

# Human Rights

Dr. Tracey Elliott  
University of Leicester



# WHAT ARE 'HUMAN RIGHTS'?



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Pretty much everything I say today is contested!

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Views differ as to how they developed and how they are to apply/be applied

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Modern idea of human rights geared towards western civilizations

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Idealistic in nature

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Concept of the universality of certain rights: 'core' human values, e.g. life

# Distinctive characteristics of human rights

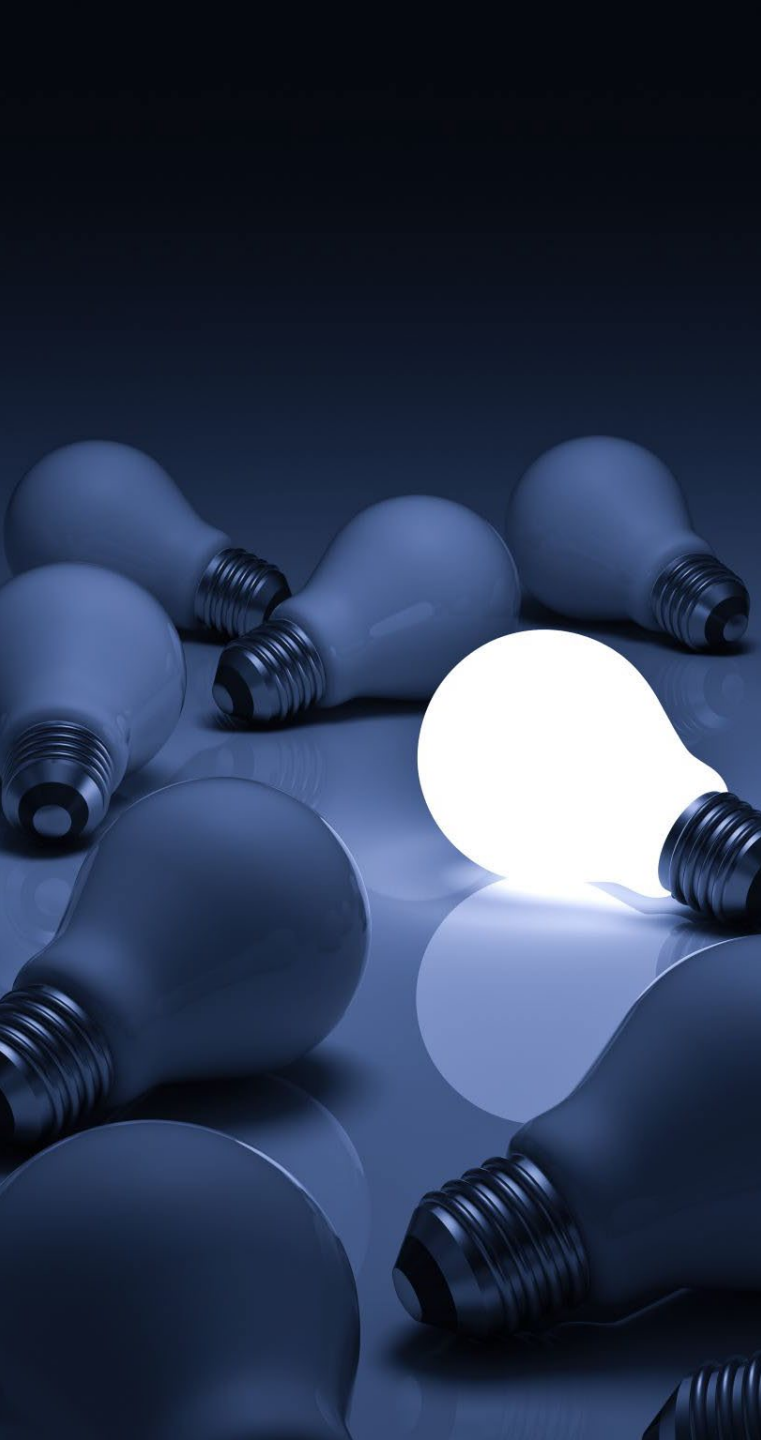
Universality: everyone has them



Everyone has them equally



They are the rights of individuals



# Origins

- Macintyre (*After Virtue*) :

“It would of course be a little odd that there should be such rights attaching to human beings simply *qua* human beings in light of the fact...that there is no expression in any ancient or medieval language correctly translated by our expression ‘a right’ until near the close of the middle ages: the concept lacks any means of expression in Hebrew, Greek, Latin or Arabic, classical or medieval, before about 1400, let alone in Old English, or in Japan even as late as the mid-nineteenth century.”



# The Greeks

- Aristotle believed that constitutions could assign rights to citizens
- Citizens' rights included rights to property and participation in public affairs.
- When rights were violated, laws determined compensation/punishment
- But no notion of *human rights*: believed rights derived from constitutions and some men slaves by nature



# Kenneth Dover

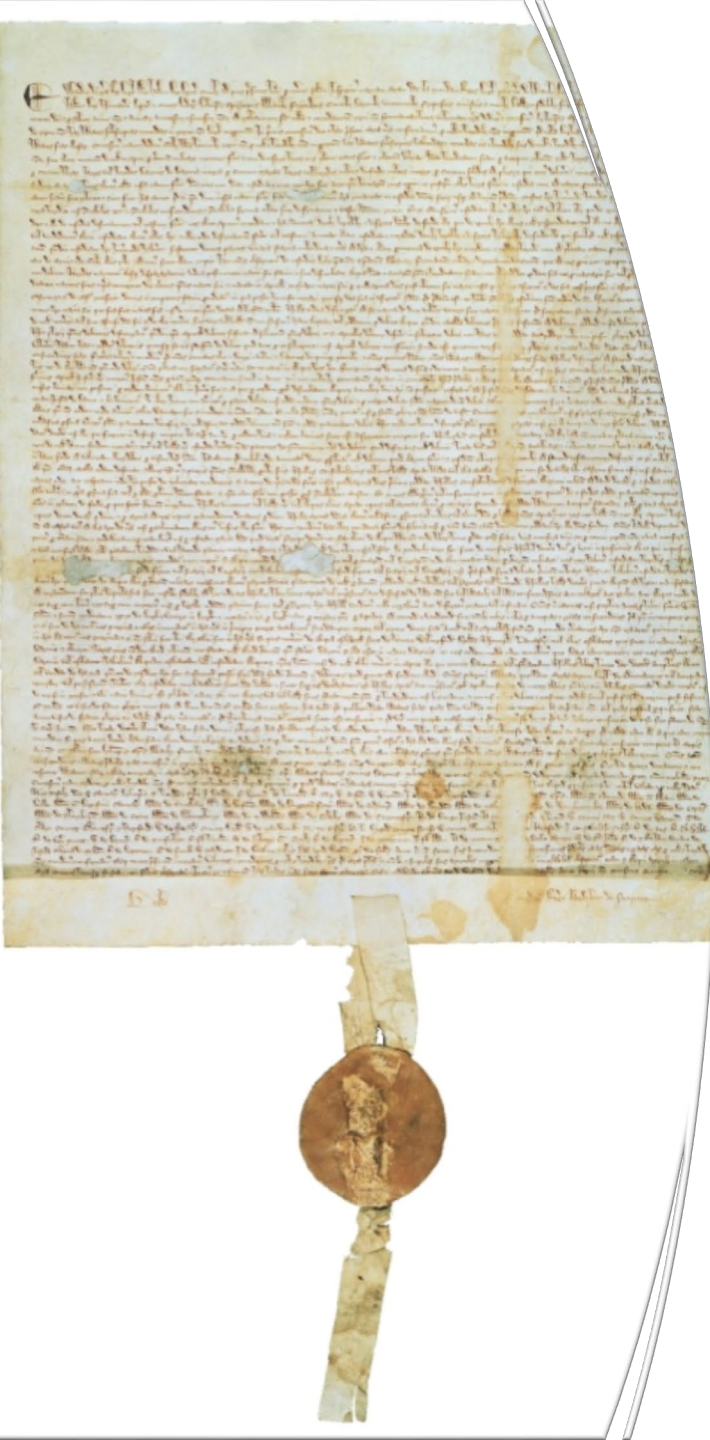
“The Greek did not regard himself as having more rights at any given time than the laws of the city into which he was born gave him at that time; these rights could be reduced, for the community was sovereign, and no rights were inalienable. The idea that parents have a *right* to educate...their children...or a *right* to take up the time of doctors and nurses in consequence of not wearing a safety-belt, would have seemed to a Greek too laughable to be discussed.”



# Magna Carta 1215

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- Principle that the king was subject to the law.
- Art 39: no free man shall be arrested, imprisoned, exiled or in any way ruined, except by lawful judgment of his peers or by the law of the land.
- But not a charter of 'human rights'.
- Purpose: to provide remedies for specific grievances.







# St.Thomas Aquinas

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- *Summa Theologica* (1265-74)
- “....this is the first precept of the law, that good is to be done and promoted and evil is to be avoided. All other precepts of the natural law are based on this.”
- Human law to be judged by conformity with natural law.

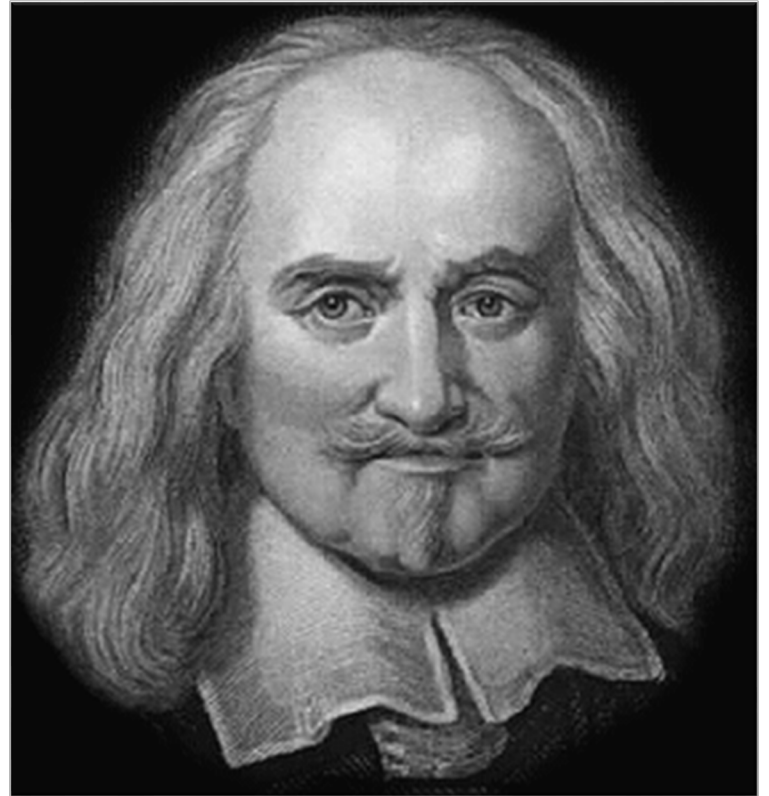
# Hugo Grotius (1583-1645)

- Will of God law, known through man's sociability, which was the basis of all other laws of nature.
- Law of nature concerned with maintenance of rights. Justice a matter of respecting and exercising individual rights..
- Separated study of rights from theology: theory did not logically require belief in God.



# Thomas Hobbes (1588-1679)

- “The RIGHT OF NATURE...is the liberty each man hath, to use his own power, as he will himself, for the preservation of his own Life;...of doing any thing, which in his own Judgement and Reason, hee shall conceive to be the aptest means thereunto”.



# John Locke

## (1632-1704)

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- Each individual had responsibility to God to observe laws of nature.
- God willed preservation of mankind and imposed on everyone obligations not to harm lives, health, liberty and possessions of others.





# American 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 inalienable rights, that among these are life, liberty and the pursuit of happiness – that to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed. That whenever any form of government becomes destructive of these ends, it is the right of the people to alter or abolish it.”



# Immanuel Kant (1724-1804)

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- 1785, *Groundwork for the Metaphysics of Morals*
- Supreme principle of natural law = **categorical imperative**: “So act that the maxim of your will can at the same time be a universal law”.
- “Treat all humans as ends in themselves, rather than as mere means”.



# Thomas Paine

- The Rights of Man: rights that men had by virtue of their status as human beings. Owed nothing to society or state.
- State had value and claims on obligations of citizens only as an instrument for protection of natural rights of individuals.





# Jeremy Bentham (1748-1832)

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- “...there are no such things as natural rights – no such thing as rights anterior to the establishment of government – no such things as natural rights opposed to, in contradistinction to, legal;...”
- “*Natural rights* is simple nonsense: natural and imprescriptible rights, rhetorical nonsense, - nonsense on stilts.”

## Aftermath of WWII: The Nuremberg Trials

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- Medical Trial: December 1946-August 1947
- 23 defendants
- 15 found guilty: 7 hanged
- 7 acquitted: several of physician defendants continued to practice medicine after war and some worked for German pharmaceutical industry



# Aftermath of WWII:

- Development of both bioethics and human rights arising out of WWII, Holocaust and Nuremberg Trials.
- Development of:
  - Ethical codes, conventions etc governing clinical and research practice, and
  - International human rights declarations, conventions and treaties aimed at preventing human rights abuses.



# Nuremberg Code 1948

1. The voluntary consent of the human subject is absolutely essential. This means that the person involved should have legal capacity to give consent; should be so situated as to be able to exercise free power of choice, without the intervention of any element of force, fraud, deceit, duress, over-reaching, or other ulterior form of constraint or coercion; and should have sufficient knowledge and comprehension of the elements of the subject matter involved, as to enable him to make an understanding and enlightened decision. ....

# Declaration of Helsinki 1964

11. It is the duty of physicians who participate in medical research to protect the life, health, dignity, integrity, right to self-determination, privacy, and confidentiality of personal information of research subjects.....
21. Medical research involving human subjects may only be conducted if the importance of the objective outweighs the inherent risks and burdens to the research subjects.
22. Participation by competent individuals as subjects in medical research must be voluntary. Although it may be appropriate to consult family members or community leaders, no competent individual may be enrolled in a research study unless he or she freely agrees.



# Universal Declaration on Bioethics and Human Rights (2005)

## **Article 3 – Human dignity and human rights**

1. Human dignity, human rights and fundamental freedoms are to be fully respected.
2. The interests and welfare of the individual should have priority over the sole interest of science or society.

## **Article 4 – Benefit and harm**

In applying and advancing scientific knowledge, medical practice and associated technologies, direct and indirect benefits to patients, research participants and other affected individuals should be maximized and any possible harm to such individuals should be minimized.

## **Article 5 – Autonomy and individual responsibility**

The autonomy of persons to make decisions, while taking responsibility for those decisions and respecting the autonomy of others, is to be respected. For persons who are not capable of exercising autonomy, special measures are to be taken to protect their rights and interests.

# UN Declaration of Human Rights 1948

## **PREAMBLE**

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 which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people,

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, ...,

# European Convention for the Protection of Fundamental Rights and Freedoms

- Ratified by UK 1951
- Came into force 3.9.1953
- 1966 UK accepted right of individual petition to European Court of Human Rights (ECtHR)
- Incorporated into UK law by Human Rights Act 1998 (in force: 2.10.2000)
- Rights guaranteed modelled upon UN Universal Declaration of Human Rights- but content of rights and qualifications more specific: reflects intention of states that rights be legally enforceable

# Objects and purpose of the ECHR:

- Maintenance and further realisation of human rights and fundamental freedoms.
- Promotion of ideals and values of a democratic society: balance between individual and group interests.
- Upholding the rule of law.
- ECHR intended to guarantee rights that are not merely 'theoretical and illusory', but 'practical and 'effective'. ECtHR will look at the reality of the position.

# 'Absolute rights'

- E.g. The right to life under Art. 2 (save in certain limited specified circumstances), and the prohibition on torture under Art. 3.
- No derogations permitted.
- Are no circumstances in which infringements of rights can be justified in public interest.

# Limited/qualified rights

- Limited rights: e.g. Art 5 (right to liberty and security of the person): limitations either set out in article, or implied by ECtHR.
- Qualified rights: e.g. Art 8 (right to respect for private life): include general qualification provision in second paragraph of article.
- Once infringement of limited/qualified right shown, for state/relevant body to show that violation justified:
  - Prescribed by law
  - Intended to achieve a legitimate objective
  - Necessary in a democratic society (proportionate)



# Human dignity as a fundamental value

- Both bioethics and human rights see dignity as being a key/fundamental/'shaping' principle.
- But:
  - Concept of human dignity vague and contested,
  - Dignity is not a 'magic' word.
- Charles Foster:

"Dignity is a slippery notion...Some aspects of dignity are like the proverbial elephant: we know them when we see them, but they are difficult to describe."
- Dignity as a term frequently used in human rights documents: not defined.

# What is human dignity?

- Often seen as a synonym for self-respect
  - ‘shaming’ behaviour may be seen as lessening dignity
- Not necessarily connected with bodily integrity: may be physically compromised and violated and still have dignity.

# Religious accounts

Dignity comes from God

All human beings equal in dignity, irrespective of:

- Social/political status
- Whether born/sentient

Non human beings do not have this form of dignity



# Dignity because of status as human

- UNESCO, Universal Declaration on the Human Genome and Human Rights:

“The human genome underlies the fundamental unity of all members of the human family, as well as the recognition of their inherent dignity and diversity...Everyone has a right to respect to their dignity and for their rights regardless of their genetic characteristics...that dignity makes it imperative not to reduce individuals to their genetic characteristics and to respect their human rights regardless of their genetic characteristics...”

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## Utilitarian accounts

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Basis of dignity (moral worth)  
is in our ability to suffer.

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Respect for dignity: obligation  
to prevent and not to bring  
about unnecessary suffering.

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Non sentient beings do not  
possess all of the rights that  
sentient beings do.

# Kant: Dignity of Reason

- “[Man] as a person, i.e. as the subject of a morally-practical reason, is exalted above all price...he is not to be valued merely as a means to the ends of other people, or even to his own ends, but to be prized as an end in himself...he possesses a dignity (an absolute inner worth) whereby he exacts the respect of all other rational beings in the world...”



# Concept of dignity unhelpful?

- Some (e.g. Macklin) see the concept as incoherent, unhelpful and even misleading:

“Dignity is a useless concept. It means no more than respect for persons or their autonomy.”

# Dignity & human rights

Dignity a key principle in human rights and human rights documents.

Mutual dependence.

Human rights : development of legal governance to 'flesh out' the principle.

But dignity  $\neq$  human rights: scope potentially wider than respect for persons or human rights: e.g. May be required to treat an embryo or a corpse (neither of which is a person or a rights' holder) with dignity

# Bioethics & Human Rights

- Annas: “[t]he disciplines of bioethics, health law and human rights are...all members of the broad human rights community.”
- Human rights (HR) has much to offer medical ethics/bioethics:
  - HR’s focus on wider/global issues (globalization/public health) may be seen as reorienting medical ethics/bioethics to look at/address broader issues/problems.

# Knowles (2001)

“The globalization of bioethics demands that we respond with coherent coordinated international policy and action. This action should be guided by a global bioethic. The human rights framework has much to offer as a guide to developing that ethic....The strength of the human rights framework lies in the moral force of its language, its practical and aspirational vision, the connection with international law, and its inclusion of communities and responsibilities.”

# Could human rights replace bioethics?

- Many of traditional norms of medical ethics have been carried over into human rights 'hard' and 'soft' law. Overlap between medical ethics/bioethics and international human rights norms.
- As medicine becomes more 'global' need for 'universal' norms.
- But:
  - What does this mean?
  - Change in orientation and practice of doctors?
  - Incorporation of medical ethics into human rights ideology?  
Convergence of bioethics/human rights?

# Bioethics & Human Rights need each other?

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Language of HR useful: casting a debate in HR terms allows a 'well tested and long-established common language, rhetoric and international practice to be applied to achieve consensus' both on nature of problem and possible solutions.

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HR may act as a 'bridgehead' between principled grounding of doctrine within health law & practical implementation of more abstract/universalist reasoning within bioethics.

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HR discourse may be useful to 'disrupt' bioethical discourse seen as being 'compromised' or 'in hock' to neoliberal governance interests.

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Potential for HR theory & practice to create foundational theory which will ground more applied & analytical work in bioethics.

# Problems?

- Terminology: Ambiguity in discussion between human rights/'international human rights': the latter implies human rights specifically recognised in international law.
- Subsumption would require *both* a reframing of medical ethics norms in the language of international human rights *and* practical activities on the part of sovereign states and judicial bodies.
- Problems re enforcement:
  - 'soft' law lacks formal enforcement mechanism;
  - not easy to use international law to protect individuals from wrongs done by other individuals.

# Other potential objections..

International human rights documents may be criticised as adopting a 'western' approach to human rights: 'cultural imperialism'.

Too individualistic: not attuned to more communal/collective basis of non-western societies, where there is greater focus on common interests of society.



# Problems re expansion of human rights discourse?

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Expansions of rights claims tends to devalue/undermine rights discourse.

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If everything = an issue of rights, then it detracts from the special protection that genuine moral rights deserve.

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Over-extension of rights claims may lead to 'crisis of confidence'.

# Rights v Obligations

O'Neill:

- Too often talk about rights using a substantival vocabulary('right to life', 'right to health') as though rights best thought of in abstraction from action as entitlements to entities or goods of one or another sort.
- This disguises the fact that these rights can only be respected and secured only if some agents are obliged to act in certain ways to others.
- Rights and duties/obligations inextricably linked.

