

**Critical Realism Group  
Inland Norway University of Applied Sciences**

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**The Critical Social Ontology of Inalienable Human Rights**

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Do inalienable human rights have their own independent ontology?  
Have justice and rights existed since human social relationships began?

# When and how did rights begin? (a mainly English version)

## National Legal Rights

England - home of human rights?

*Glorious Revolution, Bill of Rights 1688*

*Magna Carta 1215, Charter of the Forest 1225*

Conor Gearty (2016) *On Fantasy Island:*

UK Rights began with 1998 UK *Human Rights Act*

Defends individual against state,

Overturns English (not Scottish) Common Law for privileged elite:  
property owners, contract makers, employers, racists.

HRA is for 'the marginalised, the dispossessed, the hated',  
which any of us could easily become.

# When and how did rights begin?

1950 European *Convention on Human Rights*

1953 European Commission and European Court of Human Rights

Conventions can be ratified and inspected,  
with regular reports by accountable governments on progress  
with implementing them.

Rights are willed and enforced –  
so no right to happiness, love, health.

Rights – selfish individualism  
or basis for peace and human flourishing?

# 1945 United Nations Charter



## **WE THE PEOPLES OF THE UNITED NATIONS DETERMINED**

- to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind, and
- to reaffirm faith in fundamental **human rights**, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small, and
- to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained, and
- to promote social progress and better standards of life in larger freedom,

## **AND FOR THESE ENDS**

- to practice tolerance and live together in peace with one another as good neighbours, and
- to unite our strength to maintain international peace and security...

## United Nations

*Charter of the United Nations* 1945

*Universal Declaration of Human Rights* 1948

*Convention on Status of Refugees* 1951

*Covenant on Civil and Political Rights* 1966

*Covenant on Economic, Social and Cultural Rights* 1966

*Declaration on Rights of Disabled Persons* 1975

*Convention on the Elimination of All Forms of*

*Discrimination against Women* 1979

*Convention on the Rights of the Child* 1989

(ratified by every government in world except USA)

*Convention on Rights of Persons with Disabilities* 2006

High Commissioner for Human Rights since 1993



## Essential rights, most apparent when they seem absent, claims to right wrongs

UDHR 1948

Rights to: non-discrimination, life, liberty and security of person, equality before the law, fair trials, privacy and family life, freedom of movement, to seek and enjoy asylum from persecution, to nationality, marry and found a family, own property, freedom of thought, conscience and religion, opinion and expression, peaceful assembly and association, to take part in government, genuine elections, secret ballot, universal suffrage, social security, social and cultural rights indispensable for the dignity and the free development of the personality.

Everyone has the right to work, to free choice of employment,  
to just and favourable conditions of work,  
protection against unemployment,  
the right to equal pay for equal work without any discrimination,  
to 'just and favourable remuneration ensuring for himself and his family  
an existence worthy of human dignity', with supplements if necessary.

Everyone has the right to form and join trade unions,  
to rest and leisure, an adequate standard of living,  
education, free participation in cultural life of the community,  
to a social and international order in which  
these rights and freedoms can be fully realized.

Rights - freedoms to, and also freedoms from:

slavery, torture,

cruel, inhuman or degrading treatment or punishment,

arbitrary arrest, detention or exile.

Everyone has duties to the community in which alone  
the free and full development of his [sic] personality is possible.

Rights are responsibilities, not individual, but universal claims to justice.



## Legal positivists

Conor Gearty followed Jeremy Bentham 1748-1832,  
utilitarian, democrat

Rights are a legally enforceable set of expectations  
about how others, most obviously the state,  
should behave towards legally autonomous moral agents  
and others entitled to protection

Bentham dismissed natural rights 'nonsense on stilts'



## Natural law and rights discovered by reason

Certain rights, values, responsibilities inherent in human nature

Echoed in UN Conventions and UDHR 1948:

Whereas 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,  
Whereas disregard and contempt for human rights have resulted in barbarous acts...  
Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression,  
that human rights should be protected by the rule of law,

## Thomas Paine 1737-1809

English excise officer

*Common Sense* 1776.

Paine assisted Jefferson, Franklin, Adams, et al. with writing

*US Declaration of Independence* 1776

‘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,’

Jefferson assisted with French

*Declaration of the Rights of Man and the Citizen* 1789

‘Liberty, equality, fraternity/solidarity’

*Paine’s Rights of Man* 1791-92 defended French Revolution

## **John Locke 1632-1704**

*Two Treatises of Government* 1698

Civilised society based on natural law and contract theory,

All men are created equal in the state of nature by God

With rights to life, liberty and property

And therefore duties not to kill, enslave, or steal.

- Though Locke's work used to justify denying rights to many groups.

Back through history to

## **Aristotle**

Natural rights in individuals and political community to reflect

and develop the highest practical capacity nature gives to human beings

to promote moral virtue and practical wisdom.

## Criticisms of Rights in Sociology

Mainly glaring omission (Wright 2010),

Rights dismissed as selfish individualism (Sayer 2011:230-1).

Following Marx, Durkheim, Weber and Foucault

– sociologists are mainly sceptical.

Rights seen as a social construct of Enlightenment and Capitalism's need to identify individual agents of commercial contracts and property owners and reinforce social discipline and surveillance (Bentham and Panopticon).

Rights have limited value - when they enlarge freedoms and restrain the state,

But rights' major omission is to present autonomy and reciprocity

as compatible with inequality (Woodiwiss 2005:32).



## Rights in sociology

Analyse problems of universality vs diverse cultural complexity,  
Individual vs structural oppressions.

‘Long delay’ in addressing rights (Freeman 2022).

Brian Turner: Frail humanity with precarious survival needs agreed rights.

Sociologists’ main concern is rights in research ethics.

Rights in medical research ethics developed in 1980s,  
but BSA did not require REC review of research protocols until 2002.

Recent lax BSA standards (BSA 2017; Alderson & Morrow 2020).

## Cycles of empirical, actual and real and human legal and natural rights

Recently criticised by Elder Vass et al, (2023), but can be very useful

Constantly shifting and interacting. Some things move between levels into different roles. \*

	Stages of process	With human rights 1
<b>Empirical subjective epistemology</b>	Experience, analyse, recall, discuss, describe, measure,	↓ * Sense and identify thirst, hunger, deprivation, exclusions, restrictions, disrespect, coercion, abuse, suffering - absence.
<b>Actual objective ontology</b>	Things, events, non-events	↕ Lack of water, food, freedoms, equality, justice. Oppressions of poverty, slavery, torture, war.
<b>Real ontology</b>	Causal mechanisms, influences, motives, reasons	↑ Anger, fear, start to protect and protest – emergence.

	Stage of HR process 2	Stage of HR process 3
<b>Empirical: Experience and identify</b>	↓ Sense and identify pain, loss, need, suffering, power2	↓ Growing clarity, confidence, detailed sense of everyone's worth, dignity, values and rights, Power1.
<b>Actual: things, events</b>	↕* Start collective planning, resistance, action to change routines and systems, overcome obstacles, protests, strikes	↕ Specific efforts, identify, declare and defend international rights, such as 'to seek and enjoy asylum'; sign and ratify Conventions; inspect and report on progress with implementation.
<b>Real: causal mechanisms</b>	↑ Shared anger, hope, courage, faith, longing, solidarity, desire, power1.	↑* Practical respect for equality, peace and justice for all.



## **International processes over millennia**

'Rights' - understood, defined and practised in varying ways.

Are they inherent, inevitable in all human relationships?

Exodus (c800 BCE history or myth) starts with Pharaoh's oppression of the Israelites in Egypt.

They escape and 'wander in the desert for 40 years',

gaining and wavering in their confidence and identity,

fear and hope of the 'promised land' and

of being 'God's chosen people' (their worth, dignity and flourishing).

Ten Commandments an early form of rights and responsibilities.

Final Chapter 40: God continues to lead their wandering

– Are rights never fully realised, always in process?

Never more needed than now in Middle East.

## Children's rights

Eglantine Jebb founded Save the Children after seeing starving children around Europe after World War 1.

She wrote the *Declaration of the Rights of the Child* 1923.

Save the Children commissioned *Young Children's Rights* (Alderson, 2000/2008).

Can rights apply to children aged <8years?

Critical realism's four planes of social being are useful in showing how the 42 main Articles in the United Nations 1989

*Convention on the Rights of the Child* can all apply from birth.

## Four planes of social being and

babies' rights to freedom of religion and of peaceful assembly UNCRC 1989, Articles 14, 15

Bodies in relation to nature Sensory experience	All rights experienced and expressed, honoured or violated through bodies. Freedom to take babies to religious welcoming ceremonies, maybe with music, baptism, incense, pictures, prayerful body movements followed with food and other support.
Interpersonal relations	Ceremonies for religious groups to promise to welcome, include, support child and family within the community.
Social structures	Indivisible rights that support peaceful safe communities and adequate standard of living
Inner being	Religious groups recognise, nurture child's moral/ethical/spiritual life. Preverbal babies think about kindness and justice. (Alison Gopnik <i>The Philosophical Baby</i> , Paul Bloom <i>Just Babies</i> ) innate inalienable human worth and dignity? Morality not all synthetic, learned, acquired.

Thomas Hertog *On the Origin of Time: Stephen Hawking's Final Theory*  
(Penguin April 2023)

Hertog and Hawking replace the idea that the universe is a machine governed by prior, fixed, unconditional laws of physics with: 'a view of the universe as a kind of self-organising entity in which all sorts of emergent patterns appear'. Laws of physics are nearer to evolutionary biology. 'Examples of these life-supporting conditions include the delicate balance that exists between particle forces that allow chemistry and complex molecules to exist. Having only three dimensions of space permits stable solar systems to evolve and provide homes for living creatures.'

'However baffling and complex the universe may be, beneath it all lies a harmonious unity.' Laws and rules that somehow had to exist before the universe began.

Paul Davies on <https://www.bbc.co.uk/programmes/m0003ks6>

## Dignity that merits bearing rights and honours rights-bearers

Is human dignity extrinsic, conferred by respectful others,  
Or intrinsic, an integral inalienable part of the moral spiritual human being?

Dignitas – ‘worth’, like gravitas – ‘internal weight’  
that Aristotle thought caused objects to fall before gravity was recognised.

Similar mysterious dialectic: humans are treated with mutual dignity and respect  
Because of our integral worth, which is then enhanced

Do these complexities and processes resonate with emergent recognition over  
millennia of the ontology of inalienable rights?

Basic principles are uncovered and developed through interactions between  
layers of social, psychological and physical realities of human lives,  
and reinterpreted within countless times and contexts?

Dignity that merits bearing rights and honours rights-bearers

Are dignity and moral insight irreducibly social, or also biological  
endowed through genetics that evolved through natural selection  
because empathic cooperative families are more likely to survive (de Waal)?

Memories (such as of past famines) are inherited through genes

Mental realities pass into physical realities

- neurons and synapses of the brain and hormones of the emotions

Enduring and also fluid, fixed and also constantly moving and emergent.

Are they like particle and wave in the ontology of being and doing,  
constantly developing and interacting with the epistemology of thinking and knowing?

## Ontology of rights

Critical realism helps to clarify the independent ontology of inalienable indivisible human rights, most powerful when they seem to be most absent.

Right cannot be invented, given or taken away,

Though they are recognised, denied, honoured or violated, and enforced in law.

They are claims and remedies to right wrongs.

One clue to their value is the present UK Government's opposition to our Human Rights Act 1998 and the European Court of Human Rights.

Priscilla Alderson 2021

*Critical Realism for Health and Illness Research*. Policy Press.

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