



Civil rights are just a myth

The recent rash of legislative 'tort reform' throughout Australia has resulted in claims that interference with common law rights is an infringement of civil rights. But few that refer to the concept of civil rights consider what it might mean and how it originated.

When we speak of civil rights we imply that all citizens possess certain natural inalienable rights. In other words, rights that operate independent of man made law. These rights are commonly believed to stem from some extrinsic natural law that governs the actions of humanity.

Under this conception of civil rights, human made laws (which are also called 'positive laws') must approximate natural law if they are to retain moral authority to regulate everyday behaviour. The rules that comprise this body of natural law are, seemingly, ingrained into our psyche and comprise our barometer for assessing values like justice, equality, fairness, etc.

When positive law contradicts an individual's concept of natural law then feelings of injustice result. These feelings may be intense and can provoke individuals to take actions they would not otherwise contemplate; actions such as revenge or self help.

What is the origin and content of this natural law that we resort to when evaluating the justice of positive laws such as legislation and the common law?

The belief in some kind of natural law is among the oldest concepts of humanity. It arises because humans seek meaning to harmonise the external world revealed by perception with the internal world of emotion and thought. At its heart is the dualistic conception of 'self' and 'other' implicit in Descartes' famous 'cogito ergo sum'.¹ In other words, natural laws are what we invent to make sense of external reality.

In ancient cultures, religion was probably invented as an attempt to make sense of the unknown. The ancient Greeks believed that the existence of natural laws (such as the laws of mathematics, geometry, physics, etc) were evidence of divine motive. But the belief in natural laws is not unique to religion. A belief in hidden laws waiting to be discovered also inhabits science.

At a behavioural level, the perceived duality between natural and positive laws reflects an integration of the mores of family and community values. In many cases, these mores originate from, or are reinforced by, prevailing religious morality and beliefs about life after death, final judgement, etc. This duality is even recognised in the oath that many witnesses swear before giving evidence in courts. To commit perjury is, for them, to break an oath to God. Their belief in God's natural law is a greater compulsion to truthfulness than the Oaths Act.

Most secular philosophers argue that religious beliefs and values are all of human origin. They point to the many religions that each claim unique and divinely revealed 'truths' as evidence that they all cannot be right.

Indeed, there are several notorious examples of manufactured beliefs propagated in order to control the thoughts and actions of others. For example, Plato argued that the guardians of his Utopia should lie to citizens and invent religious rules in order to exert control over them.² Hitler propagated myths of a superior Aryan race destined to world domination and used it to motivate citizens to persecute Jews and gypsies. In each case, the tenants of these belief

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structures, when subscribed to by gullible individuals, have the appearance (to the individuals involved) of natural laws.

Appeals to religion and mysticism have been used for many thousands of years by countless cultures across the world as a form or cultural glue to unite and motivate ethnic and religious groups.

This insight led Marx to label religion as the 'opium of the people'³ and Bertrand Russell to wryly observe that religion could be defined as any belief 'that God is on the side of the Government'.

At different times, however, religion has escaped the control of those who would use it to enslave the mentation of others and made vassals of them instead. For the thousand years of the middle ages, most of Europe's kings and queens relied on the franchise of popes for their divine authority to rule. When religions have assumed political control their tyranny has matched, and often surpassed, the worst excesses of secular tyrants.

The excesses of church and monarchies throughout the Middle Ages ultimately produced a decline in their moral authority. Ultimately, this gave rise to the greater philosophical and

political liberalism and the development of modern democratic institutions of governance. Institutions designed to limit the power of the church and their proxies.

These were heavily influenced by the French Revolution and its calls for 'Liberté! Egalité! Fraternité!', influences manifested in the stirring words of the American Declaration of Independence:

'We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable rights, that among these are life, liberty and the pursuit of happiness'.⁴

The notion of natural laws interpreted by the church, used so successfully for centuries to retain power over the thoughts and actions of ordinary people, was thereby replaced (in Western culture at least) with a new philosophy. God remained, not as the absent head of an earthly political institution, but rather as the entity that endowed all citizens with individual civil rights. Rights that were invented in order to place the notion of individual liberty on a solid philosophical foundation.

In the process, revolution broke up the monopoly of the church and replaced it with the democratic doctrines of the separation of powers, the

rule of law, and institutionalised bloodless revolutions of the ballot box.

Unfortunately, there is no escaping one unalienable truth. Civil rights are merely a convenient myth. They were invented in an attempt to curb the megalomaniacal tendencies of all rulers, elected or otherwise. Without a constitutional charter of rights they exist only in the minds of citizens and they are preserved only by the revolution of the ballot.

But if social norms change, so too does our conception of our civil rights.

Politicians that ride the crest of public opinion or cynically manipulate that opinion for their own ends can do whatever they like. Personal feelings of injustice count for nothing unless the community also shares them. Because the only thing politicians fear in a democracy is adverse public opinion at the time of an election. ■

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ENDNOTES:

- ¹ Bertrand Russell, 'A History of Western Philosophy', Allen & Unwin (1963) p. 547.
- ² Plato's 'Republic'.
- ³ Karl Marx, 'A Contribution to the Critique of Hegel's Philosophy of Right', 1843-4.
- ⁴ Thomas Jefferson, 'American Declaration of Independence', 4 July 1776.