

## HUMAN RIGHTS

*By Paul Marshall*

### AN EVANGELICAL COMMITMENT TO HUMAN RIGHTS

Paralleling developments within the Roman Catholic church, most evangelicals now believe that human rights are an essential expression of the gospel, that the language of rights is a good way to express Christian concerns<sup>1</sup>, and that any responsible faith directed politics must be committed to defending and promoting human rights.<sup>2</sup>

This belief has now gone beyond theological and philosophical interpretation and has become the core of growing political action. This has been true for many years in the pro-life movement and in concerns about euthanasia and other aspects of modern medicine, and, for more politically liberal evangelicals, in matters of poverty and trade. But, the late 1990's has also seen the rise of a broadly based evangelical movement concerned with rights overseas, especially with religious freedom. In cooperation with a broadly based coalition, it helped pass the 1998 International Religious Freedom Act, and then pushed for a ceasefire and a peace agreement in Sudan, a conflict that has taken over two million lives. These efforts have often been criticized as, at bottom, only efforts to help Christians overseas and thus not a genuine universal concern for rights, but that criticism has been much more difficult to mount when the same coalition became the core, in cooperation with feminist groups, of major initiatives to stop sex trafficking, and then took up the forgotten, ignored and, to many of us, distasteful issue of prison rape.

A wide range of evangelical groups have also been in the forefront of efforts to get the U.S. Government to act on AIDS, especially in Africa, and has been active in debt relief. Allen D. Hertzke maintains, "one cannot understand international relations today without comprehending the new faith-based movement aimed at shaping foreign policy—a bold assertion but one that will be born out in coming years."<sup>3</sup>

Despite the fact that most evangelicals believe that human rights are a good thing and flow from the gospel's influence in the west, there is no one particular approach that could appropriately be called the evangelical approach to or theory of human rights.<sup>4</sup> This reflects the larger fact that there is nothing that could appropriately be called the Christian approach to or theory of rights. Of course, this fragmentation of views reflects theological, philosophical and political differences between Christians, but one other reason is that the words 'right' and 'rights' are used throughout the world, by Christians and non-Christians alike, in many different, and sometimes contradictory, ways. They are also applied to a bewilderingly broad range of things. Finally, since human rights are understood to be basic, fundamental and foundational things, understanding them touches on the deepest theological, philosophical and political questions.

### THE DIFFERING MEANINGS OF RIGHTS

The language of human rights is now perhaps the most common contemporary way of addressing normative issues in politics worldwide.<sup>5</sup> Views of human rights are central to many modern theories of the nature and purpose of politics and to many laws. They occur in lectures and journals, and in constitutional courts and street demonstrations. They also pervade not only the language of the academy, the courts, the legislatures and the streets but also the living room and the shopping mall. They have become part and parcel of our everyday language. When we believe that someone is doing something wrong, it is common no longer to say that "that is wrong," but, instead, to say "you have no right to do that" or "you have no right to speak to me like that." In many cases the notion of rights and human rights have simply become the language in which people inside and outside of churches express our general concerns and hopes. Someone who claims "everyone has a right to decent housing" might mean that this is a consequence of some specific inherent human right, or they might even mean that a proper interpretation of the law requires it. But they very often mean nothing more than that people *should have* decent housing, that it would be just and fair for the rest of us to try to make sure such housing is available. We speak of rights to decent medical treatment, to a safe environment; we say every child has a right to a stable home with two parents. In these expressions, the term "rights" has often lost any specific content and becomes a general term of approval or disapproval, commendation or criticism.

Human rights are also used to try to address issues as diverse as democracy, elections, courts, constitutions, tax policy, housing policy, war, torture, the criminal justice system, race, abortion, international trade, political freedoms, medical practice, the environment, homosexuality, marriage, and other sexual relations. Indeed, since rights can refer to so many different issues and mean so many different things, one notable feature of current political battles is that opponents usually vie with one another to appropriate the mantle of rights for their own position. As L. W. Sumner has pointed out: "it is the agility of rights, their talent for turning up on both sides of an issue, which is simultaneously their most impressive and their most troubling feature. Clearly, interest groups which agree on little else agree that rights are indispensable weapons in political debate."<sup>6</sup> In these debates rights are especially potent rhetorical weapons: "if one interest group has built its case on an alleged right none of its competitors can afford not to follow suit... they will tend to proliferate and to escalate."<sup>7</sup> Such proliferation and escalation is apparent throughout the world, and especially in the United States. The group that manages to get its

issue defined and expressed as a call for human rights, such as a right to marry for gays, is often well on its way to political victory.

This stress on human rights is heightened by the claim that they are universal, as in the United Nation's *Universal Declaration of Human Rights*.<sup>9</sup> On a slightly less exalted plane, they are usually regarded as fundamental. In the 1966 United Nations International Covenants on Human Rights they are described as "the foundation of freedom, justice, and peace in the world." More prosaically, they have been described as "trumps," as basic elements which, when rightfully claimed, properly override other political and legal considerations such as propriety, efficiency, and communal solidarity.<sup>9</sup>

As a result, despite our society's emphasis, even obsession, with rights, there is little clarity about what we mean or should mean when we talk about them. Arguments over the meaning of rights are a major part of our political disputes. People from all parts of the political spectrum have a love/hate relationship with "rights," depending on exactly what type right is on offer. This means that we need to have some clarity about what we mean by rights.

## CONCERNS ABOUT RIGHTS

While there is a growing evangelical consensus about and action for rights, especially internationally, many Christians, and others, often also feel decidedly uneasy at the fact that so many domestic American issues are also addressed in terms of rights. Typically, people who stress property rights reject notions of "gay rights." People who make strong demands for rights of religious freedom can be nervous about claims for free speech when obscenity and pornography come to the fore. Many things that we consider flat wrong are pushed in the name of rights.

There is also the worry that, even in cases where the issue might genuinely concern rights, then we may still overemphasize them to the exclusion of other legitimate political concerns. Many of our problems stem from good things that have been overstretched, sometimes even to the point of idolatry. As G. K. Chesterton wrote,

"When a religious scheme is shattered it is not merely the vices that are let loose. The vices are, indeed, let loose, and they wander and do damage. But the virtues are let loose also, and the virtues wander more wildly, and the virtues do more terrible damage. The modern world is full of the old Christian virtues gone mad. The virtues have gone mad because they are isolated from each other and are wandering alone. Thus some scientists care for truth; and their truth is pitiless. Thus some humanitarians only care for pity; and their pity (I am sorry to say) is often untruthful...."<sup>10</sup>

Although rights may be good, they are not the only good things, and they might squeeze out other good things. Rights emphasize what a person should have, not what they should do. If rights become the defining feature of our politics, then questions of what it is good for someone to do will tend to be subsumed under questions of what someone has a right to do, regardless of the consequences for others. The question of what others owe to us often takes priority over the question of what we might owe another. For these reasons, Kierkegaard regarded a concern for rights, even rights for all, as evocative of self-love. Simone Weil worried that rights had "a commercial flavor; essentially evocative of legal claims and arguments. Rights are always asserted in a tone of contention..."<sup>11</sup> That was one reason that, when commissioned by the Free French Forces to produce a study on the promotion of human rights in post Second World War France, she instead wrote a book entitled *The Need for Roots: Prelude to a Declaration of Duties Towards Mankind*.<sup>12</sup>

Mary Ann Glendon argues that not so much rights themselves but a near exclusive fixation on them has hobbled American politics and poisoned its social relations. She describes current American rights talk as conspicuous in "its starkness and simplicity, its prodigality in bestowing the rights label, its legalistic character, its exaggerated absoluteness, its hyperindividualism, its insularity, and its silence with respect to personal, civic, and collective responsibilities."<sup>13</sup> It produces a "near-aphasia concerning responsibilities... without assuming... corresponding personal and civic obligations." It gives "excessive homage to individual independence and self sufficiency," and concentrates on the "individual and the state at the expense of the intermediate groups of civil society."<sup>14</sup> This, in turn, makes it "extremely difficult for us to develop an adequate conceptual apparatus for taking into account the sorts of groups within which human character, competence, and capacity for citizenship are formed.... For individual freedom and the general welfare alike, depend on the condition of the fine texture of civil society--on a fragile ecology for which we have no name."<sup>15</sup> Michael Ignatieff cautions that human rights can become idolatry.<sup>16</sup>

Similar concerns arise in evangelical circles. While most American evangelicals have a positive view of human rights, for some the whole idea is troubling. It smacks of an assertion of human pride and self-will rather than the humility that should mark our lives. A clamor for rights seems to violate any belief in sacrifice and servanthood, that we are called to assert not our own interests but first of all to serve others. The demand for rights seems to neglect the fact that, for example, the Bible pictures human beings as the clay and God as the potter who shapes our lives as He wills. In this sense, rights seem to run counter to the example of Jesus' life, and to violate Paul's admonition to the Philippians: "Let each of you look not only to his own interests, but also to the interests of

others. Have this mind among yourselves, which is yours in Christ Jesus, who, though he was in the form of God, did not count equality with God a thing to be grasped, but emptied himself, taking the form of a servant.”(Phil. 2:4-7) It is difficult to read the story of Jesus’ passion (or to see the movie *The Passion of the Christ*) and be quickly drawn to a notion of rights. However, rights need not be tied to an assertion of autonomy or self will, they can be seen as a gift of God, as one expression of God’s abundant grace.

#### A BASIS FOR RIGHTS AND RIGHTS DEFENDERS

It is certainly true that the notion of rights can be exaggerated, overstretched and misused--nowhere more so than in individualist North America, where every call for restraint sometimes seems to be met by the claim that “I have a right.” But the misuse of something need not invalidate its proper use. Instead, we need to understand rights and their limits properly.

Furthermore, human will or self-assertion are not the only possible bases of rights. Rights can be understood as gifts, endowments. Indeed this is an understanding reflected in the American Declaration of Independence, where rights are described as “endowed” by God, something given to human beings that is appropriate for their nature. In thinking of rights, we should focus on the fact that all people are created by God and that every human being is made in His image. This too finds its place in America’s founding documents, which speak of human beings not merely as equal, but as “created equal.”<sup>17</sup> We should base our view of rights on who we are—we are created by God, what we are like—we are made in the image of God, and what has been given to us—God’s free grace in Jesus Christ that justifies us before Him.<sup>18</sup>

We are not autonomous creatures. The Scriptures know of no human beings who consist only in themselves: the core of being human is always being related to God.<sup>19</sup> Only by God’s will are we created and do we exist (cf. Col 1:15-20, Rev. 4:11, Ps. 24:1, Ps. 139). The great commandment is to love the Lord (Matt. 22:34-40). All sin is rooted in and manifested by a rejection of God and God’s law (cf. Lev. 19, Hosea 4). Human life is life properly lived in responsibility to God; to be human is to image God. In looking for the rights of humans we should not look for a self-contained, inherent dignity, or for the presence of a supposed defining human characteristic such as will, reason or conscience. Instead we should look first to our status as God’s creatures.<sup>20</sup>

Similarly if we are to speak of someone’s rights, we cannot speak of their inherent goodness, nobility, or desert: we all have sinned and come short of the glory of God. Instead, we should understand rights in relation to the root of all right, righteousness, authority and justice – the righteousness and justice of God manifested in the grace of God (cf. The Song of Moses, esp. Dt. 32:4-14, Ps. 89:5-19, Ps. 97, Is. 5:16).<sup>21</sup>

This is manifest in the beginning of the Bible when the first killing occurred. When Cain murdered his brother Abel, the Lord appeared to him and said, “The voice of your brother’s blood is crying to me from the ground” (4:10). The word translated here as “crying” or “crying out” is *ze’aqah*. This word is used frequently throughout the Old Testament to mean the cry, complaint or appeal of one who is suffering injustice. It is the word used to describe the lament of the poor and needy that led to the destruction of Sodom and Gomorrah (Gen. 18:20; Ezek. 16:49). It is the plea of Israel during their years of slavery in Egypt (Exod. 2:23, 24). “Outcry” was also a technical legal term. It is similar to the current legal term “appeal,” when a higher court is called to rectify injustice. If a human court does not fulfill its duty to defend the wronged, then the outcry will come to God, who is the final court, judge and guardian of all justice. Hence, the use of the term “outcry” shows that God’s appearance in response to Abel’s death is being described in judicial terms. This continues throughout the Bible. God is always the one who hears the cry of the wronged (Ex. 22:22,27). God punishes Sodom and Gomorrah as a result of the cry of the poor and needy (Gen. 18:20f, Ezek. 16:49). G. von Rad writes, “The word outcry (*ze’aqah*)... is a technical legal term and designates the cry for help which one who suffers a great injustice screams.... With this cry for help... he appeals for the protection of the legal community. What it does not hear or grant, however, comes directly before Yahweh as the guardian of all right.”<sup>22</sup>

God decided to punish Cain for the murder of his brother, but did not simply make him an outcast, an outlaw, since God in mercy also placed a mark on Cain to protect him too from wrongful killing (Gen. 4:8-17). Cain had complained that he would be hidden from God’s face and he was terrified that he would be denied God’s judicial protection (so, “whoever finds me will kill me” v.14). When the Scriptures speak of God “hiding his face” they mean that God is hidden, is not responding to the cry of the people, that God is silent and does not come to His people’s defense. This occurs in Psalm 27,

*When evildoers assail me...  
I will inquire in his temple...  
Hear, O Lord, when I cry aloud...  
Thou hast said,  
'Seek ye my face.'  
My heart says to thee,  
'Thy face, Lord, do I seek.'  
Hide not thy face from me.*

*Turn not thy servant away in anger,  
thou who hast been my help.  
Cast me not off, forsake me not...[3]*

The imagery is that, when God's face is revealed, righteousness and justice prevails. When God's face is hidden, evil seems to prosper and the wicked triumph. The "mark of Cain," a mark signifying that God's face was not turned away, and hence also a mark of protection, was not merely particular to Cain as an individual: it was also a sign that God had appointed an order to maintain justice. This order embraced every human being and demanded that they treat each other as God intended.

Much of this interchange can be expressed in terms of rights. When Cain was murdered, his very blood is described as making a judicial appeal for justice, an appeal to which God responds. Whenever there is genuine injustice, a genuine violation of human rights, it comes to the ears of God, who demand justice.

Hence, God covenants with Abraham and promises to save his descendants when they are enslaved (Gen. 15:13-14). God then hears the outcry (*ze 'aqah*) of Israel in Egypt. Israel has a claim on God, not because they are especially righteous but because of God's gracious promise (Dt. 7:7, 9:4-6). Moses relies on this claim in order to rescue Israel after the golden calf (Ex. 32:11-13, 33:12-16). Israel is continually saved through claims upon God's promises (I Kings 8:46-53, Neh. 9, Dan. 9:1-19).

It is not only God who must respond to injustice: it becomes a responsibility given to the human race itself. After the story of Cain, the next figure to whom Genesis devotes major attention is Noah. Noah is not only the person entrusted with saving the animals, he is also the bearer of new human political responsibilities. As he had with Abel, God said to Noah, "I shall demand account of your life-blood" (Genesis 9:5). However, unlike the situation with Cain and Abel, when God appeared directly as a judge, this accounting was no longer solely God's sole responsibility: now it was shared with human beings. In Genesis 9:6, after the Ark had landed, as part of the renewal of the cultural mandate, God stressed to Noah and his family the human responsibility for dealing with injustice, saying, "who sheds the blood of man, *by man* shall his blood be shed, for in the image of God was man created."

Many of the discussions of this text focus only on the issue of capital punishment. But here I want to emphasize not what the *penalty* was, but *who* was supposed to ensure that the penalty is applied. In the case of Cain, it was God who appeared directly. But now, God said "by man" shall blood be shed. Human beings are being charged with the responsibility for dealing with injustice directly. They were no longer simply to wait for God's appearing in justice and mercy, but were themselves to be active. Eventually this would be applied not only to extreme injustice like murder, but also to other problems of human life.

A new vocation, a new ministry, had now been given. Human beings were to be not only planters and herders and artists – they are to be *judges* as well. As Noah and his offspring spread throughout the world, they would take with them the task of maintaining a just order in human relations. A responsibility for upholding justice and rights had been delegated to humankind.

These claims for a situation to be "righted," and the continuing human responsibility to right them, rest not on human merit but upon the promised justice, righteousness and grace of God. This is why the authors of the Psalms frequently claim to be in the right - not because they are personally righteous, but because God has put them in the right. This is why the Lord always defends the right of the poor and needy, not because they are themselves righteous but because God upholds righteousness and defends those who suffer unrighteousness (cf. Amos 2:4,7; 3:10; 4:1,2,13; 5:6,7,10-15,24).

In the New Testament the claims of humanity based on the grace of God achieve their focus in John's remarkable statement that "To all who received him, to those who believe in his name, he gave the right (*exousia*, authority) to become children of God" (John 1:12). Because of this claim Paul is under an *obligation* to the Greeks and barbarians (Rom. 1:14). The root of all claims to be righted, of all human rights, is the authority to be children of God given in and by the grace of God through Jesus Christ (cf. Titus 3:4-7).

Human beings have rights because God cares for us, protects us, and demands justice for us, and, in that sense, gives us rights. Hence, a Christian understanding of rights should flow from the recognition that, through God's continuing justice, mercy and provision for us, we have a claim to be in a right relation with one another and that we can claim what God says is right for us. We are given a place in the world in which we can make decisions, accept responsibility and live our lives. Whether we are aware of it or not, and whether we acknowledge it or not, we are given the responsibility, and therefore the right, to fulfill the tasks that have been given to us. In short, we have the right to do what we are properly called to do. Our rights relate to and stem from our duties and responsibilities. This is why the political order should be understood as one in which men and women can express themselves as people made in the image of God.

Rights should be unfolded in terms of our human duties and responsibilities in the world. We find the authority and responsibility of the person by understanding our place in God's creation. God has made us, male and female, and placed us within the world to love our Creator and Redeemer, to love our neighbors as ourselves,

and to steward the earth. This is what we are made for, this is what we are fitted for. We all are called, both Christian and non-Christian, to live out every dimension of our lives in joyful obedience to God.

We, along with all creatures, are God's servants. We may say that each of us has a right to be a servant of God, to fulfill our particular office and calling for God's glory. Human beings have a claim to be able to do what God calls them to do. Our rights relate to our God-given human duties and responsibilities. Human beings have a right to the institutions and the resources they need to carry out their responsibilities. Hence the political order must be one in which men and women can express themselves as God's imagers, or, to put it another way, there must be social space for human personality.

This necessarily implies, first of all, the right to be, the right to life itself, the right to be unharmed.<sup>23</sup> This right belongs to each human life. Such human life always exists in bodies of flesh and blood and bones, hence humans have a right to remain whole, not to be harmed, aborted, maimed, tortured, molested, placed in hostage or terrorized. The basic needs of individuals to food, nurture, shelter and care are implicit in the right to life itself. The biblical message pointedly indicates that the fulfillment of such needs is a matter of God's requirement of justice. This justice therefore requires an allocation of material and cultural goods such that human life is made possible, protected, and enhanced so that humans can realize their God-given tasks within human history. These tasks entail the use of "nature" and its resources. This use is not only a right of the human species or of the human "community," for each of us is also called. The earth is the Lord's, and persons have the right to a stewardly possession and use of it. In a differentiated society, this implies some right to privacy and, its concomitant, private property.

Similarly we may speak of the rights of humans as parents to raise and educate their children, for so God has commanded us. We may also speak of the right to be allowed to marry and have family life. As God holds us responsible for the politics of this world we may also speak of the rights of citizens to exercise responsibility and authority for the direction of the state. In each area of God's calling and callings to humankind, individually and together, we can speak of the human right to what is needed to fulfill those callings.

#### THE RELATIONS OF AND MISUSE OF RIGHTS

This description of rights so far has only addressed rights as rightful claims, the things that justice requires be secured for people. It has not addressed a multitude of further complexities. One of these is the problem of sin: do rights still pertain when humankind is fallen? Are rights forfeited, or can they be ignored, when people do not use their freedom in order to act in responsible ways? Other questions concern how rights should be related to each other, how rights relate to law and politics, and who is responsible for meeting these rights.

I have tried to suggest that our rights are not rooted in our own righteousness or independent dignity; they are rooted in God's graceful dealing with us. God's ordering of creation, the calling given to us all, does not cease because of human sin, although, because of such sin, God's provisions for us are misused and turned to evil. Hence sin does not eradicate rights, nor does the misuse of the freedom of rights lead to their forfeiture. Their use and misuse is the responsibility of those who have such rights. The wheat and the tares will co-exist until God's final day of judgment. Therefore, even though rights are granted as freedoms, as room, as social space, to act according to God's calling, one cannot be *forced* to follow that calling within one's sphere of right. If we deny this then we must deny human rights. All of us fail in our callings, all of us misuse freedom, none of us perfectly reflect the *Imago Dei*.

There is also the problem that legitimate claims and rights can conflict. There are many persons with rights, and their exercise of those rights will affect the lives and rights of others. The claim of one to free speech will affect the claim of another to be dealt with truthfully and with integrity. The claim of one to property will affect the claim of another to food and shelter. The claim of one to resources will reduce what is available to meet other claims. In this situation we cannot pretend that human rights are invariant. Rather, they are specific, varied, legitimate claims that must all be addressed simultaneously. There are claims for access to food and shelter by some, with claims for the means of education by others, with claims not to be interfered with by others. None of these claims is illegitimate, so none can be dismissed. None of these claims is invariant and contextless, for each claim always affects the treatment of other such legitimate claims. In addition, the very limits of resources means that all possible claims cannot be met simultaneously. In this situation, *justice* points to the manner and means of weighing and simultaneously meeting different rights. Rights in turn, as God-given arenas of authority, point to *what it is that must be related in a just fashion*.<sup>24</sup>

#### RIGHTS, GOVERNMENT AND LAW

So far, we have not addressed the question of how rights should find political expression. The fact that we have some understanding of what is owed to human beings, what they may rightfully claim, does not itself tell us how such an owing should find expression in laws, constitutions, or bills of rights. What should be is not the same thing as what should be required by law, backed by the possibility of state coercion.

For example, in the scriptures, we find the right of field workers to eat while harvesting (Deut. 23:25-26), limitations on slavery (Ex. 21:2; Lev. 25:10, 39f.), protections of female slaves (Ex. 21:7-11), provisions for the equitable distribution of land (Num. 33:54; Lev. 25:14-18, 25-34) and the general theme of the subordination of rulers to law (1 Sam. 22:17; 2 Sam. 11-12). But it is not always clear that these requirements were backed by sanctions, that is, that an Israelite would be punished for violating them. Also, these rights were not universal human rights. They were held generally by the Israelites themselves, but not equally applicable to women or to aliens. (Though, since the eventual goal was to universalize God's law so that it would become clearly applicable to all humans, a theme developed in the New Testament, it may be argued that they were akin to legal human rights).

Within a legal system, rights or, at least, some rights, need to be far more than rightful moral claims. They must be strong and enforceable political and legal guarantees. With important political rights, we want more than for someone to sympathize that we did not receive what we rightfully should, instead we want a judge or some other authority to announce that legally guaranteed human rights have been violated and that some enforceable remedy will be forthcoming. This is especially the case with fundamental human rights, where we are dealing not with just any of the myriad injustices and responsibilities that affect our lives, but expressly with the fundamental conditions of free human life. This means that we need to ascertain those rights that should be guaranteed by governments and also those rights that are fundamental, lest the whole idea of political rights be squandered or diluted by reducing them to every human claim or desire, even if legitimate. They should be reserved for those things without which free human life is not possible. And, of course, these are the areas that are most subject to political conflict and governmental intrusion.

Those rights that should be politically guaranteed require human rights laws that can direct and constrain governments in such a way that rights cannot easily be disregarded. This is a major reason why it is often desirable to place guarantees of such rights within a constitution. Constitutional laws are usually not simply rules made by the legislature for the population at large, and which, hence, can be changed by the legislature, but they are meant to restrict, control and direct the government, even if it has popular support. They are laws binding on the government itself, which cannot be changed except through a laborious process usually following a major change in public opinion. Hence, the protection of rights often and properly finds its expression in constitutional bills of rights, such as that in the Bill of Rights in the U.S. Constitution.

However, while bills of rights are vitally important, they are not the only form of human rights protection. Another important way of safeguarding human rights is democracy, since, if a government is genuinely answerable to the population, then it will be far more reluctant to threaten or abuse them. Other political structures, such as federalism, or the separation of political power into judicial, legislative and executive branches, are means to prevent the over-concentration of political power, and therefore can be at the same time protections against violations of human rights. This is one reason why the protections in the Bill of Rights were only added as amendments to the U.S. Constitution and were not part of the original document. Several authors of the Constitution believed that the restrictions that they had already put on the power of government, through democratic elections, federalism and the division of powers, would be sufficient to protect rights: it was only subsequent pressure in order to get the Constitution ratified that led to the additional guarantees of a bill of rights in order to satisfy those more demanding.

As Johan van der Vyver notes:

"The primary function of a bill of rights is... on a par with other constitutional strategies for the limitation of state authority. Such strategies include the principle of representative government in a democratic dispensation; decentralization of the instruments of government in a federal structure with autonomous regional and local bureaucracies; distribution of state authority through the separation of powers; ... surveillance of administrative acts by an ombudsman; subjection of the powers of government to the rule of law; and shielding a defined category of fundamental freedoms against legislative and executive encroachment in a bill of rights regime."<sup>25</sup>

Another form of protection developed in recent decades has been international human rights law. In such law, states make treaties with one another to protect rights. The rights protected by international law usually include "civil and political" rights. These typically involve: freedom from discrimination; rights to life, liberty and security of the person; freedom from torture or cruel punishment; the right to legal personality and a fair trial; freedom of movement and residence; the right to asylum, to a nationality, to marry and found a family, to property; freedom of religion, thought, conscience, opinion and expression; the right to take part in the government of one's country and to equal access to public services. Most human rights advocates support the rights on this list. Many charters now often include another group of rights usually referred to as "economic, social and cultural" rights. These include: the right to social security; the right to work; the right to a standard of living adequate for well being; and the right to education. These will be discussed below.

The earliest European examples of such arrangements are probably the post-Reformation treaties that guaranteed religious freedom to minority religious groups.<sup>26</sup> Hugo Grotius and Emerich de Vattel, the principal theorists of international law, both made provision for the international protection of rights. This in turn helped shape the nineteenth century conventions on slavery, the turn of the century Hague and Geneva Conventions on conduct

during warfare, the labor standards formulated by the International Labor Organization (1919), and the largely impotent charter of the post World War I League of Nations.<sup>27</sup>

In World War II, the protection of human rights became a rallying point for the Allied powers and, hence, became a key feature in the formation of the United Nations. This produced the 1948 'Universal Declaration of Human Rights and Fundamental Freedoms,' which, in turn, acquired legal status in the form of the 'International Covenant on Economic, Social and Cultural Rights' (1966) and 'International Covenant on Civil and Political Rights' (1966). Subsequently, there have been regional treaties along similar lines. These are the European 'Convention for the Protection of Human Rights and Fundamental Freedoms' (1950), the 'American Convention on Human Rights' (1969), and the 'African Convention on Human and Peoples' Rights' (1981). At present the European system is the most developed and active.

Because these treaties exist *between* states, then governments can be held accountable by others when they abuse their own populations. They cannot claim that such abuse is simply an internal matter since it is already part of a treaty, an agreement that they have made with other countries and to which they are bound. If human rights are understood in this way, and if it is the task of governments to work for justice even beyond their own boundaries, then the protection of human rights is important not only internally in the United States, but also should be a part of foreign policy.

#### DIFFERENT TYPES OF RIGHTS

While we should defend genuine rights, there is the problem that, as we have seen, the expression "human rights" means many things. How do we decide which of these are genuine, and which of these genuine ones are of the type that should be enforced by the state? One of the major examples of this debate occurs in the question of whether what are called "economic rights," such as a right to welfare or housing or education, should really be regarded as fundamental human rights. This matter is debated ferociously throughout the world, is the cause of major arguments in international relations, and has become intertwined with debates about whether a stress on rights of individual freedom are truly universal or only reflect western individualism.<sup>28</sup>

Countries such as China, Iran and Malaysia have maintained heatedly that human rights should come to very different expressions in different countries. In fact, there are increasing claims by several Asian and Muslim countries that many currently recognized international civil and political rights do not have a universal character at all, but are simply western inventions and impositions. They claim that these "rights" simply reflect western values and should properly be subordinated to their own Confucian or Islamic traditions.

Meanwhile, United Nations gatherings such as the Cairo Population Conference or the Beijing Women's Conference have continued to advocate new and wider, and wilder rights, such as to abortion or to a clean and sustainable environment, with promiscuous abandon. Many seem never to have met any claim to a right they didn't like.

In this setting, the need to clarify the meaning of and justification for human rights is not some sterile academic exercise. It is, rather, a vital condition for clarifying some of the major cultural, social and political problems we face, both domestically and internationally. This comes to the fore in the debates over "social" or "economic" rights.

The question of "economic rights" is also tied intimately to the vexed question of the universality of rights. Critics of such rights say that the problem with treating economic provisions as if they were rights is that there are often legitimate reasons why a particular government would not be able to fulfill such rights at a given historical juncture. Even a well-meaning government may not be able to guarantee income, or housing, or health care, or even food. Many African countries simply do not have the resources to do so. Consequently, if we were to treat economic guarantees as rights, then we would be forced to accept that rights cannot and need not be met immediately. They would be things to be *aimed for* rather than *guaranteed*. The result is that we will end up diluting rights to mere goals and denying their immediacy.

In addition, several Asian countries have attempted to use the non-immediate character of "economic rights" to reduce all rights simply to long term goals which governments should pursue, rather than stringent limits to which governments should adhere. China says it stresses "economic rights" as its long-term aspirations, then slides into treating the eradication of torture and press freedom also as long-term goals rather than as immediate demands. The jailing and beating of peaceful opponents is then put off into the long-term future on the grounds that rights are only goals.

Defenders of economic rights counter that often they can be more important than political rights. This argument usually takes some form of saying "a hungry man or woman wants food more than elections." The common response to this is that, if someone is actually starving to death in a famine, this is doubtless true, but that, as a general argument, it is spurious. Even when people are poor and needy, with generally not enough to eat, they may and do care very much about political freedom. People throughout the world cry out for relief from

repressive governments and, just because people are hungry, this is no reason to repress them as well: this would be sadism of a high order.

To this response is added the argument that there need not be any real competition between political freedom and economic well-being, as though countries should put off freedom until they are wealthy. A half-century of international experience indicates that politically free societies are precisely the ones whose citizens have become the most comfortably housed and fed, and have the best medical care.<sup>29</sup> Rather, it is the countries with authoritarian governments where people languish in poverty, sometimes to the point of starvation. While some Asian countries have managed for a while to combine economic success with authoritarian government, they are a distinct minority. They also face increasing pressure for democratization. Similarly, as Nobel Prize winner Amartya Sen has shown, countries with a free press no longer have famines, since the publicity given to people's suffering ignites action for relief, and there is no shortage of relief supplies if agencies are allowed to deliver them.<sup>30</sup> It is only in authoritarian settings where the government has the power to repress reports of what is happening that people can be hidden, ignored and forgotten as they starve. Modern famines are the result of political action by corrupt governments such as in Sudan and North Korea. Consequently, there are no grounds for rejecting political rights, such as freedom of the press, in pursuit of supposed economic security. The opposite is true: where there are political rights, then economic rights are also likely to be met.

Defenders of economic rights often counter that these arguments are true, but that they do not undercut economic rights per se. They only show that trying to pursue economic rights while denying political rights is a contradiction. They demonstrate instead that one should not downgrade or reject the importance of political and individual freedom while pursuing economic and social guarantees. Hence they imply that the proper strategy is to pursue both kinds of rights simultaneously.

Another argument advanced by critics of the notion of economic rights is that genuine universal human rights must actually be capable of being fulfilled universally, and that economic rights often cannot make such a claim, since poverty-stricken countries can legitimately assert that they have no near term possibility of honestly furnishing such guarantees.

Defenders of economic rights counter that some political rights, such as regular elections or the provision of legal counsel, can also suffer from the same defect of lack of resources. For example, Rwanda simply does not have enough lawyers to defend those accused in its genocide. Even a well-meaning government may lack the resources to actually make such guarantees real. This is much more so in the case of defending citizens from external attack, which may require extremely expensive armed forces, forces that many states simply cannot afford. Hence, if universal human rights are only those that all governments can actually meet at all times, then there are several political rights that cannot be universal either.

These arguments will no doubt continue. My own view is that, in suggesting what proper, *politically enforceable*, universal human rights are, we should focus not on what governments *should* do but on what *they should not* do.<sup>31</sup>

If a government is actually capable of exercising authority over its territory, that is - as long as it actually is a functioning government -- then it can refrain from torturing, killing or arbitrarily imprisoning its citizens. These restrictions do not require an especially powerful or wealthy government, but only a functioning government. They do not require wealth, for they do not ask a government to do something, but *not* to do something. Therefore they can be universal in the sense that any functioning government can meet them.

Hence, if rights are universal in this sense, they will usually lie in those areas of human life where governments should *refrain* from acting. This is not as peculiar as it at first might sound. It is in fact the structure of most American constitutional rights. The very first words of the Bill of Rights are: "Congress shall make *no law*..." In fact the basic structure of the first, second, third, fourth, fifth, seventh, eighth, ninth and tenth amendments is to say what the government *cannot* do: "no law ... not be infringed ... no soldier ... no person ... no fact ... not required ... not be construed ... not delegated..." The third, fifth, eighth and tenth amendments do not even use the term "rights," they simply tell the government what not to do, which has the same effect. In America, at least, most constitutional rights are focused on what governments should not do.

## CONCLUSIONS

Human rights properly understood are compatible with and, indeed, flow from a Christian view of the person and of the authority of the state. The basis of human rights need not be human will or autonomy, but can be understood as an expression of the grace of God extended to all. Human beings, as *imago Dei*, may rightfully claim that which they need to fulfill their God-given responsibilities. Hence rights should not be multiplied endlessly according to the assertion of human will, but must reflect a normative understanding of genuine human responsibility and authority.

Governments need to recognize human rights and guarantee those that are compatible with their own responsibility, authority and ability. This implies that we should be careful about distinguishing human rights

understood as universal moral claims from those human rights that should also be enforced by government and, perhaps, put in a constitutional bill of rights. Those who advocate for legally imposed economic and social rights should be aware that this implies that we are using the word rights to refer to, on the one hand, those things that governments should always or never do, and, on the other hand, to those things that governments should always try to achieve. If we use the term rights for both of these, we should be aware that we are using it in two different senses.

Finally, we live in an age when evangelical awareness of and practical commitment to human rights is rapidly expanding. This will continue to present questions and problems such as those described here and also far beyond them. This is to be expected in a world both complex and suffused with evil and suffering. Our ongoing challenge is to continue and deepen our work, knowing that it is part of our response to the grace and rights God has bestowed on us.

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<sup>1</sup> On the development of a right to religious freedom, see David Little, "The Development in the West of the Right to Freedom of Religion and Conscience: A Basis for Comparison with Islam," 13-32 of D. Little, J. Kelsay, and A. Sachedina, *Human Rights and the Conflict of Cultures: Western and Islamic Perspectives on Religious Liberty* (Columbia, N.C., University of North Carolina Press, 1988). A classic statement of a Catholic approach to rights, one which applies far beyond the Catholic church, is Jacques Maritain, *Man and the State* (Chicago: University of Chicago Press, 1951),

<sup>2</sup> The best survey of religion and human rights is found in John Witte and Johan van der Vyver, eds., *Religious Human Rights in Global Perspective: Legal Perspectives*, and *Religious Human Rights in Global Perspective: Religious Perspectives* (Leiden: Martinus Nijhoff, 1996). See also Kieran Cronin, *Rights and Christian Ethics* (Cambridge, Cambridge University Press, 1992).

<sup>3</sup> Allen D. Hertzke, *Freeing God's Children: The Unlikely Alliance for Human Rights* (Lanham, MD: Rowman and Littlefield, forthcoming 2004). See also Paul Marshall, *Their Blood Cries Out: The Untold Story of Modern Christians Who are Dying for Their Faith* (Nashville: W Publishing, 1997); Nina Shea, *In the Lion's Den*, (Nashville: Broadman and Holman, 1997); Holly Burkhalter, "The Politics of AIDS: Engaging Conservative Activists," *Foreign Affairs*, January/February 2004.

<sup>4</sup> Michael Perry argues that human rights necessarily have something sacred about them, see his *The Idea of Human Rights: Four Inquiries* (New York: Oxford University Press, 2000)

<sup>5</sup> See Paul Marshall, "Two Types of Rights," *Canadian Journal of Political Science* XXV: 4, (December, 1992), pp. 661-676

<sup>6</sup> L.W. Sumner, *The Moral Foundation of Rights* (Oxford: Clarendon Press, 1987), p.8.

<sup>7</sup> *Ibid.*

<sup>8</sup> On the development and meaning of the Universal Declaration of Human Rights, see Mary Ann Glendon, *A World Made New: Eleanor Roosevelt and the Universal Declaration of Human Rights* (New York: Random House, 2002)

<sup>9</sup> While a view of rights as "trumps" was articulated most clearly by Ronald Dworkin, it points more widely to a feature common in modern jurisprudence. See the survey provided in H. Gillman, "The Evolution of the Rights Trump in the American Constitutional Tradition," paper presented at the Annual Meeting of the American Political Science Association, Washington, D.C., September 1991.

<sup>10</sup> G.K. Chesterton, *Orthodoxy* (New York: Doubleday, 1924), 30-31.

<sup>11</sup> See Meirllys Owens, "The Notion of Human Rights: A Reconsideration," 240-246 of *American Philosophical Quarterly*, vol. 6, (1969), p. 244.

<sup>12</sup> 2<sup>nd</sup> Edition (New York: Routledge, 2001).

<sup>13</sup> Mary Ann Glendon, *Rights Talk: The Impoverishment of Political Discourse* (New York: Basic Books, 1991).

<sup>14</sup> Glendon, *op. cit.*, x-xi, 14.

<sup>15</sup> *Op cit.*, 109-110. Similar themes occur in attempts to import the notion of rights into ecological discussions, see Paul Marshall, "Do Animals Have Rights?" in *Studies in Christian Ethics*, vol. 6.2, (Summer, 1993), 31-49.

<sup>16</sup> Michael Ignatieff, et al., *Human Rights As Politics & Idolatry* (Princeton: Princeton University Press, 2003)

<sup>17</sup> Thomas A. West, "Religious Liberty: the View from the Founding," in Daniel C. Palm, ed., *On Faith and Free Government* (Lanham: Rowman and Littlefield, 1997). My point here is not that leaders such as Washington, Madison, Jefferson or, later, Lincoln were all orthodox in their theology. It is that their thinking was shaped in fundamental ways by Christian beliefs. In the case of Lincoln, a man "visibly influenced" by a faith he did not share, see Allen Guelzo, *Abraham Lincoln: Redeemer President* (Grand Rapids: Eerdmans, 1999). See also James H. Hutson, ed. *Religion and the New Republic: Faith in the Founding of America* (Lanham: Rowman and Littlefield, 2000); Michael Novak, *God's Country: Taking the Declaration Seriously* (Washington: American Enterprise Institute, 2000).

<sup>18</sup> Paul Marshall, *Human Rights Theories in Christian Perspective* (Toronto: ICS, 1983)

<sup>19</sup> The following discussion relies heavily on Christopher J.H. Wright's *Human Rights: A Study in Biblical Themes* (Bramcote: Grove Books, 1979). See also James Limburg, "Human Rights in the Old Testament," in Alois Muller and Norbert Greinacher, *The Church and the Rights of Man* (New York: Seabury, 1979), 25-26, and Josef Blank, "The Justice of God as the Humanization of Man -The Problem of Human Rights in the New Testament," *op. cit.*, 27-58.

<sup>20</sup> See also Paul Marshall, "Dooyeweerd's Empirical Theory of Rights," in C.T. McIntire, ed., *The Legacy of Herman Dooyeweerd* (Lanham, Md.: University Press of America, 1985), 119-142.

<sup>21</sup> On the notion of rights as endowments by God, in this case dealing with the rights of animals, see Andrew Linzey, *Animal Rights: A Christian Assessment of Man's Treatment of Animals* (London: S.C.M. 1976).

<sup>22</sup> G. von Rad, *Genesis, A Commentary* (London: S.C.M., 1961), revised ed., 211. See also Meredith Kline, "Oracular Origin of the State," in G. Tuttle, *Biblical and near Eastern Studies* (Grand Rapids, Mich.: Eerdmans, 1978), 132-141; Paul Marshall, *God and the Constitution: Christianity and American Politics* (Lanham, MD.: Rowman and Littlefield, 2002), chapter 3.

<sup>23</sup> This paragraph relies heavily on B. Zylstra, "Using the Constitution to Defend Religious Rights," 95-114 of Lynn R. Buzzard, ed., *Freedom and Faith: The Impact of Law on Religious Liberty* (Westchester, IL: Crossway Books, 1982), p.96.

<sup>24</sup> On the importance of stressing justice rather than equality in addressing rights claims, see Julius Stone, "Justice Not Equality," *Hastings Law Journal* 29 (1978), 995-1024.

<sup>25</sup> Johan van der Vyver, "Constitutional Options for Post-Apartheid South Africa," *Emory Law Journal* 40 (1991), 771.

<sup>26</sup> On the history of rights, see Richard Tuck's excellent *Natural Rights Theories: Their Origin and Development* (Cambridge: Cambridge University Press, 1979). Tuck points out that in Greek and Roman discussions we do not find the concept of a right; "ius" is not, in the continental sense, a "subjective right" but more of a legal claim, an entitlement due under law. One does not get the sense that it is an entitlement that precedes the positive law or justice. See also A.S. McGrade, "Ockham and the Birth of Individual Rights," in B. Tierney and P. Linehan eds., *Authority and Power: Studies in Medieval Law and Government* (Cambridge: Cambridge University Press, 1980), 149-165; M. Villey, "La genèse du droit subjectif chez Guillaume d'Occam," *Archives de philosophie du droit* 9 (1964), 97-127; B. Tierney "Villey, Ockham and the Origins of Individual Rights," in J. Witte and F. S. Alexander, eds. *The Weightier Matters of the Law: Essays on Law and Religion* (Atlanta: Scholars Press, 1988), 1-32; L. Vereecke, 'Individu et communauté selon Guillaume d'Ockham,' *Studia Moralia* 3 (1965), 150-177.

<sup>27</sup> In this respect it is important to note the influence of Christian Democratic views on the development of the charters. John Humphrey, who produced the first draft of the Universal Declaration of Human Rights, noted "it seemed at times that the chief protagonists in the conference room were the Roman Catholics and the Communists, with the latter a poor second." John P. Humphrey, *Human Rights and the United Nations: A Great Adventure* (Dobbs Ferry, New York: Transnational Publishers, 1984), 32, summarized in Morphet, *op. cit.*, 77. On the European developments, see Joan Lockwood O'Donovan's excellent "Subsidiarity and Political Authority in Theological Perspective," *Studies in Christian Ethics*, vol.6, no.1. (1993), 17-34.

<sup>28</sup> One of the striking features of many treatments of economic and welfare rights (see, for example, *Economic Rights*, ed., Ellen Frankel Paul, Fred D. Miller, Jr., and Jeffrey Paul (New York: Cambridge University Press, 1992)) is that, despite their precision over aspects of social policy, the authors never really ask what they mean by a right. The "Introduction" says "it is difficult to think of any moral or political theory which does not implicitly or explicitly

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incorporate some theory of economic rights," vii. A useful survey is given in Sally Morphet, "Economic, Social and Cultural Rights: The Development of Governments' Views," 74-92 of Ralph Beddard and Dilys M. Hill, *Economic, Social and Cultural Rights: Progress and Achievement* (London: MacMillan, 1992). See also Maurice Cranston, *What are Human Rights?* (New York: Basic Books, 1962), ch. 3. and p. 54; "Human Rights: Real and Supposed," 43-53 of D. D. Raphael, *Political Theory and the Rights of Man* (London: MacMillan, 1967), 52. For a summary of these discussions, see Jack Donnelly, *Universal Human Rights in Theory and Practice* (Ithaca: Cornell University Press, 1989), 31ff.

<sup>29</sup> See the results in the annual Freedom House surveys *Freedom in the World* and *Press Freedom in the World*.

<sup>30</sup> Amartya Sen, *Development as Freedom* (New York: Knopf, 1999).

<sup>31</sup> See my "On the Universality of Human Rights," in Luis Lugo, ed., *International Morality in the Post Cold War Era* (Totowa: Rowman and Littlefield). This touches on themes well explored in Isaiah Berlin's famous distinction of "positive" and "negative" liberties in his "Two Concepts of Liberty," 118-172 of his *Four Essays on Liberty* (New York: Oxford University Press, 1969). Alan Wolfe has some worthwhile comments to make on the distinction between, and the advantages and disadvantages of, absolute and conditional welfare rights in his "The Rights to Welfare and the Obligation to Society," *The Responsive Community*, vol.2 (Spring, 1991), 12-22.