

Human Rights and Religious Faith

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The Universal Declaration of Human Rights is unquestionably a landmark in the history of moral consciousness, one of the factors that has consistently given hope and purpose to political life throughout the globe since it first saw the light of day in 1948. It has offered a global benchmark for identifying injustices to those who have never been able to make their voices heard. And, for all the challenges which we shall come back to in a moment, it has been an energising force in the witness of more than one community of faith in their struggle against arbitrary oppression and for the protection of the vulnerable. Yet the language of human rights has – surprisingly – become more rather than less problematic in recent years. The ‘human rights record’ of certain states is – very understandably – deployed as a factor in calculating political and economic strategies of engagement; but this has its impact on any idea that the language of human rights is, so to speak, ‘power neutral’. For some, it can reinforce the notion that this language is an ideological tool for one culture to use against another. We have heard over a good many years arguments about the ‘inappropriateness’ of human rights language in a context, say, of mass economic privation, where it is claimed that a focus on individual rights is a luxury, at least during the period when economic injustices are being rectified. Both the old Soviet bloc and a number of regimes in developing nations have at times advanced this defence against accusations of overriding individual rights. But more recently, questions about human rights have begun to give anxiety to some religious communities who feel that alien cultural standards are somehow being imposed – particularly in regard to inherited views of marriage and family. And so we face the worrying prospect of a gap opening up between a discourse of rights increasingly conceived as a universal legal ‘code’ and the specific moral and religious intuitions of actual diverse communities.

In what follows, I want to suggest some ways in which we might reconnect thinking about human rights and religious conviction – more specifically, Christian convictions about human dignity and human relatedness, how we belong together. Similar points may of course emerge from other kinds of religious belief. I believe this reconnection can be done by trying to understand rights against a background not of individual claims but of the question of what is involved in mutual recognition between human beings. I believe that rights are a crucial way of working out what it is for people to belong together in a society. The language gets difficult only when it is divorced from that awareness of belonging and reciprocity. This is not just to make the obvious (and slightly tired) point about rights and responsibilities. It is to see the world of ‘rights’ as anchored in habits of empathy and identification with the other. And I shall also argue that a proper understanding of law may help us here. Law, I believe, is not a comprehensive code that will define and enforce a set of universal claims; it is the way in which we codify what we think, at any given point, mutual recognition requires from us. It will therefore shift its focus from time to time and it cannot avoid choices about

priorities. To seek for legal recognition of any particular liberty as a 'human right' is not to try and construct a universal and exhaustive code but to challenge a society that apparently refuses full civic recognition to some of its members.

The 'Universal' aspect of rights, though, is a central element. What makes the gap between religion and the discourse of rights worrying is that the language of the Universal Declaration is unthinkable without the kind of moral universalism that religious ethics safeguards. The presupposition of the Declaration is that there is a level of respect owed to human beings irrespective of their nationality, status, gender, age or achievement. They have a status simply as members of the human race; so that this language takes for granted that there are some things that remain true about the nature or character of human beings whatever particular circumstances prevail and whatever any specific political settlement may claim. While this is not – as a matter of fact – a set of convictions held uniquely by religious people, religious people will argue that they alone have a secure 'doctrinal' basis for believing it, because they hold that every human subject is related to God independently of their relation to other subjects or to earthly political and social systems. Human beings are held to be created by God 'in the image and likeness of God', as the Jewish and Christian Scriptures insist; they are seen as having a responsibility to reflect in their lives the love, fidelity and justice of God – hence the Torah, the law in the Hebrew Scriptures, and the various concepts of mutual nourishment and support in Christian Scripture, such as the language of membership in a single organism.

From one point of view, therefore, human rights has to do with the individual person, establishing the status of the person as something independent of any society; from another, it is a doctrine deeply opposed to 'individualism', since it locates this status of the person within a scheme that (logically) requires any person to acknowledge the same status in every other person, near or far, like or unlike. Every individual's account of their own needs or desires has to be thought about and negotiated in the context of this mutual recognition, this assumption of a basic empathy between persons living out the same human condition. Take away this moral underpinning, and language about human rights can become either a purely aspirational matter or something that is simply prescribed by authority. If it is the former, it is hard to see why legal systems should be expected to enshrine such recognitions. If it is the latter, its force depends on the will of some actual legal authority to enforce it; the legitimacy of such an authority would have to be established; and there would be no inbuilt guarantee that the unconditionality of the rights in question would always be honoured. The risk would be that 'human rights' would be seen as a set of entitlements specified by a particular political authority, and thus vulnerable being redefined according to that authority's convenience and preference and circumstances. It is not an academic point: in the last century, the Church in South Africa or the Democratic Republic of Germany – to take just two examples – was perhaps the most significant context in which universal, non-negotiable human dignity could be affirmed and defended. The struggle against apartheid in South Africa would have been very different without what the Church contributed; and in East Germany, the Church was almost the only place where free discussion was possible and different futures could be imagined, welcoming all who wanted to ask the questions that were prohibited in the public square. For rights language to

lose the link with religious language and institutions would be for it to lose something historically crucial.

It is important for the language of rights not to lose its anchorage in a universalist religious ethic – and just as important for religious believers not to back away from the territory and treat rights language as an essentially secular matter, potentially at odds with the morality and spirituality of believers. As I have hinted, I think that we may be helped by some serious engagement with the question of the character and foundations of law. And I shall be suggesting that if we begin from there, we may find some directions for thinking about human rights that will help overcome some of the current confusion around this discourse and refresh our commitments. Odd as it may sound, a better account of how human rights relates to our thinking about the function of law could save us from a dangerously thin version of rights as a primarily legal category, and from some of the confusions that come with that.

Law sets out what is expected of the citizen and what the citizen is entitled to expect. As legal systems develop, they codify in increasing detail these basic expectations, and affirm that such expectations are not simply at the mercy of what happens to suit a ruling authority or elite at any given moment. A law-governed society is one in which anyone belonging to the community has certain guaranteed liberties of access to protection against assault or to redress after injury. An important advance in principle was the abandonment of the idea that someone may be punished by having the protection of the law withdrawn: in early modern practice, outlawry disappears as a sanction, and the offender undergoing punishment retains a claim to some kinds of protection. While law is made and enforced by local juridical authorities, it is always bound up with some sorts of universalist claim. Within one jurisdiction, ‘equality before the law’ as a principle implies that the law deals with any imaginable subject of the jurisdiction on the basis that they are recognizable as belonging to a single community, and that this belonging is unconditional, whatever sanctions may be imposed by the legal system. Thus in modern legal practice, we generally work on the assumption that the wrongdoer’s civic identity is to be preserved intact. In other words, the bonds that connect us are not to be broken by any arbitrary exercise of power: law affirms that something is owed to the fellow-citizen whatever may happen to either the society or the individual. But in a similar way, the idea of a ‘law of nations’ arises from the acknowledgement that different law-governed societies can recognize in each other comparable needs and dignities. The direction of development in all this is clearly towards some kind of universal principle, based on the mutual recognition of a shared human condition.

One implication of this is that every member of a society has the liberty to argue for proper protection if it seems not to be forthcoming. Law does not offer a comprehensive definition of the answers to such claims but establishes a process for scrutinising them and a way of ending debates by way of public decisions announced by recognized authorities. In this sense, law is bound to be ‘reactive’: what people think about themselves changes, what they think is possible changes, and the law has to assess whether any particular fresh claim that protection is inadequate is a reasonable

one. And this is triggered by the kind of public argument that – if we look at recent and not so recent history - leads to major shifts in what we think is necessary to overcome the exclusion of certain people from the society to which they think they belong.

The point can be illustrated in many ways. The advance of legislation around the protection of ethnic minorities, not only from very specific kinds of practical discrimination but also from demeaning public speech, reflects such a reactive move: ‘civic discourse and practice’, the developing moral and imaginative awareness of a society, lead us to recognize that certain ways of speaking and behaving habitually restrict the possibilities of certain groups, implicitly as well as explicitly. Where it has been commonplace to use stereotypic words and images of others, we come to see that by using such words and pictures we are in effect treating some person or group as people we need not fully recognize as fellow-humans and fellow-citizens, people who do not belong in the same way that we do. And once that is acknowledged, the law properly steps in to do what it is there to do to secure recognition. Again, in the last century or so, the principle has been increasingly applied to women as well as ethnic ‘others’: bit by bit, the law has identified some of the ways in which women receive less than full recognition in society, how employment opportunities are skewed by assumptions about the superiority of men, how the imbalance of power leaves women vulnerable to sexual exploitation or harassment. The law steps in to assert that women have received less than is due to them, and that practices that perpetuate this are now proscribed. Probably more rapidly than anyone expected, the same principles have led, in many parts of the world, to various enactments for the protection of sexual minorities (and it is important to put on record the consistent support of the Anglican Communion, in successive international meetings at the highest level, for such protection from violence and intimidation). At the moment, the vulnerable position of religious minorities is fast becoming a matter of urgency in many contexts. This is particularly acute where there is a vague tradition of tolerance towards a minority that has never quite amounted to full civic equality; heightened political tensions mean that this is now an anomaly that has to be sorted out. And in the light of all these issues and more, there is a growing set of questions about the proper protection of migrants, including asylum seekers. It is an area in which regression to attitudes of suspicion and harshness is in evidence in more than one society. It is going to need some stubborn arguments from those who believe that the sense of belonging within any one state or society and a sense of belonging between diverse human communities have to be kept together. And this is one area where religious traditions of hospitality, based in universal acknowledgements of human dignity, have particular weight.

The unifying conviction in all this is that, once we have acknowledged both that a person or group is properly part of our community and that they are inadequately protected, the law has to rectify the situation. The fundamental point is not so much that every person has a specific set of positive claims to be enforced, but that persons and minority groups of persons need to be recognized as belonging to the same moral and civic world as the majority, whatever differences or disagreements there may be. And I want to argue that a proper consideration of human rights has a better chance of sustaining its case if it begins from the recognition of a common dignity or worthiness of respect among members of a community than if it assumes some comprehensive catalogue of claims that

might be enforceable. This implies that the language of human rights is an aspect of culture – what has been helpfully called “a culture of dignity”: it is the outworking of a steadily intensifying and more inclusive habit of acceptance, a wider and wider acknowledgement of belonging. The Australian ethicist Sarah Bachelard, in a perceptive paper on ‘Rights as Industry’, published ten years ago in Australia, (*Res Publica*, the journal of the Centre for Applied Philosophy and Public Ethics in the University of Melbourne, 11.1, 2002, pp.1-5), takes this further and argues that a sustainable and morally ‘dense’ commitment to human rights must have in its background the possibility of love – in the sense of a felt urgency about how human lives ‘matter’, how they are ‘unique and irreplaceable’ (p.4). If it is seen first and foremost in terms of an agreed set of specific entitlements, there is a real inadequacy in this sense of uniqueness, of lives mattering. Instead of the language serving an awareness of infinite human distinctiveness, it can be boiled down to a strictly calculated set of claims, equally distributed to all.

I referred earlier to the Universal Declaration of Human Rights as a landmark in ethical development that has strengthened the hand of countless protesters against injustice, religious and secular. But it is still possible to misread it as just such a catalogue of entitlements, especially in a cultural setting where individualist assumptions rule. Take, for example, Article 23 of the Declaration, a very significant statement about economic life: ‘Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment’. Now, if we take this to mean that every individual is literally and legally entitled to a job (in the same sense that he or she is entitled as a citizen to a fair trial, say), there is no possibility of any universal assurance that such a claim could be met. Article 24 speaks of a right to paid holidays: even more of a problem if seen as entitlement. And what imaginable entitlement is there (Article 28) ‘to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized’? We need to translate a bit. A ‘culture of dignity’ is, for example, one in which a person’s freedom to work or access to employment is a significant moral touchstone; or it is one in which the conditions of work are not such as to prohibit leisure and self-care; or one in which the imperative to create a just and sustainable international order is given proper priority. We cannot pretend that gross inequalities in access to employment are really compatible with a proper sense of shared belonging; we cannot argue that a lack of international justice and stability have nothing to do with whether we are living with an adequate degree of respect towards each other. When we are speaking of ‘rights’ in the context that these Articles of the Declaration have in view, I think, to reconfigure the argument in more positive terms – in terms of what sort of considerations would be at work in a society (and a global ‘society of societies’) that assumed the need for maximal mutual recognition.

All of this implies that the law comes in at the point where there is a particular case in which some person or group is able to argue that they are insufficiently protected relative to others in that society. Thus, in an economically stringent situation, the law cannot create jobs; but it may remove unfair restrictions on who can apply for jobs in particular circumstances. The rest of the work has to be done by the ‘culture’ overall – the work that will secure educational opportunity and keep up the pressure for economic justice. The law responds to the cultural context when it can be shown that

people have unequal expectations of how they will be treated. The claim that is being enforced is not a claim to some specific good (a job, a particular kind of education, a paid holiday), but the claim to be treated on the same basis as other citizens, to be protected against unfairness, because unfairness entails a failure of recognition, a lack of mutual acknowledgement.

All of which should make us cautious, I believe, about legislation that begins from a presumed specific right that calls for enforcement. At the moment, there is a good deal of discussion, for example notably in the UK, of whether there is such a thing as a 'right to die' (and thus to request legally recognized assistance in dying) as an aspect of the right to be spared intolerable pain or humiliating disability. But the problem that faces the legislator (and the judge) is this: legal recognition of a liberty to decide the moment of one's death, and to require professional assistance in securing this, shifts what we might call the 'default setting' of a society. It declares that securing this liberty by a change in the law is necessarily more urgent than securing the protection of, for example, elderly, disabled or seriously ill individuals who may be pressured to think themselves dispensable, encouraged to see their conditions as rendering them burdensome or substandard – or of practising physicians who are called on to make what are admitted to be highly complex decisions about the irreversibility of a medical condition or about a patient's state of mind. If we ask what is protected by a change in the law, it is not easy to answer. One might say, 'the liberty to choose to avoid suffering that could be terminated.' But if protecting such a liberty entails substantive threat to a significant quantity of other people, and if changing the law has the effect of changing an assumption that deliberately inducing premature death is not admissible, it cannot be reasonably argued that the 'right' in question must on any account be honoured.

What we are really talking about is, once again, a set of cultural issues and conundrums, not least about how much as a society we invest in care for those terminally sick or disabled, so that they do not experience anything that could be described as cruel or degrading treatment. There are real and tough arguments to be had about how we show adequate respect to a person dying in circumstances of unmanageable pain and loss of dignity; about how we properly value lives lived in circumstances of dramatically restricted comfort and mobility; how we avoid an attitude to medical care that seeks to prolong life at all costs, in a kind of technological triumphalism. There are delicate issues over what the attitude of the law should be in practice to people who resort to unlawful expedients in extreme situations. There is the fundamental question of what it is to die well. To none of these is there an instant and simple answer that would imply a right to 'assisted dying.' Arguments about all these questions are profoundly serious, and not everyone will begin – as most religious believers would – from the assumption that life is not to be surrendered in this way because every imaginable human condition is capable of being lived through in a way that relates it to God. But even without that assumption, the problem remains: faced with the possibility of a change in the law that is designed to protect a supposed liberty at the cost of removing a highly significant protection for the most vulnerable, I do not believe we can claim that this is straightforwardly about honouring a universal entitlement.

What this brings into focus is the anxiety that law is being used proactively to change culture – one of the chief anxieties of some religious people faced with developments in the application of rights. But surely – it will be said – this is exactly what is happening anyway when law establishes protection for previously unprotected or underprotected person or groups? Not exactly: when the law establishes protection or equality of access to public goods for a previously disadvantaged person or group, it declares that an agreed aspiration to a culture of dignity is damaged or frustrated by unequal protection and access. It secures what the very institution of a law-governed society is intended to embody, and it identifies as inconsistent or corrupt the refusal to extend recognition to particular persons or groups. Now laws change as societies become more conscious of what they are and claim to be; as I have said, it may take time for a society to realize that its practice is inconsistent – with respect to women and to ethnic, religious or sexual minorities. Law may indeed turn out to be ahead of majority opinion in recognizing this, but it has a clear argument to advance – that the failure to guarantee protection and access is simply incompatible with the very idea of a lawful society. But this falls short of a legal charter to promote change in institutions, even in language. Law must prohibit publicly abusive and demeaning language, it must secure institutions that do not systematically disadvantage any category of the community. But these tasks remain ‘negative’ in force. If it is said, for example, that a failure to legalise assisted suicide – or indeed same-sex marriage - perpetuates stigma or marginalisation for some people, the reply must be, I believe, that issues like stigma and marginalisation have to be addressed at the level of culture rather than law, the gradual evolving of fresh attitudes in a spirit of what has been called ‘strategic patience’ by some legal thinkers.

But on such a basis, it ought to be possible to revisit the connection between religious belief and the discourse of human rights with an eye to avoiding the dangerous standoff that threatens. The existence of laws discriminating against sexual minorities as such can have no justification in societies that are serious about law itself. Such laws reflect a refusal to recognize that minorities belong, and they are indeed directly comparable to racial discrimination. Laws that criminalise certain kinds of sexual behaviour need the most careful scrutiny: legislation in this area is very definitely to do with the protection of the vulnerable from those with power to exploit and harm. Sexual violence against women and against children of both sexes is a tragic fact, especially in conflict-ridden societies and the law’s protection is urgently necessary. Go beyond this, and the territory is a lot more slippery. Many societies would now recognize that legal interference with some sorts of consensual sexual conduct can be both unworkable and open to appalling abuse (intimidation and blackmail). This concern for protection from violence and intimidation can be held without prejudging any moral question; religion and culture have their own arguments on these matters. But a culture that argues about such things is a culture that is able to find a language in common. Criminalise a minority and there is no chance of such a language in common or of any properly civil or civic discussion.

It is just this issue of language in common which belongs in the centre of a discussion of rights. Too often, the presentation of human rights as a set of entitlements to be enforced in law suggests a division between the routine language of an actual society and a universal and abstract account of

human identity, as if there is a single universal positive jurisdiction that trumps every particular social and cultural order. The challenge for a mature political philosophy that seeks to avoid this abstract universalism is to hold together the proper universalism that accords everyone dignity and security with the diversity of actual social institutions, including religious institutions, that form our identities. What the law does, I have argued, is to insist that for a society to be worth the name of a legitimate society (one that doesn't rest only on the interest and success of the strongest) it must embody mutual recognition, the assumption that the other's experience is comparable to mine to the degree that we can talk about it. Legal equality is the way the space is secured for this kind of civil discourse. Rather than silencing the particularities of diverse communal identities, it allows them to come forward into a safe space both to argue and to collaborate. The shared acknowledgement of 'human rights' is, among other things, a guarantee that there is a shared social agenda to collaborate about – a common practice of scrutinising what is going on with an eye to who is being left out and how they might be integrated better into the common activity of a community.

As I have argued elsewhere, following the seminal studies of Roger Ruston (*Human Rights and the Image of God*, London SCM 2004), this takes for granted that every human agent is potentially a free contributor to a creative social practice, endowed with the capacity to make a difference to a shared social world. This is about the capacity not to enforce rights but to be actively involved in right itself – in the struggle for justice. And this capacity is the ultimate foundation of 'rights' in the plural: what we recognize in one another is the creative capacity, as material, bodily presences, to make some kind of difference (see, e.g. Ruston, pp.100-103). But, lest that formulation lead us into the error of making rights conditional on some sort of effective performance as a difference-maker (so that the child, born or unborn, the disabled, the aged, the mentally challenged and so on, are ruled out), we have to define the making of a difference in terms that bring in the sort of thing that Sarah Bachelard draws attention to in the paper cited earlier – the 'difference' that is my sense of wonder at the unique otherness of the other. Moral differences are effectively made in our world only when something of that wonder is activated; and the apparently powerless or silent human person (the child, the elderly person, the person with disabilities...) has a profoundly powerful role in maintaining the moral intensity of more active agents through whatever relations they make possible by their bare physical existence. To put it as strongly as possible, it is about how certain persons are receivers as well as givers of love and make a difference, as both receivers and givers of love. For the believer, though Sarah Bachelard does not spell this out in these terms, it is rooted in the conviction that they are objects of an unconditional divine love.

And we are now bordering on the issue touched on at the start of these reflections. The language of human rights becomes manifestly confused and artificial when divorced from our thinking about belonging, recognition, dignity and so on. It is vulnerable to being seen as a culture in itself – usually an alien culture, pressing the imperatives of universal equality over all local custom and affinity, all specific ways of making sense of our world. But what is it that grounds the moral vision that belongs with these things – belonging, recognition, dignity? The truth is that mutual recognition is a fragile thing: social exclusion and political oppression begin when the imperative to care only for those who

appear instantly and obviously like us takes over; and it recurs constantly in human history. What Freud called 'the narcissism of small differences' translates into political terms when near neighbours sharing territory and often even language are driven towards mutual hostility by wider circumstances – food or water shortages, demographic projections, the suspicion of the other that is intensified at times of general social disintegration. The effects are horribly familiar: at worst, genocide, at the very least, the enshrining of massive discrimination.

To acknowledge the dignity of another person is in effect to admit that there is something about them that is – so to speak – beyond me: something to which my individual purposes, preferences, fears or hopes are irrelevant. The other is involved with more than me – or indeed, more than people that I think are just like me. Mutual respect in a society, paradoxically, means both the recognition of another as mattering in the same way that I do, sharing the same human condition, and the recognition that this entails their not being at my disposal, their independence, their distance from me. And this is where Christian theology comes in. Roger Ruston, in the book mentioned earlier, proposes that speaking about the 'image of God' in human beings puts 'the human person into a set of relationships: first with God, a relationship of filial adoption and answerability; second, with one another, relationships of equality and reciprocity; third, with the non-human creation, which may be understood as a relationship of stewardship and freedom of use.' And, as he goes on to say, these relationships are seen accordingly not as extraneous or accidental but as constitutive of what human identity truly is (op.cit., p.279). What makes this theological principle so significant for "human rights" is that this nest of relationships means that we cannot separate any human individual from a "morally charged" environment, rooted first and foremost in relation with the Creator. Their life, and the lives of groups of such persons are of significance in the eyes of God; what I recognize in recognizing the dignity of the other is that they have a standing before God, which is, of its nature, invulnerable to the success or failure of any other relationship or any situation in the contingent world.

For human rights to be more than an artificially constructed series of conventions, embodied in a set of claims, there has to be some global account of what human dignity means and how it is grounded. It cannot be left dependent on the decision of individuals or societies to act in this way: that would turn it into a particular bundle of cultural options among others – inviting the sceptical response that it is just what happens to suit the current global hegemonies. It has to establish itself as a vision that makes sense of the practice of law within and between societies – something that provides a general template for looking critically at the claims of any particular society to be equitable and inclusive, not something that just represents the preferences of the powerful. A credible, sustainable doctrine of human rights must therefore be both modest and insistently ambitious. It must be modest in seeing itself as the legal mopping-up of issues raised in the context of a broad-based struggle for social equity and consistency – the negative face of what appears positively as the capacity to work for justice in a spirit of mutual reverence; but it must be ambitious in insisting on the dignity of every minority and their consequent claim to protection, to be allowed to make their contribution, to have their voice made audible.

The mistakes sometimes made are to be ambitious in the wrong areas and modest in the wrong areas – to be ambitious for human rights as a universal programme for what might be called affirmative action, to be modest about the uncompromisingly metaphysical or religious foundations that the discourse needs and about the ‘humane’ education of the emotions that is involved. Sarah Bachelard, mentioned earlier, quotes a poignant passage from Simone Weil in which the great French thinker observes that talking about a violation of ‘rights’ is ‘ludicrously inadequate’ to the situation of a victim of sexual abuse: ‘That language’ says Bachelard, ‘gets no grip on the desecration of the fragile and vulnerable heart and body of a young girl through rape,...the refusal to acknowledge the soul animating the flesh’ (op.cit.,p.3). Something more is required, something that allows us to experience the shock of violation.

Bachelard speaks of ‘desecration’, and the implication is clear that we need a vocabulary of the sacred here, a sense almost of ‘blasphemy’. It is this that religious doctrine offers to the institutions and dialects of ‘human rights’, and it is a vital contribution. It is essential that, in an age that is often simultaneously sentimental, utilitarian and impatient, we do not allow the language of rights to wander too far from its roots in an acknowledgement of the sacred. This means, on the one hand, that would-be secular accounts of rights need to hear the arguments against an excessively abstract model of clearly defined claims to be tried before an impartial or universal tribunal. On the other, it means a warning to religious bodies not to try to make anxieties about their freedom to make religiously based ethical judgements an excuse for denying the unconditionality – and the self-critical imperatives – of the language of rights. Too much is at stake for the world’s well-being.