

Topics in Social and Political Philosophy

Philosophy 185s
Spring 2007

Schedule

WHAT ARE RIGHTS?

Tuesday, 16 January

WHAT ARE HUMAN RIGHTS?

Well, they're rights all human beings have. But, more specifically, what rights are counted as human rights? They are surprisingly diverse and sometimes controversial.

READING: Mary Ann Glendon, *A World Made New: Eleanor Roosevelt and the Universal Declaration of Human Rights* (Random House, 2001), pp. 172-91, 73-8, 235-41.

Thursday, 18 January

HISTORY AND ANALYSIS

Today's session covers two important intellectual breaks. One is the move to thinking of rights as things that are possessed and used. The other is the development of a series of analytical distinctions that help to make our thinking more precise.

READING: John Finnis, *Natural Law and Natural Rights* (Oxford University Press, 1980), 205-10. Carl Wellman, *A theory of rights* (Rowman and Allanheld, 1985), 7-15.

Tuesday, 23 January

A RIGHT TO DO WRONG?

Waldron makes two claims: that it is possible to have a right to do wrong and that there must be a right to do wrong if there are any rights at all. It's an interesting article that is very useful for flexing our distinctions.

READING: Jeremy Waldron, "A Right to Do Wrong", *Ethics* 92 (1981).

Thursday, 25 January

NATURAL RIGHTS

The most obvious source for human rights comes from the natural law tradition. Maritain defends such a view. MacDonald criticizes it.

READING: Jacques Maritain, *The rights of man and natural law* (Charles Scribner's Sons, 1943). Margaret MacDonald, "Natural Rights", *Proceedings of the Aristotelian Society* NS 47 (1947).

Tuesday, 30 January

HART'S CHOICE THEORY

Hart has a way of arguing for natural rights that avoids MacDonald's criticisms. His argument depends on his view of the nature of rights, so we will begin with that. Hart tries to show what is distinctive about rights. What do rights add that could not be fully described by listing people's duties? His answer is that rights give those who have them control over the liberty of those

who bear the duties. He argues for his choice theory of rights by contrasting it with the benefit theory (also known as the interest theory), according to which having a right involves being the person who will benefit from the performance of a duty.

READING: H.L.A. Hart, "Are there any natural rights?", *Philosophical Review* 64 (1955), pp. 175-82.

Thursday, 1 February HART ON NATURAL RIGHTS

Hart uses his theory of rights to argue that there is at least one natural right: the equal right to be free. A natural right is a right that exists independently of any human interactions or institutions. Hart claims that some of the rights that we recognize make sense only if there is an equal natural right to be free. Today we will talk about the examples he gives to make his point.

READING: Hart, pp. 183-91.

Tuesday, 6 February HART ON NATURAL RIGHTS

Today, we will finish Hart's argument by looking at the claim that if there are any rights there is a natural right to *equal* freedom.

READING: Hart, pp. 183-91.

Thursday, 8 February A DEFENSE OF THE BENEFIT THEORY

Raz's article is very technical. But it presents a version of the benefit or interest theory of rights that avoids most of the standard objections. We'll spell out the relevant details and go over the objections that benefit theories render rights redundant with duties and that they get the wrong answer in the third party beneficiary cases.

READING: Joseph Raz, "On the Nature of Rights", *Mind* 93 (1984).

Tuesday, 13 February MORE RAZ

If Raz's theory of rights is correct, why do we need rights? Why not just talk about interests instead?

READING: Raz.

Thursday, 15 February RIGHTS, CLAIMS, AND SELF-RESPECT

This is Feinberg's attempt to answer the question about what is distinctive about rights. According to Feinberg, rights give us the ability to make claims. What does that mean? Feinberg also thinks that this distinctive feature of rights explains their value as well. We will look at that next time.

READING: Feinberg, pp. 304-12.

Tuesday, 20 February HOW IMPORTANT IS CLAIMING?

According to Feinberg, the ability to make claims is necessary for self-respect. Claiming is something that only a particular person can do; criticizing, by contrast, is something that anyone can do. Why isn't criticizing good enough for self-respect? Also, are all rights claims, in Feinberg's sense of the term?

READING: Feinberg, pp. 308-12. Selections from: H. L. A. Hart, "Legal Rights", in: *Essays on Bentham* (Oxford University Press, 1982).

Thursday, 22 February GEO. WASHINGTON'S BIRTHDAY
No class today.
READING: None.

Tuesday, 27 February HOW IMPORTANT ARE RIGHTS?
Buchanan argues that no one has satisfactorily shown that rights are necessary.
READING: Allen Buchanan, "What's So Special About Rights?", *Social Philosophy and Policy* 2 (1984).

RIGHTS AND DUTIES

Thursday, 1 March TORTURE
Do all restraints go out the window during hostilities? After all, if people are allowed to kill one another why aren't they allowed to do something less destructive to their opponents, like torturing them?
READING: Henry Shue, "Torture", *Philosophy and Public Affairs* 7 (1978).

Tuesday, 6 March ABSOLUTE RIGHTS
Gewirth takes on the hardest case: the only way to save the city is torture someone. It appears to be a case of rights to life against rights to life: the rights of the torture victim and the rights of the people in the city. Gewirth uses a principle of responsibility to argue that this is not so.
READING: Alan Gewirth, "Are There Any Absolute Rights?", *The Philosophical Quarterly* 31 (1981).

Thursday, 8 March ABSOLUTISM AND UTILITARIANISM
Nagel has a different way of defending absolutism, though it is a funny absolutism since it concedes that respecting rights can be wrong.
READING: Thomas Nagel, "War and Massacre", *Philosophy and Public Affairs* 1 (1972).

Tuesday, 20 March RIGHTS AS SIDE CONSTRAINTS
Nozick argues that rights have the form of what he calls side constraints. That means that rights constrain our choices. They do not take the form of goals. We don't try to minimize rights violation.
READING: Robert Nozick, *Anarchy, State, and Utopia* (Basic Books, 1974), especially pp. 26-35, 48-51, 149-64, 167-73.

13-15 March SPRING BREAK
No class

READING: none

Thursday, 22 March

FORM AND CONTENT

Scheffler maintains that so-called welfare rights can take the form of side constraints. If so, Nozick's inference from form to content is false.
 READING: Samuel Scheffler, "Natural Rights, Equality, and the Minimal State", in: *Reading Nozick* (Rowman and Littlefield, 1981).

Tuesday, 27 March

MORE ON SCHEFFLER

Can welfare rights really take the form of side constraints? What am I not supposed to do?
 READING: Scheffler.

Thursday, 29 March

WHICH RIGHTS ARE REAL?

Cranston argues that only some of the rights in the UDHR are genuine human rights. Shue criticizes his reasoning.
 READING: Maurice Cranston, "Human Rights, Real and Supposed", in: D.D. Raphael, editor, *Political Theory and the Rights of Man* (Indiana University Press, 1967). Henry Shue, *Basic Rights* (Princeton University Press, 1986), 5-34.

Tuesday, 3 April

BASIC RIGHTS

Shue defines a category of rights that he calls basic rights. His argument for these rights is like Hart's argument for natural rights: if there are any rights, there are basic rights. He also has a novel understanding of duties corresponding to rights.

READING: Shue, *Basic Rights*, 35-64.

Thursday, 5 April

RIGHTS AND DUTIES

Waldron discusses conflicts among rights or, to put the same thing the other way around, conflicts among duties corresponding to rights.
 READING: Jeremy Waldron, "Rights in Conflict", *Ethics* 99 (1989).

Tuesday, 10 April

CRITICISMS OF SHUE

Both O'Neill and Wellman think that there is no satisfactory way of spelling out the relationship between the rights and the duties that Shue proposes.

READING: Onora O'Neill, *Towards Justice and Virtue* (Cambridge University Press, 1996), 128-36. Carl Wellman, *Welfare Rights* (Rowman and Littlefield, 1982), 157-64.

Thursday, 12 April

CRITICISMS, CONTINUED

Continued discussion of O'Neill and Wellman's criticisms.
 READING: O'Neill, 128-36. Wellman, *Welfare Rights*, 157-

FOUNDATIONS?

Tuesday, 17 April

A FOUNDATIONALIST ACCOUNT

Alan Gewirth argues that all creatures that engage in intentional action are logically committed to respecting others' rights. According to him, human action and logic are the foundations for human rights. Human rights rest on something separate from, and more solid than, other rights. Contrast Hart's way of arguing for natural rights: it moved from one set of rights to another. Today, we will concentrate on understanding his argument.

READING: Alan Gewirth, "The Epistemology of Human Rights", *Social Philosophy and Policy* 1 (1984).

Thursday, 19 April

CRITICISMS OF GEWIRTH

Today, we will consider objections to Gewirth's argument.

READING: Gewirth, "The Epistemology of Human Rights".

Tuesday, 24 April

A NON-FOUNDATIONALIST ACCOUNT

Charles Beitz proposes a significantly less ambitious rationale for human rights.

READING: Charles R. Beitz, "Human Rights as a Common Concern", *American Political Science Review* 95 (2001).

Thursday, 26 April

BEITZ, CONTINUED

Continued discussion of Beitz's article.

READING: Beitz.

Tuesday, 1 May

RORTY'S ANTI-FOUNDATIONALISM.

Richard Rorty was Alan Gewirth's student. He rejects foundationalism with vigor.

READING: Richard Rorty, "Human Rights, Rationality, and Sentimentality", in: *Human Rights: the Oxford Amnesty Lectures 1993* (Basic Books, 1993).

Materials

Henry Shue's book *Basic Rights* may be purchased at the Huntley Bookstore. Everything else will be available in a xeroxed reader from King's Copies, 865 W. Foothill, 625-2002, kingsclaremont@yahoo.com.

All readings will be on reserve in the Honnold-Mudd Library.

Comments on lectures and announcements will be posted on the web at the Sakai site for this course.

I will make extensive use of the Sakai site for this course. For instance, comments on lectures, grading policies, and announcements will be posted there.

Instructor

My name is Michael Green. My office is 207 Pearsons. I will hold office hours every Tuesday and Thursday between 3:30 and 5. If my office hours are inconvenient, we can easily make alternative arrangements.

My office phone number is 607-0906. Life seems to go better if I answer email only once a day. I will reply, but if you need an answer quickly, you're probably best off calling.

Assignments

Grades will be based on two or three papers. You can write three 1800 word papers, that is, around five or six pages. Or you can write one 1800 word paper and one 3600 word paper. The longer paper will be written in two stages: a draft and a final version.

All assignments must be completed in order to pass the course. Late papers will be accepted *without question*. They will be penalized at the rate of one-quarter of a point *per* day. Grades are based on the College's twelve point scale. Exceptions will be made in extremely unusual circumstances; suffering from writer's block is, alas, too common to qualify. The penalty is extremely mild. Just turn it in the next day.