

June 2024

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Braden Daniels

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Recommended Citation

Daniels, Braden (2024) "Analysis of Human Rights Doctrine and a Biblical Perspective," *NEXUS: The Liberty Journal of Interdisciplinary Studies*: Vol. 1: Iss. 2, Article 4.

Available at: <https://digitalcommons.liberty.edu/nexus/vol1/iss2/4>

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Analysis of Human Rights Doctrine and a Biblical Perspective

Braden Daniels

Human rights can be traced back to the Peace of Westphalia, the anti-slavery movements, the Congress of Berlin of 1878, and the Paris Peace Conference.ⁱ However, human rights have come especially into the international conscience since World War II when they were found in the human rights provisions of the United Nations Charter and in the Universal Declaration of Human Rights.ⁱⁱ The current practice, lacking any coherent justification, most strongly informs the views of most modern individuals and politicians. Naturalistic theories, which grants human rights based on one's status as a human, tend to restrict the scope of human rights to a much smaller subset than current international practice.ⁱⁱⁱ Likewise, agreement theories, which determine human rights by looking at the agreement of cultures, also lead to a similar restriction of the scope of human rights.^{iv} On the other hand, a popular theory from John Rawls, which looks only at the agreement of "decent" states, tends to produce a much larger set of human rights.^v Finally, the theory with the largest scope of human rights comes from Charles Beitz's Practical Considerations Theory, which takes human rights as they currently are in international law as the source material for the scope of human rights.^{vi}

The current Western practice of international human rights places a responsibility on individual states to ensure that certain dynamic conditions are met in dealing with their own people.^{vii} Failing to meet these conditions may result in action from other states or the world community to prevent further perceived injustices or to punish past perceived injustices.^{viii} These conditions, called human rights, are minimal requirements that protect against social and economic danger while guaranteeing some participation in political and cultural life.^{ix} Charles Beitz identified five documents that represent the core of international human rights doctrine: the

International Bill of Rights, the Convention on the Elimination of all Forms of Racial Discrimination, the Convention on the Elimination of all Forms of Discrimination against Women, the Convention against Torture and other Cruel, Inhuman, or Degrading Treatment or Punishment, and the Convention on the Rights of the Child.^x Each of these documents provide the core of human rights doctrine, but other important documents exist as well. Beitz divided the human rights recognized in these documents into five broad classifications: rights to liberty and personal security, rights in civil society, rights in the polity, economic, social, and cultural rights, and rights of “peoples.”^{xi}

Naturalistic theories about human rights are descended from the natural rights tradition, especially popular in Enlightenment Europe and North America. The natural rights tradition, from which these theories flow, can be traced back to John Locke, Samuel von Pufendorf, Hugo Grotius, and debatably Aristotle. A. John Simmons, in “Human Rights and World Citizenship: The Universality of Human Rights in Kant and Locke,” grounds human rights in the state of nature.^{xii} Human rights are natural, universal, and independent rights that cannot be lost and belong to human beings simply by their humanity. Naturalistic theories require no observation of any public doctrine or practice but constitute a merely philosophical inquiry.

Beitz identifies two branches of natural rights theory that impact the way naturalistic theories of human rights conceive of human rights. The first is the standard view derived from Grotius, Pufendorf, and Locke which claims that a natural/human right belongs by nature to all human beings.^{xiii} The second view, advocated by the pre-modern natural law tradition, holds that natural rights are those which would be required by the best law for one’s situation.

The second branch of theories that Beitz identifies are the agreement theories which focus more on social science than philosophy. Agreement theorists focus on the areas of

agreement that divergent cultures have with each other, rather than a theoretical conception of humans in a state of nature. Agreement theories have a broader influence than naturalistic theories and have been expounded by such thinkers as Michael Walzer, Charles Taylor, Joshua Cohen, Bernard Williams, and Abdullah An-Na'im. Agreement theorists believe that rights are found throughout the world's moral codes, and they are the source of the authority of human rights.

Agreements theorists can be separated into three categories: common core, overlapping consensus, and progressive convergence. Common core agreement theorists compare social moral codes to produce standards to which all societies should be held.^{xiv} This code presents the moral minimum or lowest common denominator for a just society.^{xv}

Overlapping consensus agreement theorists distinguish between human rights themselves and the variety of doctrines found among the world's cultures.^{xvi} These theorists would point to human rights as norms that could be reachable from the variety of foundational positions found throughout the world.^{xvii}

Finally, Beitz outlines a less popular progressive convergence theory. This theory finds human rights not from the actual contents of existing cultures, but from an examination of hypothetical future cultures that have evolved under the need for reinterpretation.

The third theory that Beitz outlines is the theory of John Rawls which has strongly influenced both the agreement theorists and practical considerations theorists.^{xviii} John Rawls's theory is very similar to the agreement theory, except that he focuses not on all cultures but only on what he calls "decent" or liberal-democratic cultures. Decent peoples have a conception of justice for the common good and procedures that allow adults to make their voices heard. Rawls points to those states that would not fall under the decent peoples heading as outlaw states, for

which human rights doctrine is formed.^{xix} Rawls defines justice using the role its various conceptions have in common by the way advantages are divided through social cooperation. Like agreement theorists, Rawls uses no independent philosophical foundation for human rights in his doctrine, instead creating a “political doctrine constructed for certain political purposes.”^{xx}

Taking inspiration from both Rawls’s theory and Henry Shue’s *Basic Rights*, Beitz derives his own theory, which he labels as practical conception theory.^{xxi} Beitz’s theory frames human rights using the doctrine and practice of human rights as it currently exists in international politics.^{xxii} In Beitz’s system, states have a duty to protect human rights in their official business, to protect human rights’ interests under their jurisdiction, and to aid those who are victims of the deprivation of human rights.^{xxiii} A failure to carry out these responsibilities would justify intervention from the international community or individual states.^{xxiv} In order to make his doctrine valuable, Beitz proposes that international human rights doctrine must be constantly reevaluated to ensure that it aligns with the aims that the doctrine hopes to achieve.^{xxv}

Every human rights theory has both strengths and weaknesses. But in order to have the most ideal rationale for determining pragmatic human rights, there must be three criteria met: a clear method for determining the scope of human rights, a clear basis to justify the existence of human rights, and a clear avenue of criticism for the current state of affairs.

Without a clear avenue of criticism, any human rights theory is little more than empty philosophical speculation and is probably more of a justification of normativity, rather than a stringent philosophical theory. While some theories fail to criticize the current international order or rogue states, naturalistic theories do both. If philosophically coherent, naturalistic theories provide the best basis to justify the existence of human rights. A postmodern or enlightenment skeptical framework requires such a basis to talk about rights in any way other than *realpolitik*.

Basing rights in human beings as such creates a coherent basis for the naturalistic framework. These theories point out the overbreadth of modern international human rights doctrine but are dually quick to condemn human rights abuses of many individual states. The biggest hurdle that naturalistic theorists must overcome in their formulation is the difficulty in determining the proper scope of human rights. Basing rights off a hypothetical state that may or may not have existed is incredibly difficult and can be demonstrated by the widely divergent views of Thomas Hobbes, John Locke, and Jean Jacques Rousseau who all began with a similar framework.^{xxvi}

Agreement theories may have an easier time in determining the scope of human rights. Due to a variance in methodology, agreement theorists face some difficulties in formulating this scope, especially common core theorists. While common core theorists may readily criticize the current international system of human rights law, they lack some of the tools for criticism of individual states. Without the ability to criticize individual states, the utility of human rights thought dries up quickly. Overlapping consensus theorists and progressive convergence agreement theorists both face this difficulty to a lesser extent, but as they increase their ability to criticize individual states, they lose the clarity of how to determine the proper scope of human rights. Because these theories face the same hypothetical struggles that naturalistic theories did, the two branches of agreement theories also fail to provide a clear basis to justify the existence of human rights. Without the existence of an underlying natural law to which states agree, there is no clear justification for human rights.

In contrast, John Rawls's theory excels in many of the ways that naturalistic and agreement theorists failed. His theory provides a consistent avenue of criticism for both the international community and individual state actors. Furthermore, the method for determining the scope of human rights is simpler than any of the previous theories. The biggest difficulty in

his methodology may be determining which peoples qualify as decent peoples. However, like the agreement theories, John Rawls fails to provide a clear basis for the justification of human rights under his system. Furthermore, Rawls's theory has the added problem of perceived Western bias. His theory could be construed as an elite club of countries, including his own, who get to determine and enforce what human rights are for the rest of the world. Considering these criticisms, the characterization of Rawls's theory as a "political doctrine constructed for certain political purposes" seems correct.^{xxvii}

Charles Beitz's theory presents many of the same problems and strengths as John Rawls's. It fails to provide a clear basis for the justification of human rights but provides a clear method for determining the scope of human rights. Additionally, Beitz does not provide a clear avenue of criticism for the international order. While this is currently preferable to the common core theory's failure to provide a clear avenue of criticism for individual states, a day may come when the international order's extensive list of human rights becomes more harmful than individual state's violation of human rights. For these reasons, Beitz's theory ends up failing because of its shortsightedness and lack of philosophical stringency.

The failures in the secular theories of human rights are mitigated in the presence of a Christian worldview. In this view, the best justification for human rights is presented, and there is clear methodology to every avenue of criticism. A biblical worldview coincides with naturalistic theories that human rights are imbued in all human beings as such, but it grounds those rights in Creation. Because God created all human beings in His image, humans are an exceptionally unique creation that possesses human rights simply because of the image they reflect. The scope of these rights can be determined using proper biblical hermeneutics, balancing textual investigation, rational inquiry, contextual inquiry, and church history in the

search for the proper scope of human rights. The church's view on just war theory is particularly informative in this context. While it is unlikely that the Bible agrees with everything that international law currently considers to be human rights, it is also true that the Bible condemns some nations for abusing human rights. Scripture may even justify the use of international and individual state force against these nations for their corruption. Referencing Scripture may not solve all international and complex situations, but some of the controversy around the justification for human rights can be heavily aided by biblical text.

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Endnotes

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- ⁱ Leo Gross, “The Peace of Westphalia, 1648-1948,” *American Journal of International Law* 42 (1948), 21-22; Consolidated Treaty Series, ed. Clive Parry (Dobbs Ferry, NY: Oceana Publications, 1969), I; George A. Finch, “The International Rights of Man [Editorial Comment],” *American Journal of International Law* 35 (1941): 662-65.
- ⁱⁱ Beitz, *The Idea of Human Rights*, 13-14.
- ⁱⁱⁱ *Ibid.*, 48.
- ^{iv} *Ibid.*, 73.
- ^v *Ibid.*, 96.
- ^{vi} *Ibid.*, 102.
- ^{vii} *Ibid.*, 13.
- ^{viii} *Ibid.*, 13,31.
- ^{ix} Michael Grant Ignatieff, *Human Rights as Politics and Idolatry* (Princeton, NJ: Princeton University Press, 2001), 56; Bernard Williams, *In the Beginning Was the Deed* (Princeton, NJ: Princeton University Press, 2006), 19.
- ^x Beitz, *The Idea of Human Rights*, 26.
- ^{xi} Mary Ann Glendon, *A World Made New: Eleanor Roosevelt and the Universal Declaration of Human Rights* (Manhattan: Random House, 2001), 174; ICCPR and ICESCR, arts. 1(1)-1(2).
- ^{xii} A. John Simmons, “Human Rights and World Citizenship: The Universality of Human Rights in Kant and Locke,” in *Justification and Legitimacy: Essays on Rights and Obligations* (Cambridge: Cambridge University Press, 2001), 185.
- ^{xiii} Beitz, *The Idea of Human Rights*, 51; Leo Strauss, ed., *The History of Political Philosophy* (Chicago: University of Chicago Press, 1987), 218-232; Oliver O’Donovan & Joan Lockwood O’Donovan, eds., *A Sourcebook in Christian Political Thought: 100-1625* (Grand Rapids, MI: William B. Eerdmans Publishing, 1999), 787-820.
- ^{xiv} Michael Walzer, *Thick and Thin: Moral Argument at Home and Abroad* (Notre Dame, IN: University of Notre Dame Press, 1994), 9-10.
- ^{xv} R. J. Vincent, *Human Rights and International Relations* (Cambridge: Cambridge University Press, 1986), 48-49; Vincent is describing a view he does not hold to.
- ^{xvi} Beitz, *The Idea of Human Rights*, 76.
- ^{xvii} Rex Martin, *A System of Rights* (Oxford: Clarendon Press, 1993), 75.
- ^{xviii} Beitz, *The Idea of Human Rights*, 96; John Rawls, *The Law of Peoples* (Cambridge, MA: Harvard University Press, 1999), Generally. Beitz points especially to the following pages as instructive for Rawls’s view on human rights: 36-38, 65-66, 68, 78-81, 80 n. 23, 81 nn. 25-26, 93, 93 n. 6.
- ^{xix} Rawls, *The Law of Peoples*, 80-81.
- ^{xx} Beitz, *The Idea of Human Rights*, 99 (quoting Peter Jones, “International Human Rights: Philosophical or Political?” in *National Rights, International Obligations*, ed. Simon Caney, David George, and Peter Jones (Boulder, CO: Westview, 1996), 183-204).
- ^{xxi} Beitz, *The Idea of Human Rights*, 102; Henry Shue, *Basic Rights*, 2nd ed. (Princeton, NJ: Princeton University Press, 1996); see also James Nickel, *Making Sense of Human Rights*, 2nd ed. (Malden, MA: Blackwell, 2007), chs. 1-4; Amrtya Sen, “Elements of Human Rights,” *Philosophy and Public Affairs* 32 (2004): 315-56; International Commission on Intervention and State Sovereignty, *The Responsibility to Protect* (Ottawa: International Development Research Centre, 2001).
- ^{xxii} *The Idea of Human Rights*, 102.
- ^{xxiii} *Ibid.*, 109.
- ^{xxiv} *Ibid.*
- ^{xxv} *Ibid.*
- ^{xxvi} Strauss, *History of Political Philosophy*, 183-193, 218-32, 254-263.
- ^{xxvii} Beitz, *The Idea of Human Rights*, 99; Jones, “International Human Rights,” 183-204.