

## Human rights and international law

### Rights

- Rights can be defined as legitimate entitlements of individuals or groups to access to or effective control of particular goods or services or the free exercise of particular abilities or powers.
- Rights have right holders (parties that possess and exercise the right).
- Rights imply responsibilities or obligations:
  - The responsibilities of the rights holder to exercise their rights in an appropriate fashion, not infringing the rights of others
  - The duty of others to respect and facilitate the effective realisation of the rights in question
- Acquired rights are those gained through the exercise of sort of social power, authority, agreement or decision-making (i.e. contracts, reaching a particular age etc).
- Positional rights are rights inherent within the execution of a particular position (i.e. rights of being employed).
- Positional rights are typically seen as functionally necessary for effective fulfillment of the requirements of the social roles in Q.

### Moral rights

- Consider the development of moral rights.
- In mediaeval times, law defined the inherited rights and privileges of the ruling class of lords and church officials, as rights of control over the working population of peasant-serfs.
- Later feudal monarchs typically claimed a divine right to rule with absolute authority.
- At the time of the English Revolution in the mid-17<sup>th</sup> century, the concept of rights was extended beyond institutional legal support for the interests of particular social groups to embrace the entire political community.
- The revolutionaries developed the idea of universal human rights to articulate their demands for change.

- Such rights were viewed as possessed by all individuals simply by virtue of their common humanity.

## Classical liberalism

- Classical liberals see social structures and social relations as effects, products and consequences of intentional action and interaction of human individuals.
- For the classical liberal tradition, all human beings, unrestricted by central power, are by nature selfish, lazy, greedy creatures seeking the gratification of their own desires.
- Classical liberals see humans as intrinsically competitive, power-seeking and domineering.
- Classical liberal theory (CLT) centres on ideas of the positive potential of individual nature and the need to free such potential from unnecessary restriction and distortion by state power and established hierarchy in order to allow for individual fulfillment and social progress.
- With CLT, persons should be maximally free to choose to do what they want without impinging on others' freedom to do the same.
- CLT type rights include, for example:
  - Right to a fair trial
  - Freedom from arbitrary arrest torture and cruel punishment
- Market relations are seen as 'natural' and the requirements for ongoing operation of such relations are therefore expressed in terms of respect for life and property.

## Classical liberalism and justice

- The classical liberal view of both legal and economic justice centres on ideas of *just deserts*: people should, and generally do, reap the benefits or suffer the consequences of their own free choices of action.
- Inequalities of wealth and power are seen as necessary incentives to productive effort, innovation etc
- Market forces ensure that persons are rewarded in direct proportion to the value of their real productive social contribution, and therefore also punished through lack of any such reward if they fail to make such valuable contribution.
- Classical liberals demand a formal or procedural equality in formulation and application of legal principles.

- All should be subject to the same laws and all should expect to be treated in similar fashion by the justice system.
- Consider how classical liberal theory can be reconciled with the idea of the Rule of Law?
  - Equality before the law
  - Consistency in application of law
  - No one is 'above the law'

## Early bill of rights

### The English Bill of Rights

- The first document to use the language of 'rights'
- Introduced the system of free elections
- Intended to ensure the royal absolutism was firmly dissolved in favour of monarch's accountability to Parliament

### The American Declaration of Independence of 1776

- Proclaimed a self-evident human equality and inalienable rights to life, liberty and the pursuit of happiness

### The French Declaration of 1789

- Asserted the liberty, fraternity and equality of all citizens, as well as rights of property, liberty of conscience, freedom of the press and arbitrary imprisonment

## Social liberalism

- J S Mill said writings combined a traditional liberal individualism and faith in progressive power of the market with a recognition of the need for significant state intervention to protect the political rights and promote the free development of individuals
- J S Mill said critical of radical inequality supported by free market relations
- For social liberals, human rights are seen as ethically grounded insofar as they are rights to objects of need, to the things that all humans must have in order to be able to survive and live and fulfilled life.

## Human needs

- The provision of equality, security and empowerment and of adequate health care and education can be seen as significant human needs.
- Human needs can provide an objective foundation for the idea of moral rights, or at least the creation of legal rights to the objects of such needs

## Against methodological individualism

- Social liberals recognise that society pre-exists both the human species and individual human life, with pre-existing social structures shaping and directing human personality, perception, thought and action.
- Social liberals recognise broader range of basic human rights than those identified by classical liberals.
- Social liberals recognise the necessity for progressive taxation and regulation of markets in order to provide the public funding and economic stability to allow for enforcement of universal rights to employment and social services for those in need

## Social liberal ideas of justice

- Social liberals recognise decisions and actions as facilitated and constrained by social situations.
- Social liberals recognise the need for changing social situations in order to achieve any significant change in social actions.
- It is quite legitimate to hold the privileged to a higher standard of individual accountability in view of their much greater scope of free decision and action.
- Social liberals look beyond the purely formal or procedural legal equality of classical liberal theory. They recognise that the same procedures applied to people in very different social situations can produce thoroughly unjust or unfair outcomes

## The UN and the UDHR

- What is public international law?
- A substantial part of international law revolves around ideas and codifications of universal human rights, thought of as grounded in universal human needs.
- The United Nations (UN) Charter is a treaty, which means a legally binding agreement between states.
- The UN Charter provides a constitutional framework for the governance of the organisation through organs, including the Office of the Secretary General, the Security Council, the General Assembly and a number of other councils.