

**HUMAN RIGHTS: THE UNIVERSALIST CONTROVERSY. A  
RESPONSE TO ARE THE PRINCIPLES OF HUMAN RIGHTS  
“WESTERN” IDEAS? AN ANALYSIS OF THE CLAIM OF THE  
“ASIAN” CONCEPT OF HUMAN RIGHTS FROM THE  
PERSPECTIVES OF HINDUISM, BY DR. SURYA P. SUBEDI.**

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INTRODUCTION

For over half a century, human rights have remained an ideal yet unexcelled in the hope of providing a means to peace and an end to suffering in our world. Nevertheless, wars abound and human suffering endures—far beyond what we would care to imagine. World leaders speak on international respect for human rights; world leaders endorse their unspeakable violation. The reality of human rights thus remains entirely problematic. Equally problematic, moreover, is the idea of human rights. At the very heart of the conceptual problem of human rights is the question of whether they are in fact universal. Dr. Surya P. Subedi, in his article entitled *Are the Principles of Human Rights “Western” Ideas? An Analysis of the Claim of the “Asian” Concept of Human Rights from the Perspectives of Hinduism*, has proposed for our consideration an argument that human rights are universal.<sup>1</sup> The staff of the California Western International Law Journal has graciously invited me to provide a response.

Part I of this discussion will articulate what I take to be the conceptual structure of Subedi’s argument on the universality of human rights principles and how he conceives the Hindu concept of *dharma* to

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1. Surya P. Subedi, *Are the Principles of Human Rights “Western” Ideas? An Analysis of the Claim of the “Asian” Concept of Human Rights From the Perspectives of Hinduism*, 30 CAL. W. INT’L L.J. 45 (1999).

substantiate this claim. Part II will delineate my own understanding of the conceptual grammar of Western rights language.<sup>2</sup> Part III will compare this conceptuality with that of Indian rights vis-à-vis their Hindu religious heritage.<sup>3</sup> Part IV will articulate the Judeo-Christian religious heritage of Western rights.<sup>4</sup> Finally, in conclusion, this discussion will address the fundamental theological differences between Western and Hindu rights language.

## I. DHARMA AND UNIVERSAL HUMAN RIGHTS

In his reflection upon human rights, Subedi is anxious to defend their universality against competing claims of cultural relativism. Subedi observes that two camps advance the claim of cultural relativism as it relates to human rights. On the one hand, Asian States claim cultural relativism to protect their native cultures from intrusion by the Western values ostensibly endemic to the jurisprudence of human rights.<sup>5</sup> Subedi contends that political motives typically drive these claims, which are used to justify oppressive governmental practices.<sup>6</sup> On the other hand, Western scholars endorse cultural relativism by asserting human rights as a distinctively Western concept.<sup>7</sup> Subedi contends that ethnocentric shortsightedness drives this assertion, which ignores the human rights tenets of other traditions.<sup>8</sup> Subedi argues on the contrary that the principles of

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2. See generally Matthew A. Ritter, "Human Rights": *Would You Recognize One if You Saw One? A Philosophical Hearing of International Rights Talk*, 27 CAL. W. INT'L L.J. 265 (1997).

3. See Matthew A. Ritter, *Universal Rights Talk/Plurality of Voices: A Philosophical and Theological Hearing of International Rights Talk*, in INTERNATIONAL LAW AND RELIGION 417, 441-44 (Mark W. Janis & Carolyn Evans eds., 2d ed. 1999).

4. See *id.* at 450-52.

5. See Subedi, *supra* note 1, at 46-47.

6. See *id.* Explaining that certain Asian States resist implementation of universal human rights principles vis-à-vis

the significance of national and regional particularities and various historical, cultural and religious backgrounds" [quoting Bangkok Declaration of Human Rights], . . . [which] has been used quite frequently since the early 1960s by various Asian political leaders to justify, *inter alia*, either a one-party system of government or a party-less one.

*Id.* at 47. Thus endorsing the position that universal human rights are Western values unsuitable for Asian States.

7. See *id.* at 49.

8. See *id.* Explaining that although

the Western world, perhaps more than any other civilization, has made a significant contribution to the development of modern international human rights standards . . . that is not to say that other civilizations had no practice of human rights or no knowledge of the concept itself, [which] misunderstanding on the part of such Western writers is partly due to their narrow Euro-centric perception of international law.

human rights are universal, may be found in all great civilizations and religions of the world, and therefore apply equally to all persons, regardless of State citizenship.<sup>9</sup> Subedi seeks to illustrate this through a conceptual analysis of the Hindu notion of *dharma*.<sup>10</sup>

As Subedi observes, *dharma* derives from the Sanskrit root *dhr* (to uphold or maintain), and articulates the law that regulates Hindu life, expressing “what must be done to maintain and support the individual, the family, social class, and the whole society.”<sup>11</sup> *Dharma* thus establishes the proper mode of human existence, and provides the foundation for the Hindu understanding of law and justice.<sup>12</sup> For Subedi, *dharma* exhibits human rights principles in three significant ways.

First, Subedi argues that *dharma* is an essentially secular principle that is not a specific function of either divine or autocratic dictate. *Dharma* functions in Hindu thought not only to structure social reality, but reality itself, thus expressing the law of the cosmos in a metaphysical sense.<sup>13</sup> Hindu gods and kings are therefore equally subject to *dharma*.<sup>14</sup> Second, *dharma* is consequently a universal concept. It establishes order among all aspects of reality—cosmic, divine, human, animal, vegetable.<sup>15</sup> Third, *dharma* dictates accordingly a ubiquitous harmony among all human beings, regardless of familial, communal, national, or religious affiliation.<sup>16</sup> Subedi thus contends that by virtue of its concept of *dharma*, Hindu thought

*Id.*

9. *See id.* at 48.

10. “The very concept of *dharma* in Hinduism contains many tenets of modern principles of human rights.” *Id.* at 51.

11. *Id.* at 52 (quoting JOHN M. KOLLER, *THE INDIAN WAY* 62 (1982)).

12. “*Dharma*, . . . used in a legal sense, . . . refers to the laws and traditions governing society, informing every citizen of the rules governing social life.” *Id.* (quoting JOHN M. KOLLER, *THE INDIAN WAY* 62 (1982)); *see also* K.L. Seshagiri Rao, *Practitioners of Hindu Law: Ancient and Modern*, 66 *FORDHAM L. REV.* 1185, 1186 (1998) (“The purpose of *dharma* is to maintain and conserve established social order as well as the general welfare of humankind.”).

13. *See* Subedi, *supra* note 1, at 53-54 (“The concept of *dharma* in its original sense means the maintenance of peace and security through the law and order within the larger cosmic order.”).

14.

Society . . . is an aspect of cosmic patterns [and therefore its rulers are] . . . not free to establish regulations which serve [society’s] . . . own purposes, but [are] obliged to order its life in a way which brings order to the larger cosmic framework as well. Society is not the slave of divine purpose, but it is part of [a] larger order . . . .

*Id.* (quoting PAUL YOUNGER, *INTRODUCTION TO INDIAN RELIGIOUS THOUGHT* 35-36 (1972)).

15. *See id.*

16. “Since time immemorial Hindu philosophy has embraced the idea of harmony and fraternity among all human beings . . . .” *Id.* at 54. Subedi observes that this *dharmic* harmony extends to all aspects of social reality: “*Dharma* is the law of righteousness that regulates relations between the individual, the family, the community, and the State.” *Id.* at 53.

embraces the essential human rights principles of secularism, universalism, and peace.<sup>17</sup>

Taking his point of departure from *dharma* as an organizational principle of social order, Subedi further contends that by virtue of any particular society being organized as a society, it similarly exemplifies these principles of human rights.<sup>18</sup> Subedi, therefore, concludes that human rights are universal: "They are universal because every human being living in every corner of the world needs the protection of such rights, and every civilized society in every orderly and civilized country has recognized them as such since time immemorial."<sup>19</sup> The individualism typical of the West, Subedi avers, is thus not intrinsic to human rights, but to the Western version of human rights.<sup>20</sup> "Not every form of extreme individualism and excessive liberalism is part and parcel of universal human rights."<sup>21</sup> Neither Asian autocrats nor Western scholars are consequently justified in construing human rights as unique to the West.<sup>22</sup> "[S]o far as the respect for fundamental principles of human rights is concerned, it is as much deeply rooted in Asian culture as it is in Western culture."<sup>23</sup>

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17.

Thus, *secularism* in the conduct of the domestic affairs of the State, *universalism* in human approaches to the outside world, and adherence to the *principle of peaceful co-existence* when dealing with foreign powers of different faiths and beliefs, are some of the key elements deeply rooted in ancient Hindu thinking.

*Id.* at 56 (emphasis added).

18.

[O]ther parts of the world had their own way of ensuring an orderly and civilized society in the absence of which there could be no State or society. . . . Every human being had some measure of protection under the law of the State of their domicile. The modern concept of human rights is an expansion, consolidation, codification, and crystallization of that State practice. Human rights were not invented overnight out of nowhere.

*Id.* at 58.

19. *Id.* at 58.

20. *See id.* at 66:

The mistake many people make is to regard the vices of the Western societies [i.e., "rapid decay in morality and an unprecedented level of violent crime, drug-related problems, vagrancy, vandalism, . . ."] due to an "extreme form of individualism . . . and the "I want-it-all" consumer culture . . ." *Id.* at 65] as part of the human rights package, and attribute the failures of Western governments and societies to the international human rights regime.

*Id.* at 65-66.

21. *Id.* at 67.

22. *See id.* at 69 ("To maintain that the concept of human rights is a Western concept, or that they were created by the adoption of the UDHR [United Nation's 1948 Universal Declaration of Human Rights], . . . is to ignore the history and contributions of other civilizations.").

23. *Id.* at 66-67.

## II. GRAMMAR OF WESTERN HUMAN RIGHTS LANGUAGE

Before reflecting on Subedi's universalist contention regarding the "deep roots" of human rights principles, it behooves us to examine their history and conceptuality. The modern history of international human rights began in San Francisco at the 1945 Charter Convention of the United Nations,<sup>24</sup> "to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women . . ."<sup>25</sup> Since its Charter, the United Nations has enacted numerous declarations and covenants regarding human rights.<sup>26</sup> Beyond North America and Western Europe, human rights are constitutionally guaranteed throughout post colonial Africa<sup>27</sup> and Latin America,<sup>28</sup> the Middle East,<sup>29</sup> and the Far East, including Japan,<sup>30</sup> China,<sup>31</sup> and India.<sup>32</sup> More than thirty new democratic governments proclaiming the fundamentality of human rights have established themselves since 1973.<sup>33</sup> Some 125 States have adopted<sup>34</sup> the United Nations multilateral treaty guaranteeing civil and political rights.<sup>35</sup> This worldwide agreement on human rights principles accords with Subedi's universalist contentions, and leads some human rights scholars to infer along with Subedi that the roots of human rights principles run deep

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24. See Lewis B. Sohn, *The New International Law: Protection of the Rights of Individuals Rather Than States*, 32 AM. U. L. REV. 1, 1 (1982).

25. U.N. CHARTER preamble.

26. See Sohn, *supra* note 24, at 11-17. The U.N. Charter initially asserted the international recognition of human rights. These rights were enumerated in the Universal Declaration of Human Rights, and elaborated in the International Covenant on Civil and Political Rights as well as in the International Covenant on Economic, Social and Cultural Rights. The United Nations has since adopted some 50 additional declarations and conventions concerning human rights. See *id.* at 11. For the text of these documents, see UNITED NATIONS, HUMAN RIGHTS: A COMPILATION OF INTERNATIONAL INSTRUMENTS, U.N. Doc. ST/HR/1/Rev. 1 (1978).

27. See Keebet von Benda-Beckman, *Western Law and Legal Perceptions in the Third World*, in HUMAN RIGHTS IN A PLURALISTIC WORLD 225, 232 (Jan Berting et al. eds., 1990).

28. See Francisco Miro Quesada, *Human Rights in Latin America*, in PHILOSOPHICAL FOUNDATIONS OF HUMAN RIGHTS 303, 305 (Paul Ricoeur ed., 1986).

29. See Mohammed Allal Sinaceur, *Islamic Tradition and Human Rights*, in PHILOSOPHICAL FOUNDATIONS OF HUMAN RIGHTS, *supra* note 28, at 193, 208.

30. See Ryosake Inagaki, *Some Aspects of Human Rights in Japan*, in PHILOSOPHICAL FOUNDATIONS OF HUMAN RIGHTS, *supra* note 28, at 179, 179.

31. See Roger T. Ames, *Rites as Rights: The Confucian Alternative*, in HUMAN RIGHTS AND THE WORLD'S RELIGIONS 199, 209 (Leroy S. Rouner ed., 1988).

32. See John B. Carman, *Duties and Rights in Hindu Society*, in HUMAN RIGHTS AND THE WORLD'S RELIGIONS, *supra* note 31, at 113, 117.

33. See John Witte, Jr., *Law, Religion, and Human Rights*, 28 COLUM. HUM. RTS. L. REV. 1, 1 (1996).

34. See Donna E. Artz, *Heroes or Heretics: Religious Dissidents Under Islamic Law*, 14 WIS. INT'L L.J. 349, 358 (1996).

35. International Covenant on Civil and Political Rights, *adopted* Dec. 19, 1966, 999 U.N.T.S. 171, 6 I.L.M. 368.

into all the various religious/cultural traditions of the world.<sup>36</sup>

Despite this translation of the universal declaration of human rights into a plethora of international treaties and national constitutions that bind nearly every nation on the planet, the implementation of universal respect for human rights remains largely confined to the realm of discourse.<sup>37</sup> Moreover, notwithstanding ostensible international agreement on human rights principles, no unanimity exists on their universality vis-à-vis the world's plurality of religion and culture,<sup>38</sup> their possible contingency upon gender,<sup>39</sup> or their peculiarity to Western culture.<sup>40</sup> Whether unanimity can

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36. See Sampong Sucharitkul, *A Multi-Dimensional Concept of Human Rights in International Law*, 62 NOTRE DAME L. REV. 305, 306 (1987) (“[W]e can find the notion of human rights in all societies and at all times, in Europe as well as in Asia and Africa, in antique as well as in modern Chinese philosophy, in Hinduism, Buddhism, Christianity, Judaism, and Islam.”); cf. MICHAEL J. PERRY, *LOVE AND POWER* 81 (1991):

[T]he great religious traditions, Indic as well as Semitic, tend to converge with one another in affirming that an essential part of what it means to be fully human, an essential requirement of the meaningful life for everyone, is to accept some responsibility for the basic well-being of the Other (the outsider, the stranger, the alien).

*Id.*

37. See Anthony Chase, *Legal Guardians: Islamic Law, International Law, Human Rights Law, and the Salmon Rushdie Affair*, 11 AM. U. J. INT’L L. & POL’Y 375, 383 (1996) (“[T]he universality of human rights appears to be the rhetoric of a political project, rather than the expression of an established fact.”); see also Leroy S. Rouner, *Introduction, in HUMAN RIGHTS AND THE WORLD’S RELIGIONS*, *supra* note 31, at 1, 1:

Confronted by holocaust after holocaust, and war on war, where the burning of children is commonplace, and the suffering of all unspeakable, we know beyond any possible doubt that these things are wrong. We have a right to be free of such suffering. Two separate affirmations are involved in this conviction, however. One is that the individual human being has inherent dignity and worth. The other is that *human rights* is the most significant symbol of that worth. The first conviction remains strong in moral philosophy, East and West. The second is now being re-examined in the West, either directly or indirectly.

*Id.*

38. See generally Ritter, *supra* note 3, at 417 (addressing the Western metaphysics of human rights and then comparatively analyzing the conceptual grammar of rights talk within the African Banjul Charter, Islamic Sharia, Hindu Dharma, Confucian Li, Buddhist Dhamma, and Judeo-Christian Grace); Patrick Macklem, *Distributing Sovereignty: Indian Nations and Equality of Peoples*, 45 STAN. L. REV. 1311, 1340 (1993):

Related to universality’s problem of indeterminacy is its apparent inability to escape charges of ethnocentrism. That is, when assessing a right alleged to be a universal human right, it is difficult to determine whether the claim is truly universal, namely, part of what it means to be human, or simply is a set of beliefs specific to a particular culture disguised by the rhetoric of universality.

*Id.*

39. See generally Matthew A. Ritter, *Language, Law, and Male Privilege: The Penile Code*, 2 N.Y. CITY L. REV. 1 (1998) (examining whether the grammar of human rights is a masculine construction).

40. See Jan Berting, *Societal Change, Human Rights and the Welfare State in Europe, in*

exist depends upon the conceptual grammar of human rights language.

In the West, the universality of human rights is entirely a function of their possession by individuals.<sup>41</sup> They are held by any one individual to the

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HUMAN RIGHTS IN A PLURALIST WORLD, *supra* note 27, at 189, 194 (“The concept of human rights is the product of both Enlightenment and the rise of a new social order based on industrial production.”); Sucharitkul, *supra* note 36 (“Human rights, as commonly known and widely understood in the modern world, are essentially a European concept, the consequence of prevailing economic, social, and political conditions in Europe. They have been drafted by diplomats and legal experts educated according to the European legal traditions and ideology.”). This criticism was in fact articulated during the drafting of the Universal Declaration of Human Rights. On behalf of the American Anthropological Association, a “Statement on Human Rights” appeared in the *American Anthropologist* and was submitted as well to the United Nations Commission on Human Rights, warning that the Declaration would be “a statement of rights conceived only in terms of the values prevalent in the countries of Western Europe and America,” that such “standards and values are relative to the culture from which they derive,” and that “what is held to be a human right in one society may be regarded as anti-social by another people.” Am. Anthropological Ass’n, *Statement on Human Rights*, 49 AM. ANTHROPOLOGIST 539 (1947), *quoted in* Tracy E. Higgins, *Anti-Essentialism, Relativism, and Human Rights*, 19 HARV. WOMEN’S L.J. 89, 92 (1996), and in ALLISON DUNDES RENTLEN, *INTERNATIONAL HUMAN RIGHTS* 83 (1990). This criticism has led to the further contention that Western rights talk is perhaps inappropriate in non-Western contexts. This stands in direct conflict, of course, with the categorical presumption that “international human rights standards can be legitimately applied to non-Western societies.” JACK DONNELLY, *UNIVERSAL HUMAN RIGHTS IN THEORY AND PRACTICE* 3 (1989). In essence, international jurisprudence has leveled upon Western rights talk the critical question of whether human rights are indeed a “universal invariant,” or are rather something peculiar to the West, and thus inappropriate to cultures other than Western. *See* Raimundo Panikkar, *Is the Notion of Human Rights a Western Concept?* 120 *DIOGENES* 75, 76 (1982).

41. *See* RONALD DWORKIN, *TAKING RIGHTS SERIOUSLY* xi, 139 (Harv. Univ. Press 1978); *see also* Jack Donnelly, *Human Rights, Individual Rights and Collective Rights*, in *HUMAN RIGHTS IN A PLURALISTIC WORLD*, *supra* note 27, at 39, 43 (“[O]nly individuals have human rights.”). This contention has generated an extensive debate among human rights advocates as to whether human rights can inhere in collectivities. Donnelly contends that because human rights are held only by individuals (by virtue of being human), human collectivities cannot possess human rights other than through the rights held individually by their members. *See id.* Donnelly is primarily concerned to preserve the essential function of human rights as a protection of individuals against oppression by the collective, whether political, religious, ethnic, or social. Thus, collectivities are imprudently construed as having any rights that could possibly be used to obviate the rights of their individual members. *See id.* at 48. “Every day we see individuals crushed by society. Rarely if ever do we see society torn apart by the exercise of individual human rights; social disorder and decay are instead usually associated with the violation of individual human rights by the state or some other organized segment of society.” *Id.* at 49. The alternative view argues that collectivities are not adequately understood as derivative from the reality of their individual members, that social reality is more than merely epiphenomenal. *See* Koo VanderWal, *Collective Human Rights: A Western View*, in *HUMAN RIGHTS IN A PLURALISTIC WORLD*, *supra* note 27, at 83, 92. VanderWal argues the social dimension of individuals’ human existence is compatible with the notion of collective human rights. “The collective human rights then pertain to that particular form of human subjectivity that is expressed in the common action of an inclusive community.” *Id.* at 96. Unless the grammar of rights talk is structured upon a more expansive metaphysics of the person than that inherent in the Western notion of the individual as autonomous and abstracted from any and all social differentia, however, human rights are simply not conceptually consistent with being held by anything other than individuals. Several such lines of conceptual resistance to individualism—all traceable in one way or another to a more

extent that they are held by all individuals. "Human rights are, by definition, the *rights*, in the strict and strong sense of entitlements, that one *has* simply because one is a human being."<sup>42</sup> Intrinsic to the notion of human rights is the idea that they are equally held by all human beings.<sup>43</sup> Western rights language thus presumes equality for all who possess them.<sup>44</sup>

The egalitarian possession of human rights is a function, moreover, of the *dignity* or *worth* equally inherent in each individual human being.<sup>45</sup> Talk of human rights speaks essentially about the intrinsic value of each human

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Aristotelean understanding of the socially organic character of human existence—have indeed been drawn through modern Western thought. In the arena of political philosophy, Marx rejected any strict dualism between the individual and society. See Berting, *supra* note 40. Kant conceived the State as having a kind of moral personhood. See VanderWal, *supra*, at 91. Rousseau considered his notion of the "common will," communally constituted through social contract, to be a distinct form of human social reality. See *id.* In a similar vein, the sociologist Durkheim advanced a notion of collective conscience in explicit contrast to Hobbesean and Lockean ideas of social contract based upon individual self-interest as the governing factor for social reality. See Berting, *supra* note 40, at 195. An expansion of the Western metaphysic of the person may therefore be a viable philosophical enterprise, but unfortunately lies beyond the scope of this discussion.

42. Donnelly, *supra* note 41, at 39.

43. Although rights talk has been spoken by a variety of quite different voices in the history of their jurisprudence, these voices are univocal in the presumption that such human rights are held by each individual to the extent that they are held equally by all individuals.

Numerous analysts have suggested a variety of specific formulations for the philosophical foundations of human rights. Such foundations include the fulfillment of human potential, social justice, promotion of essential human needs, equal respect and concern for all by governments, common historical social interest or "praxis," just provision of needs, and traditional Western notions of natural rights. Although differing in detail and approach, nearly all of these theories contend that human rights are ultimately based upon essential human needs and interests possessed by *all people equally* as prerequisites to human dignity.

Douglas Lee Donoho, *Relativism Versus Universalism in Human Rights: The Search for Meaningful Standards*, 27 STAN. J. INT'L L. 345, 359 (1991).

44. See DWORKIN, *supra* note 41, at 272 ("Government must not only treat people with concern and respect, but with equal concern and respect."); JOHN RAWLS, A THEORY OF JUSTICE 302 (1971) ("Each person is to have an equal right to the most extensive total system of equal basic liberties compatible with a similar system of liberties for all."); ALISTAIR MACINTYRE, AFTER VIRTUE 66 (1981) ("By 'rights' [are meant] those rights which are alleged to belong to human beings as such and . . . to attach equally to all individuals . . .").

45. See PATRICIA WERHANE, PERSONS, RIGHTS, AND CORPORATIONS 3 (1985), *quoted in* Henry Rosemont, Jr., *Why Take Rights Seriously? A Confucian Critique*, in HUMAN RIGHTS AND THE WORLD'S RELIGIONS, *supra* note 31, at 167, 170 ("I shall assume that all human beings . . . have inherent value. Because human beings have inherent value they have certain rights. These rights are moral rights . . ."); see also Sinaceur, *supra* note 29, at 195:

[A]t the source of public liberties we find an ethical value, an ethical vision, which confers on human rights a status independent both of law in the traditional sense and of ideologies, a value that cannot be considered from the standpoint of what is valid, what is comparable, relative or evaluable, what is effective or practicable. This value or vision is the worth of the human "individual."

*Id.*



being—an intrinsic value equally common to each and every individual simply by virtue of being human. Human rights language is talk that demands universal egalitarian respect for the dignity intrinsic to all human individuals.

The universality of human rights language is thus coincident with the internationalization of the individual. “[R]ights are political trumps held by individuals.”<sup>46</sup> The universalization of rights language evolved from the idea that individual human beings exist not for the benefit of the State, but rather that the State exists for the benefit of the individual.<sup>47</sup> Human rights proclaim the intrinsic worth of the individual against the legislative authority of the State, inverting the classical logic of relationship between the State and its citizenry.<sup>48</sup> The governing principle of human rights is the equality of all individuals by virtue of their intrinsic dignity as human.

Human rights language therefore prevents any existential differentiation in the intrinsic worth of an individual on the basis of any socially defining characteristic, whether political, religious, ethnic, economic, sexual, etc. Such social differentiations are extrinsic to the essential nature of human beings. In essence, all human beings are equal by virtue of nothing—i.e., not by virtue of any some-thing in terms of which individuals may be socially differentiated.<sup>49</sup> Human rights are therefore possessed by individuals—by every individual—simply by virtue of being human, and not by virtue of any extraneous social differentia.<sup>50</sup> Consequently, human rights are possessed universally by all individuals.<sup>51</sup> All other aspects of human rights sprout from this fundamental root: their universal and egalitarian possession by all persons on the basis of the inherent dignity of every individual human being simply by virtue of being human, and not by virtue of any other defining social characteristic

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46. DWORKIN, *supra* note 41, at xi.

47. See J. Herman Burgers, *The Function of Human Rights as Individual and Collective Rights*, in HUMAN RIGHTS IN A PLURALISTIC WORLD, *supra* note 27, at 63, 64.

48. See *id.*

49. Much ink has been spilled over the course of the past two centuries, particularly in American jurisprudence, on trying rationally to determine how—in terms of what aspect of humanity—humans are equal. This effort, however, has been for naught, because it misunderstands the conceptual grammar of the Western notion of human equality. If there were anything in terms of which all humans were equal, then that very thing would become a means to differentiate one individual from another, providing a measure whereby one person may become “more equal” than another, hence not equal. In the West, humans are simply not equal by virtue of any socially defining characteristic, whether that be construed as having some religious, racial, ethnic, gender, or political identity, possessing land, riches, beauty, or intelligence. Humans are equal in terms of nothing. The Western notion of equality demands this by conceptual necessity—but not by mere philosophical fiat. Rather, this Western notion of equality devolved from a distinctive religious heritage. See discussion *infra* Part IV.

50. See Jean-Bernard Marie, *Relations Between Peoples’ Rights and Human Rights: Semantic and Methodological Distinctions*, 7 HUM. RTS. L.J. 195, 198 (1986) (“[T]he central subject of human rights as embodied in the basic international texts is still quite definitely the irreducible human person.”).

51. See DONNELLY, *supra* note 40, at 1.

whatsoever.

Western rights language thus articulates a programmatically secular appreciation for the essential humanity universally intrinsic to all human beings—an essential humanity constitutive of the sameness of all humans, and providing the programmatic basis for the claim of equality between them, regardless of social differentia, especially religious.<sup>52</sup> This essential humanity engenders an equally secular understanding of the human being: the abstract autonomous individual: rational, independent, self-sufficient, unencumbered, and unconnected to others except by choice.<sup>53</sup> Western rights ultimately protect and promote abstract autonomous individuality.

### III. INDIC RIGHTS V. WESTERN RIGHTS

Despite Subedi's claim that the principles of human rights run deep into the religious heritage of India, the sacred texts of Hinduism articulate no such notion of human rights. Classical Sanskrit had no word for a human "right."<sup>54</sup> The closest semantic correlate, *adhikara*—the word used to mean "right" in contemporary India—permits a "just claim" by virtue of having either performed some act (*dharma*) of value or attained some thing of value.<sup>55</sup> Such acts or things of value accord status, and upon the basis of such status one may justly claim one's appropriate due.<sup>56</sup> Contrary, then, to

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52. See Ritter, *supra* note 2, at 273 ("Modern jurisprudence [of human rights] was initiated upon a programmatically non-religious basis. Rights talk would base itself not upon the extrinsically revealed truth of the divine, but upon the intrinsically known truth of the human.").

53. See MARY ANN GLENDON, RIGHTS TALK 48 (1991); see also Ritter, *supra* note 3, at 428 (citations omitted):

The essential being of human being is thus constituted as the pre-communal autonomy of the abstract individual. How this essential being is communally realized is a function of preserving its defining character of autonomy. The abstract individual becomes itself precisely by virtue of being itself, namely autonomous. The central and controlling issue for the abstract autonomous individual thus becomes: how to protect and promote one's autonomy. For modernity, autonomy is preserved through two fundamental complementary rights: the right to privacy, and the right to self-development. The right to privacy dictates that the autonomy of the abstract individual is to be respected by the various communal involvements of the individual. Privacy generates a host of *protective rights*. The right to self-development dictates that the abstract individual be allowed autonomously to pursue whatever mode of self-realization the individual should choose. Self-development generates a host of *promotive rights*. The complementary rights of privacy/self-development programmatically inform all communal involvements of the abstract autonomous individual: political, economic, legal, religious, and even philosophical.

*Id.*

54. See R.C. Pandeya, *Human Rights: An Indian Perspective*, in PHILOSOPHICAL FOUNDATIONS OF HUMAN RIGHTS, *supra* note 28, at 267, 267.

55. See *id.*

56. See *id.* at 268 ("In other words, rights are earned and efforts made in acquiring them confer certain privileges upon persons who take the trouble to exert themselves."). Status was

the notion of human rights that inhere in a person merely by virtue of being human, Hindu rights are acquired as the result of right action—*dharma*. Hindu rights are accorded through one's conformity to *dharma*—to the law of right action. Those who act rightly acquire the rights appropriate to their manner of life; those who fail to act rightly do not acquire such rights.<sup>57</sup> Hindu rights are thus acquired not from one's intrinsic nature as a human, but from one's extrinsic action as a human. Hindu rights are attendant not to being human, but to the mode of being human—to one's *dharma*. Under the ethical conceptuality of *dharma*, intrinsic human rights make no moral sense.<sup>58</sup>

The Western notion of human rights as intrinsic to the being of human being therefore violates the conceptual grammar of *dharma*, which dictates rather that human rights are accorded on the basis of right action. Right action is a function of one's duty to act in accordance with *dharma*, a duty that encompasses all behavior toward self, family, society, humanity, and divinity. Hindu rights thus derive from duty.<sup>59</sup> The fulfillment of one's duty to act in accordance with *dharma* generates rights appropriate to the status acquired by having acted rightly. Contrary to the Western logic of relationship between rights and duties, duties are primary, rights secondary.<sup>60</sup> Hindu rights are acquired only in relation to the fulfillment of a

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most poignantly a function in classical India of inherited social status within the Hindu caste system. This caste system was not constitutive of Hindu ethics, however, but rather a reflection of it. For the Hindu, status was and remains a function of the value attendant to one's existence—a value that derives from the acts or things achieved within one's life. Life, of course, has a dramatically expanded sense in Hindu thought by virtue of the doctrine of re-incarnation of the soul, or subtle body, as informed by the notion of karma. "The [subtle body] endures the death of the gross (physical) body. The quality of actions performed in the present life conditions the future life; the conditions of the present life are the result of past actions. Thus one's [personal] endowment and social status are the consequence of past deeds." Seshagiri Rao, *supra* note 12, at 1186. Status therefore derives ultimately from the character of one's actions through the force of their karma, and the extent to which they accord with *dharma*. Rights are entirely a function of such status. "What is one's right is what is one's due, whether because of who one is by birth or because of what one has accomplished." Carman, *supra* note 32, at 121.

57. See Pandeya, *supra* note 54, at 268 ("If rights are unearned, i.e. acquired without effort, they become gratuitous. In the absence of voluntary human efforts these rights become amoral and hence beyond considerations of good-bad and right-wrong. Thus so-called natural rights become no-rights.").

58. See *id.* at 270 ("If you tell an Indian, who is alive to the Indian tradition, that he has certain rights by virtue of his being a man he would laugh at you.").

59. See Yougindra Khushalani, *Human Rights in Asia and Africa*, in *THIRD WORLD ATTITUDES TOWARD INTERNATIONAL LAW* 321, 324 (Frederick E. Snyder & Surakiart Sathirathai eds., 1987) ("In Hindu civilization human rights exist in relation to human obligations.").

60. See Pandeya, *supra* note 54, at 271 ("In the Indian intellectual tradition, rights flow from duties, whereas the [Western intellectual tradition] presumes that human rights being basic, duties are determined by these rights."). For example, the right to work presumes the obligation to work dutifully within prescribed restraints as dictated by society. The right to work is forfeited when this prescribed duty is disobeyed. See *id.* at 274.

duty to act rightly.<sup>61</sup>

Underlying this variant logic of relationship between rights and duties in Hindu ethics, moreover, resides a more profound difference from Western ethical sensibility in the governing religious purpose of Hindu moral obligation. Hindu moral duty to act rightly in accordance with *dharma* is a religious obligation. The ultimate purpose of this religious obligation is self-knowledge.<sup>62</sup> Hindu self-knowledge is the profound awareness of the identity between one's human being and being itself, whereby one may attain release from the otherwise ineluctable reincarnation into continued existence.<sup>63</sup> Although this salvific enlightenment (*moksha*) may be achieved in a variety of different ways,<sup>64</sup> it is essentially a mode of existential self-renunciation whereby one detaches oneself from any personal interest in life:

But when a man has found delight and satisfaction and peace in the Atman, then he is no longer obliged to perform any kind of action. He has nothing to gain in this world by action, and nothing to lose by refraining from action. He is independent of everybody and everything. Do your duty always; but without attachment. This is how a man reaches the ultimate Truth; by working without anxiety about results.<sup>65</sup>

For the Hindu, the fulfillment of religious obligation is practiced without regard to its social benefits. Indeed, Hindu religious obligation cannot be fulfilled if practiced with any other than proper religious motives. Hence, the fulfillment of one's religious duty whereby one inherits the social status to which certain rights attend is motivated not by any interest in such rights. Rather, such religious duty may only be fulfilled if one is detached from any interest in the rights consequently acquired.<sup>66</sup> Although such rights devolve from the status appropriate to the level of one's spiritual advancement, they may not constitute the end to which one's spiritual efforts are directed as a means. Spiritual advancement is measured, rather, by the extent to which

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61. Consequently, there exists no semantic correlate for a human right per se in India. See *id.* at 273.

62. See *id.* at 275 ("To know oneself is the supreme duty of man.").

63. "The sage who by faith, devotion, and meditation has realized the Self, and become one with Brahman, is released from the wheel of change and escapes from rebirth, sorrow, and death." *Upanishads Kaivalya*.

64. Although Hinduism is comprised of a plethora of sects, each advocating its own particular *dharma*, classical Hinduism recognizes three basic ways of enlightened salvation: *Karma Marga* (Way of Works: ritualistic in character); *Jnana Yoga* (Way of Knowledge: intellectual in character, devolving primarily from the *Upanishads*); *Bhakti Marga* (Way of Devotion: religiously devotional in character, quintessentially represented by the *Bhagavad Gita*). See JOHN B. NOSS, *MAN'S RELIGIONS* 186-95 (1974).

65. *Bhagavad Gita* bk. III (*Karma Yoga*).

66. See Pandeya, *supra* note 54, at 276 ("[T]he duty of man . . . consist[s] in moving closer at every step to the spiritual goal and accordingly at every state of his progress towards the cherished goal his rights would be determined with reference to his state of progress.").

one remains detached from such personal interests.<sup>67</sup>

The governing motive for Hindu religious obligation is thus not self-interested, but selflessness. The Hindu is ultimately obliged religiously to renounce personal interest in the self. The only motive properly permitted the Hindu is that through one's own spiritual efforts others are led to do the same.<sup>68</sup> Religious obligation for the Hindu is thus finally directed toward the spiritual benefit of others. The Hindu ethic of *dharma* is accordingly governed by the fulfillment of religious obligation, one's own as well as that of others. The rights attendant to the performance of right action are entirely consequential, and ultimately inconsequential, to the religious status attained thereby.

Life in the world and life in the spirit are not incompatible. Work, or action, is not contrary to knowledge of God, but indeed, if performed without attachment, is a means to it. On the other hand, renunciation is renunciation of the ego, of selfishness—not of life. The end, both of work and of renunciation, is to know the Self within and Brahman without, and to realize their identity. The Self is Brahman, and Brahman is all.<sup>69</sup>

The driving principle of Hindu rights is ultimately rooted in this distinctively non-self-interested religious motivation toward self-renunciation.<sup>70</sup>

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67. "The ignorant work for the fruit of their action: The wise must work also [but] without desire pointing man's feet to the path of his duty." *Bhagavad Gita* bk. III (*Karma Yoga*).

68. *See id.* ("Your motive in working should be to set others, by your example, on the path of duty.")

69. *Upanishads Isha*.

70. The religious motivation underlying Hindu rights, however, is not readily apparent in much of contemporary Indian political discourse. Following its liberation from British rule in 1948, India adopted its Constitution as a sovereign democratic republic in 1949. *See* Seshagiri Rao, *supra* note 12, at 1189. This Constitution recognizes a variety of "fundamental rights" for all Indian citizens, guaranteeing social, economic, and political equality. *See id.*; *see also* Carman, *supra* note 32. It therefore challenged the traditional Hindu social stratification of *varnadharma*—caste system—which had privileged certain classes of people over others in India since its antiquity. *See id.* at 118. The Indian Constitution was crafted, however, with an expressly secular agenda of establishing political independence for the nation of India and social/economic prosperity for her citizenry. The Constitution was not written in terms of the conceptual grammar that has classically governed Hindu ethics throughout its history. "[T]he constitution does not recognize the fundamental *dharma* affirmed by the Hindu tradition and sets no spiritual obligation for the state itself or for the people." *Id.* at 120. "Because it was written for a secular state, however, the Indian Constitution does not address the spiritual, metaphysical, and ultimate concerns of the individual. Nor does it seek to achieve the goal of total fulfillment of the person in the spirit of *dharma* and in the atmosphere of non-violence." Seshagiri Rao, *supra* note 12, at 1189. Based on nothing other than secular legislative concerns, the Indian Constitution makes "no explicit appeal to that which is right (*ius*) beyond the letter of the enacted law (*lex*)." Carman, *supra* note 32, at 120. The increasing concern of many Indian legal scholars is that the Constitution—and the Western ethical conceptuality it represents—consequently exerts no moral authority beyond mere legislative fiat, which perhaps accounts for the excessive number of amendments that have been made to it. *See id.*; *see also* Pandeya, *supra* note 54, at

The respective roots of Hindu rights and Western rights thus diverge quite radically. Hindu rights are attendant to right action by virtue of distinctly religious duties toward self-renunciation and the spiritual benefit of others; Western rights are attendant to being human by virtue of distinctly secular motives toward self-realization and the autonomy of the individual. The individualism inherent in Western human rights, moreover, is not a mere aspect of human rights conceptuality that may be readily severed from its own deeper roots. On the contrary, the individualism of Western human rights devolves from its own religious heritage. Properly to understand the truly fundamental difference between Hindu and Western rights requires articulation of the Judeo-Christian grammar of Western human rights language.

#### IV. JUDEO-CHRISTIAN HERITAGE OF WESTERN RIGHTS

The primordially controlling religious concept for the Jewish understanding of human being is its creation in the image of God: "So God created man in his own image, in the image of God he created them; male and female he created them."<sup>71</sup> By virtue of reflecting the divine image, absolute worth is accorded to human being.<sup>72</sup> Created in this image of God, the worth of every individual person ultimately mirrors the value of human being itself.<sup>73</sup> Judaism consequently ascribes the absolute value of humanity

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270-71 (contending that the proclamation of human rights vis-à-vis the ethical conceptuality of the Universal Declaration—and the Indian Constitution—is entirely antithetical to the morality of classical Hindu thought, and thus exerts no real moral authority); Seshagari Rao, *supra* note 12, at 1189 (arguing that the jurisprudence attendant to the ethical conceptuality of the Indian Constitution remains foreign to Hinduism and thus exercises a merely external legal authority—i.e., not an intrinsic moral authority). This concern devolves from the ethical, if not metaphysical dissonance between Western rights talk and Hindu rights under the doctrine of *dharma*.

71. *Genesis* 1:27.

72. "For at the core of the biblical system is the perception that the person is of absolute and inviolate worth: created in the divine image." Michael Fishbane, *The Image of the Human and the Rights of the Individual in Jewish Tradition*, in *HUMAN RIGHTS AND THE WORLD'S RELIGIONS*, *supra* note 31, at 17, 18. Fishbane notes that the biblical attribution of absolute worth to human being distinguished early Judaism from other Near Eastern religions. Among the Babylonians, Assyrians, and Hittites, human life could be measured economically in terms of the value of property or possessions: "[L]ife and property are commensurable values, used interchangeably in the legal system, there being presupposed an exchange rate between persons and things." *Id.* The Bible allows no such economic valuation of human being, and therefore permits no legal substitution of property for human life: "Whoever sheds the blood of man, by man shall his blood be shed; for God made man in his own image." *Genesis* 9:6.

73. See Fishbane, *supra* note 72, at 19 ("All humanity is bound up in the life of each person."). Jewish commentary upon the Bible accordingly construed each person as a microcosm of the human race:

It was for this reason Adam was created alone: to teach you that anyone who destroys a single life, it is to be accounted to him by Scripture as if he has destroyed the whole world, and whoever preserves a single life, it is accounted to

to every person. The Jewish understanding of human rights is entirely a function of this extraordinary value divinely granted to humanity.<sup>74</sup>

From this Jewish heritage, Western rights acquire their absolute character as attendant to the human being of every individual. Within Judaism, however, the absolute character of human rights is not intrinsic to the being of human being, but is divinely granted. Such divine regard may be withheld or withdrawn depending upon fulfillment of God's will through obedience to the revealed Law of God (Torah).<sup>75</sup> Although absolute, Jewish human rights are not universal.<sup>76</sup>

Within its Christian heritage, however, divine regard for human being was perfected by the Son of God in the person of Jesus Christ. Through Christ, humanity is freed from sin, redeemed before God, and exists in a state of grace.<sup>77</sup> Rectification between God and humankind is thus entirely God's doing. Through Christ, therefore, humankind is freed from the logic (or word) of Law, and lives in the logic (or word) of Spirit whereby divine Grace may be enjoyed fully and eternally: "For the wages of sin is death, but the free gift of God is eternal life in Christ Jesus our Lord."<sup>78</sup> In essence, the Law of God is fulfilled in the person of Jesus Christ, which fulfillment is accorded by the Grace of God to all of humankind. Divine regard is therefore realized not through obedience (to the Law), but through faith (in Christ): "If you continue in my word, you are truly my disciples, and you

him by Scripture as if he had preserved a whole world.

*M. Sanhedrin 4.5* (Mishnah from the second to third century C.E.), *quoted in Fishbane, supra* note 72, at 19.

74. *See Fishbane, supra* note 72, at 17:

The fundamental presupposition of the rights of the person in Judaism is a belief in the absolute and uncompromisable worth of human life. This belief is grounded in the unique value of the individual in the divine scheme of creation and is variously articulated in both biblical literature and rabbinic tradition.

*Id.*

75. Judaism has generally confined its absolute regard for human life to those of the Jewish faith who, moreover, properly fulfill their religious duties as such. *See id.* at 25.

76. Not only has Jewish regard for the absolute value of human life been historically confined to those of the Jewish faith who fulfill their religious duties as such, but certain categories of persons were not historically accorded full human status to begin with (e.g., idiots, minors, women, androgynes, etc.). *See id.* at 26.

77. As the incarnation of divinity in humanity, the person of Jesus Christ rectified the relationship between God and humankind—a rectification achieved not by human fulfillment of the Law, but by the Grace of God.

For the law of the Spirit of life in Christ Jesus has set me free from the law of sin and death. For God has done what the law, weakened by the flesh, could not do: sending his own Son in the likeness of sinful flesh and for sin, he condemned sin in the flesh, in order that the just requirement of the law might be fulfilled in us, who walk not according to the flesh but according to the Spirit.

*Romans 8:2-4.*

78. *Romans 6:23.*

will know the truth, and the truth will make you free.”<sup>79</sup> Christian freedom from Jewish Law is therefore “granted by God and received in faith.”<sup>80</sup> The Christian is free from the burden of the Law by virtue of living in Grace. “For the law was given through Moses; grace and truth came through Jesus Christ.”<sup>81</sup> This is the Christian faith.<sup>82</sup>

The Christian understanding of human rights is entirely a function of the extraordinary value divinely granted to human being through the person of Jesus Christ. This value is not only absolute; it is *fait accompli*. Through Christ, all persons exist in the state of Grace by virtue of being human.

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79. *John* 8:31-32. The freedom referred to here is freedom from the burden of having to fulfill the divine will through obedience to God’s law: “For freedom Christ has set us free; stand fast therefore, and do not submit again to a yoke of slavery.” *Galatians* 5:1.

80. Trutz Rendtorff, *Christian Concepts of the Responsible Self*, in HUMAN RIGHTS AND THE WORLD’S RELIGIONS, *supra* note 31, at 33, 39.

81. *John* 1:17.

82. See generally Matthew A. Ritter, *God and Truth: A Conceptual Analysis of Religious Commitment; Subversion of the S/subject* (1989) (unpublished Ph.D. dissertation, Yale University) (on file with author) (discussing the metaphysics, philosophical and theological, of the Christian faith). A leading theologian of the twentieth century properly construes the Christian faith accordingly:

To believe means to believe in Jesus Christ. But this means to keep wholly and utterly to the fact that our temporal existence receives and has and again receives its truth, not from itself, but exclusively from its relationship to what Jesus Christ is and does as our Advocate and Mediator in God himself. . . . [I]n faith we abandon whatever we might otherwise regard as our standing, namely, our standing upon ourselves . . . for the real standing in which we no longer stand on ourselves . . . but . . . on the ground of the truth of God and therefore on the ground of the reconciliation which has taken place in Jesus Christ and is confirmed by him to all eternity.

II KARL BARTH, *CHURCH DOGMATICS, THE DOCTRINE OF GOD* Pt.1 159 (T.H.L. Parker et al. trans., G.W. Bromiley & T.F. Torrance eds., 1957). The truth of Jesus Christ is the truth of the reconciliation between the divine and the human. For the Christian faith, Jesus Christ reveals this truth by virtue of embodying this reconciliation. The truth that we humans are constitutionally unable to realize is realized in the constitution of Jesus Christ. See Ritter, *supra* at 158. “Jesus Christ is the atonement. But that means that He is the maintaining and accomplishing and fulfilling of the divine covenant as executed by God Himself.” IV KARL BARTH, *CHURCH DOGMATICS, THE DOCTRINE OF GOD* Pt.4 34-35 (G.W. Bromiley trans., G.W. Bromiley & T.F. Torrance eds., 1956). The person of Jesus Christ thus renders/reveals full accord between divinity and humanity, and accordingly between God and all persons. Although this accord is realized by Christ alone, it is revealed to humanity, the only proper response to which is faith: “Believers ‘are’ the elect . . . so far as they bear witness to the truth, that is, to the elect man, Jesus Christ, and manifest and reproduce and reflect the life of this one Elect.” II KARL BARTH, *CHURCH DOGMATICS, THE DOCTRINE OF GOD* Pt.2 347 (G.W. Bromiley et al. trans., G.W. Bromiley & T.F. Torrance eds., 1957). Constitutionally unable to realize the truth of the divine-human accord itself, truth is realized for humanity by Jesus Christ. Humanity thus receives truth vicariously. Only through faith in its revelation may this truth be acknowledged and received. “[T]he truth of man’s being . . . can consist in nothing other than in man’s response with a corresponding faithfulness to the way and work of God [in Jesus Christ], to God’s faithfulness.” II KARL BARTH, Pt.1, *supra*, at 207. Reconciliation between divinity and humanity is therefore accomplished by God, through the person of Jesus Christ, but for the salvific benefit of all human kind.



Christ rectified divine regard for human being. All humans participate in this rectification. Divine regard for the individual is thus utterly independent of anything the individual is or does. Grace is prevenient; achieved not by human, but by divine effort in the person of Christ. The absolute value of a person therefore pre-exists any social differentia and is consequently universal. All persons are accordingly equal by virtue of no-thing—not by virtue of anything a person is or does. Pre-established through Christ, divine regard for humanity is absolute, universal, and egalitarian.

Human rights language within the Christian religious tradition addresses itself to this divine regard, and is accordingly dictated by the Word of God revealed through Jesus Christ. Universal egalitarian regard for the absolute value of the individual devolves from the radical freedom from the Law provided by Grace in the person of Jesus Christ.<sup>83</sup> The Christian community of faith proclaims this freedom:

But now the righteousness of God has been manifested apart from the law, although the law and the prophets bear witness to it, the righteousness of God through faith in Jesus Christ for all who believe. For there is no distinction; since all have sinned and fall short of the glory of God, they are justified by his grace as a gift, through the redemption which is in Jesus Christ, whom God put forward as an expiation by his blood, to be received by faith.<sup>84</sup>

Christian rights language is thus governed by the grammar of grace as voiced within the community of faith through its express belief in the Christ. The Christian community of faith is itself the communal incarnation of Christ as proclaiming redemption through Christ.<sup>85</sup>

As the communal incarnation of Christ, Christian ethics is accordingly governed by the single moral dictate of Christ as the Word of God: “I give you a new commandment: love one another; just as I have loved you, you must also love one another.”<sup>86</sup> The Law—whereby the human is reconciled with the divine—becomes through Christ the singular commandment to be toward all others as Christ was: to love—unconditionally, without regard to anything a person is or does.<sup>87</sup> Christian love is granted through divine

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83. See Rendtorff, *supra* note 80, at 43 (discussing the Christian content to modern “human rights”: “Secularization as rationalization means to express the Christian concept of freedom and responsibility in nontheological language, thus giving human freedom a universal form.”).

84. *Romans* 3:21-25.

85. “For where two or three are gathered in my name, there am I in the midst of them.” *Matthew* 18:20.

86. *John* 13:34.

87. See *Matthew* 22: 35-40:

And one of . . . [the Pharisees], a lawyer, asked . . . [Jesus] a question, to test him [on Jewish Law]. “Teacher, which is the greatest commandment in the law?” And he said to him, “You shall love the Lord your God with all your heart, and with all your soul, and with all your mind. This is the great and first commandment. And a

grace—a function not of human achievement; Christian love is received in gratitude as profoundly undeserved.

The Judeo-Christian religious heritage of human rights thus dictates an ethics of unconditional love for all persons. Judeo-Christian regard for persons is requisitely absolute, universal, and egalitarian: absolute by virtue of humanity's creation in the Image of God according divine worth to human kind; universal by virtue of the reconciliation between God and humanity realized by the person of Jesus Christ—vicariously fulfilling the Law for all persons; and egalitarian by virtue of its attribution to all individuals through grace—esteeming all individuals equally on the basis of nothing a person otherwise is or does. Absolute, universal, and egalitarian, Judeo-Christian regard for others—for all others—is therefore a function of nothing—of no social differentia whatsoever. At its root, the Judeo-Christian regard for persons is not a human regard at all, but is a function rather of the divine regard for human kind. In the Judeo-Christian heritage, this divine regard for humanity is graciously absolute, universal, and egalitarian.

The Judeo-Christian tradition therefore accords absolute, universal, and egalitarian value to all individuals—simply and only by virtue of their being human. The Judeo-Christian tradition accordingly provides the governing religious ethic whereby Western rights are uniquely construed to inhere absolutely, universally, and equally in all persons on the basis of the inherent dignity of every individual human being simply by virtue of being human, and not by virtue of any other defining social characteristic whatsoever.

## CONCLUSION

The differences between Indic and Western rights run as deep as the theological differences between Hinduism and Judeo-Christianity. Hindu rights are attendant to right action by virtue of a distinctly religious duty toward self-renunciation and the spiritual benefit of others; Judeo-Christian rights are attendant to being human by virtue of a distinctly religious attribution of absolute, universal, and egalitarian worth to all individuals. Contrary, then, to the claims of Subedi, the roots of Hindu and Western rights diverge quite profoundly. The absolute, universal, and egalitarian character of Western rights of the individual is simply not consonant with the character of Hindu rights acquired through *dharmic* action.

Subedi's analysis of human rights thus commits a rather ironic

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second is like it, You shall love your neighbor as yourself. On these two commandments depend all the law and the prophets.”

*Id.* When asked to clarify who one's neighbor is, Jesus responds with the Good Samaritan parable, making it clear that neighbor encompasses all others, no matter how detestable. See *Luke 10:29-37*.

oversight. He defends the universality of human rights by contending that Western scholars neglect to inquire into the ancient religiosity of non-Western cultures, and thus fail to see the deep roots of human rights principles in these other cultures:

Those who have claimed that the notion of human rights is the product of Western Christian civilization have sought to project the selective nineteenth-century values (values of the peak period of colonial domination) backwards into the past. They have not taken into full account the developments that took place prior to the colonization period.<sup>88</sup>

Oddly enough, Subedi commits the very same error by not taking into full account the development of Western human rights conceptuality that took place well prior to the nineteenth century. By assuming that Western human rights devolved from the European Enlightenment, Subedi himself fails to recognize their own ancient religious roots. He thus too readily dismisses nineteenth-century values as non-intrinsic to human rights principles, which allows him to sever these values from what he therefore holds forth as the ancient roots of human rights in other cultures. Western human rights, however, devolve from own an equally ancient Judeo-Christian heritage, and the nineteenth-century values attendant to Western human rights are themselves a function of that very same heritage. Although Subedi's contention that the "excessive individualism" of modern Western culture may readily be excised from the deeper roots of human rights principles ignores the religious roots of Western rights language, it does provide an interesting point of departure for reflection upon whether the Western language of human rights is fully consonant with its own Judeo-Christian heritage.

Western rights are attendant to being human by virtue of distinctly secular motives toward self-realization and the autonomy of the individual. Western talk of human rights speaks secularly about the intrinsic value of each human being—an intrinsic value equally common to each and every individual simply by virtue of being human. The grammar of Western rights language thus truncates the worth of human being into the essence of human being, having collapsed this essence into the abstract autonomy of the individual. Absent its religious heritage, however, Western rights language voices a secular misconstrual of the worth of the individual. The Judeo-Christian tradition from which Western rights talk historically devolves construes the absolute worth of the individual as a function of divine regard. The truncation of this divine regard into the essence of human being consequently transforms an ethics driven by unconditional love of others into an ethics driven by unconditional self-interest. When worth is granted, it is received graciously; when owned, it is demanded indignantly. In its

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88. Subedi, *supra* note 1, at 45.

secular enthusiasm to abstract the human worth of the individual from all possible differentia, particularly religious, Western rights language collapsed a uniquely Judeo-Christian understanding of the absolute worth of all persons into the being of the individual. Judeo-Christian rights grammatically structured in terms of divine regard consequently became Western rights grammatically structured in terms of human self-regard.

Subedi's reflections upon the religious roots of human rights language should therefore inspire Western scholars and jurists to rethink the religious heritage of our own notion of human rights. The secularism of Western jurisprudence may have nobly intended to construe human rights as absolute, universal, and egalitarian—and therefore not contingent upon any particular social differentia, particularly religious—but consequently compromised the governing religious ethic that provides for their absolute, universal, and egalitarian character.