

## *Dr Samantha Joy Cheesman*

'Where we come from does not determine who we can become. What we look like places no limits on what we can achieve. We should all have the right to express ourselves, all have the right to be heard, all have the right to be what we can be: To reach for the sky and touch the stars. No matter who we are, no matter whether we are man or woman, or rich or poor: My voice, my right. My voice counts.'

-Desmond Tutu

### *Class Summary: Concepts*

In the history of the development of human rights there have been and still are key voices who have contributed to the ongoing conversation about what a 'right' is and how we ought to conceptualise them.

This class will discuss and highlight some of these key figures and what they have to say about the development of human rights. In this handout I have chosen to highlight two theorists and their contributions to the development of human rights. They both have very different starting points when it comes to the language and the way in which they conceive of human rights. Both views are important to consider as it challenges our own preconceived understandings and maybe even misunderstandings concerning the concepts of human rights. The questions raised in most discussions concerning human rights revolve around where do rights originate, who is entitled to have rights, who gets to determine who has these rights, are rights universal and also what type of rights should be included in the list of human rights. Much debate has been had concerning this non-exhaustive list of questions. The readings for today's class will provide you with a deeper insight into the competing theories as well as exploring new areas that human rights could be applied to.

#### **Maurice Cranston (1920-1993)**

Maurice that human rights could be grouped under two headings: Legal rights and Moral rights.

Legal rights are those which are classified as being positive rights which are secured for everyone living in a particular jurisdiction. These human rights are protected within liberal nations in institutions which provide at least a facade of having rights but when they cannot be enforced they cannot be considered to be positive rights. The second category are moral rights. For Cranston, moral rights in order for them to be truly universal in nature they must be a smaller number. Cranston takes the right to life as an example of a right where it is easy to establish what infringes this right rather than the

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Author – Dr. Samantha Joy Cheesman

philosophical expression of that right

Cranston argues that political and Civil Rights are easily secured by legislation restraining the government's own executive arm. For Cranston it is also important to ask when can the language of human rights be invoked? He cites the following situations where it might be deemed that a human right has been violated and what the corresponding solution might be:

1. Student refused visa because of race: the right to free movement
2. Genocide: the right to life
3. Held in prison indefinitely without trial: the right to liberty and fair trial

Violating a human right is not just an affront to justice it also has consequences for calling into disrepute the network of human rights protection.

#### **Martha C Nussbaum (1947-)**

Martha Nussbaum's work has been particularly influential in the field of human rights. Both Nussbaum and Amartya Sen's work has looked at the question of capabilities being the measuring stick that we use when gauging the ability of one to access human rights.

The capabilities approach to human rights views one's ability to claim resources and opportunities which promote the full functioning of every individual as being central to realising these rights. It is a helpful method which enables us to understand what is needed to become capable of performing the major areas of human functioning.

This is an important reconceptualisation of the language of rights as most of the language of human rights focuses on ability. It is this expression of human rights which is dominant in formulating human rights: Rationality and language then come hand in hand and have a particularly nuanced approach when we consider that if in order to be able to be deemed competent to claim human rights these two aspects must be present then the rights of animals and people with disabilities force us to reconsider our original conceptualisations of human rights.

#### *Reading Task*

1. Are There Any Human Rights?
2. Collective responsibility for Severe Poverty
3. Legal Positivism

### *Self-Check Questions*

1. Should rights and duties be absolute or are there situations where it would be permissible to compromise human rights in order to achieve another important goal? Discuss.
2. If not by judicial means how might human rights violations be resolved? Discuss.
3. Why can Human Rights be considered as cultural values?

### *Definitions/Key Terminology*

- Positive rights
- Capabilities
- Liberties
- Privileges
- Duties

