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William A. Edmundson

# An Introduction to Rights

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CAMBRIDGE INTRODUCTIONS TO PHILOSOPHY AND LAW



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## An Introduction to Rights

*An Introduction to Rights* is the only accessible and readable introduction to the history, logic, moral implications, and political tendencies of the idea of rights. It is organized chronologically and discusses important historical events such as the French Revolution. It deals with historical figures, including Grotius, Paley, Hobbes, Locke, Bentham, Burke, Godwin, Mill, and Hohfeld, and covers contemporary debates, including consequentialism versus contractualism.

Rights come in various types – human, moral, civil, political, and legal – and claims about who has a right, and to what, are often contested. What are rights? Are they timeless and universal, or merely conventional? How are they related to other morally significant values, such as well-being, autonomy, and community? Can animals have rights? Or fetuses? Do we have a right to do as we please so long as we do not harm others? Professor William A. Edmundson addresses these issues from both philosophical and legal perspectives.

As an undergraduate text, *An Introduction to Rights* is well-suited to introductions to political philosophy, moral philosophy, and ethics. It may also be used in courses on political theory in departments of political science and government and in courses on legal theory in law schools.

William A. Edmundson is Professor of Law and Philosophy at Georgia State University. He is the author of *Three Anarchical Fallacies* (Cambridge) and is co-editor of *The Blackwell Guide to the Philosophy of Law and Legal Theory*.


## Cambridge Introductions to Philosophy and Law

This introductory series of books provides concise studies of the philosophical foundations of law, of perennial topics in the philosophy of law, and of important and opposing schools of thought. The series is aimed principally at students in philosophy, law, and political science.

*Forthcoming*

Liam Murphy: *The Limits of Law*

*For Gloria Kelly, friend and guide*



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## Preface

This book is an introduction to the subject of rights. I hope it will interest general readers, but it is aimed at upper-level undergraduates and postgraduates pursuing studies in ethics, moral philosophy, political philosophy, law, legal philosophy, jurisprudence, political science, political theory, or government. At a level of detail appropriate to an introductory book, it covers the history, formal structure, philosophical implications, and political possibilities and tendencies of the idea of rights.

It is impossible to understand what rights are without having a sense of their development over time, but the goal here is to bring current controversies into focus, and to indicate the likely direction of further discussion about the proper role of rights in our moral and political thinking. The most important of these controversies have been taking place on two planes: one plane being that of global politics and political philosophy in the widest sense, the other being a narrower plane on which legal philosophers have investigated the logic of the concept of rights. My aim has been to discuss the substantive concerns of political

philosophy and the conceptual concerns of legal philosophy in a way that illuminates both.

One particular matter I hope this method illuminates has to do with understanding two different, though related, functions of rights – that is, rights as *prohibitions* and, contrastingly, rights as *permissions*. The former role of rights has predominated in traditional discussion: rights serve to endow individuals with a kind of “moral armor” protecting them from encroachments by political authority. The latter role, rights as permissions, emphasizes the importance of the moral “breathing room” that rights allow the individual, in which she may pursue projects of her own choosing, whether or not these are responsive to the demands that morality would otherwise impose upon her. The individual’s antagonist here is not political authority so much as it is morality itself. In the former role, rights *prohibit* others from doing things to the individual for any reason whatever; in the latter, rights *permit* the individual to ignore demands that would be made of her from a disinterested moral viewpoint.


There are other dimensions of the subject of rights that I bring into the discussion here. One has to do with what could be called the metaethics of rights – that is, the philosophical presuppositions that underlie the very idea that rights exist. This dimension is capable of illuminating the other dimensions to at least some degree, as the book suggests. But an integrated understanding of these differing dimensions – much less, a complete understanding of any one of them – is beyond the grasp of this “Introduction to Rights.” The Bibliographical Notes discuss my sources and suggest further reading.

I wish to thank the following: Andy Altman, Brian Bix, Clark Emerson, Martin Golding, Matt Kramer, Peter Lindsay, Chuck Marvin, Neil Kinkopf, Keith Poole, and two anonymous reviewers for Cambridge University Press, for commenting on the manuscript; participants in my rights seminars in 1999 and 2000, for their insights and patience; Jeremy Waldron, for strategic guidance at an early stage; and Terry Moore of Cambridge University Press, without whose encouragement this book would not have been possible. I am also grateful to my research assistants, Keith Diener, Wendi Armstrong, and Victoria Watkins, and to Christine Nwakamma, for help in preparing the final manuscript. The errors and omissions that remain in this book are my fault alone: but for the generous help of others there would have been more.



## A Note on Citation Form

To facilitate smooth reading, I have not used footnotes or endnotes, and I have slightly modified the author-date system to document my sources. Wherever it is obvious in the text which work and what author I am quoting or citing, I have simply provided a page number in parentheses. Wherever the context leaves it unclear which work or what author I am referring to, I have given a full author-date citation, in accordance with *The Chicago Manual of Style* (15th ed.). I have also included a section of Bibliographical Notes before the References.



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PART ONE

# The First Expansionary Era

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## The Prehistory of Rights

Rights are universal, many people say. Everybody possesses certain fundamental rights simply by virtue of being human. But there are also many people who say that rights are a modern, Western invention. Rights are something made up, “constructed,” by a certain historical culture – call it the modern, bourgeois West – that seeks, for its own purposes, to export its notions and even to impose them upon other cultures regardless of their traditional ways. And some people seem to want to say both that rights are something that modern Western culture made up and that rights belong to everybody simply by virtue of being human – ignoring the apparent inconsistency.

One way of trying to reconcile these conflicting opinions about the nature of rights is to trace the history of rights discourse, and see whether rights or something equivalent to rights are recognized in all human cultures at all times. If they are, then that would settle the question: rights, whatever else they are, are not simply a modern Western invention. If, on the other hand, rights are not universally recognized across cultures,

then the discovery may make us uneasy, for we will then have to face the following dilemma: Should we say that the particular moral cultures that do not, or did not, recognize rights are to that extent morally defective cultures, or should we say instead that the fact that a given culture rejects or ignores the idea of rights does not entitle us to draw any conclusions about its moral worth? (I ignore for now a third possibility, of viewing talk of rights as a decadent and defective mode of moral discourse.)

The dilemma has practical implications. If we are persuaded that rights are not recognized in all cultures, the question then arises: What posture should we adopt toward the cultures that do not recognize them? If the culture in question is a historical one – ancient Greece, say – the issue is whether we are to admire the ancient Greeks and even to emulate their culture, or whether to regard them as morally primitive, even blamable. If the culture in question is, on the other hand, a contemporary one – say, China or Iran – the issue is whether or not to regard that culture as a candidate for reform, censure, and sanctions by means of diplomatic, economic, or even military pressure. For it would be remarkable if a culture that did not recognize the existence of rights should nonetheless be able to treat its members decently. Or is it possible that a culture might treat its members decently without, by that very fact, exhibiting a recognition of rights held by its members?

Finding that a culture recognizes the existence of rights will not, of itself, satisfy all of our possible concerns about that culture's treatment of its members, for it is still possible that the kind of rights it recognizes, and its distribution of rights, may be defective. For example, one culture might tolerate religious nonobservance but not open dissent, or another culture might allow certain rights to all but a despised minority of outcasts. But we can appreciate that moral reform has a much surer opportunity within a culture that recognizes that some of its members, at least, have some rights, than it has within a culture to which the very idea of rights is alien.

Are rights a modern invention? Alasdair MacIntyre makes this observation about “natural” or *human* rights:

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 Japanese even as late as the mid-nineteenth century. (67)

MacIntyre's account would explain why historians of ideas disagree about which mediaeval thinker, writing in Latin, should be credited with having introduced our modern concept of rights: some say William of Ockham, some say Duns Scotus, others say Jean Gerson. The mediaeval thinkers had to express themselves in a classical language, Latin, in order to convey an idea for which language had no expression. So it is only to be expected that there should be disagreement, since none of the candidates clearly announced: "I am introducing a concept without precedent in this language."

Other writers have made similar observations about the concept of rights. Benjamin Constant, writing in the aftermath of the French Revolution, thought rights to be a modern innovation, and the twentieth-century classical scholar Kenneth Dover has written:

The Greek [of classical antiquity] 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 that the individual has a *right* to take drugs . . . 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. (157–58)

But here we should pause and consider carefully what to make of these claims. Assuming for the moment that we have before us a correct account of the linguistic resources and commonsense beliefs of, say, classical Greece, what conclusions would this warrant with respect to the nature and existence of rights?

The presence or absence of a word or concise phrase or locution in another language, with which to translate a word we use, is hardly conclusive as to the *availability* of an idea to speakers of another language. The Greeks had no word for *quarks*, but the idea of what a quark is could surely have been conveyed to them as a kind of constituent of certain subatomic particles – after all, we have borrowed the Greek terms *atomos*, *electron*, *proton*, and so on in order to describe these very things. So, if the argument is that the concept of rights cannot be attributed to a linguistic