

lion & lamb



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Editor: Derek Poole

Assistant Editor: Ruth Hutchinson

Design: Colin Maguire

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Howard House, 1 Brunswick Street, Belfast, BT2 7GE
Tel: 028 9032 5258 Fax: 028 9043 4156
e-mail: admin@econ1.org www.econ1.org



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RIGHTS

The popular notion of rights, as the fulfilment of individual destinies and uninhibited freedom of expression, is the image that dominates daytime TV chat shows and evening soaps. It is expressed in language predominantly individualistic and profoundly religious, as the right to have rights takes on a credal quality in a secular age. This is not to deny the genuine empathy that human rights, in the political sphere, has nurtured in many societies but it is to suggest that not all expressions of the rights culture are unquestionably good and inevitably liberating. This edition of *Lion & Lamb* considers some of these issues and in particular wrestles with the meaning of personal and political rights in the context of Northern Ireland.

From a Christian perspective it is not possible to consider the meaning of human rights apart from issues of love and justice in our social relationships. The Biblical view of the individual is communitarian. Like the Trinity, humanity exists and is fulfilled in relationships of interdependence and mutuality. Although justice demands rights for the individual, these rights are only absolute in the abstract. In real communities, rights are relativised by the mutual responsibilities and obligations that make up the complex reality of life together. As David Hollenbach states, "The mutual interdependence of persons on each other in family life, in work, and in political life is viewed as the foundation and matrix for the realisation of human freedom and dignity. Respect for freedom and dignity, therefore, involves more than not interfering with the activity of persons. Obligations of justice include positive duties to aid persons in need, to participate in the maintaining of the public good and to share in efforts to create the kinds of institutions which promote genuine mutuality and reciprocal respect." Christian understanding of rights is therefore inseparable from the biblical vocation of love and service, both for the common good of society and for real people in concrete situations where advocacy for the rights of others is undoubtedly linked to experiences of genuine oppression and deprivation.

As long ago as the fourth century St. Ambrose was identifying the relationship between justice, love and service. "Justice," he wrote, "which assigns to each man his own, does not claim another's and disregards its own advantage, so as to guard the rights of all." Again he says, "He who is ordinarily wise is wise for temporal matters, is wise for himself as to deprive another of something and get it for himself. He who is really wise does not know how to regard his own advantage, but looks with all his desire to that which is eternal, and to that which is seemingly and virtuous, seeking not what is useful for himself, but for all...The upright man must never think of depriving another of anything, nor must he wish to increase his own advantage to the disadvantage of another". In this Ambrose is building on the Old Testament's command to seek, through justice, the common good of society, and the New Testament's emphasis on the love of neighbour.

The promotion of justice in the form of human rights is for Christians an expression of love and service. It transcends the self-absorbed notion of rights as the fulfilment of raw individualism and places it in the context of mutuality and interdependence in our social relationships. It is not just agitating for one's own interests and needs, but a positive working for the legitimate claims and interests of those who need our support. For the church, this requires more than a trendy homage to 'political correctness' but a compassionate commitment to 'political virtue' seen in our ability to affirm the rights of the marginal, the powerless and even our enemies.

Derek Poole
Editor

comment

Joanna Milosz

Religious Rights in Vietnam

Article 18 of UN Declaration of Human Rights

Everyone has the right to freedom of thought, conscience and religion ...and to manifest his religion or belief in worship...

Article 20 of UN Declaration of Human Rights

Everyone has the right to freedom of peaceful assembly and association.

Evangelist Nguyen Van Hoang has been repeatedly arrested, imprisoned, tortured and held in solitary confinement. He has paid a heavy price for exercising his freedom of assembly and worship. It is a price that Christians have to pay every day in Vietnam.

The 7–8 million Vietnamese Christians face restrictions and harassment on a day to day basis from the security forces and local government authorities. Religious organisations and denominations have to adhere to strict regulations requiring permission for every facet of religious life from publication of religious books to holding of meditation periods. Religious activities are controlled and monitored by the Bureau of Religious Affairs.

The Protestant churches in particular face difficulties in gaining official registration. In the last 23 years not a single Protestant church organisation has received legal recognition, thus denying these organisations and the more than 3,000 congregations they represent even the minimal protection of freedom afforded by the law. The vast majority of these Christians are forced to meet 'illegally' in homes or, in the case of the highland tribes, somewhere in the forest.

These 'illegal' worship meetings are routinely invaded by the security services. The leaders and the home owners are levied huge fines - often in excess of \$ 100 US. Any Christian literature found is regularly confiscated in these raids, even Bibles with the official government imprimatur. Whilst Vietnamese legislation does not guarantee freedom of assembly, contrary to Article 20, it does permit meetings of up to 20 people in homes.

Protestant pastors and lay leaders are also frequently harassed, threatened and faced with imprisonment and hard labour in one of the re-education camps, often in appalling conditions. Human rights and religious organisations have documented numerous incidents of beatings, maltreatment and torture of imprisoned Christians by Vietnamese prison and security services officials.

Vietnamese Christians of ethnic origin are facing perhaps the heaviest persecution due to the phenomenal growth of Christianity amongst them. In addition to the usual harassment, house arrest, detention and other restrictive measures applied to religious communities, the authorities have also targeted their places of worship, burning down and destroying a number of them in an attempt to force these minorities to relinquish their newly adopted faith.

Despite these threats Christianity continues to grow in Vietnam and the Christians continue to practise their faith even in the most difficult circumstances. When Nguyen Van Hoang was in solitary confinement, he found a way to communicate with the woman next door via a water pipe and led her to Christ.

Joanna Milosz is Research and Advocacy Officer with Christian Solidarity Worldwide. The information in the article was compiled from WEF (World Evangelical Fellowship)-- Religious Liberty Commission.

comment2

The rites of Drumcree

Mervyn Gibson

In a review of the Parades Commission in February 2000, the Secretary of State, Peter Mandelson stated that all sides in the Drumcree issue emphasised a rights-based approach - 'different sides had their own interpretation of what the rights at issue were'. As a Christian who is also an Orangeman and therefore involved in the dispute it is important I am clear as to which rights are being infringed. My conclusions are arrived at through my experiences and interpretation of events and legislation as a citizen of the United Kingdom, but more importantly my witness as a Christian and a stranger in this world must influence my response to this analysis.

The situation that has emerged at Drumcree over several years is complex, acquiring the baggage of many other agendas and evolving against a dramatically changing political and social landscape. Unfortunately the motives, actions and selfish interests of many involved serve to broaden the dispute. Some make it an anti-Belfast Agreement issue, some propagate an ecumenical agenda, and some use it as an extension of their terrorist campaign against the indigenous British population. Therein lies a fundamental difference of approach to the 'rights' involved. The Orange Institution views the issues as principles, whereas for many in the Republican community the whole affair is merely a tactic.

As a citizen I believe there are clear infringements of rights. Injustices have to be identified and addressed. The Parades Commission, in practice if not conception, seeks to restrict, police and shape the expression of one particular identity and culture. Many of the Commission's decisions refuse Orangemen permission to walk, based on the fact that to give such consent would produce violent responses from the residents and their supporters. To react to the threat of violence and lawlessness by making a decision that accommodates those who threaten it is morally unjustifiable.

I would contend that the core issue of the parading dispute in its purest sense is about a civil right, specifically the refusal to accept the right of Orangemen to walk quietly and peaceably along the public highway. The fact that they are returning from a service of worship is incidental, the opposition is equally intransigent no matter what the purpose of the parade. When all else is stripped away, the issue under dispute is where Orangemen can walk. This is the logical core of the dispute, but logic seldom permeates the heat surrounding such an emotive issue.

The claim that these disputed parades are traditional does not legitimise their right to occur anywhere, but rather offers evidence that the parades are not intended to offend. When protests against parades occur they are historically and experientially extremely violent. Sadly, and inexcusably, the peaceful protests organised by the Orange Institution to highlight the injustices now attract an element who offer violence as an unwanted addendum to the Order's non-violent civil disobedience approach as practised by Martin Luther King Junior. Any protest that is not peaceful is to be condemned unreservedly. All have a fundamental right to live free from the fear of intimidation or violence.

During a speech on 25th July 2000, the Secretary of State, Peter Mandelson MP stated that from 2nd October this year the Human Rights legislation ... 'will be in force allowing this conflict of rights to be tested in the courts, rather than on the streets'. I welcome an Act that does not support territorial apartheid or reward the threat of violence but enshrines the principle that protest takes second place to the right of free assembly as articulated in Article 11 of the Convention of Human Rights. As an organisation the Orange Institution asks for no privileges, no special rights, but as citizens we claim the same rights from the same government as every other part of the United Kingdom.

As an individual Christian I seek to measure all I do and say against the grace granted to me through faith in Jesus Christ. We all live our Christianity in the reality of this world and our theological preferences and conscience will drive our choices. We will arrive at different interpretations of events and often take stances on opposite sides of an argument. It is how we respond to these differences and react to those with whom we disagree that will test our Christian witness. The parades dispute is no exception. The question, "What would Jesus do?" is constantly being asked of those involved in the situation. My honest answer is that I don't know. I am not the Son of God, but I seek to frame my actions in accordance with His teaching, although I regularly meet fellow Christians who claim clear insight that allows them to play the 'blame game' and make clear, unambiguous pronouncements on the situation.

God provides his Holy Spirit to guide and direct our paths in all the complexities of life. God has given us reason, intellect and a free will. He has gifted us with the Bible and His son Jesus Christ as standards to inform and influence our existence on this planet. As a Christian who is commanded to love his enemy, I struggle to do so, particularly in this case when the war is not over. It is said love considers nothing its right and everything its obligation, but that includes the obligation to seek truth and stand up against injustice. I put neither rights nor rites before my responsibilities as a Christian, responsibilities that have to be all the more finely honed when one confesses a faith as a follower of Jesus Christ. Many of us on all sides have failed some of the challenges such a living faith presents to us, but that does not negate our position, it simply requires that we pray and work harder for the restoration of civil and religious liberty for all and special privileges for none.

Mervyn Gibson is a member of the Education Committee of the Grand Orange Lodge of Ireland, and an assistant minister with the Presbyterian Church.

The journey towards peace in our community has again taken a turn in the direction of the proverbial abyss. Confidence in the Unionist community in the Belfast Agreement is eroding and the evidence is there for all to see. But to conceive of this crisis only in terms of recent events at the polls, on the Shankill or in relation to the Policing Bill is to fail to grasp a more fundamental challenge.

The peace process of the 1990's has in a profound way confronted Unionism and the wider Protestant community with a series of worst possible dilemmas. Quandaries have left many feeling alienated and 'on their bellies' instead of confidently embracing change in a context where consent is the basis for any change to the constitutional future. The irony is that it is these internal factors, which are shaping the mood and response of many to the current situation, that threaten to undermine what has been gained through positive engagement and constructive leadership.

The peace process is perceived as the creation of a pan-nationalist front, which continues to set the pace, extracting concessions at every turn. Unionists perceive that it offers them little except the realisation of their fears. Many find it difficult to come to terms with the emotional abandonment of the British government and the setting up of institutions and structures that in effect are seen to prepare the way for a united Ireland. They are prepared to share responsibility and work together for the common good of Northern Ireland within the UK and in relationship to its closest neighbouring state. But they are suspicious of a harmonisation of functions throughout the island and are not prepared to accept the neutralisation of Britishness in public life.

There is a sincere moral dilemma for many as violence and terror are seen to be allowed to subvert the democratic mandate of the greater number of people. The historic compromise with Irish Nationalism of 1921/22 was extracted through the threat of force, justified as being in the defence of civil and religious liberties and secured the British national identity in Ireland. It was these and the accompanying financial power which were perceived to be under threat in a Catholic, Gaelic Ireland. Coming to terms with the enforced and necessary changes of the early seventies, with all this implied for their past and future, needed time. Instead there followed 25 years of rebellion and terror, supposedly aimed at the British State, but in the experience of the unionist community measured in repeated atrocities in which their friends and relatives were the victims.

Faced with the possibility of engaging with republicans in political relationships rather than through military engagement, many remain confused. Such political relationships are a greater threat because of the ambiguity that it creates around previous certainties. This involves acknowledging the right of republicans to hold

their analysis, while not accepting the political coherence of their argument. It further involves embracing into the democratic fold those who have resorted to political violence and who may regret its necessity, and even question its continued expediency, but will not deny its legitimacy in the circumstances that prevailed. Consequently many Protestants are confronted with opening themselves to the possibility of being persuaded towards an outcome opposed to their political convictions and through a process that contravenes their moral framework.

Ultimately the relationship between faith and politics is being tested and found wanting. Unionism is caught between the civic vision of inclusiveness regardless of religion and culture and the religious exclusion of a militant Protestantism. The role of religion, and Evangelical Protestantism in particular, as a unifying factor in the emergence of unionism is often under valued. The Evangelical revival of 1859 served to bring a spiritual coherence between Protestant and Dissenter, a development reinforced by the growth of the Orange Order with its increasing emphasis on defending 'evangelical faith'.

The inheritors of this religious tradition today are characterised by three traits that predispose them against the politics of accommodation that is on offer and towards the politics of fear; **fundamentalist** in belief and mindset; **separatist**, with an emphasis on maintaining distinctives and distance from those who differ; **apocalyptic**, with a worldview based on an expectation of the world becoming a more hostile place in which to live, at the heart of which is the threat of Catholic domination.

All these issues need to be taken seriously while not being used as an excuse to justify a deliberate undermining of a genuine attempt to create a new beginning for us all. For the Christian disciple the clear biblical model is one of self-reflection and critique. In this what most needs to be addressed amongst many Evangelicals is the perception of righteous Ulstermen as without blame for the conflict and the congruence of the people and God and the people of Ulster, again so evident in the political discourse following the South Antrim by-election. Such attitudes lead to a virulent religious nationalism, with an accompanying self-righteous disdain for the moral ambiguities of making peace in a divided community that is part of a fallen world.

David Porter

Human Rights

A CRITICAL APPROPRIATION

Julian Rivers

The problem of rights

When, after a Tuscan holiday in Summer 1998, Tony Blair claimed that 'everyone had a fundamental right to choose their holiday destination' his choice of words was indicative of a massive shift in the ethical language of our culture. An appeal to rights, and in particular basic, fundamental, or human rights is increasingly characteristic of moral and political debate. With the passage of the Human Rights Act 1998, vast areas of legal reasoning are also to be reworked in terms of rights-language, although of course the concept of a right has long graced lawyers' arguments. Christians tend to be wary of rights-language: it sounds selfish to go round claiming 'my rights' all the time. Yet who can deny the noble aspirations of international human rights treaties since the Second World War in their attempt to make unlawful the oppression that gave immediate occasion to their creation? The difficulty in evaluating 'human rights' is that one has to

shoot at several moving targets simultaneously. The language of rights can be used in moral, political or legal debate, and each of those three areas may have characteristics which make an appeal to rights more or less appropriate. And the targets are moving because what is or is not considered a human right changes from culture to culture. We can be pretty sure that the international lawyers of the 1950s did not think there were any specific gay rights, for example. And to compound the problem, philosophers cannot agree on what it means (in general) to have a right anyway.

For some Christians, the matter is conclusively determined by the fact that the concept of a right was developed in the medieval period and is not to be found in either the Old or New Testaments. Rights are unbiblical. At one level this is true. There is no word in Hebrew, Greek or classical Latin that corresponds to our word 'right'. But that does not mean that

the *idea* is not present. There is no word in the Bible for the Trinity either. To pick just one example of a right, in Leviticus 25:29, a person selling a house in a walled city could repurchase it for one year after the sale. That is a right, and modern translations find it hard to avoid rights-language, although in the Hebrew there is no word as such to be translated. Again, Paul's use of *exousia* in I Corinthians at times closely approximates our modern understanding of a right. The real issue is whether rights-language has a role to play in a Christian ethic, not whether the word itself can be identified in the original biblical languages.

The ethics of rights

Some theorists consider the language of rights to be morally neutral. On this account, any moral position can be equally well expressed in terms of rights, and there is really nothing to get worried about. We might disagree on matters of substance (what rights do we actually have?), but the form is value-neutral. I think this view is incorrect. One only needs to consider casting a debate about the morality of 'victimless crimes', such as consensual sexual behaviour of any kind, in terms of rights, to see that certain moral positions become harder - even impossible - to maintain. If all there is to morality is rights, who has been wronged by such behaviour? Now it may be correct as a matter of political theory that the state should not police consensual sexual activity; that is another matter. The problem with rights-language is that it rules certain views out of court from the very beginning of the debate. In that sense, rights-language has a morally skewing effect.

So rights-language tends to privilege certain moral positions over others. Rights-language favours individualism over collectivism, freedom over obedience and conflict over consensus. Rights belong to identifiable people or groups of people, so it is difficult to express the value of common interests in rights-language. Rights mark up a sphere within which the individual has freedom to engage in certain activity without interference from outside. And rights-claims tend to be combative. They purport to be conclusive of moral debate (although of course, they usually are not!) and they demand satisfaction. Now it is important to realise that each of these tendencies is a perversion of something valuable. The ability of individuals to be creative in structuring their own lives is of fundamental importance. It is, I would suggest, part of what it means to be an image-bearer of God. A good example of a valuable use of rights can be found in the shift from the Old to New Testaments in the matter of charitable giving: a duty to tithe is replaced by the virtues of discretion,

generosity and discipline. That understanding presupposes rights to property and to privacy. Not, of course, rights against God - we are accountable to God for the use of all our wealth - but rights against other Christians. A church that insisted on regulating the amount of each member's giving - insisting, let us imagine, on collective obedience according to levels set by consensus - would not be faithful to the New Testament framework, which is well expressed in terms of individual moral rights.

Morally speaking, there are at least two other concepts as important as the concept of a right. They are duty and virtue. Now of course some duties are owed to other identifiable individuals; they then simply become the flip-side of rights. You have a right to life against me; I have a duty not to kill you. But some duties are not correlative to rights, and we get into all sorts of tangles if we try to make them so. There is a duty to educate your child. The child cannot release you from that duty, nor indeed can anyone, although you might have an element of choice in how you educate your child (in that sense a right against others telling you how to do it) and you might delegate performance of that duty to another person. But at root, education is a duty owed 'to society as a whole', simply because it is good that children be educated. The moment you try to recast this in terms of rights, you end up failing to capture some of the beneficial aspects of education. Collective goods generally find expression in duties without corresponding rights.

If we cannot do without duties, nor can we do without virtues, those aspects of morality that are essentially uncoerced but which make life bearable. A moral language shorn of patience, generosity, tolerance, faithfulness and so on, would be a dreadful impoverishment, not to speak of the theological loss in explaining the gospel of mercy and grace. Rights have no place in relationships of gift. Thus at the level of moral debate, rights can be very useful - but not as useful as modern discourse seems to imply. We don't want a situation in which an appeal to duty or virtue somehow sounds weaker, for these, too, are essential components of a complete ethic.

International human rights

So what about human rights? 'Human rights' has become the label for a set of standards of international political morality. There can be no objection to the 'human' element, because it flags up the truth that these are standards of morality applying to all people everywhere. The 'rights' element is arguably misleading, because some of the standards don't even use the term (e.g. 'No-one shall be subjected to torture or

to inhuman or degrading treatment or punishment'), and some of the standards are probably not rights at all. The 'right to peace', for example, is better conceived as a duty on governments not to make war. In fact, there is a tendency to talk about 'human rights standards' or 'human rights principles', a different sort of normative term again. Where the use of the term 'rights' is problematic is if it gives rise to the expectation that the international moral code is best enforced by individuals bringing actions against their governments. This may be a very good way where individuals are specifically victims (e.g. in cases of torture), but not where matters of policy indirectly affecting everybody are concerned (e.g. decisions to wage war).

Constitutional rights

Since the Second World War, legal systems around the world have increasingly incorporated constitutional bills of (human) rights, enforceable by citizens. In enacting the Human Rights Act 1998, we are simply catching up with Germany, the United States, France, Canada, New Zealand and many other countries. This constitutional protection of human rights does a certain limited job very well. It is very successful in protecting the individual from the over-intrusive state. In the European tradition, the protection is rarely absolute, but always potentially subject to balancing with the needs of collective interests. However, the burden of proof, as it were, is on the state to show that the right in question needs to be limited to gain the collective good. So, for example, there is a right to freedom of speech, but governments may need to limit that where necessary to preserve national security.

However, in recent decades, constitutional rights theories have tended to expand to embrace all forms of government activity, and to be applied not just to public bodies, but to private individuals as well. This has a number of undesirable consequences. First, it makes all government decision-taking potentially subject to judicial review, which means that the last word on controversial political decisions ultimately rests with judges, not elected politicians. On some theories, it would seem that even an increase in income tax is a breach of human rights. This is a major threat to the separation of powers, itself a vital bulwark against tyranny, and it is not clear that constitutional rights theory has successfully identified the proper role of legislatures and executives under a constitution dominated by human rights. Secondly, the extension of human rights standards from governments to other groups and individuals can itself be restrictive of liberty. It may be right that governments should not discriminate on religious grounds, and we might want to extend that to (secular) employers, but what about churches and religious

charities? Of course, we can reach the right answer by pointing out that these groups also have rights, but that is not the point. Why are we extending moral standards appropriate for governments to private bodies at all?

In short, the danger in the constitutionalisation of human rights is that one part of justice comes to be mistaken for the whole. And the easiest way of preventing that is by restricting the role of constitutional rights to that originally conceived in the post-war period: simply to stopping states from doing nasty things to their citizens. This leaves adequate space for the state to enact public policies that derive their ethical appeal from moralities of duty and even virtue.

To some extent, the Human Rights Act 1998 avoids these dangers. By incorporating one of the earliest human rights instruments (the European Convention on Human Rights and Fundamental Freedoms, 1950) it contains what is now a traditional list of civil and political rights, mostly - though not entirely - directed towards stopping governments doing nasty things to their citizens, rather than referring to the more ambitious social and economic rights that require governments to do good things such as providing work, health, education, welfare etc. It also preserves the ultimate supremacy of Parliament, which limits the dangers of judicial hegemony. However, the Act will be applicable to private bodies exercising public functions (such as schools, churches) and the drift of academic opinion is that it will be applicable to purely private relationships, although the precise effect of this is unclear.

Perhaps the biggest concern about the Human Rights Act is not its precise legal impact, but its status as the icon of a new 'human rights culture'. If an exclusive commitment to the language of rights impoverishes our moral debate, it is far from clear that such a culture is desirable.

Julian Rivers is lecturer in law at the University of Bristol. He is author of 'Beyond Rights - the morality of rights-language', Cambridge Papers 6.3 (Sept 1997)

Human Rights

WHY CHURCHES NEED TO BE INVOLVED

Brice Dickson

This millennium year is momentous in Northern Ireland, not just because it is a significant anniversary of Christ's birth, but also because it sees two very important initiatives on the human rights front. First, from 2 October 2000 the European Convention on Human Rights becomes law in Northern Ireland. This means that any individual who believes that his or her rights as laid out in the Convention have been violated will be able to seek a remedy in a court in Northern Ireland. Second, the Northern Ireland Human Rights Commission - a body set up as a result of the Good Friday Agreement - has been tasked with giving advice to the Secretary of State by the end of the year on what rights over and above those in the European Convention should be protected by a special Bill of Rights for this part of the world.

Each of these developments has huge significance for all inhabitants of Northern Ireland. The European Convention will ensure that a number of rights dear to the hearts of religious people will be better protected by the law than they were before. In fact the Act of Parliament which is making the Convention part of our law - the Human Rights Act of 1998 - contains a specific provision (Section 13) which grants **special** protection to the right to freedom of conscience, thought and religion. It states that if a challenge is made in court to the religious practices of any grouping, the judge must pay particular attention to the importance of the right to freedom of religion. This will mean that the Catholic church, for example, will still be able to discriminate against women in the selection of priests, and that no church will be required to 'marry' homosexual couples.

But the European Convention is a tried and tested document. It has been applied throughout the continent of Europe for almost 50 years. It is now part of the law of 40 countries - Ireland is to

follow the UK's suit in a few months' time. The text itself has been altered occasionally by the adoption of additional protocols, and the judges of the European Court of Human Rights have stressed that the Convention is a living instrument which will be interpreted in different ways as times change. But by and large the document is a fixture on the legal landscape. The Bill of Rights for Northern Ireland, on the other hand, is as yet unwritten. Within the next few months there is a golden opportunity to influence the content of the Bill of Rights and to put in place proper arrangements for its enforcement.

The Human Rights Commission wants to hear from all sections of society in Northern Ireland as to what rights should be protected in the Bill. The Belfast (Good Friday) Agreement says that the Bill should reflect the particular circumstances of Northern Ireland as well as the principles of mutual respect for the identity and ethos of both communities and of parity of esteem. We are very keen to hear from the churches what this actually means to them. What exactly is the 'identity and ethos' of a community, and how precisely can 'esteem' be measured? Is it sensible, moreover, to limit these extra 'group rights' to the two main communities - Protestant/Unionist and Catholic/Nationalist? Are there not many other communities deserving of respect and esteem too?

A Bill of Rights also gives the chance for society to state clearly what it sees as people's responsibilities as well as their rights. It is accepted by all advocates for human rights that very few of those rights can be unqualified in nature (the right not to be tortured and the right to freedom of thought are probably two of them). The right to express oneself, and the right to manifest one's religious beliefs, cannot be unlimited.

So the laws on blasphemy and indecency protect the general public against what to many would be highly offensive material. Anyone exercising those rights must respect the rights of others. The European Convention itself recognises this by stating at several points that a person's rights can legitimately be limited in order to protect the rights and freedoms of others.

But when limits are placed on rights it is important that they are not applied in a discriminatory or disproportionate way. The laws on blasphemy, for example, protect only Christians, not other believers. The laws regulating the Church of Scientology are often said to be like a sledgehammer cracking a nut. In a Bill of Rights for Northern Ireland there will be a chance to be more specific about how to balance rights - the right to march and the right not to be intimidated, the right to have one's cultural identity respected and the right to fly the national flag, the right to free speech and the right to privacy. Other difficult issues for consideration will probably be abortion and euthanasia: while some see those as susceptible to a 'rights' analysis, others of course do not.

The Human Rights Commission is not here to impose a new morality on the country. It is here to facilitate and institutionalise change so that never again in this part of the world will there be the terrible slaughter and mayhem that we witnessed from 1969 to just recently. Nor is the Commission here merely to endorse every single bit of the Belfast Agreement - even people who voted against the Agreement need their human rights fully protected by law, and they need not to be discriminated against on account of their political belief. Members of different faiths need more clarity about their rights too.

By obtaining a Bill of Rights, Northern Ireland may be distinguishing itself from other parts of the United Kingdom, but at the same time it would be aligning itself with countless other legal systems around the world where a Bill of Rights has been used as a peace-enhancing mechanism. Places like South Africa, Namibia, Hong Kong and Sri Lanka have all benefited, to a greater or lesser extent, from such a document.

Churches and other religious organisations have an important part to play in the Commission's on-going consultations on the Bill of Rights. The Commission will meet with any group at any mutually convenient place and time to discuss the matter. You can obtain further information about our consultation process, in the form of pamphlets and other educational materials, by contacting the Commission. Please make sure you have your say.

Brice Dickson is Chief Commissioner of the Northern Ireland Human Rights Commission.



parting

thoughts on life and leaving

Tucker Ball

As I walk along a desolate beach near my home in North Florida, a Navy helicopter skims across the Atlantic invading my solitude and returning me instantly to North Belfast. I volunteered in Northern Ireland for the previous twelve months on behalf of a peace and reconciliation programme sponsored by the Presbyterian Church (USA). My reasons for volunteer service stemmed from a passion for social justice, a motivation rooted in faith and bolstered by a belief in human rights.

I arrived in Northern Ireland hoping not to solve the cyclical conflict but to better understand it. I wanted to ignore media-exaggerated depictions so that I could learn first-hand from people with whom I would be living and working. My hope was that I could understand the situation in such a way that I could offer my perspective based on twenty-eight years in the United States. Growing up in the South in the wake of the Civil Rights Movement, I saw a possible parallel as the cancers of racism and sectarianism affect society similarly.

My exposure to Belfast was diverse. I lived in a working-class Catholic neighbourhood in North Belfast, one that had seen more than its share of violence. Stories and statistics of years past were hard to comprehend in the relative safety of today's ceasefire. I served as a youth worker in this environment, working with marginalised teenagers on the street and young children in an after-school programme. I also worked with two other organisations that were cross-community in ethos but comprised largely of middle-class Protestants. This experience was quite different, as the walk from Antrim Road to city centre reminded me daily. I enjoyed working with these organisations because I was able to assist in a professional capacity - designing websites and coordinating marketing broadened my understanding of life in Northern Ireland. Without these contrasting work environments, my exposure would have been one-sided.

The longer I lived in Belfast the more complicated the Troubles became. As questions were answered, new ones arose. As soon as a situation made sense, new interpretations further complicated the issues. I realised quickly that my understanding would be limited, but I took comfort when others admitted they were confused as well. Few people seemed to have the answer, though most were eager to discuss the problem.

The longer I lived in Belfast the less interested I became in discussing the politics of peace. I concluded that change also begins with each individual, and that establishing relationships with people from the local community was as important to fostering reconciliation as negotiating the finer points of the Agreement was to securing peace. And these relationships resulted in a meaningful contribution to the community and created a space for change in me as well.

My initial impression of Northern Ireland was the friendliness and hospitality of people from both sides of the religious divide. Few times in my life have I experienced this level of community - such openness and willingness of people to share their lives. I connected immediately with the culture in Northern Ireland as I realized that sarcasm was a common expression of acceptance and affection. I cherished the abundant wit and humour, admiring gregarious gifts of laughter and story-telling. I also respected the importance faith still commands in people's lives and the resistance expressed towards an increasingly materialistic society. Additionally, the natural beauty of the rolling countryside and rocky coastline offered inspiration and a nearby escape from intense inner-city living. For all these reasons and many others, I valued the people, culture and environs of Northern Ireland.

I leave Belfast optimistic for the future. Despite seeing a new Assembly suspended and then sustained, despite watching a prisoner released and then retained, despite hearing the constant drone of helicopters and landrovers, despite witnessing riots and paramilitary gunfire, I am still optimistic. I am encouraged by the vast number of people and projects working towards reconciliation. I am encouraged by those struggling to raise awareness within themselves and their neighbourhoods. I am encouraged by the peace process, as slow and awkward as it seems at times.

I leave Belfast with new lenses, a better insight into life in Northern Ireland, into my lifestyle and spirituality, and into the advantages and limitations of life in America. I leave rejuvenated and replenished, regardless of acute feelings of loss over the conclusion of an endearing experience. I leave with friendships and memories, adventures and awareness. I leave humbled by receiving far more than I gave.

I give thanks for the people who touched my life, for ECONI that provided an opportunity, and for all those who strive for unity and equality in a divided world.

Tucker Ball volunteered with ECONI this past year in conjunction with the PC(USA) International Volunteer Programme. Tucker left Northern Ireland in August and currently resides at his home in Atlantic Beach, Florida.

Human Rights

A BILL OF RIGHTS FOR NORTHERN IRELAND

David Stevens

Some Considerations

The Northern Ireland Human Rights Commission has been given the statutory duty of advising the Secretary of State on what additional rights, which are not protected under the European Convention on Human Rights, should be guaranteed in a Northern Ireland Bill of Rights. The Commission has undertaken to carry out widespread consultation on all the issues involved with all sections of the community in Northern Ireland and to prepare its draft report by the end of the year 2000.

What are the main gaps in the European Convention on Human Rights? The Commission suggests there are six main areas:

1. Discrimination and Equality

There is no general guarantee of equality in the Convention. It covers only discrimination by public bodies in respect of rights guaranteed under the Convention.

2. Education

The Convention gives only limited protection to the rights of parents to have their children educated in the way they want. It does not guarantee any form of state funding for different kinds of education or any special protection for, for example, Catholic or Protestant or integrated schools.

3. Language

The Convention does not contain any specific guarantees of the right to use a minority language and it does not stop the authorities from requiring people to use the official language in their dealings with public bodies.

4. Communal and Cultural Rights

The Convention does not provide any general protection for the cultural or other rights of distinctive communities or any specific guarantee that they will be granted parity of treatment and esteem.

5. Economic and Social Rights

The Convention does not include any specific protection for economic and social rights, such as the right to health or housing or the right to safe conditions of work.

6. Victims' Rights

Neither the European Convention on Human Rights nor any other major human rights convention contains any specific guarantees for the rights of victims of communal conflict or other serious abuses. In the particular circumstances of Northern Ireland it may be desirable to include some specific guarantees of the rights of victims.

General Considerations

Since the adoption of the Universal Declaration of Human Rights in 1948, human rights discourse has become an important part of the language of the good. In particular, the idea that we are all rights-bearing equals has been an important way that excluded and victimised groups have been able to make claims for recognition, inclusion and protection on the rest of society and on the state. Human rights discourse, however, has its limitations. It reduces human beings to a contextless abstraction without a history and a culture. It also reduces human interaction to civil and legal obligation. It tends to ignore such fundamental issues as the levels of trust, confidence, integration, tolerance of diversity, security, mutual respect and sense of belonging in society. It

also ignores why people in their diversity should be a community together at all, bound by mutual obligation. It assumes citizens bound by the rule of law and a state able, with the consent of its citizens, to enforce appropriate laws. Much of this is problematic in Northern Ireland.

Christian Concern

Christian thinking about human rights proceeds from the dignity of the person 'made in the image of God' but also the social nature of humanity (God combines unity and relationship within himself). Everyone is a person-in-representation whose well-being cannot be attained alone. In practice the individual person and the community will always have claims against each other, and their rights might often be in tension. Nevertheless, their true fulfilment goes together. Human rights in this perspective are about those things which make life more truly human.

Christian thinking also proceeds from the reality that we constantly violate human dignity and our social relationships, and that restraints of law and force are necessary to prevent us from doing so. In this perspective human rights are about the necessary protection human beings need from each other. Christian faith also warns us against any utopianism in regard to human rights.

The Context for a Bill of Rights

A Bill of Rights ought to be part of an agreement about how society is fairly run. As such it can be something - mutually agreed - which binds people together, a 'transcendent' to which everyone can appeal. It can be an expression of good working relationships between people and groups in society. Ideally it should be an integral part of a political accommodation between the main groups within a society (as was envisaged in the Good Friday Agreement). It cannot be a substitute for such an accommodation and will have difficulties in its absence.

To affirm human rights (as in a Bill of Rights) is also to affirm human responsibilities and obligations. To claim a right for myself means my claiming it for others too. There must be a willingness to treat other communities with the same fairness as one expects for one's own. (Both these are expressions of the Golden Rule). There is a responsibility and an obligation to work with others for the common good of society. This needs to be recognised in the drafting of a Bill of Rights, not only because it is generally true but because in the particular circumstances of a divided and contested society like Northern Ireland's there is already the danger of one community's 'rights' being asserted over and against another's.

The Central Question in Northern Ireland

The central question in Northern Ireland is whether the two main communities can live and work together in a just relationship whilst being allowed to maintain their own distinctiveness as long as they wish.

Thus the challenge is to create a social order which is equitable; which recognises and cherishes the diversity of its people in their historical and particular existence (including religion) and which promotes communication between members of different groups and allows for shared living and institutions. A Bill of Rights should concern itself with all three elements and seek to promote an appropriate balance between them.

If a Bill of Rights only deals with equity and diversity issues the danger is that it may heighten the competition between the two main communities and promote further fragmentation of Northern Irish society.

It is, therefore, important that a Bill of Rights (1) gives legal support for policies and activities that promote living and working together ('promoting good relations' in the words of section 75 of the Northern Ireland Act 1998) and (2) requires that the different identity groups have a responsibility to promote mutual respect and the common good.

Similarly, different identity groups can only demand public recognition within reasonable boundaries prescribed ultimately by requirements that all citizens should be treated equally and by the effect on relationships within the community.

An identity group's traditions self-expression etc. are to be taken seriously. But all its claims and demands for expression (e.g. as cultural rights) are not necessarily to be accepted by others or given recognition by the state (e.g. in a Bill of Rights). This is not what parity of esteem means.

In a contested society like Northern Ireland's, the danger is that the recognition of a particular communal or cultural right simply becomes part of the fight between the two main communities, spawning counter-claims and irreconcilable demands. A contested society is good at generating conflicting claims to 'rights' and a powerful rhetoric of justification. Thus a Bill of Rights needs to be particularly careful in dealing with particular communal and cultural rights that it does not further aggravate relations between the communities.

There is a particular balance required to be struck between the rights of every citizen to be treated equitably and the recognition of different identity groups. Perhaps there needs to be a clear distinction between certain fundamental rights, which apply equally to all citizens, and the rights which deal with the recognition of the two main communities and to parity of esteem between them.

General Comments about a Bill of Rights

Provisions in a Bill of Rights should be drafted in fairly general terms and allow some flexibility for government to alter more specific legislation to meet changing circumstances.

Rights sometimes come into collision or competition with one another, so that some rights must give way to others with a higher status or priority. Therefore, the drafting of a Bill of

Rights, involves some ordering of rights. Such an ordering must involve a consideration of the common good.

Particular Issues

1. Discrimination and Equality

Section 15 of the Canadian Charter should be looked at, being a more modern and comprehensive equality clause than those provided in most international human rights documents. Protection against discrimination should include a general exemption for measures designed to encourage greater integration of the two main communities (e.g. in housing and education).

2. Education

Consideration should be given to the formal recognition of the rights of parents to have their children educated in schools of a particular character e.g. religious, integrated, Irish language, with equivalent state funding where the numbers involved justify such expenditure.

A possible variant is a formal recognition of the rights of the two major education systems, integrated schools and Irish language schools, to complete equality of funding and support.

A formal obligation should be put on schools to promote understanding, tolerance and mutual respect.

3. Language

Consideration should be given to the formal recognition of Irish, Ulster Scots and other minority languages. Such recognition would allow for legislation to specify in detail the circumstances in which individuals or bodies would be entitled to use other languages in their dealings with government and for other official purposes, and to provide funding and support.

4. Promoting Good Relations in the Community

Section 75 of the Northern Ireland Act 1998 puts an obligation on public authorities in Northern Ireland 'to have regard to the desirability of promoting good relations between persons of different religious beliefs, political opinions or racial groups'. Consideration should be given to putting a formal requirement in a Bill of Rights that all legislation should be scrutinised for its effects on relationships within the Northern Ireland community.

5. Victims of Violence

Victims of violence have their particular needs: for justice, for the seriousness of the harm to be acknowledged, for apology and repentance from those who have done them wrong, for their stories to be heard, for compensation, for practical support etc. There are all sorts of contentious issues round victims of violence, e.g. who is to be 'rightfully' regarded as a victim? Might a preamble to a Bill of Rights seek to acknowledge the context in which it is set: a divided society, the hurt and pain of the last thirty years, the deaths and injuries, the need for a new start as a way of coming at this issue?

6. Social and Economic Rights

The general principle of recognising social and economic rights in a democratic constitutional order is to be supported. People need to have the conditions necessary for meaningful participation in the life of the community. Whether it is politically possible or sensible to include them in a Bill of Rights for only a part of the United Kingdom is another question.

Freedom of Religion and the Right to Express Faith or Conviction Individually or Collectively

Article 9 of the European Convention on Human Rights states regarding freedom of religion:

1. *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 a community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.*
2. *Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health and morals, or for the protection of the rights and freedom of others.*

One issue for churches to consider might be to seek the extension of the individual application of this Article to the collective aspects of the expression of faith and conviction, i.e. that religious bodies have the freedom to organise their own affairs. An issue that religious bodies have been concerned about is the effect of fair employment legislation on their freedom to preserve their ethos through the employment of appropriate staff. This issue may be of relevance when considering a possible extension of Article 9.

Edited from a document produced to help churches and Christian organisations by Dr. David Stevens in Temple Court, Belfast in April 2000. David Stevens is General Secretary of The Irish Council of Churches.

Does God
always forgive
his children?

Put your hard hat on and come with me into a theological minefield. Does God withhold forgiveness from his children? "Of course He doesn't," I hear you shout. Let's take a close look at what Jesus said to his followers on the Mount.

For if you forgive men when they sin against you, your heavenly Father will also forgive you. But if you do not forgive men their sins, your Father will not forgive your sins. (Matt 6:14-15)

What did Jesus mean when he said your Father will not forgive you? Some information will help our understanding. Firstly we have already established that Jesus was teaching his followers, those who had already placed their trust in him. This is not a treatise on salvation, but an expression of perennial discipline. The issue here is not justification, rather sanctification.

Secondly these words were spoken in the context of the 'Lords' Prayer and about people who prayed things like 'Our Father, in heaven, hallowed be your name, your will be done' - expressions of passionate intimacy. Furthermore, these words are found in the context of Jesus' initial teaching on forgiveness. So it is important that we understand what Jesus is teaching.

Sowing and Reaping

What Jesus is saying here is that God will allow us to experience the sin we inflict on others in order to show us how sinful we are and bring us to a place of repentance. This principle is seen throughout the Bible. For example, in the life of Jacob the deceiver, he met Laban, an even bigger deceiver. When the Nation of Israel began to worship idols in the Promised Land, God sent them into exile, to Babylon, a land flowing with idols. It is the outworking of the principle, 'you reap what you sow'. Sometimes God needs to withhold forgiveness from us to teach us how important it is to show grace and forgiveness to others. Some Bible teachers interpret these verses as Jesus teaching that if we refuse to forgive others, then our fellowship with God will be broken. Of course, if we have bitterness and resentment in our hearts then we will not be able to have fellowship with God and intimacy will be lost. However, what Jesus is saying here is something very different. He is saying that God is proactive, that the breakdown of fellowship is not only because we have unforgiving hearts, but God will make a conscious, 'decisive' decision to withhold forgiveness from us if we refuse to forgive others.

Most evangelicals have a casual attitude to God's forgiveness, and can unconsciously fall into a trap of thinking that it is God's responsibility to forgive. We rarely think of God withholding forgiveness, especially from those who are his children, but this is what Jesus is clearly teaching.

This raises a very important question: how do we know if God is withholding forgiveness? God's forgiveness not only takes away our sin, but it should become one of the highest and most exciting motivations for love, worship and life. God's forgiveness should lead a person to radical displays of love and devotion. This is illustrated in the story in Luke 7: 36-50, when a woman fell at Jesus' feet and anointed Him with oil and tears at the house of Simon the Pharisee. Jesus concludes:

Do you see this woman? I came to your house. You did not give me any water for my feet, but she wet my feet with her tears and wiped them with her hair. You did not give me a kiss, but this woman, from the time I entered has not stopped kissing my feet. You did not put oil on my head, but she has poured perfume on my feet. Therefore, I tell you, her many sins have been forgiven, for she loved much. But he who has been forgiven little loves little.

Without going into the details of the story, Jesus is making a very simple point. When we experience God's forgiveness in our hearts it will produce joy and peace in us, enabling us to express a deeper love for Jesus and others. If this is not the case, then maybe God is withholding His forgiveness in order to bring us to the place of repentance. Maybe this is the reason why love is rarely experienced in significant and life-transforming ways in the church. As Christian communities we seldom encounter or display the forgiveness of God in enthusiastic and extravagant ways. Maybe God has withheld his forgiveness from us as a form of discipline! God's forgiveness should be one of the most radical experiences of our lives. Matthew 6: 14-15 are uncomfortable verses but, if our understanding is correct, then it could lead us to a new freedom to love and forgive others, and to a deeper experience of God.

Alan Wilson is a member of Hamilton Road Baptist Church, Bangor.



faithandpractice

an interview with Ruth Lavery

Ruth Lavery, a member of the Equality Commission and a part-time chair of the Independent Appeals Tribunals, is the subject of the second interview in the faith and practice series.

Ruth is a native of Belfast. Brought up on a farm on the outskirts of the city, she now lives with her husband and seven-year-old daughter in the Lisburn area. Until recently she lectured in the law school in Queen's University, specialising in the law as it applies to children and to vulnerable adults. Throughout her life she has worshipped in Windsor Baptist Church, where she is a member.

Early life

Ruth always enjoyed academic work, finding in it a sense of achievement and self-endorsement. She studied law at Queen's and Oxford, and qualified as a barrister. She then took up a lectureship at Queen's where she taught and researched until the end of last year. Her reasons for studying law are rooted in her upbringing.

I studied law partly because I thought it would be an intellectual challenge. I also thought an understanding of law would give an insight into the nature of power and authority in society. The law sets the parameters of what it is possible for one person to do to another, and I have always been fascinated by the way people like to control one another. In particular I grew up aware of the way women in a rural society often had very little say in decision making, often working hard on farms at the expense of their own aspirations, and without recognition in terms of gaining property rights. In particular I was aware that women often shouldered caring responsibilities for children and older relatives, without much tangible recognition of the value of their work. I thought that knowledge of the law would give me an understanding of the responsibility of the state to provide care. The vulnerability of carers and cared for and the role of law in family life has been a focus throughout my working life.

Vision and Values

We wondered if Ruth felt a sense of vocation, perhaps in the struggle of individuals against powerful and impersonal systems. Did she believe that issues of injustice are not understood by society? How would she describe her vision and the values that undergird it?

Concern about injustice takes many forms. My own preoccupation has been with the need to protect and empower people who are vulnerable to abuse and exploitation, and with equitable treatment of carers. I would like to see greater emphasis on carers having a right to support and a say in the limit of their responsibility. I don't think that the most vulnerable people in society are really of central importance to the political agenda. Part of the value of equality and human rights provisions is that they provide legal mechanisms with the potential to help to counter this. I accept, however, that the law is very limited as a means of ensuring justice in the home and family.

I firmly believe that God cares about each individual and that each person is equally important, regardless of what they have or what they do. I look at the law as it applies to children and to vulnerable adults in light of this principle. The image that I held to when teaching child law was of Christ's displeasure with the disciples when they kept children from him. We need to be vigilant that children's real needs are not sidelined and that they are a central policy concern. For instance, discussion of childcare often centres on meeting a parent's need to work, rather than on the child's need for care.

Faith

Next we asked Ruth to speak of her personal faith and how it has impacted on her working life.

I can't remember a time when I was not concerned with spiritual issues. In particular, how to relate to God and what happened after death concerned me even as a child. I was fortunate to have a Christian upbringing with parents who never directly preached or tried to enforce belief, but who were very positive role models. I have also, however, been aware that faith cannot be inherited, and that I must decide for myself whether to follow Christ or not. This is a commitment that I have had to reaffirm as I have gone through life, particularly when the implications of living as a Christian were demanding.

I hesitate to spell out how my faith has influenced my working life. It is very easy to claim Christian attitudes and values without really living them out. I have no doubt that I would have been very committed to my work and to some vision of social justice even if I was not a Christian. The key difference it has made is in my understanding of the importance of what I do. I have learnt that my value does not lie in what I do but simply in being loved by God and by other people. This is liberating and allows me to enjoy work, rather than seeking self-endorsement from it. I also believe that the value of a task lies in how it is done, not what it is, so that I don't really divide my life into work and non-work. Much of my work as an academic, and now as a Commissioner and chairperson, is done in private. No one really knows how full my preparation for work is. No one is really going to check every footnote. But I know that God sees everything I do. In an increasingly 'results orientated' society this awareness is a check to taking short cuts and to concentrating on only doing well what other people see. Without this I am quite sure small dishonesties would have crept in and I would be looking for the approval of other people more than I do.

More generally, a faith in meaningful life after death gives a perspective on the relative importance of both problems and achievements. I hope that my faith has given me a willingness to serve others when working. It is a real struggle to remember that work is not primarily about self-advancement or achievement or earning money but about service. I think that increasingly Christians will find that such values are at odds with the attitude to work in society.

Defining Moments

We asked Ruth to speak about any defining moments that caused her to re-evaluate her life's commitments and priorities.



faithandpractice

an interview with Ruth Lavery

I think that I have tried to work out my priorities and commitments irrespective of particular pressure to do so. I think it is important to have a belief in the value of what you are spending time and effort on, and to know why you are doing so. One defining event was the birth of my daughter. It didn't change what I thought was important, but it meant that work had to fit in with caring for her. This was a privilege, not a problem. I went from working full-time to part-time and gave up many of the outside connections which I valued, for instance with the Western Health and Social Services Board and with Age Concern (NI). Ultimately, I suppose it led to my leaving academic life and finding a way of working which is more family-friendly. It also made me more passionate about the welfare of children, and aware of how much children are at the mercy of their parents' choices.

Role Models

We asked Ruth about people who had influenced her. Perhaps there have been role models in the wider community.

I would find it hard to treat someone as role model unless I really knew them. Like most women my main model is how my mother lived her life. In the work context, I have valued the example of other women lawyers, some Christian, some not, who have worked with professionalism and concern for others. At the time I studied law and began to lecture, women were very much in the minority in the legal world. I admire other women who paved the way for the rather more balanced representation we have today.

I also found strong role models in Windsor Church where I grew up. There were gifted people there who took time, despite lots of other commitments, to take an interest in me and address seriously some of the obstacles to Christian faith. I saw people who, as well as being successful in their own careers, willingly made time for church life. This encouraged me to believe that if you follow God's will it is possible to have a balanced life contributing to the world of work, to family and other relationships. It was also an important antidote to the kind of Christianity I sometimes saw which concentrated on making a profession of faith, with little emphasis on the need for moral change. I saw that kindness and integrity are central to a Christian life.

The Future

All my natural inclinations are to plan ahead and to work towards specific goals. I can honestly say that, at the moment, I have no definite sense of direction. While once this would have worried me, I am learning to live in the present and, hopefully, to be able to trust my future to God. This is easy to say, but I think that Christians must always have an open mind about the direction of their life and work.

ECONI wants to thank Ruth Lavery for her willing participation in the interview. We wish her success as she continues to make a difference in peoples' lives.

Ruth Hutchinson
Assistant Editor

Human Rights

THE CONCEPT OF RIGHTS IN CHRISTIAN MORAL DISCOURSE

Joan Lockwood O'Donovan

The entrenchment of rights language in contemporary discourse is beyond dispute. No less significantly there are indications that the concept of rights is itself passing beyond dispute.

The concept of subjective rights, or rights ascribable to individuals and groups, has entered contemporary political and legal currency primarily through the liberal contractarian tradition. Consequently, the meanings of the term 'rights' cannot be properly ascertained in detachment from this theoretical context. For these meanings are embedded in a constellation of political-legal, philosophical and theological concepts with a complex history. Thus, to appraise the contemporary vocabulary of 'rights' is to appraise the dynamic theoretical complex that has given rise to it. If such an appraisal seeks its standard of judgement in the Bible, then it is bound to proceed theologically.

My impression is that theologians often engage in a naive and facile appropriation of the language of rights. There is a quite predictable argument, running from the creation of humankind in God's image to the unique dignity of persons in community to their universal possession of rights. Different denominations do bring important nuances to the argument; nevertheless, there appears to be a consensus about the unproblematic nature of the move from human dignity to

human rights once the theological 'foundation' or 'analogy' is prepared. 'Rights' is accepted by all as adequately expressing the moral attributes of a theologically conceived humanity.

However, it is precisely the adequacy of 'rights' as an element of theological-moral discourse that I wish to challenge, in the light of the pre-modern traditions of Christian natural law.

Two Orientations Toward Political Right

A close analysis of the history of the concept of subjective rights reveals a progressive antagonism between the older Christian tradition of political right and the newer voluntarist, individualist and subjectivist orientation. Whereas in the older tradition, God's right established a matrix of divine, natural and human laws or objective obligations that constituted the ordering justice of political community, in the newer tradition God's right established discrete rights, possessed by individuals originally and by communities derivatively, that determined civil order and justice.

In the older traditions, the central moral-political act on the part of ruler and ruled alike was to consent to the demands of justice, to the obligations inhering in communal life according to divine intention and rationally conceived as laws.

In the newer orientation to political right that began to emerge in the fourteenth and fifteenth centuries, the active individual will occupied a central position. So, on the one hand, the Roman civil lawyers stressed the source of positive law in the commanding will of the ruler, and on the other hand, certain theologians attributed to individuals pre-political 'natural' rights or powers that placed moral-legal constraints on the operation of political authority.

Not until the seventeenth and eighteenth centuries did the subjective rights of individuals supersede the objective right of divinely revealed and natural laws as the primary or exclusive basis of political authority, justice and law. These centuries dominated the transformation of the Western Christian tradition of natural law and natural right into a tradition of **natural rights**.

The theoretical elaborations of the concept of rights from the fifteenth to the eighteenth centuries have invested it with lasting intellectual content. For contemporary moral and political theorising this content is in varying degrees inescapable, being woven into the fabric of politics in this century - the fabric of democratic, pluralistic, technological liberalism. Christian political thought that is not wholly satisfied with this fabric recognises the need to divest the concept of rights of its offensive theoretical material. But when it attempts to separate some conceptual threads from the fabric, the result inevitably falls short: either too much of the fabric adheres to the threads, or the threads lose their coherence.

To substantiate this judgement would require prior completion of two tasks: first, to delineate the inherited theoretical content of the Western 'rights' tradition, and second, to demonstrate the incompatibility of this content with the biblical theological doctrines that Christians regularly invoke to ground the concept of rights. I propose to undertake the first of these prior tasks, with the hope of helping readers judge for themselves the historical and theological plausibility of contemporary Christian appropriations of the language of rights. I will consider the central historical content of rights theories that is theologically problematic in three categories: the roles played by property rights, contract, and freedom of choice.

The Role Of Property Rights

In the 1320s Pope John XXII attacked the Franciscan Order's vow of poverty, which entailed the renunciation of all legal rights of ownership of the material goods used by members of the order. The pope contended that all lawful consumption of material goods was inseparable from property right in them or dominion (*dominium*) over them. He reinforced his case with the assertion that *dominium*, in the legal sense of full property right over earthly goods, belonged to Adam in his created state and reflected the divine *dominium* over the earth. This argument anchored property right in an original created human power of disposal or control over temporal things.

In the fourteenth and fifteenth centuries, the idea of right (*ius*) as a power belonging to a subject was carried forward by Jean Gerson (1363-1429). Gerson extensively explicated the concept of *ius* as 'a dispositional *facultas* or power, appropriate to someone and in accordance with the dictates of right reason,' and he conceived 'natural *dominium*' as the divinely bestowed *ius* of 'every creature' to 'take inferior things into its own use for its own preservation.' (Richard Tuck) Furthermore, Gerson joined to man's 'natural *dominium*' the *dominium* or *facultas* of liberty. He thus paralleled man's original property right - his power of using exterior things - with his original freedom - his power of using himself, his body and his actions.

Hobbes and Locke

The seventeenth-century proprietary concept of subjective right arrived at its zenith with the political writings of Hobbes and Locke. Its essence was an understanding of the individual as 'free inasmuch as he is the proprietor of his person and capacities,' his freedom being conceived as both independence of 'the wills of others' and 'a function of possession.' (CB Macpherson)

Hobbes's chief contribution was his conception of 'right of nature' as the individual's unrestrained liberty 'to use his own power' and to act for his self-preservation. Against the earlier rights theory Hobbes asserted the radical priority of natural right to natural law and the radical separation of natural right from social obligation. In their natural condition, Hobbes's individuals have unlimited right to use everything, including one another's bodies, unbounded by obligations of natural justice. Only the intolerable insecurity of right in this condition necessitates the prudential stratagems for peace known as 'laws of nature,' which include the 'mutual [contractual] transferring of right' by individuals to a civil power recognised by them for the purpose of securing to them a sphere of limited rights. The one portion of individual right that is, however, inalienable is the right to one's life and to the means of ending it, and the citizen may by right forcibly resist violent assaults on these fundamental possessions by the civil power itself.

If Hobbes's emphasis gave rise to a model of social relationships as acquisitive, atomistic and competitive, the Levellers' and Locke's concentration on property right gave rise to a proto-liberal economic or market model of social relationships.

Locke, building on the Levellers' assimilation of subjective right to property, elaborated certain internal relationships among subjective rights as forms of property. The most important of these was the relationship between the individual's ownership of his capacity to labour and his ownership of the produce of his labour. On analogy with God's exclusive proprietary right over his creation, Locke's individual has exclusive proprietary right over the objects created by his work within the broad rational constraints of natural law. The individual's control of

his labour is merely one aspect of his autonomous freedom - his right of unrestrained disposal of his actions apart from the obligations belonging to the natural law: hence, his acquisition of material property presumes a sphere of moral autonomy.

Exchanging Natural Right for Civil Right

The centrality of property in labour for Locke's theory of private property focused attention on the consequences of alienating one's labour by a wage contract, and so on the quality of labour as a transferable commodity. These considerations threw into sharp relief the question of what portion of natural right was alienable and what was inalienable. A century later this question would occupy the forefront of American Revolutionary thought, and the answer proposed by Thomas Paine revealed the outer limit of libertarian individualism. According to Paine, each individual on entering into society retains those natural rights 'in which the power to execute is as perfect in the individual as the right itself' and 'deposits . . . in the common stock of society' those in which, 'though the right is perfect in the individual, the power to execute them is defective'. In conceiving the exchange of natural right for civil right, Paine draws on the analogy of a joint stock company: 'Every man is proprietor in society, and draws on the capital as a matter of right.'

The continuing predominance of property right within the negative libertarian tradition is hardly surprising. It sustains the concept of a right or freedom as a power of acting possessed by a subject that entails the obligation of non-interference on the part of all other subjects, and especially of government. The influence of property right on the more recent tradition of positive or welfare rights is less obvious. But if welfare rights constitute obligation-imposing demands on others made by subjects on the basis of their powers of action, then they remain within the ambit of property rights.

The logic of the connection is that individuals are impeded in fully using their personal property (their freedoms, powers, or capacities) because the necessary means are unavailable to them. Their property in these capacities implies their claim-right to these means. That claim-right is held against the government, which has, therefore, the duty to provide the relevant means. To understand why the claim-right is held against the government is to understand something of the evolving role of contract in Western political rights theory.

The Role Of Contract

In all Western theories of individual natural rights, the idea of contract has proved indispensable to the theoretical transition from original right to civil and social rights. In the sixteenth and seventeenth centuries, both Protestant and Catholic theories of political covenant integrated individualist and naturalist ideas. For the most part, however, these ideas were set within a solid matrix of more traditional theo-political premises.

The Exchange of Rights

The crucially novel element introduced into social and political contract conceptions by the more radical English Puritans and Whigs in the mid-seventeenth century onward was the idea of an exchange of rights - of natural for civil rights. This idea resonated with commercial overtones. The basis of political society and rule was thereby brought into the sphere of economic transaction. The effect was to accentuate the superior bargaining position and adjudicating power of contracting individuals, or associations of individuals, and the dominant role of calculative rationality in setting the terms of the contract.

Another effect was to deprive the sphere of **public** welfare and public law of a moral basis independent from that of **private** welfare and private law. As the transcendent guidance of revealed and natural law, recognised by most seventeenth-century rights theories, has gone further into eclipse, it has become clearer that such independence of the public realm requires a basis beyond the mutual limiting of individual wills and a logic beyond prudential strategies for enhancing personal property. In contemporary contractarian liberalism, all communal obligations are derived from contract, and the only residual social right is the creation of free-market forces. It is hardly surprising in this theoretical climate that political authority and action should themselves succumb to the logic and principles of market economics. Politicians, as Ian Shapiro points out, 'sell a commodity as entrepreneurs, employ agencies to 'package' their products for advertising, and gear those products to what they believe the market demands.'

Correspondingly, citizens in their dealings with the state are increasingly consumer-conscious: they seek the most advantageous political exchange, the best possible protection and provision for their indefinitely expanding range of personal rights in return for surrender of some freedom and material property. On the basis of their ever more explicit contractual relations with the state, as formalised in bills and charters of rights, citizens have growing incentives and opportunities to demand legal redress of the failures of governmental and public agencies to furnish the expected goods and services. Such political contractualism spells the most extreme reduction of public law and the common good it enforces to private law and private good.

Freedom of Choice - The Universal Right

In a society whose only coherent public moral language is that of subjective rights the only universally respected right is that of freedom, understood as the sovereignty of the subject over his physical and moral world - that is, his emancipation from all externally imposed material and spiritual constraints on his freedom of choice and self-determination. A common thread throughout rights theories is the idea of the bearer of rights as a self-transcending will who **uses** the world around as well as his own body and capacities to achieve certain self-referential ends. Even if these ends and the means of realising them are given in divine and natural law, the rights-bearer is still regarded as the primary source of political meaning, social worth and positive law; if they are not so given, then the rights-bearer is regarded as the exclusive source. The secularisation of liberalism in the eighteenth and nineteenth centuries has meant that the self-positing, personal creative will acknowledges fewer and fewer external obligations and objective goods.

It is precisely on account of the supposed sovereignty of the rights-bearing subject that the concept of rights is not simply coordinate with the concept of obligations. As Shapiro had demonstrated, the classical rights theories continue to confer 'asymmetrical rights on the agent or maker' that impose obligations on others. The resulting situation is a competition among sovereign subjects to maximise their freedom, that is, to maximise protection of and provision for their rights. General belief in the equality of subjects in respect of rights entails rights-bearers in honouring the claims of others, but only insofar as their legitimate prudential calculations allow. Conflicts among right-claims, therefore, can be resolved only by pragmatic compromises.

Resolving such conflicts within the contractarian tradition has been rendered even more difficult by the absorption of utilitarian interest theory which presents individual judgements about utility as highly subjective, and as such incommensurable. The outcome of stressing incommensurability of 'interest' or 'utility' judgements is to focus public consensus on freedom of choice as the pivotal right.

Concluding Observations

Our task has been to examine the three dominant conceptual elements of the Western tradition of rights theory: property right, contract and freedom of choice. Within this tradition the rights-bearing subject has been conceived as the exclusive proprietor both of his spiritual and physical being and capacities and of those external objects necessary to their preservation and development. His orientation to his environment has been portrayed as controlling, acquisitive, and competitive: he disposes, uses, exchanges, commands and demands. His freedom as self-possession consists in independence from, or non-subjection to, other wills, externally imposed obligations and natural limitations. The self-possessing subject forms social and political relationships through the formal mechanism of the contract, whose terms typically mirror those of an economic transaction undertaken from calculations of self-interest.

It may appear facile to argue the incompatibility of unadulterated secular liberalism with the Christian doctrines that are regularly invoked to support the generic concept of human rights. At a certain level this incompatibility is obvious to all current Christian apologists for rights. But the question that has yet to be satisfactorily answered is why Christian thinkers have been and are willing to adopt a child of such questionable parentage as the concept of human rights.

The answer, I suggest, lies in the affinities between some modern theological interpretations of these biblical doctrines and the classical liberal anthropological premises. The theological exercise I am recommending would at least indirectly clarify these affinities. It would present theological alternatives to, for instance, interpreting the *imago Dei* as human participation in God's rational, self-positing freedom, and interpreting the covenant as human partnership in God's sovereign, creative ordering of the world. Both of these interpretations, combined in the popular concept of 'responsibility,' are more open to the political-ethical language of subjective rights than to that of objective rights and obligations.

Amidst the universal political enthusiasm for rights in the civilised world, theologians with reservations about the concept are in an unenviable position. In attacking what has become a virtually unassailable datum of the Christian social conscience, we run the risk of being mistaken for complacent pietists or atavistic romantics. At the least we expose ourselves to the accusation of being unconcerned with the apologetic equipment of Christian evangelism.

However, there are enough signs about of social anomie, moral confusion and ideological fatigue to suggest that the risk is worth taking. We may, after all, be witnessing the bitter historical irony that the revitalised striving in contemporary society for the substance of community, reciprocity, equity and public trust is being undermined by its most trusted theoretical support.

Joan Lockwood O'Donovan lectures, tutors and writes in Oxford, England. She is the author of 'Theology of Law and Authority in the English Reformation, George Grant and the Twilight of Justice' and is co-editor, with Oliver O'Donovan, of 'From Irenaeus to Grotius: A Sourcebook in Christian Political Thought'.

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Howard House
1 Brunswick Street
Belfast
BT2 7GE
Tel: (028) 9032 5258
Fax: (028) 9043 4156
Email: claire@econi.org
Web: www.econi.org

HUMAN RIGHTS AND THE CHURCH



A SHARED VISION? Human Rights and the Church

A culture of human rights is rapidly developing in Northern Ireland. The Northern Ireland Human Rights Commission, established under the terms of the Belfast Agreement, is currently consulting on a Bill of Rights for Northern Ireland. Beyond this official level 'rights talk' has become, as Julian Rivers suggests, 'the lingua franca of modern moral discourse'.

How should Christians and churches respond to this phenomenon? Should they welcome it, resist it or ignore it? This new report, commissioned by EA, CARE and ECONI will help Christians answer this question. The report surveys contemporary and historical dimensions of human rights, looks at existing Christian responses and suggests that churches need to develop a model of critical engagement with the human rights tradition.

The report is available from ECONI for £3 plus postage and packing.

Howard House, 1 Brunswick Street, Belfast, BT2 7GE
Tel: 028 9032 5258 Fax: 028 9043 4156
e-mail: admin@econi.org www.econi.org