

## Religious Faith and Human Rights

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Twenty-seven years ago, Alasdair MacIntyre in his seminal work on the foundations of moral discourse, *After Virtue*, declared that human rights did not exist. 'Rights which are alleged to belong to human beings as such and which are cited as a reason for holding that people ought not to be interfered with in their pursuit of life, liberty and happiness' are a fiction: 'there are', he says, 'no such rights, and belief in them is one with belief in witches and in unicorns' (pp.66-7). The language of rights emerges, MacIntyre argues, at a time when people need a fresh moral compass in the wake of the dissolution of much traditional morality; like the concept of 'utility', which is another characteristic notion developed in the modern period as a touchstone for moral decision, the idea of 'rights' is meant to act as a trump in moral argument. The trouble is, MacIntyre argues, that rights and utility don't get along very well together in argument: one is essentially about the claims of the individual, the other about the priorities of administration. The result is the familiar modern standoff between the individual and the bureaucratic state. The state is both the guarantor of rights – more clearly than ever with the emergence of the 'market state' in which the most important reason for recognising the legitimacy of a state is its ability to maximise your choices, as Philip Bobbitt has demonstrated – and the authority that claims the right to assess and on occasion overrule individual liberties. Hence the tension between the state and civil society which has been so explosive a theme in twentieth century politics. The lack of mediating concepts to deal with this tension was identified by Hannah Arendt, echoed more recently by Gillian Rose, as one of the roots of totalitarianism. But Rose notes also the same problem identified by MacIntyre, the way in which the standoff between rights and utility leaves the path open to an exclusively *managerial* account of political life, in which 'expertise' about process is allowed to short-circuit proper discussions of corporate human goals.

MacIntyre's point is not, therefore, to deny the reality of human rights in the name of some kind of absolutism; quite the contrary. He is anxious that the language of rights and the language of utility are, as typically used in the modern world, no more than assertion – stop-gap notions to avoid complete relativism in public morality. This is one of the undoubted complexities in contemporary discussion of rights. On the one hand, 'human rights' is habitually used as a discussion-stopper, as the way in which we speak about aspects of social morality that are not up for negotiation or compromise. 'Human rights abuses' are widely seen as the most damaging weaknesses in a state's claim to legitimacy, and in extreme cases may be used as part of an argument for direct intervention by other states. On the other hand, what is often discussed in connection with both the Universal Declaration of Human Rights and the specifics of current human rights legislation is in fact a hybrid mass of claims to be decided by the state through its legislative apparatus; it is a quintessentially bureaucratic or managerial business, weighing various supposed entitlements against each other. If we speak without qualification of the right to life, the right to a fair trial, the right to raise a family and the right to a paid holiday under exactly the same rubric, it is very hard to see how this language can plausibly be understood as dealing with moral foundations. Fundamental issues blend with reasonable contractual expectations in a confusing way, and the idea of a list of entitlements dropped, as it were, into the cradle of each individual is deeply vulnerable to the charge of arbitrariness. MacIntyre's scepticism is well-placed.

But if we are to salvage something from this, what do we need? Salvaging is important, if only for the reason that, if the language of rights is indeed the only generally intelligible way in modern political ethics of decisively challenging the positive authority of the state to do what it pleases, the only way of expressing how the state is itself under law, then this language needs to be as robust as it can be. In these remarks, I want to propose two ways in which a particular religious tradition may offer resources for grounding the discourse. There is now an abundant literature on religion and human rights, and a certain feeling in some quarters that there is a tension between rights and religious belief. It has been a good deal discussed in the context of Muslim critiques of the Universal Declaration, but Christian theologians have also voiced some unease about a scheme of ideas that places claims ahead of duties or even dignity. But I do not believe that this supposed tension is as serious as it is made out to be – so long, that is, as there is some recognition that rights have to be more than pure assertion or, as some would now have it, necessary fictions to secure a maximal degree of social harmony.

As Roger Ruston has argued in a very important study of the development of rights language (*Human Rights and the Image of God*, 2004), the idea of irreducible or non-negotiable liberties for human beings has a strong theological basis in mediaeval thought. Paradoxically, it is in part the result of Christianity's confused and uneasy relationship with the institution of slavery. As is often pointed out, slavery as such is not condemned in Scripture, and is taken for granted – with varying degrees of regret – as an unavoidable social institution by most if not all Christian thinkers of the first millennium and a half of Christian history. However, from the first, the Christian community included both slaves and slaveowners; the Letter to the Ephesians in the New Testament touches briefly on their relationship (6.5-9), as does the First Letter of Peter (2.13-25). The slave must give service as if freely to the Christian slaveowner, not as a response to compulsion, and being willing to serve the harsh master as willingly as the kind one; and the slaveowner must remember that s/he and the slave are alike bound in 'slavery' to one master. This last point relates to a passing remark made by St Paul in Romans 14.4 about refraining from judging another believer: you are not entitled to assess the satisfactoriness of the behaviour of someone else's slave.

The point is that the slaveowner's relationship to the slave is severely complicated by the baptismal relationship. The slave is no longer simply the property of the master or mistress, but 'belongs' to the one divine Master and is ultimately answerable to him, in exactly the same way as is the Christian slaveowner. As the Christian community develops and reflection about these issues continues, some implications are tentatively spelled out. In a world in which the slaveowner had powers of life and death over the slave, the Church determines that it is sinful to kill a slave (though the penitential tariff for this doesn't seem appropriately high to a modern reader). In a context where the slaveowner was assumed to have unlimited sexual access to slaves, sex with a slave is treated on the same basis as any other sexual misdemeanour; and marriage between a slave and a free person is recognised by the Church.

Stoic writers like Seneca had made it a commonplace that the master had no power over the mind of the slave; but no philosopher attempts to limit what ownership of the body might entail. The Christian attempt to think through the implications of slave and slaveowner as equal members of the same community inevitably qualified what could be said about absolute ownership, and offered minimal but real protection to the body of the slave. So it is not surprising that Thomas Aquinas, discussing the limits of obedience to earthly masters or sovereigns (IIaIIae 104.5), say explicitly that while 'a human being is bound to obey another in matters external to the body, in those things that affect the nature of the body, no one is bound to obey another human being, but to obey God alone – for instance, in matters to do with the body's sustenance or the begetting of children.' A slave cannot be commanded – for example – to starve to death; nor can he or she be prohibited from deciding on marriage or celibacy.

The principle that has been established is that the human body cannot in the Christian scheme of things be regarded as an item of property. It is not just that I have an 'ownership' of my body that is not transferable, though some moralists (including a few recent Christian writers) have tried to argue something like this; it is rather that the whole idea of ownership is inappropriate. I may talk about 'my body' in a phrase that parallels 'my house' or 'my car', but it should be obvious that there is a radical difference. I can't change it for another, I can't acquire more than one of it, I cannot survive the loss of it. The body – and this is where Aquinas and the tradition associated with him significantly refuses to accept a separation of 'soul' and 'body' as entities existing side by side – is the organ of the soul's meaning: it is the medium in which the conscious subject communicates, and there is no communication without it. To protect the body, to love the body, is to seek to sustain the means of communication which secure a place within human discourse. And so a claim to control the body absolutely, to the point where you could be commanded to deny your body what is needed for its life, would be a refusal to allow another to communicate, to make sense of themselves. The ultimate form of slavery would be a situation in which your body was made to carry the meanings or messages of another subject and never permitted to say in word or gesture what was distinctive for itself as the embodiment of a sense-making consciousness.

My own relation to my body is not that of an owner to an object; and to recognise another material thing as a human body is to recognise that it is not reducible in this way to an object among others. In that it is a means of communication, it cannot be simply instrumental to another's will or purpose. It is significant that Aquinas uses the examples he does. The nurture of the body is, for humans, more than an instinctive

business; it requires thought and a measure of liberty. And the sexual involvement or non-involvement of the body is a primary locus for the making of sense; denial of this liberty is the denial of something absolutely fundamental (which is why sexual abuse is indeed a prime instance of rights being violated, the body becoming an instrument for someone else's 'meanings', a tool for the construction of another person's sense-making. The recognition of a body as a human body is, in this framework, the foundation of recognising the rights of another; and to recognise a body as a human body is to recognise that it is a vehicle of communication. It is not a recondite point. The state of mind in which someone is unable to grasp that another's body is a site of feeling and so of consciousness and so of communication is routinely regarded as seriously distorted, whether we are talking of the difficulties of the extreme end of the autism spectrum or of the plainly psychotic. Our ordinary human interchange simply and straightforwardly depends upon understanding any apparently human body we encounter as in some sense a potential communicator with me. And when in the past people have sought to justify slavery or other forms of institutionalised dehumanising, it has been necessary to restrict, often expensively and dramatically, their opportunity to communicate and to belittle their ability to do so. In George Steiner's extraordinary story 'The Portage to San Cristobal of A.H.', in which a group of Jewish agents have been given the task of kidnapping an aged Hitler from his South American hideaway, they are strictly instructed not to allow him to speak to them, because that will force them to see him as a human like themselves.

One advantage of putting the issue in these terms is that it takes us away from the more unhelpful aspects of those rights theories that stress the grounding of rights in human dignity but then associate human dignity with a particular set of capacities. The danger of these is that, by trying to identify a list of essential capacities, it becomes possible to identify criteria according to which full claims to human rights may be granted or withheld. The right of the imperfectly rational person – whether the child or the person with mental disabilities – may be put in question if we stipulate a capacity for reasoned self-consciousness as a condition for acknowledging rights. And to speak of the right of the body as such casts a different light on the sensitive issue of the right of the unborn; the unanswerable question of when embryonic material becomes a 'person', let alone when it acquires a soul, still assumes a basic dualism about the body and its inhabitant or proprietor – where the way in which we ought to framing the question is in terms of what counts as bodily continuity and what can be said about the 'communicative' dimension of the organic life of the unborn, how even the foetus requires to be seen and understood as expressing something to us in its character as an individual human organism.

But that is a complex set of arguments, and my aim for now is simply to establish that recognising the human body as a human body, that is as a system of communication, by no means exclusively rational, let alone verbal, is fundamental for understanding why we should want to speak of rights at all, of equal liberties that are rooted in the liberty to 'make sense', that is to engage in communication. As I have said, it is in one way only to spell out the act of faith we make every time we engage in human communication at all. Yet behind that routine act lies something else, given that many human societies have in practice assumed that some human bodies are not worth communicating with or receiving communication from. Hence the point of excavating the theological insights that have moved us irreversibly in the direction that leads towards universal doctrines of right. Grasping that the body cannot be an item of property is one of the things that is established by the Christian doctrine of communion in Christ and shared obedience to Christ. The doctrine affirms that the body of every other individual is related to its maker and saviour before it is related to any human system of power. This in turn implies that there is a level of human identity or selfhood that cannot be taken over by any other person's will – a level of human identity both bodily and subjective or interior. And this belongs with the recognition that the body *speaks*, that it is the way I make myself present to myself and to others. This holds true even for the most inarticulate, or those whose communications are hardest to decode: to put it as vividly as I can, they still have *faces*. Over against those who want to locate human dignity in the distinctive structure of the human self, a position which still skirts the risks of setting *conditions* for dignity, I want to propose that the character of the body as the vehicle of language is what is basic here.

Michael Zuckert, in a careful and interesting essay on 'Human Dignity and the Basis of Justice' (*The Hedgehog Review* 9.3, special issue on Human Dignity and Justice, Fall 2007, pp.32-48) makes a strong case for beginning from the character of the self as a mental structure allowing human beings to understand themselves as agents with an identity that continues through time and a capacity for envisaging future situations as resulting from present decisions. This is surely what is most irreducibly unique about us, and

thus what grounds a universal moral code. But I believe he weakens his case by speaking of the self – following Locke - as proprietor of its experiences ('The relation of the rights-bearer to his property is remarkably parallel to his relation to his self', p.47). The embodied self as communicator, I suggest, is more than the self-conscious organiser of experience into patterns of continuity through time, past and future; it can survive the absence of this sort of self-awareness without forfeiting its claim to be treated as possessed of equal liberty in the basic sense defined earlier. Given the much-chronicled history of the abuse, psychological, physical and sexual, of the mentally challenged, of small children or sufferers from dementia, it is crucial to clarify our grounds for regarding them as protected from being made the carriers of the desires and purposes of others; if we begin from the recognition of them as embodied in the same sense that we are, we have such a clear foundation, in a way that I am not sure we can have even on so sophisticated a version of capacity-theory as Zuckert's.

If this is correct, the irreducible core of human rights is the liberty to make sense as a bodily subject; which means that the inviolability of the body itself is where we should start in thinking about rights. 'Man is "created equal"', wrote the poet and artist David Jones in the early forties, 'in the sense that all men belong to a form-creating group of creatures – and all men have unalienable rights with respect to that equal birthright' (*Epoch and Artist*, p.90); and that form-creating character is anchored most simply and primitively in the character of what we mean by the very notion of a body (as opposed to an object). It is true, of course, that while the sort of Christian thinking represented by Thomas Aquinas laid the foundations for this, it still accepted extreme physical punishment, including death, for transgression, and of course did not understand the necessary freedom to determine the pattern of one's sexual life as a charter for everyone to shape their own destinies irrespective of the Church's teaching. The implications of Aquinas's view still allow the state to say that it will limit the bodily freedom of some of its citizens when that freedom threatens the freedom of others – though, centuries on from Aquinas, we have taken on board more fully the need for punishment both to respect the essential physical dignity of the punished, and to be capable of rational communication to the punished. The basic concept of right with which Aquinas works itself puts in question capital punishment or humiliating and damaging physical penalties. It is what grounds the modern refusal of legitimacy to torture, degrading or humiliating punishment or even indefinite detention without charge; significant markers in the age of Guantanamo or Abu Ghraib, and at least a significant part of the argument about the time limits for detention now being discussed in our own legislature. Likewise, this view allows the Church to say that there is a limit on morally acceptable options for sexual life; although we would not now understand this as licensing a restriction by law on the decisions people may make in this area. We are free to make bad or inadequate sense of our bodily lives, and the legal restriction of this, beyond the obvious protections of the vulnerable, would have to be seen as outside the powers of rulers. If the state legislates against sexual violence and abuse, as it must, it is because of the recognition that this is an area in which the liberty to make sense of or with one's own body is most often put at risk by predatory behaviour on the part of others.

So: equal liberty is at root inseparable from the equality of being embodied. Rights belong not to the person who can demonstrate capacity or rationality but to any organism that can be recognised as a human body, at any stage of its organic development. If the body cannot be property, it will always be carrying meanings or messages that are inalienably its own. And this opens up the second area in which aspects of Christian theology offer a foundation for a discourse of universal rights. Thus far, the emphasis has been upon the view from within, as it were – the body as carrier of the soul's meaning, the body as 'formed', given intelligible shape, by the continuing self called into being by God. But the process by which the body realises its communicative nature, by which it becomes concretely and actively a locus of meaning is a process in which the body *receives* and digests communication. The individual communicates meaningfully when s/he is decoding and responding to the meanings that are present to him or her; the full development of the particular body's freedom to communicate is realised in the process of understanding and managing and responding to the communications that are being received.

The human other is thus essential to my own growth as a communicative being, a bearer of meaningful messages that cannot be silenced; my own liberty not to be silenced, not to have my body reduced to someone else's instrument, is nourished by the equal liberty of the other not to be silenced. And, in the framework we have been using, this is identified as the central feature of the community created by the Christian gospel. Slave and owner are not merely bound to a common divine Master, they are bound in a relation of mutuality according to which each becomes the bearer of necessary gifts to the other. The

relation of each to the Master is such that each is given some unique contribution to the common life, so that no one member of the community is able fully to realise their calling and their possibilities without every other. Not killing or not abusing the slave is for the slaveowner the necessary implication of recognising that the slave is going to be his or her benefactor in ways that may never be visible or obvious but are nonetheless vital.

The dignity accorded to the human other is not, then, a recognition that they may be better than they seem, but simply a recognition that what they have to say (welcome or unwelcome, intelligible or unintelligible, convergent or divergent) could in certain circumstances be the gift of God. Not every human other is a fellow-member of the Body of Christ in the biblical sense; but the universal command to preach the gospel to all prohibits any conclusion that this or that person is incapable of ever hearing and answering God's invitation, and therefore mandates an attitude of receptivity towards them. Not silencing the other or forcing their communication into your own agenda is part of remaining open to the communication of God – which may come even through the human other who is most repellent or opaque to sympathy. The recognition of a dignity that grounds the right to be heard is the recognition of my own need to receive as fully as I can what is being communicated to me by another being made by God. It compels that stepping back from control or manipulation of the other which we so often seek for our security, so as to hear what we cannot generate for ourselves. And it should be clear, incidentally, that this is an argument that also grounds whatever we might want to say about the 'right' of the non-human world to have an integrity not wholly at the mercy of human planning.

To found human rights on the body's liberty to express its own message and the need for all embodied human beings to receive each other's meaningful communication in order for them to be who and what they are removes from the argument those elements of conditionality which can creep in if we speak too glibly about capacities, whether rational or moral. Nicholas Wolterstorff, in the special issue of *The Hedgehog Review* already quoted, notes the way in which some other contributors insist that the discourse of human rights and dignity expresses simply 'an explication of what it is to treat humans as humans'; but he very reasonably goes on to ask why in particular circumstances I should treat *this* human being as a human being, if, for example, I conclude that s/he is a poor or inadequate specimen of humanity. If the appeal to treating humans as humans is not to be purely assertive or tautologous, we need more (68-9). Something related to language about the image of God seems called for – but we need also to be aware that this language can't just be 'mentioned' as if it instantly provided a clear rationale for rights as we understand them (65).

My purpose in these reflections has been to suggest precisely what might be involved in doing more than 'mentioning' the biblical themes. Is this, then, to argue that we simply cannot talk about human rights intelligibly if we do not have a religious or even a Christian foundation for doing so? Given that there is already more than one essay in grounding human rights in traditions other than Christianity (Abdulaziz Sachedina's work is a case in point, as seen in his contribution to the *Hedgehog* symposium quoted), it may be rash to make excessive claims for Christianity here. But the fact is that the question of foundations for the discourse of non-negotiable rights is not one that lends itself to simple resolution in secular terms; so it is not at all odd if diverse ways of framing this question in religious terms flourish so persistently. The uncomfortable truth is that a purely secular account of human rights is always going to be problematic if it attempts to establish the language of rights as a supreme and non-contestable governing concept in ethics. MacIntyre's argument, with which we began, alerts us to the anxiety and the tension that is hidden within the classical Enlightenment discourse of rights, the sense of having to manage the effects of a moral bereavement; and the development of that discourse in the ways we have witnessed in the late twentieth century does little to diminish the anxiety or resolve the tension. The question of whether there is anything at all that is quite strictly non-negotiable about human dignity – whether, for example, we might be permitted to revisit the consensus about torture when faced with the 'captured terrorist and ticking bomb' scenario beloved of some political ethicists – is not academic. Our instinct seems to be that something has to be secured over against the claims of *raison d'état* in the name of a human 'form of life' beyond choice and convenience.

Sabina Lovibond, in her brilliant essay on *Realism and Imagination in Ethics* (1983) has some pertinent reflections on Wittgenstein's remark that 'justification comes to an end' – i.e. that there comes a point where we have to stop arguing and accept that we have reached a level that is recognised as basic for any kind of human thinking. 'Justification', producing reasons for doing this rather than that, comes to an end, she argues, 'not because we get bored with it, but because rational discourse unfolds within a setting not chosen by ourselves' – a setting which she, with both Wittgenstein and Hegel, associates with the fact of embodiment (215). When we grasp that our embodied state is the condition of everything else we might want to say about thinking in general and ethics in particular, we have arrived at the point where it no longer makes sense to ask for 'justification'. To speak of non-negotiable rights is to attempt some explication of this 'not chosen' dimension of our reality. And to be able to assess or even prioritise the wildly varied entitlements that are currently called 'rights' means developing some means of seeing how far – in a specific social context – this or that claimed entitlement reflects what is required for participation in the human 'form of life' as such; how far it is inseparable from the imperative to allow the body the liberty to say what it means to say. We may, for instance, feel instinctively that the right to a paid vacation belongs to a different order from the right to fair trial; yet in certain economic conditions, guaranteed freedom for leisure is an intelligible aspect of possessing adequate bodily/communicative liberty.

The idea of a pattern of embodied interaction in which every body, literally, is equipped to 'say' what it has it in it to say, in intelligible exchange (which means more than a chorus of individual self-expressions) – this is, for Lovibond, the heart of an ethic that can seriously claim universality and objectivity, 'realism'. I would only add that, while this is an absolutely accurate account of the formal shape of a universal ethic – and thus one that can do justice to the language of inalienable right – it still leaves some unfinished business. I have interpreted the New Testament texts about slavery so as to suggest that the recognition that it is impossible to own a human body is rooted not only in the recognition of how the body works as a communicative organism but in the conviction that the bare fact of embodied reality 'encodes' a gift to be offered by each to all, a primitive communication by the creator; the inviolability of the body is ultimately grounded in the prior relation of each embodied subject to God. And, as I have hinted here (and developed further elsewhere), this has some application for the rest of the material order as well.

Political and legal philosophy is unlikely to arrive at complete convergence with theology in any imaginable future; but the way in which a theology may propose a frame for political and legal questions is not the less important for that. The theological perspective as I have tried to outline it here is – at least – a way of insisting that we should not pretend that the discourse of universal ethics and inalienable right has a firmer foundation than it actually has. If the Enlightenment has left us in some measure bereaved, it is important to accept that, and to ask what are the most secure foundations that can still be laid for our universalist aspirations. We should beware of looking for easy refuge in bare assertion or brisk functionalism about rights: but it is also important to grasp that universalism itself is not a simple and self-evident idea and that there are various ways of conceiving it outside the strict Enlightenment framework. Among those ways will be the various religious modes of imagining universal destiny or equal human dignity. These, I suggest, need to be engaged with, rather than dismissed as irrational or regressive. It may be that the most important service that can be offered by religious commitment where human rights are concerned is to prevent any overlooking of the issue of how to establish a 'non-negotiable' foundation for the whole discourse. As in other areas of political or social thinking, theology is one of those elements that continue to pose questions about the legitimacy of what is said and done in society, about the foundations of law itself. The secularist may not have an answer and may not be convinced that the religious believer has an answer that can be generally accepted; but our discussion of social and political ethics will be a great deal poorer if we cannot acknowledge the force of the question.