CAN HUMAN RIGHTS PUT AN END TO SOCIAL STRIFE?

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INTRODUCTION

What hope does the law offer to communities and societies that are divided by strife? Can the legal protection for human rights foster peace? These are questions that many societies who seek to overcome conflict ask themselves. These are natural questions. When individuals in society hurt and threaten each other, we look to the law to right the matter. So it is natural that when individuals as members of groups hurt and threaten each other – what we call social conflict – we should similarly look to the law for answers. Yet while the law deals reasonably well with individual-based conflicts, it has often proved much less successful in dealing with broad social conflicts. Why is this? Does it mean that the law can do nothing to prevent social strife? And if the answer to that question is no, what precisely can the law do? These are the questions I would like to explore with you tonight.

I will suggest that the law does have a role to play in reducing social strife, particularly the branch of the law we call human rights. This role, I will suggest, involves three distinct processes. The first process is preparatory. To enable the law to do its work, we must set up the conditions in which it can function by acknowledging past wrongs, sharing conflicting narratives, and seeking reconciliation: the therapeutic function. The second process involves providing legal structures through which differences can be worked out and accommodations made: the regulatory function. The third process uses the law to concretise and communicate the values of a civil society: the discourse function. Before we get to the precise ways the law can help alleviate social strife, however, it may be useful to briefly consider the anatomy of social strife and the role of the law in maintaining social harmony.

First, let us consider the anatomy of social strife. Individual conflict in society is unavoidable. Human activities inevitably bring people into conflict with one another. Human beings are profoundly social; they can define themselves only by reference to others. Yet at the same time they are individual, competing with others, interacting with others, sometimes seeking to dominate others in the human equivalent of Robert Ardrey's territorial imperative. The law seeks to control and regulate these interactions. Criminal law, family law, tort law, contract law, administrative law – these and many more branches of the law deal with the day to day interactions and conflicts between individuals and their agencies. The law, in sum, represents the principle of order in social relations. It permits us in peaceful fashion to work out the accommodations essential to civil society.

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Social strife involves a different order of conflict. It involves not the inevitable conflict of individual-to-individual, but conflict among individuals as members of social groups. This is not individual conflict, but group-based conflict. And because it is group-based, social conflict is more difficult to moderate than individual conflict. The group identity confers its own morality, its own language and stories, its own sense of righteousness. Violence and force may be justified – indeed glorified – in the name of the greater group aspiration.

Group belonging is good. The identity and self-worth of individuals is rooted in the groups to which they belong – their race, religion and gender, to mention only a few. The goal of civil society is to permit individuals to flourish as members of their group or groups; for the complex reality is that each individual finds himself grounded in a number of groups. Achieving this goal requires two things. First, the individual must be permitted to realize his or her identity or aspirations as a member of a group: validation, not suppression. Second, civil society must provide a peaceful way of working out the group-based conflicts that inevitably arise: peaceful accommodation, not conflict. Social strife occurs when these requirements are not met. It is the pathology of group identity gone wrong. The positive virtues of religion, race or clan become the destructive vice of a diseased and dysfunctional body politic.

This brings us to the role of the law in maintaining social harmony. The law as it developed to the middle of the 20th century was concerned primarily with individual-based conflict. Group-based conflict was largely outside its domain. Or perhaps, more accurately, to the extent that governments sought to use the law to moderate groups-based social strife, it generally failed. Typically, the group-based ethic, endowed with its own "superior" morality and the force of numbers, was prepared to defy the law. Consequently, the principle of order, essential to a civil society, was never successfully extended to group-based social strife. The mechanisms of 19th century law, geared to individual-based conflicts, stood impotent before group-based conflicts. This is not to deny that group-based social uprisings were often crushed in the name of the law, or its deformed cousin "law and order." Rather, it is to say that the normative force of the law as a principle of order and accommodation was not effective: repression, yes; legal order, no.

The challenge for civil society was – and remains – to find a way for the law to bring the same order and accommodation to social strife as it does to individual conflict. I hasten to say that just as individual conflict can never be eliminated, so group-based social conflict cannot be eradicated. Conflict is a natural outgrowth of diversity, and cannot be eliminated short of enforced hegemony. We are not concerned with elimination of social strife, but management. The goal is not a definitive resolution but a process of mutual accommodation. Accepting that in every society, diverse groups must live together, the aim is to find a way to permit them, with all their differences, to speak across what separates them and live together in harmony.

The group-based nature of social strife requires a group-based legal response. The failure of 19th century law is that it provided an individual-based response, predicated on the assumption, too often false, that each nation-state represented a single homogeneous ethnic or religious group. To respond to

the reality of the group-diverse modern state, a group-tolerant legal norm is required. The law of human rights which emerged in the aftermath of the Second World War provides such a norm. The ethic of human rights is grounded in equal respect for all individuals, regardless of the group to which they belong. At the same time, it acknowledges the source of individual identity in group allegiances by forbidding discrimination on group-based grounds. If this be so, we have at hand a legal concept that may help to moderate group-based conflict and avoid the pathology of social strife.

My country, Canada, is a country of many groups and cultures. The modern Canada was created in the marriage of two colonies – one French-speaking and Roman Catholic; the other English-speaking and Protestant. The country's founding premise – a shaky one in the eyes of many sceptics – was that different peoples could realise their aspirations and live in harmony within a single nation. The mechanism for the realisation of this premise was the law. This included the law of the Quebec Act of 1774, which guaranteed to the French Catholics of Quebec the right to retain their language, religion and the French Civil Law; the law of our first Constitution, the British North America Act of 1867, which provided language, religious and educational guarantees to French and Anglo minorities wherever they might be; the law of the *Charter of Rights and Freedoms* of 1982, which confirmed and strengthened linguistic rights, gave constitutional protection to Aboriginal rights and formally recognized the multi-cultural character of the modern Canada; the law of equality and anti-discrimination that runs through our human rights statutes and is enshrined in section 15 of the *Charter*. Canada has had its conflicts, to be sure. We are not immune to the pathology of group-based civil strife, as attested by the political rebellions of the 19th century, FLQ terrorism in the 20th century and the 1990 stand-off of the Mohawk community of Kanesatake. But in the main, we have resolved our group-based differences through respect and accommodation – a respect and accommodation grounded in legal protection.

The most divisive political issue facing Canada – the question of Quebec secession – has been characterized by civility. With the exception of the brief FLQ campaign, proponents and opponents of secession have engaged each other in perfectly peaceful debate. The issue of whether the province should form an independent state has been twice submitted to the Quebec electorate without notable incidents. The legal question of whether Quebec can secede unilaterally from Canada has even been debated before the Supreme Court of Canada.[1] The Court's advisory opinion on this issue has been generally accepted by all sides of the debate.

I believe that Canada has generally been spared conflict because of a commitment to democracy, justice and the rule of law, but also because of culture – a culture of respect, tolerance and accommodation of difference grounded in the law. The result is a country in which individuals are free to affirm and celebrate their particular group identities and where conflicts, by and large, are worked out peacefully, without bloodshed. The *Canadian Charter of Rights and Freedoms* stands as the ultimate expression and legal

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[1] See *Reference re Secession of Quebec* [1998] 2 SCR 217.

manifestation of a culture of respect, tolerance and accommodation of difference.

Against this background, let me return to the processes by which the ethic and legal practice of human rights can moderate group-based differences and prevent social strife.

Coming To Terms With The Past: Truth And Reconciliation

The first step in coming to grips with social strife is preparatory. Societies that have been exposed to social strife must establish the conditions under which the laws and the language of human rights can do their work. Society, like individuals, are burdened by their pasts. The more troubled the past, the more difficult the way forward. Just as individuals must come to grips with their past before they can change their lives, so societies must reconcile themselves with their histories before they can move toward a just present and a peaceful future. Only when a society understands what has gone wrong in its past can it move forward to developing a culture of respect and accommodation.

One searches in vain for a universal formula for achieving the conditions that permit the healing of historic wounds. Each society must find its own way. Yet experience suggests that a society seeking to move beyond a past of civil strife after a history of violence and human rights abuse can do two things. First it can in some broad sense acknowledge the truth. Second, it can move to reconcile that truth with its present values and aspirations.

Facing the truth and reconciling victims and abusers who have opposed each other in bitter and violent conflicts is no easy task. As 19th century philosopher Wilhelm Dilthey pointed observed, we make our meanings and infuse our identities by continually narrating the stories of our lives.[2] Each group's narrative becomes its inner reality, a reality that makes it difficult to acknowledge the quite different narrative and reality of the other group. The depth of suffering, animosity and indeed hatred that may result from conflict must not be underestimated. Yet, if there is to be any hope for a peaceful future, societies that have experienced conflict must earnestly attempt to share their conflicting narratives and reconcile with each other. Without reconciliation, the memory of the conflicts and abuses of the past may well hold sway over the present and haunt the future. As Shira Herzog observes:

> "The history of protracted conflicts teaches that memory, fear and pain do not disappear – but they can be balanced by the promise of a better future."[3]

Acknowledging the Truth

Before a society can move to eliminate social strife, it must in some broad sense acknowledge the truth of its past. This acknowledgment must be based in an acceptance of the fundamental tenet of human rights doctrine – that every individual is entitled to equal respect and dignity and that discrimination and persecution are evil.

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[2] See, *eg*, W. Dilthey, *Hermeneutics and the Study of History* (Princeton: Princeton University Press, 1996).

[3] *The Globe* and *Mail* (May 13, 2003, A15).

By acknowledging the truth of the past, I do not mean to suggest that a society can, or should try, to describe and pin down with historical accuracy, all or even most of the wrongs and conflicts that make up its past of social strife. We never can recapture the past, no matter how much we try or how much we spend. And the very process of reconstructing past wrongs in meticulous detail if taken too far can fuel rather than assuage the group sense of grievance. I mean only that in some broad sense people on both sides of endemic conflict must begin to share their stories or narratives and acknowledge the wrongs of the past.

Many societies that have undergone the transformation from social conflict or authoritarian rule to peaceful democratic governance have used truth commissions to develop an official account of past human rights abuses: Argentina, Chile, El Salvador and South Africa to mention only a few.[4] The truth commission's purpose is to describe the overall pattern of human rights abuses over a given period, to the end of enhancing the understanding of conflicting narratives. However, truth commissions are not the only way for societies to come to grips with their past. For example, commissions of inquiry may assist in uncovering specific instances of abuse. Here in Northern Ireland, inquiries are underway into alleged past abuses. In Canada, such commissions have been used to ascertain the truth about the dark chapters of our past and present. One such example is the 1991 Royal Commission on Aboriginal Peoples.

At this point, a difficulty must be acknowledged. Truth seeking can go on forever. We can never uncover every abuse, examine every alleged wrong. Tribunal fatigue and, ultimately, contempt for the entire process is a real danger. Endemic, debilitating social guilt is also a risk. Therefore, care must be taken to structure the process in a way that achieves closure within a reasonable time. The aim is not to discover historical fact, nor to establish guilt. It is rather to confront and acknowledge the dark corners of the past.

However one achieves this acknowledgement: whether by truth commission, inquiry or some other means of coming to grips with the past, establishing the truth is only a first step.[5] Truth without reconciliation does little in moving a society beyond conflict. To achieve social reconciliation and ultimately respect for human rights, more than mere examination of the past is required.

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[4] P.B. Hayner, *Unspeakable Truths* (New York, 2001); P.B. Hayner, "Fifteen Truth Commissions – 1974 to 1994: A Comparative Study" (1994) 16 *Human Rights Quarterly* 597; J.M. Pasqualucci, "The Whole Truth and Nothing But the Truth: Truth Commissions, Impunity and the Inter-American Human Rights System" (1994) 12 *Boston Univ Int'l L.J.* 321; T. Buergenthal, "The United Nations Truth Commission for El Salvador" (1994) 27 *Vand. J. Transnat'l L* 497; *The Azanian Peoples Organization (AZAPO) et al* v *The President of the Republic of South Africa et al.*, CCT 17/96 (S.A. Const. Ct.); D. Dyzenhaus, *Judging the Judges, Judging Ourselves: Truth, Reconciliation and the Apartheid Legal Order* (Oxford, 1998), pp 1-6.

[5] *Ibid.*

Reconciliation

Reconciliation is site-specific. What achieves reconciliation in one situation may fail in another. The catharsis of facing the truth of the past may itself promote reconciliation. We are told how witnesses at South African Truth Commission hearings weep and forgive, even as they recount the most horrifying atrocities. Reconciliation demands that members of groups in conflict come to see the other, no longer as their enemy, but as their fellow citizen. To do this, they must look beyond their own narrative and acknowledge the conflicting narrative of the enemy. Enemies may not become close friends, but through sharing narratives, they can make the other person's suffering part of their own story. But beyond this cognitive exercise, reconciliation demands an act of acceptance and social will. Abusers and victims alike must come to see that their society recognizes the wrong that has been done and is resolved to move on. Both these goals can be furthered by the simple act of acknowledging the truth.

Sometimes, however, more will be required to achieve reconciliation. One possibility is an apology, an expression of sincere and profound regret, to the victims of past conflict. An official public apology "has the potential to set the record straight and restore dignity to the person or group harmed, under full, public scrutiny".[6] Apologies, we are learning, are sometimes the key that unlocks the door to healing and reconciliation.

A true apology entails acknowledgment of the wrong done, acceptance of responsibility for the wrongdoing, an expression of sincere regret and profound remorse and the assurance or promise that the wrong done will not recur.[7] The sincerity and import of an apology may be seriously undermined if it is used as an occasion to provide explanations or excuses for the wrongdoing.

In Canada, official apologies have twice been used to address some of the darker periods of our history. During the Second World War, the Canadian government classified all people of Japanese ancestry as "enemy aliens", detained 22,000 of them in internment camps, and confiscated and sold their property. In 1988, in open Parliament, Prime Minister Brian Mulroney acknowledged the wrongfulness of the government's actions and offered Japanese Canadians a formal and sincere apology for the injustices they had suffered.[8]

The second apology was for Canada's wrongs towards its original inhabitants, the First Nations peoples. The wrongs included removal from traditional lands, denial of access to natural resources and paternalistic governmental administration. In 1998, Canada issued a formal statement of reconciliation, acknowledging, that "attitudes of racial and cultural superiority led to a suppression of Aboriginal culture and values" and that past actions resulted in "the erosion of the political, economic and social

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[6] S. Alter, "Apologising for Serious Wrongdoing: Social, Psychological and Legal Considerations" (Law Commission of Canada, Ottawa, 1999).

[7] See N. Tavuchis, *Mea Culpa: A Sociology of Apology and Reconciliation* (Stanford: 1991) p vii.

[8] Canadian House of Commons Debates, September 22, 1988, pp 19499-19500.

systems of Aboriginal people and nations."[9] The Government formally expressed "to all aboriginal people in Canada [its] profound regret for past actions of the federal government which have contributed to [the] difficult pages in the history of our relationship together."[10]

A victimized community is also entitled to the reassurance that injustice will not be repeated and that rights will in the future be respected. In the apology to Japanese Canadians, Prime Minister Mulroney gave a "solemn commitment and undertaking to Canadians of every origin that such violations will never again in this country be countenanced or repeated."[11] Likewise the Statement of Reconciliation with Aboriginal Canadians recognizes the importance of ensuring "that the mistakes which marked our past relationship are not repeated."[12]

Official apologies like the ones delivered to the Japanese Canadian community and Aboriginal Canadians mark a break with the past and a desire to begin a new relationship based on respect and accommodation. Sincere apologies offer the hope of forgiveness.[13] The act of asking forgiveness has healing potential; and forgiveness, should it follow, may establish full reconciliation: the "act of forgiving can reconnect the offender and the victim and establish or renew a relationship; it can heal grief; forge new, constructive alliances; and break cycles of violence."[14]

The challenge is to provide complete and sincere apologies for serious wrongs and inhumanities, without trivializing the technique of apology. Virtually all groups can recount wrongs committed against their members at some time in the historic past. If the apology is to retain its force as an agent of reconciliation, it must be reserved for exceptional, sustained abuses – abuses that truly constitute a dark blot on the nation's history.

Beyond apology, lie the thorny issues of reparations and dealing with the perpetrators of past abuses. The task of devising compensation for wrongs done to previous generations is challenging. Those who suffered the wrong are no longer with us; how then can money – insofar as money ever can – make up for these abuses? Canada struggled with this in devising the reparations that accompanied its apologies to Japanese Canadians and Aboriginal peoples.

Individuals of Japanese ancestry whose rights were restricted were offered monetary compensation. Moreover, an educational, social and cultural fund for the Japanese Canadian was established and an offer of citizenship was extended to persons of Japanese ancestry who were expelled or who had

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[9] The Hon Jane Stewart, Minister of Indian Affairs and Northern Development, "Statement of Reconciliation", January 7, 1998 <http://www.ainc-inac.gc.ca/nr /spch /1998/98j7_e.html>.

[10] *Ibid*.

[11] *Op cit* n 8, p 19500.

[12] The Hon Jane Stewart, Minister of Indian Affairs and Northern Development, "Statement of Reconciliation", *op cit*.

[13] S. Alter, *supra*; N. Tavuchis, *op cit* p viii.

[14] M. Minow, *Between Vengeance and Forgiveness: Facing History after Genocide and Mass Violence* (Boston, 1998) p 14.

their citizenship revoked.[15] Likewise, upon delivering the Statement of Reconciliation to Aboriginal Canadians, the Minister of Indian Affairs and Northern Development announced a $350 million commitment to community-based healing as a first step to deal with the legacy of physical and sexual abuse at residential schools.

The quite different question of what to do with those who have committed human rights abuses raises difficult and contentious issues. Three options present themselves: prosecution, the removal from office of tainted state officials, and amnesty.

It might be argued that, in an ideal world, officials responsible for violations of human rights will be removed from office, and those who have committed criminal acts will be prosecuted and brought before justice by way of fair and impartial trials and, if found guilty, sentenced and punished in accordance with the law. Yet, in many situations, neither prosecution nor lustration are practical options for a society trying to maintain a fragile peace. Some societies have decided to accord amnesty to individuals responsible for even the most grave human rights violations. Each society coming to terms with past conflict must address the question of whether to follow the path of just retribution or forgiveness. In dealing with this issue and the question of reparations, each society must examine not only the requirements of its domestic law, its obligations under international law, the relevant political context, local circumstances, the nature and extent of the conflict and the gravity and duration of the human rights abuses,[16] but also its common values and needs.

Credible Legal Structures

Human rights protection is not simply a matter of coming to terms with the past. If a divided society is to overcome conflict, credible legal structures are necessary to ensure that human rights abuses cease and are not repeated. Society must provide a mechanism for resolving ongoing group-based conflicts. The credible legal structures that are the hallmark of a civil society must be extended beyond the sphere of individual conflict to group-based conflict.

This means that in addition to an independent and impartial judiciary to administer justice in accordance with law, the laws must provide legal protection for the fundamental human rights of individuals and groups. Rights may be enshrined in a written constitution, as has been done in Canada and the United States. Alternatively, human rights may receive non-constitutional legislative protection. Examples of this approach include the United Kingdom Human Rights Act 1998 and the New Zealand Bill of Rights Act 1990. The fact that a Bill of Rights has not been enshrined does not mean that it lacks constitutional force. For example, the United Kingdom Human Rights Act, coupled as it is with a treaty-based

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[15] See J Orange, "Bolstering the Argument for Redress for the Comfort Women: The Japanese Canadian Settlement as Precedent" (1998) *International Insights* 27, pp 34-35.

[16] See, *eg*, *The Azanian Peoples Organization (AZAPO) et al* v *The President of the Republic of South Africa et al, op cit.*

commitment to conformity of the law to the European Convention on Human Rights Convention, effectively operates as a constitutional document.

Some states have neither explicit constitutional nor comprehensive legislative protection for human rights. That does not mean that they have no legal protection for human rights. Indeed the common law or *jus commune* of many countries includes rules and presumptions that may offer extensive and effective protection for human rights. The Australian constitution, for example, does not include an express Bill of Rights. Similarly, the Commonwealth Parliament has yet to adopt any comprehensive federal human rights legislation. Nevertheless, few would argue that human rights are less well protected in Australia than they were, for example, in the former Soviet Union which ironically included extensive protection for individual rights and freedoms in its constitution.[17] This said, the dominant model for recognizing group-based rights and dealing with the conflicts they engender, is the written Bill of Rights with constitutional force.

The legal protection of human rights involves most obviously protection of the fundamental individual rights and freedoms. These rights inhere in every person by reason of the fact that they are human beings. Many social conflicts are marked by numerous and grave violations of basic individual freedoms by both state agents and non-state actors. As a result, it is imperative to offer legal protection for the basic right to life, liberty and security. Legal protection of basic individual rights, coupled with a commitment to the Rule of Law and an independent and impartial justice system, ensures an immediate cessation of abuses and provides victims with the much needed concrete assurance that their suffering will never again be repeated.

The importance of an independent and impartial justice system in making the transition from a society of civil strife to a society of peaceful accommodation cannot be over-emphasized. The success of the venture hinges on the state being perceived as the neutral broker of difference. Police forces must act fairly in maintaining the peace and investigating violence. Prosecutors and defence counsel must conduct their activities with high professionalism. And above all, the judiciary, the final safeguard of freedom and justice, must be perceived to be absolutely independent and impartial. The role of the lawyer or judge in a society driven by civil strife may be difficult and dangerous, as you in Northern Ireland are all too aware. But it remains vital, if peace is ever to be achieved.

I have been speaking of the mass infringement of individual human rights in times of social strife. However, we must remember that the source of the conflict usually lies in group concerns. The legal protection of group rights may provide a useful tool in addressing the origins of conflicts and in preventing their recurrence. Group rights are rights that we possess on account of membership in a particular group or community. Humans, we know, are social beings. As a result, individual identity is closely related to membership in groups based on shared culture, beliefs, language and history. In order for the individual to achieve full self-actualization, we must respect

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[17] See Chap 7 of the *Constitution of the Union of Soviet Socialist Republics*, adopted on October 7, 1977.

his or her membership in the groups that participate in defining his or her identity. Group rights safeguard human dignity by protecting every individual's right to retain membership in the identity communities that define oneself. Such membership is empty unless the identity community is healthy and capable of ensuring its survival. The function of recognizing group rights is to give vulnerable identity communities the tools necessary to ensure that they survive and flourish.

The protection of language rights in Canada is an example of how the legal protection of group rights can assist in maintaining peaceful co-existence in a diverse society. Language is an essential element of both individual and group identity.[18] At the individual level, it shapes the way we think and the way we perceive the world. Language also has communal dimensions. Language is a fundamental element of human culture[19] and, like religion, can be the glue that holds a minority community together.

Although many languages are spoken in Canada, we have two official languages – English and French. The official recognition of English and French reflects the primary role that English and French speaking immigrants played in building our country. Thus, our Constitution recognises that English and French are the official languages of Canada and have equal status, rights and privileges.[20] The Constitution guarantees the right to use English and French before Parliament, and the federal courts,[21] as well as the legislative assemblies and courts of the provinces of Quebec, New Brunswick and Manitoba.[22]

Minority language communities find support in the linguistic educational rights guaranteed in section 23 of the *Canadian Charter of Rights and Freedoms*, which guarantee their right to have their children receive primary and secondary education in their language. By enshrining linguistic educational rights in our Constitution we have recognised the importance of schools for the preservation, development and promotion of minority languages and culture. Schools are essential to ensuring the future of a linguistic minority community. They protect against assimilation. They are focal points for communities. And they promote the health and cultural vibrancy of minority communities.

The legal protection of group language rights in Canada has ensured that the Canadian linguistic tradition is grounded not in conflict or suppression, but in respect and accommodation. Every country must find its own way to recognise its particular group. I note with interest that the Northern Ireland Human Rights Commission has included proposals for language rights and rights concerning identity and communities in its consultation document on a Bill of Rights for Northern Ireland.[23]

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[18] See Ford, *Quebec (Attorney General)* [1988] 2 SCR 712 at pp 748-749.
[19] See *Mahe* v *Alberta* [1990] 1 SCR 342 at p 362.
[20] S 16 of the *Canadian Charter of Rights and Freedoms*.
[21] See s 133 of the *Constitution Act 1867*; and ss 17, 18, and 19 of the *Canadian Charter of Rights and Freedoms.*
[22] *Ibid*, and s 23 of the *Manitoba Act 1870*.
[23] Northern Ireland Human Rights Commission, *Making a Bill of Rights for Northern Ireland: A Consultation Paper by the Northern Ireland Human Rights Commission* (Belfast, 2001), pp 24-28 and 79-83.

The Discourse Of Rights

Finally, legal norms founded in human rights communicate the values of a civil society. They provide space for social discourse; and they express society's commitment to the inherent dignity of all human beings and the right of all to live in peace together.

First, the language of rights provides a place of discourse. Using shared principles and values given expression by the law, speakers and audiences are empowered to express, receive, and understand each other's discourse. The language of rights provides a framework in which people holding competing perspectives can work out peaceful accommodations.

Framing claims in the shared language of rights permits individuals and groups who may not have shared experiences to understand the perspective of the other. Martha Minow suggests that the rights discourse may be viewed as "a medium for speaking across conflicting affiliations, about the separations and connections between individual groups and the state."[24] Rights claimants implicitly invest themselves in a larger community, even when seeking to change it.[25] A rights claim thus initiates a form of communal dialogue;[26] "[it]draws each claimant into the community and grants each a basic opportunity to participate in the process of communal debate."[27] This is important for societies divided by strife. As Professor Minow puts it:

> "The very fact of summoning "community" through a language of rights may expose the divisions within the community – and even beyond it. Rights then can be understood as a kind of language that reconfirms the difficult commitment to live together even as it enables the expression of conflicts and struggles."[28]

The language of rights does not only communicate, but transforms. Rights language enables the expression of conflicts and struggles, but it also transforms them from physical conflict into verbal dispute.[29]

Second, the language of human rights, over and above providing a means to resolve differences, contains its own message – the inherent dignity of every human being. This is the message of the *Universal Declaration of Human Rights* which in the first paragraph of its preamble crisply proclaims that:

> ". . . recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace and the world, . . ."[30]

The discourse of rights tells us that all human beings have equal moral worth and are equally deserving of consideration and respect; that each human

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[24] M Minow, *Making All the Difference: Inclusion, Exclusion, and American Law* (Ithaca, 1990), p 310.
[25] *Ibid*, p 294.
[26] *Ibid*, p 295.
[27] *Ibid*, p 296.
[28] *Ibid*, p 309.
[29] *Ibid*, p 293.
[30] GA Res 217 A (III), UN Doc A/810, at p 71 (1948).

being is entitled to choose his or her own vision of the good life; and all members of the human family should be treated as ends, not means. The concept of dignity thus emphasizes our common humanity.

CONCLUSION

In conclusion, allow me to return to the question originally posed: can human rights put an end to social strife? The short answer to this question is that legal protection for human rights is, in itself, insufficient to put an end to all strife. However, accompanied by political will and the resolve of the community and its leaders to effect compromise and achieve peace, the law of human rights can provide the basis for a civil society in which disparate groups can live together in peace.

Just as human rights abuses are the hallmark of inter-group conflict, so respect for human rights is a necessary element of any viable solution to a situation of social conflict. Respect for human rights may assist a community to come to terms with the past. It may provide the basis for credible legal structures to prevent future abuses. And it may found a discourse of rights, through which we develop the accommodations of the future. In these ways, human rights serve as a bridge, a bridge between a troubled and divided past and a future founded on peaceful co-existence, and a bridge spanning the conflict-gouged chasms that separate one part of society from another.[31]

But bridges, we know, are sedentary objects. By themselves they do not transport us. We must be willing to cross the bridge. Too often, we do not move out on the bridge because of fear. Fear that the past is too powerful to overcome. Fear that we will fail in building the structures required for accommodation. Fear finally, and most profoundly, that in acknowledging the other, we ourselves may be somehow diminished. Fear, in a word, that the bridge will not hold.

To that, there is but one response. The bridge must hold. It has held in my country for 350 years. And it can hold in other countries, given the chance.

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[31] See the epilogue to the 1993 interim *Constitution of the Republic of South Africa*, Act 200 of 1993.