

# HUMAN RIGHTS

## Unit 1. Introduction

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1. Human rights: description
2. Links with the idea of dignity
3. Multidimensional nature
4. Human rights and fundamental rights

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# 1. Human rights: description

- Ambiguity and vagueness of words/concepts
- Human rights: distinctive mark of our time
- Human rights: fundamental and basic for human beings
  - Fundamental
  - Basic

# 1. Human rights: description

- Guarantee basic goods. Make it possible to have:
  - A life
  - Security
  - Autonomy and development
- Human rights: source of legitimacy.

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## 2. Links with the idea of dignity

- Human dignity: starting point.
  - Ontological excellence of human beings
  - Human beings as subjects, not objects
- Human dignity
  - Inherent
  - Absolute

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## 3. Multidimensional nature

- Philosophical dimension
  - Idealisation
- Legal dimension
  - Positivation
- Historical dimension
  - Constant evolution
  - Idealisation, positivation, realisation.

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## 4. Human rights and fundamental rights

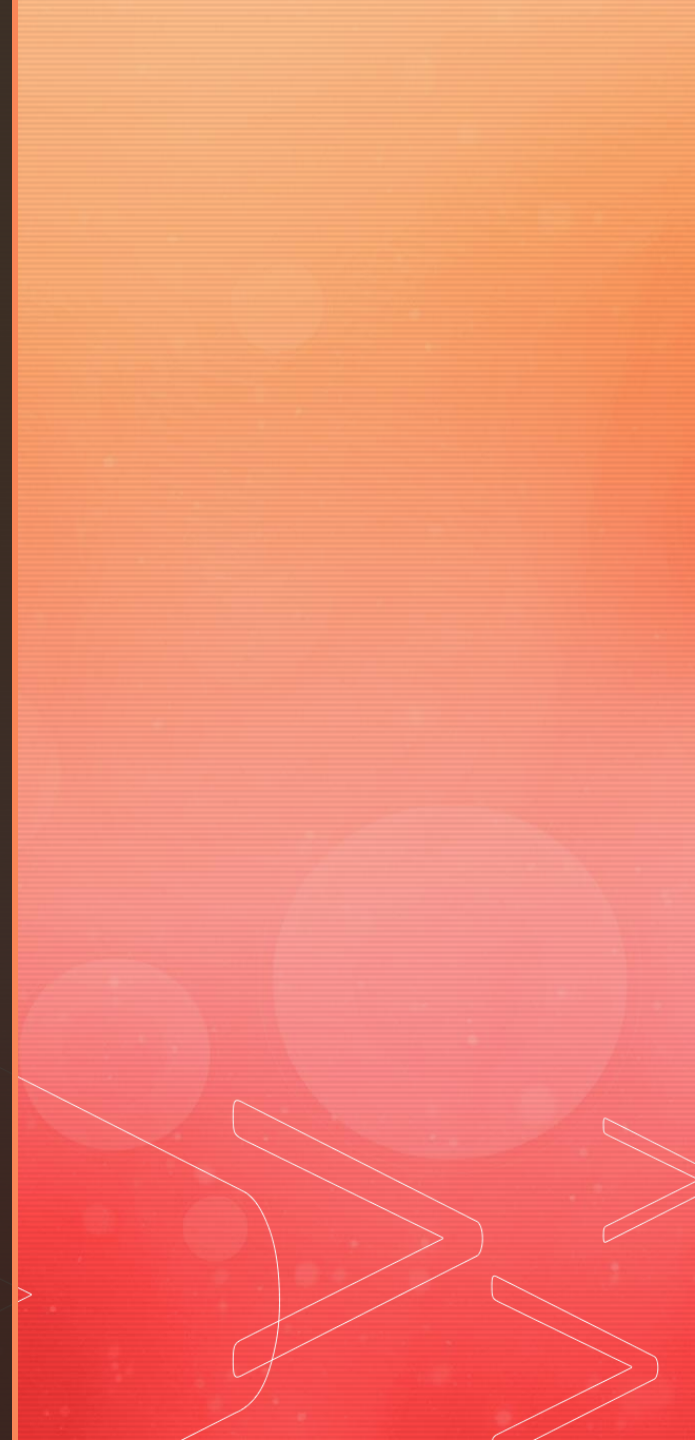
	Human rights	Fundamental rights
Where can we find them? / Where can we claim them?		
Are they generally enforceable?		
What is their content? / What do they express?		

## 4. Human rights and fundamental rights

- Fundamental rights: ‘positivised’ human rights
  - BUT very often used as synonyms.
- Definition of human rights (Antonio Enrique Pérez-Luño):
  - ‘The set of faculties and institutions that, in each historical moment, specify the demands of human dignity relating to life, liberty, equality, and solidarity of human beings, which must be positively recognised and reflected in national and international orderings’.

# HUMAN RIGHTS

## Unit 2. History



## Unit 2. History

1. Human rights on a national level
2. Human rights on the international level
  - a. Before the Second World War
  - b. After the Second World War



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# 1. Human rights on the national level

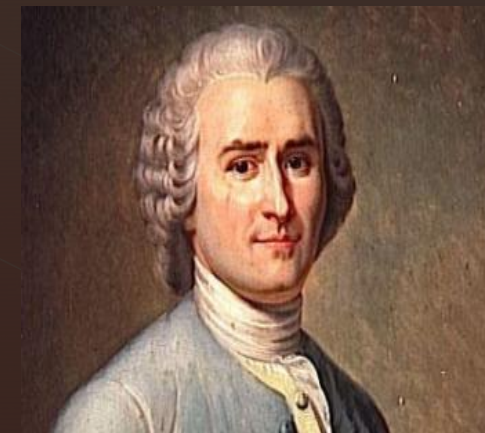
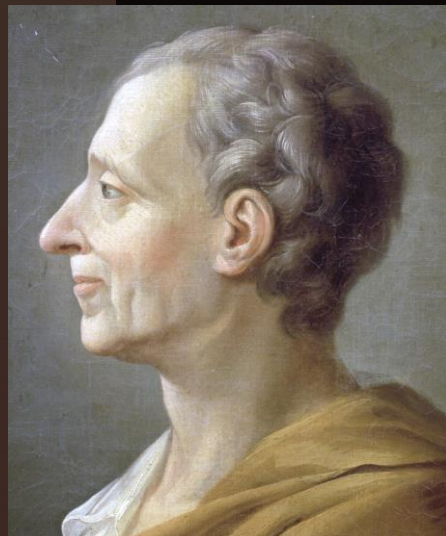
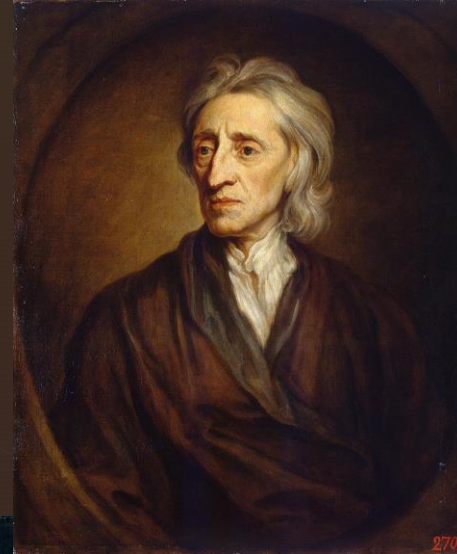




# 1. Human rights on the national level

- Key documents / landmarks:
  - **Hammurabi Code, c. 1750 BC.** One of the first true legal codes - includes general rules and some limits on arbitrary/absolute power. Asserts rule of law.
  - **Stoicism, I BC - I AD.** *Humanitas*, cosmopolitanism (citizens of the world)
  - **Christianity:** human dignity regardless of status/circumstances, brotherhood (equality), different understanding of power / challenge to power.
  - **Magna Carta, 1215.** A pact between king and nobility. Limitation of absolute/arbitrary power of the sovereign.
  - **Peace of Westphalia, 1648.** Ended the religious wars, establishes some religious tolerance. Precedent of international relations as we know them today.
  - **English Bill of Rights, 1689.** The context was the English Civil War and the 'Glorious Revolution', culminating in the Bill of Rights (1689). Despite its name the document was really a constitutional settlement that championed sovereignty of Parliament.
  - **Virginia Declaration of Rights, June 1776. US Declaration of Independence, July 1776:** government by consent, separation of powers, list of fundamental natural rights.
  - **French Declaration of the Rights of Man and Citizen, 1789:** French Revolution. End of the 'ancien regime' / monarchy, separation of powers, and fundamental rights.
  - **US Bill of Rights, 1791:** first ten amendments of the US Constitution.

# 1. Human rights on a national level



# 1. Human rights on a national level

- Key authors / Enlightenment thinkers
  - John Locke
  - Baron de Montesquieu
  - Thomas Hobbes
  - Thomas Paine
  - Jean-Jacques Rousseau
  - Immanuel Kant



# 1. Human rights on a national level

- Key ideas. Achievements
  - Rule of law
  - Limits to power / separation of powers
  - Social contract: the state exists to protect individuals
  - Natural rights of individuals
  - Self-evident truths
  - All men are created equal / equality
  - Confidence in progress / optimism



# 1. Human rights on a national level

- Key ideas. Achievements, victories/triumphs
  - These achievements are unquestionable. Many of the freedoms and rights we enjoy today are heirs to these first declarations.
  - **HOWEVER:** the shortcomings of Enlightenment.

## Unit 2. History

1. Human rights on a national level
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## 2. HR on the international level before WW2

- International humanitarian law

## 2. HR on the international level before WW2

- The abolition of slave trade

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# HUMAN RIGHTS

## Unit 3. Justifications



## Unit 3. Justifications

1. Introduction
2. Types of justifications
3. Some justifications: dignity and equality
4. Conclusion

## Unit 3. Justifications

1. Introduction
2. Types of justifications
3. Some justifications: dignity and equality
4. Conclusion

# 1. Introduction

- Justifying human rights
- Human rights as normative concepts
- Why justify human rights?

## Unit 3. Justifications

1. Introduction
2. Types of justifications
3. Some justifications: dignity and equality
4. Challenges
5. Conclusion

## 2. Types of justifications

- Monist / pluralist
- Religious / non-religious
- Consequentialist / categorical [video](#)

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### 3. Some justifications: dignity and equality

- Dignity
- Equality: equal moral worth

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## 4. Conclusion

- Human rights must be justified
- Multiple justifications
- Individual at the centre

# HUMAN RIGHTS

## Unit 3. Critiques

## Unit 4. Critiques

1. Early critiques
  1. Realist critique
  2. Utilitarian critique
  3. Marxist critique
2. More recent critiques
  1. Cultural relativist or particularist critique
  2. Feminist critique
  3. Post-colonial critique
3. Conclusion

## Unit 4. Critiques

1. Early critiques
  1. Realist critique
  2. Utilitarian critique
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2. More recent critiques
  1. Cultural relativist or particularist critique
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3. Conclusion



# 1.1. Realist critique

- Author: Jeremy Bentham.

- French Declaration, 1789: ‘nonsense upon stilts.’
- ‘Look to the letter, you find nonsense. Look beyond the letter, you find nothing.’

- Old realist critique

- The assumptions at the core of the old HR orthodoxy: the idea that HR are ‘natural’; existing irrespective of social recognition; and so discoverable through reason.
- Realism: stresses the man-made origin of HR and argues that they are not obvious at all.

- Current realist critique

- Current assumptions on theory of HR: HR are agreed through a deliberative process.
- Realism in international relations: the main actor is the state. States must fight for their own survival, security, and sovereignty. Political ethics should not be brought in line with private ethics. In other words, states should follow a public morality that differs from the one governing relations between individuals.

## 1.1. Realist critique

- For realists, HR belong to the imagination of utopian dreamers.
  - a) For Bentham: because the French Declaration did not provide a positive legal framework that made the declared rights real
  - b) For today's realists: because states do not wish to submit to the HR declarations that supposedly guide the international community.

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## 1.2. Utilitarian critique

- **Author: John Stuart Mill**
- Utilitarianism is the ethical philosophy that posits that an action must be judged morally by reference to the welfare (utility) it produces. It holds that the good act is the one that maximises happiness or welfare. That's why it is a consequentialist philosophy: it judges actions by reference to their consequences: 'the greatest amount of good for the greatest number of people'.
- Utilitarianism and HR are not unreconcilable, quite the contrary. JS Mill defended HR because they were conducive to the common good. HR orthodoxy has always been replete with utilitarian considerations (such as limitations to HR, and the concept of proportionality).
- HR orthodoxy increasingly slides from 'natural' logic into 'deliberative' mode. The deliberative mode conceives human rights as being agreed upon, the result of a consensus, rather than constituted as a universal given that exists outside social recognition.

## 1.2. Utilitarian critique

- For the old HR orthodoxy: HR are absolute and inalienable rights. Everyone has rights and everyone has the same rights and in the same intensity/grade.
  - o some rights are absolute and inalienable
  - o example: prohibition of torture is absolute. Any act of torture will be intrinsically wrong.
  - o when thinking about acting in a certain way, we ask ourselves: "Is it wrong?"
- Utilitarianism: it is contrary to the idea of absolute and inalienable rights
  - o no right is absolute and inalienable
  - o ex: prohibition of torture: it is not absolute. There might be a circumstance where an act of torture would be good for the collective (example: stopping a time bomb)
  - o when thinking about acting in a certain way, we ask ourselves: "Is it *causing* a wrong?"



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## 1.3. Marxist critique

- **Author: Karl Marx**
- For Marx, the rights of man were rights of egoistical men, separated from other men and the community.
- Marx denounces human alienation. While political emancipation might be achieved, this falls short of human emancipation.
- Marx: the rights declared in France mask and sustain the inequality and oppression characteristic of capitalist society.
- HR do not always emancipate us. Real emancipation cannot be expected through human rights. Real emancipation comes through the establishment of a communist society.
- The political (bourgeois) state represents a necessary stage in a progression towards communism. Political emancipation is a step, but the goal is human emancipation.
- Marx inspired revolutions and dictatorships throughout the world.

## 1.3. Marxist critique

- What/who is truly Marxist? That can be disputed. What is not disputed is the way Marx analysed power relationships and examined how things are not as they seem, and his analysis left a mark on all social sciences, and on many more recent HR critiques.
- Where Marx talked about bourgeoisie vs. proletariat:
  - cultural relativism discusses dominant culture vs. indigenous/dominated cultures
  - feminism discusses male vs. female
  - and post-colonialism discusses rich vs. poor, or centre vs. periphery

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## 2.1. Cultural relativist critique

- **Authors: American Anthropological Association (AAA)**
- AAA: how can the UDHR be truly universal, and not only Western? It called for respect for all cultures after the cultural destruction heralded by imperialism and colonialism.
- The UDHR is replete with Western concepts. Even the concept of HR is Western.
- What is cultural relativism? The theory is founded on two observations (descriptive):
  - moral systems are embedded in culture
  - different cultures produce different moralitiesand some inferences (normative):
  - different moralities must be tolerated

## 2.1. Cultural relativist critique

- Instead of saying 'we know best' or 'we know' (universalists), relativists pose the question: 'what do we know?'
- Universalism has
  - a good side (the drafting of minimal common standards)
  - and a bad side (arrogance).
- Relativism has
  - a good side (respect for difference)
  - and a bad side (indifference).
- We do not have a choice between being either universalists or particularists: we must be both at the same time. Similarly, HR law must accommodate both positions.
- Properly understood, the particularist critique is less a critique than a corrective to the ever-possible excesses of universalism.



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## 2.2. Feminist critique

- Author (predecessor): Olympe de Gouges
- Feminism is a way of looking at the world,
  - seeing it as organised along gendered lines which benefit men (descriptive),
  - and trying to change it so that women are empowered (normative).
- There are many ways of being a feminist:
  - liberal strand: equality
  - cultural feminism: ethic of care (vs. ethic of rights)
  - radical feminism: women's oppression
  - post-modern feminism: deconstructs the categories of 'woman' and 'gender'

The affirmation in law of women's entitlement to equal rights is a momentous achievement. While it must be celebrated, it should not lead to complacency. Feminist analyses demonstrate that HR law is still male-oriented.

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## 2.3. Post-colonial critique

- **Authors: Edward Said, Ratna Kapur**
- There are direct connections between the Enlightenment universalising project and the history of European and Western conquest. HR are entrenched in colonial logic.
- Aim of post-colonialism: to critique, expose, deconstruct, counter, and transcend the cultural and broader ideological legacies and presences of imperialism.
- Post-colonialism is committed to a double task:
  - reveal how colonial logic imbibes ideas and behaviours
  - make it possible to hear the experiences of the colonised ('Can the Subaltern speak?')
- Post-colonialism asserts that, contrary to its claims of being inclusive, the idea of HR was always an exclusionary concept.
- Can HR be redeemed? Many post-colonialists argue it can. Kapur: 'HR seem a preferable, though flawed ideal, to no rights at all.'

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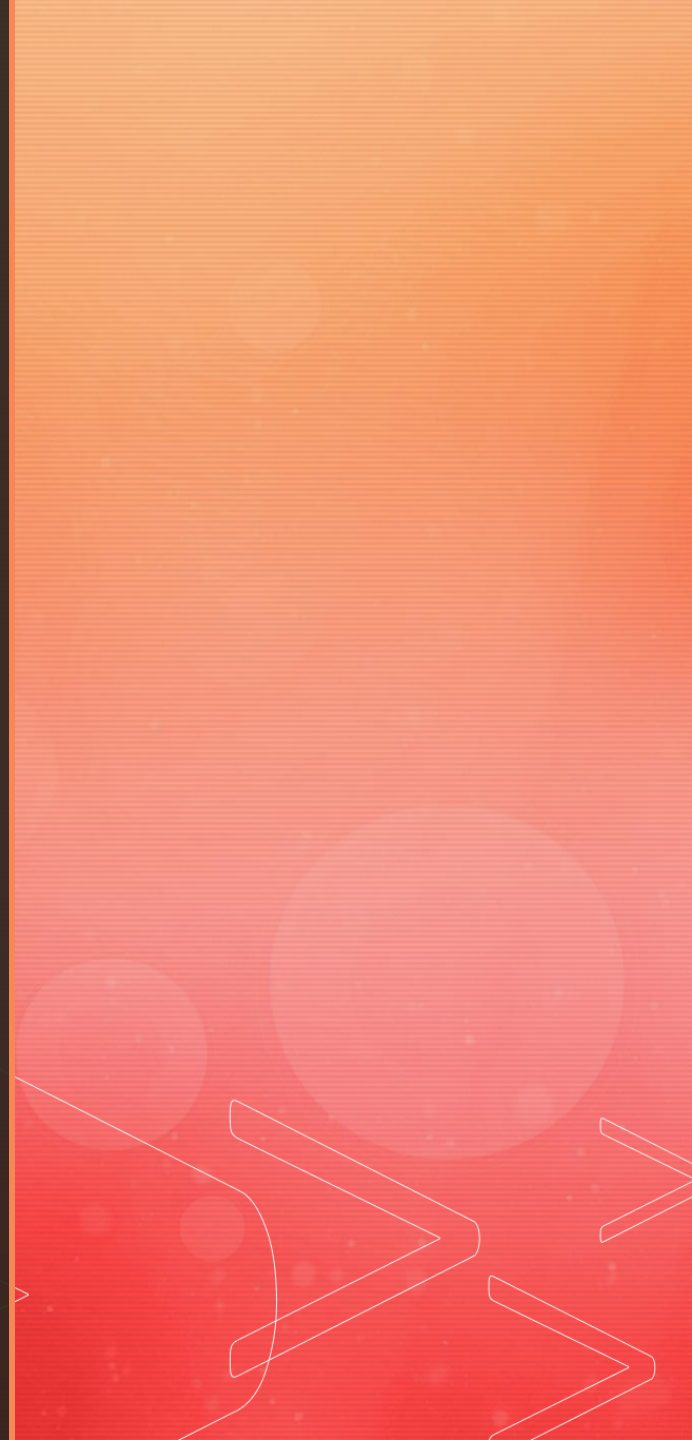
## 3. Conclusion

- Managing to 'give the HR body a soul' (R. Kapur) is a challenge which, if at all successful, will need to be taken up repeatedly (listening to and including these critiques), rather than being met once and for all.



# HUMAN RIGHTS

## Unit 5. Sources



## Unit 5. Sources

- Sources of international human rights law
  - Source
  - Source of law
  - Source of HR law
    - National
    - International

## Unit 5. Sources

- International:
  - International/global human rights treaties (9 core treaties)
  - Regional human rights treaties (e.g., Europe)

# HUMAN RIGHTS

- Unit 6.  
Human rights  
obligations

## Unit 6. Human rights obligations

1. Introduction. Special character of HR obligations
2. Implementation of human rights obligations
3. Conclusion



## Unit 6. Human rights obligations

1. Introduction. Special character of HR obligations
2. Implementation of human rights obligations
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# 1. Introduction. The special character of HR obligations

- International law
  - International HR law

	International law	International HR law
Actors		
Main concept		
Instruments		
Character		
Relationships		

## Unit 6. Human rights obligations

1. Introduction. The special character of HR obligations
2. Implementation of human rights obligations
3. Conclusion

## 2. Implementation of HR obligations

- Respect
- Protect
- Fulfil

## Unit 6. Human rights obligations

1. Introduction. The special character of HR obligations
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### 3. Conclusion

- HR obligations norms have a logic of their own

# HUMAN RIGHTS

- Unit 7.  
Scope of  
application

## Unit 7. Scope of application

1. Introduction. Who has human rights obligations?
2. Who has human rights?
3. Conclusion. Where do human rights apply?

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1. Introduction. Who has human rights obligations?
2. Who has human rights?
3. Conclusion. Where do human rights apply?

# 1. Introduction. Who has HR obligations?

- State responsibility
- Jurisdiction
- Who has HR obligations?



## Unit 7. Scope of application

1. Introduction. Who has human rights obligations?
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3. Conclusion. Where do human rights apply?

## 2. Who has HR?

- Foreigners
- The unborn
- Artificial entities

## Unit 7. Scope of application

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### 3. Conclusion. Where do HR apply?

Jurisdiction over...  
territory vs. individual