

Submission to the National Human Rights Consultation

By the Standing Committee of the Synod of the Anglican Church Diocese of Sydney

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Who we are

1. This submission is made by the Standing Committee of the Synod of the Anglican Church Diocese of Sydney.
2. The Standing Committee is the executive of the Synod which in turn is the principal governing body of the Diocese. The Diocese is the oldest and largest of the 23 Anglican dioceses which together form the Anglican Church of Australia.
3. The Diocese is an unincorporated voluntary association comprising various incorporated and unincorporated bodies. These bodies, together with the diocesan network of 267 parishes¹, are accountable to the members of the Church through the Synod.
4. We are grateful for the opportunity to contribute our perspective to the National Human Rights Consultation.

Summary of our submission

5. We strongly support the protection of human rights in Australia despite the inadequacy of human rights as a means of describing everything that should be valued and protected in human life.

¹ The regular combined membership of our 267 parishes is about 80,000 people.

6. We encourage a focus on protecting the civil and political rights reflected in ICCPR, including the continued protection of religious freedom as a fundamental human right.
7. We consider that human rights are adequately protected for the majority of Australians. However we point to the narrowing of religious exemptions under anti-discrimination law as a particular area of concern.
8. We consider that the adoption of a Federal charter of rights would, at best, make little difference to the protection of human rights and may, at worst, undermine the protection of human rights in Australia. We advance the following propositions in support of this position –
 - (a) Firstly, there is little evidence that bills or charters of rights contribute much to the protection of human rights. In particular there appears to be little difference between the substantive human rights record of those Western liberal democracies which have and those which do not have a bill or charter of rights. Further it appears that human rights bills or charters do not generally work well outside Western liberal democracies.
 - (b) Secondly, we consider it would be a mistake to see the current expression of human rights as representing universally accepted and immutable standards which, if applied, are capable of resolving (or silencing) political debate on matters of public policy. Rather human rights are essentially moral claims, often competing, which provide a useful *starting point* in public policy debate.
 - (c) Thirdly, we consider that human rights bills or charters (whether constitutionally entrenched or legislation based) reflect this mistaken view insofar as they seek to treat human rights as essentially legal claims above day-to-day political debate. As a consequence we consider that charters or bills of rights pose a danger to the protection of human rights because of their tendency to shift the resolution of competing moral claims from the realm of politics to the realm of the courts thereby prematurely foreclosing public policy debate on such matters.
 - (d) Fourthly, we have a particular concern about the impact of a Federal charter on religious freedoms. Rather than protecting religious freedoms, the experience from jurisdictions which have a charter suggests that a Federal charter is likely to accelerate the current trend of eroding religious freedoms in favour of other rights (especially anti-discrimination rights) with the

consequence that religious freedoms will increasingly be treated as second order rather than fundamental rights.

9. We consider that the effective protection of human rights in Australia is achieved by targeted legislation to deal with specific matters, the enhancement of Federal Parliamentary Committees, the promotion of community debate on human rights issues and a strong independent media.

Christian engagement with human rights discourse

10. As a Christian organisation, we strongly support the protection of human rights in Australian society. We express our support while recognising that human rights cannot adequately describe everything that should be valued and protected in human life.
11. Both historically and to the present day, Christians and Christian organisations have been at the forefront of social justice by caring and advocating for disadvantaged groups in Australian society.² Historically, Christian scholars have also made a significant contribution, through the natural law or natural rights discourse, to the body of principles now known as human rights. However Christians differ about whether human rights, as currently expressed³, continue to have a philosophical and metaphysical basis capable of being grounded in a Christian world view. In particular many Christians regard with suspicion the more strident humanist discourses which treat human rights as a secular article of faith.⁴
12. Our view is that, while the current expression of human rights is essentially a product of Western liberal democratic culture, the Judeo-Christian underpinnings of human rights are still evident in the way they are expressed. Accordingly, they continue to reflect, albeit inadequately, God-given and therefore universal/transcendent standards by which we should deal with one another. Our Doctrine Commission has expressed this tension in Christian engagement in the following way –

² For example our social welfare agency, Anglicare Diocese of Sydney, relates to approximately 40,000 clients on an annual basis with counselling, children and youth services, emergency relief, and programs for family relationships and aged care. Another example is our Social Issues Executive which engages in direct advocacy and political engagement as well as the production of educational materials on a wide range of matters including: asylum seekers, prisoners and prison conditions, mental health issues, employment issues/workers' rights, domestic violence, disability issues and carers' needs.

³ By this we are referring principally to the *Universal Declaration of Human Rights* as expressed through the *International Covenant on Civil and Political Rights* and the *International Covenant on Economic Social and Cultural Rights*.

⁴ See, for example, Ignatieff M, *Human Rights as Politics and Idolatry* (Princeton University Press 2001) in which the author makes the following frank assessment (at p. 77): "Human rights has become a secular article of faith. Yet the faith's metaphysical underpinnings are anything but clear."

The Christian duty to love one's neighbour is motivation enough to share the concern to protect the oppressed and the wronged. It is this concern that lies behind the various attempts to safeguard "human rights". Christians recognize the necessity to "restrain wickedness and vice". However Christians are bound to approach the task in very different terms from the stridently secular manner in which the public debates about human rights are generally conducted today. [We] will argue that the biblical revelation provides far richer and more powerful categories for understanding what in human life should be guarded and protected than those which dominate the discussion about "human rights". This is not to deny "human rights", but rather to insist that this concept is less than adequate for the task of understanding that which we should value and defend in every human life.⁵

13. Since this theological perspective is an important starting point for the comments we want to make in this submission, we attach a copy of the Doctrine Commission's paper for the interest of the Consultation Committee.

What human rights should be protected?

14. There is confusion between the aspirations we have for the members of our society (ie. what is regarded as good in life) and the fundamental liberties necessary to protect their dignity.
15. Branding everything which seems good (or aspirational) as a human right devalues the currency of human rights and increases the difficulty of obtaining broad based acceptance of human rights standards as a useful political discourse. This is essentially because different communities have different conceptions of what is regarded as good in life. The matter is well expressed by Ignatieff –

...rights inflation – the tendency to define anything desirable as a right – ends up eroding the legitimacy of a defensible core of rights. That defensible core ought to be those that are strictly necessary to the enjoyment of any life whatever. The claim here would be that civil and political freedoms are the necessary condition for the eventual attainment of social and economic

⁵ Doctrine Commission of the Anglican Church Diocese of Sydney, *Human Rights: A Theological Account* (unpublished paper, June 2009) at [3].

security. Without the freedom to articulate and express political opinions, without freedom of speech and assembly, together with freedom of property, agents cannot organise themselves to struggle for social and economic security.⁶

16. We therefore encourage a focus on the civil and political rights reflected in ICCPR. This is not to deny the importance of the broader economic, social and cultural rights contained in international instruments such as ICESCR but rather to recognise that the attainment of these second and third generation "rights" is in a sense dependent on the protection of civil and political rights and often involves difficult choices about the application of limited resources among competing priorities.
17. Of particular concern to us is the right to freedom of religion under Article 18 ICCPR. We would encourage the Government to take appropriate steps to ensure that the right to freedom of religion continues to be protected as a fundamental human right. The fundamental importance of the right to religious freedom is evident from Article 4 of ICCPR which permits no derogation from the right to religious freedom even in a time of public emergency which threatens the life of the nation.

Are human rights sufficiently protected?

18. We consider that for the majority of Australians, human rights are sufficiently protected through our existing institutions including the common law, a democratically elected parliament, separation of powers, a free press and an active civil society. We therefore broadly concur with the sentiments expressed by Professor Tom Campbell –

Arguably Australia went backwards during the Howard era, but so did other democratic regimes faced with immigration and terrorist concerns. This is not to say that the human rights status quo in Australia is acceptable. In my opinion, it is not. But, in relative terms, Australia's human rights record is not particularly deficient, an important comparative point that gets lost when we focus anecdotally on particular human rights failures in Australia and selected judicial interventions elsewhere.⁷

19. However one area of concern for us relates to the increasing and unwarranted narrowing of exemptions for faith-based

⁶ Ignatieff at p. 90.

⁷ Campbell T, "Human rights-based judicial review: it seemed a good idea at the time", *Dissent*, Spring 2008 at p14.

organisations and schools under anti-discrimination law.⁸ Such narrowing of exemptions is unwarranted because it reflects neither the liberality of religious freedom under Article 18 of ICCPR nor the fact that such freedom may be subject under Article 18.3 only to “such limitations as prescribed by law and are necessary to protect public safety, order, health or morals or the fundamental rights and freedoms of others”. Of particular concern is the fact that the limitation provisions in Article 18.3 are not reflected in the *Human Rights Act 2004 (ACT)* or the *Charter of Human Rights and Responsibilities Act 2006 (Vic)*, both of which provide a broader scope for limiting religious freedom than is possible under Article 18.3.

20. We are also concerned with the clumsy attempt to proscribe religious hate speech under Victoria's *Racial and Religious Tolerance Act 2001*. As Professor Patrick Parkinson observes, “the law in Victoria seems to be that one can ‘incite’ hatred without either the intention to do so or the effect of so doing.”⁹ We remain hopeful that no other government in Australia will adopt the Victorian model.
21. It would no doubt be possible to identify other areas where human rights protections could be strengthened, particularly for the most marginalised and vulnerable in our society (eg. the right to life for unborn children, rights for refugees ie. “the alien among us”). However rather than commenting further on this matter, we wish to focus on how human rights will and will not be effectively protected.

Why a charter will not effectively protect human rights

Charters do not make much difference

22. Proponents of a Federal rights charter usually assert that rights charters play an important role in preventing human rights abuses and that Australia's lack of a charter therefore represents a serious deficiency that needs to be remedied.

⁸ For example the 2002 amendments to the Anti-discrimination Act 1991 (Qld) which narrowed exemptions for religious schools and hospitals and also the recent decision of the NSW Administrative Decision Tribunal in the matter of *OV & OW v QT & The Uniting Church in Australia Property Trust (NSW) (No 2)* NSW ADT 115 which, if upheld on appeal, would render virtually meaningless the exemption for religious bodies under s. 56(d) of the *Anti-discrimination Act 1977 (NSW)*. We are also aware of a current review of exemptions in the Equal Opportunity Act 1995 (Vic) and the Federal Government's review of the Sex Discrimination Act to which the Australian Human Rights Commission, in its submission to the Inquiry, made the following troubling statement (at p. 166): “...Permanent exemption [for religious bodies within the Sex Discrimination Act 1984] does not provide support for women of faith who are promoting gender equality within their religious body.”

⁹ Parkinson P, “Religious vilification, anti-discrimination laws and religious minorities in Australia: the freedom to be different” *Australian Law Journal* 81 (2007), 954-966 at 957.

Such claims are usually accompanied by anecdotal examples of human rights failures.¹⁰ However despite these claims, there is little evidence that charters contribute much to the protection of human rights. The ineffectual nature of charters can be seen at two levels.

23. At one level, there appears to be little or no difference between the overall human rights records of those Western democracies which have and those Western democracies which do not have a charter.¹¹ This conclusion is highlighted, for example, in a recent analysis of the civil justice problems experienced by Canadians suffering ill health or disability. The author of that analysis concludes that the level of justiciable problems experienced by people with a chronic illness or disability in Canada is similar to that experienced by such people in Australia and the UK.¹² In light of this analysis, it is not unreasonable to question whether the Canadian Charter, which has been in force for 27 years, has made any positive difference to persons suffering from a disability.
24. At the second level, the existence of a rights charter in nations which are not Western democracies appears to make little difference to the human rights record of such nations. Indeed it is notorious that some of the most abusive and oppressive regimes have had extensive charters of rights.
25. We consider that the fundamental reason for charters apparently contributing little to the protection of human rights is that human rights are essentially a product of Western liberal democratic culture *and not the other way round*. The protection of rights within a society fundamentally depends upon the existence of a culture of respect and fairness rather than a culture of rights. The matter is expressed well by Professor Chris Brown –

...liberal societies of the last 150-200 years have indeed been the freest and the most generally congenial societies known to history, but not because they have been constructed on the basis of rights; their success has been based on features within them that pointed towards a different, less individualist, context for political

¹⁰ See for example: Williams G, "A Charter of Rights for Australia", *Dissent*, Spring 2008 at pp 10-12.

¹¹ Campbell T at p14.

¹² Currie A, "Civil Justice Problems and the Disability and Health Status of Canadians", *Transforming Lives: Law and Social Process* (Papers from the Legal Services Research Centre's International Research Conference, Transforming Lives, Queen's University, Belfast, 19 to 21 April 2006) at p 62.

action. It was because of the existence of this context, because these societies were, in certain respects, *ethical communities*, that rights were widely honoured and respected; a successful rights-based politics is parasitic on features of the polity that have nothing to do with rights – indeed, which may even be inimical to rights thinking.¹³

Charters prematurely foreclose political debate

26. Although there is little evidence that charters contribute much to the protection of human rights, that is not to say that charters have no effect.
27. The so-called dialogue models of charter currently in operation in places such as the UK, New Zealand, Victoria and the ACT maintain the sovereignty of parliament in a formal sense. In substance, however, they effect a fundamental, although subtle, shift in the resolution of competing moral claims from the political arena to the courts.
28. The debate is often put in terms of whether we can trust our judges. This is not our point. We have no doubt that our courts and judges are well equipped to make judgments on legal matters. However human rights are essentially about moral claims and therefore the balancing of conflicting human rights (typically abstracted at a high level in charters) is essentially about making moral judgments. It is not at all clear why judges are in a better position to make such moral judgments than the populace in general and the Parliament in particular.
29. It is this tendency to see that which we most value in human life primarily in terms of legal standards which lies behind our concern about a rights charter. Rather than stimulating discussion over matters such as how competing moral claims in society should be appropriately balanced, a rights charter will prematurely foreclose political debate on such matters. Charters typically achieve this in two ways. Firstly they require courts to interpret and give effect to legislation as far as possible compatibly with human rights. This is perhaps the more worrying power, since it enables a body of case law to develop around the interpretation of legislative provisions which may distort the meaning parliament otherwise intended for the provision. Secondly, where the court cannot find any possible interpretation which is compatible with human rights, the court is empowered to make a declaration that the legislation is incompatible with human rights. In reality this also poses a

¹³ Brown C, "Universal human rights: a critique" *Human Rights in Global Politics* (Cambridge University Press 1999) at p. 111.

challenge to parliamentary sovereignty, for who would argue against something which has been declared by a court to be incompatible with a human right? Politicians have shown a reluctance to do so in jurisdictions where such declarations can currently be made.¹⁴

30. If humans are to flourish and human rights are to be effectively protected and promoted, then our primary focus should be on maintaining the resolution of competing human rights in the political arena. We must avoid prematurely foreclosing this debate by transferring it from the political arena and into the judicial arena.
31. Fundamentally, it is important that human rights are not treated as “trumps” which resolve (or silence) debate on conflicting public policy matters. Rather than resolving conflict, the appeal to human rights gives rise to conflicts which are properly resolved through public policy debate. Although writing from a humanist perspective, we agree with the view expressed by Ignatieff on this matter –

Human rights might become less imperial, if it became more political, that is, if it were understood as a language, not for the proclamation and enactment of eternal verities, but as a discourse for the adjudication of conflict. But thinking of human rights in this way means accepting that human rights principles themselves conflict. Activists who suppose that the Universal Declaration of human rights is a comprehensive list of all the desirable ends of human life fail to understand that these ends – liberty and equality, freedom and security, private property and distributive justice – conflict, and, because they do, the rights that define them as entitlements are also in conflict. If rights conflict and there is no unarguable order of moral priority in rights claims, we cannot speak of rights as trumps. The idea of rights as trumps implies that when rights are introduced into a political

¹⁴ See Walters B and Pound A, “In the Matter of A Proposed Federal Charter of Rights” (Memorandum of Advice for the Human Rights Law Resource Centre) October 2008 who indicate (at p. 3) that in the United Kingdom, the government has so far responded to almost every declaration of incompatibility made by the courts by amending the legislation in some fashion (not always so as to remove completely any incompatibility). The interplay of the interpretation provision in s. 3 of the UK Human Rights Act 1998 and the incompatibility declarations in s. 4, led Lord Steyn in *Ghaidan v Godin-Mendoza* [2004] UK HK 30, 39 to conclude that “a study of the case law reinforces the need to pose the question whether the law has taken a wrong turning.”

discussion, they serve to resolve the discussion.
In fact, the opposite is the case.¹⁵

Charters accelerate the trend of religious freedoms becoming “second-class” rights

32. We are particularly concerned that a Federal charter will accelerate the current trend of eroding religious freedoms in favour of other rights (especially anti-discrimination) with a result that religious freedoms will be further relegated to a category of second order rights.
33. It might be assumed that a charter of rights, such as the one in Victoria or the United Kingdom, would have the effect of providing greater protection to religious freedoms in those jurisdictions. Sadly, the reverse appears to be true.¹⁶
34. In the UK, a recent case on point is the way in which the charter has been used to limit the right to “manifest” religion in the recently introduced Equality Bill. In a memorandum prepared by the UK Government’s Equality Office for this Bill, the following justification is provided for the Bill’s approach in limiting the manifestation of religion –

What counts as “manifesting” a religion or belief has been *limited by the courts* so that it does not cover each act which is motivated or influenced by a religion or belief. What are protected are acts which are *intimately* linked to beliefs or creeds such as acts of worship and devotion which are the aspects of the practice of a religion or belief in a *generally recognised form*. [our emphasis]¹⁷
35. The key issue here is who has made the decision that manifesting a religion or belief should be limited in such a formalistic and narrow way? Unfortunately, the answer given in the memorandum is the courts.

¹⁵ Ignatieff at p. 20.

¹⁶ A striking example of the problems faced by religious institutions in the UK is a recent test case in which the UK Charities Commission refused permission for the Catholic Care adoption agency of the Catholic Diocese of Leeds to amend its trust deed to access an exemption under the UK Sexual Orientation Regulations which would allow it to provide benefits only to those of a particular sexual orientation. The Catholic Church in the UK has commented in response to the case that – “As the charities cannot provide unrestricted services without being in breach of their obligations to act in accordance with the tenets of the Roman Catholic Church, it seems likely that the charities will need to close their adoption services and a flagship service of the charities will be lost.” See <http://www.dailymail.co.uk/news/article-1190412/Catholic-ban-adoption-sex-couples-ruled-illegal.html>.

¹⁷ UK Equality Office, Memorandum for Joint Committee on Human Rights, Equality Bill.

36. We consider that the Equality Bill is a good example of how an appeal to the courts through the lens of a charter can be used to shut down political debate on competing moral claims of fundamental importance (in this case the freedom to manifest religion and the freedom from discrimination). This is evident in comments about the impact of the Equality Bill made by the UK's Deputy Equalities Minister, Maria Eagle –

The circumstances in which religious institutions can practice anything less than the full equality are few and far between...While the state would not intervene in narrowly ritual or doctrinal matters within faith groups, these communities cannot claim that everything they run is outside the scope of anti-discrimination law.¹⁸

37. Such an outcome would, we submit, be unacceptable in Australia. However it does indicate how a Federal charter could open the way for judicial decisions from countries which do not necessarily share our values on particular matters to be used by Australian judges as a source of precedent in defining the boundaries of competing human rights in Australia.

How to protect human rights effectively

Specific legislation to deal with specific matters

38. Rather than using a Federal charter as a means of protecting human rights in Australia, we consider that any further protection which the law might appropriately provide could be achieved through specific legislation on particular matters following a "fine grained" public policy debate on how to ensure the inevitable conflicts in competing moral claims are appropriately balanced.

Enhancement of Federal Parliamentary Committees

39. We consider that the existing Federal Parliamentary Committee system should be strengthened to ensure that Parliament has an opportunity to fully inquire, debate and assess the human rights implications of bills to be introduced into Parliament.
40. This function is partially fulfilled by the Senate Scrutiny of Bills Committee. More broadly, the Senate and House of Representatives Standing Committees on Legal and Constitutional Affairs already examine legislation and conduct inquiries into matters which have significant human rights implications. These Committees are not ignorant of such concerns as they conduct their business. The work of many

¹⁸ telegraph.co.uk, 20 May 2009.

other committees also touches on human rights matters. Enhanced debate could be achieved through making the Scrutiny of Bills Committee a joint standing committee and revising the terms of reference to more sharply focus its work on human rights concerns.

41. However, even with the enhanced work of such committees, human rights assessments regarding specific clauses or bills may, in the end, be political rather than resolved through technical examination of legislation. Political decision-making is properly the domain of parliament and public discourse, rather than the courts, tribunals or government authorities.

Community debate and strong independent media

42. It is easy to resort to legislation as a primary means of protecting human rights. However legislation is a blunt instrument and has its limitations. We would want to encourage the Government to ensure that it facilitates on-going community debate about human rights and to ensure we continue to have a strong and independent media capable of bringing any human rights abuses to our attention.

Our role in protecting human rights

43. As Christians we believe there are gifts which God has given to all humans which should be protected and promoted. We intend to continue expressing views consistent with this belief in the public arena alongside others who hold different views. We also intend to continue engaging in social justice by caring and advocating for disadvantaged groups in our society in a manner which is consistent with our beliefs. We fully accept that we do not live in a society where everyone, or even a majority of persons, will necessarily adopt the views we espouse. Indeed insofar as civil society is concerned, we accept that our voice is merely one among many seeking to promote a community in which rights can be genuinely honoured and respected. However we need to ensure that we retain a society in which these voices can be effectively heard.

For and on behalf of the Standing Committee

BISHOP ROBERT FORSYTH
DR KARIN SOWADA
MR ROBERT TONG
MR ROBERT WICKS

15 June 2009

Attachment

35/08 Human Rights: A Theological Account

(A report from the Sydney Diocesan Doctrine Commission.)

The concern for human rights

Historical attempts to codify human rights in crisis contexts

1. In the history of Western civilization various attempts have been made to codify the rights of human beings. Outstanding examples include the Magna Carta (granted, under considerable duress, by King John at Runnymede on 15 June 1215), the United States Bill of Rights (introduced as amendments to the constitution of the United States of America in 1791), and the Universal Declaration of Human Rights (adopted by the General Assembly of the United Nations on 10 December 1948). Typically these attempts have been made at times of crisis and in the face of great wrongs. Such a context no doubt clarified the issues needing to be addressed and provided a favourable climate for people of good will to reach agreement.

The different context of today's Australian discussion

2. The context in which consideration is being given to a "human rights framework" for Australia at the beginning of the 21st century is very different. It is, for example, far removed from the situation, immediately after World War II and the Holocaust, in which the Universal Declaration of Human Rights took shape. However, it would be naïve to think that the relative peace and prosperity of Australia today means that human beings are thereby safe from the kind of wrongs that they have so often suffered at the hands of tyrants and oppressors. The call for a codification of "human rights" is not so easily dismissed.

A Christian perspective

How are Christians to engage in an essentially secular debate?

3. The Christian duty to love one's neighbour is motivation enough to share the concern to protect the oppressed and the wronged. It is this concern that lies behind the various attempts to safeguard "human rights". Christians recognize the necessity to "restrain wickedness and vice". However Christians are bound to approach the task in very different terms from the stridently secular manner in which the public debates about human rights are generally conducted today. This paper will argue that the biblical revelation provides far richer and more powerful categories for understanding what in human life should be guarded and protected than those which dominate the discussion about "human rights". This is not to deny "human rights", but rather to insist that this concept is less than adequate for the task of

understanding that which we should value and defend in every human life.

Christians must find ways to engage in the conversation

4. Nonetheless it is important for Christian people to find appropriate ways to engage in the secular conversation about “human rights”. This paper is an attempt to reflect, in Christian terms, on the concerns that the language of “human rights” is striving to articulate. For example, the concerns behind the 1948 UN charter of human rights are set out in the preamble, in which we read –

“Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people ...

Therefore the General Assembly proclaims this universal declaration of human rights ...”

The distinctive Christian approach to the subject: we understand “rights” as “gifts from God”

5. The Christian joins a conversation about these things with a fundamentally different frame of reference to those who refuse to have God in their knowledge (Rom. 1:28). This does not mean that there can be no points of agreement, but it does mean that the Christian sees everything in a different light because all things are seen in relation to God. That is why the Christian may find the language of “rights” inadequate and potentially distorting. What the secular person calls a “human right”, the Christian sees as a gift from God. This is a truer way of seeing these things. Certainly, for example, the fact that God has given me life means that another person has no “right” to take it away. There will be some agreement, therefore, with the claim that life is a “human right”. However, when I see life as a gift from God, rather than simply a “right”, I am able to understand that the gift comes with the responsibility to use it in accordance with the purpose of the Giver. To understand a so-called “human right” as a gift from God is particularly helpful in addressing numerous problems that arise in the human rights debates (such as the relationship between rights and responsibilities, the difficulties of competing “rights”, and so on). Christians cannot afford to enter the debate simply on the terms set up by the secular conversation. The question, “What are the fundamental

rights of humans?” becomes for us, “What has God given each and every human being?” Christians are compelled to consider that question in the light of the gospel of Jesus Christ.

Christian expectations from the conversation

6. However, as Christians engage in this secular and political debate, we ought to do so recognizing, on the one hand, that the church of Jesus Christ does not expect to dominate the world in this age nor, on the other hand, are we to remove ourselves from the world. Certainly we are not to accommodate to the world and its values. Rather, we are to understand that the church is something new that emerges from within the world as God’s Spirit previews the new creation in the lives of Christian communities (Cf. 2 Cor. 5:17; Gal. 6:15). This is a point to which we will return, but we are to think and speak with the spiritual wisdom that comes through the message of Christ crucified – the gospel (1 Cor. 1:21ff.).

An approach to the issue

The purpose of this paper

7. This paper is intended to assist Christian people to understand the issues of “human rights” in the light of the gospel of our Lord Jesus Christ. It is not intended to produce a list of “rights”, nor does it seek to adjudicate the current debate concerning the merits (or otherwise) of introducing a national human rights charter for Australia. Its intention is to provide a biblical and theological framework for our thinking about any such proposals. This is essential if we are to engage in the wider conversation as Christian people, even though the manner of that engagement will itself call for careful wisdom.

The critical question

8. The heart of the matter can be reasonably summed up with a question suggested by the words quoted above from the 1948 United Nations Declaration –

“How should we understand ‘the inherent dignity’ and ‘inalienable rights of all members of the human family’?”

What follows is an attempt to answer this question, not in the secular terms in which it may have been asked, but in the light of the gospel.

The theological basis

The dignity of human beings is God’s gift

9. The “dignity” and “rights” of all human beings are the consequence of their being created by God and, in particular, created in his image and likeness (Gen. 1:26). Therefore, rather than simply and inexplicably being described as “inherent” and “inalienable”, the Christian will understand these things as God’s gifts, by which human beings participate and play a unique role in the goodness of creation

(Gen. 1:31). How then are we to understand the gift of God in the creation of humanity?

God's gift must be understood in relation to Jesus Christ

10. The Bible teaches us to understand the existence and purpose of all things in their relationship to Jesus Christ. He is the one through whom and for whom all things were created (Col. 1:16-17). "[F]or us there is one God, the Father, from whom are all things and for whom we exist and one Lord, Jesus Christ, through whom are all things and through whom we exist (1 Cor. 8:6). Jesus is the one "whom God made heir of all things, [the one] through whom he made the universe" (Heb. 1:2). Most famously, John described Christ Jesus as the Word who was "with God in the beginning. All things were made through him and without him was not any thing made that was made" (Jn. 1:2-3).

Jesus Christ is the one in whom all things are summed up

11. Remarkably in Christ Jesus, God the Son became a creature in his own creation. By the power of the Spirit, the Lord Jesus was "born of a woman, born under the law" (Gal. 4:4) and "born in the likeness of sinful flesh" (Rom. 8:3). Hence he shares in our flesh and blood (Heb. 2:14), dies our death and is raised bodily as "the last Adam", crowned with glory and honour (1 Cor. 15:45). This Christ is "the image of the invisible God" (Col. 1:15). The first Adam was therefore a "type" who foreshadowed this coming one (Rom. 5:14). As Luke tells us, Jesus was "the son of Adam" (Lk. 3:38). It is in Jesus that God's purpose for fellowship with his creation in general and human beings in particular is perfected or fulfilled. For "all things are summed up in him" (Eph. 1:10). This was always the Father's desire, for just as all things were created through the Lord Jesus Christ, so also are all things for him (Col. 1:16).

Jesus Christ's work restores the goodness of creation

12. The United Nations charter may well speak of the "dignity" of all members of the human family. The gospel of Jesus Christ, however, goes further. In the person of Jesus Christ God has displayed his "glory" (Jn. 1:14) and restored the "goodness" or "dignity" (Gen. 1:31) of creation and particularly humanity. This was accomplished in Jesus' sin bearing death on the cross. At the point of the Lord Jesus' greatest indignity ("shame" Heb. 12:2), we see the glory of God and the reordering of creation. The cross of Christ Jesus is the great crisis that serves as the backdrop of our description of human dignity. It stands as the ultimate act of barbarity between humans. Further, the conspiracy to murder the one through whom the world was made cannot but be the greatest act of "disregard and contempt" for all that is good. At the same time, in the Christian gospel we recognise and celebrate that the death of Jesus was also God's good and gracious gift. Christ died as the atoning sacrifice "for the sins of the world" (1 Jn. 2:2): both those committed directly against God's person and those

“barbarous acts” by which the dignity and “rights” of our fellow creatures have been violated. Christ submitted himself to the forces of envy, hatred and violence, which represent disregard and contempt for the inherent dignity of others made in God’s image as well as an assault upon their participation in his gifts of life and goodness. Yet while the cross remains the central moment of God’s actions in his relationship with creation, it is not the end. The risen and ascended Lord Jesus is always and eternally the mediator between God and creation, for in him all things hold together (Col. 1:17).

Jesus Christ is now head of a new humanity

13. God has freely chosen to bind himself to humanity forever in the Lord Jesus. By the blood of his cross, Christ has acted to reconcile all things to God (Col. 1:20). This reconciliation is realised in the experience of those who come to faith in Christ through the gospel that has been proclaimed in all creation (Col. 1:21-23). Christ is now the head of the new, reconciled humanity (Col. 1:18; 3:10). Out of his love, God, the Father of our Lord Jesus Christ, made all things to be united in his Son (Eph. 1:10; Col. 1:17). “When Christ who is [our] life appears, then [we] also will appear with him in glory” (Col. 3:4), and reign with him forever and ever (2 Tim. 2:12; Rev. 22:5). “Inherent dignity” and “inalienable rights” are hardly adequate expressions for the surpassing greatness of such gifts!

In Jesus we see the unique glory of human beings – the image of God

14. Jesus Christ, the image of God, reveals the unique glory of human beings. They alone were created in the likeness of the one through whom and for whom all things were made (Gen. 1:26-27; Col. 1:15-16). Human beings, male and female, were to be “the image of God” in their relationship to the rest of God’s creation (Gen. 1:28; 2:15), and in their relationship to God (Gen. 2:16-17).

In Jesus’ earthly life we see God’s purpose for human life fulfilled

15. God’s gift of human life is seen fully in the earthly life of Jesus. Jesus lived rightly with His heavenly Father: he based his life on the word of God, he refused to worship any other than God and he never presumed upon the promises of God (Lk.4:1-11). In Jesus we see whole-hearted love for God and neighbour (Mtt. 22:40).

The purpose of God’s gift is right relationships and participation in creation’s goodness

16. Since human life is God’s gift, perhaps it can therefore be called an inherent “right.” However, the attraction of the latter vocabulary (for some, at least) is that, unlike “gift,” it allows the Giver to be disregarded. To this extent it cannot provide an adequate understanding. Certainly the human life that God has given must not be taken away by any creature (Gen. 9:5-6). In this sense we might, again, refer to life as a basic human “right”. However, God has given

human life for the purposes of right relationship with him, and participation in the goodness of creation through right relations with others and with the whole creation (Gen. 1:28). To deny human beings such participation, or to impede it, is therefore a violation of their "right" to fulfil their God-given purpose. It is this thinking in the light of God's express purpose that will enable Christians to understand what "rights" human beings have.

The church as the body of Christ is the place where peace is established

17. When the gospel of God's peace is proclaimed, a new community (the church) emerges in the world of human relations that are otherwise distorted and frustrated by disregard and contempt. Instituted in the Lord Jesus and constituted by the Holy Spirit (Eph. 2:21-22), this new community is both an affirmation of the old creation's goodness and a promise of a new creation free from barbarous acts. God's gift of participation in the goodness of his creation and right relations with one another are seen in the many ways in which the Spirit enables Christians to serve one another and others (Gal. 6:10). One implication that we may draw from the New Testament's image of the body with many different members (1 Cor. 12:14-31) is that right relations between God and others occur when each has an opportunity to make a particular constructive contribution to the whole. The right relations we may observe in the body of Christ Jesus are the beginnings of the perfection of that which happens by God's providence in the rest of human society.

Jesus Christ came to restore God's gift to men and women

18. These actions in the body of Christ are a testimony to Jesus' mission to the world. He came "to preach the good news to the poor, to proclaim liberation to the captives, recovery of sight to the blind, to release the oppressed and to proclaim the Lord's favour" (Lk. 4:18-19; cf. Isa. 61). The Lord Jesus thus restored God's gift of life to those who had either abandoned it in sin (Lk. 7:35-50), lost it in death (Jn. 11:1-33) or been robbed of it by evil (Mk. 5:1-17). Jesus preached against racial discrimination (Lk. 10:30-35; cf. Lev. 19:33, 34) and used the power of God to bring healing to those considered outcasts (Mtt. 7:24-30; cf. Ex. 22:22). He also welcomed and extended God's mercy to the rejected and the marginalised (Lk. 15 passim). "The blind saw, the lame walked, those with skin diseases were healed, the deaf heard, the dead were raised, and the poor were told the good news" (Mtt. 11:5). All this was in anticipation of his ultimate act to restore human life to its fullness: his sin bearing death on the cross. Those who now are "in Christ" by faith are being renewed as a new humanity (Col. 3:10). Here Jew and Greek, male and female, slave and free have equal access to the Father (Eph. 2:11ff; cf. Gal. 3:28), and receive full rights as his adopted children (Rom. 8:15-17; Gal. 4:5-7).

God's children are to imitate Jesus Christ

19. The children of God are likewise called to imitate God, living a life of love which follows the pattern of Christ's self-sacrifice (Eph. 5:1-2). This will necessarily entail showing respect for the "rights" of others, no longer stealing, for instance, but working honestly, "so as to have something to share with the needy" (Eph. 4:28). Indeed commands to help and protect the weak, to honour and care for the poor, abound in the New Testament (e.g., Acts 20:35; Rom. 15:1; 1 Cor. 8:9; 1 Thess. 5:14; Jam. 1:27; Mtt. 19:21; Jam. 1:27). Christian people, then, are to imitate their Lord, of whom it was said: "A bruised reed he will not break, and a smoldering wick he will not quench; he will faithfully bring forth justice" (Isa. 42:3; cf. Mtt. 12:20). They are to show honour to all people and to do good to everyone (Rom. 12:10; 1 Pet. 2:17; Gal. 6:10). Even in regard to their enemies, they are not only called to eschew the path of vengeance, but to actively minister to their needs (Mtt. 5:43-48; Rom. 12:19-21).

God's judgment and role of governing authorities

20. The role of avenger ultimately belongs only to God—"Vengeance is mine, I will repay," says the Lord" (Deut. 32:35; Rom. 12:19; Heb. 10:30). He will judge the world in righteousness through Jesus Christ, when he comes again (Ps. 96:13; Acts 17:31; 2 Thess. 1:5-8). However, in this age, a measure of temporal judgment is also delegated to governing authorities, instituted by God to approve those who do good and to punish those who do evil (Rom. 13:1-7). It is, therefore, the role of government to protect the "rights" of the governed and to punish those who show "disregard and contempt" for such rights. To this end, God's children are to pray for the governing authorities, that they might "truly and impartially administer justice", so that we might lead "a peaceful and quiet life, godly and dignified in every way" (1 Tim. 2:2) and that the gospel of Jesus Christ may be proclaimed unhindered, that all may come to a saving knowledge of the truth (1 Tim. 2:4).

Conclusion

Rights and dignity are secular descriptions of what God has given human beings in creation and restored in Christ

21. The person and work of Jesus are therefore central to a Christian understanding of God's gift of human life, or (if you like) "the inherent dignity" and "inalienable rights of all members of the human family." These terms are secular descriptions of what God has given human beings in creation and restored in the person and work of Jesus: right relations with God, other human beings and the creation.

God-given relationships provide the best context for understanding rights

22. These right relations ought to shape the way we treat each other. It is only in the context of right relations that “rights” are properly understood. For example, the relationship between a buyer and a seller relies upon honesty and fair dealing and entails the recognition of a right of individual property and a freedom to make and be bound by agreements. Similarly, within a family the relationships between parents and children or husbands and wives entail their own set of responsibilities and corresponding “rights”. Fathers are not to provoke their children; children are to obey their parents. In this network of relationships there must be freedom to nurture a mature faith. Once again, being made to enjoy fellowship with God in the world that he created provides proper grounds for a right to religious expression free from coercion by the State. Yet in each of these examples, and the many others that could be cited, the inadequacy of the language of “rights” quickly becomes apparent.

Legislation cannot deal with the real problem, which is the human heart

23. Without underestimating the value and importance of legislation to protect and promote people’s rights, even the most carefully constructed human rights charter cannot deal with the root cause of dissension, exploitation, oppression and abuse. Although it may educate, encourage and restrain, it can only operate at what is ultimately an external level, with the actions which are the product of our human self-centredness. It is not able to change the human heart. And yet the Christian gospel makes clear that it is the heart hardened against God which generates harm towards others and the abuse of the our shared environment.

Christians share concern for the protection and nourishment of others, especially the most vulnerable

24. Understanding life and relationship as gifts of God and our responsibility to love our neighbour as ourselves gives us substantial common ground with those who advocate a “human rights framework” for Australia. We too are concerned for the vulnerable, the dispossessed and the marginalised. By the gift of his Spirit, Jesus enables us to follow his example in this regard. Therefore, it is not that the call for a human rights framework or charter seeks too much. Rather, it does not seek enough and, at best, can only achieve superficial and short-term solutions. This is not to impugn the value and importance of such a measure, but simply to acknowledge that it will never be the panacea for human evil, that some proponents might wish it to be.

Yet our ultimate hope is not in law but in the transforming power of the gospel of Christ

25. The gospel of Jesus Christ both calls on us to act in love now and to wait for that day when every injustice, cruelty and oppression will be undone. It reveals where the real problem lies and unmasks the futility of human attempts to deal with this problem apart from or without reference to God and his saving purposes. The promise of a new heavens and a new earth in which righteousness dwells is sure because of Christ's victory over the powers in heaven and on the earth that stood against us. However, in this world perfection will remain an object of hope, for which we humbly and patiently wait. On that day creation will be made anew without sin, death and evil (Rev. 21:1–6). The life of the church gives us a glimpse and an anticipation of the full experience of God's good gift. But this hope, which is anchored in the one who died and rose again to deal with all human sin, has profound consequences in the present. It will not allow us to be satisfied with symbolic actions or empty rhetoric. Nor will it condone inaction in the face of injustice. Instead it calls on us to love as we have been loved and to recognise in each other God's much loved creation.

For and on behalf of the Standing Committee.

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