

Towards a Theology of Human Rights

Review and Expositor, Winter 2000

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Human Rights under siege

Human rights are a *fact* in our world. They are listed in the *Universal Declaration of Human Rights* whose moral force has been recognized widely as international customary law; they are further defined and legally codified in the two Human Rights Covenants – the *International Covenant on Economic, Social and Cultural Rights* and the *International Covenant on Civil and Political Rights*. Then there are the many Human Rights Declarations and Human Rights Conventions that deal with single issues like torture, the rights of the child, and religious liberty. They define these issues and then devise structures for their implementation. The texts of human rights instruments are readily available and accessible through United Nations channels.

Human rights are an *important* fact in our world. All major threats to humanity are international and global in nature: the nuclear threat, the ecological crisis, poverty, the arms race, unemployment, drug traffic, torture, land mines, child abuse. Names and places like Rwanda, Burundi, Kosovo, East Timor and Chechnya witness to the terrible and terrifying fact that national, religious, ideological and economic interests, mixed with ethnic hatred and military and political power, can lead to oppression, exploitation, murder, and rape of people who cannot defend themselves. In a time when nationalism, religious enthusiasm, technology and trade fail to recognize national and cultural borders, what is there to stop their often-selfish exploits unless the human family develops a universal morality?

Human rights have evolved to fulfill the need for a *universal* morality, a morality that transcends national, cultural and religious interests. Just as national laws have the function of protecting the vulnerable and the weak against the power and self-interest of the strong, so on the international scene moral structures are needed to define and protect human dignity.

At the same time we need to recognize that human rights are somewhat *nebulous*, *ambivalent* and *ambiguous*. African and Asian countries claim their own moral and cultural values. They consider human rights to be a Western imposition on their national affairs and cultural integrity. Their protest is supported by Western postmodern intellectuals who under the umbrella of tolerance postulate that truth is situational and relative. For many and perhaps most things that is indeed true. Life would be rather boring if we did not have the kaleidoscope of multi-cultural values and customs. But can the human community ever be tolerant of rape, murder, torture, and child abuse?

The authority and effectiveness of human rights is constantly threatened by political reality and by philosophical and even theological debate. Take the recent horror in Kosovo, in East Timor and in Chechnya. When the UN Security Council failed to approve the NATO intervention in Yugoslavia, the NATO countries justified their involvement with an appeal to human rights. At the same time, at the time of writing this essay (December 1999), no one dares to interfere with the Russian clamp down on Chechnya. Consequently, the accusation of a double standard is readily at hand. East Timor is more clear-cut because the UN Security Council approved the interference in Indonesia's national affairs. But the fact cannot be overlooked: human rights are always in danger of being rendered ineffective when they collide with political, military and economic power.

Human rights are also controversial in philosophical and theological debates. While many intellectuals opposed the recent interference of NATO in Yugoslavia on the basis that there had

been no mandate from the UN, Vaclav Havel disagrees. In an address to the Canadian Senate and the House of Commons in Ottawa on April 29, 1999 he claimed that human dignity is a high value that needs to be protected on a universal level. "Human rights are superior to the rights of states. Human freedoms represent a higher value than state sovereignty. International law protecting the unique human being must be ranked higher than international law protecting the state." On that basis NATO had to protect the Kosovo Albanians even without the mandate of the UN. Indeed, Havel says, "this is probably the first war that has not been waged in the name of 'national interests,' but rather in the name of principles and values Kosovo has no oil fields to be coveted; no member nation in the alliance has any territorial demands on Kosovo"¹

Yet even such a convincing and noble defence of the importance, indeed the necessity of human rights, cannot quite satisfy the reasoning of head and heart. My Serbian friends remind me constantly of the atrocities committed by the Kosovar Albanians and Serbs feel that they have a historically justified claim on today's Kosovo.

Indeed, we cannot hide the fact that human rights are easily functionalized to serve other interests. During the recent controversial World Trade Organization (WTO) meetings in Seattle (December 1999) President Clinton signed into effect a new ILO Convention banning the worst form of child labor and announced his intention to intensify the American opposition to child labour. At the time of the 10th anniversary of the *Convention of the Rights of the Child* this seemed a noble thing to do. At the same time the moral value was somewhat tainted by the knowledge that Clinton was under great pressure from American trade unions to save jobs by clamping down on cheap imports which are often the product of child labor. Ways have to be found to deal with such moral ambivalence in order to safeguard the moral authority of human rights.

Human rights are also controversial in the Christian church. Fortunately, after centuries of hesitation, today all churches support the struggle for human rights. Nevertheless, in their theological discussions the matter remains controversial. There are those who say that the Bible is silent about human rights; others argue that the church should be concerned with saving souls for heaven rather than protecting and empowering humans for life on earth; a third group insists that we should be concerned with God's sovereignty and God's rights, rather than with human rights; and then there are those who say that Christians should be mediators of reconciliation, rather than conscientizing and encouraging states to protect the people in their jurisdiction, and people to claim their human rights.

Indeed: human rights are under siege!

Christian Faith and Human Rights

Do we as Christians have anything to say about the development, understanding and implementation of human rights? There is no need, of course, to invent "Christian" human rights. Human rights are an acknowledged fact in our world. As Christians we may ask, however, whether we can presume the providence of God at work in the human rights tradition, and whether the content of our faith in Christ can and perhaps must be brought into correlation with human rights.

Everything that happens in the world to make and keep human life human is of great interest to the Christian faith. Christians believe that God is a humane God who is interested in the welfare and survival of his creation. Indeed, the God of the Judeo-Christian tradition shows a special leaning to protect those who are disadvantaged, and God encourages the creation of structures that define and protect human dignity.

Human rights are not revelation. They have evolved in the struggle of human persons who sought to protect and shape human dignity against institutional claims and power. As such they can, and for Christians they must, be brought into correlation with God's revelation in Jesus Christ.

But given the clear aim of human rights to further freedom, justice and peace, and recognizing the shaping influence of Christian faith in the development of human rights, the Christian theologian can presume God's providential working in the evolving of human rights, and then ask, in what way human rights echo the Christian vision of reality, where Christian faith can enhance the understanding and implementation of human rights, and at what points Christians may be critical of the human rights tradition

Gleanings from history

Modern human rights - those human rights that have been codified since 1945 within the context of the United Nations - had their origins in the French and the American revolutions of the 18th century, and their forerunners in English history. It was there, in North America, in France and in England, where we meet the first extensive lists of codified rights that aimed to give expressions to the struggle for freedom, equality, and solidarity in concrete and particular situations.

The soil, however, in which these rights grew, was prepared by the preceding philosophical discussions and religious struggles in Europe, and from there they decisively influenced the formation of human rights in North America.

Many factors have influenced and shaped modern human rights: natural law thinking, individualism, the protest of reason against the institutions of church and state, Marxism, the struggle of developing countries. One factor that has often been overlooked is the *striving for religious liberty* during the Reformation and post-Reformation period.

Given the fact that academic inquiry is never simply neutral or objective, but is also determined by perceptions and interests, I would like to suggest that secular historians and philosophers tend to minimize the shaping power of faith in the human rights tradition.

The German jurist Georg Jellinek (1851-1911)² suggested that the wellspring for universal human rights was not the French Revolution, nor the philosophical traditions of France, nor the natural law thinking of England, but the striving for freedom of conscience, and for the separation of church and state, originating in sixteenth and seventeenth century England, and coming to its fruition and legal codification in the American colonies³. He argued that Christian dissident groups in England had claimed the right to freedom of conscience, worship and religion. This right cannot be granted by historical institutions like state and church, and therefore it cannot be taken away by them. It is grounded in the gospel of Christ, and historical institutions like state and church have the responsibility to recognize these human rights and provide room for people to exercise them.

These two basic principles – freedom of conscience, and the implied separation of church and state – were taken to the American colonies, and there they were most clearly formulated and pursued by people like Roger Williams (1603-1683). Jellinek concludes:

The idea to legally codify inalienable, inborn, sacred rights is not of political, but of religious origin. What up to now was seen as the product of the revolution is really a fruit of the reformation and its struggles. Its first apostle is not Lafayette, but the same Roger Williams who, driven by a powerful and deeply religious enthusiasm, goes into the wilderness in order to found the kingdom of religious liberty, and whose name Americans mention with deep reverence to the present day.⁴

Jellinek's thesis has been challenged from several quarters and it certainly needs some qualifications. But its basic thrust needs to be remembered.

The Anabaptists of the 16th century, for instance, were persecuted by church and state because of their radical commitment to Reformation principles. It has been said that the "Anabaptists were the only Reformation group consistently advocating religious liberty, separation of church and state, freedom of the individual conscience, and toleration of divergence in religious matters."⁵ Men and

women like Conrad Grebel (1498?-1526) and Felix Manz (1498?-1527) in Zürich, Balthasar Hubmaier (1489?-1528) in Waldshut, Hans Denk (1500?-1527) in Southern Germany, and Menno Simons (1496-1561) in Holland confessed in word and deed that faith can only be the voluntary commitment of a free conscience. It cannot be created, sustained or destroyed by the use of force.⁶ God alone is the ruler of conscience and therefore the state has no authority over the realm of the soul. Since God alone can grant faith, and faith therefore cannot be a human achievement, therefore tolerance is demanded towards all people: "It is never right to compel one in matters of faith, whatever he may believe, be he Jew or Turk."⁷

In Britain during the beginning of the 17th century, John Smyth (1563?-1612)⁸ and Thomas Helwys (1550?-1616)⁹ were among the pioneers of the Baptist movement.¹⁰ From the group around Smyth we read in a confession of 1612:

... the magistrate is not by virtue of his office to meddle with religion, or matters of conscience, to force or compel men to this or that form of religion, or doctrine: ..., for Christ only is the king and lawgiver of the church and conscience.¹¹

Helwys' book *A Short Declaration of the Mystery of Iniquity* (1612) has been heralded as "the first Protestant defence of religious freedom."¹² In it he asserts that the king is an earthly king who has no power over people's conscience. "Let them be heretikes, Turcks, Jewes, or whatsoever it apperteynes not the earthly power to punish them in the least measure."¹³

While the names mentioned above are mainly known in Baptist circles, Roger Williams (1603?-1683) has become world famous as the "Apostle of Religious Liberty."¹⁴ In 1630 he left British shores in search of the religious liberty denied him by the Church of England. After serious disagreements and confrontations over issues related to religious liberty with the Anglican Puritans in the Massachusetts Bay Colony and also with the Separatists in the Plymouth Colony, he founded the settlement Providence in 1636. There he was baptized by immersion and joined the Baptists to whom he remained attached, at least in spirit, to the end of his life. In 1644 he obtained a charter from the British Parliament to unite Providence with various other towns into the Colony of Rhode Island. It became a haven for Quakers, Anabaptists and others searching for a society in which religious liberty was practiced.¹⁵

Up to the present day it has not been sufficiently recognized that the mainline reformers (Luther, Calvin, Zwingli) and the institutional Reformation churches failed to be pioneers of religious liberty. They remained tied to the medieval principle of one religion for one political region. What they demanded for themselves from the Roman Catholic Church, and what they also asserted in theory, in practice they denied, when they persecuted religious minorities and used civil authorities to propagate and further their ecclesiastical interests. W.K. Jordan says about the Baptists:

It is to their great credit that, though persistently persecuted, they maintained steadily the doctrine of religious liberty and denied that any human power, whether civil or ecclesiastical, exercised any legitimate authority over the human conscience.¹⁶

This leads us to the conclusion that the struggles for religious liberty during the 16th and the 17th centuries on the European continent and in England gave an important impulse for the assertion of human rights. Being confronted with the institutional claims of crown, state, and church, there were men and women whose faith in Christ was to them an ultimate concern. They did not deny the function and the necessity of crown, state and church, but they insisted that the human conscience can only know and accept one ultimate authority, and that is God. In correction of Jellinek, and to forestall a possible misunderstanding, it must be emphasized, however, that the struggle for religious liberty, and with it an important motif for the formation of human rights, comes mainly from the radical wing of the Reformation, as well as the dissident groups in England and America (mainly Baptists and Quakers).¹⁷ It would be a historical distortion if one fails to appreciate the shaping influence of Christian faith upon the modern human rights tradition.

Ontology

Human rights make ontological claims when they insist that “all human beings *are born* free and equal in dignity and rights” (§1, *Universal Declaration of Human Rights*). The *Virginia Declaration of Rights* (1776) says: “all men” – whether in those days they included women, native Americans and slaves is doubtful – “are *by nature* equally free and independent, and have certain *inherent* rights” (§1, emphasis mine). The *French Declaration of the Rights of Man and of the Citizen* (1789) is introduced with the words: “Men *are born* free and equal in respect of rights” (§1, emphasis mine). The *Universal Declaration of Human Rights* tunes into those claims by asserting “the *inherent* dignity and of the equal and *inalienable* rights of all members of the human family” (Preamble, my emphasis).

The intention of these formulations is clear. They want to underline the *universality* of human rights; and they want to assert that the dignity and freedom of the human person *transcends* the authority of human and historical institutions like the state, the law, the church, and human contracts.¹⁸ Historical institutions neither invented nor granted human dignity, therefore they cannot take it away. Their noble function is to recognize, understand and protect it.

The problem arises, however, when one tries to understand and explain the moral foundation for human rights. What does it mean that a person has certain “inherent” and “inalienable” rights; that people are “born” with certain rights that no one should take away from them; that human beings have these rights “by nature”? If people “are endowed with reason and conscience,” who or what “endows” them with such?

Traditionally, Natural Law theories have been called upon to provide a universal basis for morality. But such theories have lost their power in the wake of having been used to justify slavery, racism, sexism and nationalism. This loss of credibility poses a serious dilemma. A Swiss jurist, familiar with the human rights debate, says:

From the legal point of view it must be insisted that some foundation is indispensable. Legal norms are usually respected not because they are backed by power and people fear the sanctions of power against transgressors; their validity rests primarily on belief in their legitimacy The question then inevitably arises of the source of this legitimacy. Legitimacy is necessarily meta-legal and meta-materialistic: as a rule and generally speaking it does not derive from such norms as self-evidence or from any inherent or ‘historical’ necessity¹⁹

While most human rights declarations leave the question of ontology unanswered, the *American Declaration of Independence* (1776) is an exception with its reference to the Creator-God: “We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain inalienable Rights, that among these are Life, Liberty, and the pursuit of Happiness.”

The most one can say at the present time, is that there is an emerging consensus that human rights are grounded in the human person. But that does not solve the ontological challenge. It only raises new questions as to how the human person is to be understood and what content should be given to the *humanum*.

The problem and the challenge is clear: unless a universally valid moral foundation for human rights is discovered and agreed upon, human rights will be increasingly emptied of their validity and authority, and they will continue to be functionalized to serve national, economic and other ideological interests. Perhaps, the dawning awareness that all of humankind is in the same boat and needs to face the challenge of a human and humane survival together, will provide the necessary motivation to arrive at moral foundations that can provide both legitimacy and content to human rights.

This poses a special challenge to the religions of the world. Given the fact that historically religions have been on the side of the problem rather than the answer as far as human rights are concerned, there is an urgent need for the religions of the world to make historically manifest that the very reality that inspires them provides the foundation for freedom, equality and solidarity.²⁰ All human beings "are born free and equal" and are "endowed with reason and conscience" because God has created them as such!

It belongs to our theological task to argue that any understanding of the *humanum* that brackets out the human need for a relationship with God is deficient. The identity and integrity of human person does not only entail self-acceptance; it also includes being related to God through faith and worship, being related to others through solidarity and love, and being related to nature in sensitivity and concern. Without God, friends and nature we cannot survive, we cannot be who we are. Human rights therefore must recognize the different aspects of the *humanum* and create room to exercise them and create structures to protect them.

Content

A growing number of people in the developing countries and in the least developed countries become suspicious when the North Atlantic rim countries talk of human rights. They suspect that human rights have become functionalized to advance the interests of those who are strong, rather than empowering those who are in need. It therefore needs to be emphasized that it is the intention of human rights to protect individuals and groups against the institutional abuse of power. It is a noble function of law in general and of human rights in particular to curb selfishness, ruthlessness and injustice, and to protect the interests of the vulnerable, the weak and the marginalized groups in society.

This tendency echoes the Judeo-Christian conviction that God is concerned with liberating, sustaining, guiding and accompanying people who are being pushed to the margins. What we hear of God's concern for Israel, applies to all people who are left half dead on the sides of the roads of life:

... the LORD said, "I have observed the misery of my people who are in Egypt; I have heard their cry on account of their taskmasters. Indeed, I know their sufferings, and I have come down to deliver them from the Egyptians, and to bring them up out of that land to a good and broad land," (Exod 3:7f.)

The early Christian church tuned into this ethos when it heard Christ speaking the overture to his life:

"The Spirit of the Lord is upon me, because he has anointed me to bring good news to the poor. He has sent me to proclaim release to the captives and recovery of sight to the blind, to let the oppressed go free, to proclaim the year of the Lord's favour." (Luke 4:18f.)

Jesus promised grace to the poor, to the hungry and the sorrowful (Luke 6:20f.) and he fleshed out the gospel by healing the sick, driving out demons and sharing his life with the marginal people of society.

In response, the earliest Christian churches tuned into Jesus' passion for the world by affirming the essential equality of all persons and by beginning to eliminate injustice from their own midst. When the resurrection of the crucified Christ became historically manifest, Christian communities emerged in which racial, social or sexual barriers and injustices were transfigured into a new reality of life together because in Christ there "is neither Jew nor Greek, there is neither slave nor free, there is neither male nor female" (Gal 3:28).

We may safely say that the Psalmist gathers up the tendency and the intention of the whole biblical message when he hears God speaking into his conscience: "Give justice to the weak and the

fatherless; maintain the right of the afflicted and the destitute" (Ps 82:3). And the writer of Proverbs relates this directly to God's action in history: "the Lord will plead their cause" (Prov 22:22). Moreover, "he who oppresses a poor man insults his Maker, but he who is kind to the needy honours him" (Prov 14:31). It belongs to the privilege of faith to tune into God's healing and saving passion for the world.

It is therefore no accident that the earliest Christian churches located Jesus' presence in the world not only in the preaching of the word and the administration of the sacraments, but also in the vulnerable child (Mark 9:36f.), in the hungry, the stranger, the naked and the prisoner. As much as we have done it or not done it to these, his brothers and sisters through the ages, we have done it or not done it to him (Matt 25:31-46). If Christians want to be found where Jesus Christ is active in the world, then they must show healing, saving and liberating solidarity with those whose human dignity is injured or threatened.

Since human rights provide the structures to protect and enhance human dignity, the Christian faith can joyfully presume the providence of God at work in the human rights tradition.

Universality

Human rights by their very nature apply to *all* human beings. This poses the somewhat controversial question of *universal* values. Philosophers and theologians within the post-modern paradigm question the validity of a universal morality and tend to argue that all morality is situational and therefore relative.

Politicians in Asian and African countries contend that the *International Bill of Human Rights* does not sufficiently recognize cultural differences and the specific challenges that developing countries face. They claim that it is too "Western", too individualistic. This fairly popular criticism calls for comment.

It is, first of all, simply not true that modern human rights are the product of a single cultural emphasis. The individual rights of the "West", the social rights emphasized by the Socialist countries, and the rights of self-determination and cultural identity claimed by the developing nations have all been included in the modern human rights instruments.²¹ Even during the drafting stage of the *Universal Declaration* a "quiet revolution" among those who participated in it took place. Charles Malik of Lebanon, Rapporteur of the then Human Rights Commission at that time and its chairperson from 1951 makes an interesting reference to an intellectual process that took place in the early work of the Commission. He discerns three stages in the ongoing consciousness of Commission members:

... the first is to say, the civil, political and personal is primary, but the economic, social and cultural also has its place. The second is to move ... from this position to the view that both types of rights are equally important. And the third obviously is to say, what is the use of the civil, political and personal if the economic and social is not first guaranteed? Therefore, the social and economic is primary and more important.²²

We need to recognize, secondly, that human rights are a fact and a process at the same time. New moral challenges call for new formulations and codifications. The process continues and all countries can bring their particular concerns into the human rights process. At present there is a proposal before the United Nations Assembly to supplement the *Universal Declaration of Human Rights* with a *Universal Declaration of Human Responsibilities*.²³ Work is continuing on the rights of indigenous people and on the right to conscientious objection to military service. Negotiations are also taking place for a convention of religious liberty.

The next great challenge which the human community faces is to inter-relate human rights with the ecological challenge. Just as there was a self-authenticating shift of emphasis from individual to the social rights, so we are now realizing that unless we solve some of the ecological problems that

we have created, we shall not fulfill our moral responsibility to future generations and we shall destroy the very garden that sustains us. For too long has our human historical consciousness with its inherent drive to conquer determined and often exploited nature. What so far has been taken for granted, has become a major ethical challenge. The air we breathe, the food we eat, the water we drink becomes an integral part of us. Nature is not just our environment, but we are ontologically inter-woven with and dependent on nature. Human rights therefore call for the rights of nature, which the human community in Rio (1991) and then recently in Kyoto (1997) is trying to come to terms with.

Thirdly, we have to realize that affirming the universality and the indivisibility of human rights does not exclude the appreciation and affirmation of regional, national and cultural differences, but it squarely faces the question which “liberals”, “pluralists” and “post-modernists” in the name of tolerance often tend to avoid: is *all* morality situational and relative, or are there certain absolutes that we need in order to understand, define and protect human dignity, whether it is in Kenya, Afghanistan, France, Chile, Canada, Sweden, America or Australia? Can torture, child abuse, rape, racism, sexism, ethnic cleansing, slavery, poverty, hunger, and oppression ever be right? Is not the very raising of such issues a powerful call for the necessity and importance of *universal* human rights?

We need to recognize, finally, that the critique of universal human rights and the call for Asian or African values often comes from dictatorial regimes that have reason to fear the inroads of freedom, equality and solidarity. The Human Rights Summit in Vienna (1993) affirmed that human rights by their very nature are *universal, indivisible and interrelated*. The challenge is therefore to arrive at a global ethic that can pave the way to a promising future. While tolerance is an important value, the human community should never be tolerant of torture, rape, child abuse, racism and the many other issues that are addressed in the *International Bill of Human Rights*.

The Christian faith affirms the universal thrust to human rights. Christians confess God as “creator of heaven and earth”. God is the all-encompassing reality and the ground “of all that is, seen and unseen”. In Christ, God has concretely manifested his love for the world and thereby declared his will that none should perish, but that all shall be graced with the promise of eternal life. This universal thrust has motivated Christians to participate in shaping a universal moral and spiritual ethos which seeks, together with other religions and with all people of good will, to lay the foundation for peace and justice in the world.²⁴

National Sovereignty

The universality of human rights often conflicts with a country’s claim of national sovereignty. By joining the United Nations, a State-party commits itself to the recognition and implementation of universal human rights. This commitment is intensified with the ratification of the *International Bill of Human Rights* and other human rights instruments. The acceptance of the moral and legal authority of universal human rights implies bringing national constitutions and legal systems into alignment with human rights. This seemingly obvious and indeed agreed procedure is often frustrated by the principle of national sovereignty that is tenaciously defended by most nations. Governments continue to insist that within their national borders only their own national legal and political structures have a right and duty to create laws, to determine policies, and to implement them.

There are, of course, many reasons why the principle of national sovereignty is important and needs to be maintained. Political and social interference in countries like (the former) German Democratic Republic and Hungary in the 1950s, Czechoslovakia, Vietnam, and Cuba in the 1960s, Afghanistan, El Salvador, Nicaragua, the Falkland Islands and Grenada in the 1980s, and Kuwait in the 90s, recalls the ever present danger that powerful nations assume the prerogative of interfering in other countries’ politics if they see their own political, economic, and military interests endangered. Those same countries would, of course, resist any attempt of outside interference in their own national affairs. The human rights tradition has dealt with these problems by insisting on

the right of the self-determination of nations. No nation has the right to interfere in the internal affairs of another nation.

At the same time, it is intolerable that the human community looks on when in Rwanda and Burundi, in Kuwait, in Yugoslavia, in Indonesia and in Russia racial, ethnic, economic, national and tribal interests and conflicts lead to chaos and anarchy with appallingly dehumanizing consequences for the civilian population; when in Algiers and Afghanistan religious fanaticism leads to murder and the oppression of women and girls; when in India and China girls are assigned a lower social status than boys; when in Australia, Canada and the Americas indigenous people are denied respect, equality, and justice.

The challenge is clear. While it is important to safeguard national and cultural distinctives, it is necessary at the same time to develop a global responsibility.

Individual societies and states, in their social rights and duties, are responsible not only to the people who live in them but also to humanity. Human rights thus also entail humanity's claim on individual societies and people. If particular political and social communities are bound through their constitutions to the human rights of their citizens, they must also be bound, on the other hand, to the rights of humanity. Collective egoism threatens human rights just as much as individual egoism. Thus individual communities and states are only then really legitimized by human rights, when they respect not only the human rights of their own citizens, but also to the same degree those of other nations and peoples. Human right is indivisible; it is no privilege. Therefore national foreign policy can only be legitimized as the world's domestic policy. International solidarity in overcoming the horror of starvation and the threat of world military crises has, therefore, because of the rights of humanity, a precedence over loyalty to one's own people, to one's own class, race or nation. Individual communities and states have human duties in the face of the rights of the whole humanity to life, freedom, and community. Therefore human rights point to a universal community in which alone they can be realized.²⁵

National governments are challenged to recognize that there is a moral foundation of law that transcends national and ideological interests. The law must serve the truth; truth cannot be limited to the situational expression of the law. Human rights instruments must therefore be accepted as a *critical* measure of national legal constitutions. Human rights have a *critical* dimension, and national legal structures must serve the implementation of human rights in a national context. Properly understood, this emphasis in no way negates national sovereignty; it simply insists that governments act in accordance with their ratification of human rights instruments to which they have voluntarily agreed.

It is a regrettable fact that Christian churches have often validated and supported national, racial and ethnic ambitions. Although the local manifestation of the church must be deeply rooted in its respective culture, it must never lose sight of the fact, that the church is the "body of Christ", Christ's way of relating and minister to God's creation, and as such transcending racial, national and ethnic claims. We would be a long way along the road of peace and justice, if Christians would obey the first commandment and decide not to disadvantage each other, whatever their nationality, race, sex or color may be.

Indivisibility

Countries should not "pick and choose" those rights that are convenient, and neglect those which make an uncomfortable claim upon their situation. We all know of the human tendency of using morality to further situational, national or group interests. It is therefore important to recall that ethical practice begins at the "point of pain". Otherwise ethics would simply be used to serve the status quo. To swim with the stream is easy; to stand still is also not too difficult; but to start resisting the stream and then even beginning to swim against the stream, one must have good

reasons to do so. Even a commitment to such a high moral ideal as tolerance can be misused to escape urgent moral responsibilities in the struggle for truth, peace and justice.

It is therefore important to understand that a country's moral credibility with respect to human rights is not primarily seen by those rights which it acknowledges and implements, but by those rights which it does *not* keep and implement. A commitment to the indivisibility of human rights is important, so that morality is not functionalized to cement the status quo or to serve the interest of those who are in power, but to maintain a *critical function*. Human rights, all of them, provide the *measure* by which a society must evaluate the progress of its social and national ethos.

Nevertheless, given the ambivalence of human life, certain tensions and conflicts between human rights cannot be avoided. How much room must a government allow for to freedom of religious expression or freedom of opinion or freedom of assembly, and where does a government's responsibility for social stability and order come in? How is the right to life related to the death penalty and to abortion on demand? To deal with such difficulties a *core* of human rights have emerged and have been proclaimed which are universally valid, and which must therefore be kept by all people and institutions in all situations at all times.

The *International Covenant on Civil and Political Rights*, for instance, lists a number of human rights which are valid in all circumstances (§4:2): The inherent right to life (§6), the prohibition of slavery and servitude (§8:1,2), the prohibition of imprisonment merely on the ground of failing to fulfill a contractual obligation (§11), the right that "no one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law at the time it was committed" (§15), the right that everyone must be recognized as a person before the law (§16), and the right to freedom of thought, conscience, and religion (§18).

Understanding

Christians do not claim that human rights are God's revelation. They do suggest, however, that human rights are part of the providential working of God to make and keep human life human. Christians presume that the Spirit of God is at work in the human rights tradition. At the same time, they suggest that the Christian faith can highlight special dimensions that are not immediately obvious to human experience and human reason. Let us illustrate that point with regard to freedom and equality.

Freedom is an important reality that undergirds the human rights tradition:²⁶ "All human beings are born free ..." (§ 1); "Everyone is entitled to all the rights and freedoms set forth in this Declaration ..." (§ 2); "Everyone has the right to life, liberty, and security of person." (§ 3); "No one shall be held in slavery and servitude ..." (§ 4); "No one shall be subjected to arbitrary arrest, detention or exile." (§ 9); "Everyone has the right to freedom of movement ... (and) the right to leave any country, including his own, and return to his country." (§ 13); "Everyone has the right to freedom of thought, conscience and religion ..." (§ 18); "Everyone has the right to freedom of opinion and expression ..." (§ 19); "Everyone has the right to freedom of peaceful assembly ..." (§ 20).

Traditionally, freedom has been understood in terms of the French *Declaration of the Rights of Man and of the Citizen* (1789): as "the power of doing whatever does not injure another" (§4). Little do we realize the ambivalence of this understanding of freedom. On the one hand, it has inspired the industrial and scientific revolution, as well as the economic and political structures on which our "Western" political and economic strength is built. On the other hand, it is widely recognized today, and fairly obvious to the impartial observer, that the negative by-product of the "Western" ideal was that the weak, the under-privileged, and the economically powerless had to suffer from or were at the mercy of the strong. The classical "Western" definition of freedom is deficient because it favours seeing every other person as a potential enemy who may restrict my individual freedom. Such an individualistic understanding of freedom easily leads to separation and enmity between human beings. People become primarily concerned with staking out the frontiers of their self-interest. Concern for the neighbour is ascribed secondary importance.

Here the Christian faith reminds us that we are not individualistic beings but that we are relational beings. The classic biblical portrayal is well known: "... God created humankind in his image, in the image of God he created them; male and female he created them" (Gen 1:27). The relationality of human life became individualized by an unbending human self-will. However, when the Christian community celebrates the salvation that God has established through Christ, the communitarian nature of human life is restored,

... for in Christ Jesus you are all children of God through faith. As many of you as were baptized into Christ have clothed yourselves with Christ. There is no longer Jew or Greek, there is no longer slave or free, there is no longer male and female; for all of you are one in Christ Jesus. (Gal 3:26-28)

Christians can joyously affirm freedom rights, but at the same time they add the extra dimension that at its deepest point freedom is a community experience where our human brother and sister are not our potential enemy, but the one whom we need for the celebration of true freedom.

A similar case, illustrating a special dimension that the Christian faith can offer, would be the issue of *equality* which underlies many human rights:²⁷ "all human beings are born free and equal in dignity and rights." (§ 1); "Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status." (§ 2); "All are equal before the law and are entitled without any discrimination to equal protection of the law." (§ 7); "Everyone is entitled in full equality to a fair and public hearing" (§ 10); "Everyone, without discrimination, has the right to equal pay for equal work." (§23:2)

The assertion that "all human beings are born free and equal in dignity and rights" is neither obvious nor apparent in our world. Aboriginal and Torres Strait Islander people in Australia, girl children in India and China, poor black people and African Americans in South Africa and in the USA, Christians in Moslem countries, women and Gypsies all over the world, do not enjoy equality in their respective situations. Indeed, by looking into the world as it is, there is more evidence for affirming inequality as a "natural" fact than equality. Even the historical situations in which equality rights were asserted are replete with ambiguity. When, for instance, the founding fathers in North America claimed equality with and independence from England, they did not think of giving the same equality and freedom to African slaves, to Native Americans, or to women.

As Christians we wholeheartedly affirm and support equality rights. Christians are aware that the empirical evidence does not support a universal ethos of equality. They therefore base their commitment to equality not on what human reason perceives in the nature of things, but on God's dealings with humanity as it becomes historically manifest in the story of Jesus. Christians assert the equality of all people because God has created all human beings to be equal in dignity. Individualism and selfishness, which has led to inequality, is seen as a result of turning away from grounding life in God. In Christ, God has dealt with the estranging power of sin and created a new reality, which includes equality for all people. This equality is affirmed, claimed and implemented through faith in Christ. When the new reality which God has established in Christ becomes historically manifest then a community is created in which "there is no longer Jew or Greek, there is no longer slave or free, there is no longer male and female; for all of you are one in Christ Jesus." (Gal 3:28)

Above all, the Christian faith lives from the knowledge that in Christ, God has not only manifested his love for the world (John 3:16), but has in fact reconciled the world with himself (2 Cor 5:17-21). The Christian commitment to the struggle for human rights is carried by the awareness that we bring into reality what God has already provided for. This adds a theological dimension to the struggle, which will hopefully save the human rights tradition from going stale or running dry. The awareness that God in Christ has done something for us that we cannot do for ourselves, also gives us the freedom that in certain situations we may perceive it to be our duty to waive our equality rights in order to serve what we may identify to be a worthier cause.

Implementation

The greatest problem associated with human rights is the universal failure in the actual implementation of human rights. We have not yet internalized that seeking the welfare of the "other" in the long run is the best for ourselves. It is regrettable that many nations formally accept the moral authority of the *Universal Declaration of Human Rights* and even ratify the *Human Rights Covenants* and *Conventions*, while in theory and practice they have no intention of keeping them. Organizations like "Amnesty International", the "International Commission of Jurists", "Human Rights Watch" and many other human rights organizations report on torture, denials of basic liberties, capital punishment, child abuse and the inequality of persons before the law from all parts of the global community.

Experts tell us that in the present political climate great responsibility for furthering and intensifying the human rights process falls upon the Non-Governmental Organizations that have consultative status at the United Nations. Does it not belong to the prophetic task of the churches to presume the Spirit of God at work in the human rights tradition and then commit themselves to the implementation of human rights? In fact this is happening already. Churches are involved in the alleviation of poverty, they are involved in the refugee camps of the world, they engage themselves for fair treatment of asylum seekers and they become advocates for the poor and oppressed by reminding their respective governments of their obligations to the human community.

Christians and churches can also be active in the codification of new human rights. One example is the matter of conscientious objection to military service which has been discussed within the context of the United Nations for over 20 years. Many young people live in countries where military service is obligatory and where conscientious objection is restricted or even illegal. They are facing conflict situations and crises of conscience for which moral guidance is urgently needed. So far we have only a resolution from the Commission of Human Rights in which the countries that require military service are called upon to refrain from punishing or criminalizing conscientious objectors, but to provide an alternative service for them.

Churches are also ideally suited to collect reliable information about human rights abuses and to make them known to the wider public. Churches can conscientize their people, monitor and influence governments, and support the many human rights organizations that are active and effective in providing a future for people whose rights are denied and whose dignity is marred.

Christians and churches join the struggle for the implementation of human rights with the presumption that the Spirit of God seeks and invites partners for making human life human. The knowledge of the struggle for human rights implies the invitation to accept responsibility for what we know: "Anyone, then, who knows the right thing to do and fails to do it, commits sin." (James 4:17)

TL: Canberra, 13/06/2003 .

¹ Vaclav Havel, "Kosovo and the End of the Nation State," in: *The New York Review of Books*, June 10, 1999.

² Die Erklärung der Menschen- und Bürgerrechte," (1895; 41927) in: Roman Schnur, ed., *Zur Geschichte der Erklärung der Menschenrechte* (Darmstadt: Wissenschaftliche Buchgesellschaft, 1964), pp. 1-77; see also his "Antwort an Emile Boutmy," in: *ibid.*, pp. 113-128.

³ This theory has been supported by the theologian Ernst Troeltsch (1865-1923) and the sociologist Max Weber (1864-1920). For Ernst Troeltsch see: *Die Bedeutung des Protestantismus für die Entstehung der modernen Welt* (Aalen: Otto Zeller, 1963 [1911]), pp. 59-64; *The Social Teaching of the Christian Churches*. Vol. 2 (London: Allen & Unwin, 1949 [1931]), pp. 671-673. Troeltsch rightly corrects Jellinek at the point where the latter sees a Calvinistic puritanism as providing the main motivation for the struggle for religious liberty. Calvinism and Puritanism were essentially intolerant, resisting the formation of other churches and other expressions of faith alongside their own. The real parents of the struggle for religious liberty were the stepchildren of the Reformation; in the American colonies especially Baptists and Quakers. For Max Weber see: "Religiöse Heilsmethodik und Systematisierung der Lebensführung," (1922) in: *Die Protestantische Ethik*. I. Eine Aufsatzsammlung (München: Siebenstern, ²1969, pp. 318-343), pp. 342f., also in *Grundriss der Sozialökonomik*. Vol. 3: Wirtschaft und Gesellschaft (Tübingen: Mohr, 1947), pp. 816f.

⁴ "Die Erklärung der Menschen- und Bürgerrechte," (1895; ⁴1927) in: Roman Schnur, ed., *Zur Geschichte der Erklärung der Menschenrechte* (1964), pp. 53f. (my translation).

⁵ H.S. Bender "Religious Liberty," in *The Mennonite Encyclopedia* 4 (Scottsdale, PA.: Mennonite Publishing House, 1959, pp. 291-293), p. 292.

⁶ Compare: Harold S. Bender, "The Anabaptists and Religious Liberty in the 16th Century," in *Archiv für Reformationsgeschichte* 44 (1953), pp. 32-51; Joseph Lecler, S.J., *Toleration and the Reformation*, Vol. I (New York: Association Press, 1960), pp. 290-301.

⁷ These are the words of the Anabaptist Kilian Aurbacher as cited in W. Klaassen, ed., *Anabaptism in Outline*. Selected Primary Sources (Kitchener, Ont., Scottsdale, Pa.: Herald Press, 1981) pp. 292f.; a selection of texts representing Anabaptist voices on religious liberty in *ibid.*, pp. 290-301.

⁸ For a brief introduction to John Smyth see: James E. Tull, *Shapers of Baptist Thought* (Valley Forge: Judson Press, 1972) pp. 9-30.

⁹ For a brief introduction to Thomas Helwys see: Ernest A. Payne, *Thomas Helwys and the First Baptist Church in England* (London: The Baptist Union of Great Britain and Ireland, 1959).

¹⁰ For further details compare: W.K. Jordan, *The Development of Religious Toleration in England*. From the Accession of James I to the Convention of the Long Parliament (1603 - 1640) (London: Allen & Unwin, 1936), pp. 258-314; Joseph Lecler, S.J. *Toleration and the Reformation*, Vol. 2 (1960), pp. 461-474; Timothy George, "Between Pacifism and Coercion: The English Baptist Doctrine of Religious Toleration," *Mennonite Quarterly Review* 58 (1984), pp. 30-49

¹¹ Cited from William L. Lumpkin, *Baptist Confessions of Faith* (Valley Forge: Judson Press, rev. ed. 1969), p. 140.

¹² Joseph Lecler, S.J., *Toleration and the Reformation*, Vol. 2 (1960), p. 462.

¹³ Thomas Helwys, *The Mystery of Iniquity* (1612) published for the Baptist Historical Society (London: Kingsgate Press, 1935), p. 69.

¹⁴ The expression is adopted from James E. Tull, *Shapers of Baptist Thought* (1972), p. 31. Roger Williams's most important book on religious liberty is *The Bloudy Tenent of Persecution* (1644), being Vol. 3 of *The Complete Writings of Roger Williams*, ed. by Samuel L. Caldwell (New York: Russell & Russell, 1963).

¹⁵ The role of religious liberty in the American revolution as a whole is described by Glenn T. Miller, *Religious Liberty in America: History and Prospects* (Philadelphia: Westminster Press, 1976).

¹⁶ 16] *The Development of Religious Toleration in England* (1936), p. 259.

¹⁷ Harold S. Bender, "The Anabaptists and Religious Liberty in the 16th century," in: *Archiv für Reformationsgeschichte* 44 (1953) pp. 32-51; article "Religious Liberty," in: *The Mennonite Encyclopedia*, vol. 4, pp. 291-293.

¹⁸ Vaclav Havel concluded his address mentioned in footnote 1 with the words: "... while the state is a human creation, human beings are the creation of God."

¹⁹ 19] Peter Saladin, "Christianity and Human Rights: A Jurist's Reflection," in: E. Lorenz, ed., *How Christian are Human Rights? An Interconfessional Study on the Theological Bases of Human Rights* (Geneva: Lutheran World Federation, 1981, pp. 25-35), pp. 29f.

²⁰ The Christian theologian Hans Küng has been a leading proponent in shaping a "world ethic" by which the religions of the world can make a positive contribution in the furtherance of justice and peace; compare Hans Küng, *Global Responsibility. In Search of a New World Ethic* (London: SCM, 1991).

²¹ 21] The *International Bill of Human Rights* includes the *Universal Declaration of Human Rights*, the *International Covenant on Economic, Social and Cultural Rights*, the *International Covenant on Civil and Political Rights*, and the *Optional Protocol to the International Covenant on Civil and Political Rights*.

²² 22] Charles Malik, "Human Rights and the United Nations," *United Nations Bulletin* 13 (Sept. 1, 1952), p. 253, cited from Vernon Van Dyke, *Human Rights, the United States, and World Community* (New York: Oxford University Press, 1970), pp. 58f.

²³ The *Universal Declaration of Human Responsibilities* is proposed by the *Inter Action Council* which includes many former chancellors, prime ministers and presidents, such as: Helmut Schmidt (Germany - Honorary Chairman), Malcolm Fraser (Australia - Chairman), Andries A. M. van Agt (Netherlands), Anand Panyarachun (Thailand), Oscar Arias Sanchez (Costa Rica), Lord Callaghan of Cardiff (UK), Jimmy Carter (USA), Miguel de la Madrid Hurtado (Mexico), Kurt Furgler (Switzerland), Valery Giscard D'Estaing (France), Felipe Gonzalez Marquez (Spain), Kenneth Kaunda (Zambia), Lee Kuan Yew (Singapore), Kiichi Miyazawa (Japan), Simon Peres (Israel), Maria de Lourdes Pintasilgo (Portugal), Jose Sarney (Brazil), Shin Hyon Hwak (Rep. of Korea), Kalevi Sorsa (Finland), Pierre Elliott Trudeau (Canada), Ola Ullsten (Sweden), George Vassilou (Cyprus), Franz Vanitzki (Austria).

²⁴ See footnote 20.

²⁵ Jürgen Moltmann, "A Christian Declaration on Human Rights," in A.O. Miller, ed., *A Christian Declaration on Human Rights*. Theological Studies of the World Alliance of Reformed Churches (Grand Rapids: Eerdmans, 1977, pp. 129-143), p. 135.

²⁶ All references are to the *Universal Declaration of Human Rights*.

²⁷ Again, all references are to the *Universal Declaration of Human Rights*