

Human Rights and Civic Responsibility

Frank Brennan SJ

Abstract

The challenge is to articulate a philosophy of human rights which strikes the appropriate balance between rights and responsibilities. The problem is that many people of good will simply assume that primitive majoritarianism is sufficient to protect human rights. 'Human rights' is the contemporary language for embracing, and the modern means of achieving, respect and dignity for all. Respect for the dignity of the human person created in the image of God provides the theological underpinning for the growing international consciousness of the full range of human rights. An overemphasis on rights can lead to a disregard for duties.

Resume

The challenge is to articulate a philosophy of human rights which strikes the appropriate balance between rights and responsibilities, avoiding a mindset which encourages a sense of individual entitlement at the cost of collective responsibility and the common good. The problem is that many people of good will simply assume that primitive majoritarianism is sufficient to protect human rights. There has long been a suspicion in the Catholic Church that human rights discourse and advocacy are a means for pursuing a left of centre, secular agenda, which could undermine Church teachings and the freedom of the Church to constitute itself and act according to its teachings without outside interference.

'Human rights' is the contemporary language for embracing, and the modern means of achieving, respect and dignity for all. It has taken some time for the Catholic Church to embrace the cause of human rights. Respect for the dignity of the human person created in the image of God provides the theological underpinning for the growing international consciousness of the full range of human rights. An overemphasis on rights can lead to a disregard for duties. Duties set a limit on rights because they point to the anthropological and ethical framework of which rights are a part, in this way ensuring that they do not become licence.

Introduction: What is the challenge? What is the problem?

The challenge is to articulate a philosophy of human rights which strikes the appropriate balance between rights and responsibilities, avoiding a mindset which encourages a sense of individual entitlement at the cost of collective responsibility and the common good. Also there is a need for a philosophy of human rights which enhances the compatibility between human rights and religion. The problem is that many people of good

will simply assume that primitive majoritarianism is sufficient to protect human rights. There has long been a suspicion in the Catholic Church that human rights discourse and advocacy are a means for pursuing a left of centre, secular agenda, which could undermine Church teachings and the freedom of the Church to constitute itself and act according to its teachings without outside interference. In finding the balance between human rights, civic responsibility and the common good and in committing oneself to political action consistent with that balance, there must always be a place for the formed and informed conscience of the individual actor.

Even democracies which function on the basis of majority rule need to institutionalise protection of legitimate minority interests. “This is the essential problem underlying debate about human rights’.¹ Debate about human rights serves two purposes: it can help shape the processes and lines of argument between the organs of the State (the legislature, the executive and the judiciary) when decision makers are determining what rights should be granted to and obligations imposed on people, especially in relation to minority groups and strongly contested matters; and it can encourage discussion in the public domain about what rights and what limits on rights should be recognised in law. In a well-functioning democracy, human rights are often recognised as legal rights. There may, however, be some human rights that continue to be insufficiently recognised and protected in law.

Legal rights are individual entitlements recognised and protected by governments, courts and parliaments. A person who enjoys a legal right is able to enforce others’ obligation to uphold the right. If someone has a legal right to property, others have a duty to respect that right by not interfering with the right-holder’s possession and use of the property. If that duty is breached, the right-holder can seek assistance from the State to uphold and enforce their right. Legal rights and legal duties are defined and enforced by law.

These days people often speak of human rights—rights that are important to them, regardless of whether those rights are set down in law. These are rights people think the State ought to recognise and protect. But what is the source of such rights? And how do we define them? Are there human rights that we can claim with moral authority or coherent political argument against the State, demanding that instruments of the State affirm and protect them even though they are not dealt with in any domestic law of the State?

Analysis of the Problem

Philosopher Alasdair MacIntyre has boldly claimed, ‘There are no such rights, and belief in them is one with belief in witches and in unicorns’.² There is a long history of philosophical musing about the reality of human rights.

Precedents exist in a range of religious and secular philosophies. For example, Confucius’s *Analects* (compiled after his death in the 5th century BCE) promoted a society founded on respect, tolerance and generosity towards others³; the Indian emperor Asoka advocated non-violence and religious tolerance in the 3rd century BCE⁴; and Cicero (106–43 BCE) established the foundations of natural law, a concept closely connected to the modern idea of human rights.⁵

For centuries many thinkers who considered questions to do with justice and rights took as their starting point the idea that all human beings were created by God and were thus endowed with particular gifts and divinely commanded to live in a particular way. Such thinking holds little sway in the public domain today, even if some religious people still find it convincing.

Disgusted by the religious wars of the Reformation period, Dutch lawyer Hugo Grotius (1583–1645) was convinced that disputes about rights were the main cause of war. He defined a natural right to be ‘a moral quality pertaining to a person to possess or do something justly’.⁶ Reflecting on the human person in the community, he set down the

demands for a peaceful and rational life lived in community and said, ‘What we have spoken about would carry some weight even if we were to suppose that God does not exist or that God takes no interest in human affairs’.⁷

Across the Channel, Thomas Hobbes (1588–1679) also spoke of natural rights. He was troubled by the English Civil War and parliament’s execution of Charles I. Two years after the execution, and anxious that people be able to avoid the state of nature in which life would be brutish and short, he published his *Leviathan*.⁸ He thought the natural human condition was a state of war in which ‘every man has a right to everything; even to one another’s body’⁹, and he proposed the social contract, whereby all individuals would give up their right to govern themselves in exchange for security and peace guaranteed by a State able to provide ‘peace at home and mutual aid against their enemies abroad’.¹⁰

John Locke (1632–1704) had a less jaundiced view of the state of nature than did Hobbes:

Man being born, as has been proved, with a Title to perfect Freedom, and an uncontrolled enjoyment of all the Rights and Privileges of the Law of Nature, equally with any other Man or Number of Men in the World, hath by Nature a Power ... to preserve his Property, that is, his Life, Liberty and Estate, against the injuries and Attempts of other Men.¹¹

Locke thought the laws enacted by the State needed to reflect this law of nature, which stood as ‘an eternal rule to all men’.¹² This thinking on natural rights was central to much of the political ferment in England, what was to become the United States of America, and France. The founding fathers of the United States declared, ‘We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain inalienable Rights’.¹³ Nowadays these truths are perhaps more contested: they are definitely not self-evident. People are more likely to speak about human rights rather than natural rights.

Some philosophers continue to claim that human rights can derive from the nature of the human being. They look to what is needed for the flourishing of the individual living in

the community. But, even if they were to agree on specific facts about human nature, their critics say it is impossible to logically argue from how things are to how things ought to be. You cannot just slip from 'is' to 'ought'. Other philosophers claim there are very few uncontested facts about human nature. They question whether there is any such thing as an essential human nature, arguing that 'the only lesson of either history or anthropology is our extraordinary malleability'.¹⁴ Pragmatists such as Richard Rorty see a human rights culture emerging not from any increased moral knowledge but from our being attentive to moving and shocking stories about the violation of people's human rights.¹⁵

Kantians do not find much moral guidance in emotion; rather, they seek universal rules or maxims. Immanuel Kant (1724–1804) propounded his famous maxim 'Act in such a way that you treat humanity, whether in your own person or in the person of any other, never merely as a means, but always at the same time as an end'.¹⁶

Some philosophers admire the thinking of Professor John Rawls, who posited the thought experiment of people standing behind a veil of ignorance, knowing little about their future prospects and agreeing on principles of justice such as 'Each person has an equal right to a fully adequate scheme of equal basic liberties compatible with a similar scheme of liberties for all'.¹⁷ Finally, a deconstructionist critique of human rights has emerged in recent years, destabilising the idea that human rights will always lead to better outcomes.¹⁸

People disagree about what to include in the list of basic liberties, and they often seek assistance in the catalogues that have been drawn up by the community of nations in the formal human rights instruments promulgated since the United Nations was formed in 1945. In the words of Professor Louis Henkin, 'Ours is the age of rights. Human rights is the idea of our time'.¹⁹

The watershed in the world's awareness of human rights was the calamity of World War 2. After the war the world's leaders responded to the horror and destruction by

establishing, by charter, the United Nations. They spoke in the name of ‘We the peoples of the United Nations determined to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small’.²⁰

Three years later the UN General Assembly adopted the Universal Declaration of Human Rights, stating that ‘recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world’ and that ‘it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law’.²¹ Human dignity, equality and human rights are fundamental to freedom, justice and peace in the world.

The thinkers who contributed to the drafting brought a diversity of cultures, philosophies and faiths to the table. From the United States Eleanor Roosevelt, Frenchman René Cassin, Chilean Hernan Santa Cruz, Lebanese Christian Charles Habib Malik and Chinese Confucian Peng-chun Chang were great contributors to this truly international undertaking. They consulted religious and philosophical greats such as Pierre Teilhard de Chardin SJ, Mahatma Gandhi and Aldous Huxley. It was Teilhard de Chardin who counselled the drafters to focus on ‘man in society’ rather than the human being as an individual.²²

Marking the 60th anniversary of the declaration, Irish poet Seamus Heaney said:

Since it was framed, the Declaration has succeeded in creating an international moral consensus. It is always there as a means of highlighting abuse if not always as a remedy: it exists instead in the moral imagination as an equivalent of the gold standard in the monetary system. The articulation of its tenets has made them into world currency of a negotiable sort. Even if its Articles are ignored or flouted—in many cases by governments who have signed up to them—it provides a worldwide amplification system for the ‘still, small voice’.²³

The concept of human rights has real work to do whenever those with power justify their solutions to social ills or political conflicts only on the basis of majority support or by

claiming the solutions will lead to an improved situation for the mainstream majority. Even if a particular solution is popular or maximises gains for the greatest number of people, it might still be wrong and objectionable. There is a need to have regard to the wellbeing of all members of the community. By invoking human rights, we affirm that 'each and everyone's well being, in each of its basic aspects, must be considered and favoured at all times by those responsible for co-ordinating the common life'.²⁴

Professor Henkin neatly summarises the varying perspectives on the origin and basis of human rights, espousing the centrality of the idea in any society committed to freedom, justice and peace for all:

Although there is no agreement between the secular and the theological, or between traditional and modern perspectives on human beings and on the universe, there is now a working consensus that every man and woman, between birth and death, counts, and has a claim to an irreducible core of integrity and dignity. In that consensus, in the world we have and are shaping, the idea of human rights is an essential idea.²⁵

'Human rights' is the contemporary language for embracing, and the modern means of achieving, respect and dignity for all. It has taken some time for the Catholic Church to embrace the cause of human rights.

The Faith and Justice Dimension

Though Jesuit General Congregations since the Second Vatican Council have been constant in their agitation of the relationship between faith and justice, there has been little reference to human rights. However in 1995, the 34th Congregation broke new ground observing:²⁶

More recently we have become increasingly aware of other dimensions of this struggle for justice. Respect for the dignity of the human person created in the image of God underlies the growing international consciousness of the full range of human rights. These include economic and social rights to the basic necessities of life and well-being; personal rights such as freedom of conscience and expression and the right to practise and share one's faith; civil and political rights to participate fully and freely in the processes of society; and rights such as development, peace and a healthy environment. Since persons and communities are intertwined, there are important analogies between the rights of persons and what are sometimes called the "rights of peoples," such as cultural integrity and preservation, and control of their own destiny and resources. The Society, as an international apostolic body, must work with communities of solidarity in supporting these rights.

In his first encyclical, *Deus Caritas Est* Pope Benedict XVI was quite upfront about the failure of the Church leaders of the nineteenth century to adapt to new ways of thinking about morality and justice in light of the conflict between labour and capital. He said, “It must be admitted that the Church's leadership was slow to realize that the issue of the just structuring of society needed to be approached in a new way.”²⁷ Benedict was adamant that Catholic social doctrine must not “attempt to impose on those who do not share the faith ways of thinking and modes of conduct proper to faith. Its aim is simply to help purify reason and to contribute, here and now, to the acknowledgment and attainment of what is just.” Having said that it “is not the Church's responsibility to make this teaching prevail in political life”, he declared in *Deus Caritas Est*:²⁸

Rather, the Church wishes to help form consciences in political life and to stimulate greater insight into the authentic requirements of justice as well as greater readiness to act accordingly, even when this might involve conflict with situations of personal interest. ...

The Church is duty-bound to offer, through the purification of reason and through ethical formation, her own specific contribution towards understanding the requirements of justice and achieving them politically.

Benedict has been adamant that the church “cannot and must not remain on the sidelines in the fight for justice. She has to play her part through rational argument and she has to reawaken the spiritual energy without which justice, which always demands sacrifice, cannot prevail and prosper.”²⁹

Pope Benedict’s reflections in his first encyclical are consistent with his 1985 theological reflection when he mused on “A Christian orientation in a pluralist democracy”:³⁰

Catholic theology has since the later Middle Ages, with the acceptance of Aristotle and his idea of natural law, found its way to a positive concept of the profane non-Messianic state. But it then frequently loaded the idea of natural law with so much Christian ballast that the necessary readiness to compromise got lost and the state could not be accepted within the limits essential to its profane nature. Too much was fought for and as a result the way to what was possible and necessary was blocked.

Coercion of conscience even within the confines of the religious community is not defensible. Benedict XVI put the position well for Catholics when he said prior to his becoming pope: “The true law of God is not an external matter. It dwells within us. It is the

inner direction of our lives, which is brought into being and established by the will of God. It speaks to us in our conscience.”³¹

In his most recent encyclical *Caritas in Veritate*, Benedict offers a sustained reflection on the relationship between human rights and responsibilities:³²

“The reality of human solidarity, which is a benefit for us, also imposes a duty”. Many people today would claim that they owe nothing to anyone, except to themselves. They are concerned only with their rights, and they often have great difficulty in taking responsibility for their own and other people's integral development. Hence it is important to call for a renewed reflection on how rights presuppose duties, if they are not to become mere licence. Nowadays we are witnessing a grave inconsistency. On the one hand, appeals are made to alleged rights, arbitrary and non-essential in nature, accompanied by the demand that they be recognized and promoted by public structures, while, on the other hand, elementary and basic rights remain unacknowledged and are violated in much of the world. A link has often been noted between claims to a “right to excess”, and even to transgression and vice, within affluent societies, and the lack of food, drinkable water, basic instruction and elementary health care in areas of the underdeveloped world and on the outskirts of large metropolitan centres. The link consists in this: individual rights, when detached from a framework of duties which grants them their full meaning, can run wild, leading to an escalation of demands which is effectively unlimited and indiscriminate. An overemphasis on rights leads to a disregard for duties. Duties set a limit on rights because they point to the anthropological and ethical framework of which rights are a part, in this way ensuring that they do not become licence. Duties thereby reinforce rights and call for their defence and promotion as a task to be undertaken in the service of the common good. Otherwise, if the only basis of human rights is to be found in the deliberations of an assembly of citizens, those rights can be changed at any time, and so the duty to respect and pursue them fades from the common consciousness. Governments and international bodies can then lose sight of the objectivity and “inviolability” of rights. When this happens, the authentic development of peoples is endangered. Such a way of thinking and acting compromises the authority of international bodies, especially in the eyes of those countries most in need of development. Indeed, the latter demand that the international community take up the duty of helping them to be “artisans of their own destiny”, that is, to take up duties of their own. The sharing of reciprocal duties is a more powerful incentive to action than the mere assertion of rights.

Though there may often be a case for legislating human rights, it becomes more difficult to legislate responsibilities. There is little point in prosecuting people for failing to discharge their social responsibilities. These responsibilities must be voluntarily assumed. Recently in Australia, I chaired a national inquiry on human rights and we proposed the following list of responsibilities:³³

- to respect the rights of others
- to support parliamentary democracy and the rule of law
- to uphold and obey the law
- to agitate against unjust laws
- to serve on a jury when required

- to vote and to ensure to the best of our ability that our vote is informed
- to show respect for diversity and the equal worth, dignity and freedom of others
- to promote peaceful means for the resolution of conflict and just outcomes
- to promote and protect the rights of the vulnerable
- to acknowledge and respect the special place of our Indigenous people and acknowledge the need to redress their disadvantage
- to play an active role in monitoring the extent to which governments are protecting the rights of the most vulnerable
- to ensure that we are attentive to the needs of our fellow human beings and contribute according to our means.

Possibilities for Global Collaboration

The 2006 Task Force on Globalisation and Marginalisation of the Jesuit Social Justice Secretariat suggested six global apostolic strategies which are appropriate for faculty at universities in different countries wanting to collaborate on human rights projects.³⁴

1. Strengthen an individual and corporate global outlook which is rooted in our local commitments. At all levels, pay greater attention to the global common good that conditions a dignified human life for all.
2. Adopt an inclusive approach which involves all actors (stakeholders) in transforming concrete situations of marginalisation. Build alliances and bridges, providing spaces for interaction and dialogue.
3. Stress ‘mutual accompaniment’ in our apostolic initiatives supporting the conscious choices of the marginalised in their struggles.
4. Explore the Ignatian principle of communitarian discernment in apostolic decision-making. This process is characterised by inclusive

participation of all actors no matter what their differences, prayerful discernment of internal movements, and a clear final choice for action.

5. Promote publicly an overall ethical, human and interior perspective that is indispensable for all knowledge contributing to the good and the true.
6. Design structures of governance which equip us better to face the challenges of globalisation and marginalisation

Possibilities for Collaboration amongst faculty and policy makers

The 2006 Task Force on Globalisation and Marginalisation of the Jesuit Social Justice Secretariat provided a useful checklist for those wanting to commit to rights and responsibilities in an increasingly globalised and marginalised world:³⁵

1. Espouse and cherish differences amongst Jesuit apostolate partners as a privileged means of addressing the divisions in our marginalised and globalising world.
2. Presume that God's self-revelation will be disclosed amidst differences and not just in the resolving of difference.
3. Adopt one justice issue, inform yourself, and after close contact with the marginalised, take some political action (no matter where you live nor what your work).
4. Ask yourself, when you consume resources, if similar consumption by all is sustainable. If it is not, ask yourself what you will do to make up or put right your excessive consumption of limited global resources.
5. Be an advocate for at least one culture different from your own.
6. Acquire an appreciative and advanced knowledge of at least one religion not your own.

7. Be involved with a community of solidarity i.e. a community which links the marginalised with the decision makers through shared relationships with Jesuit apostolate partners.
8. Occasionally visit a community of insertion where Jesuit apostolate partners share the life of the marginalised.
9. Ask your Jesuit Province to establish an accessible community of solidarity or a community of insertion if you cannot find one.

Questions to stimulate discussion

- How can academics and social activists from diverse countries co-operate to counter human rights violations committed by the most oppressive regimes?
- While espousing human rights, how do we avoid the development of egotistical entitlements at the cost of civic responsibility and the common good?
- Are human rights consistent with the Church's claim to freedom of religious practice immune from State interference?
- Is it adverse discrimination or appropriate behaviour for a Church institution to claim a right to determine employment practices consistent with Church teaching?
- Are human rights a Western individualistic concept imposed on developing nations with diverse communitarian religious and philosophical traditions?
- How do we distinguish between law, public policy and morality when discussing and advocating human rights and responsibilities?
- What are the justified limits that the State may impose on the individual exercising their human rights and acting according to their formed and informed conscience?
- When collaborating on human rights projects, are we able to agree on the philosophical basis for the rights and the limits on those rights that we espouse?

Endnotes

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- ² A MacIntyre, *After Virtue: a study in moral theory* (3rd edn, 2007) 69.
- ³ Confucius, 'On fair distribution and education' in *The Analects*, cited in M Ishay, *The Human Rights Reader* (2nd edn, 2007) 45.
- ⁴ Asoka, 'Against religious intolerance and discrimination within the community' in *The Edicts*, cited in M Ishay, *The Human Rights Reader* (2nd edn, 2007) 29.
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- ⁶ H Grotius, *De Jure Belli et Pacis* (1625), quoted in J Mahoney, *The Challenge of Human Rights: origin, development and significance* (2007) 12.
- ⁷ *ibid.* 10.
- ⁸ T Hobbes, *Leviathan* (1651), quoted in J Mahoney, *ibid.* 20.
- ⁹ *ibid.* 12.
- ¹⁰ *ibid.* 13.
- ¹¹ J Locke, *Two Treatises of Government* (1689), quoted in J Mahoney, *ibid.* 19–20.
- ¹² *ibid.* 20.
- ¹³ US Declaration of Independence (1776).
- ¹⁴ R Rorty, 'Human rights, rationality and sentimentality', in S Shute and S Hurley (eds), *On Human Rights: the Oxford Amnesty Lectures* (1993) 115.
- ¹⁵ *ibid.* 118–19.
- ¹⁶ I Kant, *Groundwork for the Metaphysics of Morals* (1785) 4:429.
- ¹⁷ Reformulated by John Rawls in *Political Liberalism: expanded edition* (2005) 291.
- ¹⁸ See, for example, D Kennedy, *The Dark Sides of Virtue: reassessing international humanitarianism* (2004); C Douzinas, *The End of Human Rights: critical legal thought at the fin-de-siècle* (2000).
- ¹⁹ L Henkin, *The Age of Rights* (1990) xvii.
- ²⁰ Charter of the United Nations, preamble.
- ²¹ Universal Declaration of Human Rights, preamble.
- ²² M Glendon, *A World Made New: Eleanor Roosevelt and the Universal Declaration of Human Rights* (2001) 76.
- ²³ S Heaney, 'The poetic redress', *The Irish Times* (Dublin) <<http://www.irishtimes.com/indepth/amnesty/introduction.html>> at 10 September 2009.
- ²⁴ J Finnis, *Natural Law and Natural Rights* (1980) 214.
- ²⁵ L Henkin, 'Religion, religions, and human rights', in EM Bucar and B Barnett (eds), *Does Human Rights Need God?* (2005) 145, 155.

²⁶ GC 34, D 3, n. 6

²⁷ *Deus Caritas East*, #27

²⁸ *Ibid*, #28

²⁹ *Ibid*.

³⁰ J. Ratzinger, *Church, Ecumenism and Politics*, Crossroad, New York, 1988, pp. 204-220 at p. 213

³¹ J. Ratzinger, *God is Near Us*, Ignatius Press, San Francisco, 2003, p. 105

³² Benedict XVI, *Caritas in Veritate*, #43

³³ National Human Rights Consultation, *Report*, Commonwealth of Australia, 2009, p. 355

³⁴ *Globalisation and Marginalisation: Our Global Apostolic Response*, Report of the Taskforce on Globalisation and Marginalisation, Social Justice Secretariat, Rome, 2006, pp. 31-2

³⁵ *Globalisation and Marginalisation: Our Global Apostolic Response*, Report of the Taskforce on Globalisation and Marginalisation, Social Justice Secretariat, Rome, 2006, p. 34