

## The General Idea of Human Rights

The [Universal Declaration of Human Rights](#) (1948) sets out a list of over two dozen specific human rights that countries should respect and protect. These specific rights can be divided into six or more families: security rights that protect people against crimes such as murder, massacre, torture, and rape; due process rights that protect against abuses of the legal system such as imprisonment without trial, secret trials, and excessive punishments; liberty rights that protect freedoms in areas such as belief, expression, association, assembly, and movement; political rights that protect the liberty to participate in politics through actions such as communicating, assembling, protesting, voting, and serving in public office; equality rights that guarantee equal citizenship, equality before the law, and nondiscrimination; and social (or “welfare”) rights that require provision of education to all children and protections against severe poverty and starvation. Another family that might be included is group rights. The Universal Declaration does not include group rights, but subsequent treaties do. Group rights include protections of ethnic groups against genocide and the ownership by countries of their national territories and resources (see Anaya 2004, Baker 2004, Henrard 2000, and Kymlicka 1989). In this section I try to explain the general idea of human rights by setting out some defining features. The goal here is to answer the question of what human rights are with a general description of the concept rather than a list of specific rights. Two people can have the same general idea of human rights even though they disagree about whether some particular rights are human rights. Human rights are political norms dealing mainly with how people should be treated by their governments and institutions. They are not ordinary moral norms applying mainly to interpersonal conduct (such as prohibitions of lying and violence). As Thomas Pogge puts it, “to engage human rights, conduct must be in some sense official” (Pogge 2000, 47). But we must be careful here since some rights, such as rights against racial and sexual discrimination are primarily concerned to regulate private behavior (Okin 1998). Still, governments are directed in two ways by rights against discrimination. They forbid governments to discriminate in their actions and policies, and they impose duties on governments to prohibit and discourage both private and public forms of discrimination. Second, human rights exist as moral and/or legal rights. A human right can exist as a shared norm of actual human moralities, as a justified moral norm supported by strong reasons, as a legal right at the national level (here it might be referred to as a “civil” or “constitutional” right), or as a legal right within international law. The aspiration of the human rights movement is that human rights will come to exist in all four ways. See [Section 2. The Existence of Human Rights](#). Third, human rights are numerous (several dozen) rather than few. John Locke’s rights to life, liberty, and property were few and abstract (Locke 1689), but human rights as we know them today address specific problems (e.g., guaranteeing fair trials, ending slavery, ensuring the availability of education, preventing genocide.) They are the rights of the lawyers rather than the abstract rights of the philosophers. Human rights protect people against familiar abuses of people’s dignity and fundamental interests. Because many human rights deal with contemporary problems and institutions they are not transhistorical. One could formulate human rights abstractly or conditionally to make them transhistorical, but the fact remains that the formulations in contemporary human rights documents are neither abstract nor conditional. They presuppose criminal trials, governments funded by income taxes, and formal systems of education. Fourth, human rights are minimal standards. They are concerned with avoiding the terrible rather than with achieving the best. Their focus is protecting minimally good lives for all people (Nickel 2006). Henry Shue suggests that human rights concern the “lower limits on tolerable human conduct” rather than “great aspirations and exalted ideals” (Shue 1996). As minimal standards they leave most legal and policy matters open to democratic decision-making at the national and local levels. This allows them to accommodate a great deal of cultural and institutional variation and to leave a large space for democratic decisionmaking at the national level. Fifth, human rights are international norms covering all countries and all people living today. International law plays a crucial role in giving human rights global reach. We can say that human rights are universal provided that we recognize that some rights, such as the right to vote, are held only by adult citizens; that some human rights documents focus on vulnerable groups such as children, women, and indigenous peoples; and that some rights, such as the right against genocide, are group rights. Sixth, human rights are high-priority norms. Maurice Cranston held that human rights are matters of “paramount importance” and their violation “a grave affront to justice” (Cranston 1967). This does not mean, however, that we should take human rights to be absolute. As James Griffin says, human rights should be understood as “resistant to trade-offs, but not too resistant” (Griffin 2001b). The high priority of human rights needs support from a plausible connection with fundamental human interests or powerful normative considerations. Seventh, human rights require robust justifications that apply everywhere and support their high priority. Without this they cannot withstand cultural diversity and national sovereignty. Robust justifications are powerful but need not be understood as ones that are irresistible. Eighth, human rights are rights, but not necessarily in a strict sense. As rights they have several features. One is that they have rightholders – a person or agency having a particular right. Broadly, the rightholders of human rights are all people living today. More precisely, they are sometimes all people, sometimes all citizens of countries, sometimes all members of groups with particular vulnerabilities (women, children, racial and religious minorities, indigenous peoples), and sometimes all ethnic groups (as with rights against genocide.) Another feature of rights is that they focus on a freedom, protection, status, or benefit for the rightholders (Brandt 1983, 44). When we talk about a right to freedom of speech, for example, the focus is on a generally beneficial freedom that the rightholders are to have available. Rights also have addressees who are assigned duties or responsibilities. A person’s human rights are not primarily rights against the United Nations or other international bodies; they primarily impose obligations on the government of the country in which the person resides or is located. The human rights of citizens of Belgium are mainly addressed to the Belgian government. International agencies, and the governments of countries other than one’s own, are secondary or “backup” addressees. International human rights organizations provide encouragement, assistance, and sometimes criticism to states in order to assist them in fulfilling their duties. The duties associated with human rights typically require actions involving respect, protection, facilitation, and provision. Finally, rights are usually mandatory in the sense of imposing duties on their addressees, but they sometimes do

little more than declare high-priority goals and assign responsibility for their progressive realization. It is possible to argue, of course, that goal-like rights are not real rights, but it may be better simply to recognize that they comprise a weaker notion of a right. Having set out a general idea of human rights with eight elements, it is useful to consider three other candidates which I think should be rejected. The first is the claim that all human rights are negative rights, in the sense that they only require governments to refrain from doing things. On this view, human rights never require governments to take positive steps such as protecting and providing. To refute this claim we do not need to appeal to social rights that require the provision of things like education and medical care. It is enough to note that this view is incompatible with the attractive position that one of the main jobs of governments is to protect people's rights by creating a system of criminal law and of legal property rights. The European Convention on Human Rights (Council of Europe 1950) incorporates this view when it says that "Everyone's right to life shall be protected by law" (article 2.1). And the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (United Nations 1984) imposes the requirement that "Each State Party shall ensure that all acts of torture are offences under its criminal law" (article 4.1). Providing protections is providing services, not merely refraining. A second claim to be rejected is that all human rights are inalienable. Inalienability does not mean that rights are absolute or can never be overridden by other considerations. To say that a right is inalienable means that its holder cannot lose it temporarily or permanently by bad conduct or by voluntarily giving it up. I doubt that all human rights are inalienable in this sense. If we believe in imprisonment for serious crimes, then people's rights to freedom of movement can be forfeited temporarily or permanently by just convictions of serious crimes. And the right to freedom of movement can be voluntarily alienated by a person who makes a lifelong commitment to live in a monastery. Human rights are not inalienable but they are hard to lose (for a stronger view of inalienability, see Donnelly 2003:10). Third, I think we should reject John Rawls' proposal in *The Law of Peoples* that human rights define where legitimate toleration of other countries ends. Rawls says that human rights "specify limits to a regime's internal autonomy" and that "their fulfillment is sufficient to exclude justified and forceful intervention by other peoples, for example, by diplomatic and economic sanctions, or in grave cases by military force" (Rawls 1999, 79-80). It is a grave oversimplification to suggest that there is a line defined by human rights where national sovereignty ends. There is no need to deny that human rights are helpful in identifying the limits of justifiable toleration, but there are several reasons to doubt that they simply define that boundary. First, the "fulfillment" of human rights is a very vague idea. No country fully satisfies human rights; all countries have significant human rights problems. Some countries have large human rights problems, and many have massive problems ("gross violations of human rights"). Beyond this, the responsibility of the current government of a country for these problems also varies. The main responsibility may belong to the previous government and the current government may be taking reasonable steps to move towards greater compliance. Further, defining human rights as norms that set the bounds of toleration requires restricting human rights to only a few fundamental rights. Rawls suggests the following list: "the right to life (to the means of subsistence and security); to liberty (to freedom from slavery, serfdom, and forced occupation, and to a sufficient measure of liberty of conscience to ensure freedom of religion and thought); to property (personal property); and to formal equality as pressed by the rules of natural justice (that is, that similar cases be treated similarly)" (Rawls 1999, 65). As Rawls recognizes this list leaves out most freedoms, rights of political participation, equality rights, and social rights. Leaving out any protection for equality and democracy is a high price to pay for assigning human rights the role of setting the bounds of tolerance, and we can accommodate Rawls' underlying idea without paying it. The intuitive idea that Rawls uses is that countries engaging in massive violations of the most important human rights are not to be tolerated ? particularly when the notion of toleration implies, as Rawls thinks it does, full and equal membership in good standing in the community of nations. To use this intuitive idea we do not need to follow Rawls in equating human rights with some radically stripped down list of human rights. Instead we can work up a view ? which is needed for other purposes anyway ? of which human rights are the most important. Massive violations of the most fundamental rights can then be used as grounds for non-tolerance.

## About the Author

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