

Human Rights and Human Dignity: unmasking the Trojan horse

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I guess that if we were to ask any tolerably well-educated person on the streets of Cambridge, ‘what is the basis on which we human beings can live together in peace and under conditions of justice?’ sooner or later they would mention human rights. It is, after all, the claim made in the opening preamble to the 1948 Universal Declaration of Human Rights: human rights are the foundation of freedom, justice and peace in the world. And this claim is one which is increasingly accepted. No decent person can be against human rights.

It is also a claim which is increasingly juridified, that is, made the subject of enforceable law. Back in 1948 human rights could be seen as an emerging code of international political morality, binding on states from the outside, as it were, but having no necessary domestic legal consequences. They were fully compatible, for example, with a sovereign Parliament making law subject to the judgement of no court. The German Constitution of 1949 was unusual in starting with a code of human rights enforceable before a Constitutional Court – for entirely understandable reasons of recent history, of course. Even then there was no right of individual petition. But throughout the second half of the 20th century Western liberal democracies steadily enhanced the legal status of human rights, such that they are now, with a range of national variations, more or less coequal with the powers of democratically legitimated legislatures. Or perhaps we should put the relationship like this: democratically legitimate legislatures operate within the boundaries set by human rights and enforced by the judiciary. This restriction is justified because human rights represent the foundation of freedom, justice and peace in the world. They are the conditions under which democracy does not collapse into mere majoritarianism. The UK introduced a Human Rights Act in 2000 and even democratic republican France now has a right of individual constitutional review.

And if we were to ask our hypothetical tolerably well-educated person, why human beings have human rights, what it is about human beings that produces these normative, moral, consequences for our political institutions, they are quite likely to answer in terms of human dignity. Again, the Universal Declaration points the way: it is ‘recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family’ which is the foundation of freedom, justice and peace in the world. Human beings have an intrinsic worth or value; we have dignity. This worth or value demands mutual respect; and human rights are the currency of that respect. We show our respect for the value of other human beings by not torturing them, or enslaving them, or locking them up without a fair trial, by not invading their homes or breaking up their families, by allowing them freedom to worship, to express themselves, to associate freely, and so on.

As a foundation for human rights, human dignity is particularly attractive, because it appears capable of bridging different religious and ethical traditions. A Roman Catholic, a Muslim and an agnostic humanist can all agree that human beings have dignity, or worth, and can agree to differ on exactly why human beings have dignity. They can disagree about which narrative about God and the world makes best sense of that common claim. This assumption that there is a common commitment to human dignity across all traditions and civilisations underlies and reinforces the political role of human rights. Human dignity and human rights represent a common point of moral departure at least among all decent peoples. Any others can safely be ignored; they are beyond the pale.

Now, human dignity as the foundation of human rights has also increasingly been juridified, it has been rendered legally significant by lawyers and judges. We can note three routes by which this has happened. First of all, the human rights instruments and texts which have emerged from the interactions of nations and their representatives are highly abstract and open-textured. Some of the norms are quite clear: the simple rules that no-one shall be subject to torture or degrading or inhuman treatment or punishment, or slavery or forced labour simply require one to identify the acts and social conditions which amount to 'torture' or 'slavery' and so on. But many human rights establish principles subject to competing considerations which need balancing. Yes, speech should be free, but not if it is obscene, or defamatory, or subject to commercial confidentiality, or a threat to national security and so on. Where then should the lines be drawn? If human rights were merely moral and aspirational, these matters could be left vague. But as human rights have been subject to increasing litigation and enforcement, both at the international level and within domestic legal systems, such questions can no longer remain open. They have to be answered concretely by judges, and answered in a way which commands legitimacy. In rendering abstract rights more concrete it is inevitable that lawyers and judges should reach back to what they take to be the foundation of human rights to justify their decisions.

But dignity creeps into human rights adjudication by a second, and more radical, route as well. As human rights instruments and texts get older, they begin to show their age. Their claim to be universal and timeless is shown to be more of an aspiration, less of a realisation. We can now see quite clearly the extent to which the texts of the 1940s and 1950s were preoccupied with combating fascism and communism. It is a familiar idea that legislative processes need to be designed to make legal change orderly, but not too difficult. Constitutions – and that includes instances of higher or fundamental law such as human rights law – also need to change, albeit more slowly. If there is no formal process for amending the text, amendment will effectively happen by judicial reinterpretation instead. A constitution is a living tree; its interpretation evolves. Interpretative originalists who seek to stem the tide of change are always fighting a losing battle. Once again, the appeal to dignity is inevitable. The form of the argument is straightforward. Here we have a human rights text which appears to require X. It

does so because at the time, people thought that our common commitment to human dignity required X. But actually, when you think about it, our commitment to human dignity requires Y, which is a little different from X. So we will read the human rights text to require Y also.

Let me give you an example. The right to marry and found a family in article 12 of the 1950 European Convention on Human Rights is put like this: ‘Men and women of marriageable age have the right to marry and to found a family, according to the national laws governing the exercise of this right.’ In its judgement in *Schalk & Kopf v Austria* in 2010 the European Court of Human Rights noted that both the wording of this article and the historical context of the drafting mean that only a man and a woman have the right to marry under the Convention. However, in the light of social developments, expressed notably in the European Union’s Charter of Fundamental Rights of 2000, which does not refer to ‘men and women’, ‘the Court would no longer consider that the right to marry enshrined in Article 12 must in all circumstances be limited to marriage between two persons of the opposite sex.’ Nevertheless, since there was as yet no European consensus regarding same-sex marriage, it was not a *requirement* of the Convention that states make the status of marriage available to same-sex couples. The Court ‘must not rush to substitute its own judgement’. What was left unspoken was the logical conclusion: if a time should come in which most European states permit same-sex marriage, then we can expect to find an equivalent right under article 12 of the Convention, regardless of its wording and history.

Thirdly, human dignity can function as a limit to human rights. This argument has recently been put forward by the human rights scholar, Christopher McCrudden. The appeal to human dignity on the part of European and British courts risks being particularly disadvantageous to religious people. In an early case, the European Court of Human Rights held that in order for a particular religious or other belief to be protected by the right to freedom of thought, conscience and religion, it had to be ‘worthy of respect in a democratic society and ... not incompatible with human dignity.’ In other words, ‘dignity’ here functions as a threshold to remove from the protection of human rights, beliefs and practices which are seen as fundamentally opposed to human rights values. Back in 1982 the belief in question was the view that children should not be exposed to corporal punishment. It passed the test. Nowadays they are more likely to be Islamic views on modesty or Christian views on sexuality. And they are less likely to.

The significance of this observation is that it exposes what we should have known to be true all along. We do not agree in our conceptions of human dignity. Dignity does not actually function as a common moral foundation for all people regardless of tradition or worldview. What it is about human beings which makes us of value, and how we should treat each other in the light of that, is tradition-dependent. In our own Western European context the two main poles of that tradition are, on one hand, Christianity, and on the other, Enlightenment thought. There is a tension here, because

the Enlightenment, starting as it does with the individual human person at the centre of its worldview, is fundamentally hostile to religion. Here is Immanuel Kant in the *Metaphysics of Morals*:

Kneeling down or prostrating oneself on the ground, even to show your veneration for heavenly objects, is contrary to the dignity of humanity, as is invoking them in actual images; for you then humble yourself, not before an ideal presented to you by your own reason, but before an idol of your own making.

Do you see Kant's hypothesis? It is this: the worship of any God other than that presented to our own minds as an idea of pure reason is idolatry.

Postmodernism can be seen as a radicalisation of Enlightenment thought, on the assumption that reason gives us access to no God at all. So, the postmodern answer to what gives us human beings value is our capacity to make of ourselves what we will. I am authentic, even god-like, when I am free to become the sort of person I want to be, and there are no set patterns to that process of becoming. What gives me dignity is my capacity to be my own creator, to mould that plastic me. There is no divine blueprint, and there are therefore, in principle, no natural or external constraints to what I can do, or to the use of technology in making me what I want myself to be. The more we look around, the more we can see this postmodern view of human dignity at work: plastic surgery, childhood fashions, transhumanism, animal-human hybrids, family breakdown, body-piercing, human sexuality, consumer debt, virtual reality, cannibalism, euthanasia. I am what I make of myself.

This ethical constructivism is most clearly and elegantly articulated by the late, great, political philosopher Ronald Dworkin. In his final grand work, *Justice for Hedgehogs* (2011) Dworkin argues that our ethical responsibility to live well can be understood in terms of two principles:

...The first is a principle of self-respect. Each person must take his own life seriously: he must accept that it is a matter of importance that his life be a successful performance rather than a wasted opportunity. The second is a principle of authenticity. Each person has a special, personal responsibility for identifying what counts as success in his own life: he has a personal responsibility to create that life through a coherent narrative or style that he himself endorses. Together the two principles offer a conception of human dignity: dignity requires self-respect and authenticity.

On this basis, an act can be defined as morally wrongful if it insults the dignity of others. And human rights are the relatively discrete components of the many ways in which the dignity of human beings can be attacked.

In short, dignity is becoming a Trojan horse for the insinuation of a postmodern worldview as if it were the universal foundation of freedom, justice and peace in the world, which no decent person could reject. The interpretation, development and enjoyment of human rights is becoming dependent on adherence to this ideology.

Notice some features of the postmodern understanding of human dignity. It is highly individualistic. The value of any relationship depends on its continuing contribution to my developing self. Commitment must always be provisional; I'd be a fool to sign my autonomy away. It is also vulnerable and defensive. Precisely because there is no set pattern for human nature and human flourishing, precisely because we must each make of ourselves what we will, we can be neither right nor wrong. There is no right or wrong about it, because the universe is empty apart from you and me and what we make of ourselves. All we can be is authentic. That, presumably, is why a Girl Guide no longer pledges to 'love my God' but instead to 'be true to myself'. So if I start criticising you for your acts of self-creation, I am being deeply offensive; denying your dignity, which resides only in your self-produced authenticity. Incitement to hatred in respect of some aspect of your identity is the new blasphemy. Postmodern dignity is also abusive. Because at the very least we cannot treat children in this way. There, we have to decide what is good for them, and we have got into the habit of thinking that there is no good for humankind. Small wonder that childhood is disintegrating into grotesque parodies of adult life.

In response to this development in our political and legal culture I want to propose a thesis, raise a very large problem, and close with a challenge.

The thesis is not that we should abandon human rights, which is after all only a label for the universal requirements of political morality. It is that our understanding of human rights needs to be grounded in a Christian conception of human dignity, which is first of all deeply relational. The reformed theologian Nicholas Wolterstorff argues that the most fundamental reason human beings have worth is because we are loved by God. We can expand this in line with Jesus' Great Commandment: we have worth because we are loved and are capable of love both in the horizontal plane between each other and in the vertical plane in relation to God. This is not something additional to our independent pre-existence as human beings, as if first we exist and then we love. Our relationships are not adopted as part of our conception of a good life. Like God, we are constituted by relationship while at the same time not losing our personality by virtue of our existence as beings-in-relationship.

The very large problem is this. Insisting on a theistic component to human dignity, the vertical dimension, has immediate practical application in the contours of freedom of conscience. I don't think we can explain or continue to protect rights of conscience as we have inherited them from our political tradition unless we locate conscience in the context of the inescapable call of God to a life of morally responsible action. But insisting on a theistic component to human dignity immediately creates a political problem: it appears to relegate non-theists to second-class citizenship in the ideal polity of human rights discourse.

The problem gets worse. I don't think we can explain or continue to protect freedom of religion as we have inherited it from our political tradition if we detach it from the history and theology of the Christian church. Freedom of religion is indeed equally guaranteed to all, but its underlying assumption that a distinct and organised part of civil society, with its own corporate identity, pursuing truth, goodness and beauty independently from the state and with a legitimacy higher than that of the state, makes no sense outside the Christian tradition.

And I hardly need mention the family. We like to think that the family is a natural form of social organisation, prior to the state, yet the rights to marriage, to family life, to privacy, the home and to equality are all shaped by our normative conception of the family, by our sense of the ideals and boundaries within which we are to shape our domestic life.

As Christians we want to say that the postmodern claim to be our own creators is fundamentally idolatrous. We are created by God, and though we are created free and equal, our freedom is bounded by who we are created to be: men or women in his image. There is a pattern. That pattern is marred and spoiled in all sorts of ways. And because that pattern is marred and spoiled in all sorts of ways, we need a new pattern, to know what is original and what is defective. And God in his love and generosity towards us has come among us in human form, his Son Jesus Christ, to give us an authentic pattern. He is both the image of the invisible God, and the perfect man. Human authenticity is found not in self-creation, but in being conformed to the likeness of Christ through the work of his Spirit. This cannot be done apart from the community of spiritual formation which is his body on earth, the Church. And it cannot be done without the hope of a future transformation in which what we will have become will be at last in perfect conformity with the ultimate reality of the infinite, personal, creator God, Three in One, perfect in love.

So here's the challenge. As Christians who care about freedom, justice and peace in the world, we are going to have to get better at exposing the clash of ideologies implicit in supposedly universal human rights, and better at articulating and defending a conception of dignity and rights that is truly humane.