

Religion and Limitations to the Protection of Human Life

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Abstract

Despite the contention that modern legal systems should function as if God did not exist, religious beliefs and practices continue to play an important role in how people develop, interpret, and choose to respond to legal systems. This article seeks to investigate the relation between religion and international human rights law, focusing on the protection of life in three religions: Hinduism, Islam, and Christianity. Political theory is drawn upon to argue that the motivation to adhere to norms within international human rights law is not only contained in these norms themselves, but that each of the religions surveyed has the potential to provide additional motivations to adhere to norms related to the right to life and its deprivation. Based on this exploration of selected authoritative legal or quasi-legal codices and principles, the article finds that these religions affirm the importance of protecting life and all three religions find that arbitrary deprivation of life is unacceptable, but that the protection of life is otherwise not the supreme value in any of three religions surveyed.

Keywords

Right to life; religion; protection of life

1. Introduction

The relationship between religion and modern legal systems is tension-ridden. This is not surprising, as religion is often used to propagate and support ideas and ideologies that are at odds with modern international human rights law. Cases where Christianity, Islam, and Hinduism have curtailed the rights of minorities and women, freedom of expression, or freedom of association abound.

This article seeks to investigate the relation between religion the protection of human life, with the interest in understanding the relative importance accorded to the protection of life and the circumstances under which the deprivation of life is deemed acceptable. It should be emphasised at the outset that the focus of international human rights law on life pertains to individual life, not the life of the group or the species as a whole. 'Life' is also understood in general terms, starting at conception or birth and ending at death – notions of the afterlife are not brought into play.

Three components of the value that international law attaches to life are taken as points of reference. In the first place, international human rights law regards the right to life of the individual as 'the supreme right'.¹ In accordance with, for example, O'Connell in her

criticism of United Kingdom Parliamentary Joint Committee on Human Rights' report on targeted killing, the right to life is regarded as *jus cogens*, '... a peremptory norm of international law'.²

At the same time, secondly, we acknowledge that strict limitations to this right are allowed, most often expressed as the prohibition of the arbitrary deprivation of life. This logic is reflected in numerous regional and international positions on the right to life. In its comment on article 6 of the International Covenant on Civil and Political Rights (ICCPR), the United Nations (UN) Human Rights Committee affirms that 'no derogation' from the 'inherent right to life' that all human beings share can be permitted and continues by stating that no life may be taken 'arbitrarily'.³ Article 4 of the African Charter on Human and Peoples' Rights (African Charter, also known as the Banjul Charter) in like manner describes human beings as 'inviolable', entitling them to respect for their lives and the integrity of their persons.⁴ It continues by affirming that no life may be taken arbitrarily. The Arab Charter on Human Rights and the American Convention on Human Rights also state that every person's right to life should be respected, and that no life may be taken arbitrarily.⁵ The European Convention on Human Rights, whilst not making explicit use of the term 'arbitrarily', prescribes restrictive circumstances under which the deprivation of life is permissible.⁶

The General Comment on the Right to Life in the African Charter is one of the most recent attempts at synthesising and bringing into clear focus the limitations to the protection of the right to life.⁷ This is done by describing the circumstances under which taking a life should not be viewed as arbitrary. A life may only be taken if this is acceptable under international law, which means that the 'intentional deprivation of life' is only allowed '... if it is both necessary and proportionate'.

In addition, human rights law also regards accountability for arbitrary deprivation of life as an inherent part of the protection of the right to life. Where there is no real accountability that restores a norm once violated, there is – in effect – no real right. Christof Heyns, the former UN Special Rapporteur on extrajudicial, summary, or arbitrary executions, cites the UN Human Rights Committee (General Comment 6 and General Comment 31) and the 2005 UN Basic Principles and Guidelines on a Right to a Remedy and Reparation to argue that accountability, when the arbitrary loss of life has taken place, is as much part of the right to life as preventing the loss of life.⁸ He continues by delineating 'necessity' and 'proportionality'.

²Mary Ellen O'Connell, 'The Law on Lethal Force Begins with the Right to Life' (2016) 3 Journal on the Use of Force and International Law 206.

³International Covenant on Civil and Political Rights (ICCPR) (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171.

⁴African Charter on Human and Peoples' Rights (African Charter or Banjul Charter) (adopted 27 June 1981, entered into force 21 October 1986) Organisation of African Unity (OAU) Doc CAB/LEG/67/3 rev 5, 21 ILM 58 (1982).

⁵Arab Charter on Human Rights (adopted 15 September 1994) League of Arab States; American Convention on Human Rights (adopted 22 November 1969, entered into force 18 July 1978) Organisation of American States (OAS).

⁶Elizabeth Wicks, 'The Meaning of 'Life': Dignity and the Right to Life in International Human Rights Treaties' (2012) 12(1) Human Rights Law Review 201.

⁷African Commission on Human and Peoples' Rights, *General Comment No 3 On The African Charter On Human and Peoples' Rights: The Right to Life (Article 4)* (4–18 November 2015).

⁸Christof Heyns, 'Human Rights and the Use of Autonomous Weapons Systems (AWS) During Domestic Law Enforcement' (2016) 38(2) Human Rights Quarterly 362.

This article seeks to investigate the extent to which religion supports or detracts from the value that international law puts on the protection of individual life, as explicated in terms of the three components set out above.

At the outset we should acknowledge that an all-encompassing answer to this question is hardly possible. Very many groupings could be called religions, and each religion consists of a vast array of sub-groupings. Some might argue that the very concept of 'religion' has only limited usefulness, as it not always clear if 'religion' refers to a single phenomenon that adequately describes groupings typically called religions. Even if we agree on the usefulness of the concept of religion, we are faced with a further set of challenges. Where do we search for evidence of the value of life in a particular religion? Do we identify and investigate a corpus of authoritative texts, or do we engage the thought of authoritative theologians and spiritual leaders? And in those religions in which a corpus of authoritative texts plays a key role, how to we choose between the different, at times conflicting, traditions within these texts? Should we include the different understandings of textual authority in our attempt at interpreting and possibly even comparing these texts?

These and other complexities compels the application of an inductive, even exploratory, approach, with very definite delimitations. This study seeks to explore perspectives on the value of protecting human life relative to other values in only three religions: Hinduism, Islam, and Christianity. These religions are chosen as they are regarded as the three largest religious groupings in the world,⁹ and as each of these religions bases its beliefs and practices on a corpus of authoritative texts. For the purposes of this article, this study is limited to the exploration of selected authoritative legal or quasi-legal codices or principles, and excludes the exploration of the value of human life in the many traditions of interpretation that developed subsequent to the 'canonisation' of the authoritative corpuses of texts. The goal of this investigation is not to provide an exhaustive interpretation even of these selected codices and principles, but to undertake a preliminary investigation into the relative importance of the protection of human life in selected religions. This article seeks to compare this with human life, and the protection thereof, as the supreme value in international human rights law. This section has outlined the question this article seeks to explore and has provided a short overview of the importance attached to human life in international human rights law. This will be followed by sections on Hinduism, Islam, and Christianity. We start with an introduction to general tenets of each religion, aimed at highlighting specific doctrinal elements upon which we will expand in a discussion of the relative importance of the protection of human life in the respective religion.

Despite major methodological challenges, such as identifying and comparing authoritative texts and legal or quasi-legal codices or principles, we conclude with a section in which we synthesise some emerging findings. We find that in the codices and principles investigated in the authoritative texts of each of the religions, the protection of human life is an important but not the supreme value. In each of the religions, limitations to the right to life are expressed in terms of distinctive religious arguments or argumentative structures. Based on this preliminary exploration, it might even seem as if limitations to the protection of life are often embedded in the accountability logic of the respective

⁹According to the most recent data from the Pew-Templeton Global Religious Futures Project, 2.17 billion people describe themselves as Christians, 1.6 billion as Muslims, and 1.03 billion as Hindus. According to their projection, by 2050 these numbers will be 2.92 billion Christians, 2.76 billion Muslims and 1.38 billion Hindus. See Pew-Templeton Global Religious Futures Project, 2016, Data Explorer <www.globalreligiousfutures.org> accessed 16 August 2018.

religion, which is again embedded in the religion's distinctive argumentative structure. It is certainly not implausible to argue that the protection of human life as the highest value is by no means a universal value, but the expression of a particular set of histories and intellectual traditions. To be sure, religious values certainly support the protection of life and the emphasis on life as a very important value, but it is not possible to simply say that religions support life, and its protection, as supreme moral goods. In the concluding paragraphs, we draw on the role of religion in motivating commitment to domestic and international legal norms to outline some implications for the link between international human rights law and religious convictions pertaining to limitations to the right to life.

2. Hinduism and the Right to Life

2.1. Key characteristics

It is deceptively difficult to identify unifying beliefs and practices amongst adherents of the largest religious groupings in the world. This is, at least partly, due to the localisation and differentiation that occur in such large groups. Another reason is the descriptive limitation of the very concept of 'religion' and related concepts such as 'theology' and 'morality'.¹⁰ This is especially the case for Hinduism. Despite Persian authors' use of the word 'Hindu' in the eighth century,¹¹ the use of 'Hinduism' to designate a religious grouping can be traced only to the nineteenth century.¹² To this day the most appropriate definition of Hinduism uses geography, rather than theology, as the defining feature of Hinduism. It denotes 'the religion of the majority of people in India and Nepal and of some communities in other continents who refer to themselves as "Hindu"'.¹³ Hinduism could be viewed as '... a group of religions which have much in common between them, but in which there are also many differences and contrasts'.¹⁴

Despite the huge diversity amongst those who describe themselves as Hindus, it is possible to identify certain shared features, notably a corpus of authoritative texts.¹⁵ These texts can be divided into two classes, namely the *śruti* and *smṛti*. The *śruti* is the most authoritative class of texts in Hinduism and includes the four layers of the Vedas. The most ancient layer is the Vedic hymns (or *Samihitās*), followed by the prose of the *Brāhmaṇa*, the *Āraṇyakas* and the *Upanisads*, in which reflection on the meaning of the Vedic hymns that one also finds in the *Āraṇyakas* is developed further. The *smṛti* consists of all the other authoritative texts in Hinduism, including the *Mahābhārata* epic, which contains the *Bhagavad Gītā*.

2.2. On the protection of human life

For most Hindus, the authoritative texts do not present a philosophy to be understood or doctrines to be believed, but principles according to which to order one's life and practices

¹⁰Francis X Clooney, 'Restoring "Hindu Theology" as a Category in Indian Intellectual Discourse' in Gavin Flood (ed), *The Blackwell Companion to Hinduism* (Blackwell 2005).

¹¹Gavin Flood, 'Introduction: Establishing the Boundaries' in Gavin Flood (ed), *The Blackwell Companion to Hinduism* (Blackwell 2005).

¹²Paul Hacker, 'Dharma in Hinduism' (2006) 34(5) *Journal of Indian Philosophy* 479.

¹³Flood, 'Introduction' (n 11) 2.

¹⁴Hacker (n 12) 479.

¹⁵Harold Coward, *Scripture in the World Religions* (Oxford University Press 2000) 106–11.

that will lead to ‘a better rebirth’.¹⁶ An important – and indeed unifying – set of principles is the *trivarga*, or three goals according to which one’s life should be lived. These goals are *dharma*, *artha*, and *kāma*. *Moksa* is often added as a fourth goal, and this set forms the *Purusārta*s.¹⁷ For our purposes, *dharma* is of particular interest, as it provides a framework for understanding the importance of human life.

Dharma, defined broadly, can be understood as ‘... the right way to maintain order and balance in the universe’.¹⁸ Balance is set as the ultimate end and is achieved if every element in the universe acts according to its *dharma*. Caste and the stage of life of a person determine the *dharma* of each individual.¹⁹ In order to understand how caste and stage of life determine each individual’s *dharma*, the different castes and stages in Hinduism must be noted.

Four castes are typically identified: the Brahman, the Kshatriya (warriors, rulers, or nobles), the Vaiśya (farmers and merchants), and the Śūdras (servants). Four stages of life can be understood as cutting across the four castes. They are that of the student, the married man, the hermit, and the wandering ascetic. Some of the castes have certain kinds of *dharma* in common. Every caste, however, also has its particular *dharma*.²⁰ The *dharma* of the Brahman, for example, includes teaching the Vedas and receiving specific gifts. The Kshatriya are responsible for law and order, whereas the *dharma* of the Vaiśya would typically include trade and crafts. The *dharma* of the Śūdras can only be found in serving others. The *dharma* of the three upper castes is further divided in terms of states of life. It should be noted that the *dharma* of men and women related to the different stages of their lives differs. Boys at a young age are typically regarded as *brahmacārin*, and their *dharma* consists in studying authoritative texts under the guidance of a *guru*. In the stage of life that follows, their *dharma* changes to that of a householder. Young men are expected to establish and look after a family and father a son. The third stage of life includes retirement from active public life. The fourth and last stage of life is that of wandering ascetic or renouncer. The life-stage *dharma* of women is determined only by one rite of passage, namely their wedding.

According to an influential tradition in Hinduism, as attested to in texts such as the *Rāmāyana* and *Mahābhārata*, the absence of violence, or cruelty, is *dharma*.²¹ The term *ahimsā* is often used to describe this precept and plays a major role in defining Hindu attitudes towards war and self-defence. *Ahimsā* also provides a useful point of access for understanding Hindu attitudes towards the right to life and its limitations.

Ahimsā is most commonly translated as non-violence, or compassion. Such translations might conceal the fact that *ahimsā* is a complex concept with numerous related meanings.²² Depending on the context in which it is used, its meaning may refer to ‘not causing injury’, ‘not adopting an aggressive attitude’, ‘not having an unstilled

¹⁶‘Hinduism’ in John Bokwer (ed), *The Oxford Dictionary of World Religions* (Oxford University Press 1997).

¹⁷Even though the vast majority of scholars agree these three, or four, goals can be viewed as distinctive and unifying categories, there are some dissenting voices. In this regard see Donald R Davis, ‘Being Hindu or Being Human: A Reappraisal of the Purusārthas’ (2005) 8 *International Journal of Hindu Studies* 1.

¹⁸Ludo Rocher, ‘The Dharaśāstras’ in Flood, *The Blackwell Companion* (n 10).

¹⁹Hacker (n 12) 482–83.

²⁰Rocher (n 18) 103.

²¹John Brockington, ‘The Concept of Dharma in the Rāmāyana’ (2004) 32(5–6) *Journal of Indian Philosophy* 663.

²²Ian Proudfoot, *Ahimsā and a Mahābhārata Story: The Development of the Story of Tuladhāra in the Mahābhārata in Connection with Non-violence, Cow Protection and Sacrifice* (Asian Studies Monograph Series 9, Australian National University 1987).

spirit', 'not taking life', or 'not causing pain'.²³ Despite its range of meanings, the general thrust of this concept is clear: it refers to actions and attitudes that do not cause harm. According to the *Manusmṛti* [Laws of Manu], an authoritative attempt at collecting and systematising Hindu legal and moral precepts in 880 BCE, people belonging to all castes should refrain from any form of causing harm.²⁴

Does this mean that the protection of human life is the supreme value in Hinduism? The caste-specific and life-stage specific form *dharma* takes in a respective context seems to point towards a negative answer. The protection of human life or, put more broadly, refraining from causing harm, is embedded into an argumentative structure aimed at ensuring interpersonal, societal, and cosmic balance. In fact, ensuring accountability for gravely endangering *dharma* is one of the only limitations to the right to life.

To be sure, Brahmins, and, in particular, those who have reached the stage of life in which they are renunciators, are especially bound by the injunction to be non-violent. Brahmins in general are expected to live lives of '... purity and focus on learning and meditation'.²⁵ But this is not the case for the Kshatriya, and certainly not for the kings who typically come from this caste. Kshatriya kings have the obligation to protect *dharma* by using the *danda* [stick] to uphold the rule of law.²⁶ This might entail waging wars and certainly does not exclude depriving people of their lives.

Some scholars argue that the tension between understanding *ahimsā* as an expression, even one of the ultimate expressions, of *dharma* and the right of the Kshatriya to use violence to protect *dharma* is inherent in Hinduism's authoritative texts. The *Rāmāyana*, for example, seems to both legitimate and rebuke the use of violence.²⁷ The text, for example, cites an ancient proverb stating that a '... superior person never requites evil on the part of evildoers with evil' as a noble person acts '... compassionately whether people are wicked, virtuous, or even deserving of death'. The text nonetheless seems to legitimise the use of violence in certain circumstances. This tension is also to be found in other authoritative texts. Armed conflict and the resultant loss of life can be found in many of these texts, not the least in the *Bhagavad Gītā* and the *Rig Veda*. In the former one finds a narrative in which Lord Krishna instructs Arjuna, a Kshatriya, to engage in violent conflict and kill his relations who are aligned to his cousin Duryodhana: '... [c]onsidering your specific duty as a Kshatriya, you should know that there is no better engagement for you than fighting on religious principles; and so there is no need for hesitation.'²⁸

At this point, it should be clear that *ahimsā* cannot be regarded as an absolute value, in the sense that it is to be applied by all people in all circumstances. It should rather be understood in relation to maintaining *dharma*. The use of violence by the Kshatriya to ensure law and order might even be viewed as an expression of their *dharma*.

Strict guidelines apply to the use of violence, and thus, the potential deprivation of life. *Danda* [the use of violence or war] is regarded as the last of four Hindu avenues for

²³ibid 1

²⁴Francis X Clooney, 'Violence and Non-violence in Hindu Religious Traditions' (2002) 9 *Contagion* 118. Clooney uses the seminal interpretation provided by Hans Schmidt to provide this interpretation.

²⁵ibid 124.

²⁶ibid 123.

²⁷Raj Balkaran and A Walter Dorn, 'Violence in the *Vālmiki Rāmāyana*: Just War Criteria in an Ancient Indian Epic' (2012) 80(3) *Journal of the American Academy of Religion* 684–87.

²⁸Surya P Subedi, 'The Concept in Hinduism of "Just War"' [2003] *Journal of Conflict and Security Law* 344.

resolving conflict, and can only be resorted to if *sama* [conciliation], *dana* [gifts], and *bheda* [threat] have proved unsuccessful.²⁹ Should a Kshatriya king choose to engage in a war, he would be required to inform those against whom the war will be waged of his intention, after which a formal declaration of war should be made.³⁰ Balkaran and Dorn recently argued that even more criteria for waging a just war exist and suggest that elements of all seven modern criteria for a just war might be found in authoritative Hindu texts.³¹

According to some scholars, notably Kaushik Roy, it is possible to identify a certain development of ideas in Hindu texts with regard to the criteria for waging a just war.³² Kautilya (around 300 BCE), traditionally regarded as the author of *Arthashastra*, seems to propound rules of warfare at odds with the notion of *dharmayuddha* [just war] of the Vedic texts. His view seems closer to what these texts might call a *kutayuddha* [unjust war]. Emperor Asoka (260–232 BCE) seems to have revived a radical version of the *dharmayuddha* by raising *ahimsā* ‘... from an act of personal virtue to an issue of national policy’.³³ The *Manusmṛti* can be regarded as an attempt at reconciling positions represented by Kautilya and Asoka, thus retaining the importance of *ahimsā* whilst keeping open the possibility of violent conflict and the deprivation of life.

During a war, strict rules on how the war should be waged have to be adhered to. Both the *Manusmṛti* and the *Mahābhārata* contain lists of such rules. Surya Subedi provides an overview of KRR Sastry’s influential collection of the most common Hindu laws on the use of violence in armed conflict. For the purposes of getting a clearer understanding of limitations to the right to life, the following are of particular interest: all combatants should wear appropriate protection; the weakened and wounded may not be killed; combatants ‘... should fight only with their equals’; those without weapons should not be attacked; those who surrender should not be killed; the elderly, women, and children or ‘those in retreat’ should not be killed; ‘... the sleepy, the thirsty, a peaceful citizen walking along the road, the insane, one engaged in eating, a camp-follower, a war musician, and the guards at the gates should not be killed’; non-combatants may not be forced to engage in the conflict.³⁴

3. Islam and the Right to Life

3.1. Key characteristics

Islam is a religion that encompasses a vast array of beliefs and practices in a very large number of societies across the globe. At the heart of Islam – and one might call this its defining characteristic – is its distinctive form of monotheism. Islam’s absolute monotheism, *tawhid*, emphasises the ‘unity and uniqueness’ of *Allah* [God] and functions as the ‘... organizing principle for human society’.³⁵ According to a classical explanation,

²⁹ibid 352.

³⁰ibid 353–54.

³¹Balkaran and Dorn (n 27)

³²Kaushik Roy, ‘Just and Unjust War in Hindu Philosophy’ (2007) 6(3) Journal of Military Ethics 232.

³³ibid 239.

³⁴Subedi (n 28) 355.

³⁵‘Tawhid’ in John L Esposito (ed), *The Oxford Dictionary of Islam*, Oxford Islamic Studies Online, <www.oxfordislamicstudies.com/article/opr/t125/e2356> accessed 17 May 2017.

God's oneness means that God has no partner (*sharik*), no patron (*wali*), and no offspring (*walad*). *Tahwid* also refers to many of God's attributes, including God's glory, power, and transcendence.³⁶ Submission to God is understood as the way to peace with God, others, and oneself. By surrendering oneself to God, the believer becomes part of the *ummah* [the worldwide community of believers]. *Tawhid* is, by and large, implied in the first of the five pillars of Islam – mandatory acts or 'performative works' practised by the vast majority of Muslims.³⁷ The first pillar Islam requires of believers to testify publicly that 'there is no god but God and that Muhammad is the Messenger of God'.³⁸

Islam can be understood to consist, broadly, of two branches. Sunni Islam, or '... the people who follow the example of the Prophet and who value the consensus of the Muslim community',³⁹ stresses the *Sunnah*, or the life and practices of the Prophet Muhammad, and consensus. Shia Islam, or '... the followers of the party of Ali',⁴⁰ believes that Ali ibn Abi Talib, brother-in-law and cousin of the Prophet Muhammad, should be regarded as the Prophet's legitimate successor. Their adherence to Ali subsequently led to some significant divergences from Sunni Islam. Within Sunni and Shia Islam one finds further groupings.

The importance of the *Qur'ān*, Islam's most authoritative text, cannot be overstated. According to some Islamic scholars, Islam should be regarded as a 'literary religion'.⁴¹ The text of the *Qur'ān* is regarded as the timeless words of God, and it provides authoritative guidance for all Muslims on 'worship and ritual, as well as personal piety, and family and community'.⁴² It is believed to have been revealed to the Prophet Muhammad, the most important figure in Islam, over a period of 23 years.⁴³ In addition to the *Qur'ān*, the *hadith* is also recognised as revealed authority. Its authority is second only to the absolute authority of the *Qur'ān*. The *hadith* can be understood as having a threefold function, which also serves to explain its authority relative to that of the *Qur'ān*: it '... emphasises what is in the *Qur'ān*', '... explains the manner in which something should be carried out', and '... introduces teaching based on certain quranic verses or principles'.⁴⁴

3.2. On the protection of human life

Sharia, or Islamic law, is a useful starting point for investigating Islamic views on the value of human life. *Sharia* is much more than a formalistic set of laws, in the sense that one might understand the legal system of a country. *Sharia* exemplifies the closest of connections, even a symbiosis, between Islamic theology, specifically the *Qur'ān*, and law. *Sharia* can be understood as the way in which Muslims enact and ideally perfect their submission to God, as prescribed by the *Qur'ān*. Despite continued debate on its

³⁶Daniel A Madigan, 'Themes and Topics' in Jane Dammen McAuliffe (ed), *The Cambridge Companion to the Qur'ān* (Cambridge University Press 2006) 81.

³⁷Wael B Hallaq, *Shari'a: Theory, Practice, Transformations* (Cambridge University Press 2009) 225.

³⁸The other pillars are *salāt* [prayer], *zakat* [alms tax], *hajj* [pilgrimage], and *sawm* [fasting during the month of Ramadan].

³⁹Sunni Islam, in Esposito (n 35).

⁴⁰Shii Islam' in Esposito (n 35).

⁴¹Shabbir Akhtar, *Islam as Political Religion: The Future of an Imperial Faith* (Routledge 2011).

⁴²Tamara Sonn, 'Introduction' in Andrew Rippin (ed), *The Blackwell Companion to the Quran* (Blackwell 2006) 9.

⁴³MAS Abdel Haleem, 'Qur'an and Hadith' in Tim Winter (ed), *The Cambridge Companion to Classical Islamic Theology* (Cambridge University Press 2008) 21.

⁴⁴ibid 22.

coherence and meaning,⁴⁵ *Sharia* can be viewed as a system of beliefs, norms, rules, and practices that prescribe how Muslims should relate to one another and to God. As such *Sharia* is an integrative system that includes moral, legal and religious elements.⁴⁶ Some Islamic scholars thus describe Islam as a nomocratic religion, as its monotheism is underpinned by an ‘all-embracing’ conception of the law.⁴⁷

The protection of life is embedded in the *maqasid al-Sharia* [objectives of Islamic law]. The *maqasid* are understood as the higher objectives of *Sharia* and direct the enactment of *Sharia*. The genesis of the term *maqasid* should be sought in the writings of the fourth-century jurist Abu ‘Abd Allāh al-Tirmidhī al-Hakīm. Later Imām al-Haramayn al-Juwaynī systematised the *maqasid* in a scheme that has become generally accepted amongst Muslim jurists.⁴⁸ Its categories are the *darūriyyat* [indispensable necessities], *hājiyyat* [needs], and *tahsīniyyat* [improvements]. For our purposes the *darūriyyat* are particularly important.

The *darūriyyat* are typically divided into five categories, namely the protection of religion, life, progeny, property, and intellect. The protection provided by the *darūriyyat* is seen as the foundation of a stable society.⁴⁹ It is important to note that the conventional order of the *darūriyyat* expresses an internal logic. Most Islamic jurists agree that the protection of religion has priority over the protection of life.⁵⁰ Put differently, one might say that the protection of the true religion is more important for the stability of a society than the protection of individual lives. This logic seems to be aligned with the nature of *Sharia* itself. It is not, in the first instance, a system of laws that needs to be protected as an end in itself, but much rather an expression of the core tenets of Islam. In some sense, one cannot but expect of *Sharia* to elevate the protection of the system of beliefs that gives it its *raison d’être* above the protection of the right to life.

It seems possible to conclude that the protection of life is not a goal in itself, but makes sense only when one acknowledges the religious argument within which the principle is embedded. The extent to which the protection of, and limitations to, the right to life is embedded in a system of rules aimed at maintaining the ideal societal order attested to in the *Qur’ān* is particularly clear in *Sharia*’s penal code.

Sharia prescribes three classes of punishment, each of which expresses clear limitations to the right to life. A first – and one might say fixed – class of punishments is the *Hudud*. The purpose of *Al-Hudud*, or fixed punishments, is threefold: deterrence, retribution, and expiation. These punishments are prescribed by God in the *Qur’ān* or *Hadith* and might include killing, for example, in the case of extramarital sexual relations.⁵¹ The second class of punishments is aimed at restitution, as is often called the *Qisas*. *Al-Qisas* often follow a *lex talionis* scheme.⁵² When a murder has

⁴⁵Michiel Otto, *Sharia Incorporated: A Comparative Overview of the Legal Systems of Twelve Muslim Countries in Past and Present* (University of Leiden Press 2010).

⁴⁶Farrukh B Hakeem, ‘Alternative Perspectives on Penalty under Sharia: A Review Essay’ (2003) 27(1) *International Journal of Comparative and Applied Criminal Justice* 85.

⁴⁷Umar F Abd-Allah ‘Theological Dimensions of Islamic Law’ in Winter, *The Cambridge Companion* (n 43) 237.

⁴⁸Mohammad Hasim Kamali, ‘Maqāsid al-Shari’ah’: The Objectives of Islamic Law’ (1999) 28(2) *Islamic Studies* 199.

⁴⁹Yasir S Ibrahim, ‘An Examination of the Modern Discourse on *Masāqid al-Shari’a*’ (2014) 5(1) *Journal of the Middle East and Africa* 44.

⁵⁰*ibid* 51.

⁵¹Hakeem (n 46) 90–94.

⁵²*ibid* 94–96.

been committed, for example, the *Qisas* make provision for three responses: the family of the victim may choose to take revenge by killing the murderer; they may also demand blood money, or *diya*, as compensation; or they may choose to forgive the perpetrator. According to some jurists, forgiveness should be viewed as the superior of the three options. However, killing the perpetrator in retaliation for the initial murder is certainly not seen as an unacceptable response. It should be added that, should a family choose to retaliate by taking the life of the perpetrator, very specific and clearly stipulated conditions apply. In most cases the family would need to be able to prove beyond any doubt that the murder was deliberate (*amd*).

A third type of punishment is the *Al-Taazir*, or discretionary punishments.⁵³ Their purpose is twofold: reform or deterrence. With regard to *Taazir* punishments, judges and rulers have the responsibility to impose punishments on ‘... actions or omissions that fall beyond the purview of *Hadd* or *Qisas*’ in order to ‘[safeguard] the interests of society’.⁵⁴ Nine types of *Taazir* exist, and only in the case of *Al-Taazier bil Qatl* may the death penalty be prescribed. Only in exceptional cases will the death penalty be imposed as *Taazir* punishment. This includes punishment for, amongst other things, certain cases of homosexuality or cases of murder in which *Qisas* cannot be imposed.

Islamic views on war, and on waging *jihad* in particular, provide a further glimpse into the logic underlying limitations to the protection of the right to life in Islam.⁵⁵ In this regard, it is important to note that *jihad* should not be understood as referring only to an aggressive and religiously sanctioned war. Even though this understanding of *jihad* retains some currency, there is evidence that this form of *jihad* ideology was a function of the expansionist phase of Islam.⁵⁶ Many Islamic jurists also propound a more pacifist *jihad* ideology. These jurists draw on those sayings of the Prophet Muhammad that seem to describe *jihad* in terms of ‘... self-exertion in peaceful and personal compliance with the dictates of Islam’.⁵⁷

Despite disagreement amongst Muslim scholars on what constitutes the purest form of *jihad* in Islamic international law, or *as-siyar*, it certainly does not prohibit wars and the deprivation of life in wars. *As-siyar* does, however, limit the conditions under which war is permissible.⁵⁸ Of particular interest is the fact that wars, also those conducted as part of *jihad*, include categories of persons whose lives may not be taken. The most basic distinction is drawn between combatants and non-combatants. Non-combatants are regarded as those who are not able to actively participate in a war. This group includes ‘... children, women, the very old, blind, crippled, disabled (mentally and physically disabled) and sick’, who may not be attacked or killed.⁵⁹ Those who do participate in the warfare are to conduct themselves in a humane manner. The *as-siyar* thus prohibits most forms of treachery and mutilation.⁶⁰

⁵³ibid 96–100.

⁵⁴ibid 97.

⁵⁵Shaheen Sardar Ali and Javaid Rehman, ‘The Concept of *Jihad* in Islamic International Law’ (2005) 10(3) Journal of Conflict and Security Law 321.

⁵⁶ibid 329.

⁵⁷ibid 330.

⁵⁸ibid 338ff.

⁵⁹ibid 338.

⁶⁰ibid 339.

4. Christianity and the Right to Life

4.1. Key characteristics

Christianity's distinctive form of monotheism is focused by the central role of Jesus Christ. According to Christians, the person of Jesus Christ is the definitive revelation of the only and one God. Based on historical records, Jesus Christ lived in present-day Israel and Egypt about 2000 years ago. Despite the apparent simplicity of the core belief of Christians, Christianity comprises a variety of groupings, movements, and belief systems. Amongst these groupings, the distinction between Roman Catholic, Orthodox, and Protestant Christians is often viewed as the most significant.

In historical terms, the first significant division amongst Christians can be traced to 1054, when Christians in Eastern Europe and Asia split from those in the West, later to be called the Roman Catholic Church. Christian church historians often refer to this event as the Great Schism.⁶¹ In a descriptive sense, Roman Catholics are those Christians who regard themselves to be in communion with the Pope, a term denoting the person who embodies the highest religious authority and who is seated in the Vatican in Rome. The Eastern Orthodox Church comprises a collection of independent yet affiliated churches that acknowledge the honorary primacy of the Patriarch of Constantinople, also known as the Ecumenical Patriarch.

The genesis of Protestantism should be sought in an intra-Christian reform movement in what is now Germany and Switzerland in the early sixteenth century.⁶² Figures such as Martin Luther and John Calvin, and before them, a figure such as Jan Hus in the present-day Czech Republic, distanced themselves from what was perceived to be the autocratic and overly hierarchical tendencies in the Catholic Church. After protracted wars in central Europe a cluster of Christian groupings, broadly called Protestant churches, emerged. These churches distanced themselves from the dogma and authority of Roman Catholic Church. Contemporary Protestantism encompasses a global and diverse variety of Christians. Protestants include large groupings of Christians, such as Pentecostals, Baptists, Lutherans, Presbyterians, and many others.

Christians are united in the belief that a collection of writings, grouped together as the Old Testament and the New Testament, authoritatively bears witness to Jesus Christ, and to other elements of God's will. The Old and New Testaments are known as the Bible, which was canonised as Christianity's authoritative texts during the first five centuries after the death of Jesus Christ.⁶³ The Old Testament, in most Christian traditions, is the same as the *Tanakh*, Judaism's authoritative scripture. In fact, Jesus Christ seems to have understood himself as the fulfilment of the expectation in certain Judaic traditions that a Messiah will redeem the chosen people of God. This explains the strong reliance of the New Testament, the second collection of writings, on the Old Testament. The New Testament can, in many ways, be understood as an interpretation, or reinterpretation, of the writings collected in the Old Testament. Many, if not most, Christian doctrines can consequently only be understood adequately with reference to the Old Testament, and by implication with reference to Judaism.

⁶¹Chris Cook, *The Routledge Companion to Christian History* (Routledge 2008).

⁶²Matthias Pohligh (ed), *Reformation: Basistexte Frühe Neuzeit* (Frank Steiner Verlag 2015).

⁶³Einar Thomassen (ed), *Canon and Canonicity: The Formation and Use of Scripture* (Museum Tusculanum 2010).

4.2. On the protection of human life

Impulses from within Christianity have arguably had a stronger influence on the origins of modern human rights law than any other religion. Influential theorists identify early Christian reflections on human dignity as a particularly important source.⁶⁴ Key to comprehending Christian understandings of human dignity is a statement in the first creation narrative in the book of Genesis in the Bible. According to the narrator, God created humankind in God's 'image' and 'likeness', rendered in Latin as *imago* and *similitudo Dei*. Most Christian theologians agree that *imago* and *similitudo Dei* indicate that human beings have been bestowed with a dignity that differentiates them from other animate and inanimate beings. They differ, however, on what constitutes that dignity and on the scope of its application. Christian theologians offer three interpretations of the constitutive element of *imago Dei*.⁶⁵ Some view it as an indication of a quality that differentiates human beings from other living beings. Others view *imago Dei* as an indication of a specific duty, namely to have 'dominion' over the earth, as rendered in Genesis 1:28 in the Bible. According to a third group of theologians, the *imago Dei* designates the capacity of humankind to enter into a distinctive relationship, namely the relationship with God.

Throughout the ages, Christian theologians have differed on the scope of application the application of the *imago Dei*, or, put differently, on who should be regarded as 'dignified' human beings. In the influential *De dignitate conditionis humanae* Saint Ambrose of Milan (c 340–97) developed an early Christian proposal for understanding the linkage between the *imago Dei* and the dignity of all human beings. However, until medieval Christianity these and other impulses did not gain ascendancy. In his diachronic reconstruction of the development of the notion of human dignity in the Protestant Christian tradition, Wolfgang Huber suggests three reasons as explanation: an emphasis on the sinfulness of humanity, the persistence of the distinction between Christians and heathens, and the hierarchical organisation of society which relativised the belief that all human beings were endowed with equal dignity.⁶⁶

The Italian humanism of the fifteenth century, coupled with Spanish late-scholasticism and the German (and later Swiss) Reformation in the sixteenth century, ushered in new understandings of the dignity of all human beings.⁶⁷ Some theorists, such as Pico della Mirandola, Thomas More, and Desiderius Erasmus, emphasised the equal freedom of all to find happiness, others emphasised the unique rational abilities of human beings,⁶⁸ and others such as Bartolomeo de las Casas and Francisco de Vitoria also emphasised the unique social features of the human condition. The German Reformer Martin Luther focused on the inalienable dignity that is bestowed upon human beings by virtue of their unique relationship to God. The logic proposed by Luther in *Disputatio de homine* is essentially that the dignity of all human beings is inalienable as it is conferred

⁶⁴Wolfgang Huber and Heinz-Eduard Tödt, *Menschenrechte: Perspektiven einer menschlichen Welt* (Kreuz Verlag 1977); Hans-Richard Reuter (ed), *Ethik der Menschenrechte: Zum Streit um die Universalität einer Idee* (Mohr Siebeck 1999).

⁶⁵Bernd Oberdorfer, 'Human Dignity and "Image of God"' (2010) 104(1) *Scriptura* 234–37.

⁶⁶Wolfgang Huber, *Gerechtigkeit und Recht: Grundlinien christlicher Rechtsethik* (Gütersloher Verlagshaus 1996) 228.

⁶⁷*ibid* 228–30.

⁶⁸Dietmar Mieth, 'Human Dignity in Late-Medieval Spiritual and Political Conflicts' in Marcus Düwell, Jens Braarvig, Roger Brownsword, and Dietmar Mieth (eds), *The Cambridge Handbook of Human Dignity: Interdisciplinary Perspectives* (Cambridge University Press 2014) 74.

upon them by God.⁶⁹ The Swiss Reformer John Calvin built on Luther's thinking and highlighted the ability of human beings to live sanctified lives, characterised not only by God's dignifying grace but also by human beings' sanctifying response.⁷⁰

The question remains as to whether this rather rosy picture implies that Christianity regards the protection of human life as a supreme value. This perception might even be strengthened by the sixth commandment in the Decalogue, or Ten Commandments, found in Exodus and in Deuteronomy, the Old Testament's second and fifth book respectively.⁷¹ The sixth commandment seems to forbid any form of murder. In Genesis 1:28, the first book of the Old Testament, a similar prohibition against murder is motivated with reference to humankind as beings created 'in God's image'.

The reception of the Decalogue, the sixth commandment in particular, seems to point in opposite directions in the Old Testament and the New Testament: despite the impact of Christianity's insistence on the importance of protecting human life, it certainly does not unambiguously promote human life and its protection as the supreme value. The apparent conflict between Decalogue's prohibition of murder and instances in the Old and New Testament in which murder is either condoned or demanded only makes sense when one recognises that limitations to the right to life are embedded within the semblance of an accountability structure.

Even in the Old Testament, this injunction against killing is not applied universally. Put differently, it is made clear in the Old Testament that the prohibition against killing is not a universal end in itself, but an expression of the broader religious argument within which this prohibition is embedded. The death penalty is prescribed for a number of transgressions, including 'profaning the Sabbath, striking or cursing a parent, kidnapping, mortally striking someone, sorcery, performing sacrifices to foreign gods, bestiality, adultery', and many others.⁷² These limitations to the right to life are justified according to at least two logics.⁷³ *Lex talionis* is invoked in no fewer than three instances. In terms of this logic, punishment is aimed at re-establishing the harmony that was disturbed by a wayward action. It is clear how this logic would require capital punishment for murder. It might be less clear in other cases. In order to make sense of capital punishment for offences other than murder, one should keep in mind that reciprocity between offence and punishment should not be sought simply in terms of the form of the offence committed. The perceived impact of the offence on the harmony of the specific community is often viewed as that which requires counterbalancing.

Expiation is a second form of logic that is invoked. Especially when read in conjunction with the New Testament, this logic is of particular importance. In terms of this logic, offences are understood to profane the community. Restoring purity might require the taking of a life, with clear symbolic overtones. A particularly controversial example of the legitimisation of large-scale deprivation of human lives is *herem*, often translated as 'the ban'. *Herem* is most commonly found in passages in the books of Leviticus,

⁶⁹Oswald Bayer, 'Martin Luther's Conception of Human Dignity' in Düwell and others (n 68) 107.

⁷⁰Ruedi Imbach, 'Human Dignity in the Middle Ages (Twelfth to Fourteenth Century)' in Düwell and others (n 68).

⁷¹Eckart Otto, Gottfried Reeg, Dieter Sänger, Christoph Stroh, Svend Andersen, and Günter R Schmidt, 'Dekalog' in Hans Dieter Betz (ed), *Religion in Geschichte und Gegenwart: Handwörterbuch für Theologie und Religionswissenschaft* (Mohr Siebeck 2005).

⁷²Tobias Winright, 'Killing' in Robert L Brawley (ed), *The Oxford Encyclopedia of the Bible and Ethics* (Oxford University Press 2014).

⁷³*ibid* 50–51.

Deuteronomy, and 1 Samuel, and typically requires the total annihilation of the enemy. The passages on *herem* often invoke language reminiscent of a *lex talionis* scheme. In some instances *herem* may be viewed as ‘an instrument of God’s justice’ and thus as contributing to restoring some sort of cosmic harmony by punishing the injustices of the enemy.⁷⁴ One also finds instances in which *herem* is viewed as a sacrifice. The underlying logic here is that the lives of the enemies are offered to God for the victory God has granted them.⁷⁵

Some might expect the current discussion to include notes on a theory of just war. This ‘theory’, initially based on reflections by the Christian theologians Ambrose (c 339–97) and Augustine (c. 354–430) is based on two assumptions.⁷⁶ The first is that peace is the natural condition of humankind, as God created all beings to exist in harmony with each other. Sin, however, disturbed God’s intentions in creating humanity. Sin not only had an impact on the individual’s relationship with God, but also perverted the relationships between people and groups. The result is that Christians should, at times, be required to resist evil actively. This line of thinking is captured in a famous quote by Augustine: ‘It is iniquity on the part of the adversary that forces a just war upon the wise man.’⁷⁷ Even though Christianity has made important contributions to the theory of just war, an expanded discussion on this theme is not explored here, as it goes beyond the limits of the current section. As stated above, certain impulses related to limitations to the right to life in the texts of some of the world’s largest religious groupings are explored. This means that we do not focus on theories that were developed subsequently in the work of key theorists in the respective religions.

The New Testament bears witness to Jesus’ self-proclaimed fulfilment of the Ten Commandments, or more broadly, of the Old Testament law. In understanding the way in which Jesus fulfils the law, one should acknowledge the differences in how Jesus is represented by the different authors of the New Testament. This is especially the case in the first four books of the New Testament, called the gospels. Matthew, the author of the first gospel, presents Jesus to a presumably Jewish audience, and thus emphasises Jesus’ fulfilment of the law. In the so-called ‘sermon on the mount’ Jesus seems to emulate Moses, the person to whom the Decalogue was entrusted in the Old Testament. He radicalises the commandment that prohibits murder by stating that anybody who is angry with another person will be ‘liable to judgment’, anybody who insults another person will be ‘liable to the council’, and anybody who calls another person a ‘fool’ will be ‘liable to the hell of fire’ (Matthew 5:21–22).⁷⁸ Paul, the writer of the bulk of the non-gospel literature in the New Testament, does not discuss the sixth commandment, but does promote a non-literal understanding of the Decalogue. Love for one’s neighbour, according to Paul, is the fulfilment of the law.⁷⁹

The radicalisation of the Decalogue which one finds in the New Testament might create the impression that this collection of Christianity’s authoritative texts advocates a pacifist religion. This is not the case. In a movement similar to the persistence and legitimisation of

⁷⁴Peet van Dyk, ‘Violence and the Old Testament’ (2003) 16(1) Old Testament Essays 106.

⁷⁵ibid 105.

⁷⁶Gregory M Reichberg, ‘Catholic Christianity: Part I: Historical Development’ in Gregory M Reichberg and Henrik Syse (eds), *Religion, War, and Ethics: A Sourcebook of Textual Traditions* (Cambridge University Press 2014) 83.

⁷⁷Ibid.

⁷⁸R Alan Culpepper, ‘Fulfilment of Scripture and Jesus’ Teachings in Matthew’ (2015) 49(2) In die Skriflig Art 1986; Culpepper 2015.

⁷⁹Gert J Steyn, ‘Pretexts of the Second Table of the Decalogue and Early Christian Intertexts’ (1996) 30(2) Neotestamentica 454.

taking human lives in the Old Testament, despite the clear prohibition of murder in the Decalogue, one also seems to find an acceptance of killing other human beings in the New Testament. A case in point is the seemingly apathetic stance in the New Testament towards the way in which the political elite exert their power. In his letter to Christians in Rome, Paul instructed them to subject themselves to ‘the governing authorities’, as ‘... there is no authority except from God’. Those in positions of authority are therefore ‘... not a terror to good conduct, but to bad’, as found in Romans 13:1–3 in the Bible. The political elites ‘... do not bear the sword in vain’ (Romans 13:4). Similar attitudes, at least no explicit repudiation of violence and killing by political authorities, can be found in Jesus’ sayings in the gospels.⁸⁰

The absence of a universal prohibition on taking human lives, some might argue, is also evident in the biography of Jesus Christ himself. One of the most important moments in his biography is Jesus’ crucifixion by the Jewish political elite of his day. Christians understand the underlying theological logic as that of expiation: Jesus had to be killed as a person innocent of any crimes in order to expiate the sins of humankind. In this sense, Jesus’ death and subsequent resurrection had cosmic consequences. Of importance for this discussion is the presence of what can be called justified or righteous killing, in both the Old Testament and the New Testament.

5. Concluding Thoughts

Are the texts of the religions surveyed in this article at odds with the limitations to the right to life espoused by international human rights law? Or are these texts in support of the key tenets of the right to life and limitations thereof in international human rights law? In concluding this article, we refrain from either a simple or an immediate answer to these and related questions.

To start with, it should be noted that these conclusions neither reflect the sophistication of current Hindu, Islamic, or Christian scholarship, nor do they reflect the diversity of views that invariably exists amongst adherents of these religions. The aim of the article, in this respect, is modest. The article sought simply to uncover certain figures of thought, based on authoritative legal or quasi-legal codices or principles.

More substantively, the article argues that religion and limitations to the right to life in international human rights law cannot be separated – even in the face of severe tensions or contradictions. There are at least three reasons for this contention, discussed in detail below.

First, religious beliefs and practices continue to exert a major influence on how people conduct their lives. Despite the contention that modern legal systems should function *etsi deus non daretur*,⁸¹ religious beliefs and practices play an important role in how people develop, interpret, and choose to respond to legal systems. The very large number of people who describe themselves as ‘religious’ or who regularly participate in activities associated with particular religions illustrates this point. In some cases, religion motivates actions that are at odds with these systems, whilst in others it motivates actions that go beyond legal systems.

⁸⁰Kobus Kok, ‘Killing’ in Brawley (n 72) 474.

⁸¹‘As if God did not exist’, a phrase made famous by Hugo Grotius in the 1600s. See Hugo Grotius, ‘*De Jure Belli ac Pacis*’ (1625) <<http://socserv.mcmaster.ca/econ/ugcm/3ll3/grotius/Law2.pdf>> accessed 17 May 2017.

Second, religion has influenced the content and implementation of legal systems since ancient times. The Code of Hammurabi, for example, is framed as a legal code developed by a Babylonian king ‘... who feared Marduk, the patron god of Babylon’.⁸² The Code of Ur-Nammu, the oldest extant legal code, and the Laws of Eshunna similarly invoke deities in their respective prologues. Obedience to the law was conceived of as a duty with profoundly religious implications, and transgressions were often viewed as disobedience to a deity. Of importance to this article is the connection between decidedly religious impulses and the development of what has come to be known as human rights. In the section on Christianity above, this development was discussed with reference to the notion of ‘human dignity’, in more detail.

Third, the efficacy of international human rights law, and the right to life in particular, is dependent on the beliefs, convictions, motivations, and commitment produced in religions. Put differently: the motivation to ascribe and adhere to norms propagated in international human rights law is typically not only a function of these norms themselves. This can be explained with reference to the famous dictum on the extra-political and extra-judicial sources of civic commitment coined by the political scientist Ernst-Wolfgang Böckenförde: ‘The liberal secular state is dependent on premises that it cannot itself guarantee.’⁸³ Böckenförde argues that liberal secular states have no other choice but to grant citizens the freedom to choose between strengthening or destructing society from ‘the inside’.⁸⁴ He does not deny states’ ability to influence their citizens, but in his opinion, citizens’ freedom to provide the conditions necessary for societies to function precedes the influence of states. The Christian theologian Michael Welker extends Böckenförde’s dictum to democracy and human rights.⁸⁵ According to Welker, democracy is a form of government that should be cognisant of its fallibility and thus its need for balances and counterbalances built on presuppositions that transcend its limits. Loyalty to the state, commitment to norms such as the right to life, trust in the state’s institutions and fellow citizens, the willingness to contribute to social cohesion, interest in legitimising the form of political rule and many other presuppositions cannot be guaranteed by the state or its apparatuses.⁸⁶

In what sense, then, is a discussion of the importance of the protection of life in Hinduism, Islam, and Christianity, and circumstances under which these religions deem its loss acceptable useful? The article finds that, beyond mere thematic overlaps, the extent to which these religions contain motivations for affirming the three components of the

⁸²‘Code of Hammurabi’ (*The Avalon Project*, Yale Law School Lillian Goldman Law Library) <www.avalon.law.yale.edu/ancient/hamframe> accessed 17 May 2017.

⁸³‘Der freiheitliche, säkularisierte Staat lebt von Voraussetzungen, die er selbst nicht garantieren kann’. Ernst-Wolfgang Böckenförde, *Staat, Gesellschaft, Freiheit* (Suhrkamp, 1976) 60. Böckenförde (1977: 60) then continues by identifying the liberal and secular state as not only the guarantor of freedom but also as dependent on citizens’ use of their freedom in order to contribute to its sustenance: ‘Als freiheitlicher Staat kann er einerseits nur bestehen, wenn sich die Freiheit, die er seinen Bürgern gewährt, von innen her, aus der moralischen Substanz des einzelnen und der Homogenität der Gesellschaft, reguliert. Andererseits kann er diese inneren Regulierungskräfte nicht von sich aus, das heißt, mit den Mitteln des Rechtszwanges und autoritativen Gebots zu garantieren versuchen, ohne seine Freiheitlichkeit aufzugeben und – auf säkularisierter Ebene – in jenen Totalitätsanspruch zurückzufallen, aus dem er in den konfessionellen Bürgerkriegen herausgeführt hat.’

⁸⁴Ibid.

⁸⁵Michael Welker, ‘Wovon der freiheitliche Staat lebt. Die Quellen politischer Loyalität im spätmodernen Pluralismus’ in Hans-Richard Reuter, Heinrich Bedford-Strohm, Helga Kuhlmann, and K-H Lütcke (eds), *Freiheit verantworten: Festschrift für Wolfgang Huber zum 60. Geburtstag* (Kaiser, Gütersloher Verl Haus 2002) 225–42.

⁸⁶See also Erwin Teufel (ed), *Was halt die moderne Gesellschaft zusammen?* (Suhrkamp, 1996).

value that international law attaches to life is of importance. According to this analysis, each of three religions – at least based on the above analysis of selected texts – contain material that can motivate commitment to the core tenets of the right to life and limits to its protection in international human rights law.

Taken together, these religions seem to *affirm the importance of protecting human life*. The importance of protecting life is motivated in different ways. In Hinduism, protection of human life is directed by the belief that all human beings should live in such a way so as to minimise harm. In Islam, it seems to be possible to argue that the protection of life is one of the requirements necessary for a stable society. In Christianity, the notion that humankind is created in the image of God seems to require protecting human lives – particularly those of the most vulnerable.

It is important to note that *the protection of human life*, however, *is not the supreme value*. In Böckenfördian terms, it seems possible to state that the motivation for protecting human life cannot be found in the primacy given to the protection of human life in international human rights law alone. In these religions, it competes with other norms. In fact, it is clear that none of the three religions advocate for an absolute prohibition on the deprivation of life. In Hinduism, the preservation of life itself seems to be less important than other aims – notably the maintenance of a humane cosmic order. According to some traditions within Islam, the protection of the true religion is more important for stability in society and thus, more important than the protection of human life. In Christianity, many theologians will argue that elevating the protection of human life to the supreme value runs the risk of underestimating human depravity and its destructive effects.

Yet, *in all three religions surveyed, the arbitrary deprivation of human life is unacceptable*. All three religions, in particular Hinduism and Islam, provide clear guidelines on the safeguards that need to be in place in order to prevent the arbitrary deprivation of life. Christianity, at least in the New Testament, seems to accede to the safeguards put in place by the society in which it is embedded.

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