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## *Justice and Human Rights: Reflections on the Address of Pope Benedict to the UN*

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The topic of human rights was prominent in Pope Benedict's address to the United Nations General Assembly in the year of the Universal Declaration's 60th anniversary.<sup>1</sup> As with many of Pope Benedict's speeches, his 18 April address to the United Nations is one in which some rather complex ideas are expressed in a very condensed fashion. It is a speech that needs, as they say, to be 'unpacked'.

Today, the UDHR has become the single most important common reference point for cross-national discussions of decent human behaviour, and the language of rights has become the principal language for carrying on those discussions. Pope Benedict took those facts as his starting point, noting that 'Human rights are increasingly being presented as the common language and ethical substratum of international relations.'

But success has had its costs. For the more the international human rights idea has shown its power, the more intense has become the struggle to capture that power for various ends, not all of which are respectful of human dignity. In 1948, many scoffed at the idea that mere words could make a difference. By 1989, the world was marveling that a few simple words of truth – a few courageous people willing to 'call good and evil by name' – could change the course of history. Sometimes, however, the same words that once were rays of light can become lethal arrows. And sometimes our most noble human enterprises can take a wrong turn.

Who would have thought that the human rights project could become so powerful that it risked being turned against itself, and against the human person? That question comes to mind when one ponders Pope Benedict's pointed discussion of the challenges facing human rights at the present time.

The Pope began his discussion with praise for the UDHR, describing it as the outcome of a process designed 'to place the human person at the heart of institutions, laws, and the workings of society'. And he credited it with having enabled 'different

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<sup>1</sup> [http://www.vatican.va/holy\\_father/benedict\\_xvi/speeches/2008/april/documents/hf\\_ben-xvi\\_spe\\_20080418\\_un-visit\\_en.html](http://www.vatican.va/holy_father/benedict_xvi/speeches/2008/april/documents/hf_ben-xvi_spe_20080418_un-visit_en.html)

cultures, juridical expressions and institutional models to converge around a fundamental nucleus of values and hence of rights’.

But what is striking is that those expressions of appreciation are accompanied by a set of warnings that amount to what is perhaps the most sobering cautionary discussion about human rights that has ever appeared in any papal document. Pope Benedict’s short speech signals no fewer than nine dilemmas that have beset the human rights project from the beginning – nine dilemmas that, ironically, have become more acute as the human rights project has advanced: (1) the threat posed by cultural relativism, (2) the risks of positivism, (3) the unsettled question of foundations, (4) the temptation of utilitarianism, (5) the spread of selective approaches to the common core of basic rights, (6) escalating demands for new rights, (7) hyper-individualistic interpretations of rights, (8) forgetfulness of the relation between rights and responsibilities, and (9) the threat to religious freedom posed by dogmatic secularism.

What makes these challenges especially poignant is that many of them have emerged from developments that nearly every friend of human rights would consider to have been genuine advances for humanity, while others contain elements of constructive criticism.

1. Consider, for example, the challenge of *cultural relativism*. In his UN speech, the Pope warned against the denial of universality ‘in the name of different cultural, political, social and even religious outlooks’, and criticized the use of ‘the argument of cultural specificity to mask violations of human rights’. As we all know, some of the world’s worst human rights violators, most recently Burma, have attempted to hide behind that argument.

At the same time, however, one must admit that it is not always easy to distinguish between the cultural relativism that undermines universality and a legitimate pluralism that permits different means of expressing and protecting fundamental rights. Universality need not entail homogeneity, and the existence of different ways of implementing principles does not necessarily entail relativism about the principles themselves. In fact, the history of enculturation of the Christian faith in vastly diverse societies provides eloquent testimony that the common understanding of core truths can actually be enriched by the accumulation of a variety of experiences in living those truths. Thus, the Pope’s warning about cultural relativism should not be understood as putting universal rights and cultural particularities into stark opposition. After all, rights emerge from culture; rights cannot be sustained without cultural underpinnings; and rights, to be effective, must become part of each people’s way of life.

In fact, to ignore that reality would be to run the opposite risk – that of cultural imperialism. It would be to fall into the mindset that characterizes the professional culture of many international lawyers, international civil servants, and international NGOs – a kind of international-*ism* that is insensitive to local particularities and that insists on its own dogmatic interpretations of human rights.

2. But how can one distinguish pure cultural relativism from legitimate pluralism? By what standard can a nation’s conduct be judged if rights are viewed merely as the result of legislative enactments or other official decisions? That question brings us to a second point in the Pope’s speech – his *critique of positivism*. As the

Pope put it, justice is often denied when rights are considered 'purely in terms of legality ... divorced from the ethical and rational dimension which is their foundation and their goal'.

In that connection, the Pope has noted approvingly the position of the American founders in the Declaration of Independence that basic rights are not created by governments; they are pre-political. Alexander Hamilton once wrote, in language that could have been penned by Pope Benedict: "The sacred rights of mankind are not to be rummaged for among old parchments.... They are written ... in the whole volume of human nature by the hand of divinity itself; and can never be erased or obscured by mortal power."<sup>2</sup>

Similarly, in Catholic thought, human rights arise from a natural order whose laws can be discovered through study and experience – by believer and unbeliever alike. To remove human rights from that context, the Pope points out, would destroy their universality.

As a lawyer, however, I must pause to note the obvious: that fair procedures and rules of law, while not sufficient in themselves, are extremely important to the protection of human freedom and dignity (and are recognized as such in the UDHR). Like the fundamental rights they protect, they, too, represent hard-won cultural achievements.

3. But all those achievements are fragile in our post-modern world where understandings of rights, justice, and natural law are all hotly contested. And that brings the Pope to a *third neuralgic point: foundations*. Philosophical relativism has penetrated so deeply into popular culture that good men and women are increasingly unable to say why any values should be defended, or why any conduct should be condemned, except that it is a matter of preference. But if there are no common truths to which people of different backgrounds and cultures can appeal, it is difficult to see how universal rights can be upheld. That prompted the Polish poet Czeslaw Milosz to wonder about the fate of 'those beautiful and moving words which pertain to the old repertory of the rights of man and the dignity of the person. I wonder at this phenomenon because maybe underneath there is an abyss. After all, these ideas had their foundation in religion .... How will they stay afloat if the bottom is taken out?'<sup>3</sup>

The answer of Pope Benedict, about which I will say more presently, is that these ideas can be defended on the basis of reason and experience. But, even so, the issue of 'who decides' will always be a thorny one – one that the liberal democracies have found best to approach through separation of powers and checks-and-balances.

4. The problem of foundations has led many friends of human rights to defend them on the basis of what the Pope, in a fourth critical observation, calls a '*utilitarian perspective*'. As a practical matter, considerations of utility have their place in many common situations. But 'the greatest good for the greatest number' can spell doom for the weakest and most vulnerable members of society. Thus, utilitarianism can easily become a justification for the imposition of the will of the stronger.

<sup>2</sup> A. Hamilton, 'The Farmer Refuted', reprinted in *The Founders' Constitution*, vol. 1, ch. 3, doc. 5, available at <http://press-pubs.uchicago.edu/founders/documents/v1ch3s5.html>.

<sup>3</sup> Milosz, 'The Religious Imagination at 2000', *New Perspectives Quarterly* (1997), at 32.

5. A fifth element of the Pope's critique concerns *selectivity*, the widespread tendency to treat fundamental rights like items on a menu from which one can pick and choose one's favourites, ignoring the rest. Though the principle that universal rights are 'interdependent and indivisible' has been affirmed in many UN documents, it is conspicuously flouted in practice by nation states and interest groups alike.

For the past 60 years, however, one of the strongest voices in defence of the Universal Declaration as an integrated whole has been that of the Holy See. During the Cold War, it resisted the separation of political and civil rights from social and economic rights, while recognizing that the UDHR allows more diversity in modes of implementation of the latter than the former. Today, with the provisions protecting marriage, the family, parental rights, and religious freedom under mounting assault, the Pope warned against pressures to 'move away from the protection of human dignity towards the satisfaction of simple interests, often particular interests', insisting that the Declaration 'cannot be applied piecemeal, according to trends or selective choices'.

6. The problem of selectivity is closely related to a sixth source of concern mentioned by the Pope – the *pressure to expand the category of rights* that are so fundamental as to be deemed universal. That category cannot be closed, for, as he pointed out, 'new situations arise as history proceeds'. On the other hand, the more goods or desires that are recognized as universal rights, the more risk there is of trivializing core human values.

The problem is another concomitant of success. Now that the UDHR has been accepted as a universal standard, interest groups of all sorts have intensified their efforts to have their agenda items recognized as universal rights. No wonder that the Pope called (twice in his short speech!) for great 'discernment' in dealing with demands for new rights. In that connection, his last three warnings can be viewed as aids to distinguishing proposals that represent healthy developments from those that are harmful to human dignity.

7. The Pope's caution against privileging *an excessively individualistic approach to human rights* can be understood as a reminder of the social dimension of human personhood. '[R]ights and the resulting duties', he said, 'flow naturally from human interaction.... They are the fruit of a commonly held sense of justice built primarily upon solidarity among the members of society.' In other words, some constraints on individual behaviour are necessary if large numbers of people are to live together in freedom. Good questions to ask about any proposed new right, therefore, are: What goods does it protect? What are its implicit assumptions about the human person, and his or her relation to society?

Long ago, Tocqueville sounded an equally pointed warning about the dangers of hyper-individualism. New forms of despotism, he predicted, could emerge unrecognized in societies where citizens withdraw into themselves, 'constantly glutting their souls with petty and banal pleasures'. Tyranny would then appear as a protective power 'that likes to see citizens enjoy themselves, provided they think of nothing but themselves.'<sup>4</sup>

<sup>4</sup> *Democracy in America*, vol. II, part iv, ch. 6.

8. Another useful question to ask about a proposed new right, therefore, is whether it recognizes corresponding *responsibilities*. As the Pope put it, 'In the name of freedom, there has to be a correlation between rights and duties, by which every person is called to assume responsibility for his or her choices, made as a consequence of entering into relations with others.'
9. Finally, let us note the Pope's allusion to one of his major preoccupations – the threat to religious freedom and human dignity posed by *a dogmatic form of secularism* that aims to displace religion from public life. Though his allusion is brief, it is sufficient to evoke the recollection of extensive discussions elsewhere – by Pope Benedict, Marcello Pera, and Joseph Weiler, among others – of the dangers of ignoring the Biblical roots of the great achievements of modernity.<sup>5</sup>

After this long litany of cautions about the human rights project, one might well wonder whether anything is left of Pope Benedict's affirmations! The outlines of a positive answer can be found, I believe, elsewhere in his writings.

For example, in the lecture that he was to have given at *La Sapienza* University in Rome at the beginning of 2008, he addressed this challenge to the Faculty of Jurisprudence.<sup>6</sup> 'How can juridical norms be found that guarantee freedom, human dignity and human rights?' Anticipating the standard response referring to democratic processes of deliberation, he observed that public argumentation in contemporary democracies aims above all at attaining majorities, and that 'sensitivity to the truth is constantly overruled by sensitivity to interests', often 'special interests that do not truly serve everyone'.

Having uttered the word 'truth', he was, of course, faced with Pilate's question: What is truth? Pope Benedict – so post-modern in his own distinctive way – said he could not 'properly offer an answer, but only an invitation'. The search for truth, he said, is 'one that always demands strenuous new efforts, and that is never posed and resolved definitively'. The invitation he offered was 'to remain on the journey with the great ones who throughout history have struggled and sought with their responses and their restlessness for the truth which continually beckons from beyond any individual answer'.

To a 17 year-old boy who, on another occasion, pressed the Pope to say more, the Pope replied: 'There are only two options. Either one recognizes the priority of reason, of creative Reason that is at the beginning of all things and is the principle of all things ... or the priority of the irrational', which would mean accepting that everything on earth and in our lives, including reason itself, is only accidental. 'The great option of Christianity', the Pope told the boy, 'is the option for rationality and the priority of reason.'<sup>7</sup>

There is much more to be said on that subject – far more than I as a mere jurist – am qualified to discuss. But the application to the dilemmas that face the human rights project seems to be something like this: The self-subverting tendencies of freedom that

<sup>5</sup> J. Ratzinger and M. Pera, *Without Roots: The West, Relativism, Christianity, Islam* (2006); J. Weiler, *Un' Europa cristiana: Un saggio esplorativo* (2003).

<sup>6</sup> <http://www.zenit.org/article-21526?l=english>

<sup>7</sup> <http://chiesa.espresso.repubblica.it/articolo/186421>.

we are now experiencing are not the whole story. The quest for freedom that brought traditional authorities and institutions into question at the dawn of modernity, the struggle for freedom that has liberated countless human beings from dehumanizing conditions, the desire for freedom that now threatens to destroy freedom's foundations – that same freedom also gives us the opportunity for reconsideration in the light of reason and experience. That same freedom permits us to stand back, take a fresh look, to correct our course.

Let me conclude, therefore, by returning to the suggestion I made at the outset of these remarks – that the principal addressees of the Pope's remarks on human rights are not diplomats or UN officials. He was also sending a message, an invitation, and a challenge to all men and women of good will. His words were meant to inspire each of us to consider the ways in which our decisions and actions in the areas where we live and work can help to shift probabilities either for or against a social order respectful of the dignity and rights of the person. 'Every generation', as he wrote in *Spe Salvi*, 'has the task of engaging anew in the arduous search for the right way to order human affairs'.<sup>8</sup> No one doubts that the stakes are high. The key decision for each of us is whether to embrace that task and accept its challenges.

<sup>8</sup> *Spe Salvi*, at para. 25, available at [http://www.vatican.va/holy\\_father/benedict\\_xvi/encyclicals/documents/hf\\_ben-xvi\\_enc\\_20071130\\_spe-salvi\\_en.html](http://www.vatican.va/holy_father/benedict_xvi/encyclicals/documents/hf_ben-xvi_enc_20071130_spe-salvi_en.html)