

whether civil liberties were better protected through a bill of rights or under the common law, how this protection could be related to the distribution of legislative powers, and the degree of entrenchment such rights should receive in any new constitutional arrangement.

The debate on the first issue ended with the enactment of the 1960 Canadian Bill of Rights, entitled "An Act for the Recognition and Protection of Human Rights and Fundamental Freedoms". The preamble states: "The Parliament of Canada, affirming that the Canadian nation is founded upon principles that acknowledge the supremacy of God, the dignity and worth of the human person and the position of the family in a society of free men and free institutions; Affirming also that men and institutions remain free only when freedom is founded upon respect for moral and spiritual values and the rule of law, and being desirous of enshrining these principles and the human rights and fundamental freedoms derived from them, in a Bill of Rights which shall reflect the respect of Parliament for its constitutional authority and which shall ensure the protection of these rights and freedoms in Canada."

The treatment of the Bill of Rights in the courts, characterized by some as one of "benign neglect", and the continuing demands for a new Canadian Constitution suggested that the 1960 bill might not be the last word on the formal recognition of human rights in Canada. In 1968, coinciding with International Human Rights Year, the Government published proposals for a constitutionally-entrenched Canadian Charter of Human Rights. The ensuing debate focused increasingly on other aspects of constitutional reform, and the initiative came to a halt with the defeat of the Victoria proposals in 1971.

In 1978, the Government launched new constitutional proposals that constitute a "Canadian Charter of Human Rights and Freedoms" replacing the 1960 Bill of Rights. The new instrument has a different ring to it, the preamble declaring the Charter to be "founded on the conviction and belief, affirmed by this Act, that in a free and democratic society there are certain rights and freedoms which must be assured to all of the people of that society as well as to people within society individually and as members of particular groups, and which must, if they are to endure, be incapable of being alienated by the ordinary exercise of such legislation or other authority as may be conferred by law on its respective institutions of government".

Human rights have an ill-defined status in the hierarchy of legal standards, with the result that there continues to be debate about their jurisprudential underpinnings. One approach, growing out of the seventeenth century's emphasis on mankind's common human nature and its egalitarian implications, conceives human rights in naturalist terms — that is, a set of minimum inalienable rights inhering in man by virtue of his being man. Authority for "a higher law" is found in theological or metaphysical absolutes. The problem is that only a legal order can recognize and protect such rights.

Another approach, historical or anthropological in nature, focuses on specific demands at a given time in particular societies. It emphasizes the uniqueness of each society within its own cultural and environmental variables, thus suggesting a highly particular or nationalistic quality at the expense of common human values. The approach of the positivists is to confine rights to those accorded by a state at a particular time within an organized coercive system. They would deny a place for values detached from specific political and ethical beliefs. Again, the result is a strong emphasis on the sovereignty of nation states and a marked resistance to the idea that individuals can be appropriate subjects as well as objects of international law. The Marxist approach, born in response to the often exploitive quality of early industrial society, was initially intensely concerned with human dignity. The Russian revolutionaries gave a priority of rights to the working class and added the right to work, to a fair wage and to social security. In its present form, Communist theory has human rights appertaining to the collectivity, usually the nation state, at the expense of the individual.

#### Generality

Human rights have traditionally been expressed in a high degree of generality, and their definition is usually a composite of shifting elements of legislative, executive and judicial consensus. In the drafting of the International Human Rights Covenants there was a sharp division between those who argued for brief clauses of a general nature and those who argued for substantial precision. The first view prevailed, generally because of the difficulty of setting out the scope and substance of rights in any detail in a comprehensive document intended to attract the widest support among states. Thus, having committed themselves to the general principles, states were to be allowed substantial

*Emphasis  
on sovereignty  
of nation states*