

HUMAN
RIGHTS

FAITH

*50th Anniversary of the
Universal Declaration
of Human Rights*

and

CULTURE

**Proceedings of the Australian
Bahá'í Studies Conference**

7-8 November 1998

Canberra, Australia

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Introduction

The year 1998 marked the 50th anniversary of the Universal Declaration of Human Rights.

Rightly, this anniversary provoked reflection by many organizations and individuals on the progress made, and yet to be made, in attaining the goals - indeed the minimum societal aspirations - set out in that historic document.

As a contribution to this process of reflection, the Association for Baha'i Studies Australia hosted a 50th anniversary conference on the theme "Human Rights, Faith and Culture". It is a theme particularly pertinent to our period of history in which the inter-relationship between belief, culture and human rights is at issue in both positive and negative ways.

The papers presented at the conference, which are published here together for the first time, provide much food for thought on these questions.

Zita Antonios explores for us one of the challenging issues facing Australian society: our capacity to accord due recognition and respect to the religious beliefs and institutions of the indigenous people of Australia. Gillian Bird, in a keynote address to the conference, reflects broadly on Australia's approach to international human rights, and the current state of progress of human rights. Angela Chan draws to our attention the issues of cultural diversity and inclusiveness, which are intimately connected to the affirmation of the human dignity for all without distinction. Hilary Charlesworth examines debates regarding cultural relativity and human rights and explores the role of religious institutions in intergovernmental negotiations in resisting equal rights for women. Sandie Cornish reviews the historical unfoldment of the Roman Catholic Church's approach to human rights questions and also reflects on issues of gender equity facing the Church. Michael Curtotti provides a perspective on Baha'i approach and practice in the field of human rights and provides an outline of the relationship between Baha'i scripture and human rights

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principles. Graham Hassall, also speaking from a Baha'i perspective, addresses the Baha'i approach to issues of religious freedom in the Asia-Pacific, and more widely. Jeremy Jones reflects on universal questions from a Jewish perspective – exploring the inter-relationship between learning and practical action in the service of human dignity. Robert McCorquodale explores and affirms the obligation to respect human rights from a Christian and scriptural viewpoint. Ann Pickering examines the experience of the Buddhist community in Canberra in seeking recognition of its religious practices in respect to death and dying. Juliet Sheen, looking at the evolution of minority rights within the international system, explores the difficulties still encountered by religious and other minorities both overseas and in Australia. Asmi Wood draws interlinkages between Islam and human rights – and challenges the notion that there is any inherent contradiction between the two.

This brief review will hopefully serve to whet the appetite of the reader to learn more of the insights shared by these contributors. They represent a wide diversity of Australian opinion and in themselves demonstrate that, despite the road yet to be traversed, human rights have had a profound and positive impact on Australia.

With the publication of these papers in 2002 we see that their relevance has far from diminished.

We take this opportunity to express our sincere thanks to all who spoke at the conference and contributed to its organization. We extend our very special thanks to Annemarie Devereux, of the Catholic Community, who made a disproportionate and much appreciated contribution to the conference's organization and success. Also deserving of special thanks is Sandra Langshaw who, as Treasurer of the Association for Baha'i Studies Australia, managed the financial aspects of the conference.

Human Rights Working Group
Association for Baha'i Studies Australia

The Contributors

Ms Zita Antonios

Zita Antonios was appointed Race Discrimination Commissioner in September 1994 and Acting Aboriginal and Torres Strait Islander Social Justice Commissioner in February 1998.

She was educated in Sydney and is a qualified social worker. Throughout her career she has held a range of administrative, research and policy positions. The public service positions she has held have focused on equal opportunity and race discrimination particularly as it affects people of non-English speaking backgrounds. She has also held a number of advisory positions and she is currently a member of the Multicultural Advisory Committee to the Sydney Organising Committee for the Olympic Games.

Ms Gillian Bird

Gillian Bird is the First Assistant Secretary of the International Organisations and Legal Division of the Department of Foreign Affairs and Trade. She joined the Department of Foreign Affairs and Trade in 1980 and has represented the Australian government at the OECD and the United Nations. From 1988 to 1990 she worked in the Office for Minister of Trade Negotiations, and from 1990 to 1993 she worked as First Secretary and Counsellor at the Australian mission to the United Nations New York. In 1993 she worked on the "Cooperating for Peace" issue and Comprehensive Test Ban Treaty projects. Also in 1993 she was appointed Assistant Secretary of the Executive Branch, and in 1994, Executive Secretary of the Peace, Arms Control and Disarmament Branch. Ms Bird holds a BA (Hons) from the University of Sydney. She was born in Adelaide.

Ms Angela Chan

Angela Chan was born in Sydney, and graduated from the University of Wollongong with a Bachelor of Arts, majoring in Italian language and South-East Asian history. She completed her Diploma in Law (Barrister's Admission Board) and was admitted to the Bar in 1990. She was the first Australian born Chinese woman to be admitted as a Barrister. Angela is a former Chairperson of the Ethnic Communities' Council of NSW (ECC) which was a voluntary position. Her term as Chairperson came to its constitutional end in 1997 when she was then appointed the national Convenor for the Federation of Ethnic Communities' Council of Australia (FECCA) on community harmony, anti-racism, reconciliation and the Sydney 2000 Olympics.

Professor Hilary Charlesworth

Hilary Charlesworth is Professor and Director of the Centre for International and Public Law at the Australian National University. From 1993 to 1997 she was John Bray Professor of Law at the University of Adelaide. In 1997 she was a visiting Professor at the law program, Research School of Social Sciences, Australian National University. Her research and teaching interests are in international law and human rights law. In 1997 she wrote, with Burns Weaton and Richard Falk, *International Law and World Order*. In 1982, she was awarded the Frank Knox Memorial Scholarship, the Robert Gordon Menzies Scholarship to Harvard and a Fulbright Scholarship to undertake postgraduate work at Harvard Law School. She graduated from Harvard with an SJD in 1986. She was part-time Commissioner with the Australian Law Reform Commission on its reference into Equality before the Law. She was a member of the Australian Council for Women, a body established by the Commonwealth government to advise it on preparations for the Fourth World Conference on Women in 1995, and Deputy Chair of the National Consultative Committee on the World Summit for Social Development. From 1995 to 1998 she was a member of the Executive Council of the American Society of International Law. From 1994 to 1998 she was a Hearing Commissioner with the Human Rights and Equal Opportunity Commission. She

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is currently a member of Foreign Affairs Council of the Minister for Foreign Affairs, a Board member of the Diplomacy Training Program and Defence of Children International (Australia). She is also President of the Australian and New Zealand Society of International Law.

Ms Sandie Cornish

Sandie Cornish is the Chief Executive Officer of the Australian Catholic Social Justice Council and Co-Convenor of the National Council of Churches in Australia's Network on Women and Gender Relationships. She has played a significant role in the planning and conduct of the Catholic Bishops' research on the Participation of Women in the Catholic Church of Australia, the report of which was due for completion in May 1999. Sandie has degrees in Economics, Catholic Social Doctrine, and Public Policy, and has worked in the field of Social Justice for ten years. She is married to Photographer Geoff Hirst.

Mr Michael Curtotti

Since 1996 Michael Curtotti has been Executive Officer – External Affairs for the Australian Baha'i Community in which capacity he represents the community on human rights issues and supports the work of the Bahá'í Community on human rights and related social issues. He is also currently Secretary of the Australian Forum of Human Rights Organisations, in which capacity he serves as a liaison with the Department of Foreign Affairs and Trade in relation to biannual human rights consultations. He has represented the Australian Council for Overseas Aid in 1997 and again in 1998 at the United Nations Commission on Human Rights. Prior to working in the non-government sector Michael served as a policy and legal officer in the International Organizations and Legal Division of the Department of Foreign Affairs and Trade (1993-1996). Prior to joining DFAT he was Assistant Director of International and Operations Law with the Royal Australian Navy. He holds a Master of International Law from the Australian National University and a Bachelor of Laws and Commerce from the University of New South Wales.

Dr Graham Hassall

Graham Hassall studied Asian and Pacific Islands' history at Sydney University and the Australian National University. Since 1990 he has directed the Asia-Pacific program of teaching and research at the Centre for Comparative Constitutional Studies, the University of Melbourne. In recent years he has published works on issues of citizenship, human rights, and electoral systems. In July of this year he observed the Cambodian general election on behalf of the Lawasia Organisation and in October he participated in a meeting in Stockholm on "Democracy and Deep-Rooted Conflict". He is an active member of the Victorian Bahá'í community, the United Nations Association of Victoria, and the World Conference on Religion and Peace.

Mr Jeremy Jones

Jeremy Jones is the Director of International Community Affairs of the Australia/Israel & Jewish Affairs Council; the Executive Vice-President of the Executive Council of Australian Jewry; the Chair of the Advisory Group of Faith Communities to the Council for Aboriginal Reconciliation; a member of the Jewish community components in on-going dialogues with Uniting, Catholic and Anglican Churches; Australian correspondent for the Jerusalem Report and for the Jewish Telegraphic Agency.

Associate Professor Robert McCorquodale

Robert McCorquodale is an Associate Professor (Reader) in International and Public Law in the Faculty of Law at the Australian National University. He has been at the ANU for three years. Prior to this he was a Fellow and Lecturer in Law at St. John's College, University of Cambridge for 8 years after a number of years in legal practice. He has written two books and over 40 papers in the field of international law and constitutional law, with the focus being on international human rights law. He has advised governments and peoples on issues of international law and has assisted in the drafting of new constitutions, such as in Malawi. Robert is a Christian and has been a member of Christian churches all his life, particularly the Uniting Church in Australia and the Baptist Church in the UK, and he is a lay preacher. He is a member of the Board for Social Responsibility in the NSW Synod of the Uniting Church. He is blessed by a wonderful wife and three lovely children.

Ms Ann Pickering

Ann Pickering is a student of Sogyal Rinpoche, the author of *The Tibetan Book of Living and Dying*, and Namkhai Norbu Rinpoche. She has received teachings from these and other masters on the Tibetan Buddhist practices for the moment of death. The sudden death in Canberra in 1993 of Gyalsay Tulku Rinpoche triggered a review of the ACT Coroner's Act. Ann coordinated a submission to this review by the combined Buddhist communities of Canberra. In 1998, she provided evidence on Buddhist beliefs on death and dying to a workshop on Religion and Human Rights by the Human Rights and Equal Opportunity Commission.

Dr Juliet Sheen

Juliet Sheen is an independent human rights consultant, specialising in the area of freedom of religion and belief. While working on policy development and law reform in the NSW Anti-Discrimination Board from 1977 to 1994, she largely compiled its 1984 report: *Discrimination and Religious Conviction*. Since 1984 she has been involved in international work to support the 1981 UN Declaration of the Elimination of All Forms of Intolerance and of Discrimination Based on Religion and Belief. In recent years, as a Fellow of the University of Essex Human Rights Centre (UK), she has worked with Kevin Boyle to produce *Freedom of Religion and Belief: A World Report* which studies 57 countries.

Mr Asmi Wood

Asmi Wood is a student of International Law with a special interest in human rights. He graduated from the University Of Melbourne in Science and has worked both in the private sector and in government. He currently works as a contractor to the public sector and also works for a family business. He is interested in Islamic studies and is currently the Secretary of the Canberra Islamic Centre and Australian National Islamic Library, both based in Canberra.

Seeing is Believing

BY ZITA ANTONIOS

Several years ago the Commonwealth Government appointed three Commissioners to inquire into the development of the Australian coastal zone. A meeting was held at Millingimbi on the coast of Arnhem Land where the Commissioners met with Aboriginal custodians and heard their concerns about the protection of the coast, the inter-tidal zone and their salt-water country. The Aboriginal custodians were worried about pollution, the intensity of commercial fishing, especially the waste of what is called 'by-catch', tourist operations and the protection of sacred sites in the sea. At the end of the day a senior custodian offered to take the Commissioners to a site for which he had particular responsibility. Shoes and socks were taken off, trousers were rolled up as the Commissioners waded out to an aluminum run-about. There was an air of expectancy as the old man carefully aligned landmarks and directed the boat to a particular point. The Commissioners peered over the side at a patch of muddy brown water, *completely indistinguishable* from the rest of the sea which stretched out around them. Their faces could not hide their disappointment and disbelief as they stared at nothing.

Hundreds of kilometres to the west, also in the Northern Territory, an optical fibre cable was laid through the Victoria River District. "The route could not avoid traversing land which held documented mythological significance. The whole area formed a densely mythologised cluster of sacred sites, including a child or a piccaninny Dreaming (Karu), a major blue-tongued lizard Dreaming (Lungarra) and a black whip snake Dreaming (Wiyawatu) ... The area represented a kind of spiritual bottleneck which made it inevitable that some form of damage to significant Dreaming sites and pathways would occur" in the process of laying the cable¹.

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Under the *Northern Territory Sacred Sites Act* (1989) compensation for interference with land was negotiated. But “as one of the company representatives indicated, while he was *not* saying the areas in question were *not* sacred sites, ‘he had a lot of difficulty in paying for something that was invisible’ ... something that you could not place a recognisable value on.”²

Recognition is the fundamental issue in achieving respect for Indigenous spiritual beliefs. Lack of recognition can occur at several levels.

In Australia, the first level flows from a deeply-instilled, almost subliminal disbelief in the value of Indigenous culture generally. It has its origins in nineteenth century social Darwinian theory in which Aboriginal culture was regarded as primitive, the product of an unevolved society. Within such a framework, the progress of civilisation - epitomised by Western Europe - was marked not only by technological advances, but by refinement in the artifacts of the law, government and religion. Indigenous religious belief, if not stigmatised as devil worship, was regarded as a crude and benighted form of superstition. The missionary imperative was to bring our dark brothers and sisters within the light of civilised belief and to find salvation within Christianity. The separation of Aboriginal and Torres Strait Islander children from their families was part of the attempt to destroy Indigenous religion and to cut the cultural descent lines of its transmission.

Such aggressive denigration of Indigenous culture has diminished today. A more politic, polite, sometimes romantic, view is expressed. But the undertow of this history remains active. It can be revealed by what is omitted. Another form of invisibility.

During his visit to Australia in 1997, Abdulfattah Amor, the United Nations Special Rapporteur on Religion and Belief, observed that information on Aboriginal and Torres Strait Islander beliefs was not included in the statistics provided to him on Australia’s religious diversity.

Aboriginals are not identified in the table of religions in Australia. Part of this population may, of course, be included in the Christian religion. However, the Aboriginal people have their own beliefs, which are manifested by their sacred ties to the Earth and which have to be taken into account as part of Australia’s religious diversity.³

The Special Rapporteur went on to note that:

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The land and sacred sites hold a fundamental significance for Aboriginal people insofar as their beliefs are identified with the land. A basic question is therefore the recognition of an Aboriginal religion intrinsically related to the land within the framework of an Australian society essentially based on Judeo-Christian and western values. In the view of the Aboriginals the integrity of the land takes on a religious dimension which therefore has to be preserved.⁴

This passage indicates further difficulties with the recognition of Indigenous spiritual beliefs. Unlike the Judeo-Christian tradition where the numinous is located in *places* (usually structures) consecrated to worship, Indigenous spirituality is embedded throughout the entire natural landscape in complex interwoven patterns of dreaming tracks, significant and sacred sites laid down from the time of creation. They express the origins of all vitality and are essential to its universal maintenance. At the same time they are intensely personal.

The significance of country is difficult for non-Indigenous people to grasp. One of the most vivid attempts to convey its meaning was made by the late Professor Bill Stanner:

No English words are good enough to give a sense of the links between an Aboriginal group and its homeland. Our word 'home', warm and suggestive though it be does not match the Aboriginal word that may mean 'camp', 'hearth', 'country', 'everlasting home', 'totem place', 'life source', 'spirit centre' and much else all in one. Our word 'land' is too spare and meagre. We can now scarcely use it except with economic overtones unless we happen to be poets. The Aboriginal would speak of 'earth' and use the word in a richly symbolic way to mean his 'shoulder' or his 'side'. I have seen an Aboriginal embrace the earth he walked on. To put our words 'home' and 'land' together into 'homeland' is a little better but not much. A different tradition leaves us tongueless and earless towards this other world of meaning and significance.⁵

The distance between our traditions is certainly profound. But I suggest it is more than mere difference that gives the particular quality to the lack of recognition of Indigenous culture and religion. We manage, in Australia, without sharing beliefs, to recognise many other religious traditions different to that of the Judeo-Christian world. The Islamic Faith, Buddhism, Hindu and Shinto Religions may not always be extended the fullest respect, but their quality as genuine religious beliefs is not impugned or called into question in the same manner as are Indigenous beliefs.

It is not merely that Aboriginal and Torres Strait Islander cultures have different beliefs and those beliefs find expression in different forms. It is the location of the spiritual in the physical landscape that generates so much difficulty in the extension of respect.

Values which underpin the dominant settler culture of Australia are directly confronted by the Indigenous relationship to land. The analysis of this relationship by Judge Blackburn in the Gove Peninsula case, *Milirrpum vs. Commonwealth*⁶, revealed the divergent values which collide when Anglo-European concepts are applied to Indigenous culture.

The Judge was impressed with the depth and reality of the Aboriginal connection to land to the extent that he ventured the curious thought that possibly Aboriginal people were owned by the land rather than owning it. But in his view, their relationship failed to satisfy the common law test of ownership by lacking to demonstrate a right to exclusive possession. The significance of exclusive possession of precisely defined areas of land, of course, reflects the values and needs of a sedentary agricultural society. Land in the common law tradition is primarily defined by its utility; it is an economic commodity characterised by the ability to buy and sell and use it as you see fit, constrained only by the rights of adjacent land owners.

As Professor Stanner said, "we can scarcely use" the word land "except with economic overtones". The location of religious values in an economic commodity brings those values into sharp relief against values shaped by the hard edge of materialism and economic rationalism. And this is not an abstract philosophical collision of values. It happens in the physical world where spiritual significance collides with scrapppers and bulldozers.

Perhaps the greatest attention, certainly the most critical attention, is paid to Indigenous beliefs when they are pitted against proposed land developments and resource extraction projects. It is a field of contest where the precise dollar figures of employment and export earnings are contrasted against the intangible and divergent beliefs of another culture. There is a kind of echo of the social Darwinian theory as progress and development is seen to be impeded by the beliefs of an ancient culture clinging to its impractical heritage. As one Aboriginal man wryly put it: "Indigenous culture is seen, basically, as a speed hump on the road to development."

Whenever these conflicts between development proposals and the protection of significant sites occur, not only scepticism but frequently deep

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cynicism is expressed about the existence and characters of those sites. The Ngarrindjeri experience with Hindmarsh Island and the Gamilaraay people's inability to protect Boobera Lagoon near Boggabilla on the New South Wales-Queensland border are only two of the more recent demonstrations of this denigration of belief and accusations of bad faith. Always there is a demand for proof.

The United Nations Rapporteur commented on the complexities and the inconsistency provided by various State, Territory and Commonwealth laws. He observed that:

One criticism which is often put forward is the inability of these laws derived from a western legal system to take account of basic Aboriginal values. A basic difficulty arises from the fact, that under some laws, Aboriginals have to prove the religious significance of sites and their importance.⁷

One wonders how proof of the appearance of the Blessed Virgin Mary in Lourdes would fare in 1998 if pitched against a billion dollar mining proposal. Would the issue ever even emerge? I have chosen this example because it is most familiar to me - I am sure you could think of many others from different belief systems. But the problems of proof are not confined to the credit of stories given substance, resonance, meaning and significance by faith and belief. They go to the processes of inquiry and the intrusive public nature of the disclosure of information to inappropriate people. Acute sensitivity is not confined to Aboriginal people. The commercial-in-confidence is a very real form of secret business.

In a multicultural society where competing interests and values must be balanced, there is no doubt of a need for a discretionary process of assessment which accords all parties natural justice. It is the nature of that balance and the extent of protection which is of deep concern.

The *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* (CTH) was reviewed by the Hon Elizabeth Evatt AC in 1986. The Review was guided by seven policy objectives. Three in particular are worth reciting:

- To respect and support the living culture, traditions and belief of Aboriginal people and to recognise their role and interest in the protection and control of their cultural heritage.

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- To ensure that heritage protection laws benefit all Aboriginal people, whether or not they live a traditional lifestyle, whether they are urban, rural or remote, so as to protect the living culture/tradition as Aboriginal people see it now.
- To resolve some of the difficulties of developers by better procedures which ensure early consideration of heritage issues in the planning process, effective consultation with Aboriginal people and genuine mediation.

The latter point identifies that in common with many conflicts concerning Indigenous rights, early consultation and negotiations can avoid many unnecessary conflicts and achieve a reconciliation of interests in a practical way. The work clearance agreements negotiated in South Australia by the Aboriginal Legal Rights Movement are a very good demonstration of this approach.

Unfortunately the recommendations of the Evatt Report have not been translated into effect in the Aboriginal and Torres Strait Islander Heritage Protection Bill 1998 which is intended to replace the current *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* (Cth).

The Bill proposes to minimise Commonwealth involvement in Aboriginal cultural protection. The States and Territories will be accredited after meeting certain minimum standards. The Commonwealth would then have no role in the protection of Aboriginal heritage except in relation to unaccredited regimes or in cases where the protection of an area or object might be in the 'national interest'.

The Bill has been widely criticised. Elizabeth Evatt was quoted as saying that the Bill represented an abdication of Federal responsibility to preserve Aboriginal heritage by handing back its protective power to the States without adequate minimum standards. She said that this was contrary to her findings that most State and Territory regimes do not adequately protect cultural heritage.⁸

The Aboriginal and Torres Strait Islander Commission also criticised the Bill on a number of similar grounds including the fact that 'national interest' is not defined, and may be limited to decisions which affect export income and employment rather than allowing a broader definition which might include the protection of significant areas and sites.

The Parliamentary Joint Committee on Native Title and Aboriginal and Torres Strait Islander Land Fund reviewed the Bill in light of the recom-

mendations made in a previous report and reported its further findings in its 12th Report in May 1998.

The Committee recommended specific changes to the Bill including that it should:

- provide blanket or presumptive protection of Indigenous heritage and for States and Territory legislation to have this protection in order to achieve accreditation;
- define the 'national interest' comprehensively (but not exhaustively) so as to include the protection of Indigenous heritage; and
- provide a more detailed and comprehensive standard by which States and Territories may qualify to adopt their own heritage protection regimes subject to the Commonwealth's last resort function.⁹

These suggested amendments would resolve in some measure the main flaws of the Bill but it is arguable that they do not go far enough. In particular, the retention of any form of a 'national interest' criterion for Commonwealth intervention may be a step away from the fundamental purpose of the legislation and the Commonwealth national responsibility to provide a remedy of last resort for all Indigenous heritage which is not protected adequately by State or Territory legislation. The minority report of the Committee rejected the Bill on this ground:

The Minority emphasises the point entailed jointly by evidence from Ms Elizabeth Evatt, Professor Garth Nettheim, and Mr Mick Dodson that:

- The combination of an inadequate accreditation regime;
- together with 'national interest' criterion for submitting heritage protection to the Commonwealth accredited jurisdiction; means
- in practice, the Bill would establish a heritage protection regime which could not be used as a last resort in an overwhelming majority of cases.

Despite the Committee's concern about the Bill the Government proceeded with it in its original form and it has passed through the Lower House without amendment. It is now to be considered by the Senate.

Conclusion

In closing, the failure of our country to accord respect and effective protection to the religious beliefs of its Indigenous peoples calls into question our obligations under Articles 2, 18, 26 and 27 of the International Covenant on Civil and Political Rights dealing with religious freedom, equality before the law and minority rights to culture and religion. It ignores the call of the United Nations Special Rapporteur for Indigenous Peoples to respect “the profound highly complex and sensitive relationship that Indigenous people have with their land”.

But more immediately, it refuses the gift of Indigenous perception.

To see the spiritual within the material, to recognise our intimate relationship and obligation to all living things in the natural world, draws us into relationship with timeless and transcendent values. Surely this is one of the most nourishing and sustaining perceptions of the human spirit. To deny respect for this is to deny respect for our own spirit.

Notes

- 1 McWilliam, A., “Negotiating Discretion: Sacred Sites, Damage and Due Compensation in the Northern Territory”, *Australian Aboriginal Studies*, no. 1, 1998, p. 6.
- 2 *Ibid.*, pp. 6-7.
- 3 “Implementation of the Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief”, report submitted by Mr Abdulfattah Amor, Special Rapporteur UNDOC, E/CN. 4/1998/6/ADD.1, p. 9.
- 4 *Ibid.*, p. 17.
- 5 Stanner, W. E. H., *White Man Got No Dreaming: Essays 1938-1973*, Australian National University Press, Canberra, 1979, p. 230.
- 6 *Milirrpum v Nabalco* (1971) 17 FLR 141 (NTSC).
- 7 Amor report, *supra* note 3, para. 93.
- 8 See also Kingston, M., *Sydney Morning Herald*, 12 May 1998, p. 6.
- 9 Parliament of the Commonwealth of Australia, *Parliamentary Joint Committee on Native Title and the Aboriginal and Torres Strait Islander Land Fund* (12th Report), Canberra, 1998, para. 4.4.

Human Rights: Fifty Years and On

BY GILLIAN BIRD

In this year, 1998, as we mark the fiftieth anniversary of the Universal Declaration of Human Rights, it is important to recognise the impact the Declaration has had and continues to have, on peoples all around the world, regardless of race, sex, culture or religion. What is equally important is that the beliefs inscribed in the Universal Declaration were not invented fifty years ago. They have been with us for centuries. The earliest philosophical thinkers espoused them. Every great religion teaches them. That is why the Universal Declaration can claim rightly to embody a set of universal principles - principles that apply equally to all human beings.

The Universal Declaration was adopted in 1948, in part to fulfil a requirement in Article 13 of the UN Charter which calls on the General Assembly to initiate studies and make recommendations for the purpose of "assisting in the realization of human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion". Australia can be proud of the key role played by our then Foreign Minister, Dr Evatt, in ensuring that respect for human rights was placed alongside peace, security and development as the primary objectives of the UN. In recognition of Australia's efforts in championing human rights in the newly established UN, we were included in the eight-member committee charged with drafting the Universal Declaration. Moreover Australia, in the person of Dr Evatt, presided over the General Assembly when the Declaration was adopted by the United Nations in 1948.

The international community wasted no time in giving effect to the human rights commitments in the UN Charter: the Universal Declaration of Human Rights was one of the first major achievements of the United

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Nations. Indeed, it was the first time that human rights and fundamental freedoms were set forth in such detail in a single document.

After fifty years the Universal Declaration remains a powerful instrument which continues to exert an enormous effect on lives all over the world. Although not legally binding, it carries immense moral force. It is rightly regarded as the foundation of the international human rights system. Its adoption prompted a sustained and intensive series of negotiations which have seen the drafting and adoption of a set of international instruments which today form a significant body of international law. These include the two basic Covenants, on civil and political rights, and on economic, social and cultural rights - which, together with the Universal Declaration, form the Universal Bill of Human Rights - as well as other international legal instruments dealing with issues such as freedom from torture and racial discrimination, and the rights of women and children.

This year, 1998, is not only the fiftieth anniversary year of the Universal Declaration of Human Rights. It also marks the five year review of the Vienna Declaration and Program of Action agreed on at the World Conference on Human Rights in 1993 by Australia and 170 other countries. The Vienna Declaration reaffirmed the international community's commitment to the purposes and principles contained in the Universal Declaration of Human Rights, and in particular the universality, indivisibility and interdependence of all human rights, thus providing clear guidance for promoting and protecting all rights - civil, political, economic, social and cultural. The commemoration of these two events has a special significance given the interrelationship between the Universal Declaration and the Vienna Plan of Action: if the Declaration is the foundation on which the UN's human rights goals are built, then the Vienna Plan of Action charts the course for the international community into the next century by providing a framework of principles and a program of activities for achieving these goals.

This is a time both to reflect on the achievements in developing and maintaining this international human rights system, and to consider what is still required to consolidate and further develop it. As stated by the Prime Minister, the fiftieth anniversary is an opportunity for all of us to reinvigorate efforts to ensure that human rights are enjoyed by all people in all countries. He has also pledged that Australia will continue to do all it can to promote and protect the rights enshrined in the Declaration to ensure they become a reality throughout the world.

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While much has been achieved in the five decades since the adoption of the Universal Declaration of Human Rights, it is clear that respect for all the rights articulated in the Declaration is far from universal. The Universal Declaration will not be able to deliver its promised vision for the world if it is not implemented in a practical and coherent way.

Over the past fifty years, the UN has created an elaborate system of mechanisms to advance human rights, as well as to deal with violations of human rights as they occur. The treaty body system which underpins the UN's human rights mechanisms is an impressive body of international law. Today we have international laws which defend our basic right to life and the right of freedom of expression; laws which address the rights to work and to a decent standard of living, health and education; laws which advance and protect the rights of women and children; and laws which ensure the proper treatment of people regardless of race.

A recent major achievement was the adoption by the Rome Diplomatic Conference in July 1998 of a statute to establish an International Criminal Court. Australia played an active and constructive role throughout the negotiating process. The Court's establishment is one of the Australian Government's prime multilateral and human rights objectives. In welcoming the adoption of the Court's Statute, Australia's Minister for Foreign Affairs, Mr Downer, noted that "the creation of an International Criminal Court was a great victory for those who had fought long and hard to ensure that the perpetrators of the most heinous crimes against humanity would not be able to act with impunity".

We still have some way to go in developing this network of international law. There still exist gaps in international law in important areas such as according full protection for children from sexual exploitation and participating in armed conflict. Negotiations are currently proceeding in two working groups to elaborate optional protocols to the Convention on the Rights of the Child to fill these gaps. Australia is participating in both these working groups.

We also need to give adequate protection to the defenders of our human rights - those who often put their lives on the line to protect others - whether they be individuals, groups, NGOs, lawyers, or anyone committed to the promotion and protection of human rights and fundamental freedoms. Australia welcomed the adoption this year by the Commission on Human Rights of the Declaration on Human Rights Defenders, and looks forward to its adoption by the General Assembly on 10 December

1998. This would be an apt conclusion to the celebrations marking this "human rights year".

A key element in the UN's human rights system is the way in which it makes states accountable for meeting their obligations as parties through a monitoring system provided for in the six key treaties. Monitoring is undertaken by committees of independent experts whose key task is to examine periodic reports on implementation which parties are obliged to provide. Some of the committees have additional mandates to seek information from parties or to hear complaints from their citizens.

The first human rights instrument to establish an international monitoring system was the Convention on the Elimination of Racial Discrimination, adopted by the UN General Assembly in 1965. This convention not only defined and condemned racial discrimination, but also committed States to amend policy which creates or perpetuates racial discrimination. The Convention's monitoring mechanism - the Committee on the Elimination of Racial Discrimination - was subsequently established in 1969 when the Convention came into force.

The two Covenants dealing with economic, social and cultural rights, and civil and political rights also have monitoring bodies. The monitoring body of the International Covenant on Civil and Political Rights - the Human Rights Committee - is mandated not only to study reports from State Parties but also to consider complaints from one State against another or from individuals. But the monitoring body for the International Covenant on Economic Social and Cultural Rights, the Committee on Economic, Social and Cultural Rights, which was only established some ten years after the Human Rights Committee, does not have a mandate to consider complaints. This inconsistency has been the subject of international debate over the years, but it needs to be remembered that the Universal Declaration itself makes no distinction between civil and political, and economic, social and cultural rights. And that is precisely Australia's position. Australia's human rights policies are based on the universality of all fundamental human rights - civil, political, economic, social and cultural. We have consistently rejected the view that there exists a hierarchy or priority of rights. As far as Australia is concerned, all rights in the Universal Declaration are closely inter-related, inter-dependent and, above all, indivisible.

Three subsequent conventions also established treaty monitoring bodies: the Convention on the Elimination of All Forms of Discrimination against Women; the Convention against Torture and other Cruel, Inhu-

man or Degrading Treatment or Punishment; and the Convention on the Rights of the Child.

Apart from this formal system of monitoring States' compliance, special procedures such as working groups, special rapporteurs and special representatives of the UN Secretary-General are called upon to deal with burning issues as they arise. Australia has supported these arrangements as we see them as valuable tools to be used in the protection and promotion of human rights internationally.

Despite this impressive and ever-evolving body of international human rights instruments, we need to remember that the protections embodied in these instruments can only be fully realised if they are universally and fully implemented. The more effective and widespread the implementation of these instruments, the greater the protections to each and every individual. The real challenge facing us therefore is not only to continue developing the human rights system, but to do the less eye-catching but, if anything, more important work of ensuring that existing instruments and mechanisms work as effectively as possible.

However, as Professor Philip Alston (the Australian chair of the ESCR Committee) pointed out in a major report in 1996, the treaty monitoring system is experiencing serious difficulties. At the time of his report, 957 national reports under the 6 human rights treaties were overdue, thus leading to serious concerns about the ability of the treaty bodies to perform their monitoring role. Of equal concern was the fact that if all overdue national reports were submitted today, the Committees would not have the time or resources to deal with them expeditiously. For example, it has been estimated that it would take the Committee on the Elimination of Racial Discrimination twenty-four years to examine all its reports while the Committee on the Elimination of Discrimination against Women would require twenty-one years. If the burden of preparing reports is resulting in countries like Australia being well behind in meeting their obligations, and, even when submitted, the reports are not considered until they are well out of date, then the effectiveness of the system is severely compromised. Professor Alston's suggestions for improving the system focused on a streamlining of the reporting requirements both to encourage greater compliance with the obligation and to make the reports easier for the Committee to manage. Reducing the workload of the Committees in this way would enable them to deal with reports much more quickly, to identify problems promptly and assist parties in developing appropriate ways of dealing with them within a realistic timeframe. While Australia, along with Canada and New Zealand, has been championing this proposal, it

has not yet been accepted by many State Parties. But we will continue to push the issue.

Australia has also supported the efforts of the UN Secretary-General and High Commissioner for Human Rights to promote an integrated system-wide approach to the UN's human rights activities. The link between democracy, development, peace and human rights has been demonstrated time and again by global events - be it the situation in Cambodia or the internecine conflict of the Balkans. To promote mainstreaming of human rights across the UN system, the Office of the High Commissioner has been given the task of assessing the work carried out on human rights issues in the four Executive Committees of the United Nations - dealing with peace and security, economic and social affairs, development cooperation, and humanitarian affairs - and to participate regularly in every stage of the UN's activities in relation to actual or potential conflicts, or post-conflict situations. This approach has already been reflected in the increased cooperation and coordination between the Office of the High Commissioner for Human Rights and the United Nations Development Program, thereby enhancing the human rights aspects of this program which focuses on poverty elimination, the promotion of good governance and democracy.

We also see scope to improve the functioning of the UN Commission for Human Rights, the pre-eminent multilateral human rights forum. The current Chairman of the Commission, Ambassador Selebi of South Africa, launched an initiative to review its agenda and procedures with a view to eliminating unproductive activity. Australia has been a keen participant in this process. In relation to human rights, as for other international issues, our preference is for cooperation rather than confrontation, and we make no secret of the fact that we regard a confrontational approach as frequently unhelpful and unproductive. As was seen at the 1998 session of the Commission, a good deal of its work, and the great majority of its resolutions and decisions, proceed on a consensus basis, with States making considerable efforts to accommodate a diversity of views. That said, there will always be occasions, particularly in a forum dealing with such sensitive issues, when consensus proves either impossible or meaningless, and the differences among States must be registered if the credibility of the Commission is to be preserved. But we hope that the greater degree of commonality of purpose evident in 1998 will become the norm.

Australia has a clear national commitment to the ratification and implementation of the human rights treaties. We are a party to all six key hu-

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man rights instruments, as well as to the two optional protocols to the International Covenant on Civil and Political Rights. As in any country, this is an ongoing and evolving process. As States sign and ratify instruments these need to be incorporated into domestic laws, consolidated within their institutions, and finally absorbed into their society and culture.

As well as our commitment to human rights domestically, Australia also has a strong commitment to assist other countries, particularly those in our region, to accept and meet human rights norms. We have sought to do this by taking opportunities, whether in bilateral contexts or multilateral forums, to promote the ratification of major international human rights instruments, as well as by providing guidance on and assistance for their implementation. Australia is also playing an increasingly active role in providing support to domestic institutions in countries where civil society and the rule of law are still underdeveloped. The government funds a range of training programs which seek to enhance those common elements in society which are vital to the democratic process, such as courts, police, parliaments, the media and national human rights institutions.

National institutions are a good example of how culture can be used to promote human rights. These institutions, established in conformity with international human rights standards, and taking into account different national circumstances, are one of the most practical and effective vehicles for the promotion and protection of human rights. A key strength of such institutions is their ability to reflect to a significant degree the different culture and local conditions of the societies in which they are established, while at the same time remaining faithful to international human rights standards. By being able to deal with issues with a sensitivity for local conditions that only a local body can have, and with a competence for finding solutions which, again, no outsider can easily replicate, these bodies make potent human rights advocates at the national level. They also have the added advantage of taking away the government's option of using national sovereignty arguments, which they may resort to when criticism or suggestions come from abroad.

For all these reasons, Australia has endeavoured to assist countries in their efforts to establish and strengthen these bodies. For example, we recently provided AUD 2 million to the Indonesian National Commission on Human Rights. When the former Suharto Government decided to establish the Commission in 1993, there were cries of scepticism from some who doubted the Commission's ability to maintain its independence and effectiveness when confronted with a multitude of human rights issues. It

has, however, disproved the sceptics and is a striking ambassador for national human rights institutions in our region, conducting investigations, spreading human rights education, and hosting conferences on topical human rights themes.

Australia also supports the establishment and operation of regional arrangements on human rights. The government has contributed \$275,000 since 1996 to finance the establishment and operation of the secretariat to the Asia-Pacific Forum of National Human Rights Institutions. This body, established in Darwin in July 1996, has become a vibrant, collegiate force in the regional human rights system, and an example of how institutions from countries with different cultural and religious backgrounds can work together in the pursuit of universal human rights goals. Australia also participates actively in the UN's annual workshop on Asia-Pacific regional human rights arrangements, the long-term objective of which is to transcend regional particularities and establish a bona fide human rights mechanism in this part of the world.

In conclusion, it is worth noting that the committee charged with drafting the Universal Declaration comprised eight people who represented a good cross-section of cultural and religious traditions, and had different patterns of socio-economic development. Apart from Australia, the committee included representatives from Chile, China, France, Lebanon, the then Union of Soviet Socialist Republics, the United Kingdom and the United States of America. The Declaration is well equipped to stand the test of time because the drafters of this document sought to embody in it rights which are foreign to no culture and native to all nations. In our dealings with other countries, this fundamental truth has been revealed again and again. As people around the world gather to commemorate the fiftieth anniversary of the Universal Declaration, the world community has a salient opportunity to remind itself that human rights are the foundation of human existence and the basis for co-existence.

Combating Racism: Multiculturalism and Reconciliation

BY ANGELA CHAN

This year is the twenty-fifth anniversary of the inauguration of the policy of multiculturalism in Australia. Before that time ethnic and racial discrimination were enshrined in the policy of the nation at all levels.

Externally, the White Australia Policy was in place, requiring that intending migrants to Australia, whatever their nationality, should be 75% substantially European, whatever that meant. It was left to junior clerks in the bureaucracy working from either interviews or photographs, to decide whether applicants were in accord with the racial requirements of the day.

In Australia itself, Australian citizenship was granted on the basis of colour and place of birth. Different people were given citizenship after one year, five years, or maybe never. During the depths of World War II, indigenous Australians and Asian Australians were not permitted to join the armed forces. The fact that some did is a testimony to the fundamental sense of fair play of ordinary Australians who defied government edicts. Even in comparatively recent years, some states did not permit indigenous Australians and Asian Australians to join the police force, while for a time any language other than English was banned in some Australian schools.

This is the past and we will never go back to it. But it is an essential recital of what every Australian over the age of forty will remember and will have encountered. Despite the fact that the nation's legislative face was wiped clean, racial and ethnic discrimination continued, and in fact it continues today. I am convinced that as we come to the end of the

twentieth century the greatest aid to the survival of prejudice and discrimination is stereotyping.

Australia has always been a multicultural society, and in colonial times stereotyping was a useful tool to divide the society and keep it in its place as part of a worldwide empire. For most of the nineteenth century, stereotyping was concentrated on three major groups. Indigenous Australians, who were the majority of the population up until the 1850s, were the main target for most of the nineteenth century. If you were going to take the land and the women of any group of people, it would be comforting to the plunderers to categorise them as less than human. The myth that they did not really own the land was expanded to the myth that they were not really here at all. In fact, until the High Court of Australia recently ruled otherwise, it was the official policy of Australia, and taught to young Australians, that when the British Empire took over Australia no one lived here. This policy was called *terra nullius*: land with no one. If anyone is puzzled how the stupidities of racial stereotyping can be accepted, we have only to address the fact that seven generations accepted as a legal truth an obvious lie. So Indigenous Australians were the first target of not only racial discrimination and vilification, but stereotyping which even denied them their humanity.

The next target for stereotyping and discrimination was the Irish. They came as prisoners of war, as rebels, and largely with a different language, religion and culture to the ruling regime. Their stereotyping spanned what was described as their papist superstitions, inclination to violence, drunkenness, and irresponsibility. Some critics of the Irish followed the stereotypes of Indigenous Australians and wrote them off as "monkey men".

The third great leg of discrimination in the last century focussed on the Asians, particularly the Chinese. The Chinese started coming to Australia in the 1830s. In some places, like the Northern Territory, they constituted a majority after the original Australian population. After the gold rush boom of the 1850s and the recessions which followed, the Chinese were a convenient scapegoat for the vagaries of the colonial economy. They were attacked on a personal basis as heathens, gamblers, practitioners of immorality and, of course, opium smokers. This stereotyping, which was put forward in the parliament and political meetings in every part of the country, totally ignored the police records which described them as the most law-abiding group in the community. The demonisation of the Chinese was continued with the invention of the yellow peril and the flight of fancy that great fleets of Chinese junks were going to arrive to take over the country. So deep was the prejudice against the Asians and the Irish

that William Parkes, the English-born five-time Premier of New South Wales, who is often called the Father of Federation, declared that there was no place in Australia for either the Chinese or the Irish. He was successful in excluding the Chinese. All this stereotyping served political purposes at the time. There is no doubt it has left a legacy.

Other groups came in for their share, such as southern Europeans, described in a Queensland Royal Commission report as coming from an inferior civilisation. We have seen the stereotyping of the “Balts,” who were displaced persons after World War II, and of course the Vietnamese, who came as refugees, and the Arabic-speaking peoples. I can only recall the words of a New South Wales policeman who said, “We have no trouble in our area, except for the Lebs”. He was referring to the Lebanese, who have made a unique contribution to Australia in the last hundred years, and who happened to be the majority in his area.

While the old religious discriminations in Australia have largely disappeared, there still remains overt prejudice against Muslims and Jews. Jewish synagogues are defaced and firebombed, while the Muslim women who choose to wear their veils become specific targets. This mindless prejudice is born of, and reinforced by, the stereotyping invented to justify political action at the national or international level. It is this stereotyping which has been used to advance the policy of assimilation, and it is still the desire of some groups in Australian society, and indeed a significant minority of individuals, to go back to the ugly days of assimilation. It is important to recognise that what assimilation means is that we all pretend to be the same: to have the same heritage, the same language, the same appearance, the same values, and even the same religion. Assimilation is a tool of racial discrimination. It has no validity in any community because it abolishes individual human rights. It has no place in our multicultural society. However, like many nations in the western world, Australia is facing a challenge about the efficiency and efficacy of the democratic process. This situation arises from the great changes in attitude and tradition which have long been occurring in western societies.

For many centuries, old countries such as England and the northern European nations have used the symbolism of monarchy as the means of unifying and directing the people towards common objectives in the political sphere. In countries such as Spain, Italy and Greece the state was the repository of the Catholic or Orthodox tradition which provided the central focus for loyalty and cohesion. Australia was part of a world empire, and as a dutiful colony we followed the mores of the imperial power. Since World War II, the symbolism which so long dominated the

western countries has become less important and less recognised, and new attitudes have developed. There was faith that the people's will would prevail, and indeed, in post-colonial Australia, living conditions, social security, education and health made tremendous advances. In both town and country there was a feeling that the society was sound and that people generally wanted to see a "fair go for all". In later times, however, the "fair go for all" has been replaced to some extent by a "fair go for me".

In the 1998 federal election there was little emphasis on the fact that Australians are now working longer hours for less pay, or that one Australian family in eight is living below the poverty line. The horrific youth unemployment, rising in some rural areas to as much as 46%, attracted attention but not much passion and commitment from the top. Despite the rise of the "greed is good" syndrome, Australians did register their votes and the informal vote appeared to be lower than before - in other words, although compelled to go to the polls, there was a feeling that the individual should make his or her voice heard.

The concept of loyalty and dedication to our neighbours and the community must be made the priority of national consciousness. It is not good enough to rely on outworn forms of loyalty to a monarch and call for sacrifice in the monarch's name. Loyalty to the people of the land and the greatest good for the greatest number must be taught as a basis for citizenship. This is one of the fundamental principles of multiculturalism, as well as respect for Australia's institutions and legal systems, equality of the sexes, recognition of English as the national language, and mutual respect for the many cultures, religions and traditions in Australia.

Until 1972, the White Australia Policy was still implemented. This meant that potential migrants had to prove that they were 75% substantially European to be accepted for migration to Australia. In 1973, the policy of multiculturalism was launched by the Hon. Al Grassby, former Minister for Immigration. It was done not because people simply thought it was a good idea, or they thought that the word was good, or because they plucked the theory out of the air. It was done after much community consultation around Australia and after examining policies around the world. For example, Americans have the "melting pot" theory. In essence this is the policy of assimilation, and we know that assimilation is something we find abhorrent. We only have to look at the ethnic communities and the effects on the Indigenous communities and the stolen generations to see that assimilation is not something which is an acceptable alternative to multiculturalism.

Canadians, who launched their policy of multiculturalism before the Australians, recognised the French and the English as the founding nations of Canada. That was all very well, but the policy failed to recognise the indigenous people, the Inuit and the Indian peoples of Canada. It also failed to recognise that there were other ethnic communities who were part of the Canadian community. In Canada today, the French are trying to secede. They are saying that they are more Canadian than the English, they are more Canadian than the Inuits and Indian peoples, they are more Canadian than everyone. The problem with the Canadian policy is that you can't have a country which says it is multicultural but only officially recognises two ethnicities. This is divisive in itself, and the Canadians are moving away from this model.

Paramount to the policy of multiculturalism launched in Australia was the recognition of the Indigenous people as the custodians of Australia for at least forty thousand years. They were at the apex of the family tree. That is a very important aspect of the policy. It also recognised that everyone else who has come to Australia over the past two hundred years were migrants of one generation, or a maximum of eight generations. The most important aspect of the policy of multiculturalism was that it was an inclusive policy for people of English speaking backgrounds and non English speaking backgrounds, and it recognised the Indigenous and ethnic communities as one multicultural community. It is very important that we recognise the policy of multiculturalism, as it was originally launched in 1973, as fundamental to our cohesive Australian society.

Part of the challenge for the new millennium is reconciliation with the original Australian people, which should be achieved sooner rather than later. The debate has gone on long enough. The issues are clear. It is time to translate the overwhelming desire for reconciliation into realities of a new Constitutional preamble, a new look at Australian history, and above all, a recognition that the very foundations of Australia for forty thousand years rested exclusively on the shoulders of Australia's Indigenous people. However, it is not enough simply to complete the process of reconciliation. We must also achieve a consensus on the policy of multiculturalism which guarantees every Australian a "fair go". Multiculturalism has been enshrined in legislation in some states and it has been the subject of lip service by many members of most parliaments, but this is not enough. Australia must proclaim in its fundamental document of unity, the Constitution, that this is a multicultural society. This would be a pledge that Australia would never again tolerate the politics of division.

Our young people cannot be ignored. Governments will continue to err by ignoring the voice of youth, and by simply assuming that they will continue with the traditional protocols and agree with the rhetoric of the major political parties. There is a challenge for institutions to ensure that they have strategies in place which address the needs of our young people, who will be the future leaders in the new millennium.

The last federal election witnessed a turning point in the history of Australia and the combating of racial discrimination. Never in the twenty-five years since the White Australia Policy was abolished, multiculturalism inaugurated and the Racial Discrimination Act adopted has there been such a significant victory against the forces of racism and reaction.

During the past quarter-century racism did not disappear because of legislation. It was present at the personal level, and indeed at the organisational level in many parts of Australia. But in the last three years it found a new voice and a new strength based on valid resentment of neglect and hardship imposed on many communities that suffered from the policies of economic rationalism. It is in such circumstances of hardship that racists have always raised their banners: blame the Jews, blame the Asians, blame the Blacks.

We have now witnessed the failure by the leaders of the upsurge in racism in their bid to take their places in the national parliament. Only one person will find a lonely and isolated place in the Senate. The resignation of several One Nation members of parliament in Queensland will, I believe, add to the decay of One Nation. The upsurge in racism has been turned back. But the question remains, for how long?

The Australian population is made up of more than two hundred ethnicities, eighty different religions and ninety different languages, in addition to indigenous Australian languages. There is no way that the jackboot of assimilation and racial discrimination can destroy multicultural Australia with its inclusive values representing a "fair go for all Australians".

Cultural Diversity in International Law

BY HILARY CHARLESWORTH

How does international human rights law respond to the phenomenon of cultural diversity? Can we respect culture and protect rights at the same time? The international community is made up of myriad cultures and traditions and so the issue is a very live one.

In international human rights law, the issue of cultural diversity has two distinct aspects. The first is the issue of cultural diversity at the international level: can international human rights law claim to be truly universal? When the Universal Declaration of Human Rights (UDHR) was adopted fifty years ago, the UN had only 56 member states. It was by and large a Western club, with very few Asian or African members. During the drafting of the UDHR, there was no discussion at all about whether the values enshrined in the Declaration were culturally specific. The description 'universal' was seen as uncontroversial, a statement of fact, and the drafters of the UDHR, a committee chaired by Eleanor Roosevelt, mainly drew inspiration from Western sources and concepts in their work.

Today, the UN has 185 member states, the majority of which are non-Western. These states are extremely wary of any signs of what they perceive to be neo-colonialism in the form of the imposition of Western culture and values. The area of human rights has understandably been a major battlefield in this context because of its assumption that there are rights that attach to people everywhere simply by virtue of their humanity.

Asian and African states, in particular, have argued that the UN human rights system focuses on rights that are built on a very Western, limited notion. For example, they have been critical of the priority given to the individual's needs and rights, arguing that the rights of the community are often more important. They have also been critical of the empha-

sis placed by Western countries on civil and political rights – such as the right to freedom of speech and assembly – at the expense of economic and social rights – such as the right to food and the right to housing.

For example, in our region, Dr Mahathir of Malaysia has argued that the UDHR should be redrafted to take ‘Asian values’ into account. He has described the notion of human rights as a vehicle for the re-imposition of colonialism on developing countries. So too, the permanent secretary of the Ministry of Foreign Affairs in Singapore, Kishore Mahbubani, has linked the collapse of the West’s economic and social structures to the West’s decadence, which he in turn connected to an over-emphasis on human rights.¹

The debate between the ‘universalists’ and the ‘cultural relativists’ is sometimes based on inaccurate understanding of each other’s position. Western understanding of human rights is not inevitably individualistic – indeed there is an important tradition of communitarianism in Western philosophy. At the same time, ‘Asian’ values are not completely communal by any means. An example of this is the priority given to the idea of entrepreneurship, which celebrates individualism, in many Asian societies.²

Professor Yash Ghai has pointed out that, in the Asian context, rejection of human rights principles typically comes from governments seeking to justify repressive practices rather than promoting social practices. Minorities and human rights organisations within Asian states generally see international human rights standards as important benchmarks to assess government practices.

Indeed, Dr Mahathir’s former deputy, Anwar Ibrahim, has said:

If we in Asia wish to speak credibly of Asian values, we too must be prepared to champion those ideals which are universal and belong to humanity as a whole. It is altogether shameful, if ingenious, to cite Asian values as an excuse for autocratic practices and denial of basic rights and civil liberties ... It is true that Asians place greater emphasis on order and social stability. But it is certainly wrong to regard society as a kind of false god upon whose altar the individual must constantly be sacrificed.

The issue of cultural diversity at an international level has involved much rhetoric and absorbed much diplomatic energy, but it is worth noting that, in practice, all 185 members of the UN are parties to at least one

human rights treaty. They were also able to finally agree at the Vienna Conference on Human Rights in 1993 that 'the universal nature of [international human rights law] is beyond question.' The Vienna Declaration stated that:

While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms.

It has been pointed out that both the universalists and cultural relativists have many assumptions in common – particularly about the value of 'human dignity'³ – and useful attempts to formulate pluralist approaches to human rights have been made, particularly by anthropologists.⁴

This first debate over cultural diversity has essentially been one between different states. A second aspect of the debate over cultural diversity in human rights law takes place within national societies. This debate is over the rights of culturally distinct communities to retain their own traditions and culture: to what extent do ethnic or religious minorities within a particular state have the right to maintain their particularity?

I use the term 'culture' here to mean (in Clifford Geertz' words) 'an historically transmitted pattern of meanings embodied in symbols, a system of inherited conceptions ... by means of which men communicate, perpetuate, and develop their knowledge about and attitudes towards life.'⁵ Of course 'culture' is never internally homogenous. It is continually contested and negotiated.⁶

International human rights law provides some protection for minority groups. For example, article 27 of the International Covenant on Civil and Political Rights (ICCPR) provides:

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.

What does this right actually mean? The interpretation of article 27 by the Human Rights Committee, which monitors the implementation of the

ICCPR, has been relatively expansive. The Committee has adopted an 'objective' test to decide whether ethnic, religious or linguistic minorities exist, refusing to accept individual States' assessment of this issue. It has stated that 'the survival and continued development of the cultural, religious and social identity of minorities ... [enriches] the fabric of society as a whole.'

The Committee has decided that article 27 imposes a positive obligation of protection of minorities in order that the identity of a minority is preserved and that its members can enjoy and develop their culture and language.⁷ It has also endorsed the notion of special treatment for minorities if it is aimed at correcting conditions that impair the enjoyment of the rights in article 27.

In 1992, the UN General Assembly adopted a Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities.⁸ This document emphasises that States must take affirmative steps to ensure the rights of minorities to their particular identity. The Declaration requires States:

to take measures to create favourable conditions to enable persons belonging to minorities to express their characteristics and to develop their culture, language, religion, traditions and customs, except where ... contrary to international standards.

From these standards, it can be argued that depriving a person of the cultural context that provides the environment in which autonomy and independence may develop is a violation of human dignity.⁹

Another relevant provision for the issue of cultural diversity within national societies is the right to self-determination. The centrality of this right to the international legal order is signified by the fact that it is set out in article 1 of both the ICCPR and the International Covenant on Economic, Social and Cultural Rights (ICESCR):

All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

A third set of human rights norms that are relevant to cultural difference within states are those relating to equality and non-discrimination. The Convention on the Elimination of All Forms of Racial Discrimination of 1966 deals with this right in detail. The more general right to non-discrimination is set out in article 26 of the ICCPR:

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour ... or other status.

So, in summary, while the international community has been relatively wary of conceding that cultural differences on the international level can undermine the universality of human rights norms, it has shown considerable respect for cultural diversity *within* nation states.

Thus far I have used the terms 'culture' and 'cultural diversity' as if they were unproblematic, neutral terms. Of course, the definition of 'culture' is a highly political and contentious one – who defines 'culture', and who benefits from it?

A case study of women's rights in international law shows how problematic the category can be. Claims of women's rights are often countered by counter claims of religious and cultural rights. For example, we can see this in the striking number of reservations made to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) on the basis of respect for religion. Another example is the response (made by the Catholic Church and Islam in particular) in some of the global conferences in the 1990s, particularly in Cairo in 1994 and in Beijing in 1995.

At the UN Conference on Population and Development (UNCPD), the Catholic and Islamic religious traditions strenuously opposed placing women's health, reproduction and sexuality within a human rights framework. Because the UN conferences work on a consensus principle, the coalition was able to delay agreement on a text until very late in the conference. The coalition resisted the definition of the notion of reproductive health to include sexual health, 'the purpose of which is the enhancement of life and personal relations, and not merely counselling and care related to reproduction and sexually transmitted disease.' This text was finally accepted, with strong reservations made by Catholic and Islamic states.¹⁰

But the Holy See and Islamic states managed to undermine this apparent advance at the next international summit, the Copenhagen Summit on Social Development. Unusually, and at the insistence of the Holy See and Islamic states, the Copenhagen Platform for Action refers to reservations made to the UNCPD documents, which gives them renewed status. A statement in a draft of the official Beijing conference document that reaffirmed commitments made about women in earlier summit documents, especially at UNCPD, was vigorously contested by the Holy See. The Holy See was also active in ensuring that parts of the official documents containing references to reproductive health, fertility control and sex education, all endorsed at the UNCPD, remained in square brackets during the negotiations for both Copenhagen and Beijing, indicating lack of consensus on their adoption.¹¹ In the end, however, the UNCPD wording was preserved.

A particular concern of Islamic states has been the issue of the universality of human rights. After much debate and controversy, the Vienna Second World Conference on Human Rights in 1993 affirmed that human rights were universal, indivisible, inter-dependent and inter-related, and that 'while the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of states, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms.'¹² At the 1994 UNCPD, Islamic states were successful in watering down the Vienna language by inserting a rather contradictory clause stating that implementation of the document should both be in conformity with universally recognised human rights but also 'should be consistent with full respect for the various religions and ethical values and cultural backgrounds' of nations.¹³ Islamic states also revived this debate in the context of women's rights at Beijing. Although the Vienna language was eventually included in the preamble to the Beijing Platform, on the table until the very last moments of the official Conference was a proposal to insert a footnote to the effect that different cultural and religious traditions were relevant in implementing the human rights of women. The footnote did not make its way into the final document, apparently as a trade-off for the exclusion of any reference to women's right to freedom of sexual orientation.¹⁴

There are signs of the success of Islamic lobbying at Beijing in the official documents. For example, the Beijing Platform for Action acknowledges women's right to inherit property, but because of resistance by some sub-Saharan and Islamic states, not the right to inherit in equal shares to

men. The signs of the failure of the religious lobbying are evident in the reservations made to the Platform, for example the Holy See and some Catholic and Islamic states rejected the idea of a woman's right to control her sexuality (para 97) and they also rejected the call to review punitive laws for women who had had illegal abortions (para 107 (k)).

The role of the Holy See and Islamic countries was not unremittingly negative at Beijing. Indeed, Professor Mary Ann Glendon, the leader of the Holy See's delegation, supported many aspects of the Beijing Platform for Action, for example recognising the economic value of women's work in the home. My point is rather that the Catholic and Islamic delegations were interested in limited notions of the rights of women that involved no rethinking of religious traditions.

The reservations made by Islamic states to the Convention on the Elimination of All Forms of Discrimination against Women are another manifestation of the tension between human rights and religious traditions. The Cairo Declaration on Human Rights in Islam states that women are equal to men in dignity, but not in rights. Unlike the Holy See, many Islamic states have become a party to the Women's Convention. However they have lodged formal statements of reservation to the treaty.¹⁵ Typical of these reservations is that of Egypt. With respect to article 16 of the Women's Convention, which requires that states observe equality between men and women in all matters concerning marriage and family relations, Egypt's reservation states that this matter must be subject to Islamic *Shari'a* law.

Some states have made even more sweeping reservations. For example, the Maldives' reservation commits it to comply with the Convention's provisions 'except those which the Government may consider contradictory to the principles of the Islamic Shari'a upon which the laws and the traditions of the Maldives is founded.' Moreover, the reservation goes on to say 'the Republic of Maldives does not see itself bound by any provisions of the Convention which obliges it to change its Constitutions and laws in any manner'. While there is little question that this type of reservation is invalid under international law because it undermines the object and purpose of the treaty, there are no satisfactory mechanisms in international law to challenge reservations adequately.¹⁶ A number of states have objected to the reservations,¹⁷ but the objections have been rejected by the Islamic states as a form of religious intolerance.¹⁸ Thus Islamic states are still considered parties to the Women's Convention although they have rejected the equality provisions that are at its heart. Many other countries have made reservations to the Women's Convention, but the Islamic res-

ervations, along with the Israeli, Indian and UK reservations, that protect the laws of religious communities, are the only ones based on religious grounds.

So, in the context of women's rights, major religious traditions have regarded human rights as a sort of Trojan Horse, with a belly full of subversive values. Why do women's rights pose so many problems for religions? Such traditions are an important part of the life of human society. They sustain both spiritual and temporal hierarchies. At the same time, they have contributed to and reinforced the historic relegation of women to the sphere of home, hearth and family, and women's traditional exclusion from the public sphere of the economy, political life and power. The idea of separate spheres based on gender is accompanied by a common image of womanhood presented in the texts of all major religions: it is integrally connected to motherhood, submission, sacrifice and duty – being a woman entails obedience, not only to God, but to fathers, husbands and other male family members. Indeed there are many passages in the Bible, the *Qur'an* and the sacred texts of Hinduism and Buddhism that explicitly present women as the property of men.¹⁹

In other words, the major religious traditions operate with asymmetric accounts of manhood and womanhood. This is rationalised not as inequality as such, but as based on a type of 'separate but equal' doctrine. Women may have similar moral and spiritual worth to men, but their life work is fundamentally different. This is why the Catholic Church has found the issue of women's ordination so difficult: priesthood is simply not within the province of womanhood. Similarly, in orthodox Judaism, women are disqualified from being rabbis and performing most public functions.²⁰ In Islam, a verse of the *Qur'an* declares that men have *qawama* [guardianship and authority] over women because of the physical advantage men have over women and because men spend their property in supporting women.²¹ The *Shari'a* interpretation of this verse is that men as a group are guardians of and superior to women as a group and the men of a particular family are the guardians of and superior to the women of that family. An associated principle is that of *al-hijab*, or the wearing of the veil, symbolising the assignment of women to the private domestic sphere. Women also have much fewer rights than men in family and inheritance law.²² Attempts by scholars to reinterpret religious texts to eradicate the asymmetry have had little apparent impact on actual religious practices. The problem with a 'separate but equal' approach, as we have learned from the experience of segregation in the United States and that of apartheid in South Africa, is that the promise of equality is illusory if

groups are running different races, or assigned to different spheres. There is no meaningful equality in denying women the status of being a priest, rabbi or mullah.

Given the fundamental inequality between women and men on which the major religious traditions operate, it is small wonder the international law of human rights which regards sex and gender as irrelevant to rights poses a great challenge to those traditions. The challenge has not been taken up in any meaningful way: unfortunately the approach seems to be to resist engagement and dialogue and to work hard to undermine many women's rights at the international level. In this way, the transformative possibilities of human rights law are being squandered.

The failure to come to grips with human rights law is also evident in local contexts. For example, in Australia many religious institutions lobbied successfully to gain exemption from the state and federal laws prohibiting sex discrimination. Thus the Sex Discrimination Act specifically excludes from its provisions sex discrimination in the ordination or appointment of priests and ministers or members of a religious order (sec 37 (a)) and 'any ... act or practice established for religious purposes, where the act or practice conforms to the doctrines, tenets or beliefs of that religion or is necessary to avoid injury to the religious susceptibilities of followers of that religion.' (sec 37 (d)). If the Churches had lobbied to be exempted from race discrimination laws, it would have been regarded as quite unacceptable by their members and by the community generally. There is no principled reason why the religious exemption from sex discrimination laws is not similarly problematic.

Second, religious traditions must be prepared to interpret their sacred texts and traditions in ways that are consistent with the protection of human rights – developing a 'human rights hermeneutic'.²³ In some contexts, this has already proved possible – for example, at the Second Vatican Council the Catholic Church adopted a *Declaration on Human Freedom* which vindicated the right of people to freely choose their own conscientious religious beliefs, although the right had been denied for centuries by the Church. In the context of Islam, the Sudanese jurist, Abdullahi An-Na'im, has described a process of reinterpretation of the sources of Islamic tradition in a way that both preserves legitimacy and is consistent with human rights norms. He has argued that we need to understand that religious traditions reflect a historically conditioned interpretation of scripture, influenced by social, economic and political circumstances.²⁴ For example, with respect to the strictures on the role of women in the *Shari'a*, we need to note that equality between women and men at the

time of the development of the *Shari'a* in the Middle East would have been inconceivable. By analysing the *Shari'a* principle of *qawama*, the guardianship and authority of men over women, it can be seen to be based on assumptions that have little relevance today – that men are stronger than women and that men financially support women. The principle, An-Na'im has suggested, should not therefore retain its legitimacy. A similar analysis could apply to the scriptures of Christianity that are used to justify the exclusion of women from the priesthood.²⁵

A human rights approach indicates that it is important to pay attention to the political uses of claims of religious culture. We need to ask whose culture is being invoked, what the status of the interpreter is, in whose name the argument is advanced, and who the primary beneficiaries are.²⁶ An-Na'im has observed that Islamic governments, when pressured to observe Islam, 'have tended to enunciate policies that have a differential impact upon the weaker elements of society [particularly women and minorities]'.²⁷ So too, Ann Mayer has noted the tendency in Islamic states to use Islam as an interchangeable rationale with 'the rule of law', 'public order and morality' and 'state policy' to suppress any activism by women.²⁸ A good example of this was a 1997 statement of the Muslim Governor of Kandahar, a province of Afghanistan, rejecting attempts by the Grameen Bank of Bangladesh to lend money to rural women to start their own businesses. He was quoted as saying that '[t]he motive of the bank was to lead Moslems away from Islam and to promote shamelessness among women.'²⁹

A human rights approach also requires a close analysis of the invocation of religion by the Holy See in its international lobbying against certain women's rights. Whose interests are served by arguments based on religion and who comes out on top? At the international level religious traditions are used in a complex way to preserve the power of men. The appeal to the sanctity of religion is considerably reduced if it is the case that it is being used to bolster the existing distribution of power and privilege.³⁰

Notes

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- 5 Geertz, C., *Interpretation of Culture*, 1973, p. 89.
- 6 Tully, J., *Strange Multiplicity*, 1995, p. 11.
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- 8 A/RES/47/135, 18 December 1992.
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- 16 See generally Simma, B., "Reservations to Human Rights Treaties - Some Recent Developments" in Hafner, G., et al eds, *Liber Amicorum Professor Seidl-Hohenveldern - in honour of his 80th birthday*, 1998, p.659.
- 17 See Austria, Canada, Denmark, Finland, Portugal and Sweden. The objections can be found at <http://www.un.org/womenwatch/daw/>
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- 22 *Ibid.*, p. 34.
- 23 *Ibid.*, pp. 15-16.
- 24 *Ibid.*, pp. 46-7.
- 25 See Fiorenza, E., *In Memory of Her: A Feminist Theological Reconstruction of Christian Origins*, 1983; Countryman, L. W., "The good news about women and men" in

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27 An-Na'im, A., *supra* note 21 p. 26.

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Catholicism, Gender and Human Rights

BY SANDIE CORNISH

From rejection to proclamation: a brief overview of the development of Catholic thinking on human rights

The Catholic Church's teaching on human rights is part of what is known as Catholic Social Doctrine or Catholic Social Teaching. Catholic Social Teaching is grounded in Biblical revelation, the teachings of the leaders of the Early Church (often known as the Fathers of the Church, although there were also some significant 'Mothers'), and in the wisdom gathered from the experience of the Christian community as it has responded to social justice issues through time (also known as Tradition). Catholic Social Teaching develops through time as it responds to new situations and learns from advances in human knowledge. It uses perennial principles for reflection and also more dynamic middle axioms or criteria for judgement. Catholic Social Teaching also includes less authoritative, more changeable and more specific guidelines for action in the particularity of given cases or historical situations.

Few people today would doubt that the Catholic Church is a great champion of human rights, yet the Church has not always viewed the concept of human rights as a positive thing. The journey of the Catholic Church from an outright rejection of human rights to a very active and committed proclamation of human rights is instructive for us all as we celebrate the fiftieth anniversary of the Universal Declaration of Human Rights.

Monsignor Franco Biffi, of the Lateran and Gregorian Universities, describes the Church's engagement with the idea of human rights as hav-

ing passed through four phases: rejection, discernment, dialogue, and proclamation.¹

The phase of rejection (Pius VI-Pius IX)

The Church's initial response to the French Revolution and the resultant Declaration of the Rights of Man and of the Citizen was complete rejection. This was essentially a defensive reaction against the anti-Christian, anti-religious, anti-clerical, rationalist and indifferentist spirit of the movement which produced the Charter of 1789.

The Church saw the French revolution as proclaiming a 'liberty' that was total and without limits. Such a 'liberty' was seen as ultimately promoting a freedom from God, the laws of God, and the social requirements of the common good. The base of this movement for liberty was naturalistic and materialistic.

The Church's rejection of the human rights ideas being promoted reached a peak during the reign of Pope Gregory XVI. In *Mirari Vos* (1832) he saw freedom of opinion and the separation of Church and State as 'crazed absurdity'. He also rejected religious liberty, freedom of the press and indifferentism (the idea that it is possible to obtain salvation through the profession of any kind of religion, ie. being indifferent to different religions).

The logic of the Church at this time was as follows. The Roman Catholic faith is the true religion. It is good for people to believe what is true. The State is obliged to promote the common good. Therefore the State is bound to promote Catholic belief, and, wherever possible, to establish Catholicism as the religion of the State.²

The basic idea was that error has no rights. The Church now sees persons as being the subject of rights rather than abstract concepts.

The phase of discernment (Leo XIII-Pius XII)

Pope Leo XIII began to discern and accept some positive elements in the human rights ideas of his times.³ His great contribution to the Church's teaching on human rights was the incorporation of whatever he saw as true or healthy in the liberal institutions being established in society.

Leo XIII saw human dignity as the root of natural, universal and inviolable rights. He saw a need for the State to exercise authority according to the rule of law, to defend the powerless, and to promote the common good. In taking this position he stressed that the person is prior to and above the State and therefore the State has no right to 'swallow up' the individual or family. In the aftermath of the Industrial Revolution, Leo XIII understood that the Church must become an advocate of the social and economic rights of the person, and his landmark encyclical *Rerum Novarum* (1891) elaborates a whole series of socio-economic rights.

Pius XI developed further the thinking of the Church about the rights of the person in relation to the State. In *Non Abbiamo Bisogno* (1931) he spoke out against fascism and in favour of the liberty of conscience. In *Mit Brennender Sorge* (1937) he rejected Nazism and the idolatry of the State, emphasising the right to profess one's faith and live according to it and the primary right of parents to the education of their children. In *Divini Redemptoris* (1937) he rejected communism and its reversal of the order of relations between the person and the State. He also enunciated a whole range of the respective rights and duties of the person and the State. In the third of his 1937 encyclicals, which became known collectively as the Easter Trilogy, *Nos Es Muy Conocida*, Pius XI made it clear that Catholic citizens should not passively accept the infringement of their religious and civil liberties, and that defence of oneself and one's nation by legitimate and appropriate means (with certain conditions) is not prohibited.

Pius XII's thoughts during the second World War were already focussed on what would be needed to reconstruct just and peaceful nations. His Christmas radio messages were particularly important in setting out the philosophical and juridical framework of the Church's approach to human rights and the role of the State. Pius XII's contribution is often overlooked because he published few encyclicals and lacked the charisma of John XXIII, who was later to rely so heavily on his predecessor's work.

The phase of dialogue (John XXIII Vatican II)

Pope John XXIII initiated a phase of dialogue between the Church and the international community on human rights.⁴ In his teachings, and that of Vatican II, the affirmation, defence and promotion of human rights was included with increasing clarity as one of the fundamental and indispensable tasks of the Church's mission.

In *Mater et Magistra* (1961) Pope John picked up Pius XII's revival of the expression 'the signs of the times' and he set about reading the hopeful and concerning signs of his times. He identified as a positive sign of the times the increasing consciousness of their own dignity and rights of workers, women and newly independent nations.

Pacem in Terris (1963) is as close as the social magisterium of the Church in modern times comes to its own declaration of human rights. Pope John saw human rights as the basis of peace, without which real peace was not possible. He set out the rights and duties of individuals within the community, and the rights and duties of political communities. He went on to outline the need for a supranational authority capable of ensuring a more enduring peace between nations.

It was in the context of the encyclical *Pacem in Terris* addressed not only to Catholics, but to all people of goodwill, that Pope John explicitly praised the Universal Declaration of Human Rights which had been issued by the United Nations in 1948. This was highly significant given that his predecessor had passed the Declaration over in silence. Pope John built on the secular Declaration to produce a 'Christian Charter of human rights', which saw human rights as based on the dignity of the human person created in the image and likeness of God, and giving emphasis to the social nature of the person and the reciprocal nature of rights and duties. It had been the absence of these dimensions from the UN Declaration that had so disappointed Pius XII that he failed to explicitly welcome it. Pope John, as Cardinal Roncalli the Papal Nuncio in Paris, had worked on the drafting of the Universal Declaration of Human Rights, and in *Pacem in Terris* he completed his own declaration.

The Second Vatican Council, initiated by Pope John and brought to completion by Pope Paul VI, focussed on the Church's role as a servant of humanity. All of the rights enunciated by the Universal Declaration of Human Rights can be found in the texts of Vatican II, and especially in *Gaudium et Spes* (1965).

The phase of proclamation (Paul VI to the present)

Following the Second Vatican Council the Catholic Church embarked on a new phase of actively proclaiming human rights.⁵ By 1971, the Synod of Bishops saw the promotion of human rights as not only part of the work of the Church, but central to the demands of the Gospel. This theme was taken up by Paul VI in *Evangelii Nuntiandi* (1975) which sets out the

relationship between evangelisation and the work for social justice, human rights and development.

Pope Paul taught about rights, duties and peace through a range of 'gestures of peace' such as the institution of the World Day of Prayer for Peace, and the establishment of the Pontifical Commission for Justice and Peace (now a Pontifical Council). Pope Paul engaged in many of the activities and conferences of the United Nations and frequently made positive reference to the Universal Declaration of Human Rights. He worked hard to assist those whose rights had been violated, although little of this 'diplomatic' action was known. He fostered ecumenical collaboration via SODEPAX (Committee on Research on Society, Development and Peace) which acted as a link between the World Council of Churches and the Pontifical Commission for Justice and Peace. And it was Pope Paul who initiated the great Papal travels of our times.

During the past twenty years, Pope John Paul II has contributed strongly to the development of Catholic Social Teaching, producing important social encyclicals and taking part in many significant international forums. His journeys to many countries have become an important tool for highlighting the particular forms of human rights abuses present in various parts of the world. The theological underpinnings of John Paul II's human rights work are explicitly Christological and incarnational. Followers of Christ, who embraced the human condition, must be lovers of humanity and are called to imitate him in defending the dignity and rights of every human person and of all peoples.

The Catholic Church's attitude to human rights has come a long way since the French Revolution. We now understand that far from offending God, the defence of human rights is the will of God.

Human dignity demands respect for human rights: connecting Church teaching and human rights today

To summarise the current state of Catholic thinking on human rights, the source of human rights is the inalienable, transcendent, God given dignity of every human being. It is on the basis of this dignity that we make the claims that are called human rights. Every human being and all human groups share equally in the image of God and are therefore equal in dignity and rights. The promotion of human rights is a central part of the mission of the Catholic Church. It is both a requirement of evangelisation and a consequence of it.

The source of human rights is God

Human dignity is the starting point and central concern of Catholic thinking about human rights and justice in society. Each person is created in the image and likeness of God and so has an inalienable, transcendent God given dignity. It is because we were made by God in God's own image, endowed with intelligence and free will, that we have human rights. This is the source or origin of our human rights, not the Universal Declaration of Human Rights. The Universal Declaration states some truths about the dignity and rights of human beings, and it has significant moral force in international humanitarian law, but it does not create or confer those rights.

To speak of human rights is to speak of the claims that we can make on the basis of our human dignity. They are the things that are due to us simply because we are human beings, made in the image and likeness of God. It follows that each member of the human family is equal in dignity and has equal rights because we are all created in God's likeness, all children of the one God. We are sisters and brothers to each other.

We understand God to be a trinity of persons and so we see the image of God reflected not only in individual people, but also in communities. Together in community we bear the image of our God whose very nature is communal. Our nature too is social. We were born out of relationship and into relationship. Human beings cannot survive, let alone reach their potential, in isolation from others. Just as all persons are equal in dignity and rights, so too every nation possesses equal dignity and rights.

Created in the image and likeness of the one God and equally endowed with rational souls, all men [sic] have the same nature and the same origin. Redeemed by the sacrifice of Christ, all are called to participate in the same divine beatitude: all therefore enjoy an equal dignity.⁶

Human dignity demands respect for human rights

The Church more often speaks of the dignity of the human person than of human rights; however, the teaching of the Church makes it clear that respect for human dignity requires respect for human rights.

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Respect for the human person entails respect for the rights that flow from his [sic] dignity as a creature. These rights are prior to society and must be recognised by it. They are the basis of the moral legitimacy of every authority; by flouting them, or refusing to recognise them in its positive legislation, a society undermines its own moral legitimacy.⁷

Respect for human dignity and human rights is not simply something that the Church urges on individuals and secular authorities. The promotion of human dignity and human rights is a central part of the Church's own mission. The Church's work for social justice and the promotion of human rights has deep Christological and missiological roots.

The mystery of the Incarnation and Redemption and human rights

To be Christians we must be followers of Jesus Christ. Through the mystery of the Incarnation Jesus took on the human condition and redeemed it. Christians, then, must also embrace the human in all its concrete historical particularity. God acts in and through human history and so the ordinary business of living in this world is part of our journey of faith, part of our path to salvation. This is what Pope John Paul II means when he talks about the human person as the path of the Church.

... we are not dealing here with man [sic] in the 'abstract', but with the real, 'concrete', 'historical' man [sic]. We are dealing with each individual, since each one is included in the mystery of the Redemption, and through this mystery Christ has united himself with each one forever. It follows that the Church cannot abandon man [sic], and that this man [sic] is the primary route that the Church must travel in fulfilling her [sic] mission ... the way traced out by Christ himself, the way that leads invariably through the mystery of the Incarnation and the Redemption.⁸

The option for the poor and human rights

Jesus had a special care for the poor, powerless and pushed aside. To follow him means walking in solidarity with the poor, the oppressed, and those who are powerless, to affirm their dignity and rights, and to lend them a voice. Our lives too must bring good news for the poor, sight for

the blind, and freedom for the oppressed. This is sometimes called the option for the poor.

This is an option, or a special form of primacy in the exercise of Christian charity, to which the whole tradition of the Church bears witness. It affects the life of each Christian inasmuch as he or she seeks to imitate the life of Christ, but it applies equally to our social responsibilities and hence to our manner of living, and to the logical decisions to be made concerning the ownership of goods.

Today, furthermore, given the worldwide dimension which the social question has assumed, this love of preference for the poor, and the decisions which it inspires in us, cannot but embrace the immense multitudes of the hungry, the needy, the homeless, those without medical care and, above all, those without hope for a better future. It is impossible not to take account of the existence of these realities.⁹

Evangelisation and human rights

Work for justice and respect for human rights is an essential part of the Catholic faith, and it is a necessary part of preaching the Gospel of Jesus Christ. It is both a requirement of evangelisation and a consequence of it. The first means of evangelisation is the witness of life; in order to preach the Gospel effectively we must witness to its values in the way that we live. And if we hear and accept the Gospel, we will answer its call to work for justice and respect for the dignity of each and every human person.

As the kernel and centre of his good news, Christ proclaims salvation, this great gift of God which is liberation from everything that oppresses man [sic] but which is above all liberation from sin and the evil one.¹⁰

Work for social justice and respect for human rights involves promoting the elimination of poverty, and freedom from political oppression. These things are part of working to build up the Reign of God already mysteriously present in the world, but the Reign of God is not to be reduced to a purely temporal transformation of our societies. Work for social justice and the promotion of human rights is not the whole of the mission of the Church.

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The teaching and spread of her [sic] social doctrine are part of the Church's evangelising mission. And since it is a doctrine aimed at guiding people's behaviour, it consequently gives rise to a 'commitment to justice', according to each individual's role, vocation and circumstances.

The condemnation of evils and injustices is also part of that ministry of evangelisation in the social field which is an aspect of the Church's prophetic role. But it should be made clear that proclamation is always more important than condemnation, and the latter cannot ignore the former, which gives it true solidity and the force of higher motivation.¹¹

The rights of man or of all human persons? Catholic teaching on the rights of women

Current Catholic teaching about the roles and rights of women appears to be contradictory. On the one hand, women and men are seen as equal and the participation of women in public life is heralded as a positive sign of the times. Yet on the other hand, the role of women is seen in terms of complementarity and being helper to men, and the appropriate vocational choices presented are either virginity or motherhood. Sex discrimination in the world at large is decried, but not all roles within the Catholic Church are open to women.

As we shall see there is much in the teachings to support those who promote a socially conservative view of the role of women, while at the same time there is ample encouragement to Christian feminists.

Women's rights are human rights

During the early 1990s I undertook a study of the teachings of the Catholic Church in Australia on matters of justice for Aboriginal and Torres Strait Islander people. I compared the Australian teachings to the international teachings of the Church – or, as we would say, to the universal social magisterium. The development of the Church's thinking about the rights of indigenous people was to be seen most clearly in the speeches given by the Pope when visiting various countries and addressing groups of indigenous people.

I found that the approach of the Church was not to identify special rights for indigenous peoples that other peoples can't have, but rather to emphasise that the rights of indigenous people and indigenous peoples

are simply human rights. Everybody, including indigenous peoples, has a right not to have their land and property taken from them arbitrarily. Everyone, including indigenous people, has a right to primacy in the education of their children, and a right to raise their children according to their own culture. And so the list of basic human rights of indigenous people that haven't been respected in practice goes on.

This study illustrates the general approach of the Catholic Church to the rights of particular groups. It is not a case of special rights for special groups. Human rights are seen as universal, as applying to all people and all peoples across all boundaries of time and place. But what might be required in order to give practical expression to these same rights may be different for different groups or in different concrete circumstances. For example, respect for religious liberty does not require that Catholics have access to particular pieces of land, but the freedom of many indigenous peoples to practice their religious beliefs does require that they have access to particular sites.

Following this approach, the Catholic Church today proclaims that women's rights are human rights, that all human rights pertain to women as well as to men. As in many other areas of teaching on human rights, it has taken the Catholic Church some time to reach this understanding. During the medieval period women were clearly seen by the Catholic Church as inferior beings and there were serious theological discussions on whether or not women possessed souls.

In *Gaudium et Spes*, which is a very authoritative Church document, being a teaching statement of the Pope in Council, we have a clear denunciation of discrimination on the basis of sex:

Undoubtedly not all men are alike as regards physical capacity and intellectual and moral power. But forms of social or cultural discrimination in basic personal rights on the grounds of sex, race, colour, social conditions, language or religion, must be curbed and eradicated as incompatible with God's design. It is regrettable that these basic personal rights are not yet being respected everywhere, as is the case with women who are denied the choice freely to choose a husband, or a state of life, or to have access to the same educational and cultural benefits as available to men.¹²

Complementarity, virginity and motherhood

While the Catholic Church sees women and men as being equal in dignity, it also sees them as different, and as having quite different roles and responsibilities. The proper vocation of women is seen as either virginity or motherhood. These sex roles are treated as biologically determined and Divinely ordained. They are seen as part of the natural order and, at times, it appears that women and men are seen as having different natures rather than a common human nature. Men's vocation, role and nature are not defined by the teachings biologically.

As John Paul II expressed it in his *Letter to Women*:

The creation of woman is thus marked from the outset by the principle of help: a help which is not one sided but mutual. Woman complements man, just as man complements woman: men and women are complementary. Womanhood expresses the 'human' as much as manhood does, but in a different and complementary way.

When the Book of Genesis speaks of 'help', it is not referring merely to acting, but also to being. Womanhood and manhood are complementary not only from the physical and psychological points of view, but also from the ontological. It is only through the duality of the 'masculine' and the 'feminine' that the 'human' finds full realization.¹³

The concept of complementarity between the roles of women and men casts women in the role of helper and nurturer. These roles may be experienced as subsidiary, dependent, conferring little social status and providing few opportunities for self expression and growth. In these circumstances, such a division of roles may foster domination rather than mutuality and equality.

While affirming the full personhood of women, their autonomy, their capacity and right to freely determine their own life choices, the Catholic Church also indicates what it sees to be the proper role of women. This is well illustrated by the following passage from *Octagesima Adveniens* by Paul VI:

in many countries a charter for women which would put an end to actual discrimination and would establish relationships of equality in rights and respect for their dignity is the object of study and at times lively demands. We do not have

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in mind that false equality which would deny the distinctions laid down by the Creator himself and which would be in contradiction with women's proper role, which is of such capital importance, at the heart of the family as well as within society. Developments in legislation should on the contrary be directed to protecting her proper vocation and at the same time recognising her independence as a person, and her equal rights to participate in cultural, economic, social and political life.¹⁴

The controversy regarding the Catholic Church's judgement that it has no authority to ordain women to the ministerial priesthood is related to this view of complementarity. Many of the faithful struggle to see this gendered division of religious roles as reflecting different but equal roles rather than simply enforcing different and unequal ones. Interestingly, Aboriginal and Torres Strait Islander Catholics seem to find this division easily acceptable. All of the Aboriginal and Torres Strait Islander Catholic women with whom I have discussed these issues saw this division as being in harmony with their cultures: cultures in which gender roles are highly specified but experienced as complementary and equal. This encourages me to believe that it is the social construction of complementarity that is problematic rather than the concept that women and men are different but equal.

This is how John Paul II has explained the Church's position on ordination:

the presence of a diversity of roles is in no way prejudicial to women, provided that this diversity is not the result of arbitrary imposition, but is rather an expression of what is specific to being male and female ...

If Christ by his free and sovereign choice, clearly attested to by the Gospel and by the Church's constant tradition entrusted only to men the task of being an 'icon' of his countenance as 'shepherd' and 'bridegroom' of the Church through the exercise of the ministerial priesthood, this in no way detracts from the role of women, or for that matter from the role of the other members of the Church who are not ordained to the sacred ministry, since all share equally in the dignity proper to the 'common priesthood' based on baptism.¹⁵

Those who wish to examine a fuller explanation of this position should read John Paul II's Apostolic Letters *Mullieris dignitatem* (On the Dignity and Vocation of Women) and *Ordinatio sacerdotalis* (On Reserving Priestly Ordination to Men Alone) - only the titles are in Latin.

Participation in the public sphere

The participation of women in the public sphere was at first treated by the Popes as an unfortunate reality, often the result of economic necessity, typically the loss of a male provider, or the advent of war. Such participation was gradually accepted, on the proviso that it should not be allowed to interfere with women's 'real' role as mothers.

And so we see the following qualifications in *Gaudium et Spes*' affirmation of women's participation in social and cultural life:

Women are employed in almost every area of life. It is appropriate that they should be able to assume their full proper roles in accordance with their own nature. Everyone should acknowledge and favour the proper and necessary participation of women in cultural life.¹⁶

And, spelling out more specifically what this nature implies:

the children, especially the younger among them, need the care of their mother at home. This domestic role of hers must be safely preserved, though the legitimate social progress of women should not be underrated on that account.¹⁷

'Good' Pope John had earlier welcomed, in his characteristically optimistic tone, the increasing consciousness of women and their participation in public life as a sign of the times:

it is obvious to everyone that women are now taking a part in public life. This is happening more rapidly perhaps in nations of Christian civilisation, and, more slowly but broadly, among peoples who have inherited other traditions or cultures [this claim is perhaps debatable]. Since women are becoming ever more conscious of their human dignity, they will not tolerate being treated as inanimate objects or mere instruments, but claim, both in domestic and in public life, the rights and duties that befit a human person.¹⁸

While the contributions of women to public life are now more clearly celebrated, there remains an implicit preference for domestic roles or roles with a quasi domestic quality. In welcoming women's participation in

public life and urging them to become involved in the work of reconciliation, Pope Paul VI sees their specific contribution as an extension of their nurturing family roles:

We rejoice, especially on the eve of International Women's Year, proclaimed by the United Nations, at the ever wider participation of women in the life of society, to which they bring a specific contribution of great value, thanks to the qualities that God has given them. These qualities of intuition, creativity, sensibility, a sense of piety and compassion, a profound capacity for understanding and love, enable women to be in a very particular way the creators of reconciliation in families and in society.¹⁹

While the heavy emphasis of Catholic teaching on the family roles of women may seem burdensome and restrictive to many, the experience of many women of different cultures and classes, but especially the poorest, has been that the price of involvement outside the domestic sphere is that they are now expected to work the double shift of paid employment, caring for dependants and performing housework. It is true, as the International Declaration of Human Rights sets out in Article 25.2 that motherhood and childhood are worthy of special care and protection. Catholic teaching is right to insist that this role be esteemed and protected. This is really a pro woman stance. What is problematic is the apparent reduction and restriction of women to this role. There are signs, however, that the Catholic Church's thinking on how this care and protection can best be ensured in is a state of change. In recent Church pronouncements and in 'semi-official' writings there has begun to enter an appreciation of the necessity of men taking their fathering roles more seriously and sharing in the work of family life. There has also been a move to suggest that the organisation of the production process itself should be better adapted to the family responsibilities of workers.

There has also been a significant concession that sex role stereotypes may not be Divinely ordained but rather the result of social conditioning. John Paul II's acknowledgment of the role of social conditioning and apology for the Church's part in the oppression of women is worth quoting at length:

Unfortunately we are heirs to a history which has conditioned us to a remarkable extent. In every time and place, this conditioning has been an obstacle to the progress of women. Women's dignity has often been unacknowledged and their

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prerogatives misrepresented; they have often been relegated to the margins of society and even reduced to servitude. This has prevented women from truly being themselves and it has resulted in a spiritual impoverishment of humanity. Certainly it is no easy task to assign the blame for this, considering the many kinds of cultural conditioning which down the centuries have shaped ways of thinking and acting. And if objective blame, especially in particular historical contexts, has belonged to not just a few members of the Church, for this I am truly sorry. May this regret be transformed, on the part of the whole Church, into a renewed commitment of fidelity to the Gospel vision. When it comes to setting women free from every kind of exploitation and domination, the Gospel contains an ever relevant message which goes back to the attitude of Jesus Christ himself. Transcending the established norms of his own culture, Jesus treated women with openness, respect, acceptance and tenderness. In this way he honoured the dignity which women have always possessed according to God's plan and in his love. As we look to Christ at the end of this Second Millennium, it is natural to ask ourselves: how much of his message has been heard and acted upon?

Yes, it is time to examine the past with courage, to assign responsibility where it is due in a review of the long history of humanity.²⁰

How can the Catholic Church respond to this call?

Fidelity to the Gospel vision: some directions for the development of Catholic teaching on gender and human rights

Catholic social teaching draws on the Scriptures; on human knowledge, especially in the areas of the social sciences; and on Tradition or the experience of the faith community through time. It is a constantly developing body of teaching as the Church grows in understanding of the human person and the world and responds to changing circumstances and new issues. Its standard methodology is inductive, moving from observation and description of the social reality to assessing this reality according to the Church's principles for reflection and applying the criteria for judgement in order to develop guidelines for action.

Recalling the sources and methodology of Catholic Social Teaching provides several starting points for the development of Catholic thinking on gender and human rights.

Return to the Book, look again at Tradition

What does the Bible tell us about the lives of women as they respond to the message of the Gospel? What does it tell us about the kinds of relationships that Jesus had with women and the kinds of relationships that the Gospel message inspired in the early followers of Jesus?

In the last couple of decades there has been an explosion of Scriptural studies undertaken by women and feminist men. As people of the book, the Bible is a critically important source for us in trying to be ever more faithful to the Gospel. Good Biblical scholarship, attentive to the perspectives and experiences of women as well as men, will be indispensable to the task of renewing our commitment to the Gospel vision of the equal dignity of women and men.

I mentioned earlier the influence of the 'Fathers of the Church'. We need also to look for the Mothers of the Church and to recover the stories of the women of the Early Church. This enterprise also needs to extend beyond the so-called Patristic period to encompass the experience of the people of God through time-up to and including the present. In particular we will benefit from the excavation of the wisdom gained through the experiences of the female part of the people of God as we have struggled to respond to social justice issues through history.

There are many role models that could be offered to modern women. There are many virgins and martyrs but strangely very few mothers among our saints. Women engaged in working actively in the world should also feature among those held up as examples of faith.

Embrace knowledge about the human person

The Church can always learn from human sciences, especially the social sciences. As human knowledge advances, it is conceivable that the anthropology underlying Papal teaching on the roles of women and men may need to be reassessed. Perhaps the part played in the determination of gender roles by social conditioning is even larger than currently thought. If nurture were found to be a stronger influence on roles than nature, then it may well be that rigidly defined sex roles are not part of a Divinely ordained order but rather are a consequence of original sin.

The passage from John Paul II quoted above moves in this direction but it needs to be more thoroughly 'unpacked' to understand its implications.

Start with the reality of women's lives

There has been a growing tendency in teaching about women to work deductively, applying abstract ideas to the 'question' of women, or to base teaching in Mariology, rather than working inductively, starting from the concrete reality of contemporary women's lives. To date the experiences of women have not been adequately taken into account in the Catholic Church's social teachings. For example, it is only in recent times that women's experiences as workers have begun to be addressed as something more than an unfortunate passing phenomenon.

Applying the standard methods of the Catholic Social Teachings, we would start by looking at the concrete, historical, lived experience of real women around the world today. We would then ask what was happening to the dignity of women as human persons. We would formulate a call to action to promote the dignity and rights of women as full human beings. A global analysis would grow out of the dialogue between a variety of more localised or specific analyses.

As well as being the object of Catholic reflection, women should also be more frequently involved in that analysis, reflection and subsequent formulation of Church teaching. The laity as a whole have the particular mission of transforming the everyday world according to the will of God. Women in particular must claim this legitimate role in action for social justice.

Returning to the methodology of Catholic Social Teaching would provide a strong antidote to the romanticisation and sentimentalism that marks so much Catholic teaching on women and on motherhood in particular. As a woman and a social scientist, I think I am reasonably well placed to observe that women are not morally superior to men; we are capable of all of the evil that is perpetrated by men - sometimes we just lack the opportunity. The exalted status that is given to women by Church teaching has not in fact resulted in care and protection of women by men, but more often in a dualistic love - hate relationship marked by exploitation.

Conclusion

Catholic teaching on the dignity and role of women appears at this time to be riddled with contradictions. Is this chaos and confusion? Is it hypocrisy? In my opinion it is the sign of a period of growth and development in the Church's teachings. Catholic thinking is struggling towards a new understanding of gender and human rights. It has already taken some time, and it may take some years yet, to reach that new understanding. It is my hope that it will be an understanding that continues to esteem motherhood but balances this esteem with a greater emphasis on the parenting responsibilities of fathers and the personal growth and opportunities for self-giving that this offers men. I hope that it will be an understanding that retains a commitment to the complementarity and mutuality of women and men but denounces as sinful the social construction of complementarity as subordination. I hope that in the not too distant future, the teaching authority of the Church will encourage a greater participation by women in the public realm and a greater participation by men in the private realm, but above all, deliver a challenge to everyone to develop their God--given potential and to place it at the service of the human community.

Notes

- 1 The historical material that follows is indebted to the work of Monsignor Biffi in course notes and in his article "Human Rights in the Magisterium of the Popes of the Twentieth Century", in *Human Rights: a Christian Approach*, International Federation of Catholic Universities Research Coordination Centre, Manilla, 1988.
- 2 Key Papal texts from this period include Gregory XVI, *Mirari Vos*, 1832; and Pius IX, *Quanta Cura* and the *Syllabus of Errors*, 1864.
- 3 Key Papal texts from this period include: Leo XIII, *Rerum Novarum*, 1891; Pius XI, *Quadragesimo Anno*, 1931, *Non Abbiamo Bisogno*, 1931, *Mit Brennender Sorge*, 1937, *Divini Redemptoris*, 1937, *Nos Es Muy Conocida*, 1937; Pius XII, *Summi Pontificatus*, 1939, and his Christmas Radio Messages during the Second World War, especially 1941, 1942, and 1944.
- 4 Key texts from John XXIII were *Mater et Magistra*, 1961; and *Pacem in Terris*, 1963. One of the most significant texts from Vatican II was *Gaudium et Spes*, 1965.
- 5 Some important texts from this period include the 1971 Synod of Bishops' statement, *Justice in the World*; Paul VI, *Populorum Progressio*, 1967, *Evangelii Nuntiandi*, 1975; John Paul II, *Redemptor Hominis*, 1979, *Laborem Exercens*, 1981, *Sollicitudo Rei Socialis*, 1987, *Centesimus Annus*, 1991.
- 6 Catechism of the Catholic Church, n 1934.
- 7 Catechism of the Catholic Church, n 1930.
- 8 John Paul II, *Centesimus Annus*, n 52.

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- 9 Pope John Paul II, *Sollicitudo Rei Socialis*, n 42.
- 10 Pope Paul VI, *Evangelii Nuntiandi*, n 9.
- 11 Pope John Paul II, *Sollicitudo Rei Socialis*, n 41.
- 12 Vatican II, *Gaudium et Spes*, 1965, n 29.
- 13 John Paul II, *Letter to Women*, 1995, n 7.
- 14 Paul VI, *Octagesima Adveniens*, 1971, n 13.
- 15 John Paul II, *Letter to Women*, 1995, n 11.
- 16 Vatican II, *Gaudium et Spes*, 1965, n 60.
- 17 Vatican II, *Gaudium et Spes*, 1965, n 52.
- 18 John XXII, *Pacem in Terris*, 1963, n 41.
- 19 Paul VI, *World Day of Peace Message*, 1975, n 13.
- 20 John Paul II, *Letter to Women*, 1995, n 3.

Human Rights: Reflections from a Bahá'í Viewpoint

BY MICHAEL CURTOTTI

Since its inception in Iran in 1844, the Bahá'í Faith has developed into a global religion in both its geographical spread and in the diversity of the composition of its community. As of May 1995 the Bahá'í community world-wide numbered over five million. A total of 174 National Spiritual Assemblies had been established in separate countries and territories, each representing a well-established Bahá'í community.¹ Today just under 90% of local Bahá'í communities are found in the developing world, approximately 10% in western countries, and less than 2% in the original Islamic heartlands where the Bahá'í Faith emerged.²

Born in modern times, the Bahá'í Faith addresses human rights in the language of modernity. As well, however, we find traditional religious terminology with which religions have characteristically dealt with issues now falling within the human rights framework. In the earliest writings of Bahá'u'lláh, the prophet-founder of the Bahá'í Faith, we find rights themes addressed in terms of the spiritual journey of the soul. From this seed, references to rights evolve into a well-defined set of principles which form the foundation of the Bahá'í teachings, many of which have subsequently been championed by the modern human rights movement, and some of which suggest future human rights agendas.

The Bahá'í community has long undertaken activities which promote human rights, particularly in fields such as the abolition of racial and other prejudices and the advocacy of the equality of men and women. Since the adoption of the Universal Declaration of Human Rights the community has also advocated human rights through its contribution as an

non-government organisation represented at the United Nations, and in the work of national communities around the world.

A significantly expanded involvement in human rights issues since 1994 has compelled the community to develop a better understanding of the scriptural basis of the Bahá'í commitment to human rights, and to begin to develop methodologies for the effective advocacy of rights which are consistent with the community's non-political character and its emphasis on building unity between people. The focus on rights also raises the question of how to deal maturely with areas where the standards of the Bahá'í Faith and particular aspects of human rights may seem to be in tension.

Bahá'í Scripture and human rights principles

In a forty-year period from 1852-1892, Bahá'u'lláh delivered a complex body of religious teachings directed to his followers, to enquirers, to leaders of society and to humanity in general. Born to a leading ministerial and noble family of Persia, Bahá'u'lláh spent this entire period as an exile in the Ottoman Empire, held in varying degrees of detention and imprisonment by its government.

A common theme throughout all of Bahá'u'lláh's writings is the concept of the oneness of humanity. Replete with human rights resonance, it symbolises complex ideas concerning the nature of the human person and society. This principle is regarded as the "pivot" around which the Bahá'í teachings are built.³ It expresses the common spiritual origin - and thus equality - of all human beings:

Know ye not why We created you all from the same dust? That no one should exalt himself over the other.⁴

It symbolises the value of the human person, in language which parallels the concept of human dignity in article 1 of the Universal Declaration of Human Rights:

Noble have I created Thee, yet thou hast abased thyself. Rise then to that for which thou wast created.⁵

It expresses the basic moral paradigm of Bahá'u'lláh's teaching, emphasising a vision of service to humanity as the highest moral order:

Do not busy yourselves in your own concerns; let your thoughts be fixed upon that which will rehabilitate the fortunes of mankind and sanctify the hearts and souls of men.⁶

It expresses the close bonds uniting all human beings together:

Ye are the fruits of one tree and the leaves of one branch. Deal ye one with another with the utmost love and harmony, with friendliness and fellowship ... So powerful is the light of unity that it can illuminate the whole earth ... Exert yourselves that ye may attain this transcendent and most sublime station, the station that can ensure the protection and security of all mankind. This goal excelleth every other goal, and this aspiration is the monarch of all aspirations. So long, however, as the thick clouds of oppression, which obscure the day star of justice, remain undispeled, it would be difficult for the glory of this station to be unveiled to men's eyes.⁷

Bahá'u'lláh's teaching that "the earth is but one country, and mankind its citizens" expresses yet another aspect. It concisely conveys not only the idea of oneness but also the idea of equality of all humans before one global law. The foundational philosophies of the Universal Declaration - dignity, equality, fraternity and non-discrimination - find expression in the idea of the oneness of humanity and the other core Bahá'í principles.

Bahá'u'lláh's teachings

It is possible to discern four phases in Bahá'u'lláh's teachings. Despite the marked differences between the various categories of scripture, all feature the thread of human rights, which are given expression in an evolutionary way.

During the first phase, his Baghdad teachings from 1852 to 1863, Bahá'u'lláh's writings were largely mystical and theological in character, focussing on the relationship between man and God and on the nature of religion. Observance of human rights is regarded as an element of the

soul's search for God. The second phase, from 1863 to 1872, during which Bahá'u'lláh was successively exiled to Constantinople, Adrianople and finally the prison city of Akka in Palestine, featured a key series of letters to various kings and rulers. Here observance of human rights is a divine obligation imposed on the rulers of society. The third phase is represented by the writing in 1873 of the *Kitáb-i-Aqdas*, the Bahá'í book of sacred law, in which human rights are foundational elements of the ordering of the 'divine' society. The fourth and final stage is expressed in a series of letters written to various followers in which Bahá'u'lláh provides his vision of an enlightened society, outlining a series of teachings designed to addressing the healing of social ills. As aspirations for the future, human rights are at the core of the healing of society's ills and the redemption of humanity.

The journey of the soul (1852-1863)

The earliest references to rights concepts in Bahá'í scripture are found in Bahá'u'lláh's mystical and theological writings. From a Bahá'í point of view rights are a far richer concept than mere legal prohibitions limiting the power of those governing society. They are enjoined on the believer, not only because they represent justice, but because the believer must express them to be able to attain to God. The following passage from the *Kitáb-i-Iqán*, in which Bahá'u'lláh discusses the religious path, is an example of this:

When a true seeker determines to take the step of search in the path leading to the knowledge of the Ancient of Days he must ... never exalt himself above anyone ... That seeker should regard backbiting as grievous error ... He should succour the dispossessed, and never withhold his favour from the destitute. He should show kindness to animals, how much more to his fellow man, to him who is endowed with the power of utterance ... He should not wish for others that which he doth not wish for himself ... These are among the attributes ... of the spiritually minded.⁸

In the previous section we have reviewed a number of quotations from the Hidden Words which come from this period and which address equality in spiritual terms. In the same works we find a range of other rights concepts such as adherence to justice, care for the poor and condemnation of injustice, in each case expressed in mystical language. These kinds of references, as Bahá'u'lláh himself states, crystallise the teachings 're-

vealed unto the prophets of old'. One such example is the following passage in which the prophet Isaiah talks of the kind of worship that is acceptable to God:

"The multitudes of your sacrifices - what are they to me?" says the Lord. "I have more than enough of burnt offerings, of rams and the fat of fattened animals ... Stop bringing meaningless offerings! Your incense is detestable to me ... I cannot bear your evil assemblies. Your New Moon festivals and your appointed feasts my soul hates. They have become a burden to me ... even if you offer many prayers I will not listen ... Your hands are full of blood; wash and make yourselves clean. Take your evil deeds out of my sight! Stop doing wrong, learn to do right! Seek justice, rebuke the oppressor. Defend the cause of the fatherless, plead the case of the widow".

Sources such as this, which could be multiplied from a variety of religions, underline the universality and antiquity of philosophies which are the roots of the modern human rights movement.

The duties of the rulers of society (1863 - 1873)

The next phase of Bahá'u'lláh's writings is represented by letters to various kings and rulers of society in which he proclaims his divine mission. These letters include an active advocacy of rights expressed in terms of divinely imposed duties binding on the rulers of society. It is a theme that continues in subsequent periods of his teachings.

Thus we find the core of civil and political rights: a condemnation of oppression and praise of just governance and the securing of rights.

God hath committed into your hands the reins of the government of the people, that ye may rule with justice over them, safeguard the rights of the down-trodden and punish the wrong-doers.⁹

We also find the basic outlines of the concepts of economic rights in repeated calls for economic justice. Thus Bahá'u'lláh calls on the Ottoman sultan to address the extremes of wealth and poverty under his rule:

Deal with ... undeviating justice so that none among [your subjects] may either suffer want or be pampered with luxuries. This is but manifest justice ... for this is what we observed when we entered the City [Constantinople]. We found among its inhabitants some who were possessed of an affluent fortune and lived in the midst of excess riches, while others were in dire want and abject poverty. This ill becometh thy sovereignty, and is unworthy of thy rank.¹⁰

In addition to these two major themes we find a number of specific rights references addressed to rulers of society. Religious discrimination is condemned in a reference to the persecution of the Jewish community by two governments.¹¹ In an allusion to the suffering of the Bahá'í community Bahá'u'lláh outlines the kinds of abuses of governmental power that are impermissible and which should be addressed by the world's leaders, including violation of life, property, and reputation. He emphasises the duty of kings (in modern terminology, governments) to prevent oppression.¹² The role of the will of the people in the process of governance is alluded to in an early letter to Queen Victoria: "We have heard that thou has entrusted the reins of counsel into the hands of the representatives of the people. Thou, indeed, hast done well".¹³ To these representatives he emphasises that they should regard themselves as "the representatives of all that dwell on earth"¹⁴, a concept which emphatically suggests the duty to advance the rights of all people:

O ye the elected representatives of the people in every land! Take ye counsel together, and let your concern be only for that which profiteth mankind, and bettereth the condition thereof.¹⁵

A third major theme which dominates Bahá'u'lláh's message to the rulers is his encouragement for them to establish peace in the world. While examination of this theme is beyond the scope of this paper, it is important to note that a full appreciation of the promotion of peace was central in his writings to kings and rulers.

The *Kitáb-i-Aqdas* and human rights

The *Kitáb-i-Aqdas*, Bahá'u'lláh's book of sacred law, is the fundamental source for the way of life practiced by Bahá'ís. The *Aqdas* provides for prayer, fasting, religious institutions, places of worship and religious festivals. It deals with traditional religious subjects - morality, man's rela-

tionship with God and individual spiritual growth. It is concerned with basic social laws such as the prohibition of theft and murder. It deals with basic matters of personal status such as marriage, divorce and inheritance. Within this overall context we find in the *Aqdas* basic human rights principles - dignity, equality, fraternity, non-discrimination - and the outlines of the concepts of civil and political rights and economic, social and cultural rights. In addition there is a range of provisions bearing directly on human rights principles found in the Universal Declaration of Human Rights.

The idea of human unity is expressed in the *Aqdas* in a call to Bahá'ís to "consort with all religions in the spirit of amity and concord", with the added emphasis that "all things proceed from God and unto Him they return". Here we find both the idea of the human fraternity and the idea of the equality of human beings found in article 1 of the Declaration.¹⁶ Its basic intent is reinforced in provisions such as the abolition of ritual impurity, a concept whose discriminatory impact and destructiveness to equality and dignity (particularly for women) requires no elaboration. In the context of this abolition Bahá'u'lláh again calls on his followers to "consort with the followers of all religions".¹⁷

Human dignity is expressed in passages which emphasise the sacredness of the human person - "the human temple", "temple of man" - and which encourage behaviour worthy of that dignity.¹⁸

The way in which the prohibition of murder is expressed emphasises the sacredness of human life:

let no soul slay another ... What! Would ye kill him whom God hath quickened, whom He hath endowed with a breath of spirit through a breath from Him? Grievous then would your trespass be before His throne! Fear God, and lift not the hand of injustice and oppression to destroy what He hath Himself raised up.¹⁹

From a religious viewpoint the "right to life" set out in article 3 of the Declaration could not be more strongly stated. The applicability of this prohibition to the agents of government is implicit in the condemnation of the abuse of power to take life expressed in this passage.

The abolition of the slave trade and the practice of slavery set out in article 4 of the Universal Declaration is advocated in the *Kitáb-i-Aqdas*:

It is forbidden to you to trade in slaves, be they men or women. It is not for him who is a servant to buy another of God's servants ... Let no man exalt himself over another: all are but bondslaves before the Lord.²⁰

As well as forbidding both the slave trade and slavery the language emphasises the concept of human equality - including by implication the equality of men and women, an equality explicit in other of Bahá'u'lláh's writings.

The right to social security found in articles 22 and 25 of the Declaration is expressed in a variety of provisions of the *Aqdas*:

All have been enjoined to earn a living, and as for those who are incapable of doing so, it is incumbent on the Deputies of God and on the wealthy to make adequate provision for them.²¹

Other passages confirm the system of charitable contributions for relief of the poor known as Zakat, which was taught by Muhammad.²² The estate of a deceased who leaves no children and no will is to be expended "on the orphaned and widowed, and on whatsoever will bring benefit to the generality of the people".²³ These passages envision a society providing systems of social security.

The right to education found in article 26 of the Declaration is expressed in the *Aqdas*:

Unto every father hath been enjoined the instruction of his son and daughter in the art of reading and writing ... He that putteth away that which is commanded unto him, the Trustees are then to take from him that which is required for their instruction if he be wealthy and, if not, the matter devolveth upon the House of Justice. Verily have We made it a shelter for the poor and needy.²⁴

This passage provides successive mechanisms to ensure that all children receive an education. Like the passage dealing with slavery, where equality of men and women is implied, this provision promotes equal gender access to education.

The principles of protection of privacy and reputation found in article 12 of the Declaration are expressed in the *Aqdas*: "take heed that ye enter

no house in the absence of its owner, except with permission." Believers are forbidden to commit "backbiting or calumny", a prohibition strongly emphasised in Bahá'u'lláh's teachings.

References in the *Aqdas* to the kings and rulers of society continue elaboration of the basic elements of civil and political rights, reinforcing statements addressing such rights in greater detail elsewhere. Bahá'u'lláh reminds the Kings that their power is not arbitrary: they are subject to a higher law and to divine sovereignty.²⁵ This concept reminds us of the non-secular sources of the concept of the "rule of law". He is contemptuous of the "throne of tyranny" in Constantople, the capital of the Ottoman Empire.²⁶ In a paragraph specifically addressed to the rulers of America he calls on them to "Adorn the temple of dominion with the ornament of justice and fear of God". He calls on them to "Bind the broken with the hands of justice, and crush the oppressor who flourisheth with the rod of the commandments of your Lord, the Ordainer, the All-wise."²⁷ In a reference to his native city of Teheran he predicts that eventually God will bless its throne "with one who will rule with justice" and that "erelong, the reins of power" would fall into the hands of the people.²⁸ In a later work he clarifies the intent of this reference:

Referring to the land of Ta [Teheran] We have revealed in the *Kitáb-i-Aqdas* that which will admonish mankind. They that perpetrate tyranny in the world have usurped the rights of the peoples and kindreds of the earth and are sedulously pursuing their selfish inclinations.²⁹

Bahá'u'lláh later expresses support for constitutional monarchy, as it is "adorned with the light of both kingship and of the consultation of the people".³⁰

These provisions of the *Aqdas* establish a broad foundation for human rights. The significance of this scriptural foundation cannot be overemphasised. Bahá'í support of human rights is not a question of response to current social trends; it falls rather into the category of fundamental norm of Bahá'í community life. Advocacy of human rights is one aspect of aspiring and doing justice to the way of life inculcated in the Bahá'í teachings.

An enlightened world society

The final phase of Bahá'u'lláh's writings was embodied in a series of major letters to the faithful and others which set out his vision of an enlightened world society. Here again we find the stream of human rights thought expressed.

In the *Tablet of the World*, for instance, he defines societal evil in terms which only too well capture the depths of violations of human dignity in the twentieth century:

The unbelievers and the faithless have set their minds on four things: first, the shedding of blood; second, the burning of books; third, the shunning of the followers of other religions; fourth, the extermination of other communities and groups.³¹

A flavour of the writings of this period can be gleaned by an examination of the letter known as *Glad-Tidings* which, among others, abolishes the law of holy war, encourages association with the followers of all religions, promotes the adoption of a universal language so that "the whole earth will come to be regarded as one country", encourages loyalty to government, calls for the establishment of global peace, promotes freedom in dress, encourages service to the community, prohibits the destruction of books, promotes the sciences and the arts, regards work as worship, and promotes constitutional monarchy. Similar passages are found in other writings of the period.

It is also in this period that Bahá'u'lláh defines the distinguishing character of his teachings:

We have on one hand, blotted from the pages of God's Holy Book whatsoever hath been the cause of strife, of malice and mischief amongst the children of men, and have, on the other, laid down the essential prerequisites of concord, of understanding, of complete and enduring unity.³²

It is from passages such as this that the core principle of the oneness of humanity is drawn.

Again we find additional human rights elements represented in this period. For instance, the idea of fair reward for work: "The people of

Bahá should not deny any soul the reward due to him, should treat craftsmen with deference".³³ The proper administration of justice is referred to: "Shed not the blood of anyone, O people, neither judge ye anyone unjustly."³⁴ Respect for the property of others is embodied in such passages as: "Deal not treacherously with the substance of your neighbour. Be ye trustworthy on earth".³⁵ The *Aqdas* instruction to ensure the education of children is reiterated as a central principle. The obligation to work is identified as a form of worship, which later we see elaborated as a right to work and as a duty on those who organise society to ensure work is provided for all.

Seen from the Bahá'í paradigm

Religions provide meaning to life, and in doing so they provide a conceptual world or paradigm within which the religion's principles and teachings are elaborated. Accordingly, though we have seen a powerful affirmation of rights themes in the Bahá'í teachings, those teachings cannot be seen as merely an expression of human rights philosophy or any other system of thought. The Bahá'í approach to human rights needs to be understood in its own context, if it is to be fully appreciated.

The difference in paradigm between secular modernism and a religious system such as the Bahá'í Faith inevitably gives rise to a number of areas of conceptual tension. These tensions need to be acknowledged and explored. In some cases the tension can be resolved by a better understanding of the nature of human rights, or of the Bahá'í teachings, and by better understanding what is essential to each.

Fundamentally the Bahá'í approach to human rights is one that balances communitarian approaches with individual interest. Unsurprisingly, given its religious character, responsibilities are as important as rights from a Bahá'í point of view. This issue, of course, only becomes problematic if one views human rights as in any sense anti-communitarian or anti-responsibility. Such an interpretation must be regarded as highly questionable, certainly in respect of the principles of the human rights movement grounded in the 1948 Universal Declaration of Human Rights.

If one looks to the *Kitáb-i-Aqdas*, one finds that its very first phrase is a reference to a duty, not a right: the duty of the individual to know God and his prophets and to obey their teachings. Curiously, we can observe that the Universal Declaration itself begins with a duty rather than a right:

every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance".³⁶

In addition, every right implies duties. The "right to life", for instance, in an active sense is addressed to all mankind and only has meaning if we understand by it "thou shalt not abuse power to take human life". Article 29 of the Universal Declaration includes the idea of community responsibility, stating "everyone has duties to the community in which alone the free and full development of his personality is possible". The emphasis on rights as opposed to duties in the Declaration itself also needs to be understood in its historical context. The language, for very good reasons, is concerned to emphasise the limits of governmental power, because governments have so prominently been the principal violators of rights. The introduction of extensive reference to duties would potentially undermine this purpose. The same is true of the international human rights treaties, which are concerned to bind governments with legal obligations not qualified by ambiguities arising from duties which might be read by those minded to avoid human rights obligations as making rights conditional.

A second area of difficulty is presented by the revolutionary origin of human rights philosophy. To the extent that human rights can be interpreted as continuing to endorse the violent overthrow of government, they would not accord with Bahá'í principle. Violence is a methodology antithetical to the character of the Bahá'í Faith and is profoundly rejected. Bahá'ís are counselled to be obedient and loyal to government:

None must contend with those who wield authority over the people; leave unto them that which is theirs, and direct your attention to men's hearts.³⁷

In the last clause of this passage we see encapsulated the Bahá'í view that the true transformation of society depends ultimately on the transformation of the individual. The pacific character of the Bahá'í Faith is emphasised by other provisions such as the prohibition on carrying arms unless essential, and on engaging in conflict, striking another, or committing similar acts "whereby hearts and souls may be saddened".³⁸ These statements do not imply an acceptance of unjust rule, but they define a

methodology based on the peaceful and progressive transformation of such injustice.

Fundamental to an appreciation of the Bahá'í approach is its emphasis on unity as the prerequisite to social well-being and the Bahá'í Faith's own unifying mission which mandates that all its activities be directed to the achievement of unity in the human family.

The foregoing is not necessarily outside the bounds of modern human rights thinking. The preambular paragraphs to the Declaration in fact note that one of the purposes of human rights is to obviate the necessity for individuals to resort to "rebellion against tyranny and oppression".

Further, the modernity of the Bahá'í Faith in its social principles does not equate to an acceptance of moral indifference or moral relativism in matters of personal conduct, which is a prominent characteristic of modern cosmopolitan society. Indeed the Bahá'í Faith expects high standards of morality from its followers including in areas such as personal ethics, chastity, and abstinence from alcohol, drugs and gambling.

The Faith's emphasis both on peace and on high standards of conduct is reflected in Bahá'u'lláh's critical reference to liberty in the *Aqdas*. It is a reference which can be easily misunderstood if taken out of context. In the *Aqdas*, Baha'u'llah refers to excesses of liberty as contrary to human well-being. As indicated by the Universal House of Justice, the world governing body of the Bahá'í Faith, such references cannot be construed as approval of oppressive governance:

A true reading of the teachings of Bahá'u'lláh leaves no doubt as to the high importance of [freedom of thought, expression and action] to constructive social processes. Consider, for instance, Bahá'u'lláh's proclamation to the kings and rulers. Can it not be deduced from this alone that attainment of freedom is a significant purpose of his Revelation? His denunciations of tyranny and His urgent appeals on behalf of the oppressed provide unmistakable proof. But does not the freedom foreshadowed by His Revelation imply nobler, ampler manifestations of human achievement? Does it not indicate an organic relationship between the internal and external realities of man such as has not yet been attained?³⁹

An analysis of the relationship between the teachings of the Bahá'í Faith and human rights is found in a major essay in the 1996-1997 volume of *The Bahá'í World*. The inclusion of this essay in an official publication of the international Bahá'í community reflects the significance of

human rights in the current work of the community. Titled "The Human Rights Discourse: A Bahá'í Perspective", the article addresses the philosophy of rights and makes a number of observations. First and foremost, it discusses the basic congruence between human rights values and the Bahá'í teachings. Secondly, it is concerned to critique moral relativism and thus to support the universality of human rights, commenting that relativistic statements about rights (such as in the Bangkok Declaration) "are often intended to insulate governments from international criticism regarding treatment of their citizens". Thirdly, the article discusses the various sources posited for human rights (nature, reason etc) supporting the validity of arguments for a divine origin for those rights. Fourthly the article emphasises the communitarian character of the Bahá'í teachings which call for a balance between individual freedom and the promotion of the collective good.

Beyond these thematic issues are specific provisions of Bahá'í law that need to be considered in the overall context of the relationship between the Bahá'í teachings and human rights. The following examples illustrate some of the issues that arise.

A social law introduced by Bahá'u'lláh requires that once intending spouses have decided they wish to marry each other, they should seek and obtain the consent of their parents to the marriage. This might be seen as impeding free consent of the spouses as referred to in article 16.2 of the Universal Declaration. Yet Bahá'u'lláh's intent in introducing this provision furthers an aim of this article, which is the well-being of the family:

Desiring to establish love, unity and harmony amidst Our servants, We have conditioned [marriage], once the couple's wish is known, upon the permission of their parents, lest enmity and rancour should arise amongst them.⁴⁰

The intestacy laws provided by Bahá'u'lláh provide for a complex series of inheritors who receive different portions of the inheritance. The first male child receives significant preference over other potential beneficiaries, and in other instances a greater proportion of inheritance is provided for male as opposed to female beneficiaries. Here again difficult issues arise, a full appreciation requiring consideration of the context of these inheritance laws.

The death penalty is allowed for in the case of murder and arson, as is its commutation to life imprisonment.⁴¹ A significant body of work in the human rights movement is undertaken to bring about the full abolition of the death penalty, although there is an equally significant resistance to this aim.

Rather than creating a fundamental divergence, such issues need to be seen in the context of an evolutionary and diverse human rights system, whose basic provisions vary over both time and place, although its fundamental principles and intent remain in essence unchanging. Since 1948 new "generations" of rights have been created and different regions have emphasised different aspects of human rights. Work within the international system to elaborate rights continues largely unabated. Furthermore, rights are themselves not absolute and are balanced against each other. For instance, the Convention on the Elimination of Racial Discrimination limits the right to freedom of expression in order to promote racial equality. Universality thus cannot be taken to mean uniformity: within limits there is scope for a diversity of approaches to achieving the minimum aspirations set out in the Universal Declaration.

Bahá'í aspirations for human rights

A review of the Bahá'í approach to human rights would be incomplete without reference to those areas where the Bahá'í teachings suggest the need for further development of human rights principles.

Of central importance to unfulfilled human rights aspirations from a Bahá'í point of view is the concept of the oneness of humanity - a concept at the core of Bahá'u'lláh's teachings and which he emphasises repeatedly. It is expressed in various ways including the idea of global citizenship. "The Earth is but one country, and mankind its citizens." This idea of universal human citizenship implies, in stronger terms than expressed in the Declaration, the equality of rights of all members of the human family. Citizenship is the organising principle that replaced hierarchical medieval society with egalitarian concepts of modernity. Yet, in today's world we still do not practice full equality of human rights. One's country of birth still determines whether one will live in abject poverty or in material affluence unimaginable to previous generations, whether one will experience peace or warfare, whether one lives in a democratic society or whether one is subject to tyranny. It is a reality implicitly endorsed by the Declaration, which in this respect gives priority to the rights of states as opposed to the rights of the individual. For instance articles 13 (freedom

of movement, and the right to leave a country), 14 (the right to asylum) and 15 (the right to nationality) can be seen from a Bahá'í point of view as steps along the way to adopting the principle that all humanity are the citizens of a common homeland.

In this context article 28, which states that “everyone is entitled to a social and international order in which the rights and freedoms set forth in the Declaration can be fully realised”, would be seen as an area of neglected human rights advocacy. From the point of view of the Bahá'í teachings, human rights will not be achieved until the unity of the human race is established.

The Bahá'í principle that extremes of wealth as well as the extreme of poverty need to be addressed suggest another area of human rights advocacy. In broader terms the attention given to economic rights in the Bahá'í writings contrasts with western approaches which in the past were primarily focussed on civil and political rights. Thus far efforts towards the achievement of basic economic standards for all human beings, as called for in the Universal Declaration, have been notably unsuccessful; and extremes of poverty and wealth are increasing, both globally and within national borders.

The concept of the “oneness of religion” takes article 18 of the declaration one step beyond recognising the freedom of others to practice their beliefs - it implies the idea that all religions are from God and therefore sacred and worthy of reverence. It is an idea that promotes reconciliation and mutual respect between the followers of all faiths. Religious tolerance remains an unachieved aspiration, as sadly evident in conflict between followers of different faiths in a number of countries.

Bahá'í community advocacy of human rights

The Bahá'í teachings provide rich sources for action to promote human rights. Thus, as one would expect, the Bahá'í community has sought to translate these principles into practical action.

In a general sense Bahá'í community life intrinsically involves the promotion of human rights. The practices of free and fair elections, the role of the community in the governance of its own affairs, the promotion of unity between people irrespective of race and background, the pursuit of gender equity are all inherent aspects of Bahá'í community life. In a Bahá'í International Community statement on human rights education the pro-

motion of human rights principles in Bahá'í moral education classes is discussed: "Bahá'í communities in 173 countries are already both promoting and providing education, based on the principle of the oneness of humanity, which seeks to cultivate respect for the rights of others, a sense of responsibility for the well-being of the human family, and the moral attributes that contribute to a just, harmonious and peaceful world civilization. As a fundamental tenet of their religion, Bahá'ís are committed to the eradication of all forms of prejudice, including those based on race, ethnic origin, religion, sex or nationality – prejudices that fuel hatred and cause otherwise good people to deprive their fellow citizens of rights."⁴²

As well as this general context there is an increasing body of specific human rights advocacy in which the Bahá'í community is engaged.

Statements issued by the Bahá'í International Community, which represent some of its work at the United Nations, give an indication of the length of commitment to human rights at the international level. The Bahá'í community contributed to the drafting of the Universal Declaration of Human Rights through its Bahá'í Declaration of Human Obligations and Rights. From 1974 onwards there has been a steady stream of Bahá'í contributions to the human rights work of United Nations bodies, covering a broad range of topics including women's rights, racial prejudice, rights of minorities, religious tolerance, rights of indigenous people, economic social and cultural rights, human rights education, violence against women and combatting racism.⁴³

A 1974 document on the elimination of discrimination against women illustrates how the Bahá'í community, as a global entity, has worked over many years to promote human rights:

Since this is the first occasion we have had to report on publicity given to the Declaration on the Elimination of Discrimination Against Women, we would like to mention that as far back as 1968 we were making available to our affiliates [national communities] information on the [Declaration on the Elimination of Discrimination Against Women], as well as mailing supplies for United Nations Day or Human Rights Day meetings.

This description is representative of the kind of global and grass roots activity that Bahá'í communities have pursued for many years.

During the International Year of Peace in 1986, the Universal House of Justice issued *The Promise of World Peace*, a document which focussed on the prerequisites for the achievement of peace. It was shared with community leaders from the Secretary General of the United Nations to the chiefs and mayors of local communities, as well as the public in general. It continues to be distributed by the Bahá'í community. Its themes include the abolition of racism, the equality of men and women, the abolition of extremes of wealth and poverty, and the need for universal education.

In 1994 Bahá'í advocacy of human rights was given a greater focus through the adoption of an international policy for a Bahá'í contribution to the fostering of peace that focussed on four thematic issues: human rights, advancement of women, global prosperity and moral development. This policy has had the effect of significantly increasing national and local Bahá'í focus on these issues. In 1997 the Bahá'í community launched a program of action to support the implementation of national measures pursuant to the United Nations Decade for Human Rights Education. In this campaign Bahá'í communities have been encouraged to undertake promotion of commemoration of the fiftieth anniversary of the Universal Declaration of Human Rights and steps to implement the UN plan of action for the decade.

In Australia, the Bahá'í community has participated in such activities over many years. The community's work for peace was recognised by an award from the United Nations Secretary General in the International Year of Peace. Since 1996 there has been an increased focus on commemoration of Human Rights day, adding to routine activities in support of other international and national commemorations such as United Nations' Day, International Women's Day, Reconciliation Week and Refugee Week. In its national work the community has sought to increase its contribution to non-government work in the field of human rights. A wide range of activities were organised to promote the fiftieth anniversary of the Universal Declaration of Human Rights in 1998, including local commemorations and the conference at which this paper was presented.

Conclusion

As we explore the body of Bahá'í teachings we see a deep stream of reference to human rights expressed in traditional religious terminology - terminology drawn not from modern western political philosophy, but rather from the traditions of the great prophetic traditions of the Middle East. The comprehensiveness of this reference to human rights underlines

the centrality of rights in the Bahá'í Faith. The traditional language expressing rights concepts signals what can be deduced from a study of Judaism, Christianity, Islam and indeed the other great faiths: that these systems of thought have contributed directly to the assumptions and ways of thought from which human rights and instruments such as the Universal Declaration of Human Rights have emerged.

The very act of humanity gathering in 1948 to declare its global values and its aspirations for all human beings was profoundly spiritual in character. It was both a step and a beacon towards a future worthy of human dignity.

Notes

- 1 Statistics from *The Bahá'í World 1995-1996*, World Centre Publications, 1996. Local communities sufficiently developed to possess Local Spiritual Assemblies numbered 17,148 with the following geographical spread: Africa: 4828, Americas 4515, Asia 5954, Australasia 901, Europe 950.
- 2 Smith, P., *The Bábí and Bahá'í Religions: From Messianic Shi'ism to a World Religion*, Cambridge University Press, 1987.
- 3 Shoghi Effendi, *World Order of Bahá'u'lláh: Selected Letters*, Bahá'í Publishing Trust, Wilmette, 1938, 1974, pp 42-43.
- 4 Bahá'u'lláh, *The Hidden Words*, Bahá'í Publishing Trust, Wilmette: 1985. Arabic Hidden Words, No. 68.
- 5 *Ibid.*, Arabic Hidden Words, No. 22.
- 6 Bahá'u'lláh, *Writings of Bahá'u'lláh: A Compilation*, Bahá'í Publishing Trust, New Delhi, 1986, pp. 212-213.
- 7 Bahá'u'lláh, *Gleanings from the Writings of Bahá'u'lláh*, Bahá'í Publishing Trust, Wilmette, 1952, p. 288.
- 8 *Ibid.*, p. 264 (quoting from Bahá'u'lláh's *Kitáb-i-Iqán*).
- 9 Bahá'u'lláh, *The Proclamation of Bahá'u'lláh to the Kings and Leaders of the World*, Bahá'í World Centre, Haifa, 1967, 1972, p. 11.
- 10 Bahá'u'lláh, *Gleanings from the Writings of Bahá'u'lláh*, Bahá'í Publishing Trust, Wilmette, 1952, *supra* note 8, p. 235.
- 11 Bahá'u'lláh, *Writings of Bahá'u'lláh*, *supra* note 7, p. 255.
- 12 "Twenty years have passed, O Kings, during which We have, each day, tasted the agony of a fresh tribulation ... They that rose up against Us, have put Us to death, have shed Our blood, have plundered Our property, and violated Our honour. Though aware of most of Our afflictions, ye, nevertheless, have failed to stay the hand of the aggressor. For is it not your clear duty to restrain the tyranny of the oppressor, and to deal equitably with your subjects, that your high sense of justice may be fully demonstrated to all mankind." Bahá'u'lláh, *The Proclamation of Bahá'u'lláh*, *supra* note 10, p. 11.
- 13 *Ibid.*, p. 34.

- 14 Ibid.
- 15 Ibid., p. 67.
- 16 "God hath, likewise, as a bounty from His presence, abolished the concept of 'unclean-ness', whereby divers things and people have been held to be impure." Bahá'u'lláh, Kitáb-i-Aqdas, para 144.
- 17 Ibid., para 75.
- 18 Ibid., para 120 and 154 dealing with intoxicants and mind-altering substances.
- 19 Ibid., para 73.
- 20 Ibid., para 72.
- 21 Ibid., para 147.
- 22 Ibid., para 146.
- 23 Ibid., para 21.
- 24 Ibid., para 49.
- 25 Ibid., para 81 and 82.
- 26 Ibid., para 89.
- 27 Ibid., para 88.
- 28 Ibid., para 91 and 93.
- 29 Bahá'u'lláh, Writings of Bahá'u'lláh, supra note 7, p. 212.
- 30 Ibid., p. 216.
- 31 Ibid., pp. 215-216.
- 32 Ibid., p. 217.
- 33 Ibid., p. 189.
- 34 Ibid., p. 328.
- 35 Ibid.
- 36 Preamble to the Universal Declaration of Human Rights (Universal Declaration), General Assembly Resolution, UN Doc A/811.
- 37 Bahá'u'lláh, Kitáb-i-Aqdas, supra note 17, para 95.
- 38 Ibid., para. 159, 148.
- 39 Universal House of Justice, Individual Rights and Freedoms in the World Order of Bahá'u'lláh: To the Followers of Bahá'u'lláh in the United States of America, 29 December 1988.
- 40 Bahá'u'lláh, Kitáb-i-Aqdas, supra note 17, para. 65.
- 41 Ibid., para. 62.
- 42 Bahá'í International Community, "Statement on the UN Decade of Human Rights Education delivered to the UN Commission on Human Rights", March 1996.
- 43 Statements of the Bahá'í International Community can be accessed via the Bahá'í World web site at www.bahai.org.

Religious Freedom in the Asia Pacific: The Experience of the Bahá'í Community

BY GRAHAM HASSALL

This paper outlines some aspects of the Bahá'í Community's approach to one human rights initiative, the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief. It does so in the context of key challenges facing nations in the Asia Pacific region if the cause of human rights is to be advanced. These include the need for new notions of governance, an understanding of the origin of human rights and their relationality, and a normative appreciation of diversity. The Asia Pacific is a region of diverse peoples and belief systems in which most of the great religious traditions have contributed in one or several states to the progress of civilisation. It is a region, too, in which entire states have been founded on one or other of the great traditions: Hindu, Buddhist, Islamic and Western/Christian. In the context of the rapid integration of economic and social systems frequently referred to as globalisation it is desirable that the increasing proximity of religious traditions lead to inter-faith harmony rather than to sectarianism. Legal standards ensuring freedom of belief provide an essential platform for religious harmony. A considerable number of states, particularly in the Pacific Islands, are yet to endorse the major covenants outlining these legal standards. The Decade of Human Rights Education provides the opportunity to heighten awareness of the issues, and the benefits of agreeing to common standards.

The Emergence of Universal Human Rights

The articulation of the rights of individuals, and the legal means for their protection, have emerged in response to consciousness of the large-scale brutality of the twentieth century, and now comprise a significant

portion of twentieth century international law innovation. A significant body of legal norms has been built on the Universal Declaration of Human Rights agreed by the United Nations in 1948. Although merely a 'declaration' of desirable standards pertaining to human rights, the UDHR has had considerable impact on the ways in which states and citizens understand notions of individual rights and obligations. In 1966 the UN concluded two "covenants" concerning human rights: the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). A number of other declarations have been formulated since, including one seeking to eliminate all forms of racial prejudice; another to eliminate all forms of religious intolerance; and yet another declaring the rights of indigenous peoples. In addition to the Universal Declaration of Human Rights the principal treaties are:

- The International Covenant on Civil and Political Rights
- The International Covenant of Economic, Social and Cultural Rights
- The Convention on the Elimination of All Forms of Racial Discrimination
- The Convention on the Elimination of Discrimination Against Women
- The Convention on the Rights of the Child
- The Convention Against Torture

In 1993 the United Nations convened a Conference in Vienna to review global progress in advancing human rights.¹ In 1995 the United Nations declared the UN Decade for Human Rights Education (1995-2004).

The Bahá'í International Community has contributed ideas on human rights policy from the inception of the United Nations. It presented the document "A Bahá'í Declaration of Human Obligations and Rights" to the first session of the United Nations Commission on Human Rights at Lake Success in New York in February 1947. That document identified seven "essential human rights characterizing the new world era" - those concerned with: (1) the individual; (2) the family; (3) race; (4) work and wealth; (5) education; (6) worship; (7) social order.

Since 1947 the BIC has made numerous statements to sessions of various agencies of the United Nations. Almost every year since 1988 it has

addressed a statement to the United Nations Commission on Human Rights in 1998 in relation to the 1981 Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief.

In 1995 the BIC published a Statement on the Occasion of the 50th Anniversary of the United Nations² and also in that year distributed a statement at the United Nations World Summit on Social Development, Copenhagen.³ In March 1996 the Bahá'í International Community submitted a written statement to the UN Commission on Human Rights, indicating its full support for the Commission's *Plan of Action*.

Many of these documents point out that the Bahá'í Community has been the beneficiary of the UN's human rights regime - particularly in relation to conditions in Iran but also following episodes of persecution in Morocco and elsewhere. But in addition to relying on human rights mechanisms to seek relief in such circumstances, the Bahá'í International Community has sought to contribute actively to the formulation of policy and to foster within the human rights community a positive vision of possibilities for the future.

Human Rights in Asia-Pacific: the Bahá'í Experience

Bahá'í Communities in the Asia Pacific region face particular challenges. In some states they are yet to secure for themselves the fundamental rights guaranteed in international law. A second challenge is their ability to make a contribution to the promotion of human rights of all who live in the region. The purpose of this paper is to briefly review the status of Bahá'í Communities in the Asia Pacific with respect to existing human rights regimes, and to consider the educational needs of these Communities if they are to make a genuine contribution to the promotion of human rights.

The persecution of Bahá'ís in Iran is the most widely acknowledged instance of persecution of Bahá'ís on the basis of their religion, but it is not the only instance.⁴ In Asia, for instance, political and social upheaval, and political and religious ideology, have affected the situation of the Bahá'ís in a number of countries. All effective contact with the Cambodian Bahá'ís was lost during the period of Khmer Rouge rule (1975-79), and apart from contact with Bahá'ís subsequently found in refugee camps in Thailand, the community had to be completely re-established in the 1980s.⁵ In Vietnam, similarly, the Bahá'í Community was affected by

government policy toward religions implemented after reunification in 1975.⁶

The activities of Bahá'í Communities in predominantly Islamic countries face a number of limitations. The Bahá'í Community of Indonesia has been deprived of basic rights since the 1960s. Although the Indonesian constitution states "The State shall be based upon belief in the One, Supreme God", and that "The state shall guarantee the freedom of the people to express and to exercise their own religion", a Presidential Decree of 1962 banned a number of religious organisations including the Bahá'í Faith.⁷ The length of this ban, and the legal arguments used to support it, began to attract scholarly comment,⁸ and it has since been lifted. The activities of the Bahá'í Communities of Malaysia, Afghanistan and Pakistan are also subject to restrictions specified by law.

In the islands of the Pacific, most Bahá'í Communities enjoy freedom of religion afforded by express constitutional protections. Subtle forms of persecution persist, however, at 'grass-roots' level in cultures that are unfamiliar with notions of human rights, and with religious diversity. Some Pacific Island constitutions protect Christianity as the state religion while allowing freedom of religion, creating a tension occasionally expressed in calls for the banning of non-Christian religions. Bahá'í Communities in these states are uniquely placed: in many they constitute the largest non-Christian religious community. While most Pacific Island states are members of the United Nations, some are too small to meet the basic requirements of membership: whether membership fees, or the costs of diplomatic representation. Accession to international treaties is an imposing exercise, and adherence to international standards of compliance and reporting is equally daunting.

Asia-Pacific Bahá'í Communities and Human Rights Education

Asia-Pacific Bahá'í Communities have been prepared for involvement in programs of Human Rights Education by several circumstances. Firstly, they are part of a global religious tradition that holds the values of the human rights culture implicit in its scripture. Second, on the basis of their own experience, they understand the urgency of systemic change in the operation of state power, and for broader understanding of the advantages of more enlightened cooperation between governments, individuals, and civil society.

This positive disposition, however, is accompanied by several constraints. There is a lack of detailed knowledge across Asia-Pacific Bahá'í Communities about current human rights practices and procedures. Those who do have such knowledge are not sufficient in number to conduct broad-based education programs.⁹ The short-term implication is that such activity as does occur in the field of human rights education, and human rights advocacy, will be by a small group of specialists acting on behalf of their Communities. Despite the benefits of such activity, a broader approach to human rights education and advocacy will be required if the aspirations of the Human Rights Commission's *Plan of Action* is to be realised. The BIC statement on that plan comments:

The *Plan of Action* prepared by the High Commissioner for Human Rights reflects this integrated conception of education by defining human rights education as "training, dissemination and information efforts aimed at the building of a universal culture of human rights through the imparting of knowledge and skills and the moulding of attitudes which are directed to:

- a) The strengthening of respect for human rights and fundamental freedoms;
- b) The full development of the human personality and the sense of its dignity;
- c) The promotion of understanding, tolerance, gender equality and friendship among all nations, indigenous peoples and racial, national, ethnic, religious and linguistic groups;
- d) The enabling of all persons to participate effectively in a free society; and
- e) The furtherance of the activities of the United Nations for the maintenance of peace.

The Bahá'í International Community fully embraces these goals and objectives. Human rights education, if it is to succeed, must seek to transform individual attitudes and behaviour and thereby establish, within every local and national community, a new "culture" of respect for human rights. Only such a change in the fundamental social outlook of every individual - whether a government offi-

cial or an ordinary citizen - can bring about the universal observance of human rights principles in the daily lives of people. In the final analysis, the human rights of an individual are respected and protected - or violated - by other individuals, even if they are acting in an official capacity. Accordingly, it is essential to touch the hearts, and elevate the behaviour, of all human beings, if, in the words of the Plan of Action, human rights are to be transformed "from the expression of abstract norms" to the "reality" of the "social, economic, cultural and political conditions" experienced by people in their daily lives."¹⁰

Steps that can be taken

1. *Participation in Human Rights Education*

Therefore, the Bahá'í International Community joins Mr. Ribeiro in his call for efforts to promote greater understanding amongst all people, particularly through inter-faith dialogues and through systematic efforts by the Centre for Human Rights to disseminate the principles of the 1981 Declaration through the media and to urge their inclusion in the curriculum of schools and universities.¹¹

In the view of the Bahá'í International Community, the only sure means of eradicating prejudice is through education, for education dispels ignorance, and blind ignorance is at the root of all prejudice.

We, therefore, believe that education is the essential factor in securing implementation of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination based on Religion or Belief. It is necessary not only that the declaration be disseminated as widely as possible, but that it should most particularly be brought to the attention of schools and other educational bodies, and that determined steps should be taken, at both national and international levels, actively to promote understanding, tolerance and respect in matters relating to religion or belief.¹²

2. *Converting Declaration into a Treaty*

Turning now to the role of the international community in combating religious intolerance in all its many guises, the Bahá'í International Community believes that the attention accorded in the United Nations human rights programme to the implementation of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief is not only appropriate but must be increased.

... We do not believe that public denunciations are necessarily the best method of resolving the issues involved. We therefore appeal to the Commission, and to the Special Rapporteur, to devise strategies which will enable the Rapporteur to discuss problems with Governments and to assist Governments in solving difficulties without politicization of the issues.

It is also, we believe, important that the Commission remind itself of the General Assembly's decision, in December 1962, to initiate the preparation of both a Declaration and a Convention to combat religious intolerance. Practical considerations called, eventually, for priority to be given to the elaboration of a Declaration, but we believe that the Commission should once again recognize that this issue has the same claim to being dealt with in a binding international instrument as does the issue of racial discrimination.

We do not advocate the hasty initiation of a drafting exercise by the Commission, and we believe that the suggestion contained in paragraph 216 of Mrs. Odio-Benito's report — namely, that non-governmental organizations and independent experts should be entrusted with drafting the outline for a Convention — is an interesting proposal.

We believe that all men and women of good will can contribute towards hastening the end of religious fanaticism. They can do this, first, by living up to the high ideals of love, unity and tolerance that lie at the center of their own religions or beliefs. In addition ... everyone must be taught to respect the beliefs of others so that they will not merely tolerate, but positively respect, those who hold different beliefs.¹³

The Bahá'í International Community believes that binding international norms protecting human rights are of great importance. We are therefore following with great interest the recent discussions in the Sub-Commission and the Commission on the possible elaboration of a binding international instrument dealing with freedom of religion or belief...¹⁴

Conclusion

With the emergence of global human rights discourse in the second half of the twentieth century, issues of identity and difference have emerged. There is no regional human rights organisation in the Asia Pacific, and a number of nations in the region insist on defining rights in their specific 'historical and cultural circumstances'. The UN Decade for

Human Rights Education provides the opportunity for Bahá'í communities to contribute a broad conception of human rights, in terms of their origin, scope, and ultimate purposes, to a vitally important component in the construction of global civil society and the new world order.

Notes

- 1 United Nations. World Conference on Human Rights Vienna, 14-25 June 1993, Vienna Declaration and Programme of Action. A/Conf.157/23.
- 2 Bahá'í International Community, "Turning Point For All Nations", A Statement of the Bahá'í International Community on the Occasion of the 50th Anniversary of the United Nations, Bahá'í International Community, United Nations Office, New York, October 1995.
- 3 Bahá'í International Community, "The Prosperity of Humankind", Statement prepared by the Bahá'í International Community's Office of Public Information, Haifa, Israel, 3 March 1995.
- 4 Persecution in past years of Bahá'ís in Egypt, Morocco, and Iraq is also widely documented.
- 5 A report concerning the fate of the Cambodian Bahá'ís appeared in Bahá'í World 1973-76, Bahá'í World Centre, Haifa. "With the conclusion of warfare and the establishment of the new regime all Bahá'í activity in Cambodia is at a standstill, as far as can be ascertained. For a time the national Teaching Committee secretary wrote of continuing teaching activity among the believers and enquirers but there are now no available channels of communication and there has been no recent news of the fate of the Khmer Bahá'ís": Bahá'í World 1973-76, p.138.
- 6 A report in Bahá'í World 1973-76, *ibid.* said: "In the latter period under review circumstances beyond the control of the Bahá'ís have hindered the completion of the goals. An administrative committee has been appointed to function on behalf of the National Spiritual Assembly". In 1978 the National Spiritual Assembly was dissolved. The Bahá'ís were forbidden to meet, and all Bahá'í centres were closed or confiscated. The National Hazirat'ul Quds was seized and two members of the National Spiritual Assembly were arrested and sent to "re-education" camps. One was released due to ill health in 1982. CM (Council of Ministers) Resolution 297 of November 1977 was superseded by SRV CM Resolution 69 "Regulation on Religious Activities" of 1991 which tightened state control over religious activities and required churches to obtain government approval for religious conferences, visits by foreign clergy etc. (Indochina Chronology X:2, 1991) At the same time, the new code does promised "Freedom of Belief and non belief". (It was printed in French in Eglises D'Asie 111, 16 May 1991.) See further: U.S. Dept. of State, February 1, 1991, 1990 Human Rights Report; U.S. Dept. of State, February, 1992, 1991 Human Rights Report.
- 7 Presidential Decree 1 of January 27, 1965 stated there were six official religions: Islam, Protestantism, Catholicism, Hinduism, Buddhism and Confucianism. Many mystical movements have also been banned, and the Ministry of Religious Affairs has restricted Christian missionary activity: see USA. Department of State, Country Reports on Human Rights Practices for 1985, February 1986. (Report submitted to the Committee on Foreign Affairs (House of Representatives) and Committee on Foreign Relations, (Senate), p.778 [Indonesia]: "A 1972 letter of the Supreme Prosecutor reiterated a Presiden-

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tial Decree of 1962 banning membership in Jehovah's Witnesses and the Bahá'í Faith. Although technically belief in one of these religions is not prohibited, legal decisions based on the 1972 and 1962 decrees made clear that such belief implies membership, which is illegal." Early in 1985 the Aceh provincial office of the Ministry for Religion sent a circular to all its officials to report any person propagating the Bahá'í Faith. The provincial police chief sent similar instructions to all police posts in the region, coupled with a warning to people not to be tricked into joining (as reported in *The Australian*, 4 March, 1985: "Jakarta bans Bahá'í Faith as un-Islamic".)

- 8 Shelton, D., *A Draft Model Law on Freedom of Religion, With Commentary. Religious Human Rights in Global Perspective: Legal Perspectives*, Martinus Nijhoff Publishers, The Hague, Boston & London, 1996, pp. 559-592: "The freedom to have a religion means that the government does not prescribe orthodoxy or prohibit particular religions or beliefs. In practice, this is not always the case. Among the examples that may be cited, Indonesia bans the Jehovah's Witness religion because of 'its aggressive manner in propagating its teachings, trying to convert other adherents to this faith'. According to the government, 'misleading cults' are banned in order to maintain peace and harmony between and among adherents of the various religions. 'Without the Government's handling in the matter, the activities of 'cults' (including Jehovah's Witnesses and Bahá'ís) may create disturbances and disrupt the existing religious tolerance.' [Report on Religious Intolerance, 20]. Indonesian law is based on the Constitution (which stipulates that 'the State shall be based upon belief in the One Supreme God', and which guarantees every resident the freedom to adhere to his respective religion and to perform his own religious duties in conformity with that faith. *Ibid*, 39. However, Article 1 of Law No. 1/NPS/1965 on the Prevention of Abuse and/or the Defiling of Religions, prohibits anyone from deliberately making interpretations of any of the recognized religions in Indonesia or publicly engaging in activities which deviate from those religions; such interpretations and activities being contrary to, and deviating from the true teachings of those religions. *Ibid*, 40. Based on this, the Bahá'í faith is banned in Indonesia 'since its teaching and practices are contrary to, and deviating from the teachings of Islam' *Ibid*. UN Doc E/CN.4/1990/46 of 22 January 1990.
- 9 The Australian Bahá'í Community, through its Office of External Affairs, and through others in the community with human rights expertise, is among the best placed in the region to commence such involvements: See Curtotti, M., "The Bahá'í Contribution to Society: an Overview of the Bahá'í External Affairs Strategy", in *Association for Bahá'í Studies, From Poverty to Prosperity: Proceedings from the 1996 National Conference of the Association for Bahá'í Studies*, Rosebery, 1997; Puri, K., *Human Rights of Indigenous Peoples. Indigenous Peoples: in the Wake of Mabo*, Bahá'í Publications Australia, Mona Vale, 1997, pp. 115-132; Nicholson, G., "Toward a Global Ethic: The Bahá'í Faith and Human Rights" in *Toward the Most Great Justice: Elements of Justice in the New World Order*, Bahá'í Publishing Trust, London, 1996; Johnston, S. W. "Human Rights and the Bahá'í Faith" in *75 Years of the Bahá'í Faith in Australasia: Proceedings from the 1995 National Bahá'í Studies Conference*, Rosebery, Association for Bahá'í Studies - Australia, Rosebery, 1996.
- 10 Bahá'í International Community, "The United Nations Decade for Human Rights Education", in *The Bahá'í World 1995-96*, World Centre Publications, Haifa, 1997, pp. 295-308.
- 11 Statement to the United Nations Sub-Commission on the Prevention of Discrimination and Protection of Minorities, Geneva, Switzerland, August 1993.
- 12 Bahá'í International Community, "Eliminating Religious Intolerance", Statement to the 49th session of the United Nations Commission on Human Rights, Agenda item 22:

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Implementation of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, Geneva, Switzerland, 18 February 1993.

- 13 Bahá'í International Community, "Eliminating Religious Intolerance", Statement to the forty-third session of the United Nations Commission on Human Rights, Agenda item 23: Implementation of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, Geneva, Switzerland, February/March 1987.
- 14 Bahá'í International Community, "Eliminating Religious Intolerance", Statement to the forty-fourth session of the United Nations Commission on Human Rights, Agenda item 23: Implementation of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, Geneva, Switzerland, 17 February 1988.

Tikkun Olam: To Repair the World

BY JEREMY JONES

Justice, Justice shall you pursue that you may live, and inherit the land which the Lord your God has given you. (Deut.16:20)

In the early 1980s one of the major issues on the international human rights agenda was that of the treatment of Jews and others within the USSR. For the Jewish community, this was arguably the priority issue of the time and the Australian Jewish community is recognised as having played a key role in advocating for the rights of Jews within the Soviet Union to either be permitted freedom of emigration or to be allowed freedom to practice their religion, free of persecution.

Our public activities included petitions, writing articles for newspapers, appealing to our government to intervene and, whenever and wherever appropriate, demonstrating and protesting when various Soviet representatives visited these shores. With the Embassy of the Soviet Union being located in Canberra, there were many occasions on which I drove from Sydney to spend my Sundays holding a placard or joining in songs of freedom in an effort to keep the issue before the Australian public and our politicians.

On the last of these occasions, my newly-purchased secondhand car stopped running as I cruised into Canberra, with the gear box seizing just as I reached the Canberra Rex Hotel, the venue for this conference. Needless to say, I missed that demonstration but, as the *Australian Jewish News* put it, I had a protest of my own to look after on the next day.

For so many Jewish people, regardless of their knowledge of the Jewish religion or commitment to many of the ritual aspects, there was a clear and vivid motivation in the Soviet Jewry movement of an awareness of a moral responsibility to act as 'our brothers' keepers'. Right up until the crumbling of the Soviet Union, we had no way of knowing whether our efforts were doing much more than allowing us to feel we were at least doing something for our brothers and sisters behind the Iron Curtain. We now know not only were our efforts important in contributing to the eventual end of the Soviet dictatorship but that many Jews have taken the decision to leave and re-join the Jewish family centred in Israel while others have been involved in a remarkable re-building of Jewish life after almost eighty years of oppression.

In September this year I attended the opening of the first synagogue constructed anywhere in the former Soviet Union since the victory of the Bolsheviks in 1917. The synagogue was built by and for the Jewish community of Moscow and was opened by the Russian President, Boris Yeltsin, the Mayor of Moscow, a special representative of President Clinton, leading figures in international Jewish organisations and Israeli leaders, including Natan Sharansky.

In an event which would have been unimaginable a decade ago, a former long-serving prisoner of the Soviets, Natan Sharansky, returned to Moscow as a Cabinet Minister of the sovereign Jewish State to open a synagogue in front of an international Jewish and non-Jewish gathering. To add to the symbolism of the occasion, the synagogue is located between an Orthodox church and a mosque, in a park area which is dedicated to the memory of the victims of Fascism in the Second World War.

Anatoly Sharansky, as a prisoner in the Gulag, lived the struggle for human rights. At a session of the Russian Jewish Congress, which took place concurrently with the synagogue dedication, Minister Sharansky told us the story of how, when placed in prison, he had not been put in solitary confinement but was imprisoned together with someone his jailers believed would cause him even more distress - a committed Christian.

Natan Sharansky told us that his guards were surprised that when the only book permitted to his co-prisoner, a Bible, was taken away for a punishment, the two men went on a hunger strike together, and they did the same when his own lone book, a book of Psalms, was taken away. The two men demonstrated the understanding that an enemy of freedom was an enemy of all freedoms and that people of faith can and should give each other mutual encouragement.

One of the many outstanding religious figures to address the conference gave what we call in Hebrew a *d'var torah*, a commentary on the words of the Bible. The rabbi said that, as we gathered on this occasion, it was worthwhile for us to reflect on what message it was that normative Jewish teaching would derive from the portion of the five books of Moses which was read in the synagogue that week.

The rabbi dealt with the theme of what it is that God wants from humanity. He explained that, as we think of God as our father we should therefore think of ourselves - of all humanity - as children of God. He asked what it is that parents most want from their children and said that he believed all parents would agree, on reflection, that it is that we act with love towards our siblings.

He spoke of how, when children demonstrate their love for each other, whatever they do which might irritate, offend or upset their parents is easily forgiven. However, if they do not demonstrate warmth and affection to each other, not only do the parents feel themselves to be failures, but they find it almost impossible to enjoy the successes and achievements of their children. He argued that all our Commandments - and in Judaism we are given 613 of them - are premised in the view that as children we should love and respect our God and that part of the demonstration of this love is reflected in the way we treat each other.

On 9 November the Jewish world, and many non-Jews, commemorate *Krystallnacht*, the night in 1938 when the Nazis preceded the murder of millions of human beings with violent attacks on property and people. The *Shoah* - the Holocaust - marked a period when humanity sank to its nadir. Jewish people and others regarded as less than human were deprived of their rights, not only to participate fully within society, but even to live. The process of stripping a human being of his or her humanity proved to be remarkably simple, once the population was divided into identifiable segments, with the weaker group being depicted as existential enemies of the dominant population. There is an abundance of evidence that many Jews who are involved in social justice activities, particularly in opposition to racism in all its forms, have drawn lessons from the Holocaust and have vowed that such a world must not be allowed to return.

Much of Judaism is about memory. So much of our understanding of our own identity is drawn from knowledge of what it is like to be a slave in Egypt, of what it is to be a member of a small, dispersed and too often

despised group which had to learn how to maintain self-respect and dignity in adversity.

While the Holocaust is etched deeply into the memory of Jews in the current period, we recall centuries without a homeland, without political rights, without any control over our own external destiny, on many occasions throughout each year. We ask ourselves not only what happened to us and how it happened, but also what lessons we can gain from our experiences. To do this, we study.

The Jewish people have always placed a high value on literacy and learning. Scholarship has always been thought of as the most worthy of pursuits. But what is often not considered is why Jewish people study.

There is a famous Jewish story about two rabbis who lived in Poland last century. We learn that one of the rabbis, upon completion of a major tractate which represented a lifetime of study and scholarship, went to visit his colleague. The proud and excited scholar said to his colleague, 'Where is your life's work? Why haven't you written your discourses yet?' The second rabbi led the scholar to his study and took out a tattered and well-worn notebook. He opened it and read entries such as:

- 1 Cheshvan, a widow came to me because she doesn't have money to feed her children. I was able to get her some food;
- 3 Cheshvan, an orphan came to me in need of a job. Taken care of;
- 6 Cheshvan, a poor family was worried about the coming winter. They received clothing and blankets.

And so it continued, each entry recorded whether he had been able to meet the needs of those who turned to him. 'This,' the rabbi said, pointing to his notebook, 'is my life's work.'

The purpose of this story is not to take away from the humanity or goodness of the first rabbi, whose scholarship and contribution to learning is undoubted. What it does tell us, however, is that the purpose of learning is to guide our behaviour. The question for each of us is how we can achieve the appropriate balance, accruing enough knowledge to allow us to act in the best way possible while not neglecting action for the sake of learning.

Rosalyn Yallow, Nobel Prize Laureate for Medicine in 1977, stated recently that Jewish tradition 'places emphasis on learning - learning for the sake of understanding and perfecting the world'. Whatever the activ-

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ity in which a Jewish person is involved, there is Jewish teaching and learning which guides one in the direction of social justice.

Marcos Aguinis, who was Secretary of Culture of Argentina from 1983 to 1987 and is a novelist and essayist, notes that: 'Biblical prophets lashed out at corrupt kings and priests. As a consequence, we gained the courage to recognise and take responsibility for our shortcomings - as Jewish people, as individuals and as part of humanity.'

When I look at the way others often misunderstand Judaism, I am repeatedly struck by the false impression that we see learning as an end in itself. Further, perhaps because of the way in which we use the word 'law' to refer to many acts which we believe do honour to God, there is an image of Jews as people who would put ritual laws above what could be considered general moral principles. However, as Dr Hyam Maccoby has argued so cogently, in each and every case where ritual obligations and moral requirements come into conflict, moral obligations have priority. Our Prophets are always inveighing against those who put ritual before moral requirements, as we see in places such as Proverbs 15:8, Isaiah 1:11-15 and Amos 5:21-24.

Ruth Bader Ginsburg of the US Supreme Court said she had learnt from Jewish history that Jewish tradition has always prized the scholarship of judges and lawyers but there was always a clear purpose to laws, and this has been reflected by Jewish jurists and judges who had used law 'as protectors of the oppressed, the poor, the loner'.

In trying to understand our place in the world, as Jews, we have religious source material not only on issues such as the rule of law and the inherent dignity of all human beings, but also on issues such as the environment - where we are taught that we have a trust relationship over the earth - and on the paramount obligation for all of us to pursue *darchei shalom*, the 'ways of peace', i.e. to be involved in the work of social justice.

We see human beings as the children of God who have a responsibility towards each other. We do not, as a religion, seek to impose our view on others, but rather to live in a way which does honour to the Lord. In the words of Nobel Peace Prize Laureate, Elie Wiesel:

A Jew must be sensitive to the pain of all human beings. A Jew cannot remain indifferent to human suffering, whether in former Yugoslavia, in Somalia or in our own cities and towns. The mission of the Jewish people has never been to make the world more Jewish, but to make it more human.

Tikkun Olam: To Repair the World

While the expression *tikkun olam* - to repair the world - is loaded with Messianic inferences, Judaism does not allow us the luxury of wishing for a Messiah to bring us a better world. It is incumbent upon each of us to work towards a more civil and better society marked by doing towards each person as we would have them do towards us and learning to celebrate together our relationship with each other and with God.

Human Rights and Responsibilities: A Christian Perspective

BY ROBERT MCCORQUODALE

Introduction

Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world...Now, therefore, the General Assembly proclaims this universal declaration of human rights.¹

With these introductory words, on the evening of 10 December 1948, the Universal Declaration of Human Rights was adopted by the General Assembly of the United Nations. There were no dissenting votes.² The Assembly, in a rare gesture of appreciation, gave a standing ovation to Eleanor Roosevelt, the chair of the Human Rights Commission which had drafted the Universal Declaration.

The Universal Declaration was stated to be a 'common standard of achievement for all peoples and all nations,'³ setting out a range of civil, political, economic, social and cultural rights for all humans. These are high ideals which were designed to change the whole focus of governments and humans. As the then President of the General Assembly, Dr H.V. Evatt of Australia, stated:

the adoption of the Declaration is a step forward in a great evolutionary process ... the first occasion on which the organised community of nations has made a

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declaration of human rights and fundamental freedoms. That document is backed by the authority of the body of opinion of the United Nations as a whole and millions of people, men, women and children all over the world who would turn to it for help, guidance and inspiration.⁴

It is now 50 years since that Declaration was adopted, yet, appallingly, human rights violations continue. Many people remain oppressed by others who have more political, economic or social power. Too many people live in fear, not only in those conflicts seen in the international media, but also in conflicts hidden in the shadows of family life. There is a constant loss of life, liberty and security and many millions do not have an adequate standard of living. Often there is no access to a protective legal mechanism when their rights are violated.

At the same time, in those 50 years there has been amazing progress in making human rights more than vague moral inspiration. Prompted by the Universal Declaration,⁵ there are now hundreds of international treaties, agreements, documents and other material protecting human rights.⁶ These agreements place obligations, usually legal, upon governments and many of these agreements set up some form of supervisory mechanism to ensure compliance. While most countries do not always fulfil all those obligations, no government today states that it can legally abuse human rights.⁷ Walls of oppression and authoritarian rule have been torn down from Eastern Europe to Africa and Asia. Indeed, an extraordinary fact is that every single country in the world has accepted that it has international legal obligations to protect human rights.⁸ Thus international legal protection of human rights offers both obligations on governments to which individuals or groups can appeal, and international standards by which governments can be judged.

One consequence of these developments has been that the language of human rights is now used in many contexts: from national and international conflicts to personal relationships. I want to explore the extent to which this use of human rights is consistent with Christian understandings. What I aim to demonstrate is that much of the legal and social discourse of human rights has foundations in Biblical material and that the language of human rights is a contemporary discourse which is absolutely consistent with the discourse and practice of Christ. I will focus on two aspects: the concept of human rights and the way human rights are protected. These show that there are clear obligations on Christians to uphold human rights arising from their responsibility, owed to God, to love their neighbours without discrimination.

There are three matters which must be dealt with initially. First, there are far too many instances when actions or inaction by the institutions of the Christian Churches and by those professing a Christian faith have violated human rights. Many would also claim that some of the current practices of some parts of the Christian Churches, particularly in regard to ordination, continue to violate human rights.⁹ I do not aim here to examine those actions and inactions but to seek to offer a way forward. The Christian Churches may seem immovable but it is hoped that they are able to change their practices and seek new ways forward. The second introductory matter is that I am not going to deal directly with the issue of the right to freedom of religion – which is protected in Article 18 of the Universal Declaration and elsewhere.¹⁰ Third, I do not pretend to be able to offer *the* Christian perspective on human rights. There are many Christian perspectives and mine is influenced by the reformed/protestant Christian theology and by my legal training.

Concepts of Human Rights

There are many ways to describe human rights. One writer has offered four characteristics of a human right:

First, it must be possessed by all human beings, as well as only by human beings. Second, because it is the same right that all human beings possess, it must be possessed equally by all human beings. Third, because human rights are possessed by all human beings, we can rule out as possible candidates any of those rights which one might have in virtue of occupying any particular status or relationship, such as that of parent, president or promisee. And fourth, if they are human rights, they have the additional characteristic of being assertable, in a manner of speaking, “against the whole world”.¹¹

These characteristics are essentially the primary elements of a human right, though the fourth characteristic suggested is too broadly stated because a right does not always mean a legally enforceable claim against another who has a duty to uphold that entitlement.¹² The international community has confirmed the essence of these characteristics in the Universal Declaration when it proclaimed the ‘*inherent* dignity and ... the *equal* and *inalienable* rights of *all members* of the human family’.¹³

The use of the term “human rights” is relatively new, at least in the context of enabling an individual to bring a claim against a government

about its oppressive activities. However, the notion of the liberty of humans from oppression can be found in Greek philosophy and ancient Chinese and Indian practice.¹⁴ Later philosophers associated rights with the law of nature because they considered that autonomy and independence of individuals were natural to humans and that governments were under a duty to protect them.¹⁵ The Christian theologian Thomas Aquinas proposed that nature and government were ordained by, and subject to, divine law, being the higher law.¹⁶ The influence of his philosophy can be seen in the American Declaration of Independence of 1776 which proclaims: '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'.¹⁷

Most contemporary philosophy about human rights has tended to reject natural rights, on the basis, as Bentham put it, that 'natural rights is simple nonsense; natural and imprescriptible rights, rhetorical nonsense - nonsense upon stilts'.¹⁸ Indeed, during the drafting of the Universal Declaration it was proposed that Article 1 should provide that 'human beings are created in the image of God ... [and] are endowed by nature with reason and conscience' but this was rejected as incompatible with the views of many in the world.¹⁹ Instead, contemporary human rights philosophy is primarily based on reasoned notions of inherent human dignity without reference to any spiritual element.²⁰ Nevertheless, there is general consensus that a key aspect of the nature of human rights remains the natural law concept that human rights are inalienable and so unable to be surrendered.²¹

One immediate difficulty for Christian scholars is that the Bible does not use the term "human rights" in the sense of a legal entitlement of an individual to bring a claim against another, who has a duty to uphold the entitlement. However, the Bible is replete with references to justice and to righteousness, in which notions of human rights can be seen.²² For example, Zechariah proclaims: 'This is what the Lord Almighty says: "Administer true justice; show mercy and compassion to one another. Do not oppress the widow or the fatherless, the alien or the poor."'"²³ This injunction is particularly directed at the need to protect widows, orphans, the poor and foreigners. This is because these groups were the powerless in that society, who were often the subject of oppression, and so needed to be helped by God's people.²⁴

As well as the concept of justice requiring the protection of human rights, the concept of loving one's neighbours is a key element of Chris-

tian teaching. In one of the first actions of Christ's ministry, he read from the book of Isaiah:

The Spirit of the Lord is on me, because he has anointed me to preach good news to the poor. He has sent me to proclaim freedom for the prisoners and recovery of sight for the blind, to release the oppressed and to proclaim the year of the Lord's favour.²⁵

He then rolled up the scroll and said "Today this scripture is fulfilled in your hearing".²⁶ Here he is declaring that his mission, his good news, is about helping the poor and needy, the sick and helpless, the disenfranchised, and the outcast. It is about setting free the oppressed.

This statement of mission by Christ is consistent with his teaching about the greatest commandments. When he was asked which is the greatest commandment he replied:

Love the Lord your God with all your heart and with all your soul and with all your mind. This is the first and greatest commandment. And the second is like it: Love your neighbour as yourself. All the Law and the Prophets hang on these two commandments.²⁷

When Christ was asked (by an expert in the law) "who is my neighbour?", he responded by telling the parable of the Good Samaritan.²⁸ In this parable, a man walking from Jerusalem to Jericho was attacked by a group of robbers who beat him, stripped him and left him to die. A priest, who was walking the same road, saw the man and passed to the other side of the road. A Levite (a religious scholar) did the same. Then a foreigner, a man from Samaria, came along and took pity on the man. He poured oil on his wounds, bandaged them and put the man on his donkey. He then took the wounded man to an inn and paid the innkeeper to look after the man until the Samaritan returned. In recounting this event, Luke does not end his passage after the end of the parable. Instead, he writes that Christ then asked which of the people in the parable was the neighbour. The questioner answered that it was the one who had mercy on the man. At which answer Christ said: "Go and do likewise".²⁹ Do the same as the Samaritan had done: go and help those in need.

As the Christian theologian Wolterstorff has noted:

The commandment to love one another is grounded on this common sharing in the image of God - on the fact that my fellow human being is, in Isaiah's words, of my "own flesh and blood" ... Every human being is, in this deep sense, my neighbour. Indeed, says Calvin, Jesus' purpose in the parable of the Good Samaritan was to teach "that the word *neighbour* extends indiscriminately to every man, because the whole human race is united by a sacred bond of fellowship".³⁰

So a consistency can be seen between Christian concepts of loving one's neighbour, that being all of humanity created in the image of God, and the international legal concept that human rights are universal and inalienable. In fact, national courts have used Christian ideas in reaching conclusions on law. For example, the determination of the extent of liability of manufacturers to consumers was based on the question "who in law is my neighbour?"³¹

There are deep questions about the universalism of human rights and the close connection between Judeo-Christian ideas and the ideals and systems of law in the developed countries. There are also real concerns about some of the developments in international human rights law as being 'partial and androcentric, privileging a male world view'.³² I do not intend to deal with those issues here other than to note that while there are serious divisions as to how human rights are to be *applied* in practical ways in a society, there are few divisions as to whether the *concept* of human rights exists at all in a society.³³ In fact, international human rights law does recognise explicitly the need for differing applications of human rights worldwide,³⁴ with the African Charter of Human and Peoples' Rights expressly taking into account the 'values of African civilization'³⁵ and protecting both individual and group rights. In a similar way the Christian Churches should be aware of differences, with the liberation theologian Gutierrez pointing out that:

a true and full encounter with our neighbour requires that we first experience the gratuitousness of God's love. Once we have experienced it, our approach to others is purified of any tendency to impose an alien will on them: it is disinterested and respectful of their personalities, their needs and aspirations.³⁶

Thus there can be discerned within the Bible and theological writings a strong conceptual basis for human rights. While the discourse is not exactly in human rights terms as we understand it today, the concepts dealt with could be said to create, as the Latin American bishops have affirmed, a 'gospel of human rights'.³⁷

Protection of Human Rights

While there may be many strong arguments that a particular need, moral entitlement or aspect of life is a human right, only certain needs, entitlements or aspects have been internationally recognised as human rights and protected by international law.³⁸ When comparing the rights which are protected in international law with the commands of Christ there are powerful resonances, particularly in the area of social rights. For example, Article 25 of the Universal Declaration states that 'everyone has a right to a standard of living adequate for the health and well-being of himself and his family, including food, clothing, housing, medical care and necessary social services'. In Matthew's gospel it is clear that the people who God will consider at final judgment to be the righteous are those who fed the hungry, gave drink to the thirsty, received strangers, clothed the naked, cared for the sick and visited the prisoners.³⁹ There is a clear connection here. Christian responsibilities to protect human rights are not limited to just a few political or civil rights because 'biblical righteousness is more than a private and personal affair; it includes social righteousness as well.'⁴⁰

Further, the Christian Churches, as institutions, have a responsibility to take action against violations of human rights whenever they occur. This is a responsibility to resist oppression, whether it is political, economic, social or religious. The action taken might include making public statements, using their moral authority in societies and motivating their members where human rights are at issue. While the issue of conflict between God and earthly authority is a broader one than can be discussed here,⁴¹ there could be said to be a harmony in the rejection of the absolute power and sovereignty of the state found in both international human rights law and in Christianity.⁴²

Yet there are three primary areas where Christ's commandments do not seem to be appropriate to the international legal system for the protection of human rights. First, the Bible deals with concern for the oppressed in terms of responsibilities rather than rights. Second, the broader focus of the Bible on communities seems inconsistent with the protection

of individual rights. Third, the international human rights system places responsibilities on governments, rather than on individuals, to protect human rights.

In relation to the first issue, the Old Testament prophets do not address the oppressed, encouraging them to claim their rights, but rather address the powerful. Isaiah warns: 'Woe to those who make unjust laws, to those who issue oppressive decrees, to deprive the poor of their rights and to withhold justice from the oppressed of my people.'⁴³ In the New Testament these responsibilities to others are not only owed by those with power, they are owed by all Christians, with James asking:

What good is it, my brothers, if a man claims to have faith but has no deeds? Can such faith save him? Suppose a brother or sister is without clothes and daily food. If one of you says to him, "Go, I wish you well: keep warm and well fed," but does nothing about his physical needs, what good is it? In the same way, faith by itself, if it is not accompanied by action, is dead.⁴⁴

It is in the light of such passages as these that the Kairos Document from South Africa recommended the development of a 'prophetic ministry' of resistance to oppression and towards democratic transition.⁴⁵

But rights and responsibilities are linked. Contrary to the perceptions of many, rights are not absolute. That rights can imply responsibilities (or duties) is acknowledged in international human rights law. For example, Article 29 of the Universal Declaration provides:

In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.⁴⁶

As this Article makes clear, each person's human rights are limited both by the rights of others and by the general interests of society. This is because rights are not exercised in a vacuum but are exercised within the context of communities. The promotion and protection of human rights should not be any less strongly affirmed by Christians because of the focus on responsibilities in the Bible. After all, as Cronin has noted: 'the quality of human freedom [is] based on God's gift of creation and re-

demption' respect is due to each person, a respect which involves justified claims and correlative obligations.⁴⁷ Rather, while recognising their own responsibilities, the presumption must be in favour of human rights being protected as the oppressed are generally the powerless in society. They are not in a position to determine if responsibilities are carried out or to decide the legitimacy of any attempts by society to limit their rights.

Despite the social context within which it is recognised that rights are exercised, there remains the concern that the broader focus of the Bible on communities seems inconsistent with the protection of individual rights. This concern was expressed by a former Archbishop of York when he said that 'there are good reasons to fear that the emphasis on rights, so far from strengthening social cohesion, has in fact reduced it by seeking to justify an individualistic kind of acquisitiveness.'⁴⁸ I share that concern, but I see it as based on a misunderstanding of the concept of human rights. Human rights, as I have shown, is a concept which includes responsibilities to others and to the community. Indeed protection of human rights is not limited to individual rights but includes the protection of group rights, such as those of indigenous peoples. Thus, while the building of a sense of community is a vital part of the Christian Churches' role, human rights should not be cast aside, as the discourse of human rights can be empowering and can give a voice to those without power.⁴⁹

The third concern is that the international human rights system places responsibilities on governments to protect human rights and does not generally place responsibilities on individuals.⁵⁰ There are responsibilities towards others placed on all peoples in international human rights law, as seen in Article 29 of the Universal Declaration. But these responsibilities are premised on the notion that all people have a horizontal responsibility to protect the human rights of others. Christians have an additional responsibility: a vertical responsibility to God. Christians have an obligation to God to uphold the rights of others and God demands that these rights be upheld.⁵¹ The parable of the Good Samaritan makes clear that the responsibility to uphold the rights of others is not dependent on causation or any direct relationship between people. It is irrelevant as to whether the person in need has in some way been responsible for the position in which she/he now finds her/himself. No human being is a stranger and all Christians are responsible for them all.⁵² To take action to assist those who are oppressed is not only a matter of charity or selfless giving; rather it is a responsibility of all Christians to all people and that responsibility is owed to God.

The protection of human rights by the international legal system is therefore consistent with Christianity, although the emphases are often different. Rights and responsibilities are not distinct but are linked. Indeed, it may be possible that the engagement of Christians in the process of protecting human rights could be to broaden the notion of responsibilities found in international human rights law.⁵³ After all, 'what unites us as bearers of the image of God is more important than what divides us as members of nations.'⁵⁴

Conclusion

The development of an international system for the protection of human rights has been a major achievement of the latter half of the twentieth century, although its concepts had a considerably longer history. There is a coherence in the conceptual bases of both human rights and Biblical commandments. There are clear Biblical instructions that Christians must take action to help the oppressed and the powerless. This is due to the Christians' responsibility, owed to God, to love their neighbours as themselves. This responsibility extends to upholding the rights of others and taking practical action to assist the oppressed and disadvantaged. This responsibility is, sadly, not widely understood either by Christians or by the Christian Churches. It is vital that Christians understand this responsibility if they are to play a positive role in the education and clarification of human rights because, as the South African theologian Morphew has stated:

human rights have become possibly *the* pressing global issue of our time. This alone makes it imperative for thinking Christians to grapple with it. More profoundly, the struggle for human rights has to do with what it means to be fully human, with how and to what extent the human race can reach its potential and destiny. Any area of thought or endeavour that deals with man in his essence must be the concern of those who are committed to the gospel of Jesus Christ, for he came to seek and to save the same humanity.⁵⁵

Finally, while the general discourse of human rights as expressed in the Universal Declaration of Human Rights does not resolve all social and moral issues, it does offer a basis for an inter-faith discourse and practice. Human rights discourse acknowledges that there are greater interests to serve than our own self-interests, including our own religion's self-inter-

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ests.⁵⁶ It can be a means of building hope and restoring a sense of community.⁵⁷ It offers parameters for making judgments about human relationships and about the nature of being human because it 'is saying that at the deepest level all [humans] have equal worth, a worth which demands action to bring the less fortunate ... up to a satisfactory level of participation in the goods which make human worth obvious to the naked eye.'⁵⁸ This, after all, is one area where the major faiths can be united: a shared belief in seeking true justice and in upholding the dignity and worth of the human person.

Notes

- 1 Preamble to the Universal Declaration of Human Rights (Universal Declaration), General Assembly Resolution, UN Doc A/811.
- 2 The vote was 48 states in favour, none against and eight abstentions (Byelorussia, Czechoslovakia, Poland, Saudi Arabia, Ukraine, USSR, South Africa and Yugoslavia).
- 3 Preamble to the Universal Declaration, *supra* note 1.
- 4 Cited in Australian Department of Foreign Affairs and Trade, *Human Rights Manual*, 1993, p. 1.
- 5 Many of the principles set out in the Universal Declaration are now generally considered to be binding on all countries as a matter of customary international law: *Advisory Opinion on Namibia*, International Court of Justice Reports, 1971, pp. 16, 57.
- 6 See Steiner, H. and Alston, P., *International Human Rights in Context*, 1996; and Robertson, A. and Merrills, J., *Human Rights in the World*, 3rd ed., 1992.
- 7 When a government is confronted with allegations that it is abusing human rights it either denies the facts upon which the allegations are based or seeks to rely on limitations on the right. Whichever tactic is adopted, as a matter of international law, the actions of governments in seeking to rely on exceptions to their obligations confirm that a legal obligation does exist. See *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v United States)* International Court of Justice Reports, 1986, p. 14 at para 186.
- 8 There are nearly 190 countries in the world and every one has ratified at least one treaty protecting human rights. The Vienna Declaration and Programme of Action 1993, International Legal Materials, no. 32, 1993, p. 1661 states in paragraph 4: "the promotion and protection of all human rights is a legitimate concern of the international community".
- 9 Charlesworth, H., "The Challenge of Human Rights for Religious Traditions", *Eureka Street*, no. 7, November 1997; and Padilla, A. and Winrich, J., "Christianity, Feminism and The Law", *Columbia Journal of Gender and Law*, no. 1, 1991, p. 67. Gourevitch, P., *We wish to inform you that tomorrow we will be killed with our Families: Stories from Rwanda*, 1998, shows how Churches were involved in the genocides and other actions in Rwanda in 1994.
- 10 See *Human Rights and Equal Opportunity, Free to Believe? The Right to Freedom of Religion and Belief in Australia*, Discussion Paper No. 1, 1997.

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- 11 Wasserstrom, R., "Rights, Human Rights and Racial Discrimination" in Rachels, J., (ed), *Moral Problems*, 1979, p. 12.
- 12 See Hohfeld, W., "Fundamental Legal Conceptions as applied to Judicial Reasoning", *Yale Law Journal*, no. 23, 1913, p. 16.
- 13 Preamble to the Universal Declaration, *supra* note 1, (emphasis added). See also the Preamble to the Vienna Declaration and Programme of Action 1993, *International Legal Materials*, no. 32, 1993, p. 1661: "all human rights derive from the dignity and worth inherent in the human person, and that the human person is the central subject of human rights and fundamental freedoms, and consequently should be the principal beneficiary and should participate actively in the realization of these rights and freedoms".
- 14 Aristotle relied on the law of nature to show that there were elementary principles of justice which were unalterable and eternal. Weinreb, L., "Natural Law and Rights" in George, R., (ed), *Natural Law Theory: Contemporary Essays*, 1992, p. 278. This philosophy was not originally concerned with rights as "an individual could be harmed without warning if that was the natural order of things". The Chin dynasty, founded 2200 years ago, operated with a belief in the fair treatment of all irrespective of caste: Charlesworth, H., "The Challenge of Human Rights for Religious Traditions", *Eureka Street*, no. 7, November 1997.
- 15 See Finnis, J., *Natural Law and Natural Rights*, 1980.
- 16 St Thomas Aquinas, *Summa Theologiae*, quoted in Haldane, J., "Medieval and Renaissance Ethics" in Singer, P., (ed), *A Companion to Ethics*, 1993, p. 133.
- 17 Emphasis added. Another example is the French Declaration of the Rights and Duties of Man and the Citizen, 1789, which notes that "men are born and remain free and equal in rights ... the purpose of all political association is the conservation of the natural and inalienable rights of man". Both Declarations protect a limited range of rights.
- 18 Bentham, J., *Anarchical Fallacies*, reprinted in Waldron, J., (ed), *Nonsense Upon Stilts*, 1987.
- 19 Humphrey, J., *Human Rights and the United Nations: A Great Adventure*, 1984, p. 67.
- 20 "Many educated citizens in the West, however, have abandoned the traditional view of man and replaced it with a more contemporary scientific view ... In purely material, scientific terms, human beings are insignificant oddities cast up by chance in an immense and impersonal universe.": Thaxton, C. and Meyer, S., "Human Rights: Blessed by God or Begrudged by Government", *Los Angeles Times*, 27 December 1987, part V.
- 21 Almond, B., "Rights" in Singer, P. (ed), *A Companion to Ethics*, 1993, pp. 259, 265-6.
- 22 The Hebrew word "mispat", which means justice or justice and righteousness, is often used to refer to rights: J. Douglas, *The New Bible Dictionary*, 1962, p. 680. References to "The Bible" are to the Christian Bible using the New International Version, 1973.
- 23 Zech 7:9-10. See also Deut 10:18, 16:19, 24:17 and 27:19. Also see Ps 9:4, Ps 140:12 and Jer 5:28, as well as 1 Sam 8:3 (right to a fair trial) and Lam 3:35 (prisoner's rights). Martin Luther King has noted that an unjust law is "a human law that is not rooted in eternal and natural law ... [and] any law that uplifts human personality is just. Any law that degrades human personality is unjust". Quoted in Washington, J. (ed), *A Testament of Hope: The Essential Writings of Martin Luther King*, 1986.
- 24 This idea of distributive justice is also found in the New Testament where the Greek words "dikaios" and "dikaiosyne" are used: Kittel, G. and Friedrich, G., *Theological Dictionary of the New Testament*, 1985, vol. II pp. 174-225. See 1 Jn 2:29: "If you know

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that he is righteous, you know that everyone who does what is right has been born of him”.

- 25 Luke 4:18-19. The words are from Is 61:1-2.
- 26 Luke 4:21.
- 27 Matt 22:39 and Mk 12:31.
- 28 Luke 10:25-37.
- 29 Luke 10:37.
- 30 Wolterstorff, N., *Until Justice and Peace Embrace*, 1983, p. 78 (emphasis in original).
- 31 Lord Denning, *The Influence of Religion on Law*, 1989, pp.18-19, referring to Lord Atkin’s decision in *Donaghue v. Stevenson* [1932] Appeal Cases, pp. 562, 580.
- 32 Charlesworth, H., “What are Women’s International Human Rights?” in Cook, R., (ed), *Human Rights of Women: National and International Perspectives*, 1994, p. 60. She also criticises the public/private distinction created as to when law will and will not be concerned with an issue.
- 33 See Teson, F., “International Human Rights and Cultural Relativism”, *Virginia Journal of International Law*, vol. 25, no. 869, 1985, p. 891. Paragraph 1 of the Vienna Declaration and Programme of Action 1993, *International Legal Materials*, no. 32, 1993, p. 1661, states: “the universal nature of [human rights] is beyond question”. See also Sinaceur, M., “Islamic Tradition and Human Rights” in UNESCO, *Philosophical Foundations of Human Rights*, 1986, p. 205; Haile, M., “Human Rights, Stability, and Development in Africa: Some Observations on Concept and Reality”, *Virginia Journal of International Law*, no. 24, 1984, p. 575; and Rouner, L. (ed), *Human Rights and the World’s Religions*, 1988. The contrary argument, that human rights are relative to each society or culture (known as “cultural relativism”), is set out in Pollis, A. and Schwab, P., (eds), *Towards a Human Rights Framework*, 1982.
- 34 See the “margin of appreciation” doctrine used by the European Court of Human Rights, where there is a degree of flexibility given to governments to determine the particular pressing needs of their State. This is based on the notion that there ‘cannot [be a] disregard [for] those legal and factual features which characterise the life of the society in the State’: *Belgian Linguistics Case* ECHR Series A, vol. 6, 1968, para 34-35. See further van Dijk, P. and van Hoof, G., *Theory and Practice of the European Convention on Human Rights*, 1990, pp. 585-606.
- 35 Preamble.
- 36 Gutierrez, G., *We Drink from our own Wells*, 1983, p. 112.
- 37 Final Document of the Fourth General Conference of Latin American Bishops 1992 in Santo Domingo, published in *Santo Domingo Conclusions*, 1993.
- 38 Debates about which human rights should be protected by law continue and at times further rights are protected, such as the rights of the child.
- 39 Matt 25:31-46. The righteous are, therefore, not necessarily those who have won great theological debates.
- 40 Stott, J., *Christian Counter Culture*, p. 45. He goes on to note that “righteousness is concerned with seeking man’s liberation from oppression, together with promotion of civil rights, justice in the law courts, integrity in business dealings and honour in home and family affairs. Thus Christians are committed to hunger for righteousness in the whole human community as something pleasing to a righteous God”.

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- 41 For a discussion on civil disobedience and pacifism see Wolterstorff, N., *Until Justice and Peace Embrace*, 1983, pp. 143-5.
- 42 Christian philosophy upholds the sovereignty of God so that there are times when “we must obey God rather than men”: Acts 5:29 and Acts 4:19.
- 43 Is 10:2. See also Psalm 72.
- 44 James 2:14-17. In a passage reminiscent of the Old Testament, James wrote: “Religion that God our Father accepts as pure and faultless is this: to look after orphans and widows in their distress” (1:27).
- 45 The Kairos Document, 1986. This document arose from discussions between a wide range of church leaders in South Africa during the apartheid era.
- 46 Article 29 (2).
- 47 Cronin, K., *Rights and Christian Ethics*, 1992, p. 176.
- 48 Habgood, J., *Church and Nation in a Secular Age*, 1983, p. 42.
- 49 “For the historically disempowered, the conferring of rights is symbolic of all the denied aspects of their humanity: rights imply a respect that places one in the referential range of self and others, that elevates one’s status from human body to social being”: Williams, P., *The Alchemy of Race and Rights*, 1991, pp. 153, 164.
- 50 Individuals are directly liable for crimes against humanity and genocide, for example: consider the Convention on the Prevention and Punishment of the Crime of Genocide, 1948, article IV and the jurisdiction of the International Criminal Court.
- 51 This obligation can be illustrated by the story of Cain and Abel: Gen 4. See C. Wright, *Human Rights: A Study in Biblical Themes*, 1979.
- 52 Murray, D., “The Theological Basis for Human Rights”, *Irish Theological Quarterly*, vol. 56/2, 1990, p. 92 states: “Jesus Christ, the Son of God, has united himself to that person to set him or her free (Gal 5:1); the Spirit, whose presence gives freedom (2 Cor 3:17) is within them; the Father, the source and goal of freedom, has loved them first.”
- 53 Charlesworth, M., *Religious Inventions*, 1997, p. 152, notes that human creativity and imagination have played an indispensable role in the development of religion and this should continue.
- 54 Wolterstorff, N., *Until Justice and Peace Embrace*, 1983, p. 119.
- 55 Morphew, D., *Christians for Human Rights*, 1991, p. 1 (emphasis in original).
- 56 A threat to human rights can come from fundamentalist streams of all religions. See the analysis in Marty, M. and Appleby, R., *Accounting for Fundamentalisms: The Dynamic Character of Movements*, 1994; Spong, J. S., *Rescuing the Bible from Fundamentalism*, 1991; and *The Uniting Church in Australia, Interim Report on Sexuality*, 1996.
- 57 On the need to restore communities, see Costello, T., *Streets of Hope*, 1998.
- 58 Cronin, K., *Rights and Christian Ethics*, 1992, p. 74.

Respecting Spiritual and Cultural Beliefs about Death: An Australian Buddhist Case Study

BY ANN PICKERING

In 1994 I coordinated a submission by the Combined Buddhist Communities of Canberra into reform of the ACT Coroner's Act, following the sudden death in Canberra of the Tibetan Lama Gyalsey Tulku Rinpoche. His death dramatically illustrated that current Australian law and practice are such that members of minority spiritual and cultural traditions cannot be sure that we will be able to die and have our bodies handled after death in accordance with our spiritual beliefs.

When Sogyal Rinpoche, the author of the *Tibetan Book of Living and Dying*, was asked what he hoped for from his book, he replied: 'to inspire a quiet revolution in the whole way we look at death and care for the dying, and the whole way we look at life and care for the living'. All people, whatever their spiritual tradition or cultural background, should be able to die in peace and dignity in accordance with their spiritual beliefs and cultural traditions.

Buddhist understandings of death and the dying process

Buddhism has a variety of traditions. While there are differences between them, there is a common Buddhist understanding of death and the process of dying, based on the core Buddhist scriptures.

The following are the key points from a Mahayana Buddhist perspective.

The state of mind at the moment of death is seen as all-important. His Holiness the Dalai Lama has stated that 'our state of mind at the moment of death can influence the quality of our next rebirth'.¹ If a person is distressed at the moment of death it can affect their passage through death and their next rebirth. The moment of death is also an important spiritual opportunity:

The actual point of death is also when the more profound and beneficial inner experiences can come about ... an accomplished meditator can use his or her actual death to gain great spiritual realisation. This is why experienced practitioners engage in meditative practices as they pass away. An indicator of their attainment is that often their bodies do not begin to decay until long after they are clinically dead.²

Death is seen as a process: even after a person dies from a clinical point of view, the inner process of dying and final separation of body and consciousness is seen to continue for some time.

For these reasons, all Buddhist traditions emphasise the importance of maintaining a peaceful, calm and respectful atmosphere both during and just after the moment of death. Thus, once it is clear that a person is actually dying, it is desirable that they be able to die in a peaceful, meditative atmosphere. Any advance directives or statements of their wishes, eg. about not being resuscitated or being disconnected from life support and monitors, should be respected.

All Buddhist traditions emphasise the importance of spiritual care and support at the moment of death so the person dies in a good state of mind. In the Mahayana tradition it is seen as important to have someone in the same tradition - for example, a close fellow student of the same teacher - remind the person of their heart practice and to guide the person so that they die well, as well as to contact the person's main teacher so that they and other students can practise for them.

While this will often be organised by the immediate family, they may not always share the person's beliefs. In contemporary Australia, this is true not only for Buddhists but for many people in other traditions. It is therefore important to routinely check whether a person who is seriously ill, dying or has just died has expressed any wishes in relation to spiritual care and if there is anyone they want contacted to provide or arrange such care.

The person's consciousness is seen to continue after death. It can be affected by what happens after death, including the handling of the body. It can be up to three and a half days before a practitioner's consciousness finally leaves the body. An accomplished master may remain in a special state of meditation for some days following clinical death.

Thus, if at all possible it is important:

- to keep the body calm and undisturbed for up to 72 hours after the last breath, until the 'consciousness' has left the body, and not to touch the body at all;
- if the body must be moved, not to do so until certain prayers have been done;
- not to hold autopsies or post-mortems for three days or until there are clear indications that the consciousness has separated from the body;
- when the body is moved, that it is touched initially at the crown of the head. This is because touching can draw the consciousness to that part of the body, and where the consciousness leaves the body can determine the person's future rebirth;
- to allow access to do prayers in front of the body - including a body in the morgue awaiting autopsy. In the case of an ordinary person, this is because the dead person is believed to sense a strong feeling of connection with their body during the period immediately after death, so that practices in the presence of the body can be particularly powerful in helping the dead person. In the case of a master, their close students regard it as of tremendous importance to be able to carry out spiritual practices in the presence of the body.

The death of Gyalsey Rinpoche

The gulf between Buddhist understandings of death and dying and Australian law and practice was startlingly illustrated by the death of Gyalsey Tulku Rinpoche.³ Rinpoche died in Canberra early in the morning on Sunday 22 November 1993, after giving a Medicine Buddha empowerment the previous night. He had a headache before the empowerment which had seemed to leave him during the teaching, but it came back at the end and he retired to his room.

At 9 am the next morning, the students who were to drive him to Sydney discovered him dead. As the local lama, Lama Choedak, was overseas, they had to do the best they could.

They did two main things. One was to contact paramedics, to see if they could revive him. The other was to contact Sakya Trizin, the head of Rinpoche's lineage, in India. He instructed them to practise, and told them which practices to do. He also said that the local law must be complied with, but if at all possible, to avoid having the body moved or having an autopsy. They also contacted the Sakya centre in Sydney. Two lamas based in Sydney and some older students arranged to drive down to Canberra that afternoon.

I was at home when a visiting friend, Luiz Ribeiro, who had been at the empowerment, was rung by his wife to tell him the news. He left immediately for the centre to do what he could to make sure the teachings about death and dying were carried out.

I rang and left messages with two of my main masters. The main practical instruction from Sogyal Rinpoche, which was later passed back to me, was the importance of making sure that Rinpoche's own teachers and family were informed.

I then had a call from Luiz's wife Elisabeth to say there was trouble at the house, the police had been notified by the paramedics and some of the students were threatening to barricade the house to stop them taking the body away. This set off another stage of the drama, where Elizabeth and I tried to think what we could do to help. The police have no discretion but to carry out the law - but could we do anything to stop the situation?

I rang the police to see if I could speak to someone senior, at least to get a delay until the lama from Sydney arrived.

I also rang Senator Reid, who suggested I ring the ACT Attorney-General, Terry Connolly, at home. Terry's instant reaction was that the law had to be carried out - because of Rinpoche's age, an autopsy would be unavoidable - but that the law could be changed. He said that this was an issue also for the Koori (Aboriginal) community and for the Greek Orthodox and asked me whether the Ethnic Communities Council was the best mode of consultation. I asked if he could at least stall things until the lama from Sydney arrived and he undertook to ring the Commissioner of Police, which he did. But in the meantime I was told that the body had just been moved.

It was because the students contacted the paramedics that they lost control of the situation. When the paramedics could not revive him, they contacted the police, as required under Australian law in all cases of sudden death. The next thing they knew, the police were there wanting to take away the body.

The students attempted to negotiate with the police for some time, whom they later commented showed a commendable level of sympathy and patience. A police doctor came and certified life extinct. Eventually, on the orders of the coroner (a magistrate rostered for that day) the police decided to move the body.

Before they did so, Luiz touched Rinpoche on the head with a gold Buddha statue. This is in line with the teaching that, if a body must be moved, it should first be touched firmly on the crown of the head, so that the consciousness leaves from the top of the head. Four or five students recited mantras by the body while the negotiations with the police took place. Rinpoche's body was then put in a body bag and carried out. The policeman in charge, who rang me later in the day, said that the students had made sure Rinpoche's body was handled very respectfully. I was impressed both to be rung back and by his attitude, and felt that the police had tried to do their best in a difficult community policing situation.

Later in the morning one of Rinpoche's devoted students, who was a doctor, said that had he been contacted immediately he could have signed a death certificate, as Rinpoche had been complaining to him of headaches for some time. If accepted by the coroner, this might have avoided the need for the removal of the body and an autopsy.

The body was taken to the morgue where Lama Kechog and Lama Trijam did practice late that day. They settled the students by saying that in fact Rinpoche had died quickly of a 'wind stroke' and his consciousness had left straight away; it was all right for the autopsy to go ahead. I got to the morgue after they left. I was shown the body, on a stretcher covered in gold silk, and still with a strong sense of presence.

The head of Rinpoche's lineage was still keen to avoid an autopsy if at all possible. The next morning, I was rung asking for the number of a lawyer to get an injunction to stop the autopsy for three days. When I checked I was told that it was unlikely that legal action would work: the only thing that could was a political intervention.

Later that day a meeting was held with the ACT Attorney-General, the Coroner, the Professor who would do the autopsy, the Office of Tibet

and David Cheah, the doctor. The position of the ACT authorities was that the law had to be carried out, but as a compromise only a limited autopsy was carried out on Rinpoche's head with David Cheah present, which confirmed that he died of a stroke.

However the law could be changed - the Attorney-General announced the same day that an inquiry would be carried out into the ACT Coroner's Act.

After the autopsy the body was embalmed. The undertaker broke with precedent and allowed some senior students to be present at the embalming. Canberra's Buddhist community from all traditions practised in front of the body over several nights at the funeral parlour. Later in the week Lama Choedak flew back from India to accompany the corpse back to Rinpoche's monastery in India where the appropriate practices were done.

Reform of the ACT law

The death of Gyalsey Tulku Rinpoche acted as a catalyst. In response to the distress caused by the death, the ACT Attorney General announced an inquiry the next day into the ACT Coroner's Act 'to ensure that the legal procedures that flow from a death in the Canberra community will more appropriately reflect the multicultural nature of Canberra'.

A discussion paper was issued by the ACT Government in July 1994. On behalf of Rigpa, the students of Sogyal Rinpoche, I coordinated a submission by the combined Buddhist Communities of Canberra, which was signed by leaders of all major Buddhist traditions. A number of other Buddhist groups also made submissions.

Sogyal Rinpoche also wrote personally to the ACT Attorney General, welcoming the Discussion Paper and indicating that he was disturbed to learn that it was simply not possible, under current Australian law and practice, to ensure that Gyalsey Tulku Rinpoche's body was given the respect traditionally due to a Buddhist teacher.

It goes without saying that the moment of death, and what happens after, is the greatest issue that faces any human being, and this is reflected in the tremendous importance placed on it in all the great world religions ... I believe that Australian law should now take steps to recognise the right of all people, including Buddhists, to die in peace and dignity in accordance with their spiritual beliefs; for this must surely be the most fundamental human right of all.

Respecting Spiritual and Cultural Beliefs about Death

I hope and pray that Gyalsey Tulku Rinpoche's death will in a way act as a catalyst for a change in the law and practice, not only in Canberra but throughout Australia, to enable greater caring and respect for the dying and the dead, so that they can die well in accordance with their own religious beliefs...There is no way to exaggerate the importance of such a change. It would send a message to the rest of the world about the urgent need to pay attention to the questions surrounding dying and death, especially in a multi-cultural context...It would also act as a model for other Western countries.⁴

The need for reform was again drawn to attention in 1995 when a senior visiting Pakistani civil servant died suddenly and his body was not handled in accordance with Islamic law.

Following a change in Government, in late 1995 the new Attorney General tabled an exposure draft of amendments to the Coroner's Act for community comment. Further detailed comments were made by Tibetan Buddhist and other groups and some minor changes were made as a result. Amendments to the Coroner's Act finally came into effect in October 1997, almost four years after Gyalsey Rinpoche's death.

The crucial section of the amended legislation is section 28, which requires the Coroner, in deciding whether to order a postmortem or removal of the body, to 'have regard to the desirability of minimising the causing of distress or offence to persons who, because of their cultural attitudes or spiritual beliefs, could reasonably be expected to be distressed or offended.' There are also provisions giving rights to the members of the immediate family, or a representative of such a person, for example, to request a viewing of the body or that the Coroner dispense with a post-mortem examination if the manner and cause of death are sufficiently clear.

This legislation is a major step forward.

From a Buddhist perspective, however, it is not perfect. For example, the concern is with minimising distress to the survivors. The legislation is based on the Western assumption that once a person is clinically dead, they cease to be a legal person and so to have rights. Buddhism sees death as a gradual process of dissolution that continues after clinical death and in which the fate of the consciousness can be profoundly affected by what happens after death.

Moreover, rights are primarily vested in the immediate family. However in many traditions the primary responsibility for ensuring that the appropriate rituals are done and that the body is handled appropriately

is vested in other people with special expertise. For example, in the case of Gyalsey Tulku Rinpoche, even though his family was informed, it was his teacher and religious superior in India, Sakya Trizin, who so actively sought through the Australian students who were on the ground to ensure that his body was handled with the appropriate respect.

The ACT Act contains some useful extensions of the concept of immediate family, for example to give rights to de facto spouses, including in same sex situations. However, the only situation where it is recognised that there may be customs or traditions giving responsibility to a person outside the immediate family is where the deceased was an Aboriginal person or Torres Strait Islander.

Another layer of complexity is that in contemporary Australia, it cannot be assumed that a person's immediate family will share their spiritual and cultural beliefs, or even be comfortable with them. If there is to be true freedom for people to die in accordance with their beliefs, in the end it should be the beliefs of the dead person that are decisive. Thus if a person has indicated while they are alive that they want certain people to act on their behalf to ensure the appropriate rituals are performed during and after death, this should be respected, for example by a coroner.

However, the legislation gives the coroner a degree of discretion. Provided that coroners are sympathetic and cross-culturally aware, and that those acting on behalf of the dead person can know what their rights are and who they need to contact and can get hold of them quickly enough, it should be possible for those in the know to navigate their way round the new Act and achieve a result that is consistent with the dead or dying person's beliefs.

Another important issue is the ability to ensure a peaceful, calm death. This includes the ability for people to indicate their wishes about issues such as resuscitation and withdrawal of medical treatment and to have these respected, as well as to give someone else a medical power of attorney to act on their behalf should they no longer be able to do so.

This area is well provided for in ACT law, by the *ACT Medical Treatment Act 1994* and associated changes to the *Powers of Attorney Act*.

I understand that there have also been amendments to coronial legislation in NSW, Victoria and the Northern Territory to take into account spiritual and cultural issues, as well as pressures for change by the Buddhist hospice in Queensland, and that legislation relating to medical powers of attorney exists in some States, but I have not researched the details.

Where to next?

What needs to happen next? And what can Governments and individuals do to help bring about a situation in which all Australians, including members of minority religions, can die in accordance with their beliefs?

There are three levels at which change needs to occur. First, law and standard operating procedures need to be changed. Secondly, we need to change attitudes to recognise how important it is to offer people access to spiritual care in accordance with their beliefs at the time of and after death. And finally, at the deepest level, we need to come to terms with death and express our wishes while we are alive to those close to us, so that we create a climate in which others - whether they have a strong spiritual tradition or not - will feel comfortable in expressing their wishes for the moment of death.

Changing law and practice

The Human Rights and Equal Employment Opportunity Commission (HREOC) Report *Article 18, Freedom of Religion and Belief* was tabled in Parliament on 11 November 1998.⁵ It discusses issues relating to burials and autopsies, including a discussion of Buddhist concerns which draws on the 1995 letter from the Canberra Buddhist Communities about the issues raised by the death of Gyalsey Tulku Rinpoche. The report makes a number of findings and recommendations on autopsies which I generally support, subject to the proviso that freedom to die in accordance with one's beliefs requires that first priority be given to respecting of the spiritual beliefs of the dead person, whilst of course also seeking to minimise distress for the family.

The appearance of this report provides a favourable moment to push for changes to the law throughout Australia. I believe that if we are clear about what is needed, persistent, and can persuade Governments that this is an important issue, we will succeed in bringing about change.

One of our strongest arguments for changing the law is the increasing spiritual diversity of the Australian population. While 70% of the population are Christian, the 1996 Census shows a significant growth in the proportion of the population that belong to non-Christian religions. For example there has been a 43% growth in the Buddhist population and similar growth in the Islamic population, a small increase in the Jewish

population, and Hinduism was separately noted as a religion for the first time. One quarter declared themselves as having no religion.⁶

The areas of the law where change is important are coronial legislation, consent to medical treatment (a particular issue for Jehovah's Witness), introducing medical powers of attorney where they do not exist, and laws relating to the disposal of the body.

Even where the law has been changed to respond to the needs of some religious and cultural minorities who have raised concerns, this does not guarantee that it meets the needs of all traditions. There may be issues of vital concern to other minority traditions that did not even occur to the law makers as potential issues. So all traditions need to look critically at the law and identify whether it needs to be further amended to take account of their concerns.

It is not enough to change the law. People, especially members of minority traditions, need to know their rights and how to exercise them.

Because of the history, most of my Tibetan Buddhist friends are aware that there have been changes to the Coroner's Act, but not of the details of what rights it provides. Most are not aware of the Medical Treatment Act or position in relation to medical powers of attorney, unless their lawyer has drawn it to their attention.

While researching this paper I discovered that there is in fact an excellent pamphlet on the Medical Treatment Act available in a number of languages at the Civic Shopfront.⁷ There is also a pamphlet on the NSW Coroner's Act available at funeral parlours.⁸ However, while the ACT Coroner's Act was amended in 1997 and a first draft of an information booklet was made available for comment late that year, work on it has come to a halt for the time being.

This highlights that not only is there a need for easy-to-understand information on the law, but there are issues as to how best to alert key people in minority spiritual and cultural traditions to the changes.

Another issue is that often it is important to act quickly, so people need to be able to find out easily who to ring in an emergency to be able to exercise their rights. This problem came up not only in relation to the death of Gyalsey Tulku Rinpoche but again in 1995, when, if only I had known who to ring, I could have arranged for a qualified lama who was visiting Canberra to do the practice for the transference of consciousness in front of the body of a friend who had just committed suicide. While this practice can be done in the absence of the body, it is much more powerful

if it can be done in its presence. However neither I nor Telstra inquiries could find the right number and yet again I only worked out who I should have contacted after it was too late.

Another area that is important is to review checklists, operating procedures, manuals and so on to ensure that they contain prompts so that caregivers are aware of the person's wishes as to who they want contacted and any special requirements.

One important area is hospital admission procedures and patient charts. These can be used to routinely capture and alert nurses to key information such as whether, in an emergency, the person wants someone from their spiritual tradition, and any special requirements that caregivers need to be aware of.

People can also die or have medical emergencies at work. Emergency contact lists need to be redesigned to ask whether people want someone from their spiritual tradition contacted in an emergency. A recent experience highlights the need to ask for an alternative if the main contact is not available. I am the emergency contact for a friend. Her ten year old daughter rang a few weeks ago to say her mother was very ill and needed help. But I was away on retreat. Luckily other friends stepped in and got help in time, and she is recovering.

Another area to be addressed is checklists on what to do when someone dies and bereavement kits. These can contain subtle embedded assumptions. For example, the pamphlet put out by the Australian Funeral Director's Association called 'What do I do if someone dies?' states that the first person who should be called is generally a doctor. 'If appropriate, you may also call your Priest or Minister.'⁹

Notice the primacy given to the medico-legal perspective, the Christian language and subtle assumption that it is the priest of the person who survives who should be called. Later the discussion of funerals focuses on their role in helping the survivors cope with their grief.

The attention given to the needs of the grieving in the pamphlet is excellent - our society has come a long way in this area in the last twenty years. However, if you believe that the consciousness of the dead person can be affected by what happens after death, and that your prayers can help them, then your perspective changes radically. In some traditions, the focus just after death is on helping the consciousness of the dead person. The primary concern is to carry out the appropriate prayers for the moment of death and ensure the body is handled, or not handled, in ac-

cordance with that tradition. However, knowing they have done the best they can to help the dead person can help the survivors greatly in their grieving.

Thus I would like to see added to such checklists a simple prompt to ask whether the person belonged to a spiritual tradition and whether it has any special prayers or rituals that need to be carried out upon death before the body is removed.

Changing attitudes

This has two dimensions. One is to change attitudes towards death by training doctors and nurses in issues relating to death and dying and end of life care, so that patients and family are comfortable in talking about and planning the end of their lives and what they want to happen after death. My impression is that current practice in Australia varies, with places like hospices and oncology wards, which deal with the dying all the time, and Catholic institutions, where there are long traditions of administering last rites to the dying, probably the most comfortable with these issues.

There are signs of a welcome shift for the better. In 1995 an American Medical Association study found that doctors were routinely misunderstanding or ignoring the wishes of patients even where they had expressed these clearly in advance directives and living wills.¹⁰ In October 1998 it announced a training program for doctors in end of life care.¹¹

There is also a need to increase the cross-cultural awareness of all of those likely to be involved with deaths, especially sudden deaths, as these are the most likely to involve coronial issues and are the ones where it is least likely that there will be a chance to ask the dying person their wishes. This might involve professional development seminars and the provision of written information to doctors, nurses, other health workers, coroners, forensic pathologists, ambulance and other emergency service staff.¹²

The aim is not to get them to know all the fine detail of every tradition. It is simply to make them aware of the importance that many traditions place on spiritual care during and after death - and so the importance of asking who the dead person wants contacted. Also they need to be sensitised to the range of issues they may not otherwise have thought of where followers of particular traditions may have concerns, eg. the Tibetan Buddhist concern about not touching the body until the prayers for the transference of consciousness are completed, but if it must be touched, doing so first firmly at the fontanelle.

Preparing for our own death

None of us knows how and when we will die. Many traditions emphasise the importance of preparing for death - not only to make it easier for those who survive us, but also so that we are able to let go and die peacefully.

As well as making a will governing issues such as the disposal of our money, personal possessions and body and the guardianship of any children under 18, we should think about issues such as organ donation and whether we want to be resuscitated once we are dying, and consider whether we want to exercise our rights under legislation such as the ACT Medical Treatment Act, where such legislation exists, or give someone power of medical attorney.

However, for those of us who see the spiritual as central, most important of all is both to talk to and give written instructions to those close to us, especially those likely to be contacted first if we die or in an emergency. We need to talk through with them, especially if they do not share our beliefs, about what spiritual care we want while we are dying and after death. We need to make sure they know who we want contacted from our spiritual tradition and how to contact them in an emergency - also, if we have left any money to pay for special prayers, as these may need to be arranged well before anyone looks at our will. It is good to give back-up contacts. We may, if our tradition has strong concerns about autopsies, like to think of giving someone written authority to act on our behalf, particularly if we want someone other than our immediate family or senior next of kin to act on our behalf or we anticipate differences of opinion within the family.

Talking about what you want can both allow you to be more confident that you can die in accordance with your beliefs, and help those who survive you - by channelling their natural desire to do the best they can to help you. Also, if those of us who are clear about our wishes talk about them, it can help create an environment where others, even those who do not formally belong to a spiritual tradition but wish to die in a spiritual atmosphere, can also start to feel more comfortable in expressing their wishes. Finally, thinking about death highlights for us what is most important in life; it helps us sort out our priorities and live life more fully.

Conclusion

I only heard Gyalsey Tulku Rinpoche teach once while he was alive - about death, including how it can come suddenly, just to someone in the street. His death has been extraordinarily powerful. I would like to dedicate this paper in honour of him, and also for the fulfilment of the extraordinary vision of Sogyal Rinpoche of bringing about a transformation of Western attitudes towards living and dying. May this talk be a cause for a change in law, practices and attitudes so that all people may be able both to live and to die in accordance with their religious and cultural beliefs.

Notes

- 1 HH Dalai Lama, Foreword to Sogyal Rinpoche, *The Tibetan Book of Living and Dying*, p. ix
- 2 Ibid, p. x.
- 3 See also Lauber, S., "The Death of a Lama - autopsy laws in Australia and freedom of religion", *Alternative Law Journal*, vol. 21, no. 2, 1996, p. 84.
- 4 See also Pickering, A., "Reforming Coronial Legislation", *View*, no. 6, 1996, p. 48. Publication details of *View* magazine are on the Rigpa Fellowship web site.
- 5 This report, titled Article 18, Freedom of Religion and Belief, was tabled in the Senate on 11 November 1998.
- 6 "Christians lose faith but eastern religions prosper", *The Australian*, 16 July 1997, reporting the results of the 1996 Census.
- 7 "Making decisions about your medical treatment", published by the ACT Department of Health and Community Care. This pamphlet also contains forms for exercising the rights provided under the Medical Treatment Act (1994).
- 8 Attorney-General's Department (New South Wales), "The Coroner's Court".
- 9 Australian Funeral Directors Association, "What do I do when someone dies?"
- 10 "Study Finds Doctors Refuse Patients' Requests on Death", *New York Times*, 22 November 1995. This reports a study reported in *The Journal of the American Medical Association* of the same date.
- 11 "AMA launches end-of-life care program", *Reuters Health Information*, October 1998, obtained through Yahoo!News. This reports a statement released by the American Medical Association by Dr Reed Tuckson, senior vice president for professional standards.
- 12 I was told by a friend whose mother is a nurse educator that information on the beliefs about death of different religious traditions is provided in training manuals for nurses. She said that it is possible for the relatives of a person who dies in hospital to request that the body remain undisturbed for up to four hours, eg. so they can see the body and have last rites performed. I am not aware how generally this applies. See also R3.10, HREOC report.

Majority-Minority Issues in Religious Freedom

BY JULIET SHEEN

In celebrating the fiftieth anniversary of the Universal Declaration of Human Rights, our thoughts could well go back to one aspect of its origins: minority rights.

Religious freedom, asserted in Article 18 of the UDHR, has always been central to minority rights. Minority rights have been at the root of the development of modern human rights mechanisms; yet they remain controversial. How does democracy square with the concept of such rights? As for countries which have traditionally accommodated minority communities, is the historical legacy satisfactory? What if a minority is not recognised? We can look at questions such as these in a world context.

Discrimination against minorities for their culture, language or religion is contrary to human rights norms. So is discrimination on many other grounds which affect religious communities as individuals and as groups. It is in terms of norms embracing all humanity that the rights of minorities may be best asserted and new approaches developed.

The modern era has seen so many wars of religion and of empire (the reformation and the counter-reformation; the Ottoman, Napoleonic and Austro-Hungarian empires), of liberation and revolution (France, Greece, Italy, Russia), the first and the second world wars and the continuing crumbling of colonial administrations, the cold war and the dissolution of communism in Europe. Not to mention the rise and rise of nationalism. Indeed, there is scarcely a conflict in which religion and belief, ideology, national or community affiliation, language and mode of life has not played a significant role.

That great humanitarian Yehudi Menuhin deplored the fact that we still act on the basis of territory rather than on the basis of principle.¹ But the two have been tied together throughout history, if only because principle cannot be enunciated except through human agency and that agency always has ‘a local habitation and a name’. The human rights instruments we know today emerged not just from the will of nations, but, among other things, from centuries of experience of negotiating and concluding treaties between warring nations, the conquerors and the conquered, those who invaded and those who retreated from their lands.

Out of the two world wars came the Universal Declaration, with Article 18 declaring the right of freedom of religion and belief, acknowledged as one of the basic rights which people have simply through the dignity of being human. In exercising this right fully, human beings also exercise their freedom of thought and conscience, of association with others, of movement, of speech, expression and communication, of educating their children and maintaining their religious institutions, and their right to physical integrity, to their very existence as living beings. Freedom of belief is called a ‘non-derogable’ right which means that no country may say they will not respect it when they ratify a convention under international law. The 1981 UN Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion and Belief further enlarges our understanding of the implications of this right.

Treaties concerned with minorities have been many. Typically they have resulted in a particular power protecting a particular minority defined by its religion, nationality or culture. Where territory has been ceded, certain rights which its inhabitants had been accustomed to enjoy became protected under the new regime, notably their religious, civil and political rights. While some treaties protected the status of a named minority vis-a-vis the rest of the polity, other treaties extended equal rights as citizens to all who had lived in the former territory.

Within national or empire boundaries, various protections developed, depending on political considerations and differing legal systems. One example of this is the millet system. Under the Ottoman empire, the millet system allowed minority communities some autonomy, subject to ultimate accounting to Constantinople. One legacy of the millet system in some Mediterranean countries affects minorities wanting to maintain or rebuild their religious buildings. For instance, in Egypt the Christian Copts, who have been there since before Islam, virtually require a presidential decree to even repair a toilet. Another example of limited minority autonomy is the separate systems of personal law (such as in marriage, di-

voiced, custody and maintenance) which exist in many countries, often side by side with civil law. As ever, women remain the markers of cultural distinction and the battle for women's equality has aroused communal tensions, as witnessed by Taslima Nasreen in Bangladesh.

Returning to the subject of minority treaties, two strands emerge from these treaties which are also to be found in human rights instruments today because they bind states as powers. The minority treaties contained either general guarantees of civil and political rights (including religious freedom) for people defined by territory - those individuals within certain borders - or, on the other hand, guarantees of certain rights to people defined as a specific group, especially as identified by religion: the community of Muslims, or of Catholics or Protestants, or of Orthodox Christians, for instance, together with their rituals, their religious governance, buildings, schools and places of worship.

Since 1948, the Universal Declaration of Human Rights and the other instruments which go to make up the international standards of human rights and non-discrimination, and their protections, have been the global statements of what makes a full human life in society, no matter who you are or where you live, defining interference with the enjoyment of that right in terms which carry moral weight - such as discrimination, intolerance, exploitation, torture, genocide - and are stated to be contrary to the aim of peace and brotherhood among the human community of nations. These interlocking, interdependent principles morally and legally bind States whether through ratified treaties or through customary international law.

Article 27 of the International Covenant on Civil and Political Rights states:

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.

The question of what constitutes a minority often depends on the context in which the word is used: legal, cultural, political, descriptive. There is no general agreement on its definition, as Francesco Capotorti, the author of the United Nation's first major study on the rights of minorities, has noted.² Questions about size, minority-to-majority ratios, objective

and subjective criteria, minorities' origin and nationality are all issues that affect the consideration of a definition. Under Article 27 of the ICCPR, any group claiming minority status must be numerically smaller than the rest of the population, be different from the rest, occupy a non-dominant position in society and must wish to preserve its special characteristics as a group. One of the significant developments in interpreting Article 27 has been the widening of its breadth of reference and the inclusion of First People's concerns such as land rights.

However, to be recognised as a minority has also been seen as diminishing the community's status to second-class, thus contributing to the controversy which surrounds the question of how minorities should be treated in the general polity. According to this view, even making a distinction between majority and minority automatically imports discrimination and disadvantage. The issue can become a very complex interplay between state policy and the perceptions of minorities who have to live in the country. Let alone, in this era of globalisation, those outside. As in other issues concerning a wide range of minorities, not confined to religion, tensions exist between those who wish to blend with the majority in whatever way is possible, claiming their allegiance is to the whole, and those whose concern is to be as distinctive as possible while maintaining their identity.

Examples of the complexities of minority issues are legion. Here are some; I make no pretence to cover the world.

The year 1999 marks the fortieth year since the Dalai Lama escaped from Tibet to India during the unsuccessful uprising against Chinese rule. Chinese repression of Tibetan Buddhism has been extreme and is well documented. The ban on photographs of the Dalai Lama has deepened and books and plays have been banned under a new campaign declaring Tibetan Culture not to be Buddhist. Re-education and other state-sponsored action against monks has reduced the number of functioning monasteries.³ Meanwhile, state-sponsored internal migration of Han Chinese has gradually been changing cultural ratios in Tibet, a standard technique of colonisers. China demands that the Dalai Lama recognise Chinese sovereignty over Tibet and the Dalai Lama wants to preserve Tibetan heritage. But current tantalising hopes for resolving the issue need to be set beside China's human rights record of state control of religious expression and organisation and its ruthless repression of political dissidence.

The slaughter and destruction in the former Yugoslavia goes on. In the face of accusations that gross human rights violations have been commit-

ted by Serbian army, police and para-military units, the President, Slobodan Milosevic, has been obliged to organise troop withdrawals and accept the monitoring of the withdrawal by the Organisation for Security and Cooperation in Europe.⁴ Kosovans are ethnic Albanians and predominantly Muslim descendants of people who lived under the Ottoman Empire. In 1389, Serbia was defeated at the Battle of Kosovo Field. From 1987, former Communist Party leader Milosevic started to link nationalism to Serbian Orthodox religious fervour so that by the 600th anniversary of the battle, in 1989, Kosovo had lost its autonomy to the vision of a Greater Serbia.⁵ Almost all official Albanian-language education was stopped in 1991 by Milosevic, and ethnic Albanians have had to set up their own schools, often in houses; even these have been gutted with the destruction of whole villages and the fleeing of their inhabitants.⁶ Just as elsewhere in the Balkans, rampant nationalism has replaced with violence some centuries of co-existence among neighbours and religions, a harmony which often still persists despite the depredations of hate and civil war. Serbians who oppose the current ideology have been deprived of access to the state-dominated media which encourages xenophobia and is the only local source of information for those in rural Serbia. Re-broadcasts in Serbian by the BBC and Radio Free Europe have now been banned and professors at the University of Belgrade who are not members of the ruling Socialist Party are being sacked to prevent their views from contaminating student minds.⁷ In these circumstances, a political solution for the Albanian minority in territory under Serb control does not look imminent.

The mix of religion and politics has long been acknowledged as conducive to intolerance. Christian minorities in India have come under increased pressure with the rise of Hindu nationalism, especially after the Bharatiya Janata party won power in the central government.⁸ Religious nationalism has been pushing at the bounds of India's secular system for some time now, affecting Muslims as well as smaller religious groups. In the complex equation of caste, class, religion and ethnic origin which makes up India, Christianity has also come under attack, not only for its evangelism in the so-called 'tribal' areas but, also, as another religious political party, the Vishwa Hindu Parishad, has claimed for endangering national unity and integrity and the cultural ethos of Hindu society.

The dissolution of the Soviet empire has continued to bring instability and violence to Central Asia. The Afghanistan Taliban militia's narrow religious zeal was formed in Sunni Muslim religious schools of neighbouring Pakistan. When the Taliban captured the northern city of Mazar-i-Sharif,

it was reported by Amnesty that the Shi'ite Hazara minority were targeted when, among other killings, seventy men were slaughtered at a Shi'ite shrine.⁹ The Hazaras look distinctively Asian; Persian- or Turkish-based language speakers were killed but Pashtu-speakers were not. Pashtu is spoken by the Taliban. The Mullah who was appointed governor of the city is reported to have offered Shias three choices: convert to Sunni Islam, leave the country or die.

When is a minority not a respected minority? When a member is branded an apostate, a heretic or a blasphemer. Sandi Cornish has recalled the time when the Catholic Church held that error has no rights. To be regarded as having known absolute truth and then rejected it has been considered unforgivable. That situation still holds for minorities in some countries with dominant religions, as Bahá'í communities know to their cost.¹⁰ Religious dissidents and secular believers have been persecuted as apostates. Prosecutions for blasphemy have inflamed communal violence and even prompted a Pakistani Catholic bishop recently to commit suicide to bring world attention to the injustices.¹¹

In Europe, new religious movements have been under political and administrative scrutiny for some years now, leading to complaints about discrimination and persecution.¹² The difficulty of working out exactly what constitutes a group dangerous to society and in need of state regulation and warning to the general populace has been highlighted. A report issued by the Belgian Parliamentary Commission on Sects in 1997 contained a list of 189 minority groups which includes, among others, Bahá'ís and Hassidic Jews, and those Evangelical, Pentecostal and Adventist groups who do not belong to the state-recognised United Protestant Church of Belgium even though they account for half the Protestant population.¹³ Groups on the list will be scrutinised by the newly-formed Information and Advisory Centre on Harmful Sectarian Organisations (the Belgian Observatory on Sects). The non-government organisation Human Rights Without Frontiers has reported concern about the investigation and the policy and structures proposed to implement the recommendations. After the report was issued, there was a rise in intolerance because it was generally interpreted as black-listing groups. Representatives of the Belgian Adventist Church and of the Bahá'ís have encountered unexpected difficulties in renting a public hall, for instance, and the Religious Department of the Ministry of Justice also refused to meet with the Adventists, saying it would only have relations with 'recognised' religions. The Report also contained attacks on a Hassidic Jewish group, the Satmar community, its institutions and schools, as being insular and exclusionist. Rabbi

Abraham Malinsky, who inspects Jewish religious classes in public schools, has commented that ‘since the end of the Second World War, Belgium has been the first European State to publish hostile and unsubstantiated statements against a prominent group of Orthodox Jewry.’

Registration of religious bodies is common in European countries’ administrative arrangements and continental law, as it is in Central and South America. However, some administrative arrangements may have the effect of restricting religious freedom, especially in contrast to traditionally dominant religions. With the emergence of democratic political structures in Russia, the Orthodox Church and the Communist Party deputies drew together to make common cause against minority incursions on the national turf. The law on religion passed by the Duma resembles the old Soviet control mechanisms in many ways. It makes distinctions between three classes of religion and religious organisation as to which are allowed to own property, preach publicly and distribute literature lawfully. ‘Traditional’ religions are recognised and their institutions and activities allowed: Russian Orthodoxy, Judaism, Islam and Buddhism are religions not considered foreign to the wider Russia. All other religious groups can ‘meet privately’ if the local authorities agree to register them. However, this approval would only apply to those currently registered groups which have been operating already for more than 15 years, that is, from the time when Brezhnev lived, in the era when religion and the religious were persecuted. The rest - Roman Catholics, Protestants, Baptists, Seventh Day Adventists, Mormons, Pentecostals, Jehovah’s Witnesses - would have to go through the fifteen-year approval process. During the fifteen years the so-called ‘foreign religions’ would need to get permission to operate from the traditional religions in their area. Some allowance has apparently been made for ‘centralised’ religions but this might not, however, apply to some Catholic orders, let alone indigenous Russian congregations like the independent Baptists or dissident Orthodox. According to the Keston Institute, the fifteen-year rule has been under challenge in the Constitutional Court.¹⁴

What of Australia?

Australian political scientist Marion Maddox has commented that whereas commentary on the religion-politics overlap tends to focus on Christian denominations, ‘the religious issues which have generated the greatest public controversy over recent years have mainly to do with non-Christian traditions.’¹⁵ When the UN Special Rapporteur on Religious Intolerance reported on his visit to Australia, he highlighted not only the

need to respect Indigenous beliefs and practices but also prejudice against other religious minorities.¹⁶

Let me give you the most recent example. The Bangladeshi Muslim community in Bankstown were understandably dismayed to hear that Justice Sheahan of the NSW Land and Environment Court had interpreted the word ‘church’ extremely narrowly when he reviewed the land use for which Council approval had been given in 1954.¹⁷ The Bankstown City Council had allowed the Presbyterian Church of NSW to erect a ‘brick church or office’ on the land. The Bangladeshi community, who have been using the church they bought from the Presbyterians as a mosque, had thought that its existing use as a place of worship would stand. They are not the only non-Christian community to have made such an assumption, especially as the number of adherents of mainstream Christianity has long been shrinking and the formerly consecrated churches become deconsecrated and sold for other purposes.

However Bankstown Council chose to use complaints about noise and parking, complaints which might have been resolved another way, as the springboard for bringing a theological test into the court, a test which had not been in the minds of the original legislators or administrators. The wonder is that, so close to the millenium, the Council was allowed to run with it and that their argument succeeded. An appeal from the decision should definitely be made, especially as so many other councils reportedly have been waiting for this determination in order to deal with similar matters in their own suburbs.

In 1984, the NSW Anti-Discrimination Board’s report on religious discrimination commented on precisely this type of discrimination:

This report contains many examples of the way concepts and practices of mainstream Christianity have been assumed to be universal. Some judicial interpretations of religious terminology contained in legislation have in effect constituted narrow theological tests rather than the wider application intended under legislation. While such terms as ‘church’, ‘worship’, ‘clergy’, and ‘minister’ remain unqualified in our legislation, such over-strict interpretations, bearing little reference to the religious diversity of Australians today, may continue even though the High Court has set down a more liberal interpretation of ‘religion’.¹⁸

Even though the Council’s administrative decision could be direct religious discrimination, that is still not covered by the NSW Anti-Discrimination Act. However, the Council’s decision could well constitute

unreasonable, and therefore unlawful, indirect racial discrimination, if the Bangladeshi community were to make a complaint under the Act concerning the Council's original decision, as indeed they may already have done.

The NSW Ethnic Affairs Commission and the NSW Anti-Discrimination Board have made representations to government on the issue. All non-Christian communities would be affected by Justice Sheahan's decision if it were allowed to stand as legal precedent.

According to the Islamic Council of NSW, the Canterbury and Bankstown Councils have recently rejected or are likely to reject other applications for building mosques and centres. Numbers of young Muslims are rising in those areas and the councils concerned may have overlooked the role of religious institutions in strengthening community ties and educating the young to take their place in civil society.

To conclude, Australia is (or should be) a liberal democracy. There is nothing like championing the cause of minority rights to make one realise that they are mostly simply what the majority or the elite take for granted belong to themselves or consider are universally available. Yet minorities frequently have to struggle for their rights - not special rights, but ordinary rights. In getting them, minorities are subjected to a degree of scrutiny which the majority or the elite do not turn upon themselves as if they have to be convinced of the reasonableness rather than the rightness of the need. 'O! reason not the need; our basest beggars/ Are in the poorest thing superfluous', says Lear. Human rights ARE the bare necessities of life.

Who takes up the causes of the powerless and minorities in democracies with majoritarian tendencies? Human rights, religious organisations and community groups, by mobilising the civil society and developing and leading public opinion. Minority interests can become subsumed in principles advocated by much more numerous groups which have electoral clout. Thus, anti-racism is espoused by those who are not minority members but who, in the name of the equality of all citizens, hold that racism subverts equality. In this way minority interests can contribute to developing pressure within a democracy, pressure which may lead to a political decision by power-holders to further develop Australian policy and law at every level for protecting human rights.¹⁹ Such a resolution does not usually come quickly or easily, but in this society it should be possible.

Zola apparently once said that the purpose of democracy was to make people feel a little less different from each other. But democracies are not truly democratic where minorities are discriminated against. Democracies are only worthy of the name where the interests of all the people are observed, not just those of the majority. The quality of government and civil society and the protection of adequate human rights laws is what makes a democracy worthy of the name.

There is no Quick Fix in human rights. Progress comes from patiently knitting together one right with another, and rights with responsibilities. We should take a strand from this tradition, another from that tradition and weave the old with the new to make a fabric which holds us all together in this world.

Notes

- 1 Yehudi Menuhin, interview with Margaret Throsby, ABC-FM radio, 27 October 1998.
- 2 Capotorti, F., "Study on the Rights of Persons Belonging to Ethnic, Religious and Linguistic Minorities", E/CN.4/Sub.2/384/Rev.1, New York: United Nations, 1979.
- 3 Kremmer, C., "Hope in exile", Sydney Morning Herald, 28 October 1998.
- 4 Stevens, M., "Ceasefire deal defuses flashpoint in Kosovo", The Australian, 14 October 1998.
- 5 Stevens, M., "Tactical genius destroys it all", The Australian, 13 October 1998.
- 6 Strauss, J., "Cry for help in shattered village", Sydney Morning Herald, 10 October 1998.
- 7 Perlez, J., "Milosevic channels Serb anger into fury at the West", Sydney Morning Herald, 14 October 1998.
- 8 Zubrzycki, J., "Besieged Christians seek succour from Hindu rulers", The Australian, 8 October 1998.
- 9 Kremmer, C., "Why many pray for invasion by Iran", Sydney Morning Herald, 26 September 1998.
- 10 See entries for Algeria, Egypt, Iran, Malaysia, Morocco, Pakistan and Sudan in Boyle, K., and Sheen, J., (eds), *Freedom of Religion and Belief: A World Report*, London and New York: Routledge, 1997.
- 11 O'Kane, M., "The invisible martyr", SMH Good Weekend, 15 August 1998.
- 12 See entries for Europe in Boyle and Sheen, *Freedom of Religion*, supra note 10.
- 13 Fautré, W., press releases issued by Human Rights Without Frontiers, Belgium, 20-21 May 1998.
- 14 Uzzell, L., "Sebentsov offers milder than expected interpretation of new religion law", Keston News Service, 27 October 1997.
- 15 Maddox, M., "What is a "fabrication"? The political status of religious belief", *Australian Religious Studies Review*, vol. 11, no.1, Autumn 1998, pp. 14-15.
- 16 Amor, A., "Visit to Australia", report of the Special Rapporteur on Religious Intolerance, Commission on Human Rights, 54th session: E/CN.4/1998/6/Add.1.

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- 17 Marsh, J., “Q: Why is this church not a church?” and editorial, “A mosque in Bankstown”, Sydney Morning Herald, 29 October 1998.
- 18 Discrimination and Religious Conviction, NSW Anti-Discrimination Board, 1984, p. 167.
- 19 The Human Rights and Equal Opportunity Commission report, Article 18: Freedom of Religion and Belief was issued just after this paper was completed and so has not been referred to in the text. The report proposes a federal Religious Freedom Act for Australia and also a number of policy and legislative changes to ensure respect for minority beliefs and practices.

An Islamic Legal Perspective on the Universal Declaration of Human Rights

BY ASMI WOOD

Many eminent scholars have written about human rights in Islam.¹ The purpose of this presentation is to examine the provisions of the Universal Declaration of Human Rights from an Islamic law perspective. One of the aims is to seek to identify the areas of agreement, i.e. to identify the common ground between human rights under Islamic law and the Universal Declaration.

Two specific questions often arise for Muslims when considering the Universal Declaration. First, does its claim to universality pose a problem for acceptance of the Declaration among the proponents of Islamic law? In addressing this point, the issue of a perceived western bias and the accusation of the Declaration's cultural relativism will be covered. The second question is, do any of the provisions of the Declaration conflict with the rules of Islamic law? Due to limitations of space, an article-by-article comparison of the Declaration to rules and principles under Islamic law is not possible; some general comparisons, however, will be made.

The creation of obligation and some enforcement mechanisms within Islamic law will also be examined. It is argued that enforcement mechanisms under Islamic law, if utilised, will actually help improve human rights as articulated in the Declaration. To be effective, however, it must first be shown that these principles are binding on Muslims under Islamic law.

In undertaking a comparison of this nature, it is important to be aware of the problems associated with any attempt to compare apparently similar concepts between systems of government and ideologies whose bases

are fundamentally different. The concept of sovereignty can be taken as an example. In a secular context, sovereignty may be vested in the “sovereign” or in the people. In Islam, however, sovereignty rests with the Creator (God) alone. In the context of this presentation, two major consequences arise from this fundamental difference. First, secular legal systems, including systems of government in Muslim majority states, recognise sovereignty in the meaning of the UN Charter, which, in the view of Dixon and McCorquodale, is “one of the fundamental concepts of international law”.² The Qur’an, the primary source of Islamic law, on the other hand, states that the Muslim “nation” or *ummah* is one and indivisible.³ Sovereignty rests with God alone, and the sole purpose of differences in race, colour, language and so forth among people is to assist “people identifying each other”,⁴ and is not a valid basis for the separation of people into self-governing sovereign states. Secondly, if sovereignty is vested other than with God, then that sovereign may legitimately decide what is permissible and what is not. However, under Islamic law, it is God alone – through the Qur’an – who mandates what is permissible and what is not.

It is also necessary to make clear what we mean by a “Muslim” system of government. In countries where Muslims make up a numerical majority, governments have attempted to form regimes that reflect and incorporate parts of the Islamic belief system of the people in the governance of the state.⁵ More than fifty states have a Muslim majority and they display a range of types of government, including ‘secular’ states such as Turkey and Bangladesh, ‘Islamic Republics’ such as Mauritania, Pakistan and Iran, Westminster-style democracies, military dictatorships, monarchies, civilian dictatorships or the various cross-sections of the forms of government as represented in the UN. Even in states that are attempting to move towards the ‘Islamic State’ there are certain logistic problems of living in a predominantly secular world. For example the fundamental contradiction in the terms “Islamic Republic”⁶ at once shows the difficulties of establishing an Islamic regime in the contemporary world. The journey towards a unified *ummah*, or even the desire to achieve this end, does not at present appear to be universal.⁷

Bases of Islamic law

To Muslims, the Qur’an is the literal revealed word of God,⁸ and is the primary source of Islamic law.⁹ Thus in evaluating the validity of the pro-

visions of the Declaration from an Islamic perspective, it is of fundamental importance to examine the Quranic injunctions on the subject.

In the view of Shafi'i, the second source of Islamic law, the *sunna* or prophetic traditions, derives its legitimacy from the Qur'an.¹⁰ Shafi'i substantiates this assertion by reference to the Qur'an, citing the phrase "*al kitab wa'l hikma*".¹¹ *Al kitab* (literally "the Book") is a word often used to describe the Qur'an. *Al hikma* (literally "the wisdom") is, according to Shafi'i, the wisdom given to humanity in the practice of the prophet.

Other sources of Islamic law include *ijma'a* or consensus,¹² which can refer to the consensus of the scholars or the consensus of the people;¹³ *qi'yas* or analogy; and, in Shi'i Islam, *ra'y* or reason.¹⁴

Two main types of obligation arise out of Islamic law. The first is an obligation on a person as an individual (*fard ayn*), and the second is a collective obligation on a community (*fard kifaya*). An example of the former is the obligation to perform the daily prayers. Prayer is obligatory on every man and woman, and failure to perform a prayer is a personal derogation for which the individual is answerable to God. An example of the latter type of obligation is the burying of the dead. If some members of the community bury a dead person then the whole community is relieved of the obligation; however, if no one does it, the whole community is answerable to God for failure to perform a mandatory act.

In terms of Islamic Law, and therefore relevant provisions of the Declaration, the call on Muslims to establish justice is an obligation-creating command by God on every individual (*fard ayn*). This is seen in the following Quranic verse:

O ye who believe! Stand out firmly for justice as witnesses to God even as against yourselves or your parents or your kin and whether it be (against) rich or poor: for God can best protect both. Follow not the lusts (of your hearts) lest ye swerve and if ye distort (justice) or decline to do justice verily God is well-acquainted with all that ye do. (Qur'an 4: 135)

Similarly the following verse is a command to some in the Muslim community (*fard kifaya*) to protect monasteries, churches, synagogues, and lastly mosques:

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Did not God check one set of people by means of another they would surely have pulled down monasteries, churches, synagogues and mosques in which the name of God is commemorated in abundant measure. God will certainly aid those who aid His (cause); for verily God is Full of Strength Exalted in Might (Able to enforce His Will). (Qur'an 22:40)

If, however, such protection is not forthcoming, then the whole community is seen to have failed in fulfilling its obligation. In Islamic history when the Muslim government has been unable to protect places of worship, homes and so forth, for example because it had lost control of territory, this has resulted in the government returning the taxes of the non-Muslim citizens (only).

The Universal Declaration of Human Rights

The first of the questions raised at the beginning of this paper was whether the universality of the Declaration poses a problem for its acceptance among the proponents of Islamic law.

Dr Mahathir, Prime Minister of Malaysia, has asserted that the Declaration might need to be modified or amended to incorporate the values that have sometimes been called 'Asian values'. The existence of regional human rights instruments such as the African Charter on Human and Peoples' Rights (1981), the European Convention for the Protection of Human Rights and Fundamental Freedoms (1950), and other regional human rights agreements appears to give some credence to the view that human rights are perceived differently by different cultures and races, and that governments have concluded regional instruments to reflect this belief.

If, however, human rights are the right of an individual on the basis of being human, then a regional approach necessarily suggests that there is an intrinsic difference between people from different regions. To be binding on Muslims, such a notion must be shown to be based in Islamic law. The question then becomes: (a) what is the legal personality of an individual under Islamic Law; and (b) does this vary from region to region.

The Islamic law view of an individual or a person's legal personality is clear. On the Day of Judgement, God will address each man and each woman individually:

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On no soul does God place a burden greater than it can bear. It gets every good that it earns and it suffers every ill that it earns. (Qur'an 2:286)

An individual is judged, according to Islamic theology, *inter alia* on their intent and the performance of their individual and collective duties. Just judgement necessarily implies that all duties and responsibilities for which one is answerable have been clearly and unambiguously articulated. After all, the Qur'an alludes above all to a Just God. Thus any basic differences in human beings on the basis of region, race, gender and so forth will have to be clearly indicated by the Qur'an. If an African Swahili-speaking woman were, for example, fundamentally different from a Hokkein-speaking Chinese man, then their mandated duties (*fard ayn*) should also be clearly and separately identified, in keeping with their regional differences.

In reference to the various races and cultural differences within the present human population the Qur'an states:

O humanity! We created you from a single (pair) of a male and a female and made you into nations and tribes that ye may know each other, not that ye may despise each other. Verily the most honoured of you in the sight of God is one who is the most righteous of you. And God has full knowledge and is well acquainted (with all things) (Qur'an 49: 13).

It therefore concedes no distinction on the basis of regional or racial differences. Further, this verse was interpreted by the Prophet, who was quoted by Ibn Kathir, who in turn was quoted by Bashier, as saying:

O People, surely your Lord is one, you all descend from Adam and Adam was created of clay. No Arab is superior to a non-Arab nor a non-Arab superior to an Arab and no white person is superior to a black person nor a black person superior to a white, surely the most noble of you are those who are the most God-fearing.¹⁵

Thus there is no basis in Islamic law for the fundamental differentiation between people on a regional, racial or geographic basis. There are clearly differences within human populations, such as the rich and the poor, the healthy and the infirm, and so forth. Islamic law caters for these differences, but always on a universal basis. Thus there is no basis in Is-

Islamic law for the stipulation of fundamental rights in other than universal terms.

Specifically, therefore, while there may well be differences between the Islamic law and the Declaration on what actually constitutes a "right", the universality of these rights is not in question.

Thus the arguments based on cultural relativism as discussed in the literature,¹⁶ and views opposing the Declaration on the basis of its universal nature, have no valid basis in Islamic law.

Opinio juris

It is now an opportune moment to examine state practice. An examination of the practice of two different Muslim majority countries, Saudi Arabia and Iran, which both claim to be governed by Islamic law, highlights important principles from the perspectives of both international law and Islam.

Saudi Arabia was represented at the Third Committee deliberations on the Universal Declaration of Human Rights by Ambassador M. Baroody. While other Muslim States - Syria and Turkey - were also present, they could not have been reasonably expected to provide an Islamic perspective at the time - in the case of Syria because the nation was still going through the de-colonisation process, and in the case of Turkey because it was in the midst of an anti-Islamic phase of its history. Saudi Arabia, on the other hand, had ample opportunity to present its perspective on the draft declaration in the days leading up to 10 December 1948, when the General Assembly voted unanimously to adopt it. Their role is particularly important as Saudi Arabia was never formally colonised. In addition, Saudi Arabia has consistently and proudly proclaimed its custodianship of the two holy mosques in Mecca and Medina and, by virtue of this custodianship, has claimed to be committed to the defence of the faith.¹⁷ Saudi Arabia claimed, as it does today, that Islamic law (the *sharia'a*) was the law applicable in Saudi Arabia.

Saudi Arabia did not voice any fundamental opposition to the articles of the draft UDHR. The *travaux preparatoires* indicates that Mr. Baroody asked for no amendments to be made on the basis that the draft UDHR had provisions conflicting with Islamic law;¹⁸ While Mr. Kayali, representing Syria, went further and in fact appeared to propose a strengthening of the provisions.¹⁹ It appears that there was a belief on the part of the Saudi Arabian delegation that there was no conflict between the draft declaration and Islamic law. Had the Saudi delegation believed that there

was a conflict, then, on the basis of its claim to defend Islam, it would have voted against the adoption of the Declaration.

Further, the *Saudi Gazette*, which is seen to reflect the views of the Saudi establishment, stated that the Declaration is “not so comprehensive as rights granted under the Qur’an and in several respects is deficient in ensuring justice and equality to all”.²⁰ Thus in the Saudi Arabian view, rights would be better protected under Islamic law; however it does not question the validity of the provisions of the Declaration.

Nation-states sometimes radically change their forms of government. In Iran, the monarchial form of government was replaced by a theocracy. The new government declared its intention of establishing an Islamic form of government. In doing so it radically reexamined its commitments, including its international obligations.²¹

The Vienna Convention on the Law of Treaties (1969) provides for the denunciation or termination of treaties. Iran could have argued, for example, that there was a “fundamental change in circumstances”.²² History attests to the fact that the new Iranian government did not present a case for denouncing the Declaration.²³ It must be seen to be of the view that there were no fundamental conflicts between the Declaration and Islamic law. In fact Iranian scholars generally take the Declaration to task for its narrow and, in their view, extremely limited scope. Dr Thani goes further and questions the efficacy, though not the legitimacy, of the Declaration. He points out the deterioration of rights by examining the subsequent human rights record of some of the 56 nations present at the 1948 vote.²⁴

Thus Iran viewed the Declaration as falling short of the rights granted in the Qur’an. The record nevertheless shows that post-revolutionary Iran, as a nation, did not denounce the Declaration and has even acknowledged the positive points in it.²⁵ Iran must therefore be seen as accepting its validity. The Islamic law basis for accepting the terms of a treaty concluded prior to the establishment of Islamic rule comes from the traditions of the Prophet. He made it very clear that even treaties concluded by non-Islamic predecessors remain binding on Muslims on the condition that the treaties are just.²⁶

Why is the Declaration perceived as a “Western” document?

The obvious answer to this question is because it was produced by the UN at a time when the Western countries were the major powers. From the Muslim viewpoint this domination has, if anything, increased in the post-cold war era. However, this domination has not been because of the Declaration.

The underlying reason why Muslims and others perceive the Declaration as “Western”, however, is because of the simplistic notion that if it shows the West as being the “guardians” of human rights, then it must inherently be a Western tool. It is this false perception that the West is a good human rights defender that must first be corrected, not the Declaration itself. The human rights failings of the West, especially but not exclusively on foreign soil, are many. For example, although article 9 of the Declaration states “No one should be subject to arbitrary exile”, this is exactly what the British did to the original inhabitants of Diego Garcia who were exiled to Mauritius.²⁷ Although article 4 states that “No one should be held in slavery or servitude”, Australia thought otherwise for the Gurindji (Aboriginal) people at Wave Hill Station.²⁸

John Pilger states that “it’s the victims, not the oppressors who are [painted as the] terrorists”. He explains how the West gets away with the deception by quoting Falk: it is “the domination of *fact* by *image* in shaping and shading the dissemination of information that controls the public perception of reality.”²⁹

The Provisions of the Universal Declaration

A comparison of provisions of Islamic law with the 30 articles of the Universal Declaration shows that there is no basis in Islamic law to justify the weakening of human rights provisions of the Declaration. In principle agreement is quite clear.

There will always, however, be differences of opinion. What, for example, constitutes “a cruel, inhuman or degrading punishment”?³⁰ Is a long stint in a tiny cell, with no privacy, at Long Bay Gaol for armed robbery brought on by a gambling addiction, degrading? Is a spear in the leg inhuman? Is the cutting off of a hand of the habitual criminal cruel? Most people would agree in principle that there must be some form of punishment and/or rehabilitation for crimes committed and proven by a competent court. What this punishment actually constitutes is a moot

point and may be affected by one's cultural background. It is, therefore, in the implementation and the interpretation, rather than in matters of principle, that differences come to the fore.

Enforcement

While the Universal Declaration is arguably binding on member states under customary international law, and some of its provisions may even possess the character of *jus cogens*, there is always a question of the lack of suitable enforcement mechanisms. Many men, women and children have been, and are continuing to be, at the receiving end of the abuses of human rights both in Muslim majority states and elsewhere. There have been calls for a greater vigilance on the excesses committed by servants of our nation-states. As technological innovations improve, it appears that it is the persecutors and the oppressors of people, and not the enforcement of rights for the oppressed, that receives the benefits of this progress.

On the other hand, God, in the Islamic view, mandates rights granted under Islamic law, and the protection of these rights is thus binding on all Muslims by virtue of their claim to be Muslims. The Qur'an makes it incumbent on all those who believe in God to work towards a just outcome for everyone:

O ye who believe! Stand out firmly for justice as witnesses to God even as against yourselves or your parents or your kin and whether it be (against) rich or poor: for God can best protect both. Follow not the lusts (of your hearts) lest ye swerve and if ye distort (justice) or decline to do justice verily God is well-acquainted with all that ye do. (Qur'an 4: 135)

There is a further Prophetic tradition:

God's Apostle said, "Help a Muslim, whether they are the oppressor or the oppressed one." People asked, "O God's Apostle! We can help them if they are the oppressed, but how should we help when they are the oppressor?" The Prophet said, "By preventing them from oppressing others".³¹

As you will recall, these injunctions are binding on all Muslim men and Muslim women and the main enforcement mechanism in Islamic

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law is the belief by Muslims that they are accountable to God on the Day of Judgement:

One day every soul will come up struggling for itself and every soul will be recompensed (fully) for all its actions and none will be unjustly dealt with. (Qur'an 16:111)

And the establishment of a just order is one of the actions mandated on a Muslim by God. The great drawback, however, is that for those with no conscience or an absence of a belief in the Day of Judgement, these Qur'anic sanctions will have little effect. In this case, all the posturing by Muslims is going to have little effect on elimination of abuses in human rights.

Some Advice to Human Rights Activists

When you write to leaders of Muslim states to make complaints of breaches in human rights, please keep this thought in mind. Use the provisions of the Qur'an, their source of obligation, when reminding them of their misdemeanours.³² They may not accept your version of the facts, nor perhaps your perception of events, but it will make it that much more difficult for them to dismiss you as "enemies of Islam" or by some other similar platitudes. Remind them that the obligation on Muslims, both individually and collectively, does not stop at not oppressing, but goes further in obligating them to actively oppose oppression and injustice.

Conclusion

There is no basis in Islamic law to claim the non-applicability of the Declaration purely on the basis of its being universal. In fact, there is no basis in Islamic law for the stipulation of fundamental rights in other than in universal terms. An examination of the provisions of the Declaration in the light of the sources of Islamic law shows that the rights it proclaims, in general, appear to be in keeping with the teachings of the Islamic religion and law.

The just implementation of Islamic law would strengthen the human rights regime. However, accepting the provisions of the Declaration as an

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interim measure should encounter little legitimate resistance on the basis of Islamic law.

Islamic law is a potentially powerful force in enforcing the rights of people. If the world's 1000 million Muslim people refuse to oppress or actively oppose the oppression of people - as they are obliged to do - than it will become increasingly difficult for faceless governments to perpetrate and conceal as much abuse as they do today. It is, after all, in the interests of the Muslim peoples themselves to do so. John Pilger states that "in fact, not only have Muslims been responsible for a tiny proportion of deaths caused by terrorism, but in recent years it is they who have been the greatest sufferers from state terrorism".³³

In conclusion, please ask the next person you meet who professes the Islamic faith the following question. Ask them what they have done to discharge the obligation placed on them by God to oppose oppression by state powers; the oppression visited on their country-folk, their co-religionist, the speaker of their language or simply their sister or brother in humanity.

Notes

- 1 Badawi, J., "An Islamic Classification of Human Rights", Salam Magazine, Jan-Feb 1996; World Association of Muslim Youth, Human Rights in Islam, series no. 6, Institute of Islamic Information & Education, 1997; Al-Quaradawi, Y., Islam is a Force Against Terrorism, Salam Magazine, Nov-Dec 1996; Ishaque, K., Fundamental Rights in the Qur'an, The Muslim, Dec 1973-Jan 1974.
- 2 Dixon, M. and McCorquodale, R., Cases and Materials on International Law, Blackstone Press, London, 1995, p. 279. Sovereignty is defined in article 2.1 of the UN Charter: "the Organisation is based on the principle of the sovereign equality of all its Members."
- 3 "Verily this Nation of yours is a single Nation and I am your Lord and Cherisher: therefore serve Me (and no other)": Qur'an 21:92. Asad, M., The Message of the Qur'an, Dar Al Andalus Press, Gibraltar, 1980.
- 4 "O humanity! We created you from a single (pair) of a male and a female and made you into nations and tribes that ye may know each other, not that ye may despise each other". Qur'an 49:1. Asad, The Message of the Qur'an.
- 5 The 1998 Constitutional Amendment Bill in Pakistan, which declared the Qur'an and sunna as the supreme law of the country, is an example of specific legislation currently being considered. In general one can point to the Islamisation programs undertaken in Iran, the Sudan, Malaysia, Algeria and some other Muslim majority states.
- 6 Butterworths Concise Australian Legal Dictionary defines a republic as a form of government where the source of authority is the will of the people. This source of authority may be compared with an Islamic form of government that draws its legal authority from God alone.
- 7 Reference to a unified ummah is absent from the communiqués and resolutions issued by groupings of Muslim states. For example, neither the Organisation of the Islamic Conference (OIC) meeting of Heads of States nor the meeting of OIC Foreign Ministers

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held in Tehran in December 1997 issued any communiqués or passed any resolutions that referred to establishment of a single Muslim political entity, even in aspirational terms.

- 8 "The revelation of this divine writ from on high is from God the Almighty the Wise": Qur'an 46:2. Asad, *The Message of the Qur'an*.
- 9 "If any do fail to judge by (the light of) what God hath revealed they are (no better than) those who rebel": Qur'an 5:47. Asad, *The Message of the Qur'an*.
- 10 Muhammad ibn-Idris al-Shafi'i, *Kitab al Risala fi Usul al Fiqh* (Treatise on the Roots of Jurisprudence), Bulaaq Edition, vol. 6, p. 206.
- 11 For example Qur'an 2:129, 2:151, 2:231, 3:164, 4:113, 62:2.
- 12 Hourani, G. F., *The Basis of Authority of Consensus in Sunnite Islam*, *Studia Islamica*, Dartmouth, 1996.
- 13 Wegner, J. R., "Islamic and Talmudic Jurisprudence: The Four Roots of Islamic Law and their Talmudic Counterparts", *American Journal of Legal History*, vol. XXVI, 1982, p. 55.
- 14 Reza, S. A. (trans.), *Nahjul Balagha: Peak of Eloquence: Sermons, Letters and Sayings of Imam Ali ibn Abu Talib*, Tahrike Tarsile Qur'an Publication, New York, 1986, p. vii.
- 15 Bashier, Z., *Sunshine at Madinah*, Islamic Foundation, Leicester, 1990, p. 120.
- 16 Steiner, H. J. and Alston, P., *International Human Rights in Context*, Clarendon Press, Oxford, 1996, p. 192.
- 17 Shaheen, S. H., *Unification of Saudi Arabia: A Historical Narrative*, Ammar Press, 1993, p. 25.
- 18 "Draft Universal Declaration of Human Rights (E/800): report of sub-committee 4", (A/C.3/400 and A/C.3/400/Rev 1), p. 844.
- 19 *Ibid.*, pp. 842-860.
- 20 Ahsan., M. M., "Human Rights in Islam: Islamic Concept of Rights God-Centred," *Saudi Gazette*, 1 February 1993.
- 21 Human Rights in Islam, papers presented at the 5th Islamic thought conference, Tehran, January 1987. Iran was represented by important personalities such as Ali Khamenei. Though the Conference stressed the view that the West dominated the UN, it conceded that the mechanism for this domination was the Security Council. The reality, however, is that the Security Council may have less actual power than is attributed to it. This is highlighted in Bennis, P., *Calling the Shots: How Washington Dominates Today's UN*, Olive Branch Press, New York, 1996, p. xii: "The UN Security Council was still meeting on 16 January, 1991, debating whether to authorise the bombing on Iraq, when a reporter came into the chamber and said, "They are bombing Baghdad. It's on CNN".
- 22 Article 62, *Vienna Convention on the Law of Treaties*, 1969.
- 23 Some provisions of the Declaration may arguably have the character of *jus cogens*, provisions from which no derogation is permissible. A nation could, nevertheless, place its views on record at the various forums at the United Nations.
- 24 Thani, J., "Some of the Shortcomings of the UDHR", *Human Rights in Islam*, *supra* note 1.
- 25 "Conclusions and Recommendations of the 5th Islamic Thought Conference on Human Rights", *Human Rights in Islam*, p. 9.

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- 26 Bashier, Z., *The Makkan Crucible*, Islamic Foundation, London, 1991, p. 66 refers to the "Alliance of the Virtuous", a treaty concluded in pre-Islamic times to protect visitors to Mecca. On being questioned about the treaty's validity after the establishment of Islamic rule the Prophet said, "I will never exchange that Treaty for the best material gains and if someone appealed to it in Islam I will respond."
- 27 Madeley, J., *Diego Garcia: A Contrast to the Falklands*, Minority Rights Group no. 54, London, 1985.
- 28 Berndt, R. M., (ed.), *The Concept of Protest within an Australian Aboriginal Context*, University of Western Australia Press, Nedlands, 1971.
- 29 Pilger, J., *Hidden Agendas*, Vintage, 1998, p. 37.
- 30 Article 5 of the "Universal Declaration of Human Rights".
- 31 Narrated by Anas in the Sahih of Al Bukhari, vol. 3, Hadith no. 624.
- 32 God Says: "O My servants, I have forbidden oppression for Myself and have made it forbidden amongst you, so do not oppress one another." Hadith Qudsi, no. 17.
- 33 Pilger, J., *Hidden Agendas*, p. 34, supra note 29.

Attachment 1

O ye who believe! Stand out firmly for God as witnesses to fair dealing and let not the hatred of others to you make you swerve to wrong and depart from justice. Be just: that is next to Piety: and fear God for God is well-acquainted with all that ye do. (Qur'an 5:8)

O ye who believe! Stand out firmly for justice as witnesses to God even as against yourselves or your parents or your kin and whether it be (against) rich or poor: for God can best protect both. Follow not the lusts (of your hearts) lest ye swerve and if ye distort (justice) or decline to do justice verily God is well-acquainted with all that ye do. (Qur'an 4:135)

Art 1 All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

Islamic law

We have honoured the children of Adam; provided them with transport on land and sea; given them for sustenance things good and pure; and conferred on them special favours above a great part of Our Creation. (Qur'an 17:70)

O ye who believe! Stand out firmly for justice as witnesses to God even as against yourselves or your parents or your kin and whether it be (against) rich or poor: for God can best protect both. Follow not the lusts (of your hearts) lest ye swerve and if ye distort (justice) or decline to do justice verily God is well-acquainted with all that ye do. (Qur'an 4:135)

Art 2 [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]. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

Islamic law

O People! We created you from a single (pair) of a male and a female and made you into nations and tribes that ye may know each other (not that ye may despise each other). Verily the most honoured of you in the sight of God is (he who is) the most righteous of you. And God has full knowledge and is well-acquainted (with all things). (Qur'an 49:13)

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Art 3 Everyone has the right to life, liberty and security of person.

Islamic law

If anyone slew a person unless it be for murder or in the execution of justice it would be as if he slew the whole people: and if anyone saved a life it would be as if he saved the life of the whole people. Then although there came to them Our apostles with clear Signs yet even after that many of them continued to commit excesses in the land. (Qur'an 5:32)

Take not life which God hath made sacred except by way of justice and law: thus doth He command you that ye may learn wisdom. (Qur'an 6:151)

Nor take life which God has made sacred except for just cause. And if anyone is slain wrongfully We have given their heir authority (to demand *Qisas* or to forgive): but let him not exceed bounds in the matter of taking life: for they are helped (by the Law). (Qur'an 17:33)

Art 4 No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.

Islamic law

Agreed by Islamic law on the basis of *ijma'a*.

Art 5 No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Islamic law

O My servants, I have forbidden oppression for Myself and have made it forbidden amongst you, so do not oppress one another. (Hadith Qudsi No 17)

Art 6 Everyone has the right to recognition everywhere as a person before the law.

Islamic law

God doth command you to render back your trusts to those to whom they are due; and when ye judge between people that ye judge with justice: verily how excellent is the teaching which He giveth you! For God is He who heareth and seeth all things. (Qur'an 4:58)

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Art 7 All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

Islamic law

Now then for that (reason) call (them to the Faith) and stand steadfast as thou art commanded nor follow thou their vain desires; but say: "I believe in the Book which God has sent down; and I am commanded to judge justly between you. God is Our Lord and your Lord. For us (is the responsibility for) Our deeds and for you for your deeds. There is no contention between you and us. God will bring us together and to God is (Our) final goal. (Qur'an 42:15)

God commands justice the doing of good and liberality to kith and kin and He forbids all shameful deeds and injustice and rebellion: God instructs you that ye may receive admonition. (Qur'an 16:90)

Art 8 Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

Islamic law

God doth command you to render back your trusts to those to whom they are due; and when ye judge between people that ye judge with justice: verily how excellent is the teaching which He giveth you! for God is He who heareth and seeth all things. (Qur'an 4:58)

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- Art 9 No one shall be subjected to arbitrary arrest, detention or exile.
- Art 10 Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

Islamic law

After this it is ye the same people who slay among yourselves and banish a party of you from their homes; assist (their enemies) against them in guilt and rancor; and if they come to you as captives ye ransom them though it was not lawful for you to banish them. Then is it only a part of the Book that ye believe in and do ye reject the rest? But what is the reward for those among you who behave like this but disgrace in this life? and on the Day of Judgment they shall be consigned to the most grievous penalty. For God is not unmindful of what ye do. (Qur'an 2:5)

Malik related to me that Rabia ibn Abi Abd ar-Rahman said, "An Iraqi man came before Umar ibn al-Khattab and said, 'I have come to you because of a matter which has no beginning and no end.' Umar said, 'What is it?' The man said, 'False testimony has appeared in our land.' Umar said, 'Is that so?' He said, 'Yes.' Umar said, 'By God! No one is detained in Islam without just witnesses.'"

Malik related to me that Umar ibn al-Khattab said, "The testimony of someone known to bear a grudge or to be unreliable is not accepted."

(*Al Muwatta* of Malik Hadith No 36.4)

- Art 11 [1]. Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.

[2]. No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.

Islamic law

And those who launch a charge against chaste women and produce not four witnesses (to support their allegation) flog them with eighty stripes: and reject their evidence ever after: for such men are wicked transgressors. (Qur'an 24:4)

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Art 12 No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

Islamic law

O ye who believe! Let not some men among you laugh at others: it may be that the (latter) are better than the (former): Nor let some women laugh at others: it may be that the (latter) are better than the (former): nor defame nor be sarcastic to each other nor call each other by (offensive) nicknames: Ill-seeming is a name connoting wickedness (to be used of one) after he has believed: And those who do not desist are (indeed) doing wrong. (Qur'an 49:11)

O ye who believe! Avoid suspicion as much (as possible): for suspicion in some cases is a sin: and spy not on each other nor speak ill of each other behind their backs. Would any of you like to eat the flesh of his dead brother? Nay ye would abhor it...but fear God: for God is Oft-Returning Most Merciful. (Qur'an 49:11-12)

O ye who believe! Enter not houses other than your own until ye have asked permission and saluted those in them: that is best for you in order that ye may heed (what is seemly). (Qur'an 24:27)

If ye find no one in the house enter not until permission is given to you: if ye are asked to go back go back: that makes for greater purity for yourselves: and God knows well all that ye do. (Qur'an 24:27-28)

Art 13 [1]. Everyone has the right to freedom of movement and residence within the borders of each State.

[2]. Everyone has the right to leave any country, including his own, and to return to his country.

Islamic law

And when the Prayer is finished then may *ye disperse through the land and seek of the Bounty of God: and celebrate the Praises of God often (and without stint):* that ye may prosper. (Qur'an 62:10)

It is He Who has made the earth manageable for you so traverse ye through its tracts and enjoy of the Sustenance which He furnishes: but unto Him is the Resurrection. (Qur'an 67:15)

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- Art 14 [1]. Everyone has the right to seek and to enjoy in other countries asylum from persecution.
- [2]. This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations.

Islamic law

The Treaty of Hudaibya & Exile of Meccans to Abyssinia, Exile of Meccans to Medina.

- Art 15 [1]. Everyone has the right to a nationality.
- [2]. No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.

Islamic law

Everyone in an Islamic state has access to the law and a legal personality. [See general verses of the Qur'an on justice].

- Art 16 [1]. Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.
- [2]. Marriage shall be entered into only with free and full consent of the intending spouses.

Islamic law

O ye who believe! ye are *forbidden to inherit women against their will*. Nor should ye treat them with harshness that ye may take away part of the dower ye have given them except where they have been guilty of open lewdness; on the contrary live with them on a footing of kindness and equity. *If ye take a dislike to them it may be that ye dislike a thing and God brings about through it a great deal of good.* (Qur'an 4:19)

O People! Reverence your Guardian-Lord Who created you from a single person created of like nature his mate and from them twain scattered (like seeds) countless men and women; reverence God through Whom ye demand your mutual (rights) and (*reverence*) *the wombs (that bore you)*: for God ever watches over you. (Qur'an 4:1)

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Art 17 [1]. Everyone has the right to own property alone as well as in association with others.

[2]. No one shall be arbitrarily deprived of his property.

Islamic law

To orphans restore their property (when they reach their age) nor substitute (your) worthless things for (their) good ones; and devour not their substance (by mixing it up) with your own. For this is indeed a great sin. (Qur'an 4:2)

O ye who believe! Eat not up your property among yourselves in vanities: but let there be amongst you traffic and trade by mutual good-will: nor kill (or destroy) yourselves: for verily God hath been to you Most Merciful. (Qur'an 4:29)

And do not eat up your property among yourselves for vanities nor use it as bait for the judges with intent that ye may eat up wrongfully and knowingly a little of (other) people's property. (Quran 2:188)

Art 18 Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

Islamic law

Those who believe (in the Qur'an) and those who follow the Jewish (Scriptures) and the Christians and the Sabians and who believe in God and the last day and work righteousness shall have their reward with their Lord; on them shall be no fear nor shall they grieve. (Qur'an 2:62 & 5:69)

Let there be no compulsion in religion. Truth stands out clear from error; whoever rejects evil and believes in God hath grasped the most trustworthy hand-hold that never breaks. And God heareth and knoweth all things. (Qur'an 2:256)

We know best what they say; and thou art not one to ever awe them by force. So admonish with the Qur'an such as fear My Warning! (Qur'an 50:45)

If it had been the Lord's Will they would all have believed all who are on earth! Wilt thou then compel mankind against their will to believe! (Qur'an 10:99)

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Art 19 Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

Islamic law

Therefore do thou give admonition for thou art one to admonish. Thou art not one to manage (men's) affairs. (Qur'an 88:21-22)

The Qur'an alludes to this freedom in many places. For example the Qur'an refers to the accusations unjustly made against the Prophets including Mohammed [eg 'they call you a madman (Qur'an 81: 26 (notes)), They say thou art possessed (Quran 65:51) etc]. These accusations are rebutted but no attempt was made to silence the enemies of the Prophet.

Art 20 [1]. Everyone has the right to freedom of peaceful assembly and association.

[2]. No one may be compelled to belong to an association.

Islamic law

Revile not ye those whom they call upon besides God lest they out of spite revile God in their ignorance. Thus have We made alluring to each people its own doings. In the end will they return to their Lord and We shall then tell them the truth of all that they did. (Qur'an 6:108)

Invite (all) to the way of thy Lord with wisdom and beautiful preaching; and argue with them in ways that are best and most gracious: for thy Lord knoweth best who have strayed from His Path and who receive guidance. (Qur'an 16:125)

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- Art 21
- [1]. Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.
 - [2]. Everyone has the right to equal access to public service in his country.
 - [3]. The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

Islamic law

Those who hearken to their Lord and establish regular prayer; who (conduct) their affairs by mutual Consultation; who spend out of what We bestow on them for Sustenance. (Qur'an 42:38)

It is part of the Mercy of God that thou dost deal gently with them. Wert thou severe or harsh-hearted they would have broken away from about thee; so pass over (their faults) and ask for (God's) forgiveness for them; *and consult them in affairs* (of moment). Then when thou hast taken a decision put thy trust in God. For God loves those who put their trust (in Him). (Qur'an 3:159)

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Art 22 Everyone, as a member of society, has the right to social security and is entitled to realisation, through national effort and international co-operation and in accordance with the organisation and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.

Islamic law

And in their wealth and possessions (was remembered) the right of the (needy) those who asked and those who (for some reason) were prevented (from asking). (Qur'an 51:19)

It is not righteousness that ye turn your faces toward East or West (in prayer); but it is righteousness to believe in God and the Last Day and the Angels and the Book and the Messengers; to spend of your substance out of love for Him for your kin for orphans for the needy for the wayfarer for those who ask and for the ransom of slaves; to be steadfast in prayer and practice regular charity; to fulfil the contracts which ye have made; and to be firm and patient in pain (or suffering) and adversity and throughout all periods of panic. Such are the people of truth the God-fearing. (Qur'an 2:177)

(The Poor rate) for those in need who in God's cause are restricted (from travel) and cannot move about in the land seeking (for trade or work). The ignorant one thinks because of their modesty that they are free from want. Thou shalt know them by their (unfailing) mark: they beg not importunately from all and sundry. And whatever of good ye give be assured God knoweth it well. (Qur'an 2:273)

Art 23 [1]. Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.

[2]. Everyone, without any discrimination, has the right to equal pay for equal work.

[3]. Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.

[4]. Everyone has the right to form and to join trade unions for the protection of his interests.

Islamic law

And every person shall be fully compensated for what they did. And God knows full well what they do. (Qur'an 39:70)

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Art 24 Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.

Islamic law

God's Messenger (peace be upon him) said, "Give the workers their wages before the sweat on the brow is dry." *Ibn Majah* transmitted it. (*Al Tirmizi Hadith* 2987)

Art 25 [1]. Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

[2]. Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

Islamic law

Alms are for the poor and the needy and those employed to administer the (funds); for those whose hearts have been (recently) reconciled (to truth); for those in bondage and in debt; in the cause of God; and for the wayfarer: (thus is it) ordained by God and God is full of knowledge and wisdom. (Qur'an 9:60)

O People! Reverence your Guardian-Lord Who created you from a single person created of like nature his mate and from them twain scattered (like seeds) countless men and women; reverence God through Whom ye demand your mutual (rights) and (reverence) the wombs (that bore you): for God ever watches over you. (Qur'an 4:1)

Thy Lord hath decreed that ye worship none but Him and that *ye be kind to parents*. Whether one or both of them attain old age in thy life say not to them a word of contempt nor repel them but address them in terms of honour. And out of kindness lower to them the wing of humility and say: "My Lord! bestow on them *Thy Mercy even as they cherished me in childhood*." (Qur'an 17:23-24)

We have enjoined on man Kindness to his parents: in pain did his mother bear him and in pain did she give him birth. The carrying of the (child) to his weaning is (a period of) thirty months. (Qur'an 46:15)

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- Art 26 [1]. Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.
- [2]. Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.
- [3]. Parents have a prior right to choose the kind of education that shall be given to their children.

Islamic law

High above all is God, the King, the Truth! Be not in haste before its revelation to thee is completed but say, "O my Lord! advance me in knowledge." (Qur'an 20:114)

Proclaim! (or Read!) in the name of thy Lord and Cherisher Who created
 Created mankind out of a (mere) clot of congealed blood
 Proclaim! And thy Lord is Most Bountiful
 He Who taught (the use of) the Pen
 Taught mankind that which it knew not.
 Nay but mankind doth transgress all bounds
 In that they looketh upon themselves as self-sufficient.
 Verily to thy Lord is the return (of all). (Qur'an 96:1-8)

Yahya related to me from Malik that he heard that Luqman al-Hakim made his will and counselled his child, saying, "Sit with the learned and keep close to them. God gives life to the hearts with the light of wisdom as God gives life to the dead earth with the abundant rain of the sky. (Al Muwatta 59-1)

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Art 26 Kathir ibn Qays said: I was sitting with AbudDarda' in the mosque of Damascus. A man came to him and said: AbudDarda, I have come to you from the town of the Apostle of God (peace be upon him) for a tradition that I have heard you relate from the Apostle of God (peace be upon him). I have come for no other purpose. He said: I heard the Apostle of God (peace be upon him) say: If anyone travels on a road in search of knowledge, God will cause them to travel on one of the roads of Paradise. The angels will lower their wings in their great pleasure with one who seeks knowledge, the inhabitants of the heavens and the Earth and the fish in the deep waters ask forgiveness for the learned. The superiority of the learned over the devout is like that of the moon, on the night when it is full, over the rest of the stars. The learned are the heirs of the Prophets, and the Prophets leave neither dinar nor dirham, leaving only knowledge, and who takes it takes an abundant portion. (Sunna of Abu Dawd No 3634)

Several Verses in the Qur'an exhort People to Read, Ponder, think and Seek knowledge.

Art 27 [1]. Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.

[2]. Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

Islamic law

O humanity! We created you from a single (pair) of a male and a female and made you into nations and tribes that ye may know each other, not that ye may despise each other. Verily the most honoured of you in the sight of God is one who is the most righteous of you. And God has full knowledge and is well-acquainted (with all things). (Qur'an 49:13)

Art 28 Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realised.

Islamic law

See the body of the text for a discussion on the *ummah*.

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- Art 29 [1]. Everyone has duties to the community in which alone the free and full development of his personality is possible.
- [2]. In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.
- [3]. These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations.

Islamic law

See the body of the text for a discussion on *fard ayn* and *fard kyfiah*.

- Art 30 Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.

Islamic law

See the body of the text for a discussion on the *Ummah*.