

111. RHR

Draft

Published in *The Encyclopedia of Christianity* (Grand Rapids/Cambridge/ Leiden/Boston: Wm. B. Eerdmans Publishing Co. and Brill, 2005), vol. 4, 701-709

Rights

John Witte, Jr.

Abstract

This Article provides a brief analysis of the main stages of Western theories of rights and liberties: (1) classic Roman views of objective and subjective rights and liberties; (2) medieval Catholic views of rights and liberties rooted in natural law and corporate charters; (3) early modern Protestant views of rights and liberties rooted in biblical commands and natural orders; (4) modern Enlightenment views grounded in human nature and social contracts, and reflected in constitutional texts and cases; and (5) the proliferation and diversification of universal rights talk in the aftermath of World War II.

Keywords: Rights, western tradition, liberties, natural law, human nature, universal rights

Introduction

Rights are so commonplace today that the term is in danger of becoming cliché. Rights talk has become a dominant mode of political, legal, and moral discourse in the West, and rights protections and violations have become increasingly important issues in international relations and diplomacy. Most states now have detailed bills or recitations of rights in their constitutions, statutes, and cases. The United Nations and various other groups of nation-states have detailed catalogues of rights set out in treaties, declarations, conventions, and covenants. Many Christian denominations and ecumenical groups, alongside other religious groups, have their own declarations and statements on rights as well. Thousands of governmental, intergovernmental, and non-governmental organizations are now dedicated to the defense of rights around the world, including a large number of Christian and other religious lobbying and litigation groups.

Various classes of rights are commonly distinguished. One common distinction is between public or constitutional rights (those which operate vis-à-vis the state) and private or personal rights (those which operate vis-à-vis other private parties). A second distinction is between human rights (those that inhere in a human *qua* human) and civil rights (those that inhere in citizens or civil subjects). A third is between natural rights (those that are based on natural law or human nature) and positive rights (those that are based in the positive law of the state). A fourth is between individual rights and the rights of associations or groups (whether private, like businesses or churches, or public, like municipalities or political parties). A fifth is between unalienable or nonderogable rights (those that cannot be given or taken away) and alienable or derogable rights (those that can be voluntarily given away or can be taken away under specified legal conditions). Increasingly today, distinctions are also drawn among the discrete claims of particular parties and groups that have historically not received adequate rights protection -- women, children, workers, migrants, minorities, prisoners, captives, indigenous peoples, religious parties, the mentally and physically handicapped, and more. And distinctions are also increasingly drawn among “first generation” civil and political rights, “second generation” social, cultural, and economic rights, and “third generation” rights to peace, environmental protection, and orderly development.

Different types of legal claims and jural relationships are inherent in these classifications of rights. Some scholars distinguish rights (something that triggers a correlative duty in others) from privileges (something that no one has a right to interfere with). Others distinguish active rights (the power or capacity to do or assert something oneself) and passive rights (the entitlement or claim to be given or allowed something by someone or something else). Others distinguish rights or privileges (claims or entitlements to something) from liberties or immunities (freedoms or protections from interference). This latter distinction is also sometimes rendered as positive freedom (the right to do something) versus negative freedom (the right to be left alone).

In all these foregoing formulations, the term “right” and its equivalents is being used in a “subjective sense” – what is called a “subjective right.” The right is vested in a subject (whether an individual, group, or entity), and the subject can have that right vindicated before an appropriate authority when the right is threatened or violated. This subjective sense of right is quite different from right in an “objective sense” – what is called an “objective right.” “Objective right” (or “rightness”) means that something is the objectively right thing or action in the circumstances. Objective right obtains when something is rightly ordered, is just, is considered to be right when judged against some objective or external standard. “Right” is here being used as an adjective, not as a noun: It is what is correct or proper -- “due and meet” as the Book of Common Prayer put it.

These subjective and objective senses of right can cohere, even overlap. You can say that “a victim of theft has a right to have his property restored” or that “it is right for a victim of theft to have his property restored.” Knowing nothing else, these are parallel statements. But if the victim is a ruthless tycoon and the thief a starving child, the parallel is harder to draw: Even though the subject (tycoon) has a right, it might not be objectively

right to respect or enforce it. Sometimes the subjective and objective senses of right are more clearly dissociated: Even if it is objectively right for someone to perform an action, it does not always mean the beneficiary of that action has a subjective right to its performance. Though it might be right for you to give alms to the poor, a poor person has no right to receive alms from you. Though it is right for a parishioner to give tithes to the church, a church has no right to receive tithes from that parishioner.

This basic tension between the subjective and objective senses of the English term “right” has parallels in other languages. *Recht* in German, *droit* in French, *diritto* in Italian, *ius* in Latin, all can be used in both subjective and objective senses – and sometimes in other senses as well. And, just like English, each of these languages has developed their own terms for privileges, immunities, powers, capacities, freedoms, liberties, and more, which are used to sort out various types of rights.

These linguistic tensions and tangles of our rights talk today are products of a two-millennium-long evolution in West. The intellectual history of Western rights talk is still very much a work in progress, with scholars still discovering and disputing in earnest the basic roots and routes of the development of rights concepts and structures. What follows is a brief sampling of some of the highlights of this still highly contested story.

Classical Formulations. The classic Roman jurists of the first centuries, c.e. used the ancient Latin term “*ius*” to identify right in both its objective and subjective senses. (*Ius* also meant law or legal order more generally). The objective sense of *ius* – to be in proper order, to perform what is right and required, to give to each his due (*ius suum cuiusque tribuere*) – dominated their texts. But the Roman law texts also sometimes used *ius* subjectively, in the sense of a person “having a right” (*ius habere*). Many of the subjective rights recognized at Roman law involved property: the right to own or co-own property, the right to possess, lease, or use property, the right to build or prevent building on land, the right to gain access to water, the right to be free from interference or invasion of one’s property, the right or capacity to alienate property, the right to bury one’s dead, and more. Several texts dealt with personal rights: the rights of testators and heirs, the rights of patrons and guardians, the rights of fathers over children, masters over slaves, mothers over orphaned children and their affairs. Other texts dealt with public rights: the right of an official to punish or deal with his subjects in a certain way, the right to delegate power, the right to appoint and supervise officials. Others dealt with procedural rights in criminal and civil cases. Charles Donahue has recently identified 191 texts on subjective rights in the *Digest* alone (one of the four books of Justinian’s *Corpus Iuris Civilis*) and speculates that hundreds if not thousands more such texts can be found in other books of Roman law.

The classical Roman law also referred to subjective rights using the Latin term *libertas*, which roughly translates as liberty. One’s *libertas* at Roman law turned in part on one’s status in Roman society: Men had more *libertas* than women, married women more than concubines, adults more than children, free persons more than slaves, and so on. But each person at Roman law had a basic *libertas* inherent in his or her social status.

This included a basic right to be free from subjection or undue restraint from others who had no rights (*iura*) or claim (*dominium*) over them. Thus the wife had *libertas* from sexual relations with all others besides her husband. The child had *libertas* from the direction of all others save the *paterfamilias* or his delegates. Even the slave had *libertas* from the discipline of others besides his or her master. And those rights could be vindicated by filing actions before a judge, directly or through a representative.

Some *libertas* interests recognized at Roman law were cast more generally, and not necessarily conditioned on the correlative rights or duties of others. A good example was the freedom of religion guaranteed to Christians and others under the Edict of Milan (313) passed by Emperor Constantine. This included “the freedom (*libertas*) to follow whatever religion each one wished”; “a public and free liberty to practice their religion or cult”; and a “free permission (*facultas*) to follow their own religion and worship as befits the peacefulness of our times.”

Echoes of both *ius* and *libertas* recurred occasionally in later Frankish and Anglo-Saxon texts. In fact, in a few late ninth and tenth century Anglo-Saxon texts, these terms were variously translated as “ryhtes,” “rihtes,” and “rihta(e)” (O.E.D., s.v. “right”). The careful Roman law differentiation of objective and subjective senses of right, however, seems to have been lost in the last centuries of the first millennium c.e. – though a systematic study of the possible rights talk of the Germanic texts of this period is apparently still a desideratum. And what is also apparently still needed is a close study (in a Romance language) of the possible rights talk of Muslim and Jewish scholars in this same period. After all both these groups of scholars had access to the ancient Roman law texts that were lost in the West after the sixth century, and both worked out a refined theological jurisprudence in the eighth through tenth centuries, c.e.

Medieval Formulations. The rediscovery of the ancient texts of Roman law in the late eleventh century helped to trigger a renaissance of subjective rights talk in the West. Brian Tierney has shown that, already in the twelfth century, medieval canonists differentiated all manner of rights (*iura*) and liberties (*libertates*). They grounded these rights and liberties in the law of nature (*lex naturae*) or natural law (*ius naturale*), and associated them variously with a power (*facultas*) inhering in rational human nature and with the property (*dominium*) of a person or the power (*potestas*) of an office of authority (*officium*). The early canonists repeated and glossed many of the subjective rights and liberties set out in the Roman law – especially the public rights and powers of rulers, the private rights and liberties of property, and what Gratian in ca. 1140 called the “rights of liberty” (*iura libertatis*) that persons in different stations of life and offices of authority must enjoy. They also began to weave these early Roman law texts into a whole complex latticework of what we now call rights, freedoms, powers, immunities, protections, and capacities for different groups and persons.

Most important to the medieval canonists were the rights needed to protect the “freedom of the church” (*libertas ecclesiae*). “Freedom of the Church” from civil and feudal control and corruption had been the rallying cry of Pope Gregory VII (1073-1085),

which had inaugurated the Papal Revolution of 1075. In defense of this revolution, medieval canonists specified in great detail the rights of the church to make its own laws, to maintain its own courts, to define its own doctrines and liturgies, to elect and remove its own clergy. They also stipulated the exemptions of church property from civil taxation and takings, and the right of the clergy to control and use church property without interference or encumbrance from secular or feudal authorities. They also guaranteed the immunity of the clergy from civil prosecution, military service, and compulsory testimony, and the rights of smaller church entities like parishes, monasteries, charities, and guilds to form and dissolve, to accept and reject members, and to establish order and discipline. In later twelfth- and thirteenth-century decrees, the canon law defined the rights of church councils and synods to participate in the election and discipline of bishops, abbots, and other clergy. It defined the rights of the lower clergy vis-à-vis their superiors. It defined the rights of the laity to worship, evangelize, maintain religious symbols, participate in the sacraments, travel on religious pilgrimages, and educate their children. It defined the rights of the poor, widows, and needy to seek solace, succor, and sanctuary within the Church. It even defined the (truncated) rights that Jews, Muslims, and heretics had in Christian society.

These medieval canon law rights were enforced by a hierarchy of church courts and other administrative offices, each with distinctive rules of litigation, evidence, and judgment, and with ultimate appeal to Rome. These rights formulations were rendered increasingly sophisticated and systematic in the fourteenth through sixteenth centuries through the work of such scholars as William of Ockham, John Wycliff, Conrad Summenhart, Richard Fitzralph, Jean Gerson, Francisco Vitoria, Fernando Vázquez, Francisco Suarez, and others. Particularly the formulations of William of Ockham in the fourteenth century and the Spanish neo-scholastic jurists of the sixteenth century were of monumental importance to the evolution and expansion of Western rights talk. They provided a good deal of the intellectual arsenal for the later rights theories of Johannes Althusius, Hugo Grotius, Samuel von Pufendorf, and others.

The medieval canon law formulations of rights and liberties had parallels in medieval secular law. Particularly notable sources were the literally thousands of treaties, concordats, and charters that were issued from the eleventh to the sixteenth centuries by various religious and secular authorities. These were often detailed, and sometimes very flowery, statements of the rights and liberties to be enjoyed by various groups of clergy, nobles, barons, knights, municipal councils, citizens, universities, monasteries, and other corporate entities. A good example was the Magna Carta (1215), the great charter issued by the English Crown at the behest of the church and barons of England. The Magna Carta guaranteed that “the Church of England shall be free (*libera*) and shall have all her whole rights [*iura*] and liberties [*libertates*] inviolable” and that all “free-men” [*liberis hominibus*] were to enjoy their various “liberties” [*libertates*]. These liberties included sundry rights to property, marriage, and inheritance, to freedom from undue military service, and to freedom to pay one’s debts and taxes from the property of one’s own choosing. The Magna Carta also set out various rights and powers of towns and of local

justices and their tribunals, various rights and prerogatives of the king and of the royal courts, and various procedural rights in these courts (including the right to jury trial).

These medieval charters of rights became important prototypes on which fifteenth and sixteenth century revolutionaries would later call to justify their revolt against arbitrary authorities. A good example of this was the Dutch Declaration of Independence of 1581, by which the estates of the Netherlands justified their revolt against Spanish religious and political tyranny on the strength of “the law of nature” and of the “ancient rights, privileges, and liberties” set out in their medieval charters.

Protestant Reformation. The sixteenth-century Protestant Reformation grounded its revolt not on ancient charters of rights but on biblical calls for freedom. Particularly the New Testament was amply peppered with all manner of aphorisms on freedom: “For freedom, Christ has set us free.” “You were called to freedom.” “Where the Spirit of the Lord is, there is freedom.” “You will know the truth, and the truth will make you free.” “You will be free indeed.” You have been given “the glorious liberty of the children of God” (Gal. 5:1,13; 2 Cor 3:17; John 8:32,36; Romans 8:21). These and other biblical passages inspired Martin Luther to unleash the Reformation in Germany in 1517 in the name of freedom (*libertas, Freiheit*) -- freedom of the church from the tyranny of the pope, freedom of the laity from the hegemony of the clergy, freedom of the conscience from the strictures of canon law. “Freedom of the Christian” was the rallying cry of the early Protestant Reformation. It drove theologians and jurists, clergy and laity, princes and peasants alike to denounce the medieval church authorities and legal structures with unprecedented alacrity. The church’s canon law books were burned. Church courts were closed. Monastic institutions were confiscated. Endowed benefices were dissolved. Church lands were seized. Clerical privileges were stripped. Mendicant begging was banned. Mandatory celibacy was suspended. Indulgence trafficking was condemned. Annates to Rome were outlawed. Ties to the pope were severed. Each nation, each church, and each Christian was to be free.

Left in such raw and radical form, this early Protestant call for freedom was a recipe for lawlessness and license, as Luther learned the hard way during the Peasants’ Revolt of 1525. Luther and other Protestants soon came to realize that structures of law and authority were essential to protecting order and peace, even as guarantees of liberties and rights were essential to preserving the message and momentum of the Reformation. The challenge for Protestants was to strike new balances between authority and liberty on the strength of cardinal biblical teachings.

One important Protestant contribution to Western rights talk, offered by Philip Melancthon, John Calvin, and others, was to comb through the Bible in order to redefine the nature and authority of the family, the church, and the state vis-à-vis each other and their constituents. The Reformers regarded these three institutions as fundamental orders of creation, equal before God and each other, and vested with certain natural duties and qualities that the other authorities could not trespass. To define these respective offices clearly not only served to check the natural appetite of the *paterfamilias, patertheologicus,*

and *paterpoliticus* for tyranny and abuse. It also helped to clarify the liberties of those subject to their authority, and to specify the grounds on which they could protest or disobey.

A second contribution was the Reformers' habit of grounding rights in the duties of the Decalogue and of other biblical texts. The First Table of the Decalogue prescribes duties of love that each person owes to God -- to honor God and God's name, to observe the Sabbath day and to worship, to avoid false gods and false swearing. The Second Table prescribes duties of love that each person owes to neighbors -- to honor one's parents and other authorities, not to kill, not to commit adultery, not to steal, not to bear false witness, not to covet. The Reformers cast the person's duties toward God as a set of rights that others could not obstruct -- the right to religious exercise: the right to honor God and God's name, the right to rest and worship on one's Sabbath, the right to be free from false gods and false oaths. They cast a person's duties towards a neighbor, in turn, as the neighbor's right to have that duty discharged. One person's duties not to kill, to commit adultery, to steal, or to bear false witness thus gives rise to another person's rights to life, property, fidelity, and reputation.

A third contribution was the effort of later Protestants to unpack the political implications of the signature Reformation teaching that a person is at once sinner and saint (*simul justus et peccatur*). On the one hand, Protestants argued, every person is created in the image of God and justified by faith in God. Every person is called to a distinct vocation, which stands equal in dignity and sanctity to all others. Every person is a prophet, priest and king, and responsible to exhort, to minister, and to rule in the community. Every person thus stands equal before God and before his or her neighbor. Every person is vested with a natural liberty to live, to believe, to love and serve God and neighbor. Every person is entitled to the vernacular Scripture, to education, to work in a vocation. On the other hand, Protestants argued, every person is sinful and prone to evil and egoism. Every person needs the restraint of the law to deter him from evil, and to drive him to repentance. Every person needs the association of others to exhort, minister, and rule her with law and with love. Every person, therefore, is inherently a communal creature. Every person belongs to a family, a church, a political community.

By the later sixteenth century, Protestant groups began to recast these theological doctrines into democratic norms and forms designed to protect rights. Protestant doctrines of the person and society were cast into democratic social forms. Since all persons stand equal before God, they must stand equal before God's political agents in the state. Since God has vested all persons with natural liberties of life and belief, the state must ensure them of similar civil liberties. Since God has called all persons to be prophets, priests, and kings, the state must protect their constitutional freedoms to speak, to preach, and to rule in the community. Since God has created persons as social creatures, the state must promote and protect a plurality of social institutions, particularly the church and the family. Protestant doctrines of sin, in turn, were cast into democratic political forms. The political office must be protected against the sinfulness of the political official. Political power, like ecclesiastical power, must be distributed among self-checking

executive, legislative, and judicial branches. Officials must be elected to limited terms of office. Laws must be clearly codified, and discretion closely guarded. If officials abuse their office, they must be disobeyed. If they persist in their abuse, they must be removed, even if by revolutionary force and regicide.

These Protestant teachings were among the driving ideological forces behind the revolts of the French Huguenots, Dutch Pietists, and Scottish Presbyterians against their monarchical oppressors in the later sixteenth and seventeenth centuries. They were also critical weapons in the arsenal of the seventeenth-century English revolutionaries, whose efforts yielded the Petition of Right (1628) and the Bill of Rights (1689). Both these documents set firm limits on royal authority and prescribed rules for royal succession and Parliamentary election in England. The Bill of Rights went further in guaranteeing English citizens various “undoubted rights and liberties” -- the rights to speech, petition, and election, the right to bear arms, and various criminal procedural protections (right to jury trial, freedom from excessive bail and fines and from cruel and unusual punishment). These were important public law rights that were added to the growing body of private law rights already recognized by the common law and civil law.

Enlightenment. While medieval canonists grounded rights in natural law and ancient charters, and while Protestant Reformers grounded them in biblical texts and theological anthropology, Enlightenment writers in Europe and North America grounded rights in human nature and the social contract. Building in part on ancient Stoic ideas, John Locke, Thomas Hobbes, Jean Jacques Rousseau, Thomas Jefferson and others argued for a new foundation of rights and political order. Every individual, they argued, was created, or was by nature, equal in virtue and dignity, and vested with inherent and unalienable rights of life, liberty, and property. Each person was naturally capable of choosing his or her own means and measures of happiness without necessary external reference or commandment. In their natural state, the state of nature, all persons were free to exercise their natural rights fully. But life in this state of nature was at minimum “inconvenient,” as Locke put it -- if not “brutish, nasty, and short,” as Hobbes put it. For there was no means to balance and broker disputes between one person’s rights against all others, no incentive to invest or create property or conclude contracts when one’s title was not sure, no mechanism for dealing with the needs of children, the weak, the disabled, the vulnerable. As a consequence, rational persons choose to move from the state of nature to a society. They did so by entering into social contracts and ratifying constitutions to govern their newly created societies. By these instruments, persons agreed to sacrifice or limit some of their natural rights for the sake of creating a measure of social order and peace. They also agreed to delegate their natural rights to self-rule to elected officials who would represent and exercise executive, legislative, and judicial authority on their behalf. But, at the same time, these social contracts and political constitutions insisted on the protection of various “inalienable” rights that were to enjoy, and the specification of the conditions of “due process of law” under which “alienable” rights could be abridged or taken away. And they also insisted in the right to elect and change their representatives in government, and to be tried in all cases by their peers.

Particularly the American and French constitutions reflected these new Enlightenment views. The Virginia Declaration of Rights (1776), for example, provided in Article I: "That all men are by nature equally free and independent, and have certain inherent rights, of which, when they enter into a state of society, they cannot, by any compact, deprive or divest their posterity; namely, the enjoyment of life and liberty, with the means of acquiring and possessing property, and pursuing and obtaining happiness and safety." The Declaration went on to specify the rights of the people to vote and to run for office, their "indubitable, unalienable, and indefeasible right to reform, alter or abolish" their government if necessary, various traditional criminal procedural protections, the right to jury trial in civil and criminal cases, freedom of press, and various freedoms of religion. But the Declaration also reflected traditional Christian sentiments in providing that "no free government, or the blessings of liberty, can be preserved to any people but by a firm adherence to justice, moderation, temperance, frugality, and virtue and by frequent recurrence to fundamental principles," and further by insisting that it was "the mutual duty of all to practice Christian forbearance, love, and charity towards each other." Even stronger such traditional Christian formulations stood alongside the new Enlightenment views in the 1780 Massachusetts Constitution.

The Bill of Rights of 1789, which amended the United States Constitution of 1787, was more forceful in its articulation of basic Enlightenment sentiments on rights. While the Constitution spoke generically of the "blessings of liberty" and specified a few discrete "privileges and immunities," it was left to the Bill of Rights to enumerate the rights of American citizens. The Bill of Rights guaranteed the freedoms of religion, speech, assembly, and press, the right to bear arms, the freedom from forced quartering of soldiers, freedom from illegal searches and seizures, various criminal procedural protections (the right to grand jury indictment and trial by jury, the right to a fair and speedy trial, the right to face accusers and have them compelled to appear, freedom from double jeopardy, the privilege against self incrimination, freedom from excessive bail and cruel and unusual punishment), the right to jury trial in civil cases, the guarantee not to be deprived of life, liberty, or property without due process of law, and the right not to have property taken for public use without just compensation. This original Bill of Rights was later augmented by several other amendments, the most important of which were the right to be free from slavery and involuntary servitude, the right to equal protection under the law, and the right for all adults, male and female, to vote.

The French Declaration of the Rights of Man and Citizen (1791) enumerated various "natural, unalienable, and sacred rights," including liberty, property, security, and resistance to oppression, "the freedom to do everything which injures no one else," the right to participate in the foundation and formulation of law, a guarantee that all citizens are equal before the law and equally eligible to all dignities and to all public positions and occupations, according to their abilities. The Declaration also included basic criminal procedure protections, freedom of (religious) opinions, freedoms of speech and press, and rights to property. Both the French and American constitutions and declarations were essential prototypes for a whole raft of constitutional and international documents on rights that were forged in the next century.

Modern Age. While these Enlightenment foundations and formulations of rights have remained prominent among some theorists, a concept of universal rights predicated on "human dignity" has become increasingly common today. In the mid-twentieth century, the world stared in horror into Hitler's death camps and Stalin's gulags where all sense of humanity and dignity had been brutally sacrificed. In response, the world had seized anew on the ancient concept of human dignity, claiming this as the "ur-principle" of a new world order. The Universal Declaration of Human Rights of 1948 opened its preamble with what would become classic words: "recognition in 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."

The United Nations and several nation-states issued a number of landmark documents on human rights thereafter. Foremost among these were the two great international covenants promulgated by the United Nations in 1966. Both these covenants took as their starting point the "inherent dignity" and "the equal and inalienable rights of all members of the human family," and the belief that all such "rights derive from the inherent dignity of the human person." The International Covenant on Economic, Social, and Cultural Rights (1966) posed as essential to human dignity the rights to self-determination, subsistence, work, welfare, security, education, and various other forms of participation in cultural life. The International Covenant on Civil and Political Rights (1966) set out a long catalogue of rights to life and to security of person and property, freedom from slavery and cruelty, basic civil and criminal procedural protections, rights to travel and pilgrimage, freedoms of religion, expression, and assembly, rights to marriage and family life, and freedom from discrimination on grounds of race, color, sex, language, and national origin. A number of other international and domestic instruments took particular aim at racial, religious, and gender discrimination in education, employment, social welfare programs, and other forms and forums of public life, and the protection of children, migrants, workers, and indigenous peoples. Later instruments, like the 1981 UN Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief and the 1989 Vienna Concluding Documents, provided important foundations for the protection of religious rights for individuals and groups, though religious rights protections at international law remain surprisingly underdeveloped.

Christian and Jewish communities participated actively as midwives in the birth of this modern rights movement. Individual religious groups issued bold confessional statements and manifestoes on human rights shortly after World War II. Several denominations and budding ecumenical bodies joined with Jewish non-governmental organizations in the cultivation of human rights at the international level. The Free Church tradition played a critical role in the civil rights movement in America and beyond, as did the Social Gospel and Christian Democratic movements in Europe and Latin America.

Various Christian groups also provided an active nursery for the cultivation of new global understandings of human rights predicated on human dignity. In *Dignitatis Humanae* and several other documents produced during and after the Second Vatican Council (1962-1965), the Roman Catholic Church took some of the decisive first steps,

reversing earlier statements like the 1864 Syllabus of Errors that had stood foursquare against human rights. Every person, the Catholic Church now taught, is created by God with "dignity, intelligence and free will ... and has rights flowing directly and simultaneously from his very nature." Such rights include the right to life and adequate standards of living, to moral and cultural values, to religious activities, to assembly and association, to marriage and family life, and to various social, political, and economic benefits and opportunities. The Church emphasized the religious rights of conscience, worship, assembly, and education, calling them the "first rights" of any civic order. The Church also stressed the need to balance individual and associational rights, particularly those involving the church, family, and school. Governments everywhere were encouraged to create conditions conducive to the realization and protection of these inviolable rights and encouraged to root out discrimination, whether social or cultural, whether based on sex, race, color, social distinction, language, or religion. Within a decade, various Ecumenical groups, some Protestants, and even a few Orthodox Christian groups crafted comparable comprehensive declarations on human rights, albeit with varying emphasis on the concept of human dignity.

Today, the concept of human dignity has become ubiquitous to the point of cliché -- a moral trump frayed by heavy use, a general principle harried by constant invocation. We now read regularly of the dignity of luxury, pleasure, and leisure; the dignity of poverty, pain, and imprisonment; the dignity of identity, belonging, and difference; the dignity of ethnic, cultural, and linguistic purity; the dignity of sex, gender, and sexual preference; the dignity of aging, dying, and death. At the same time, the corpus of human rights has become swollen to the point of eruption -- with many recent rights claims no longer anchored in universal norms of human dignity but aired as special aspirations of an individual or a group. We now hear regularly of the rights to peace, health, and beauty; the right to rest, holidays, and workbreaks; the right to work, development and economic expansion; the right to abortion, suicide, and death.

On the one hand, the current ubiquity of the principle of human dignity testifies to its universality. And the constant proliferation of human rights precepts speaks to their power to inspire new hope for many desperate persons and peoples around the world. Moreover, the increased pervasiveness of these norms is partly a function of emerging globalization. Since the first international documents on human dignity and human rights were issued in the mid-twentieth century, many new voices and values have joined the global dialogue -- especially those from Africa, Asia, and Latin America, and from various Buddhist, Confucian, Hindu, Islamic, and Traditional communities. It is simple ignorance to assume that the first international documents were truly universal statements on human dignity and human rights. The views of Christians, Jews, and Enlightenment exponents dominated them. And it is simple arrogance to assume that the 1940s through 1960s were the golden age of human dignity and human rights. Such theological and legal constructions are in need of constant reformation. The recent challenges of the South and the East to the prevailing Western paradigm of human dignity and human rights might well be salutary.

On the other hand, the very ubiquity of the principle of human dignity today threatens its claims to universality. And the very proliferation of new human rights threatens their long-term effectiveness for doing good. Human dignity needs to be assigned some limits if it is to remain a sturdy foundation for the edifice of human rights. Human rights need to be founded firmly on human dignity and other moral principles lest they devolve into a gaggle of wishes and wants. Fairness commands as broad a definition of human dignity as possible, so that no legitimate human good is excluded and no legitimate human rights claim is foreclosed. But prudence counsels a narrower definition of human dignity, so that not every good becomes part of human dignity, and not every aspiration becomes subject to human rights vindication.

The task of defining the appropriate ambit of human dignity and human rights today must be a multi-disciplinary, multi-religious, and multi-cultural exercise. Many disciplines, religions, and cultures around the globe have unique sources and resources, texts and traditions that speak to human dignity and human rights. Some endorse dignity and rights with alacrity and urge their expansion into new arenas. Others demur, and urge their reform and restriction. It is essential that each community be allowed to speak with its own unique accent, to work with its own distinct methods on human dignity and human rights -- that the exercise be multi- rather than inter-disciplinary, -religious, and -cultural in character. It also essential, however, that each of these disciplines, religions, and cultures develops a capacity for bilingualism -- an ability to speak with insiders and outsiders alike about their unique understanding of the origin, nature and purpose of human dignity and human rights.

Bibliography

A.S. Brett, *Liberty, Right, and Nature: Individual Rights in Later Scholastic Thought* (Cambridge/New York, 1997)

I. Brownlie and G.S. Goodwin-Gill, *Basic Documents on Human Rights* (4th ed.; Oxford/New York, 2002)

R. W. Davis, ed., *The Origins of Modern Freedom in the West* (Stanford, CA, 1995)

C. A. Donahue, "Ius in the Subjective Sense in Roman Law: Reflections on Villey and Tierney," in *A Ennio Cortese*, ed. D. Maffei (Rome, 2001), vol. 1, pp. 506-535

W.N. Hohfeld, *Fundamental Legal Conceptions* (New Haven, CT, 1919)

N. Lerner, *Religion, Beliefs, and International Human Rights* (Maryknoll, NY, 2000)

L. Strauss, *Natural Right and History* (Chicago, 1953)

B. Tierney, *The Idea of Natural Rights: Studies on Natural Rights, Natural Law, and Church Law, 1150-1625* (Atlanta, 1996)

idem., *Religion, Law, and the Growth of Constitutional Thought, 1150-1650* (Cambridge, 1982)

R. Tuck, *Natural Rights Theories: Their Origins and Development* (Cambridge/New York, 1979)

M. Villey, *La formation de la pensée juridique moderne* (Paris, 1968)

idem., *Leçons d'histoire de la philosophie du droit*, (new ed; Paris, 1977)

C. Wirszubski, *Libertas as a Political Idea at Rome During the Late Republic and Early Principate* (Cambridge, 1960)

J. Witte, Jr. and F.S. Alexander, *Modern Christian Teachings on Law, Politics, Society, and Human Nature*, 2 vols. (New York, 2005)

J. Witte, Jr. and J.D. van der Vyver, *Religious Human Rights in the World Today*, 2 vols. (The Hague/Boston, 1996)