Freedom of Religion as a Distinct Human Right

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Eleanor Roosevelt’s remark about the Universal Declaration

- ”A new Magna Carta for humanity”.

- However, in comparison to the original Magna Carta (1215) the UN Declaration is a very substantial human rights document with civil, political, economic/social and cultural rights.

- The core document of the global human rights community today. In many ways ”complete” but concerns have been raised to ”rewrite it”.
"The Human Rights Family"

- All human rights can be seen as members of a family where interdependence, interrelatedness and indivisibility are seen as main characteristics (in tune with article 30 of UDHR and the Vienna Declaration of HR 1993) Some members are "parents" in the sense that they are absolute and foundational (the right not to be tortured and the right not to be enslaved, freedom of thought) while other rights are "siblings"
”The siblings” in the human rights family?

- Freedom of expression
- Freedom of association
- Freedom of religion (except for forum internum – freedom of thought which is an absolute right).
- ”Siblings” have to adjust to one another and they are not absolute rights (they have qualifications). This is also in line with the UN Declaration – article 30.
Article 18 in UN Declaration of Human Rights

- Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his or her religion or belief (my remark: not conscience), and freedom either alone or in community with others and in public or private, to manifest his or her religion or belief in teaching, practice, worship and observance.

- A very substantial article!
Challenges/threats to freedom of religion

- **Political challenges** (oppression of religious minorities from other religious groups and direct/indirect discrimination from the state)

- **Intellectual/ideological challenges** (for example - questioning the reasonableness of freedom of religion as a distinct human rights).
Various criticism of the human right to freedom of religion

- 1) Criticize human rights generally or partially (utilitarianism, marxism, communitarianism, feminism, cultural relativism, post-modernism)
- 2) Critizise religion (atheism)
- 3) Critizise freedom or the right to change one´s religion (theocracy)
- 4) Critizise the distincticiveness of the right to freedom of religion (”secularism” or human rights ”reductionism”)
The Distinctiveness of Freedom of Religion as a "family member"?

Why not only cultural rights, associational rights, conscience and belief, freedom of speech, freedom of education, property rights, freedom of movement etc.? (James Nickel)

More accurate and fair to talk about a right to ethical independence? (Ronald Dworkin)
Why the urge for a reduction?

1) *Simplicity* - the epistemetic ideal that a theory or a scheme of rights is more reasonable if it is characterized by as few principles as possible.

2) *Emphasize the most salient ethical features* such as conscience (Nussbaum).

3) *Get rid of unfair positive treatment of religious identities and convictions* (in comparison to non-religious beliefs).

4) *Religion – unreasonable* (atheism).
Other critical concerns

A) The fight for freedom of religion has to some extent been linked in recent years to conservative political agendas in some countries (preserve collective religious autonomy)

B) Freedom of religion as a collective right undermines it as an individual right,

C) Freedom of religion often seems to clash with other cherished rights such as freedom of expression and anti-discrimination principles (”messy” member of HR family).
Response 1:

- Human Rights Declarations such as UDHR can´t be compared to ethical theories such as utilitarianism or ”duty ethics” (that may have as their desiderata simplicity and the urge for ”master concepts”)) Rights declarations are responses to - historical situations, atrocities such as discrimination - with the purpose of preventing this to happen again. Main purpose of UDHR: raise the moral stature of man in the light of global challenges.
Response 2:

- **A)** The struggle for freedom of religion has often been linked to the fight for other freedoms. How freedom of religion is respected is an indicator how other freedoms and rights are respected (Briam Grim & Roger Finke – ”The Price of Freedom Denied”)

- **B)** In UN documents – freedom of religion is seen primarily as an individual right.

- **C)** Other rights also clashes with other rights. Freedom of religion - a precondition for other rights?
More responses:

- To deny freedom of religion the status of being a distinct human right sends a signal of a degradation of religious freedom.

- To take away freedom of religion has negative effects on the other members of the HR family. Freedom of religion has been a catalyst for other human rights and freedoms. Religions have also functioned as critical vantage points vis-à-vis political states thru history (Peter Berger)
Reduction of freedom of religion given certain assumptions

1) Intellectualized view of religion (religions are primarily belief systems).

2) However, many religions include practices—also at an individual level in all walks of life (not only within associations or for groups).

Hence, freedom of belief and freedom of association not enough to explain freedom of religion.
Freedom of religion not exposed to common criticism of HR!

1) Article 18 does not express an individualistic view of man (religion is often practiced in communities and in public arenas). 2) Not a cultural parochial right that only reflects limited cultural traditions, i.e. religions universal throughout the history of mankind (in comparisons to for example nations). Hence, on the basis of the points above freedom of religion "answers" criticism from marxism and cultural relativism.
Religious rights or freedom of religion beneficial for HR family

- Empowerment of human beings (H. Bielefeldt)
- Make it possible to think about life, humanity and the world in the most overarching terms and act in accordance to those thoughts/beliefs.
- Also beneficial for the human rights scheme as a whole if one endorses the view that religious/philosophical reflections are important for the formulation and justification of HR. The HR articles can be "embedded" in various religious frameworks.
Freedom of religion - a natural member in the HR family

- Especially in the light of *human dignity* as a foundation for human rights. Man’s search for ultimate meaning and understanding is an important part of being a human (in comparison to animals). Hence, respect for human dignity implies respect for freedom of religion. Human dignity presents also a general or ”all encompassing” foundation for *all* members of the HR family.
Human dignity as a justification for human rights

- Freedom of religion receives a secure place in the HR family on the basis of human dignity (in comparison to other theories of justification such as justification from basic needs (Miller) or preconditions for human agency (Griffin))

- Respect for human dignity means respect not only for basic needs & human agency but also for a person’s will and ability to express herself through overarching existential interpretations of the world.
Learned Hand from ”The Spirit of Liberty” (collected writings)

- On the limits of rights schemes, laws, declarations and conventions: irrespectively of how good a human rights scheme is the source of morality lies elsewhere.

”Liberty lies in the hearts of men and women; when it dies there, no constitution, no law, no court can save it.”

Hence, UDHR as a moral educational project!