Human rights and faith: a ‘world-wide secular religion’?

Henri Féron

School of Law, Tsinghua University, Beijing, China

Abstract

While human rights are meant to represent a secular morality, there are surprising parallels to be drawn with religions. Perhaps most striking is the realization that human rights are actually based on faith, as was already recognized at the proclamation of the Universal Declaration of Human Rights. This dependence on faith has deep implications for the way we understand and propagate them, because it puts rights in situations of epistemological stalemate vis-à-vis other cultural, religious, or ideological moral systems. This paper proposes to compare human rights doctrine to a religion to identify potential threats to its long-term credibility, and how to address them. In particular, it explains why coercive propagation of rights risks degenerating into a form of self-contradictory fundamentalism. Ultimately, the article argues for a return to the values of tolerance and mutual respect that rights actually stand for.

Keywords: Foundation of Human Rights; sovereignty and human rights; religion and human rights; universality of human rights; cultural relativism

INTRODUCTION

Liberty cannot exist without morality, nor morality without faith.
Alexis de Tocqueville

The Universal Declaration of Human Rights (UDHR) grounds itself on ‘faith’ in fundamental human rights.\(^1\) The word was not chosen accidentally. The UNESCO’s

\(^*\)Correspondence to: Henri Féron, School of Law, Tsinghua University, Haidian District, Beijing 100084, China, Email: henri_feron@163.com

\(\dagger\)Henri Féron is a PhD candidate in International Law at Tsinghua University, Beijing, China. He holds an LLM in Chinese Law from Tsinghua University, as well as a double degree LLB in French and English Law, jointly administered by King’s College London, United Kingdom, and Université Paris 1 Panthéon-Sorbonne, France.

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‘Committee on the Philosophic Principles of the Rights of Man’ had concluded during the drafting that there was no deeper consensus on the theoretical basis of human rights. Yes, we agree on the rights, but on condition that no one asks us why’ explained French philosopher Jacques Maritain, deeply involved in the Committee. The invocation of a common ‘faith’ was therefore the only way to hold the Declaration together. This, though, was not an innocent conclusion, especially when used for something as morally charged as human rights. After all, does basing human rights on faith not suggest they are somewhat similar to a religion?

The present article proposes to embrace this religious analogy as an analytical tool that could shed a whole new light on challenges that human rights face in theory and in practice.

Defining religion
In what sense are human rights a religion, beyond their appeal to faith? When the Nobel Peace Prize laureate Elie Wiesel celebrated the UDHR as the ‘sacred text’ of a ‘world-wide secular religion’, he certainly did not mean religion in the sense of a ‘belief in spiritual beings’. Likewise, Nobel Literature Prize laureate Nadine Gordimer was not making a reference to supernatural forces when she described the Declaration as the ‘creed of humanity’. Instead, their meaning was similar to that of the drafters of the Declaration of the Rights of Man and the Citizen of 1789 (DRMC), when they proclaimed the ‘natural, inalienable and sacred rights of man’ (emphasis added). The point is that human rights are supposed to be untouchable, inviolable, endowed with an authority that transcends the temporal. Consequently, when we compare human rights to religion here, it is in the sense given by French sociologist Emile Durkheim: a unified system of beliefs and practices relative to sacred things—things ‘set apart and forbidden’—which unite into one single moral community all those who adhere to them.

The moral community of human rights
A number of historical clues suggest that human rights are indeed a value system meant to unite humankind into a ‘moral community’, justifying their comparison with a religion.

The revival of human rights through the UDHR in 1948, for instance, was meant to morally unite liberals and socialists by entrenching their common support of antifascist values. Although the preamble’s linkage of ‘disregard and contempt for human rights’ and ‘barbarous acts which outraged the conscience of mankind’ is sometimes taken as a reference to the genocide of the Jews, American historian Samuel Moyn has made clear that the Holocaust went virtually unmentioned during the General Assembly debates. Instead, this linkage shows that the UDHR was drafted primarily as a rejection of fascist ideology. Socialist states would probably not even have participated in the drafting if they had not seen the UDHR as a moral rallying flag against it. And though the UDHR eventually failed to attract the votes of socialist countries for political and ideological reasons, its adoption of a number
The revival of human rights during the 1970s is also largely explainable by the longing for a set of minimalist moral values that could unite a broad moral community behind it. Despite the proclamation of the UDHR in 1948, human rights remained actually quite marginal in the few decades that followed the war, pushed off the stage by the Cold War and the process of decolonization. Their real breakthrough, as Moyn notes, came around 1977, a year when US President Jimmy Carter got elected on a human rights platform, Amnesty International got the Nobel Peace Prize, and the words ‘human rights’ were printed in the New York Times nearly five times as often as in any prior year in that publication’s history. What was determining then, he explains, was the general feeling that other utopias had failed, discredited by the excesses of their champions during the Cold War: ‘human rights emerged historically as the last utopia—one that became powerful and prominent because other visions imploded’. Human rights activists were trying to revive once more a set of moral values that could be accepted by all, regardless of the ideology one had felt betrayed by.

In brief, the post-World War II development of human rights reveals them as a value system meant to unify humankind into a single moral community. There is therefore a case to be made for interpreting them as a universalistic ‘religion’ in the Durkheimian sense.

**The utility of the religious analogy**

What would be the purpose of portraying human rights as a religion? The analogy helps to identify potential threats to the credibility of those rights, especially in the context of their propagation to non-Western cultures. In particular, it shows why simply insisting that human rights are ‘the only true God’ is a deeply divisive strategy in the long run.

Of course, the ambition of human rights activists to propagate human rights all over the world does not pose a problem per se. Tensions arise, however, from the ‘fundamentalist’ tendency to present human rights as the only legitimate morality. Is the activist who propagates human rights as the only legitimate morality not as polarizing as the missionary who preaches that his God is the only true God? While this brand of proselytism may convince some in the short term, it will over the long term offend most of those who believe otherwise, especially if they are being ‘named and shamed’ into submission. Rather than proselytize by humiliation, there is room to argue that it would be more effective to convert by example, by practicing what one preaches. After all, it makes as little sense to preach tolerance through humiliation as it does to preach love through war.

As we can see, the religious analogy, by precisely identifying the problem, readily points towards a solution. A problem well put is already half-solved.
The foundations debate

Is it inappropriate to compare human rights to a religion given that they are supposed to be a secular doctrine with rational foundations that make them rise above faith?

The main endeavor of natural rights theory, from which human rights derive, is to establish the existence and authority of rights independently of faith or agreement on our part, as if they were part of a universally and eternally valid moral science. This quasi-scientific conception of rights is notably at the root of attempts to quantify respect for civil and political rights through various indices, such as the Freedom in the World index by the non-governmental organization Freedom House. Yet the great weakness of this naturalist approach is its inability to demonstrate the existence or authority of rights according to the scientific method, that is, through the verification of a rationally coherent hypothesis through reproducible experiments. Even less strictly scientific attempts to establish the Psychological Foundations of Human Rights, as Robin Kar attempted, have come to the conclusion that human rights awareness derives from nurture rather than from nature.17

Deprived of experiments to validate hypotheses, theorists of the secular foundations of human rights have instead focused on building increasingly complex rationalist justifications for the existence and authority of those rights. These hypotheses are so often based on Prussian philosopher Immanuel Kant’s concept of human dignity that the whole modern theory of rights has been said to rest on his ‘giant shoulders’.18 According to Kant’s ‘second formulation of the categorical imperative’, free will and rational thought endow each human being with an inherent dignity that Reason commands us to respect.19 Naturalists have then linked human rights to dignity to justify the existence and authority of these rights.20

Yet this abstract justification remains controversial among non-naturalists and naturalists alike, as American jurist Michael Perry has pointed out.21 Perry questions in particular that theories of dignity sufficiently account for the authority of rights.22 He concludes it is not quite clear that dignity makes for a ‘satisfactory secular answer’ to the problem, ‘even if one rejects any theistic answer as implausible’.23 Concordantly, scholars such as Michael Freeman have argued that there is no decisive reason to prefer a secular interpretation of human rights over a religious one.24 Further complicating matters for naturalists, recent advances in neuroscience put into question Kant’s central assumption that we are endowed with free will, as our brain seems to make decisions up to several seconds before we become aware of them.25 Without free will, what sense is there in proclaiming freedom of thought or the right to vote?

As the debate on foundations stands, then, human rights cannot pretend to the quasi-scientific authority that naturalists would endow them with. At most, they can claim the internal rational coherence that is characteristic of ideologies and religions, justifying the religious analogy.
An unnecessary taboo

Even if human rights cannot rely on exterior proof of their existence and authority and are therefore reliant on faith, should we avoid the religious analogy for the sake of keeping appearances? This is what Michael Ignatieff, a Canadian scholar and public figure known for his writings on human rights, proposes. Ignatieff showed himself concerned that the religious analogy might reduce the global appeal of human rights. But since he admits himself that human rights are indeed grounded in faith, we must interpret his opposition to the religious analogy as a sort of taboo on an inconvenient truth. His unease about this realization is evident from the difficulty we have in reconciling his two claims that human rights are a ‘secular article of faith’, but would be ‘misunderstood’ if they are described as a ‘secular religion’ or a ‘creed’.

There is no convincing metaphysical case for making the religious analogy into a taboo. What Ignatieff is actually worried about are attempts by Christian groups to ‘capture’ human rights for themselves. He quotes for instance Max Stackhouse, a US American theologian who argues that human rights can only be founded on the idea of God. This is why Ignatieff spends much energy trying to ground those rights into what he claims to be an ‘antifoundational’ secular humanism. Ironically, he ends up founding his humanism on another sort of moral belief in the very next line, namely, ‘on the idea of moral reciprocity’.

The worry about ‘capture’ by Christian groups does not justify all these self-contradictions. We are better off accepting that the idea of human rights has to be founded on some faith and is therefore ‘ineliminably religious’, to use Perry’s expression. But this does not mean, as Ignatieff would fear, that we need to accept that human rights can only be grounded in Christian faith. Those rights could just as well be founded on a humanist belief in free will and the sacredness of human beings, God or no God.

Not only is there no convincing metaphysical case for making the religious analogy into a taboo, but there is no practical case either. The dependence of human rights on faith may well be an admission that we cannot reach a consensus on the metaphysical foundations of human rights. But this need not prevent us from agreeing on a list of rights as practical principles of action, as suggested Maritain. Each person would then be free to justify these common principles according to his or her own deeper beliefs. This foreshadowed what John Rawls would later call the notion of an ‘overlapping consensus’ on common principles of justice and morality (except that the UDHR consensus was not so much built on Reason, as we will see, as on a shared Horror).

In the end, then, a taboo is justified on neither metaphysical nor practical grounds. The religious analogy is a more sincere and accurate rendering of the nature of human rights.

Structure

The present paper will demonstrate the pertinence of the religious analogy when discussing tensions between the theory and practice of human rights, with a special
focus on their relation to other cultural, religious, and ideological moral systems. We will first examine in detail why human rights are dependent on faith by reviewing the history of their genesis. We will then move on to discuss the implications of this dependence for their global propagation.

THE FOUNDATIONS OF NATURAL RIGHTS: FROM REASON TO FAITH

In this section, we will discuss the historical circumstances that led human rights to be proclaimed as a moral faith in the UDHR, despite the original aspiration of natural rights theory to be thought of as a moral science.

We will first demonstrate that religious conflict due to the Protestant Reformation was one of the earliest and most determining factors in the development of modern natural rights theories. Insofar as they were said to be based on Reason rather than God, natural rights theories effectively answered the need for common moral rules that would avoid theological dispute. We will then review the reasons for which human rights declined in importance, noting a widespread intellectual disillusionment during the 19th century in the moral rationalism of the Enlightenment. We will thereby be able to understand why, by the time of the rebirth of human rights through the UDHR in 1948, it was impossible to agree on rationalist foundations, and why rights had to be grounded instead in a common faith.

A science of morality

The success and popularity of natural rights theories in early modernity owed much to their image as a moral science. Their perceived rationalism and minimalism allowed those theories to transcend the religious conflicts that had torn Europe apart since the collapse of the Catholic moral monopoly. Religious tensions had flared up since the 16th century with the rise of Protestantism, leading to more than a century of religious wars, both civil and international. Even after their culmination in the 30 Years’ War (1618–1648), political alliances in Europe continued to be formed with a strong denominational element, at least up to the French Revolution (1789–1799). The problem, from a theological perspective, was that most denominations would follow a strictly monotheistic interpretation of Christianity by systematically denouncing other denominations as heretic, a charge that had been punishable by excommunication and death in medieval Catholicism. This made dialogue nearly impossible, hence the escalation into armed conflict. Attaining peaceful coexistence in these circumstances effectively required moral rules that stood above theological dispute, so that they could be accepted by all denominations involved.

We suggest that the main appeal of natural rights theories was that they answered this need, as they were claimed to derive from Reason rather than from God.

As supporting evidence for this claim, we bring attention to the fact that Hugo Grotius, Thomas Hobbes, John Locke, and Jean-Jacques Rousseau, perhaps the most prominent theorists of natural rights and the social contract, had all been victims of religio-political persecution and had therefore deeply personal reasons to
devise moral theories that transcended religious disagreement. Grotius narrowly escaped life in prison for his views on the separation of the Church and State, Hobbes and Locke had to exile themselves for reasons ultimately linked to the English Civil War (which had opposed Catholic royalists and Protestant parliamentarians), and Jean-Jacques Rousseau had been banned from France and Geneva, where his books were burned for views considered too religiously tolerant.

As further evidence, it may be pointed out that most of the Enlightenment figures linked to natural rights were noted either for their strong advocacy of religious tolerance (especially Locke\textsuperscript{38}) or for their support of deism. Deism was a ‘natural religion’ purged of all symbols that could divide Catholics and Protestants, allowing to preach for toleration without appearing as an atheist (although strong ‘indifferentism’ had at times also counted as heresy). It proved particularly popular in France and America, seducing, among others, Montesquieu,\textsuperscript{39} Voltaire,\textsuperscript{40} Rousseau,\textsuperscript{41} Robespierre,\textsuperscript{42} Jefferson,\textsuperscript{43} Franklin,\textsuperscript{44} Paine,\textsuperscript{45} and even, according to some, Washington.\textsuperscript{46} The French DRMC of 1789 even contains a direct reference to deism, an invocation of the ‘Supreme Being’.\textsuperscript{47}

We can thus conclude that there is a strong link between the development of rights talk and the previously blasphemous idea of religious neutrality.

How did naturalists answer the challenge of devising moral rules that stood above theological dispute?

Christian moral rules, for instance, essentially derive their existence and authority from faith in, respectively, divine command and punishment. This means that Christian moral theory, while it offers substantial content, is limited in reach to those who actually believe in the axiomatic premise of that theory, Christian dogma. It cannot effectively reach those who do not believe that God laid down those rules and will punish those who do not follow them. The goal of naturalists, then, is to discover rules that have universal reach and that anybody must agree with, irrespective of faith—rules that are based on the premise of self-evident moral Truths deriving from Reason. But do these Truths exist, and can we find enough of them to create substantial moral content?

Hugo Grotius was a pioneer in this respect, as he developed rules of international law that were supposed to be rationalist and minimalist enough that they could stand \textit{etsi deus non daretur} (even if God did not exist).\textsuperscript{48} He justified this by suggesting that the rules drew their existence and authority from rational principles of national self-preservation said to be so fundamental that no one could disagree with them ‘without doing violence to himself’.\textsuperscript{49} Grotius’ approach was so successful in establishing a moral consensus across religious denominations that he is today remembered as the ‘father of modern international law’.\textsuperscript{50}

Thomas Hobbes innovated on this minimalism and applied it to the domestic sphere. Similarly to Grotius, Hobbes used a naturalistic principle of self-preservation (which he called the \textit{ius naturale}) as the self-evident Truth at the basis of his reasoning. He suggested that, threatened by a state of nature where raged a war of all against all,\textsuperscript{51} men had decided to improve their chances of survival by willingly giving up some of their original liberty to enter into a binding agreement to protect
each other. This agreement, he argued, was the origin of society, as well as the justification of the law and moral rules that governed it. This social contract theory thereby allowed Hobbes to produce substantial moral content from a minimalistic premise, even justifying given forms of government.

John Locke would later add more axiomatic self-evident Truths at the basis of the social contract to expand the moral content. His idea was to argue that the social contract was not based on self-preservation, but on the premise of natural rights to life, liberty, and estate. Of course, these were more demanding premises, and Locke’s own involvement in the slave trade was difficultly reconcilable with natural rights to liberty and estate. His objective, however, was not so much intellectual rigor as a rhetorically effective condemnation of absolute monarchy. By adding these premises, Locke was able to condemn what Hobbes had supported, and this is probably why the reasoning resonated so well with Thomas Jefferson and the Marquis de Lafayette when they drafted declarations for their own countries.

Later secular human rights theories would nearly all follow the same pattern of reasoning, further multiplying the number of natural rights that served as the rational foundation of a universal morality. In these circumstances, however, it was only a matter of time before skeptics started to question whether the ever-expanding list of rights was really made of Truths that were that ‘self-evident’.

The great disillusion
Adding more and more so-called ‘self-evident Truths’ to increase the moral content of natural rights theories was eventually bound to affect their credibility and compromise their universal reach. We will suggest here a link to the growing discredit of naturalism and moral rationalism during the 19th century, and explain why this discrediting made it impossible for the UDHR to be proclaimed in the name of Reason.

The credibility of natural rights had been dubious from the start, and this only worsened as more and more new ‘Truths’ were proclaimed. Beyond the problem of slavery, the idea that there was a natural right to private property came under heavy fire during the 19th century, most memorably by French politician Pierre-Joseph Proudhon’s provocative argument that ‘property is theft’. Thomas Jefferson may have foreseen these problems, perhaps because Native Americans did not have a concept of private property in the Western sense, and he replaced the right to estate with the right to the pursuit of happiness in the American Declaration of Independence. Yet even the self-evidence of that statement was later questioned, for example by German philosopher Friedrich Nietzsche: ‘If you have a “Why” in life, you can endure almost any “How”—Man does not pursue Happiness, only the Englishman does’.

The galloping inflation of natural rights fueled by the revolutionary fervor of the late 18th century was sooner or later bound to hit a brick wall of skepticism. The DRMC of 1789 prided itself with not just three, but 17 enthusiastic articles, and that number would have doubled just 4 years later with the adoption of the Declaration of 1793. The Thermidorian Reaction, which led to the execution of the radical Jacobins that had fashioned it, made clear that it was not enough to proclaim
the self-evidence of moral rules to have them universally recognized as such. The European Restoration drove the point home once more some 20 years later, as it rolled back the political changes in the territories that had been conquered by Napoléon. Given that the former Jacobin had justified his conquests by claiming to spread the rights of man, the Restoration suggested that declarations of ‘self-evident Truths’, like history, were written by the victors.

It is perhaps English philosopher Jeremy Bentham who most famously argued that ‘self-evident Truths’ were designed rather than discovered. His lifelong engagement for causes such as gender equality and the abolition of slavery and the death penalty showed he was not aiming at the values of natural rights, but at their philosophical foundations. The problem, in his eyes, was that naturalists were guilty of ‘wishful thinking’, confusing the desirability of natural rights with their actual existence, trying to conjure out of thin air rights that could only flow from posited law (e.g. from the British or American Bills of Rights). For the legal positivist that he was, the idea of natural and imprescriptible rights could only be dismissed as ‘nonsense on stilts’.

Bentham’s skepticism was in fact characteristic of 19th-century disillusion with the moral certainty that could really be offered by naturalism and moral rationalism. Ironically, it was Kant, that great apostle of Reason, who had most powerfully discredited the moral rationalist belief (and, by extension, the secular naturalist one) that moral knowledge was discoverable by Reason. In his Critique of Pure Reason, Kant demonstrated that pure theoretical Reason had its limits, and that its a priori speculations were unable to secure knowledge of three unconditioned absolutes: the immortality of the soul, the reality of the material world, and the existence of God. Yet, in his later Critique of Practical Reason, Kant argued that morality could not make sense without God (implying freedom of the will and thus moral responsibility) or immortality (for motivation). He therefore concluded that we had to accept those absolutes as ‘postulates of pure practical reason’, which he describes as ‘necessary hypotheses ... which [are] subjective, but yet true and unconditional’. In other words, Kant presents morality as necessarily resting on moral faith, as opposed to moral knowledge (albeit he insists on calling it a ‘purely rational faith’). In the end, Kant’s transcendental idealism had discredited moral rationalism and challenged secular naturalism by making morality rest on faith in God and immortality.

In a further twist of irony, Kant’s rebuttal of rationalist arguments for the existence of God turned out to be much more powerful than his argument on the practical necessity of ‘moral faith’ in it, throwing Western civilization into deep moral doubt. Nietzsche accused us of having murdered God. And Russian writer Fyodor Dostoyevsky suggested that without God, everything had become permissible. The implications for natural law of the dependence of morality on faith were thus summarized by Anatole France, a French writer:

It is almost impossible systematically to constitute a natural moral law. Nature has no principles. She furnishes us with no reason to believe that human life is to be respected. Nature, in her indifference, makes no distinction between good and evil.
Even the supposedly final and eternal truths of Kant’s morality were increasingly derided as dogmatic and unscientific. German philosopher Arthur Schopenhauer, among the many critiques he leveled against Kant, pointed out that practical reason did not inevitably lead to virtue, and could on the contrary very well lead to a Machiavellian amorality, concerned solely with self-interest (indeed, this is where ‘Reason’ takes us in the discipline of economics). Further, the unconditioned absolutes that serve as the foundation of Kant’s morality—God, World, and Soul—are not demonstrated as universal and derive visibly more from Judeo-Christian tradition than from Reason.

German socialist Friedrich Engels, on his part, mocked the pretense that we could at all discover final and eternal truths in morality when we have such difficulty establishing them in the hard sciences, as each apparent discovery actually leaves us faced with problems of ever more cosmic proportions. For a historical materialist like Engels, any moral rules touted as final and eternal are in reality only the rules of the ruling socioeconomic class, and therefore do not necessarily hold sway over those who are not members of this class.

These critiques consequently threatened the theories of human dignity that had tried to salvage natural rights by founding them on Kantian idealism rather than moral rationalism.

As we can see, 19th-century thinkers revealed that naturalists had just as much trouble proving natural law as Christians used to have proving God. This is because there is visibly no way of demonstrating the existence and authority of natural rights according to the scientific method, that is, through a rationally coherent hypothesis that is validated by reproducible experiments. The only rational authority that natural rights theories can pretend to, as we noted above, is the internal coherence of an ideology or religion with its axiomatic premises.

As a result, when the absurd destructiveness of the Second World War renewed the need for a universal morality—if only to prosecute the Nazi government—it did not come as a great surprise that naturalists and non-naturalists failed to find a common theoretical basis for it. Instead, the only thing they could agree on was that there needed to be some basic, unshakeable, unquestionable, dogmatic faith in values that could prevent the ‘barbarous acts which outraged the conscience of mankind’ from happening again. Each school of thought would justify this practical compromise according to its own subjective beliefs, what we will call pillar creeds, achieving an overlapping consensus—born from the shared Horror of the war.

**HUMAN RIGHTS AND CONFLICT OF VALUES: DOGMA AGAINST DOGMA**

We saw in the previous section that human rights were dependent on a common faith. But what are the implications thereof? In this section, we will demonstrate that an analogy with religion can help us identify and counter threats to the credibility of rights, especially regarding their relationship to other systems of moral value.
The doctrine of human rights remains valuable even if it depends on an overlapping consensus resting on the pillar creeds of each consenting member. Consider German philosopher Jürgen Habermas’ bold suggestion that human rights may have become an indispensable moral language:

Notwithstanding their European origins... in Asia, Africa, and South America, [human rights now] constitute the only language in which the opponents and victims of murderous regimes and civil wars can raise their voices against violence, repression, and persecution, against injuries to their human dignity. 83

Obviously, dependence on faith does not invalidate this vernacular, rhetorical function of human rights. It does, however, condition the relation that those rights can afford to have to other moral faiths. This brings us to the question of whether human rights can claim primacy when they conflict with non-naturalist values, for example Christian or Muslim ones. As we will now see, the short answer is that they cannot do so on epistemological grounds, and that this has forced naturalists into a dilemma between moderation and fundamentalism in the promotion of human rights.

Epistemological stalemate
For naturalists, who start their reasoning from the premise that human rights have the universal authority of a moral science, such rights must by definition have primacy over other values in case of conflict. But in the absence of scientific proof for the existence and authority of such rights, we must describe this conclusion as based on faith (or opinion), as opposed to knowledge. As we saw above, Kant demonstrated that rationalist reasoning must ultimately rest on axioms that cannot be proven by pure theoretical Reason, and Schopenhauer pointed out that Kantian morality itself ultimately relied on the unproven axioms of God, freedom, and immortality. This leads us to the conclusion that modern natural rights theories, essentially based on the Kantian concept of human dignity, cannot stand independently from faith in certain unproven, dogmatic axioms that justify the existence and authority of rights. Assuming that non-naturalists cannot either scientifically prove the existence and authority of their own values, we are confronted to an epistemological stalemate, dogma against dogma.

The epistemological stalemate means that to give primacy to human rights on account of the naturalist claim that they are universal is just as circular as giving primacy to a religion on account of its claim that it follows the revelations of the one true God. This explains the difficulties that naturalists have encountered when convincing those who believe in other cultural, religious, or ideological moral systems. Monotheistic religions in particular provide a clear case study that can then be extrapolated by analogy.

Consider Islam. Back in 1947, the Kingdom of Saudi Arabia refused to adopt the UDHR, notably due to objections to the formulation of article 18 (freedom of religion). 84 It is important to note that Islam has a tradition of religious tolerance, and that the Shari’ah accepts the principle that non-Muslims (at least the ahl al-
People of the Book) may be left to practice their own faith. What causes a conflict, however, is the liberal belief that anybody should have the right to convert to any religion from any other. Islam permits the conversion of non-Muslims to Islam, but it forbids Muslims to renounce it because an apostate (murtadd) effectively defies the monotheistic truth of the religion. The liberal belief that church and state should be separated has also proven problematic to reconcile with Islam for similar reasons. Yet if Muslims are right that there is no god but Allah and that Mohammed is his prophet, as the Shahada goes, then there are good reasons to consider that theocratic forms of government that promote the Muslim cause are morally superior to liberal and secular forms that remain indifferent to it. This is the reasoning behind, for instance, the establishment of the Islamic Republic of Iran. As we can see, given that neither Islam nor human rights doctrine has a clear epistemological upper hand, the crux of the matter is about which one of the two is believed to represent the more fundamental (i.e. axiomatic) Truth, the ultimate point of moral reference, the ultimate norm. It turns out that the Muslim states of the Organisation of the Islamic Conference put their faith in Islam by subordinating rights to the Shari’ah in the Cairo Declaration on Human Rights in Islam (articles 24 and 25).

Although both Islam and human rights doctrine are universalistic and deny that moral rules are a matter of choice, the absence of a determining epistemological argument forces us in practice into a ‘leap of faith’ in favor of one morality or the other—hoping we chose the right one.

**Naturalist fundamentalism**

One further consequence of the epistemological stalemate is that it throws naturalists into a dilemma faced by any universalistic religion. Either they suffer the affront that substantial parts of humanity simply do not believe in human rights as the ultimate point of moral reference. Or naturalists decide to enforce the universality of human rights, coercing people into this faith if necessary. The moderate path leads to de facto denial that those rights are universal and absolute, but allows for a peaceful coexistence with other belief systems. The fundamentalist path follows the claim of universality to its logical conclusion but leads to conflict with other belief systems, and it hollows out freedom of thought and religion of their substance. The UDHR’s model of overlapping consensus essentially followed the moderate path. But with the end of the Cold War and the collapse of the West’s most powerful ideological rival, human rights fundamentalists such as Thomas Franck, former president of the American Society of International Law, have become increasingly vocal about imposing their faith by force of arms.

The fundamentalist crusade puts great pressure on the overlapping consensus formula, as it makes natural rights appear as a threat to the pillar creeds on which this consensus is resting. The relationship of naturalists to Catholics provides a telling example of the tensions that might be set free if the consensus broke down.

Catholicism was originally opposed to the doctrine of natural rights, as the absolute claims of both sides to represent the ultimate point of moral reference
appeared clearly incompatible. Pope Pius VI therefore condemned in 1791 the
DRMC as ‘contrary to religion and society’. Secular French revolutionaries then
sought to break the power of the Church in France with a vast campaign of de-
Christianization. Repression often got out of hand, and the brutal crushing of a
Catholic uprising in the Vendée was even denounced by some historians as a
genocide. French revolutionary armies also invaded the Vatican, and Pope Pius VI
died in their captivity in August 1799. The weakened Church eventually settled
for a political compromise favorable to the French State through the Concordat of
1801. Nevertheless, it was not uncommon for Christians at the time to depict
Napoléon, heir of the Revolution, as the Antichrist. After his defeat, the Bourbon
Restoration gave back the Church much of its former privileges in France and led
to a wave of revenge killings by Catholics. The Church grew defiant again, and
in 1832 Pope Gregory XVI would again accuse the doctrine of the rights of man
of being ‘complete delirium’. 

It is only when the Papacy decided that natural rights doctrines were a lesser threat
to Catholicism than fascism and communism that it would partly reconcile itself
with rights talk, proclaiming in the encyclical *Pacem in Terris* (1963) that each person
has universal, inviolable, and inalienable rights and duties that flow from their nature
as human beings. This did not mean, however, that the Catholic Church recog-
nized Reason as a more fundamental source of Truth than God. St. Thomas
Aquinas is quoted in *Pacem in Terris* to drive home the point that human reason
derives from divine law, and that the ultimate source of Truth therefore is and
remains God. In other words, the Holy See saw God’s Truth as more axiomatic
than human rights, and thus reserved for itself the right to correct interpretations
of those rights that it would consider illegitimate from a Catholic perspective.
This is confirmed by the Pastoral Constitution *Gaudium et Spes* proclaimed in 1965 by
Pope Paul VI, which proclaims the rights of man while insisting they are conditioned
by respect of the divine law.

It is not unimaginable that the Church would again withdraw its support entirely
should it consider that secular naturalism has become too serious a threat. In 2007,
for instance, it reacted with great vigor to a change in Amnesty International’s neutral
stance on abortion to one supporting it in certain cases—the Church called the change
a betrayal of its mission, withdrew all its funding, and urged Catholics to sever ties
with it. And when fundamentalist naturalists respond by publicly naming and
shaming the Church’s position on contraception, abortion, and extensive gay rights
(e.g. gay marriage), this obviously puts even more pressure on Catholic support
for the overlapping consensus.

More generally, every time fundamentalist naturalists use coercive tactics such as
name-and-shame campaigns against other cultural, religious, or ideological moral
systems, they erode the support of the pillar creeds to the overlapping consensus
on natural rights. It is not quite clear whether this really serves the cause of human
rights. Humiliation by humiliation, there may well come a day that the consensus will
break down and human rights will cease to be globally relevant.
Cultural specificity

Many fundamentalist naturalists justify their uncompromising proselytism by the argument that secular doctrines of natural rights are acultural—free from cultural bias—and therefore more universally legitimate than culturally specific moral systems. This view has been popular among opinion leaders on human rights in the West, such as Thomas Franck or Michael Ignatieff.

Yet the etymology of the word ‘secular’ itself reveals how paradoxical it is to claim that values supposed to be universal could be acultural. ‘Secular’ had come to mean ‘non-religious’ or ‘religiously neutral’ because of its original sense of representing the customs ‘belonging to an age or epoch’ (the temporal) against the timeless truths of religion (the spiritual). The etymology is clearer in French, where siècle means century and séculaire means age-long. However, the claim that human rights are universal and therefore suffer no worldly exception implies precisely the timelessness and absoluteness that used to be identified with the spiritual. Accordingly, to claim that human rights are secular makes little sense etymologically or ontologically. As universal, eternal, absolute values, their claim necessarily lies beyond the worldly and the temporal, and they are sooner or later bound to conflict with other values that have also been so proclaimed. For instance, declaring an absolute right to dispose of one’s own body leads to conflict with the Christian absolute value of the sanctity of life in the case of abortion. Allowing abortion denies absoluteness to the sanctity of life, while forbidding it denies absoluteness to the right of disposing of one’s own body. There is no moral in between here—the unborn child either lives or dies. Whether the conclusion is pro-life or pro-choice, it cannot pretend to be neutral or acultural.

There have been some interesting attempts to demonstrate that human rights are acultural by showing shared universalistic values with non-Western cultures, such as religious tolerance or judicial impartiality. But although findings of shared conceptions can certainly not be denied, they cannot really prove those rights to be acultural. Human rights doctrine is more than just the sum of its parts: it is the cultural specificity of the ‘construct’ as a whole that matters. This is not about a relatively common belief in human worth, as human rights scholar Jack Donnelly remarked, but about a very specific belief in human rights. And these rights, add anthropologists, are not necessarily ‘universalizable’ as such.

Consider for instance that the doctrine of human rights affirms the self, as it insists on one’s rights and desires. The cultural specificity of this affirmation is revealed by comparison to ascetic worldviews such as Buddhism, which teaches through its ‘Four Noble Truths’ that the affirmation of the self is a source of suffering, and that it is by its negation that we attain Enlightenment.

In a further example, let us point out that the doctrine of human rights seeks to make the weak equal to the strong. This egalitarian premise, whatever its merits, is not acultural. It is notably at variance with elitist views of social justice. Nietzsche, for instance, warned that societies that focus on the weak rather than the strong are following a ‘nihilistic’ teaching typical of Christianity (as opposed to heroic

H. Féron

194
Antiquity), when in fact true justice would be, in his eyes, best represented by the maxim ‘equality to the equal; inequality to the unequal’.112

To give a final example, we may note that human rights are also legalistic, as they assume that giving ‘rights’ and enforcing them through the judicial process comprise an efficient method of social engineering. This premise is at variance with, for instance, Confucian teachings, according to which the more societies rely on law, the less virtuous its citizens would be:

If the people be led by laws, and uniformity sought to be given them by punishments, they will try to avoid the punishment, but have no sense of shame.

If they be led by virtue, and uniformity sought to be given them by the rules of propriety, they will have the sense of shame, and moreover will become good.113

Although this list is not exhaustive, we can see that the doctrine of human rights relies on a number of culturally specific premises, which reveals that the absolute values it affirms are far from being acultural. Given that human rights doctrine is epistemologically dogmatic and culturally specific, there is room to argue that fundamentalist naturalists who impose their beliefs on others are not so much entrenching as undermining the ideals of tolerance and moral autonomy that human rights are supposed to stand for.

CONCLUSION

It will be left to the reader to decide whether he or she accepts the comparison of human rights to a religion. Ultimately, it depends on whether one agrees or not with Durkheim’s definition of religion.

Yet, regardless of semantics, this article will have shown that natural rights doctrines, despite having been designed in great part to transcend religious conflict, are themselves dependent on faith in axioms that justify the existence and authority of these rights, and are thus no different from a religion in epistemological terms. This realization sheds new light on conflicts with other cultural, religious, and ideological moral systems. Those conflicts are revealed as epistemological stalemates, similar to those that oppose monotheistic religions or other universalistic worldviews. An important consequence is that naturalists are inevitably confronted by much the same dilemma between moderation and fundamentalism as those religions and worldviews.

The analogy of human rights to a religion hence makes sense at least as a thought experiment, an analytical prism that reveals clearly why fundamentalist naturalism is so threatening to a peaceful and mutually supportive relationship with other religions and worldviews. What we risk is the survival of the overlapping consensus that makes natural rights a globally relevant moral theory. Ironically, even as naturalist fundamentalism may claim to follow the absoluteness of rights to its logical conclusion, its coercive militancy effectively hollows out the tolerance and moral autonomy those rights are supposed to stand for.
The truth of the matter is that it is by seeking the Absolute in human rights that we inevitably turn them into a religion, and a source of conflict with other faiths. It is only by pragmatism, moderation, and compromise that we can make human rights embrace the whole of humanity and thereby ensure peace on Earth.

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Human rights and faith

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Human rights and faith

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H. Féron

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