

Human Rights

Introductory Thoughts and Questions

On what philosophical basis can it be claimed that people have 'human' rights?

"I know my rights" - can anyone really be so sure?

Explain, giving examples, the view that rights normally involve corresponding duties.

When people are so clearly unequal, on what grounds can equality be claimed to be an inalienable human right?

Is 'positive discrimination' really positive?

Political rights

These are rights to be involved in the formation and working of the government under which one lives. For example, in the Western tradition of democracy political rights would include the right stand as a candidate, to canvass support for a candidate, to vote, to be a part of government, and so on.

Civil Rights

These are those rights that citizens claim for themselves in the ordinary workings of their lives. For example, in the Western tradition civil rights would include the right to equal treatment before the law, to access to education and health, to freedom of association, to free speech, to freedom from arbitrary arrest, and so on.

It should be noted that the definitions to the left apply to the Western tradition; other traditions would recognise different framings of civil and political rights.

The basis for rights

It should be understood that civil and political rights as enshrined in, say, the *Universal Declaration of Human Rights* of 1948 (cf. quotes) come on the back of centuries of gradual change: 'rights talk' is essentially a modern phenomenon. On what could one base the notion of human rights?

divine right This is normally used in phrases like 'the *divine right* of the King/Queen', that is, the right to be sovereign over a people is God- given. However, it could also be applied more generally to all human beings in the claim that the rights of each come from God and, that being so, are inalienable as well as universal.

natural rights This is the attempt to ground the notion of rights in human nature: the fact that one is human, the fact that one has intelligence and free will, leads to the claim to rights. This claim precedes and is independent of any claim of the state. If one believes that God implants in each their human nature then the notion of divine right and natural rights merge.

This is essentially the position of the Catholic Church (cf. quote of Pope John 23rd). **Hugo Grotius** (b. 1583), a Dutch Protestant Theologian and Lawyer, believed that the natural rights of a person were knowable without reference to belief in God. He laid the foundations for an understanding of society in which **rights were based on contract**. The various forms of this theory build on natural law whilst stressing the need of individuals to surrender some of their rights and freedoms for the embracing benefit of living peacefully in society - individuals come together in a *social contract* to constitute society.

Thomas Hobbes (1588-1679) took a gloomy view of human life beyond the pale of society. Hobbes defined 'natural right' in a strange way: all human beings are born with a right to everything - even to the bodies and possessions of others (cf. NDCE, *Natural Rights*). Without society's benefit humans would be in a constant state of striving, one against the other, making for '*the life of man, solitary, poor, nasty, brutish and short*' (cf. quote). This being so, Hobbes saw the price of society was the willingness of each to submit to the authority of an absolute ruler in order that society be viable. Thus, for him rights originate in a *social contract*.

John Locke (1632-1704) took a sunnier view of human nature, giving human beings the credit of being able upon reflection to realise 'fixed and permanent' moral truths, for example: it is wrong to inflict undue suffering on another; it is right to aid another in distress. This leads humans to form societies where the natural rights of each would be protected against arbitrary force and exploitation. Unlike Hobbes, Locke saw no need for absolute rulers, envisioning instead a more democratic system of rule (the drafters of the *American Declaration of Independence* drew on his insights - cf. quote).

utilitarian basis for rights Different religious traditions contain an expression of what Christians call the Golden Rule - *treat others as you would have them treat you* (cf. Mt 7:12). A utilitarian basis for rights suggests that we should recognize each other's rights so that others will recognize ours. Hence respecting others' rights boils down to self interest.

prima facie basis for rights **Sir David Ross** (1877-1971) advanced a method of resolving perceived conflicts in one's duty. A *prima facie* duty is one for which there is a strong moral reason in the absence of any moral reason against it (cf. NDCE, *Conflict of Duties*). For example, one has a *prima facie* duty not to lie. We ought always to tell the truth unless there is a strong moral reason not to - for example, if by lying we could save someone from being murdered. Ross loosely listed categories of *prima facie* duties derived from what he said to be '*the main moral convictions of the plain man*'. He preferred to work from ordinary experience of deliberation, distrusting any notion that derived various duties from a single principle of right action (as is the case, say, with utilitarianism).

totalitarian basis for rights This theory would reject any concept of rights being inherent in human beings; on the contrary, a person's rights are conferred on them by the state. As Allsop points out, this would mean a person having no rights in the Western sense of the word; rights would be more as privileges granted by the state. This kind of thinking arises from the Marxist conviction of the state and the place of the individual therein.

Note that all the various theories of the basis for human rights, except for the last, can overlap each other. For example, the *American Declaration of Independence* brings together

the notion of social contract ('We hold these truths to be self-evident ...') with natural rights gifted by God (' ... that all men are created equal, that they are *endowed by their Creator* with certain *inalienable* rights ...).

Various problems centre on the notion of rights.

The framing of human rights, their acceptance, their being upheld universally requires *universal* consent. This seems well nigh impossible to get. The *Universal Declaration* is steeped in a western understanding of human rights; can we expect compliance from totalitarian states?

Western theorists have drafted six basic principles concerning human rights:

- universal consent,
- equality of rights in all different cultures,
- fundamental to human life,
- enforceable by law,
- rights have power to constrain others' actions,
- some rights are inalienable and cannot be forfeited.

As well as considering the possible non-compliance of certain nations, one could also point out the difficulty of enforcing rights even in those nations that are signatories to the Declaration.

Some philosophers (for example, MacDonald) have come to see the *Universal Declaration* and the six principles above as having no ground in knowledge, merely expressing a *non-cognitive* preference on the part of the writers (cf. ethical non-cognitivism). There has been an historical scepticism to the idea of rights being inherent, inalienable, ... Bentham considered the notion to be 'nonsense on stilts'.

Then there is the question of the precise nature of rights: sometimes they are framed in a negative way (e.g. the right *not* to be arrested arbitrarily); sometimes they are framed positively to include a duty on the part of a government or individual (eg. the right to health care).

One must also realise that what is taken to be 'obvious' now, for example, the right not to be made a slave, has not been obvious throughout history. It is a sobering thought that *inalienable* rights in today's terms have not always been considered so. Will they always be considered so in the future?

Some of the positively framed rights (e.g. the right to education, health care, work, and so on) remain a distant aspiration for so many people in so many nations.

Scholarly quotes/views

'It is hard to think of a case in which the claim to a right does not entail a corresponding duty.'

Allsop, *Module 11 booklet*

'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.'

First Article of the Universal Declaration, 1948

'... each individual man is truly a person ... endowed with intelligence and free will ... he has rights and duties which together flow as a direct consequence from his nature. These rights are universal, and indivisible, and therefore altogether inalienable.'

Pope John XXIII, *Pacem in Terris*, 1963

'For Hobbes humans were caught under tyranny, either of law and government or of their essential rivalry and hate.'

Allsop, *Module 11 booklet*

' ... men without a common power to keep them all in awe ... are in that

condition which is called war ... every man against every man ... No arts; no letters; no society; and which is worst of all, continual fear and danger of violent death; and the life of man, solitary, poor, nasty, brutish and short.'

Hobbes, *Leviathan*

'We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain inalienable rights, that among these are life, liberty, and the pursuit of happiness.'

American Declaration of Independence

'I have a dream that my four little children will one day live in a nation where they will not be judged by the colour of their skin, but by what sort of persons they are. I have a dream that one day ... all God's children, black, white, Jews and Gentiles, Protestant and Catholics, will be able to join hands and sing in the words of the black people's old song: Free at last, free at last; thank God Almighty, we are free at last!'

Martin Luther King