

Introduction

In Europe, Christianity played a crucial role in the development of the concept of freedom. However, the creation of the human rights construct has primarily been formulated as an achievement of the Enlightenment, viewing the ideals of Christianity as a spiritual current and social organising force that restricts the freedom of the individual. It may be worth considering the question of whether individual freedom and the interests of the community, the ideas of ‘liberal freedom’ and ‘Christian freedom’, are indeed opposites, as they are often portrayed in public debates. While recognising the importance of Christianity, Europe’s constitutional systems operate on the principle of religious neutrality. The religious neutrality of the state is an indisputable achievement of recent constitutional development, on the basis of which the state sphere and churches operate separately. The state does not favour any particular religion or worldview, but respects the various diverging beliefs within society, by ensuring the equal status of the churches and allowing individuals to practice their religion freely, thus securing the freedom of its citizens and the communities they create. This is a self-evident feature of modern democracies, which are built on guaranteeing fundamental human rights.

In general, the state cannot and may not be value-neutral: When it promotes culture, maintains public service media, prescribes the celebration of certain historical events or organises public education, it decides on its content, and always applies certain values. These decisions are not made on a ‘neutral’ basis, regardless of their religious content. If we completely banish religious-based considerations from the values taken into account by the state, we will ultimately reduce the pluralism and diversity of the values represented in public life, thus narrowing the choices of the individual. Prohibiting religious beliefs from the public sphere as a whole is not possible and would seriously damage the foundations of modern constitutionality. According to the philosopher János Kis:

The modern, secular philosophy of morality was created in no small part as a translation of the Judeo-Christian religious tradition into secular language, as a secular interpretation and critique of it. Thus, if a religious statement fails in the filter of the accessibility test [which thinks non-believers can be accepted], it is not because of its religious nature *per se*, but because of some other characteristic that is not necessarily related to, but not alien to, religiosity.¹

Some authors hold that the foundations of human rights and the recognition of the equal dignity of all men are rooted not only in the ideas of the Enlightenment but also in Christianity and the teachings of Jesus Christ. Recently, a number of definitive works have also been published that find the foundation of human rights

¹ János Kis, ‘Az állam semlegessége. Újabb nekifutás’, *Fundamentum* no 3 (2011), 18.

in Christian doctrines.² Larry Siedentop argues that the central idea of human rights, of the individual as a value, stemmed from Christianity, and it is no coincidence that reverence for it spread only in the Western world, which is traditionally Christian.³ In his posthumous book, the self-declared atheist Ronald Dworkin expressed the idea that religiosity is possible even without faith in God and that acceptance of the basic values of religious belief is independent of what we think of God.⁴ We might add that no matter what we think of these interpretations, we can conclude that there is no need for a constant clash between religious beliefs and secular arguments, and in fact, modern secular democracy and fundamental rights concepts often overlap with arguments based on Christianity.

In the 2004 debate on the Treaty establishing a Constitution for Europe (which was to remain unratified), the European Union decided not to include a reference to Christianity in the preamble to the document, and a similar reference in the Fundamental Law of Hungary of 2011 generated vociferous European debates. However, in 2015, in *SAS v France*, the European Court of Human Rights considered the norms of Europeans living together to be the criteria that may justify the restriction of fundamental rights, even if it may restrict the religious freedom of Muslims, while in 2019, Ursula von der Leyen, the then newly-appointed President of the European Commission, created the portfolio of Commissioner in charge of 'protecting the European way of life'. These norms of 'living together' are in many respects determined by Christian culture, and the representation of the Christian order of values can hardly be left out of such an imagined catalogue of the elements of the 'European way of life'. In any case, as a result of criticism, the name of the portfolio was immediately changed to 'For Promoting the European Way of Life'. However, it is questionable whether Christianity is a prominent part of the officially acknowledged European way of life today, and if so, in what respect (religious, political or cultural).

The essays collected in this volume clearly show that the intertwining of culture, values, law and religion, especially Christianity, constitutes a special area of legal studies, and this is a research field which requires much fuller exploration. Although the authors each analysed this very complex correlation from their own points of view, it can be said that most of the papers focus on the legal questions raised by liberties, such as the right to human dignity and to the freedom of expression, religion and thought. The very first essay, by András Láncoz, is a comparison of the ancient and modern concepts of freedom, and the modern tendency towards totalising politics. He argues that the ancient solution to the problem of how to reconcile the command of Law and freedom of man was based on the classical concept of Nature, and that freedom was derived from man's accommodation

² Michael J Perry, *Toward a Theory of Human Rights: Religion, Law, Courts* (Cambridge: Cambridge University Press, 2006).

³ Larry Siedentop, *Inventing the Individual: The Origins of Western Liberalism* (London: Allen Lane, 2014).

⁴ Ronald Dworkin, *Religion Without God* (Cambridge, MA: Harvard University Press, 2013).

to the laws of nature, while the Christian theory rested on the free will of man and the fight against sin, whereas the modern idea is founded on the political rights of man, ensured by supranational conventions and treaties. The ancient and Christian understanding regarded the Law as absolute, while the modern concept removed first God, then natural laws from the concept of freedom, and subjected it to constant political debates.

Still applying the method of historical comparison but focusing more on Christianity, Ádám Rixer's essay examines the notion of Christian liberty. After cataloguing its traditional legal and theological aspects, he formulates a more dynamic, process-like concept, showing that this new legal notion of Christian liberty is established on a sociological basis that refers not only to legal norms or decisions but also to the practices of different authorities beyond those legal sources. The first part of Balázs Schanda's paper provides insight into the evolution of the doctrine of the Catholic Church on the freedom of religion, while the second section outlines the chances of a culture originating from Christianity in an age when this faith is diminishing in society. The Biblical vision of the human person has determined the Western world: Man and woman were created in the image of God, and their free will had a unique dignity. Although traditionally the rationale of the State was to serve the common good, the content of this doctrine has evolved over time: Nowadays we regard human rights and especially religious freedom as inherent parts of the common good. Zsolt P Balogh argues that the system of human rights is similar to a system of religious beliefs and that they belong together as the basis of human rights originates in the freedom given by God. Human dignity is embedded in all rights, and the Christian idea of freedom supports human rights, which are naturally inseparable from individuals. After investigating privacy and the rights relating to personality, and dealing with the problem of equality, he concludes that human rights must also cover some social rights, based on the Christian approach. Lóránt Csink analyses Christian liberty from the view-point of the Bible, and constitutional liberty from the perspective of classical liberal doctrines, not presenting either the liberal or the biblical standpoint of human nature in its entirety, but comparing the source, content and aims of liberty.

The next group concentrates on the problem of conscience. Gergely Deli explores the question of the grounds on which a Christian may sue in his own interest, and whether it would not be better to mildly renounce that right. He addresses this problem with the help of the instruments of the evening examination of conscience, and outlines an 'emotional', intent-oriented constitutionalism, founded on human salvation and focusing on vices, instead of mainstream, individualistic, consequence-based and rational constitutionalism. Zoltán Balázs underlines that the doctrine of human rights is not a moral or philosophical but a political issue. After introducing the concept of political doctrine, he traces how this doctrine was formed within specific political contexts. He argues that this 'right' has long been firmly connected to specific (mostly ecclesiastical) institutional forms (universities,

legal processes), and that during the robust democratisation of the Western world, individuals have become the institutional ‘forms’ of these rights. The massive political power of human rights defence movements and organisations confirms the political nature of their underlying ideological commitments.

Some more specific issues of human rights are elaborated by Tamás Nyirkos and Ferenc Hörcher. Nyirkos investigates the notion of human rights as an object of faith, religion and secular religion. While the extraordinary vagueness of all such claims and the terms contained therein make it impossible to draw any analogy with religion in general, several features of the theory of human rights show similarities to those of certain traditions which are usually called religious, and mostly Christian. Hörcher’s essay aims to introduce the proposal of Pierre Manent to reconstruct natural law, mainly in his book on *Natural Law and Human Rights*. Hörcher demonstrates how Manent starts out from the obvious contrast between the human rights discourse in a European and a non-European context, then historically reconstructs the early modern rise of the human rights discourse. Manent’s proposal introduces his view of politics, based on the dialectic of command and obedience (pleasure, use and honesty). Hörcher supports Manent’s proposal to revive the Aristotelian–Thomistic practical wisdom and the reasoning based on common good, confining the political use of human rights discourse to its proper territory.

Embarking on a slightly different trajectory, Attila K Molnár focuses on the emergence of the notion of disobedience not as a political or moral opportunity but as a moral duty. The post-war political and moral imagination has emphasised – alongside the notion of natural law – the moral (and even legal) duty of disobedience when confronted with an unjust law or order. Although in political thinking, the mainstream problem was how to cope with the rebel as an eternal danger for the political community, the history of Christian moral thinking, centred on the idea of conscience, produced the opposing notion of the duty of disobedience. Norbert Kis sketches how pre-Christian people met the Christian religion, then suggests the causes of the weakening of Christianity. While Christian freedom remained a constructive power in the age of the Enlightenment, the first attempts at secularisation that had started by that time have disrupted the organic tissues of Western culture for the last two centuries. He argues that, after a desperate two-hundred-year-long period of ‘quest’, the revitalisation of the Christian religion could provide a counterforce to the disruption of Western communities. Gyula Bándi, focusing on the teaching of the Catholic Church, highlights that the international community in the past decades has been struggling to establish the right to environment officially into the body of human rights, either on its own or in constituents. Although environmental protection is the basis and condition of everything – including human rights – it is also deeply based in Christianity and has been part of the message of the Church for decades. It was also inevitable that human rights and the environment should come together in the same teaching. As János Frivaldszky explains, at the time when the Universal Declaration of Human Rights was drafted, it seemed neither possible nor

necessary to establish a philosophical anthropological definition of the human person whose rights were proclaimed by the Declaration; nowadays this is inevitable. The Catholic natural law tradition has always proved to be an effective aid in this process, when, through upholding rights, the human person needs to be protected in ever new bioethical situations.

The final part of the volume sheds more light on Christian values. András Zs Varga provides an overview of the basic international human rights instruments on marriage and family. He reviews the extent to which marriage and the family can be seen as essential components of European culture: Starting from the conception of marriage in the Old Testament, Jewish and Roman imperial law, he presents the contemporary universal and domestic ecclesiastical conception after reviewing the rules of the Catholic Church, which conveys these values. Defending human rights and common values can be difficult, however. Kálmán Pócza's study identifies the causes that led to one of the greatest crises in the history of the German Federal Constitutional Court, and explains why the position of the Court was (temporarily) destabilised by the issue of the Crucifix in the classroom and the question of freedom of religion despite the fact that this institution and its decisions enjoy a high level of public and political support among German citizens and the members of the political elite. Finally, as András Koltay puts it, expressions of religious beliefs are simultaneously protected by the right to freedom of religion and expression. Furthermore, freedom of expression also includes the right to remain silent. The question of whether making a cake constitutes speech and whether the baker may refuse to do so on the grounds of freedom of religion has been raised before several courts. This very complex problem involves issues including freedom of religion and expression, ensuring equal treatment, protection of human dignity, freedom of expression and religion.

In our opinion, the careful examination of the issues raised briefly above is necessary, not only to understand the past but also to make well-informed decisions for the future, in any European country or in the European Union operating as a community of nations. Enriching the discussion on human rights is the most important mission of the Hungarian law journal *Acta Humana*. We have devoted two volumes (3 and 4 of 2020) to articles examining the relationship between Christianity and human rights. During the editing process, after reading the manuscripts, we decided that the texts submitted for inclusion in the journal were suitable for contributing to a broader scientific discourse outside Hungary. In the spirit of this, we are launching this volume, trusting that the readers will find in it writings that are of interest to them, and will, we hope, simultaneously stimulate them to engage in the debate.

Budapest, 31 January 2021

András Koltay
Editor