

## **Human Rights in the West**

**Jorgen S. Nielsen**

*Abstract: One of the areas of conflict between Islam and the West in today's world is the concern for human rights. This has sometimes been criticized in the Muslim world as a form of neo-imperialism. It is therefore necessary to understand the various dimensions of human rights, and the various phases through which this concern has grown. In the earliest form, it was an assertion of the rights of the landed aristocracy against those of the monarch. The French revolution, with its emphasis on "liberty, equality and fraternity," for all individuals, provided another dimension. There were many occasions on which individual and organized religion came into conflict during the Middle Ages. The experience of World War II, particularly the atrocities of the Nazis, led to the internationalization of individual rights.*

The subject of human rights is possibly one of the areas most symbolic of the tensions and misunderstandings between the Muslim world and the West in the last decades of the twentieth century. In and of itself, the subject provokes immediate emotional and uncritical reactions on both sides: as Walid Saif suggested not too long ago at a seminar, the issue of human rights has too often become the stick with which Western powers seek to discipline African and Asian states.<sup>1</sup> In the general crisis of relations between the Muslim world and the West, human rights have become relativised in the context of the wider conflict over the "imperialism of democracy" [my words].<sup>2</sup>

But underneath such polarized—and sloganized—views there lie not only the grand conceptual contradictions of the divine versus the

---

Jorgen S. Nielsen is Professor at the Centre of Islamic and Christian-Muslim Relations, Birmingham University, U.K.

profane, the spiritual versus the material, and the collective versus the individual. Crossing and questioning these are the tensions of the historical versus the mythical, the secular versus the clerical, and the daily actuality versus the wishful dream. One could consolidate these two planes and express them in terms of the tension between the intellectual and the sensual (in a now almost archaic meaning). This tension is clearly one which is thoroughly infused from both sides—the Muslim world and Christendom—with memories (usually selective), with the current perceptions and above all, with the concurrently imprisoning and liberating effects of the languages, idioms and thought patterns in which such tensions are expressed.<sup>3</sup>

We cannot escape the fact that most of the conditions for participating in this universal debate today have been set by the historical experience of Europe. The circumstances in which this particular historical experience has been made universally predominant are obviously those of Europe, and more widely, those of Western (whatever that means) political preponderance. In other words it is economic and political power which has made the particular experience a universal criterion. But viewed historically, there is nothing new in such a process. In previous times, similar processes have made Greco-Roman, Judaeo-Christian, Chinese, Arabophone or Persophone Islamic, or Slavic Orthodox civilizations predominant. Today the only difference is that the "universal" is no longer continental but, due to technology, truly world-wide. (This may, of course, represent a genuinely qualitative change over previous human experience, but I am not yet convinced that this necessarily is so.)

However, the consideration that the distribution of ideas is determined cynically by power relationships should not mislead us into dismissing the content of the ideas thus spread. This is where the problem with some African and Asian—and non-Christian or non-Western—critique of human rights ideas arises. On the one hand it is easy to dismiss them as a tool of Western neo-imperialism—and too often they are used as such. On the other hand, the underlying principles have to be taken seriously (if only, and negatively, because they regularly mobilise such large proportions of the communities).

But these principles must also be understood in the contexts in which they arose—an approach that serves to relativise the principles to a certain degree, and allows us to distinguish between their spirit,

and the time- and culture-bound language in which they were expressed. In essence, I do not believe that there is a fundamental contradiction between Western human rights principles and the fundamental ethical principles of Islam. But this harmony does depend on an intellectual methodology and a realistic historical and cultural analysis which, to my mind, can allow for the common potentials of both traditions to be actualised in a constructive and forward-looking approach.

### **An Historical Dimension**

It is not easy to examine the historical circumstances which laid the foundations of contemporary Western human rights paradigms. The history is complex, and out of several phases of that history, several dimensions of human rights have emerged. For our purposes I would like to point out three key dimensions, namely, the rights of the group, those of the individual, and those of the stranger. It so happens that I tend towards the view that these dimensions have come into the historical arena successively, in that same order.

At the risk of being accused of offering a cynical approach, I suggest that the historical foundations of the Western human rights tradition are to be found in medieval central—and—west-European feudalism. One of the characteristics of European feudalism was the assertion of local land-based rights, including taxation and juridical autonomy, against those of the monarch.<sup>4</sup> Very quickly, as the landed agricultural feudal system established itself, mercantile and craft-based towns and cities sought a separate status, independent of both monarch and feudal lord. Thus we see, on the one hand, the "freedom" of the barons, asserted against the king in the Magna Carta in England in 1215 and, on the other hand, the growth of urban corporations with royal charters guaranteeing their financial and judicial autonomy. Into this system also fit the various levels of the church and, with time, the universities. It was only in the 19th century that the separate representation in the House of Commons of the universities of Oxford and Cambridge was abolished.

The reference to the cynical approach previously was designed to anticipate the possible comment that, of course, the foundations of the human rights tradition of Europe are to be found in the intellectual heritage of the Greco-Roman tradition, on the one hand, and the spiritual heritage of the Judaeo-Christian tradition on the other. Much has been written in this vein,<sup>5</sup> but here, I shall venture

that both the traditions were appealed to many centuries later to provide the legitimising language and formulations required to justify current political stances. This does not deny the influences of those traditions, but it does emphasize the circumstances in which particular aspects of the traditions were mobilised for current purposes.

Out of this medieval experience arose the political conception of the "estates" namely, the comparatively clearly—demarcated social strata of feudal landowner, urban business craftsman, and peasant—an approach to social demarcation which is by no means alien to medieval Islamic tradition. It is these "estates" which, in the next phases of history, lead us in the direction of the French Revolution, the latter being a time when economic realities were in a growing tension with an increasingly brittle political system founded on feudal tradition. In the French context, the estates were aristocracy, church and town; in the British tradition, they had become aristocracy and town. In both cases, the peasantry had been subjugated under or absorbed into one or the other. In central Europe, however—the Scandinavian, German and Habsburg realms—the peasantry still existed as an estate in the absence of the Protestantized church or as a fourth estate together with a still Catholic church.

Out of the political experience of the French revolution came two distinct new trends of conceptual emphasis. Central to the French revolution was the slogan of "liberty, equality, fraternity." As in so many other situations before and since, the slogan was thought up in one context and was then reinterpreted—or misunderstood?—in another. The slogan, which came out of the urban and provincial bourgeoisie, derived from the ideas of writers such as Rousseau, but was attractive only because of the resonances it provoked among less intellectual groups with varying immediate concerns. But as a slogan, it also appealed to others who did not understand it as it had been intended. "Liberty, equality, fraternity" became the rallying cry for an increasingly individualistic motif. Of course, this was helped by the fact that a decade earlier the French monarchy had perversely allied itself to the American revolt against Britain, a revolt which, with its strong Puritanical Protestant element, was ideologically much more radical than the first stages of the French Revolution.

The other effect of the French Revolution resulted from the wider European reaction to it, especially that of those parts of Europe

which were subjected to French conquest in the late revolutionary and Napoleonic phases. Above all, and most significantly for the immediate future, this meant the various German states. Here, the ideal of liberty, which had so roused urban populations initially, soon came to mean national liberty. It came to mean not so much class or individual liberation from the socially dominant, but ethnic and national liberty from the foreign ruler. In the first instance this meant the French ruler, but as the movement gained ground ideologically and philosophically it meant the "foreign" rule of any "nation" by any other.

Granted, this was exploited by the main European powers after the final collapse of the French adventure in 1815, especially in the establishment of Greece out of Ottoman suzerainty less than two decades later. But this Germanic tradition of the nation and its rights also offered, in turn, a significant part of the conceptual foundation of both the Young Turk movement and of very late Ottoman—Armenian and Levantine-Arab nationalism, not to mention both Kurdish and, through people such as Muhammad Iqbal, Pakistani-Muslim nationalism.<sup>6</sup>

Even within the mid-19th century and later Marxist trends, as they appear in both pamphleteering and political action, there is a persistent overlap of socio-political class (based on the feudal "estates" tradition), the idea of "nation," and the personal autonomy of the individual as it has, at least rudimentarily, come out of the more philosophical tradition of 18th century enlightenment.

It is obvious that the regional developments in Europe and North America, arising out of this experience, are what laid the foundations for the expansion of a human rights tradition in particular state circumstances. The influence of these developments is evinced in political events in Europe, especially in 1830 and 1848, when so-called enlightened monarchies, deliberately or reluctantly, surrendered the powers they had earlier usurped from the feudal barons and corporations to the general population (the "national" *ummah*?). The process was often confused, and sometimes subverted, by wider pressures. Thus, the genuine democratisation of the Habsburg Empire was gradually overtaken by the more forceful processes of national disintegration. Similarly, in Germany, the forces of national integration tended to take precedence over many small-scale progressive experiments, not to mention the constantly distracting effect on domestic affairs of the increasingly imperial

rivalry of Russia, Germany, France and Great Britain.

### **The 20th Century and International Human Rights**

It is only in the 20th century that the tension between collective and individual approaches to human rights comes to a head in the international political arena, outside the boundaries of sovereign states increasingly self-conscious of their status as such. This process can be portrayed as coalescing around:

- a. two historical episodes, namely, the settlements after the first and second world wars;
- b. the identification of nations, individuals and refugees as distinct repositories of rights in international law (followed more weakly by attempts to identify class—especially workers, gender and "race");
- c. the continuing decolonisation and search for post-imperial autonomy.

In the present century the "fourteen points" proposed by US President Woodrow Wilson in a series of speeches during 1918, set the moral tone for the settlement of the first world war. But the tone was clearly one of the imperial era, based on a concept of developed, maturing and immature nations. The myths which have grown up in the West around the fourteen points have tended to emphasise the notions of national sovereignty while ignoring the dimensions of "classes" of nations which were, at least conceptually, not all that distinct from the concurrent Marxist-Leninist modes of categorisation.<sup>7</sup> There were major and minor nations, there were nations which continued to require tutelage by their betters, and there were those which, under the League of Nations mandate, could be expected to reach maturity and independence soon.

The League of Nations structures legitimised—in international law—the concepts of nation and national identity which had been developing over the previous century and a half. But the post-1918 settlement introduced, for the first time the rudiments of an international regime concerned with the rights of the "outsider." The "outsider," in this case, refers to the streams of refugees created in central Europe by the effects of war (particularly the post—1917 civil war in Russia), and by the movements of the boundaries as the war ended. It was at this time that a legal distinction was introduced

between refugees (those fleeing across international borders) and displaced people (those fleeing their homes within the borders of a recognised state).<sup>8</sup>

The rights of individuals had remained the domain primarily of national constitutional developments. Thus, during the 19th century, a succession of French constitutions, amendments to the US constitution, and a growing number of constitutions of Central European states, developed legal principles and patterns of political and judicial practice which became models for many 20th century constitutions as more and more states outside Europe and North America became independent.

But it was only under the influence of Nazism that serious moves were made after the Second World War to institute an international legal regime on human rights. The allied victors of the war drew up the Charter of the United Nations in 1945. In its preamble, it refers to "fundamental human rights" and "the equal rights of men and women and of nations large and small." Three years later, the General Assembly adopted the Universal Declaration of Human Rights.<sup>9</sup> However, the machinery instituted by the UN over subsequent years was cumbersome and prone to manipulation for the narrow political interests of member states. The Declaration was simply that—a declaration intended to set a standard but with no mechanism for enforcement.

Europe had, of course, been the arena in which some of the major abuses had taken place which lay behind the internationalisation of human rights principles. So it was also in Europe that first attempt was made to produce an international agreement on principles which also contained measures to establish machinery for supervision and enforcement. Under the auspices of the Council of Europe, the European Convention on Human Rights was signed in November 1950.<sup>10</sup> Section 1 of the latter set out the rights which the signatories agreed should be upheld. The subsequent four sections established the European Commission on Human Rights, to which governments and individuals could appeal cases for guidance and arbitration from their own domestic jurisdictions, and the European Court of Human Rights, which has the authority to make judgements binding on the signatory governments. In fact, there have been numerous instances in which domestic legislation has had to be changed following a decision by the Commission or the Court.

Subsequently, a number of provisions were added to the protocols of the convention. Some of these protocols have dealt with the machinery and procedures, others have extended the rights specified in Section 1.

It is useful at this point to summarise the rights enshrined in the European Convention, partly because they do have legal force, and partly because they embody a representative statement of 20th century perceptions of human rights in the West. Very briefly, the rights specified in Section 1 of the Convention are as follows:

- art. 2: Right to life.
- art. 3: Prohibition of torture or inhumane or degrading treatment or punishment.
- art. 4: Prohibition of slavery and forced labour.
- art. 5: Right to liberty and security of person, and regulation of circumstances of arrest and detention.
- art. 6: Right to a fair and public trial, and the presumption of innocence until proven guilty.
- art. 7: Decision of guilt and punishment in terms of the law applicable at the time and place a criminal act was committed.
- art. 8: Right to respect for private and family life.
- art. 9: Freedom of thought, conscience and religion.
- art. 10: Freedom of expression.
- art. 11: Freedom of peaceful assembly and association.
- art. 12: Right to marry.
- art. 13: Right to an effective recourse to a national authority for victims of violation of these rights.
- art. 14: Prohibition of discrimination in these rights on grounds of sex, race, colour, language, religion, etc.
- art. 15: Limitations on the right of the national government to withdraw rights in times of war or national emergency.
- art. 16: Permission for governments to restrict the political activity of aliens.
- art. 17: Prohibition of use of these rights for the purpose of



destroying them.

- art.18: Prohibition of using stated restriction to rights for any purpose other than that stated.

### **Civil versus Social Rights**

A comparison of the European Convention with the UN Declaration makes for interesting reading. Here, I am not so much interested in the details of the rights just listed, which to all intents and purposes correspond to the intent of articles 2-12, 16, and 18-20 in the Declaration; the omissions are much more interesting. Most significant among these omissions are those in articles 22-29 of the UN document. In these, the Declaration contains mention of rights to social security, to work and fair remuneration, to rest and leisure, to an adequate standard of living, and to education and cultural participation. Article 29 even says that "everyone has duties to the community"—without being more specific.

Here we see clearly an expression of a difference of emphasis which has constantly broken the initial international consensus on human rights. The European Convention represents an implementation of that group of rights which is usually considered as political and civil, to the exclusion of economic and social rights. To be fair to the Europeans, the Council of Europe did, in 1961, adopt a European Social Charter, but instead of the "teeth" of a European court to enforce it, it included only a Committee of Experts to give opinions.<sup>11</sup> Over the years, the Soviet Union and its allies regularly used the charge of Western neglect of social and economic rights to counter the West's charge of communist abuse of civil and political rights. This was a charge which evoked some sympathy in a number of countries of Africa and Asia, even in some countries vehemently opposed to communism.

The collapse of the Soviet bloc did not, as some had hoped, release the international community from the tensions of this dichotomy. If anything, it contributed to an initial heightening of the tension. A certain measure of triumphalism in the West seemed to legitimize a greater emphasis on the spread of civil and political rights in the context of a spread of democracy, at least, as that concept was understood in Western capitals. At the same time, governments in Africa and Asia perceived a greater freedom to increase the emphasis on the social and economic dimensions,

especially in the context of the individual's duties to the community (cf. UN Declaration art. 29). These tensions were a major feature of the International Conference on Human Rights in Vienna in the autumn of 1993.

### **Ideals and Realities**

On both sides of the argument, there has been a mixture of high ideals and immediate self-interest on the part of governments. In the West, there is a perception that governments in Africa and Asia are using the argument of social and economic rights as a cover for domestic power politics in which civil and political rights are the first victim. In Africa and Asia, there is a perception that the argument of political and civil rights is being used by Western governments as a tool of international power politics. A symptom of the depth of the tension is exemplified by the continuing argument which took place (within the context of the recent GATT treaty) concluding the "Uruguay round" in which some Western governments sought guarantees of minimum standards of labour conditions from Asian and African governments. This could be seen as the ultimate in cynicism, that certain Western governments suddenly raise the issue of social and economic rights when it is to their own advantage.

At the same time, it would be a gross mistake and misunderstanding of what is going on, to draw a purely cynical interpretation of the issue. There is no doubt that human rights ideals have become deeply embedded in Western culture, even if we sometimes fall somewhat short in practice (domestically and internationally), especially when our individual and collective material interests appear to be threatened. On the other side, it has to be accepted that the issue of economic and social rights and aspirations are as deeply embedded in other parts of the world.

However cynically we may wish to interpret the motivations of particular governments or campaigning groups at any particular time, it must be noted that the language in which they argue their cases in the international and the domestic arenas is now almost invariably that of the human rights discourse, even when it is dressed up with a particular regional or cultural gloss. Governments and political movements may be completely hypocritical in attempting to exploit this discourse for their own ends, but history has repeatedly shown that this is a dangerous game.

The feudal classes of 13th century England, in raising their claim to rights, ultimately begged the question: why should such rights be restricted to one class? The ancient regime in France contributed to the loss of its own legitimacy by siding with the American revolution and its declaration of independence in 1776. The colonial powers dressed up their ambitions in the Wilsonian nation-state language of the mandate system, and thereby provided the ideology of independence movements. By using the language of human rights discourse—or any other discourse, for that matter—contemporary governments and political movements are, in a similar manner, implicitly accepting a criterion outside their own control by which their actions may be measured. And if they fall short, they risk losing their case ultimately.

### **Is there a Religious Dimension?**

In the context of this discussion, we must finally look at the religious content and context of the question. I have, from the outset, stressed that my approach to the subject is historical. One of the most interesting aspects of history is—the relationship between religious teaching and belief, on the one hand, and the actual daily life of individuals and communities, on the other. At the extreme, this is signified in the tension between the religious ideologist, for whom what actually has happened in history is totally irrelevant, and the complete materialist, for whom ideas and ideals are the products of chemical and physical processes interacting with human biological drives.

The religious ideologist, challenged by historical realities, risks the charge of ineffectiveness: if the ideals of Islam or Christianity, (strongly proposed, at various times, as revolutionary new movements), have historically been contradicted most often by their corruption, we are entitled to ask how powerful this new message has been.

On the other hand, a fully materialist interpretation finds itself unable to explain how, without any clear motivation other than possibly clinical madness, individuals and groups throughout history have regularly sought martyrdom. By any kind of materialist interpretation, the early church should not have survived; neither should have Muslim communities in Soviet Central Asia.

My theme is human rights in the West. I have to reiterate that

this tradition is recent, compared to two millennia of Christian history. I must also point out that often, the origins of what is today the human rights agenda is found to be in opposition to institutions which found their legitimacy in religion. This opposition was provoked, and made almost inevitable, by a medieval system of landownership and political power in which the church, as a secular (in the true sense of that word, i.e. worldly) institution, was a major player. Rome was clearly not too concerned with Galileo's disagreement with its traditional views of the cosmos. The issue was fundamentally one of the authority of Rome. To that extent, Galileo's challenge was no different from that of Henry VIII. I shall consign the business of the divine right of kings to the margins where it belongs: as an ideology, it was a desperate last attempt by monarchs to boost their legitimacy after they themselves had participated in the dismantling of all the other religious foundations on which they had previously rested.

A modern parallel is surely to be found in the recent near-obsession of France with its laicist republican tradition of the complete separation of religion and state, which formally dates back to 1905. This separation arose out of a history of conflict between a very powerful and stubborn French Catholic church and the traditions sparked by the more radical dimensions of the 1789 revolution. Given that peculiar history, French republicanism is deeply imbued with an anti-clericalism which, to outside observers, often seems archaic. By way of comparison, it is worth noting that the Republic of Ireland has a constitution which is as laicist as that of France, but there the public image is of a country with an almost symbiotic relationship between church and state. On the other hand, Germany is a secular state only to the extent that, constitutionally, it is neutral among the religions, rather than separated from them.

In such contexts it is enormously difficult for people and institutions of religion to play an appropriate role. By definition almost, as soon as a person or institution of religion finds itself in a situation of power, its judgements are likely to be influenced not only by the teachings of the religion but also by the interests of preserving and developing its influence through the mechanisms of political power. The churches in late medieval and early modern Europe were masters at devising theological arguments in defence of the status quo—this still happens in the various established churches today. By definition, other views had to be those of religious

dissidents or anticlerical movements. But once the serious power bases of the churches and their professionals had been subverted, it became much easier to discover the essential scriptural and revealed foundations of what we know today as the human rights agenda.

## Notes

1. Walid Saif, "Human Rights and Islamic Revivalism," *Islam and Christian-Muslim Relations (ICMR)* 5 (1994): 57-65.
2. For a succinct summary of the place of the ideology of democracy within this debate, see Maha Azzam, "Islamist attitudes to the current world order," *ICMR*, 4 (1993): 247-256.
3. A simple example of the last point really ought to be explored, I suggest, in the vocabulary of "nationhood" as it has been used in the present century. The concept of "nation" migrated into the Ottoman Empire and the European colonial domains in the two centuries from about 1750. In the process both classical Islamic concept of *ummah* became, in the Muslim world, the most common translation for the alien concept of "nation." The meaning of this new term has been reflected back into modern readings of classical texts, where this modern meaning of "nation" was never imagined. In the process both classical Islamic text and, dare one suggest, contemporary Qur'ān interpretation as inserted into political debate have had their meanings corrupted. At the same time it must be recognised that the use of the concept of *ummah*, however understood, in the Arab context has often been liberating.
4. This is the context in which the constitutional concept of "subsidiarity," recently so much discussed in the context of the European Union, was first firmly established.
5. See, for example, the papers by Einar Vetvik and Francis Clark in J.S. Nielsen (ed.), *Religion and Citizenship in Europe and the Arab World* (London: Grey Seal, 1993).
6. Bassam Tibi provides a very cogent example of this process in relation to Arab nationalism in his study *Arab Nationalism* (London: Macmillan, 1981). See also, for a more general account, Peter Alter, *Nationalismus* (Frankfurt: Suhrkamp, 1985).
7. Ian Cummins, *Marx, Engels and National Movements* (London: Croom Helms, 1980).
8. The development of this aspect is summarised in Sarah Collinson, *Europe and International Migration* (London: Printer for RIIA, 1993), 28-

45.

9. Relevant excerpts of the Charter are to be found in Ian Brownlie (ed.), *Basic Documents on Human Rights* (Oxford: Clarendon Press, 1971), 93-105. The Declaration is reproduced in *ibid.*, 106-112.

10. The full text of the Convention is to be found in *ibid.*, 338-355. It is also available directly from the Council of Europe in Strasbourg.

11. For the text see *ibid.*, 366-386.