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Liberalism, Autonomy and Rights (Lecture 2)

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(Lecture II)

The Rt. Revd Lord Harries

Good afternoon, everybody. I know that you, like me, are very sorry that Raymond Plant is not well and it means that, particularly people who have been following his course and been looking forward to the next instalment, are going to be a bit disappointed. So, I am stepping in. I am a huge admirer of Raymond's approach. Raymond, I have known for many years, and I hugely admire his approach to these issues, which, as you know, is a very, very careful unpicking of the arguments, and a very careful, weighing analysis and weighing of one argument with another. But I have to face the fact that our approaches to these issues are slightly different. The way I think I would put it is that Raymond is primarily a philosopher with theological interests, and I am primarily a jobbing theologian with philosophical interests. So, we totally overlap, but we approach them from slightly different points of view, which I think is what you will find from me this morning. Although my starting point is that chapter from his book, which some of you I think have seen, those who have been following his course have seen that chapter, and I am covering some of the ground in that chapter, but I am not going into all the detail of his arguments – I am not going to try to give his lecture for him.

I am going to begin with a point that he makes towards the end of that chapter, when he refers to Joan Lockwood O'Donovan, who is very critical of the whole concept of human rights because, as he puts it, it "...embodies too attenuated a concept of the person and one which will, over time, transform the public realm into one that is dominated more and more by private conceptions." What Joan O'Donovan actually says is: "On this view, the public realm suffers from moral monism, being enslaved to one universally acclaimed good, that of individual self-determination. Increasingly, all communal and institutional aims, aspirations and claims must be articulated in the individualist language in order to be heard, but this language is unsuited to express the purposes and structures of laws and diverse communities. It is equally unsuited to express the goods of law of marriage," and so on. Now, I have a very great deal of sympathy with her criticism of the very individualistic way of looking at issues in our society now and I will be coming onto that at the end.

The point of beginning with that quotation, however, because, as you know, there is a fairly widespread antipathy to the whole concept of human rights in some quarters, and you yourself may have something of that antipathy about them. First of all, there is criticism about the emphasis upon entitlements. There are some people who say that we should be talking much more about responsibilities and rather less on rights, and there are other people who feel that what they call the human rights agenda has been set up as the ultimate standard, in the light of which their own religious values are being judged, whereas they themselves would regard their own religious truths as the highest standard in the light of which everything else should be judged, hence of course we have had those very well-known cases in the Court of Human Rights in Europe about things like wearing crosses, about whether a person is free to discriminate against somebody because they are same-sex and so on.

I think the first point that I would want to make is that a reference to human rights is not in itself individualistic or in any way selfish because the whole human rights movement which has gained so much momentum since World War II has been about protecting the rights of other people, so that organisations like Amnesty International and Watch Human Rights, they are constantly on the lookout for those countries where people's human rights are being violated, and this is very much a concern for the other, a concern for, if you like, the community as a whole. So, I believe that we should not go along with that kind of suspicion of human rights, particularly the suspicion from some Christian quarters, and that we need to see it in its full historical perspective. And I think, if you look at that, I would argue that the human rights movement, which began with the Declaration of Human Rights in 1948, will be judged by future historians as one of the great huge achievements of our age.

And I would also argue that it actually has fundamentally Christian roots. First of all, I would want to argue that although, in the Middle Ages, for example, people did not, on the whole, talk about rights, they had morally-based laws, and if you have, for example, a law against stealing, what does that imply but that people do have a right to their own property, that if you have a law against harming other people, what does this imply but you have a right to a certain inviolability of your own person through unwanted, un-asked-for brutality on your person by others? So, those laws, at least implicit, have a theory of rights behind them, and furthermore, the medieval thinkers would certainly have argued that the basis of these laws would have been in the divine law, and particularly the natural law. They are not just legal enactments, but there are legal enactments which are finally, ultimately, grounded in the moral law.

And, it is also worth noting that the great founders of the whole modern rights movement in the eighteenth Century, although some of them were not believing Orthodox Christians, they were very often deists – they believed in one creator God. For instance, the American Declaration of Independence in 1776 stated: "All men are created equal and are endowed by their creator with certain inalienable rights." Now, Thomas Jefferson, the main architect of that Declaration, and some of his colleagues, they were not what we would call Orthodox Christians, they were deists, but nevertheless, that did imply at least a belief in the one creator God. And I think it is no less important to note that this religious reference is made even by the French Declaration, because that French Declaration was made, quote, "...in the presence and under the auspices of the Supreme Being".

So, Roger Ruston, the Roman Catholic theologian, looking at the thought of Aquinas and the sixteenth Century Spanish theologians and John Locke, rightly concludes, in my view: "So the apparently secular discourse of human rights, far from being something alien imposed on religious life from outside, has grown from within a religious tradition in response to its deepest insights into God's creative presence in the world."

I think it is also worth noting that, actually, some of the prime movers behind the Universal Declaration of Human Rights in 1948, and later on, the two Covenants, the one on political rights and the one on social and economic rights, were actually leading Christians at the time, leading Christian statesmen on the Continent, and leading Protestant Churchmen in the World Council of Churches. The World Council of Churches, at that point, was much more significant than it is now, and they also had quite a significant influence on that.

So, I would argue that it is a mistake to think of human rights as something, as it were, set up by a secular mind-set, as a superior yardstick over any kind of religious view of the world. It emerges within a Christian tradition, out of a Christian tradition, and very often as a result of significant influence by Christian thinkers and Christian statesmen within it.

Now, one of the main issues that Raymond discusses in his chapter, is the basis for our human rights. Can we find a universally agreeable principle on which they can be based? Now, here, I do take a rather different approach to him, and perhaps this is the point to mention it, that I have a chapter in this book called "Faith in Politics? Rediscovering the Christian Roots of our Political Values", which has just been reissued two days ago with a new long introduction for the General Election year, and there is a chapter in that on human rights. In that book, I do take a slightly different approach to Raymond. My starting point is the American legal philosopher, who sadly died last year, Ronald Dworkin, and he wrote: "Anyone who professes to take rights seriously must accept, at the minimum, the vague but powerful idea of human dignity." Similarly, the great international thinker Amartya Sen finds the basis of human rights, quotes, "...in the ethical principle that every individual has claims to the attention and regard of others". I would want to suggest that, whatever arguments we might put forward to justify the fact that our fellow human beings, every single human being has a unique dignity and status and should be treated with equal respect and concern. Whatever arguments we put forward, in the end, we cannot escape the need for some kind of act of recognition and response.

Take, for example, somebody whom you regard as a great friend of yours, and you try to explain to them why they are a friend. Well, you can give all sorts of qualities about the person. You can perhaps describe various ways in which they behave. But in the end, I would suggest that it is a matter of beginning to see what you yourself see in that person, a unique human being.

When I first met my wife, I was the envy of everybody because her indulgent father had given her a beautiful light blue new MGA car, the nicest MGA car ever made. Of course, everybody accused me of going out with her simply for the sake of her car, and of course I had to convince her that it was for her herself, it was because of her beauty, but she might then have said to me, well, what happens, you know, the Beatles' song, "What happens when that goes and I am old and wrinkled, and we are both of us old and wrinkled, will you still love me then?"

Of course, genuine love means that, in the end, you simply love a person because of what they

are, simply uniquely what they are, and I think this is brought out very well in a play by the Irish writer Frank McGuinness, a play called "There Came a Gypsy Riding". In this play, a family meet together on the anniversary of their son Gene's suicide. They are given a note he wrote, indicating no reason at all as to why he had taken his own life, and they are doubly distressed both because of his death and the fact that he gave no reason for it. And then the father says to his wife: "I looked into his coffin the morning of his funeral. I said something to him that nobody heard. I have not told you nor the children. I told him, if I were given one wish, I would go back in time before he was born and I would not change him, Gene, I would still choose him – I would not change my child no matter what." That is a remarkable statement, and what I think he is trying to suggest, that there is a fundamental act of appreciation of someone being loved and of value and worth simply as they are, for themselves.

In fact, Montaigne is very good on this, in his essay on friendship. He says: "If I man urged me to tell him wherefore I loved him, I feel it cannot be expressed but by answering "Because it was he, because it was myself" It is not one of special consideration, or two nor three nor four nor a thousand – it is what...not...what kind of quintessence of all this co-mixture which seized my will," the unique person, the unique blend of characteristics and qualities which makes each one of us a special unique person.

Commenting on this, the philosopher Margaret MacDonald has written: "Yet it is also correct to say that our decisions about worth are not merely arbitrary, and intelligent choices are not random. They cannot be proved correct by evidence, nor, I suggest, do we try to prove them. What we do is to support and defend our decisions. The relation of the record of a decision to the considerations which supported it is not that of proof to conclusions, it is much more like the defence of his client by a good counsel."

So, in a similar kind of way, I would argue, as Ronald Dworkin has said, that human rights are simply based in a recognition of the fact that humans have a unique dignity, and we can put forward all kinds of arguments in favour of that, but in the end – and we should perhaps put forward all sorts of arguments, but in the end, it does depend upon a particular kind of act of recognition.

I think I entitled a chapter in my book on this subject "Does God believe in Human Rights?" We believe in human rights, but does God believe in human rights? After all, many passages in the Bible unfortunately give the impression of just the opposite by modern standards, and there are some horrendous stories in the Bible, are there not? Well, I find them horrendous. I do not know whether you find them horrendous, but I certainly do – they violate everything we mean by the sacred nature of the human. And certainly there are passages even in New Testament which seem to suggest that God can do what he likes with what he wants. St Paul, for instance, says we are really like clay in the hands of a potter, and cannot the potter do what he wants with his lumps of clay, to which the answer is of course, well, we are not lumps of clay, we are human beings. And I think I would want to suggest that God, through the very act of creating us, does

endow us with this special dignity and worth, which he himself recognises as such. Even though he is the Creator of all things, he recognises the value of what he has created.

There is a very well-known story about Winston Churchill, who had his portrait painted by Graham Sutherland, and his wife and he so disliked it that his wife had it destroyed. Now, they might very well have said, well, they paid for it, they own it, surely they can do what they want with it, but supposing they had a Titian that they intensely disliked and they decided to destroy that – what would we think of that? Would we not want to argue, actually, there is something very uniquely valuable about that Titian that they had no right to destroy, even though they had paid for it? And so it is that sometimes we put preservation orders on houses, on trees... We recognise that there are certain aspects of beauty and art and the natural world which, as it were, override any concept of the absolute power of ownership.

In a similar kind of way, I would argue that us human beings, as the creation of a good God, do have a dignity and worth in ourselves, which God recognises as such. But I do not think that is enough to ground a fully developed concept of human rights because the fundamental fact about the world in which we live is that, day by day, our basic human rights are denied and violated, and the reason that we have legally-stated human rights, quite simply, is because of that fact. In our human family, when relationships are going well, we do not talk about human rights, do we? We rely on people's sense of care for one another, their sense of belonging to a human family, that we almost instinctively make adjustments so that people have their fair share and they are able to participate equally in what is happening in the family and share in the good things of that family. We do not talk about human rights in the family. And if the world was a perfect place, of course, we would not talk about human rights in the world, but we do need to talk about them, and so I would argue that the sort of theological basis for human rights is, first of all, the fact that we do have this worth and value in ourselves, as children of God, but secondly, we need to have those human rights legally enforced because we live in a world where we do not act as a loving family but we act as a family that destroys and disparages one another.

The point about human rights is, as Ronald Dworkin again has put it very powerfully, is that they are political trumps. I think that is a very brilliant image. Dworkin has written: "Individual rights are political trumps held by individuals. Individuals have rights when, for some reason, a collective good is not sufficient justification for denying them what they wish as individuals to have or to do, or not a sufficient justification for imposing some loss or injury upon them. If someone has a right to something, then it is wrong for the government to deny it to him, even though it would be in the general interest to do so."

Of course, the classic example here is torture, or if you like waterboarding. It was no doubt argued by some Americans at the time that it was in the greatest interest for the greatest number of people in America, their safety and security, that these techniques of waterboarding should be applied to people. If you believe that that was a form of torture and that one of the most fundamental human rights is that people should not be tortured, then no reason of State

can override that political trump. That is the point: no utilitarian argument, no argument of any other kind about the good of the greatest number, can override the simple fact that a human right, particularly the human right not to be tortured, is a political trump.

Now, a good example of the kind of misunderstanding that can occur was when Tony Blair seemed to suggest that he wanted to rebalance the relationship between the rights of suspected terrorists and the right of the community for security. As he said: "The demands of the majority of the law-abiding community have to take precedence." But this idea that it is a cost-benefit matter is a deeply misleading way of looking at it. Cost-benefit analysis is an important form of reasoning for most public policy issues, but not in the case of human rights. As Ronald Dworkin put it, commenting on Tony Blair's view, "This amazing statement undermines the whole point of recognising human rights - it is tantamount to saying that there is no such thing." Now, obviously, there are many rights which do not have the kind of absolute status that many people would regard the right not to be tortured, but that is a kind of, I think, a definitive example of what is meant by a right, that it does stand up in its own right against all forms of utilitarian reasoning. Again, you might want to put forward arguments, one way or...in favour of that, but in the end, it comes back to an act of recognition about the human person.

Perhaps just a couple of other things to be said before I move onto something else, and that is that, in 1966, we had these two Covenants, the International Covenant on Civil & Political Rights, and the International Covenant on Economic, Social and Cultural Rights, and I think most people, on the basis of fairly obvious common-sense, would say that there is a significant difference between the two kinds of rights, because civil and political rights can be, and should be, observed by all states, in whatever state of development they are, but obviously, social and cultural rights do depend, to a significant extent, on the state of economic development of that particular kind of society. If you say, for example, everyone has a basic right to universal free healthcare, that might very well be something which was possible in an advanced country like ours, but it might not be possible, because of economic conditions, in some other country of the world at the moment.

Nevertheless, that having been said, there has been a very, very strong movement, particularly by liberation theologians to say that we should regard social and economic rights with the same kind of force that we regard civil and political rights. For instance, Jose Bonino, one of the Latin American liberation theologians, said: "For the vast majority of the population of the world today, the basic human right is the right to human life. The deeper meaning of the violation of formal human rights is the struggle to vindicate these larger masses who claim their right to the means of life. The drive towards universality and the quest of the American and French Revolutions, the aspirations of the UN Declaration, find its historical focus today, for us, in the struggle of the poor, the economically and socially oppressed for their liberation." Now, even if you do not fully go along with that, in other words, if you cannot place social and economic rights on exactly the same par as civil and political ones, it is clear that, if we believe in human rights, if we believe in social and cultural rights, then there must be a push and a drive and a dynamic to work to bring this about so far as we can.

The reason that Raymond dealt with human rights in his chapter, and in particular he goes into an argument between Alasdair MacIntyre and Gewirth, in very great detail, that I am not going to deal with, but if you have a copy of that, you may want to read it – I think it is better read than me talking about it. But the reason that he deals with human rights at all is because he thinks that human rights is a good example of people trying to find a universal basis for the moral values or the moral outlook of our society. The fact of the matter is that we do now, of course, as we know very well, live in an extraordinary, diverse society. There are, what is it, something like 2.4 million Muslims in the country, something like a million Hindus... At the last Census, something like a quarter of the population now self-identifies as having no religion at all. In a society which is now as diverse as ours, what kind of basis is there for the fundamental values of our society, and what are the principles on which those values are held? And it is for that reason that Raymond was dealing with human rights because human rights are put forward as something which can bind us together as a society, whatever our views are.

Here, in his chapter, he suggests that there are two ways in which we approach this whole question: one is to look for universal, rationally-based principles on which we can all agree, whatever our views; the other is what he calls either the communitarian philosophers or the narrative theologians, who say there are no such universal principles which are, as it were, neutral as far as any understanding of the common good is concerned. Taking your stand with Alasdair MacIntyre, from the point of view of philosophy and theology, or Wittgenstein and other people, there are these narrative theologians and communitarians who would argue that, in fact, all our moral values are rooted in particular virtues and particular practices of a tradition and you cannot extract them from that tradition – you have to stand within the tradition. Alasdair MacIntyre, in particular, has argued in his books, with his “History of Ethics” and “After Virtue”, that concepts like duty, for example, now float around in our society, free of any proper moorings in a tradition – that is why we find it so difficult to talk about, you know, how one might justify concepts of duty, because it is floating free. It originally had its proper place within a tradition within a total world view.

Now, I approach this from a slightly different perspective and I do not think the debate is quite so polarised as it is sometimes set up, between, as it were, universally, rationally-justified principles on which everybody can agree over their view of life and a tradition-based set of values, but I would certainly start, I think, with the latter, and I would start where I would before, as I have mentioned, with the fact of human dignity and our recognition of that and our desire to respond to it, but with, I think, one important further development, and here I would come back to what I would agree with about Joan Lockwood, and that is we do have much too individualistic a concept of what it is to be a human being I think in the modern world. It would be much better to have a much more African concept, where they use the word “ubuntu”, that is we are also persons in relationship to other persons, and we are always part of a society. So, my starting point I think would not just be the dignity of the individual person but the dignity of persons in relationship to other persons, and I would indeed start with this view embedded within a Christian understanding of what it is to be a human, to be a human in relation to other persons, but I do not think that that view is confined to Christians.

Raymond quotes Stanley Hauerwas, who is one of these narrative theologians who does believe, very strongly, that actually all moral values are tradition-based and you cannot get a bridge between those traditions and other traditions and that there is no neutral ground. Stanley Hauerwas has said that what was wrong with Apartheid was not that it offended against some universal account of human nature and human rights but because one could not be a Christian at the Lord's table and treat other people like that. The source of the moral concern is to be found within the particular community, with its narrative, which provides the sources of moral concern and for moral agency.

But I would suggest that, from a Christian point of view, that if you – of course you find your concern for others partly as a result of the fact that you gather together round the Lord's table, but the Lord's table, to put it in rather theological language for a moment, is meant to be a kind of sign or foretaste of that ultimate banquet of the Kingdom of God into which all human beings are invited, and I would have thought that it was fundamental to all human beings that we are able to recognise something of the dignity of other human beings. You do not have to be a Christian to do that. You do not have to see it in terms of gathering round the Lord's table. You can see it simply by virtue of the fact that other human beings are human beings.

And I would justify that from the kind of thing that St Paul said, for example. St Paul was quite clear that we all of us as human beings have consciences, that we are all capable as human beings of distinguishing right from wrong, and there are various passages, for example in the epistle to the Romans when he does that.

So, although we may indeed begin from our tradition, I think that it is possible to find common ground with people from other religious traditions and if we like, we can use what the philosopher John Rawls calls, and asks for, and that is an overlapping consensus. John Rawls thinks that we need an overlapping consensus in order to find the values that we agree on as a society. I have no problems with that. I start off as a Christian, but I see no problems about looking for an overlapping consensus with other people – Humanists, Hindus or whatever – who approach this from another standpoint, and if this means, to some extent, leaving aside specifically religious language and putting it in more Humanist language, again, I find no difficulty about that at all.

One of the best Christian thinkers on these subjects at the moment is Nigel Biggar. In his recent book, he argues that it is a mistake for Christians always to look for something distinctively Christian in what they say. He says what matters, from a Christian point of view, is that there should be an integrity about your thinking, so that your viewpoint and what you say can be shown to flow in a natural way from your fundamental Christian and theological base. That is what matters. It does not have to be distinctively Christian in the end.

I believe that we should be trying to achieve an overlapping consensus in our society, and I believe that it is much more possible to do this than some sceptical people believe. Now, in the new introduction to this book and also, to some extent, in the last chapter, I quote Michael Sandel, whom some of you will have heard or read, and a whole range of other people who are making the same point, people like Tony Judt, for example, and Amartya Sen, who argue that our society, over the last 34 years, has been driven by a combination of social liberalism and market liberalism. In other words, the only value which people have regarded as truly overriding on others is the value of free choice, both socially, so that people can choose whatever lifestyle they want, and in terms of the market, just let the market rip.

Michael Sandel, in a whole series of very vivid examples – you will know if you have listened to his Reith lectures or read his books – he argues, through these telling examples, that actually this whole policy is totally bankrupt. One of the most telling and shocking ones comes from Germany, where somebody advertised for a person willing to be cooked and eaten. Two hundred people responded to this advertisement. Four people applied and were interviewed. One was chosen, and was duly cooked and eaten. The German authorities found that they could not indict him for murder, but they did get him on another charge. Now, if you look at that example from the standpoint of the prevailing philosophy of our times, of social and market liberalism, what is wrong with it? They need not have enquired about the position, they need not have answered the position, they need not have applied for it, they need not have been interviewed, and even if they had been accepted, they need not have gone through with it. It was a totally free contraction. It conformed to all the norms of social and market liberalism. People can choose what they want to do with their lives. This is a free market, and that was a market in cooking and being eaten, if you like. But of course, it horrifies us. It totally horrifies us because there is, if you like, something as crude as a gut instinct, a sort of moral sense that there is something fundamentally wrong in a society where this is allowed. Michael Sandel argues that we need a much thicker concept of the public good, of the common good.

One of the reasons why people talk about human rights at all and why they talk about rights is because people think, rightly or wrongly, that there is now no agreed concept of the common good. If you go to a religious tradition, there is an understanding of what the common good of humanity consists of, but we now, allegedly, all have very, very different concepts of the common good, and therefore we have to deal with rights, and as John Rawls has put it, you know, rights comes before the good – that is what his position is. But I wonder whether, in fact, there is a greater sense of shared common good than people allow. Michael Sandel has said that the problem with the average liberal position, and I am slightly caricaturing, is that we all have a different understanding of the common good and therefore we cannot bring our ideas of the common good into the public realm, and we have to talk about things like rights, which are allegedly free from any concept of the common good. But, as he put it, fundamentalists walk in where liberals fear to tread, that what has happened in America is that some of the public airwaves have been taken over by fairly vociferous right-wing people with a very strong concept of the common good. Liberals have been frightened of getting into that debate because they think we all have a very different concept of the common good and we keep out of it altogether, but as he said, fundamentalists walk in where liberals fear to tread, and he thinks that, although we may indeed start off, or think we start off, with very different understandings for common

good, if we come from different religious tradition or a Humanist tradition, he suggests that we actually have to work at it. As he put it: “To achieve a just society, we have to reason together about the meaning of the good life, and to create a public culture hospitable to the disagreements that will inevitably occur.” I think that is what we should be doing, reflecting the situation where we are now in our society, that we should not be content simply with this combination of social and market liberalism and that we should try to work up, from the bottom, as it were, some agreed consensus about what the common good of our society consists of, and I think that it is possible that we need not despair about that.

Now, it will not, of course, be the same concept of the common good that we had in this country before the Reformation. Before the Reformation, of course, there was a shared understanding of the common good of our society, which of course came from the Christian faith, which dominated every aspect of human life. We are not going to get that, as it were, top-down concept of the common good. But there is no reason why we cannot, as it were, work at it from the bottom, engaging with one another and building it up, and I believe that that is what we should be doing.

One of my favourite statements of what this common good might be like actually comes from T.S. Eliot. He says: “It would be a society in which the natural end of man - virtue and wellbeing in community - is acknowledged for all, and the supernatural end - beatitude - for those who have the eyes to see it.” Now, in my book, I slightly modify that and develop it a bit, but I leave it with you as something to be thought about. Clearly, it is Aristotle, as modified by Thomas Aquinas and brought up-to-date, and none the worse for that, I hope you might say, but let me just repeat that again. This is his idea of the common good: “It would be a society in which the natural end of man – virtue and wellbeing in community – is acknowledged for all, and the supernatural end – beatitude – for those who have the eyes to see it.”

So what I have tried to do this morning - and I am just going to open out now into some discussion on some of this – I started off by talking a little bit about human rights and how it is that I would ground human rights in a concept of human dignity, which has to be recognised as such. It can be argued for, but in the end, it has to be recognised. And that, when we set human rights within the larger picture, that from a Christian point of view, I would justify those human rights from within the Christian tradition, but I believe that starting in that tradition, and other people starting in their traditions, it is possible to work at a concept of the common good, and I think I would argue also that, actually, although Rawls says rights comes before the good, I think I would want to argue that actually, in the end, you probably cannot understand what is right or wrong apart from some concept of the common good.