A Philosophical Introduction to Human Rights

While almost everyone has heard of human rights, few will have reflected in depth on what human rights are, where they originate from and what they mean. A Philosophical Introduction to Human Rights – accessibly written without being superficial – addresses these questions and provides a multifaceted introduction to legal philosophy.

The point of departure is the famous 1948 Universal Declaration of Human Rights, which provides a frame for engagement with western legal philosophy. Thomas Mertens sketches the philosophical and historical background of the Declaration, discusses the ten most important human rights with the help of key philosophers, and ends by reflecting on the relationship between rights and duties. The basso continuo of the book is a particular worldview derived from Immanuel Kant. "Unsocial sociability" is what characterizes humans: the tension between the individual and social nature. Some human rights emphasize the first, others the second aspect. The tension between these two aspects plays a fundamental role in how human rights are interpreted and applied.

Thomas Mertens is a specialist on the relationship between law and morality. He has published extensively on human rights, Kant’s moral and legal philosophy, the just war tradition and law and morality in Nazi-Germany. He teaches at Radboud University Nijmegen and has also held adjacent positions at Leiden University and Catholic University Leuven.
The Law in Context Series

Editors: William Twining (University College London), Maksymilian Del Mar (Queen Mary, University of London) and Bronwen Morgan (University of New South Wales).

Since 1970 the Law in Context series has been at the forefront of the movement to broaden the study of law. It has been a vehicle for the publication of innovative scholarly books that treat law and legal phenomena critically in their social, political and economic contexts from a variety of perspectives. The series particularly aims to publish scholarly legal writing that brings fresh perspectives to bear on new and existing areas of law taught in universities. A contextual approach involves treating legal subjects broadly, using materials from other social sciences, and from any other discipline that helps to explain the operation in practice of the subject under discussion. It is hoped that this orientation is at once more stimulating and more realistic than the bare exposition of legal rules. The series includes original books that have a different emphasis from traditional legal textbooks, while maintaining the same high standards of scholarship. They are written primarily for undergraduate and graduate students of law and of other disciplines, but will also appeal to a wider readership. In the past, most books in the series have focused on English law, but recent publications include books on European law, globalisation, transnational legal processes, and comparative law.

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The International Journal of Law in Context is the companion journal to the Law in Context book series and provides a forum for interdisciplinary legal studies and offers intellectual space for ground-breaking critical research. It publishes contextual work about law and its relationship with other disciplines including but not limited to science, literature, humanities, philosophy, sociology, psychology, ethics, history and geography. More information about the journal and how to submit an article can be found at http://journals.cambridge.org/ijc
A Philosophical Introduction to Human Rights

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# Contents

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Preface</td>
<td></td>
<td>xi</td>
</tr>
<tr>
<td>1</td>
<td>Legal Philosophy and Human Rights</td>
<td>1</td>
</tr>
<tr>
<td><strong>PART I</strong></td>
<td>BACKGROUND TO THE UNIVERSAL DECLARATION</td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>The Political and Juridical Context of the Universal Declaration</td>
<td>19</td>
</tr>
<tr>
<td>3</td>
<td>The Philosophical Context of the Universal Declaration</td>
<td>38</td>
</tr>
<tr>
<td>4</td>
<td>Human Dignity</td>
<td>56</td>
</tr>
<tr>
<td>5</td>
<td>Intermezzo I</td>
<td>70</td>
</tr>
<tr>
<td><strong>PART II</strong></td>
<td>NEGATIVE FREEDOM</td>
<td></td>
</tr>
<tr>
<td>6</td>
<td>Everyone Has the Right to Life</td>
<td>81</td>
</tr>
<tr>
<td>7</td>
<td>No One Shall Be Subjected to Torture</td>
<td>96</td>
</tr>
<tr>
<td>8</td>
<td>No One Shall Be Unfairly Punished</td>
<td>110</td>
</tr>
<tr>
<td>9</td>
<td>Everyone Has the Right to Their Own Space</td>
<td>129</td>
</tr>
<tr>
<td>10</td>
<td>Everyone Has the Right to Property</td>
<td>142</td>
</tr>
<tr>
<td><strong>PART III</strong></td>
<td>POSITIVE FREEDOM</td>
<td></td>
</tr>
<tr>
<td>11</td>
<td>Everyone Has the Right to Take Part in the Government of Their Country</td>
<td>165</td>
</tr>
<tr>
<td>12</td>
<td>Everyone Has the Right to ‘Nationality’</td>
<td>185</td>
</tr>
<tr>
<td>13</td>
<td>Everyone Has the Right to Belong</td>
<td>201</td>
</tr>
<tr>
<td>14</td>
<td>Everyone Has the Right to a Decent Standard of Living</td>
<td>215</td>
</tr>
<tr>
<td>15</td>
<td>Everyone Has the Right to International Legal Protection</td>
<td>232</td>
</tr>
<tr>
<td><strong>PART IV</strong></td>
<td>DUTIES AND VIRTUES</td>
<td></td>
</tr>
<tr>
<td>16</td>
<td>Intermezzo II</td>
<td>249</td>
</tr>
<tr>
<td>17</td>
<td>Everyone Has the Duty of Obedience</td>
<td>256</td>
</tr>
<tr>
<td>18</td>
<td>Everyone Has the Duty to Behave with Moderation</td>
<td>269</td>
</tr>
<tr>
<td>Bibliography</td>
<td></td>
<td>283</td>
</tr>
<tr>
<td>Subject Index</td>
<td></td>
<td>294</td>
</tr>
<tr>
<td>Name Index</td>
<td></td>
<td>297</td>
</tr>
</tbody>
</table>
Preface

Readers of recent literature on human rights could easily come to the conclusion that we are approaching what one commentator has called 'the end of human rights', and another, 'the endtimes of human rights'. The heyday of human rights seem to be over and courts, such as the European Court of Human Rights, now attract fierce criticism from across the political spectrum when they find that acts of national governments violate human rights. Contrary to this trend, this book argues that the age of human rights need not be over, certainly not when they are understood in line with the Universal Declaration of Human Rights.

This very important 1948 document does not, as critics of human rights often argue, focus exclusively on civil and political rights. It does not deny the importance of human duties. Neither does it invoke an implausible view of the human being as primarily an egoistic being, nor, as Marx once formulated it, as an individual separated from the community and solely concerned with self-interest. Moreover, the Universal Declaration includes no role for activist courts.

In addition to enriching our understanding of the human rights debate, the Universal Declaration encapsulates an attractive philosophy of law. Not all aspects of the long and rich tradition of legal philosophy can be discussed when analysing the text of this Declaration, but much of this tradition can be accessed through it and thereby given context: the validity of positive law, the role of individual rights, the just claims by communities and states, and the place of morality within the life of the law. An earlier, Dutch edition of this book, Mens & Mensenrechten (beautifully published in 2012 by Boom Publishers Amsterdam) has introduced large numbers of students to the ancient and modern worlds of legal philosophy. While this book is designed as an introductory text for all readers, it has been created for teaching purposes and has served this goal well over the last several years. For this English edition, all chapters of the book have been thoroughly revised and updated. Yet the hope remains the same: that it will serve the same goal of introducing an audience of students of law and philosophy, in an accessible yet not superficial manner, to the fascinating and important world of legal philosophy by means of reflecting on human rights.
Preface

I am grateful not only to the generations of students that I have had the privilege to teach, but also for the support given to me by Boom Publishers in Amsterdam and by Cambridge University Press. I have been helped in preparing this book by Jill Bradley and Steven van Gool. Over the years, I have received excellent feedback on the thinking that forms the basis of this book, and on the texts themselves, by many colleagues. Here I single out Morag Goodwin, Corjo Jansen, Stanley Paulson and Ronald Tinnevelt for particular thanks.