ARTS1361: INTRODUCTION TO PHILOSOPHY - MIND ETHICS AND FREEDOM

**Charles R Beitz, *A Companion to Contemporary Political Philosophy,*
'Chapter 34: What are rights?' (2007)**

Intro
- The settlement of WWII caused 2 significant changes in the normative order of international relations:
  1. The prohibition of war except in self defence (UN Charter)
  2. Limitation of sovereignty by a common set of protections of individuals (UDHR)
- Collective effort at global level to imposed discipline on the external and internal behaviour of states.

The Practice of Human Rights
- The idea of a 'common standard' for all nations, nor the action to enforce it is really new - what is new is the idea of an international practice devoted to the protection and advancement of human rights.
- Post-cold war, the idea was elaborated in foreign policies of individual states and the operations of various political, financial and development agencies and NGOs.
- Two features of this are striking:
  1. Wide normative scope
     - The UDHR and treaties specify conditions for the political institutions and policies of states that bear on almost every major dimension of state action.
     - Includes rights of the person (life, liberty, security etc), rights associated with the rule of law (right to fair trial), political rights (vote), economic rights (freedom of employment, healthcare), rights of communities (self-determination).
  2. Ambiguous connection of human rights to international action
     - Human rights were conceived as standards whose violation by a government would be an international concern.
     - However, there was no agreement on provisions for enforcement or implementation.
     - The framers intended for there to be an international agency that monitored and reported on infringements and consulted with deficient governments or recommended remedial action.
     - A monitoring capacity did develop, but with inadequate resources and no authority to recommend remedial political action.
- The record of enforcement is mixed
- Human rights are supposed to be a species of 'right' but some of the provisions of the UDHR do not appear to be rights in any familiar sense.
- Also skepticism about the 'universality' of these 'universal' rights.
  1. Can the right to democratic political institutions be considered 'universal'
- What is the proper degree of ambition for human rights doctrine?
  1. Many think that HR are 'minimal standards' but the set of rights isn't really 'minimal' in any sense.

- Problem of 'contribution' - HR are not self-enforcing or cost free. The doctrine provides virtually no guidance deciding which agents have responsibilities to act when someone's human rights are threatened or what level of cost prospective agents are expected to bear.
- The following will focus on three leading areas of disagreement among theorists of human rights.
  1. These concern the nature of HR, their scope/content and relation to the value of international toleration.

The Idea of a Human Right
- What are human rights?
- It used to be common to see HR as similar to 'natural rights' - modern thought about HR is a beneficiary of the natural rights tradition.
- However, there are 2 difficulties conceiving HR as NR
  - The framers of HR clearly said they did not regard themselves as reproducing the doctrine of natural rights - HR were philosophically ecumenical, whereas NR were one of many moral-political doctrines which leant support to HR.
  - The HR in the doctrine do not occupy the same conceptual space as natural rights. NR are pre-institutional, whereas HR pertain to public policy or the institutions that carry them out.
- Instead of characterising HRs as NRs, one could interpret them as 'fundamental moral rights'. If so, they would have 2 characteristics:
  - Distinct from legal and conventional rights, and capable of serving as critical standards for the laws and customs of a society.
  - Would protect interests recognised as important in a wide range of human lives, either because people attach weight to the satisfaction of these interests for their own sake or because they are necessary to satisfy other urgent interests.
- Most HRs can be seen as satisfying these interests.
- However, fundamental rights might also have other properties which are not always shared by international human rights.
  - Eg. when validly claimed they demand immediate satisfaction; they impose duties on all agents whose conduct affects the satisfaction of the right (not just collective or group agents)
  - Most HRs lack at least one of these features.
  - Eg. Right to work - under some historical circumstances this could not be immediately satisfied (lack of resources, takes time etc).
  - It is also implausible to think that many HRs impose duties directly on individuals - usually apply more to social institutions and their officials.
  - Therefore HRs do not fit the model of 'fundamental moral rights'
- By what authority should the human rights of international practice be interpreted in light of a received philosophical idea?
  - Do human rights need to relate to some other similar idea to be legitimate?
- Instead, the interpretation of HRs should begin with international human rights practice itself and try to construct an analysis of the idea of a HR by observing the inferences drawn from invocations of this idea by competent participants in this practice.
- A pragmatic analysis would have at least three elements: