumbles along at the same inauspicious speed as it always has since 1948, inconclusively at best—and repeated efforts to reinject non-individual grounds have failed. The subcategory 'cultural rights', for example, legally authorised in the 1966 Covenant on Economic, Social and Cultural Rights, appears to have simply slipped out of usage in the decades since that treaty was signed. A root problem became clear in a number of cases taken before the UN Human Rights Committee—wherever the rights of a cultural group—to particular customs of marriage, initiation or inheritance for example—came into conflict with other human rights (notably but not only non-discrimination)—it was the cultural right that inevitably gave. The field of minority rights, the great failed hope of interwar Europe, has seen a similar slippage: away from group rights—such as education in their preferred language for example—and towards the rights of individuals in relation to a state—such as non-discrimination on grounds of race, ethnicity, or religion.¹ The same of course applies to religion—as long as it doesn't interfere with other rights, religion may be freely practiced within a community. On its face this means only that human rights are not so much inimical to community as simply indifferent to it.

But if the analysis is pushed a little, even this neat conclusion appears precarious. After all, a framework which speaks and acts relentlessly for and on behalf of individuals, and ignores their community existence—at least insofar as so few rights pertain at group level—can hardly fail to undermine "communities". So, for example, a great irony of the most fundamental human right—the right not to be discriminated against—is its inherent capacity to undermine and dissipate cultural and communitarian difference. Most often applied in the field of work, for example, effective non-discrimination law has the remarkable effect of making it not merely possible to work, but of drawing all social actors into the workforce. Once barriers to entry are dismantled, work becomes obligatory. As with non-segregation in schools, one result is to impel assimilation. Thus today, as barriers to work and education have been dismantled, gender and ethnic difference has become attenuated. Today it is the physically and mentally disabled that are drawn into the work world through non-discrimination norms. Group difference becomes more difficult to sustain, or it becomes quaint, cosmetic, or obsolete. More widely, non-discrimination law ensures that community groups, including religious groups, relinquish authority over attendance at their public events and representations of their faith. All these

1. The battle has recently revived in the field of 'indigenous rights'.

authorities fall instead to the state.

The non-communitarian thrust of a human rights framework has other side-effects. In a world where employment law increasingly addresses individuals and protections are extended to them as individuals, unions begin to lose relevance, as indeed has happened.¹ Welfare systems struggle, in an environment of individual rights and interests, to justify themselves on the basis of solidarity, fraternity or compassion, and are instead balkanised or privatised in the interests of competition or efficiency. No doubt a significant part of the problem has been the difficulty of articulating social rights as human rights, a difficulty that, if partly ideological, is also surely partly due to the low currency afforded to 'society' within human rights discourse. Human rights reflect, after all, a world of struggling, adversarial individuals, making their own way forward in adversity rather in spite of one another than within a community. Community, in this view, is suffocating, conformist, coercive.

4. Law

Finally let me return to Douzinas's striking image of the individual and state as co-reflective, a motif of human rights language. Here is an idealised image of two sovereigns (it is idealised in part because actual sovereignty always turns out to be very much more complex!) existing in mutual tension and support. This is not sovereignty divided or shared, for it turns out that both parties operate the same sovereign will, but manifest in a different body. The first is the human body, the second that of the state, the body politic. Human rights picture the human body as the *source* of the law, a law that springs from rights, rights that turn out to be natural. At the same time, sovereignty rests where it has always rested—in the state. The peculiarly modern turn has been—speaking, again, idealistically—a form of popular sovereignty. The state now, in a sense, speaks our freedoms to us, although the freedoms still reside within us as individuals. The state is the channel of our freedom in law. Whenever the state deviates from this path of protection, it is attacked in our name and that of human rights, in the name of the law. The individual is no longer merely an agent of ethical right, but its source. It is as though God died (in Europe) or was killed, right when Nietzsche proclaimed his death. The survivors—indeed, in Freud's scenario, the murderers—moved quickly to allocate rights equally among ourselves—and the result is the pathetic last man, equal and free. Continuing religious practice would then be, as Freud recognised,

1. Yet, somewhat paradoxically, private companies act as corporate persons—that is to say, with individual rights as opposed to community interests.

essentially no different from an obsessive compulsive disorder, a neurosis.¹

Conclusion

So to conclude, human rights invert the relationship found in religion between the self and the other. Where religious ethics centre on the conduct of the self and an obligation to the other, human rights rather cast obligation as held towards the self, and passes judgment on the other. The interpersonal falls out of the moral universe and into a world of enlightened self-interest. If there remains altruism, it is a mere residuum (vanishing as human rights lawyers are increasingly paid the same as their corporate colleagues). Empowerment of the individual is achieved only through an apotheosis of the state, a state conceived not as a national community, but rather on the model of the individual. This state becomes our Nobodaddy, yet is disempowered from acting on our behalf as a community or set of communities. Needless to say, the rise of a human rights ethical discourse is not the *cause* of the attenuation of Hegel's family-civil society-state triad—the squeezing of the family, the shifting of civil society from the social and ethical towards the private and economic, and its near capture of the state—but nor does it present an ethical vocabulary that might resist such an outcome.

In the abstract, if human rights are viewed merely as an ideal condition of equilibrium, they are easily aligned with any set of practices in a given religion. However, if human rights rather provide, as they must, a doctrine for transformation of the world through a machinery of justice and redress—with regard to which the individual must position herself—they instantiate a wholly secular domain that cannot sit still next to religious normativity, but that must, through an apotheosis of the ego and resistance to community, undermine religious ethics. Injured, the human rights subject does not say, 'for thee, my God, I suffer this', but 'I will prosecute you'.

1. See: Freud, 1985: 27-42.

Bibliography

Books & Articles:

1. Hegel, George (1956). *The Philosophy of History*, Mineola: Dover.
2. Hegel, George (1996). *The Philosophy of Right*, Transl. by S.W. Dyde, New York: Prometheus Books.
3. Hegel, George (1998). "The Philosophy of Religion", in: Stephen Houlgate (ed), *The Hegel Reader*, Oxford: Blackwell.
4. Freud, Sigmund (1985). "Moses and Monotheism: Three Essays", in: Freud, *The Origins of Religion*, ed. James Strachey, Volume 13, New York: Penguin.
5. Levinas, Emmanuel (1998). *Otherwise than Being or Beyond Essence*, Transl. by Alphonso Lingis, Pittsburgh, PA: Duquesne University Press.
6. Finnis, John (2001). *Natural Law and Natural Rights*, Oxford: Clarendon Press

