

Quadrant II – Transcript and Related Materials

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Notes

Introduction to Human Rights and the Concept of Natural Law

Human rights have been defined as

basic moral guarantees that people in all countries and cultures allegedly have simply because they are people. Calling these guarantees “rights” suggests that they attach to particular individuals who can invoke them, that they are of high priority, and that compliance with them is mandatory rather than discretionary. Human rights are frequently held to be universal in the sense that all people have and should enjoy them, and to be independent in the sense that they exist and are available as standards of justification and criticism whether or not they are recognized and implemented by the legal system or officials of a country.

The moral doctrine of human rights aims at identifying the fundamental prerequisites for each human being leading a minimally good life. Human rights aim to identify both the necessary negative and positive prerequisites for leading a minimally good life, such as rights against torture and rights to health care. This aspiration has been enshrined in various declarations and legal conventions issued during the past fifty years, initiated by the Universal Declaration of Human Rights (1948) and perpetuated by, most importantly, the European Convention on Human Rights (1954) and the International Covenant of Civil and Political Rights (1966).

What human rights do primarily aim to identify is the basis for determining the shape, content, and scope of fundamental, public moral norms. As James Nickel states, human rights aim to secure for individuals the necessary conditions for leading a minimally good life. Public authorities, both national and international, are identified as typically best placed to secure these conditions and so, the doctrine of human rights has become, for many, a first port of moral call for determining the basic moral guarantees all of us have a right to expect, both of one another but also, primarily, of those national and international institutions capable of directly affecting our most important interests.

While the practical efficacy of promoting and protecting human rights is significantly aided by individual nation-states' legally recognising the doctrine, the ultimate validity of human rights is characteristically thought of as not conditional upon such recognition. The moral justification of human rights is thought to precede considerations of strict national sovereignty. An underlying aspiration of the doctrine of human rights is to provide a set of legitimate criteria to which all nation-states should adhere.

The Characteristics of Human Rights

Human rights are inalienable.

This means that you cannot lose them, because they are linked to the very fact of human existence, they are inherent to all human beings. In particular circumstances some – though not all – may be suspended or restricted. For example, if someone is found guilty of a crime, his or her liberty can be taken away; or in times of national emergency, a government may declare this publicly and then derogate from some rights, for example in imposing a curfew restricting freedom of movement.

Human rights are indivisible, interdependent and interrelated.

This means that different human rights are intrinsically connected and cannot be viewed in isolation from each other. The enjoyment of one right depends on the enjoyment of many other rights and no one right is more important than the rest.

Human rights are universal.

Which means that they apply equally to all people everywhere in the world, and with no time limit. Every individual is entitled to enjoy his or her human rights without distinction of "race" or ethnic background, colour, sex, sexual orientation, disability, language, religion, political or other opinion, national or social origin, birth or other status.

We should note that the universality of human rights does not in any way threaten the rich diversity of individuals or of different cultures. Universality is not synonymous with uniformity. Diversity requires a world where everyone is equal, and equally deserving of respect. Human rights serve as minimum standards applying to all human beings; each state and society is free to define and apply higher and more specific standards. For example, in the field of economic, social and cultural rights we find the obligation to undertake steps to achieve progressively the full realisation of these rights, but there is no stipulated position on raising taxes to facilitate this. It is up to each country and society to adopt such policies in the light of their own circumstances.

The Three Generations of Human Rights

Many writers on human rights agree in the identification of three generations of human rights.

- First generation rights consist primarily of rights to security, property, and political participation. These are most typically associated with the French and US Declarations.
- Second generation rights are construed as socio-economic rights, rights to welfare, education, and leisure, for example. These rights largely originate within the UDHR.
- The final and third generation of rights are associated with such rights as a right to national self-determination, a clean environment, and the rights of indigenous minorities. This generation of rights really only takes hold during the last two decades of the 20th century but represents a significant development within the doctrine of human rights generally.

The Doctrine of Natural Law

The basis of the doctrine of natural law is the belief in the existence of a natural moral code based upon the identification of certain fundamental and objectively verifiable human goods. Our enjoyment of these basic goods is to be secured by our possession of equally

fundamental and objectively verifiable natural rights. Natural law was deemed to pre-exist actual social and political systems. Natural rights were thereby similarly presented as rights individuals possessed independently of society or polity. Natural rights were thereby presented as ultimately valid irrespective of whether they had achieved the recognition of any given political ruler or assembly.

The quintessential exponent of this position was the 17th. Century philosopher John Locke and, in particular, the argument he outlined in his *Two Treatises of Government* (1688). At the centre of Locke's argument is the claim that individuals possess natural rights, independently of the political recognition granted them by the state. These natural rights are possessed independently of, and prior to, the formation of any political community. Locke argued that natural rights flowed from natural law. Natural law originated from God. Accurately discerning the will of God provided us with an ultimately authoritative moral code. At root, each of us owes a duty of self-preservation to God. In order to successfully discharge this duty of self-preservation each individual had to be free from threats to life and liberty, whilst also requiring what Locke presented as the basic, positive means for self-preservation: personal property. Our duty of self-preservation to god entailed the necessary existence of basic natural rights to life, liberty, and property. Locke proceeded to argue that the principal purpose of the investiture of political authority in a sovereign state was the provision and protection of individuals' basic natural rights. For Locke, the protection and promotion of individuals' natural rights was the sole justification for the creation of government. The natural rights to life, liberty, and property set clear limits to the authority and jurisdiction of the State. States were presented as existing to serve the interests, the natural rights, of the people, and not of a Monarch or a ruling class.

Locke went so far as to argue that individuals are morally justified in taking up arms against their government should it systematically and deliberately fail in its duty to secure individuals' possession of natural rights.

Reference:-

Fagan, A. (n.d.). *iep.utm.edu*. Retrieved July 25, 2020, from Internet Encyclopedia of Philosophy: <https://iep.utm.edu/hum-rts/#H2>