

THE COMMON GOOD IN AN UNEQUAL WORLD
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Rights and Responsibilities:

The Compendium on Personal Rights and the Common Good

Anyone who is interested in advancing the protection of human rights will be fascinated by the values at the core of the *Compendium*. The *Compendium* is not the same as an international human rights instrument promulgated by international treaty. It does not merely address States and sets out no legal sanctions for non-compliance. It is essentially a philosophical document, undoubtedly written from a religious perspective but equally clearly accessible to all readers who are concerned about human rights.

Human rights are, of course normative in character. Contemporary human rights theory¹ can trace its origins to many philosophical and religious sources of inspiration. These sources are by no means agreed as to such basic questions as the nature and purpose of society, the proper remit of law, indeed, the very nature and goals of human life. We therefore find a dynamism and internal debate within human rights theory, which can of course be “resolved”, as a matter of positive law, by the making of some new international treaty or protocol or by the adjudication of some authoritative body, such as the European Court of Human Rights. Such resolution does not, however, quell the normative debate about the nature and scope of particular human rights or of human rights in general. What we are witnessing is a broader cultural phenomenon, in which the norms of human rights theory are in a state of constant revision and reassessment.

¹ See van der Vyver, ‘The Concept of Human Rights: Its History, Contents and Meaning’, [1979] *Acta Juridica* 10.

The same can be said of the *Compendium*. It can best be understood, not as some unchanging, constant, articulation of the rights and responsibilities of human beings in society but rather as a dynamic, ongoing assessment of this theme, in relation to which commentators can identify changes of emphasis over time. What is important to note about the *Compendium*, however is that its absolutely core concept of the inherent dignity of every human being is constant and unchanging and enlightens the specific norms relating to social justice and the common good.

Human Dignity

Human dignity² is not the core value of international human rights instruments.³ The Preamble to the Charter of the United Nations in 1945 and the Preamble to the Universal Declaration on Human Rights in 1948 both refer to ‘the dignity and worth of the human person’. Both the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights recognise ‘the inherent dignity and ... the equal and inalienable rights of all members of the human family’ as the foundation of freedom, justice and peace in the world. Dignity is a value underlying the Irish Constitution. Indeed the Irish Constitution is the first, so far as I am aware, in which dignity is given such a role.

The concept of human dignity is of an ancient pedigree.⁴ Its philosophical origins may be found in Greek philosophy and in Judeo-Christian insight into the unique value and equal worth of every human being.⁵

² See D. Kretzmer & E. Klein eds., *The Concept of Human Dignity in Human Rights Discourse* (2002), Feldman, *Human Dignity as a Legal Value* [1999] Public L 682, [2000] Public L 61.

³ See Dicke, ‘The Founding Function of Human Dignity in the Universal Declaration of Human Rights’, in D. Kretzmer & E. Klein eds., *op. cit.*, 111.

⁴ See Canick, “Dignity of Man” and “*Persona*” in Stoic Anthropology: Some Remarks on Cicero, *De Officiis I*, 105-107, in D. Kretzmer & E. Klein ed., *op. cit.*, 19.

The *Compendium* states:

*“A just society can become a reality only when it is based on the respect of the transcendent dignity of the human person. The person represents the ultimate end of society, by which it is ordered to the person: ‘Hence, the social order and its development must invariably work to the benefit of the human person, since the order of things is to be subordinate to the order of persons, and not the other way around. Respect for human dignity can in no way be separated from obedience to this principle. It is necessary to ‘consider every neighbour without exception as another self, taking into account first of all his life and the means necessary for living it with dignity.’ Every political, economic, social, scientific and cultural programme must be inspired by the awareness of the primacy of each human being over society.”*⁶

⁵ Cf. Starck, ‘The Religious and Philosophical Background of Human Dignity and Its Place in Modern Constitutions’, in D. Kretzmer & E. Klein eds., *op. cit.*, 179, at 180-181 (footnote references omitted):

‘The recent affirmation of human dignity in constitutions and international declarations is a product of a relatively secular age. Yet the development of the underlying idea – the concept of what a human being is – closely parallels the development of Christian thought. Both the Old and New Testaments state that the basis of human dignity is the fact that humans were created in the image of god (Gen. 1, 27; Eph. 4. 24). It follows that every human being has inalienable value in his or her own right, which is why no human being may be treated as a mere object or as a means to an end.

A second strand of the concept of human dignity finds its origins in classical antiquity. Philosophers in this period recognised characteristics of human beings that distinguish them from animals, namely their capacity for rational thought and free will, and from this starting point, began to recognise human dignity in citizens. Later, their theory was extended in amore cosmopolitan context to all human beings.

A strong social component characterises the classical and Christian concepts of freedom which the notion of human dignity underpins: human beings were always seen as interdependent, social creatures. This is evident from the concepts of the *polis*, of the community of believers, of general fraternity and of solidarity. Human freedom was anchored in divine law, in natural law and in moral law.

Christian life and belief, in which human beings depend (*religio*) on God, on Jesus Christ as intercessor and saviour and on the Christian community, led by the Holy Spirit, transcend the physical world. In this context, it is usual to speak of metaphysics. Thus, human beings have a metaphysical anchor, which provides the basis for their freedom, and for their equality and fraternity: all human beings are, in equal measure, the image of God. Human dignity does not mean unlimited self-determination, but self-determination which is exercised on the basis that everyone – not simply the person claiming the right to self-determination is of value in his or her own right.’

⁶ Para 132 (citations omitted).

Compendium Values and Human Rights Theory: Four Questions

It may be useful to contrast the approach of the *Compendium* to the relationship between *rights, responsibilities* and the *common good* with that adopted in contemporary human rights theory. What emerges is of some interest. The integration of these three concepts in the *Compendium*, inspired by the predominant notion of human dignity, is increasingly finding a mirror in contemporary human rights theory.

The big issues relating to human rights over the past century have included the following four questions:

Should a distinction be made between civil and political rights, on the one hand, and economic and social rights, on the other?

Are human rights enforceable only against the State or can they also be enforced against non-State actors, even private citizens in their relationships with each other?

Are there human responsibilities as well as rights?

Should human rights be protected by States or by some wider, possibly global, authority?

Civil and Political Rights versus Economic and Social Rights?

As to the first of these questions, as you know, the enmities of the Cold War led to the breaking up of human rights into two artificial categories, each with its own Covenant. Thus we have the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. A sustained assault was made by some on the justiciability of economic, social and cultural rights, backed by

arguments based on the separation of the powers doctrine and appeals to democratic values. This debate has found its way into Irish judicial circles.⁷

The Vienna Declaration and Programme of Action, in 1993, sought to remedy this artificial distinction, so far as possible. Paragraph 5 of the Declaration states:

“All human rights are universal, indivisible and interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis. While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms.”

In Catholic social thought, there is no artificial distinction between civil and political rights and economic and social rights. Pope John Paul II in his message for the celebration of the World Day of Peace on 1 January 1995 made the following observations:

“All human beings, without exception, are equal in dignity. For the same reason, these rights apply to every stage of life and to every political, social, economic and cultural situation. Together they form a single whole, directed unambiguously towards the promotion of every aspect of the good of both the person and society.

Human rights are traditionally grouped into two broad categories, including on the one hand civil and political rights and on the other economic, social and cultural rights. Both categories, although to different degrees, are guaranteed by international agreements. All human rights are in fact closely connected, being the expression of different dimensions of a single subject, the human person. The

⁷ See *Sinnott v Minister for Education* [2001] 2 IR 545, *T.D. v Minister for Education* [2001] IESC 101, critically analysed by G. Whyte, *Social Inclusion and the Legal System: Public Interest Law in Ireland* (2002), Addendum.

integral promotion of every category of human rights is the true guarantee of full respect for each individual right.

Defence of the universality and indivisibility of human rights is essential for the construction of a peaceful society and for the overall development of individuals, peoples and nations. To affirm the universality and indivisibility of rights is not to exclude legitimate cultural and political differences in the exercise of individual rights, provided that in every case the levels set for the whole of humanity by the Universal Declaration are respected.”

It is clear that Catholic social thought has no place for untrammelled “democratic majoritarianism” without regard for social justice and the common good.

Rights against whom?

Let us now consider the second question: whether human rights are enforceable only against the State or may also be enforced against non-State actors. This is a matter of heated debate.⁸

In Catholic social thought, there is no need to limit the obligation to respect human rights to states. Of course, those in society who are involved in the process of government, at all political levels, may have more wide-ranging authority and responsibilities than others, but only for the purpose of attaining the common good⁹; and everyone is required to make his or her own specific contribution to the general welfare.

⁸ See Andrew Clapham, *Human Rights Obligations of Non-State Actors* (2006), Wade, ‘Horizons of Horizontality’, 116 L.Q.Rev. 217 (2000). It is noteworthy that, in Irish constitutional theory, constitutional rights may be enforced not only against the State, but also against private individuals: *Meskeil v Coras Iompair Eireann* [1973] IR 121. See further Binchy, ‘Constitutional Remedies and the Law of Torts’, in J. O’Reilly ed., *Human Rights and Constitutional Law; Essays in Honour of Brian Walsh* (1992), 201.

⁹ *Pacem in Terris*, para. 53.

The trend in human rights theory is in the direction of expanding the range of those subject to the obligation to comply with human rights instruments. The State-based model of analysis is beginning to look somewhat jaded.

Human Responsibilities

Let us turn to the third question. The great international human rights instruments of the United Nations speak largely the language of rights rather than duties. Article 29(1) of the Universal Declaration of Human Rights 1948 is exceptional in providing that '[e]veryone has duties to the community in which alone the free and full development of his personality is possible.' The African Charter on Human and Peoples' Rights¹⁰ and the African Charter on the Rights and Welfare of the Child contain provisions spelling out duties and responsibilities as well as rights.

Catholic social theory involves a reciprocal relationship between rights and duties:

“Every basic human right draws its authoritative force from the natural law, which confers it and attaches to it its respective duty. Hence, to claim one's rights

¹⁰ Article 27 of the African Charter on Human and Peoples' Rights provides as follows:

“Every individual shall have duties towards his family and society, the State and other legally recognized communities and the international community. 2. The rights and freedoms of each individual shall be exercised with due regard to the rights of others, collective security, morality and common interest.”

Article 28 provides:

“Every individual shall have the duty to respect and consider his fellow beings without discrimination, and to maintain relations aimed at promoting, safeguarding and reinforcing mutual respect and tolerance.”

Finally Article 29 provides:

“The individual shall also have the duty: 1. to preserve the harmonious development of the family and to work for the cohesion and respect of the family; to respect his parents at all times, to maintain them in case of need; 2. To serve his national community by placing his physical and intellectual abilities at its service; 3. Not to compromise the security of the State whose national or resident he is; 4. To preserve and strengthen social and national solidarity, particularly when the latter is threatened; 5. To preserve and strengthen the national independence and the territorial integrity of his country and to contribute to its defence in accordance with the law; 6. To work to the best of his abilities and competence, and to pay taxes imposed by law in the interest of the society; 7. to preserve and strengthen positive African cultural values in his relations with other members of the society, in the spirit of tolerance, dialogue and consultation and, in general, to contribute to the promotion of the moral well being of society; 8. To contribute to the best of his abilities, at all times and at all levels, to the promotion and achievement of African unity.”

and ignore one's duties, or only half fulfil them, is like building a house with one hand and tearing it down with the other."¹¹

The acknowledgement of our responsibility to society has become more easily recognised in certain aspects of our lives over the past couple of decades. We are now conscious of our environmental responsibilities to future generations; we have concerns about global warming; the smoking ban was a striking example of how the social dimension of our lives was considered sufficiently important to impose restrictions on our choices.

¹¹ *Pacem in Terris*, para. 30.

A global remit?

The fourth issue involves the question whether some supra-national, global body should be charged with task of protecting human rights. For decades, during the Cold War, there was little or no prospect that it could actually achieve this goal. Today, there are some indications of a strengthening of the notion of a global law. The International Criminal Court is a striking example of this trend.

Catholic social theory looks in the same direction, emphasising the need for the world community to act in harmony if the global common good is to be achieved:

“Today the universal common good presents us with problems which are world-wide in their dimensions; problems, therefore, which cannot be solved except by a public authority with power, organization and means co-extensive with these problems, and with a world-wide sphere of activity. Consequently the moral order itself demands the establishment of some such general form of public authority...

The common good of individual States is something that cannot be determined without reference to the human person, and the same is true of the common good of all States taken together. Hence the public authority of the world community must likewise have as its special aim the recognition, respect, safeguarding and promotion of the rights of the human person.”¹²

The migration of workers and their families between states requires us to adopt global principles of social justice. The International Convention on the Protection of the Rights of Immigrant Workers came into force on 1 July 2003, yet Ireland shows no immediate prospect of adopting it. The Convention seeks to protect the human rights of migrant workers and their families. No good argument in social justice has been, or could be, put

¹² *Pacem in Terris*, para. 139.

forward against our adopting the Convention. This is an instance where human dignity must not be put in second place to economic profit.

Synthesis

What emerges from this brief consideration of these four issues is that human rights theory is moving from a model of civil and political rights held by citizens against States to a far more complex model of society, at every stage from individuals, private associations, local and national authorities to global institutions being in a recognised relationship of mutual rights and responsibilities, based on recognition of the primary value of human dignity. This is precisely the model that emerges from the *Compendium*. For those interested in the future development of human rights, it represents a most useful philosophical framework for analysis and debate.

The Common Good

Let us turn to consider the common good. It is a term that had widespread currency several decades ago in Ireland and it features strongly in the Constitution of 1937. Over the years, it would be fair to say that it lost a degree of currency. It came to be regarded as a conservative brake on the development of autonomy-based rights.

With the removal of criminal prohibitions from a range of areas of autonomy-related action we can perhaps look again, and in a clearer way, at the notion of the common good. The first, and most obvious, point to note about it is that it has a huge impact in the area of social justice. It is rooted in “the dignity, unity and equality of all people.”¹³

The following passage from *Gaudium et Spes* is worth close consideration:

¹³ *Compendium*, para. 164.

“Every day human interdependence grows more tightly drawn and spreads by degrees over the whole world. As a result the common good, that is, the sum of those conditions of social life which allow social groups and their individual members relatively thorough and ready access to their own fulfillment, today takes on an increasingly universal complexion and consequently involves rights and duties with respect to the whole human race. Every social group must take account of the needs and legitimate aspirations of other groups, and even of the general welfare of the entire human family.

At the same time, however, there is a growing awareness of the exalted dignity proper to the human person, since he stands above all things, and his rights and duties are universal and inviolable. Therefore, there must be made available to all men everything necessary for leading a life truly human, such as food, clothing, and shelter; the right to choose a state of life freely and to found a family, the right to education, to employment, to a good reputation, to respect, to appropriate information, to activity in accord with the upright norm of one's own conscience, to protection of privacy and rightful freedom. even in matters religious.

Hence, the social order and its development must invariably work to the benefit of the human person if the disposition of affairs is to be subordinate to the personal realm and not contrariwise...

This social order requires constant improvement It must be founded on truth, built on justice and animated by love; in freedom it should grow every day toward a more humane balance. An improvement in attitudes and abundant changes in society will have to take place if these objectives are to be gained.”

It is hard to read this passage and fail to appreciate how close it is to the language of the International Covenant on Economic, Social and Cultural Rights. That Covenant acknowledges that recognition of the inherent dignity and of the equal and inalienable rights of all the members of the human family is the foundation of freedom, justice and peace in the world and it recognises that these rights derive from the inherent dignity of

the human person. The notion in *Gaudium et Spes* that the social order “requires constant improvement” and that “in freedom it should grow every day toward a more human balance” echoes the theme of progressivity underlying the Covenant. Identifying rights to food, clothing, shelter, education and employment as integral to a life that is truly human finds parallels in the rights recognised in the Covenant.

Engaging the wider society

In my view, it would be helpful for the advancement of human rights protection is those who favour the values articulated in the *Compendium* could make it plain that these values are perfectly consistent with the language of international human rights instruments, especially the International Convention on Economic and Social Rights. I see two principal benefits. First, the advocacy for social justice would be more effective since it would soften prejudices that the advocate was speaking from some exclusively religious perspective. In fact the central values of contemporary human rights theory on social justice are to be found in the *Compendium*. Second, at the local level of Irish constitutional theory, it might have the effect of opening the minds of some members of the judiciary to the argument that an active judicial role in response to the call of social justice, far from subverting democratic norms, would actually enrich our society and deepen the strength of our democracy.