7.0 RIGHTS

Introduction: rights are the those conditions of social life, without which no man can seek in general to be at his best
other statements; John Locke: Being all equal and independent, no one ought to harm other in life, health, liberty or possessions- Two treatises of civil govt
2. Nozick: individuals have rights and that there are no things, persons or groups may do to them.
Though bentham tried to appear more exact, yet in practice his theory is also vague- Thomas Hodgskin
Burke- Natural rights are metaphysical abstractions because real rights emerge from customs and traditions
In contemporary times, the different theory of rights have been incorporated in grand theory of rights known as social welfare theory given by laski

1. modern concept
2. divine rights of king (medieval)->natural rights of man
3. anti-state, limits power of state, society
4. liberal concept- civil and political rights
5. for marxist-
    1. man's interest not against society, hence focus on duty
    2. give economic and social rights

Hohfeld



WESLEY NEWCOMB HOHFELD

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1. claims/entitlement, hence duty of other
2. liberty
3. power against state
4. immunity against society and state

Dworkin- book: Taking rights seriously



Nature of rights

1. civil: equality before law, life, property, liberty



1. right are trump. preference over everything

2. political: vote, contest elections
3. socio-economic: education, food, work

Types (on basis of source)

1. divine: god
2. natural: nature
3. fundamental rights (nature)
4. legal (state)
5. moral (society)

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From Book

1. earlier rights were claims
    1. today, those who can't claim, can never be expected to claim are also included. E.g.- animal rights, environment rights
2. earlier only those recognised by state
    1. now human rights, moral rights, etc

Theory of rights

Natural rights: divine origin (based on reason/intuition)

1. oldest theory; american declaration, french declaration based on this
2. **self-evident truth**- US declaration, fundamental to human existence (right to life, liberty and pursuit of happiness)
3. source- intuition (reason)
4. schools
    1. social contract: **Locke, Rousseau**
        1. rights in state of nature, not transferred to state
        2. since the time man existed, there are rights
    2. teleological: as a consequence, we have rights
        1. **Thomas Paine**: Rights of Man
        2. 

Criticism of natural rights

1. **Bentham**: rights are legal only (Hobbessian)
    1. in state of nature, no rights but power
    2. only state provide rights, not nature
        1. legal rights: UK
        2. human rights: US, France
        3. before WW2, legal rights, after WW2, human rights
    3. natural rights are non-sense, non-sense upon stilts
    4. natural rights are chimera
    5. natural rights are anarchincal falacies
    6. rights are properly called creatures of law
2. **Edmund Burke:** rights are sanctions from society
3. 
    1. conservative theory of rights

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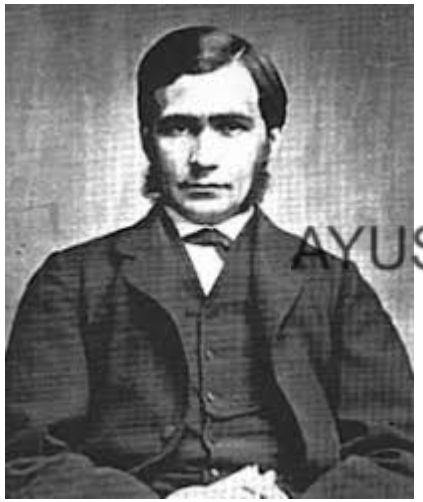
1. believed in concept of natural rights but not in social contract
    1. why to impose contract of previous generation on next
2. teleological: man is different from animal, hence requires rights

3. **TH Green**
4. 
    1. human consciousness postulates liberty...
    2. rights are not absolute, but conditional and limited
    3. rights are not permanent, but historically changing
    4. rights are not independent of society, but creation of society
    5. rights don't exist in isolation but require reciprocal
        1. rights come from customs and society
        2. man can't enjoy rights if no sanction from society
        3. natural rights are metaphysical abstractions (based on theology)
        4. natural rights doesn't bring consciousness of duty towards society
4. **Maccintyre**: (communitarian) Man is situated self, not atomistic
5. 
    1. belief in natural rights is like believing in witches and unicorns

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recognition
6. the objective of right is not individual good but common good

5. **Mill**
    1. Teleological
    2. rights for progress of men

Laski's theory



1. social-democratic perspective
2. social-democratic rights, important for human dignity

Statements of Laski

1. rights are the those conditions of social life, without which no man can seek in general to be at his best
2. every state is known by the rights it maintains. The performance of the state is judged on the basis of the contribution it makes to the substance of human happiness
3. the social order not based on the claims of individuals is based on sand
4. *rights are claims but the claims which are not empty of duties*
5. state should control the industry, otherwise industry will control the state

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Human Rights		
Origin	**International Bills on Rights**	**Kant, Locke (natural rights)= UDHR based on them**
1. after WW2	1. Universal Declaration of	1. dignity

1. after WW2 2. before WW2, monistic sovereignty, so no intervention 3. but if state violates, international community should come to protect (diluted sovereignty)	1. Universal Declaration of Human rights 1948 2. international covenants on civil and political rights 1966 3. international covenant on social and economic rights 1966	1. dignity 2. self-evident truth- Locke 3. man different from animal, hence treat different- Kant 4. universalist phenomena (independent of form of system) 1. available to all
Features	**Issues**	**Reasons for opposition**
1. Equality 1. women=men (controversial in non-western countries) 2. **Hillary Clinton**: human rights are woman rights. favours feminist foreign policy 2. universalist- opposition by Asian value concept 1. non-western countries suggest cultural-relativists approach 2. all should have few common rights (no consensus what all will qualify) 3. opposition to human rights in name of cultural relativism is thought as justification	1. human or terrorist 2. rights? what all 3. guardian of Human rights? who? (state?) 4. universalism 5. when life begins	1. promotion of western values 2. attempt of cultural imperialism

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to soft authoritarianism
3. individuality- opposition:
    1. communitarian (abstract individualism)
    2. marxist: bourgeoise
4. inalienable
5. permanence- opposition: when life starts

Opposition for universalism		
Value pluralists (toleration)	**Cultural relativists**	**Multi-culturalists**

1. latin- tolerare; to bear
2. **Isaiah Berlin**, negative liberty (positive liberty is totalitarian idea)
3. 
    1. toleration is core value of liberalism, not liberty
        1. 'substantive heart of liberalism'
    2. values are inherently pluralistic. E.g.-
	1. all cultures are equal, no hierarchy
	2. **Franz Boas**:
	3. 
	    1. related to communitarianism (idea of situated self)
	4. developed as reaction
		1. theme: protecting rights of minorities (non-dominant section), giving them voice and promoting their culture
		2. due to globalisation, identity consciousness is increasing which may lead to 'clash of civilisations'
		    1. it might also lead to cosmopolitan world order if pluralism, toleration exist
		3. since universal citizenship not possible, multicultural citizenship is proposed
		4. incorporated by indian constitution

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pluralistic. E.g. different meanings of liberalism
3. values are incommensurables
    1. can't be measured/quantified
    2. critical of Rawls: lexical order
4. nun=married woman (value their life)
5. the world that we encounter in ordinary experience is the world in which we face choices between ends equally ultimate, claims equally absolute, the realisation of some of which must inevitable involve sacrifice of other (hard choice)

4. value pluralists differ from value monism and value relativism= indifference
5. **Voltaire**
6. 

against UDHR by leaders of non-western world
5. relativism promoted against universalism of western values

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constitution
    1. special rights of minorities as fundamental rights
5. based on idea to reduce disadvantages of minority

Will Kymlicka

1. 
2. liberal multiculrural ist
3. book- **Multiculrual citizenship: a liberal theory of minority rights (1995)**
4. give special rights to minorities
    1. multi-cultural citizenship
    2. poly-ethnic rights
    3. special representation rights
    4. self-governance rights
    5. not for immigrants (came by choice) /refugees(help in deporting them)



1. i strongly detest to what you say, yet I will defend your right to say till death
2. on toleration

7. differences
    1. value pluralism= belief in one value, yet exercising toleration
    2. value monism= supremacy of particular value
    3. value relativism= indifference wrt different values
8. benefit of value pluralism for human rights
    1. help through dialogue
    2. introducing democracy at gunpoint has no meaning

Bhiku Parekh; book- **Rethinking multicultruralism**

1. 
2. post colonial perspective
3. give rights to non-national minorities also (culture/religion matters)
4. harm principle to be adopted while giving rights
5. in name of nationalism, majoritarianism customs are imposed on minorities
6. protecting rights of minorities
7. global community should go for conversation/dialogue

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Criticism of multiculturalism/cultural

Responsibility to protect

1. after end of cold war

Brazil's responsibility While Protection (against P5 deadlock in

relativism

1. feminist: **Susan Moler Okin**-
2. 

   book: gender, justice and society
   1. bad for women- most culture are discriminatory towards women
3. liberal: amarty sen- Ghettoisation
4. **Brian Barry**- too much focus on cultural issues takes away from developmental issues
   1. 

2. reinterpretation of sovereignty
3. ethnic conflicts (intra-state); art 2(7) fo UN charter prohibits intervention
4. commission led by Govt of Canada
5. sovereignty= responsibility of state to protect
6. international community can protect when states fail (based on guidelines
   1. force as last option
   2. use of force should be proportionate
   3. controversial (libya, syria)- used for regime change
   4. NATO's action led to more destruction which is condemned by Russia and China
7. R2P resolution adopted by UN and India signatory to it

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Syria

1. to make responsible for violation



5. cosmopolitan scholars: jeremy woldron



, seyla benhabib



- prevents cosmopolitan culture

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