

## Literatur zu moralischen Rechten

### Bibliography on moral rights

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Alphabetische Ordnung / alphabetical order:

<http://www.ethikseite.de/bib/brechte.pdf> (<http://www.gwdg.de/~sophia/schroth.htm/brechte.pdf>)

Chronologische Ordnung / reverse chronological order:

<http://www.ethikseite.de/bib/crechte.pdf> (<http://www.gwdg.de/~sophia/schroth.htm/crechte.pdf>)

- 2008 [1] Pavlakos, George (2008): Non-Individualism, Rights, and Practical Reason, *Ratio Juris* 21, S. 66–93.<sup>1</sup>
- 2007 [2] Ivison, Duncan (2007): *Rights*, Chesham.<sup>2</sup>
- 2007 [3] Kramer, Matthew H./Steiner, Hillel (2007): Theories of Rights: Is There a Third Way?, *Oxford Journal of Legal Studies* 27, S. 281–310.<sup>3</sup>

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<sup>1</sup> “The paper looks at an impasse with respect to the role of rights as reasons for action which afflicts contemporary legal and political debates. Adopting a meta-ethical approach, it moves on to argue that the impasse arises from a philosophical confusion surrounding the role of rights as normative reasons. In dispelling the confusion, an account of reasons is put forward that attempts to capture their normativity by relating them to a reflexive public practice. Two key outcomes are identified as a result of this explication: first, that normative practices are instances of rule-following; and second, that agents partaking of normative practices possess absolute value (i.e., acquire the status of persons). In light of this explication, rights acquire the status of the most general reasons that purport to guarantee the content of personhood by specifying and safeguarding conditions which enable agents to participate in public practices of universalisation.”

<sup>2</sup> “Rights are central to modern social and political life, and yet there is deep disagreement amongst citizens and philosophers about just what they mean. They come in many different shapes and sizes: legal, moral, civil, political, social, economic and human. Who has them? Who should have them? Who can claim them? What are the grounds upon which they can be claimed? How are they related to other important moral and political values such as community, virtue, autonomy, democracy and social justice? In this book, Duncan Ivison offers a unique and accessible integration of, and introduction to, the history and philosophy of rights. He focuses especially on the politics of rights: the fact that rights have always been, and will remain, deeply contested. He discusses not only the historical contexts in which some of the leading philosophers of rights formed their arguments, but also the moral and logical issues they raise for thinking about the nature of rights more generally. At each step, Ivison also considers various deep criticisms of rights, including those made by communitarian, feminist, Marxist and postmodern critics. The book is aimed at students and readers coming to these issues for the first time, but also at more knowledgeable readers looking for a distinctive integration of history and theory as applied to questions about the nature of rights today.”

<sup>3</sup> “Some important recent articles, including one in this journal, have sought to devise theories of rights that can transcend the longstanding debate between the Interest Theory and the Will Theory. The present essay argues that those efforts fail and that the Interest Theory and the Will Theory withstand the criticisms that have been levelled against them. To be sure, the criticisms have been valuable in that they have prompted

- 2007 [4] Stepanians, Markus S. (Hrsg.) (2007): *Individuelle Rechte*, Paderborn.<sup>4</sup>
- 2006 [5] Campbell, Tom (2006): *Rights. A Critical Introduction*, London.<sup>5</sup> (Reviewed by William Edmundson in: *Notre Dame Philosophical Reviews* 07.12.2006 <http://ndpr.nd.edu/review.cfm?id=8225>).
- 2006 [6] Cruft, Rowan (2006): Why Aren't Duties Rights?, *Philosophical Quarterly* 56, S. 175–92.<sup>6</sup>
- 2006 [7] Edwards, John (2006): Rights: Foundations, Contents, Hierarchy, *Res Publica* 12, S. 277–93.<sup>7</sup>

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the amplification and clarification of the two dominant theories of rights; but their upshot has been to reveal the need for the improvement, rather than the abandonment, of those theories.”

<sup>4</sup> Inhalt: Markus S. Stepanians: Einleitung: „Rights is a term that drips confusion“ (7). Helmut Coing: Zur Geschichte des Begriffs „subjektives Recht“ (33). Wesley N. Hohfeld: Einige Grundbegriffe des Rechts, wie sie in rechtlichen Überlegungen Anwendung finden (51). Peter Koller: Die Struktur von Rechten (86). Hans Kelsen: Subjektives Recht: Berechtigung und Ermächtigung (96). David Lyons: Rechte, Anspruchsberechtigte und Begünstigte (113). Herbert L. A. Hart: Juridische Rechte (135). D. N. MacCormick: Rechte in der Gesetzgebung (164). Joel Feinberg: Das Wesen und der Wert von Rechten (184). Ronald Dworkin: Bürgerrechte erstnehmen (204). Robert Alexy: Grundrechte als subjektive Rechte und als objektive Normen (227). Quellenangaben (247). Kommentierte Auswahlbibliographie (248). Personenregister (252). Sachregister (253).

<sup>5</sup> “We take rights to be fundamental to everyday life. Rights are also controversial and hotly debated both in theory and practice. Where do rights come from? Are they invented or discovered? What sort of rights are there and who is entitled to them? In this comprehensive introduction, Tom Campbell introduces and critically examines the key philosophical debates about rights.

The first part of the book covers historical and contemporary theories of rights, including the origin and variety of rights and standard justifications of them. He considers challenges to rights from philosophers such as Bentham, Burke and Marx. He also examines different theories of rights, such as natural law, social contract, utilitarian and communitarian theories of rights and the philosophers and political theorists associated with them, such as John Stuart Mill, John Rawls, Robert Nozick and Michael Sandel. The second part of the book explores the role of rights-promoting institutions and critically assesses legal rights and international human rights, including the United Nations. The final part of the book examines how philosophies of rights can be applied to freedom of speech, issues of social welfare and the question of self-determination for certain groups or peoples.”

<sup>6</sup> “The best analyses of the concept ‘rights’ maintain that Hohfeldian claims, privileges, powers, immunities, liabilities, and clusters of these positions, all qualify as rights when they satisfy some further condition, such as serving their holder’s interests, or fulfilling some alternative function. But duties, disabilities and no-rights can also satisfy this further condition. For example, many duties, disabilities and no-rights serve their holder’s interests, and fulfil ‘right-like’ functions. Why, then, do we disallow such duties, disabilities and no-rights from qualifying as rights?”

<sup>7</sup> “It would seem that we in the West are suffering from an increasing glut of rights. To the sixty-odd human rights that the Universal Declaration and its Covenants have long given us, must now be added the particular rights claims of an increasing number of ‘oppressed’ minorities, claims to compensation rights for just about every conceivable harm done and claims to ever more trivial things. This tendency is harmful insofar as it trivialises rights and devalues the coverage of rights. Human rights are fundamental and ought to be protected from these tendencies. Using an analysis of the foundations of human rights, and their function in maintaining autonomy in particular, this article analyses the content of rights – what must be fulfilled in order for a right to be protected – as a means of demonstrating the possibility of reducing the volume of rights without reducing rights coverage and of creating a defensible hierarchy.”

- 2006 [8] Lyons, David (2006): Rights and Recognition, *Social Theory and Practice* 32, S. 1–16.
- 2006 [9] Rainbolt, George W. (2006): *The Concept of Rights*, Dordrecht.<sup>8</sup>
- 2006 [10] Ten, C. L. (Hrsg.) (2006): *Theories of Rights*, Aldershot.<sup>9</sup>

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<sup>8</sup> “What is it to have a right? Previous answers to this question can be divided into two groups. Some (e.g., Joseph Raz) hold interest/benefit theories of rights while others (e.g., H.L.A. Hart and Carl Wellman) hold choice/will theories of rights. *The Concept of Rights* defends an alternative to both of the traditional views, the justified-constraint theory of rights. On this view, a person has a right if and only if a feature of that person is a sound justification for others to have a particular sort of normative constraint.

The justified-constraint theory avoids the problems which have bedeviled the interest/benefit theories and the choice/will theories. It also solves the puzzle of the relational nature of rights. On the justified-constraint view, an obligation correlative to a right is to the right-holder when it is a feature of the right-holder that justifies the obligation. The analysis also shows that, as far as the concept of rights is concerned, any sort of individual or group can have rights. The limits on what sorts of things have rights are substantive, not conceptual. Moreover, the justified-constraint solves the problem of the rights of past and future generations. It is a theory which applies, without modification, to past, present and future beings.”

“Contents: Acknowledgments. Introduction. **1. Rights and Hohfeldian Analysis.** **1.1** A Neo-Hohfeldian Analysis. **1.2** The Nature of Liberties. **1.3** The Structure of Hohfeldian Relations. **1.4** Disagreements with Hohfeld. **1.5** Agreements with Hohfeld. **2. Normative Constraints.** **2.1** Claim and Immunity Rights. **2.2** Liberty and Power Rights. **2.3** Duty, Disability, Liability and No-Claim Rights. **2.4** Some Objections. **2.5** Martin: Rights as Socially Recognized Normative Directions. **3. Deontic and Alethic Concepts.** **3.1** Some Fundamental Normative Concepts. **3.2** Hohfeldian and Normative Analysis. **3.3** Feinberg: Rights as Valid Claims. **3.4** Moral Rights. **4. The Relational Nature of Rights.** **4.1** Relational Obligations. **4.2** Protection and Justification: The Interest and Choice Theories. **4.3** Raz: Rights as Interests That Justify Duties. **4.4** Hart: Rights as Protected Choices. **4.5** Wellman: Rights as Advantaged Wills. **4.6** Sumner’s Theory-Based Argument for the Choice/Will Theory. **5. Rights, Reasons and Persons.** **5.1** Reasons and Relational Obligations. **5.2** Simple and Complex Justification. **5.3** Non-Relational Obligations. **5.4** Consequentialism. **5.5** The Individuation of Rights. **5.6** Some Implications of the Justified-Constraint Theory. **6. Rights Conflict.** **6.1** Permissible and Unavoidable Rights Transgression. **6.2** Prima Facie and Specification. **6.3** The Identity of Prima Facie and Specification. **6.4** Rights Conflict and Arguments. **6.5** Wellman’s Examples. **6.6** Dworkin: Rights as Trumps. **7. Right Holders: Present.** **7.1** Individuals, Groups, and Relevant Features. **7.2** Clearing Some Underbrush. **7.3** Individualism v. Collectivism. **8. Right Holders: Past and Future.** **8.1** The Problem of the Subject. **8.2** Feinberg’s Proposed Solution. **8.3** Wellman’s Proposed Solution. **8.4** Time and Rights. **8.5** Parfit and the Non-Identity Problem. **8.6** Implications. **9. A Final Comparison.** **9.1** Objections to the Justified-Constraint Theory. **9.2** Problems with Other Theories. **9.3** Advantages of the Justified-Constraint Theory.”

<sup>9</sup> “Contents: Rex Martin and James W. Nickel (1980), Recent work on the concept of rights; Joel Feinberg (1992), In defence of moral rights; J. Raz (1984), On the nature of rights; H.L.A. Hart (1955), Are there natural rights?; David Lyons (1969), Rights, claimants, and beneficiaries; Philip Montague (1980), Two concepts of rights; Jeremy Waldron (1981), A right to do wrong; Jeremy Waldron (1989), Rights in conflict; F.M. Kamm (2001), Conflicts of rights: typology, methodology, and nonconsequentialism; H.L.A. Hart (1982), Natural rights: Bentham and John Stuart Mill; T.M. Scanlon (1978), Rights, goals, and fairness; Ronald Dworkin (1981), Is there a right to pornography; Rodney Peffer (1978), A defense of rights to well-being; H.L.A. Hart (1979), Between utility and rights; Allen Buchanan (1984), What’s so special about rights?; Richard J. Arneson (2001), Against rights; Peter Jones (1999), Group rights and group oppression; Will Kymlicka (1996), The good, the bad, and the intolerable; Seung-hwan Lee (1996), Liberal rights or/and Confucian virtues?; Fred Dallmayr (2002), “Asian Values” and global human rights; Charles Taylor

- 2005 [11] Dershowitz, Alan (2005): *Rights from Wrongs. A Secular Theory of the Origins of Rights*, New York.
- 2005 [12] Harel, Alon (2005): Theories of Rights, in *The Blackwell Guide to Philosophy of Law and Legal Theory*, hrsg. von Martin P. Golding und William A. Edmundson, Oxford, S. 191–206.
- 2005 [13] Kramer, Matthew H. (2005): Moral Rights and the Limits of the Ought-Implies-Can Principle: Why Impeccable Precautions are No Excuse, *Inquiry* 48, S. 307–55.<sup>10</sup>
- 2005 [14] Nelson, William (2005): Varieties of Rights: How They Work, How They Are Justified, *Social Theory and Practice* 31, S. 359–78.
- 2005 [15] Sreenivasan, Gopal (2005): A Hybrid Theory of Claim-Rights, *Oxford Journal of Legal Studies* 25, S. 257–274.<sup>11</sup>
- 2005 [16] Wenar, Leif (2005): The Nature of Rights, *Philosophy and Public Affairs* 33, S. 223–52.
- 2004 [17] Cruft, Rowan (2004): Rights: Beyond Interest Theory and Will Theory?, *Law and Philosophy* 23, S. 347–97.
- 2004 [18] Edmundson, William A. (2004): *An Introduction to Rights*, Cambridge.<sup>12</sup>

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(1996), A world consensus on human rights?; Joshua Cohen (2004), Minimalism about human rights: the most we can hope for?. Index.”

<sup>10</sup> “This essay argues against the commonly held view that “ought” implies “can” in the domain of morality. More specifically, I contest the notion that nobody should ever be held morally responsible for failing to avoid the infliction of any harm that he or she has not been able to avoid through all reasonably feasible precautions in the carrying out of some worthwhile activity. The article explicates the concept of a moral right in order to show why violations of moral rights can occur even when no one has acted wrongfully in any fashion. In so doing, it will effectively be maintaining that strict liability (i.e., liability irrespective of the presence or absence of culpability) exists in morality as well as in law. When we take account of the distinction between exoneration and extenuation, we can see that scrupulously thorough precautions are never sufficient to constitute an excuse in morality. Having made that point with some extended examples, the article goes on to consider a number of possible objections - objections that lead into discussions of some basic distinctions within moral philosophy and some central principles within deontic logic.”

<sup>11</sup> “In this article, I propose and defend a new analysis of claim-rights. My proposal is a hybrid of the two best known analyses, the Will theory and the Interest theory. For good reason, the debate between these theories is often regarded as a stand-off. That is because the Will theory has had no satisfactory answer to the Interest theory’s best objections (inalienable rights and incompetent right-holders), while the Interest theory has likewise had no satisfactory answer to the Will theory’s best objection (third party beneficiaries). After reviewing these various objections and criticizing some recent attempts to meet them, I introduce my hybrid alternative and explain how it provides a satisfactory solution to all of these objections.”

<sup>12</sup> “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? This 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 events, such as the French Revolution. As an undergraduate text it is well-suited to introductions to political philosophy, moral philosophy, and ethics. It could also be used in courses on political theory in departments of political science and government, and in courses on legal theory in law schools

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Contents: Part I. The First Expansionary Era: 1. The prehistory of rights. 2. The rights of man: The Enlightenment. 3. ‘Mischievous nonsense’? 4. The nineteenth century: Consolidation and retrenchment. 5. The conceptual neighborhood of rights: Wesley Newcomb Hohfeld. Part II. The Second Expansionary Era: 6. The universal declaration and a revolt against utilitarianism. 7. The nature of rights: ‘choice’ theory and ‘interest’ theory. 8. A right to do wrong? Two conceptions of moral rights. 9. The pressure of consequentialism. 10. What is interference? 11. The future of rights. 12. Conclusion.”

<sup>13</sup> Contents: Introduction. 1. The Contemporary Idea of Human Rights. 2. Human Rights as Rights. 3. Making Sense of Human Rights. 4. Starting Points for Justifying Rights. 5. A Framework for Justifying Specific Rights. 6. The List Question. 7. Due Process Rights and Terrorist Emergencies. 8. Economic Liberties as Fundamental Freedoms. 9. Social Rights as Human Rights. 10. Minority Rights. 11. Eight Responses to the Relativist. 12. The Good Sense in Human Rights. Bibliography and References. Appendixes: The Universal Declaration of Human Rights. The European Convention on Human Rights. The International Covenant on Civil and Political Rights. The International Covenant on Economic, Social, and Cultural Rights. Index.

<sup>14</sup> “This paper defends a social practice conception of moral rights possession against what many of its critics take to be a decisive objection, namely that such a conception prevents us from using moral rights for critical purposes.”

<sup>15</sup> “Like most discussions within the tradition of rights-talk, this study is motivated by the desire to promote the idea that rights are moral assets that people should acquire in the course of their membership within social and political frameworks. However, while most participants in rights-talk concentrate on the safety and protection constraints required for a successful exercising of rights, the present study inquires into the circumstances under which people’s rights lose their validity. The author believes that if we want to prevent the erosion of the role of rights within society and to encourage their obligatory status, we should prevent their misuse, or their unjustified or excessive use. Those who have interests in rights, and are concerned about their withdrawal or denial, will find a unique and inventive way of dealing both with the use, as well as the abuse of rights.

Contents: Acknowledgements. Introduction. 1: The Concept of Rights. 1.1. Some agreements about rights. 1.2. The moral status of rights. 1.3. The meaning of having rights. 1.4. Conditions of absence of rights. 1.5.

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Summary. 2: The Identity of Right-Holders. 2.1. Some acknowledged characteristics of right-holders. 2.2. A few remarks on the concepts of possible right-holders. 2.3. Alan Gewirth’s theory of rights. 2.4. The priority of a system of rules. 2.5. Melden’s theory of rights. 2.6. The integrated conception of a moral agent. 2.7. Summary. 3: The Withdrawal of Rights. 3.1. Some related positions regarding the withdrawal of rights. 3.2. Towards a new conception of the withdrawal of rights. 3.3. Who has the authority to withdraw rights. 3.4. The justifying ground for the withdrawal of rights. 3.5. Some clarifying remarks. 3.6. Summary. 4: Punishment. 4.1. General introduction and preliminary remarks. 4.2. The forward-looking approach to punishment. 4.3. The backward-looking approach to punishment. 4.4. An integrated justification for punishment. 4.5. The “fair-play retributivist” or “rights-retributivist” approach toward punishment. 4.6. Capital punishment. 4.7. Summary. 4.8. Appendix: Non-legal withdrawal of rights. 5: Rights of Partial Members of the Moral Community. 5.1. Children’s rights. 5.2. Fetuses’ rights: the morality of abortion. 5.3. Abortion as a conflict between rights. 5.4. Does abortion strike at the sanctity or value of life? 5.5. Rights of mentally retarded persons. 5.6. Summary. Conclusions. References. Index. Notes.”

<sup>16</sup> “Since the seventeenth century, concern in the Western world for the welfare of the individual has been articulated philosophically most often as a concern for his rights. The modern conception of individual rights resulted from abandonment of ancient, value-laced ideas of nature and their replacement by the modern, mathematically transparent idea of nature that has room only for individuals, often in conflict. In *A Philosophical History of Rights*, Gary B. Herbert traces the historical evolution of the concept and the transformation of the problems through which the concept is defined.

The volume examines the early history of rights as they existed in ancient Greece, and locates the first philosophical inquiry into the nature of rights in Platonic and Aristotelian accounts. He traces Roman jurisprudence to the advent of Christianity, to the divine right of kings. Herbert follows the historical evolution of modern subjective rights, the attempts by Locke, Rousseau, Kant, Fichte, and Hegel to mediate rights, to make them sociable. He then turns to nineteenth-century condemnation of rights in the theories of the historical school of law, Benthamite utilitarianism, and Marxist socialism. Following World War II, a newly revived language of rights had to be constructed, to express universal moral outrage over what came to be called crimes against humanity. The contemporary Western concern for rights is today a concern for the individual and a recognition of the limits beyond which a society must not go in sacrificing the individual’s welfare for its own conception of the common good. In his conclusion, Herbert addresses the postmodern critique of rights as a form of moral imperialism legitimizing relations of dominance and subjection.

In addition to his historical analysis of the evolution of theories of rights, Herbert exposes the philosophical confusions that arise when we exchange one concept of rights for another and continue to cite historical antecedents for contemporary attitudes that are in fact their philosophical antithesis. *A Philosophical History of Rights* will be of interest to philosophers, historians, and political scientists.”

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