



From Aristotle to the UN: the development and growth of human rights

What are human rights?

The 1948 UN Universal Declaration of Human Rights states:

"All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood."

According to the Declaration, every human being should be entitled to equal treatment regardless of race, religion, gender or age. Many aspects of life, from the right to liberty and to protection from torture, to the right to privacy, to work and to own property, are encompassed in the human rights remit. Human rights are integral to modern life and the importance of upholding them is a key concern for many governments, NGOs and charities around the world.

The origins of human rights can be traced back to philosophers of the ancient and medieval worlds, and through the revolutionary ages of Britain, France and America. Historically, philosophical theory has been influential in the constitutional change which has led to the establishment of modern society. The development of human rights over the centuries has not been an uncontested process and there has been much philosophical debate on its fundamental and applied meaning. The Second World War, where millions suffered from horrific brutality, led to the emergence of the modern human rights movement. Today, the United Nations approach, which views human rights as essential to the foundation of justice and peace, has wide appeal:

"...it is the universality of human rights that gives them their strength. It endows them with the power to cross any border, climb any wall, defy any force."

Kofi Annan, UN Secretary-General 1997-2007

Due to its comparative newness, human rights law does not have the same degree of judicial precedent as other areas of law, and as such is more reliant on academic commentary. Academic lawyers have an impact on human rights law in a number of ways, through, for example, providing expertise for Chambers, giving specialist evidence before Parliamentary committees, carrying out strategic advisory work and conducting specialist training for organisations. Research in law and philosophy is central to this expertise.

Historical perspective

Centuries of dialogue have created what some academics have termed a 'moral inheritance'. The roots of rights and rights theory can be traced from ancient and medieval times, and through the revolutionary ages of Britain, America and France. Ancient Greek thought contains the origins of rights theory and the concept of justice, although at that time there was no theory or language of 'human' rights in the modern sense. Aristotle, one of the founding figures of Western philosophy, distinguished between legal justice, and natural, fundamental justice. 'Natural' rights, universal rights which do not require ratification by government, are seen to be the ancestor of modern 'human' rights. The Roman philosopher Cicero, considered to have introduced the Romans to the principles of Greek philosophy, adopted a theory of natural rights.

"...the origin of law appears to be drawn from nature... there seems to be... a law of nature which comes to us not from opinion but from a kind of inborn power."

Cicero 106-43 BCE

The Magna Carta of 1215 is one of the defining constitutional documents of the Western world. Given contemporary concern with the detainment of suspected terrorists, the writ of habeas corpus, which allows appeal against unlawful imprisonment, is perhaps the most enduring legacy of the Magna Carta. It was, however, a feudal document protecting the interests of the 'propertied classes', rather than a recognition of universal 'human' rights.

Philosophical thought has a significant role in the development of human rights, and the rights we know today are largely the product of seventeenth- and eighteenth-century Western thinking. During this period, philosophers engaged in debate regarding the concept of rights and the reasoning for their existence, producing, often divergent, rights theories.

The place of 'natural' rights in an orderly society was contested by the English philosopher and social contract theorist Thomas Hobbes [1588-1679]. Hobbes' work *Leviathan* asserted that the maintenance of social order relied upon human beings surrendering their rights. The theories of John Locke [1632-1704] and Thomas Paine [1737-1809] were instrumental ideas en route to the 1776 American Declaration of Independence. The 1789 French Declaration of the Rights of Man and the 1791 US Constitution and Bill of Rights drew heavily from contemporary theories of moral and political philosophy.

In Germany there was also debate over rights theory, the philosopher Immanuel Kant [1724-1804] made an important intellectual contribution to human rights, identifying basic freedoms which it is essential to respect.

"There is nothing more sacred in the wide world than the rights of others."

Immanuel Kant 1724-1804

Human rights and academic discourse

The rise of the human rights agenda has engaged academic attention, which in turn has profoundly influenced wider discourses on the nature of human rights. Philosophers Professor John Rawls [1921-2002] and Professor Ronald Dworkin [1931-] have both asserted significant academic influence on legal practice and human rights in the twentieth century. Dworkin's works, *Law's Empire* and *Taking*

Rights Seriously, feature regularly in debate over contentious moral and political issues, and are cited today in courts of appeal. Dworkin's assertion that "rights are trumps" is widely recognised. Rawls' *A Theory of Justice* proposes a social contract theory, emphasising the importance of moral obligations and duties. Rawls also claimed that respect for human rights is integral to any political regime.

"...each person possesses an inviolability founded on justice that even the welfare of society as a whole cannot override"
John Rawls, 'A Theory of Justice'

Human rights research and debate currently engages many high profile and well-respected academics. The incorporation of the European Convention on Human Rights into domestic UK law, through the Human Rights Act 1998, has led to greater judicial reliance upon academic commentary. The expertise of the academy is an invaluable asset, with academics providing an advisory capacity for Government, judges, practitioners and public authorities. Today academic research into law and ethics is having a very real impact upon human rights.

Examples of academic influence

- The theories of Piet Eeckhout, Professor of European Law at King's College London and an Associate Member of Matrix Chambers, were adopted in a recent landmark European Court of Justice case, on an issue of human rights involving the UN Security Council.
- The AHRC-funded 'Research Network to consider New Directions in Copyright Law', led by Professor Fiona MacMillan at Birkbeck College, has addressed the relationship between Intellectual Property and human rights. The impact of IPR upon freedom of speech and the right to cultural diversity are areas of concern addressed by the research. The project has had tangible impact, with some of its published papers influencing the law reform agenda, through their use in the Gower's Review, a Government requested review of the UK Intellectual Property Framework.
- The AHRC-funded OPCAT (Optional Protocol to the UN Convention against Torture, Inhuman and Degrading Treatment) project, led by Professor Rachel Murray at the University

of Bristol, is having considerable impact. OPCAT is concerned with the prevention of torture through the establishment of international and national bodies with the authority to visit places of detention. The aim of the research is to study the OPCAT and the effectiveness of national torture preventive mechanisms. Through the organisation of two international conferences, the OPCAT team has facilitated discussion about torture prevention between representatives from national ministries, human rights organisations, civil society organisations and academics in the field. The team has also submitted written evidence before the UK Joint Committee for Human Rights relating to allegations of torture and inhuman treatment by the UK armed forces in Iraq.

The future of human rights

Human rights are constantly evolving to incorporate new aspects of human life and in response to the changing global political environment. Terrorism and the global economy are factors of central importance in a consideration of human rights in the future. Mass violations of human rights, such as those inflicted under the Mugabe administration in Zimbabwe, indicate the scale of development which remains before human rights can be asserted in a truly universal sense. There is much work still to be done. Research plays a fundamental role in the advancement of human rights globally.

Human rights timeline

Greek philosophical thought and the concept of justice.

Ancient Roman philosophy – theoretical recognition that laws not conforming to 'reason' could be invalid.

1215 Magna Carta – the writ of habeas corpus, allowing appeal against unlawful imprisonment.

1689 English Bill of Rights – concerned with the rights of parliament rather than the rights of man.

1789 French Declaration on the Rights of Man.

1791 US Constitution and Bill of Rights.

1807 Act of Parliament to abolish the British Slave Trade.

1945 UN Charter. The expression 'human rights' comes into general use.

1946 UN Commission on Human Rights.

1948 UN Universal Declaration of Human Rights – post-war recognition of human rights.

1950 European Convention on Human Rights (ECHR).

1966 International Human Rights Covenants: Civil and Political Rights and Economic, Social and Cultural rights.

1971 Publication of John Rawls' 'A Theory of Justice' – expression of the concept of "justice as fairness."

1977 Publication of Ronald Dworkin's 'Taking Rights Seriously.'

1979 Convention on the elimination of all forms of discrimination against women.

1981 African Charter of Human and People's Rights.

1982-83 Human Rights Centre founded at University of Essex.

1983 First UK postgraduate taught degree in international human rights law introduced at University of Essex.

1984 Convention against Torture and other Cruel, Inhuman, or Degrading Treatment or Punishment.

1993 UN High Commissioner for Human Rights.

1998 UK Human Rights Act: leads to greater judicial reliance upon academic opinion.

1998 Human rights law becomes central to UK jurisprudence – incorporated into University courses.

2000 Matrix Chambers founded. Professor Conor Gearty, then of Kings College London, now of London School of Economics, and a specialist in human rights law, is a founding academic member.

2000 Centre for the Study of Human Rights founded at London School of Economics.

2008 Human Rights Law Conference will assess how new legislation has "profound human rights implications in several areas – counter terrorism, immigration and death in custody, to name but three."

2008 Centre for Applied Human Rights founded at University of York.