Human rights versus biblical responsibility

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One positive aspect of British colonization was the spread of English law, in those days profoundly influenced by the Christian faith. Some judges even said that Christianity was part of the law.[1] Consequently, there was great respect for the law and many accepted God's moral authority as standing behind those 'traditional legal systems'. However, humanism (fuelled by Darwinism) has taken its toll. Today biblical principles are progressively rejected as governments and judges embrace a variety of theories, such as 'corporatization', 'competition theory', 'antidiscrimination', 'human rights', 'feminism', 'globalism', 'multiculturalism' and 'tolerance (of almost anything)'. In a very real sense, these humanistic alternatives are the new foundations of our legal systems, and with disturbing new consequences.

Biblical law

For the most part, biblical law consists of moral rules of universal application and religious rules exclusively for the Jewish people ('Jewish customs'). While Christians are not bound by Jewish customs, God's moral rules are as relevant today as they were 3,000 years ago. Like gravity, God's ethical law is a fundamental aspect of this world's operation and might well be called a 'creation principle', or as John Murray preferred, a 'creation ordinance'.[2] Just as Isaac Newton expounded on the character of God-ordained gravity, so the Torah teaches us God-ordained principles to govern our relationships. Indeed, God's law is primarily concerned with relationship, firstly with Him and secondly with others.

The idea of God's law being a form of teaching is embodied in the word 'Torah'. Although this Hebrew word is often used to mean 'biblical law' or 'legalism', it really means 'guidance, instruction and direction'.[3] While the Torah does contain many commands, rules and judgments, it nevertheless constitutes revelational guidance as to the role and place and purpose of human beings in the created order —guidance for all generations. Until Heaven and Earth disappear and all is fulfilled, God's ethical requirements remain unchanged.[4] Jesus did not come to abolish any part of God's moral law.[5]

To illustrate the structure of biblical law, I refer you to the following story of Kantiki, a fictional tropical paradise in the South West Pacific:

> 'After centuries of quiet isolation, the people of Kantiki were quick to embrace the new products of the industrialised world. But new products require new laws and the king soon declares the island's first road rule (1) "Everyone must drive in a manner considerate of others." The islanders are pleased with this brief and understandable road rule. However, before the week is out the tribal elders are advising the king of enormous congestion at the island's four major intersections. Apparently, everyone waits for others to go. After some study the king realizes that, in these right-hand vehicles, it is easier to see right than left. It seems the driver's left-hand vision is impaired by the rear vision mirror, large passengers, a sun visor, and the roof support strut. The king soon declares Road Rule (2) "At intersections, give way to the right." So, the driver with clear right-side vision looks out for the driver with impaired left-side vision. All seems well until reports of high speed accidents reach the tribal elders. Again the king studies the matter and learns all about human reaction times and car breaking characteristics. In due course the king declares Road Rule (3) imposing speed limits, and (4) requiring regular brake maintenance. By this ongoing process the king develops a comprehensive set of road rules, all based upon the application of Road Rule 1 to various facts and circumstances.'

So it is with biblical law. While the basic obligation to 'love your neighbour'[6] will never change, its practical application (and hence its written expression) will differ according to the context or environment. Biblical law then, has two major components, being (1) love (a duty to be caring and considerate of others), and (2) knowledge and truth. As for the duty component; it has always been God's intention that we '*treat others the way we would have them treat us*'[7] ('the 'good neighbour principle') and as for the truth component; the Apostle Paul affirms that in biblical law we have '*the embodiment of knowledge and truth*'.[8] Hence, the God-ordained method of law making is the expression of a personal duty of care in the light of objective truth. (As a simple formula: Law = Duty + Truth.)

Before we leave this topic, let us remember that God also requires His Law to be administered impartially[9] (free of bias), that justice be done[10]and mercy be shown.[11] Accepting biblical law as the appropriate basis for domestic law, we can now use these biblical principles (duty of care, truth, impartiality, justice and mercy) to assess an alternative based on human rights.

The international agenda

Over the last 50 years we have witnessed a growing acceptance of human rights to describe human actions, assess political decisions, unseat old laws and accept new ones. Although debate continues as to whether human rights validly exist, numerous countries and regional groups have now

adopted their own Charter or Bill of rights and freedoms.

The popularity of 'human rights' and the continuing push for their official recognition is no accident. It is part of an international agenda to have all peoples and nations recognizing and observing a list of human rights. This worldwide agenda was publicly aired on 10 December 1948 when the United Nation's General Assembly adopted the 'Universal Declaration of Human Rights'. According to that Universal Declaration, each U.N. member nation is to actively and progressively promote the concept of human rights and 'secure their universal and effective recognition and observance'[12]—which I take to mean their 'legal enforcement'. As a result we have passed through five decades of heavy international and governmental promotion, persuasion and, dare I say it, propaganda!

The stated purpose is to have human rights (and related laws) accepted as 'the common standard of achievement for … every individual and every organ of society'.[12] Each persuaded individual is then expected to further promote these human rights while 'keeping the Universal Declaration constantly in mind'.[12] Taken to its logical conclusion, you, your family, friends, business, church, local school and service club will be expected to join this evangelistic thrust and engage in the worldwide promotion of human rights. This truly is an international and government-sponsored belief system. Indeed, the Universal Declaration speaks of 'faith in … human rights'.[13]

Why human rights?

If we are to follow the U.N. initiative and adopt human rights as a personal aspiration and life goal, we need to understand the nature of these rights and the consequences of their observance.

Both biblical law and a traditional legal system operate on the premise that we are free to act as we choose except as otherwise proscribed by law. If that is so and freedom is our starting point, why do we need rights, and who took our freedom away that we must now approach governments for 'the right to live', 'the right to (freely) speak', 'the right to food', 'the right to seek information', 'the right to otherwise express oneself', 'the right to ___'? A 'rights based system' brings with it the inescapable conclusion that from now on our freedom is to be government-defined and government –authorized. If, then, our freedom and treatment under law is to depend on the adequacy of declared rights, we need to ensure the adequacy of the listed rights.

Most human rights and freedoms are very descriptive in character, and a Bill of Rights significantly constitutes a humanistic attempt by government to describe or define us and our attributes, such as 'life' (the right to live), 'death' (the right to die), 'speech' (the right to freely speak), 'memory' (the right to seek information), 'thinking' (the right to have your own opinion), etc. It doesn't matter whether the description is phrased as a 'right' or a 'freedom', the effect is the same. The question we need to raise is whether it is appropriate for governmen to treat us according to these rights. After all, government is an authority structure designed for our benefit. Mankind exists before, and independently of, government and it is we who define government, not vice versa! What happens when governments get it wrong and laws are based on false concepts of who we are? Is not the political process one of expediency and compromise? As to our design, the Bible is quite clear, we were created in God's image and according to His likeness. While our own actions have corrupted our human nature, we are not self-defining.

A traditional legal system does not put our identity at issue, for we are dealt with straightforwardly as men and women with duties and responsibilities to one another. However, under a rights-based system, the law imposes obligations concerning rights, not people! Consider physical assault. In a traditional system a government would declare it a crime for anyone to physically assault others and thereby impose obligation on potential assailants, being the source of the problem. However, in a fully developed rights-based system, the government would firstly attribute rights to potential victims (e.g. 'a right to be physically secure') and then impose a duty on others not to infringe those rights.

To the extent human rights are descriptive, they have no intrinsic ethical or moral content. For a mere description is not an ethic but is simply neutral or amoral in character. However, the absolute and unqualified language used to express some rights can lead to unusual consequences. In Canada, for instance, the courts have now held that a right to 'freedom of expression' includes peripheral rights to express: obscenity,[14] hate propaganda,[15] defamatory statements[16] and even to possess child pornography.[17] I have no doubt many Canadians were shocked to learn that expression of these activities is now enshrined in their legal system via 'The Charter of Rights and Freedoms'.

Whereas, in the United States of America, a 'right to privacy'[18] has been taken to include a right to have an abortion. Many Americans were shocked to learn their Supreme Court considers a right to abort is enshrined in the American Constitution. It will be interesting to see how the English courts deal with the recently adopted European Convention of Human Rights and Fundamental Freedoms.[19]

In my view the establishment of human rights does not solve any problems. In fact it will create new dilemmas as these widely drafted rights are conscripted to confront established social standards, cultural mores, codes of conduct, legal rights, moral or ethical boundaries, existing laws and even other human rights. Consider who will decide between a right to sustenance –v- a right of ownership; a right to free speech –v- defamation; a right to free association –v- a marital duty… etc. Consider also the inevitable bias in a situation when only one party has a right. Conflict and confrontation is so inevitable it may become the operational heart of a rights based system.

It is also worth noting that the duties and responsibilities of biblical and traditional law require us to regularly break from our self focus to consider the interest and welfare of others. In contrast, a 'human rights system' seems to support

a continuing focus on 'us' and 'our rights' and so accentuate self interest and self focus. It hardly needs repeating that a totally selfish existence has always been deplored and is of course inequitable, unbiblical and ultimately unworkable.

A Bill of Rights

To introduce human rights into a traditional legal system, a government will usually declare a Charter or Bill of Rights with a list of rights to become the standard against which laws may be assessed, accepted or rejected (as with Canada's Charter of Rights and Freedoms). Typically, the superior courts will be empowered to invalidate laws to the extent they infringe or conflict with the declared rights and freedoms.

The problem is that rights expressed in absolute, unqualified terms will regularly conflict with traditional laws. Consider the 'right to free expression', which theoretically covers anything we say or do. It is hard to imagine any traditional law it will not infringe. In fact this right has become a favourite for those who have run out of legal options. Rather than suffer the penalty for breaching a law, they apply to have the law invalidated as an infringement of their right to free expression. Consider the following variety of Canadian cases: In *R v Sharpe*[20] the accused claimed that part of a Criminal Code section 164.1 (prohibiting possession of child pornography) was void because it infringed a right to possess pornography included in his right to 'freedom of expression'. In *Institute of Edible Oils Foods v Ontario*[21] it was claimed that section 4 of the Oleomargarine Act 1980 regulating the colouring of margarine sold in Ontario, infringed the company's 'freedom of expression' etc. In *Andrews v Ontario (Minister of Health)*,[22] a declaration was sought that 'spouse' should include a homosexual partner based on 'equality rights'. In *Smith Kline & French Laboratories Ltd* et al *v A-G of Canada*,[23] the Plaintiff sought a declaration that a section of Canada's Patent Act was inoperative or invalid as contrary to the 'right to enjoy property'. In *Skalbania v Wedgewood Village Estates Ltd*,[24] it was claimed a section of the Bankruptcy Act infringed the 'right to enjoy property'. In Smith v The Queen[25] the accused claimed the 7 year minimum sentence for importing narcotics (per s.5(2) of the Narcotics Control Act), contravened his right not to be subjected to 'cruel and unusual treatment or punishment' (etc). While in R v Higgins[26] the respondents, each charged with indictable offences, claimed that fingerprinting required under the Identification of Criminals Act contravened their 'right to life liberty and security of person' (etc).

As the Premier of New South Wales (Australia) observed:

> 'A quick look at the law reports of Canada and New Zealand will show the extensive use of their respective bills of rights in litigation. It will show that the primary use of a bill of rights is in relation to criminal appeals. … [In New Zealand] the Bill of Rights continues to be routinely used as a ground for attempting to overturn the admissibility of evidence, including confessions, evidence obtained under search warrants and breath testing of drunk drivers. It gives the lawyers a new source of technicalities to allow the guilty (including those who have confessed or were found with large quantities of drugs in their possession) to go free. Bills of rights are notorious for being the last ground of the desperate in litigation. … . The main beneficiaries of a Bill of Rights are the lawyers who profit from the legal fees that it generates and the criminals who escape imprisonment on the grounds of a technicality.'[27]

New judicial role

Traditionally, the courts have been concerned with the impartial administration of law. Normally, a court faces issues like 'Was the defendant negligent?' or 'Did the defendant trespass on the plaintiff's property?' or 'Did the defendant breach the relevant contract?' or 'Did the accused commit the crime? Judges are concerned with the application of a specific law or legal principles to a particular circumstance, with strict rules governing the admission of evidence. Because these questions are usually answerable by reference to the available evidence, there is limited opportunity for the judge to superimpose their personal opinion, philosophy or agenda. The biblical requirement of impartial judgment is a fundamental pillar of a traditional legal system.

With a Bill of Rights, decisions have to be made between rights and laws, or rights and rights, or rights and cultural practices, and as Antonio Lamer noted, 'There are societal choices to make that involve political assessments [and] moral assessments that lawyers are not especially trained to make.'[28] Indeed, I would go further and argue that judges are being asked to make national policy decisions, all within the confines of a particular court case. A policy decision that is better left with Parliament. In a constitutional democracy, it is not the judiciary but elected parliamentarians who are properly vested with authority to make national policy. They have access to significant resources, such as departmental reports, expert advice, academic research, public forums, submissions from interest groups, polls, etc. As a former Chief Justice observed,

> 'a fundamental objection to a Bill of Rights is that

it is undemocratic, as it transfers the right to make policy decision from elected parliaments to unelected judges. No fundamental right is absolute. All must be subject to limitations and the question is who should decide what the limits should be.'[29]

This judicial power to invalidate established law is given with few guidelines or limitations. Under the Canadian Charter, the principal guideline seems to be Article 1, referring to things 'reasonable' and 'justifiable in a free and democratic society'. Curiously, if the reference point is a 'free and democratic society', I cannot imagine anything more justifiable than a statute that was introduced, debated and passed by a duly elected and representative Parliament!

Unfortunately, the shift towards a Bill of Rights approach brings with it the increased possibility of judicial bias opening the way for a politicized judiciary. Without adequate guidelines, there is a danger the judges will determine matters according to (i) their personal belief or bias, or (ii) their view of what is then socially acceptable (which is difficult to determine in a multicultural society!). If judges decide according to bias, we'll soon have 'rule by opinion' not 'rule according to law'. Alternately, if they decide by reference to socially accepted behaviour, we'd all better conform and 'keep up with the Jones (or the Ngs or the Schmits)'. Needless to say, neither approach is biblical.

Conclusion

This article is not deriding the efforts or the ideals of human rights activists, who strive to eradicate false imprisonment, torture, violence and other atrocities. These are commendable pursuits. Rather, I question the benefit of introducing a Bill of Rights into an established legal system. I am concerned at the destructive interplay between law and rights and the inappropriate use of judges as national policy makers. If the matter becomes extreme, we may find that judges will become our social engineers.

I agree with William Blackstone's comment that 'Man, considered a creature must necessarily be subject to the laws of his Creator, for he is entirely a dependent being.'[30] Likewise, I believe God's moral precepts should be the template for our own laws. Unfortunately, a legal system based on human rights is contrary to biblical principles and precepts.

According to the biblical legal model, we start with freedom and establish laws to constrain the full expression of man's corrupted nature. Our freedom is limited by law. However, a Bill of Rights model establishes broad rights and freedoms to limit and constrain laws. So widely drafted are these rights and freedoms that almost any law will infringe them and so enable their potential invalidation. In a declining society with a decadent judiciary, a Bill of Rights could pave the way to anarchy and lawlessness.

Curiously, while human rights can be set up to invalidate national laws, the United Nations has quarantined itself from such difficulty. In Article 29(3) of the Universal Declaration it states: 'These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations'. While lifting up rights and freedoms as the 'common standard' for all mankind, the United Nations would nevertheless hold itself above that standard. One rule for peoples and nations, another for the United Nations.

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