



Paper Title: Introduction to Political Theory

Lesson: Rights

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Rights

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Introduction:

Rights are opportunities provided to individual for the full development of his/her personality. They also set important limits on state actions. It becomes evidently clear from the Declaration of Independence (1776) by the founders of the United States, which states that certain rights are inalienable, as well as from the French Declaration of the Rights of Man and of the Citizen (1789) that the notion of rights is taken as the central concept upon which their political organizations are built. It is, indeed, generally agreed that issues of rights play a central role in the political life of a society. It is important to note here that the interest in rights was not restricted to the 17th and 18th centuries only. Rather, there was a major resurgence of interest in the notion of human rights in the second half of the 19th century. Later on from the 1960s onwards the civil rights movement took rights as the corner stone for the rebuilding of society. It is only in the recent times that issues such as rights of women and disadvantaged minorities have taken the centre stage of our contemporary debate. With changing times and circumstances and due to the development of science and technology the nature and scope of rights are also continuously changing. Even a question such as whether people have a right to die (euthanasia) is being hotly discussed in our times. Animal rights activists have raised new questions regarding the use of animals in research and testing. Similarly the rights of sexual minorities such as gays and lesbians add a new dimension to the rights of minorities in our times. The issue of sexual choice is being discussed freely today even in the traditional societies. In our contemporary times human rights discussions have occupied the centre stage.

II. Rights: Nature and Scope

Right refers to 'one's due' as a human, citizen and individual or as a member of a group. It means to be entitled to do something or to have something done. A

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number of examples can be cited here like one has a right to vote, right to move freely, right to have health care facilities, etc. At this point of the discussion it would be very useful to distinguish between right and obligation.



Thomas Hobbes

In Thomas Hobbes' view, on any occasion one has a choice whether or not to exercise one's right. An individual is not obliged to do what she is entitled to do. For example, one's right to vote does not mean that one is obliged to vote. One is free to exercise one's choice, that is, in this case, to vote or not to vote. But at the same time it should also be kept in mind that rights and obligations are very much connected to each other. Such intense is the relation between the two concepts that they are described as the two sides of the same coin and without one the other cannot be conceived of. When an individual decides to do what she has a right to do, others have a corresponding obligation to let her do it. A pertinent question that emerges here is regarding the grounds upon which rights and obligations are justified. How one is entitled to a right and another obliged to a correlative duty? It may be noted here that a right is conferred while a correlative obligation is imposed by a law in a society of which both are members and whose legal system both are subjected to. But then all rights are not legal in nature. There are many rights which are moral in character. This leads us to the understanding that rights and their correlative obligations are essentially social in nature. An individual has them as a member of a social group, whether a society or a nation. Since rights need

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recognition from society and from the state, they are claims which can be justified on legal, moral ethical or human grounds.

In the first place a right must be justified as something one has as a member of some social group. Second, the claim to it must be backed by some necessity i.e. it must be something which is necessary for a person to be able to play her proper part as a member. Third, one's claim to have it as a right is justified only if one is able to and willing to respect the rights of the other members of the group. In view of the close affinity between rights and obligations rights express a certain kind of relationship between two parties: the right-holder and the right observers. In this context rights thus have two sides or dimensions depending on the perspective they are viewed from. When viewed from the perspective of the right-holder, a right is permission 'to act, an entitlement to act, to exist, to enjoy, to demand'. On the other hand, if viewed from the standpoint of the right observers, the right usually imposes a correlative duty or obligation. Such a duty can be either negative (to refrain from interfering with the right-holder's exercise of the right) or positive (to assist in the successful exercise of the right). Finally, to have a right entails certain responsibilities which bring us to the distinction between negative and positive rights.

Negative rights refer to those rights that entail non-interference from the society at large. The right to life, liberty or right to freedom of speech and expression are some such rights. For example, the right to life prevents others to kill a person but it does not obligate them to do anything positive to assist the person in living her life fully and happily. Positive rights, on the other hand, refer to those rights which impose obligations on other people or the state to do something i.e. to take some initiatives or concrete measures for a fuller enjoyment of people's rights. While negative rights are prohibitory in nature as they prevent or restrict us from doing something positive

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rights entail positive obligations on the part of the right-observer to do something to assist in the right-holder's exercise of the right. Thus, negative rights entail only negative obligations of non-interference whereas positive rights entail positive obligations on the part of the right observer. There can be various ways in classifying rights. They can be classified as moral, legal, human rights, etc. or civil, political and social rights.

III. Legal and Moral Rights:

Rights can also be classified on the basis of legal and moral grounds. The acts of legal authorities ultimately decide as to what is legal or illegal. Laws differ from ordinary life or moral discourse. For example, courts have defined terms in a certain manner which may or may not agree with the moral discourse. The term 'right' is used by legal authorities to refer to four different properties: the correlate of a legal duty (claim), the absence of duty (privilege or liberty), the capacity to change legal relations (power), and the protection against change in one's legal position (immunity). Ordinarily rights can be used in two senses: right to something and right to do certain things. When we say someone has the right to something the existence of the right concerns the behaviour of someone other than the right-holder. Because if I have a right to something it means that someone has the duty to act in a certain manner towards me. But in the second case to say that one has a right to do certain things or that she has a right to act in a particular way is to say that she is morally free to do so – that it is not wrong for her to do so.

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Ronald Dworkin

These two senses of the use of the term 'right' correspond in part to Dworkin's (Dworkin, 1977:188) 'strong' and 'weak' senses of right.

In case of a claim-right another person has the duty to act in a certain way with respect to the 'thing' to which the first person has a right. But a pertinent question that arises here is whether a right-to-something merely implies a duty in others or is it a package of normative advantages? However, the core idea of right, in either case, appears to be that an object or interest protected by a duty has some things that are considered to be good. Then if it is said that one has a right to such a thing it also means that one's interests in that thing deserves protection. It would be wrong to state that all goods or interests generate rights. There must be a particularly important moral reason for protecting the good or interest in question regarding which we claim of there being a right. Dworkin's (Dworkin, 1977:189-90) well-known claim that individual rights are political trumps held by individuals also expresses this idea. He also argues that individuals have rights when, for some reason, a collective goal is not a sufficient justification for denying them what they wish, as individuals, to have or to do. In other words, it is not a sufficient justification for imposing some loss or injury upon them. There is also a similar idea in Raz's (Raz, 1995:166) claim that a right exists if an aspect of a single person's well-being is a sufficient reason for holding some other person or persons to be under a duty. So far as the importance of certain goods or interests for human

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beings is concerned political theories will, of course, differ in their estimate. Consequently they differ in their ascription of particular rights. However, there is no denying of the central idea that important interests of individuals are protected against wider moral considerations. Thus, in Hartney's (Hartney, 1991) view, giving rights to the society would simply annihilate any competing individual rights. But it needs to be noted here that Hartney ignores the very important issue of individual's not as atomized entities but as culturally embedded, and the idea of 'good' as rooted in one's culture.

The fact that moral rights theory is based on the convergence of law and morality is problematic. Ronald Dworkin (Taking Rights Seriously, 1977) argues that law ought to 'take rights seriously'. In his view rights trump other considerations such as community welfare. Rights cannot simply be subordinated to the interest of the community. In another work (Ronald Dworkin, 1986) he has projected his vision of 'law as integrity' which combines the goals of descriptive and normative theory. According to Dworkin a judge should not try to give voice to his own moral or political convictions, but as an author in a chain of the common law. It requires the judge to treat the law as if it were a seamless web. To take rights seriously they cannot be treated as instruments of some other virtue. Pragmatists fail to realize this independent existence of rights since for them; rights are simply a means to make life better. Dworkin distinguishes between principles and policies. For him while the former describe rights the latter describe goals. But rights, as trumps, have a 'threshold weight' against community goals. Judges have to rely on certain principles for reaching a decision in difficult cases where application of rules does not give a clear answer. These principles are not 'extra-legal' criteria; rather they are used by judges as part of law. For example, the New York Court's rule that a murderer could not be allowed to benefit from his victim's will is based on the principle that 'a man

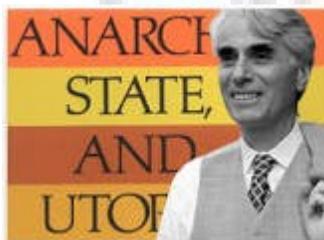
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should not benefit from his own wrong'. Moral rights theory is also criticized on the ground that moral rights, like natural rights, are purely hypothetical and not concrete rights. They are merely expectations of people which can not be termed as their rights in true sense of the term.



Joseph Raz

Joseph Raz (*The Authority of Law*, 1979) has also argued that the law is autonomous and its content can be identified without recourse to morality. Moral rights are also challenged by the champions of moral relativism who contend that there are no fixed morals for all societies at all times. So according to them moral rights can not be recognized as universal rights.



Robert Nozick

IV. Robert Nozick's Conceptions on Rights

Nozick also endorses a principle of rectification, in addition to these principles that would provide for the redress of past injustices. However, such a conception of justice essentially entails the defense of the free market and the capitalist system.

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It is a way of defending the free market insofar as it realizes justice by respecting the liberty of the individual regardless of its effects on aggregate welfare and regardless of its economic implications. A critical evolution of this conception would show that the libertarian notion of rights has been the subject of the most obvious and popular criticism. The central question that arises here is why should we think that morality demands that we accord people such absolute rights. It is also a pertinent question how could rights be thought to trump so decisively all considerations of others' welfare in the community? There could also be a situation that the economy flourishes better if the state interfered in the market economy. Even amidst libertarians not allowing it most citizens and firms might actually want it and even demand it, insofar as they believe they will be better off with such governmental interference.

V. Human Rights

Human Rights can be defined as international moral and legal norms aspiring to protect all people everywhere from severe political, legal and social abuses. Some common examples are the right to freedom of religion, the right to a fair trial when charged with a crime, the right not to be tortured and the right to engage in political activity. Such rights exist in morality and in law at the national and international levels. These rights are addressed primarily to governments, requiring compliance and enforcement. The Universal Declaration of Human Rights (1948) and the many human rights documents and practices that have followed in its wake remain the primary source of the contemporary conception of human rights.

In the philosophical aspect of human rights questions about existence, content, nature, universality and justification of human rights are addressed. A list of over two dozen specific human rights have been set out by the universal declaration of human rights which are expected to be respected and protected by countries. These

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rights may be categorized into six or more families: (i) Security right protecting people against crimes such as murder, massacre, torture and rape; (ii) liberty rights protecting freedom in areas such as belief, expression, association, assembly and movement; (iii) political rights protecting the liberty to participate in politics through actions such as communicating, assembling, protesting, voting and serving in public office; (iv) due process rights protecting against abuses of the legal system such as imprisonment without trial, secret trials and even excessive punishments; (v) equality rights guaranteeing equal citizenship, equality before law and non-discrimination; and (vi) welfare rights (or 'economic and social rights') requiring the provision of education to all children and protecting against severe poverty and starvation. There can still be another family of rights i.e. group rights which do not find any mention in the universal declaration of human rights. Nonetheless subsequent treaties include group rights consisting of protection of ethnic groups against genocide and the ownership by countries of their national territories and resources.

The generality or specificity of human rights is another important question. The general idea of human rights can be explained by setting out some defining features. In this context an attempt is made to answer the question of what human rights are with a general description of the concept rather than a list of specific rights. It would be interesting to note that two people can have the same general ideal of human rights even though they disagree about whether some particular rights are human rights. Thomas Pogge's view (Thomas Pogge, 2000) regarding human rights is very relevant here. According to him 'to engage human rights, conduct must be in some sense official'. This is in conformity with the view that human rights are political norms dealing mainly with how people should be treated by their governments and institutions. Hence, they are not ordinary moral norms

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applying mainly to interpersonal conduct (such as prohibitions of lying and violence). But one must be careful here since some rights, such as rights against racial and social discrimination are primarily concerned to regulate private behaviour. However, governments are directed in two ways by rights against discrimination. They are forbidden to discriminate in their actions and policies. On the other hand these rights impose duties on governments to prohibit and discourage both private and public forms of discrimination.

It is also important to note that every question of social justice or wise governance is not a human rights issue. There can be situations when a country could have too much income inequality, inadequate provision for higher education, or no national parks without violating any human rights. Thus, the decision as to which norms should be counted as human rights are a difficult one. With the passage of time and change of circumstances there is continuing pressure to expand lists of human rights to include new areas. In order to publicize, promote and legitimate their concerns at the international level many political movements would like to see their main concerns categorized as matters of human rights. Consequently this has led to a situation where there is human rights inflation. In turn this case of producing too much bad human rights currency has caused the devaluation of human rights.

VI. Three Generations of Rights: Civil, Political, and Social Rights

Human thinking regarding rights has been continuously growing keeping pace with changing times and circumstances. When new areas of safety and development of individual emerge the list of existing rights is suitably revised and enlarged so that favourable conditions are created to achieve these objectives. To put it briefly civil and political rights belong to the first-generation rights where as social and economic rights are considered in the second-generation and the newly recognized human

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rights such as cultural rights of minorities in a multicultural society taken to be the third-generation rights. The three generations of rights give a broad picture of the sequence of rights as they have emerged in their specific contexts which can be discussed accordingly.

Civil rights are the basic legal rights a person must possess in order to secure the status of equal citizenship in a liberal democratic state. During the 1950s and 1960s the term 'civil rights' is linked to the struggle for equality of African Americans who aimed to secure such a status. These rights constitute free and equal citizenship and include personal, political, and economic rights. It is generally agreed that such rights cannot be legitimately denied to a person on the basis of race, colour, sex, religion, national origin, or disability.

It was until the middle of the 20th century that civil rights were usually distinguished from 'political rights'. Civil rights included the rights to own property, the rights to make and enforce contracts, the right to legal recourse and the right to one's religion. They also covered freedom of speech and of the press. Political rights, on the other hand, included the right to hold public office, vote, or to testify in court. These rights were reserved for adult males. But this civil-political distinction was conceptually and morally unstable insofar as it was used to sort citizens into different categories. It was part of an ideology to deprive women of political rights. However, with the breaking down of that ideology the civil-political distinction became increasingly implausible. Such distinction could not survive the cogency of the principle that all citizens of a liberal democracy were entitled, in Rawls' words, to 'a fully adequate scheme of equal basic liberties'.

The first-generation of civil rights claims were the claims for which the American civil rights movement fought in the 1950s and 1960s. The 18th century set of civil rights such as the right to legal recourse and to make and enforce contracts were included

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in these rights. Besides they covered political rights as well. But it was argued by many that these first-generation rights were too narrow to define the scope of free and equal citizenship. It was contended that an additional set of claims such as rights to food, shelter, medical care, housing and employment could only lead to the realization of such citizenship. These rights belong to the second generation (19th century) of economic 'welfare rights' which ensured that the first generation rights could be made effective in protecting the vital interests of citizens and were not simply paper guarantees.

The traditional political and civil rights can be readily secured by legislation. As these rights are mostly rights against government interference the legislation needed had to do no more than restrain the executive's own arm. However, in case of rights such as the 'right to work', the 'right to social security', etc. it is no longer the same. These are positive rights which require of the state to undertake specific measures like social welfare programmes and social legislation so as to enable people to enjoy these rights effectively. Such rights have been duly recognized by many states all over the world through their constitutions or International Covenants. The Directive Principles of the State Policy in part iv of the Indian constitution is an example of this. International Covenant on Economic, Social and Cultural Rights (1966) which came into force in 1976 insists on the member states for recognizing the 'right of everyone to an adequate standard of living' and also to the 'continuous improvement of living conditions'.

'Rights of cultural membership', which include language rights for members of cultural minorities, and the rights of indigenous peoples to preserve their cultural institutions and practices and to exercise some measure of political autonomy, belong to the third generation of rights (20th century). Here though there is some overlap with the first-generation rights, such as that of religious liberty, rights of

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cultural membership are broader and more controversial. Due to both historical reasons as well as large scale migrations of people with diverse cultures in search of better opportunities in countries other than their own in this age of globalization a situation is arising where more and more countries are having cultural minorities within their territories. The fact that such minorities now wish to maintain the salient features of their respective cultures in terms of language, symbols of identity, religion, custom, dress code etc. it is increasingly felt that they need to be given the freedom and opportunity to preserve their cultural institutions and practices and to exercise some measure of political autonomy. Such rights are known as third-generation rights. More than a mere absence of interference by the state, which may be sufficient in case of the first- generation rights, positive steps are needed for tangible protection as well as assistance in maintaining their cultural identity. Cultural and Educational Rights of minorities as provided under Articles 29 and 30 of the Indian constitution in its Fundamental Rights section are good examples of these rights. Under the provisions of these articles minorities have their right to conserve their language, script or culture and establish and administer educational institutions of their own choice without any fear of discrimination to such institutions by the state. The state is also obliged to ensure due respect of sacred books of various religious communities and full safety of their holy cities and places of worship. In multicultural large countries the provisions of such rights are helpful in the nation-building process as they provide the cultural minorities with a sense of security and strengthen their allegiance and commitment to the nation. Existence of variety of cultures makes a nation richer and healthier in many respects as people have the opportunities to learn from each other's experience in a truly democratic spirit of give and take and fellow feeling. However when minority groups, in the name of protecting their identity, oppose progressive steps intended to change or reform irrational, superstitious, inhuman, undemocratic and unjust practices it could be

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counter-productive. Cooperation and collaboration in a congenial environment of mutual appreciation and acknowledgement is the need of the hour. By recognizing the right of everyone to a fair share in the resources of the earth and space and their right to healthy global environment, peace and humanitarian relief in case of natural disasters third-generation rights promise to cultivate a cosmopolitan outlook. The rich global heritage of knowledge and technical knowhow, which is the proud possession of all humanity, could be fruitfully utilized to solve world's problems in a collective endeavour.

It undermines the fact that different social groups have different needs, cultures, histories, experiences and perceptions of social relations, which influence their interpretation of the meanings and consequences of policy proposals, and the form of their political reasoning. Such differences in political interpretation are not merely or even primarily a result of differing or conflicting interests. Because groups have differing interpretations even when they seek to promote justice, and not merely their own self-regarding ends. That is why a genuine commitment to the inclusion of all in public deliberation requires that differences be not suppressed but acknowledged and respected. This can be done in the best possible way by establishing special forms of representation for disadvantaged groups. Such arrangements do ensure that these groups have the resources needed to organize themselves, and their perspectives are seriously considered in public decisions. The ideal of universal citizenship finds the public embodying generality as opposed to particularity, commonness versus difference. Thus the attempt to realize such ideal will tend to exclude or put at a disadvantage some groups even when formally they have an equal citizenship status. Homogeneity becomes a requirement of public

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participation. The idea of the public is projected as universal and there is a concomitant identification of particularity with privacy. All citizens are expected to assume the same impartial general point of view. But Marion Young is opposed to such a view of universal citizenship. She contends that societies have certain privileged groups and some oppressed groups. In such a situation if particular affiliations are left behind to adopt a general point of view it would mean that the interests of the privileged will dominate. In place of universal citizenship Marion Young proposes 'a group differentiated citizenship' and a heterogeneous public. Special rights for a minority culture against the larger community can be accepted within a liberal theory so as to ensure equality of circumstances between them provided it does not justify special rights for a culture against its own members. Individuals have the right to decide for themselves which aspects of their cultural heritage are worthy passing on. Liberalism is committed to support this. Individuals should have the freedom and capacity to question and possibly revise the traditional practices of their community in case such practices are considered to be irrelevant and unworthy. Liberalism is also committed to this view.

It would be unreasonable to assign rights to individuals alone as individuals are incomplete without the cultural resources that communities provide them. But it is also not proper to buy peace between the communities at the expense of individuals. In view of this it may be suggested to consider community rights as conditional rights. However it needs to be kept in mind here that these cultural rights should not override the core rights, such as the right to life, freedom, equality, and the right to assert rights.

VII. Conclusion

The theory behind international human rights is based on a belief that there are certain minimum standards of human rights protection and entitlement that should be available to all human beings. Many national governments, by ratifying treaties outlining these minimums, have gone a step forward in this direction. Even then there is no end to this problem as it can still be problematic to establish international standards in the face of the realization that values and priorities differ from country to country, as well as between cultures even within the same countries. It is also argued that despite these differences the minimal standards reflect the lowest common denominator of human rights entitlements across the board. But even then the fact still remains that culture and social context often operate to diminish these international standards. For example, the girl-child's marginalization, which is a universal phenomenon, bears ample testimony to this fact. A realignment of human rights and other priorities is the need of the hour today for changing this scenario.

References:

1. Dworkin Ronald (1985) **A Matter of Principle** (Cambridge, M.A. Havard University Press, 1985).
2. Hartney, Michael (1991) "Some Confusions Concerning Collective Rights" **Canadian Journal of Jurisprudence**, 4 (2), 1991, 296-314.
3. Burns, T.H. and H.I.A. Harts (eds) (1970) **Jeremy Bentham: An Introduction to the Principles of Morals and Legislation** (London, Athlone Press, 1970).
4. Rawls, John (1971) **A Theory of Justice** (London: Oxford University Press, 1971).

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5. Nozick, Robert (1974) **Anarchy, State and Utopia** (New York: Basic Books, 1974).
6. Dworkin, Ronald (1977) **Taking Rights Seriously** (London: Duckworth, 1977).
7. Walzer, Michael (1983) Spheres of Justice: **A Defence of Pluralism and Equity** (New York: Basic Books, 1983).
8. Kymlicka, Will (1989 a, 1989 b) **Liberalism, Community and Culture** (Oxford: Oxford University Press, 1989a).
9. _____ "Liberal Individualism and Liberal Neutrality" **Ethics**, 99, 1989b, 883-905.
10. Hobbes, Thomas, **Leviathan** (Oxford: Basil Black Well, 1946).

