

RIGHTS AND RIGHTEOUSNESS: RELIGIOUS PLURALISM AND HUMAN RIGHTS

**A conference organised by the Northern Ireland Human Rights
Commission and the Irish School of Ecumenics**

1-2 November 2007

Best Western Wellington Park Hotel, Belfast, Northern Ireland

BACKGROUND PAPER

Introduction

This background paper is written to offer a framework for the discussions at the Rights and Righteousness conference which takes place in Belfast on 1 and 2 November 2007. The conference has been jointly organised by the Northern Ireland Human Rights Commission and the Irish School of Ecumenics with the purpose of stimulating productive discussions about the relationship between faith and rights. The timing of this conference is prompted by the anniversary of a remarkable symposium convened by the United Nations Educational, Scientific and Cultural Organisation (UNESCO) sixty years ago, to help to draft the Universal Declaration of Human Rights, issued in 1948.

Conference aims

- To consider complementarities and tensions between rights- and righteousness-based approaches to justice, and
- To engage in informed dialogue between educators, clergy, writers, scholars and human rights practitioners.

The event aims to encourage open conversation to assist understanding; illuminate rights and righteousness perspectives that can challenge prejudice in a pluralist society; develop shared interests and commitments that lead to social change; and result in a greater level of collaboration between faith groups and human rights organisations.

Conference context

The UNESCO event was a window into the historical development of rights and some key areas of discussion:

- **The universality of rights:** Are rights everywhere and everywhere the same? What role do cultural and religious traditions have in the articulation of rights?
- **The basis of commitments to rights:** Are human rights necessarily secular, as some advocates would argue? Or, is a religious commitment necessary to believe that human rights have an inherent dignity that should be respected?
- **Reaching common ground on rights:** By what means should we hope to achieve consensus when we differ? Can we agree on practical outcomes even if we don't share an underlying philosophical basis?

In answering these questions the UNESCO conference participants covered a lot of ground, and raised issues still relevant today.¹ For example, they discussed the development of civil, political, economic and social rights; the role of religious freedom in the development of rights; the role of culture and religion in expressions of rights; the debate about the relationships between rights and duties; and the debate about rights and limitations on rights. Although the participants couldn't agree on some of the issues, they nonetheless agreed on a practical outcome to assist in the development of the Universal Declaration of Human Rights.

The Rights and Righteousness conference in Belfast is a chance to revisit these discussions, to look at what has been learned since, and to consider the importance of these issues in a new century.

Discussions on the development of a culture of rights in a pluralist society remain current in Northern Ireland. There are at least four ways in which a conference that happened in 1947 might still be relevant in 2007:

1. The diversity of views that shaped the emergence of the modern (post 1948) human rights era can challenge stereotypes.

¹ Most of the material for this paper comes from an account of the proceedings published as *Human Rights Comments and Interpretations: A Symposium* edited by UNESCO, with an Introduction by Jacques Maritain, Allan Wingate, London and New York, 1949.

Awareness of historical diversity, especially on issues that still concern us, provides a basis for more informed discussions among practitioners today.

2. Some of the language of 1947 is dated.² However, there is a striking modernity to some of the arguments: that a true human rights declaration would have to reflect all cultures, for example.
3. The proceedings also offer some framework for an analysis of differences that still emerge today; for example, about whether human rights are derived from human dignity or are constructed as the result of a social process.
4. Underlying the entire proceedings in 1947, there was a passionate conviction – no less relevant now – that conversation is essential if people who are different are to be able to live together in peace.

This background paper will discuss the context and purpose of the 1947 conference, give a flavour of some of the debates and suggest the implications for our discussions in Belfast in November 2007 as we approach the 60th anniversary of the UDHR.

The UNESCO Symposium

In 1947, the UN was already engaged in the preparation of the Universal Declaration of Human Rights which the General Assembly was to issue in December 1948 in Paris. During 1947, the United Nations Educational, Scientific and Cultural Organisation (UNESCO) carried out an 'enquiry into the theoretical problems raised by such a Universal Declaration'. The task was to consult scholars and assemble their replies. UNESCO wanted to know about general 'problems' of human rights; that is, philosophical contradictions and controversies. It also wanted comment on specific issues; for example, respect for cultural diversity, the social implications of science, the value of objective information, the right to education and the special position of what it called 'primitive peoples, dependent peoples, law-breakers, etc'.

² For example, the use of the word 'man' to mean 'human beings' is kept in the quotes below, because it took another generation to recognise that women might need particular and proactive measures outlined in the UN Convention on the Elimination of Discrimination Against Women.

After meetings in Paris, Mexico City and Beirut, the group forwarded their conclusions to the Human Rights Commission 'to clarify the discussion and explore the ground for a constructive agreement'. The submission began:

An international declaration of human rights must be the expression of a faith to be maintained no less than a programme of actions to be carried out. It is a foundation for convictions universally shared by men however great the differences of their circumstances and their manner of formulating human rights: it is an essential element in the constitutional structure of the United Nations.

The UNESCO submission was not the only submission to the Human Rights Commission of the United Nations, but it is possible in some instances to see its influence on the final Universal Declaration of Human Rights (UDHR) issued on 10 December 1948 in the General Assembly of the United Nations.³

There are two points to make at the outset about this achievement. First, people talking about human rights, today, tend to take the existence of the UDHR and the United Nations for granted. For the participants in these meetings in 1947, nothing was less certain. From their writings in 1947, it is fair to say they might be surprised to know that the world has survived 60 years on. They might be even more surprised to hear that much of the discourse on domestic public policy and international diplomacy is conducted with the language of the human rights for which they argued. Back then, this result was far from clear. The UNESCO symposium disagreed on whether a statement of common aspirations was possible, and whether it could be effective. Some doubted whether a new United Nations could succeed where the earlier League of Nations had failed. And there was the anxiety that soon the world would be convulsed in another war, that technology harnessed in the atomic bomb, coupled with irreconcilable differences, could lead to mutual annihilation.

The second point that is relevant for our conference is about the religious language used in opening paragraph of the UNESCO submission. Note the description of the declaration of human rights as

³ See: <http://www.un.org/Overview/rights.html>

'an expression of faith'. The implications of the use of religious language about rights still provoke debate today. For example, in 2001, Michael Ignatieff critiqued both the language and the sentiments behind it when he observed that 'human rights have become the major article of faith of a secular culture that fears it believes in nothing else'. He asked:

If human rights is a set of beliefs, what does it mean to believe in it? Is it a belief like a faith? Is it a belief like a hope? Or is it something else entirely?

In fact, Ignatieff argued that the area of human rights is misunderstood if it is presented as a 'secular religion'. He argued that human rights as an area is not a creed or a metaphysics at all.⁴ Rather, support for rights should be built on practical issues: what rights can *do* for human beings. Here he may share the conclusions of the UNESCO conference participants in 1947, who focussed resolutely on practical outcomes. As one participant said, "yes, we agree on the rights, but on the condition that no one asks us why".⁵

In the UNESCO discussions some key questions were addressed:

- ***Are rights everywhere and everywhere the same?***

Here the UNESCO philosophers appeared to be concerned about two issues, first about the philosophical rift between liberal democrats and Marxists and, second, the implications of material developments of societies for the developments of rights. These will be summarised in the next two sections of this background paper as natural rights and rights as the result of social processes.

- ***Are we born with rights?***

The natural law and anti-natural law frameworks were apparent in 1947, principally among what might be called a liberal European/US

⁴ See: *Human Rights as Politics and Idolatry*, Princeton University Press, 2003, pp. 53-54. To base the idea of human rights on propositions of human dignity, for example, is controversial: 'Some people have no difficulty thinking human beings are sacred, because they happen to believe in the existence of God who created Mankind in His likeness'. However: 'People who don't believe in God must either reject that human beings are sacred or believe that they are sacred on the basis of a secular use of a religious metaphor that a religious person will find unconvincing'.

⁵ UNESCO, ed., p. 9.

tradition on the one side and socialist and communist thinkers on the other. Jacques Maritain⁶ made a distinction between the 'classical' and 'revolutionary' positions, as follows:

- a) The classical liberal democrat view explicitly accepts 'natural law': 'the requirements of his being endow man with certain fundamental and inalienable rights antecedent in nature, and superior to, society, and are the source from which social life itself, with the duties and rights which that implies, originates and develops.'
- b) The 'revolutionary' Marxist view explicitly rejects 'natural law' and suggests that 'man's rights are relative to the historical development of society, and are themselves constantly variable and in a state of flux; they are a product of society itself as it advances...'

Maritain very much agreed with the former position and his imprint is deeply felt on these proceedings.

This debate about the human rights basis in natural law was related to other questions, which were not answered definitively in the UNESCO proceedings. For example, underlying the debate over natural law versus its opponents were other divergent assumptions about the religious foundations of human rights: **Are human rights necessarily secular, as some advocates would argue? Or perhaps, as others would argue, is a religious commitment necessary to believe that human beings have an inherent dignity that should be respected?**

The scholars expressed profound differences on this point. Some contributors suggested that a religious foundation for belief in inherent dignity was superstitious nonsense, and that religion itself was a pretext for oppressive ideologies. Equally scathing from the opposite viewpoint, Maritain argued,

If there is no God, the only reasonable policy is that the end justifies the means, and to create a society where man shall finally enjoy his full rights, it is today permissible to violate any right of man if this be necessary for the purpose in hand'.

He called this inconsistency 'an irony stained with blood'.⁷

⁶ UNESCO, ed., p. 13.

⁷ UNESCO, ed., p. 76.

In fact, the final version of the UDHR begins, in its preamble, with a ringing endorsement of what has been described here as the 'natural law' position:

Whereas recognition of the common 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...

Article 1 of the UDHR is the answer to the question whether human beings are born with rights: 'All human beings are born free and equal in dignity and rights.'

- ***Are rights a function of social processes?***

Related to this first debate, the second issue the UNESCO philosophers and scientists were interested in was the development of rights as a function of the development of social relationships and (partly because of the Marxists) productive capacity of society. Because of the rift in 1947, it was important to reach a common understanding on the history and development of rights. The statement agreed finally by the committee about the development of human rights – civil, political, economic and social – fuses some of the elements of both 'camps', but is firmly rooted in a commitment to the 'natural law' position.

The brief history of human rights that resulted in their recommendation to the UN is quoted at length here for two reasons. First, it is a useful introduction to different terms as they have been used about rights since. Second, in a note relevant to the Belfast conference in 2007, the text shows that religious freedom, and the challenges it raises, have been one of the historical drivers for the whole of the human rights movement in recent centuries.

Fundamental rights were 'rights' which regulated man's relation to political and social groups and are therefore usually referred to as civil and political rights. They had as purpose to protect man in actions which do not derogate from the freedom or well-being of others and to assign to him the exercise of function by which he might exert a proper influence on the institutions and laws of State.⁸

As a result of religious movements and the development of national states, a series of freedoms were formulated more and

⁸ UNESCO, ed., p. 264.

*more precisely and insistently from the Renaissance to the eighteenth century: to free man from unwarranted interference with his thought and expression, freedom of conscience, worship, speech, assembly, association and the press. During the seventeenth century, each of these freedoms received eloquent defence on the grounds that, not only that they may be granted without danger to the peace of the State, but also that they may not be withheld without danger.*⁹

*During the 19th century there were to these rights another set of fundamental human rights which grew out of the recognition that to live well and freely man must have at least the means requisite for living and which was made increasingly practicable by the increase of technology and industrialisation in making the means of livelihood potentially accessible to all men. These have come to be called economic and social rights.*¹⁰

The writers describe how these were first associated with the right to property (ownership and use; private and common ownership; private rights and public responsibility). Later these included education; the right to work (with legal provisions for bargaining and arbitration about rewards of work); protection of health (food and drug administrations for pure food, then grew to forms of social security for maintenance in sickness, old age, infancy, and other forms of incapacity, unemployment). Finally, they included claims to full access to cultural achievements.

These reflections point up sharp differences in the development of rights over time as they are reflected in legal codes of different countries and different histories. Again the question had to be addressed:

- ***Are rights everywhere and everywhere the same?***

The UNESCO committee concluded that, in spite of the differences of historical developments over places and time:

Human rights have become, and must remain, universal. All the rights which we have come slowly and laboriously to recognise

⁹ Very interestingly, in light of the Northern Ireland context and modern religious pluralism issues, the British diplomat E.H. Carr suggested that, 'Neither in Britain nor in the North American colonies was religious toleration absolute until religion ceased to have serious political implications'. UNESCO, ed., p. 21.

¹⁰ UNESCO, ed., p. 265.

*belong to all men everywhere without discrimination of race, sex, language or religion. They are universal, moreover, not only because there are no fundamental differences among men, but also because the great society and community of all men has become a relative and effective power, and the interdependent nature of that community is beginning at last to be recognised.*¹¹

Note that this position was necessary to take in order to maintain consistency with the natural law position; if rights are ours because we are human they must also exist wherever human beings are, regardless of culture or history.

In 1947, this argument was made by Arnold J. Lien, a political scientist who added, with some foresight, that rights might be possible to name everywhere, but they would sometimes be harder to claim everywhere:

*... while the basic rights must everywhere be the same, the degree to which they can be made operative, and the extent to which they can be fulfilled must vary from one state to another, and continue to vary for quite a long time.*¹²

The process of achieving the rights claimed in the last 60 years has led to further differentiations in the concept of human rights. For example, Marie Benedict Dembour argued in 2007 that human rights scholarship can be divided into at least four camps now: those who see human rights as given (the 'natural scholars'); those who see them as agreed ('deliberative scholars'); those who see them as fought for ('protest scholars'); and those who see them as talked about ('discourse scholars').¹³ The diversity of concepts that may guide a human rights understanding has become more complex in the past 60 years.

- ***What is the role of cultural and religious traditions in the articulation of rights?***

There are two types of answers that have emerged. First, it was argued that any universal declaration of human rights needed to reflect all cultures. Second, the assertion emerged from writers in the

¹¹ UNESCO, ed., p. 267.

¹² UNESCO, ed., p. 26.

¹³ See 'The Human Rights Creed in Four Schools', in *Who Believes in Human Rights: Reflections on the European Convention*, Cambridge University Press, 2007, p. 232 ff.

Hindu, Confucian, Christian, and Buddhist traditions that rights (or something like them in other cultural contexts) were closely linked with duties (or something like them in other cultural contexts).

The first theme in these discussions of religion, culture and rights was that cultural relativism is a fact of life. In a very modern sounding argument, F.S.C. Northrup, from Yale Law School, argued that a Soviet, Latin American, or African list of rights would all be different (and so it proved in subsequent decades). He argued that an 'adequate bill of rights must be conceived not solely in terms of political freedom but in terms of a plurality of cultural values.'¹⁴ However, he continued, acknowledging difference is not enough if the differences are contradictory. What then, he asks? There has to be in the rights a 'guarantee also a procedure by means of which people and nations can and must pass beyond their present ideologies when these ideologies so mutually contradict as to threaten the peace of the world'.¹⁵ In other words, contradictions have to be transcended if 'they are not to destroy one another'. With other contributors, Northrup looked to the importance of international courts and/or other arbiters to work out some of the contradictions that would arise between individuals, institutions and states.

- ***What about duties?***

A second theme in discussions of religious and cultural roles in the articulation of rights is the inter-relationship of rights and duties. In the UNESCO symposium a range of contributors developed the theme from within diverse cultural and religious contexts. The most striking expression of the interaction between rights and duties in a cultural context came from Mohatma Gandhi. During the social upheavals and violence in India that would lead to both decolonisation and partition, he wrote a letter to Julian Huxley, Director General, UNESCO:

I learned from my illiterate but wise mother that all rights have to be deserved and preserved from duty well done. Thus the very right to live accrues to us only when we do the duty of citizenship to the world. From this one fundamental statement, perhaps it is easy enough to define the duties of Man and Women and correlate every right to some corresponding duty to

¹⁴ UNESCO, ed., p. 183.

¹⁵ UNESCO, ed., p. 184.

*be first performed. Every other right can be shown to be a usurpation hardly worth fighting for.*¹⁶

S.V. Puntambekak developed in more detail a 'Hindu concept of Human Rights' by explaining that there were five essential freedoms (from violence; from want; from exploitation; from violation or dishonour; and from early death and disease). These were to be balanced against five essential 'virtues' (absence of intolerance; compassion; knowledge; freedom of thought and conscience; and freedom from fear or despair). Some of the concepts here may not translate directly, as he uses the English language words of 'virtues,' 'controls', and 'possessions' to try to describe the nature of the second five attributes.

From another perspective, Chung-Shu Lo, a philosopher from West-China University, noted that there was not a word for 'rights' in the Chinese vocabulary and so it is comprised of two Chinese words for their modern discussions, namely 'power and interest':

*The basic ethical concept of Chinese socio-political relations is the fulfilment of duty to one's neighbour, rather than the claiming of rights. The idea of mutual obligations is regarded as the fundamental teaching of Confucianism... Chinese ethical teaching emphasised the sympathetic attitude of regarding all one's fellow men as having the same desires, and therefore the same rights, as one would like to enjoy oneself. By the fulfilment of mutual obligations the infringement of the rights of others should be prevented.*¹⁷

Despite this conceptual difference, the writer stressed that rights had been claimed, especially for example, an ancient right of the people to overthrow bad rulers (relevant in the then current Chinese context of civil war).

In fact, nearly all the contributors to the UNESCO conference believed that a close interdependence of rights and duties had 'long been apparent in moral analysis' and should be reflected in a final document.¹⁸ Only one contributor argued strongly against such a course of action: the German philosopher Kurt Riezler, who, in 1947 wrote:

¹⁶ Dated from the Banghi Colony, New Delhi, 25 May 1947.

¹⁷ UNESCO, ed., p. 187.

¹⁸ UNESCO, ed., p. 167.

It is everybody's duty to recognise the rights of his fellow citizen... If, however, these duties of man would be duties toward the 'public welfare' the 'Society' and the State, and rights are made conditional on the fulfilment of these duties, the duties will uproot the rights. The rights will wither away... Any bill of rights that makes the rights conditional on duties towards society or the State, however strong its emphasis on human dignity, freedom, God or whatever else, can be accepted by any kind of totalitarian leader.¹⁹

Some of the passion in his words might be explained by the context, immediately following the fall of the Third Reich and the Nazis. Like every contributor, he was writing with pressing and immediate issues in mind about what was happening around him.

Despite these contributions, the language in the final version of the UDHR bears a striking resemblance to the contribution of a French Catholic contributor. Jesuit archaeologist, zoologist and philosopher, Pierre Teilhard de Chardin, was concerned with the whole community interacting with the development of the human personality:

It is not by self-isolation (as one might have thought), but by proper association with all other human beings that the individual can hope to achieve full development of his person ...since we cannot become completely reflexive, except by reflecting ourselves in, and taking reflections from other human beings.²⁰

This concept is reflected in the final version of the UDHR in Article 29, which reads:

Everyone has duties to the community in which alone the free and full development of his personality is possible.

It may be helpful at this point to note the legal form in which the balancing act between the rights of the individual are sometimes considered against a common good. This is known as limiting rights. It may be helpful also to note that Articles 29 and 30 of the UDHR also contain a summary of a related debate about the limits of some rights. Article 29 continues:

¹⁹ UNESCO, ed., pp. 156-157.

²⁰ UNESCO, ed., p. 105.

In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and general welfare in a democratic society.

This is further developed in Article 30 of the UDHR:

Nothing in this Declaration may be interpreted as implying for any state, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth therein.

- ***How can we agree when we differ?***

All the contributors acknowledged that conflicts would arise about the meaning and interpretation of rights. With regard to how to engage in conflict they felt there were only two choices: whether the conflict was engaged by peaceful means or means that were intrinsically violent or led to violence and oppression. Italian philosopher, Benedetto Croce, said there were either liberal or totalitarian methods, and he posed the challenge sharply:

How is agreement to be reached? By the reinvigoration of the current of liberalism, whose moral superiority, power of thought and persuasion and whose political wisdom and prudence will prevail over the other current? Or will it be through a new world war which will bring victory to one or the other side..?

The context of his writing suggests that he felt his question was a real choice rather than a mere form of words.

- ***Can we agree on practical outcomes even if we don't share an underlying philosophical basis?***

Maritain argued that he understood the difficulties, but we must come to an agreement wherever we can:

The paradox is that such rational justifications are at once indispensable, and yet powerless to bring about agreement between minds. They are indispensable because each one of us believes instinctively in the truth, and will only assent to what he

himself has recognised as true and based on reason. They are powerless to bring about a harmony of minds because they are fundamentally different, even antagonistic; and why should this surprise us? The questions they raise are difficult and the philosophical tradition to which they are related have long been divergent.²¹

So he argued for practical guidelines for action, and his argument carried. In conclusion, the UNESCO committee identified problems 'in principles, interpretations, political and diplomatic problems' to a universal declaration of human rights. Nonetheless, they suggested that they could offer an examination of the intellectual basis of a modern bill of rights, suggesting common ground for agreement, and explaining possible sources of differences.²²

Throughout, their conclusions remained pragmatic; while it may not be possible to agree on the means, they could agree on the ends:

The Committee is convinced that the philosophic problem involved in a declaration of human rights is not to achieve doctrinal consensus but rather to achieve agreement concerning rights, and also concerning action in the realisation and defence of rights, which may be justified on highly divergent doctrinal grounds.²³

Attempting to agree on practical outcomes can still be a relevant approach where there are likely to be fundamental disagreements about the means to get there, and this may be an appropriate strategy at this Rights and Righteousness conference.

Conclusions

Implications of the symposium for the challenges we face

If the UNESCO committee felt that the conversations in which they were engaged could help prevent further conflict, the organisers of this Belfast conference share their conviction that constructive discussions about religious pluralism and human rights can help in the task of peace-building. In other words, considering what 'a culture of rights'

²¹ UNESCO, ed., p. 9.

²² UNESCO, ed., p. 258.

²³ UNESCO, ed., p. 263.

means in a shared society may not yield agreement, but it can help in the following ways:

- Raise awareness of diversity, challenging stereotypes and increasing respect for difference in a society emerging from conflict;
- Raise awareness of rights and the diversity of views from which they emerged and in which they can still flourish;
- Explain why agreement may be difficult;
- Identify rules of engagement for when agreement is not possible; and
- Identify common grounds for action for justice where agreement is possible.

Rights and righteousness and the common good

Two final points underline the challenges for our discussions in this conference.

First, rights have not been realised. Belgian political scientist, J. Hasearts, in 1947, wrote words that have been echoed by many human rights defenders and advocates since, whether motivated by 'rights' or 'righteousness.'

Equality has been reduced to the narrow civic equality that we know so well. Political equality has barely begun and economic equality is not considered. Resistance to oppression is hunted down wherever it appears, but oppression itself is flourishing, thanks to the crises which pursue us, and it threatens rights the possessors of which have no means of defending themselves.²⁴

As social analysis, perhaps the tone is very similar to an older source in Hebrew scriptures. There, an ancient social critic observed:

Justice is turned back, and righteousness stands afar off; for truth has fallen in the public squares and uprightness cannot enter. Truth is lacking, and he who departs from evil makes himself a prey.²⁵

²⁴ UNESCO, ed., p. 97.

²⁵ Isaiah 59: vv. 14-15; New Oxford Annotated Bible, Revised Standard Version, Oxford University Press, 1977, p. 897.

Justice is the concern of both speakers, the continuing lack of it deeply troubling to both.

Secondly, the organisers of this conference would suggest, with the framers of the UDHR in their diversity and their conviction, that rights are fundamental to peace, human welfare and the common good.

The fundamental issue of our times is probably to be found in the opposition of two assumptions, made implicitly and explicitly in policies advocated for the determination of the relations of the nations of the world. On the one hand, it is assumed that there are several basic ideologies... which are in necessary conflict and opposition and which are dividing mankind into two worlds until one overcomes the other. On the other hand, it is assumed that means can be found by which men of different basic convictions in philosophy, religion, political theory and economic doctrine may cooperate to common ends in a single world of shared values. The first is a solution in which peace and human rights depend on the successful inculcation of a single basic philosophy throughout the world... and failure of efforts towards universal indoctrination in the past ...make it highly probably that pursuit of that solution must lead to war. The second ...might preserve the peace of the world by furnishing the means to reach agreements concerning the equitable solution of problems and the achievement of human welfare and the common good.²⁶

This conclusion of the 1947 conference is set before us again, sixty years later, as a challenge and choice.

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²⁶ UNESCO, ed., p. 41.