

'Human rights - does faith matter?'¹

Conor Gearty

Does faith matter to human rights? Is it right that you can't have human rights without faith of some sort or other? Of course it depends on what we mean by 'faith' and 'human rights'. Let's take the second of these terms first. The easy answer is 'No, faith doesn't matter - the truth of human rights is evident in the legion of international human rights instruments that now embrace the whole world in their ethical web.' But of course this is entirely question-begging - where do these rights come from? What explains the existence of a right to this and not a right to that? Is anything that is in a human rights convention by definition a human right as a matter of truth as well as of law? Surely this cannot be the case.

It might be thought that the answer to these conundrums lies in stressing the underlying principle of respect for human dignity, in saying that human rights draw their strength and power from this fundamental idea that lies behind them - and there is as much plausibility as there is attractiveness to this. But if we are being honest with ourselves, human dignity is in itself something of a 'floating signifier' drawing its meaning from the culture that informs it rather than from a set of eternal verities that stand above the human fray, handing down instructions. 'When in Rome do as the Romans do' may be at one level a mere cliché, but at another it is a reminder to us of the implausibility of so many of our searches for universals.

Suppose we actually succeed in tying down a 'true' meaning to 'respect for human dignity': what then? In a brilliant book a couple of years ago, *Justice for Hedgehogs* (Belknap Press, 2010), the philosopher Ronald Dworkin has sought to do exactly that. Our dignity is rooted in showing ourselves self-respect, in taking our life seriously, in living up to our life. It is achieved through a life that aims for value, which has character and style, a 'coherence endorsed by judgment' – in other words an authentic life. Now Ronald Dworkin is not to be confused with Richard Dawkins. Though writing in the secular tradition, Dworkin is gentle on religion, admiring indeed. He does not oppose faith so long as it grows out of independent reflection. What Dworkin opposes is the kind of mechanical unthinking faith that merely obeys instruction from on high without ever asking why. But his focus on the individual and his insistence on the value of reason and reflection as the twin keys to the leading of a dignified life point to what may be a strong divergence between faith and secular traditions so far as human dignity (and therefore human rights) are concerned.

The difference between the two approaches can perhaps be best encapsulated by invoking an ancient distinction, that between subjective and objective right. Consider Dworkin's perspective once again. What matters is not where you end up but how you get there - it is more a procedural than a substantive moral theory. That is why Dworkin can respect even those whose engagement

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with religion – self conscious and reasoned as he insists – has led them into practices (daily mass going; the stations of the cross weekly; the rosary every night) that he can neither understand, much less seek to emulate. But must he also accept other kinds of conduct as evidencing a dignified life just because the person concerned has thought hard about it before doing it? The lazy coach-potato with three degrees who has decided, ‘yes this suits me just fine’; the person who has done the calculations and concluded that he’ll get along best of all so long as he keeps his eye on his own material interests and thinks of no-one else. And if there is no deep sense of right conduct how can we know what it is we ought to be reflecting on - for all our supposed commitment to reason, do we not just end up merely the slave to our passions, with reason a mere justifier of emotions rather than the driver of our life events?

In other words, the problem as I see it with even sophisticated secular reflections on dignity like those of Ronald Dworkin is this: how can a procedural approach to dignity of this sort avoid collapsing into a subjectivity which turns all licence into liberty so long as you have thought about it first?

This is certainly where faith matters. I will speak about the Catholic Church because it is the faith I know but what follows may well apply to other organised religions as well. This Church has an approach to dignity which insists that it is about the flourishing of the person for sure, but that the success of any person can never be just in the eye of the beholder in this way. There is inevitably a moral dimension. Archbishop Vincent Nichols put this very well in a lecture at LSE (2 March 2011: Good Life in Hard Times <http://www2.lse.ac.uk/publicEvents/events/2011/20110302t1830vSZT.aspx>) when he said that ‘to be human is to be a meaning-seeking creature’ and ‘to be fully human is to be more than an individual - it is to be a person-in-relationship, self- transcendent, creative and emergent. These are the very bonds that enable us to understand and fulfil our freedom to be ourselves.’ What the Archbishop is engaging in here is more than just an argument, a point of view that tries to win in an open debate among equal perspectives. For to Archbishop Nichols and his Church ‘it is “homo religiosus” who is truly happy, truly human because this person has recognised the deepest reality of their nature.’ Unlike the secular human rights advocate I have just been describing, there is here ‘a deepest reality’ to reach down to. As the Archbishop puts it ‘what religious freedom ... reinforces is an understanding of “human dignity” as a capacity to “transcend one’s own materiality and to seek truth”.’

There does appear to be a foundational difference here between faith and secular perspectives on human rights. The Church is confident that it worth searching for the ‘definitive behind the provisional’ (Address of His Holiness Benedict XVI on his meeting with representatives of the world of culture, Paris 12 September 2008) and that finding such truth (or even simply looking for it) is the key to a successful and therefore a dignified life. Protagonists of human rights outside any faith tradition are in contrast in something of a bind: their language proclaims a belief in truth the possibility of which their secular, post-modern selves feel duty bound simultaneously to deny.

But why don’t we just ignore the foundational divide between faith and secular perspectives on human rights? So what if these two versions of human rights and human dignity get to the same truths by radically different routes? Not everyone must take the same route to right behaviour. In an address in France in 2008, His Holiness Pope Benedict identified one of the roles of the Church as

being the 'creation of a basic ethical consensus in society' and he returned to this theme often during his visit to Britain in 2010, particularly in his address at Westminster Hall.

It is undoubtedly the case that faith and human rights groups share much in common: they fight for justice in the same way, they care about the poor and the underdog, the maligned and the outsider, the oppressed everywhere, with similar levels of passion and compassion. Looking at their actions on the street you cannot tell which is a priest or nun and which a human rights worker. In the eyes of God no doubt they are – all of them – both. There is already a strong consensus on what a commitment to human rights entails, encapsulated in the international documents on human rights (principally the Universal Declaration of Human Rights and the covenants on civil and political and economic, social and cultural rights). The Church and civil society also share the same values which serve to underpin and energise the human rights campaigns to which they both feel able to contribute in equal intensity, albeit as I have just acknowledged driven by different kinds of motives for their shared humanitarianism.

I know that this emphasis on commonality may sound odd, misplaced even. There are those in the Church (and indeed in secular society) who see war where I see peace, whose first image is of a field of battle rather than of two forces working together towards the common good. The conflict-driven media collude in this with their endless, enthusiastic reportage of quarrelling and discord wherever they can find it. Of course there are differences of emphasis and I will come to those shortly. But first we should notice some basic facts: the human rights model that pertains across Europe is strongly supportive of Christian practice. A colleague of mine Ronan McCrea has written a brilliant book detailing how immersed the European Union is in Christian culture: *Religion and the Public Order of the European Union* (Oxford 2010). The European Convention on Human Rights guarantees a right to freedom of religious belief and (within sensible limits) to the manifestation of that belief. The EU has sophisticated systems for the prohibition of discrimination on religious grounds. Closer to home the Human Rights Act not only embeds the European Convention in UK law but goes out of its way to say (in section 13) that 'If a court's determination of any question arising under this Act might affect the exercise by a religious organisation (itself or its members collectively) of the Convention right to freedom of thought, conscience and religion, it must have particular regard to the importance of that right.'

Nor is the European Court of Human Rights the secularist bogey-man of the anxious believer's imagination. What is interesting about the Court's ruling on abortion law in Ireland (*A, B and C v Ireland* 16 December 2010) is that it is much more about Ireland's hypocrisy in promising to enact an abortion law and failing to do so than it is about a women's right to privacy trumping that of the unborn. And so far as the furore over the presence of crucifixes in state-school classrooms in Italy is concerned, the judgment of the Chamber of the Court on 3 November 2009 ruling this a breach of human rights received (rightly) a great deal of attention, the Grand Chamber's decision overturning that ruling (handed down on 15 March 2011 by a majority of 15 votes to 2) rather less so. As a result of this definitive ruling, we now know that such matters as these are for the states themselves to decide, so long as the emblems of faith are not being used to engage in the indoctrination of pupils (*Lautsi v Italy* 18 March 2011). But the media has let the resolution of this supposed crisis in secular-faith relations drift quietly by.

There is an important point here which these cases support – about the importance of religion in the public sphere. It is something that the Catholic Church must continue to stress, not only on its own account but also on behalf of less embedded religions, ones that are more vulnerable to being condemned for not being British enough for the government's taste, for mixing too much with their own kind and for not behaving as the authorities believe good Britons should. There is a memory in our Church of what it is like to be an outsider, to be associated with terrorism and identified with hostile forces within the state. Catholics in Britain should draw on that memory now to offer a veil of solidarity to fellow followers of a path marked out by faith.

It is right that human rights and the church should join in promoting a culture which is more than merely tolerant of religion but which positively celebrates faith as an important enrichment in many people's lives. I believe that an authentic secular approach to human rights does exactly this. And the days are long gone when one church sought to triumph at the expense of another: in these days of materialist hegemony, more unites than divides our major faith communities.

It is also at least 400 years too late for any European Church to assert its control over peoples who have developed new allegiances – to the democratic state; to universal human rights; to law – which can exist in parallel with religious authority but which are definitely and rightly not subject to it. If Christians – and perhaps even some Christian leaders – sometimes give the impression that they regret this, that the world of papal power or of Calvin's Zurich would be more agreeable to them (depending on from which tradition they come) then I have to say that I profoundly disagree with them. I am a Catholic who gives thanks to those men and women of the past whose struggles helped achieve the secular culture within which my faith is practised today.

Many of the tensions that do remain between faith based and secular approaches to human rights derive from the way in which the understanding of what makes a whole person and a successful life has deepened in this secular world in a way that has not (perhaps not yet?) been acknowledged in much of the religious sphere. But even here those whose human rights commitments are informed by faith do not always share the point of view of their religious masters. I am thinking now in particular of the advances in our understanding of gender and sexual orientation that have been among the great civilising triumphs of my lifetime.

When I was born women knew their place and queers stayed firmly in the closet. Now women are utterly used to being given the opportunities historically open only to men. We have had a woman prime minister and there is a woman, a wonderful feminist no less, on the United Kingdom's newly established Supreme Court. It is now also widely accepted across civil society that sexual orientation is part of what we are and that our success as a person, our flourishing in our space in the world, is greatly enhanced by our being able to express ourselves sexually as much as in other ways that flow out of our essence.

Whatever about the other Christian churches, it strikes me that some of this at least has seemed to pass religion by; certainly the Catholic Church has not got close to taking these changes to her heart. Women are still prevented from answering their vocations in a way that would allow them to become priests rather than nuns. We insist on this, whatever the price that is paid by the individual in terms of a stunting of their capacity to succeed in their life, to thrive as their conscience and their prayers demand: whatever the price of this denial we seem willing to pay it. But why? Are the feminist insights and the advances that these made possible in the second half of the 20th century a

passing fad? Do we in the Church secretly hope that they are, that women will shortly resume their role as the backroom mainstays of the lives and careers of men. Is this truly the Church's vision?

It is not just women priests of course, but married priests as well. The secular human rights campaigner has always been puzzled by this but he or she is now completely dumbfounded: you can be a married priest as long as you have been an Anglican first. Human rights law has always taken the view that certain rights can be breached by the fact of a discrimination in the exercise of them which is not based on rational grounds – the Human Rights Act includes article 12 (the right to marry) with a prohibition against discrimination in article 14. It is lucky for the Church that civil society has chosen to immunise it from the effects of human rights law (another example of favourable treatment by the way) because the current position would surely not pass muster: it is reminiscent of the Belmarsh detention case (*A v Secretary of State for the Home Department* [2004] UKHL 56) in which the law lords found Parliament's decision to grant a power of arrest and detention of *foreign* suspected terrorists but not *domestic* suspects to be illogical, irrational and a breach of human rights.

There is one other field of engagement in which church teaching and the contemporary secular human rights movement part ways, and that is on human sexuality, and in particular homosexuality. Of course there is a strong positive attitude being taken in Westminster diocese and I applaud that and the support shown by Archbishop Vincent and his clergy to Gay Catholics in this community of believers. But London is (I am tempted to say, sadly) not the whole Church.

In a statement made in the course of the proceedings of the Human Rights Council held in Geneva in March 2011, Archbishop Silvano Tomasi (the Permanent Representative of the Holy See to the UN in Geneva) spoke about 'some unnecessary confusion about the meaning of the term "sexual orientation"'. He went on to say that the 'ordinary meaning' of the term 'refers to feelings and thoughts, not to behaviour', and that 'for the purposes of human rights law, there is a critical difference between feelings and thoughts, on the one hand, and behaviour on the other.' While feelings and thoughts should never be punished, says Archbishop Tomasi, 'states can, and must regulate behaviours, including various sexual behaviours'. This is because human sexuality, 'like any voluntary activity, possesses a moral dimension' and denying this (as with those who cannot see sexuality as composed solely of a 'complete and lifelong mutual devotion of a man and woman in marriage') 'undermines ultimately his/her ontological dignity'. On this account 'dignity' has become something outside the individual, a condition to strive towards however difficult (or even impossible) personal circumstance make this.

I am bound to say that the secular human rights advocate simply does not understand dignity in this way. Recalling the subjective dimension to dignity, and refusing to accept that the expression of a homosexual orientation is merely the indulgence of an immoral licentiousness, the secular protagonist of human rights see the expression of one's sexuality as a vital way of being oneself, of living an authentic and flourishing life. It is part of the core, a central piece of the jig-saw that makes up the self. Of course the law can and does regulate paedophilia and incest (the two examples of legal regulation compatible with human rights law to which Archbishop Tomasi refers, as though there were ever any serious question of either being decriminalised) but what human rights law insists is not to be prohibited is the expression of sexual feelings between consenting adults either of the same or (outside of marriage) of different genders.

The Roman Catholic Church rightly seeks to influence civil society. Its commitment to true multiculturalism, to supporting all branches of society in their living of collectively authentic lives while not trenching negatively on the rights of others, is both laudable and important. I agree too that the secular perspective has much to gain from reflecting more deeply on what it means by freedom, and on how life can be made meaningful in a world consumed by materialism - financial, sexual and relational. The shallowness of all of this is evident even to those for whom it currently forms the whole pool of their endeavour. You do not have to be a believer in a mainstream faith to know that there is more to life than what so often seems to be all that is on offer. The Churches and the Catholic Church in particular have self-evidently so much to offer.

But getting to an ethical consensus is a two-way process. The Church must listen as well as speak. Its current position on women and on sexuality is so dogmatic, so removed from the life experience of so many bona fide seekers after dignity, that it risks drowning out the vital news that the Church can bring on how a good life is possible and how there can be more to living than the latest pair of shoes or celebrity pseudo-crisis. The real enemy is emptiness, not the wrong kind of love.

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