

# The philosophy of human rights II

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# Overview of the lecture

1. Picking up the discussion from the first lecture: what is the concept of human rights, and why does it matter?
2. Naturalistic vs political understandings of HR
3. On justifying human rights
4. Buchanan on justifying international legal human rights



# What is a human right?

- We must be clear what we are talking about
- Different concepts of human rights will make different conceptions of human rights more or less plausible



# What is the point of moral rights?

- They lack legal mechanisms of enforcement
- Their existence might be said to be dubious

But

- They *might* help us see which legal rights we should have
- They help us see in various other ways how we should act
- They help us see what we are entitled to and when we are wronged



# naturalistic vs political understandings of HR

## Naturalistic/orthodox approaches

- 1789
- A right «we have simply in virtue of being human» (Beitz)
- Pre-institutional
- HR are directed against all human beings

## Political/practical approaches

- 1948, 1966
- Human rights are defined by their role in contemporary human rights practice
- Depends on the existence of states
- HR are primarily directed against states



# The naturalistic approach: Human rights as natural rights (Beitz ch 2)

- HR hold independently of positive law
- HR are pre-institutional
- HR are time-less
- HR are rights all humans have «solely in virtue of their common humanity» (Beitz)



# Example: natural rights in the French «Declaration of the Rights of Man and Citizen» (1789)

«Men are born and remain free and equal in rights. [...] The purpose of all political association is the preservation of the natural and imprescriptible rights of man.»



# The political/ practical approach

- Methodological turn: in order to answer the question «what are HR?», we «consider the way that talk about HR actually functions in the world today.» (Beitz)
  - Step 1: define HR in terms of the *role* they play (in international affairs)
  - Step 2: look to actual practice in order to identify this role
- We might pick up on different aspects of the way we talk about HR





# Motivation for the practical approach (Beitz)

- “It is this additional critical force – the use of a philosophical conception of human rights to argue for limitations of content and reform of international doctrine – that requires a justification. Why should we insist that international human rights conform to a received philosophical conception rather than interpret them, as they present themselves, as a distinct normative system constructed to play a certain special role in global political life?” (Beitz p. 68)



# Motivation for the practical approach (Beitz)

- “ ‘human rights’ names not so much an abstract normative idea as an emergent political practice. Those interested in the theory of human rights are not at liberty to interpret this idea in whatever way best suits their philosophical commitments. Human rights is a public enterprise and those who would interpret its principles must hold themselves accountable to its public aim and character.” Beitz p. xii



## Beitz on the HR practice (ch. 5)

1. HR protect urgent individual interests against standard threats
2. HR apply (in the first instance) to the political institutions of states
3. HR are matters of international concern: a government's failure to respect HR gives reason for action by agents outside the state



# Why does the naturalistic/political-distinction matter?

- Just about how we use the words?
- The distinction is a way of asking which *arguments* can be used in justifying and criticizing HR
- The distinction is also relevant for discussions about the history and cultural universalism of HR



# Justifying human rights: some preliminary remarks

What do we justify?

1. The existence of moral human rights?
  - If so, is it the existence of MHR understood as «natural rights», i.e. as rights we have just in virtue of being human?
2. The existence of legal human rights?
3. The existence of HR understood in light of contemporary HR practice and discourse?



# Descriptive vs normative ethics

- **Descriptive claims:** claims about how things are

vs.

- **Normative claims:** claims about how things should be

(difference in direction of fit)

- **Descriptive ethics:** Description of a person's/group's normative claims

vs.

- **Normative ethics**



# The difficulty of justification in ethics

[Picture deleted]

(This and next slide: Dagfinn Føllesdal, "The emergence of justification in ethics" *European Review*, vol. 13. no. 2. (2005))



# The problem with circular justifications?

[Picture deleted]





# Possible criteria for a valid justification of moral human rights

- Must give normative force to HR-claims, and provide duty-bearers with reason for action
- Must provide the *right kind* of argument for HR
- Must allow us to say *which* HR there are
- Must have critical force in relation to generally acknowledged human rights
- Must show fidelity to the concept of HR one is working with
- The list of rights be suitable for public, practical use
- Must show why interference with sovereignty is acceptable



# Exercise

Choose a specific human right, and discuss how you can justify it



# Foundational vs derivative justifications of rights

- Cf. Nickel p. 87-91
- Derivative justifications:
  - specifying a recognized right
  - showing why a HR is necessary for/  
supports the realization of a recognized right
- Cf. "cantilever arguments": no relevant moral difference between the case for a recognized HR to A and a new HR to B (David Miller, Joseph Carens)



# 1. Prudential justifications

«In terms of my (your) own interests, I am (you are) likely to be better off, and hence I (you) have good reason to accept and support human rights» (Nickel p. 55)

Problems:

- Is it a moral justification?
- What about powerful groups?



## 2. Utilitarian/consequentialist justification

Consequentialism =

1. A theory of value, allowing us to rank  
outcomes

+

2. A theory of right action, telling us to  
produce the best outcome of those  
available to us



## 2. Utilitarian justification

Step 1: Utilitarianism: «we should judge norms and institutions entirely on the basis of their likely consequences for the general welfare». (Nickel p. 59)

Step 2: «Satisfaction of fundamental interests is a large part of people's welfare, so if human rights contribute greatly to the satisfaction of most people's fundamental interests, the utilitarian will take this to be a strong argument in support of human rights.» (p. 59)



# Questions for consequentialist justifications

- The argument is contingent on empirical circumstances
- The argument «gets the right answer for the wrong reasons»
- Justifying moral human rights or justifying institutions/laws and/or the inculcation of prevalent beliefs about moral human rights?



# The wrong reason?

Feinberg:

“Having rights enable us to ‘stand up like men’, to look others in the eye, and to feel in some fundamental way the equal of anyone. To think of oneself as the holder of rights is not to be unduly but properly proud, to have that minimal self-respect that is necessary to be worthy of the love and esteem of others.”  
 (“The Nature and Value of rights”)





# 3. A common structure for non-consequentialist justifications of HR

1. A feature of humanity which we value (human dignity)



2. A set of basic needs/interests/freedoms



3. A set of basic, general rights



4. Specification of the basic rights: a set of "proto"-HR



5. Various "filters" applied to the set of "proto"-HR



6. The final list of human rights

