

# **An Australian human rights framework: towards a Christian response.**

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- 1. Introduction.** The 2020 Summit has raised the profile of a human rights framework for the Federal legislature. The new government may introduce plans to develop such a framework. This possibility has triggered what will become sprawling and complex community debate.

If Christians can discern the main issues, we will have much to contribute to the debate. This paper is offered as a first step in that process. The SIE is thankful to the Archbishop and Standing Committee for the opportunity to participate.

- 2. Cautionary notes.** We understand that due to time constraints, some members of the Committee may be unable to read the entire paper. However we urge **that at least the following cautionary points be noted:**

- (a) Complex issues that deserve close study are at stake.
- (b) A church's task is primarily to speak theologically (see para. 38)
- (c) More will need to be said than simply that 'rights talk is unhelpful' (see para. 43).
- (d) 'Rights talk' is a 'lingua franca' for ethics, and must be challenged with care (para. 7).
- (e) 'Rights talk' does not always involve an evasion of 'responsibilities' (see para. 8).
- (f) Rejection of human rights law carries some risks (see paras 7, 44, 46).
- (g) Familiarity with competing legal models is essential to an informed response (see para. 45).
- (h) Ongoing monitoring and reflection will be required (para. 49).

- 3. The contents of this paper are as follows (paragraphs):**

## **I. The difficulties of rights language (4-8)**

*Some semantic complexities surrounding the discussion of human rights.*

## **II. Overlap of Bible, 'rights' and 'human rights' (10-17)**

*Texts and themes in the Bible that conceptually resemble modern discourse.*

## **III. A short history of rights-discourse (18-28)**

*A sketch of the evolution of 'rights' and two significant 'atheological moments'.*

## **IV. Common objections to a human rights framework (29-38)**

*Standard non-theological objections to an Australian human rights framework.*

## **V. Towards a Christian response (39-49)**

*Provisional suggestions for a considered Christian response.*

## **Appendix: UN instruments (50-55)**

*A glimpse of some important UN documents.*

## I. The difficulties of rights-language.

- 4. Context.** We offer some provisional definitions (para. 4), but discourse about 'rights' and 'human rights' contains complexities that need to be noted. This section also observes some of these complexities.
- 5. Definitions.** For purposes of this paper, we offer the following working definitions (acknowledging that disagreements can be found in each case):

**'Right':** a 'moral claim'; a form of entitlement asserted by or for someone.

**'Differential right':** a right applicable to a particular person (but not necessarily to all people).

**'Universal right':** a right applicable to all people everywhere.

**'Human rights':** a legal and moral specification of, and a discourse about, universal rights.

**'Bill of rights', 'charter of rights'** (often used synonymously): legal instruments that list and protect human rights.

**'Human rights framework':** a general term to describe the application of human rights as a controlling element in a legal system, but without specifying the actual legal model used (e.g. via either a 'constitutional' or 'statutory' arrangement).

- 6. General 'rights' and 'human rights'.** Modern 'rights' discourse encompasses a huge semantic range and the term is used in a variety of senses.

'Human rights' discourse is a subset of rights discourse. It seeks to describe, protect and uphold rights common to all people everywhere (although the normative specification of rights, and the assessments of universality, are disputed.) There is a massive literature on human rights.

A 'right of reply' or a 'consumer right' are examples of rights that are not necessarily 'human rights', because they are 'differential' rights pertaining to particular people and circumstances.

- 7. A 'lingua franca' for ethics.** Philosophical disputes about the validity of 'rights talk' may not be very helpful in popular or public discussion. Rightly or wrongly, the wider community assumes that 'rights' are valid as a general concept. It is generally held that the concept of a 'right' is not in need of discussion. It follows that those who question the validity of rights discourse are likely to be misunderstood or misrepresented.

Indeed 'rights' and 'human rights' have become a widespread language for the discussion of ethics itself. It follows that those who are 'against rights' or 'against human rights' can be misheard or misrepresented as being in favour of unethical behaviour.

There may be some value in questioning the limitations of rights discourse and in observing its abuses, but the matter will need to be approached with care. The political goal of such questioning would also need careful consideration.

- 8. Rights versus responsibilities?** A common objection to rights discourse (see para. 30) can imply that rights are *contrary* to responsibilities. It should be noted that rights theorists often try to take account of this point, and that rights discourse is arguably 'maturing' in this respect. For example: it is recognised that no 'right' in a civil society may be 'infinitely' asserted against another person or against another right; and that in reality, a right is only defended in a civil society when other parties undertake the responsibility to defend it.

Of course we also note that it is quite proper to observe that a right usually entails a responsibility. This important insight seeks to defend civil society, where care for each other ('responsibilities') obviates the need to bicker over the special interests ('rights') of the self. However, that insight may not be a strong defeater of a human rights legislative framework. The specification of human rights, and a framework for their defence, may presume and uphold reciprocal social responsibilities without formally specifying them.

- 9. Conceptual spheres.** Human rights language is used in different conceptual spheres. For example, two important U.N. 'covenants' concern different aspects of the relationship of a State to its citizens. (Each covenant is briefly described in the Appendix, below.)

- The **International Covenant on Civil and Political Rights** (ICCPR) limits government intrusions into people's lives.
- The **International Covenant on Economic, Social and Cultural Rights** (ICESCR) lists various human aspirations that governments should assist people to achieve.

The logic and philosophy of these two broad spheres is quite different.

## II. Overlap of Bible, 'rights' and 'human rights'.

**10. Context.** Christians are rightly suspicious of ethical claims to 'know good and evil' without reference to God. Yet Christians also affirm some secular ethical discussion. We may do so for the good of a neighbour, to explain the Christian worldview, or to commend the gospel.

Likewise, human rights discourse can present itself as an exercise in godless human autonomy. But it offers opportunities to protect neighbours, to explain a Christian worldview, and for gospel engagement. This is so because rights-discourse overlaps with biblical concepts and with a Christian theology of ethics.

**11. Biblical language equivalents?** The biblical languages have no direct equivalent to our modern 'right' or 'human rights'. The large semantic and conceptual range of rights discourse also complicates our discernment of where it overlaps with biblical language and concepts.

**12. 'Rights' in English bibles.** Modern translators use English 'rights' for a variety of Hebrew and Greek terms. It is not found in the KJV (although 'the right of' often appears there), and RSV uses the term with less frequency than NIV. This gradually increasing frequency in newer translations parallels its emergence as the 'lingua franca' of modern ethics. Intentionally or not, these translational choices implicitly endorse modern conceptions of rights.

**13. Biblical 'differential rights'.** Of the verses where English 'rights' is employed, some refer to what we could perhaps call 'differential rights', including the inheritance due to a firstborn, the particularity of care of due to a spouse, and the authority pertaining to the office of king or apostle. (RSV: Exod. 21:10; 1 Co. 7:3; 9:15. NIV: Exod. 21:9-10; Deut. 21:16; 1 Chr. 5:1-2; 1 Co. 9:4-5, 15, 18; Gal. 4:5; Heb. 12:16.) Arguably, some of these translational decisions may camouflage important nuances in the biblical logic of justice and authority. (For example, the NIV use of 'right' in Rev. 2:7 and 3:21 shifts the emphasis away from the gracious authority of the Lord Jesus toward an implication that 'righteous' people may claim certain rewards.)

**14. Biblical 'human rights'.** Another cluster of such verses evinces the discussion of universal 'human rights', where 'rights' translates a cluster of Hebrew terms for the 'just judgements' due to weak and vulnerable people. (RSV: 1 Sam. 10:25; Prov. 29:7; 31:5, 8f; Jer. 5:28. NIV: Job 36:6; Ps. 82:3; Prov. 31:5, 8-9; Eccl. 5:8; Isa. 10:2; Jer. 5:28; Lam. 3:35.) One translation even goes so far as to use the modern phrase 'human rights' (New Jerusalem Bible: Lam. 3:35).

**15. Creation and rights.** But most Christian discussions of human rights do not begin with such translational choices. They point to the biblical anthropology introduced in Genesis 1-2 and continued throughout the Bible. According to this view, the first parents of humanity are created in the image of God and as co-equal vice-regents over the planet. It follows that no human may treat another as less precious than themselves before God (cf. Gen. 4:10f; 9:6). It also follows that humanity is to be treated with even greater care than that due to the created order. Both entailments are seen in subsequent biblical law and ethics. The concept of 'human dignity' evolved as an expression of both these entailments. The concept of 'human rights' is a legal expression of human dignity, based in part upon these biblical beginnings. It is now 'shorthand' for how we may not treat anyone as intrinsically inferior to ourselves.

Although this argument has much to commend it, we should also pause to observe the sovereign role of God in biblical morality. Any moral order that is evident in the creation derives ultimately from the character of God, and so any 'rights' that people have are contingent upon God's goodness in creation. Even human life itself is not 'sacrosanct' in Scripture, since God is at liberty to withdraw it, and occasionally authorises others to do so. A thoroughly scriptural account of the 'rights and wrongs of rights' will need to take this authority of God into account.

A key question becomes: may we endorse the 'shorthand' without compromising God's name?

**16. Equality and rights.** Human rights become problematic when applied to the *inequalities* between people. But this problem is actually the continuation an older disagreement over the nature of 'equality' and its relationship to 'justice'.

It can be argued that the Bible expresses justice by *strict equality in extreme situations*, such as impending death, dire social exclusion, or when facing legal judgment. But in the normal orderly conduct of society, justice is expressed as *appropriate responses to differences between people* (e.g. differences of office, of giftedness, or of work performed). Justice then determines what response (e.g. honour, recognition, or payment) the difference calls forth.

The task of judgment becomes to discern when strict equality of action toward all is required, or when the appropriate response to each person's particular situation is required. *Human rights discourse will require the same task of discernment.*

Some argue that human rights discourse is **well-suited** to bring justice in extreme situations, such as dire social exclusion (e.g. extreme poverty), at legal trials, or when death threatens (e.g. extreme ill-health or during natural disasters). But others argue that human rights discourse **lacks nuance**, because it conflates the 'justice as equality' that is needed in extreme situations with the 'justice as appropriate response' that is needed in recognition of human differences.

(The reception and implementation of the UN's **ICCPR** has been less controversial than that of the **ICESCR**. Perhaps that is because very broadly speaking, the **ICCPR** is mainly concerned to avoid or remedy extreme situations, whereas the **ICESCR** promotes many aspirations and institutions to enhance the normal orderly conduct of a society.)

**17. Tyranny and rights.** Modern human rights frameworks also seek to defend against government tyranny. Several Old Testament references routinely limit the actions of Israelite kings, particularly in comparison to contemporaneous ancient near-eastern despots; and after Christ's victory over all other authorities (1 Cor. 15:24; Eph. 1:21; Phil. 2:9; Col. 2:10), the power of rulers is consistently whittled away.

Yet conservative Christians have often been reluctant to assert that the Bible endorses the limitation of tyrants. This view is based upon debatable readings of Matthew 22:21, Romans 13:1-17 and 1 Peter 2:13-17, and upon the observation that neither Jesus nor Paul nor the prophets of the exile espoused revolution.

However it can equally be argued that democratic traditions grew from Christ's exaltation to glory. Freedom of conscience, speech and assembly arose as the churches responded to Christ's Word and Spirit. Temperate legal judgments arose as judges received and imitated the merciful judgment of God in Christ. Under Christian theological influence over two millennia, Western culture was blessed by new 'standards of governance' revealed in Christ.

There can be no return to despotism since Christ has shown the nature of true rule. These new expectations upon rulers continue to be exported in an increasingly globalised world. Hence it can be argued that Christians have good reason to support human rights initiatives against the incursions of tyranny—while always objecting to the attempted erasure of Jesus Christ as the Source and Sovereign of proper rule.

### III. A short history of rights-discourse.

18. **Context.** But what explanation can be given for these overlaps of modern 'rights' with biblical concepts and with theological ethics? Perhaps 'rights' are wholly alien to Christian thought, and the overlaps only accidental. Or, perhaps there is some organic link between modern 'rights' and historic Christian thought. This section attempts to arbitrate between those possibilities. It is denser, yet is worth persevering with for reasons that will be explained below.
19. **A Western emphasis.** According to C. Taylor, all cultures somehow indicate that human beings command respect (although the circle drawn around those to be respected does vary). But peculiar to the modern West is the formulation of this principle in terms of a 'right', understood as "a legal privilege which is seen as a quasi-possession of the agent to whom it is attributed." How did this formulation evolve in the West?
20. **A complex story summarised.** In brief, 'what is right' morphed over time into 'my right', moving the emphasis of justice away from an objective moral order toward the subjective claims of individuals (and later, communities). But various accounts are given of the history of these ideas. The following rough sketch camouflages a great deal of academic dispute.
21. **Origin: 'natural law'.** In early medieval thought, God institutes *and then reveals* a 'natural law': that is, an *objective* moral order that people are 'under' and to which we submit (either joyously or rebelliously). This natural moral order confers various benefits upon each of us.
22. **Transition: 'natural right'.** For later medieval thinkers, under 'natural law' we each acquire a *subjective* power to act lawfully ('my right'). "At first such rights were seen as differential possessions: some people had the right to participate in certain assemblies, or to give counsel, or to collect tolls on this river, and so on." (C. Taylor)
23. **Turmoil: historical events.** Historians also observe that thought about human rights was not limited to the quiet halls of philosophers. The struggle over the Magna Carta, or the brief against Charles I and his trial and execution under the rule of Cromwell's Parliament, are often hailed as milestones in the development of rights. The development of rights discourse is but one aspect of an ongoing social negotiation about the complexities of 'restraining wickedness and vice', including that of rulers who sought to evade the rule of Christ over them.
24. **Flourishing: rights and contract.** "The revolution in natural law theory in the seventeenth century partly consisted in using this language of rights to express ... universal moral norms" (C. Taylor). In this early modern period, such language made it possible to describe society in terms of the 'natural rights' due to each citizen, with law understood as a system of 'social contracts' to protect those rights. But importantly, at this stage the controlling concept of 'natural law' *had not been lost*. Therefore the content of early modern rights (e.g. to 'life', 'liberty' and property) could command a general consensus.

**25. Eclipse: alternative approaches.** But 'natural law' by now included no reference to divine revelation. Its determination therefore became increasingly controversial. Hence concepts of 'natural law' and 'natural rights' fell into disfavour, and by the mid-nineteenth century, English law was criticised for its evident injustices and its many inconsistencies. Two alternative systems of moral and legal philosophy—Kant's duty-based 'categorical imperative', and Mill's consequentialist 'utilitarianism'—fought for pre-eminence; but these systems, though rivals, both jettisoned 'natural law' and privileged the power of human rationality to determine the good. Both approaches dominated ethics, law and politics until well into the twentieth century.

**26. Revival: a response to brutality and hubris.** In an attempt to curb twentieth-century excesses and atrocities committed first by Spanish communists and later by Nazi fascists, Roman Catholic moral thought reintroduced the language of rights. It appeared in pre-war defences of private property and of basic human units such as the family, and in response to the executions of priests during the Spanish Civil War. In the post-war 'human rights revolution' (and under the influence of Catholic intellectual Jacques Maritain), it was the most available language for responding to the oppression, imprisonment and murder of millions. It was this milieu that gave rise to the UN's important 1948 **Universal Declaration of Human Rights**, two subsequent **Covenants** and several other UN legal instruments (see Appendix).

But the concept of any 'natural law', which had been jettisoned in the eighteenth and nineteenth centuries, was not revived.

**27. Globalisation: an international human rights framework.** The last three decades have seen a coordinated effort to enable national legislatures to govern according to the 'spirit' of international human rights agreements. The debate to be had concerning our own Federal legislature should be regarded in this context.

Since the Australian Government is already signatory to several international human rights instruments, human rights activists argue that it should be no problem, in principle, to interrogate our laws for their congruence with these instruments.

**28. Tension: contrasting traditions of law.** The recent development of rights discourse has occurred largely in a European context. Broadly speaking, law in the European tradition is more overtly 'aspirational'. It helps to state and shape the kind of moral community to which a society aspires.

In contrast, Austral-Anglo-American legal tradition is more sceptical and adversarial. It sets out the basic minimums of action and behaviour that a community member must observe. But statements of the society's moral aspirations are left to other social institutions (e.g. churches).

Over several decades, Australian legal education has increasingly paid attention to the European tradition. It is unsurprising, then, that some tension over human rights has become evident both within and beyond our legal profession.

Underlying the human rights discussion is a deeper philosophical point at issue: the extent to which the law should intentionally express and overtly set out a community's moral aspirations.

## IV. Common objections to a human rights framework

29. **Context.** The following objections to a human rights framework often appear in media reports and general Christian discussion. We will not systematically evaluate the objections here, although some comments about them follow in paragraphs 36-38.
30. **The sufficiency of common law.** This objection argues that eight centuries of English common law tradition is already ‘a vast bill of rights’ (C. Francis), which has already developed in such a way as to protect basic human rights most admirably. The burden of proof is therefore transferred to anyone who would argue that this tradition needs augmentation by a human rights framework.
31. **Elevation of an activist judiciary over the parliament.** According to the third objection, law conducted within a human rights framework licenses the judiciary to rule the Parliament. The current separation of powers means that our parliaments make laws that our judges interpret. But a ‘charter of rights’ would enable unelected judges to preside over elected representatives, and the separation of powers would be compromised.
32. **Erosion of citizen responsibilities and ‘civil society’.** This objection concerns the rise of rights discourse in general. If a ‘right’ is correctly understood to be a moral claim or an assertion of entitlement, then a rise in rights discourse turns citizens into claimants upon each other rather than contributors to society. Such an emphasis erodes relationships of trust and cooperation by downplaying the responsibilities that citizens have toward each other. A human rights legislative framework, it is concluded, will only serve to accelerate this cultural trend.
33. **A ‘lawyers’ picnic’.** This colloquial objection pictures a consequence of the previous two scenarios. Only the legal industry profits as an ever-increasing number of human transactions are subjected to the logic of rights-claims, and special interests are given legal privilege in a way that damages social cohesion.
34. **The spectre of novel rights.** A fifth objection claims that a human rights framework will be leveraged by special interest groups for ‘socially progressive’ liberal agendas. [Behind this objection is a wider ‘culture war’, where defenders of traditional ‘family’ (children raised by a married man and woman) oppose and are opposed by proponents of diverse ‘families’ (domestic groupings that include same-sex couples, de-facto couples, single parents etc.).]
35. **Unproven results.** Opponents of human rights frameworks ask whether there is evidence to suggest that the most vulnerable groups (such as children, indigenous people and the poor) have been advanced by human rights frameworks. They often point to dysfunctional or tyrannical regimes where human rights law is ostensibly in effect. (The discussion is complicated by disputes over evidence, or by other confounding factors within the polities concerned.)

- 36. Comment (A): Human rights are well-intentioned.** The ‘restraint of wickedness and vice’ is a centuries-old social project, and arguments for and against a human rights framework are another stage in society’s negotiations about this complex task. Any government involvement deserves an assumption of goodwill and some degree of respect, even where we disagree.
- 37. Comment (B): These objections have been seriously addressed.** Human rights activists believe they can answer each objection. Their replies deserve study and evaluation. Various legal models aim to regulate the judiciary’s relationship to parliament (para. 45). Indeed activists are motivated by a belief that the sovereignty of parliament, the expression of the people’s will, the accountability of modern governments, or the adequacy of law are already highly compromised. They point (e.g.) to the denial of *habeas corpus* under anti-terror laws; to the Federal Executive’s accrual of power; or at a State level, to some vulnerabilities in private property ownership.
- 38. Comment (C): These objections are not overtly theological.** The objections concern the practical prudence of a human rights framework. Of course Christians may express considered opinions about what is likely to work for the public good. But our prior task is to discern and express those theological truths that are known to us as disciples of Christ. Some care, then, will be needed to distinguish comments that have theological warrant from other comments.

## V. Toward a Christian response.

**39. Context.** The objections we have seen are not theological as such. But distinctively Christian objections to human rights often conflict with distinctively Christian affirmations of human rights. We need to consider, then, what might account for this disagreement among Christians

The account above (paras 21-26) produces two somewhat contradictory conclusions. These two conclusions explain Christian disagreements.

More optimistically, they may even offer ‘channel markers’ for a Christian response.

**40. Two contradictory conclusions.** The historical account above (paras 21-26) includes two significant ‘atheological moments’:

- (i) when ‘natural law’ drifts free from divine revelation; and
- (ii) when ‘natural law’ itself is discarded.

The theologically informed origins of the account, and these two ‘atheological moments’, result in somewhat contradictory conclusions:

- On the one hand, rights language is no longer controlled by an objective moral order or by any divine revelation. Rights discourse can therefore ‘malfunction’. It can be used to press for special interests without reference to wider concepts of justice, and can be asserted against other claims in ways that are difficult to arbitrate.

(Similar problems can occur within existing justice systems, and can be construed as a difficulty inherent to administering justice in a complex and fallen world.)

*... For these reasons many Christians cannot **endorse** ‘human rights’.*

- On the other hand, a Christian theology of ethics defends human life and various familial and communal interactions. These defences are expressed in the Bible, match the God-given natural moral order, and have been ‘repackaged’ as ‘human rights’—a spectacularly successful popular reassertion of some key elements of the moral order.

(Similar praise could be given to some features of existing justice systems, since under the providence of God all justice systems eventually approximate something of his natural moral order.)

*... For these reasons many Christians cannot **oppose** ‘human rights’.*

Clearly then, careful thought will be needed about what to endorse and what to oppose!

**41. Christian disagreement.** These two conclusions may explain why Christians are polarised over the value or dangers of an Australian human rights framework. ‘Some Christians have denied the whole concept of human rights, believing that we only have responsibilities and duties towards one another. Others are concerned that the notion of human rights is becoming so dominant that human responsibilities are diminishing. Yet others believe that the modern notion of human rights contains within it an essential Christian component which it is the duty of the church to preserve and the mission of the church to propagate’ (J. Stott). Evangelical Christians are similarly divided, and we have seen these disagreements emerge within SIE discussion.

**42. A Christian response within ‘channel markers’.** There are good reasons to think that Christians can support a human rights framework if it enhances the normal orderly conduct of society; or if it protects from tyranny; or if it brings equality to the extreme situations of legal trial, social exclusion and the protection of human life (although we should immediately note the absurd exception, at this point, of the unborn in modern Western jurisdictions). A careful Christian response might endorse those expressions of human rights that defend what Catholics call ‘human dignity’ and what Protestants call ‘moral absolutes’.

But Christians also remain very conscious that the introduction of human rights provisions can give rise to unhelpful bickering over special interests at the expense of civil society, since the society is not able to agree about a common good, based in a natural moral order that has been given by God and revealed in the incarnate and enscripturated Word.

**43. Terms of debate.** Conservative Christians tend to question the validity of rights discourse in general. But the forthcoming debate will be about the extent to which Australian laws should be checked against an internationally agreed framework of *human rights*. The terms of the debate will not be an abstract discussion of the validity of ‘rights’ in general, and Christian comment will need at least to demonstrate an understanding of these terms of debate.

**44. Risks of conservatism.** In view of the difficulties, some may prefer simply to oppose all and every attempt to introduce a human rights framework. However, such an approach can too easily be portrayed as a protection of special Christian interests at the expense of human dignity and the common good. Also, this strategy will be hard-pressed to resist the rising tide of community expectation that good law should at least make some reference to human rights.

**45. Legal intricacies.** Versions of both the ‘constitutional’ and the (more flexible) ‘statutory’ model may be proposed for an Australian human rights framework. All serious proponents distance themselves from the U.S. model (which is governed by a ‘constitutional’ Bill, with Amendments, of very general rights). Each model has different strengths and weaknesses (and examples are outlined in a companion SIE paper). The final legal expression of human rights, and the legal sanctions to be employed, will materially affect a Christian response. Therefore, an abstract general position on human rights will unfortunately not suffice. Familiarity with the legal models will be essential to an informed comment.

(In a sense, human rights proponents seek better legal ‘tools’ to work with. We may do legal practitioners a service by assisting in the construction of human rights ‘tools’. Or, if we have good grounds to oppose a human rights framework, we may do a similar service by identifying the legal problems in need of solution and then suggesting better ‘tools’.)

- 46. The specification stage.** When a human rights framework is under development, there comes a ‘horse trading’ stage when a particular set of rights is settled. That is, the law needs to specify a particular set of rights to be approved at law, and perhaps defended by the law (depending on the legal model used). Human rights proponents remain optimistic that societies can navigate this stage. But for others it is a ‘deal breaker’, because they fear the prospect of a legal regime where their ‘right’ is not protected.

Christians often express concerns along these lines. For example, the evangelical Christian may fear that their ‘human right’ of free speech and free assembly will be eclipsed by the gay person’s ‘human right’ of social tolerance and equal opportunity. Christians may fear such ‘deal breakers’ enough to completely oppose a human rights framework from the outset. But if a human rights framework then goes ahead, such an initial strategy may later marginalise the Christian contribution (especially if we have only been pleading for special Christian interests).

Proper Christian thinking will seek to lift the debate to the set of rights that best promote the common good.

- 47. Intention versus performance.** It is premature to judge whether any proposed changes will be effective in their intent. In brief, some argue that human rights legislative frameworks do not demonstrably improve human lives. Others argue that the use of human rights in a legislative context is maturing, and that political experience and legal expertise have refined the application of human rights frameworks.

Each such argument will need consideration on its merits, and is dependent in part upon the specific legal models under consideration.

- 48. Further detail.** In the interests of brevity and clarity, this paper has deliberately avoided too much detail at some points. The SIE will be glad to supply further detail on any matters raised (or not raised) here.

- 49. Future directions.** Our suggestion is that a working group be convened to gain clarity on what legal frameworks are proposed; what list(s) of protected human rights are proposed; what a Christian position on each of these proposed protections might be; what views of justice are operative and are supportable; and whether the proposed frameworks are likely to improve human lives.

- **Andrew Cameron**, on behalf of the Social Issues Executive  
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## Appendix: UN instruments

**50. Context.** A human rights framework for the Australian legislature would be designed in observance of international human rights instruments to which Australia is a signatory. The following paragraphs introduce the three main UN human rights instruments. Although there are others, this glimpse offers some content in a discussion that can become lost in abstraction.

**51. Universal Declaration of Human Rights.**

The **UDHR** (1948) (<http://www.unhchr.ch/udhr/lang/eng.htm>) makes no attempt to define a 'right' in abstract. "All human beings are born free and equal in dignity and rights," asserts its first article. "They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood." Recognition and knowledge of "the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world," according to the preamble. The motivation of the document is therefore to advance freedom, justice and peace through the knowledge and recognition of rights. A cluster of positive and negative rights are then listed.

**52. Variance in magnitude.** The UDHR enumerates as 'rights' matters that vary in magnitude:

- Some are 'weighty': e.g. rights to life, liberty, security; equal and just treatment before the law; freedom of movement; nationality; marriage and procreation; property ownership; freedom of thought, conscience and religion; freedom of opinion and expression; freedom of peaceful assembly and association; and participation in government.
- Others are less 'weighty': e.g. rights to social security, fair work and pay, and adequate standards of living; special care for mothers and children; education; cultural participation; and even the right to "periodic holidays with pay" and rights for "the free development of ... personality".

Subsequent legal instruments have tried to deal with this variance in magnitude, and some argue that a maturation in the legal practice of human rights can be observed.

**53. International Covenant on Civil and Political Rights.**

The **ICCPR** (1966) (<http://www2.ohchr.org/english/law/ccpr.htm>) deals with rights to live without tyrannical interference to participate in the democratic process, including:

- freedom of speech and religion;
- the right to vote;
- freedom from unfair arrest and detention and the right to a fair trial; and
- freedom of association and the right to join trade unions.

**54. International Covenant on Economic, Social and Cultural Rights.**

The **ICESCR** (1966) (<http://www2.ohchr.org/english/law/cescr.htm>) deals with a State's responsibility to promote the accessibility of basic living standards, including:

- food security, housing, work, social security, education and health; and
- fair wages and safe working conditions.

**55. Other UN instruments.**

Several other international human rights instruments now exist. Considerable legal and technical expertise is required to navigate and apply them. (See <http://www2.ohchr.org/english/law/>.)

[end]