

## HUMAN RIGHTS

rights in LAW and in world opinion, examines their historical origin and development, and discusses practical obstructions to their realization.

The concept of human rights derives from Western traditions concerning the dignity of PERSONS, which expanded from an initial base of civil rights to include, in recent times, social, economic and cultural rights. The commanding current perspective on human rights as the ethical and legal basis of a comity of nations is the United Nations Charter and a succession of rights declarations since the promulgation of the Universal Declaration of Human Rights (1948). These include declarations on racial discrimination, forced labour and SLAVERY, GENOCIDE, minorities and multiculturalism, civil rights, the rights of women, children, prisoners and detainees, refugees and stateless persons, and the rights of civilian populations under the rules of war. The Universal Declaration elaborates the human rights that were merely mentioned in the UN Charter. Declarations after the Universal Declaration are meant to elucidate or emphasize rights contained in the former, or else to draw out new implications not previously addressed.

In addition to UN declarations, there are a number of regional statements from African, Asian and Latin American nations. The Organization of American States proclaimed the American Declaration of the Rights and Duties of Man in 1948. An Inter-American Convention on Human Rights providing for a court of human rights was drafted in 1959 and subsequently implemented. The declaration that has enjoyed on-going institutional effect is the Council of Europe's Convention for Protection of Human Rights and Fundamental Freedoms (1950) and the European Social Charter (1961). These two declarations were linked to UN declarations as a supportive 'collective guarantee' of the UN Declaration. The Social Charter concerns primarily economic and social rights relevant to conditions of employment and work. The application of these rights is overseen by the European Commission on Human Rights and the European Court of Human Rights. In the early years of its operation, only ten of the then fifteen member states allowed citizens to petition the Commission. The Council now comprises twenty-three member states, embracing

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The political and cultural homogenization of the globe during the past century has placed a premium on the acceptance and implementation of norms that might give effect to a peaceful, inclusive comity of nations. The norms that today enjoy the nearly universal assent of nations are those enunciating human rights and the correlative duties of governments and citizens. This entry reviews the status of human

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417 million persons, most of whom may petition the Commission.

The legal status of the UN Charter and declarations is complex. The Charter was conceived as a multilateral treaty whose clauses include provision for arbitration of conflicts and sanctions against non-compliance. The Declaration, by contrast, is not a treaty but 'a common standard'. Nations interpret their obligations under the Charter and Declaration differently. The optimal relation, from the UN perspective, is that obligations incurred under treaties are binding in member nation's domestic law and hence are enforceable in domestic courts. Where this arrangement is in effect, citizens may claim relief under provisions of UN declarations. The high courts of Australia, Canada and a few other nations have indeed endorsed this relationship on specific issues, but such nations are few and the scope of such obligation is narrowly defined. Generally speaking the courts of most nations accept petitions from citizens only under domestic laws. In OECD countries, this legal obstruction has been resolved by establishing domestic human rights commissions bearing a brief drawn from the UN Declaration, or by establishing, in the case of Europe, a regional human rights commission. Such avenues of surveillance and appeal tend to be unavailable in nations where human rights violations are most serious. The UN Charter provides for sanctions, including military intervention as a last resort, against nations in flagrant violation of the UN Charter. However, decisions to use force can be taken only by the Security Council, whose five permanent members each have a veto. Owing to rivalries among the permanent members, the military sanction has been approved only twice. The General Assembly can approve economic and political sanctions, but they are also rarely invoked. The sanctions of longest duration were against South Africa for its racial discrimination laws. In addition, the United Nations and its agencies have generated a large body of treaty law by putting into effect conventions on the limited subjects mentioned above.

Since 1955, the UN Commission on Human Rights has sought to induce a process of gradual compliance by establishing reporting routines, advisory services and regional conferences on

recent experience with specific rights. The reporting routine involves a triennial report by member states on progress toward safe-guarding and implementing specific rights. Members are invited to set human rights targets and to devise action programmes. The targets and action are assessed at the triennium's end and new targets are set. The objective is to engraft such procedures into the political processes of member states so that they become self-sustaining.

Progress in securing human rights can be measured in part by the support and collaboration that the United Nations has been able to attract. Regional human rights activities have been mentioned. But non-governmental organizations have played a continuing and at times decisive role in the promotion of rights. Amnesty International, founded in 1961, works closely with the United Nations. Its secretariat and large worldwide membership is dedicated to securing the release of political prisoners and to the prevention of torture and cruel punishments, including the death penalty, which it opposes. It also opposes the involvement of physicians in the administration of punishments in the guise of therapy and their involvement as executioners of death penalties. Amnesty International has highlighted the plight of political prisoners in many nations. Acting on the advice of political prisoners themselves, the organization has found that media exposure of the plight of specific individuals is often effective in securing their release and reducing abuses of others who remain in detention.

Churches have been major advocates of human rights. The Roman Church historically opposed the modern doctrine of rights because it sanctioned the separation of the STATE from the church. This attitude was comprehensively expressed in Pius IX's *Syllabus of Errors*, which condemned many rationalist propositions. However, this position was reversed by Leo XIII, whose *Inscrutabili* (1878) and *Libertas* (1888) laid down the fundamental principles for teaching on MARRIAGE, church-state relations, industrial relations, national self-determination and other questions. In 1938 eight racist propositions were condemned and the Church's numerous historical condemnations of slavery were reaffirmed. Such documents signify recognition

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that moral theology shared important practical ground with the modern doctrine of human dignity. The *rapprochement* culminated in John XXIII's *Pacem in Terris* (1963), which interpreted rights doctrine along traditional natural law lines. The Encyclical asserted the foundation for any society to be 'that every human being is a person; his nature is endowed with intelligence and free will. By virtue of this, he has rights and duties of his own, flowing directly and simultaneously from his very nature, which are therefore universal, inviolable and inalienable.' The Papal Commission, *Justitia et Pax* (1963), was charged with collecting evidence on human rights abuses and promoting human rights from the resources of the Church. The effects have been felt especially in Latin America, where LIBERATION THEOLOGY expressed one interpretation of *Pacem in Terris*, and in Eastern Europe, particularly the Polish Solidarity Movement.

The WORLD COUNCIL OF CHURCHES (WCC) and its member confessions have been equally committed to human rights. The Report of the Nairobi Assembly of the WCC (1974) linked the promotion of human rights with the promotion of struggles for liberation from colonial dominance in the Third World. Other WCC statements highlighted the right to life and a minimal level of economic well-being, the rights of minorities to maintain their cultural identities, and civil rights, including freedom of religion.

Human rights are the legacy of the natural rights tradition in Anglo-American and French political thought. The Petition of Right (1628), the Convention Settlement (1689), the Declaration of Independence (1776) and the Declaration of the Rights of Man and Citizen (1789) may be viewed as stages of politico-ethical development that for the moment peaks in the Universal Declaration. Its Preamble states that the 'foundation of freedom, justice and peace in the world' is 'recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family'. Article 1 declares that human beings are 'born free and equal in dignity and rights', and the exercise of these rights is deemed to be incompatible with discrimination on the basis of race, colour, sex,

language, religion, political opinion, national or social origin, PROPERTY, birth or other status.

Modern rights doctrine is an outgrowth of Roman and medieval natural law teaching. Natural lawyers hold that the correct rule for conduct is found by discerning the nature of humankind, inclusive of social relationships, and the nature of the common good that the good nurture of human beings seeks to sustain. The precepts of natural lawyers were to live honestly, to harm no-one and to give each his or her due. An elaborate corpus, including a law of nations (international law), was developed from this basis. Modern rights doctrine continues the rational search of 'nature' for rules of conduct, as well as the commitment to the rule of law cherished by natural lawyers. However, Thomas Hobbes and others reconceptualized 'nature' to make it more consistent with the mechanical concept of nature and the experimental method that displaced the Aristotelian heritage. In the modern scheme, Aristotle's teleological human nature is replaced by the impetus, or force, of appetite, so that the most powerful appetites define human ends. Appetition is assessed to be selfish and non-moral. The 'state of nature' is imagined as an actual or impending chaos of competing selfish appetites, both between and within individuals. This procedure strips away all conventional distinctions of merit and status, and places each on an equal footing as self-interested individuals. This 'equality in vice' defines the common humanity. Order is brought from the chaos by methodic identification of a rational priority of appetites or wills, enumerated by John Locke as life, liberty and property (and by the Universal Declaration as 'life, liberty and the security of person'). These are called 'natural rights', meaning those desires for which human beings persistently assert themselves and call 'right'. An artificial order is imposed conceptually on the chaos by deeming that self-interested individuals contract together to secure life, liberty, property and other such liberties as are practicable. This contract legitimates the political use of force to protect the rights of each. It also establishes a cosmopolitan rule of law regime limited by the unalienable natural right of each to defend life and liberty. 'Natural right' denotes the

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irrepressible natural impetus of each to conserve his own life. In this way the modern doctrine replaces the natural lawyers' priorities of the human good and the common good by the priorities of individual liberty. The human good is defined by liberties, i.e. the maximum feasible realization of appetite and will. The common humanity, initially defined as selfishness, is defined in the civic state as equality in legally sanctioned liberties. This orientation displaces the natural lawyers' articulation of a prescriptive model of the virtuous life by identifying moral goodness with law-abidingness. Similarly, the common good is not a substantive notion of a community well ordered by differentiation of status and religious cohesion, but is the sum of individuals goods, meaning the maximum of liberty compatible with public order understood as protection against the appetitive invasions of others, including GOVERNMENT. This is a dynamic, open-ended concept repugnant to traditional natural law. Equality and contract undercut the identity of persons by status, age, sex, nationality and religion, and substitute a uniform concept of the individual or person as a free appetitive contracting party. The dynamism of modern personhood lies in its epistemological, experiential and political openness. Just as in natural science 'nature' is a research object whose attributes multiply as investigation progresses, so in moral and political science 'human nature' is a research object whose attributes multiply as study and experience progress. The structure of appetite that comprises the human 'nature' invoked in modern rights doctrine describes only the attributes relevant to political order. Its experiential and political dynamism is its capacity to add new attributes to the structure of desire and its amenability to individual or group interpretation. But it is opposed to the legal prescription of virtue, or the proscription of any way of life on grounds other than public safety and harm to others. This is the core of modern rights secularism.

Historically, secularism was expressed as advocacy of religious toleration, freedom of speech and opposition to prescribed conformity. The central argument for toleration was that the schism in Christendom starkly revealed the

general truth that the religious community is an artifact of forced conformity. The counter argument that community is necessary for social cohesion was rebutted by the politics of interest group competition and new designs for government organization which enjoyed their efflorescence in the constitution-making of the American and French Revolutions. The American political system proved to be capable of sustaining an unprecedented rate of economic expansion and population diversity, foreshadowed in its political philosophy of rights. It is characteristic that a succession of Presidents have singled out the universality of human rights as the moral cosmopolitanism of the comity of nations.

The critique of community in the name of liberty cannot be said to have entirely succeeded intellectually or practically. A few enduring points of tension may be noted. The most conspicuous perhaps is the social paradox of the American and French revolutionary performances. Rights claims were made simultaneously in the name of individual freedom and a vision of the morally consecrated nation. American colonials beheld the vision of the incorrupt new world making a new beginning on behalf of mankind. The French vision was a mingled Christian and classical aspiration to moral regeneration. In both cases 'revolution' evoked allegiance to community goods, beginning with the right of national self-determination and extending into the higher reaches of heroic sacrifice and prescribed civic virtue. The revolution concept was adopted by movements for national independence and national salvation. In nineteenth-century Europe and Latin America, 'nation' might designate an ethno-linguistic group with no tradition of political independence. In the era of decolonialization, when many peoples lacking a political history commenced nation-building, ethnic solidarity and religion were often the main forces of national cohesion. Thus within the United Nations comity the paradox arises that the social systems for whose benefit human rights are most insistently pressed are least susceptible to the individualist rights ethos. In those settings, freedom of speech involves what is culturally perceived as BLASPHEMY or insolence toward AUTHORITY, a response particularly marked in China, Japan and

the Middle East. Sexually nearly everywhere outside, an insult to the dig- nity contrary to religion or in- terfering with the estab- lished order is disruptive of the estab- lishment. In India, whose popula- tion is one-third of the world total, the ca- tegorical justification of ine- quity and the rituals of purity are who- leheartedly in accord with rights doctrine. Such div- ergent rights norms and the ne- cessary social systems encour- aged natives to develop, unde- rstand and demand rights, a new style of 'solidarity rights'. Under the banner of human rights of individ- uals, the interest of the com- munity are in effect the claim- ant's right to persist in their ethno- cultural identity including the age, sex and other conditions typical of pre-m- odern societies.

The claims of com- munity raised by the many vari- eties of rights arose as a criticism of the sophy of rights. Auguste Comte and Positivism and staunchly originated the idea that individualism is a necessary stage in hu- man development which he associated with and the primacy of sci- ence. He interpreted the Reformation as a rejection of individualist philosophy modified by Comte's social philosophy was the necessary stage in the industrial organization of freedom of contract. The modern rights doctrine progressive human freedom 'abstract', conceived a social system of individuals in isolation from the community necessary to give this expression through the- ory and practice to willing create- tive objectification of the individual and the law guarding such objectifications.

Soviet Marxism ac- cepted the individual as vehicle, the totalitaria- n effect to the will of the individual. Yet what it a-

the Middle East. Sexual equality is perceived nearly everywhere outside the West as unnatural, an insult to the dignity of both sexes, contrary to religion or immemorial custom, and disruptive of the established division of labour. In India, whose population is nearly one-fifth the world total, the caste system and the religious justification of ineradicable inequality and rituals of purity are wholly at odds with modern rights doctrine. Such divergence between human rights norms and the norms of most non-Western social systems encouraged Third World initiatives to develop, under the umbrella of human rights, a new style of collective rights, called 'solidarity rights'. Under solidarity rights, the human rights of individuals may be curtailed in the interest of the community. Solidarity rights are in effect the claim of non-Western cultures to persist in their ethnic patterns and practices, including the age, sex and social status differentiations typical of pre-modern societies.

The claims of community have also been raised by the many varieties of SOCIALISM that arose as a criticism of the individualist philosophy of rights. Auguste Comte, the father of Positivism and staunch defender of community, originated the idea that individualism was a necessary stage in human cultural evolution, which he associated with industrial production and the primacy of scientific method. He interpreted the Reformation as the initial manifestation of individualist rationalism. Karl Marx modified Comte by claiming that the individualist philosophy was the intellectual expression of the industrial organization of labour and associated freedom of contract. Marx accepted that modern rights doctrine was a true expression of progressive human freedom, but it remained 'abstract', conceived as the attributes of individuals in isolation from social relations. It was necessary to give this will to freedom concrete expression through the abolition of all impediments to willing created by the will in its successive objectification of previous wills; property and the law guarding it are foremost among such objectifications.

Soviet Marxism achieved power through a vehicle, the totalitarian party, that gave maximum effect to the will to destroy constraints on the will. Yet what it achieved was not what the

Marxist vision of human freedom willed. In its Stalinist phase, the Soviet state was machinery for the maximum accumulation of disposable political and military force. In its post-Stalinist phase, it settled into an institutionally based patrimonial regime, dominated by elder males linked in a Byzantine maze of patronage based on the ethnic dominance of the Rus. When this regime weakened, the call for reform was expressed in the idiom of rights, including the right to ethnic self-determination. This experience indicates that the rights doctrine is not the expression of a particular social organization of work and property but is instead the articulate voice of cosmopolitan liberty audible, to some degree, in every complex culture.

INTERNATIONAL RELATIONS specialists do not generally believe that human rights provides a sufficient basis for a world order. The standards they declare are in many particulars incompatible with the social structure of Third World nations. Additionally, OECD nations experience increasing difficulty in honouring the commitment to multiculturalism, since various cultures express incompatible standards. The ABORTION issue aptly expresses the dilemma. Numerous declarations assert the sanctity of life, and the Convention on the Rights of the Child states that the right to life commences before birth. Yet the United Nations, under the influence of OECD countries, supports abortion as a means of POPULATION CONTROL. Population control is believed to be a necessity for social and environmental reasons. Thus, an extreme and cruel individual human rights violation is accepted practice for the sake of a collective good. The abortion case shows that the observance of any human right is contingent upon political judgments as to its consilience with a perceived common good.

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## HUMANISM

The term 'humanism' has had almost as many different shades of meaning as there have been human beings to use it. Purists use it to describe a cultural development characteristic of the European Renaissance, the period from the fourteenth to the sixteenth centuries. This humanism was in part a product of a particular kind of study of the humanities, in part a celebration of the human capacity for achievement in the arts and in the intellectual field. The 'rebirth' of intellect and CULTURE was, in great part, a recovery of the achievements of the classical Graeco-Roman era, in sculpture, in writing, in oratory, politics and philosophy. Even the sciences were not excluded from it; some of the great Renaissance figures were recoverers of forgotten facts of medicine or physics, as passionate in their concern for science as for the humanities. In art the recovery of the classical style involved also a revived delight in the beauty of the three-dimensional human form. It was in that sense that the Renaissance could also be described as a rediscovery of the joy of being human.

How far this involved putting humanity, rather than God, in the centre of everything is itself disputed. Many interpreters of the Renaissance have argued that humanism was essentially a secularizing movement which promoted an amoral INDIVIDUALISM and undermined

traditional religious values. But there are other scholars who have argued that it was an authentically Christian cultural tradition.

In a sense the history of the term 'humanism' has reflected this disagreement as much as has the debate about human endeavour and divine initiative within Christian THEOLOGY itself. Thus the term is sometimes used to reject any supernaturalist view of humanity or of its place in the universe. This version of humanism is sometimes called 'scientific' humanism and essentially asserts that humanity has a dignity and worth of its own, quite independent of its being thought of as the creation of a divine creator: human beings possess, in reason, the faculty for realizing their own potential. Humanists, in this sense, regard human beings as responsible, capable of intellectual progress, and therefore competent to solve the problems of their species rationally and on its own terms. Thus the British Humanist Association is a society whose members are agnostic in matters of religious belief. Precisely which modern school of philosophical thought has been most closely associated with secular humanism is a matter of some dispute. In the twentieth century there have been both Christian and humanist forms of existentialist thought, and MARXISM by its very nature as dialectical *materialism* (rather than idealism) is humanist in the secular sense. But that humanism which treats humanity as something to be understood and explained in its own terms without reference to a divine being also has points of contact with the philosophy of such twentieth-century thinkers as A.J. Ayer and Karl Popper. These have both sought (Ayer in attempting to use the criterion of verifiability and Popper, perhaps more cogently, that of falsifiability) to make the natural sciences the model for all rationality. Since science will seek explanation in its own terms, without reference to anything outside itself, the affinity between such scienticism and a secular humanism is obvious.

'Humanist' has had other meanings, too. It has been used by some to describe those who believe that Christ was human but not divine. It has also been used as equivalent to 'humanitarian', one who is concerned for the welfare of other human beings, for JUSTICE and for HUMAN RIGHTS. This has been, to some extent, little

more than a confusion of terms. But there have been versions of humanism which have also been confused with justice in SOCIETY, or to the disadvantage of the disadvantaged.

Like most other aspects of humanism, its association with social issues is complex. Within what is sometimes called the reformation and sometimes the enlightenment, the influence of humanism was often powerful. But its effects were mixed. Some Christian reformers believed in extreme austerity and asceticism; others, like Cardinal Richelieu, believed in the preparatory commission of the papacy before the Council of Trent. Some humanists, like someone who tried very hard to reach a logical agreement with the world, thought that it was perfectly possible to remain in the world while remaining in the world, like the religious orders and communities in this period, like those founded by St Philip Neri, devoted themselves to caring for the sick. Some have been influenced by humanism to believe that devotion was, of course, a necessary part of humanity. On the other hand, the thought of Machiavelli in its application, whatever the nature of that amorality. Machiavelli believed that to be moral but, at the same time, not to pretend that he was better than far as Machiavelli can be judged, his humanism did not treat human beings as a POWER game.

There have always been humanists, those who have seen themselves, with a degree of self-regard, as 'Christian' humanists. What is regarded as a legitimate claim on whether one is able to uphold the doctrine of the sovereignty of God which one places upon humanism. The Protestant Reformation of the sixteenth century was very largely a movement which believed that the salvation of the world was not upon its own efforts