

‘ENDOWED BY THEIR CREATOR’?

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Mainstream religion has little more than an indirect concern with the fundamental nature of human rights. Scripture provides no basis for any systematic code, albeit it espouses the virtues of equality, non-discrimination, and respect for others. There remains within religious organisations an uncritical respect for authority and repeated emphasis on the dominance of the male. Rather, the articulation of human rights as a coherent and justiciable entity was the product of political turmoil, rebellion and war. That the expression of such rights is consistent with Christian teaching, however, is to be welcomed and valued. This article is an edited version of the Warburton Lecture delivered by Lord Bingham in Lincoln's Inn, London, on 15 June 2003. It is reproduced with permission.

The draftsmen of the American Declaration of Independence thought it self-evident

that all men are created equal; that they are endowed by their Creator with certain inalienable rights; [and] that among these are life, liberty and the pursuit of happiness.

Two and a quarter centuries later some parts of this assertion would commend widespread, if not universal, assent. Many would subscribe, for instance, to some general notion of equality. Rights to life and liberty would similarly, although subject to some quite substantial qualifications, be widely recognised. A right to pursue happiness may be more questionable. It is not in that form to be found among the rights expressly protected in the major international human rights instruments of the past half century, but may perhaps be subsumed in recognition of a more general (although again qualified) right to personal autonomy. But are these human rights, which loom so large today in political and legal discourse, rights with which we — men, women and children — have been endowed by our Creator? Are these rights a by-product of religious teaching, faith and observance? Or are they a set of principles which human beings have on the whole devised for themselves as a means of improving the way in which their lives are led?

It would plainly be absurdly ambitious to proffer any comprehensive or final answer to these very large questions, but having raised them I must offer some sort of response. Even if my response is thought to be wrong, it may at least have the merit of provoking thought and encouraging discussion. But before embarking on this hazardous exercise I think I must attempt to make it a little clearer what I am talking about. In speaking

of religion I have in mind primarily the Christian religion because, great though my ignorance of it undoubtedly is, my ignorance of other religions is even greater. So I am assuming a single personal God, albeit comprising three Persons, revealed to Man through the prophets, evangelists, saints and authors of scripture but above all, of course, through the life, ministry, teaching and example of His Son, sent into the world to redeem it from sin and corruption and make manifest the all-embracing love of God. This God it is the joy but also the duty of human kind to worship, love, obey and so far as possible, through His divine grace, emulate. For those who strive to do so there is the hope of salvation.

From this very simple summary certain conclusions flow. First, the primary focus of religion is on the relationship between God and Man. The relationship between individual human beings, although crucially important, is ancillary. Secondly, the primary emphasis of religion is on duty: the duty owed by the creature to the Creator, by the redeemed to the redeemer, by the sinner to the source of forgiveness. The language of scripture, as I would suggest, is the language of duty inspired by love, and not the language of rights. Thirdly, religion teaches its adherents to see life on earth not as the be-all and end-all of human existence but as the prelude to an after-life which may be infinitely good or may be infinitely bad but is in either event infinite and so of much greater significance to individuals than their relatively brief human existence. Fourthly and importantly, the relationship between God and man is wholly extra-legal in the sense that it has no legal underpinning. It is the product of mutual love. The response of any individual human being is voluntary and uncoerced. It cannot be constrained or directed by legal rules. The teaching of the New Testament is very plain that mechanical observance of certain formulaic rules cannot, on the human side, express the loving relationship which should exist between human beings and their Creator. Fifthly, the central tenets of religious belief must be regarded by those holding that belief as equally applicable to all people in all places at all times. Since revealed religion represents the truth it cannot vary from decade to decade or from one postal district to another.

By human rights in the present context I am referring to the large and disparate body of beliefs, principles and laws which have at their core a single, fairly simple, precept. It is that everyone — man, woman or child — is entitled, simply by virtue of their existence as a human being and irrespective of merit and any other qualification whatever, to the enjoyment of some very basic rights. Certain points may be briefly made. First, although there is a literature devoted to the rights of non-human life, sometimes called biotic rights, they are not the subject of mainstream human rights discourse and certainly not the subject of this article.¹ Secondly, while some human rights, such as the right to life or the right not to be subjected to torture or inhuman or degrading treatment or

¹ See Rasmussen, 'Human Environmental Rights and/or Biotic Rights', in Gustavson and Juviler (eds), *Religion and Human Rights: Competing Claims?* (Armonk, New York: ME Sharpe, London, 1999), pp 36-52.

punishment, would be widely accepted, there are others, such as the right to work, the right to social security and the right to an adequate standard of living, which appear in some instruments but not in others. There are other claimed rights which have yet to gain international acceptance as rights at all; an example is the claimed right of conscientious objection to compulsory military service, as the House of Lords has recently held.² But while a number of core human rights are very generally accepted, no claim to universality can plausibly be made. In East and South-East Asia particularly, there has been resistance to what is seen as a Western and imperialistic human rights agenda, and it has been argued that rights are culturally specific, that the community takes precedence over individuals, that social and economic rights take precedence over civil and political rights and that rights are a matter of national sovereignty. Thus claims to universal validity must be viewed with caution.³ Thirdly, the enjoyment of rights is in no way dependent on the performance of duties. The French author of the Universal Declaration of Human Rights, it seems, wished to include a list of duties as well as rights, but this proposal was vetoed by Mrs Eleanor Roosevelt⁴ and I know of no list of duties in any other human rights instrument either. Fourthly, these are of course rights to be enjoyed during this life, in order to guarantee certain minimum conditions of existence, no thought being given for these purposes to the possibility of any other life. Fifthly, it is clear that the rights which human beings are guaranteed to enjoy under human rights instruments are rights to be asserted and claimed against other human beings. There is no third party on the scene. And finally, rights import a legal dimension. They may be rights enforceable in domestic law, as the rights covered by the Human Rights Act 1998 now are in this country. Or they may be rights underpinned by their acceptance in an international convention so as to become binding on the state in international law. But what distinguishes a right from an aspiration is that there is some legal means, even if not fully effective, of enforcing the former. I would not recognise as a right something which there is no legal means at all of enforcing.

It is perhaps unsurprising that, as one author put it,

Religion, religions (some of them surely, at times) have found the idea of human rights anthropocentric, egoistic, even narcissistic; and they have resisted the human rights commitment to individual autonomy, and its implicit challenge to authority, including religious authority, as anarchic — ‘every man doing whatsoever is right in his own eyes’.⁵

² *Sepe v Secretary of State for the Home Department* [2003] 1 WLR 856, [2003] UKHL 15, HL.

³ Stackhouse, ‘Human Rights and Public Theology: The Basic Validation of Human Rights’, in Gustavson and Juviler (eds), *Religion and Human Rights* at p 18.

⁴ René Cassin, ‘From the Ten Commandments to the Rights of Man’ (1969), in Shlomo Shoham (ed), *Of Law and Man – Essays in Honor of Haim H. Cohn* (Sabra, New York, 1971), pp 13-25; also available at <http://www.udhr.org/history/tencomms.htm>.

⁵ Henkin, ‘Human Rights: Religious or Enlightened?’, in Gustavson and Juviler (eds), *Religion and Human Rights* at p 32. The quotation is from Deuteronomy, 12 : 8, where the context indicates clear disapproval of such an approach.

There is indeed an obvious dissonance between two systems of belief, one God-centred, duty-based, claiming universal validity and directed in part towards an after-life and the other concentrating on relations between human beings, right-based, less than universal in application and solely concerned with our present life. But I am of course drawing the contrast in overly stark terms. For in His great summary of the law our Lord,⁶ echoing Old Testament authority,⁷ laid emphasis not only on the commandment to love the Lord thy God with all thy heart and with all thy soul and with all thy mind but also on the second like unto it, namely the commandment to love thy neighbour as thyself. Thus integral to the Christian (and Jewish) religions are a duty to treat other human beings as we would ourselves wish to be treated, recognising them as fellow-creatures of the same Creator, sharing equally in His love. This commandment has over the centuries inspired countless acts of mercy, generosity and sacrifice, many on a small scale, some on a large: one might instance the campaign to free the slaves or, more recently, the role of the Anglican Church in South Africa during apartheid or that of the Roman Catholic Church in Latin America.⁸ Acknowledgment of this important fact modifies but does not, I think, destroy the contrast I am drawing. For the benefits conferred by acts of mercy and compassion are not benefits which the beneficiary has any right to claim, let alone enforce. If they are denied, there can be no ground for complaint and no means of recourse. So while recognising the immense benefits to humankind which religion has inspired, a clear dichotomy, as I would suggest, remains.

In seeking to make good my contention that mainstream religion has no more than an indirect concern with human rights as such I begin with the Ten Commandments. On analysis it will be found that of that famous series of injunctions and prohibitions, four (the first four) are directed to religious observance, three to moral conduct and three to preservation of public order (or four if the prohibition of adultery is included under that head also). There is no corresponding charter of rights.

The series of very beautiful poems which we know as the Psalms reflect many varied moods. But they are essentially a celebration of the might, majesty, mercy and bounty of the Lord, terrible in His execution of judgment upon the ungodly, but the shield and protection of those who obey His commands, to whom he is a source of life and strength:

The righteous shall flourish like the palm tree: he shall grow up like a cedar in Lebanon.

Those that be planted in the house of the Lord shall flourish in the courts of our God.⁹

⁶ Matt 22 : 36 - 40.

⁷ Lev 19 : 18 and see Matt 19 : 19.

⁸ Crahan, 'Religion and Societal Change: The Struggle for Human Rights in Latin America', in Gustavson and Juviler (eds), *Religion and Human Rights* ch 6.

⁹ Ps 92 : 12 - 13.

But the relationship is one of utter dependence. The authors repeatedly call for divine vengeance to be visited on the evildoers who persecute and despise them. There is little suggestion that humankind is, save as a creature of God, a thing of great worth or moment. There is no suggestion of any rights exercisable against the Creator, and none that any human being has rights exercisable against another.

The question is, however, twice asked why God bothers about Man at all. On the first occasion the questions are expressed in this way:

What is man, that thou art mindful of him? and the son of man, that thou visitest him?¹⁰

There is not much by way of an answer, as the text continues:

For thou has made him a little lower than the angels, and hast crowned him with glory and honour.

Thou madest him to have dominion over the works of thy hands; thou has put all things under his feet:

All sheep and oxen, yea, and the beasts of the field;

The fowl of the air, and the fish of the sea, and whatsoever passeth through the paths of the seas.

O Lord our Lord, how excellent is thy name in all the earth.

The gist of the passage is not, as I understand it, that human beings have any particular qualities meriting divine attention, but rather that God is to be praised for so generously investing them with power over the natural world.

The questions are later raised again in somewhat similar terms: ‘Lord, what is man, that thou takest knowledge of him! or the son of man, that thou makest account of him!’¹¹ This time, in the Authorised Version, there are exclamations and not question marks. But the response, if it is such, is sombre: ‘Man is like to vanity: his days are as a shadow that passeth away’. Again, not much recognition here of human beings as creatures with particular qualities meriting divine attention.

This second response echoes a recurring theme:

But I am a worm, and no man; a reproach of men, and despised of the people.¹²

I am forgotten as a dead man out of mind: I am like a broken vessel.¹³

I am feeble and sore broken: I have roared by reason of the disquietness of my heart.¹⁴

¹⁰ Ps 8 : 4.

¹¹ Ps 144 : 3.

¹² Ps 22 : 6.

¹³ Ps 31 : 12.

¹⁴ Ps 38 : 8.

Behold, thou hast made my days as an handbreadth; and mine age is as nothing before thee: verily every man at his best state is altogether vanity.¹⁵

Give us help from trouble: for vain is the help of man.¹⁶

Reproach hath broken my heart; and I am full of heaviness: and I looked for some to take pity, but there was none; and for comforters, but I found none.¹⁷

I had rather be a doorkeeper in the house of my God, than to dwell in the tents of wickedness.¹⁸

Thou hast laid me in the lowest pit, in darkness, in the deeps.¹⁹

The Lord knoweth the thoughts of man, that they are vanity.²⁰

I am like a pelican of the wilderness: I am like an owl of the desert.

I watch, and am as a sparrow alone upon the house top . . .

My days are like a shadow that declineth; and I am withered like grass.²¹

As for man, his days are as grass: as a flower of the field, so he flourisheth.

For the wind passeth over it, and it is gone; and the place thereof shall know it no more.²²

It is better to trust in the Lord than to put confidence in man.

It is better to trust in the Lord than to put confidence in princes.²³

Put not your trust in princes, nor in the son of man, in whom there is no help.

His breath goeth forth, he returneth to the earth: in that very day his thoughts perish.²⁴

And we find the lament, no doubt sincerely felt, because repeated: '... there is none that doeth good, no, not one'.²⁵

It is, I would stress, no part of my purpose to disparage in any way the deep spiritual content or the striking imagery of the Psalms, expressing as they powerfully do the dependence of Man on his Creator. My point is a simple one: that they provide no basis for any code of human rights. And I hope that by taking them as my Old Testament source I am not choosing an unfair example.

¹⁵ Ps 39 : 5.

¹⁶ Ps 60 : 11.

¹⁷ Ps 69 : 20.

¹⁸ Ps 84 : 10b.

¹⁹ Ps 88 : 6.

²⁰ Ps 94 : 11.

²¹ Ps 102 : 6 - 7, 11.

²² Ps 103 : 15 - 16.

²³ Ps 118 : 8 - 9.

²⁴ Ps 146 : 3 - 4.

²⁵ Ps 14 : 3; Ps 53 : 3.

When I leap forward to the letters of St Paul, it must be recognised at the outset that he committed himself repeatedly and unambiguously to what must at the time have been an astonishing, and what remains an impressive and remarkable, belief in the principle of non-discrimination:

For there is no respect of persons with God.²⁶

For there is no difference between the Jew and the Greek: for the same Lord over all is rich unto all that call upon him.²⁷

For by one Spirit are we all baptised into one body, whether we be Jews or Gentiles, whether we be bond or free; and have been all made to drink into one Spirit.²⁸

There is neither Jew nor Greek, there is neither bond nor free, there is neither male nor female: for ye are all one in Christ Jesus.²⁹

Where there is neither Greek nor Jew, circumcision nor uncircumcision, Barbarian, Scythian, bond nor free: but Christ is all, and in all.³⁰

A belief in equality and non-discrimination is an important feature of any human rights code, perhaps the most important. But St Paul does not more generally give support to the assertion of human rights. First of all, he strongly discourages resort to the ordinary processes of law.

But brother goeth to law with brother, and that before the unbelievers. Now therefore there is utterly a fault among you, because ye go to law one with another. Why do ye not rather take wrong? Why do ye not rather suffer yourselves to be defrauded?³¹

It is, secondly, clear that St Paul enjoined a high degree of subordination to authority:

Let every soul be subject unto the higher powers. For there is no power but of God: the powers that be are ordained of God. Whosoever therefore resisteth the power, resisteth the ordinance of God: and they that resist shall receive to themselves damnation. For rulers are not a terror to good works, but to the evil. Wilt thou then not be afraid of the power? do that which is good, and thou shalt have the praise of the same: For he is the minister of God to thee for good. But if thou do that which is evil, be afraid; for he beareth not the sword in vain: for he is the minister of God, a revenger to execute wrath upon him that doeth evil. Wherefore ye must needs be subject, not only for wrath, but also for conscience sake. For this cause pay ye tribute also: for they are God's ministers, attending continually upon this very thing. Render

²⁶ Rom 2 : 11.

²⁷ Rom 10 : 12.

²⁸ 1 Cor 12 : 13.

²⁹ Gal 3 : 28.

³⁰ Col 3 : 11.

³¹ 1 Cor 6 : 6 - 7.

therefore to all their dues: tribute to whom tribute is due; custom to whom custom; fear to whom fear; honour to whom honour.³²

Thirdly, while St Paul more than once called upon masters to treat their servants fairly and moderately,³³ he nonetheless enjoined a high degree of subordination:

Servants, be obedient to them that are your masters according to the flesh, with fear and trembling ...³⁴

Servants, obey in all things your masters according to the flesh; not with eye-service, as menpleasers; but in singleness of heart, fearing God.³⁵

Fourthly, no doubt unsurprisingly, St Paul accords little recognition to what would now be called the rights of the child:

Children, obey your parents in the Lord: for this is right.³⁶

Children, obey your parents in all things: for this is well pleasing unto the Lord.³⁷

But St Paul does rather engagingly say, in his first letter to Timothy: 'Let no man despise thy youth'.³⁸

Fifthly, and notoriously, St Paul was not an apostle of gender equality:

Neither was the man created for the woman; but the woman for the man.³⁹

Let the woman learn in silence with all subjection. But I suffer not a woman to teach, nor to usurp authority over the man, but to be in silence. For Adam was first formed, then Eve. And Adam was not deceived, but the woman being deceived was in the transgression.⁴⁰

Wives, submit yourselves unto your own husbands, as it is fit in the Lord.⁴¹

In these passages St Paul was of course reflecting the Jewish tradition in which he had been brought up. A Jewish author has recently written that in many parts of that tradition: 'the following axiom holds to be true: women

³² Rom 13 : 1 - 7.

³³ Eph 6 : 9; Col 4 : 1.

³⁴ Eph 6 : 5.

³⁵ Col 3 : 22.

³⁶ Eph 6 : 1.

³⁷ Col 3 : 20.

³⁸ 1 Tim 4 : 12.

³⁹ 1 Cor 11 : 9.

⁴⁰ 1 Tim 2 : 11 - 14.

⁴¹ Col 3 : 18.

are to men as men are to God'.⁴² The same author draws attention to certain features of that tradition: the dominant role of the husband in the process of divorce;⁴³ the reduced role of the woman in religious worship;⁴⁴ the male-orientated language of the liturgy;⁴⁵ the exclusion of women from leadership roles;⁴⁶ the precedence accorded to men in certain religious proceedings;⁴⁷ certain rules of behaviour, among them an injunction against a man hearing a woman's voice in song;⁴⁸ the masculine associations of various rituals;⁴⁹ and some differences of religious obligation.⁵⁰ No doubt, as the author suggests, these distinctions have lessened with the passage of time, more so than in some Islamic countries, which continue to observe rules that discriminate against women.⁵¹ It is easy, and often tempting, to throw stones, but before doing so we should recall how long lasting and how persistent has been the denial of equality to women in our own society: in winning the right to vote; in access to higher education; in achieving employment on approximately equal terms; and, still, in the exercise of religious authority. Religious tradition has contributed little, I would suggest, to addressing this problem, but has a substantial share of responsibility for its intractability.

There is perhaps no right which we would more readily accept than that to freedom of thought, conscience and religion, expressed in Article 9 of the European Convention on Human Rights, Article 18 of the Universal Declaration of Human Rights, Article 18 of the International Covenant on Civil and Political Rights, and elsewhere. This is a right which, historically, established religions have found it very hard to accommodate, and in some places still do. The reason is not far to seek. Those who believe, with sincere and passionate intensity, that the religion to which they adhere has an exclusive perception of the truth and offers an exclusive path to salvation also tend to believe, naturally enough, both that they should resist any attempt to weaken or challenge that faith and also that they should convert others to it. In endowing a lecture to expose 'the apostasy of Papal Rome', Bishop Warburton, a notable controversialist in a polemical age, exemplified, in an extreme form, this religious spirit. Such beliefs have an obvious potential for giving rise to conflict. In Malaysia the former British colonial government introduced in the constitution a provision, still enforced, that no Christian missionary work could be undertaken in predominantly Muslim regions, a provision justified on grounds of communal peace and stability but giving rise to obvious

⁴² Greenberg, 'Feminism, Jewish Orthodoxy, and Human Rights: Strange Bedfellows?' in Gustavson and Juviler (eds), *Religion and Human Rights* p 150.

⁴³ *Ibid* p 146.

⁴⁴ *Ibid* p 147.

⁴⁵ *Ibid* p 148.

⁴⁶ *Ibid* p 148.

⁴⁷ *Ibid* p 149.

⁴⁸ *Ibid* p 149.

⁴⁹ *Ibid* p 149.

⁵⁰ *Ibid* p 150.

⁵¹ Mayer, 'Islamic Law and Human Rights: Conundrums and Equivocations' in Gustavson and Juviler (eds), *Religion and Human Rights* p 178.

problems in human rights terms.⁵² The European Court of Human Rights has had on more than one occasion to consider the permissible restraints on freedom to proselytise.⁵³ A recent survey on freedom of religion and belief in nearly sixty countries makes plain that these are continuing and not merely historical problems:

Throughout the history of religious and secular ideologies there has been tension between the exploration or criticism of given beliefs and fear that the authority of beliefs is undermined by the search for new paths to truth. This inevitable tension is the true site of religious conflict and persecution in history. Heresy and heretics are not only an image from the past. This Report shows that rejection, persecution and discrimination towards those who have taken a different path remain a major cause of intolerance. The Ahmadis in Pakistan and the Bahai's in Egypt, Iran and Malaysia are some examples as are the Jehovah's Witnesses in several countries of Eastern Europe, in Greece and Singapore.

There are examples of active tension and hostility over religious differences. But there are also examples of the historical legacy of such conflicts to be found everywhere in the world. The divisions in the Christian Church and within Islam have shaped the modern world. Levels of consciousness about differences in Catholic and Protestant faiths vary but remain a potent source of intolerance in parts of Latin America, in Mexico and in Northern Ireland. The division between the Shia and Sunni branches of Islam provide an equally relevant context for the prospect of building tolerance in the Middle East.⁵⁴

If I am very broadly correct in suggesting, subject to an important qualification already made and a further very important qualification with which I shall end, that mainstream religion has not on the whole inspired the drive towards international recognition of human rights, the question arises where that movement has found its inspiration. I would answer by suggesting that the most potent spur has been found in war, rebellion and political turmoil.

Most British and American commentators would, I think, see Magna Carta, the Great Charter of 1215, as an important milestone in the modern evolution of individual human rights. Much of the charter was by no means novel; despite the major contribution made to its composition by the leading churchmen of the day, it was quickly annulled by the Pope on grounds of duress; and the barons cannot be portrayed as a team of altruistic liberals. But they did at a time of acute political crisis exact from a tyrannical and unaccountable king promises that were important,

⁵² Boyle and Sheen (eds) *Freedom of Religion and Belief* (Routledge, London, 1997) p 9.

⁵³ *Kokkinakis v Greece* (1993) 17 EHRR 397, ECtHR; *Larissis v Greece* (1998) 27 EHRR 329, ECtHR.

⁵⁴ Boyle and Sheen (eds) *Freedom of Religion and Belief* pp 12 - 13.

partly for what they said and partly for what, in the course of later political controversy, they were believed to have said. These were the royal promises that no free man should be seized or imprisoned or deprived of his rights or possessions except by the lawful judgment of his equals and by the law of the land, and that to no one would the king sell, deny or delay right or justice.⁵⁵ If King John did not in 1215 promise equality before the law, as King Magnus VI of Norway is said to have done in 1275,⁵⁶ he went further than King Andrew of Hungary was constrained to do in his Golden Bull of 1222 and at least may claim to have provided posterity with a text to work on. Posterity was not slow to make the most of its opportunity when the need arose. Express reference was made to it in the Petition of Right of 1627, when the objection was strongly made to our last absolute monarch that

divers of your subjects have of late been imprisoned without any cause shown; and when for their deliverance they were brought before your justices by your Majesty's writ of *habeas corpus*, there to undergo and receive as the court should order, and their keepers commanded to certify the causes of their detainer, no cause was certified, but that they were detained by your Majesty's special command signified by the Lords of your Privy Council, and yet were returned back to several prisons without being charged with anything to which they might make answer according to the law.⁵⁷

It was after the English Civil War, in the course of debate among officers of the victorious army, that one of them (Colonel Rainborough) made the statement which still resonates as one of the pithiest human rights declarations of all time: 'for really I think', he said, 'that the poorest he that is in England has a life to live as the greatest he ...'.⁵⁸ Scarcely less celebrated is the prohibition, in the Bill of Rights 1688, of cruel and unusual punishments and the requiring of excessive bail.

It would however be hard for even the most prejudiced and hidebound of British commentators to deny pride of place, in the evolution of modern notions of individual human rights, to three eighteenth century instruments: the American Declaration of Independence in 1776; the French Declaration of the Rights of Man and the Citizen in 1789; and the first ten amendments to the United States Constitution, adopted in 1791. In asserting that all men are created equal and are endowed with certain inalienable rights the first of these instruments distilled much eighteenth century philosophy, but it also made particular complaints against the King of Great Britain which have a distinctly modern resonance: for instance,

⁵⁵ Chaps 39, 40 of Magna Carta, 1215.

⁵⁶ See Lauren, *The Evolution of International Human Rights* (1998) p 13.

⁵⁷ Petition of Right 1627 (3 Cha 1, c 1), Art V.

⁵⁸ 'The Putney Debates: The Debate on the Franchise (1647)', conveniently found in Wootton (ed) *Divine Right and Democracy: An Anthology of Political Writing in Stuart England* (Penguin, 1986), p 286.

He has made Judges dependent on his Will alone, for the tenure of their offices, and the amount and payment of their salaries ...

The French Declaration, drawing heavily on its American predecessor, described 'ignorance, neglect or contempt of the rights of man' as 'the sole cause of public calamities and of the corruption of governments'. In the first ten amendments to the American Constitution are found several rights now embodied in international instruments. To some extent these documents no doubt promised more than they delivered in the short term. American practice offered little protection to slaves, women, the unpropertied and the indigenous people of the expanding republic.⁵⁹ In France political rights were restricted not only for slaves, Jews and women but also for actors and executioners, and although slavery was abolished in all the French colonies in 1794 it was re-established by Napoleon in 1802.⁶⁰ It would be anachronistic to cavil at these blemishes. The effect of these great instruments was to move the recognition of individual human rights very much closer to effective legal protection. All were the product of rebellion, war and political turmoil.

So too was the Universal Declaration of Human Rights 1948, the first in the great series of human rights instruments which have punctuated the last half century. Following President Roosevelt's enunciation in 1941 of four freedoms (which began life as four fears, and might have been five freedoms had the president not forgotten one of them),⁶¹ the international protection of human rights was gradually if spasmodically adopted as a war aim of the Allied powers.⁶² Before 1939 there had been no international protection of individual human rights,⁶³ and the Universal Declaration was the response of the newly established United Nations to the tyranny, inhumanity and denial of human rights which had disfigured much of the world over the preceding decade. If, however, it was the Universal Declaration which proclaimed the ideal, for member states of the Council of Europe it has been the European Convention of Human Rights which has in practice operated to secure performance. Its influence has been both direct, through the decisions and judgments of the commission and the court, and indirect, through the inclusion of the convention rights in many national constitutions.⁶⁴ The result of all these developments is, I think, that to an extent without parallel in history the protection of individual human rights has become a central preoccupation of courts throughout the world.

While acknowledging that religious belief has inspired very important humanitarian reforms — I instanced the freeing of the slaves, but might have instanced the campaign to abolish child labour in factories, or

⁵⁹ Lauren, *The Evolution of Human Rights* p 31.

⁶⁰ Hunt, *The French Revolution and Human Rights* (1996), pp 18, 21 and 26.

⁶¹ AWB Simpson, *Human Rights and the End of Empire* (2001), pp 172 - 173.

⁶² *Ibid* chs 4 - 8.

⁶³ *Ibid* p 91.

⁶⁴ See Demerieux, *Fundamental Rights in Commonwealth Caribbean Constitutions* (Faculty of Law Library, University of the West Indies, Barbados, 1992).

attempts to improve prison conditions — I think it nonetheless true that our preoccupation with human rights is not a direct product of religious belief. But I emphasise the word ‘direct’. For, with the benefit of the New Testament, it is now possible to give a rather better answer than the psalmist gave to his question: ‘What is man, that thou art mindful of him? and the son of man, that thou visitest him?’

The answer is that God is mindful and ever-present because every human being has an immortal soul and is equally and infinitely precious in the sight of God. There could be no more blatant betrayal of His love and purpose than for us, His creatures, to be indifferent towards each other. To love our neighbour as ourselves is more than a duty; it is a manifestation of our loving relationship with Him. It is, however, a short step from loving one’s neighbour to recognising that he or she has needs and interests, and a shorter step still to recognising that in our dealings with each other there are some basic and fundamental standards which human beings should observe and from which they should not depart. It is entirely consonant both with religion and human rights jurisprudence to respect and protect the unique importance of each individual human being. We learn from Genesis that God resolved to make man ‘in our image, after our likeness’,⁶⁵ and from literature that he is ‘the paragon of animals’,⁶⁶ ‘God’s image’,⁶⁷ ‘Heaven’s masterpiece’.⁶⁸ To give practical expression to the belief that our fellow-creatures have not only needs but also rights is, surely, to advance God’s purpose on earth.

⁶⁵ Gen 1 : 26.

⁶⁶ *Hamlet*, Act 2, scene 2.

⁶⁷ George Herbert, *The Temple; The Church Porch*, 1xiv.

⁶⁸ Francis Quarles, *Emblems; To the Reader*, bk ii, No 6, Epig 6.