

# the SIMON GREENLEAF



## LAW REVIEW

A Scholarly Forum of Opinion Interrelating  
Law, Theology & Human Rights

featuring  
in this number

Francis Schaeffer on Christian Faith and Human Rights  
Abortion: Justice Harry A. Blackmun and the *Roe v. Wade*  
Decision

The Natural Law According to Thomas Aquinas  
California Criminal Justice: A System in Search of Itself  
Critical Reviews of the Gay Scene, Jaworski's *Crossroads*,  
*Whitehead's Second American Revolution*  
And Much More . . .

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**A Scholarly Forum of Opinion Interrelating**  
**Law, Theology & Human Rights**

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**EDITOR'S  
INTRODUCTION**

## EDITOR'S INTRODUCTION

The Simon Greenleaf School of Law has been gratified not only by the phenomenal growth of the institution itself during its first three years of operation in the United States, but also by the reception accorded to its *Law Review*. Quite plainly, a deep and genuine need has existed for a graduate school of law, apologetics, and human rights which would uncompromisingly offer revelational answers to a faltering secular society; and equally plain is the fact that a scholarly journal expressing these vital perspectives is being read and appreciated by an impressive audience here and abroad.

In line with the Renaissance orientation of our first number, this second issue of the *Simon Greenleaf Law Review* cuts a wide and deep swath. Francis Schaeffer offers a new and original treatment of human rights from the perspective of historic, biblical Christianity. Our own professor David Prescott performs detailed surgery on the California criminal justice system in a book-length essay that advances the issues more than perhaps any other material in print. The Thomistic natural law tradition has its scholarly spokesman in Professor Elmer Gelinas, who delivered the essay here published for the first time to an enthusiastic audience of Simon Greenleaf students and guests at our International Seminar in Theology and Law, held conjointly with the International Institute of Human Rights in Strasbourg, France. Janet LaRue, an honors law student at Simon Greenleaf, offers a sensitive, moving, and scholarly defense of the right to life and a devastating critique of the logic of Justice Blackmun's treatment of abortion in the *Roe v. Wade* decision. Another student (now alumnus), Craig Savord, supplies an interesting legal note on "check kiting" - which should have the pragmatic value of deterring potential subscribers to the *Law Review* from

sending us bad checks! Finally, the editor and staff review a number of challenging recent publications that tie together law, theology, and human rights: Leon Jaworski's spiritual autobiography, John Whitehead's *Second American Revolution*, and other items both English and French to whet the reader's bibliographical appetite.

And all this is set out in the spirit of the Reformation maxim, *Soli Gloria Deo*, grounded in Scripture itself: "Not unto us, O Lord, not unto us, but unto thy name give glory, for thy mercy, and for thy truth's sake" (Psalm 115:1).

J. W. M.

## CHRISTIAN FAITH AND HUMAN RIGHTS

by

Francis Schaeffer



Editor's Note: On Sunday evening July 25, a Swissair mini-jet brought Francis and Edith Schaeffer from Geneva, Switzerland, to Strasbourg, France, to participate in Simon Greenleaf's annual summer session at the International Institute of Human Rights.

Some twenty-five Christian students had been studying human rights for a month preceding the Schaeffers' visit, under the guidance of Dr. John Warwick Montgomery, Simon Greenleaf's dean and the director of its European program. Total enrollment this year at the International Institute of Human Rights reached two hundred from sixty countries--including third-world and iron-curtain nations. The Simon Greenleaf students were thus able to witness for Christ in the context of the most prestigious human rights teaching program in the world.

The Schaeffers shared an informal lunch of Alsatian-French specialties with the Simon Greenleaf students in the cellar of a medieval restaurant that had once belonged to the Cathedral chapter of Strasbourg. This was a rare privilege for the participants, since the Schaeffers' heavy speaking, writing, and film schedules and Dr. Schaeffer's health have necessarily reduced opportunities of this sort in recent years.

On Monday afternoon, Dr. Schaeffer delivered a major lecture on Christian faith and human rights at the law faculty of the University of Strasbourg under Simon Greenleaf auspices, and received from Dr. Montgomery his diploma and hood representing the honorary Doctor of Laws degree bestowed upon him at Simon Greenleaf's May commencement.

Here follows the text of Dr. Schaeffer's original lecture, edited for publication by the author himself.

The theme which was suggested to me is Why Religion Is Essential to Human Rights. The question turns at a single point. That is, who, or what, gives anything which may be called rights. This is the single question upon which all else turns.

The modern mentality is "it is my right" (and we can think of gay rights or "the right of privacy" for example) without ever thinking through the question of upon what basis I can claim *anything* to be my right.

The founding fathers of the United States used the expression "inalienable rights", but they had thought through the reason why such a phrase was not utter nonsense. They had thought it through, and they understood why what they said was not foolishness. This was based upon a Creator who gave the rights to us, and everything turned at that point.

All the freedoms the founding fathers of the United States laid out rested on this, and this specifically included the right to be free from tyranny, and a right and a responsibility to stand against all forms of tyranny. This was an *inalienable* right because there was a Creator who gave this right.

And note that while some of the founding fathers were indeed deists, yet the general consensus of thinking was that the Creator was the Judeo-Christian God. One can think, for example, of Blackstone's *Commentaries* which were so prevalent and important in that day, and how clearly Blackstone outlines that there were two bases for law: one nature, and the other was God. And specifically he related nature to the fact that it had been formed by the Creator, and he relates God to the Scriptures in which God had spoken. Or, one can even think of Benjamin Franklin, who is known as a deist and probably was,

and yet as one reads his speeches in Congress and in other places, one is profoundly impressed by the fact that though a deist he might have been, yet, nevertheless, his thought-forms were very much influenced by the Judeo-Christian concept of God.

One of the distinctions of the Judeo-Christian God is that not all things are the same to Him. That at first may sound rather trivial, but in reality it is one of the most profound things one can say about the Judeo-Christian God. He exists; He has a character; and not all things are the same to Him. Some things conform to His character, and some are opposed to His character. This is in clear distinction, for example, from the Hindu or the Buddhist concept of God. To these gods, everything is the same, so that there is no distinction between good and evil, cruelty and non-cruelty, between tyranny and non-tyranny. In such a setting, speaking of inalienable rights or human rights would be meaningless, because to the Hindu or Buddhist the final reality -- their concept of God as the all, the everything -- would give no voice, no word, as to why anything is bad; why anything is humanness or anything is lack of humanness. In such a setting, human rights are meaningless. The proof of this is very easy to ascertain. All one has to do is to look at the Hindu situation in India itself with its caste systems. There are no intrinsic human rights. I would say in passing one only has to walk the streets of Bombay to feel the implications of this in practice.

Moving into the western world, we can contrast the results of the American revolution to the French revolution and the Russian revolution. The American revolution, rooted in a Creator to whom not everything is the same, could not only talk about inalienable rights as given by the Creator, but

could and did produce a country in which those rights had meaning in practice. Compare this to the French and the Russian revolutions, built on the denial of the existence of any such Creator. Both inevitably brought forth tyranny and no intrinsic rights to the individual human being. The French revolution led inevitably to the guillotine, not only for the nobles but for literally thousands of peasants who also died in the tyranny which followed the French revolution. And then it led quickly to chaos, and that quickly led to the rise of Napoleon in an autocratic rule to overcome the chaos.

The Russian revolution as it was taken over by the Leninists--and you must always remember that the revolution was not brought forth by them, but was stolen by them--led immediately, at once, to tyrannical rule in which the individual had, and has at this moment, no intrinsic rights. The state arbitrarily gives any "rights" that there are, and it can take them away arbitrarily anytime the elite, who govern, desires to do so. There are no intrinsic rights.

The results in the Soviet state, and situation in the Soviet block, is not a fluke. It is the inevitable result of the system. Without a Creator who gives the rights, and who is greater than the state, the lack of human rights is naturally inevitable. There is nothing greater than the state to judge it by. There is nothing to which the individual can appeal as giving him or her "rights" in opposition to the arbitrary rulings of the state. Without such a Creator there can be no absolutes. There is no basis for absolutes in personal values, but there also can be no absolutes by which to judge the state.

Now moving into the present West where there is such an outcry for rights--my rights--we must ask: does the basis

which gave the inalienable rights still exist? The answer is, unhappily, largely a negative. Let us notice that it was not only the United States which had its *form-freedom balance* based upon the reality of the creator God to whom not everything was the same. Here we speak of the balance in government of forms and order without tyranny--freedom without chaos.

All the northern European countries which developed this balance were the countries which had known the Reformation. Prior to the Reformation, Western Europe had something of this balance, especially in England, with Henry de Bracton, the Magna Charta, and British common law. But the Reformation focused this by seeing that the basic authority, not only for religious matters, but for law as law, was centered *only* in the Scriptures. The final authority was not Scripture and the church, but, equally, it was not Scripture and the king. It was *Scripture only* -- not only for religious truth, but as a basis for law. Out of this came the form-freedom balance which was unique in human history. This existed in northern European nations, and those like the United States and Canada, Australia, New Zealand, etc., which came forth from Northern Europe. It was never perfect, one can think of the too often poor view of race and an all too often lack of emphasis upon a compassionate use of accumulated wealth, yet human rights flourished in these countries in a unique fashion. In these countries, there were inalienable rights for there was Someone, who gave those rights; and therefore the state was not the final authority.

But, unhappily, in our own day, the consensus has changed in the northern European countries and in the total western world. Today, increasingly, the final reality is no longer comprehended to be the infinite personal God who exists objec-



tively and who created all else, and to whom not everything is the same. Today increasingly in the total western world the final reality is seen to be only material, or energy which has existed forever, and the present form it has taken exists only by pure chance. This has become the increasing consensus of the western world.

Now notice: this final reality is really, when you think about it, very much related to the eastern concept of their gods. We may think of the western materialistic concept as absolutely opposite to eastern mysticism and eastern gods, but philosophically they are basically the same. That is, for the final reality, all things are the same. As with the eastern gods, there is no intrinsic difference between cruelty and non-cruelty, tyranny and non-tyranny, and there is no basis for human rights or for a unique concept of human life.

Such a perspective gives no value system--and it cannot. And, even more terrifying if we understand it, is that not only does it give no personal value system, but it gives no basis for law--no basis for law whatsoever. And, more terrifying still, it cares nothing about human existence, and certainly it is totally silent about any reason to speak of human rights. Thus, just at a time when everyone is shouting for his or her rights, the basis which gave a reason for there being human rights is being destroyed.

No one could have said it better than Jacques Monod, who was, as I'm sure most of you know, a French Nobel prize winner in biology. Some years ago he wrote a book called *Chance and Necessity*. It was a best-seller both in France and then in the Anglo-Saxon world. He himself very dogmatically held that this is all there was, that is, that the final reality is only material or energy shaped by pure chance. He summarized that conclusion of his own position by saying that there was no

way to distinguish the "ought" from the "is": one of the most pregnant sentences that has been written in our lifetime. On the basis of this conception of final reality, there is *no* way to distinguish the ought from the is.

In this setting, finite man, with all his limitations, *must* make himself the measure of all things and all values. Humanism must come forth from the concept of the final reality being only material or energy shaped by pure chance. Man, spelled with a capital "M", *must* make himself the measure of all things. This is why we properly may call our time the age of humanism.

All too often I think the word humanism is thrown around without people understanding the profundity of what is involved here. We must understand that if man accepts that final reality, rather than being the Creator, is only material or energy, which has existed forever, and it is shaped in its present form by pure chance, it follows that man *must* be the measure of all things. First of all, he must be the measure of all knowledge. Those of you who know anything about epistemology should be brought up short. Man is finite, yet he must be the measure of all knowledge. This means he never can be finally certain of anything. He can never come to a final conclusion in the area of knowledge. Then, beyond that, he must be the measure of all things in regard to personal values. And still beyond that, man must make himself the measure of all things concerning law.

In this setting, my rights only rest upon the Will and power of the strongest. This fits both the Marx-Engels-Lenin viewpoint, and it equally fits the concept of Oliver Wendell Holmes, Jr. I refer to Oliver Wendell Holmes' evolutionary

approach--and in my books *How Shall We Then Live* and *A Christian Manifesto* I use his own words to show that this is indeed his position--an evolutionary position of evolving biological life, and evolving law, and also the root concept of the survival of the fittest--not just biologically, but in law. This was not Holmes' view alone; it has become the general concept of law today, which not only rejects God's law, but with mathematical certainty therefore rejects a strict understanding of the Constitution. One follows the other. What we are left with is that law equals a small group of people's finite decisions as to what is good for society at the given moment. And behind them, the will of the strongest. On that basis what do my "rights" any longer mean?

With a belief in the Creator, the Constitution's view of inalienable rights was a protection of the individual against both the mob and the state. The Constitution, if you read it carefully, was drawn up by the thirteen colonies for exactly that purpose, to protect individuals on the one hand from the mob, and on the other hand from the federal state.

This protection was for everyone, but it peculiarly was a protection for the weak. Today the weak do not have a chance. Regard the unborn infant, and the newborn child who is allowed to starve to death because he or she does not come up to someone's concept of what is an adequate standard for life. And down the road a bit, the aged, who are seen and certainly will be increasingly seen as a demographic burden and nuisance, economically and socially. We can think of Oliver Wendall Holmes' spelling it out that man as man has no more unique importance than a grain of sand. With such a position as this, the weak have no protection. The weak have no inalienable rights, because the concept of the Creator to whom everything is not the same, has largely been cast aside.

I say with all sobriety, and I mean this, that if I were a minority group member today, I would be filled with concern. And I would say that if you are about twenty-five years of age today, you should be very very, troubled, because if you live for another fifty years with today's demographic changes, what is to protect you as the aged when you are a political, social, and economic burden? To those who are allowing the devaluation of human life and the devaluation of law we say: even if you do not hold to human dignity in principle, pragmatically if you are about twenty-five years of age you should be deeply concerned because you should realize that down the road you yourself will have no inalienable rights.

Even Will and Ariel Durant, who were avowed humanists, and who received the humanist pioneer award in 1976, said in *The Story of Civilization*: "Moreover, we shall find it no easy task to mold a natural ethic strong enough to maintain moral restraint and social order without the support of supernatural consolations, hopes and fears." History, experience, and logic prove that is is not only difficult, as the Durants suggest, but *impossible*. The results of Jean-Jacques Rousseau, Voltaire, the French Revolution, Marx--Engels--Lenin, and the Soviet failure concerning human rights demonstrate the point within our own general era of history.

The Greek and the Roman gods were a much better foundation for the *polis*, the state, than is the modern concept of the final reality being material or energy, shaped by pure chance. They had a better basis than modern man for attempting something in the midst of the *polis*. But the Greek and the Roman gods were not enough either. There was no Greek city-state, regardless of what your university professors have told you, which produced the human rights the Reformation

produced--not one. One does not have to read Plato's *Republic* to understand this; all you have to do is to go back to research the Durants again--their analysis of the failures of the Greco-Roman states--for this to be obvious.

What is needed to produce the balance of form and freedom in government which we have enjoyed so thoroughly is the Judeo-Christian God who is the Creator of all else. The Judeo-Christian God to whom not all things are the same. The Judeo-Christian God who, as the Reformation affirmed, has spoken in the Scriptures.

There is an unbreakable link between the existence of this God and the unique dignity and worth of the individual human being made in His image. And there is an unbreakable link between the existence of this God and any sufficient basis for law, and specifically for inalienable rights.

Without this, the society, and especially the State, *is* the final authority; and when the individual is trampled, there is then no adequate basis upon which to raise a voice against it.