

Legal Rights

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GENERAL

Legal discussion is full of talk about legal rights. There is a legal right not to be assaulted, a legal right to dispose of your property, a legal right to a fair trial, and so on. But what is the nature of a legal right? In this option, we'll try to make progress on this basic question by considering three issues. In week 5, we'll consider the *form of rights*, meaning the conceptual relations between rights and other building blocks of the law, including duties, permissions, and powers. The second issue, taken up in week 6, is the *function of rights*. We'll compare two theories of what rights are for – letting you control things or protecting your interests. Finally, in week 7, we'll think about the *force of rights*, where the focus will be on whether rights have a special normative force, such as by 'trumping' or 'excluding' competing considerations.

TIMES AND LOCATION

There will be three classes. They will be on Tuesdays in weeks 5–7 from 3–5pm in the Amersi Room in Brasenose College.

FORMAT AND EXPECTATIONS

Although I will spend some of the time telling you about the topics, this is not a lecture course. We'll aim to spend at least half of each class in discussion, either as one big group or in smaller groups. It's okay to just listen and think for some of the time. But the classes will go better – and you'll have more fun – if everyone is engaged. Try to contribute every class.

There is required reading to do before each class. Make sure you do all of this reading before class: it's the way to get the most out of class, and it will help us to have a good discussion. The further reading is not required but it will help with your essays.

WEEK 5 | FORM OF RIGHTS

Required reading

- W Hohfeld, 'Some Fundamental Legal Conceptions as Applied in Judicial Reasoning I' (1913) 23 *Yale Law Journal* 16
- W Hohfeld, 'Some Fundamental Legal Conceptions as Applied in Judicial Reasoning II' (1917) 26 *Yale Law Journal* 710
- J Feinberg, *Social Philosophy* (Prentice-Hall 1973), ch 4
- M Kramer, 'Rights Without Trimmings' in M Kramer, NE Simmonds, and H Steiner, *A Debate Over Rights* (OUP 1998) pp 7-60

Further reading

- HLA Hart, 'Legal Rights' in *Essays on Bentham* (OUP 1982)
- G Rainbolt, 'Rights as Normative Constraints on Others' (1993) 53 *Philosophy & Phenomenological Research* 93
- V Brown, 'Rights, Liberties and Duties: Reformulating Hohfeld's Scheme of Legal Relations?' (2005) 58 *Current Legal Problems* 343
- J Finnis, 'Rights: Their Logic Restated' in *Philosophy of Law* (OUP 2011)

Questions

- What makes for a good or successful analysis of rights?
- Is a duty the 'invariable correlative' of a right?
- What is a 'liberty' and how is it different from a 'claim right'?
- How, if at all, does a legal right differ from a moral right?

WEEK 6 | FUNCTION OF RIGHTS

Required reading

- J Feinberg, 'The Nature and Value of Rights' (1970) 4 *Journal of Value Inquiry* 243
- HLA Hart, 'Definition and Theory in Jurisprudence' in *Essays in Jurisprudence and Philosophy* (OUP 1983)
- J Raz, 'On the Nature of Rights' (1984) 93 *Mind* 194
- G Sreenivasan, 'A Hybrid Theory of Rights' (2005) 25 *OJLS* 257

Further reading

- N MacCormick, 'Rights in Legislation' in J Raz and PMS Hacker (eds), *Law, Morality, and Society: Essays in Honour of HLA Hart* (OUP 1977)
- N MacCormick, *Legal Right and Social Democracy* (OUP 1982)
- M Kramer, 'Rights Without Trimmings' in M Kramer, NE Simmonds, and H Steiner, *A Debate Over Rights* (OUP 1998) pp 60–101
- H Steiner, 'Working Rights' in M Kramer, NE Simmonds, and H Steiner, *A Debate Over Rights* (OUP 1998)
- L Wenar, 'The Nature of Rights' (2005) 33 *Philosophy & Public Affairs* 223

Questions

- What is the will theory of rights? What is the interest theory?
- What is the relationship between Hohfeld's project and that of the will/interest theorists?
- Can the will theory explain why young children have rights?
- Can the interest theory explain why people sometimes have rights that it is not in their interest to have?

WEEK 7 | FORCE OF RIGHTS

Required reading

- A Gewirth, 'Are There Any Absolute Rights?' (1981) 31 *Philosophical Quarterly* 1
- R Dworkin, 'Rights as Trumps' in J Waldron (ed), *Theories of Rights* (OUP 1984)
- C Wellman, *Real Rights* (OUP 1995), ch 7
- JJ Thomson, 'Some Ruminations on Rights' (1977) 19 *Arizona Law Review* 45

Further reading

- G Rainbolt, *The Concept of Rights* (Springer 2006) ch 6
- F Kamm, 'Rights' in J Coleman and S Shapiro, *Oxford Handbook of Jurisprudence and the Philosophy of Law* (OUP 2002)

Questions

- Do rights take priority over the realisation of societal goals?
- Can rights conflict with one another? If so, how are such conflicts resolved?
- Does the correct account of the function of rights (will, interest, or something else) have any implications for the force of rights?