Lesson Series 68

An introduction to human rights

Summary

Even though human rights are today well enumerated and encoded into international law, there continues to be uncertainty and confusion regarding their nature and meaning. This lesson will introduce the concept of human rights, as well as its historical development. The ideas of liberty, equality and universality—all making up today’s notion of human rights, will also be discussed.

The lesson will end by examining the state of various human rights in Asia.
Theme: An introduction to human rights

The Issue

Human rights are rights that everyone is entitled to by the simple virtue of their being human. This being the case, human rights cannot help but be universal in nature. Even with the enormous amount of rhetoric and academic discourse surrounding the concept of human rights, there continues to be much debate, controversy and even uncertainty regarding it.

While the idea of human rights is philosophical and even ‘common sense’ in nature— and has its origins in ancient times— the legal nature of human rights as entitlements is more modern. Despite human rights being encoded into national and international law today, there continue to be grave human rights abuses throughout the world.

The Lessons

Lesson 1 will give an overview of the concept of human rights as well as its historical development.

Lesson 2 will briefly discuss the various human rights enshrined in international law, and the degree of their realization today.

Cover image: The winning logo for universal human rights, as revealed on 23 September 2011, for the purpose of promoting and protecting human rights: http://humanrightslogo.net/
Lesson 1

This lesson will introduce the concept of human rights, together with its historical development.

A. What are human rights?

Very simply, human rights are rights that apply to everyone by virtue of their being human. In other words, human rights are universal, to be enjoyed by all without distinction or discrimination. In particular, human rights are based on a notion of a shared humanity, not on the citizenship of any particular country. These rights include the right to freedom of opinion and expression, the right to political participation, the right to food and shelter, and the right to equality.

Human rights today are part of international law, through the Universal Declaration of Human Rights, International Covenant on Civil and Political Rights, International Covenant on Economic, Social and Cultural Rights and various other conventions. While today's discourse may split human rights into the different categories of civil and political rights, economic, social and cultural rights, and collective rights, it is crucial to note that human rights are in fact interrelated and indivisible; no one right is more important than another, and no one right can be claimed as a reason for violating another.

As part of international and national law, human rights today are legal entitlements. In other words, they are legal rights that can be claimed by individuals, while also being legal obligations to be carried out and protected by the state. International law provides for remedies of rights violations.

Universal Declaration of Human Rights

The Universal Declaration of Human Rights (UDHR) was adopted on 10 December 1948 by the UN’s General Assembly, after three years of hard work. The drafting committee was composed of Eleanor Roosevelt (U.S.), Rene Cassin (France), P C Chang (China), Charles Malik (Lebanon) and John Humphrey, who represented the UN Secretariat, as well as representatives from several countries. They worked with the various draft bills of rights that had been presented to the Commission on Human Rights by American NGOs, as well as private citizens of nine different countries. Fifty-five national constitutions were also studied. The bulk of the work related to understanding and negotiating their different cultural traditions and convictions. Subsequently, a special group was even employed to sort out the differences in meaning of every word of each article as translated through the official languages of the United Nations.
This process was a genuine international learning experience; never before had such a diverse group of people come together to explain the values and traditions defining the core nature of their respective societies.

Developing countries played an important role in the drafting as well:

Carlos Romulo of the Philipines strongly advocated ensuring that full rights were given to colonies or territories that were not-self-governing, in view of the discriminatory practices in such areas. In this he was supported by Mrs. Newlands of New Zealand, who pressed for explicit reference to the rights of people in such regions. Hansa Mehta of India played a large part in achieving prominence in the Declaration for equal rights for women and men. In this she was supported by Minerva Barnadino of the Dominican Republic.

Marriage rights differ among cultures, and were the subject of considerable discussion. With regard to the right to marry, Mexico proposed the phrase “without any limitation due to race, nationality, or religion”. This and other statements on marriage were objected to by Jamil Baroody of Saudi Arabia, who considered them to reflect Western Values. This was disputed by Chang of China and Hernan Santa Cruz of Chile. The Pakistan Delegation, led by Shaista Ikramulla, accepted equal rights in marriage on the understanding that equal rights did not mean identical rights. This was also Eleanor Roosevelt’s view. The Egyptian delegate accepted the language, noting that marriage limitations on the basis of race (as in some states of the U.S.) were more shocking to his country than limitations based on religion or nationality.

Rights relating to religion were also subject to much discussion. Muhammad Zafrulla Khan, foreign minister of Pakistan, gave full support to the right to religious freedom, citing a passage from the Koran “Let him who chooses to believe, believe, and him who chooses to disbelieve, disbelieve.” He agreed with the right to change religions, considering this consistent with Islam, which itself was a proselytizing religion.

Another Muslim, Mohammed Habib from India, supported the statement as it was consistent with the new Indian constitution. Wahid Raafat of Egypt said that his country, while not agreeing entirely with the right, would support it. Malik, of Lebanon, also supported the right to change one’s religion, but Jamil Baroody of Saudi Arabia objected to it. This and the rights in marriage may have been why Saudi Arabia abstained from voting for the Declaration.

A number of delegates tried to change the term used in social rights from “social security” to “social justice”, because the former term often had a limited meaning of applying to people who were unable to work because of incapacity. Syria had suggested the term “social justice”. Saudi Arabia also favored this term because it was more closely related to the Muslim system of zakat, which had been in operation for 14 centuries.

Cuba was largely responsible for inclusion of the special needs of families in the right to an adequate standard of living. In the right to education, the statement that education should promote tolerance, understanding, and respect for human rights had been proposed by the World Jewish Congress…
Ecuador was responsible for the right that no one should be subject to arbitrary exile. The right of return to one’s own country was proposed by Lebanon. Mexico advocated the right to a hearing for acts in violation of fundamental rights under national law. All of the Latin American states also contributed via the Bogota Declaration of Rights and Duties, which was an important source document [http://www.humanistictexts.org/udhr.htm].

Ultimately, all those involved in the process held the rights spelled out in the UDHR to be truly universal, transcending national, social and cultural boundaries, and reflecting shared convictions and beliefs.

**UDHR’s 30 rights**

1. Everyone is born free and equal in dignity and rights
2. Everyone is entitled to all the rights set forth in this declaration without any discrimination, whether based on race, sex, property, religion, language or other status
3. Everyone has the right to life, liberty and security of person
4. No one shall be held in slavery or servitude
5. No one shall be subjected to torture, or to cruel, inhuman, or degrading treatment or punishment
6. Everyone has the right to recognition everywhere as a person before the law
7. Everyone is equal before the law and is entitled to equal protection, without any discrimination
8. Everyone has the right to an effective remedy by competent bodies for acts violating their fundamental rights
9. No one shall be subjected to arbitrary arrest, detention or exile
10. Everyone is entitled to a fair trial
11. Everyone has the right to be presumed innocent until proven guilty
12. Everyone has the right to privacy
13. Everyone has the right to freedom of movement and residence
14. Everyone has the right to seek asylum from persecution
15. Everyone has the right to a nationality
16. Everyone has the right to marriage and a family
17. Everyone has the right to own property
18. Everyone has the right to freedom of thought, conscience and religion
19. Everyone has the right to freedom of expression
20. Everyone has the right to freedom of assembly and association
21. Everyone has the right to political participation
22. Everyone has the right to social security
23. Everyone has the right to employment
24. Everyone has the right to rest and leisure
25. Everyone has the right to an adequate standard of living
26. Everyone has the right to education
27. Everyone has the right to participate in cultural life and to share in scientific advancements and benefits
28. Everyone is entitled to a world order where these rights can be realized
29. Everyone has responsibilities to their community, in which their full potential can develop
30. No person or state may commit any act that could deny or violate any of the rights stated above.

Who is responsible for these rights?

In a legal sense, it is largely each country’s responsibility to protect the human rights of its citizens, to create conditions for the realization of these rights and to refrain from violating them. This is particularly true when it comes to the rights enshrined in a country’s individual constitution and laws, as well as those enumerated in international law.

In a broader sense, civil society in each country also has a role to play in monitoring these rights and the state’s actions regarding them, as well as working towards the proper conditions for the realization of the rights. Similarly, national bodies also have a role to play.

At the international level, the United Nations’ Human Rights Council also monitors countries’ compliance with human rights norms, as do other UN mechanisms. The International Criminal Court is another body that takes action regarding human rights violations. [See Lesson Series 19, 33, 46 and 66 for more information.]
There are also regional bodies to monitor and protect human rights, such as the European Court of Human Rights, the Inter-American Court of Human Rights, and the African Court on Human and Peoples’ Rights. At present Asia does not have such a body, although in September 2009 the ASEAN Intergovernmental Commission on Human Rights was established. This body was tasked with writing a human rights charter; the ASEAN Human Rights Declaration was recently adopted during its November 18-20, 2012 summit. (Unlike other human rights charters however, the ASEAN declaration is quite limited: for more information, see http://www.un.org/apps/news/story.asp?NewsID=43520&Cr=human+rights&Cr1=#.ULME34aAj90)

B. Historical development of human rights

While it can be said that the ancient philosophy of justice and equality of individuals predates the concept of human rights, today’s concept as we know it did not come into play until much later. It is useful however, to see how early thought evolved and how human rights came to its present notion. According to Jack Donnelly, in the ancient world,

traditional societies typically have had elaborate systems of duties... conceptions of justice, political legitimacy, and human flourishing that sought to realize human dignity, flourishing, or well-being entirely independent of human rights. These institutions and practices are alternative to, rather than different formulations of, human rights [http://en.wikipedia.org/wiki/Human_rights].

Timeline of the development of human rights

— Plato and Aristotle’s philosophy regarding justice and the equality of individuals
— Restriction on king’s power in Magna Carta 1215, Britain
— Rise of the mercantile and professional class who wanted to protect their economic interests and increase political participation
— Twelve Articles 1525, part of the peasants’ demands in Germany, considered to be the first record of human rights in Europe
— Habeas Corpus Act 1679 in Britain, stating that no one should be locked up without a trial and appearing before a judge
— Britain’s Bill of Rights 1689, which strengthened the power of parliament and decreased the power of the crown

— Natural law (originally based on religion), which was seen as superior to state law, evolved during Enlightenment to the law of reason

— John Locke (1632-1704) stated that persons had the natural rights to life, freedom and property, and it was the state’s obligation to protect these rights

— Montesquieu (1689-1755) championed personal liberty, rule of law and the separation of powers

— American (1776) and French (1789) revolutions had human rights at their core, and as a result, for the first time human rights were enshrined in constitutions, even though they were limited to white men and their property

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.
— United States Declaration of Independence, 1776

— The term ‘human rights’ probably came into use some time between Thomas Paine’s The Rights of Man (1791) and William Lloyd Garrison’s 1831 writings in The Liberator, in which he stated that he was trying to enlist his readers in “the great cause of human rights”.

— The League of Nations was established in 1919, at the end of WWI, in order to maintain world peace and prevent future wars and aggression. Many of its bodies and activities, such as the International Labour Organization, worked towards promoting individual rights. In the words of Keith David Watenpaugh,

individuals and groups within the working environment of the field of humanitarianism [within the League of Nations] were engaged in forms of struggle, political and otherwise on behalf of universalizing individual rights and limiting the sovereignty of states; and, that these thinkers and activists have discernible roles in the content of the debate that carried over in the post-WWII era and contributed to the broader formal iteration of human rights idealism [http://humanrightsinitiative.ucdavis.edu/2011/08/30/the-league-of-nations-and-the-question-of-human-rights/].

More specifically, “in working on behalf of refugees, displaced people, trafficked women and children, [the League was] implementing the practical foundations of the work of human rights”.

— WWII shocked the world, and as a result, the United Nations (UN) was set up. Subsequently, human rights were articulated into the Universal Declaration of Human Rights, the International Covenant on Civil and
Political Rights, the International Covenant on Economic, Social and Cultural Rights, and other international treaties. Adoption of the Universal Declaration led to the acceptance of the universality of human rights, which would be monitored by an international body.

**Liberty and state obligation**

The two most important theories for human rights in the timeline above are those of John Locke and Charles Montesquieu. Locke’s idea that persons had the natural rights to life, freedom and property, which were the state’s obligation to protect, is the precursor to the modern concept of human rights and state responsibility to promote and protect the basic rights of all citizens. Montesquieu meanwhile, elaborated on the importance of personal liberty, which—like Locke’s right to freedom—is the axis upon which all human rights are situated. Without freedom and liberty, other rights, such as the right to employment, the right to not be tortured, or the right to a family, have no meaning. All human rights are based upon the notion that every person is a free being.

Montesquieu also championed rule of law and the separation of powers, which are also related to today’s human rights and good governance discourse. Human rights cannot be protected without rule of law, and rule of law cannot be properly established without a separation of powers in government.

**Universality**

The notion that human rights are universal—that they are rights to be enjoyed by everyone, regardless of their race, religion, gender or class—is more modern than the other components making up human rights. This notion was not agreed upon until after WWII when the UN was established. Despite universality now being enshrined in international human rights law, and a valid part of the current discourse, it is still under contention and not fully agreed upon.

**Human rights in Asia**

The dominant discourse suggests that human rights is a western notion, which does not have the same following in Asia. The above history indicates that even in the west, there was no concept of human rights early on. Rather, there was the idea of liberty and freedom, from which human rights stemmed. This being the case, we must ask whether similar ideas existed in Asia, and the answer is, yes, they did, even if they were not the ruling ideas of the time.

‘Asian values’

Despite significant Asian contribution to the development of the UDHR (as described above), since the 1990s there has been the claim that Asian values do not regard freedom to be important in the same way it is regarded in the west; given this difference, Asia must be faithful to its own philosophical and political values. In
other words, Asian values are more concerned with order and discipline than freedom, and thus many civil and political rights are less relevant and less appropriate in Asia. This argument is used to then justify the authoritarian nature of many Asian governments. (Another defense is on economic grounds, with some countries saying that development and economic rights need to first be met before civil and political rights can be tackled. A discussion of this is beyond the scope of this lesson.)

During the World Conference on Human Rights in Vienna in 1993, Singapore's foreign minister warned that, “universal recognition of the ideal of human rights can be harmful if universalism is used to deny or mask the reality of diversity”. Similarly, the Chinese delegation also emphasized ‘regional differences’, including the notion that ‘individuals must put the state’s rights before their own’.

Amartya Sen deconstructs this argument on two points. First, he says that Asia, where about 60 percent of the world population abides, is far from heterogeneous; “there are no quintessential values that separate the Asians as a group from people in the rest of the world and which fits all parts of this immensely large” population.

Second, Sen says that just as today’s concepts of human rights are not found in “Western heritage as it was experienced over millennia”, they are also not found in Asia. What can be found however, are the components making up human rights—tolerance, equality and freedom, as described above.

The Buddhist tradition, which is well established in Asia, places great importance on freedom. The Indian emperor A shoka (304-232 BCE) in fact converted to Buddhism and helped to make it a world religion by sending emissaries abroad... and he covered the country with stone inscriptions describing forms of good life and the nature of good government. The inscriptions give a special importance to tolerance of diversity [Amartya Sen, ‘Human Rights and Asian Values’, The New Republic, July 14-21, 1996, https://www.mtholyoke.edu/acad/intrel/sen.htm].

What is particularly unique about Ashoka’s thought is that he championed tolerance and egalitarianism for all, unlike others of that time, who saw such ideas as fit for the upper class or nobility only. Both tolerance and egalitarianism are important components of the human rights discourse as we know it today.

A later champion of tolerance was the Moghul emperor A kbar (1542-1605), who emphasized the acceptability of diverse forms of social and religious behaviour, and who accepted human rights of various kinds, including freedom of worship and religious practice, that would not have been so easily tolerated in parts of Europe in Akbar’s time [Sen, ‘Human Rights and Asian Values’, 1996].
In fact, at the time of Akbar’s pronouncements on religious tolerance, Sen notes that “the Inquisition was in full throttle in Europe”. Of course, it must be underlined that this tolerance was not universal; it did not include gender equality for instance. This is not dissimilar to the concept of tolerance as found in the West. Similarly, Kautilya, a senior minister in the Maurya empire, also advocated the importance of personal liberty, albeit only for the upper caste.

Meanwhile, with regards to good governance and rule of law, also important to the concept of human rights, Kim Dae Jung notes that the Chinese philosopher Meng-tzu, much earlier than John Locke, stated that if the king “did not govern righteously, the people had the right to rise up and overthrow his government”. The reason behind this was that people came first, the country second, and the king third. Furthermore Kim says, the ancient Chinese philosophy of Minben Zhengchi, or “people-based politics,” teaches that “the will of the people is the will of heaven” and that one should “respect the people as heaven” itself. A native religion of Korea, Tonghak, went even further, advocating that “man is heaven” and that one must serve man as one does heaven. These ideas inspired and motivated nearly half a million peasants in 1894 to revolt against exploitation by feudalistic government internally and imperialistic forces externally.

When Western societies were still being ruled by a succession of feudal lords, China and Korea had already sustained county prefecture systems for about 2,000 years. The government of the Chin Dynasty… practiced the rule of law and saw to it that everyone, regardless of class, was treated fairly. For nearly 1,000 years in China and Korea, even the sons of high-ranking officials were not appointed to important official positions unless they passed civil service examinations. These stringent tests were administered to members of the aristocratic class, who constituted over ten percent of the population, thus guaranteeing equal opportunity and social mobility, which are so central to popular democracy. This practice sharply contrasted with that of European fiefdoms of that time, where pedigree more or less determined one’s official position… Freedom of speech was highly valued, based on the understanding that the nation’s fate depended on it. Confucian scholars were taught that remonstration against an erring monarch was a paramount duty. Many civil servants and promising political elites gave their lives to protect the right to free speech [Kim Dae Jung, ‘Is Culture Destiny? The Myth of Asia’s Anti-Democratic Values’, Foreign Affairs, November-December 1994].

In fact, human rights have nothing to do with region, citizenship and so forth. All humans, regardless of where they live or which philosophy was espoused by their countrymen, wish to live free from torture and repression, and wish to avail of a decent standard of living. Rather than making distinctions between people, the human rights culture begins with marking everyone’s shared humanity.
Questions For Discussion

1. Pick three rights from the list above and discuss how they are both protected and violated in your country.
2. Discuss the relationship between human rights and liberty; between human rights and rule of law.

Lesson 2

This lesson will give an overview of the situation of human rights today, particularly in Asia.

A. Human rights in Asia

While human rights are now enshrined in international law, as well as in the different laws of different countries, marking a significant step from previous eras, they are still not universally accepted or protected. Countries around the world continue to violate and ignore the rights of their citizens, as do certain non-state actors.

The following rights are particularly violated in many Asian countries:

Right not to be tortured

Torture continues to be used widely in most Asian countries [see Lesson 61 for detailed information] by the police for various means: as investigation, intimidation, and even as social control.

Right to life

Enforced disappearances and extrajudicial killings continue to occur in the region [see Lessons 57, 48 for detailed information].

Right to not be arbitrarily arrested and detained

This is related to torture and harassment by the police and military [see Lesson 62 for more information].

Right to food

Asia has one of the highest populations of malnourished persons, which is mainly comprised of women and children. What is usually found is that despite the many national schemes in place regarding free or subsidized
food, these schemes rarely reach the intended beneficiaries due to bureaucratic inefficiency and corruption. At the same time, several countries in the region do not have adequate schemes in place to take care of their needy [see Lessons 38 and 39 for more information].

**Right to freedom of expression**

It is difficult to find any country in Asia where this right is not violated at all. Most countries curtail this right of a particular group of people, or when it serves the interest of the ruling elite. In a few countries, this right is violated generally to maintain social control.

**Right to remedy**

This right is violated to varying degrees in almost all Asian countries, mainly due to failing justice institutions and/or political control over these institutions. This right is in fact essential for the proper protection of all other rights, as without the right to a remedy for a human rights violation, there can be no way to redress grave abuse [see Lessons 55, 53 for more information].

**Right to non-discrimination**

Many communities continue to be discriminated against in Asia, be they religious minorities, indigenous populations, women, children or the disabled.

**B. Human rights around the world**

While Asia certainly has a high amount of human rights abuse, other regions are not immune to this grave problem. Violations of the rights mentioned above (and others) occur in countries around the world. Europe’s stringent immigration policies violate people’s rights, while in America the use of the death penalty is a key problem. The rights of prisoners of war, sexual and religious minorities, and even the rights of women and children continue to be violated in many places, including developed democracies.

Despite these violations, today’s human rights situation is much better than previous millennia, especially on paper. Perhaps the next era will see the complete translation of these rights from paper to reality.
Questions For Discussion

1. Discuss a few rights that are gravely violated in your country. Are these rights protected under your country’s constitution or other laws?
2. Discuss how you can work on improving the realization of these rights.

References

http://www.udhr.org/history/default.htm
http://www.humanistictexts.org/udhr.htm