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## 1. WHAT ARE HUMAN RIGHTS?

### THE CONCEPT OF HUMAN RIGHTS AND THEIR EXTRA-LEGAL JUSTIFICATION

#### 1. INTRODUCTORY REMARKS

In the most general sense human rights are understood as rights which belong to any individual as a consequence of being human, independently of acts of law. In stating the existence of human rights, we state that every human being, simply because he or she is a human being, is entitled to something.<sup>2</sup> Awareness of the existence of this type of rights finds its expression in the output (especially in literature) of various cultures at various times.<sup>3</sup> However, the real 'career' of the category of human rights started only after the Second World War.<sup>4</sup> It became a common category in disputes of a practical kind, not only in the area of law, but also in politics, morality and religion. The modern concept of human rights is rooted in the experiences of 'legal lawlessness' when crimes were committed with the authorization of the law, and when some human beings were denied their status as such. An answer to these experiences was the emergence of the international law of human rights. The conception of human rights adopted then, nowadays provides the paradigm for understanding human rights not only in international law, but also in other areas of culture. This conception embraces an attempt at an explication of the reasons for the immense violations of fundamental rights, and a proposal of solutions which are to ensure that such violations will not recur in the future. The solutions incorporate both standards of conduct as well as postulates referring to the conceptions of a human being, the State and positive law. The international community's appreciation of the unique worth of every human being led not only to a concern for the elimination of elements destructive of the individual,

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<sup>1</sup> The author wishes to thank the Netherlands Institute for Advanced Studies (NIAS) for the assistance received during work on this contribution.

<sup>2</sup> Hersch, 1986, p. 132.

<sup>3</sup> See Hersch, 1969.

<sup>4</sup> Weston, 1991. On the history of the concept of human rights, see Oestreich, 1968; Tierney, 1989.

but also to a concern for the creation of the conditions which would enable him or her to develop and flourish.

This chapter aims at answering the following philosophical questions: What are human rights? Why do human rights exist at all?<sup>5</sup> The answers require identification of the basic characteristics of human rights and an indication of the elements of reality which create these rights, the elements of reality which permit an explanation of the existence of human rights and their particular properties. Philosophical questions should be distinguished from questions concerning the sources of the modern *conception* of these rights, or the foundations of human rights standards in *positive human rights law*, or the basis of the *de facto recognition* or *observance* of these rights. These latter questions do not belong to philosophy and can be properly considered by, for example, history, the legal sciences, sociology or psychology.

In expounding the paradigmatic concept of human rights and in searching for an extra-legal justification for human rights law, attention should be paid to the instruments of international law which determine the foundations of international human rights protection. From the point of view of the reconstruction of the paradigmatic conception of human rights the Universal Declaration of Human Rights (1948) and the International Covenants of Human Rights (1966)<sup>6</sup> are fundamental. In spite of cultural changes which have taken place during the last half of century, and in spite of some criticisms, the basic original ideas of human rights seem to remain the same. Among legal and semi-legal instruments referring to human rights, in the context of the issues considered in this chapter, special attention should also be paid to the Vienna Declaration and Programme of Action, a final document adopted by consensus at the World Conference on Human Rights organized under the auspices of the United Nations in 1993. The Vienna Declaration unambiguously confirms the conception of human rights embraced at the beginning of their international protection. This conception stands in marked contrast to some of the emerging opinions that it is already dated since it is rooted in allegedly obsolete ideas of natural law.

Because this chapter aims at identifying the extra-legal foundations of human rights, the above-mentioned acts are not considered from a legalistic point of view (as binding legal instruments). Instead, they are treated here as a reflection of experiences of ordinary men and women living in the modern world. Consequently, the content of human rights instruments is read as

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<sup>5</sup> Suggested reading on the philosophy of human rights: Belden Fields and Narr, 1992; Cohn, 1983; Diemer et al., 1986; Donnelly, 1985; Finnis, 1992; Gewirth, 1996; Henkin, 1988 and 1990; Meyer and Parent 1992; Nickel, 1987; Nino, 1991; Piechowiak, 1997; Shestack, 1984; Sidorsky, 1979; Waldron, 1993; Wellman, 1997; White, 1984; Winston, 1988.

<sup>6</sup> The International Covenant on Economic, Social and Cultural Rights (CESCR) and the International Covenant on Civil and Political Rights (CCPR).

stating something about actual reality, as pointing out some of its aspects, rather than creating a conceptual framework for the interpretation of legal instruments.

## 2. BASIC PROPERTIES OF HUMAN RIGHTS

The first, identical, sections of the Preambles to the Universal Declaration of Human Rights and to the International Covenants of Human Rights mention that the 'recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world'. The Preambles to the Covenants add in the second section: 'these rights derive from the inherent dignity of the human person'.

First of all, it should be noted that the fundamental rights and freedoms are *universal*,<sup>7</sup> that is, belong to each and every human being, no matter what he or she is like. Universality is rooted in the *inherent* dignity and the inherency of rights. Although universality and inherency are decisive defining characteristics of human rights, they are those characteristics which are most often contested by philosophers and the theoreticians of law. It should, however, be underlined that both universality and inherency are definitely recognized and emphasized on the level of practical discussion. The Vienna Declaration contains, partially in answer to the doubts raised, the following unambiguous phrases: 'Human rights and fundamental freedoms are the *birthright* of all human beings' and 'The universal nature of these rights and freedoms is beyond question'.<sup>8</sup> Objections to the universality and the existence of human rights as rights, often stem from overlooking the distinction between human rights law and human rights themselves (the rights which are protected by human rights law).<sup>9</sup> Ignoring the fact that the human rights concept came into existence partially to challenge the positivistic approach to law, human rights are sometimes rejected only because they do not accord with those characteristics of rights which were elaborated based on statutory law. Some arguments against universality have their origin in an unjustified adoption of relativistic assumptions as the philosophical basis of some theories applied to human rights.

Fundamental rights and freedoms, as inherent, exist independently of the will of either an individual human being or a group of people. They are

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<sup>7</sup> See Piechowiak, 1996.

<sup>8</sup> The Vienna Declaration (1993), Part I, para. 1. Emphasis added.

<sup>9</sup> See Universal Declaration of Human Rights, Preamble, section 3: 'it is essential . . . that human rights should be protected by the rule of law'.

neither obtained, nor granted through any human action. They may be neither recognized nor respected in these actions, but they still belong to an individual. The rights which derive from inherent dignity are also *inalienable*.<sup>10</sup> Nobody can deprive anybody of these rights and nobody can renounce these rights by himself (e.g. to become a slave). In this approach, fundamental human rights and freedoms are not related to duly adopted legal norms, but rather, the adoption of the appropriate norms is postulated to protect human rights and determine the ways of their realization. Legal norms (human rights law) do not establish fundamental rights and freedoms, they only guarantee them. The fact that certain actions or the abandonment of actions are due to an individual has its primary basis in the uniqueness of being human. This uniqueness is also a ground for assigning *dignity* to each and every human being. Every human being is regarded as an end in himself/herself. Therefore, nobody should be treated as a mere means, even if such treatment were greatly beneficial for the society or the person himself/herself.

*Equality* is another major element of the conception of human rights. Article 1 of the 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'. First, equal dignity is pointed to: there are no human beings which are more human than other human beings. Equal dignity requires equal respect for an individual as an end in himself/herself; equal concern for the individual's protection, possibilities and means of development. If no one may be treated as a mere means, then both burdens and public goods should be distributed in a proportionally equal way. Proportionally, because respect for equality does not mean equal treatment in the sense of imposing equal aims and equal circumstances of action on individuals. Differences are desirable if there are well-grounded reasons justifying them.

If we recognize that equal and inherent dignity is a source of human rights and that human rights are inalienable, we have to accept as a consequence that human rights are not based on any particular, contingent characteristic of a human being: 'Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status'.<sup>11</sup> If the justification of human rights were related to any such characteristic, its deprivation would have to mean a deprivation of the rights based on it. Therefore, possession of human

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<sup>10</sup> Universal Declaration of Human Rights, Preamble, section 1.

<sup>11</sup> Universal Declaration of Human Rights, Article 2; CESCR, Article 2, para. 2; CCPR, Article 2, para. 1.

rights is not a consequence of, for example, being able to exercise free choices or to think logically. It should also be noted that, in accordance with the quoted Article 1, every human being is recognized as free and rational, so being free and rational are not properties related to some functional abilities, but are inherent and may be regarded as an element of the foundations of uniqueness and dignity of a human being.<sup>12</sup>

It should be pointed out that the principle of *non-discrimination*, adopted in international law of human rights, refers to the relation between an individual and human rights. It expresses an idea that the differences between people do not matter only as far as possession of human rights is concerned.<sup>13</sup> Therefore, different treatment of individuals is discrimination only when it infringes human rights.<sup>14</sup>

In constructing positive laws, the postulate of equality combines *equality before the law* and *equal protection of the law*. For example, Article 26 of the International Covenant on Civil and Political Rights mentions that: 'All persons are equal before the law and are entitled without any discrimination to the equal protection of the law'. Hence, it is not sufficient that the same judgment is passed in the circumstances which in the eyes of positive law do not significantly differ, it is also important that proper reasons for regarding certain differences as relevant in the law are chosen.

Referring in Article 1 to the *freedom* of a human being, the Universal Declaration at the same time points to *human dignity, reason and conscience*. In the conception of human rights, in determining standards of conduct, the principal significance is ascribed to an individual development resting on free choices made in accordance with the identified truth about reality. Freedom is not a quality of a human being which forms a basis for standards of conduct independently of other qualities. Freedom is not an absolute value in human rights protection. As we read in the first section of the Preamble

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<sup>12</sup> Human rights are rooted in that which is specific to being human. Sometimes 'animal rights' or even 'plant rights' are cited to point out that animals or plants deserve a certain kind of respect; that they are not entirely subject to our will; and that a justified reason is needed to interfere with their development and especially to terminate their life. However, in certain circumstances animals or plants can be treated as a mere means to benefit human beings or society, which can never happen in the case of human beings. See also Benton, 1993.

<sup>13</sup> See the Universal Declaration of Human Rights, Article 2: 'the rights set forth in this Declaration'; similarly CESCR, Article 2, para. 2 and CCPR, Article 2, para. 2.

<sup>14</sup> The International Convention on the Elimination of All Forms of Racial Discrimination gives the following definition in Article 1: 'In this Convention, the term "racial discrimination" shall mean any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life'. In other conventions on the elimination of discrimination one can find similar elements: what differs are the characteristics in respect of which differentiation takes place, or areas of life to which a given convention applies.

of the Universal Declaration of Human Rights: 'recognition of the inherent dignity and of the equal and inalienable rights . . . is the foundation of freedom'. Reference to reason and conscience, made in Article 1 of the Declaration, underlines that a human being is not free in defining the standards of conduct, but that in doing so, he or she should take into account what reason and conscience disclose. It is symptomatic that no mention is made here of the emotions which are nowadays often seen as a basis for determining the good to which a human being is entitled. Goods and rights are a matter of knowledge and not of emotional reactions.<sup>15</sup>

Article 1 of the Universal Declaration of Human Rights, in speaking about 'a spirit of brotherhood', draws attention to the fact that, in principle, members of society or the global community are not competitors who constitute a danger to each other. Human beings are *social beings*; relations with others, a certain social and cultural environment, are an indispensable condition of development. A concern for the well-being of others and of the community as a whole is a duty based on the dignity of others and on the social character of human beings. The Universal Declaration of Human Rights in Article 29(1) stresses that 'Everyone has duties to the community in which alone the free and full development of his personality is possible'.<sup>16</sup>

Recognition of the indispensability of a social environment and of certain duties of the individual towards the group, which include the abandonment of some of his or her own plans or interests, must not lead to assigning priority to the community if a conflict between respect for the dignity of an individual and the well-being of the community emerges. An individual must never be treated as a mere means to achieve the well-being of a group, just as he or she must not be sacrificed for the well-being of another individual. A human being is *autonomous*, he or she is not a mere part of society; society exists for his or her benefit.

The social dimension of human beings is a basis for the so-called collective rights, rights which are vested in or exist for the benefit of groups.<sup>17</sup> The individual is, however, the ultimate beneficiary of these rights.<sup>18</sup>

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<sup>15</sup> English 'conscience' is rendered in Chinese version of the text by two signs: 'zhi' – knowledge, understanding, and 'liang' – good, virtue; literally it could be translated as 'knowledge, understanding of good and virtue'. We do not have here a combination 'liang' with 'sin', which may also mean 'conscience' but emphasizes an emotional component. Lindholm (1992, p. 33) suggests that the Chinese text should be rendered by 'two-man mindedness' or 'consciousness of his fellow men', 'sympathy'. However, it seems to be a misinterpretation which may rest on mistaking a Chinese word corresponding with *liang* for a very similarly sounding Chinese word which means 'two'.

<sup>16</sup> See also section 5 of the Preambles of the CESCR and the CCPR.

<sup>17</sup> Crawford, 1988, p. 164.

<sup>18</sup> Triggs, 1988, p. 156.

An important feature of the contemporary conception of human rights is the recognition of the *indivisibility and interdependence* of different rights. 'All human rights are universal, indivisible and interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis'.<sup>19</sup> Each of the different aspects of a human being (physical, psychological, moral, spiritual, social, etc.) deserves attention. Individual development requires appropriate social, political, economic, cultural, and ecological conditions. Moreover, ensuring a minimum in one of these is usually indispensable for developing or preventing degradation in another; for example, ensuring minimal social standards is necessary for the enjoyment of political rights. However, it seems to be impossible to define, for all cases and in general terms, the means for the prevention of the degradation of a human being or for ensuring his/her development should be distributed. The point of departure is a specific person, living in unique circumstances. An aim of the formulated law is the well-being of a human being, and not abstract values. Acknowledgment of inherent dignity as the source of rights is also an acknowledgment of the fact that rights are *secondary* to an individual and exist for the benefit of an individual as a whole.

### 3. HUMAN RIGHTS AND THE CONCEPTION OF THE STATE

The conception of human rights is linked with a specific concept of the State and positive law, in which *a central place is given to the individual*; respect for his or her dignity prevails over the good of a group and over that of the State. In the paradigmatic conception of human rights, the recognition of dignity and of the rights which derive from this dignity is the *basis of justice*<sup>20</sup> and, therefore, the basis of every legal system which claims to be just. Indicating the extra-legal foundations of positive law and modelling the legal system on the basis of a respect for human rights, helps to protect positive law from degenerating into 'legal lawlessness'. The State and the law exist for the individual living in a society. The State and the law protect the individual against being treated as a mere means, and support the establishment of the conditions for his/her comprehensive development. Other tasks of the State are subordinated to these functions and may be realized only within the limits of respect for fundamental rights and freedoms. With the introduction of this model, in spite of the fact that human rights law was created, among

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<sup>19</sup> The Vienna Declaration (1993), Part I, para. 5. See also section 3 of the Preambles of the CESCPR and the CCPR.

<sup>20</sup> Universal Declaration of Human Rights, Preamble, section 1.

other things, to protect the individual against the power of the State, the State increasingly becomes regarded as a guardian of human rights.

The contemporary State based on a respect for human rights is usually characterized as a *democratic State governed by the rule of law*, realizing an appropriate *social policy*. These characteristics point to certain significant aspects of the organization of social life. These aspects, however, should always be seen in a broader context in order not to make any of them absolute. Democracy, which is promoted first of all because the individual is a free and rational agent (a being 'endowed with reason and conscience'), cannot be understood as an absolute primacy of the will of majority. The State governed by the rule of law cannot be reduced to mere conformity with laws which are correctly adopted in a formal respect. The postulate of undertaking an appropriate social policy does not mean that the State should unconditionally ensure directly to every individual a basic subsistence; rather it has to be understood as a postulate to support the individual's initiative and his/her responsibility for himself/herself and other members of society.

When considering the paradigmatic conception of human rights, neither a social contract, nor the will of individuals, nor yet the State, can be regarded as the original source of human rights and of a just legal order; human rights can neither be justified only as a condition for the possibility of social dispute nor as a mere condition which the system has to fulfil to be functional.

#### 4. DEFINITION OF THE EXISTENTIAL ASPECT OF HUMAN RIGHTS

When considering the basic characteristics of human rights, we can attempt to identify definitional elements of the broad philosophical notion of human rights. Human rights can be described as a complex of relations which is constituted of real relations between individuals who have the duty to act (or refrain from acting) towards each other, and the relations of every human being to certain goods (things, circumstances) securing his or her well-being. This complex of relations exists independently of acts of law, and independently of whether it is apprehended by any individual or not. The law of human rights indicates these relations and aims at formulating legal norms ensuring appropriate goods.<sup>21</sup> When defining human rights, certain kinds of actions by others (including institutions) or relations between a human being and goods may be pointed out. It should, however, be noted that

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<sup>21</sup> Such an understanding of rights is rooted in a conception of *ius* understood as 'the right thing itself' (*ipsa res iusta*) or an objectively just relation between a man and a thing (cf. Aristotle, *Nicomachean Ethics*, 1106a 28 *et seq.*; Thomas Aquinas, *Summa theologiae*, II-II, q. 57, a. 1); cf. Miller, 1995; Tierney, 1988; Villey, 1991.



relations to goods form an ontic foundation, a reason founded in reality, for demanding certain actions. On the other hand, it is not sufficient to take into account the relations of a human being to goods securing his well-being, because in the domain of rights these relations are important only as far as they are a basis for duties of other subjects to act or to refrain from acting.

After having characterized what human rights are, we can try to answer the question why human rights exist at all. At least two additional questions should be asked. First, what is the reason for the existence of relations between a human being and certain goods? Second, why do relations of duty exist? These questions are interrelated. To answer these philosophically, such elements of reality which are a necessary condition for the existence of the above-mentioned relations should be indicated. Thus, first, we can say that human rights exist because a human being exists as a person who is directed towards personal development. This development takes place through the actualization of the potentialities of a human being. The development is possible, if, first of all, a human being, who is a subject of the potentialities, exists, and if the potentialities, which contribute to personal development, are not impaired. Therefore, his/her well-being requires certain goods which, negatively, prevent the destruction of a being and the impairment of conditions of his/her development, and which, positively, actualize potentialities. Second, human rights exist because there are relations between individuals who are ends in themselves, and whose well-being depends on the free and rational actions of others. These elements of reality explaining the existence of human rights are an ultimate point of reference for determining the content of these rights.

Recognition of the objective structure of being as a basis of law in general, and human rights law in particular, does not mean that it is desirable or possible to determine 'the only right' model of personality and of human development. Two issues have to be raised here.

First, the requirement not to be treated as a mere means makes it possible to determine the *limits* of that which is acceptable. Compromise outside these limits would be contrary to a respect for dignity and would lead to a violation of human rights. Recognition of the fact that there are limits which must not be crossed by an individual, by any action based on positive law (even approved by the will of a majority of citizens), or by a State authority, is one of the basic ideas underlying the contemporary conception of human rights (specific '*fundamentalism*' of human rights). However, there is a place for plurality and compromise when the means of protecting these limits are discussed; but under an obvious condition that the means do not go beyond these limits.

Second, respect for a human being related to his or her development requires ensuring—within the limits of what is acceptable—conditions for the free and rational choice of aims of actions and of individual 'projects' of

development. If conflicts arise here, there is a place for *compromise* in discussions on the ways and means of personal development. Such discussions and compromises do not aim at uniformity; on the contrary, the realization of human rights means the realization of *plurality*: postulated because of the specific potentialities of each human being, freedom in choosing his or her own way, the relation of the individual to a particular culture which forms an indispensable environment for his or her development, etc. There is no contradiction between plurality and universality once we realize that determining what is wrong and unjust does not mean determining the individual's protection and development in a uniform way.

## 5. HUMAN RIGHTS LAW

Human rights law, both international and domestic, aims at grasping the relations constituting human rights in their existential aspect, and at creating instruments of protection of these rights. Various types of human rights standards point to different aspects of the individual, to his or her different potentialities, different categories of goods (circumstances, things, etc.) as well as to different ways of ensuring these goods.

Human rights are expressed in positive law usually in the form of so-called subjective rights. They can be characterized as complex legal situations which embrace legally protected claims, liberties, powers, privileges,<sup>22</sup> constituting a certain functional whole in respect of specific human abilities which are to be developed, or in respect of specific goods (things, circumstances, actions) which are to be protected or ensured.

Catalogues of human rights formulated in positive law, and partially also the conceptions of human rights themselves, are an answer to threats to the individual and his or her development; also the threats of a structural type, rooted in deviant conceptions of a human being or the State. In a world of different cultures and rapidly changing circumstances, it is not easy to discern these threats and ways which lead to the full development of the individual. It is not easy to find appropriate remedies and to agree upon the organization of social life. This explains the *historic and dynamic* character of the concepts and standards offered in human rights law. However, this is not to deny the existence of human rights and their inherent and universal character, but rather is an affirmation of uniqueness of each human being and his or her life.

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<sup>22</sup> This distinction between four types of rights was introduced into the modern debate on rights by W. N. Hohfeld (Hohfeld, 1919).

BIBLIOGRAPHY

- Belden Fields, A., and Wolf-Dieter Narr, 'Human Rights as a Holistic Concept', *Human Rights Quarterly*, Vol. 14 (1992), pp. 1–20.
- Benton, Ted, *Natural Relations: Ecology, Animal Rights, and Social Justice*. London: Verso, 1993.
- Cohn, Haim H., 'On the Meaning of Human Dignity', *Israel Yearbook on Human Rights*, Vol. 13 (1983), pp. 226–251.
- Crawford, James, 'The Rights of Peoples: Some Conclusions', pp. 159–175, in James Crawford (ed.), *The Rights of Peoples*. Oxford: Clarendon Press, 1988.
- Diemer, Alwin et al., *Philosophical Foundations of Human Rights*. Paris: UNESCO, 1986.
- Donnelly, Jack, *The Concept of Human Rights*. London: Croom Helm, 1985.
- Finnis, John, *Natural Law and Natural Rights*. Oxford: Clarendon Press, 1992.
- Gewirth, Alan, *The Community of Rights*. Chicago: University of Chicago Press, 1996.
- Henkin, Louis, 'International Human Rights as "Rights"', pp. 129–145, in Morton E. Winston (ed.), *The Philosophy of Human Rights*. Belmont, Cal.: Wadsworth, 1988.
- Henkin, Louis, *The Age of Rights*. New York: Columbia University Press, 1990.
- Hersch, Jeanne (ed.), *Birthright of Man: A Selection of Texts*. Paris: UNESCO, 1969.
- Hersch, Jeanne, 'Human Rights in Western Thoughts', pp. 131–148, in Alwin Diemer et al., *Philosophical Foundations of Human Rights*. Paris: UNESCO, 1986.
- Hohfeld, W. N., *Fundamental Legal Conceptions as Applied in Judicial Reasoning*. New Haven, 1919.
- Lindholm, Tore, 'Article 1', pp. 31–55, in Asbjørn Eide, Gudmundur Alfredsson, Göran Melander, Lars Adam Rehof and Allan Rosas (eds.), *The Universal Declaration of Human Rights: A Commentary*. Oslo: Scandinavian University Press, 1992.
- Meyer, Michael J., and William A. Parent (eds.), *The Constitution of Rights: Human Dignity and American Values*. Ithaca: Cornell University Press, 1992.
- Miller, Fred J., Jr., *Nature, Justice and Rights in Aristotle's 'Politics'*. Oxford: Oxford University Press, 1995.
- Nickel, James W., *Making Sense of Human Rights: Philosophical Reflections on the Universal Declaration of Human Rights*. Berkeley: University of California Press, 1987.
- Nino, Carlos Santiago, *The Ethics of Human Rights*. Oxford: Clarendon Press, 1991.

Oestreich, Gerhard, *Geschichte der Menschenrechte und Grundfreiheiten im Umriß*. Berlin: Duncker & Humblot, 1968.

Piechowiak, Marek, 'Powszechność praw człowieka. Zagadnienia filozoficznoprawne' [Universality of Human Rights: Philosophical Issues], pp. 49–71, in Tadeusz Jasudowicz and Cezary Mik (eds.), *O prawach człowieka. W podwójną rocznicę Paktów*. Toruń: Dom Organizatora TNOiK, 1996.

Piechowiak, Marek, 'Pojęcie praw człowieka' [The Concept of Human Rights], pp. 7–37, in Leszek Wiśniewski (ed.), *Podstawowe prawa jednostki i ich sądowa ochrona*. Warszawa: Wydawnictwo Sejmowe, 1997.

Shestack, Jerome J., 'The Jurisprudence of Human Rights', pp. 69–113, in Theodor Meron (ed.), *Human Rights in International Law, Vol. I*. Oxford: Clarendon Press, 1984.

Sidorsky, David, 'Contemporary Reinterpretations of the Concept of Human Rights', pp. 87–109, in David Sidorsky (ed.), *Essays on Human Rights*. Philadelphia: The Jewish Publication Society of America, 1979.

Tierney, Brian, 'Villey, Ockham and the Origin of Individual Rights', pp. 1–31, in J. Witte, Jr. and F. S. Alexander (eds.), *The Weightier Matters of the Law*. Atlanta, Georgia: Scholars Press, 1988.

Tierney, Brian, 'Origins of Natural Rights Language: Texts and Contexts, 1150–1250', *History of Political Thought*, Vol. 10, No. 4 (1989), pp. 615–646.

Triggs, Gillian, 'The Rights of "Peoples" and Individual Rights: Conflict or Harmony?', pp. 141–157, in James Crawford (ed.), *The Rights of Peoples*. Oxford: Clarendon Press, 1988.

Villey, Michel, 'Law in Things', pp. 2–12, in Paul Amselek and Neil MacCormick (eds.), *Controversies about Law's Ontology*. Edinburgh: Edinburgh University Press, 1991.

Waldron, Jeremy, 'Rights', pp. 575–585, in Robert E. Goodin and Philip Pettit (eds.), *A Companion to Contemporary Political Philosophy*. Oxford: Blackwell, 1993.

Wellman, Carl, *An Approach to Rights: Studies in Philosophy of Law and Morals*. Dordrecht: Kluwer, 1997.

Weston, Burns H., 'Human Rights', pp. 656–664, in *The New Encyclopaedia Britannica*, Vol. 20. Chicago: Encyclopaedia Britannica, 1991. Also *Human Rights Quarterly*, Vol. 6, No. 3 (1984), pp. 257–283.

White, Alan R., *Rights*. Oxford: Clarendon Press, 1984.

Winston, Morton E. (ed.), *The Philosophy of Human Rights*. Belmont, Cal.: Wadsworth, 1988.

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## ABBREVIATIONS

ACHR	Inter-American Convention on Human Rights
ACP	African, Caribbean and Pacific States
APT	Association for the Prevention of Torture
ARIS	Anti-Racism Information Service
CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CCPR	International Covenant on Civil and Political Rights
CCR	Committee on Conventions and Recommendations
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CEJIL	Center for Justice and International Law
CERD	International Convention on the Elimination of All Forms of Racial Discrimination
CESCR	International Covenant on Economic, Social and Cultural Rights
CIE	Committee of Independent Experts
CIS	Commonwealth of Independent States
CMLR	Common Market Law Reports
CRC	Convention on the Rights of the Child
CSC	Conference on Security and Cooperation in Europe
DPA	Department of Political Affairs (United Nations)
DPKO	Department of Peace-Keeping Operations (United Nations)
EC	European Communities (European Community)
ECHR	Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights)
ECJ	Court of Justice of the European Communities (European Court of Justice)
ECOSOC	United Nations Economic and Social Council
ECR	European Court Reports
ECSC	European Coal and Steel Community
EEA	European Economic Area
EEC	European Economic Community
EMU	European Economic and Monetary Union
ESC	European Social Charter
ETS	European Treaty Series
EU	European Union
Euratom	European Atomic Energy Community
FAO	Food and Agriculture Organization
GATT	General Agreement on Tariffs and Trade
GC	Governmental Committee
HCNM	High Commissioner on National Minorities (OSCE)
HRFOR	Human Rights Field Operation in Rwanda
IBRD	International Bank for Reconstruction and Development
ICAO	International Civil Aviation Organization
ICJ	International Court of Justice



# **An Introduction to the International Protection of Human Rights**

**A Textbook**

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