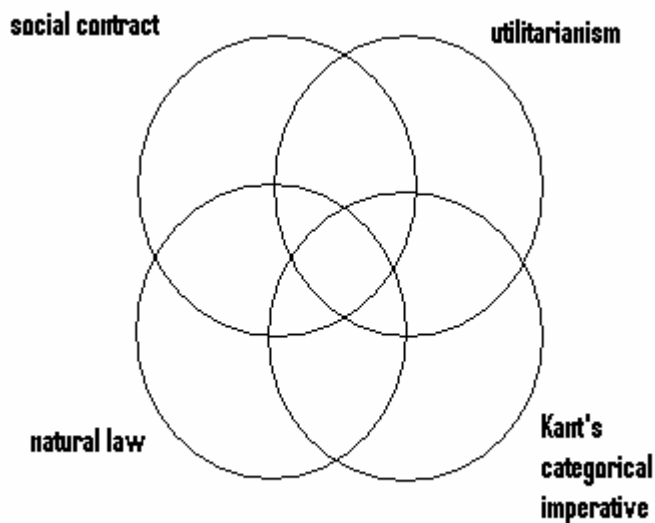


Philosophy and Human Rights

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The most fundamental question regarding human rights is a philosophical question about their source or justification: Where do human rights come from? A secondary question is who has the legitimate authority to enforce them? As philosopher James Nickel says, human rights are the conclusions of arguments.¹ They are arrived at through a process of reasoning. To be justified in a way that ensures that they are powerful and compelling, they need strong grounds. Human rights may be recognized by laws or treaties, but they do not get their justification from the laws or treaties. While there is no philosophical consensus on the justification for human rights, a pluralistic justificatory framework allows for a variety of overlapping justifications.



¹ Nickel, James W. (2007) *Making Sense of Human Rights*, 2nd edition. Blackwell Publishing. See especially chapter 4, "A Starting Point for Justifying Human Rights."

Social Contract Theory

The concept of ‘rights’ originated in the context of contracts between people in which the rights of each party are specified. A sales contract, for example, may specify that the customer has the right to return the product within a certain period of time if the product is found to be defective, or it may specify that the product is being sold “as is.”

Social contract theory conceives of organized societies as arising out of agreements between people who decide to cooperate in order to promote their mutual survival and flourishing. In this view, government gets its authority from the fact that people within a society agree to live under the authority of the government and by the rules which are established by that government. In Thomas Hobbes’ version of the social contract, people agreed to live under the authority of a monarch who is responsible for establishing and enforcing the laws. In this view, the rights of people are those that are established by the contract, or those that are established by the legitimate authority that is created by the contract.

If rights are created by a social contract, this does not seem to leave much room for *universal human rights*—rights which all human beings share equally in virtue of their shared humanity. The only way to establish universal human rights would be if there was a universal social contract which established such rights. The Universal Declaration of Human Rights, adopted by the General Assembly of the United Nations in December of 1948, is an example of what this might look like. Prior to the creation of the social contract, in what Hobbes called “the state of nature,” rights would not exist. This would mean, for example, that slavery during the eighteenth and nineteenth centuries was not a violation of human rights because there was no social contract which

prohibited it at the time. Once the social contract is created, the rights which are specified would only apply to those people who are party to the contract, and thus would not be universal.

Natural Law Theory

Natural law theory can trace its roots back to Aristotle's belief that everything in nature has a particular purpose or function (*telos* in Greek) for which it is designed, and that nature has a rational order to it which allows us to use reason to understand the way things are meant to be. In the thirteenth century, St. Thomas Aquinas took many of Aristotle's ideas and adapted them to the Christian worldview. Aquinas believed that God had given us reason, and this allowed us to understand the natural laws which dictate the way things are meant to be. Aquinas believed that all rational beings, even those who had never been exposed to Christianity, could understand the difference between right and wrong. Natural law theory has been very influential in the Catholic Church.

During the European Enlightenment, English philosopher John Locke used the concept of natural law to argue for universal human rights. According to Locke, civil laws are right only in so far as they agree with the natural law. While Thomas Hobbes had said that there are no rules of right and wrong in the state of nature, Locke disagreed. In his *Second Treatise of Government*, he said that "The state of nature has a law of nature which governs it, and reason, which is that law, teaches all mankind who will but consult it that being born all free and equal, no one ought to harm another in his life, liberty, or property."² Thus, Locke used the concept of natural law to argue for the existence of human rights which are truly universal—applying to all people at all times.

² Locke, John. (1690) *Second Treatise of Government*. Chapter II, "Of the State of Nature," section 6.

Kant's Categorical Imperative

The concept of universal human rights was developed by the philosophers of the Enlightenment, or the “age of reason.” Like Locke, German philosopher Immanuel Kant argued that moral rules were dictates of reason. According to Kant, reason demands consistency, and thus it is irrational to follow any rule that could not be followed by everyone. Reason also demands that we treat all rational creatures with the respect that is appropriate to their nature. The primary rule of morality, which Kant referred to as the “Categorical Imperative,” says that all people should be treated as *ends*, or beings which are valuable for their own sake, and never as *means only*, or things which are valuable only for the sake of something else. What this means for Kant is that we must respect people’s rationality and never treat them as if they are mere objects. The duty to treat people with appropriate respect is an absolute duty, and corresponding to this duty are rights which people have to be treated with appropriate respect. Slavery, for example, is a violation of human rights because it treats people as if they were merely objects to be used as means for the benefit of others. Likewise, rape, torture, and such are violations of people’s basic rights because they involve the treatment of people as if they were mere objects.

What Kant’s view shares with natural law theory is the idea that moral rules are dictated by reason and that rational beings are capable of understanding these rules. Human rights, on this view, are not created by governments, laws, or treaties. The governments, laws, and treaties merely recognize those rights which are dictated by reason. This is what Jim Nickel means when he says that rights are the conclusions of arguments.

Utilitarianism

English philosopher Jeremy Bentham was suspicious of the religious overtones of natural law theory. For many natural law theorists, especially those in the Catholic Church, natural law is equated with God's law. But in the absence of any concrete evidence, talk of 'natural law' and 'natural rights' sounded to Bentham like superstitious mumbo jumbo used by those who wanted to justify their own preferences by claiming that they are sanctioned by God. Bentham thought that so-called "natural laws" were just figments of our imaginations. Rights, he said, come from laws—real laws. Rights are created by human beings in the form of laws, not by gods. With regard to the concept of natural rights, Bentham famously said, "Natural rights is simple nonsense: natural and imprescriptible rights rhetorical nonsense—nonsense upon stilts." If Bentham is right, then it would seem that there are no universal human rights prior to the creation of laws and treaties which create rights.

However, Bentham did believe that the goal of all morality and all laws ought to be the promotion of human (and animal) welfare, and that everyone's welfare ought to be promoted equally. The *Principle of Utility*, which Bentham endorsed, says that we ought to produce as much happiness in the world as we possibly can. The *Principle of Utility* implies that not all laws, or moral rules, are equally good. Those laws and rules which best promote utility (the sum total of human and animal welfare in the world) are the ones we ought to follow. Thus, it seems that even in Bentham's understanding, moral rules are dictates of reason. In this respect, Bentham's approach is not so different from those of John Locke and Immanuel Kant as it might seem. They all agree that moral rules may be more or less reasonable.

Bentham's disciple and fellow utilitarian, John Stuart Mill, argued that the happiest societies are those which guarantee people certain liberties, such as freedom of speech and freedom of religion, freedom to marry whomever one chooses, etc. Thus, from a utilitarian perspective, human rights may once again be seen as the conclusions of arguments.

Universal Jurisdiction

The arguments which justify human rights claims seek to establish legal, political, and social practices which will protect these rights. In the state of nature, where there is no legitimate authority, John Locke claims that everyone is responsible for enforcing the moral law.³ Locke's suggestion that everyone must enforce the laws of nature in the state of nature provides a justification for the concept of *universal jurisdiction*. The Spanish courts have used the principle of universal jurisdiction to bring charges against former Chilean dictator Augusto Pinochet and Guatemalan dictator Efraim Rios Montt, even though the crimes were not committed in Spain, and neither the perpetrators nor the victims were Spanish. The principle of universal jurisdiction depends upon the fact that human rights derive their authority from the philosophical arguments which justify them rather than from governments.

Dictators who torture and massacre their own citizens, who commit genocide in the effort to eliminate particular ethnic groups, do not violate any national laws so long as they have the power to define the laws to suit their own needs. They may violate international laws, but in most cases there is no authority with the power to enforce those laws. This allows many dictators to commit "crimes against humanity" with impunity. When it comes to international relations, we are not far removed from the state of nature.

³ Locke, John. (1690) *Second Treatise of Government*. Chapter II, "Of the State of Nature," section 6.

If we believe in universal human rights and we want to see them protected, it is everyone's responsibility to enforce them. This is why the Spanish courts have claimed jurisdiction for the crimes committed by Pinochet and Montt in Latin America. The alternative is to let them get away with genocide.