

The Complexity of Religious Minority Rights

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Introduction

This paper tries to shed some light upon three conceptual extensions of the term group: group rights, group-related religion, and group related religious law. It argues for incorporating them into the idea of religious minority rights. I realize that the ‘canonical’ interpretation of the group concept is in terms of members of the group, but some documents make room for the survival, continuous development and identity of the minority group as a group. This paper tries to use this space and fill it by some questions and tentative reflections.

1. Relevance of religious minority rights

Why religious minority rights? The Covenant of the League of Nations (1919) did not refer to the issue of religious minorities rights, as religion was considered an issue for minorities, and minorities were considered a risk of national and international conflicts. In 1948 the religious freedom had been entered into the Universal Declaration of Human Rights (article 18), but minorities rights had been left out. After all they have been inscribed into article 27 in 1966 International Covenant on Civil and Political Rights (ICCPR). This is important as religious minorities suffer from violations of human dignity, freedom and equality –the three corner stones of the human rights regime.

Are religious minority rights superfluous? As Nazila Ghanea points out, despite the 1966 provision religious minority rights clause have not been used (on any scale) in judicial processes so far. Minority cases have mainly been treated under the separation of church and state principle and/or the freedom of religion, which after all is not an illogical procedure. The separation of church and state is founded on a special concern for religious minorities and the freedom of religion guarantees them to manifest their religiosity.

Relevance of religious minority rights A special provision for religious minority rights is relevant and in a sense indispensable. To begin with, the bonds between members of minority groups is based on so-called ascriptive solidarity, meaning that their members have been born into them on the basis of kinship ties, in which religious togetherness plays an essential role. Being a member of that bond is not their individual achievement. This ascriptive solidarity binds them together around common values and interests. Moreover there is an important political aspect in all of this, because being a minority means that there is a majority that ‘rules this country’. The majority does not need extra protection, as it is represented by the economic and political elite. One might argue that human rights give members of religious minorities access to the civil, political and socioeconomic domain, but that does not alter the fact that actually (religious) minorities are discriminated against, directly and/or indirectly, incidentally and/or structurally, and suffer from experienced and perceived discrimination in society. One may say that (religious) minority rights aim at contribute to the system of checks and balances by countering majoritarianism –a system which is one of the corner stones of democracy. Lastly, religious minorities should not only be tolerated, as long they exist, but reasonably accommodated in the perspective of inclusive universalism, as Heiner Bielefeldt argues. Human Rights Committee’s General Comment 23 says that the rights of minorities should be protected in the perspective of ‘ensuring their survival and continued development’. Nazila Ghanea’ rightly argues that continued development goes beyond pure survival.

II Conceptual questions

What are minorities? This question is not a purely academic, but also a practical-political one because of the exponential increase of migrant groups since the 1960s, at least in Europe. In Germany there are 32 and in Italy 90 minority groups. Their varying multiplicity depends on the interpretation of some criteria used: (a) the numerical criterion (lower limit and upper limit), (b) the power criterion (the relation between their high or low numerical weight and their high or low societal power), (3) the identity criterion (the measure of distinctiveness of their cultural, religious and/or linguistic character compared with that of the majority).

Religious majority/minority maps In order to substantiate the latter criterion, the minorities' self-understanding, it is important to reflect on the varieties of maps from which people look at the group they belong to, which shapes what Heiner Bielefeldt calls their self-understanding. From a Christian map Catholics, Eastern Christians and Protestants are different groups, that in varying states and provinces may function as a majority or minority. On a higher abstraction level, from a monotheistic map, Jew, Christians and Muslims consider themselves as belonging to different group formations, that again in varying states and provinces play varying majority and minority roles. On an even higher abstraction level there are two religious group formations in the world: eastern ones (Hinduism, Buddhism etcetera) and western ones (monotheistic religions). On the highest abstraction level we have the religious-secular divide with again two group formations: religious and nonreligious groups, that again may consider themselves in varying countries majorities or minorities. Non-religious people in, for example, Italy may consider themselves a pagan minority –a title they carry proudly with them–, whereas in the Netherlands religious people are beginning to see themselves as a minority over against a secularised majority.

But this fourfold mapping leaves an important insight from the science of religion aside, which is that many times the differences within religions are more important than those between religions. So there seems to be a world of difference between conservative and progressive wings within religions. The conservative wing in one religion seems to be apt to seek cooperation with those in other religions and progressive wings do so with those in other religions. Fruitful conversations may take place between, for example, liberal Catholics and liberal Sunnites or between orthodox Jews and orthodox protestants. In varying states and provinces these wings may function as majority or minorities over against each other.

I repeat that these distinctions are not purely of academic relevance, but also have practical-political implications. Where religions exchange their positions as majority or minority, the relation between equality and inequality is at stake. In general terms a changing relation has an impact on societal processes like anomy, social cohesion and law and order.

'Religion' in religious minority rights The question what religion is, is a complicated one, especially when it is asked in the perspective of religious minority rights. Here human rights law does not help us any further. As the US Supreme Court put it once: "The law knows no heresy, and is committed to the support of no dogma, the establishment of no sect". Nevertheless, article 18 in the Universal Declaration contains some important aspects: teaching, worship, observance and practice. But on further consideration, this article appears not only to imply an individual right of religious freedom, but also an individual conception of religion, while leaving aside a group conception of religion. In literature it is said that the formulation of this article seems to focus on individual religion within the frame of institutional religion. This emphasis on institutional religion leaves 'lived religion' aside. The

question is what difference it would make for religious minority rights when religion would be formulated not only in individual, but also in communitarian terms and not only in institutional terms but also in those of ‘lived religion’.

Let me try to answer this question in terms of some essential aspects of religion by focussing on the so-called axial religions, that date to the 5th century BCE. The first aspect is that religion are oriented on what Paul Tillich calls ‘an ultimate concern’, to be religiously substantiated into ‘the divine’. Second comes the revelation by or the manifestation of the divine through holy texts. While reading them people experience the divine, as they say. From the interaction between people’s religious experiences and continuous religious socialisation emerge their ‘lived religious beliefs’, which is the third aspect. The fourth aspect refers to people’s endeavour to put these ‘lived beliefs’ into practice, in the hope to practice what they believe. The fifth aspect is rituality through which people’s religious experiences and ‘lived beliefs’ are expressed and their communitarian bonds reinforced. The sixth aspect refers to the exegesis of holy texts and ‘lived beliefs’ in sermons and other communications. A seventh aspect goes with the conflicts that emerge around this exegesis. One starts with re-reading the holy texts and, if that does not help to end the conflict, one recurs to the traditions of interpretation of these texts, and if that does not help either, one recurs to an ultimate authority, an individual or synodal one, who is competent to declare what interpretation is binding and definitely resolves the conflict. The last and eighth aspect refers to the institutional or, more precise, juridical implications in all this. Religious group life, like all group life, is permeated by whatever juridical norms, informal and formal, unwritten and written, non-systematised or codified ones, that refer to the structuring of the religious domain, and from there also to the private and public domain in society. In one word, religion implies religious law.

The quick summary shows to what extent this set of eight aspects overlaps with the four religious manifestations in article 18 (teaching, worship, practice and observance), but at the same time goes beyond it, and does so in four different ways. First it centres around an ‘ultimate concern’, to be religiously substantiated into terms of the divine, further it is about ‘lived religion’, including ‘lived beliefs’ instead of abstract, institutionalised doctrinal truths, moreover it is group- or community-based, and lastly it is about authority, power and law.

Religious law What I said about religious law connects with the last part of Nazila Ghanea’s article, where she says that minorities’ religious law is not allowed to violate human rights whatsoever. An important example is the discrimination of women and persons with a homosexual orientation. The state not only has a negative obligation to counter this type of violation of freedom and equality, but also a positive obligation to develop policies in order to improve the predicament women and homos suffer from, especially in the sphere of marriage, albeit in a different sense (for women forced marriages, polygyny and honour killing, for homos exclusion from having sex and marriage). Here so-called legal pluralism encounters its boundaries, however deeply this kind of behaviour may be anchored in the religious communities concerned.

Conclusion

The presupposition of this paper is that the conception of human rights as individual rights implies an anthropology that is or seems to be of a typically Western making. The emphasis is on the independence, autonomy and free will of the individual person. But from a philosophical perspective it makes no sense to consider independence and dependence as opposites. The underlying presupposition should be interdependence. This might have

important consequences: widening the concept of right, widening and deepening the concept of religion, and reflecting on religious power and law. I realize that I far from solved all questions I referred to, like those on minority criteria and minority mapping as well as lived religion, let alone the juridical translation of all of this. But maybe some elements may appear to be fruitful for our discussion.