



# Making Sense of Human Rights

Second Edition

James W. Nickel

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# Contents

Introduction	1
1 The Contemporary Idea of Human Rights	7
2 Human Rights as Rights	22
3 Making Sense of Human Rights	35
4 Starting Points for Justifying Human Rights	53
5 A Framework for Justifying Specific Rights	70
6 The List Question	92
7 Due Process Rights and Terrorist Emergencies	106
8 Economic Liberties as Fundamental Freedoms	123
9 Social Rights as Human Rights	137
10 Minority Rights	154
11 Eight Responses to the Relativist	168
12 The Good Sense in Human Rights	185
Appendix 1: Universal Declaration of Human Rights	191
Appendix 2: The European Convention for the Protection of Human Rights and Fundamental Freedoms	198
Appendix 3: International Covenant on Civil and Political Rights	213
Appendix 4: International Covenant on Economic, Social and Cultural Rights	232
Bibliography and References	243
Index	256

# Introduction

When governments do cruel and unjust things to their citizens we are now likely to describe those actions as violations of human rights – instead of simply saying that they are unjust, immoral, tyrannical, or barbaric. Appealing to human rights in order to describe and criticize the actions of repressive governments became common as a popular phenomenon in the second half of the twentieth century. Talk of natural rights and of constitutional rights has long been common among philosophers and lawyers, but since 1948, the idea of human rights has gradually been adopted by journalists, politicians, and the public in many parts of the world. Violations of human rights are now frequently recognized and reported as such by journalists, and many people around the world have adopted “human rights violations” as a category of political thought and appraisal.

The creation of the Universal Declaration of Human Rights (United Nations 1948b) made possible the subsequent flourishing of the idea of international human rights. The Declaration’s list of human rights is, broadly speaking, the list that is still in use today. And the international human rights treaties that followed in its wake refined the formulations of these rights and gave them the status of international law.

This book tries to show that the idea of human rights makes good sense and that people should be comfortable, but not unreflective, in appealing to human rights. It does this by examining and evaluating the general idea of human rights, by considering and responding to objections to it, and by offering justifications for particular families of rights.

Many philosophers have constructed theories of rights without reference to the international human rights movement and its documents (for example, Thomson 1990; Veach 1985). Perhaps they proceeded in this way because they were interested in interpersonal morality rather than international political morality, or simply because they wished to construct a moral vision unencumbered by the sometimes dubious normative decisions of politicians and diplomats. My approach here is different. It focuses

on the contemporary political project of creating an international law of human rights that promotes decent treatment of people by their governments. I focus on the Universal Declaration and the human rights treaties that followed, not because I think they are without flaws, but because they have given the idea of human rights a determinate meaning that has gained widespread international acceptance.

For human rights norms to succeed in practice they need to be supported both by strong reasons and by effective implementation. Since the end of World War II, a system of international implementation for human rights has been developed and refined, despite many obstacles and setbacks, in the United Nations and other international organizations. This system is described in Chapter 1. But the question of the availability of strong and universally applicable supporting reasons remains. Chapters 4 and 5 offer a sketch of what those reasons are.

In spite of the progress that has been made in listing and protecting international human rights, many people still find the idea of international human rights perplexing and raise questions about what human rights are, what their content is or should be, and whether they can be justified in our messy and diverse world. Conceptual questions pertain to the nature or status of human rights; here one might ask whether human rights are really rights (rather than, say, political goals) or question whether international law is a suitable home for real and robust rights. Questions about the content of human rights pertain to which families of rights can plausibly be taken to be the rights of all people, and about which parties bear duties in connection with these rights. Questions of justification ask whether there are good grounds for believing in universal human rights, whether these grounds transcend cultural and religious differences, and what steps are involved in justifying a right.

This book addresses a number of these sorts of questions, moving from historical and analytical topics to issues of justification and affordability and then on to the discussion of some particular families of rights. Overall, the book sketches a defense of the contemporary idea of human rights against a variety of philosophical and practical objections.

At the conceptual or analytical level my intention is to explain the concept of rights and to show that it is an attractive vehicle for expressing the norms of the international human rights movement. I also offer a general account of what human rights are (a definition, that is, rather than a list) and of what characteristics they can plausibly be said to have. The account given here of the nature and justification of specific human rights, such as the right to a fair trial or the right to freedom of movement, does not take such specific rights to be ultimate moral standards that are unchanging. Instead, it sees the several dozen norms that we now

call human rights as attempts to identify the implications for political morality and for national and international law of deeper and more abstract values and norms. Specific human rights respond to familiar and recurrent threats to fundamental human interests and important moral norms. To reflect on human rights requires reflection both on those interests and norms *and* on which political, social, and legal abuses are most dangerous to them.

Human rights are minimal standards. They focus on areas of great injustice. As minimal standards they can hope to be supported by very strong reasons of universal appeal, to be of high priority, and to resist claims of national and cultural autonomy. Even when this view of human rights is accepted, however, it remains difficult to know where lists of human rights should end. There are many serious problems in all human societies, and it is tempting to extend the reach of human rights norms to address all of them. Further, the advocates of many causes would like to get their agendas incorporated in the norms, institutions, and activities of the human rights movement. The question of which families of rights should be included in the documents and treaties of the human rights movement is important and is discussed in Chapters 5 and 6.

The justification of human rights has several stages. The most basic stage involves trying to identify and justify the abstract values or norms that underlie human rights. The second stage involves trying to show that some specific norms follow from these abstract considerations, and that these norms are plausibly conceived as universal rights. Using an analogy to chess, I will often refer to this second stage as the “middle game.” A third stage of justification involves defending the measures that will be necessary to protect and promote human rights internationally. To extend the analogy, this might be thought of as the “end game.”

This book gives considerable attention to the middle game. Philosophers typically focus on ultimate justification, and political scientists and lawyers usually focus on the end game, with the result that the middle level is largely ignored. I try to remedy this lack of attention by developing an account of the kind of case that needs to be made for a specific right at the middle level of justification. The result may seem insufficiently theoretical to philosophers and insufficiently practical to political scientists and lawyers, but this is a risk I willingly take. I hope to make it obvious that the middle level of justification is a significant area in which the concerns of philosophers, anthropologists, political scientists, economists, and lawyers come together.

There are a number of philosophical topics relevant to human rights that this book does not address. One is metaethics – the epistemology, metaphysics, and psychology of normative discourse. No broad

philosophical account of human moral and practical knowledge is offered. I do, however, presuppose that normal humans are capable of acquiring, with luck and effort, moral and practical knowledge. I also presuppose that most people are capable – much of the time – of guiding their behavior by the values and norms they accept (see Rawls 1993). Fortunately, lots of good philosophical work on metaethics is now available (see, for example, Darwall 1998 and Huemer 2005). Other relevant subjects that deserve much greater attention than they receive here include distributive justice, globalization, the law of war, international criminal law, sovereignty, and when coercive and military intervention to protect human rights is justified (see Teson 2005).

This book was first published in 1987 as *Making Sense of Human Rights: Philosophical Reflections on the Universal Declaration of Human Rights* (University of California Press). This revised and enlarged edition brings the book up to date and makes many changes and additions. More than half of its material is new. The subtitle has been dropped because the revised version focuses as much on human rights treaties as on the Universal Declaration. All the chapters have been substantially rewritten. Three old chapters were cut, and new chapters added on lists of human rights (6), due process rights and terrorism (7), economic liberties (8), and minority rights (10).

This is a short book, with chapters that can be read in a single sitting. Extensive bibliographic references are provided. When I first began working on human rights in the 1970s, the human rights literature in philosophy, law, and political science was very limited. I am pleased to be able to say that there is now an abundance of good books and articles on human rights.

I have been extremely fortunate to have many friends who have provided encouragement and assistance during more than 30 years of thinking, teaching, and writing about the philosophy and law of human rights. I am particularly grateful to Louis Henkin for the pivotal role that he played by introducing me to international human rights law at Columbia Law School in 1973. Rex Martin, David Reidy, and Eduardo Viola deserve special gratitude for co-authoring with me papers in the area of human rights. Others who have provided much appreciated discussion, help, and encouragement include Charles Beitz, Nick Bellorini, Richard E. Brown, Allen Buchanan, Joseph Chan, Deen Chatterjee, Beth Difelice, David Duquette, James Griffin, Aaron James, Ranjana Kumar, Betsy Lamm, Tore Lindholm, Peter de Marneffe, Gail Merten, David Miller, Stephen R. Munzer (who wrote comments on many chapters), Thomas Pogge, M. B. E. Smith (who wrote comments on the entire manuscript in 2004), John Tasioulas, Rebecca Tsosie, Johannes A. van der Ven, James



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Readers who wish to contact me may do so by e-mail at [james.nickel@asu.edu](mailto:james.nickel@asu.edu). I intend to maintain current bibliographies and accounts of the international law of human rights in my “human rights” entry in the online Stanford Encyclopedia of Philosophy (<<http://plato.stanford.edu/entries/rights-human/>>).