

Which Rights are Human Rights

Which Rights are Human Rights? This section discusses the question of which rights belong on lists of human rights. Not every question of social justice or wise governance is a human rights issue. For example, a country could have too much income inequality, inadequate provision for higher education, or no national parks without violating any human rights. Deciding which norms should be counted as human rights is a matter of some difficulty. And there is continuing pressure to expand lists of human rights to include new areas. Many political movements would like to see their main concerns categorized as matters of human rights, since this would publicize, promote, and legitimate their concerns at the international level. A possible result of this is "human rights inflation," the devaluation of human rights caused by producing too much bad human rights currency (Cranston 1973, Orend 2002, Wellman 1999, Griffin 2001b). One way to avoid rights inflation is to follow Cranston in insisting that human rights only deal with extremely important goods, protections, and freedoms. A supplementary approach is to impose several justificatory tests for specific human rights. For example, it could be required that a proposed human right not only deal with some very important good but also respond to a common and serious threat to that good, impose burdens on the addressees that are justifiable and no larger than necessary, and be feasible in most of the world's countries (see Nickel 2006). This approach restrains rights inflation with several tests, not just one master test. Human rights are specific and problem-oriented (Dershowitz 2004, Donnelly 2003, Shue 1996, Talbott 2005). Historic bills of rights often begin with a list of complaints about the abuses of previous regimes or eras. Bills of rights may have preambles that speak grandly and abstractly of life, liberty, and the inherent dignity of persons, but their lists of rights contain specific norms addressed to familiar political, legal, or economic problems. In deciding which specific rights are human rights it is possible to make either too little or too much of international documents such as the Universal Declaration and the European Convention. One makes too little of them by proceeding as if drawing up a list of important rights were a new question, never before addressed, and as if there were no practical wisdom to be found in the choices of rights that went into the historic documents. And one makes too much of them by presuming that those documents tell us everything we need to know about human rights. This approach involves a kind of fundamentalism: it holds that if a right is on the official lists of human rights that settles its status as a human right ("If it's in the book that's all I need to know.") But the process of listing human rights in the United Nations and elsewhere was a political process with plenty of imperfections. There is little reason to take international diplomats as the most authoritative guides to which human rights there are. Further, even if a treaty could settle the issue of whether a certain right is a human right within international law, such a treaty cannot settle its weight. It may claim that the right is supported by weighty considerations, but it cannot make this so. If an international treaty enacted a right to visit national parks without charge as a human right, the ratification of that treaty would make free access to national parks a "human right" within international law. But it would not be able to make us believe that the right to visit national parks without charge was sufficiently important to be a real human right. Once one takes seriously the question of whether some norms that are now counted as human rights do not merit that status (Griffin, 2001a and 2001b) and whether some norms that are not currently accepted as human rights should be upgraded, there are many possible ways to proceed. One approach that should be avoided puts a lot of weight on whether the norm in question really is, or could be, a right in a strict sense. This approach might yield arguments that human rights cannot include children's rights since young children cannot exercise their rights by invoking, claiming, or waiving (Hart 1955, Wellman 1995). This approach begs the question of whether human rights are rights in a strict sense rather than a fairly loose one. The human rights movement and its purposes are not well served by being forced into a narrow conceptual framework. The most basic idea of the human rights movement is not that of a right, but the idea of regulating the behavior of governments through international norms. And when we look at human rights documents we find that they use a variety of normative concepts. Sometimes they speak of rights, as when the Universal Declaration says that "Everyone has the right to freedom of movement" (article 13). Sometimes these documents issue prohibitions, as when the Universal Declaration says that "No one shall be subjected to arbitrary arrest, detention, or exile" (article 9). And at other times they express general principles, as illustrated by the Universal Declaration's claim that "All are equal before the law" (article 7). A better way to evaluate a norm that is nominated for the status of human right is to consider whether it is compatible with the general idea of human rights that we find in international human rights documents. If the general idea of human rights suggested above is correct, it requires affirmative answers to questions such as whether this norm could have governments as its primary addressees, whether it ensures that people can have minimally good lives, whether it has high priority, and whether it can be supported by strong reasons that make plausible its universality and high priority. Questions about which rights are human rights arise in regard to many families of human rights. Discussed below are (1) civil and political rights; (2) social rights; (3) minority and group rights; and (4) environmental rights.

3.1 Civil and Political Rights

These rights are familiar from historic bills of rights such as the [French Declaration of the Rights of Man and the Citizen](#) (1789) and the [U.S. Bill of Rights](#) (1791, with subsequent amendments). Contemporary sources include the first 21 articles of the [Universal Declaration](#), and such treaties as the [European Convention](#), the [International Covenant on Civil and Political Rights](#), the [American Convention on Human Rights](#), and the [African Charter on Human and People's Rights](#). Some representative formulations follow: Everyone has the right to freedom of thought and expression. This right includes freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one's choice. (American Convention on Human Rights, article 13.1) Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests (European Convention, article 11). Every citizen shall have the right to participate freely in the government of his country, either directly or through freely chosen representatives in accordance with the provisions of the law. 2. Every citizen shall have the right of equal access to the public service of his country. 3. Every individual shall have the right of access to public property and services in strict equality of all persons before the law (African Charter, article 13). These rights fit the general idea of human rights suggested above (see [1. The General Idea of](#)

[Human Rights](#)). First, they are political norms that primarily impose responsibilities on governments and international organizations. Second, they are minimal norms in that they protect against the worst things that happen in political society rather than setting out standards of excellence in government. Third, they are international norms establishing standards for all countries ? and that have been accepted by more than 150 of the world's countries. Finally, it is plausible to make claims of high priority on their behalf, and to support these claims of importance with strong reasons. Consider the right to freedom of movement. One approach to justifying this right and its high priority would argue the importance of free movement to being able to find the necessities of life, to pursuing plans, projects, and commitments, and to maintaining ties to family and friends. A related approach argues that it is impossible to make use of other human rights if one cannot move freely. The right to political participation is undermined if a person is not permitted to go to political rallies or to the polls. Most civil and political rights are not absolute?they are in some cases overridden by other considerations and rightly set aside in those cases. For example, some civil and political rights can be restricted by public and private property rights, by restraining orders related to domestic violence, and by legal punishments. Further, after a disaster such as a hurricane or earthquake free movement is often appropriately suspended to keep out the curious, to permit access of emergency vehicles and equipment, and to prevent looting. The International Covenant on Civil and Political Rights permits rights to be suspended during times "of public emergency which threatens the life of the nation" (article 4). But it excludes some rights from suspension including the right to life, the prohibition of torture, the prohibition of slavery, the prohibition of ex post facto criminal laws, and freedom of thought and religion.

3.2 Social Rights

Besides the civil and political rights just discussed, the Universal Declaration includes social (or welfare) rights. These include equality and nondiscrimination for women and minorities, access to employment opportunities, fair pay, safe and healthy working conditions, the right to form trade unions and bargain collectively, social security, an adequate standard of living (covering adequate food, clothing, and housing), health care, and education. These rights were made part of international law by treaties such as the [International Covenant on Economic, Social, and Cultural Rights](#), [European Social Charter](#), and the [Protocol of San Salvador](#) (1988), which amended the American Convention on Human Rights. Whether social rights are genuine human rights is discussed below: ([4. Are Social Rights Genuine Human Rights?](#)).

3.3 Minority and Group Rights

Concern for the equal rights of women and minorities is a longstanding concern of the human rights movement. Human rights documents emphasize that all people, including women and members of minority ethnic and religious groups, have the same basic rights and should be able to enjoy them without discrimination. The right to freedom from discrimination figures prominently in the Universal Declaration and subsequent treaties. The Civil and Political Covenant, for example, commits its participating states to respecting and protecting their people's rights "without distinction of any kind, such as race, color, sex, language, political or other opinion, national or social origin, property, birth, or social status" (see Nickel 2006, ch. 10). Some standard individual rights are especially important to ethnic and religious minorities, including rights to freedom of association, freedom of assembly, freedom of religion, and freedom from discrimination. Human rights documents also include rights that refer to minorities explicitly and give them special protections. For example, the Civil and Political Covenant in article 27 says that persons belonging to ethnic, religious, or linguistic minorities "shall not be denied the right, in community with other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language." Since 1964 the United Nations has mainly dealt with the rights of women and minorities through specialized treaties such as the [International Convention on the Elimination of All Forms of Racial Discrimination](#) (1965); the [Convention on the Elimination of All Forms of Discrimination Against Women](#) (1979); and the [Convention on the Rights of the Child](#) (1989). See also the [Draft Declaration on the Rights of Indigenous Peoples](#) (1945). Specialized treaties allow international norms to address unique problems of particular groups such as prostitution and trafficking in the case of women, custody issues in the case of children, and the loss of territory by indigenous peoples. Minority groups are often targets of violence. Human rights norms call upon governments to refrain from such violence and to provide protections against it. This work is partly done by the right to life, which is a standard individual right. It is also done by the right against genocide which protects groups from attempts to destroy or decimate them. The [Genocide Convention](#) was one of the first human rights treaties after World War II. It gives the following definition of genocide: "genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial, or religious group, as such: (a) Killing members of the group; (b) Causing serious bodily or mental harm to members of the group; (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; (d) Imposing measures intended to prevent births within the group; (e) Forcibly transferring children of the group to another group. The right against genocide seems to be a group right. It is held by groups and provides protection to groups as groups. It is largely negative in the sense that it requires governments and other agencies to refrain from destroying groups; but it also requires that legal and other protections be implemented for this purpose. Can a group right fit the general idea of human rights proposed earlier? It can if we broaden the conception of who can hold human rights to include ethnic and religious groups. This can be made more palatable, perhaps, by recognizing that the beneficiaries of the right against genocide are individual humans who enjoy greater security against attempts to destroy the group to which they belong (Kymlicka 1989).

3.4 Environmental Rights

In spite of the danger of rights inflation, there are doubtless norms that should be counted as human rights but are not generally so treated. After all, there are lots of areas in which people's dignity and fundamental interests are threatened by governmental actions and omissions. Consider environmental rights, which are often defined as rights of animals or of nature itself. Conceived in this way they do not fit our general idea of human rights because the rightholders are not humans or human groups. But more modest formulations are possible; environmental rights can be understood as rights to an environment that is healthy and safe. Such a right is human-oriented: it does not cover directly issues such as the claims of animals, biodiversity, or sustainable development (Nickel 1993. See also Hayward 2005). The right to a safe environment can be sculpted to fit the general idea of human rights suggested above by conceiving it as primarily imposing responsibilities on governments and international organizations. It calls on them to regulate the activities of both governmental and

nongovernmental agents to ensure that environmental safety is maintained. Citizens are secondary addressees. This right sets out a minimal environmental standard, safety for humans, rather than calling for higher and broader standards of environmental protection. (Countries that are able to implement higher standards are of course free to enact those standards in their law or bill of rights.) A justification for this right must show that environmental problems pose serious threats to fundamental human interests, values, or norms; that governments may appropriately be burdened with the responsibility of protecting people against these threats; and that most governments actually have the ability to do this. This last requirement ? feasibility ? may be the most difficult. Environmental protection is expensive and difficult, and many governments will be unable to do very much of it while meeting other important responsibilities. The problem of feasibility in poorer countries might be addressed here in the same way that it was in the Social Covenant. That treaty commits governments not to the immediate realization of social rights for all, but rather to making the realization of such rights a high-priority goal and beginning to take steps towards its fulfillment. In thinking about adding new rights to the list of human rights it is important to recognize that implementing a right is an activity with opportunity costs. If no new resources are available, implementing a new right will mean that fewer resources are available for the implementation of existing rights. Rights are not magical sources of supply (Holmes and Sunstein 1999, Nickel 2006, ch. 5).

About the Author

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