

PHILOSOPHY 195: HUMAN RIGHTS

FALL 2008

INSTRUCTOR: Allen Buchanan, James B. Duke Professor of Philosophy

COURSE CONTENT:

This is not a “how to” course for human rights activists. Instead, its aim is to step back and think critically and rigorously about the idea of human rights and the contemporary human rights enterprise broadly conceived. We will examine and evaluate alternative conceptions of human rights, articulate and evaluate various types of purported justifications for saying that there are human rights and grapple with the problem of specifying the content of various putative human rights in such a way as to guide policy. In the instructor’s opinion, prejudices concerning human rights abound: some enthusiasts for human rights have little grasp of the history, meaning, and problematic aspects of human rights discourse and practice; and many who disparage human rights discourse or practice misunderstand what human rights are, and are uninformed about or inadequately appreciative of the strengths of human rights discourse and practice. This course is intended to challenge prejudices of both kinds.

We will consider carefully several distinct *challenges* to the contemporary theory and practice of human rights, including the following:

- (1) the charge that human rights are really parochial moral norms, that what are called human rights are only rights for individuals in liberal, individualistic society, and that therefore the attempt to secure compliance with human rights norms is ‘cultural moral imperialism’.**
- (2) the charge that the enforcement of human rights norms is so biased (in favor of powerful countries) that the attempt at enforcement is illegitimate.**
- (3) the charge that international human rights law wrongly intrudes on domestic law, including Constitutional law, in constitutional democracies, and the charge that the commitment to international human rights law and the commitment to constitutional democracy at the level of the individual State are incompatible.**
- (4) the charge that there is ‘human rights inflation’—that some, perhaps many of the items that are said to be human rights are not, but instead at most are desirable goals or ideals (e.g., ‘the right to periodic holidays with pay’ and ‘the right to the highest possible standard of physical and mental well-being’).**
- (5) the charge that the doctrine of human rights is being used to justify ‘humanitarian’ military interventions that are dangerous, violate State sovereignty, and/or are covers for the pursuit of geopolitical ambitions by powerful states.**
- (6) the charge that an international order that increasingly purports to take human rights seriously is illegitimate because there is no cogent, widely accessible, public justification for the various norms stated in major human rights documents.**

Some of the main questions to be explored in the course are the following:

1. What are human rights? (If they are moral rights, what does that mean, and how do they differ from other moral rights?).
2. Why are they called *human* rights?
3. Why are they called *rights*? (What are rights, anyway?)

4. How do we know which rights, if any, are human rights?
5. How can claims about the existence of various human rights be justified?
6. Is there a sound *secular* justification for claims about human rights?

From the standpoint of justification, is it more cogent to think of human rights as (a) protecting “normative agency” (James Griffin), (b) protecting basic human interests (and/or the opportunity for a minimally good or decent life) (James Nickel), or (c) as standards for how governments ought to treat their citizens that can be justified from the standpoint of a diversity of cultural traditions? (Joshua Cohen).

7. What does it mean to say human rights are universal?
8. If human rights are universal, how is respect for human rights compatible with respect for cultural diversity and tolerance of different value systems?
9. How can we determine the content of human rights norms (they are very abstract as presented in human rights conventions)?
10. Who should determine the content of human rights norms (and by what method or process)?
11. Should human rights norms be enforced, through international criminal law or military action, or should we seek to gain better compliance with them only through noncoercive means?
12. Can human rights conflict? If so, how are such conflicts to be resolved?
13. If human rights are supposed to be rights that all humans have simply by virtue of their humanity, how there be a human right to something that is possible only in the context of certain kinds of institutions, some of which haven’t always existed in human society? (e.g., a right to due process under the law, or various welfare rights).
14. How can it be justifiable to go to war to protect human rights, given that at least under modern conditions war virtually always involves the killing of innocent persons? (How is warfare—for any purpose—compatible with respect for human rights?).
15. What are the chief practical functions of appeals to human rights? (Is Rawls correct in saying that the function of appeals to human rights is that their violation serves to justify interventions across State borders?)

REQUIREMENTS:

- 1. Active, informed, and regular participation in class discussion. Failure to do this will result in a minimum of 10% reduction in final grade (more for graduate students).**
- 2. Completion, on time, of all short response papers (late response papers will count against your final grade: each late response paper without a proper excuse will lower your final grade by 10%). Short response papers are due at 9:00 of the day for which they are scheduled, to be submitted to the digital drop box of the Blackboard site and you are to bring a hard copy with you to class that day.**

3. (For undergraduates) an in-class essay exam just before the middle of the semester (date to be announced). 40% of final grade.
4. A final paper of 10-15 pages (undergraduates)/10-20 pages (graduate students) (double-spaced, normal margins and font), due on December 1, 2008, hardcopy in instructor's mailbox, electronic copy submitted to digital drop-box on Blackboard, by 4:00pm. 60% of final grade for undergraduates, 80% for graduate students.

COURSE PLAN:

Note: This is a tentative plan; pace and details will be determined as we get to know each other better.

Note: all readings are posted under "Course Documents" on Blackboard, except for two books: James W. Nickel, *Making Sense of Human Rights*, revised edition; and David Miller, *National Responsibility and Global Justice*. Please order these books for yourself (e.g., on Amazon.com).

Week 1: Welcome to the World of Human Rights (and their violation)

----Assignment: read the following major human rights documents: Universal Declaration of Human Rights, International Covenant on Civil and Political Rights, International Covenant on Economic, Social, and Cultural Rights, European Convention for the Protection of Human Rights and Fundamental Freedoms.

----overview of course, including sketch of the main philosophical theories of human rights

----Film: "Genocide" from *The World At War* documentary series. (50 minutes)

----overview of the changing role of human rights in the international order

Week 2: More Background on the International Order; Challenges to Human Rights Doctrine and Practice—overview

----Reading assignment: Nickel, Introduction and Chapters 1 and 2; Buchanan, "International Law, The Philosophy of", entry in *The Routledge Encyclopedia of Philosophy*.

----Written assignment: write a two page (double-spaced) essay critically one of the following claims:

Claim 1: Human rights are not universal, because the idea of human rights is a Western idea.

Claim 2: Human rights cannot be rights we have by virtue of our humanity, because at least some of these rights presuppose institutions that humans haven't always had (e.g., due process rights make sense only against a background of sophisticated legal institutions, which have not always existed in human society).

Claim 3: Human rights discourse is defective because it is too 'recipient-oriented'; what's important is obligations, not entitlements.

----Background on the international legal system (p-pt presentation)

----Preliminary discussion of major challenges to human rights doctrine and practice

Week 3: Rival Contemporary Theories of Human Rights

----Reading assignment: Chapters 3 and 4, Nickel; Tasioulas, "Political Conceptions of Human Rights" (unpublished paper).

----More detailed overview of main types of theories:

1. Interest-based Theories (Nickel, Griffin, Tasioulas, Buchanan)

2. 'Political' Theories (Rawls, Beitz, J. Cohen, J. Raz.)

3. Alternative views of how claims about how the content of human rights norms is to be specified: 'pure' philosophical approaches (e.g., Griffin) versus approaches that give a significant role to legal process broadly described (Buchanan, Nickel?)

4. Theories that distinguish sharply between global justice and domestic justice, as to the validity

- of *egalitarian* principles of justice (T. Nagel, M. Blake, D. Miller)
5. Theories that include 'claimability' among the existence conditions for human rights (O'Neill) and those that don't (Tasioulas)
 6. 'Institutionalist' versus 'Noninstitutionalist' theories (e.g., Pogge versus Tasioulas, Buchanan, Nickel, Griffin)
 7. Theories that address the distinction between legitimacy and justification (Rawls, Buchanan) and those that don't (Nickel, Griffin, Tasioulas)

Week 4: Attempts to Justify Claims About the Existence of Human Rights

----Reading assignment: Chapter 5, Nickel; James Griffin, *On Human Rights*, Introduction, Chapters 1 and 2.

----Written assignment: write a two-page on either of the following questions:

1. Where do Nickel's 'four secure claims (basic human rights?)' come from? How could one argue for them?
2. When Griffin considers alternative ways of giving more determinate sense to the concept of human rights to his own, does he consider Nickel's view? How might Griffin try to show that his view is superior to Nickel's?

Week 5: "Positive" Rights as Human Rights

----Reading Assignment: International Covenant on Economic, Social, and Cultural Rights; Nickel, Chapters 6 and 7; Tasioulas, "The Moral Reality of Human Rights," _____ edited by Thomas Pogge.

----Written Assignment: two-page response paper.

Week 6: "Positive" Rights as Human Rights, cont'd

----Reading Assignment: Nickel, Chapters 8 and 9.

----Written assignment: two-page response paper

Week 7: Human Rights and the Liberal Nationalist/Liberal Cosmopolitan Debate

----Reading assignment: Michael Blake, "Distributive Justice, State Coercion, and Autonomy", *Philosophy & Public Affairs*, 2001; Richard Miller, "Cosmopolitan Respect and Patriotic Concern," *Philosophy & Public Affairs*, 1998.

----Written assignment: two-page response paper.

Week 8: Human Rights and the Liberal Nationalist/Liberal Cosmopolitan Debate, cont'd

----Reading assignment: David Miller, *National Responsibility and Global Justice*, Introduction, Chapters 1, 2, and 3.

----Written assignment: two-page response paper

Week 9: Human Rights and the Liberal Nationalist/Liberal Cosmopolitan Debate, cont'd

----Reading assignment: David Miller, *National Responsibility and Global Justice*, Chapters 5 and 7.

----Written assignment: two-page response paper

Week 10: Human Rights and Equality

----Reading assignment: Elizabeth Anderson, "What is the Point of Equality?", *Ethics*, 109 (2), 1999; Buchanan, "Taking the Human Out of Human Rights," in *Rawls's Law of Peoples: A Realistic Utopia?*, Rex Martin and David Reidy, eds. Routledge, 2006.

----Written assignment: write a two-page paper examining whether the interest-based or "decent life" or "minimally good life" approach favored by Nickel and Tasioulas adequately captures the

importance of equality, including nondiscrimination, as a matter of human rights, in the light of Anderson's article.

Week 11: Human Rights and Equality, cont'd

----Pulling together reflections on the liberal nationalism/liberal cosmopolitanism debate and on the relationship between human rights and equality

----Written assignment: final paper proposal (one page) due.

Week 12: Human Rights and the Legitimacy of International Institutions

--overview of legitimacy issues: sociological versus normative senses of 'legitimacy'; stronger and weaker conceptions of legitimacy (in the normative sense)

----Reading assignment: Buchanan and Keohane, "The Legitimacy of Global Governance Institutions," *Ethics & International Affairs*, 2005; Buchanan, "The Legitimacy of International Law," in *The Philosophy of International Law*, Samantha Besson and John Tasioulas, eds., Oxford U. Press, forthcoming.

----written assignment: two-page response paper.

Week 13: Human Rights and the Legitimacy of International Institutions, cont'd

----The parochialism challenge to the legitimacy of human rights institutions (if human rights are 'parochial' moral conceptions, then how can the institutionalization of human rights be legitimate?)

----Reading assignment: Cohen, "Human Rights Minimalism: All We Can Hope For?"; Buchanan, "Human Rights and the Legitimacy of the International Legal Order"

Week 14: Human Rights and the Legitimacy of International Institutions, cont'd

----Are the commitment to constitutional democracy and the commitment to international human rights law compatible?

----Reading Assignment: Curtis Bradley, "Delegation..."; Allen Buchanan and Russell Powell, "Survey Article: Constitutional Democracy and International Law: Are They Compatible?", *Journal of Political Philosophy*, forthcoming.

----Written assignment: two page response paper.