

Venice Academy of Human Rights 2012

THE LIMITS OF HUMAN RIGHTS

A FUTURE FOR HUMAN RIGHTS?

Philip Allott

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1. *Imagining high values.*
 2. *Constituting high values socially.*
 3. *Re-imagining human rights.*
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What are Human Rights – philosophically, socially, legally?
Why have they not transformed the behaviour of governments?
Could they be made to do so?
Could we reduce the volume of public evil in the world?

1.

Imagining high values

OUTLINE

1. Provisional description – *legislated Human Rights are designed to impose certain very high values on a particular legal system or legal systems generally.*

The intellectual task – what are **values** and how are they created?

2. Physiology, philosophy, religion, law – existential conundrum for each of them.
freedom of the will *versus* determinism – necessity *versus* responsibility.
(D. Hume: after we have acted, the idea of ‘purpose’ makes us think that we chose freely.) (G.E. Moore: ‘I could have done [chosen to do] something else.’)

3. Evolutionary biology -

- (1) Thinking is a survival strategy.
- (2) Value is a form of thinking.
- (3) Value is a survival strategy.

4. Neuropsychology -

Degrees of freedom problem: *infinite number of possible bodily actions.*

Motor equivalence problem: *task → possible bodily actions → action.*

5. Freedom of a mechanical will.

The brain a **self-determining** machine. (J. Eccles).

from *Ist-Wert to Soll-Wert.* (N. Bernstein)

from *a model of the challenging situation to a model of a possible course of action.*

from *the possible to the actual.*

There must be **algorithms** at work in the intervening **gap** – imagining external reality and imagining possible effects on external reality of possible forms of action – and – greatest mystery of all – **choosing and causing a particular form of action.**

(algorithm = computational problem-solving procedure)

(imagination = a creative activity of the brain)

6. Source of the brain-algorithms = whole structure and functioning of the brain (phylogeny, ontogeny), internal self-perception, external sense-perception, memory, involuntary association of ideas, trial and error, **values.**

Values are algorithms acting in the functioning of the brain that help the brain to choose and execute a particular course of action.

*Possible action A is **preferred** (great mystery!) over possible action B and is adopted as a course of action.*

It seems that the brain's amazing capacity to *focus its attention* on an 'idea' (any sort of orderly mental content, including 'value') must be linked to a capacity to open a channel of physical energy corresponding to that 'idea' → real-world action.

We might call this a *moral node* in the brain, where Kant's *intelligible world* (noumenal) meets the *physical world* (phenomenal) in the performing of morally-guided action.

(But there must be a further non-conscious brain-capacity behind those capacities enabling it to *choose this* 'idea' rather than that – and so on and on!!!)

Our brain talks to itself before we 'choose' to do something. The non-conscious brain has its reasons which we cannot know. *Our brain is cleverer than we are.*

Limitless non-conscious computational capacity.

Five layers of the *human condition* (not four) – brain, self, society, humanity, universe (a sixth – God – for those who so believe).

7. Values are generated **within** the brain of a particular person – or they are **internalised** from that person's social participation, by way of sense-perception, especially *language* in the widest sense of the word.

Distinguish – **private** mind – **public** mind of society (a mind without a brain).

Internally generated values modify the functioning of a particular private mind.

Socially generated values modify the functioning of the private minds of those who internalise those values – and modify the functioning of the public mind of a given society – for the better and for the worse.

(Compare: the obsessive idea of J.-J. Rousseau & (early) K. Marx and F. Nietzsche: *morality corrupts*). → next lecture.

8. *Values are existential algorithms of human action, individual and social.*

Human Rights are an effort to impose certain value-algorithms on human beings by imposing those value-algorithms on a given society or societies in general.

(Legislated Human Rights aim to do this through legal systems.)

How could this be justified?

9. *Values are the ultimate form of social power.*

(F. Bacon, G. Vico, J-J Rousseau, K.Marx...)

Change people's values and you change people (?and even governments!).

10. *Morality* is the applying of values to change behaviour.

So, the great questions of traditional **moral philosophy** (in all cultures) –

where do values come from?

how can we decide between conflicting values?

Distinguish / compare – **individual** values / **social** values.

Aristotle, *Ethics* and *Politics*. Vast effort ever since to bridge this gap.

11. Surprise! - **philosophy** does not answer questions, solve problems, discover the truth.

Philosophy is a permanent incremental discussion of universal problems of the natural and human worlds.

Rationality – perhaps the greatest gift of evolution to the human species – an integral part of the neuropsychological decision-making process already discussed.

A form of brain-functioning that integrates in highly efficient ways infinitely diverse mental contents – silently, imperceptibly – the ultimate human survival strategy.

(But also *irrationality* – including emotion – *le cœur a ses raisons que la raison ne connaît point* – the heart has its reasons that reasons does not know (B. Pascal). And *non-conscious rationality* – autonomous self-ordering brain functioning – (PJA) *la raison a ses raisons que la raison ne connaît point* – reason has its reasons that reason does not know.

Contrast – *reasons* in the human world; *causes* in the natural world).

Philosophy is the effort to think **rationally** – to use rationality to think about universal problems of the natural and human world – to explore *causes* and *reasons*.

Philosophy is the human mind thinking about itself. Philosophy has not **answered** the great questions of traditional moral philosophy. It has illuminated them greatly.

12. A **syncretic view** of moral philosophy.

Moral values are the effect of **all** the following causes (!!!). (empirically reasonable, not empirically falsifiable).

Biology.
Society.
Psychology.

—

Moral sense.
Practical reason.
Universal order.

13. *Biology* – evolutionary biology, ethology, sociobiology.

C. Darwin (*Descent of Man*): morality = evolutionary inheritance of sympathy and social instincts *plus* rational thought about experience, leading to the idea of duty.

Examples 13A and B.

14. *Society*. The primary source of moral values is societal. **Examples 14A, B and C.**

15. *Psychology* - Freud (*passim*): *superego* produced in the development of the ontogenetic (individual) psyche through the repressing of phylogenetic (species-inherited) instincts and drives.

Or *emotivism*: **Example 15A.**

Or *logical positivism*: **Example 15B.**

_____ *Dividing line between naturalist philosophies (above) _____*
and transcendental philosophies (below).

16. *Moral sense* - Intuitionism – Innate capacity of the mind to make moral judgments. **Example 16.**

17. *Practical reason* – Aristotle, Aquinas, Kant. An action is good if it is chosen voluntarily and done simply because it is good, as if determined by a process of universal rational deliberation.

18. *Universal order* – Plato, religion, idealism. Moral action reflects an ideal of the good which is recognised by the self-ordering of the mind but originates from an order that is beyond the mind and beyond society.

19. So, the human species has given itself immensely sophisticated and complex and dynamic processes for generating and re-generating value-algorithms to help it to decide upon courses of action with a view to human survival and flourishing.

Using these processes, the human species has used its *imagination* to generate and re-generate values and, in particular, *high values* – that is, values that govern other values and can decide conflicts of value – things that we value most highly of all –

the true, the good, the just, the beautiful, the right, freedom, duty, love, the ideal, happiness, sympathy, altruism, honesty, integrity, perseverance, generosity, trust, joy, friendship, courage, the creative, the public-spirited, cheerfulness, hope...

20. Binary thinking. Growth/decay. Life/death. Time/space.
True/false. Matter/spirit. Body/soul. Brain/mind. Master/slave.
Plaintiff/defendant. Virtue/vice.

Switches in the brain. On-off. Yes-no. One-zero (computer language; Leibniz).

Binary **normative** thinking. - ‘normative’: value-measuring;
Latin, *norma*: a carpenter’s square.

Good/evil. Right/duty. Justice/injustice.

Dialectical thinking. Heraclitus. **Example 20A.**

Affirmation is negation. (Spinoza, Foucault, Derrida). Yes is also not-No.
(e.g., the idea of ‘human sciences’ depends on an idea of the thing that they are not – the ‘natural sciences’ – a false equation (says G. Canguilhem), since there is no single idea of the natural sciences. Compare – Foucault on ‘insanity’ and ‘sanity’.)

G. Hegel. *Aufheben* = ‘to abolish’ – ‘to retain’ – ‘to surpass’. $1 + 1 = 3$.

(Pythagoras: All is Three – or, possibly, Three is All.)

Legislated human rights as an *Aufhebung* of conflicting values.

Human rights as a compromise between high values and crude reality.

Internal contradictions of human rights provisions.

Example 20B.

21. *Conclusion.*
1. *Values* are biologically necessary.
 2. *High* values transform people.
 3. Legislating *universal* values is problematic (next lecture).

‘All sciences are now under the obligation to prepare the ground for the future task of philosophy, which is to solve the problem of value, to determine the true hierarchy of values.’
F. Nietzsche, *The Genealogy of Morals* (1887), First Essay (end Note).

13A. ‘The idea [of universal human rights] is not general; it is largely the invention of recent European-American civilization. I suggest we will want to give it primary status...because we are mammals. Our societies are based on the mammalian plan: the individual strives for personal reproductive success foremost and that of his kin secondarily; further grudging cooperation represents a compromise struck in order to enjoy the benefits of group membership...I suggest this is the true reason for the universal rights movement and that an understanding of its raw biological causation will be more compelling in the end than any rationalization contrived by culture to reinforce and euphemize them’ E.O. Wilson, *On Human Nature* (1978).

13B. ‘That the origin of a higher form of life from a simpler ancestor means an increase in values is a reality as undeniable as that of our own existence.’ K. Lorenz, *On Aggression* (1963).

14A. ‘Does it require deep intuition to comprehend that man’s ideas, views and conceptions, in one word, man’s consciousness, changes with every change in the conditions of his material existence, in his social relations and in his social life?’ K. Marx, F. Engels, *Communist Manifesto* (1848).

14B. ‘Morality, religion, metaphysics, all the rest of ideology and their corresponding forms of consciousness no longer retain the semblance of independence; they have no history and no development; but men, developing their material production and their material intercourse, alter, along with their real existence, their thinking and the product of their collective thinking.’ K. Marx, F. Engels, *The German Ideology* (1846/1932).

14C. ‘A culture, like an individual, is a more or less consistent pattern of thought and action.’ R. Benedict, *Patterns of Culture* (1934).

15A. ‘Thus, when we use [the word “good”] in the sentence, “*This* is good,” we merely refer to *this*, and the addition of “is good” makes no difference whatever to our reference...it serves only as an emotive sign expressing our attitude to *this*, and perhaps evoking similar attitudes in other persons, or inciting them to actions of one kind or another.’ I. Richards, C. Ogden, *The Meaning of Meaning* (1923).

15B. ‘I see now that these nonsensical expressions [moral judgments claiming to invoke absolute values] were not nonsensical because I had not yet found the correct expressions, but that their nonsensicality was their very essence. For all I wanted to do with them was just *to go beyond* the world and that is to say beyond significant language. My whole tendency and I believe the tendency of all men who ever tried to write or talk Ethics...was to run against the boundaries of language. This running against the walls of our cage is perfectly, absolutely hopeless.’ L. Wittgenstein, *A Lecture on Ethics* (1929).

16. ‘[Moral sense is] an original power of the mind, which we call conscience, or the moral faculty, we have the conceptions of right and wrong in human conduct, of merit and demerit, of duty and moral obligation, ...and that by the same faculty, we perceive some things in human conduct to be right, and others to be wrong; that the first principles of morals are the dictates of this faculty.’ T. Reid, *Essays on the Active Powers of Man* (1788).

20A. ‘There is another theory about the soul that has come down to us, which many people find the most plausible...They [Pythagoreans] say that the soul is a kind of attunement (*harmonia*), on the ground that attunement is a mixture and compound of opposites, and the body is made up of opposites.’ Aristotle, *On the Soul*.

20B. ‘The free communication of ideas and opinions is one of the most precious of the rights of man. Every citizen may, accordingly, speak, write, and print with freedom, but shall be responsible for such abuses of this freedom as shall be defined by law.’ *French Declaration of the Rights of Man and the Citizen* (1789), art.11.

A FUTURE FOR HUMAN RIGHTS?

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2.**Constituting high values socially**

OUTLINE

22. Human condition.

To change the condition of a particular society purposefully, you must change its institutions, its ideas, or its everyday reality. True also of international society, the society of all societies (PJA, 1990).

Such is, I assume, the essential *purpose* of legislated human rights.

But that means that we must first try to understand the way the human species functions in the most general way – the so-called *human condition*.

The oldest of all intellectual problems. Here follows yet another (necessary) effort to disentangle the mind-numbing complexity and obscurity of the human condition.

Necessary (I promise) for solving the particular problem of *human rights*.

23. Human condition A. Social self-constituting. *A society is a process not a thing – a permanent state of self-constituting – re-making itself from day to day. Like a human being.*

Three dimensions of social self-constituting –

Institutions.

Ideas.

Everyday reality.

Dynamically interactive.

Institutions (incl. political bodies and the law) – themselves the product and the source of *ideas* – organise the enactment and enforcement of ideas in response to the forces generated by *everyday reality*.

Ideas (incl. socially constitutive ideas – democracy, capitalism...) flow ceaselessly to and from the private minds of society-members and the public mind of society.

Everyday reality (including economic life, and natural conditions and events) is organised by social institutions and by socially constituted ideas.

24. A society's present state is the residue of past states of its three-dimensional self-constituting.

A society's *past* is *present* as idea and fact. A society is its living history.

Example 24.

25. **Human condition B.** *Not all value-algorithms are algorithms of high values.*

Low values. Hate, lust, avarice, intemperance, greed, selfishness, unjustified pride, cruelty, moral corruption of others, political corruption...

Ambiguous values. Contingent. Contextual. Pride, self-interest, arrogance, single-mindedness, perseverance, faith, rationality, objectivity, self-restraint, pleasure, desire, happiness...

Human consciousness – scene of a permanent struggle among the algorithms of value. All human action, individual and social, is ruled by the struggle of value-algorithms. Particular human actions, individual and social, are dialectical outcomes of that struggle.

26. **Human condition C.** *Two realms of human consciousness.* Private mind. Public mind. Individual consciousness. Social consciousness (E. Durkheim). Permanently flowing into each other – not least in the struggle of value – permanently acting upon the making of society's idea of itself.

Example 26.

27. **Human condition D.** *Two realms of human self-organising.* Public realm. Private realm.

?Central theme of Th. Hobbes – 'men are by nature free', but the private realm is the residual space left free by the public realm (the sovereign) (negative liberty).

Dual personality of the public official – private and public – natural and artificial – serving different purposes → suggesting a third realm of human consciousness (public-private in the same person: compare: H. Arendt's idea (1963) of *the banality of evil*).

Arendt – significant person – exile from European culture who did not become an American liberal or an American realist.

Zoon politikon. What did Aristotle mean? H Arendt sees the merging of the two organising realms into the idea of *society* as the sinister recipe for totalitarianism. (*On the Human Condition*, 1958).

Compare: PJA: on the sinister idea of *civil society* (*Health of Nations*, ch. 6).

28. **Human condition E.** *Many realms of value in a single society.* With different sets of high values (and low values!)

Family – highest value – *security*.

Political – highest value – *power*.

Economic (capitalist) – highest value – *wealth*.

High culture (the arts and literature, *plus* – believe it or not! – the universities, as social systems of intellectual creativity) – highest value – *originality*.

Popular culture – highest value – *fame*.

Law – highest value – *justice*.

Religion – highest value – *the will of God*.

Diplomacy – highest value – *national interest*.

Society – highest value – *security*.

International society – highest value – none.

Society is the scene of a permanent struggle among the value-algorithms of conflicting public realms of value – conflicting high and low and ambiguous value-algorithms causing social and individual actions, including government and law.

29. Are they really all ultimately *a selfish quest for power*? Or some other ultimate human life-force – a force that also drives the unceasing energy of the brain?

Desire (Hobbes). *Conatus* (striving) (Spinoza).

Will (Schopenhauer). *Freedom* (self-existence-making). (Sartre).

Impulse of life (PJA).

Example 29A.

The agonising consequences of conflicting moral realms.

‘I do for my country things that I would not do for myself.’ (Cavour)

Examples 29B and C.

30. **Human condition F.** *Understanding the human condition.* For three millennia, humanity has recorded its thinking about itself. We have been greatly enlightened by that effort. The last two centuries – feverish organised self-investigation has produced *no revolutionary transformation* in our self-understanding.

Social psychology. The public mind – a magnified extrapolation of the private mind, but with a life of its own, and characteristics of its own. Poorly studied by S. Freud (and his successors). Better (but oddly) studied by C. Jung.

Anthropology. Study (from c. 1860) of pre-European societies and generalised study of perennial social phenomena (e.g.. J. Frazer, C. Jung, J. Campbell) have established

no universal hypotheses about humanity. The long search for 'human nature' is now clearly abortive – the hunting of a snark.

Historiography. We know a very great deal about the human past. We have learned very little to help us to make the human future.

Sociology. The high hopes of C. de Saint-Simon (1813) and A. Comte (1847) have not been realised. We have oceans of *information* about the human condition. We have discovered *no scientific* (or even *quasi-scientific*) laws of the human condition.

Philosophy. In the 20th century, the human mind's universalising study of itself – a three-millennial worldwide tradition – wounded itself in Europe, perhaps fatally, suggesting that there could never be anything universal to be said usefully about the part played by the mind in the making of the human condition.

The exposition by the early K. Marx (c. 1844) of *the social power of ideas* – a familiar idea from Plato and beyond – produced a *limited revolutionary transformation* in our self-understanding, because of the exceptional vigour of that exposition. The near-revolutionary potentiality of the work of S. Freud – a *philosophical psychobiology of the human mind* – was fatally vitiated by its obscurity and instability and the perversity of its form of exposition.

(*Natural sciences.* Strangely, it is the natural sciences that have produced two revolutionary transformations in human self-understanding. The life-history of the Earth – C. Lyell (1833), with his predecessors and successors. The natural origin of the human species – C. Darwin (1859), with his predecessors and successors. But the triumphant ethos of the natural sciences has also encouraged destructive forms of naturalism and reductionism in relation to the study of the human condition.)

31. Human condition G. *Transcending the human condition.* Humanity has devoted much effort to the challenge of transcending the human condition – individual and social – in particular, *to tame the abuse of public power.*

(1) *Law.* An almost miraculous human achievement in turning self-interest into common interest, and common interest into self-interest. Law found within itself the idea of *higher law* (or fundamental or constitutional law) – law above law; law judging law. Unwritten constitutions (Athens, Rome). Written constitutions (since 1787). And law found within itself *public law* – law governing government (all public power). The Rule of Law.

Distinguish: *Rechtsstaat* – *État de droit* – *Stato di diritto* – *Estado de derecho* from the Rule of Law.

Example 31(1).

(2) *Religion.* Humanity is everything and nothing in the universe. Hence religion. What? and Why? and How? The questions that religion answers. But there is not *religion*; there are *religions* – conflicting among themselves and within themselves.

(3) *Art.* All the arts, including literature, have offered to the human mind a mirror of the human condition, with their highest values being *truth* and *beauty*. They have had – and continue to have – a profound and obscure effect on human self-understanding.

(4) *Natural law* The Roman experience of extreme cultural diversity, including intense legal diversity, encouraged the idea that there must be a *law above all laws*. Stoic philosophy had taught that *humanity* is the primary natural phenomenon and social diversity is secondary. So a *natural law* covering *all-humanity* seemed a logical corollary.

The idea persisted for a remarkably long time, energising the development of *higher law, the law of nations, and the theorising of liberal democracy*. Lost its intellectual power, became culturally marginal, in the European 19th century. M. Weber (1925) – ideological paradox of natural law – sanctifying bourgeois values but igniting revolutions – natural law *versus* nationalism and historicism and totalitarianism → legal positivism.

(5) *Humanism* A philosophy in all cultural traditions – especially in the Greek tradition – contemplating *things human* at the universal level, including social phenomena seen universally. Profound effects on the self-constituting of countless societies. But always a work in progress – sec. 11 above.

(6) *International law*. At best, *gentle civilizer of nations* (M. Koskenniemi). At worst, the cynical manipulation of the public mind by corrupt ruling classes. And everything – more or less benign, more or less socially useful – in-between.

Example 31(5).

(7) *Human Rights!* Everything said so far might be seen as an argument about the difficulty, if not impossibility, of the legislating of ‘human rights’ in the post-1945 world. But four particular problems must be mentioned specifically.

32. Law versus philosophy. Human Rights are a marriage of convenience between the Higher Law tradition and the Natural Law tradition – see 31(1) and (4) herein.

- (a) ironical and pragmatic use by Th. Hobbes and J. Locke of natural law ideas to create a model of an internalised transcendental source of ultimate limits on government = universalising of a British higher law tradition (the Rule of Law). How can there be ‘rights’ before there is society and law?

Example 32(a).

- (b) the Virginia Declaration of Rights (June 1776) – the 17th-century transcendental-internal theory of government placed at centre-stage, as a prologue to social transformation, using the ambiguous notion of ‘rights’. ‘Who can help lamenting that so rational a cause should be rested upon reasons, so much fitter to beget objections, than to remove them.’
J. Bentham, *Principles of Morals and Legislation* (1789).

Example 32(b).

- (c) the French Declaration of the Rights of Man and the Citizen (August 1789) – philosophy triumphs in the justifying of constitutional transformation, but the internal aspect (‘the rights of the citizen’) is an unresolved negation of the transcendental (‘the rights of man’).

Example 32(c).

Law/philosophy – a genetic weakness within modern legislated Human Rights.

33. Social individuality versus philosophical universality. The structural weakness within Human Rights reflects a deeper problem. The self-constituting of a given society is a unique product of its unique history – see 24 herein. How could a society

possibly assimilate a sudden invasion from outside aimed at the deepest roots of its social existence in the name of philosophical universality?

Examples 33A and B.

The co-existence of dozens of different formulations of fundamental rights, nationally and internationally. ?Fatal undermining of their universality.

34. Philosophical particularity versus philosophical universality. K. Marx, in rather frenzied prose, made an argument that is comprehensible and remains difficult to answer. The Rights of Man reflect a particular view of the relationship between the individual and society, namely, that the individual is prior to society, and society has no other purpose or justification than to promote the interests and ‘the happiness’ of the individual.

Example 34.

Rephrasing his argument – the legislating of the Rights of Man does crude violence to the crucial and immensely subtle relationship of the public and private realms in society (see 26 herein).

(H. Arendt (*On Revolution*) draws attention to the unstable presence of the great 18th-century word ‘happiness’ in the two documents and in the American Declaration of Independence – is it the happiness of society or the happiness of the individual?)

35. Rhetoric versus law. Law transforms a value-algorithm into a law-algorithm. (A legal relation (right, duty etc.) is matrix, heuristic, and algorithm (PJA 2007). Law is the product of politics. The legislating and institutionalising of Human Rights, nationally and internationally, runs the risk of reducing very high and very precious human values to *hypocritical ideology* and *bureaucratic legalism*.

Particular risk – the *instrumentalising* of a rhetoric of very high values by *government* – causing conflict, encouraging arbitrary interventionism, and allowing spurious self-justifying of evil actions.

Compare: other devalued values – *peace, just war, legitimacy, self-defence, self-determination, duty to protect, international peace and security, international justice, international community, globalisation...*

36. Conclusion.
1. The self-constituting of society is profound, complex and long.
 2. Legislated human rights are structurally and systematically anomalous in relation to the self-constituting of society.
 3. Legislated human rights, national or international, cannot be expected to transform the government of societies.
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 4. Relations between national societies are in a primitive state of social self-constituting.
 5. Internationally legislated human rights are anomalous in relation to the rudimentary self-constituting of international society.
 6. They cannot be expected to transform the behaviour of governments.

24. ‘I derived from history itself a great and too little noticed fact. That is the powerful work of itself on itself [*le travail de soi sur soi*], by which France, through its own progress, continually transforms its raw elements... Thus each people goes, making itself, engendering itself, grinding, amalgamating elements which no doubt remain in an obscure and confused state, but which are small in comparison with what was the long work of the great soul... France has made France... Man is his own Prometheus.’ J. Michelet, *Histoire de la France* (preface of 1869).

26. ‘For a society is not made up merely of the mass of individuals who compose it, the ground which they occupy, the things which they use and the movements which they perform, but above all is the idea which it forms of itself.’ (E. Durkheim *Elementary Forms of Religious Life*, 1912).

29A. ‘...And therefore the voluntary actions, and inclinations of all men tend, not only to the procuring, but also to the assuring of a contented life... and differ only... in the diversity of passions in diverse men; and partly from the difference of the knowledge or opinion each one has of the causes which produce the effect desired. So that... I put for a general inclination of all mankind a perpetual and restless desire of power after power, that ceases only in death.’ (Th. Hobbes, *Leviathan*, 1651).

29B. ‘[William Pitt, British Prime Minister, bribed members of the Irish Parliament to support legislation uniting the British and Irish parliaments (1800), leading to the creation of the United Kingdom of Great Britain and Ireland.]

‘But must we equally condemn the government which purchased these corrupt men? I would not hesitate to do this if, by a fatal error, public opinion in ages past, and even in our own, had not in some measure sanctioned on the part of government a morality different from that which private persons recognise; if it had not, in all times, treated with excessive indulgence the immoral acts which have brought about great political results. If we would brand with disgrace the character of Pitt for having practised parliamentary corruption on a great scale, we must treat with equal severity the greatest monarchs of past times, Louis XIV, Joseph II, the great Frederick, who, to reach their ends, offended far more grievously against the inflexible principles of morality and of humanity than did the illustrious statesman who established the United Kingdom of Great Britain and Ireland.’
Count Cavour, ‘Thoughts on Ireland: its present and its future.’ (1845).

29C. ‘People are more or less represented by the states which they form, and these states by the governments which rule them. The individual citizen can with horror convince himself in this war of what would occasionally cross his mind in peace-time – that the state has forbidden to the individual the practice of wrong-doing, not because it desires to abolish it, but because it wants to monopolize it, like salt and tobacco. A belligerent state permits itself every such misdeed, every such act of violence, as would disgrace the individual. It makes use against the enemy not only of the accepted stratagems of war, but of deliberate lying and deception as well... Nor should it be a matter for surprise that this relaxation of all the moral ties between the collective beings of mankind should have had repercussions on the morality of individuals; for our conscience is not the inflexible judge that ethical teachers declare it, but in its origin is dread of the community and nothing else. When the community no longer raises objections, there is an end, too, to the suppression of evil passions, and people perpetrate deeds of cruelty, fraud, treachery and barbarity so incompatible with their level of civilization that one would have thought them impossible.’ S. Freud, *Thoughts for the Times on War and Death* (1915).

31(1). ‘By what inconceivable art has a means been found of making men free by making them subject...? These wonders are the work of law.’ J-J. Rousseau, *Discourse on Political Economy* (1755)

31(5). ‘You may call the rule of nations vague and untrustworthy. I find in it, on the contrary, a great and noble monument of human wisdom, founded on the combined dictates of sound experience, a precious inheritance bequeathed to us by the generations that have gone before us, and a firm foundation on which we must take care to build whatever it may be our part to add to their acquisitions, if indeed we wish to promote the peace and welfare of the world.’ W. Gladstone, future British Prime Minister, in a House of Commons debate in 1850 – a famous general debate on foreign policy following British armed intervention against Greece in the so-called Don Pacifico incident. The speech of Lord Palmerston, Prime Minister and master-mind of British foreign policy, lasted for five hours. He took a slightly different line. ‘...a British subject, in whatever land he may be, shall feel confident that the watchful eye and the strong arm of England will protect him against injustice and wrong.’

32(a) ‘...[in order that] their religion, laws and liberties might not be in danger of being again subverted...[we pray that] it may be declared and enacted that all and singular the rights and liberties asserted and declared are the true ancient and indubitable rights and liberties of the people of this kingdom.’ British *Bill of Rights*, 1689. Th. Paine called it ‘a bill of wrongs, and of insult.’ *Rights of Man* (1791) – ‘the parts of government [made a bargain] to divide up powers, profits, and privileges.’

32(b). **A DECLARATION OF RIGHTS** [June 1776] made by the representatives of the good people of Virginia, assembled in full and free convention which rights do pertain to them and their posterity, as the basis and foundation of government .

Section 1. That all men are by nature equally free and independent and have certain inherent rights, of which, when they enter into a state of society, they cannot, by any compact, deprive or divest their posterity; namely, the enjoyment of life and liberty, with the means of acquiring and possessing property, and pursuing and obtaining happiness and safety....

Section 3. That government is, or ought to be, instituted for the common benefit, protection, and security of the people, nation, or community; of all the various modes and forms of government, that is best which is capable of producing the greatest degree of happiness and safety and is most effectually secured against the danger of maladministration. And that, when any government shall be found inadequate or contrary to these purposes, a majority of the community has an indubitable, inalienable, and indefeasible right to reform, alter, or abolish it, in such manner as shall be judged most conducive to the public weal.

32(c). The representatives of the French people, organized as a National Assembly, believing that the ignorance, neglect, or contempt of the rights of man are the sole cause of public calamities and of the corruption of governments, have determined to set forth in a solemn declaration the natural, unalienable, and sacred rights of man, in order that this declaration, being constantly before all the members of the Social body, shall remind them continually of their rights and duties; in order that the acts of the legislative power, as well as those of the executive power, may be compared at any moment with the objects and purposes of all political institutions.

33A. ‘Society requires not only that the passions of individuals should be subjected, but that even in the mass and body [of society]...the inclinations of men should frequently be thwarted, their will controlled, and their passions brought into subjection. This can only be done *by a power out of themselves*; ...In this sense the restraints on men, as well as their liberties, are to be reckoned among their rights. But as the liberties and the restrictions vary with times and circumstances, and admit of infinite modifications, they cannot be settled upon any abstract rule...The rights of men in governments are...often in balances of good; in compromises sometimes between good and evil, and sometimes between evil and evil. Political reason is a computing principle; adding, subtracting, multiplying, and dividing, morally and not metaphysically...’ E. Burke, *Reflections on the Revolution in France* (1791).

33B. ‘Variety is disappearing from the human race; the same ways of acting, thinking, and feeling are to be met with all over the world.’ A de Tocqueville, *Democracy in America*, Second Part (1840).

34. ‘None of the so-called rights of man, therefore, go beyond egoistic man, beyond man as a member of civil society – that is, an individual withdrawn into himself, into the confines of his private interests and private caprice, and separated from the community.... The sole bond holding them together is natural necessity, need and private interest, the preservation of their property and their egoistic selves... Man as a member of civil society, unpolitical man, inevitably appears, however, as the natural man... Finally, man as a member of civil society is held to be man in his sensuous, individual, immediate existence, whereas political man is only abstract, artificial man, man as an allegorical, juridical person.’ K. Marx, *On the Jewish Question* (1844).

Venice Academy of Human Rights 2012

A FUTURE FOR HUMAN RIGHTS?

Philip Allott

3.

Re-imagining human rights (seminar discussion)

37. The condition of the human condition today. What is wrong with the world?
Itus et reditus (B. Pascal, c. 1662). The tide of history.
 ‘There is a tide in the affairs of men.’ W. Shakespeare, *Julius Caesar* (1599).
 ‘Another wave is approaching, still more greedily and savagely than the first – thus live waves – thus live we who will.’ F. Nietzsche, *Gay Science* (1882).
 What is to be done? (E. Burke, N. Chernyshevsky, L. Tolstoy, V. Lenin).
38. The problem of method. The physiology of thinking new thoughts.
 Idealism *versus* empiricism. **Example 38A.**
 Universalism *versus* relativism **Examples 38B, C and D.**
 Enlightenment *versus* revolution. **Example 38E.**
 Apriorism *versus* pragmatism. **Example 38F.**
39. Educate the governing classes? Universities. UNU. EUI. OSCE. ENA. EIUC.
 Human rights invite kings to be philosophers.
Example 39.
40. New kinds of rights and responsibilities? Taming the abuse of *economic power*?
 Taming the excesses of *science and technology*?
41. Re-imagining the public-private realm relationship in international society?
 New theory of representation?
 Misarchism (F. Nietzsche, *Genealogy of Morals*, 1887).
Examples 41 and 29C.
42. A new humanism? Return of the transcendental?
43. ???
Example 43.

38A. ‘Let us begin then by laying all facts aside, as they do not affect the question. The investigations we may enter into...must not be considered as historical truths, but only as mere conditional and hypothetical reasonings, ’J-J. Rousseau, *Discourse on Inequality* (1754). ‘Man is born free; and everywhere he is in chains...How did this change come about? I do not know. What can make it legitimate? That question I think I can answer.’ J-J. Rousseau, *Social Contract* (1762).

38B. ‘...a bill of rights is what the people are entitled to against every government on earth, general or particular; and what no government should refuse, or rest on inference.’ Th. Jefferson, letter to J. Madison, Dec. 1787 (Bill of Rights added, as ten amendments, to the US Constitution of 1787 in 1791 (on Madison’s proposal).

38C. ‘If it be true that the temper of the mind and the passions of the heart are extremely different in different climates, the laws ought to be in relation both to the variety of those passions and to the variety of those tempers...In cold countries [the nervous glands] have very little sensibility for pleasure; in temperate countries, they have more; in warm countries, their sensibility is exquisite...The legislators of China were more rational [than in other Asian countries] when, considering men not in the peaceful state which they are to enjoy hereafter, but in the situation proper for discharging the several duties of life, they made their religion, philosophy, and laws all practical.’ C. de Montesquieu, *The Spirit of the Laws* (1748), vol. I, xiv.

38D. ‘Every age and every nation has certain characteristic vices, which prevail almost universally, which scarcely any person scruples to avow, and which even rigid moralists but faintly censure. Succeeding generations change the fashion of their morals, with the fashion of their hats and their coaches; take some other kind of wickedness under their patronage, and wonder at the depravity of their ancestors.’ Th. Macaulay, *Essay on Machiavelli*, 1827.

38E. ‘[The French revolution] is no more than the consequence of a mental revolution priorly existing in France. The mind of the nation had changed beforehand, and the new order of things has naturally followed the new order of thoughts.’ Th. Paine, *Rights of Man* (1791).

38F. ‘The Americans are much more addicted to the use of general ideas than the English...This appears very singular at first, when it is remembered that the two nations have the same origin, that they have lived for centuries under the same laws, and that they still incessantly interchange their opinions and their manners...It would seem as if the mind of the English could tear itself only reluctantly and painfully away from the observation of particular facts, to rise from them to their causes, and that it only generalizes in spite of itself. Among the French, on the contrary, the taste for general ideas would seem to have grown to so ardent a passion that it must be satisfied on every occasion.’ A. de Tocqueville, *Democracy in America*, Second Part, 1840.

39. ‘A pattern, then, I said, was what we wanted when we were inquiring into the nature of ideal justice and asking what would be the character of the perfectly just man, supposing him to exist...We wished to fix our eyes upon them as types and models...Our purpose was not to demonstrate the possibility of the realisation of these ideals...Then were not we, as we say, trying to create in words the pattern of a good state?...Unless, I said, either philosophers become kings in our states or those whom we now call our kings and rulers take to the pursuit of philosophy...and there is a conjunction of these two things, political power and philosophical intelligence...there can be no cessation of troubles, dear Glaucon, for our states, nor, I fancy, for the human race either.’ Plato, *Republic*, bk. V.

41. ‘Some writers have so confounded society with government, as to leave little or no distinction between them; whereas they are not only different, but have different origins. Society is produced by our wants and government by our wickedness; the former promotes our happiness positively by uniting our affections, the latter negatively by restraining our vices...Society in every state is a blessing, but government even in its best state is but a necessary evil.’ Th. Paine, *Common Sense* (1776).

43. *Die Stimme des Intellekts ist leise, aber sie ruht nicht, ehe sie sich Gehör geschafft hat.*
‘The voice of the intellect is soft; but it does not rest until it has gained a hearing.’
S. Freud, *Die Zukunft einer Illusion* (The Future of an Illusion) (1927).