

Indispensability of Religions for Human Rights Ideology: A Critical Engagement with Louis Henkin's View of Religions

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Abstract

This article argues that religions are essential for human rights and human rights discourse without religious foundation is unable to protect human sacredness, criticizing Louis Henkin's assertion that religions are not only incompatible with human rights, but also hostile to human rights. First, I argue that ideally, religions are fully compatible with human rights ideology and both religions and human rights ideology can be abused by humans and infringe human rights of individuals. Second, criticizing Henkin's argument that religions which use the language of obligations and third-party beneficiaries are unrelated to human rights discourse which deals with right-talk, I argue that human rights talk cannot sustain itself without mentioning obli-

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gations and third-party beneficiaries. Third, human rights ideology can ensure human dignity when it is based on religious foundations. Fourth, unlike Henkin's claim that the religiously based human rights ideology is incompatible with the secular human rights ideology, the human rights ideology based on religions is fully compatible with secular human rights ideology. Simply put, religions are compatible with and indispensable for human rights ideology.

- **Keywords**

Religion, Human Rights, Right-talk, Duty-talk, Secular human rights discourse, Human sacredness

I. Introduction

We are witnessing human rights abuses while human rights discourse is prevalent. Some claim that religions are the source of human rights abuses and others claim that religions are irrelevant to human rights. This article argues that religions are compatible with and even indispensable for human rights ideology, refuting Louis Henkin's arguments that religions are incompatible with and even in opposition to human rights ideology.¹ First, I show that Henkin's argument that religions are in opposition to human rights ideology is incorrect, using concepts of totality and individuality - as a totality,² both religions and human rights ideology (specifically, when they are implemented in a real world) are likely to ignore or override individual human rights; an ideal religion can be compatible with human rights ideology but both religion and human rights ideology have been manipulated by human beings. Second, I argue that a duty language and the concept of a third-party beneficiary are not opposed to human rights ideology but are essential for human rights implementation. Third, I assert that only religions can preserve human sacredness. Fourth, I contend that human rights provided by religions are compatible with secularly de-

1 Louis Henkin (1917-2010) was a world renowned legal scholar who created the field of human rights law.

2 The concept of totality has been a main theme in Western thought. Hegel and Marx systematically formulated their theories based on the concept of totality. It is criticized by many philosophers such as Kierkegaard, Sartre, and Levinas, to name a few. For more detailed information on the history of the concept of totality, see Martin Jay, *Marxism and Totality: The Adventures of a Concept from Lukes to Habermas* (Berkeley: University of California Press, 1984). In this article, totality means something bigger and more important than individuality. Using Rawls's term, it can be identified with comprehensive doctrine, religious and nonreligious. Working toward its goal, totality like religion and ideology justifies sacrifice of individuality.

defined human rights, since religions provide a deeper foundation of human rights and a convergent point on secularly defined human rights. With these arguments, I would conclude that religions are not only compatible with but also indispensable for human rights ideology.

II. Are Religions Against Human Rights?

Some theorists contend that religions are responsible for human right abuses.³ Henkin opens his criticism on religions, saying “religions cannot escape from the sins of their various ‘fundamentalisms’ when they become oppressive or affiliated with terrorism...”⁴ Henkin’s criticism on religions is correct in that they have been oppressive and sometimes affiliated with terrorism. There is no doubt that religions have played a crucial role in justifying oppressive regimes, terrorism, or inhumane atrocities. Religion as a form of institution has an innate propensity for overriding individual human rights in order to achieve its own goal of totality. For the goal of an instituted religion, individual rights can be easily ignored.

3 Gerrie ter Haar, “Rats, Cockroaches, and People Like Us: Views of Humanity and Human Rights,” in *Human Rights and Responsibilities in the World Religions*, ed. Joseph Runzo, Nancy M. Martin, and Arvind Sharma (Oxford: Oneworld Publications, 2007), 79. Langan also mentions that Christianity has “collaborated in and benefited from the repression of human rights.” John Langan, “The Individual and the Collectivity in Christianity,” in *Religious Diversity and Human Rights*, ed. Irene Bloom, J. Paul Martin, and Wayne L. Proudfoot (New York: Columbia University Press, 1996), 172.

4 Louis Henkin, “Religion, Religions, and Human Rights,” in *Does Human Rights need God?*, ed. Elizabeth M. Bucar and Barbra Barnett (Grand Rapids, Michigan: William B. Eerdmans Publishing Company, 2005), 146.

Though I acknowledge the innate propensity of religions to override an individual's human rights, there is ample evidence that religions have contributed to invigorating human rights movement. For instance, Martin Luther King Jr. led African-American Civil Rights Movement solely based on his Christian faith. As another instance, Archbishop Oscar Romero's commitment to human rights is inseparable from his religious faith. While fundamentalism in any religion is against human rights, religious faith has nourished human rights movement and inspired people to work toward respecting the dignity of all.

Henkin further criticizes religions in that they are far from equality and nondiscrimination: "Religions, in contrast, have accepted – indeed mandated – distinctions on the basis of religion, permitting (requiring) distinctions between one religion and other religions, between faithful and the infidel."⁵ His criticism is reasonable in that historically, all religions refused to treat followers of other religions equally and discriminated against them. In contrast to religions, the contemporary human rights ideology stipulates that "human dignity requires equality and nondiscrimination, including nondiscrimination on grounds of religion or nonreligion."⁶ There is no doubt that human rights ideology places a high value on equality and nondiscrimination and disallows discrimination against people on religious or nonreligious grounds. However, it does not mean that human rights ideology in real life is immune to discriminating against certain human beings. An example is humanitarian intervention. In humanitarian intervention, there could be cases in which human beings are treated inhu-

5 Louis Henkin, "Religion, Religions, and Human Rights," 147-148.

6 Louis Henkin, "Religion, Religions, and Human Rights," 147.

manely. In order to stop genocide, for example, if a humanitarian intervention army bombards the camp of so-called rebel troops, innocent people such as rebel's families will suffer collateral damage. People in the rebel troops are easily equated with human rights infidels, even when they are child soldiers, prisoners, or non-combatants.⁷ Although human rights ideology asserts equality and nondiscrimination, in such cases people in the rebel troops are unavoidably discriminated against and regarded as sub-human beings who deserve death. Not only religion but also implementation of human rights is likely to discriminate against people.

Henkin continues his criticism on religions, asserting his identification of religions with totality and of human rights ideology with individuality: "The human rights idea has valued autonomy and individual freedom, sometimes above order and community.... [R]eligions have often achieved order at the cost of repression, of inequalities, of limitations on individual liberty and on individual development."⁸ There is no doubt that in order to achieve totality of a religion (order and community), a religion has done heinous things to individuals.⁹ But, that "the human rights idea has valued autonomy and individual freedom, sometimes above order and community" does not automatically immunize human rights implementation from repression, inequalities, or limitations on individual liberty and individual development. Although the human rights idea values individ-

7 It is reported that civilian death rate is 11-15 percent or 5-18 percent of those killed by drone airstrikes. See. Kenneth R. Himes, OFM, *Drones and the Ethics of Targeted Killing* (Lanham, Maryland: Rowman & Littlefield, 2016), 135-142.

8 Louis Henkin, "Religion, Religions, and Human Rights," 147.

9 Hochul Kwak, "Belling a Leviathan: Korean Christianity and Human Rights," *Korean Journal of Christian Studies* 92 (2014), 143-170.

ual autonomy and freedom, its implementation is likely to overriding individual autonomy and freedom as soon as the implementation of human rights becomes a kind of totality. In this case, totality means applying human rights universally to human beings as a collective whole rather than as individual beings. When individual human rights is imposed on a group of people, individuality is likely to be ignored or overlooked in the name of human rights ideology itself. Sheer example of ignorance of individuality is evident when a humanitarian intervention army regards its hostile army as infidels of human rights.

Human rights ideology is easily abused by “us-ism,” which is a kind of totality. Michael Perry describes “us-ism” as a real-world challenge to human rights ideology, saying that “the moral (impartial, universal) point of view” is in our real world, “often fiercely partial / local rather than impartial / universal.”¹⁰ He cites Nathan Stoltzfus:

Those on the Rosenstrasse who risked their lives for Jews did not express opposition to anti-Semitic policies per se. They displayed primarily what the late Primo Levi, a survivor of Auschwitz, called ‘selfishness extended to the person closest to you...us-ism.’ In most of the stories that I have heard of Aryans who risked their lives for Jews to whom they were married, they withdrew to safety, one by one, the moment their loved ones were released. Their protests bring home to us the iron limits, the tragically narrow borders, of us-ism.¹¹

10 Michael J. Perry, *The Idea of Human Rights: Four Inquiries* (New York: Oxford University Press, 1998), 31.

11 Nathan Stoltzfus, “Dissent in Nazi Germany,” *Atlantic Monthly* 270, no. 3 (September 1992), 87, 94.

Referring to Stolfus' criticism on us-ism, Perry emphasizes how partial and parochial human egalitarian works are. In a similar vein, human rights ideology can be accepted universally and impartially, but human rights implementation is likely to be partial and local. That is to say, human rights ideology can be easily manipulated by human beings in a real life. Though accepting human rights as universal theory that should be applied to all human beings, people are prone to neglect or ignore others' human rights infringement while they protect and promote human rights of their close ones. In order for human rights ideology not to be manipulated, in order to fully protect individual autonomy and freedom, and in order to keep individuality from being abused by totality, the religious concept of human sacredness is indispensable. I would argue it after discussing the compatibility of religious duty to the Supreme Being with human rights.

III. Are Religions incompatible with Human Rights?

In terms of the relationship between religions and human rights ideology, compatibility between the two is a key issue. After identifying religions with human rights infringers, Henkin points out that religions cannot be compatible with human rights, mentioning three reasons:

Religions laid claim to conceptions of the good, of the good society, long ago, without any idea of rights. The Bible – and the Qur'an, too, I think – knew not rights but duties. The Bible- to take the best-known example – mandates a duty upon me to

love my neighbor; but it does not present my neighbor as having a right to be loved by me; he or she, one might say, is only a third-party beneficiary of my duty to [the Supreme Being].¹²

The three reasons are these: religions did not use the idea of rights; they used duties instead of rights; one's duty is not directly for the beneficiary but for the Supreme Being. When it comes to the view that the idea of rights is not in religious Scriptures, it is correct that the Christian Bible does not mention the idea of rights. When the Christian Bible was written, there was no language of rights. In a similar vein, Korean traditional religions had no such concept of rights before Western influence. For instance, Confucianism, which emphasizes human dignity, has used no language of rights.¹³ Buddhism focuses on the relationship among living beings rather than their rights.¹⁴ Shamanism teaches and performs liberation and restoration of the oppressed without using the language of rights.¹⁵ If there was no exact language of rights in the Bible or in Korean traditional religions, does it justify that human rights are incompatible with aforementioned religions? It

12 Louis Henkin, "Religion, Religions, and Human Rights," 148-149.

13 Jong-Seok Na, "Research on the Possibility of Confucian Justification regarding Human Rights," *Tasan & Contemporary Times* 6 (2013), 187-230; Hong Kyu Park, "Confucianism and Human Rights," *The Journal of the Humanities* 53 (2007), 217-246.

14 Ok-Sun An contends that Buddhism can justify human rights using the concept of Four Noble Truths: Ok-Sun An, "Buddhist 'Human Rights': Establishment, Advocacy, and Implementation," *Yongbong Journal of Humanities* 30 (2001), 225. Differences between Buddhist concept of human rights and Western concept of human rights, see Ok-Sun An, "A Buddhist Critique of 'Individualistic Human Rights'," *Journal of the New Korean Philosophical Association* 28 (2002), 377-399.

15 Il Young Park, "Shamanism and Human Rights in Contemporary Korea," *Won Buddhist Thought & Religious Culture* 72 (2017), 402. 389-411.

could be, if the language of rights was generally used when the Christian Bible and other religious Scriptures were written or it has no equivalent in the religious Scriptures. As shown above, the language of right was not generally used when the religious Scriptures were written. Instead, there is a concept of duty in them, specifically in the Christian Bible. Henkin emphasizes differences between duty and rights, saying that “duty to love my neighbor is not the same as my neighbor’s right to be loved by me.”¹⁶ His view that duty is totally different from right is incorrect. As Amesbury points out, “although rights entail obligation, not all obligations entail rights.”¹⁷ It opens a possibility of equating duty with right. I will show that there is a case in which one’s duty can be equated with her neighbor’s right. In some cases, furthermore, the language of duty is more powerful and effective than the language of rights.

I would like to divide duty into compulsory duty and recommended duty. Compulsory duty seems to be tautology, but by compulsory duty I mean a duty by which one will be blamed or punished if she does not perform it. Recommended duty is, on the contrary, a duty by which one will be praised if she performs it but will not be blamed or punished if she does not perform it. I would say that compulsory duty can be equated with right whereas recommended duty is just duty unrelated to right. For instance, generosity is a kind of duty which cannot be equated with right. One can have a duty to be generous to her neighbors but it does not mean that her neighbors have the right to ask generosity to her. Generosity is a sheer example of recommended

16 Louis Henkin, “Religion, Religions, and Human Rights,” 149.

17 Richard Amesbury and George M. Newlands, *Faith and Human Rights: Christianity and the Global Struggle for Human Dignity* (Minneapolis: Fortress Press, 2008), 26.

duty. There is, however, compulsory duty. When a person is in a library, it is the compulsory duty not to talk to each other in such a way that others can study without unpleasant noise. If she chats without regard to others, she will be blamed by others in the library or be asked to leave the library by a librarian (as a punishment). In that situation, the compulsory duty to refrain from chatting can be equated with others' right to have a quiet space. In terms of divine duty, for another example, Matthew 25:31-46 talks about a compulsory duty rather than a recommended duty, since people will be praised or punished by the Supreme Being based on their fulfillment of the duty.¹⁸ Simply put, recommended duty is not equated with right but compulsory duty can be equated with right.

When one recognizes others' rights and implements moral acts to others, she does it with a sense of duty: Since others have rights, she has a duty to provide or refrain from something to protect their rights. If she does not accept others' rights as her duty, a language of rights loses its power. Consider the right to have a shelter. The right to have a shelter is more powerful than one's duty to provide a shelter to the homeless. Theoretically, the right to have a shelter naturally leads to a society without the homeless. In reality, however, there are many homeless people in Korea although the right to have a shelter is publicly articulated. It raises the question of responsibility. Whose responsibility is to provide shelters to the homeless? If nobody takes responsibility, to articulate the right to have a shelter is worse than to say nothing of the right to have a shelter. In this case, right-talk is not

18 In the Gospel of Matthew, those who helped the least such as the homeless, the starved, the thirsty, the alienated, the unclothed, and the imprisoned are accepted in the kingdom of God, while those who did not help the least would receive eternal punishment.

as effective as it is supposed to be. At least in such a case, duty language seems to be more effective, since the duty requires a person to provide a shelter to a homeless person: If it is a duty, at least responsibility is given to a certain person. In light of responsibility, therefore, there are cases in which duty-talk is more effective than right-talk. If there are cases in which duty language is more powerful than right language, it is inappropriate to assert that religions, which only talk about duty, are incompatible with human rights ideology. Rather, it is correct to say that religions, more specifically, duty language can co-operate with human rights ideology.

Henkin contends that religions are incompatible with human rights since when one loves his neighbor he does so for his duty to the Supreme Being and accordingly his neighbor becomes only a third-party beneficiary. It seems to be true that in religions his neighbor is an indirect beneficiary of his moral acts whereas in light of human rights ideology his neighbor could be a direct beneficiary of his moral acts. I would say, however, that his neighbor is an indirect beneficiary of his moral acts, since his moral acts are done to his neighbor through the ideology of human rights. Consider a situation which is devoid of the ideology of human rights. In such a situation, will a person automatically and innately perform moral acts without knowing human rights ideology? Seeing his insistence on individual autonomy and rationality, Henkin seems to say that a person will automatically and innately perform moral acts without any medium. I disagree with him. In the current political situation, an embarrassing problem of human rights implementation is that there is no executive entity to impose human rights ideology on inhumane groups. Without a political system that guarantees human rights to its members (individual human

beings) human rights ideology seems not to work. Without the ideology of human rights and socio-political system which embodies human rights ideology, human beings are prone to ignore or override others' rights. In this sense, Henkin's view that neighbor is a direct beneficiary of one's moral acts is incorrect.

I would rather assert that the concept of third-party beneficiary is crucial in protecting human rights. Consider that there are two human beings. As long as they are human beings, they are destined to death. They are ephemeral beings. Both of them might die tomorrow or enjoy their longevity. But, at some point, both of them will encounter death eventually. When they are to be starved to death because of a food shortage, as an extreme case, can one then eat the other? If the other eventually dies, why should one not eat the other? In the Bible and human history there are many instances where starved parents ate their own children.¹⁹ If a human being is an ephemeral being and survival is his ultimate concern, why should he regard the other as one who has inviolable rights? Why should he protect the other's life if the other passes away some day? There is no way to assert human morality if we only consider a direct relationship between or among ephemeral human beings. There should be something beyond a direct human relationship in order to assert human morality. Human rights ideology can play the role of something beyond direct relationship among human beings. Only through human rights ideology (a kind of moral commandment) can one be a beneficiary of his neighbor's moral acts. In this sense, human beings are always third-party bene-

19 2 Kings 6:28-29. According to Sejong jangheon daewang sillok (Veritable Records of King Sejong), homicidal cannibal was reported in 1447. http://sillok.history.go.kr/id/kda_12911017_001.

ficiaries in terms of their moral acts.

IV. Are Religions necessary for Human Rights?

If human rights ideology is sufficient to protect human sacredness and inviolability, religions are unnecessary with relation to human rights. Is human rights ideology enough to protect human sacredness and inviolability? Human rights ideology can protect some human rights but it cannot ensure human inviolability or sacredness. Henkin contends that “[t]he human rights ideology is a fully secular and rational ideology whose very promise of success as a universal ideology depends on its secularity and rationality.”²⁰ To rephrase the question in light of Henkin’s contention, can secularity and rationality protect human inviolability or human sacredness? I would say that it is impossible. Sacredness and secularity are in themselves incompatible with each other. Where sacredness ends there secularity begins; and where secularity ends there sacredness begins, though sacredness and secularity exist together in our real life. Secularization means divesting something of its sacredness. If secularity means divesting something of its sacredness, how can secularity protect human sacredness? It is inconsistent to assert that human sacredness is fully protected as secularity divests human beings of its sacredness. Secularity cannot preserve human sacredness. Can rationality then preserve human sacredness or human inviolability? It is impossible, too. The history of human beings, especially, the two world wars, clearly shows that human rationality is not trustworthy in protecting human sacredness.

20 Louis Henkin, “Religion, Religions, and Human Rights,” 154.

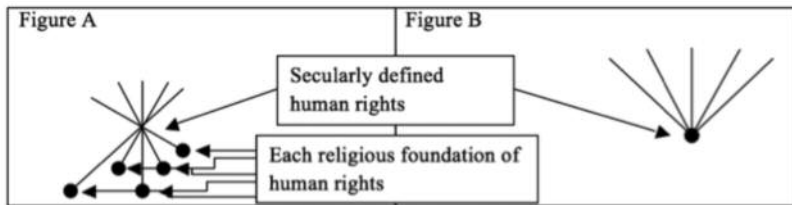
Rationally enlightened Western people, especially the U.S., made a nuclear attack on the almost defeated Japan which was like a candle flickering in the wind. Rationally enlightened developed countries, such as the U.S. and UK, imposed an economic sanction on Iraq and as a result at least 400,000 innocent children died of malnutrition. In a perfect situation, rationality might work. But in a real world, in a situation of life or death rationality works badly or terribly. It is because rationality is unable to imagine something beyond survival. The range of rationality is life and visible world. Attaching ultimate value to something invisible means that it violates the border of rationality. Human sacredness is in a sense beyond rationality since sacredness attributes ultimate value to human beings. Still, one rationalist might defend human sacredness saying that human beings have reason. To some extent, higher animals have reason, too. As far as I know, there is no persuasive, rationalist's argument for defending human sacredness without appealing to anthropocentric viewpoint. To attach sacredness to human beings without reasonable differentiation between human beings and higher animals is thus irrational and against rationality. Either secularity or rationality cannot protect human sacredness and human inviolability.

Only religions can ensure human sacredness and inviolability. Only with the help of divine or transcendental being's commandment can human beings attach ultimate value to human beings and accordingly preserve human sacredness. To attach ultimate value to ephemeral beings is possible only by entity beyond ephemeral being, that is, something eternal.

If human rights ideology cannot protect human inviolability and only religions can, how can human rights be universally accepted by

all human beings, especially by non-believers? I would say that religions provide a deeper foundation of human rights than that of human rights ideology and human rights discourse supported by religions converges on secularly defined human rights.

Henkin contends that religion is incompatible with human rights ideology since nonbelievers cannot agree with the basis of human rights provided by religions. His view is like Figure B. Human rights ideology needs one universal foundation: “a quest for universal acceptance and universal commitment to a common moral intuition articulated in specific agreed-upon terms.”²¹ In this framework, religions cannot play a role in founding human rights ideology since they are unable to provide one universal foundation to other religious traditions and non-believers. In Figure A, however, religions can play a significant and fundamental role in providing human rights ideology.



In Asian traditions, religion(宗教) means a foundational teaching (宗教: 宗 – bottom, basis, foundation; 教 – teaching). All other teachings are to be built upon the basis of religion. Borrowing Paul Tillich’s term, religions are teachings on “ultimate.”²² For example, Buddhism teaches not to kill any living being. Human beings are only a part of

21 Louis Henkin, “Religion, Religions, and Human Rights,” 150.

22 Paul Tillich, *Systematic Theology*, Vol. 1 (Chicago, The University of Chicago Press, 1973), 12.

all living beings. Human beings are asked not to kill each other as a part of all living beings. Put differently, human beings are asked to protect each other as a part of all living beings. Such a Buddhist teaching thus can converge on secularly defined human rights: although human rights ideology is unable to arrive at not to kill any living being, human rights ideology and Buddhism are able to converge on not to kill human beings. For another example, Jesus tells that what one does to the least is done to Jesus himself.²³ What Jesus said is more foundational than human rights ideology. Human rights ideology does not and cannot ask human beings to equate others with divine beings. Asking human beings to regard the least as Christ himself, Christian teachings are far deeper than what human rights ideology can arrive at. Human rights ideology and Christian teachings, however, converge on protecting human beings. Figure A shows this understanding of religious teachings and human rights ideology.

That religions provide deeper dimensions of human rights also resolves the problem of incompatibility of religions to other religions and non-believers in terms of universal acceptance and universal commitments to human rights. In dealing with universal acceptance and universal commitments to human rights, the incompatible religious teachings are no problem at all, since religions can converge on human rights. Christian does not have to accept the deeper dimension of Buddhist teachings and vice versa. Atheist does not have to conform his own view of human rights to Christian basis of human rights and vice versa. As long as there is convergence among religions and non-believers in terms of secularly defined human rights, that religions and

23 Matthew 25:40, "Truly I tell you, just as you did it to one of the least of these who are members of my family, you did it to me."

non-believers have different basis of human rights does not raise a problem of incompatibility.

V. Conclusion

It is undeniable that religions have been involved in violating individual human rights, either directly or indirectly. Though religions in general have been accused of infringing human rights, not only religions but also implemented human rights ideology is prone to ignore or override individual human rights. Even in some cases, however, religious faith provides the unshakable foundation for human rights movements. Based on the fact that religions have no language of rights, some scholars argue that religions are incompatible with human rights. However, duty language and the concept of third-party beneficiary, which religions use, are essential for human rights implementation. That is, duty-talk is far more powerful than right-talk in terms of implementing human rights. In addition, the concept of third-party beneficiary is crucial in protecting human rights. Some human rights theorists contend that human rights ideology can preserve human sacredness and inviolability without the help of religions. Without transcendental endorsement of ultimate value to human beings, however, human sacredness and inviolability is meaningless to vulnerable, ephemeral human beings. Only with religious impartation of sacredness can ephemeral human beings have sacredness and inviolability. Though some human rights advocates contend that human rights discourse provided by religions is incompatible with secularly defined human rights, religiously supported human rights are com-

patible with secularly defined human rights, since religions lay a deeper foundation for human rights at which secularly defined human rights is unable to arrive and provide a convergent point on secularly defined human rights. Therefore, religions are not only compatible with but also indispensable for human rights ideology. Nonetheless, it is noteworthy that not all religions are compatible or indispensable for human rights ideology, in spite of the compatibility and indispensability of religions for human rights ideology.

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