

“WAITER, WHY are there are no vegetarian options on this menu. My friend here is a vegetarian, surely she has the right to a vegetarian meal.”

“I’m sorry, sir, meat dishes are our speciality. However, there is a good vegetarian restaurant further down this street. You could go there if you wish.”

“That’s no good. I want a meat dish and she wants a vegetarian dish. If we go there, I will have to eat a vegetarian meal, and I don’t want to. Surely I have the right to eat meat, and she has the right not to eat meat. I wish to see the manager to resolve this matter?”

If you were the manager, how would you resolve this dilemma? Would you be infringing your customers’ rights by not catering for vegetarians? As manager, of course, you might not want such a contrary customer and you could exercise your right to refuse admission to whomever you wish. But, if you did this, would you be infringing your customers’ right to be served?

Today many controversial issues are seen in terms of rights and their infringement. Claims over rights can even conflict. Is everything we claim a right to, invariably a right? The following are claimed by many to be rights: the right to strike, the right to life, the right to capital punishment, the right to food, the right to famine relief, the right to hunger strike, the right to revolt, the right to vote, the right to health care, the right to euthanasia, the right to education, consumer rights, animal rights and so on.

AT ONCE a difficulty arises, for many of these so-called rights conflict. For example, I could maintain that everyone has the right to life, but if I also maintain that I have the right to revolt against a tyrannical political regime which will very likely bring about death and destruction, then I will have to give up the claim that everyone has the right to life. But just because I give up that claim does this mean

that the right to life does not exist?

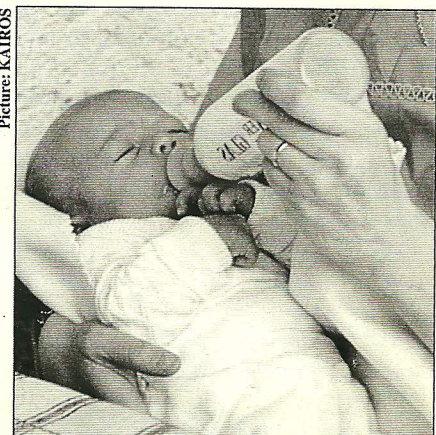
Take another example: the right to strike – a particularly controversial matter in the public sector. Nurses sometimes go on strike, claiming that they have the right to strike when their conditions of employ-

because there is enough food in the world for them to eat and human beings need food to live – whether they can pay for it or not. One cannot have the right to the impossible, but only to what is obtainable.

The right to food is justified on both of these counts: food is obtainable and the right to food is applicable to all human beings. The right to food, then, is a basic human right. No one should die from lack of food. The right to food whether claimed or not by starving people puts an onus on others to rectify such a situation. This is a legitimate concern and a reason for what some countries might consider as interference in sovereign matters. However, in order for such human rights as the right to food to be respected, international co-operation and the costs involved must be met.

HUMAN RIGHTS are rights you have by virtue of being human. To claim a human right, therefore, is to make a very general claim. On the other hand, to claim a right to x and discover that such a right is neither applicable to everyone nor obtainable for all human beings would be one way of testing whether what you claim is a legitimate human right or not.

A new-born baby cannot claim a right to food, but has it, nonetheless

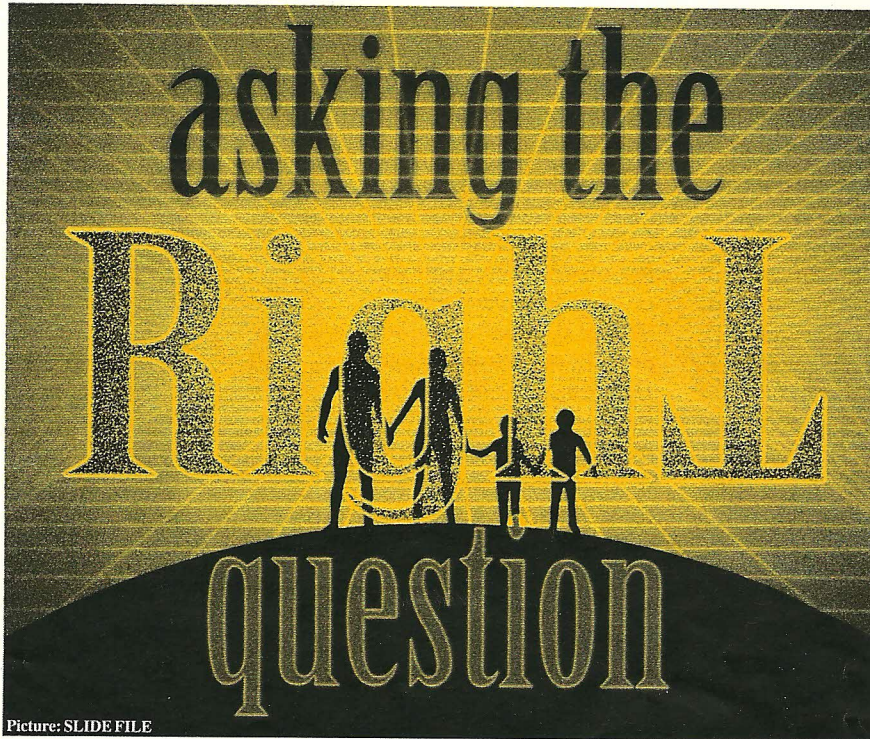


Picture: KAIROS

ment are unacceptable. Others, including some nurses, disagree, claiming that nurses do not have the right to strike. But can nurses have both the right to strike and the right not to strike? Evidently not. Either there is a right to strike or there is not. From this we can see that claims to rights may well conflict – the right to strike v the right not to strike – but rights themselves cannot. Bearing this in mind, perhaps we may be able to assist the manager of the restaurant above in his dilemma.

What he could say is that his customers have the right to food only if they are willing to pay for it. The fact they are vegetarians or meat-eaters is irrelevant. It will then be up to the customers to choose to stay in the restaurant or go elsewhere. No right to vegetarian meals exist hence, no infringement of rights occurs.

ON A more serious note, and to broaden the example, do people have the right to food, even if they cannot pay for it? Do starving people have the right to food? If so, why? Is it because they are starving? Surely not. Starving people have the right to food



Picture: SLIDE FILE

Rightly or wrongly people are claiming more rights today than ever before. But is everything we claim a right to, invariably a right, asks CYRIL McDONNELL.

So, has a vegetarian the right to be a vegetarian? Evidently not. The Inuit, for example, would die if they did not eat meat. So, I cannot claim the right to be a vegetarian on moral or human grounds. In sum, if I have the right to food, I have the right to any kind of food. If I choose to eat or not to eat meat, I can do so, but have no right to eat or not to eat meat.

So, if the right to be a vegetarian is not a basic human right, is it a civil or political right? Evidently not. No government could practically legislate for such a right. So, what is it? Perhaps the right to be a vegetarian is not a right at all, but rather a choice, a choice not to eat meat. On the other hand, there is no choice involved in one's claim to have the right to food. Indeed, some people who are starving may not be able to claim their right to food. A new born baby or an old person may not claim their right to food, but nonetheless they have such a right. Claimed or unclaimed the right to food is a basic human right.

IN SUMMARY, then, as a human being I do have the right to food, but not the right to be a vegetarian or meat-eater. This is a right that I am born with, what commentators call, an inalienable right, a right I cannot give up. However, if the right to food is a human right, then this right puts duties on others (parents or state) to respect it. If there exists a basic right to food, then people starving anywhere at any time in the world through famine, drought or expulsion from one country to another residing in refugee camps have the right to be fed.

In addition to human rights, people often talk about their civil and legal rights. A glance at the history of the concept of rights will reveal just how broad the notion of rights has become.

History of the Concept of Rights

Rights is a highly emotive issue. Although the concept of rights is very familiar today, historically it is quite recent. It became prominent in European consciousness around the 18th century and lead to the French and American revolutions. We can look to the American Declaration of Independence (1776) and the French Declaration of the Rights of Man and the Citizen (1789) as the first major historical documents or inscriptions of rights.

Revolution and the Right to Revolt

The right to revolt is inscribed in both of these documents as kernel rights. But the right to revolt is not inscribed as an absolute right. The revolutionary has the

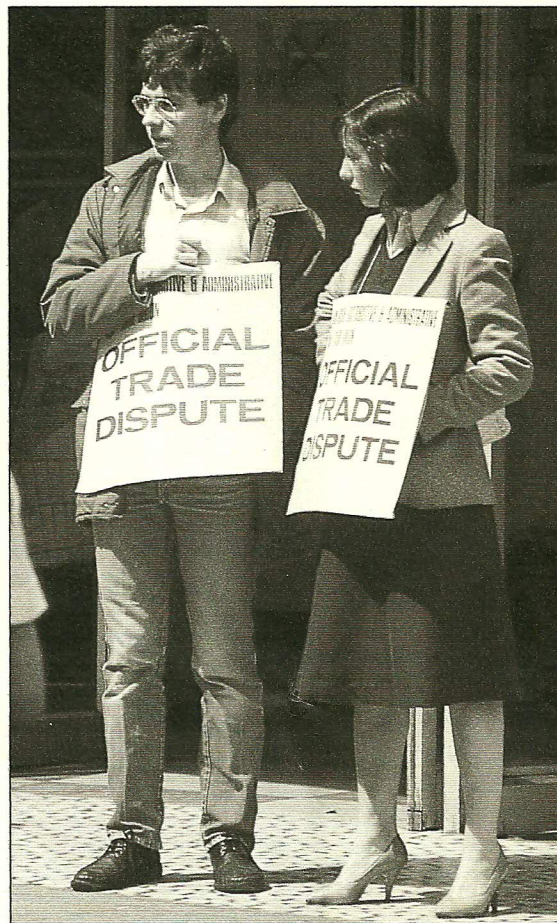
right to revolt only in certain circumstances, or more precisely, only in those circumstances where people's civil and political rights are not being respected. The right to revolt is asserted against unjust rule and on behalf of the rights of the oppressed. Its aim is to produce a better and more just political reorganization of society.

However, can we know that exercising the right to revolt will lead to better political re-organization, to a democracy where laws enacted by government should be neither oppressive, arbitrary or discriminatory? As Scott Davidson reminds us about the French Revolution: "One should not forget that the revolution which gave birth to these high sounding ideals and principles also gave birth to the Terror and the guillotine." (*Human Rights*, p 5) Nevertheless, from a historical perspective, The American and French Revolutions were concerned with the legitimate use and regulation of power.

The original state of nature theories

Another factor influencing the modern concept of rights was speculation about the origin of society. This became a much-discussed topic by social and legal theorists. Thomas Hobbes (1588-1679), John Locke, (1632-1704) and Jean-Jacques Rousseau (1712-78) are some well-known figures. According to Hobbes, before any government or rule of law by an authority (a monarch) existed, people generally did their own thing in an original state of nature. In this state what was mine was mine, and if possible, what was yours was also mine! Hence one was always on the lookout for a knife in the back! Not surprisingly, in this original state of nature, "Life was nasty, brutish and short," as Hobbes put it.

So, according to Hobbes, government was invented and social contracts were drawn up wherein individuals gave up their right to do their own thing in favour of collective agreement about competing interests. But the government, or sovereign, did not possess absolute power over his or her subjects. If the sovereign put the interests of one section of society before another, then overthrowing such governance was entirely justifiable.



The right to strike is a particularly controversial matter in the public sector

Or, if a sovereign was defeated in battle, he or she would have no power to protect you, hence, you could withdraw allegiance to the crown. Your own self-preservation – the right to life – overrules such contractual rights of allegiance. Here, then, in Hobbes, we witness the birth of the concept of inalienable rights, ie, rights that cannot be surrendered. The right to self-expression, the right to freedom and the right to self-determination of a nation are considered by those who claim them as inalienable rights.

INDEED, THE extent to which the American Founding Fathers in the American Declaration of Independence (1776), drafted by Thomas Jefferson, relied upon such social contract theories is evident in his following famous remarks: "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. That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed. That whenever any Form of government becomes destructive of these ends, it is

the right of the People to alter or abolish it."

The moving out of Hobbes' original state of nature towards some form of law and order, then, and the right to revolution are intended to arrive at the same conclusion: legitimate and just exercise of power.

Natural law theory of Ethics

Mention of creator and creation brings us to the third and final factor generally acknowledged to have played an important part in the evolution of the modern concept of rights, and that is the natural law theory of ethics, in particular St Thomas Aquinas' theory of the 13th century.

According to this theory, everything that exists is created out of nothing by God for his purposes. The moral laws determine man's nature (how he ought to act), the natural laws determine how things must act and positive human law – called positive because it refers to laws that are enacted in place at a particular time and in a particular jurisdiction – unfold from the Divine Plan of the Creator. So, all laws, the scientific laws of nature, the moral, unwritten, unchangeable, natural law of man, the state written, changeable, positive law of the land as well as human individual beings themselves made in God's image are all part of God's creative plan.

FROM THIS, however, it was possible to argue that: the royal authority of monarchs – their perceived divine right – is constrained by Divine rules; kings and queens could not behave arbitrarily, but had to act in accord with the plan of God's reason for all of creation; and that all human beings were endowed with a unique individual identity which was separate from the state. Indeed, this latter aspect of natural law doctrine may be seen "as containing the seeds of natural rights idea that each person constituted an autonomous individual". (S Davidson, *Human Rights*, p.27)

Taken together then, and in a somewhat haphazard way, the revolutions of the 18th century, the original-state-of-nature theories, and the 13th century natural law theory came together to produce what, today, we call rights.

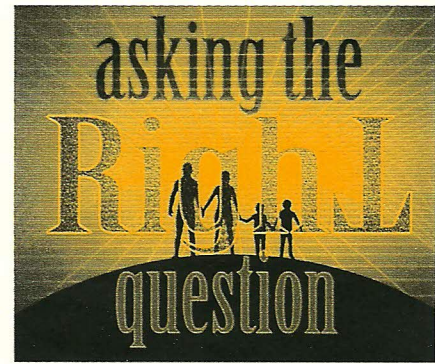
The importance of Human Rights

Some people, however, are highly sceptical of the concept of human rights. They argue that since this concept was developed initially in Western Europe, it is therefore only applicable to Western Europe – only the West can afford it. However, if there are such things as *human rights*, then no matter where the concept originated, they do not belong to particular countries but to people simply because they are people. People, not countries, have rights.

The concept of human rights, then, does seem to be important. What it seems to bring into the debate about the human good is that such human good is only realizable on a twofold basis: by acknowledging gross injustices worldwide, and, by attempting to do something about this. This could involve bringing economic-political pressure on governments known to infringe basic human rights, or to redistribute resources to targeted areas of poverty and underdevelopment. This costs money. It takes effort. It will take international co-operation. What the purpose of human rights appears to be, as one commentator puts it, is to "defend by institutionalized means the rights of human beings against abuses of power committed by the organs of the State and, at the same time, to promote the multidimensional development of the human personality". (I Szabo)

THE NOTION of human rights is not static, but dynamic. A glance at its history can reveal that "the notion of human rights has made a transition from exclusive concern with the protection of the individual from State absolutism to the creation of social and economic conditions calculated to allow the individual to develop to the maximum of his or her potential". (Davidson)

Karl Vasak has divided the concept of rights into three generations which can act as a useful summary. First-generation rights – rights of liberty – comprised of civil and political rights, eg, the right of individuals to be free from arbitrary and tyrannical interference by the state. Sec-



ond generation rights – rights of equality – are largely social, economic and cultural in nature. These rights require the state to put in place programmes and conditions that will allow each individual to develop his or her maximum potential. Finally, most recently and most controversially, there are third-generation rights – rights of fraternity. These we share as brothers and sisters of the earth. Hence they span nations and all political boundaries. They include, the right to peace, the right to a good environment, the right to disaster-relief assistance and so forth.

HOWEVER, IF such rights are to be implemented, constitutional checks within given countries cannot be enough. Rather, international co-operation is needed. International influence in the activities of countries where these rights are not being respected will also be needed. We await the further development of the concept of rights ●

*As brothers and sisters of the earth
we share the right to peace and to a good environment*



Picture: SLIDE FILE