

# Interreligious and Cross-Cultural Perspectives on Informed Consent in the Light of Human Rights and Mental Privacy

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**ABSTRACT:** Even if under a lot of stress at the moment, human rights are generally considered to be absolutes that should not be touched nor put into question. Yet, recent biotechnological and neuroscientific discoveries have led many scholars to call for an increase in the level of alert that such changes in our society could imply - reaching the suggestion that we should implement new, additional human rights (cognitive liberty, mental privacy, mental integrity, psychological continuity) aimed at dealing with the specific threats that our mental privacy, autonomy and integrity could suffer from. Surely this scenario includes in direct ways our approach to informed consent and the objective of this paper is to highlight how six of the most prominent religious traditions and cultures in the world (Buddhism, Christianity, Confucianism, Hinduism, Islam and Judaism) can interact with these new human rights, underlining the specific role of informed consent within each tradition and in which way the possible implementation of this new way of conceptualizing human rights could impact -if at all- on any of the already established guidelines of each of them.

**KEYWORDS:** Autonomy; human rights; informed consent; neuroethics; religion

**SUMMARY:** 1. Introduction – 2. Neuroscience and Human Rights – 3. Biolaw and Human Rights – 4. The Principle of Responsibility, Human Rights and Neuroethics – 5. New Human Rights: How Would Those Affect Informed Consent? – 6. New Human Rights, Informed Consent and Religion – 7. Conclusions.

## 1. Introduction



That there are similar bioethical problems in different countries does not imply that the same ethical approach exists everywhere. The global dimension, however, invites us to re-think our usual approaches and ethical frameworks. It makes us aware of the “locality” of

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our own moral views while, at the same time, encouraging us to search for moral views that are shared globally. In this challenge, bioethics is increasingly connected with international law, particularly human rights law, which has a similar global vision<sup>1</sup>.

Rapid developments and discoveries in biotechnology and neuroscience challenge us with new, at times unpredictable, moral dilemmas that have great scope and impact. Surely, the global interconnectedness of our times pushes us more than ever to enquire and discuss said challenges in an inter-religious and cross-cultural perspective because we believe that such an exchange of views has, in itself, an added value for the progress of human dialogue. Here, our focus will be on drawing a map of the relationship between human rights and global bioethics, and then move towards the specific problem that some new human rights invoked in the field of neuroethics could represent for society. Lastly, we will highlight how such new human rights would interact with six of the most prominent religious traditions in the world, hoping to contribute to the fostering of dialogue among different groups of people in the world and increasing the exchange of knowledge in relation to rapid neuro-ethical challenges we are facing as a global community. Hence, to begin with, let us look into the relationship between human rights and neuroscience.

## 2. Neuroscience and Human Rights

When considering the relationship between neuroscience and human rights, it is important to clarify what we understand by human rights. They are the set of goods whose recognition, protection and guarantee, in each historical moment, specify the requirements of dignity, freedom and equality, which must be positively recognized by legal systems, at both national and international level.

When we say that they are “goods” we mean that they are “valuable things”, that is, realities that human beings are endowed with that are objectively essential and fundamental for our existence and for our development. The classic definition of justice as “giving each one his own” helps us to understand this concept a bit abstract, but no less real. “What is yours” is “what belongs to each one”. The very nature of human rights characterizes them as universal, since all human beings possess them by default when coming into existence. This is one of the reasons why we define human rights as inherent, that is, inseparable from the human condition. They arise with the new human being and are extinguished with the death of the person. Precisely because they are essential goods and endowed with an objective value, human rights are not susceptible to acts of domination. This assumes that such goods are so fundamental to our existence and development like people who cannot be bought or sold, given away or renounced. Not even the individual can renounce them, nor, of course, can the State arrogate to itself the right to dispose of them legitimately, invoking the benefit of the community. In this sense, we say that human rights are unconditional, because they should not be violated, infringed or arbitrarily limited.

From this general understanding of human rights, we can better understand the extent to which neuroscience and its applications, in the form of neurotechnology, can contribute to the satisfaction or realization of these rights -as well as creating space for further integrations on the list we currently

<sup>1</sup> H. TEN HAVE, *Respect for Cultural Diversity and Pluralism*, in P. J. THAM; K. KWAN; A. GARCIA (eds.), *Religious Perspectives on Bioethics and Human Rights*, Cham, Switzerland, 2017, p. 10.

have drafted as a document with the Universal Declaration of Human Rights (UDHR)<sup>2</sup>. The creation (or acknowledgment) of such rights entails correlative human duties. Indeed, there are no real and effective rights if each right that is invoked as such (in a strong sense) is not associated with a correlative duty (or responsibility to do or not do) on the part of another person, group of people or an institution.

Human rights, therefore, have an ethical groundwork, since they are presented as a set of objective moral demands -they do not depend on consensus or the parliamentary majorities that approve and promulgate positive laws. In other words, my life, my freedom and my dignity do not depend on an authority or a law to recognize them. They are goods (valuable things in themselves) that belong to me because of the simple fact that I am a human being. Therefore, human rights are prior to positive law. However, human rights so conceived have a legal vocation - they must be positivized. Hence, the State (the legitimate authority of a certain political community) has the task and duty to recognize them, to guarantee them and to promote them as a way to facilitate and promote peace, social cohesion and mutual coexistence. The State, therefore, does not create human rights - as these belong to every human being - but it has a duty to recognize and protect these rights so that, such a positive law (democratically approved in a parliament) that does not recognize or ignore such rights must be considered an unjust law.

From a religious perspective, the brain, mind and spirit are fundamental assets of the person. These three realities can only be understood in their inherent relationship and always forming part of the totality of the person which is a human body, in the sense that it is not an organism like any other (an object according to the legal categories), but belongs to the higher existential and ontological order that constitutes him/her as a subject, naturally endowed with a special value, which we call human dignity, and a unique social-relational capacity, which distinguishes and differentiates animate and inanimate beings. The complexity of the interactions and correlations between the body, the brain, the mind and -within a religious scheme- the soul has led to conceptualization as a scientific-philosophical problem (mind-body problem). What, however, seems indisputable is that each of us exists, survives and develops thanks to the existence of our brain and our body, which allow us to relate to others and the environment. Our nature and way of being specifically human enables our development in a particular culture, which is part of our own education and identity. Of course, this encompasses any kind of religious experience and tradition, but it is surely hard to defend that such a variety of religious practices would be possible, certainly, without a human brain.

Thus, human life and existence, as well as personality, identity and freedom cannot exist in the abstract but only embodied in the concrete person who can perceive and appreciate himself/herself in relation to others when the brain and mind work properly, allowing him/her to reason and relate harmoniously with the human environment (family, society, work and so on) that surrounds him/her and the contingent environment. In this sense, we can say that the brain and mind properly integrated, are fundamental elements of the person. In other words, they are conditions of possibility for the existence, enjoyment and development of human rights. Before further dwelling on the connection between human rights, neuroscience and religion, in the section of this work, we will look into more details with the overlapping that this discussion has with the law.

<sup>2</sup> [www.un.org/en/universal-declaration-human-rights/index.html](http://www.un.org/en/universal-declaration-human-rights/index.html) (last visited 14/06/2019).

### 3. Biolaw and Human Rights

Law studies and deals with regulating human behavior insofar as it affects coexistence in society and affects the common good of citizens. Modern neurotechnologies, on the other hand, offer growing knowledge about the human brain and mind, as well as about the behavior of human beings. Both law and neuroscience aim to study human behavior, although each of them uses different tools and perspectives because they do so with different purposes. Both branches of knowledge, within their respective sphere of influence, can and must interrelate to complement each other, putting the person and society at the center.

Nowadays, neurotechnology offers a series of opportunities that allow us to observe and affect, with increasing depth and knowledge of the cause, the brain of people. Neuroimaging techniques allow us to know and study the shape and functioning of the brain with instruments unthinkable until a few decades ago, with a level of accuracy that is drastically increasing. The greater knowledge of the brain (still very distant from being complete and exhaustive) has allowed the development of more and less invasive products and intervention methods, such as certain medications, brain stimulation (invasive and non-invasive), neurosurgery, cell therapy with neural stem cells and even the implants of electronic devices in our brains<sup>3</sup>. These interventions, insofar as they imply human behavior, are the object of many studies by bioethicists and lawyers.

Such neurotechnological advances are produced thanks to scientists, researchers and medical professionals who dedicate themselves passionately and competently to the study of the human brain and from them civil society legitimately hopes that their knowledge and professionalism will benefit the medical, societal and political community in which they work. In a hypertechnological society such as ours, not infrequently there are voices of suspicion towards the purpose, use and intentions of the people that are part of the scientific community, at times due to completely ungrounded reasons, at times due to some legitimate worries of transparency. To avoid the creation of an even more skeptical society, it is thus convenient and necessary that bioethical and biolegal reflection always accompany the new discoveries and the applications of new technologies.

Prudence in the ethical judgment about neurotechnology and the precautionary principle<sup>4</sup> in their implementation, might help us, on the one hand, to diminish or minimize the unfounded fears towards the new and unknown (which sometimes appears to us as a threat) and, on the other, to moderate the euphoria of the successes of technological development, placing neuroscience and neurotechnology within the realm of the achievable rather than the quasi-Olympian dimension of the divine. As highlighted by various experts, “the brain has a special status in human life that supposes that the interventions in this organ provoke concerns that have not been provoked, to the same extent, by other new technologies or interventions [...] the ethical evaluation of this type of interventions begins by considering the reasons we have to assess our brains and the corresponding imperative reasons to intervene when the brain stops working or when it is damaged or diseased. We observed that the mixture of the ethical imperative to alleviate the damages that result from brain

<sup>3</sup> A. LAVAZZA, M.D. GARASIC, *How Non-invasive Brain Stimulation Might Invade Our Sphere of Justice*, in *Journal of Cognitive Enhancement*, 1, 2017, p. 31-38.

<sup>4</sup> L. MARINI, L. PALAZZANI (EDS.), *Il principio di precauzione, tra filosofia, biodiritto e biopolitica*, Rome, Edizioni Studium, 2008.

damage and the limits of our knowledge about how to achieve it generates a special tension between necessity and uncertainty<sup>5</sup>”.

Therefore, when considering the advancements in the field of neuroscience, there is a need to take into account the intentions with which products, procedures or techniques can be studied or developed: for purposes of experimentation, for therapeutic purposes, for recreational purposes or for military purposes. Both the object of these actions, which involve intervention on the human brain, and its purpose are not, and should not be, alien to the legal world, especially in the light of the fact that such behaviors affect social life -hence, the fundamental rights of people and the common good. While interventions that have a therapeutic purpose (to cure) are normally accepted and requested socially, it is not uncommon to fear how some neurointerventions that involve manipulation (to alter certain characteristics of the brain) could lead to unhealthy use of the technology, alter the human condition in questionable manners and generate and exacerbate injustice.

When we speak of law, we can use the term or concept, at least in two different ways: law as a rule (positive law) and law as a legal right. As a “norm”, we refer to law as synonymous with “law” that are provisions of the legitimate authority that intervenes and regulates, with obligatory character, human behavior, when the common good is at stake. In this sense, it is said that a lawyer is an expert in law or that ignorance of law does not exempt from compliance. There are positive laws that regulate to a greater or lesser extent the use of neurotechnology (e.g. laws on biomedical research, on medicines, medical devices and implants, on the autonomy of patients and on the protection of privacy or confidentiality, as well as laws that protect personal data and laws on public health protection), but they can quickly become outdated.

As a “legal right”, we refer to the right as a basic need for the existence of the person. It is in this sense that we speak of human rights: of the right to life, to integrity or to one’s own identity. From this approach to human rights, these needs are the fundamental assets of the person that we must recognize, respect and guarantee the whole of the citizens and, by mandate of them, the authorities of the State. From this perspective, we seek to analyze the extent to which neurotechnology can affect our rights. It is in this second sense of law that we stop now for a moment to reflect on the human rights that are at stake in the use of neurotechnology. If we take a careful look at the UDHR, we find a series of fundamental goods that have already been recognized as universal and that therefore belong both to those who use neurotechnology and to those who do not use them. Both to those who benefit from their direct use and those who do not (either by choice or inaccessibility of various kind). Neuroscience and its neurotechnological applications are, undoubtedly, instruments that, when used correctly (not only based on technical criteria but also with ethical criteria), offer the opportunity to satisfy and promote respect for life, freedom, psychic integrity, the identity of people. All these are human rights. And together with these individual benefits, society as a whole is also favored by scientific and technological advances. However, it is important not to forget that the growing potential of these instruments can also pose a risk and a threat to dignity and to the same essential assets of people and of society itself. It is to this uncharted territory that Marcello Lenca and Roberto Adorno want us to pay attention, and we shall look into that below. First however, we shall highlight the relevance of the principle of responsibility to human rights and neuroethics.

<sup>5</sup> NUFFIELD COUNCIL ON BIOETHICS, *Novel Technologies: Intervening in the Brain*, London, 2013, p. 72.

#### 4. The Principle of Responsibility, Human Rights and Neuroethics

In line with what explained until now, the principle of responsibility<sup>6</sup> could be revealed as a fruitful way of biolegal reflection to face the need of guardianship of the person and the prevention of the damages that neuroscience could cause to the fundamental rights of man. This is the idea basically put forward by Hans Jonas, for whom: “the responsibility is the care of another being when it is recognized as a duty, becoming a “concern” in case the vulnerability of said being is threatened”<sup>7</sup>. The implementation of this principle, therefore, implies a duty to protect also those who are more fragile and unable to defend themselves.

A legislative project -based on the principle of responsibility- should therefore start with a process of identification, assessment and investigation of biotechnological and neuroscientific risk, aimed at identifying the probability of damage, as well as evaluating the effect: pursuing of different objective contexts. On the one hand, this entails great care for the protection of the person and their personal rights; on the other, it does not hinder the development of the investigation.

Therefore, the need to individualize a definition of the principle of responsibility presupposes that, in addition to being a guide to the options in the legislative field, it can be put into practice in the same way as a mandatory principle for judges, so to put them in a position to identify the possible impact and the incidence of neurotechnology on humans<sup>8</sup>. This idea of constant scrutiny -and adaption- of new technology to human beings and back is at the very center of the next section of our work, and we shall look into it next.

#### 5. New Human Rights: How Would Those Affect Informed Consent?

In a recent article that has rightly gained wide international visibility<sup>9</sup>, Marcello Ienca and Roberto Andorno stress how, in the course of human history, our mind has always been our last “refuge of personal freedom and self-determination”. Obviously, the claim is made on the -until now unquestionable- fact that no matter what kind of restrictions we might have to endure in the world “out there” (e.g. torture), our “internal” emotions and beliefs are free and untouchable.

As mentioned above, neurotechnology might have led us to an era where such certainty has become less stable. Fearing that we might enter this dystopian future in a very proximate time, Ienca and Andorno propose to implement new human rights that would help us protect ourselves from such threat. The suggested rights are the following four:

<sup>6</sup> The conceptualization of the principle of responsibility is that of the German philosopher Hans Jonas, for whom each individual should apply said principle in each action and gesture she does, constantly taking into account the impact that the given action will have on the future of individuals and of humanity as a whole. H. JONAS, *The Imperative of Responsibility: In Search of an Ethics for the Technological Age*, Chicago, 1984.

<sup>7</sup> H. JONAS, *The Imperative of Responsibility: In Search of an Ethics for the Technological Age*, op. cit. p. 81.

<sup>8</sup> TPICE– that stands for Tribunal de Première Instance des Communautés Européennes (European Communities’ Court of First Instance) – in the T-13/99 case, has affirmed that “the scientific assessment of risks is commonly defined both at the international level and at the community level, as a scientific process that consists in identifying and characterizing a hazard, while evaluating the exposure it needs to also connote the risks.”

<sup>9</sup> M. IENCA; R. ANDORNO, *Towards new human rights in the age of neuroscience and neurotechnology*, in *Life Sciences, Society and Policy*, 13(1), 2017.

- 1) The right to cognitive liberty: the right to alter one's mental states through technical means, and the right to refuse to do so.
- 2) The right to mental privacy: the right to prevent illegitimate access to our brain information.
- 3) The right to mental integrity: the right of individuals to protect their mental dimension from potential harm.
- 4) The right to psychological continuity: the right to preserve personal identity and the coherence of the individual's behavior from unconsented modification.

Out of the four, we want to pay particular attention to the right to mental privacy – the one we think it is most immediately at risk of being threatened by neurotechnology. The reason behind our concern is based on the fact that, differently from the other three rights, this is more “passive” in a sense: it would “only” require a reading from external entities of our brain activity (recent advancements in neuroimage techniques suggest that enormous progress has been made in that direction). The posed threat then, would be twofold: on the one hand, we will risk losing sensitive, personal information, and, on the other, we might suffer so without our informed consent. As this scenario comes close to reality, we feel that it is useful to consult, no matter how preliminarily, historic religious and cultural traditions across the globe to attempt to clarify if and how they might have a common stand among them and with seculars on this timely theme.

## 6. New Human Rights, Informed Consent and Religion

Could we convincingly define how should or do religions and cultures interact with the advancements of neuroscience? Probably not in a definitive manner, and surely not within the scope of this paper. Yet, we think that the following sections (divided into each religious tradition) will be useful to create a valuable framework within which to build and foster the discussion on the implementation of the new human rights proposed by Lenca and Andorno -with particular emphasis on mental privacy due to its connection with informed consent (or its possible absence).

### *Buddhism*

While some have argued that human rights conflict with the Buddhist approach that sees the *dharma's* allocation of different duties to different people, others have defended<sup>10</sup> that the way human rights have been formulated is complementary to moral values present in classical Buddhism -hence the current formulations of human rights complement moral values of classical Buddhism and describe what is due under *dharma*.

In relation to the right to mental privacy, as the Buddhist tradition does not strictly rely on individual autonomy (and as a result informed consent), its relevance does not seem so clear. Ellen Zhang provides us with a very important reading of the practical value of the informed consent forms, and the role of duty in the Buddhist tradition. “While Buddhism challenges an individual-oriented approach to autonomy, it also challenges an individual-oriented approach to rights. Buddhism would accept

<sup>10</sup> D. KEOWN; C. PREBISH; W.R. HUSTED (eds.), *Buddhism and human rights*, Richmond/Surrey, 1998.

‘negative rights’ as a protective means for the interests of the patient yet having problems with using the language of rights without qualification to grapple with every moral issue<sup>11</sup>’.

As a result, one might be tempted to think that Buddhism would not be too concerned with the introduction (or not) of a right to mental privacy so to preserve our individual freedom, as not so valued in the Buddhist tradition. However, Hongladarom<sup>12</sup> reminds us that, for Buddhist, much importance must be given to interdependence and compassion, and that those entail care for those who need special protection and respect due to their conditions that make them vulnerable. Hence a protection of the vulnerable (those unable to be in a position to say no) would suggest a support of this defense of informed consent.

### Christianity

In relation to the connection between (new) human rights and Christianity<sup>13</sup>, Laura Palazzani stresses the importance to keep in mind the connection between rights and duties, highlighting how such a relationship has been developed in the course of the last decades. She writes:

“Within the context of the Catholic Church the line of thought of the relationship between religion and human rights was further elaborated in the documents of the Pontifical Commission ‘Iustitia ed Pax’, and in particular in the document *The Church and the rights of man* 1975, reprinted in 2011.<sup>14</sup> The document stresses the need to strictly correlate rights and duties – “to speak of rights is like enouncing duties” – and on the widening of rights and duties from the individual to the community, both as far as concerns civil and political rights and economic, social and cultural ones. In the international theological Commission two texts with particular reference to human rights were drafted. Dignity and rights of the human person (1983) stresses the need to clearly define man’s rights and to establish their juridical formulation, with a view to a common interpretation of the rights of man, at least in political and social terms. In the document *In search of a universal ethic: a new look at the natural law* (2009) the urgent need to reinterpret natural law, natural right and human rights in the context of religious and philosophical pluralism, secularization and the recent historical-social transformations, particularly with regard to techno-scientific development, are addressed<sup>15</sup>”.

Of extreme importance, is also the call for attention towards the corresponding duties that one has when receiving rights that the Pontifical Council for Peace and Justice has repeatedly and strongly

<sup>11</sup> E. ZHANG, *Informed consent – A Critical Response from a Buddhist Perspective*, in *Studia Bioethica*, 11 (2), 2018, pp. 5-13.

<sup>12</sup> S. HONGLADAROM, *Buddhist perspective on four vulnerable groups: Children, women, the elderly and disabled*, in P.J. THAM; A. GARCIA; G. MIRANDA (eds.), *Religious perspectives on human vulnerability in bioethics*, Dordrecht, 2014, p. 117-133.

<sup>13</sup> Although aware of the fact that we refer to Christianity only through the lenses of Roman Catholicism, we are convinced that the positions here highlighted do not clash in any way with the Christian Orthodox, Protestant and other version of Christian bioethics. K. WILDES, *The Ecumenical and Non-Ecumenical Dialectic of Christian Bioethics*, in *Christian bioethics: Non-Ecumenical Studies in Medical Morality*, 1 (2), Oxford University Press, 1995, pp. 121-127.

<sup>14</sup> These documents do not coincide with the official position of the Church but constitute a significant contribution to its internal reflection.

<sup>15</sup> L. PALAZZANI, *The Christian-Catholic Religious Perspective: Human Rights, Cultural Pluralism and Bioethics*, in J. THAM; K. KWAN; A. GARCIA (eds.), *Religious Perspectives on Bioethics and Human Rights*, Cham, Switzerland, 2017, pp. 190-191.



stressed. In the Compendium of the Social Doctrine of the Church,<sup>16</sup> as a matter of fact, it says: “Therefore those who, while claiming their rights, forget or do not place their respective duties in the right place, run the danger of building with one hand and destroying with the other<sup>17</sup>”.

More specifically still for the scope of the present investigation, Palazzani goes on to explain in another work, the Christian approach to the right to mental privacy, stressing that: “informed consent is inspired by Jesus, who cured the sick with compassion, generosity, and understanding. Christians believe that disease and suffering are trials from God to bring them closer to salvation through death and into His grace. Scientific research should be done for the purpose of serving those who are ill, not solely or primarily for the benefit of the researchers<sup>18</sup>”. Hence, the need to implement the new human rights suggested appears necessary. Not only they would guarantee the continuation of this integration between rights and duties so relevant and central for the Christian tradition, but - concerning the specific right to mental privacy- it would preserve the theological space that informed consent requires for the believer to freely choose to follow the path of Jesus. Any alteration that could jeopardize the genuineness of such a choice could not be seen favorably by the tradition and must then be avoided at all costs by implementing the required normative tools that help us defend ourselves from such a threat.

### Confucianism

There is no clear concept of human rights in early Confucian societies, possibly because, instead of laws, such societies were governed more often by rites. It was this very ritual based governing scheme that decided who had to do what. Despite the fact that modern China has not fully pledged its commitment to the UDHR, there are numerous ideas related to human rights embedded within Confucianism that have been implemented by recent governments.

Ruiping Fan explains how, in strict medical sense, the relevance of informed consent might not be as important as it should be when considering the value of expressing one’s ideas in political terms, as politics is always more important than medicine when considering the benefits that could be done to society. Yet the result, in terms of the right to mental privacy appear to be the same. He writes: “Confucianism sees medicine as ‘the art of *ren*’<sup>19</sup> [...] Throughout the history of Chinese medicine, the emphasis has always been placed on the physician’s virtue and obligation in performing the art of *ren* for assisting people, rather than on providing adequate information to patients and their families. In reality, Chinese physicians must have gained consent, either explicitly or implicitly, from patients and their families in order to conduct medical treatment, but it is also clear that obtaining such consent before treatment has never been formally and clearly required in the tradition<sup>20</sup>”. Even if not so easy to predict for all four of the newly proposed human rights, it would appear as if the Confucian tradi-

<sup>16</sup> [www.vatican.va/roman\\_curia/pontifical\\_councils/justpeace/documents/rc\\_pc\\_justpeace\\_doc\\_20060526\\_compendio-dott-soc\\_it.html#%20Diritti%20e%20doveri](http://www.vatican.va/roman_curia/pontifical_councils/justpeace/documents/rc_pc_justpeace_doc_20060526_compendio-dott-soc_it.html#%20Diritti%20e%20doveri) (last visited 14/04/2019)

<sup>17</sup> GIOVANNI XXIII, Lett. enc. *Pacem in terris*: AAS 55 (1963) 264.

<sup>18</sup> L. PALAZZANI, *Multicultural and interreligious perspectives on informed consent. The Christian perspective*, in *Studia Bioethica*, 11 (2), 2018, pp. 14-22.

<sup>19</sup> “Ren” could mean: ‘humanity’, ‘humaneness’, ‘goodness’, ‘benevolence’, or ‘love’.

<sup>20</sup> R. FAN, *A Confucian View of Informed Consent and the Issue of Vaccination*, in *Studia Bioethica*, 11 (2), 2018, pp. 23-30.

tion would not see positively the possibility to direct one's consent -be it individual or collective- as this represent a path to virtue for the individual, families and society.

### Hinduism

Although India is the largest democracy in the world and Mahatma Gandhi is considered by many as an example of civil rights, such rights do not fully accommodate themselves in the Hindu tradition. "As Hajime Nakamura, a Buddhist and Hindu scholar says, "we don't usually speak of rights in our tradition," referring to all of the Eastern religions. On the other hand, the religious texts are replete with the concepts of duty, often translated as dharma same as religion. Rights imply entitlements, duties are obligations<sup>21</sup>".

Hence, although, as for other Asian traditions, Hinduism sees the centrality of individual autonomy as much less important than in the West -and with that the relevance of informed consent- the moral acceptance of medical and clinical practices and trials gets its legitimization through a form of relational autonomy (both moral and legal) that requires *some* degrees of freedom of choice and independent processing that the right to mental privacy would guarantee. Yet, the issue seems to be less pivotal than in other traditions perhaps.

### Islam

As in the case of China and Confucianism, the UDHR has had some problems in getting implemented in Muslim countries due to the fact that they can only be guaranteed within the Qur'an and Shari'ah law as these tools are necessary for the definition of religious responsibilities and allow authorities to be recognized by the community. For this reason, in 1990 Muslim states created an alternative to the UDHR, the Cairo Declaration on Human Rights in Islam. Later on, in 1994 the Arab Charter on Human Rights more closely approximated "a global bioethics that invokes the western conception of human dignity with subsequent rights and resultant duties and directly affirms the UN Declaration of Human Rights<sup>22</sup>".

Aasim Padela stresses further the importance of understanding the reason behind a partial acceptance of the UDHR as a response to a perception of a "Western imposition" that pushes Muslim states to look at the document with skepticism. He writes: "Just as medical technology and curricula are patterned after Western academies, bioethics teaching around the world also draws upon ethical principles and moral frameworks first worked out in the "West."<sup>23</sup> [...] Given the scant literature that is available on informed consent practices in Muslim contexts, these trends suggest that informed consent processes and structures likely mimic implementation models within the US and Europe. [I want to] draw attention to a couple of features of Muslim culture that problematize such consent

<sup>21</sup> P.N. DESAI, *Duties and Rights in Hinduism: Before and After India's Independence*, in P. J. THAM; K. KWAN; A. GARCIA (eds.), *Religious Perspectives on Bioethics and Human Rights*, Cham, Switzerland, 2017, p. 155.

<sup>22</sup> A. GARCIA; J. LUNSTROTH; D.J. MONLEZUN; C.R. SOTOMAYOR, *Convergence of Human Rights and Duties: Towards a Global Bioethics*, in J. THAM; K. KWAN; A. GARCIA (eds.), *Religious Perspectives on Bioethics and Human Rights*, Cham, Switzerland, 2017, p. 69.

<sup>23</sup> R. DE VRIES; L. ROTT, *Bioethics as Missionary Work: The Export of Western Ethics to Developing Countries*, in C. MYSER (ed.), *Bioethics around the Globe*, New York, 2011, p. 3-18.

processes and thereby necessitate a re-imagining of these procedures to suit Muslim sensibilities and culture<sup>24</sup>.

Those features include the fact that Muslim societies operate out of a communitarian ethos and shared decision-making processes and that, for such societies, there is a need to ground ethics regulations within Islamic law -including during the implementation of informed consent processes. What Padela is suggesting then is that, within Islam, we might reach the same results through a different path (perhaps based on less individual centered version of autonomy). However, as in other traditions where the value of individual informed consent might not be as predominant as in the secular Western context, it seems that the very reference to a concept of duty towards the vulnerable, as well as the quasi-dignity referred in the Arab Charter on Human Rights would push Islamic ethicists to support the right to mental privacy with conviction.

### *Judaism*

As in the case of other traditions, the relationship between rights and duties is of crucial importance in the Jewish tradition, and David Heyd explains to us the approach that Judaism has towards human rights along those lines. He writes: "Rights as we understand them are the product of seventeenth-century philosophical culture in Europe. It is a modern concept. But beyond that, even after its integration in modern liberal worldview, it has not been easily incorporated in religious thought in general and that of Judaism in particular. For rights are claims that human beings have against each other, or against the state; but it would be absurd to make claims against God. Rights particularly call for the protection of the interests of an individual from competing interests of other individuals (or the state); but God has no competing interests against which a human being must be protected. Rights are not derived from duties but rather impose duties on others.<sup>25</sup> Obviously, human beings cannot impose duties on God and hence can have no rights against Him. Rights are characteristically mutual, that is people have at least the same human rights against each other. But this reciprocity cannot apply to the relation between humans and God. There is something intrinsically alien in the concept of rights in the sphere of religious, duty-based ethics<sup>26</sup>".

This seems particularly relevant and interesting to consider when elaborating a possible common stand from religions and cultural traditions in relation to the newly proposed human rights. First, it stresses the way in which rights are to be claimed against other individuals, the state or third entities (e.g. internet companies?), second, it makes a link between rights and duties that perhaps is key in relation to this new human rights in particular: the duty not to interfere with some of our more intimate and personal ways of existing (of course, particularly in some traditions, this idea of not interfering with God's work has had a historically revisited approach to it (Heyd clearly stresses how Judaism changed in time its attitude towards intervening medicine), but perhaps this is something altogether new and hence in need to be defended more fiercely. What remains crucial to ensure, is the absence of a structural interference by other in our freedom to be informed and decide.

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<sup>24</sup> A. PADELA, *Reflecting and Adapting Informed Consent to fit within an Islamic Moral Landscape and in Muslim Contexts*, in *Studia Bioethica*, 11 (2), 2018, pp.31-39.

<sup>25</sup> J. RAZ, *The Morality of Freedom*, Oxford, 1986, p.1 81.

<sup>26</sup> D. HEYD, *Between Humaneness and Human Rights: A Jewish Perspective on Modern Bioethics*, in J. THAM; K. KWAN; A. GARCIA (eds.), *Religious Perspectives on Bioethics and Human Rights*, Cham, Switzerland, 2017, p. 260.

## 7. Conclusions

In conclusion, it appears that the implementation of a new, additional human right -that of mental privacy- would be seen favourably by all traditions considering not only their respective quasi-univocal acceptance of the UDHR, but rather for the shared concern of the importance of complying with a duty towards oneself and the community (be it religious or secular). In that light, any technological advancement that could alter significantly our capacity to act otherwise (these are the main concerns put forward by Lenca and Andorno) should be approached with extreme caution -and the introduction of new human rights seem to be a great and needed way forward for our global community. Hence, we have highlighted how six of the main religious traditions would generally agree in supporting extreme caution with all applications related to neurotechnological advancements, particularly in relation to the right to mental privacy and the threat informed consent might suffer from its lack of implementation.