

UNIVERSITY OF CAPE COAST

**A PHILOSOPHICAL ANALYSIS OF RELIGION AS A
JUSTIFICATION FOR HUMAN RIGHTS**

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JUSTIFICATION FOR HUMAN RIGHTS**

BY

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**THESIS SUBMITTED TO THE DEPARTMENT OF CLASSICS AND
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REQUIREMENTS FOR THE AWARD OF MASTER OF
PHILOSOPHY DEGREE IN PHILOSOPHY**

MARCH, 2015

DECLARATION

Candidate's declaration

I hereby declare that this thesis is the result of my own original research and that no part of it has been presented for another degree in this university or elsewhere.

Candidate's signature:..... Date:.....

Name:.....

Supervisor's Declaration

We hereby declare that the preparation and presentation of the thesis were supervised in accordance with guidelines on supervision of thesis laid down by the University of Cape Coast.

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Name:.....

ABSTRACT

One of the highlights of the twentieth century was the promulgation of the Universal Declaration of Human Rights (UDHR) by the newly formed United Nations in 1948. Since this step was taken, however, the concept of human rights has become the topic of much debate. Also, current statistics indicate that human right violations are more frequent now than they were, prior to the world wars. To ensure that the UDHR achieves its aim of protecting human dignity, philosophers and other scholars have risen to the challenge of building a coherent theoretical foundation for universal human rights in order that the concept may appeal universally. As part of this exercise, scholars, including Michael J. Perry, have postulated religion as a means, even the only means by which human rights can be justified. On the opposing side of the debate stand the secularists who argue that, considering the nature of religion, it cannot and must not be used as a justification of human rights. This research analyzes the arguments in support of human rights from selected religious traditions and makes some discoveries. Contrary to what some secularist theorists hold, religion *does* qualify as a justification for human rights except that those who claim religion is the only way to make sense of the morality of human rights might need to revise their stand. The researcher thus concludes that a successful justification of human rights must have both a religious dimension based on faith and a secular one, based on pure reason.

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DEDICATION

To Elizabeth Aba Savage.

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CHAPTER ONE

INTRODUCTION

Background to the study

Human rights, as a concept, is believed, by some scholars, to be linked to religion. Scholars like Louis Henkin have characterized this connection in negative terms, citing religion as an imperialistic and anti-human-right institution (Henkin 1998:238). Others have, however, refuted this claim and insisted that religion has a positive impact on human rights. A careful study world history makes one aware of the numerous instances where religion has justified grave acts of violence and human right violations. Up until the early twentieth century, some scholars were of the view that religion was not going to survive modernity. This assumption was refuted with the September 2001 attack on America by Islamic fundamentalists. What the September 11th attack did was to bring religion back into international discussions.

Prior to the 2001 bombings, religion and human rights had been considered opposing concepts. Indeed, long before the concept of universal human rights, there were other such concepts as natural law and natural rights that sought to protect and respect human dignity. Religion has, however, throughout all these periods, been a perpetuator of crimes against humankind. In the East, Zoroastrianism preached a kind of militarism that saw the eternal battle drawn out between the good and the evil, mostly culminating in the loss of lives. Judaism has many instances in the Torah where Yahweh instructed genocides and human sacrifices. The Roman Catholic Church was well noted for stifling people's rights including those to life, association and conscience. The Crusades and the Inquisition are proof of Christian abuse of human rights.

Islam, by virtue of its system of government where religion is infused with politics, has blatantly abused human rights through its Sharia and infamous jihads (holy wars).

Even in such periods as the Reformation and the nationalist era in Europe, religion played a part in the violence and human right abuses. The sixteenth century Protestant Reformation and the reactionary Catholic Reformation, which led to disputes between Catholics and Protestants, set off a long chain of civil wars across Europe, and was a major cause of the destructive Thirty Years War (1618-1648) among the powers of Europe (Ellerbe 1995: 95). Colonialism, which occurred in most of the third world countries, had religious undertones; the colonists often invaded the colonies in the guise of preaching the gospel. The modern religions are not alone in these human right violations; the African traditional religion is another abuser of human rights. Human sacrifices still abound in some African societies, and there is also the now global issue of female genital mutilation. Female genital mutilation is the practice of removing parts of the female reproductive organ - usually under insanitary conditions - to prevent sexual infidelity.

But do these religious traditions actually sanction violence against humanity or are such instances of abuse only given religious guises? It has been argued that, indeed, none of the modern religions promote violence. There can be no one correct answer to the above question because religion has also aided in numerous human rights campaigns. The Methodist church is known to have played a crucial role in putting an end to slavery in various parts of North America (Fahlbusch 2008: 33). The Hindu, Mahatma Gandhi, may be named as a force behind Indian independence from England. Martin

Luther King Jr., a religious leader, was influential in the American civil rights movement in the 1950's and 1960's (McNeese 2007: 132). The Catholic Church has also played various roles in securing human rights during coup d'états in Brazil (1964); Bolivia, Chile and Uruguay in the 1970's (Hagopian 2009: 190). Apartheid was also resisted vehemently by the religious groups in South Africa including Muslims, Christians and Jews.

Human rights, as a concept, entails that human beings be treated in certain ways, by virtue of their humanity. The current human rights regime, as codified in the Universal Declaration of Human Rights (hereafter, UDHR), is arguably a product of Western speculations about the so-called laws of nature. It was after the Second World War that this concept came to the forefront of international law deliberations despite evolutionary changes during the centuries preceding the war (Donnelly 1998: 3).

Notwithstanding the high hopes its drafters had for it, since its adoption in 1948, the UDHR has done little to ensure respect for the inherent and inalienable dignity of members of the human family. Human right violations are more rampant now, as some scholars (Chowdhury & Bhuiyan 2010: 5) observe, than they were before the UDHR was adopted. Challenges to the main human rights document have poured in from all regions of the world, including even the West, the purported originators of the concept. It has become necessary to provide a theoretical basis upon which to build a foundation of human rights and the work of philosophers, anthropologists and political theorists is to provide adequate reasons why people must treat their fellow human beings with the utmost respect. Scholars who have risen to this

task include Immanuel Kant (1785), Michael Ignatieff (2003), Jack Donnelly (1998) and Alan Gewirth (1912-2004).

As already stated, human right violations have characterized our current century - and many centuries past - and it is of great import to add that quite a number of these violations have been motivated by religion or have been carried out by religious institutions or individuals with religious motivations. In the minds of a number of scholars, therefore, religion is an anti-human-rights institution. In addition to this religious challenge is the twin challenge of cultural relativism and imperialism – the argument that human rights is a Western idea and cannot be applied cross-culturally.

Various arguments have been proposed by scholars as a response to these challenges. One example of these arguments is from the school of legal positivism. Jeremy Bentham and his camp of legal positivists postulate positive law – the type of law which is laid down by a legislative body - as a justification of human rights. What the advocates of positive law argue is that all rights are sourced from the authority of the state. Legal positivists deny a philosophical justification for human rights and they believe rights are only products of legal enactments and their corresponding sanctions (Shestack 1998: 209). Legal positivists are not concerned with the content of the laws they back; in the absence of a philosophical theory nothing can be used to label a particular law as right or wrong. The positivists will therefore see nothing wrong with a law like those that sanctioned apartheid in South Africa. Though positivism has come under many attacks it is still a viable foundation for human rights. Since the state regulates human rights, laws will be enacted to strengthen the institution of human rights which laws all must follow

regardless of their individual misgivings. Other such theoretical justifications of human rights include utilitarianism, secular natural law theory and Marxism.

Of the numerous theoretical foundations proposed for the concept of human rights, one that strikes many scholars as odd is religion. The reason for some scholars' rejection of religion as a basis for rights becomes obvious when the reader considers the various human right abuses throughout history by religious men and institutions.

Scholars like David Novak have, however, argued that human rights is, by its very nature, a religious concept. This argument is partly based on the premise that the various religious texts have declarations that seem to translate directly into a code of human rights. This makes one wonder, considering the numerous examples of schism between religious belief and the human rights regime, how can religion, the abuser of human rights in our day be used as a tool to justify the concept, at least in theory? (Marthoz and Saunders 2005: 40)

Ancient texts like the Vedas, the Bible and the Qur'an, arguably, have concepts similar to our modern human rights (Shiman 1993: 6). The Bible, the world's most popular religious text, has prescriptions that appear to promote human rights (see the ten commandments: Exodus 20: 1-17) but these have been rebuffed as mere prohibitions and duties that have nothing to do with the concept of rights, let alone, human rights (Henkin 1998: 232). The golden rule (the moral imperative to treat others as one would like to be treated), upon which scholars in the camp of religion claim that human rights are based, is regarded as a command - a duty - bereft of any concept of rights (Henkin *ibid*). Indeed, with our current understanding of human rights, the Biblical and other

prohibition-based concepts will not count as rights. But these religious texts do claim to have respect for the sacredness and inherent worth of mankind and that this respect may be regarded as a sufficient condition for the existence of human rights in their teachings. For this reason, it is believed that human rights will make no sense to a wide array of people unless they are put in the religious context.

Added to the claim identified in the above paragraph is the somewhat audacious claim that Religion is the only way to ground human rights. As will be explained later in the literature review, some religious scholars believe the concept of rights will make no sense without a belief in a transcendental being. What is it, then, that the concept of religion has that can be used to support human rights? In the face of all the religious extremism and fundamentalism, how justifiable is the claim that human rights can only have meaning in a religious context?

The current study, it should be noted, is necessitated by the age old debate concerning the place of religion in international relations. It appears the world is becoming more and more secularized and it is the work of ethicists to assess the moral implications of an increasingly secularized world. One approach, the researcher believes, is to examine exactly what significant roles religion plays in the field of international relations. With this clarification in place, ethicists can then be in a better position to find a justification for human rights that cuts across cultural boundaries.

Statement of the problem

Human rights have become popular since the Second World War but this acceptance has been everything but uncritical. How, then, can these criticisms be refuted? Apparently, people need a reason to forego the full enjoyment of their lives in order to ensure the next person enjoys theirs and this reason is exactly what concerned scholars have tasked themselves with providing. Some believe the justification of human rights can be done by building international human rights on solid religious grounds. Scholars like Michael Perry believe that unless religion is given a place at the human rights round table there will be no way of justifying human rights in this historical epoch or any other, for that matter (Perry 1998: 39-40). But this assertion has been variously challenged due to the blatant disregard for human rights by some religions. The problem then becomes one of how the various arguments for and against religion can be analyzed in order to show whether religious scriptures may be used to justify human rights, at least, in theory.

Significance of the study

The schism between religious traditions and the concept of human rights is probably the biggest news-making event of the current century. Various debates over the real place of religion in the protection of human rights have emerged; some scholars have come out to condemn religion for being a bulwark against the universal protection of human dignity. Yet the religious movements and their representatives continue to claim they do have a say in achieving this universal aim of the UDHR. What this research does is to situate this debate into the broader human rights discourse and examine both sides from an academic bird's eye view. If the religious establishments

claim they do have the inherent dignity of mankind at heart, this research will determine the veracity of the claim. Selected religious human rights doctrines will be examined to determine whether, really, religion may be used as a tool for propagating human rights. If indeed the religious arguments for human rights are sound then this work will have clarified one more justification for human rights. Religious leaders who intend to use their platform to strengthen the human rights regime may use this research since the research looks at how exactly human rights come to play in various religious traditions. Generally, any student of human rights will be interested in the detailed expose on human rights contained in the second chapter.

Delimitation

The researcher is quite aware of the fact that there are various justifications for human rights other than the religious one. These include the (secular) Natural Law justification, the Positive Law justification, the Utilitarian justification, the Marxist justification, among others. However, this research will consider, briefly, some of these justifications only to the extent to which they relate to the religious justification.

Objectives of the study

- a. To provide a detailed understanding of the concept of human rights, revealing its strengths and weaknesses as a mechanism for safeguarding universal human dignity.
- b. To build the case for human rights on religious grounds.
- c. To examine said arguments to determine whether they hold any true prospects for the future of human rights Foundationalism and finally,

- d. To examine the argument that religion is the only way by which human rights can be justified.

Organization

The research will be divided into five main chapters, as follows. Chapter one will be the introductory chapter with such sections as the background to the study, statement of the problem, significance of the study, methodology, organization and literature review. Chapter two will attempt a historical evaluation of the concept of human rights, looking at the broad concept and its constituting terms, what has been said against it by way of criticism and the responses to these critiques. There will also be an analysis of the problems facing the practical realization of the concept. Chapter three will be the first part of the examination of the religious justification of universal human rights; this chapter will critically examine the core arguments made by scholars to support religion as a foundation for universal human rights. Chapter four will look at the critiques or objections raised against the religious justification of human rights. The fifth and final chapter will be an appraisal of human rights discourse and the role of religion as an instrument of legitimation.

Sources of information

The Universal Declaration of Human Rights is the main primary document upon which this research is conducted. However, this research will also be sourced from books, articles and online publications on the religious debate on universal human rights and the human rights debate in general. Primary works to be used in the research include religious scripture such as

the Christian Bible, the Islamic Quran, the Hindu Vedas, and others. These primary sources are used in order to reach the original arguments put forth to either support or reject religion as a justification of human rights. Secondary sources will include commentaries from theologians and other scholars including Michael Perry, Ari Kohen and Dhorman Byers.

Methodology

The data collected from the above sources will be examined using the analytic method. This method makes use of critical thinking to discover facts concerning a given topic and deduce, from the discovered facts, a novel and pragmatic solution to a particular problem. In this light, the arguments put forward by scholars like Perry, Ari Kohen and Ronald Dworkin on the research topic will be analyzed using the tools of logic and language analysis. The findings made in the analyses of the arguments for religion are then juxtaposed with arguments of secular theorists like Alan Gewirth and Alan Dershowitz in order to determine which position is more cogent. Certain concepts like human rights and religion will also need detailed analyses due to their significance in arriving at the main aim of the research.

Theoretical Framework

Since the concept of human rights basically rests on a particular version of natural law, this theory will serve as the framework within which this research will be conducted. Michael Perry, whose arguments for the religious justification will be assessed, propounds a foundationalist theory which is in line with Thomistic natural law. Despite its origins in Aristotelian

thought, natural law is considered to have been best formulated by Thomas Aquinas (Trepanier 2011: 1092-93).

Aquinas was a natural law theorist who believed that the end of a particular thing is relevant to determining what is good for that thing. Like Aristotle, Aquinas believed what is good is *quod omnia appetunt*, that to which everything tends. Aquinas was, in a way, affirming Heraclitus' idea that all things are becoming; are in a state of perpetual potentiality, seeking to reach some end. Man, like all beings, is only good to the extent to which he is fulfilling his purpose in life. A good human society, therefore, is one in which all its members are given the freedom and opportunity to fulfill their common good.

Aquinas believes that God is the highest good to whom all things, not excluding man, must aim. God is the *Ipsum Esse*, Being in itself, compared to whom we are merely potential beings and Aquinas believes that it is through reason that man discovers he is a mere copy of real Being which is embodied by God. God is thus simultaneously the beginning and end of all mankind. The external end of mankind is God and the internal end of society must be for all its members to reach their end in God (*Summa Theologiae* I, 65, 2).

Reason aids us to understand the eternal law set forth by God and which law governs the entire universe. Our participation in this eternal law is what Aquinas refers to as the natural moral order or the natural law. God can only be appreciated through reason and since only humans possess this faculty, Aquinas believed that only humans are capable of following the natural law.

Aquinas affirms Aristotle's thesis that man is a social animal and our biological makeup evidences this. Man is born undeveloped and therefore needs the love, cooperation and encouragement of society to develop. For man to be able to achieve his true purpose in God, he needs society. Society then serves as a means to man's end. A person who is incapable of living in a society must either be a beast - below the race of mankind - or a god - transcending all mankind (*Politics* 1253a3-4). This point underscores the importance of society in human life. Reason must necessarily play a crucial role in every good society but so does emotion. The needed emotions for the proper progression of society is love. The Romans after Aristotle believed that a society which lacks emotions, and is built on only reason, is doomed to destruction, as embodied by the terse, *summum ius summa injuria* - the most perfect justice among men ends up as the most perfect injustice (*De Officiis*. I 10, 33) The Bible has many instances of the concepts of *philia*, love and *Philadelphia*, brotherhood. Jesus is quoted on numerous occasions in the gospels advising his followers to love one another (John 13:34-35).

It is in this framework that this study wishes to place the religious arguments for human rights. The framework Aquinas builds for the concept of rights is based on natural law, a set of laws which are in turn based on the eternal law of God. Aquinas therefore implies that man's natural rights are sourced from the one true Being - God.

Literature review

Since the formation of the United Nations (UN) in 1945, human rights have become a widely discussed issue and this discourse has simultaneously opened up the concept of human rights to criticism from people of diverse

persuasions. Human rights have been analyzed by great minds and some of these have identified what they think are irreparable flaws in the concept. Adamantia Pollis and others believe the tenets of the UDHR are imperialistic and particularistic and for these reasons are not enforceable universally. Some scholars have found it necessary to create a rational foundation for human rights against the myriad of opposition leveled against it. This is but one scholarly view; another camp of scholars believe foundationalism - the view that human rights need some form of theoretical foundation - is not the way to go with human rights and proffer other means of reinforcing respect for human dignity. Most prominent of these other means is Rorty's sentimental education. For those who propose a foundation for human rights, the justifications have included natural law theory, positive law and religion. Of all the justifications the religious one seems to be most controversial as some scholars doubt its credibility as a justification for a seemingly secular concept; others believe religion is a viable candidate for the justification exercise. Literature is reviewed in this section according to the various subjects of debate listed above in order to situate the argument on religion.

Human rights is an issue that features in various academic branches; the concept may be examined under moral philosophy but its study may also be done from the social and political philosophy standpoint. To better understand this study, I refer to an introduction to social and political philosophy by Robert Simon. Man, as a political animal, thrives on social and political interaction consisting in practices and institutions. This interaction has its issues and these include the nature of these institutions, how they affect its component people and how viable they are in other social and political

setups. Also, there is the moral examination of these institutions as to whether they are just, fair or unfair. This is the normative aspect. The meta-ethical aspect concerns itself with the definition of the words used in the normative assessment and these include 'justice' and 'fairness'. This is the scope of political and social philosophy; the moral assessment of political institutions and the development, clarification and assessment of proposed principles for evaluation of the social order (Simon 2002: 2). Simon lists a set of issues in social and political philosophy ranging from the nature of the state's authority, its limits, to its duty to protect the rights of citizens and avoid interference in citizens' lives. Human rights can then be put into this model if they are to be understood as both a moral and political concept. This work thus becomes an examination of whether religion can be used to justify the political concept of human rights.

Part of the research concerns works that deal with how the concept of human rights ought to be understood and what human rights really are. Jack Donnelly does exactly this in his article, "Human rights and human dignity: An analytic critique of non-western conceptions of human rights". Donnelly makes the claim that the concept of human rights is exclusive to the West. This is in disagreement with scholars like Adamantia Pollis and Peter Schwab who claim that other cultures have similar concepts. Non-western societies tend to respect 'human dignity' as opposed to human rights; a distinction Donnelly believes is vital to understanding his position. The concept of human rights is the Western approach to the attainment of human dignity and Donnelly believes it is the best approach yet. Donnelly's conclusions about the origin of human rights are of little importance to this research; his analysis of

the nature of human rights is of significance to this work, however, since an adequate examination of a particular justification of a concept is impossible without a proper understanding of the nature of the concept under study (Donnelly 1982).

Human rights are claims owned by their possessor, by virtue of their humanity, independent of the other person. This is how the concept differs from other non-Western approaches to human dignity, where duties and prohibitions are employed between rulers and subjects. Donnelly makes a distinction between ‘rights’ as claims and ‘right’ as in what is right, though these terms are closely connected (Donnelly 1982: 304). Illustrations are made from the Islamic, African, Indian and Chinese cultures to prove his point. Of particular importance to this study is Donnelly’s claim that societies which prescribe group rights over individual ones do so out of scarcity. Donnelly believes that in the light of the current globalized economy group rights are losing their pragmatic appeal, paving way for universal individual rights. The scholars who argue for religion are of a different view, they hold that the institution of religion provides spiritual security in a way no amount of globalization can. So for those who still need this security, any form of justification must be done within a religious framework (Witte and Green 2012: 15-16).

The above is but a reformulation of R. H. Tawney’s argument, quoted in Michael Perry’s *The idea of human rights: Four inquiries*, that the concept of human rights will make no sense to an “inescapably religious” majority unless it is founded on some religious worldview (Perry 1998: 39-40). Perry bases his argument for a religious justification on what he envisions a religious

worldview to be, i.e. a worldview which visualizes the best possible world and our role in attaining it (Perry 1998: 15). With this in mind, many institutions may be regarded as 'religions' and their ideology can be used to justify human rights. Karen Armstrong argues that Buddhism and Marxism which are, respectively, a non-theistic religion and an economic theory, may well fit into this characterization of religion (Armstrong 1993: 354.). One main problem identified with Perry's theory is that it seems to put too many institutions and groups under the religious umbrella, a challenge that will be evaluated in the third chapter of this research.

Pollis and Schwab identify the problem of cultural relativism and, tying it in with the imperialism challenge, deny human rights any form of universality. Pollis and Schwab, as is typical of scholars of their group (see Zvobgo 1979: 95), draw attention to the fact that during the San Francisco conference which established the UN in 1945 - and even in 1948 when the UDHR was promulgated - many of the third world countries were still colonies and, to Pollis and Schwab, this is historical evidence of the imperialistic spirit of the UDHR. Pollis and Schwab add that the concept of human rights cannot be implemented in non-western countries (Pollis and Schwab 1980: 13). This denial of the universality of human rights is one which this work intends to examine. Two reasons Pollis and Schwab give as to why nations neglect the UDHR are the cultural patterns and the development goals of states. Concerning the cultural reason, non-western nations are mainly communal and therefore allow society to figuratively swallow the individual. This claim is, however, a hasty generalization since most African societies do recognize the independence of the individual though they put more premium

on communal living than the West does. Secondly, the economic agenda of the former colonies makes them view human rights as a means of attaining economic prosperity and at any point when the means (i.e. human rights and democracy) begin to hamper economic progress they are done away with and this often leads to governments trampling over the rights of even their own citizens (Pollis and Schwab 1980: 8).

Pollis and Schwab believe the whole concept of human rights is to be re-evaluated and the non-Western nations should be given major roles in its reformulation. Pollis and Schwab recommend an ideological approach which will cut across a wider spectrum. This research rejects blaming the failure of human rights completely on their Western origins. It is for this reason that a section of chapter two will attempt to discover the obstacles on the road to a world where human rights are properly respected. Pollis and Schwab make a recommendation which is significant to this work since the researcher believes human rights need reformulation in order to have global appeal. But this reformulation does not have to be of the content of the charter; it could be of the way people are made to understand why they should respect human rights; it could be a project of justification (Pollis and Schwab 1980: 14-17).

In the book, *The proliferation of rights: Moral progress or empty rhetoric?* Carl Wellman mentions what he believes is another problem with the UDHR; that it is now filled with numerous rights which may not be considered as fundamental to humans (Wellman 1999: 2-11). An example is Article 24 of the UDHR, which concerns the right to holidays with pay. Holidays, Wellman argues, should not be contained in a list of fundamental human rights since its inclusion has the tendency of raising questions as to the

practicality of the document as well as its sense of urgency. A right, as defined by Maurice Cranston, is something whose deprivation will lead to a grave injustice (Cranston 1967: 52). In line with this definition, rights like in Article 24 only give the general concept a fantastic, unrealistic aura (Wellman 1999: 52). Other rights like the rights to strike and abortion have all been repealed by several governments, casting doubt on the overall validity of the document. A counter argument may be leveled against Wellman and Cranston in the following way: a proper understanding of rights, as shown in Donnelly, allows that they may be overridden in certain instances without losing their standing as human rights. Though a right is a high priority concept, universal human rights are presented in a set of quasi-legal articles which are open to manipulations by reason. It is due to this that a philosophical justification is needed to make people understand that human rights principles are not to be undermined but strengthened and this research will determine whether the institution of religion can adequately perform this task.

James Nickel does a defense of welfare rights, the kind of rights Wellman believes are unnecessary rights, in an article titled “A defense of welfare rights” in *Contemporary debates in political philosophy*, edited by Thomas Christiano and John Christman. Nickel makes a claim that though a considerably large number of states have ratified the main human rights treaties, it is not the case that that many states have respect for human rights. (Nickel 2009: 437). Welfare rights, which consist of economic and social rights, contained in the International Covenant on Economic, Social, and Cultural Rights (ESCR) and ratified by more than one hundred and forty countries, include rights to nondiscrimination in employment, the right to

adequate food, shelter and clothing, among other such rights. Though these are documented rights their observance has been somewhat derisory and this is chiefly due to the ongoing debate among scholars as to whether these rights are really worthy of the concept under which they fall (Nickel 2009: 438).

Nickel is of the opinion that welfare rights, like all other human rights, are not aimed at achieving ideals but are rather tools for ensuring that all people everywhere get the barest minimum of food, clothing and shelter. This is what some philosophers have referred to as subsistence rights (Shue 1996). Nickel rightly observes that the philosophers who regard welfare rights as subsistence rights seem to make welfare rights too narrow a concept whereas the UDHR and other documents make them too broad. The problem with making welfare rights subsistence rights is that they become insufficient in the long run. Overemphasizing these rights, as the UDHR does, also raises the question of how nations can provide such claims as holidays with pay (Nickel 2009: 438).

Nickel introduces what he calls the Vance conception of welfare rights after former US secretary of state Cyrus Vance who listed a number of rights he thought must be included in any human rights document. The rights listed, “the right to the fulfillment of social vital needs as food, shelter, healthcare and education”, (Vance 1977 quoted in Nickel 2009: 439) are what Nickel believes are the ideal rights to be conceived of as welfare rights. In his justification exercise, Nickel presents the linkage argument which states that welfare rights need to be implemented for other rights to be realized. A person's right to free speech, for instance, will mean nothing if he is not educated. This argument is, however, not completely sound since the denial of

subsistence rights to some people in a country might end up aiding the implementation of some other rights. Nickel's second form of justification proposes a model for what a justified human right must be. He lists these criteria and argues that welfare rights meet these requirements and thus must be accorded the same high place given to other rights. A justified human right, according to Nickel's model must:

1. Have a place in the human rights concept
2. be equally as relevant as other rights
3. Respond to recurrent threats
4. Be sourced from the power of rights rather than from some weaker norm
5. Impose reasonable burdens on duty-bearers and,
6. be workable universally or in as many countries as possible (Nickel 2009: 441-451).

The claim that only the courts should be the custodians of welfare rights, Nickel believes, is counterproductive in some circumstances. Nickel concludes by claiming that welfare rights are advantageous to both the poor and the rich in a nation since the poor will have the basic needs of life and the rich will have a sense of security with no fear of having their rights forcibly encroached upon by the poor (Nickel 2009: 454). The concept of human rights is indeed a cloudy one and any exercise attempted on the concept must involve a clear conception of what are and what are not human rights and Nickel does just that in the article reviewed above.

Anthony Pagden also joins the debate on human rights by affirming that human rights are in actual fact a culmination of Western imperialistic

tendencies. He traces the concept from ancient days and identifies epochs in which the Western powers have interpreted the then natural rights/law to suit their imperialist inclinations. For instance, the natural law governing unoccupied lands (*terra nullius*) was used in numerous occasions to dislodge native cultures whose inhabitants were reduced to sub-human status due to their failure to cultivate their own lands (Pagden 2003: 182). Pagden indicates how the then European natural law theory was used as a justification for the Spanish invasion of America (Pagden 2003: 177). Pagden believes that this fact notwithstanding, people should be made to understand that human rights aim at securing their and others' inherent dignity. The admission of the fact that human rights as we have them now were once instruments for oppression should have no effect on our acceptance of its objectives. This is no way an admission of the popular terse about ends, means and justification but a historical assessment of the concept of human rights dredges up many sentiments that are best kept buried in favour of rational contemplation.

Pagden makes an assertion that directly relates to this research: unless we accept the idea of a deity who has made us in such a way that we can interact and understand each other, any sense of humanity will be a social construct and will regard people outside that society as non-human (Pagden 2003: 192). This perspective could be useful to our research as it is one of the arguments for a religious justification of human rights to be examined.

These problems identified in the preceding paragraphs have divided human rights theorists into two camps. One camp believes that in order to increase the effectiveness of human rights, there has to be a rational underpinning, a justification of sort; these are the Foundationalists. On the

other side of the debate stand the non-Foundationalists who believe a rational justification would not be the best means to promote human rights. Most prominent of the latter group is Richard Rorty. In his 1993 Oxford Amnesty Lecture entitled “Human rights, rationality, and sentimentality”, Rorty builds upon a scenario in an earlier publication to dismiss the human rights Foundationalists. In his book, *Contingency, irony and solidarity*, Rorty narrates how non-Jews (gentiles) provided asylum for Jews during the holocaust (Rorty 1989: 189). According to Rorty, the assumption that human beings have a common rational faculty that links us as species is superficial and thus, any justification built upon that assumption is, at best, dubious. Rorty believes there is “something within each of us - our essential humanity - which resonates to the same thing in other human beings” (Rorty: *ibid*). This ‘thing’, Rorty argues, is what can be harnessed to promote human rights in a way no form of justification can.

Rorty further opines that human beings are custom-bound mammals who view ‘the other’ as inferior, foreign, and even non-human. History has, in fact, shown this to be true. Hence, instead of finding a rational foundation for human rights, theorists should focus on “sentimental education” (Rorty 1993: 127). Rorty explains this as the method of emphasizing our sentimental faculty to enable us to conceive of others as similar to us, based on the pain we all experience and to translate that similarity into a sense of belonging. This, we can achieve by telling detailed, sad stories that rouse empathetic feelings, culminating in affectionate sympathetic feelings. This sympathy will further lead to our realization that these ‘others’ need to be accorded some kind of dignity (Rorty 1993: 122-123). Unless Rorty can account for his purported

necessary connection between our feeling of sympathy and our recognition of other peoples' inherent dignity then his theory is significantly limited. Rorty's contribution to this study is the question he throws up regarding whether human rights do really need a theoretical justification and a section will be dedicated to finding a convincing answer to this question in chapter two.

In the camp of scholars who support one form of justification or the other for human rights is the German philosopher, Immanuel Kant (1724-1804) whose moral philosophy has been variously used as a justification for the idea of universal human rights. In the *Groundwork to the metaphysics of morals*, Kant distinguishes between an end - which is objective and capable of self-determination; a means, an action which is motivated by the end; the incentive, which is a subjective desire; and the motive, which is an objectively-based desire (Kant 1785: 429). From this distinction, Kant argues that human beings are ends in themselves by virtue of their status as rational beings and for this reason each person must consider himself and others as such. This formulation is meant to have universal appeal. In line with his deontologic philosophy Kant adds that each person is duty-bound to desist from using himself or others as means to some other end. This makes Kant's theory a duty-based justification of rights. There is therefore, in Kant's duty-based theory, a refutation of Donnelly's claim about the absence of the concept of rights in religious and non-western traditions. If religions and non-western traditions are denied the concept of rights then Kant may not be argued to have advocated for human rights. What all these parties – Kant, religions and non-western traditions - have in common are duties from which the idea of a right is only implicit. Kant is an important secular Foundationalist

and his arguments will be used in this study to test the religious approach to justifying human rights.

Onora O'Neill argues that duty-based rights, like what Kant's theory proposes, have some advantages over the rights-based human rights in that the former kind may be extended to those who do not have the reasoning capacity to demand their rights e.g. babies. On the other hand, rights-holders under duty-based rights may not have space for recourse if their rights are violated; they become passive right-holders at the mercy of other people's beneficence and this defeats the purpose of protecting autonomous individuals (O'Neill 1989). Kant's conception of rights is best understood in the broad context of his natural law theory. Autonomy, according to Kant, is the natural disposition for rational beings like humans. Humanity is the source of value for all other things and any action which undermines humanity for some other purpose is not justifiable. Every other thing is but a means to the actualization of our natural potential. Kant's justification of human rights is based on our dignity as autonomous rational beings. This position has since come under attack and scholars believe that reason, used as a criterion for according dignity, is too exclusive and will render people like the mentally ill and docile undeserving of human rights.

Louis Henkin makes a distinction between 'religion' and 'religions', a distinction of interest to this research since the terms feature significantly in it. 'Religions' refer to crystallized versions of the abstract term, 'religion'. Whereas religions are organized communities with a common history, religion is the abstraction upon which these institutions are based. To Henkin, there is no religion in the public realm; there are only religions (Henkin 1998: 229).

This leads to the problem of whether human rights theorists who argue against religion do so using the abstract term or its physical manifestations.

Religions differ from human rights in terms of their ideology in that they possess different sources of legitimization. Man, in the Judeo-Christian religious tradition, is an offspring of God. Adam, the first created human, is humanity's common ancestor, thus we are all related. Our respect for each other may then be deduced from our common ancestry and equal status as children of God (Henkin 1998: 230). Henkin claims that the human rights regime has distanced itself from this religious basis and even natural law but this is debatable since the wording of the UDHR is quite Stoic and Christian in style.

Henkin argues rather contentiously that religions do not respect the right to freedom of religion. By examining the various human rights concepts embedded in selected religious movements, this research will ascertain if indeed religions are intolerant of each other. Henkin also fails to draw a connection between toleration and respect for dignity since he believes the absence of the former implies an absence of the latter. Religions, however, have duty-rights as opposed to the concept of human rights which has *rights qua rights*. Religions are also notorious for disagreeing with anything which is not based on God. Religions assimilate the individual into the congregation. Henkin concludes by saying that though it seems that religions are embracing the idea of human rights, (with some currently claiming to be originators of the concept) old anti-human-rights attitudes still persist and for this reason a religious grounding for human rights is an impossibility (Henkin 1998: 238). This intellectual stance is exactly what this research seeks to evaluate in a way

quite different from Henkin's. This research will examine the various points of contact between religions and human rights to determine whether, in theory, religion may justify human rights. Henkin seems to pay no mind to the fact that religions may be given political coloring over time but their underlying abstraction remains the same and the two terms need to be examined differently.

Evidently, religious institutions and their beliefs have committed somewhat grave human right violations. Concerning religious intolerance of human rights, the most culpable religious group of our time is Islam. Some Islamic scholars have come out to express their doubts about this claim. One such scholar is Abdul-Rahman al-Sheha. Al-Sheha describes three current trends in the global society. The first trend exalts the individual over his society; the second subsumes the individual into society; and the third gives equal standing to both entities. Al-Sheha believes the first trend leads to chaos since individuals will pursue selfish ends with impunity. The second trend strips the individual of his true freedom. In Islam, the Quran and the Sunnah try to advocate the third trend. As is the case with a quintessential religious view of human rights, al-Sheha denies the concept any link to political or social ideology and states that human rights are Allah's way of ensuring mankind's worldly happiness and in the afterlife.

This research will examine the above stated claim and see how justifiable it is to base human rights on divine providence. Al-Sheha supports his claim with various scripture passages such as Quran 17:70: "We have honored the sons of Adam; provided them with transport on land and sea; given them for sustenance things good and pure; and conferred on them

special favours, above a great part of Our Creation”. The rights enshrined in the UDHR, al-Sheha claims, are dubious reformulations of those revealed in the Quran and Sharia fourteen centuries ago. Al-Sheha believes the UDHR has political imperialistic undertones and this has allowed various global atrocities despite its existence. The role of Muslims, then, is to come to the aid of such violated people as commanded by Allah in Quran 4:75. Al-Sheha sounds a word of caution to scholars studying Islam that their research should be done objectively and should not be approached with bias originating from people who commit wrong acts in the name of the religion. The Islamic system is manifested differently according to the level of commitment of the interpreter, thus the system of Islam itself should be studied and not its manifestations. Islamic scholars whose opinions will be considered in this research share this view and include Abdullahi A. An-Na'im.

The relationship between religion and liberal democracy, perhaps the most popular political theory of the century, is explored by Christopher Eberle in *The Blackwell guide to social and political philosophy*. Democratic Liberalism is a political system which emphasizes the freedom of the individual citizen by placing premium on such concepts like human rights, equality before the law, the rule of law and others. Though the term liberalism is used differently in some countries, notably the USA, it is generally characterized by the features mentioned above. Some liberalists include William Gladstone and John Stuart Mill (Noce and Miskelly 2002: 90). Eberle raises the question as to whether it is appropriate for a citizen to obey a law only because it is in line with her religious beliefs. This, Eberle claims, is neither a legal nor moral rights question; it is a question regarding the right

application of moral rights. Is it proper, then, for a citizen to support a certain law solely on religious grounds or must she ensure that there is some secular rationale behind the law? The justificatory liberals, whom Eberle identifies as including Rawls and Gerald Gaus, argue that solely basing one's support for a coercive law (the type of legislation enforced by the threat of punishment) on religion is reprobate. Justificatory liberals are those liberals who believe that a citizen must publicly justify her support for a particular coercive law. Citizens, according to justificatory liberals, must support only laws that can be justified for every other member of the state (Eberle 2002: 294).

Public justification is described by Eberle as a rationale that sits well with other members of the public. Going by this justificatory theory of liberalism, religious justifications are never public justifications and therefore as soon as a citizen realizes their support for a coercive law is based solely on religion, they must withdraw their support. This assertion is unrealistic, for obvious reasons, and Eberle argues that public justification must be a sufficient but not a necessary condition for accepting a coercive law (Eberle 2002: 316-7). Justificatory liberals have not been able to give evidence to the claim that a religious rationale lacks public justification. Eberle believes by rejecting religion as a rationale for supporting a coercive law, the justificatory liberalists become partial and their position becomes dubitable. Religious people should be able to find a rationale for their actions which is not based only on their private religious experience but in the absence of this, citizens who base their support for coercive law solely on religion are not blameworthy for their position. Eberle poses some strong arguments against liberal theorists like Rorty who believe liberal democracies will not stand the test of time

unless religion is privatized. Some of Rorty's arguments have been adapted and examined in this research.

The concept of rights and its relation to duty is explored by Renteln in "The concept of human rights". Renteln observes that the four groups of arguments in the debate over the correlation of rights with duties are based on W. N. Hohfeld's four categories. Hohfeld defined four categories of rights which include privileges, claim rights, liabilities and immunity rights. Privileges are liberties one has to do an action that they do not have a duty to refrain from doing. Other people might also not have any duties to respect a person's privilege. A person may drink whiskey outside work; he has no duty not to but neither does his wife have any duties to make him enjoy this privilege. This man's wife may consequently hide his bottle of whiskey, thereby depriving him of his "pure liberty right" (Campbell 2010:672).

Claim rights, according to Hohfeld, are those liberties one has which correlate to a duty on other persons to desist from interfering with these rights. Claim rights may also imply a duty on the other person to help the right holder realize them.

Liabilities arise out of situations where the right holder's rights impose a duty on other persons; duties which serve to manipulate the rights of the latter. The liability may then be said to be on the part of the person bound by a duty to respect the "power right" of the right holder. A power right can, in this case, be conceived of as a right a person has to declare other peoples' rights null and void. For instance, a right to privacy entails the right holder's power to limit another person's right to noise-making (Campbell 2010: 673).

Lastly, immunity rights are the type of rights that prevent others from modifying the right holder's rights and responsibilities. An immunity right holder may not be bound by duty to respect particular rights of other people. An example of an immunity right is that of diplomatic immunity; diplomats do not have a duty to do otherwise obligatory actions in foreign countries. (Campbell: *ibid*)

David Lyons is one of the scholars in the right-duty correlation debate who holds that it is not always the case that rights have correlative duties; a person's right to free speech may not reasonably be said to impose a duty on others to listen (Lyons 1970: 50). The logical correlativity argument may be refuted using Hohfeld's conception of an immunity right and its correlating disability. Renteln argues against the position that these correlating disabilities are not obligations in the proper sense. Indeed, substituting his example, the Ghana police service is under no law to assault criminals but this in no way implies that they are under no obligation to desist from assaulting criminals. Renteln goes on to argue that the freedom of speech, as mentioned by Lyons does, as a matter of fact, have a correlating duty not on other citizens but on the courts to protect this right.

In another camp, Joel Feinberg (1970: 244), Henry Hart (1955: 179) and W. D Lamont (1950) invert Lyons' argument and challenge the logical correlativity argument by explaining that some duties do not have any correlative rights to which another person has a claim. Adam Bedau joins these scholars by claiming that one's duty to rescue does not have a corresponding right (Bedau 1968). Renteln counters these arguments in two ways; he insists everywhere there are duties there are rights. Renteln seems to

be of the opinion that duties imply rights but this position is untenable; a duty not to hunt endangered species has no correlating rights. In cases where duties appear to be standing alone it only means that the duty itself is not well defined. A duty to be charitable, for instance, is only a real duty in selected groups and not in others. Renteln identifies the motivation for the anti-logical-correlativists' position; they believe that by linking rights rigidly to duties, a great many things which have corresponding duties will come to be called rights and this may misplace the concept of rights (Renteln 1988: 345-6).

Nonetheless, Renteln is of the opinion that these philosophers are addressing the wrong problem; the problem is with finding a sound justification for the assertion of certain rights. Richard Brandt makes an assertion Renteln seems to agree with - that rights and duties are different feathers on the same bird (Brandt 1959: 434). Renteln believes the principle of logical correlativity between rights and duties is important in that the recognition of a duty may now be automatically traced to a right of some sort and this will definitely deepen peoples' understanding of rights. Ronald Dworkin's distinction between duty-based, goal-based and right-based theories of rights (Dworkin 1977:169-173) comes under attack from Renteln since without the distinction between rights and duties Dworkin's tripartite distinction is bogus. Most importantly, Renteln opines that the concept of duty may well be used to arrive at, even justify, the concept of rights (Renteln 1988: 346). The relationship between rights and duties has important implications for this study since most of the religious literatures have duties but yet it is argued that these duties constitute rights. With Renteln's analysis

of the right-duty relationship, we realize both concepts are on the same page; they both aim at protecting human dignity.

Presented above is the current direction the human rights debate is in. This research picks out one point of the debate - the debate on religion as a justification for human rights - and examines the arguments in an attempt to add to the various contributions purposed to put the matter to rest.

CHAPTER TWO

CONCEPTUAL ANALYSIS

The evolution of human rights

The concept of universal human rights, as enshrined in the United Nations Declaration on Human Rights (UDHR), can be traced to the Roman civilization during the second and sixth centuries C.E. It may be argued that the Greeks had principles that were meant to ensure human flourishing but these, according to H. L. A Hart (1955: 176-177), were flawed in the sense that they only prescribed paths to well-being but provided no ways of safeguarding them. Other scholars like J. J. Shestack argue differently but their arguments lack the needed credence to be accepted widely. Some commentators argue, for instance, that Aristotle had a concept of rights in mind when he drew a distinction between [*dikaion*] *nomikon* and [*dikaion*] *physikon* (*Politics* 7 1134b18–19). *Nomikon* and *Physikon* were Aristotle's conceptions of justice; *nomikon* was conventional justice whereas *physikon* was objective and unchanging. This claim has, however, been refuted by R. G. Mulgan who argues that Aristotle had neither a concept of individuality nor a belief that humans deserved certain things because they were human (Mulgan 1977: 33).

There were, in Greek prose, instances where invocations made were translated by later scholars as demands for rights. In Sophocles' *Antigone*, Oedipus' daughter justifies her defiance of the king's order not to bury her brother by appealing to the "unwritten and unshakeable usages of the gods" (Sophocles 1998: 11-454-5; Shestack 1998:10). Other scholars, notably, Maurice Cranston and G. H Sabine have refuted the above claim and

maintained that the concept of rights originated in Rome (Cranston 1973: 10) (Sabine 1973: 5).

The word 'right', as we understand it today, is a Germanic permutation of the Ancient Roman word *ius* (plural: *iura*) which denoted a kind of distributive justice. *Ius* was also believed to be an objective standard sanctioned by the gods; it was a religious term with legal application. This concept, though similar, lacked some features of our contemporary understanding of rights. For one, *ius* encompassed both duties and rights conferred upon a person, not because she was human, but because she was an active legal entity. For the sake of argument, we must state here that the origin of the concept of rights was in a religious term.

Gradually, the concept saw a transformation in AD 212 when *ius* was expanded under the *Corpus Iuris Civilis*. Every citizen of the Roman Empire now had some *iura* by virtue of their citizenship and since the empire was vast, *ius* became a slightly universal concept. Further evolution of the concept occurred in the sixth century when emperor Justinian (527-565) moved to legalize the idea of *koinos nomos* (common order) anticipated by the Stoics of Hellenic Greece and Rome (Domingo 2010: 10-11). The Stoics believed in a universal law of living according to nature. Based on this law was the idea of a world order, an objective standard of morality in a cosmopolitan world; a world of brotherhood. With this, the birth of the concept of natural law, which was later to become the concept of natural rights, took place. It should be noted that *ius* still remained a religious concept at this stage, though it had legal authority. That *ius*, the original concept that evolved into human rights,

was a religious one is a point often stressed by scholars who argue that the concept of human rights is a religious one.

Natural law, in its early stages, recognized such basic human propensities as breathing and excretion, among others. Through the Stoics, particularly, Cicero, the idea of a world order, of the universal brotherhood of mankind, resulting in a republic of the world, became popular in Roman legal circles. Though the Romans had this idea of natural law, they created a governing law of nations (*ius gentium*) which regulated the Empire's dealings with other nations (*gens*). Gradually, however, the idea of a universal human brotherhood began to direct this law of nations and the *ius gentium* came to override any foreign nation's local authority (Domingo 2010: 10). At this point, a significant semblance between natural law and human rights becomes evident because as it stands, universal human rights laws are above any state's legislation. The main problem with this Roman version of a quasi-universal natural right is that it was vague and the challenge of defining what was and was not natural stared jurists in the face (Pagden 2003: 175).

The next phase in the evolution of the concept of natural rights was predominantly Christian. The Franciscan friars made a significant contribution to the concept of natural law through their agitations over the right to own property. These agitations led to a distinction between subjective and objective rights. The former refers to rights held by people by virtue of their membership of a community, whereas the latter are rights unconditionally held by an individual. Rights were, in this period, conceived of as pertaining to property (*dominium*) which gave their possessor a form of power (*potestas*) or

as Michel Villey put it, a *possibilité d'agir* (a possibility of acting) (Villey 1969: 99-101).

At the hands of Thomas Aquinas (1225-1274), natural law became a set of innate principles wired into the human machine by God. Aquinas believed that at creation God ordained what was natural and therefore right for man. Aquinas believed that some things are necessarily right and can be discovered as such using right reason. This version of natural law, based on divine authorship had its problems and therefore another attempt at universalizing natural law had to be made by Hugo Grotius (1583-1645) and Thomas Hobbes (1588-1679). Following Aquinas, Grotius added that these things Aquinas considered to be intrinsically right could not be changed, not even by God. Grotius' argument is that not even God could make a non-evil deed evil or vice versa. So, to Aquinas and Grotius, natural rights are divine sanctions.

Hobbes believed that a person's attempt at self-preservation is done "justly and of right" (Hobbes 1998: 27). Grotius held a similar view; as against the Thomists who held maxims like "love your neighbour as yourself". Grotius believed the most fundamental principles were those of self preservation and the acquisition and retention of "things which are useful to life" (Bk I Ch III: 1 (454)). According to Grotius, we need not love our neighbour; we only need to abstain from harming her. This version of natural law, advocated by Hobbes and Grotius, reduced the existing set of natural laws to a single phrase - self preservation - which they believed was valid, irrespective of culture and any other distinction. Natural Law was now a term stripped of its religiosity.

Hobbes, Grotius and Locke (1632-1704) backed their natural law theory with the social contract theory, a theory concerning the origin of human society. This theory stated that man's drive for self-preservation led him to form states to ensure his security. The view was in sharp contrast to the Aristotelian view of man as a political animal whose society precedes him. Aristotle believed as it is in the case of animals like ants and bees, man is made to live communally (*Politics*, 1235a). With Hobbes, Grotius and Locke, the individual was set apart from the state and this set a new pace in the natural law theory because as we shall see later in this chapter, the UDHR was promulgated crucially to protect the citizen from the state.

Hobbes wrote during the Reformation where the church had been separated from the state. Hobbes insisted on “a natural right” - self-preservation - in anticipation of Rousseau’s social contract theory. Locke introduced the concept of natural rights and his formulation of natural law was the most popular in later years, as evidenced by his influence on the Enlightenment, the American Revolution (1775-1783) and the French Revolution (1789-1799). Locke’s idea was that governments have a responsibility to their citizens: to protect their liberty, life and property. In the *Second Treatise of Government*, Locke condemned tyrannical rule, recommended the principle of checks and balances, the rule of law and representational government. Locke believed with the aforementioned systems in place, the natural rights of people will be protected and in case these rights are abused by the government the citizens have a right to rebel. Following Aquinas, Locke believed the divine law creates the natural law for man which

in turn necessitates natural rights (Locke, 1690: Chap. 6 sec. 8). With his deliberations, Locke reintroduced religion into the natural law/rights tradition.

The French revolution attracted much philosophical scourge from such philosophers as Jeremy Bentham and Edmund burke. In defense of natural rights, and to some extent, the French declaration, Thomas Paine wrote and made a distinction between natural rights and civil rights. Natural rights are those that an individual has to act in such a way as to be comfortable and happy. Civil rights, Paine explained, were those rights one has by being a member of a state e.g. Rights to protection, rights to election and others. Even though it is argued that the current human rights tradition is secular, based on the writings of Paine and Rousseau, some ideas contained in its covenant are drawn from the religious natural rights tradition (Morsink 1999: 282).

Other philosophical movements like Karl Marx's socialist ideology had no place for rights since human right doctrine separated the individual from the state. Marx believed that by making individuals free to do whatever pleases them only to the point where this freedom affects another human being, human rights sanction a form of universal egoism. Human rights therefore set the individual apart from the community; a direct antithesis to the socialist ideology where the individuals are considered to be part of the state (Marx, 1888). Only capitalists needed rights since the individuals had to be given a guarantee that they had protection against the equally capitalist state. Another group argues that human rights are founded on positive law of a particular society and have nothing to do with human nature. The main question then is, are rights products of societal ideologies and laws or are they

as we have them now - universal, inalienable rights based on man's inherent humanity?

It was between the sixteenth and eighteenth centuries that natural rights, emanating from natural law, were further universalized in a bid to allow free passage into all parts of the "civilized world". It was believed that with state formation came a loss of most of mankind's natural liberties so that only the rights of natural partnership and communication remained. Seneca had claimed that the gods sanctioned communication indirectly by their uneven distribution of the earth's wealth over its area. This right to communicate served as an archetype for the freedom of speech. Francisco Vitoria believed man has both a right to free intercourse with his fellows and an obligation of friendship (Vitoria 1991: 278). Vitoria used this to argue that Spain violated no laws in invading America; the Indians rather violated the aforementioned law by refusing to be hospitable to the Spaniards; the invasion was punishment for their infringement.

The concept of natural law was still used during these times but applied only in situations of war. This is because in war, human rights are mostly violated. The Romans of old had two laws governing war and these set the framework for eighteenth century natural rights theory.

The first law, *ius ad bellum*, gave the actual right to wage war and *ius in bello* dictated the manner in which war was to be conducted. Philosophers like Cicero and Augustine of Hippo believed that war should be limited to defense or as revenge for an attack on an ally (vicinage). Later jurists expanded this vicinage law to cover a wider area of the globe, thus expanding the universality of natural law. For instance, Vitoria also invoked this law as

another justification of the Spanish invasion of America, claiming it was an act of intervention to prevent the acts of human sacrifice the rulers were subjecting their citizens to, an activity which was considered akin to war (Vitoria 1991)

In the eighteenth century, with the French Revolution and subsequent promulgation of the *Declaration of the Rights of Man and the Citizen* (1789), ‘nature’ was divorced from the concept of rights and substituted completely for ‘human’ and this added to the concept of rights such things as education and proper nourishment. In this way, the criteria for humanity were increased since previously, people without property or education were not considered human in the sense the French declaration did.

Kant was the ultimate natural law theorist who based natural law on universal moral principles he called the Categorical Imperative. The eighteenth century was an era when natural rights came under strict criticism. It was after the French Revolution that the idea of the Rights of Man, which is the closest ancestor to Universal Human Rights, was accepted. Even though these rights of man were in natural law parlance like “inalienable” and “sacred to man”, the rights were politically rooted and inevitably became civil rights, as opposed to natural rights; they were imperialistic and based upon the political ideology of one state - France. Gradually, the rights of man became useless in international law and only citizens of the “civilized” states had these rights (Pagden 2003: 191).

The end of the Second World War marked the final phase in the human rights evolution. The powerful nations which had steered international policies – Germany, France, and Britain – were weak and therefore there was a need to

consolidate the views of many other nations. Thus, on December 10, 1948, the Universal Declaration of Human Rights (UDHR) was adopted to give power to the individual against the state.

The United Nations Commission on Human Rights (UNCHR) was tasked with drafting some kind of bill of rights for the world. To make proceedings as fair as possible this commission featured delegates of various national, ideological and religious backgrounds: Peng-Chun Chang was a Chinese scholar and staunch Confucian; John Peters Humphrey from Canada; René Cassin, a Jewish Frenchman and Jacques Maritain a French Catholic philosopher. Added to these men were representatives from different countries including India, Egypt and Iran and who collaborated to put together a declaration by sampling various existing human rights documents at the time.

The Declaration

The UDHR contains 30 articles which make prescriptions for the protection of the “inherent dignity” of every human being. These rights include the right to equality and freedom from discrimination; the right to life, liberty, privacy, and personal security; rights to identity, both cultural and national; freedom from all forms of bondage and inhuman treatment; legal rights such as the right to a fair trial; freedom of movement and asylum; rights to family and marriage; rights to property; the freedoms of conscience and religion, of assembly, expression and freedom of political participation; rights to labour and social security; rights to healthcare and education.

Throughout the years after 1948, some of these rights have been singled out and made the source of grand covenants. Examples of covenants based on articles of the UDHR are the International Covenant on Economic,

Social and Cultural Rights (CESCR), article 12 which has been used as the principle that guides the World Health organization. The declaration also possesses a distinctive feature in that the rights it contains seem to be interrelated. This means that some rights necessarily include some others; the right to life for instance, cannot stand alone but must be linked to such rights as the right to education and good health. But are these rights to be conceived of as a legal or moral regime? To answer this question, we first devise a working definition of human rights.

Definition of a right

The word “right” may be given two meanings, depending on the nature of the study for which the definition is employed. On the one hand the word may mean correct or accurate; as opposed to inaccurate or wrong. This is the moral use of the term in which we may say that a particular action is right. On the other hand, the term “right” may be used in line with the Latin term “ius”, from which words like justice, jury, etc derive (Fagothey 1976: 239). In this second sense, a right may denote an act which is just and proper. This sense of right tends to go hand in hand with duty. It is this second interpretation of right that this research works with. A right is, in this sense, a moral potentiality which may be actualized only when a second party fulfils their moral duty to act or abstain from certain acts. A right may be the authority to action or inaction. There is a relationship between law and rights since rights originate from, and have their validity in law. Law, as mentioned here, may be moral law, positive law, divine law or natural law (Fagothey 1976: 242).

Rights have four conceptual components and these include the subject of the right, the term, the matter, and the title of the right. It has been generally

agreed among scholars that only persons qualify to be subjects of rights even though some other scholars include animals as subjects of what they call animal rights (see Regan & Singer 1989). The subject is the one who holds the right to a particular thing. The term, the one (s) under obligation to respect the right of the subject must necessarily be human since it is only members of the human species who can be held accountable for their actions. The matter of a right, the thing to which a subject has a right, is normatively non-human. Immanuel Kant argues that man is an autonomous being and for that matter no man can be the matter of a right.

The final component of a right, the title, is the justification for the existence of a right. The title supplies the reason why a particular subject should be given a particular matter. In the context of this study, then, we wish to determine whether religion can be used as a title for human rights. A title may make a case for a right based on either acquisition or nativity. The right may be argued for using historical evidence, for instance, a receipt of purchase or a patent of creation. In such a case, the argument is based on acquisition. The argument from nativity simply argues using birth as a main premise, for instance citizenship rights (Fagothey 1976: 242). As a concept, human rights may be defined in both senses of the word right.

If we draw the authority of human rights from natural law, as most scholars do, then the concept is both “right” in the sense of being correct for man and also “a right” in the sense of being what is just for humans. The subject of human rights is the whole of humankind, as per the UDHR. The term of human rights is also the entirety of humankind. The matter of universal human rights ranges from life, property, liberty, to marriage. The

final component of universal human rights is the title which, in our case, is membership of the *Homo sapiens* species. A human right is thus a moral and legal claim every human being has to such things as liberty, life and property. This definition is however incomplete and requires an additional concept – duty.

Duty

Closely connected to the concept of rights is the concept of duty. A right may be said to be the Pythagorean Unlimited whereas a duty serves as the Limit of a right. The Pythagoreans of ancient Greece believed the world was ordered by two principles: odd and even. The odd numbers represent the Limited whereas the even represent the Unlimited (Aristotle: *Metaphysics* Bk I Part 5). In the ordering of the cosmos, the Unlimited is vast and it is through contact with the Limited that this vastness is formed into the concrete things we see on earth. A right, using the Pythagorean illustration, is a seemingly endless entity until a duty comes along to narrow its scope and it is only then can social harmony be produced. A right may only be enjoyed to the point where one runs into a duty she has to ensure the other person's rights (e.g. The right to free movement is limited by the duty to respect other people's right to privacy).

A duty may be a possessed obligation to do or avoid some act or the actual action or inaction. A right possessed by a person necessarily entails a duty on another person's part; a person's duty allows another to enjoy a correlative right. Duties are of two types. Affirmative duties oblige a person to do an act and negative duties tend to ensure people's abstention from certain acts. For instance, a person's right to life confers a negative duty on every

other person to abstain from killing the subject of the right. Also, one person's right to education creates an affirmative duty to parents to provide education for their children (Fagothey 1976: 255). Adding the concept of duty to the previous definition of a human right attempted above, a human right may be defined as a moral or legal claim every human being has to such things as liberty, life and property, which in turn creates a duty for others to respect these claims. In the historical analysis, it was discovered that human rights, as enshrined in the UDHR, has the sole purpose of promoting respect for the human species. Is this promotion of respect for dignity done within a legal or a moral framework?

Legal or moral rights

One feature of the concept of human rights as observed by Jurgen Habermas is that it is two-faced. Habermas likens the concept to a Janus face; one face turned towards law and the other towards morality or ethics (Habermas 1998: 177). In this way, human rights may simultaneously be characterized as legal and moral rights. To understand this assertion better we need to draw out the features of both morality and law to identify the points of divergence in order to situate human rights in each framework. The best distinction between morals and law was done by the German philosopher, Immanuel Kant. According to Kant, morals denote internal volitions whereas law deals with external or empirically verifiable behaviour (Kant 1977: 324). Kant however accounts for what he called an ethical law and defines this as the form of law that commands action, and the main motivation for this action must be duty (Kant 1977: 326). Added to the features of law are coercion, enforcement, punishment and institutions for performing this enforcement.

Morality lacks such features and is instead enforced by society. A moral transgression has no institutional setup to punish it other than society which may (merely) disapprove of this behaviour and make the offender an outcast.

H. Hart has made some claims to refute Kant's criterion of coercion as a distinct feature of law. Hart challenges the criterion of coercion as an exclusive and necessary element for law since, according to Hart, some laws are bereft of any form of coercion (Hart 1961: 26). Hart might be on to something since a law like one instituting presidential elections in a nation may not necessarily need a coercive element. Other scholars have taken issues with Kant's distinction between law and morality. It is argued that Kant's claim that morality involves only internal motivations is mistaken. Society only accords moral blame or praise based on the observable behaviour of members. Internal considerations may come into play but generally, an act is judged moral if it conforms to a certain "external" code of behaviour and considered immoral if the act does not. For this reason, some scholars prefer to distinguish between different types of morals. Social morality, as explained by Klaus F. Röhl and Hans Christian Röhl, refers to externally verifiable behaviour whereas morality in itself is only internal (Röhl and Röhl 2008: 303).

Also, morals are sometimes sanctioned as laws are; these sanctions include ostracism, outright disapproval and stigmatization (Stemmer 2000). Kant is however redeemed by the fact that the above notwithstanding, institutions for avenging violations are lacking in moral settings; a person who is morally aggrieved has no system to address their grievances (Engi 2012: 146).

In some countries the ideology or articles of the UDHR have been codified and incorporated into state constitutions. In such cases the concept of human rights takes on a legal character. Human rights which are codified by states as part of their constitutions become *fundamental rights* (Engi 2012: 146). The concept of human rights is therefore a legal concept in states that have legally backed fundamental rights. Fundamental rights are rights granted to citizens by virtue of their humanity and are different from human rights as codified by the UDHR in that the former has legal form whereas the latter, at least so far, has moral form. However, the distinction is not so clear cut because the moment fundamental rights are neglected by the state, they automatically become moral rights and thus human rights. For instance, as soon as a person is denied his right to vote – which is a fundamental right - she might take the matter on at the international level and will be treated then as a human right abuse, not an abuse of a fundamental right. Human rights in any state remain moral laws until they are incorporated into the law of the land (Engi 2012: 154).

But are human rights to be considered as moral or legal rights at the international level? To answer this question, we might want to consider a supra-national human rights covenant like the European Convention on Human Rights (ECHR). The laws governing human rights in the ECHR are considered binding on all members of the European Council. This notwithstanding, there are no solid enforcement mechanisms or institutions where defaulting states may be punished. At the level of the UN, though there are avenues of seeking redress when a member feels their rights have been violated, the enforcement arm of the organization- the security council- tends

to act with a certain political bias and therefore makes enforcement of the UDHR difficult (Donnelly 2003: 135). This situation keeps human rights, at the UN level, at the stage of moral rights since in most cases the legal arm neglects its duties. It may be argued, however, that historical analysis shows that the human rights regime of the world is not at the same place it was in 1948; it is evolving, gradually. As it stands, then, one would not be in error to hold that human rights are still moral rights at the global level but that the concept is gradually gaining legal form. For this reason, human rights are classified as "soft law" in international law jargon, meaning human rights are for one reason or the other not binding but are laws nonetheless (Thürer 2000, 452–454).

Human rights are, in some countries, legal rights and are in others moral rights. The question then is, “do human rights deserve the moral high ground they have acquired since 1948?” Indeed, if another person has inherent dignity, why can it not be up to the next person to determine whether to respect this dignity or not? Many people have answered these questions in ways that have led to their utter disregard for human rights law. For such people, the “why” of human rights is fundamental to their conformity.

Conceptions of human rights

Scholars have proposed two separate ways of conceiving of human rights. The first conception, popular in philosophic literature, is the orthodox or naturalistic conception of human rights. This is the more popular conception of human rights. This version conceives of human rights as claims people have to do something or have something done to them (Beitz 2009: 48). The other conception of human rights, the practical conception, makes

human rights a moral imperative for states to desist from tyrannical or oppressive rule. It is worthy to note that with this second conception, there is the caveat that at any time the international community feels a nation is not acting according to the set standards, the international community has a duty to interfere and rectify the situation (ibid). This latter conception is the type assumed by current documents like the UDHR. The first conception appeals and is more popular because we believe that it is human beings who need these rights against others to protect themselves.

The period before and during the Second World War saw numerous cases where states subjected their citizens to inhuman treatment. The UDHR was therefore codified to curtail such events. This has led to the practical conception of human right becoming quite popular in our time. Before 1948, heads-of-state claimed the independence to treat their citizens any way they wanted. This was largely due to the concept of the divine right of kings, prevalent in the period. Kings were believed to have been ordained to rule by God and for that matter could not be challenged. There was, therefore, a sort of moral nihilism as far as state-citizen relations were concerned and the UDHR was drawn up to alter this status quo. The UDHR had to do this, while still maintaining the Westphalian idea of state sovereignty (Wenar 2005: 285). At the Peace of Westphalia (1648) which ended the Thirty Years War (1618-1648), the signatories agreed to respect the territorial integrity of other European states. Some philosophers had already made attempts to curb state authority by prescribing citizens' rebellions when their rights were trampled upon by the state. John Locke's *Second Treatise of Government* had such an effect and it went a long way to bring about the American and French

revolutions. In the practical sense, human rights first give citizens certain claims and then another set of claims to the international community to intervene on the citizens' behalf in case their first claim is not met.

Who has human rights?

One important question worthy of an answer borders on who exactly is entitled to the rights enshrined in the UDHR. The answer that immediately comes to mind is “human beings” and this raises the metaphysical problem of what a human being actually is. One thing, though, is for certain: that different people have different conceptions of what a human being is, who is and who is not a human being. The argument from the nature of *Homo sapiens* - that they are born, live and die - is moot since several other non-human animals exhibit the same characteristics. To surmount this challenge, some scholars have argued that human rights are only due *Homo sapiens* with certain capabilities, which include ratiocination and intelligence. This qualification further raises a larger difficulty since some human beings fall short of this criterion (Husak 1984). Indeed, Carl Schmitt, a renowned German philosopher who doubled as a Nazi party affiliate provides proof of the above argument. In 1933, Schmitt reworded a popular Nazi idea in his refutation of human rights as a concept: “Not every being with a human face is human” (cited in Koonz 2003: 2). Schmitt’s statement sums up the weakness of the argument from the nature of *Homo sapiens*.

But there is a distinction between humans and persons. Persons have certain standards of life that require protection using rights but non-person human beings are those that merely exist and therefore have no need for rights to protect valuables which they do not have. If this distinction holds then the

implications are that some human beings are more deserving of rights than others but accepting this conclusion will downplay the main tenets of the UDHR. One way to solve the problem of whom exactly has rights while still maintaining the person/non-person distinction is to make another distinction between the possession of rights and the exercise of rights. Children, for instance, may possess rights but have not the capacity for exercising them. What this means is that children are no less right holders than adults; the former only possesses rights until they mature enough to exercise them. Looking at the problem from this angle, all humans do possess rights, but only persons are capable of exercising them.

Human rights schools of thought

Even though human rights are purported to be innate and self evident, one must not lose sight of the fact that the concept is still a philosophical one and therefore lacks any definite denotation. Human rights are understood in different ways by different people, and using Dembour's classification, this study will present four understandings of human rights. The first school of thought is the natural law theorists who conceive of human rights as given moral claims. This group believes that human rights are due every living and breathing Homo sapiens by virtue of their specific grouping. At the heart of this theory is an entity which, directly or indirectly, depending on the theorist, endows human beings with these rights - God, nature, or some other Supreme Being. In this camp, human rights are universal since the only criterion required for their entitlement is humanity (Dembour 2010: 3). This research is particularly interested in this school of thought. Religion falls under this group of natural law theorists and what sets religion apart from the other natural law

theories is the belief in a transcendental Being who is responsible for the creation of mankind and his universe.

The second school is the deliberative or the pro-human-right cultural relativist school. Their theory holds that human rights are not universal per se but might be as time goes on. This owes to the fact that each culture is under no obligation to respect human rights; they only choose to do so if it serves their interest. In this regard, universality will only be realized when every society on the globe is made to want to respect human rights. Following from their theory, the work of the UN is not to use force in the form of sanctions to get nations to respect human rights; the UN should rather embark on projects to convince nations that human rights are the best way to secure a peaceful and progressive state and world (Dembour *ibid*).

Whereas the above camps conceive of human rights as claims people are entitled to, the protest theorists are more concerned with protecting the concerns of the marginalized, destitute and defenseless in a state. Protest theorists recommend a round-the-clock battle for human rights and believe this battle can end only when human right violations end. To the protest theorists, the current human right documents are mere rubber stamp laws. They are rubber stamp laws because the current human rights documents appear to protect the rights of the middle and upper class or majority groups in society (Dembour *ibid*).

The fourth group believes that human rights are real only to the extent to which they are kept alive through discourse. These are the discursive theorists. These theorists, interestingly, deny the purported absolute morality of human rights and anticipate a better philosophical concept to pursue the

objectives of the UDHR (Dembour 2010: 4). The discourse theorists thus believe that so long as human rights are discussed in scholarly circles, the concept has a future and this future may even include further evolution of the current concept.

Up until the aftermath of the Second World War, international human rights were absent from international law documents. Authors were more concerned with the rules regarding the sovereignty of states and other things regarding inter-state relations. The concept of human rights was then considered a domestic issue and was wholly dependent upon the discretion of the government. Indeed, even during the holocaust, scholars believe, the Western powers would have turned away if Hitler could have contained his extermination of Jews. As Azizur Chowdhury and Jahid Bhuiyan observe, the powers intervened only because the war was threatening global stability. Even after the promulgation of the UDHR, traces of the old world legal order could be seen, and this culminated in the Cold War. After the Cold War, the UN picked up the pace and progress was made to put the citizen in a central position in international law issues (Chowdhury & Bhuiyan 2010: 3-5).

Challenges to Human Rights

Though human rights appear to have obtained a moral high ground, a few scholars have written with the aim of challenging this claim. The main challenge posed against human rights is the argument that human rights are sourced from and perpetuated with imperialistic motives. This challenge goes hand-in-hand with the relativist challenge that looks to downplay the universality of human rights. Human rights claim to be a set of laws for every human being but, the relativists argue, not everyone is the same; even in the

same political establishment people differ with respect to what each deserves. It may be said that the imperialist challenge is the challenge against human rights whereas the relativist or Universalist challenge is a by-product of this challenge.

The imperialist challenge is based in the Eastern political world, the Islamic world and interestingly enough, the West itself. As regards the Islamic countries their grievances are no surprise because the Islamic delegations to the UN rejected the UDHR the day it was presented to them in 1947. The Islamic religion is one that has its own systems in place for regulating most political, social and of course religious actions. Drafting a document which superimposes a foreign system onto the Islamic world was utterly preposterous and an affront to their political and cultural integrity. The UDHR appears to separate religious belief from state authority and law; an anathema in Islamic political thought. The individualist nature of the UDHR also posed a problem for its acceptance by the Muslim world (Ignatieff 2001: 102-104; Sachedina 2007). Islamic rejection or critical acceptance of the UDHR is in no way a denial of the claim that Muslims respect human rights since some Islamic scholars argue that respect for human dignity is a core Islamic principle, as we shall see in subsequent chapters.

In the West itself scholars have raised the challenge of imperialism and its twin challenge of relativism. Major names in such scholarly circles are Peter Schwab and Adamantia Pollis. These scholars believe that human rights are not, and cannot be universal. These scholars believe that the few powers of the West are taking advantage of the concept of human rights to broadcast their ethical ideology across the world. The only problem is that most

countries already have systems that have worked for them for centuries and these systems are neither as liberal nor individualistic as the UDHR. The Western powers then resort to shedding these traditions and systems in bad light, thereby creating an excuse for their abandonment in favour of the UDHR. It may be argued that since the years when imperialism was conducted by steel and blood are over, new methods have been evolved and the UDHR is the new Western imperialist tool (Pollis & Schwab 1980).

The nebulous nature of human rights also serves as an impediment to their realization. This is the main cause of the problem to which this research attempts to provide a solution. Human rights have had different conceptions throughout their evolution as shown above and this makes it difficult to pin the concept down. Religious people hold on to the religious denotation given the term in the medieval period whereas secularists prefer the irreligious conception of the Enlightenment period. Human rights theorists will have to work around the clock to create a unified concept in order that a justification for it will be concentrated. This problem drags yet another problem with it, namely the problem of the scope of human rights. Literature reviewed in the first chapter of this research identifies the back and forth between scholars who think some human rights are trivial and others who think otherwise. The proliferation of human rights has the tendency of, paraphrasing Beitz, debasing the concept's currency. A proper understanding of the nature of the concept is the solution to this problem (Beitz 2009: 44-47).

Religion

Religion is classed as one of the commonly used English words that have no standard meaning. Various dictionaries have put forward what they believe are definitions of religion but at the bar of philosophical analyses, these definitions fall short. Various reasons can be adduced for the controversy surrounding the term religion and these include the fact that there is no uniform theory of religion. These challenges notwithstanding, some scholars have attempted various definitions and these may be grouped into two main categories (Gunn 2003: 194).

The first category is known as the polythetic definitions of religion. Polythetic definitions of religion believe that a unifying theory of religion is not necessary for a proper definition of the term. The main scholar associated with polythetic definition of religion is Ludwig Wittgenstein who conceived of religion as similar to the English word “game”. As a term, games do not have any common denominator by virtue of which they are games but all the same we are able to tell which activity is a game and which one is not. Applied to religion, Wittgenstein’s game analogy implies that though we may not be able to define religion using a common trait, we may be able to tell whether a particular institution is a religion or not. This type of definition is, however, not appropriate for this research since it appears to involve more than little speculation which may end up stripping the enterprise of defining religion of its academic integrity and credulity.

A better option is the second classification of definitions of religion. This is the essentialist class of definitions. The essentialist definitions of religion are based upon the assumption that religions have core features which

need to be present for something to qualify as a religion. Most definitions of religion in legal literature are of this class. The United States Supreme Court, for instance offered its own definition of religion in 1965. The court defined religion as “The test of belief “in a relation to a Supreme Being” [in a law providing for conscientious objector status from military service] is whether a given belief that is sincere and meaningful occupies a place in the life of its possessor parallel to that filled by the orthodox belief in God” (*United States v. Seeger*, 380 U.S. 163, 165–66 (1965)). Michael Perry’s definition of religion, stated in the introductory chapter of this research may be classified as an essentialist definition of religion since it lists elements Perry believes every religion must have.

Conclusion

So far, the chapter has traced human rights from the very origins of the concept, in Ancient Greece. Interestingly, the concept has religious origins and it maintained its religiosity until the intellectual revolution in Europe. A human right may then be used in this research to refer to a claim by a human being which other human beings are bound to respect. This claim may be to a number of things which the human claimant believes are needed for his continued existence, where the ground for the claim is his or her humanness.

Religion is defined as the belief in a Supreme Being and our relation to this Supreme Being. It must be noted that, according to religious tradition, our relationship with a supreme being automatically entails a similar relationship with our fellow man. God created man in his own image and commands our respect; our respect for God therefore demands that we treat his cherished creation, which is man, with the utmost respect. This is the general idea that

underpins the arguments by the various religious traditions in support of human rights. To such religious people, human rights aids man in showing respect to God.

A definition of human rights from the religious perspective is that Human rights are claims human beings are given by a Supreme Being, claims which are to be respected by fellow humans and are justified by man's special relationship with the Supreme Being.

The concept of human rights, as has been shown in this chapter, is sourced from a religious concept but has, throughout the years, been stripped of its religiosity. But has the secularization been completely done? Looking at the schools of thought mentioned in this chapter, it appears that the most popular among them is the natural law theorist and most popular among these natural law theorists are the religious scholars. Human rights is the current mechanism in place for the protection of human dignity and religion claims to have the same purpose of protecting human dignity. Though the Judeo-Christian religion most often makes claims to the concept of human rights, other religions also argue that the concept is not foreign to them and some have indeed played a part in promoting the concept. It then becomes an argument of whether, in the face of religious extremism and anachronism, religion still has a positive role to play in human rights discourse. How exactly scholars make the case for religion as an institution for promoting human rights is examined in the next chapter.

CHAPTER THREE

EXAMINING RELIGION AS A THEORETICAL FOUNDATION FOR HUMAN RIGHTS FROM THE PERSPECTIVE OF SELECTED RELIGIOUS TRADITIONS

This chapter begins with some general arguments for religion as a justification for human rights. The chapter then looks at how exactly these religions' scriptures can be used to support the ideas presented in the Universal Declaration on Human Rights (UDHR).

Religion, as an institution, is what actually gives content to some human rights; without religion, some of the rights articulated in the UDHR will have no normative substance (Jellinek 1919). For instance, the right to religion, which allows people to freely practice their beliefs, is what undergirds such other rights as the freedom of association, the right to education and movement. The religious person who enjoys these rights will also understand that she needs to allow others these freedoms. So, as this argument goes, the right to religion and specifically, religion as an institution is what gives some rights contained in the UDHR some justification. For instance, a person who has the freedom of religion needs the freedom of movement to be able to fulfill her freedom to worship. The right to religion also necessitates a right to speech for evangelism, among others. A thorough analysis will indeed reveal that religious freedom carries with it a host of other human rights.

The above argument attributes importance to religion by identifying the major role the institution plays in the fulfillment of the UDHR. It is here that Perry and Tawney may proceed to add that religion is the only tool that

can be used to perform the task described above. The argument for religion as an exclusive justification for human rights is, however, examined in the next chapter.

The second argument for religion is what this work refers to as the argument from duty (Witte and Green 2012: 15). The argument from duty claims that since religion protects human dignity by assigning duties to persons and since rights without duties are infinite and uncontrollable, religious conceptions of duty-based rights may be regarded as setting a reasonable limit on the infinite number of freedoms human beings can have. In the second chapter of this research it was discovered that duty is what limits the concept of rights in order that the latter concept may maintain its moral character. As we shall come to know later in the current chapter, all the religious traditions under consideration have at least one argument for human rights based on a set of prescribed duties. If what religion as an institution brings to the table is a set of well defined duties to prevent excesses in the human rights regime, then it is worthy of consideration.

Without religion, the concept of human rights, as contained in the UDHR, becomes a wholly Western ideal and that state of affairs will undermine the credibility of the entitlements contained therein (Witte and Green 2012: 15). As it stands, people of various cultural backgrounds look upon the UDHR with some amount of suspicion because it is a product of Western origin. With religion in the picture, however, various religious traditions will get a say in the way the articles of the UDHR are interpreted and this will give these traditions a sense of authorship which will go a long way to expand the influence of the document. If religious groups are allowed

to discover how their duties sit with the tenets of the UDHR, then there will be no need for coercion on the part of the UN to ensure compliance to the document.

The current agenda of the UDHR, as already indicated in this research, is to regulate the relationship between the state and the individual citizen. Throughout the years after the UDHR was adopted the world has witnessed the obvious failure of this agenda. The state and the individual, it seems, may not have simple cooperation as the UDHR envisions; there has to be a buffer, a not-so-silent partner, to ensure that each party fulfils their role. The concept of human rights alone cannot achieve this aim and the onus falls on the religious traditions and their leaders to regulate this interaction between the state and the citizen (Witte and Green 2012: 15). This is yet another reason why religion is considered instrumental to the concept of human rights.

The search for a justifying theory of human rights is necessitated by the numerous violations of the concept even after its incorporation into international law. Religious groups have argued, almost similarly, that the best - and to some, the only - way to propagate human rights is by using the doctrines contained in their scriptures. For this reason, almost all of the world's religions have embarked on exercises to find some theoretical basis of human rights in their respective scriptures. Examined below is the place of human rights in the religious doctrines of Christianity, Hinduism, Islam, Buddhism and Judaism.

A Jewish foundation of human rights

Judaism is the monotheistic religion of the Jewish people, mostly found in the Middle East. The main scripture of the religion is the Torah which contains religious narratives and prescriptions for proper conduct. Though originally a Jewish religion, Judaism has become a religion practiced by people of other cultures, the world over. Jews, the precursors of Christians, believe that the owner and creator of the world is Jehovah and so present their conception of rights in the form of obligations to perpetrate or desist from certain actions in line with the commandments of Jehovah. The Torah, for instance, presents a divine sanction on murder and to ensure compliance, there is a divine command to punish murderers with death. This injunction on the taking of human life is placed by God to protect his creations which He made in his own image (Genesis 9:5-6, King James Version). This doctrine of *imago dei* is thus, the backbone of Judaic human rights because it puts man on a pedestal, higher than any other creation of God, save for the angels (Kaplan 1980 53).

Judaism is, therefore, a pro-capital punishment religion. The issue arises as to how we reconcile that stance with the Jewish claim to human rights. In Deuteronomy 21:22-23 (King James Version), the law of God prescribes capital punishment but sounds a caveat that the murderer must be buried the same day he is executed. In fact, this practice is done to maintain the sanctity of the humanity of the executed and also that of the land (Friedman 2000: 10). Though the murderer deserved to be executed, allowing his body to stay overnight is inhuman and must be avoided and this may be regarded as one instance of respect for human rights in Judaism.

Jewish scripture suggests several ways through which God's likeness is manifested in humans. The story of Adam and Eve (Genesis 1:26–27; 3:1–7, 22–24, King James Version) supports the claim that humans are like God in our ability to think, make moral judgments and in our constant pursuit of immortality (Maimonides 1964: 24-25). Other Judaic scholars believe God's likeness in man is manifested in man's physical form. One scholar, Alon Goshen-Gottstein believes that since the Torah nowhere states that God has not a form, it may be the case that humans were made in his physical appearance (Goshen-Gottstein 1994: 172- 174). A scholar like David Clines even claims that, based on the scripture, man was created *as* God's image, thereby making man God's representation on earth (Clines 1968: 101). Whichever way one looks at it, Judaists still hold a strong belief that humans are special because they are like God.

The worth of human beings or, using the UDHR phrase, their inherent dignity, is espoused by Judaists in yet another way. God created only a single person in the beginning; this goes to prove that each living person may likely be the forebear of an entire world in the same way Adam was. To murder an individual is to wipe out a possible world; a rather gargantuan burden for one to risk bearing (Bokser and Bokser 1989: 7). Also, human beings are the highest currency in the world since, though we are descended from a single man, we are, each of us, unique individuals. Since we are not products of a mass production exercise, we are dignified. In the same vein, a person who aids the progression of one human being, aids the progression of an entire world and for this act deserves a blessing from God (*Talmud Sanhedrin* 4:5). There is a significant interpretation by Rabbi Bunam of the idea presented

above and it is this: Since each man was created as a unique individual, he may very well claim that the world was created on his account; he is the reason all this is here and the other person's obligation to accord him the deserved respect is apparent (cited in Buber 1948: 249–250).

Apart from the above justifications of the respect for human life, other rights may be culled from Jewish doctrines. The right not to be tortured, for instance, is implied from the doctrine that man is made in the image of God. An instance of torturing a man is tantamount to torturing God himself. Welfare rights may also be sourced from the same doctrine since the Torah teaches that the one who provides goods like shelter, food and clothing to others provides it to the Lord himself (Proverbs 19:17, King James Version). Furthermore, not even for the sake of the lives in a whole city may one human life be sacrificed; unless the person is a capital offender (Genesis Rabbah 94:9). Apart from the *imago dei* doctrine and the belief that we are each unique individuals deserving of the utmost respect, there is also the doctrine of the covenant that serves to justify the dignified treatment of mankind in Jewish scripture.

Jews teach that God made a covenant consisting of six hundred and thirteen commandments with their ancestors on Mount Sinai. These commandments include: A command to love all human beings who are of the covenant (Leviticus 19:18, King James Version); A command not to stand by idly when a human life is in danger (Leviticus 19:16, King James Version); A command not to cheat strangers in business transactions (Exodus 22:20, King James Version), among others. These commandments have been interpreted as human rights and have, through the years, witnessed some development by the

Jewish rabbi. Human rights, in the form of interpersonal relations, are thus part of the worship of God. These commandments were given specifically to the Jewish people and there is the question of what justifies the belief that they are not applicable only to them. In the first place, when God disclosed the covenant to Abraham for the first time he promised to make Abraham the conduit through whom all other nations will receive their blessings by observing the law He will give to Abraham and his great nation. (Genesis 18:18-19; Dorff 2003: 214). The Jewish covenant with God was thus to serve as a blueprint to all the nations of the world to build upon in order to do what, in the eyes of the Lord, is right. In keeping with their part of the covenant, every Jew is required to obey the listed duties and by extension, respect human rights.

The rabbis also believe that the entire world is bound by the Sinai commandments because God made a covenant with all the sons of Noah, believed to have reproduced the world after the flood (*Talmud Sanhedrin*. 56b). This covenant is made up of the prohibitions on theft, blasphemy, adultery, murder, idolatry and tearing a live animal's limbs, among others. This covenant also brings with it another human right – the right to religion because this covenant with Noah is why Jews do not do missionary activities. The covenant made by God and the sons of Noah presupposes that every person is aware of the law and therefore their choices must be respected. The Jews are also required to extend their observance of the Sinai commandments to non-Jews. Jews are expected to attend to sick gentiles and give them the treatment they would give to an actual Jew. The motivation for this is

apparent: to ensure a harmonious relationship with their neighbours (Bokser and Bokser 1989: 30-31).

Thus far, Jewish law only mentions divinely commanded duties and not rights. The fact that one has a duty under God not to let my neighbour die of hunger in no way gives my neighbour the right to be fed. The Jewish duties include, in most cases, a list of mischievous behaviours which are to be shunned. So, to the Jew, each person is born with an obligation to be of benefit to humankind, unlike the Western concept of rights where people are born expecting privileges (Dorff 2003: 215). The absence of rights qua rights in Jewish thought is a typical feature of many other religions, as the reader will discover by the end of this chapter. Though it has been argued that a duty is no indicator of the existence of a right, several instances in Jewish scripture prove otherwise. The Torah, by claiming that each person may assert that the world was made for them, introduces the concept of rights qua rights since the right-bearer may now, based on his uniqueness, exercise or demand her right.

The above theoretical foundation makes broad pronouncements for respecting rights and one may consider this not too promising in the absence of a specific declaration of rights as in the UDHR. But the Jewish tradition does have specific one-to-one rights declarations. Jewish law, as explained by the retired Jewish judge, Hiam Cohn, makes specific demands for the respect of people's privacy, reputation, among others. Cohn (1984) spells out Jewish law's prohibition on torture and identifies such features as the rule of law. The Jewish religion indeed has numerous laws put in place to ensure respect for human dignity. Although some of them are not fully sufficient in the modern sense of the term, they are at least present.

Christianity and human rights

Christian scholars have long been under attack as being violators of one freedom or the other. But the Christians believe that their religion, despite its human right violations, has chalked some significant points for advocating the concept. Indeed, the Church has been influential in such activities as the civil rights movement in America during the twentieth century; the resistance movements to Hitler's Nazi regime and to apartheid in South Africa.

One common way scholars have attempted to argue for religion as the only way through which human rights may be justified is by claiming that human rights is a religious concept and will only make sense to people with some kind of religious persuasion. One term, as we have noted, that seems to undergird the whole concept of human rights is the term 'dignity', and scholars who argue for a religious approach to human rights advocate a complete substitution of the word 'dignity' for 'sacredness'. In this regard, humans have rights not because they have human dignity but because human life is sacred and sacredness is a religious concept.

Prominent among the religious scholars is Michael Perry and he, following the tradition laid down by the likes of R.H Tawney, argues that religion is the only effective foundation for human rights. Perry claims that belief in the human rights mantra - that human beings have some intrinsic worth that transcends any other considerations - demands a perquisite belief in God (Perry 1998:11). Tawney's statement to the same effect includes the phrase "is of infinite importance" whereas Perry, citing Tawney, replaces the whole phrase with the word "sacred" (ibid). This indicates that Perry believes being of infinite importance is to be sacred. Using this understanding of

human sacredness, Christian scholars like Perry construct the argument that many persons will have no understanding of human rights unless it is linked to the “gospel vision of the world and our place in it” (Perry 1998: 39-40).

Though this argument is presented here within a Christian framework, as we move along, it will be discovered how well it sits with other religious traditions. Jesus is believed to have laid the Christian foundation of human rights when he commanded his disciples to love one another (Mark 12: 31, King James Version). The idea here is that this instruction was not meant only for the Disciples of Christ; it was a command for all of humankind (McLennan 2004: 2). It is around this instruction Jesus gave that Christians have constructed their foundation for human rights. Christians claim that respect of the sacredness of all humankind is based on nothing but the commandment given by Jesus and therefore, ideally, all Christians must respect human rights.

In the New Testament, Jesus commands Christians to have altruistic love for all human beings, even the ones that have appearances and ideas different from their own (Matthew 5:43–48, King James Version). Christians must extend this love beyond those with whom they have day-to-day dealings or those who benefit them to those humans who, for one reason or the other, are far away and play no role whatsoever in their lives. This last command is a peculiar one since it implies that Christians should love people they know nothing about, whose existence they can only infer from hearsay. But, as will be explained shortly, the Christian religion teaches a form of love which is possible even in the absence of proximity. Jesus also commands Christians to love their enemies and people whom they are convinced are immoral and evil; even those who have harmed them in various ways (Matthew 5: 44, King

James Version). The true Christian character, as commanded by Jesus, implores believers to consider each person, even their transgressors, as sacred and worthy of love.

An atheist might find these assertions quite ridiculous and this is perfectly understandable since, according to the New Testament, only those who have ears will hear (Matthew 11: 15, King James Version). Applied to the Christian argument for human rights, the passage at Matthew 11: 15 implies that only religious people are capable of understanding how it is to love somebody based on nothing but a divine command. Based on the scripture, Christians believe love is a form of transcendental altruism unlike the popular affection-based version. This kind of love is referred to as agape love. Agape love has been variously conceived of by legion scholars and its definitions have included to act “for the sake of the beloved” (Vacek 1993: 157); “self-less altruism” (Martin 1996: 14) and “God giving himself” or “divine bestowal” (Singer 1987: 269). Generally, agape consists in wishing that our fellow human beings reach their full potential as created beings and for Christians, the fulfillment of one's potential is eternal enjoyment in heaven with God and their loved ones. From the agape love standpoint it is not surprising to love one's enemies or strangers.

Love for one's neighbour, according to the New Testament, is to be preferred over a life without it since such a life is empty and akin to death (1 John 3:14, King James Version). For Christians, loving one's neighbour and having an attitude of love is what makes one progress on the journey to actualize her potentiality embedded in her natural blueprint. The attribution of selflessness to Christian love may be challenged. It is quite possible that

individual Christians show this love only in order that they may achieve their own actualization in heaven. According to Christian scholars, a true believer will not do charitable or respectful things in a bid to secure her own happiness only and to cast doubt on the possibility of this claim is to misunderstand the true reason behind the Christian believers' actions (Perry 2005: 115). If this claim is to be appraised using Christian logic it may be incontestable but using the philosophical logic, as will be done shortly, the claim begins to unravel.

Following the scripture, Christians must not do their charitable and loving acts because they gain happiness from doing them - indeed they must be happy for doing it - but only because the needy and afflicted are their brothers and sisters and believers have a deeply founded love for them. Christians are of the belief that we achieve eternal, true and pure happiness when we fulfill our inherent nature to love one another (John 3:30, King James Version). This happiness is not gained through individual acts of kindness but by becoming persons who have altruistic agape love for others. The perfect example in the scriptures is that of Jesus Christ who, out of nothing but love, gave up his life to save humankind (Hebrews 12: 2, King James Version).

If we study a Christian believer's life and beliefs then we will arrive at a claim that is quite valuable to the human rights regime, that one's life can only find teleological value in the lives of others. So, unlike an egoist theory like hedonism, the agape love concept puts the other person in the middle of the individual and his actualization. This happiness, as described above, is identical to Aristotelian eudemonism since it is what aids in the actualization of man's potential and is best concerned with well being and not instant gratification. Aristotelian eudemonism is the ethical theory which posits

happiness as the bar for testing the moral value of an act. This happiness, in Aristotelian terms, is the fulfillment of one's potential and not some kind of instant gratification (Ross 1923: 192).

The question here is still one of whether the believers' actions can be rightly regarded as altruistic. This question necessitates a breakdown of core Christian beliefs to see the real reason behind their actions. Harry G. Frankfurt, the twentieth century American philosopher, has a model which may be useful to us here. The Christian believer's impulse to visit the sick may be called, using Frankfurt's model, a first-order desire. A first-order desire is a desire to restrain from or actually perform an action. However, it is not uncommon for such a desire to be followed by a second-order desire (Frankfurt 1971: 7). In the case of the Christian believers, the first order desire to visit the sick is accompanied by a further desire of becoming a person who acquires fulfillment through kindness to others. In this case, Christians may argue that they do have altruistic motives for their first order desire even though their motives for seeing these desires through might be purely egoistic. The question then is: does this underlying egoism affect the Christian religion's viability as a foundation for human rights?

To answer the above question we turn to the Christian argument that every other human being is either a brother or sister and refusal to show them love is a refusal to show love to God (Cupitt 2003). This refusal to show love to God ends up creating a gulf between mankind and his creator, a situation every Christian must dread. There is an instance in the Bible where, on judgment day, God refuses some Christians entry into His kingdom because these people refused to help their fellow men when they were alive. God

explains to these rejected believers that giving food to a hungry human being is giving food to God and refusing to feed the hungry is tantamount to a refusal to feed a hungry God (Matthew 25: 44, King James Version). This is, apparently, one main criterion used to determine whether a person goes to hell or heaven. From this standpoint, even egoistic Christians are enjoined to respect human rights because failure to comply will result in eternal pain and torture in hell.

The Divine Command Theory, pioneered by Aquinas and appropriated by later Christian scholars, then becomes a theoretical foundation for the concept of human rights. This theory holds that the moral value of an action is determined by whether or not it is sanctioned by God. At this point, the Christian argument for human rights may be expressed thus: I believe in a God who created all mankind in his own image; this God commands us to love each other as he loved us; therefore, all humans are worthy of love and respect and as such, must be loved and respected. The above thus justifies respect for human rights based on the religious concept of sacredness.

The Divine Command Theory, in this case, becomes the highlight of the Christian justification of human rights. Such a motivation for acting as the Christian deontology proposes goes against some other deontologist theories like Immanuel Kant's. To Kant, an action can be moral only when it is motivated by reason; not because it is commanded by God. Other philosophers, however, support the Christian motivations since they believe agape love and faith may equally be as valid as motivations of reason (Roberts 2011: 11).

The word 'command' in the Christian argument for human rights may strike some as Draconian but this is far from being the case, according to John D. Crossan. It is argued that Christians obey God's law to love their neighbours, not because they are under some form of obligation; they love their neighbours because that is how the universe functions, or is supposed to function, to them. Christians believe God's laws are as self evident as Newton's third law; an action is accompanied by a reaction, not because we or some other person want it to be so, it happens because that is how the universe functions (Crossan 2000: 129). It is worthy to note that this argument is not only present in the Christian religious worldview; it is in different forms in various other religions, as we shall discover in the course of this chapter.

Buddhism and human rights

The continent of Asia has long sought for a way to get its overwhelmingly large population to have a better conception and understanding of human rights. The current section focuses briefly on an unsuccessful attempt at using Confucianism as grounding for human rights. The remaining part of the section presents Buddhist arguments for human rights and how Buddhist doctrines may be used to justify the concept. Before we begin, it is important to understand that the concept of human rights has no place, originally, in Buddhist philosophy. There are no concepts that translate directly into a concept of human rights.

Buddhism, headed by the Dalai Lama, is a nontheistic religion largely based on teachings attributed to Siddhartha Gautama, who is commonly known as the Buddha (the awakened one). The religion is mostly practiced on the continent of Asia but has several adherents throughout the world. At the

Non-Governmental Organizations United Nations World Conference on Human Rights, on June 15, 1993, the Dalai Lama stated that there should be no difference of opinion about human rights since it is a “fundamentally important” concept. Interestingly, Buddhism is the one religion in Asia which has long renounced the caste system, which is widely considered as one of the most ancient human rights violations. Buddhism therefore becomes an escape hatch for low-caste Indians who wish for better treatment.

The Asian continent has had scholars who have made attempts to find grounding for natural rights or human rights in general. The Confucian tradition is one which prevails in some of the Buddhist Asian countries and is one which has been used to ground human rights. This grounding of human rights is done using the Confucian notion of principle. This notion reads like most ancient Greek cosmologies and holds that there is a certain order to nature; a principle of sort. This principle is what makes man breathe air and not live under water; what makes a bird fly and not walk, and so on. Humans possess this principle in them and according to Confucian thought the principle is equally present in all humankind (Fung 1976: 302). The claim of Confucians is that, owing to the even distribution of the natural principle in all humans, all humans have equal dignity. This is the Confucian grounding for human rights.

This Confucian justification of human rights, by virtue of its semblance to the natural law theory, carries most of the latter's critiques. The theory has no clear cut definition of what constitutes a thing's nature. What if it is only by chance that the birds we see fly? What if in another country all birds walk? The other pressing issue, raised by scholars is that the principle is

not well defined and this may lead to its devolution into an instrument used by the strong to suppress the weak since some people may claim to have more of the principle than others (Bongjin 2009). If, however, this power play becomes the case, then the whole idea of a universal ethic based on human rights becomes untenable and unjustifiable. It is to resolve the problems raised against the Confucian notion of rights that Buddhists have presented their own version of the justification to maintain respect for persons.

Buddhist scholars like Damien Keown believe that human rights are rarely ever justified because most of the justification exercise tends to multiply the explicanda by introducing the equally evasive concept of human dignity. Buddhists have neither concept and it may even be argued that the religion rather has some principles like self denial that can be regarded as antithetical to the idea of rights and human dignity (Keown 2000: 66).

The Buddhist religion has a peculiar problem when it comes to human rights discourse about justification. The problem is that, as a nontheistic religion, Buddhism cannot ground common human dignity on a common creator of humankind. This tends to corner Buddhist attempts at justifying human rights; but does this point obliterate all hopes of finding a justification of human rights in Buddhism? Buddhists answer this question in the negative and consistently attempt theories of justification. One of these theories of justification, spearheaded by Buddhist scholar, Kenneth Inada, is the principle of human interdependence (Inada, cited in Keown 2000: 67-68).

The principle of interdependence is one of the core beliefs of Buddhism and in the Samyutta Nikaya (The Connected Discourses of the Buddha) it is stated:

When this is, that is

This arising, that arises

When this is not, that is not

This ceases, that ceases (Samyutta Nikaya II. p28).

When applied to human rights, as Inada does, the principle of interdependence implies that since human beings have similar biological histories, are dependent on each other for survival, we must support and respect each other. As humans, we all come into this world through the same biological process. After we have arrived on this earth, we still need the support of others like us in order to survive. Taking this argument to the human rights domain, because we have the same biological origin and depend on each other to survive, we need to show love and respect to each other if we are to survive as a species.

The problem with this argument from a common origin is that its conclusion is somehow forced and is conceptually apart from the premises. If humans have a common origin, how does this translate into the idea that we have to respect each other? The fact that a person's mother gives her food may not be used as the basis for the moral imperative that she ought to respect her mother or refrain from abusing her mother. Other Buddhist scholars have attacked the theory of interdependence by claiming that the idea that our well being is linked to everything in this world is a dangerous one to formulate. Christopher Ives illustrates the weakness of the interdependence thesis with his Chernobyl reactor analogy. A baby and a Chernobyl reactor do indeed have some relationship but to claim that the latter is needed for the former's well being will be far from true. In fact, the baby's well being is rather based

upon her independence from the reactor (Ives 2008: 24-25). It is no doubt that the reactor determines some aspect of the lives of the people who live around it but it will be dubious to claim that it is necessarily a good thing. The interdependence theory is, therefore, at best, a theory of what man's place is in the universe; it is in no way what man's place ought to be and therefore cannot be used as a justification for morality or human rights.

Other scholars believe that a correct grounding of human rights in Buddhism will have to be done using the four noble truths. These four noble truths, according to the *Dhammacakkappavattana Sutta* (The Great Discourse on the Wheel of Dhamma), are:

1. The truth of *dukkha* (suffering)
2. The truth of the origins of *dukkha*
3. The truth of the cessation of *dukkha*
4. The truth of the path leading to the cessation of *dukkha* (Armstrong 2001: 77)

In Buddhist thought, the four noble truths serve as the philosophical boundaries within which moral deliberations are to be done. The first two of these noble truths are only explaining the current human condition of suffering; they cannot be used to ground any moral theory. The third and fourth truths show how a person ought to live if he/she is to achieve freedom from suffering and it is such normative teachings that may be used to ground human rights.

According to Buddhist scholars, human rights is a tool used to give humans the freedom to achieve their spiritual goals (Keown 2000:71). The right to life is a measure put in place to protect one's life in order that he may

continue to pursue his goal of spiritual emancipation. In this context, the concept of human suffering is used as a tool to ensure respect for persons by placing human rights within the scope of suffering and how we ought to live in order to prevent it. Rights, in this case, are only valid to the extent to which they alleviate human suffering. With this approach, we may easily resolve the problem of the proliferation of rights since the criterion for qualification as a right is whether a law can alleviate human suffering. The four noble truths thus lay a path which is only travelled with human rights.

The five precepts are also used to ground human rights in Buddhist thought. The precepts may be looked upon as duties that prohibit certain acts and they are stated in verses 246-247 of the Buddhist *Dhammapada* thus:

1. To refrain from murder
2. To refrain from theft
3. To refrain from carnal misconduct
4. To refrain from slander
5. To refrain from alcoholic overindulgence

Duties like the five precepts are present in the religions under consideration and it may be argued that wherever there is a duty, there is a right (King 2000: 300). So, on the level of converting duties to rights Buddhists have some grounding for human rights because a person's duty, as per the five precepts, transforms into a right for the beneficiary of the duty. Basing human rights on the five precepts, however, raises the further question of who the actual beneficiary of a duty is in Buddhist thought. One may argue that the person performing the duty is the sole beneficiary of the duty since the

performance of the duty aids in alleviating his/her suffering on earth. The concept of suffering creeps up again. If one performs his duty of desisting from beating his wife, it may be the case that he benefits since he has made at least one effort in attaining emancipation from suffering on earth. This observation appears to give an advantage to Buddhist philosophy as regards human rights because by respecting a person's rights, both the one whose rights are respected and the one who does the actual respecting benefit since one gets to live to pursue emancipation and the other gets one step closer to her emancipation; a progress on the path of Buddhist *dharma* (Goenka 1993:98).

Though the four noble truths and the five precepts may be used to propagate human rights there is yet another foundation in Buddhism which seeks to address the obvious problem of egoism implied in the justification discussed in the above paragraph. The other justification of human rights in Buddhism is done with the Buddhist concept of compassion. The *Dhammapada* preaches the ignobility of hurting fellow living things and this is one of the pillars of Buddhist pacifism and compassion (*Dhammapada* 270). At the core of every human rights philosophy, side by side with human dignity, is the concept of compassion. This may be a form of empathy towards the next person, enough to make one avoid harming her neighbour. Human rights therefore act as a channel through which compassion may be spread throughout the globe (Garfield 2002:200). It is compassion that can make an Indian, for instance, desist from shooting a Pakistani because the shooter is aware of the enormous pain caused by a bullet wound. The Buddhist theory of compassion appears to fit well with Rorty's sentimental education because

Buddhist scholars claim that the sentiment of compassion is an effective tool for propagating human rights. The effort now becomes one of making a person's sentiment of compassion advantageous to the other person and this is what human rights seek to achieve. Human rights are justified in Buddhism by being the tool for propagating human compassion towards others.

Buddhist scholars present main ways through which the religion may be used to justify human rights. The first of these is that since human beings are of one origin, we ought to respect and value each other. This argument, as has been shown, commits the is/ought fallacy; that we need to respect each other because we are dependent on each other still begs the question of why we actually need to value human life. The four noble truths, especially the truth of suffering and its cessation, have also been used to argue for human rights. If one intends to end one's suffering, one must resolve to value human life and give other people the freedom and peace of mind to seek salvation. To a Buddhist, this argument makes perfect sense and, all things being equal might succeed in bringing a believer to respecting human rights. There is also in Buddhist thought the argument for human rights from duty. These duties are the five precepts and they may be translated as welfare rights, property rights and the right to life. The duty holder is simultaneously a right holder since his/her neighbour also has similar duties. Finally, Buddhist scholars appeal to the Buddhist doctrine of compassion in justifying human rights. By respecting a person's right to life, for instance, we are expressing our compassion towards that person. In this line of argumentation human rights are left to the emotional faculties of people – a dangerous but workable state of affairs.

A Hindu justification of human rights

Hinduism, as is typical of all the religious traditions mentioned above, has no carved-up word for “rights”. Some words are loosely translated as rights and these include the word "*adhikara*", which translates as “entitlement”, a close enough translation (Lubin 2014: 673). *Adhikara* is closely related to the Hindu doctrine of *dharma*, which means “to bring together” or “keep alive” and it is a term which connotes some form of duty (Sivananda 1999: 23). The concept of *dharma* acts as a regulatory tool in Hindu religious philosophy; it sets out the rules for the proper living of one's life. By guiding man's conduct, *dharma* has the ultimate goal of ensuring that each person reaches her highest human potential. But the term transcends humanity.

Dharma regulates the whole order of the universe and plays a pivotal role in Hindu cosmology. Since the universe includes man, the focal point of *dharma* is the cosmos; it then trickles down to order the human condition (Sharma 2004: 14). Humans are entreated by *dharma* to conduct themselves properly to ensure the orderly functioning of the society in which they live, and by extension, the whole cosmos (*Bhagavad Gita*: 2.47). So far, we have been able to identify but one duty, not a right. Indeed, Hinduism protects human dignity through a system of well marked duties. Any right a person has is linked to some other duty (*dharma*) she or someone else has. In this way, a duty to abstain from killing another translates into a right to life, and so forth.

The ability to carry out the spelled out duties of their caste is a distinctive feature of humans and gives human beings an aura of dignity. All human beings, as has already been noted, have the ultimate duty of

maintaining the cosmos. Having the great responsibility of keeping the cosmos running is no mean achievement and thus makes all humans deserving of some respect. This respect is, however, irrespective of caste. Human dignity is thus a universal phenomenon in Hindu thought.

The Hindu religion has no direct reference to rights in the Western sense. Just as has been shown in the Judeo-Christian context, the concept of human rights is buried in a system of duties. Hindu scripture, for example, spells out the duties of a ruler to his subjects. Though the scripture does not explicitly state the rights associated with this duty, the scriptures encourage subjects to revolt in the situation where a ruler shirks his duties (*Anushasana Parva* 61.32-33). Put another way, Hinduism makes provisions for the rights John Locke prescribed in the seventeenth century except whereas Locke prescribed rights qua rights, Hindu philosophy advocates a duty-based theory of rights similar to that of Kant. Some commentators (see Pandeya 1986: 267) are of the view that Hindu religion places more emphasis on article 29 of the UDHR which states:

- (1) Everyone has duties to the community in which alone the free and full development of his personality is possible.
- (2) In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.

(3) These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations (Universal Declaration of Human Rights (1948)).

Hindu scholars justify this duty-based theory by claiming, as Mahatma Gandhi does, that rights are only enjoyable when duties are duly performed (cited in Sharma 2004: 13). The entirety of the articles in the UDHR, as per Hindu thought, is based on duties.

At the mention of Hinduism, the thing that immediately comes to mind is the infamous caste system practiced by Hindus. The caste system implies that different people possess different rights and this appears to downplay the universality of human rights in Hinduism. Before making an argument for universal human equality in Hindu thought, it is important to explain the caste system. The caste system is a social system, based on heredity, where some groups of people are believed to be inferior or superior to others (Donnelly 1989: 127). Hindu societies have four castes: the Brahmas, Ksatriyas, Vaisyas and Sudras. Hindu scripture allocates various professions to these castes: the Brahmas represent the priestly class; the Ksatriyas are the warriors; Vaisyas are in charge of agriculture and trade, and the Sudras form the class that provides miscellaneous services (*Rig Veda, Purusha Suktam*, Ch. X).

The above demarcation explores the caste system from a different angle and makes the system less demeaning since even in the texts of Aquinas, there is the admission that all men are not equal; some serve and some are served. Duties vary according to castes and each new member of society has certain duties carved out for her and is therefore exempted from certain other duties (*dharma*). All the same, with such a rigid system of discrimination in

place, how can Hindus claim to support equal dignity among persons? Even in the religious domain, the lowest caste, the caste of the untouchables, were not allowed to worship in the temples and that is a clear violation of their religious rights.

But a closer examination of the original Hindu texts, the Vedas, will reveal that the caste system has been adulterated by other philosophical ideologies. The idea here is not to argue out the justification of this adulteration. The original Vedic scripture does not decree that people born in specific castes may not, through self improvement, rise to higher castes. If the caste system is understood as a sort of division of labour in society then the Vedas believe one may master a different art and serve society another way. Evidence for this is shown in the *Rig-Veda* where the poet states: “I am a reciter of hymns, my father is a physician, and my mother grinds corn with stones” (*Rig-Veda* IX, 112.3). The statement implies the possibility of cross-class relations. The caste system, as presented in the Vedas, is in no way a limiting factor but rather propagates the belief that all men are equal in dignity, though not in labour, and can be whatever they want to be when given the freedom to operate. The Vedas has no place for a vertical hierarchy; it instead has a horizontal relationship where every man is as important as the next, whether he is a king or a cobbler.

Hindu psychology also teaches that the souls of all humans are equal and therefore respect must be accorded on an equal basis (Subedi 1999: 54). To deny a principle of equality of all mankind, the basis of human rights, to a religion that believes in an omnipresent God is to misunderstand the implications of the omnipotence attributed to this Supreme Being. Hindu

scripture states that “God covers all that moves in the Universe” (*Isa Upanishad*, verse 1) and since God is in everything and everyone, no one may displease another and risk displeasing God in the process.

The freedom of religion is also supported in the Hindu scriptures. *Dharma* involves the proper organization of one's life in order to ensure the proper functioning of the universe as a whole. This organization of life includes one's chosen religious belief (*ishta-devata*). Religion is what liberates man from the hardships of life and helps him reach his higher level of humanity (*moksha*). Through religion, man is able to escape the cycle of *Samsara*, as dictated by the principle of *karma*. To be able to perform this escape, one must reach a level high enough to be at one with the Supreme Being and only religion may provide this uplifting. Hindus do not, as do some other religions, believe that the path to spiritual uplifting is only one (RadhaKrishnan 1927: 19 cited in Sharma 2004: 97). There is the idea that some other paths may lead to liberation and these paths are respected by the religion. The basis of this toleration for other religions in Hindu tradition is their belief that God is nameless and formless; without any qualities whatsoever. In this case, God is only described by different people in different ways but remains the same reality. In the context of religious freedom, therefore, Hindu religion may be said to support human rights and may be used as a tool to get people to support the concept.

Human rights and Islam

The UDHR was adopted in 1948 on the agreement of parties from different religious, political and philosophical persuasions. All accepted the declaration but for one religious tradition: Islam. The Muslims refused to accept the declaration, claiming it was an imperialistic tool from the West with the goal of eradicating all other moral systems on the planet. This is but one observation worthy of note for the point to be made a few sentences hence. The second point to note is that since the declaration was promulgated, there have been some misunderstandings between the West and the Islamic communities which have resulted in gross human right abuses on both sides. Now, to the point: based on the refusal to accept the UDHR and subsequent disregard for the human rights, is Islam not positioning itself as an anti-human rights institution? Do Muslims believe human rights must be propagated or abandoned?

Various Islamic scholars have attempted answers to this question and it appears they all agree on the claim that Islam does have a place for human rights and may be used to justify the idea of human rights, even if not all of these rights are similar to the ones contained in the UDHR. So, according to Islamic scholars, Muslims are not against the idea of human rights; they only reject the UDHR for its insistence on a secular, universal moral order (An-Na'im 2000: 98).

Islam is known for its alleged human right violations throughout both the Islamic and non-Islamic world but this perception is generally dismissed as biased. With the West claiming supremacy in the world and imposing their moral outlook on it, the Islamic world had to assume a certain revolutionary

mindset (Sachedina 2007: 51). In the current historical era, Muslims have interpreted the scriptures in various ways in order for it to suit their revolutionary agenda. So, in recent times, the world has witnessed such gruesome practices in Islamic countries as public decapitations of criminals in Sudan and Saudi Arabia. There have also been so-called holy wars on non-Islamic states, instanced by the bombing of the twin towers in America and most recently, the kidnap of over 200 girls in Nigeria. In practice, therefore, Islam appears to be an anti-human rights religion but this does not mean that it cannot be used as a theoretical foundation for human rights. For a foundation of human rights, all that is needed is an interpretation of core Islamic doctrines to make them fit with the current human rights protocols.

Islamic law, as interpreted in recent times, cannot be used to justify human rights; that ship has already sailed. But what is left for Islamic scholars to do - and some scholars are doing this - is to reinterpret the Islamic Sharia to accommodate the concept of human rights (Christoffersen 2000: 73). The argument here is, in the analyses of the other world religions, we noted that none has a readily available code of rights in their scriptures but the doctrines available are interpreted in a pro-human rights manner. Islamic Sharia has the typical duties such as the prohibition on abortion, stealing and adultery. Since it has earlier on been established that every duty has a correlative right, Islamic Sharia may still be used to convince people of the need to respect other people's rights.

Several issues concerning the Islamic religion have arisen. One issue people have with Islam is how it demeans women as though they were the property of men. Also, the punishments prescribed by the Sharia are popularly

considered gruesome, inhumane and archaic. Scholars like Abdullahi Ahmed An-Na'im, Weiss, and others, are almost unanimous on the idea that the Sharia, as a set of laws, are in need of reinterpretation to keep up with the dynamics of our times. Weiss believes that the Sharia, like most religious doctrines, may have been revealed by God but its interpretation or *fiqh* (literally, understanding) is left to humans who must consider other factors in the exercise (Weiss 1998: 116). Sharia must thus be interpreted in a way that is advantageous to Muslims.

The main problem with the Sharia now is rather obvious: its precepts were laid down centuries ago and for these precepts to remain unchanged today is dangerous to those bound by them. Interestingly, however, some aspects of the Sharia have been amended but only because they affect the governments in Islamic countries; close to nothing is done to make the life of the individual Muslim comfortable. This is a point Na'im (2000: 98) makes and it gives more credence to the claim that Sharia is but a human document which is open to amendment. This amendment just has to be given a human face.

It has been argued that the Sharia contained some laws that were, in earlier times, favourable to human rights. For instance, women were hitherto given a special place in society and such things as their inheritance and protection was taken care of by the law. The only problem then is that by using the UDHR as a measure of respect for human rights, Islam - and all religions, for that matter - will always fall short since the religion has an intrinsic system of inequality between women and men; Muslims and non-Muslims (An-Na'im 1990: 4-7). Muslims believe it is more pious to live by a

law they believe to be divinely revealed than to be forced to go with a law they know is a mere human creation, wrought with human hypocrisy and mischief. But the reinterpretation of the Sharia is somewhat ordained by the Quran since it is claimed in the Quran that the purpose for its revelation to the prophet is for human reflection and understanding. Quran 2: 13 (Oxford World's Classic Edition) states: "When it is said to them, 'Believe, as the others believe,' they say, 'Should we believe as the fools do?' but they are the fools, though they do not know it". Allah despises the "fools" who just follow blindly and take whatever is given them with no reflection. This means that Allah, being omniscient, envisaged the dynamic nature of human life and therefore recommended sober reflection on even his own word.

If one studies the Quran, it becomes clear how displaced some of the interpretations of its verses are. One of these contested doctrines concerns Islam and other religions, it appears there is ample reason to believe that the Quran does not fully endorse inhumane treatment of Christians and Jews as is widely believed. The Quran insists that "There is no compulsion in religion: true guidance has become distinct from error, so whoever rejects false gods and believes in God has grasped the firmest hand-hold, one that will never break. God is all hearing and all knowing." (Quran 2: 256, Oxford World's Classic Edition). Added to this pronouncement on the freedom of religion given to non-Muslims, the prophet states that should any Muslim maltreat a non-Muslim, he, the prophet will see to their punishment on judgment day (*Abu Dawud*). The positive attitude of Muslims towards non-Muslims can also be seen in the various levels of citizenship given to non-Muslims in Islamic states. Non-Muslim residents are referred to by Muslims as *ahl ul-dhimma*,

meaning people of the covenant. This name is given to non-Muslims because the prophet and his followers entered into a covenant with non-Muslim citizens. Though, this covenant rests on conditions for both sides (Zaydan: 35), it helps to show that whether Muslim or not, human beings deserve dignified treatment. There is also the law covering the right treatment of non-Muslims who are temporary citizens of Muslim states, that is, of both people who come to Islamic countries to do business and those who come to Muslim countries seeking asylum.

Islamic scholars, however, claim that the concept of human rights has always been present in the teachings of the prophet, long before its emergence in Western international law (Al-Sheha: 5). The main difference is that as Western scholars back their concept with reason, Muslims believe their conception of human rights is sourced from the divine command to do so. Muslims also claim to have welfare rights in the Quran. Indeed the Quran talks about how the “sons of Adam”, i.e. mankind, have been given a special place on earth, and put in control of all other things. The Quran explains the special place Allah has put mankind – above all creations: “We have honoured the children of Adam and carried them by land and sea; we have provided good sustenance for them and favoured them specially above many of those We have created” (Quran 17:70, Oxford World’s Classic Edition). The angels even had to bow to the first man as a sign that Adam is above them as creations: “When We said to the angels, ‘Bow down before Adam,’ they did” (Quran 20:116, Oxford World’s Classic Edition).

Islamic religion also has a theory of human rights reminiscent of the Buddhist theory of interdependence, discussed earlier in this chapter.

According to the Quran, all mankind has a single origin and must therefore respect each other. Also, the Quran preaches religious toleration and freedom. At no point must a Muslim downplay the religious beliefs of a Non-Muslim; Allah is the Supreme judge (Quran 34:24, Oxford World's Classic Edition). Muslims are not to persecute unbelievers because, the prophet states, "If the disbelievers only knew, the time will arrive when they will not be able to ward off the Fire from their faces or their backs, and they will get no help. (Quran 21:39, Oxford World's Classic Edition). This prohibition on the mocking of other religions is, as the prophet Mohammed (SAW) claims in Quran 6: 108 (Oxford World's Classic Edition), "[Believers], do not revile those they call on beside God in case they, in their hostility and ignorance, revile God. To each community We make their own actions seem alluring, but in the end they will return to their Lord and He will inform them of all they did." The idea is apparent; to prevent non-Muslims from attacking the Islamic God as a way of retaliating.

Concerning the status of women in Islam, the Quran has so many ostensibly unfavourable verses; the verses are ostensible because, depending on how you interpret them, they are not as inhuman as they appear. One such example is seen at Quran 2: 222-223 (Oxford World's Classic Edition): "Your wives are your fields, so go into your fields whichever way you like..." The phrase "whichever way you like" leaves the verse open to diverse interpretations. Such controversial verses notwithstanding, Muslim scholars still insist the Islamic religion does not restrict women. Women who cover their faces or wear the *hijab* (headscarf) are mistaken for oppressed women but the truth, as some Muslim commentators claim, is that these women freely

choose to dress in the religious manner of their own free will. Muslim women prefer to wear the *hijab* so that they are dealt with based on their faith and not their physical appearance. For some reason, many people in Western countries believe Muslim women are oppressed. This assertion, according to the Gallup poll of 2005, is false. Indeed, women in Islamic countries like Egypt, Iran, Pakistan, and so on, believe that the West rather demeans women by the way they are presented in the media.

Islam does not encourage the treatment of women as property to be shuffled amongst men. As the Quran says, women are not to be married and divorced and remarried as men wish; they must also not be harshly treated. As Quran 4:19 (Oxford World's Classic Edition) reads: "You who believe, it is not lawful for you to inherit women against their will, nor should you treat your wives harshly, hoping to take back some of the bride-gift you gave them, unless they are guilty of something clearly outrageous. Live with them in accordance with what is fair and kind: if you dislike them, it may well be that you dislike something in which God has put much good."

That men and women are equal in Islam can be seen in the Quran's depiction of the judgment day where women and men will get equal punishments and rewards based on the kind of life they lived on earth. The prophet explains in Quran 4:124 (Oxford World's Classic Edition) that "...anyone, male or female, who does good deeds and is a believer, will enter Paradise and will not be wronged by as much as the dip in a date stone.". An interesting remark by the prophet concerning the immorality of forced marriages in Islam is stated in the Sahih Bukhari hadith where the prophet indicates that unless a woman is silent about a proposal, she should not be

made to accept it. Women are therefore regarded as dignified creations of God in Islam and must be treated as such for, as the prophet says “a noble man treats women in an honorable manner” (Imam at-Tirmidhi). There is also the puzzle as to why the religion which has the most women reverts annually is Islam. In Britain, for instance, 5,200 people converted to Islam in 2010 and of this number, 75% were women (*The Independent*, 6th November, 2011). If indeed the religion is oppressive to women as claimed, why do more and more women turn Muslims each year? From the foregoing, it appears Muslims found human rights on their version of *imago dei*; since man is God's special creation he deserves respect, even from angels.

Conclusion

Interpretation has become a key factor in discourse on religion. The religions whose arguments have been examined in this chapter all have at the core of their human rights foundation the Roman doctrine of *imago dei*. For the theistic religions examined, human rights are also to be respected because they are commanded by God. All religions base man's dignity upon the fact that he is a creation of God, made in God's own image. The Buddhist religion, that has no concept of a Supreme Being who created mankind, uses its central doctrine of suffering. The Islamic religion has fallen victim to misinterpretation of its doctrines and misunderstanding of its practices. More women convert to Islam than to any other religion in the world and this should get people thinking about whether Islam is as unattractive to women as is claimed by many.

CHAPTER FOUR

CRITIQUING THE RELIGIOUS GROUNDING OF HUMAN RIGHTS

It has already been established in this study that the concept of human rights is the moral code proposed for the century. The question of the research can thus be re-framed: “how prudent is it to base the moral regime of the current century on religion?” What religion does, exactly, link the moral value of respecting other people's inherent dignity to God and God's commandments. This becomes a question of the viability of religion as a foundation for the morality of human rights and this chapter looks at some compelling arguments made against the set of arguments espoused in chapter three above.

The first argument to be considered here is the argument that religion only presents a set of duties and which may not rightly be regarded as rights. This fits into the broader argument about the relationship between rights and duties. Philosophers like Feinberg who deny any correlation between rights with duties will also deny the existence of rights in the religious context (Feinberg 1970:244). To Feinberg, not every duty correlates to a right for another person. In our current context, the religious duty to love our neighbour, as we discovered in most of the religions in chapter three, can in no way be argued to translate into a well defined right on the part of the supposed neighbour. The duty not to stand idly by whilst another person perishes, presented in the Noahide commandments, cannot be used to give a person under threat the right to demand a rescue effort (Bedau 1968). Therefore,

religion fails to qualify as a justification for human rights since the concept of religion itself is bereft of any human rights.

The above claims do have some weight but one may want to consider the view that duties and rights are almost always together; where there is a right, there must be a correlating duty, and vice versa (King 2000: 300). If we are to look upon rights as philosophical abstractions, then a duty to feed the poor does translate into a welfare right even though right-holders may not exercise these rights. If human rights are to achieve their purpose of guaranteeing the wellbeing of the human species, then the concept of duty must be revisited in order to explore its relevance to the concept of human rights. That my neighbour must not torture me is implied by the duty I bear not to torture her. Several deontological moral theories have this thesis at their core and scholars believe that the concept of duty holds much more prospects for human rights than is currently perceived.

Duty-based rights do possess some advantages over rights-based human rights in that a human right presented by a duty is binding on the duty bearer even if the right-holder is unable to exercise their right (O'Neill 1989). Also, by conceiving of human rights from the duty-based point of view, the concept of human rights may be further expanded to include some currently neglected rights such as the right to rescue in times of need (Walla: 6). Duty-based theories like Kant's Categorical Imperative have also fronted quite cogent arguments for justifying human rights and this means that an institution that promotes human dignity based on a set of duties must not be thrown out as irrelevant.

To base the morality of human rights on religion is to base it on the belief in God and the belief that humans are created in his image and therefore worthy of respect. The question then is, in the midst of the myriad of doctrines about God's nature, which one are we really to accept as the basis of human rights? A perfect example of this anomaly is witnessed in the case of homosexuality and religion. Christian Catholics and Muslims frown on homosexuality as against human nature, and thus, a misrepresentation of God's image. Some other Christian sects such as the Presbyterian Church of the United States of America, however, believe that same-sex marriages are allowed and perfectly natural, if they are founded on true love and trust (Kurtz 2001). This downplays the ability of religion to ground human rights since it appears that the very nature of human beings, identified as God's nature, is still a matter of much debate even in religious circles.

Consequently, then, one may argue that it will be quite dangerous to entrust the moral glue holding the current century together into the hands of a lot who are even yet to agree on their core doctrines. The group of Muslims who blew up the World Trade Center believed they were acting on Allah's commandments; Europeans believed God commanded them to enslave coloured people. The incoherent picture of God is volatile and dangerous, by all accounts. Even in one religion, there can be numerous conceptions of what God really is and what He commands. In the Christian Bible, God is presented to us as intolerant, jealous and so on in the Old Testament. Then, in the New Testament, He suddenly becomes the all-loving father who loves sinners and believers alike. The argument may be put simply: If God's nature is what makes humans special and deserving of respect, ignorance of God's nature

implies that there is no knowledge about what makes humans special and therefore God's nature may not be used as a justification for human rights (Kurtz 2001).

The above argument appears to have some validity but this validity is apparent, only from the secular-humanist standpoint. No religious person will really agree to the claim that God's nature is not known. That God's plans are unknowable is a religious axiom. But to claim that no one, not even the religious person may know God's nature is simply unacceptable to religious scholars. Scholars and theologians have, throughout the years, sought to provide a comprehensive account of what the nature of God really is, based on the scripture and unlike science which is characterized by paradigm shifts, religious findings mostly seek to reinforce some existing belief, not replace it. Wieman (1958), for instance believes that God is nature, and this pantheistic view of God is held by Hindus. But the most popular traits attributed to God are omnipotence, omniscient and omnipresence (Rowe 2007:16). The religious scriptures abound with stories that give a vivid description of God's nature - which varies with each tradition - and all one has to do is read "the word", according to religious scholars. In this way, the religious person acts on the belief that he knows what God is like and depending on how pious the person is she will understand that God is indeed love and His commandment to love must be obeyed.

Against religion as grounding for any form of morality is the argument invoked by Socrates in his dialogue, *Euthyphro*. This argument is by far, the most popular against the Divine Command Theory, as advanced by many of the religious arguments examined in the previous chapter. The *Euthyphro*

argument (*Euthyphro* 10a), applied to our current area of study reads: does a thing become good when God commands it or it is intrinsically good, prior to God's commandment? In this case, does God's commandment to respect human dignity make the actual respecting good and moral or justified, or does God command respect for human rights because this respect for human rights is justified intrinsically? If we go with the first alternative, then the theist argument gains full support and nothing is capable of goodness or no act is ever morally justified without God. Going by this alternative, human rights may not be justified without an appeal to God and his commandments. The theistic alternative seems to imply that without God, an act of kindness to our fellow man will make no sense, have no moral value, unless it is linked to God's nature and his commandments.

There are, however, several difficulties associated with the above stated implication of the *Euthyphro* argument. Common sense is what actually makes an act good, according to secular humanists (Morrison 2012: 21-22). So to claim that my hesitation to torture my neighbour based on the reason that she bleeds like I do is meaningless, is wholly preposterous. It will become apparent by the end of this chapter that the main argument espoused against theistic justification of human rights is the argument that human reason alone, unaided by any divine intervention, is capable of reaching sound moral conclusions.

As was hinted earlier on, the religious justification for human rights builds the concept on a rather selfish premise (though very subliminally). People with religious conviction do things they believe are commanded by God and refrain from acts God prohibits because they aim at gaining some

reward or avoiding punishment in the afterlife (Frankfurt 1971: 7). In this way, God's commands appear to be quite arbitrary and respect for human rights now becomes a Draconian law, bereft of all human autonomy and rationality. This law is also inconsistent with the current perception of the human condition, it must be added. All the so-called commandments of God used by the religious traditions were recorded several centuries and even millennia ago. Human knowledge and capability has generally been overhauled but the so-called divine laws have remained the same. The Ten Commandments for example, state "do not kill" but the scripture (Exodus 20: 13) does not state the conditions under which the law applies. Certainly, a man who is found guilty of first degree murder and is sentenced to die deserves to be killed. This proves that the laws in religious literature are anachronistic and may not be used to ground any contemporary moral regime, as it stands.

The argument above seeks to downplay religion as a foundation for human rights based on the grounds that the prescriptions of religion are dormant and may not be of any use to us in the current dynamic world. But looked at from the religious perspective, this criticism does not create as much difficulty as its propounders would want to make of it. Religious people argue that the "word of God" is everlasting and timeless and scholars of various religious persuasions are able to interpret the laws of the scripture to suit the current moral dispensation.

According to one religious argument, humans are naturally self-seeking and are more likely to act for their own benefit rather than for others and that only the belief in God can create a genuine duty for altruism. This argument has gained much ground since modern philosophy and has led to the

belief that though atheists may display respectful behaviour towards others, it is uncertain that they will always do this since they lack any real sense of duty to (Locke 1959:1.3.7). This missing duty is what has been termed the “moral gap” (Prichard 1921). Theists exploit this gap by positing God as the rightful occupant of this gap. According to theist scholars, belief in god, in his perfectly good nature and his commandments, is what humans need to be able to behave morally and respect their fellow humans at all time. To put it another way, a Jew who has belief in God will, at all times, refrain from harming his neighbour since God prohibits it.

The claim that man has a propensity towards self fulfillment is known as psychological egoism and has been put forward by philosophers like Immanuel Kant. John Locke was also one philosopher who held that the atheist's show of goodness and respect for human rights is without any solid basis and therefore not genuine. But this immediately begs the question of whether this argument has considered that there are various levels of believers according to their level of piety. As soon as this point is introduced, the argument becomes somewhat porous. As Paul Kurtz argues, claiming that God is that element that can be used to ensure humans behave morally at all times is no different from arguing that God is the only thing that can ensure people stay HIV negative all the time; a classical fallacy. Also, the theists cannot claim that they have a reason to be altruistic all the time; become naturally altruistic. This assertion is logically indefensible. As it stands, even if the psychological egoist is allowed his thesis, it in no way implies that human beings cannot, through rational activity, decide to be altruistic at certain times

in order to avoid abusing others. This is exactly what a secular moral theory like the categorical imperative does.

There is yet another criticism against one of the main tools; even the main tool used in the construction of a religious grounding of human rights and this is creationism. Creationism is the theological, philosophical and biblical assertion that man is the product of a supreme being (Thompson 2004: 2). This, as we discovered in chapter three, is the backbone of the *imago deidoctrine*, which runs through all the religious formulations of human rights save for Buddhism. The argument made against creationism is that it is uncritical, unproven and therefore antithetical to the human rights regime itself. Humanists believe instead of creationism, it is more prudent to base human rights on evolution. Evolution, as pioneered by Charles Darwin (1909-1882), is the theory that man developed gradually from a lower animal to his current enlightened state. Evolution encompasses a number of scientific theories that seek to explain the origin and development of the human species as well as other products of nature. Some commentators have however come out to argue that creationism is an equally scientific theory which has many advantages over evolution (Scott 2009: 20).

Creationism and science may or may not be mutually exclusive but that they are different theories is apparent. Creationism begins by postulating a supreme, spiritual being; evolution on the other hand begins by observing nature. This is one striking difference. Though it may be argued that evolution is not full proof, supporters of the theory claim that evolution merely represents the general scientific approach to the question of where from and the how all things came. Creationists can back their theory by religious

revelation, mostly found in scripture whose authorship is uncertain. Evolution, on the other hand, presents verifiable evidence for its claims. Creationists may refute one or more of the critiques leveled against their theory but the most fatal argument against them, this study believes, is the fact that the creationist stories are legion. It then becomes a problem of determining which one to ascribe to in order to support human rights. Creationists have come under much criticism lately especially from the Council of Europe which has argued that the teaching of creationism in schools is inimical to the human rights regime and stifles general human advancement (*Assembly debate* on 4 October 2007 (35th Sitting)).

One significant observation with the religious claim to human rights is that the various traditions derive the concept of right from pre-existing duties. In the religious realm thus, duties precede rights. Wesley Hohfeld is one scholar who stresses the correlation between rights and duties. According to Hohfeld, there can be no rights proper without any correlating duties on others to respect those rights (Hohfeld 1913). The human rights discourse, championed by leading legal minds, has shifted its attention from the debate over whether there is indeed a correlation between rights and duties to determining which concept precedes the other, conceptually. The current direction of the debate on rights and duties may be used as one of the arguments against the religious claim to human rights. Indeed, scholars are now of the view that it is human rights that produce duties. For instance, it is one's right to freedom that creates the duty on another person to desist from kidnapping her (Fredman 2008). The human rights regime was created with the sole aim of imposing certain necessary duties on governments to treat their

citizens with dignity. For this reason, it is only logical to argue that human rights precede duties, contrary to the view held by the religious groups.

Duties cannot exist without the right moral and political instruments in place; human rights create these instruments. This would mean that any set of duties must be based on some right, not vice versa. Person A's right to life cannot and must not be based on person B's duty to respect human life. Instead, the duty to protect life must be based on the right to life. With this order of preference in place, the rights of any person bind the other person instead of merely being left to the other person's discretion. Human duties must be based on rights and they must aid in the strengthening of the human rights regime (Eide 1999). In the legal framework, then, the concept of right must be linked to the concept of duty to ensure a harmonious society. For this reason, some scholars believe that any discourse that considers duties independently of rights will end up undermining the human rights regime. Religion, with its duty-based system of rights is therefore regarded as a dangerous ground for human rights.

One other argument against religion is that moral judgments, by their very nature, are subject to human experience and reasoning. This point puts down the religious argument for the necessity of god for the justification of human rights. The argument is that some things are good in and of themselves by human standards. Some forms of killing which unequivocally fall under murder are generally considered immoral and this is not based on some special revelation or other but arise, as Kurtz put it, out of the reflections on the progression of the human condition; where we are and where we have come from (Kurtz 2009: 197). This suggests that morality or the knack for making

moral judgments and moral thinking is something imbued in the human machine. We have been moral creatures from time immemorial but, in the face of complexities in our evolution as a species, this morality has been lacking in some. This notwithstanding, it is a fact that every society which aims at continued existence has moral principles and these principles do not need to be divinely revealed to them, they are the result of pragmatic thinking. Human rights may be respected by every society - theist or atheist - the only difference lies in the conception of what it means to be human in a society. To say, then, that only belief in a divine entity - who is good and commands only good things - can ground human rights is not very convincing.

Arguably, the main motivation for the Divine Command Theory is the need for an objective set of moral principles which hold true, regardless of time and space. Theists believe that only moral codes sourced from an all-good and eternal God may be truly regarded as objective (Craig 2008). If indeed moral truths are believed to be as objective as theists claim, then they must be equally independent of God. The commands and nature of a supposed creator of the world make no difference in determining whether torture is wrong or not or whether rape is wrong or not.

There is also the argument based on the fact that there are controversial interpretations and teachings found in the various religious traditions of the world. The Christian religion, for instance, bases its beliefs on the teachings of Christ who appears to be a mythical figure created for reasons which are apparently far from being religious. The Council of Nicea which selected which canons were to be included in and which to be excluded from the Bible is indubitably a political vendetta. Some things were just not wholesome

for mass consumption; the “word of god” had to be tailored to keep some people in line. As we discovered in the previous chapter, the word of god, as ostensibly revealed to Mohammed in the Quran, has been variably interpreted by people for a myriad of reasons most of which are largely political. To base the tool for the maintenance of the human race on such a tradition is a gamble at best (Kurtz 2009: 198-199). Religion cannot be used to justify human rights because many, in fact, almost all of its moral prescriptions are obsolete. That a man must beat his wife may have been normal in pre-scientific times but not in these times. Religion is thus too anachronistic to be used as grounding for morality in general and human rights in particular.

Advanced by the religious scholars in the debate is the argument that human rights cannot be justified unless said justification is given a religious grounding. Michael Perry, Wolterstorff and Tawney all advance arguments that implicitly or explicitly state the above thesis. There are, however, numerous theories seeking to present a secular justification of human rights and on the secular side of the debate stands one prominent scholar, Dohrman W. Byers, who attempts a secular grounding for human rights, as a response to Perry’s arguments. Byers, as is typical of humanist scholars, attempts to build a theory of justification for human rights while avoiding the criticisms leveled against religion. This section of the research, therefore, examines Byers’ attempt to remove religion from the human rights equation. The idea, then, is to construct a world which is the exact opposite of Perry’s; a world without a religious worldview. Can human rights exist in such a world? That is the question whose answer seeks to downplay the religious argument for human rights.

Indeed, it is doubtful that every human person is concerned about the world and her place in it. There is, however, one thing that every one of us as humans is concerned about - our wellbeing. One's own wellbeing as a person is indubitably the most important thing to oneself and for this reason whenever one decides her wellbeing demands her obliteration; there are few reasons to prevent such a person from killing herself. A person's well being, as we agree, is based on his/her access to such amenities as food, shelter, clothing, immunity from torture, etc. It is equally valid to claim that in order to achieve these amenities we need other people. A simple point emerges: anything that increases one's well being is morally justified; anything that retards that wellbeing is morally reprehensible and must be avoided. To exact these amenities from the other people who possess them, we may choose the path of force or some other peaceful way. The path of force, one will eventually come to realize, is a strenuous one, demanding enormous amounts of time and energy; time and energy which should otherwise be used to enjoy one's wellbeing. If all human beings are using force to acquire things they need, the strong will be the only survivors and eventually only one person - the strongest human - will exist. To avoid this dog-eat-dog situation, one has to join a moral community (Byers 2010: 5-6).

A moral community is a group of human beings who agree to limit their desires and perform certain actions, considering each other, for their well being of the whole community. In such a setup, a win-win atmosphere is created as each person is assured of her protection and the acquisition of her needs. Gradually, however, some members of the moral community begin to appear to have more protection and wellbeing than others due to the former's

degree of power. Members of the community with the most power receive the most protection and aid from the community whereas those with relatively little power receive little protection and aid. There are also, in the community, those who are denied all aid and protection by virtue of their propensity to disrupt the communal wellbeing. These forms of discrimination are more observable in some communities than in others and in those communities where the contrast is sharp, the result is often a revolt which further threatens the communal wellbeing.

The above described scenario can be used as a secular foundation for human rights which is equally valid. The first condition for a person's wellbeing involves a certain level of protection from the community. For the community to be assured of the protection of any one of its members it must ensure that its protection is evenly provided for all other members. The individual, in this case, is not, under any circumstance, to be seen struggling for the community's protection since it must be given freely. It must be added here that it is not possible for a person to have all she feels she deserves by way of protection and goods necessary for her wellbeing. To ensure that one receives what is as close to perfect as possible for her, she must be willing to give up some things that ensure a perfect life. Thus, to ensure that you are protected by the community, you must be willing to expend some time and energy in protecting others. Interestingly, the implication of the above requirements is that the community now has a moral duty to ensure the wellbeing of each of its members and not to equally protect and aid individual members (Byers 2010: 7-8). This statement is similar to that made by Thomas Aquinas about natural rights. Going by human nature, not all people need the

same amount of aid and the community must therefore provide more for some than others. The community does nothing wrong by doing this; it however does wrong when it pushes harder for one individual to get their needs than it does for another.

Also, to maximize a person's wellbeing, the community must ensure that its members are shielded from external threats. In this regard, the community would have to increase its protection from its citizens to include human beings, as a whole. The logic here is that in the same way human beings need other human beings to ensure their wellbeing, moral communities also need other moral communities to ensure its wellbeing. Wars and human rights violations of the twentieth century demonstrate the importance of inter-community interaction. So, to ensure one's wellbeing, one must either belong to a community of the whole human race or he must belong to one that extends its protection to all human beings. In such a case, even if one leaves their city, they can be assured of protection and care in any other moral community.

Thirdly, one's benefits from a community must be secured and for this reason, one's entitlements to such benefits must be set out in writing or any other way to ensure that members never lose it. If, at any point, a person loses his ability to ensure his own well being or help to protect that of others, she must be assured that her interests will remain intact. For this reason, the criteria for such benefits must be humanity. In all, this translates into the idea that the ideal way to ensure and even maximize one's own wellbeing is to cooperate with other individuals and to join a moral community that seeks to protect everybody else because they are human. Thus, no metaphysical or

religious premises have been advanced for the conclusion that “one must treat all human beings as endowed with some individuality and entitlement as I require for my own wellbeing, simply because they are human”. In this way, the morality of human rights becomes a form of insurance policy; the benefits are the assurance of security and the premium payments are the restrictions on one’s freedom in pursuit of one’s own wellbeing.

So far, unlike the religious theory of human rights which associates human worth (sacredness) with the *imago dei* or the image of god, Byers’ theory, as explained so far, reduces human rights to the self. This means that each person is the source of their own worth. Human worth, other than my one’s own worth, now becomes instrumental to my worth and the other person gets worth insofar as they ensure my wellbeing. But, as per Kant, as shown in chapter one, this is immoral since the human being becomes a means to an end. The above theory, however, goes around this problem by differentiating between types of instrumentalism (Byers 2010: 11).

One form of instrumentalism is proper instrumentalism. When some people, things and actions have this instrumentalism, it means that they are directly linked to the improvement of one's wellbeing. Some of these include good teachers, good healthcare, and so on. Another form of instrumentalism, however, includes people, circumstances, actions and things that have no direct instrumentality upon my wellbeing but which I choose, through love and pity, thereby become part of the factors for my wellbeing. In this way, all human beings are instrumental to my wellbeing in two ways. The first is my relationship with other human beings by virtue of our common membership of one moral community. When I encounter a human being, no matter what role

they play in my wellbeing, I must still treat them with respect since they are part of the moral community that ensures my wellbeing.

Secondly, every human being I encounter, I must consider as the same as myself. The moral community has laws that make sure that I am treated right. So, when I meet another human being, whatever treatment I will mete out to them becomes a precedent and makes the list of permissible things that could be done to human beings. What people do to each other becomes a standard by which I am treated. This may be regarded as an application of the categorical imperative. These two relationships with other human beings show that human beings have inherent dignity. To ensure my wellbeing, therefore, the only criterion I will need to enjoy the benefits of the moral community is, as Byers put it, “DNA certified membership of the species of homo sapiens” (Byers 13).

Apart from DNA certification, any other criterion might lead to a person's, or some other surrogate human being's exclusion and desolation. This statement is the undoing of many human rights theories. Kant's deontologist theory, for instance, bases human rights on rational capacity of humans. The problem with Kant's theory is that the presence of the rational faculty is determined by other people who might decide on its absence and thus, conclude that such a human being has no inherent dignity. Using empirically verifiable criteria for qualification of the enjoyment of the benefits of the community, the human being, as a place holder for me, an extension of my very own self, becomes inherently valuable in a way which is non-instrumental. The inherent dignity of human beings thus becomes a pragmatic nonreligious and non metaphysical concept. With this, Perry's (2008) first

criterion - that a proper human rights theory must demonstrate that each human being has equal inherent dignity - in his definition of human rights is met by Byers' secular theory.

The next criterion of Perry's definition states that the inherent dignity of persons must have some normative force to us (Perry 2008). In other words, knowing that other people are inherently sacred must make us respect this dignity and thereby treat them as dignified beings. Byers' secular theory attempts to meet this criterion without appealing to God or the nature of being. It strictly uses the theory about the realization of one's wellbeing. According to Byers, since one always seeks the realization of what she conceives of as her wellbeing, the realization of which requires the cooperation of others, one comes to believe that cooperation with their moral community is the best way of ensuring their wellbeing. The community in turn cannot protect one's wellbeing effectively unless every member of the community (which is every member of the human race) treats the other person as they will like to be treated.

The golden rule, that is, a secular version of it, becomes an indispensable component to one's wellbeing. As human beings, we may become incapable of action at any time; one will still like to be treated as human in such times, therefore one must treat those human beings who are currently in states of inaction with respect so that others may treat them similarly when their period of inaction comes. It is not the case, then that we treat such disabled persons with dignity because we believe they can ensure our wellbeing, we do it because the moral community requires we do it so we are treated same. It is important to note that the community factors into its

working the members that will not treat others with dignity. In such cases, the community strikes back by withdrawing some of its benefits (withdrawing protection of the freedom to move through imprisonment, the freedom to rest through forced labour, etc.) Punishment, in this case, serves as a deterrent to other members and at the same time, justifies respect for the inherent dignity of other people. The community serves to ensure our collective wellbeing but becomes an impediment to a person's wellbeing as soon as that person becomes an impediment to, or refuses to respect, others' wellbeing and inherent dignity.

Going by the above secular theory, therefore, human rights are prescriptive moral rights due to two reasons. The first is that one is forced to respect others' inherent value because for the moral community to ensure their wellbeing they must ensure that of others. Secondly, to prevent the community's withdrawal of its benefits, each person is obliged to respect the wellbeing of other people.

Perry refers to arguments like that of Byers as "self regarding strategies" and he believes they have two basic weaknesses (Perry 1998 32-33). The first weakness is that Perry doubts that a self- regarding strategy can support anything more than a "mere nonaggression treaty can". Secondly, even if it is granted that self-regarding strategies can support rights which transcend non aggression treaties, it is not certain that such rights will be human rights; it might only be rights for people who fear for their wellbeing or have reason to believe they will have to fear one day. Or they may be rights for people who need one another's cooperation or believe they will in the

future. Perry concedes that self regarding arguments are not flawed but merely too weak to support human rights (Perry 1998: 35).

Byers counters Perry's arguments, however, with two points. Perry's perceived weakness is not true; it is not true of self regarding arguments *per se* but of the proponents and opponents of such arguments. These proponents and opponents end up making "self-regarding arguments" either too naively self-centered or too arrogantly self-confident. Naïve self-centeredness is the belief that some human beings are so weak that they cannot impact on my wellbeing. Naïve self centeredness, however, has been dealt with by modern psychology.

The other defective forms of the self-regarding argument are those that proponents tend to make into arrogantly self-confident ones. In such arguments, the morality of human rights is grounded on reciprocity. Person A only deserves my respect and rights because he can either harm or benefit me. The handicapped, for instance, are deserving of no rights as per this theory. But the arrogance here lies in the belief or the self-confidence that we will never be among the handicapped. This is a fallacious assumption, considering the certainty of old age and such occurrences like accidents which may leave one defenseless and dependent.

A perfect example of this version of the argument is that of Nietzsche. Nietzsche critiques morality as being a way by which the weak exact respect from the strong. This critique is however useful to the theory of human rights proposed by Byers since everyone considers herself weak and considers other human being as the stronger. In this case, we must treat the stronger person, who in turn sees us as the stronger person, with respect. It might be the case that one might never need the kind of protection she gives other human beings

but that is what makes human rights in this theory appear like an insurance policy. One aids the wellbeing of others, not for immediate reciprocity but so one is assured of assistance in the future. Arrogant self-confidence has, however, been disproved by economic and communication globalization, among other factors that have educated people on the nature of the world we live in and how connected we all are.

Perry has made the argument, citing some witnesses as testimonies, that without a belief in a transcendental deity who has created humankind and made them brothers and sisters, it will be impossible to ground human rights. Byers' secular theory, however, seems to surmount this hurdle to some extent. Perry cites Canadian political philosopher, Charles Taylor, who claims that without God, the human rights will be reduced to human goodness. Human goodness, as a subjective concept, may eventually be reduced to radical individualism, the very antithesis of universality (Taylor 2003 cited in Perry 2008: 323). But Byers' theory, as we have seen, uses this human good, even human individualism and egoism to build a human rights theory.

Comparing Byers' theory to Wolterstorff's religious theory of human rights, it appears the secular theory still holds its grounds. Wolterstorff makes an argument which appears almost like Perry's and he actually sets out the criteria for the type of nature humans should have that gives them intrinsic worth. This property has to be exclusively human; must not be a relational property; it must accord humans with non-instrumental worth. These are all criteria that have been met by Byers' theory.

Responding to Wolterstorff's criteria advanced in the paragraph above, Byers argues that in both the religious and secular theories human worth is a

relational property. In the religious theories, the relation is to God and in the secular theories, it is to one's wellbeing. If God created humans to be worthy of respect and love, is it the case that he does so with equal efficiency to all humans? In the secular theory, though worth is relative to and instrumental to my wellbeing, it is no entity's prerogative to bestow it. A closer look at the secular theory reveals that the said instrumentality is confusing since because every human being stands in for me, I must not treat them as mere instruments for my wellbeing. However, they are deemed to have worth for me only in relation to my wellbeing. In the secular theory, only human beings can be one's surrogate. Therefore, whereas the religious theorists speak of *imago dei* (image of God), the secular theorists speak of *imago mei* (my image).

Conclusion

This chapter has explained and examined various arguments leveled against religion as grounding for human rights and of morality in general. These arguments seem to advance reasons why religion must not be used as grounding for human rights. The arguments border on the fact that religion is not needed in human rights discourse; that mankind can do just well on his/her own, without any divine intervention. Also, some arguments exploit the fact that religious traditions are legion and most often have conflicting accounts of what morality really is (though none of these traditions ever denies knowledge of the moral). "The word of God" is also open to interpretation - after all, God is not on earth to explain his laws - and this poses yet another challenge for religious scholars. The commandments of God are unchanging, a fact that has different implications for both humanists and theist alike; humanists understand this to mean that God's laws are not dynamic and are therefore

obsolete, whereas theists believe the unchanging nature of the laws demonstrates their effectiveness as guides to life. To the religious person, God's laws do not change.

CHAPTER FIVE

SUMMARY AND CONCLUSION

The study has, thus far, met the objectives it set out to achieve. Human rights, as we have shown, originated, albeit arguably, from Ancient Greece. In the historical assessment of human rights done in chapter two of this research, Aristotle and Sophocles are shown to have used terms which were conceptually equivalent to human rights (Sophocles 1998: 11-454-5; Shestack 1998:10). The term gathered momentum, throughout the Roman Empire, up until the age of enlightenment. What happened in this age of enlightenment was that the concept of rights was given a secular underpinning, though it still saw expansion through wars and human scholarship. Through the minds of such scholars as John Locke, human rights became a tool used by citizens to maintain balance in their relationship with the state (Locke, 1690: Chap. 6 sec. 8). Historically, therefore, we conclude that the term from which our current human rights terminology originated was a religio-juridical one and this is considered as one argument for putting religion at the centre of human rights theorization. To fully understand a particular concept, it is important to identify its origins and by doing this, this study has shown that human rights and religion are closely related concepts.

The various religious traditions examined in the study also gave some validity to the claim that religions do have something to offer as far as human rights justification is concerned. On pages 67 and 68, in the third chapter of this research, it is shown that Buddhists believe in the interdependent nature of all the entities in the universe (*Samyutta Nikaya* II.p28). Since everything is connected to everything else, it is in our best interest as humans who seek

continued existence to treat everything with respect. The theory of interdependence may be a cosmological one but looked at from the point explained above it holds great prospects for human rights justification. Buddhists also attempt to justify human rights using their central theme of suffering - its existence, origin, cause and cessation (Armstrong 2001: 77). As discussed on page 68 of this study, for a Buddhist to be able to avoid suffering through the cycle of karma, Buddhists believe one must abide by the human right codes. Respect for another's life allows these other people the room to pursue their salvation. In the same way, respect for human rights provides conditions for people to pursue their own salvation. Indeed, a person whose right to life is taken away abruptly and unjustly is no more, and can therefore not lead a life worthy of salvation and free of suffering.

As with all the religions, Buddhism has an embedded set of duties which may also help justify human rights. These five precepts prohibit most human right abuses and in turn, create such rights as those to life, property and a host of others. As was discovered in chapter four (Chapter three, page 84), duties are the cornerstone of human rights (King 2000: 300). The duty to avoid stealing creates a property right for whoever owns property, by Buddhist standards.

Hindu dharma also serves as a religious justification for human rights. The role of man, according to Hindu tradition, is to maintain God's created universe. This universe, however, begins with human society, i.e., our relationship with others and we must maintain this relationship (*Bhagavad Gita*: 2.47). Maintaining a relationship with others means avoiding conflict

and this can best be done through respect for human rights (Chapter four, pages 73-74 of this study).

The caste system, at first glance, appears to be an obstacle to human rights in the Hindu context but as this study has shown, this is not the case. The caste system is but a political ordering of society, it is flexible and in no way repressive on mainstream reading. This discussion of the caste system is done in chapter three (page 74). You are what you do in the Hindu society and to change who you are, you only have to do more. Since all souls are equal in the eyes of God, Hindus believe that all men are equal with regards to dignified treatment; people may be superior in other aspects as skill and knowledge but they all deserve the same amount of respect. Since equality is the pillar upon which human rights are built, the Hindu theory of souls qualifies as a valid justification for human rights.

As a set of duties, the Islamic Sharia has more than little to offer the human rights justification project. Laws prohibiting theft, adultery, murder, and so on most definitely open up avenues for people to claim rights to property, life, conscience, among others. The concept of equality features strongly in Islamic thought as women and men, Muslims and non-Muslims are considered equal and therefore worthy of the same amount of respect (Quran 4:124 (Oxford World's Classic Edition)). The problem with the Islamic justification, as we have discovered, is the disparity between the religious teachings and the existing practice. However, this study set out to search for a possible justification of human rights in Islam and it has been discovered that it is there (Chapter four, 76-82). Misinterpretation and misrepresentation of Islamic thought is what has turned the world against Islam and marked the

religion off as an anti-human rights religion. But a closer look at the religion, as this study has done, reveals strong arguments for human rights in Islam.

Jews and Christians have almost the same arguments justifying human rights. We are like God, meaning that we are as special as the very Being that made us (Genesis 9:5-6, King James Version). This is a great motivation to respect human rights since to abuse the rights of one person is to abuse the rights of the creator himself. Also, if creation began with a single person, then each single person holds the prospects of being the forebear of a human race as great as the current one (Bosker and Bosker 1989: 7). The whole world came about because of one person; we are individual persons; therefore the world is here because of each one of us. With this in mind, Jews emphasize the importance of safeguarding the dignity of our fellow humans and of standing up for ourselves, once another person attempts to take away our rights.

There are also commandments from God which may be regarded as right-creating commandments. These commandments are contained in separate pacts made between God, Noah and Moses. These commandments contain prohibitions on vices like murder, theft and fornication (Leviticus 19:18, King James Version). The Noahide covenant, for instance, contains a command to aid distressed neighbours. Christians also base their justification for human rights on agape; selfless and affectionless love. This, Christians believe, is what Christ admonished his followers to pursue before his crucifixion. In this regard, to respect human rights is to obey Christ (Chapter three, pages 60-63).

Indeed, religious groups have had one or two encounters with the current human rights regime and this is expected because, since the UDHR was passed, all attempts have been made to secularize it and make it liberal. This over-liberalization which the UDHR seems to preach is what religions, specifically Catholicism and Islam, are vehemently opposed to. Even in the face of open resistance to the UDHR, no religious leader or religious group has put on record that human beings do not have rights based on their special DNA. As Donnelly (1982: 304) rightly put it, religion dwells on group rights whereas the UDHR dwells on individualism and this is one main contrast between the two but this difference does not mark religion off as being anti-rights. Indeed if the observation made by Donnelly is anything to go by, it should buttress the point that religion and secular institutions both have concepts of rights; the former advocating rights for the majority and the latter, for individual people.

The above arguments notwithstanding, various scholars of secular-humanist orientation have put forward arguments to show why, for one reason or other, religion cannot be an avenue for the justification of human rights. The arguments against religion analyzed in chapter four of this study tend to explain why religion is not to be allowed into the discussion on the justification of human rights. That religion provides no real rights is based on the claim that religion only prescribes duties. But we have been able to show, on pages 90-91 of this study, of what importance the concept of duty is to human rights. Where there is a duty, there is a right and vice versa. Though there are some duties that do not correlate to rights, the duties set forth by the various religious traditions examined in this study do indeed create rights for

others. The five precepts of the Buddhists, the law of dharma, the Sharia and the Ten Commandments all have duties that translate into rights, and human rights at that (65-71, chapter three). As King (2000: 300) has even argued, where there is a duty, there is a right.

The image of God is indeed a topic of great debate across the various religions but this observation is only harmful to religion as a justification of human rights when one tries to look at God as one entity. The argument against religion based on the multiple conceptions of God will hold only if the world had only one religion. It is valid to assert that to all Buddhists, God is one; this is the same in the case of Christians. The different conceptions of God have nothing, arguably, to do with the use of his commandments to propagate human rights.

The Euthyphro dilemma, the Socratic argument against the Divine Command Theory, seems to have some damaging effects for the religious arguments since it shows how religious scholars remove the moral value of an action from the reach of the acting person to a metaphysical entity. However, the claim that an action's moral value is determined by its being in or out of line with God's commandments has yet to be proven as immoral. The Divine Command Theory, as an ethical theory, is under much attack from humanists but is yet to be dismantled definitively. It continues to be the guiding principle of many people across the world and scholars are jumping the proverbial gun if they claim that the Divine Command Theory downplays religion's role as a justification of human rights.

The claimed impossibility of pure human altruism, the bedrock of selfless love, is also raised as an argument against religion as a justification of

human rights. The argument, as the study has shown on page 89 of chapter four, puts too much premium on the purity of altruism involved in human actions. One does not always have to be an altruist in order to act for the benefit of others. Indeed, as morality and ethics advance, we become more aware of the dynamic nature of human behaviour and the need to adopt a situational form of ethical theory. Humans may not be altruistic regarding many other things but be altruistic regarding the protection of the rights of others.

The humanist attack on creationism appears to be unfounded and unsubstantiated, as discussed on page 90 of chapter four. As a religious hypothesis, creationism cannot be theorized but neither can it be validly refuted. The origin of the universe and everything in it is still a matter of conjecture, both scientific and unscientific. To claim that the scientific explanation trumps the religious one is fallacious at best.

Byers' theory of a secular justification of human rights, examined from page 93 to 101 of chapter four, is a quite sound one. The burden of proof which lay on secular humanists to propound a justificatory theory that circumvents religion is skillfully lifted by Dohrman Byers. Byers' theory serves to disprove the statement by Perry that human rights may only be justified with religion (Byers 2010). Indeed, an atheist, who is concerned about his wellbeing as a human being is equally capable of respecting human rights, and for a valid reason, contrary to what religious scholars like Locke claim (Locke 1959:1.3.7).

The main problem then becomes one of practice, that is, how religion promotes human rights in reality. On the ground, however, it appears religious

abuses of human rights are becoming more widespread. But one should bear in mind that as in all institutions, there are those who interpret scripture in order that the teachings may suit their own parochial interests. This in no way affects the effectiveness of religion, as an institution, in justifying human rights. The study also set out to test the claim that religion is the only way to justify human rights, a notoriously religious concept. As Byers' secular theory of justification shows, the above assertion is weak. Other methods do exist for justifying human rights. So, to claim that religion is the only or even the best is to miss the whole point by light-years.

Religion is based on faith and revelation; reason attempts to justify held beliefs. The problem is that the nature of religious belief makes them impossible to prove. The arguments against religion as a viable justification for human rights aim at putting the institution of religion in bad light. Indeed, religions may be legion, the concept of God and what he commands may be confusing but the question still remains: can human rights be justified using religion? The answer to this question, this study has shown in the third and fourth chapters, is in the affirmative. Any attempt at examining religion as a ground for human rights must thus target the very arguments religious scholars use to support human rights. A proper argument against a Buddhist justification of human rights, for instance, should be aimed at questioning the effectiveness of the Buddhist concept of human suffering in supporting human rights.

The implications of the findings of this study include the possibility of drawing up a justification of human rights that incorporates both religious and secular doctrines. The arguments made against religion are all surmountable

due to the purely subjective nature of religious experience. The recommendation of this research paper is that if religion holds the deeds to human rights justification, it must be outsourced; a secular theory of sort must be used side-by-side. This position is based on the observation that the two sure groups of people in the world are religious people and secular people. To get human rights across to any person, a theory of justification must appeal to both faith and reason.

This researcher believes the mistrust behind the UDHR - which is caused by the document's European origins - can only be diffused if human rights justification is made to include religious ones. The work of secular human right theorists must be to determine which secular theory of justification, out of the large number, is most likely to appeal to a wider array of people. What this study has done, then, is to show that the question on religion and human rights justification must not be one of whether it is a possibility - that is a given - but of how effective religion is as a justifying institution of human rights.

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