

Human Rights and Human Nature

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Résumé de l'article

Au moins deux conséquences importantes découlent du fait que les droits de l'être humain aient leur fondement dans la nature humaine. D'une part, ils existent en vertu du droit naturel, même dans les cas où le droit positif ne les reconnaît pas. D'autre part, ils ne peuvent évoluer parce que la nature et la finalité de l'être humain ne changent pas : seules la formulation et le niveau de protection en droit positif pourront varier selon le contexte socio-historique.

NOTES, INFORMATIONS ET DOCUMENTS

Human Rights and Human Nature¹

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ABSTRACT

At least two important consequences follow from the fact that human rights are based on human nature. First, they exist according to natural law even in cases where positive law does not recognize them. Secondly, they cannot evolve because the nature and purpose of the human being does not change : only their formulation and level of protection in positive law can vary according to the socio-historical context.

RÉSUMÉ

Au moins deux conséquences importantes découlent du fait que les droits de l'être humain aient leur fondement dans la nature humaine. D'une part, ils existent en vertu du droit naturel, même dans les cas où le droit positif ne les reconnaît pas. D'autre part, ils ne peuvent évoluer parce que la nature et la finalité de l'être humain ne changent pas : seules la formulation et le niveau de protection en droit positif pourront varier selon le contexte socio-historique.

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1. Lecture at Parkhill Residence, Ottawa, January 19, 1998, The opinions expressed here are those of the author and do not necessarily reflect the view of the Department of Justice or National Defence.

INTRODUCTION

Having participated in the 1978 UNIV Conference for University students in Rome, it is my great pleasure, already 20 years later(!), to talk with you tonight about the topic of human rights chosen as the theme of this year's UNIV Conference.

Given that one could give a 45-hour course on human rights without covering all the issues, I would like you to consider my "lecture" tonight as a simple outline of an overview of the highlights on an introduction to human rights, and to allow me to start right away with a little clarification as to the use of some expressions.

Generally, we can consider that the expressions "human rights", "fundamental rights", and "basic rights" are synonymous.² They all convey the idea that these rights are extremely important, the very basis or foundation of life in a civilized community. They each suggest that the importance of these rights is such that they deserve a special respect or protection without, however, indicating the level of protection attached to these rights in positive law, as do the expressions "constitutional rights" or "statutory rights".

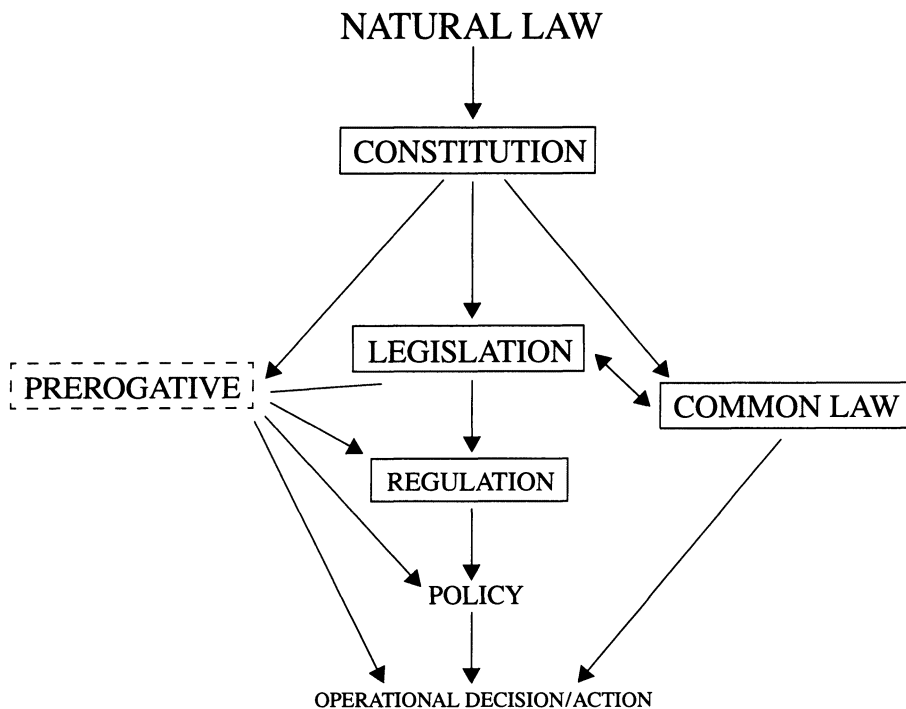
This special status reserved to some rights and the variety of qualifications used to underline their importance likely call for a few more explanations. I would thus like to briefly address two issues, the importance of human rights, and, if you allow me to say so, their "origin and evolution".

I. THE IMPORTANCE OF HUMAN RIGHTS : HUMAN NATURE AND NATURAL LAW

A. PRIORITY AND SUBORDINATION OF "RIGHTS" IN POSITIVE LAW

The significance of rights is of course directly related to that of law itself, and to that of their link with natural law and/or positive law. That law (and the rule of law) is important is so obvious that I will not linger about it. Now, since many of you are not law students, let me summarize the connection between rights and natural and positive law by explaining the following chart (see chart 1).

2. The distinction sometimes made between "human" and "fundamental" rights, on the basis of the level of the protection available in positive law rather than on the basis of the nature of the rights, is therefore wrong and confusing. Thus, when K. VASAK, "Le droit international des droits de l'homme", in (1974) IV *Recueil des cours Académie de droit international La Haye*, tome 140, pp. 333-415, asks at p. 346 "Pourquoi ne pas distinguer, désormais, les droits "fondamentaux" de l'homme, garantis véritablement, et bénéficiant effectivement à tous et partout, en toutes circonstances, d'un côté, et, de l'autre, les droits "contingents" de l'homme, garantis et réalisés en tenant compte des exigences et des possibilités d'une communauté d'hommes à un moment donné de son histoire?", the short answer is that *all true human rights are "fundamental"* and their insufficient or irregular protection in positive law does not deprive them of this status.



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First, all of these terms recognize or confer rights to people. *The importance of the source of all these rights is directly determined by their place or level in the chart: the higher the source is, the more important the rights are.* As a matter of fact and law, if a rule at a lower level is not in accordance with a rule at a higher level, it is invalid and thus cannot confer any right. Positivists may deny that (human³) positive law must be subordinated to natural law but, in doing so, would accept slavery, racism or any other unacceptable behaviour as long as these behaviours are allowed by the highest level of positive law.⁴

Secondly, positive law refers to the law that you can find “in the books” (in the “boxes” on the chart): therefore, it includes texts at the Constitution, Legislation and Regulation levels, as well as the decisions made by Courts and known as “Common Law”. When you hear about “law enforcement”, however, remember

3. Divine positive law would obviously have precedence over natural law, because God can make no errors while our limited human reasoning can be mistaken. But this text is intended to address only the positive law made by human law-makers, who are prone to make errors. On the link between divine and human law, positive and natural law, see for example J.-M. AUBERT, *Loi de Dieu lois des hommes*, Tournai (Belg.), Desclée, 1964. On how Chinese, Greek and Jewish people used “divine” law in addition to natural law to protect fundamental freedoms, see for example C.J. ANTIEAU, *The Higher Laws: Origins of Modern Constitutional Law*, Buffalo, William S. Hein & Co. Inc., 1994. More generally, see J. FINNIS, *Natural Law and Natural Rights*, Clarendon Press, 1980 (Reprint with corrections 1989).

4. For natural law analyses of such examples, see for example E. CAPARROS, “Some Myths and Some Realities in the Contemporary World of Law”, (1990) 35 *American Journal of Jurisprudence* 87-104; E.M. HOWSE, “Justice, Love and Law”, (1960) 3 *Canadian Bar Journal* 279-286.

that this expression refers to requirements imposed by and offences created by statutes (Legislation) or by regulations.⁵

"Policy" is often found "in the books" but it is not law: most lawyers would correctly say that a policy does confer "interests" or "claims", but not "rights". Some would argue, also rightly, that a policy raises among citizens "legitimate expectations" as to its implementation, and that these expectations can constitute a valid basis for challenging a governmental decision by means of a judicial review application. In this limited context, it would thus confer "rights" to the people. But as a general rule, a policy is not enforceable before the courts.

This is not to say that a policy, or an "interest" or a "value" promoted in a policy, is not important. Often, it is only the formal beginning of a process to protect this interest or value by positive law. Take bilingualism and linguistic rights for example: at his arrival in 1968, Prime Minister Trudeau introduced the policy of bilingualism in the federal public service and governmental support to the use of official languages by minority communities. By the time he resigned in 1984, he had incorporated this policy into the *Official Languages Act*⁶ and "enshrined" it into the 1982 *Canadian Charter of Rights and Freedoms*.

A policy can also be made part of positive law when it is written down in the text of a statute, a phenomenon that has occurred quite often in the last 25 years.⁷ But it then becomes a statutory requirement and/or empowerment⁸ and thus it stops being a "policy" in the strict sense of the term which I have used here.

Those among you who have studied tort law must have guessed why I made the distinction between "policy" and "operation". As you remember, public authorities are liable in tort for operational decisions and actions but, not, except in the case of bad faith, for policy decisions.⁹ In the context of the importance of rights, it is at this level of "operational decision or action" that we find, for example, contractual rights.

The consequence of this line of authority is that, for a contract to give you valid rights, the contract must comply with applicable Policy,¹⁰ Regulation,¹¹ Legislation¹² and Constitution.¹³

It is arguable that a valid written contract or agreement would also constitute positive law since it is enforceable by the courts. Of course, one can compli-

5. For purposes of law enforcement, a ministerial order made pursuant to a statute can be assimilated to a regulation. However, in some rare cases, a statute may create offences at "lower levels" than regulations: see for example the *National Defence Act*, R.S.C. 1985, ch. N-5, s. 127, for an offence related to a behaviour "contrary to regulations, orders or instructions".

6. For the current text, see R.S.C. 1985, ch. O-3.01, s. 41.

7. See, among many examples, the *Broadcasting Act*, R.S.C. 1985, ch. B-9.01, s. 3; the *Canada Post Corporation Act*, R.S.C. 1985, ch. C-9, ss. 3-4; and the *Canadian Multiculturalism Act*, R.S.C. 1985, ch. C-18.7, ss. 3-6.

8. See for example the impact of the policy stated in the *National Transportation Act*, 1987, R.S.C. 1985, ch. N-20.01, ss. 3, 4 ("public interest"), 23, 34, 266(2) and (3), and 268(1).

9. See, for example, *Just v. British Columbia*, [1989] 2 S.C.R. 1228.

10. See, for example, TREASURY BOARD OF CANADA, *Procurement Strategy for Aboriginal Business, Contracting Policy Notice* 1997-6, and related 1996-10, 1996-6, 1996-2 and 1995-2.

11. See, for example, the *Government Contracts Regulations*, S.O.R. 87/402.

12. See for example the *Financial Administration Act*, R.S.C. 1985, ch. F-11, s. 26: money to pay for a government contract cannot be taken from the Consolidated Revenue Fund without the authority of Parliament.

13. For example the requirement that Parliament must have approved the expense necessary to pay for the government's contract: see the *Constitution Act, 1867*, s. 106.

cate the issue and affirm that there are instances where a contract is clearly made part of the positive law by a statute.¹⁴

The term "prerogative" is usually used with the term "Crown" or "power" to describe a source of law recognized by the Constitution or the Common Law, and not yet repealed by Legislation.¹⁵ It can be used to make a "Regulation", for example the *Canadian Passport Order*,¹⁶ a "Policy", for example the 1982 federal native claims policy on specific claims,¹⁷ and an "Operational Decision", for example the appointment of a commission of inquiry.¹⁸ It is not fully "positive law" as it can not be entirely found "in the books".

Now, you may wonder and ask "but where do we find human rights?", question to which the initial answer is "in all of the above sources of rights". However, this answer necessarily needs to be completed or even reformulated after a short comment on the link between positive law and natural law.

B. INSUFFICIENCY OF POSITIVE LAW AND ROLE OF NATURAL LAW

For socio-economical, political and historical reasons, positive law can deny the existence and/or exercise of human rights to some categories of people. This strange phenomenon can even occur when human rights instruments are in force in the country. A very well known example is slavery, which continued to exist in France, England and the United States, for a long time after these "leaders" solemnly proclaimed their respect for human rights in the French *Déclaration des droits de l'homme et du citoyen*, the English *Magna Carta* and *Petition of Rights*, and the American *Declaration of Independence*.

This is where natural law becomes important: *even when positive law denies the existence of human rights, natural law always recognizes them*. Now, for this to be true, we need to understand properly what is "natural law". Recently, I found an article written by an American professor¹⁹ who explained that the confusion about the meaning of the expression "natural law" existed even in Antiquity. For according to the Roman-Stoic approach, law was classified in three categories: "first, civil law, the law of a particular community, next the *ius gentium*, which was the law of mankind, as discoverable by observation, and, finally, natural law, which was derived from reason".²⁰

14. See for example the *Inuvialuit Final Agreement*, "approved, given effect and declared valid" by subsection 3(1) of the *Western Arctic (Inuvialuit) Claims Settlement Act*, S.C. 1984, ch. 24, amended by S.C. 1988, ch. 16.

15. See generally P. LORDON, *Crown Law*, Toronto, Butterworths, 1991, Chapter 3.

16. P.C. 1981-1472, SI/81-86.

17. MINISTER OF INDIAN AFFAIRS AND NORTHERN DEVELOPMENT, *Outstanding Business, A Native Claims Policy*, Ottawa, Minister of Supply and Services Canada, 1982, p. 7: "The federal government's policy on Native claims finds its genesis in a statement given in the House of Commons on August 8, 1973 by the Minister of Indian Affairs and Northern Development". Thus this policy did not come as a result of aboriginal rights recognized by section 35 of the *Constitution Act, 1982*, as is the case of the new "Federal Policy Guide": MINISTER OF INDIAN AFFAIRS AND NORTHERN DEVELOPMENT, *Aboriginal Self-Government*, Ottawa, Minister of Public Works and Government Services Canada, 1995.

18. P. LORDON, *op. cit.*, note 15, p. 91.

19. M. RADIN, "Natural Law and Natural Rights", (1949-50) 59 *Yale Law Journal* 214-237.

20. *Id.*, p. 227.

The problem of confusion arose because the second and third members of the trichotomy were both intended to cover the "natural law". In very few cases, a behaviour (e.g. murder) would be said by both to be wrong because it was contrary to good human relations. However, in many cases, the *ius gentium* would allow a behaviour (e.g. slavery) because it was common among all the surrounding nations and therefore the "natural" law of mankind, while the true natural law would prohibit it on the basis that correct reasoning shows it to be wrong.

Some years ago, a Canadian professor²¹ further explained how more and worse confusion was introduced by the "modern natural law" promoted by Thomas Hobbes and John Locke.²² This new "natural law" was not based on human nature, with rights and duties, as it used to be known and understood for thousands of years: "the new natural right of self-preservation (meaning *comfortable* self-preservation, not mere existence) was the basis for the new modern order of 'possessive individualism' or modern capitalism".²³

Just to make sure that I did not complicate the issue more than necessary, I do *not* use "natural law" in the sense of "*ius gentium*" or in the "new modern sense". By *natural law* then, we should understand *a set of principles that, ensuing from the personal and social nature of the human being and ordered towards the pursuit of its finality, are inscribed in human reason.*

All this is important because the existence of "human rights", in "natural law", can always be established by using a correct human reasoning, independently of any recognition, silence or denial by positive law. Thus, by reasoning, one can conclude that the nature of the human being is such that men and women cannot and shall not be treated simply as animals.²⁴ The use of reason can also bring one to conclude that the human being is indeed endowed with a spiritual immortal soul and a physical mortal body, and is destined to eternal happiness and

21. F. VAUGHAN, "On Being a Positivist: Does it Really Matter?", (1991) 29 *Osgoode Hall L.J.* 399-409. Though I share most of his concerns, I disagree with his broad statement that "those nations and peoples who live in Western liberal regimes can afford the luxury of positivism" (pp. 402-403): they can afford only some aspects of positivism, not the many current abuses of positivism.

22. *Id.*, pp. 406-408.

23. *Id.*, p. 407.

24. See, however, P.W. HOGG, "On Being a Positivist: A Reply to Professor Vaughan", (1991) 29 *Osgoode Hall L.J.* 411-417, who calls himself a positivist and, at p. 414, presents as a "fact" that "human beings are animals": despite their sometimes cruel and/or stupid behaviour, human beings are infinitely more than animals. Though I agree with him that Blackstone should have found more than one instance of a positive law in conflict with the natural law (e.g. even the King's freedom of conscience and religion was denied by statutes that required him not to be Roman Catholic: see list in J. RHÉAUME, *Droits et libertés de la personne et de la famille*, Montréal, Wilson & Lafleur Ltée, 1990, p. 53, footnote 164) and may have had a political agenda which influenced his analysis, and though I share his concerns about judges' conclusions in these matters (but for different reasons) and about some people's use of (true and false) "natural law" as a "mask", I must disagree with professor Hogg's approach and position on most of his text. For the time being, I will only say that most of Hogg's criticism is due to many authors' fall into the confusion against which C.J. Deschênes warned us: "At the limit, any law conceived for a right reason and functioning for the common well-being has its roots in natural law. But to confound one with the other would be to transpose in the order of natural law dispositions which, by definition, do not belong to principles but to their temporal application according to their situations in place and time": see *Nissan Automobile Co. (Canada) Ltd. v. Pelletier*, (1976) 77 D.L.R. (3d) 646 (Qué. S.C.), at p. 652, affirmed on other grounds by (1978) 97 D.L.R. (3d) 277 (Qué. C.A.), and by [1981] 1 S.C.R. 67, (1981) 120 D.L.R. (3d) 766.

temporal well-being. It can and should also indicate that the human being, male and female, depending on other human beings for its survival and fulfilment, is not only an individual but also a social being²⁵ participating in and contributing to the common good.

Hence, *all the human rights find their basis in the very nature of the human being*: the rights to life and security to protect the (mortal) body, the freedom of conscience and expression for the (spiritual) soul, the right of association... *That basis is indeed the essential foundation of the right to equality*: having the same nature and ultimate purpose as human beings, all people have the same fundamental human rights (and duties), everywhere, always and towards everyone.

I should hasten to add that human rights and freedoms only exist to the extent that they are based on human nature. In other words, *our human nature not only establishes the basis of our human rights, it also fixes their limits*. As you know, to say that we have a spiritual nature implies that we have an intelligence pursuing the truth²⁶ and a will directed towards the good.

Therefore, *human rights and freedoms can only be invoked to promote the truth and the good, including the common good* (since we have a social nature). So, when a person commits perjury or murder, thus misusing her intelligence and will, she cannot expect to successfully invoke her right to freedom of expression or her right to (physical) freedom to prevent the State from sending her to jail after a fair trial.

Similarly, there cannot be a “right to make errors” or a “right to be wrong”:²⁷ while it may be justified to establish that a person not be punished for every mistake made in good faith, it is quite different from saying that making mistakes is good or that telling false statements is appropriate. If the right to make errors existed, students could write any answer for their exams, and professors, instead of correcting the exams, should simply give them a perfect mark!²⁸ And since everyone would enjoy this “right”, there would be no way to get compensation from people who injure us, damage our property, etc.

The possibility and the danger of claiming for or of recognizing the existence of false rights invite us to the second part of this presentation.

25. Thus cultural rights, for example, may be said to belong to the individual as member of a community and to be “collective” or “group” rights. For an interesting discussion, see V. SEGESVARY, “Group Rights: The Definition of Group Rights in the Contemporary Legal Debate Based on Socio-cultural Analysis”, (1995) 3 *International Journal on Group Rights* 89-107.

26. The best exposition on the link between human rights and truth is found in JOHN PAUL II, *The Splendor of Truth*, August 6, 1993 Sherbrooke, Éditions Paulines, 1993. His February 2, 1994 *Letter to Families*, Sherbrooke, Éditions Paulines, 1994, is also a remarkable text on the links between the family, human love and human rights.

27. With all due respect for the contrary opinion of, for example, the late Justice Sopinka in *United Brotherhood of Carpenters and Joiners of America, Local 579 v. Bradco Construction Ltd.*, [1993] 2 S.C.R. 316, at p. 340: “Once it has been determined that curial deference to a particular decision of a tribunal is appropriate, the tribunal has the right to be wrong, regardless of how many reviewing judges disagree with its decision”. It would have been more appropriate to simply say that “once it has been determined that curial deference to a particular decision of a tribunal is appropriate, that decision will not be overruled (or quashed), regardless [...]”.

28. This possibility was avoided in the draft “Déclaration des droits des étudiants et étudiantes de l’Université Laval”, published in *Au fil des événements*, Sainte-Foy, Dec. 3, 1987, pp. 14-15.

II. THE “ORIGIN” AND “EVOLUTION” OF HUMAN RIGHTS

A. THE “BIRTH” OR, BETTER, THE “RECOGNITION” OF FUNDAMENTAL RIGHTS

It is very important here to introduce and distinguish between two concepts. On one hand, there is *the nature of human rights* which, based on human nature itself, dates back to the apparition of human beings on earth, and cannot change or evolve. On the other hand, there is *the recognition or protection granted to these rights*. As we have seen earlier with the chart, protection can be given at any level at any time. And even if this protection can be denied by positive law, or simply not be acknowledged, true “human rights” would still exist according to natural law. So when one speaks about the “origin” and “evolution” of human rights, one must refer simply to the time at which these rights were recognized or protected by positive law and to the evolving formulation then used.

In Antiquity, fundamental rights such as freedom of conscience were promoted even in literature (e.g. Sophocles’ *Antigone*). However, civilization was barely born and even the most fundamental right, the right to life, received very little protection. It took centuries of Christian influence, with the emphasis on the unique value of every individual human being because of Christ’s command to love everyone as if each one were Him (e.g. *Matthew*, ch. 26, v. 40 and 45), to slowly rise to a better protection of the life of everyone, whether free or slave, adult or child.

However, since I cannot force you to listen to me until tomorrow, I will beg your pardon and skip the analysis of the doctrinal work of “iusnaturalists” of Antiquity and Middle Ages²⁹ to immediately address the remarkable increase of positive law measures intended to protect human rights in the Western world.

B. THE “GROWTH” OF FUNDAMENTAL RIGHTS IN POSITIVE LAW

Most jurists would agree that the English *Magna Carta* of 1215, or maybe more appropriately the one of 1225,³⁰ marks the beginning of the protection of fundamental rights in positive law. For England, they would add the *Petition of Rights* of 1627, the *Habeas Corpus Act* of 1640 and 1679, the *Bill of Rights* of 1688... For France, they would likely start with the *Déclaration des droits de*

29. See B. TIERNEY, *The Idea of Natural Rights, Studies on Natural Rights, Natural Law and Church Law 1150-1625*, Atlanta, Scholar Press, 1997.

30. For interesting short accounts of the historic events surrounding the passage from one to the other, see F.F. URQUHART, “Magna Carta”, in C.G. HERBERMANN and others, Eds., *The Catholic Encyclopedia*, vol. IX Lap-Mass, New York, The Encyclopedia Press Inc., pp. 531-533; J. FALMAGNE, *Participation populaire et naissance des libertés au moyen âge*, Montréal, Beauchemin, 1971, pp. 249-257: excommunicated by Pope Innocent III for his abuses of power (including the expropriation of the Church’s properties), and weakened by his defeat in France, King John was forced to sign under oath the document presented to him by the English barons in June 1215. The obtention of this text by compulsion of the king “at the sword’s point” brought the Pope, by a Bull dated August 24, 1215, to declare the *Magna Carta* illicit and void. After King John died in October 1215, the *Magna Carta* was revised significantly in 1216 and 1217 and John’s young son, Henry III, ratified it in a definitive form in 1225.

l'homme et du citoyen of 1789.³¹ For the United States of America, they may begin with the June 6th, 1776 *Declaration of Rights* of Virginia or with the better known *Declaration of Independence* of July 4th, 1776, and continue with the American *Bill of Rights* of 1789 and its amendments.

These texts have in common that they promote civil and political rights, which were later called the *first generation* of fundamental rights. The emphasis of these rights is on “*freedom*” from intervention by the State. As you may remember, the French revolutionaries also claimed for “*equality*” and “*fraternity*”. In the mid-XIXth century, the value of “*equality*” would be used to promote economic, social and cultural rights, such as the rights to employment, health services and education, later called the “*second generation*” of human rights. In this century, attempts were made to translate “*fraternity*” into solidarity rights, such as the rights to peace, development and a healthy environment, but the rise of this “*third generation*” of human rights is still slow and difficult.

At the international level, the most important modern texts in regard of these “generations”³² of human rights are, besides the 1948 *Universal Declaration of Human Rights*, the 1966 *International Covenant on Civil and Political Rights* and the *International Covenant on Economic, Social and Cultural Rights*.

At the national level, one could go back at least as far as the law governing French settlers before the British Conquest.³³ However, most authors would prefer to begin their general survey with the apparition of “*anti-discrimination*” legislation in provincial law in the 1940s,³⁴ followed by the adoption of human rights acts in all the provinces, to briefly mention the 1960 *Canadian Bill of Rights*³⁵ and to rapidly come to the 1982 *Canadian Charter of Rights and Freedoms*.

The justification or explanation for this rapid move towards the 1982 text is precisely connected to the chart that I used at the beginning : the higher the level of protection given to human rights in positive law, the better it is. So even though the provincial statutes and the federal 1960 statute may have provided a good level of protection to Canadian citizens, so good that the Supreme Court of Canada introduced the qualifier “quasi-constitutional”³⁶ to describe the height they reached in my chart, it remained possible to increase this protection to a higher level, that of the Constitution. Or course, the fact that human rights are constitutionally protected by the Canadian Charter does not mean that they are forever exempt from infringements and violations, or maybe even death.

31. For both England and France, however, many other earlier texts — not as important as those mentioned here — provided some recognition and protection to human rights : for a general overview, see for example the study of J. FALMAGNE, *ibid*.

32. The term “generation” is inappropriate since the second and third “generations” are not the “children” and “grand-children” of the first “generation”. For what I consider to be the correct use of the interpretation of the expression “generation of rights”, see J. RHÉAUME, *op. cit.*, note 24, pp. 25-26.

33. For a general idea, see *id.*, pp. 52ff.

34. For a survey, see for example I.A. HUNTER, “Human Rights Legislation : Its Origin, Development and Interpretation”, (1977) 15 *University of Western Ontario Law Review* 21-58.

35. For a complete study, however, see W.S. TARNOPOLSKY, *The Canadian Bill of Rights*, 2nd rev. Ed., Toronto, McClelland & Stuard, 1975.

36. See for example *Insurance Corporation of British Columbia v. Heerspink*, [1982] 2 R.C.S. 145, pp. 157-158, and *Singh v. Minister of Employment and Immigration*, [1985] 1 R.C.S. 177, p. 224.

C. THE "DEATH" OF FUNDAMENTAL RIGHTS

This reference to death may sound a bit extreme but its emotional load is used to underline some real dangers that are threatening human rights. Not to abuse your kind patience, I would shortly describe only three of these threats.

First, is the trend to consider *human rights as "property"* that people could acquire (usually at birth, exceptionally at the age of majority) and therefore could lose or give away. However, human rights "belong" to us in a different way that our clothes, money, etc. do. We "have" them because we are human, because they are inherent to human nature : and because we cannot lose our human nature, we cannot lose our human rights by being or becoming poor,³⁷ old, sick...

Expressions that you may have heard to define the nature of human rights, such as "inalienable" and "imprescriptible" thus correctly suggest that nobody can be deprived from his fundamental rights by a (mistaken but voluntary) decision or by the mere passage of time. Thus we can give away our money for example, since to be wealthy is not inherent to our human nature, but not our human rights.

Accordingly, *we can never renounce to our "entitlement" to human rights because we can not renounce to our "status" as human being. But the exercise of our human rights may be "delayed"* : for example, we have to reach a given age before we can exercise our right to vote, and then we have to wait for elections to be called by the authorities. This *exercise* can also be "*waived*" because we can also renounce to the *exercise* of our human rights in a particular context, for example we may join the army or the police or even a company and, as a result, lose the exercise of our right to be "free" and move wherever and whenever we want to go.³⁸ And because human rights are inherent to our nature, their *exercise* will "revert" to us as soon as our renunciation will no longer be effective.

The second danger I want to address is that *the human being is often considered as an "animal" or a "thing"*. In science, and particularly in medicine, the human body is more and more frequently treated as a material to work with, or on, with the consequence that human life is "depreciated", used as a vulgar prime matter for research and experiments. In finance, you already know how workers, patients and students, to name only these, are increasingly becoming simple numbers and "expenses items" in budgets. The problem here is that this materialistic approach denies that the human being is more than its body and that it "forgets" its dignity, with the risk that the human rights inherent to human nature will also be "forgotten" or set aside whenever this is found useful by the decision-maker. This problem raises significant concerns when the decision-maker is a law-maker who adopts a positivist law approach and declares, like the well-known Justice Holmes, "I see no reason for attributing to man a significance different in kind from that which belongs to a baboon or a grain of sand!"³⁹

37. This view is obviously contrary to that of Malthus, who dared to affirm that poor people did not even have a right to life : see the passage quoted at pp. 101-102 in B.K. SANDWELL, "Civil Liberties", in M. ESTALL, Ed., *Rights & Liberties in Our Time*, Toronto, The Ryerson Press, 1947, pp. 96-108.

38. One may argue that in such cases, we are not waiving the exercise of our rights but simply assuming the consequences of the *initial exercise* of our rights.

39. Quoted, without reference, in E.M. HOWSE, *loc. cit.*, note 4, p. 283.

The third threat consists of the *trend to present mere "desires" and "whims" as fundamental rights*.⁴⁰ On this issue, I can assure you that I have seen the most incredible statements, including the "right to life" and the "right to respect" of animals,⁴¹ plants, and even viruses and bacteria!⁴² Of course, a given writer may enjoy spending a few hours to invent, with a bit of humour a list of rights for people when they reach a certain age.⁴³ However, it is a quite different concern when the World Tourism Organization affirms that "tourism has become increasingly a basic need, a social necessity, a human right".⁴⁴ The problem here is that when desires are confused with human rights, when a serious matter such as human rights is treated frivolously, these can be more easily infringed and violated by unscrupulous people vested with power.

CONCLUSION

I would not dare to finish these introductory remarks on human rights on such a gloomy note. I would rather propose that the celebration of the 50th anniversary of the adoption of the *Universal Declaration of Human Rights* should be an excellent opportunity for everyone to remember *the importance of recognizing and protecting human rights at the international level and, above all, at the national level*. If you are surprised by the emphasis on the national level, you may be comforted by the fact that this is due to the greater ease with which positive law can then be used to recognize and protect these rights.

40. For a recent and very good article trying to bring a solution, see A. HAREL, "What Demands Are Rights? An Investigation into the Relation between Rights and Reasons", (1997) 17 *Oxford Journal of Legal Studies* 101-114.

41. See for example the 1977 *Universal Declaration of the Rights of Animals* of the International League for Animal Rights (in DOCTER Institute for Environmental Studies/Milan, *European Environmental Yearbook 1987*, DocTer International U.K., London, 1987, pp. 785-786), affirming among other "rights":

Art. 1. All animals are born with an equal claim on life and the same rights to existence.

Art. 2. 1. All animals are entitled to respect.

Art. 2. 3. All animals have the right to attention, care and protection of man.

Art. 14. 2. The rights of animals, like human rights, should enjoy the protection of law.

An excellent compendium of the claims advanced in this field can be found in R.F. NASH, *The Rights of Nature*, Madison, University of Wisconsin Press, 1989. See, at p. 28, his quote from D.G. RITCHIE, *Natural Rights*, London, 1894, p. 111, who by asking a question provides a good element of answer to many of these claims: "Because a work of art or some ancient monument is protected by law from injury, do we speak of the 'rights' of pictures or stones?"

42. Bacteriologist René Dubos "was prepared to say that even germs should not be eradicated [...] People and germs should coexist, just like people and wolves": see R.F. NASH, *id.*, p. 77. At p. 78, Nash brings a precision to his analysis: "Dubos never quite said that germs had a right to exist which humans should respect".

43. See G. NACHMAN, "A bill of rights (and wrongs) for those over 50", *The Ottawa Citizen*, November 23rd, 1997, p. D-13. See also Anonymous, "Une charte pour les jeunes sportifs", *La Presse*, Montréal, October 11th, 1990, p. A-10, listing ten "rights" of a child in the context of sports.

44. UN Doc. E/1978/98, quoted by P. ALSTON, "Conjuring Up New Human Rights: A Proposal for Quality Control", (1984) 78 *American Journal of International Law* 607-621, at p. 611.

I would also hope that my comments will have impressed on you the clear idea that, *even if there would be no positive law thus proclaiming the existence and respect of human rights, they still exist and must be respected* because our human nature demands these rights and we are all bound by natural law.

I would also invite you to take time to think more about some of the forgotten *consequences of the fact that human rights are inherent to our human nature*. For example, *they exist, we "possess" them, as soon as we exist, as early as our conception, even though we may not exercise them before a given time*, whether it is for example the right to life or to vote of the unborn child. Similarly, any violation of the human right of a person has an effect on each of us because we all share the same human nature.

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