9. THE NOTION OF HUMAN RIGHTS

By Anita Jowitt

KEY TERMS AND PHRASES

Rhetoric

Whilst rhetoric has particular meaning in reference to classical Greek principles and rules of composition, it more popularly is used to indicate the art of, or a body of, persuasive (although not necessarily well reasoned) writing.

Jurisprudence/jurisprudential

Jurisprudence can be thought of as the philosophy of law, and jurisprudential thought as philosophical thought about law.

Discourse

The word discourse is used to represent a body of thought and writing on a particular topic or idea. As such it represents a collection of works. Whilst there will be a plurality of views within this body of ideas, a dominant strand of argument will usually come to represent the whole body of discourse. As such the notion of discourse can be perceived as an implicitly ideological device for referring to a body of ideas.

Hegemony/hegemonic

Hegemony is used to refer to a system in which control is maintained not by force but by influence over others. This influence is gained through use of social institutions to portray and reinforce a particular ideology.

Ideology

A system of beliefs that cannot be established as being true about the way that things are or should be.

INTRODUCTION

Human rights appear to be an incontrovertible part of the modern legal and political world. The Universal Declaration of Human Rights 1948,[1] which purports to affirm a number of universal inalienable rights, is probably the United Nations' best known document. In the Pacific the constitutions of almost all USP member countries enshrine human rights.[2] Powerful political organisations, including women's rights and minority rights movements form around human rights and are a prominent part of political discourse in most modern Western or Western influenced democracies including Pacific island countries. For example, the human right of self-determination provided a focal point for Pacific decolonisation movements.[3] Globally a number of large international organisations, including the United Nations, have the protection and promotion of human rights as central goals. It seems that all right thinking people agree with human rights.

Although there seems to be international agreement with a core number of universal inalienable human rights, in recent years the use of human rights throughout the Pacific has proved to be one of the most contentious legal issues. Clashes between customary norms and human rights, particularly in relation to the issue of equality for women, have resulted in a number of judicial interventions.[4] Such clashes mean that the idea of universal inalienable rights is thrown into question. After all, if such rights really were universal and inalienable then they would exist within all cultures and surely customary norms would have developed in accordance with them. Additionally, on a socio-political level the rhetoric of human rights has been used for objectionable, or at least inequitable, ends. For instance, George Speight justified the May 2000 coup in Fiji Islands on the grounds that it was necessary to protect the indigenous peoples' rights. Whilst this is an extreme example, and possibly not a good one as it is widely acknowledged that indigenous peoples' rights were a mere front for the underlying political power plays, human rights are used in this way to favour one group of people at the expense of others. How can this be right?

This chapter examines the following questions: What are human rights? Where do they come from? Can anyone prove that they exist? Who decides what human rights are right? Why do most people seem to accept the idea of human rights? In examining these questions the chapter will consider the philosophical and political history of human rights. As the history of human rights in Western political thought stretches back to the early Greek philosophers this chapter is necessarily an introduction that only touches on the broad themes that underpin the concept of human rights. It is hoped that this introduction will also provide a background to some major strands of jurisprudential thought that can be used to examine not only human rights, but other aspects of law and policy as well.

WHERE DO HUMAN RIGHTS COME FROM: NATURAL LAW THEORY

If asked what human rights are or where they come from many people will say that human rights arise because they are a natural part of being a human being. They are something that you are born with, an innate part of being human. Such a rationale is present in the United Nations Universal Declaration of Human Rights 1948. Both the preamble and the articles emphasise that the rights come from the inherent dignity or innate nature of humankind as the excerpts below indicate (italics added):

> **Preamble**
>
> Whereas 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 in the world...
>
> Whereas the peoples of the United Nations have in the Charter reaffirmed their faith in *fundamental human rights, in the dignity and worth of the human person* and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom...
>
> **Article I**
>
> *All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience* and should act towards one another in a spirit of brotherhood.

We can also see the concept that human rights are an innate part of being a person reflected in constitutions within the Pacific. For example, the Preamble of the Marshall Islands *Constitution* 1979 states:

> WE, THE PEOPLE OF THE MARSHALL ISLANDS, trusting God, the Giver of our life, liberty, identity and our *inherent rights*, do hereby exercise these rights and establish for ourselves and generations to come this Constitution, setting forth the legitimate legal framework for the governance of the Marshall Islands. (Italics added)

The concept of human rights being a natural part of being a human being is part of the jurisprudential tradition of natural law theory. Put simply, natural law theory is the idea that the whole universe is governed by overarching natural laws. Because the physical reality of the universe is unchanging and applies everywhere this natural law is also unchanging and applies everywhere. To Aristotle's illustration that "a law of nature is immutable and has the same validity everywhere, as fire burns both here and in Persia..."[5] we can add that fire burns both now and in ancient Greece. This natural law is the source of innate rights. The Roman lawyer and statesman Cicero described natural law, which he referred to as "true" law, in the following way:

> True law is right reason in agreement with nature; it is of universal application; unchanging and everlasting... And there will not be different laws at Rome or at

> Athens, or different laws now and in the future, but one eternal and unchangeable law will be valid for all nations and for all times...[6]

Natural law is conceived of as law derived from the higher order of nature that exists independently of laws made by people. It provides natural moral or ethical criteria from which the rules for correct living can be derived. It should be noted that although human made law should accord with these natural moral and ethical criteria it is not necessarily true that human made law will comply with the natural law. Bad laws, or laws not in accordance with nature, can be made by human institutions and will be recognised as valid in accordance with the rules of recognition created by those institutions, regardless of their *complilance* with natural law.

How can we identify what is natural?

The first belief as to how natural law can be identified is through the belief that natural law can be revealed by a higher source that has knowledge of the natural order of things. This higher source is often believed to be a god who has knowledge of the natural order of things because he or she is also the creator of things or has divine knowledge of the natural order. We can see evidence of the provision of natural law through divine revelation in the very earliest laws. The Sumerian king Hammurabi, who wrote the oldest known code of laws around 2000 B.C., claimed to receive these laws from the Sun-god Shamash. Islamic law, which today provides the basic legal system for a considerable number of countries, is based on the Koran, a recording of divine revelations made to the Prophet Mohammed.[7] Within Judaism and Christianity probably the best-known example of law through divine revelation is the ten Commandments that were handed to Moses. In the modern English common law tradition we can continue to see the influence of the divine revelations recorded in the Bible even though law is meant to be secular. Most law students will be familiar with Lord Atkins's statement in *Donoghue v Stevenson* that "[t]he rule that you are to love your neighbour becomes in law, you must not injure your neighbour".[8] This principle is the basis for the modern law of negligence although the rule can be found in both the Old and New Testaments.[9] Laws found in divine revelations also affect the legislature within modern common law systems. For example, the fourth of the ten commandments, that the Sabbath should be kept as a day of rest,[10] has influenced some employment contracts legislation. For example, Vanuatu's *Employment Act* [Cap 160] states that "no employee shall be required to work on a Sunday"[11] and that "every employee shall be entitled to a weekly rest of 24 consecutive hours which shall normally fall on a Sunday".[12]

The second main belief as to how natural law can be identified is the belief that, as nature is rational, the rational observation of human beings and society will enable these criteria to be logically deduced. Such an approach to the identification of natural law can be found in the works of the classical Greek philosophers. Of these, Plato and Aristotle have had the most influence on modern legal and political thought.

Plato's view of nature was that the world we live in is merely an imperfect reflection of reality. Reality consists of ideal forms. These ideal forms are true to nature and the appearances that we see are only imperfect copies of these real forms. Plato's conception of nature is explained in *The Republic* in the allegory of the cave. In a dialogue Socrates explains to Glaucon that the appearances we perceive are a mere shadow of reality.[13] He creates an allegory of people chained in an underground den and unable to turn around with a fire behind them and a wall in front of them. All they can see is shadows of people and objects passing behind them in front of the fire. As this is all they know, they presume the shadows that they see to be reality. This story represents people in the ordinary world, who only see imperfect shadows of reality and mistake these shadows for reality. In Plato's conception of the state only very few people have sufficient reasoning capacity to comprehend reality. Given a high degree of training, these "philosopher kings" would be placed to rule the everyday world according to nature as found in the reality of ideal forms.

Aristotle sees nature, or the correct order of things, as being determined by a thing's end purpose. Aristotle's belief is that all things have a particular potential, and this is their nature. For example, the potential of a coconut is to grow into a coconut tree. This is the coconut's natural end. By observation and reason a thing's end can be determined. Natural laws are the laws that allow things to achieve their ends. As nature, for Aristotle, is determined by the *telos* or end purpose of a thing, his analysis is said to be teleological.[14] In respect of people, government and laws should be created to allow individuals to fulfil their *telos*, which is *eudaimonia*, a word usually translated as meaning happiness. *Eudaimonia* includes a sense of success and of material, mental and physical well being over time and is achieved by allowing people to fulfil their social and political natures.

In modern times the idea that reason can be used to discover truths about nature has become particularly important. The rise of science[15] has greatly influenced philosophy and in particular has led to the development of the social sciences. These social sciences include disciplines such as sociology, psychology and economics. Just as sciences such as chemistry, physics and biology rely upon observation, experimentation and experience to discover the natural laws of the physical universe, so too do these disciplines aim to apply scientific methods to discover truths about the behaviour of society and human beings. Whilst we may now take such a methodological approach for granted, such an approach has only been developed and systematised fairly recently. The word sociology was only coined in the early nineteenth century by Auguste Comte, who attempted to apply scientific method to the study of society.

It should be noted that a belief in the existence of a god and divine revelations can coexist with a belief that natural laws can also be ascertained through the use of reason. This was demonstrated most eloquently by the medieval Christian theologian St Thomas Aquinas. In Thomist philosophy God's eternal plan or reason for the universe provides the eternal law. This eternal law provides the correct ordering of things. Humanity can know of the eternal law in two ways. The first is through revelation by God, primarily through the scriptures. Such revelations form the divine

law. The second way that humanity can come to know of the eternal law is through rational observation of the order of things. In identifying the eternal order St Thomas Aquinas adopts Aristotle's teleological analysis and looks to the ends or purposes of things. As everything is ordered according to the eternal law rational inquiry will reveal part of the eternal law. The parts of the eternal law that come to be known to humanity through reasoned observation form the natural law. Finally, there is the law made by humankind.[16]

The challenge to natural law theory

The difficulty with natural law theory is the question of how the existence of some kind of higher natural order can be proved or conclusively identified. St Thomas Aquinas finds his source of natural order in God, a belief that cannot be proved but requires faith. 'Scientific' approaches relying upon rational observation also require that assumptions about the natural order or human nature be made. For instance, Aristotle believed that you could identify the natural order through rational observation of the telos of things, but deciding on what the telos of humanity is requires the making of assumptions about human nature. What human nature is cannot be proved but is also a matter of faith or belief, so such reasoning becomes somewhat circular. It can also be noted that slavery is part of Aristotle's natural order. These days most people consider slavery to be abhorrent, but it was an accepted part of Greek society in Aristotle's time. Its inclusion in Aristotle's concept of natural order indicates that assumptions about what is natural are influenced by one's society and environment. There are also philosophical challenges to the question of how far we are able to accurately observe nature.[17] Whilst natural law theories contribute significantly to the idea of human rights, the problem that remains with such an approach is that the question 'what is natural?' cannot be objectively answered, but is always reduced to a matter of faith or belief. Just as people have faith in different religions so do people have differing views about what natural order is, whether these ideas come from different religious faiths or some other source.

ARE HUMAN RIGHTS SIMPLY MAN MADE LAWS?

If, then, we are unable to identify the source of natural order from which human rights seem to spring, does this mean that human rights are nothing more or less than human made laws? The legal positivist answer to this would be yes. Legal positivism takes the view that the law, including human rights, is simply a product of human institutions. Whether something is a law is a matter of fact. There are rules of recognition, including parliamentary rules about what must be done in order to validly enact a statute and the doctrine of judicial precedent, that assist in determining this fact.[18] Law, then, is identified by its pedigree, or the way it was made, and not its content. Ideas of what is natural still retain a place in society and may influence the content of the law, but are not law. Law is what actually exists in conventions, on the statute books and within cases. Belief about what is natural provides people with morals from which come beliefs about what law ought to be. Human rights have

force, then, not because they are natural, or somehow morally correct, but because they are validly passed laws.

The positivist approach answers the question 'what are human rights?' satisfactorily from the perspective of a practising lawyer who does not have to examine why laws get made but only has to identify what is law in order to be able to apply it. However, on a philosophical level the positivist answer to what human rights are is quite unsatisfactory. It does not help to explain why human rights seem to be special, or why the rhetoric of human rights is so pervasive within modern Western legal and popular thought. It also does not tell us much about how perceptions of morality influence the law.

THE PERVASIVENESS OF HUMAN RIGHTS

Perhaps we can go beyond the positivist approach to human rights by saying that they represent the most commonly shared beliefs about what is natural and right. Because human rights represent the common ideal they assume higher status than other laws that are concerned with the regulation of human lives rather than the upholding of ideals. Such a conception of human rights subtly shifts away from natural law theories. A natural law conception of human rights would hold that human rights are rights that are in accordance with the innate nature of humankind. This conception holds that human rights are rights that are in accordance with what the majority of people believe to be the innate nature of humankind. As such, human rights are human made laws, but they gain their authority from a widespread belief about what is right.

If one accepts that human rights are based on beliefs about what is natural then human rights become disputable. Whilst one cannot argue with a concrete, provable, natural order one can argue about beliefs about what this order is. Indeed, in the Pacific, where human rights were received as part of the Western-style constitution making, we are well placed to question the dominant belief about natural order. The post-colonial discourse that challenges the cultural imperialism of the colonisers who believed that their way of life was the right way and saw part of their role as 'civilising' islanders is challenging beliefs about the natural order. In terms of human rights, we sometimes see challenges to human rights because of their focus on individual equality and freedoms rather than communitarian values that are part of traditional Pacific island lifestyles.[19]

However, human rights were generally adopted into Pacific constitutions and are widely accepted both in the Pacific and internationally. Although if one stops to think about human rights one may come to realise that they are only *beliefs* and therefore open to challenge, challenges do not often occur with any success. Why is this?

The place of ideology

The answer to this question may be that most people do accept, or at least not question, the current concept of human rights as being natural or somehow

fundamental. We can say that they are the dominant ideology, or belief system about the way the world is ordered. As a belief system about natural order this ideology will support the beliefs of some people whilst rejecting the beliefs of others. As such, ideology is not neutral. It supports the interests, as reflected in the beliefs, of one group, whilst rejecting the views of others. Remember that Aristotle believed that slavery was part of the natural order. Whilst this belief obviously suited the slave owners, who could justify their behaviour as upholding nature, one wonders what the slaves thought of this.

Karl Marx was one of the most significant philosophers to pick up on the idea that the way in which society was organised is not neutral. His view was that all of society is organised around its means of production and relations of production. In a capitalist society things are therefore organised around class lines, with the people who own the factories and other means of production, the capitalists, exploiting the workers. These exploitative relationships are maintained by ideology, a widespread belief amongst all members of society that this is the natural order, or the only order that society can take. Marx's analysis of ideology has contributed significantly to much modern political discourse. Within the field of law, schools of jurisprudence such as critical legal studies and feminist legal studies rely upon this ideological analysis. Their aim is to look behind the law to see what power structures are being upheld by the supposedly neutral laws before which every person is meant to be treated equally.[20] Some of the key beliefs of such analyses are that:

- Institutions, or the ways in which society is organised, are not neutral. Instead they are designed to maintain particular relationships and power structures.
- Ideology maintains these power structures. Ideology is a belief system, something people believe to be true even though it cannot be proven to be objectively 'true'. This belief system is often unconscious, or taken for granted without conscious thought.
- Hegemonic control is used to maintain ideologies/power relations without the need to use force. In other words, the 'oppressed' themselves consent to the system of oppression because they believe it to be 'natural'. Education, media, the political system, the legal system, religion, family structures and other social structures all help to maintain control without force. This is why ideology becomes so powerful. Although it is only an idea or belief, through hegemonic control people come to accept that the ideology is actually real, and therefore do not question it.[21]

Examining the ideology of the law therefore involves looking at the power structures behind the law and who they benefit. One cannot presume that law is neutral. An analytical approach that expressly acknowledges the place of ideology is powerful because it makes seemingly unassailable ideas more open to challenge. If something like human rights has ideological support it will be accepted as natural. It will seem to be more than simply a man made law and therefore will be difficult to challenge.

However, using an ideological analysis one can challenge the idea that things are 'natural' on the grounds that this is just a belief representing a particular ideology.

Ideology within human rights

Liberalism is the conservative politics linked to both to the rise of capitalism and, frequently, to the rise of modern formulations of human rights. Capitalism operates on the idea of free market (or *laissez faire*) economics. Freedom to do anything that will not impinge upon other people's freedoms is one of the cornerstones of human rights. *Laissez faire* economics relies upon individuals acting competitively in self-interest in order for the free market to operate efficiently. Again we see this in the individualistic nature of human rights formulations which stress the rights of the individual and balance the rights of one individual again other individuals. Capitalism also relies on the idea that an individual's private property will be protected from arbitrary interference, something that is protected within human rights documents.[22] Indeed liberalism is behind many other things in the common law legal system, such as the notion of freedom of contract, the shift from strict liability to fault based liability in negligence and the arrangement of Western land tenure systems. Even the things that the State says are crimes protect the liberal ideology or capitalist order (one can at least argue).

This argument that human rights uphold liberal ideology is further strengthened when one looks at the history of modern human rights documents. The modern conception of human rights was first drafted into constitutional significance at the time of the events of the American and French Revolutions. The first draft of the American *Constitution* was presented in 1787 and came into effect in 1791. The French Declaration of the Rights of Man and the Citizen was produced in 1789. Both share similar philosophical roots.[23] The principles enshrined in these documents provided the basis for the UN Declaration of Human Rights, 1948, which has in turn fed into modern constitutions and bills of rights in the Pacific region and elsewhere. The French revolution has been labelled a middle class revolution in that it aimed to free a newly emerging class of capitalists from the oppressive rule and taxation regime of the monarchy.[24] Similarly progressive interpretations of the American Revolution was largely fuelled by dissatisfaction with British taxation of the colony and its exports and aimed to accomplish political, economic and social ends favourable to the development of free enterprise.[25]

Human rights were also the product of Western societies and thinkers. As such they may be criticised for being ethnocentric, or focussed on upholding the beliefs and social structures of particular ethnicities at the expense of the beliefs and social structures in other cultures.[26]

However, although human rights may be linked to an ethnocentric liberal ideology, they can be used to support other peoples' ideological agendas. Here, for example, we can look to the events of May 2000 in Fiji Islands, during which George Speight and his supporters used the notion of indigenous people's rights to gain legitimacy for their actions. Here human rights were used to justify underlying political power

plays. I said in the introduction that Speight's actions are possibly not a good example of how human rights can be used for inequitable ends because they were a mere front for the underlying political power plays driving the attempted coup. However, I tend to think that this is an excellent example of how rights discourse can be manipulated to meet particular agendas. We can also look at women's rights movements both throughout the Pacific and internationally, that have used the notion of human rights to fight patriarchal (or male dominated) social structures within various cultures and economic systems.[27]

CONCLUSION

In this chapter we have looked behind that idea that human rights are 'natural' and therefore that they hold special moral force. We have seen that, rather than actually being part of the natural order, they only represent beliefs about this natural order. We have also seen how through the ideological device of hegemonic control, this belief is accepted as really representing the natural order. I have also briefly linked the concept of human rights to ethnocentric liberalism. Whilst liberalism is probably the dominant ideology (or world order) in Western societies today there are many other ideologies or belief systems that either work in parallel or aim to refute liberalism. Patriarchy, the belief that men are inherently superior to women, is an ideology. Modernisation, or the belief in the organic evolution of society towards a higher goal, is an ideology (often closely linked to liberalism through various development programmes that see capitalist economic development as being the ultimate development agenda). The idea of the 'Melanesian Way'[28] is an ideology. The belief that white people (or black people or any other kind of people) are inherently superior to others is an ideology. All of these things affect the power structures in society. Some of them are very pervasive. People tend to accept them because they are 'natural'.

Analysis that challenges or critiques ideologies is useful for questioning human rights and opening up debates about what the place of the current concept of human rights should be in relation to other rights such as community, cultural and religious rights. It is also useful for looking behind other aspects of law and social order to see what power structures are supported by seemingly neutral social institutions.

The final question I want to pose is how important is it that human rights merely represent beliefs about what is right? It seems to be part of the human condition that we do not actually know what it is that nature has ordained for us. Maybe the best that we can do is to create beliefs and ideals for the collective humanity to strive for. Human rights, so long as they are recognised as being a statement of belief about ideals, and not an unchanging statement of natural order, can provide governments and peoples with aspiration and goals. Maybe this is sufficient justification for them to retain their central place within current legal and political thinking.

ENDNOTES

1 General Assembly resolution 217 A (III) of 10th December 1948.

2 USP is the University of the South Pacific. The member countries are Vanuatu, Solomon Islands, Fiji Islands, Samoa, Tokelau, Tuvalu, Marshall Islands, Niue, Cook Islands, Kiribati, Tonga and Nauru. The only USP member countries that do not enshrine human rights in their constitutions are Niue (Niue *Constitution Act* 1974) and Tokelau (*Tokelau Act* 1948 (NZ)).

3 On a global level the United Nations also framed decolonisation in the language of human rights. The Declaration on the Granting of Independence to Colonial Countries and Peoples – resolution 1514 (XV) made on 14th December 1960 states that "the subjection of peoples to alien subjugation, domination and exploitation constitutes a *denial of fundamental human rights*, is contrary to the United Nations Charter, and is an impediment to the promotion of world peace and cooperation, and that steps should be taken to transfer, unconditionally, all powers to the Trust and Non-Self-Governing Territories so that they might enjoy complete freedom and independence" (italics added).

4 Chapters in this collection that provide further detail on clashes between human rights and custom include chapter 6, by Zorn, J.G.; chapter 7, by Bothmann, S.; and chapter 11, by Jessep, O.

5 Aristotle *Nichomeachean Ethics* as quoted in Weeramantry, C. G. 1982. A*n Invitation to the Law*. Butterworths: Australia, at pp 262–263.

6 Cicero *The Republic* quoted in Davis, M. 1994. *Asking the Law Question*. Sydney: Law Book Company, at p 61.

7 See Weeramantry, C.C. 1982. Above, n 5, chapter 1, for further discussion of Sumerian law, Islamic law and other legal systems.

8 [1932] AC 562 at p 580.

9 See, for example, Luke 10: 27–29, which also provides Lord Atkins's lawyer's question of 'who is my neighbour?'

10 Exodus 20: 8–10.

11 Section 23(1).

12 Section 25. It should be noted that the Sabbath was originally recognised as being Saturday. It still is recogised as such within the Jewish tradition. However, because of the influence of Catholicism and other forms of Christianity the Sabbath is now widely recognised to fall on Sunday.

13 Plato *The Republic* Book VII. (http://www.wsu.edu/~dee/GREECE/ALLEGORY.HTM#A Accessed 26/9/01).

14 Most jurisprudence textbooks will provide a general discussion of the contributions of Plato and Aristotle to jurisprudence. See, for example, McCourbrey, H. & White, N. 1996. *Textbook on Jurisprudence (2nd ed)*. London: Blackstone Press Ltd; Davis, M. 1994. Above, n 5.

15 The rise of science is linked in particular to the scientific revolution, which occurred in the late 1500s–1600s, and the Enlightenment, otherwise known as the Age of Reason, an era from the late 1600s–1700s. For an overview of these periods and the changes that took

place in thinking at these times see Spenser, L. & Krauze, A. 1997. *The Enlightenment for Beginners.* Cambridge: Icon Books Ltd; Hankins, T. 1985. *Science and the Enlightenment.* Cambridge: Cambridge University Press; Henry, J. 1997. *The Scientific Revolution and the Origins of Modern Science.* London: Macmillan Press.

16 For more on the legal philosophy of Aquinas see Sigmund, P. 1993. Law and Politics. In Kretzmann, N. & Stump, E. (eds.) *The Cambridge Companion to Aquinas.* Cambridge: Cambridge University Press, at pp 217–231.

17 See, for example, Kuhn, T. 1970. *The Structure of Scientific Revolutions* (2nd ed). Chicago: Chicago University Press; Newton-Smith, W. H. 1981. *The Rationality of Science.* London: Routledge.

18 Most jurisprudence texts will contain further discussion of legal positivism. See, for example, McCourbey, H. & White, N. 1996. Above n 14; Harris, J. W. 1997. *Legal Philosophies* (2nd ed). UK: Butterworths.

19 For other chapters in this collection that discuss the clash in communitarian and individual values see above, n 4.

20 For further discussion of ideological analysis of law see Grigg-Spall, I. & Ireland, P. 1992. *The Critical Lawyers' Handbook.* London: Pluto Press.

21 Antonio Gramsci initially developed the concept of hegemony. For an introduction to his work see Ransome, P. 1992. *Antonio Gramsci A New Introduction.* London: Harvester Wheatsheaf. For later applications of hegemonic analysis and extensions of theory relating to the analysis of ideology see Young, M. 1971. *Knowledge and Control.* London: Collier-Macmillan; R. Harker, C. Mahar and C. Wilkes. 1990. *An Introduction to the Work of Pierre Bourdieu.* London: Macmillan.

22 See, for example, Article 17 of the Universal Declaration of Human Rights.

23 See Dunn, S. 1999. *Sister Revolutions: French Lightning, American Light.* New York: Faber and Faber Inc.

24 Such an interpretation of the French Revolution is found in Marxist commentary on the Revolution. Georges Lefebvre, in summarising such interpretations states "Another criticism [of the Revolution]... is that it favoured one class at the expense of the others, namely the bourgeoisie that drew it up... economic liberty, though not mentioned, is very much in [the Declaration of the Rights of Man and the Citizen's] spirit... The Declaration, in short, is blamed for having allowed capitalism to develop without control..." Lefebvre, G. 1964. Declaration of the Rights of Man as the Essence of the Enlightenment. In Church, W.F. (ed.) *The Influence of the Enlightenment on the French Revolution: Creative, Disastrous or Non Existent.* Boston: Heath and Company. For more recent commentary on Marxist interpretations and contemporary revisions of the Revolution see Temple, N. 1992. *The Road to 1789: From Reform to Revolution in France.* Cardiff: University of Wales Press.

25 For an overview of different historical interpretations of the American Revolution see Greene, J. (ed.) 1968. *The Reinterpretation of the American Revolution 1763–1789.* New York, Evanston & London: Harper and Row Publishers; Webking, R. 1988. *The American Revolution and the Politics of Liberty.* Baton Rouge & London: Louisiana State University Press.

26 For further discussion of these criticisms see Weeramantry, C.G. 1982. Above, n 5 at pp 210–211.

27 Wide ranging discussion of the role of ideology in human rights and the uses to which rights discourse has been put can be found in Dunne, T. and Wheeler, N. 1999. *Human Rights in Global Politics.* Cambridge: Cambridge University Press.

28 'The Melanesian Way' has been used by a number of Melanesian politicians as device for creating identity around a supposedly homogeneous Melanesian culture. See, for example, Sokomanu, G. 1992. Government in Vanuatu: The Place of Culture and Tradition. In Crocombe, R. Neemia, U. Ravuvu, A. and von Busch, W. (eds.) *Culture and Democracy in the South Pacific.* Suva: Institute of Pacific Studies.