WHY SHOULD I CARE?
INTRODUCTION

Although the term has gained recognition and acceptance, human rights is not a straightforward or universally accepted concept. An understanding of human rights in the twenty-first century requires us to explore the ideas and history of the debate in Western society for and against the rights of individuals as opposed to the duty owed to the society or state. It is also important to recognise that other cultures have not participated in a similar debate and that many nations are founded on belief systems that prioritise the idea of duty to society over the rights of individuals. The concept of human rights is not new; however, a significant change took place in the twentieth century. Before that time people thought about human beings having ‘natural rights’. As a result of the Second World War it became apparent that all human beings have a right to be treated as equals. This was one of the direct results of the genocide we now call the Holocaust.

In this chapter we are going to look at the principles of human rights and explore their origins: they come from religion, from philosophy, what has been enshrined in law or what has become institutionalised through government and international agreements. Australia’s record is also examined, raising questions about some of the practices of recent times, and the issues of what is important to the human race as a whole are investigated.

WHAT ARE HUMAN RIGHTS?

Defining ‘human rights’ is not simple or straightforward, despite the popular apprehension that this is a clear and straightforward concept. Beitz (2009:1) offers: ‘the idea that every person is a subject of global concern’, while Sepúlveda et al. (2004:3) provides the following: [Human rights] ‘is commonly understood as inalienable fundamental rights to which a person is inherently entitled simply because she or he is a human being’.

While the key idea seems to be that each and every individual person should have the legal, moral and social rights of every other member of the society to which they belong (Ignatieff 2001; Clapham 2007), this very idea is contentious because not all cultures or societies value either individuals or the concept of an egalitarian and equal society.
The debate that arises from these differing points of view has led to the development of international laws of human rights and the creation of specific documents (such as the United Nations Charter and the Declaration of Universal Human Rights) which attempt to add these different perspectives: ‘All human beings are born free and equal in dignity and rights’ (UN Universal Declaration of Human Rights 1945).

There are certain rights that are considered to be universal and which constitute the basis for ‘human rights’ in that they should be available to all people. These include the right to life itself, freedom from torture, slavery and loss of dignity (Freeman 2002; McBeth, Nolan & Rice 2011). Others that are often cited in the Western world, such as the right to free speech or freedom of movement or religion, are not always recognised in every culture. Similarly, the recent emerging awareness of the environmental issues that may threaten the human species as a whole has had the effect of a dawning recognition that access to clean water, air and food may in fact be fundamental human rights.

HISTORY OF THE IDEAS

Where did the ideas of human rights come from? It was not until the Renaissance that people in Western society began to consider the rights of individuals. Prior to that time, belief systems (both religious and secular) supported the understanding that people were subjects of the laws of God and the Prince. As a result of this worldview, the rights of persons were very little considered.

With the Renaissance, a renewed interest in humans was developed as scholars became familiar with texts from ancient Greece, which contained political and social ideas that had been forgotten since the fall of the Roman Empire. The concept of the citizen, the man who had a say in his destiny and that of the state to which he belonged, emerged from the writings about Athenian democracy. The movement known as humanism developed an emphasis on the person as central to state, culture and life, both through art and literature and in the developments in polities.

The rise of absolute monarchies in the sixteenth century was the result of the breakdown of the traditional system of feudalism, where the rulers literally owned the serfs. As people became less inclined to give total loyalty and began to question the authority of the princes, rulers arose who attempted to consolidate power over larger territories and through the exercise of repressive law and order campaigns. This political process was almost inextricable from a belief in the ‘divine right of kings’, and authority derived directly from God by which the king had the right to rule over all his subjects, and which ensured that all of his actions were sanctioned no matter how bizarre they might be.

In the seventeenth century, one of the most influential writers on the area of rights emerged from the aftermath of the English Civil War. This was John Locke, who had seen the impact of a battle between the Stuart king, Charles, who held that he had ‘the divine right of Kings’ to justify his actions, and the forces of the Parliament who held the belief that there should be democracy and religious freedom.
What makes Locke so important for the human rights debates of the twenty-first century is the influence his writings were to have on the revolutions of the late eighteenth century—both the French and the American. The preamble to the Constitution of the United States in 1776 uses almost the exact terms that Locke had developed in arguing that people had the right to ‘life, liberty and the pursuit of happiness’ (Jefferson 1776). The French Revolution leaders argued for Liberty, Fraternity and Equality in 1789, and changed the face of Europe by introducing a form of government by the people and by overthrowing the absolute monarchy, which had depended upon the divine right of kings for its legitimacy.

While there are various important thinkers who contributed to the understanding of the rights of humans in the nineteenth century (Thomas Paine, Henry David Thoreau, Karl Marx, J. S. Mill), it is the very power and dominance of the United States in the latter part of the twentieth century that has had the greatest influence over the form that human rights has taken. The ideas that shaped the liberal democracy of the United States and other Western nations owe a significant debt to John Locke whose writings informed the thinking of the ‘Founding Fathers’, and as Rawls (2001) has argued, it is the hegemony of the political power of these nations that have enabled their ideas of human rights to become framed as ‘universal’.

In the twentieth century, the fight for human rights took many forms, usually with a focus on a specific group. The struggles for women’s rights (Bunch 1990; Baskerville 2012), particularly the right to vote in the industrialised nations of the West, continued well into the twentieth century, with a later generation demanding more than citizenship with aims for control of reproduction and for the right to determine their own lives. This struggle is by no means over, as in many countries women still have inferior or no rights. The struggles for national or civil rights or independence from colonial overlords

---

**SPOTLIGHT ON LOCKE**

Locke’s idea of ‘natural rights’ was threefold: everyone should have life, liberty and property:

The state of nature has a law of nature to govern it, which obliges every one: and reason, which is that law, teaches all mankind, who will but consult it, that being all equal and independent, no one ought to harm another in his life, health, liberty, or possessions. (Locke 1690)

Locke argued that people are born equal and are invested with natural rights that could not be removed or impinged upon by government:

The natural liberty of man is to be free from any superior power on earth, and not to be under the will or legislative authority of man, but to have only the law of nature for his rule. (Locke 1690)
dominated a large part of the second half of the century, with leaders such as Mahatma Gandhi and Martin Luther King demanding that all persons have a say in their own governing and freedom from oppression. Later movements have included demands for rights for gay or indigenous people, or those with a disability or for children to be protected.

John Rawls offered the idea that human rights was actually an idea that needed no foundation in liberal thought to be accepted: ‘It turns out that a well-ordered non-liberal society will accept the same law of peoples that well-ordered liberal societies accept’ (2001:37). This idea is disputed by other scholars (Naticchia 1998; Schaefer 2005; Wilkins 2008). What emerges from this debate is the realisation that human rights is a complex area, even a paradox (Woodiwiss 2005; Wallach 2011), because what should be a matter of individuals having opportunities to live freely and without restraint becomes entangled in increasingly enmeshed sets of laws that restrict the sovereignty of nations and states.

PRINCIPLES

It is important to remember that the idea of human rights is not universal. The foundations of the principles of human rights can be found in the underpinning cultural structures of our social entities. These include the religious, legal and political processes that underpin cultures. In this section, the religious foundations of these ideas are explored, followed by the legal and political. The different religions of the world each have a code of conduct and moral behaviour, which it has developed over time. In the West the basic principles of natural rights were developed as part of the Judaeo Christian worldview. This means that implicit in our notions of what rights humans should have are included ideas that can be traced to the times when people were living nomadic lives and had occasion to own slaves. Duty was owed to God and the lives of humans were only important as they served the deity.

In Christianity the belief as to what constitutes human rights has changed over time; however, the basic principle is laid down in the Bible in Luke 6:31 and Matthew 7:12: ‘Do unto others as you would have them do unto you’. This concept, called the Gold Rule, and the injunctions to love one another and to recognise that charity was the basis of a Christian life, were all revolutionary in the first century of the Christian era. Slavery was still a part of everyday life, the right of the head of a family to have absolute control over life and death of family members, servants and slaves was embedded in the laws of the Roman Empire. Christianity brought a different view, one that offered a sense of recognition of other people as human. Over time, this perspective became caught up in the political processes of Europe, and the laws that enabled rulers to have autocratic rule over their subjects were not challenged until the nineteenth century.

In Islam, contemporary scholars (Khadduri 1946; Said 1979; Subedi 1999) are very clear that human rights are a significant part of the beliefs for Muslims. The first and the foremost basic right is the right to live and respect human life. The Holy Koran lays down: ‘Whosoever kills a human being without (any reason like) man-slaughter, or corruption on earth, it is as though he had killed all mankind ... (5:32)’ (A’la Maududi 1976).
Some of the religious practices that come from other cultures have implicit within them concepts of societies that are stratified. Hinduism, for example, is based in practice around a caste system, which divides society into four levels, each of which has a set relationship with the others. There is even a caste considered to be not quite human, or untouchable. The driving principle of the social process was Dharma: ‘Dharma is the law of righteousness that regulates relations between the individual, the family, the community, and the State’ (Subedi 1999). It was the influence of Mahatma Gandhi who demanded the rejection of the caste system as part of the process of gaining independence for India that began to make human rights part of the Indian consciousness.

When we consider the ‘human rights record’ of China it is important to remember that while China has been a Communist country for a hundred years, it was a nation founded in the religious tenets of Taoism and Confucianism. The principles of these two religions still underpin the cultural understandings of the relationships of humans. In both, the most significant element is the principle of duty to the ruler and the state. The person lives to serve the whole community, and that duty is more important than individual rights. If a person fails in their duty, they are seen to harm the whole society, their family and the country. This is a very different point of view from that of the West, where the individual is primary and most important.

Both Buddhism and Taoism emphasised the spirit and offered a religious process in which persons would share the connections with the physical world. In nations that are based on Buddhism, there is a sense in which the quest for personal perfection is reflected in the legal and political process. Those persons who are imperfect cannot enter into the religious attainment of Nirvana, but also tend to be regarded as unworthy of inclusion as full citizens (Hoffman 2001; Sevilla 2010).

THE LAW

In the west, the foundation of a legal basis for human rights is often ascribed to the Magna Carta. Drawn up in 1215, this document offered for the first time rights to trial by jury,
and not to be imprisoned without due process. While the agreement was signed between King John and his barons, and originally intended for the protection of the aristocracy from the king, it offered to men in Britain a right to be part of a legal engagement which could stand apart from the feudal arrangements in which one man owned another.

Four centuries later, in relation to another king who was seen as oppressive, the English Bill of Rights was promulgated in 1689 (Clapham 2007; Alston & Goodman 2013). Some of the clauses are still relevant today: ‘no excessive bail’ or ‘cruel and unusual’ punishments may be imposed, freedom of speech, the right to bear arms’ etc. In 1679 the *Habeas Corpus Act* made it law that no one could be detained without proper cause being shown and that they could not be detained indefinitely without conviction in a court of law. These acts influenced the American Bill of Rights (1776) and the French Declaration of the Rights of Man in 1789.

Under the Australian Constitution, which was ratified in 1900, citizens were granted specific enumerated rights:

- right to trial by jury
- right to just compensation
- right to freedom of religion
- right to freedom from discrimination against out-of-state residents
- right to own property and to trade.

Women were granted citizenship and the right to vote at Federation in 1901 (the Commonwealth *Franchise Act* of 1902 made it official); Aboriginal people were not granted citizenship and the right to vote after the referendum of 1967—they already had both, but now they were allowed to exercise those rights; the White Australia policy, which was supported by governments from the 1890s to the 1960s, precluded non-white immigrants from entering the country; capital punishment was abolished by 1985 guaranteeing the right to life, even for offenders against the society.

In Australia, we often assume that we have certain rights, which actually are not within our constitution. The right to free speech is honoured in practice as a result of the British Bill of Rights, but is not guaranteed by our own constitution. The right to privacy is also not guaranteed, as shown in the aftermath of the 9/11 terrorist attacks in the US and the 2012 Bali bombings when legislation was passed (echoing the USA’s *Patriot Act*) which revoked rights to privacy from state intrusion in the instance of the suspicion of terrorist activities.

There are several Acts of Parliament that cover the area of human rights in Australia:

- *Age Discrimination Act* 2004
- *Australian Human Rights Commission Act* 1986
- *Disability Discrimination Act* 1992
- *Racial Discrimination Act* 1975

In addition to these, there are several provisions to deal with the rights of Indigenous people, including those that enabled the access to the ownership of property. These include the *Native Title Act*, both the Wik and the Mabo decisions of the High Court, and the Aboriginal and Torres Strait Islander Heritage Protection Bill 1998.
Australia has been a signatory to the United Nations Charter of Human Rights and, in fact, was closely involved in the original development of the Charter. The Australian Human Rights Commission was set up in 1986 to manage and investigate issues of human rights in Australia.

**AUSTRALIA AND HUMAN RIGHTS CONVENTIONS**

Australia has agreed to be bound by the following treaties:

- Convention on the Prevention and Punishment of the Crime of Genocide
- Convention on the Political Rights of Women
- International Convention on the Elimination of all forms of Racial Discrimination
- Convention on the Elimination of all forms of Discrimination against Women
- Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment
- Convention on the Rights of the Child
- Convention on the Reduction of Statelessness
- Convention Relating to the Status of Stateless Persons
- Convention Relating to the Status of Refugees
- Slavery Convention of 1926
- Supplementary Convention on Slavery
- Convention on the Rights of Persons with Disabilities.

Despite our record of addressing human rights, there are still some issues that show Australia has not had a perfect record. It is important to consider why this might be. Some of the examples of the areas that show our practice to be less brilliant than our theories are:

- Mandatory sentencing: from 1997 the Northern Territory had active legislation which meant a third offence (even for minor crimes) automatically would incur a significant prison sentence and the magistrate or judge was not permitted to vary this. As the majority of the offenders were young Indigenous males, this practice appeared to be discriminatory.

- Mandatory detention of asylum-seekers: this practice was consolidated with the *Migration Reform Act* of 1994 and has affected refugees coming to Australia ever since. It means that any person entering Australia without having established prior to arrival that they are immigrants will be put in prison for an indeterminate length of time. This has included children.

- Northern Territory Emergency Response (the ‘intervention’): established by PM John Howard in 2006, the army was sent in to rural and remote Indigenous communities to enforce a prohibition on alcohol and to restrict welfare payments while seeking to
‘improve conditions’. It was explicitly exempted from the *Racial Discrimination Act 1975*, and it saw the abolition of the Community Development Employment Program.

**INTERNATIONAL LAWS OF HUMAN RIGHTS**

The development of international human rights law has been a complex and complicated process (Sepúlveda et al. 2004; McBeth, Nolan & Rice 2011; Alston & Goodman 2013). Initiated by the foundation of the United Nations and consolidated by the adoption of the UN Charter on Human Rights in 1948, the movement has been developing ever since. Various covenants and conventions have been signed or created. These include:

- International Covenant on Economic, Social and Cultural Rights 1966
- International Covenant on Civil and Political Rights 1966
- treaties with nations
- formation of committees for the elimination of racism, discrimination against women, and torture; and committees to promote the rights of the child, of migrant workers and people with disabilities.

In 2013 almost all nations are members of the United Nations; however, not all are yet signatories to the Charter. There are no courts that deal with the application of human rights law in general; however, the various conventions allow signatories to be prosecuted within specific courts for significant breaches, particularly the International Criminal Court (the ICC) which has tried persons accused of war crimes and genocide. Australia is a signatory to all seven of the UN conventions, as well as to the UN Charter and is obliged by law to prosecute breaches committed here. The Australian Human Rights Commission (formerly Human Rights and Equal Opportunity Commission) was set up in 1986 to oversee the application of human rights laws within Australia and to investigate breaches or acts of discrimination.

**United nations charter**

The United Nations Universal Declaration of Human Rights was proclaimed in 1948. The United Nations was formed at the end of the Second World War as a group of countries that had come together to prevent further wars and to improve the lives of all people on the planet. The Charter was compiled as a list of the essential rights that should be available to all people in all lands.

The drafting of the document was undertaken by a committee led by Eleanor Roosevelt and which included members from Australia (William Hodgson), Canada (John Peter Humphrey), China (Peng-chun Chang), Chile (Hernán Santa Cruz), France (René Cassin), Lebanon (Charles Habib Malik), the United Kingdom (Charles Dukes) and the Union of the Soviet Socialist Republics (USSR; Alexander E. Bogomolov). This diversity ensured that there was lively debate, even though the fundamental principles of the Charter were essentially accepted despite minor differences. It has been noted since that, despite the variety of origins of the committee members, no provision was made to include representatives of nations that were still under colonial rule at that time.