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Conceptions of Human Rights

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Abstract

This chapter considers moral realism, our capacity for moral judgment, the diversity of systems of moral belief, and the normative force of human rights. It argues that the justification of moral practice, as we ordinarily understand it, does not require belief in God. Indeed, in some areas of ethical theory, atheism has explanatory advantages over theism.

Disciplines

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Theists might reply that it would be a weakness in evolutionary theory if it could not explain why people have a capacity to see with their eyes what is happening on the moon, and why reason has a capacity to answer moral and mathematical questions that have no evolutionary advantage. But as long as having that capacity is not disadvantageous, evolutionary theory need not be able to explain it. Evolutionary theory should be able to explain why gazelles can run faster than lions, but it would be no mark against it if it could not explain why they are *much* faster than lions. No doubt there would be some as yet unknown detailed genetic explanation of their ability to run much faster that goes beyond any evolutionary explanation. It seems plausible to think that there is some as yet unknown detailed genetic explanation of the brain's capacity to grasp objective mathematical and moral truths. Even if Scanlon is wrong in thinking that moral truths *just are* the moral propositions arrived at when reflective equilibrium is correctly applied, it does seem necessarily true that we *are justified in believing* that something is a moral truth when reflective equilibrium is correctly applied.

Not only can atheists explain how we know, or are justified in believing, objective moral truths, if it is not reasonable to believe that God exists, then it will not be reasonable to believe that God created us with a conscience, or even a kind of reason, that allows us to grasp moral truths. If it is not unreasonable to believe that God exists, it will be hard to explain why there is so much moral disagreement if God created everyone with the same sort of moral conscience or why he did not create everyone with that sort of conscience if he created different people with different moral consciences. Perhaps theists will say that people are born with the same moral conscience, but they have corrupted it through sin. But such an auxiliary hypothesis needs support if it is to save the view that God created everyone with the same sort of moral conscience.

Atheists also have to account for moral disagreement. It can partly be explained by partiality: people often favor themselves and those for whom they care, and this can skew their moral judgments. At the end of *Reasons and Persons*, Parfit is optimistic about the prospects of moral agreement, saying that moral reasoning, freed from the influence of religion, "is a very recent event" (1984, 454). He sees religion itself as an obstacle that must be overcome for greater moral agreement to emerge.

Suppose, for the sake of argument, it were a toss-up whether the atheist or theist has the best explanation of moral disagreement, leaving questions about the existence of God aside. Still, I believe that arguments against the existence of God, and in particular the argument from evil, would break the tie. So, all things considered, we should accept the atheistic explanation of our capacity to know objective moral truths. It is a plausible account that parallels an atheistic account of how we have a capacity to know objective mathematical truths. Further, it does not require positing the existence of an immaterial being who somehow implants a moral sense or capacity in people.

CONCEPTIONS OF HUMAN RIGHTS

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So far this chapter has assessed theistic and nontheistic conceptions of ethics with regard to moral realism, the diversity of moral belief, and the nature of moral judgment. Another approach to comparative evaluation is to focus on substantive normative claims that are widely accepted, and to ask whether theistic or nontheistic approaches can provide the best explanation of those norms. For the purpose of this discussion, the focus will be on human rights. Is the global ascent of human rights a secular phenomenon, or does the very idea of human rights require a religious underpinning?

Charles Beitz makes an important distinction between "orthodox" and "practical" conceptions of human rights. The orthodox conception "is the idea that human rights have an existence in the moral order that is independent of their expression in international doctrine" (Beitz 2004, 196). On this view, persons possess human rights simply in virtue of being human, and the instruments of human rights law, such as international covenants, ultimately draw their authority from this moral foundation. The practical conception, by contrast, "takes the doctrine and discourse of

human rights as we find them in international political practice as basic" (Beitz 2004, 197). Human rights have functional roles in international discourse, and those functions determine both what human rights are and what human rights there are. The practical conception is not committed to denying any fundamental moral foundation for international human rights. Rather the practical approach treats questions about the nature of human rights as separable from questions about the moral justification of human rights. On this view, human rights advocates could conceivably agree about the form and content of human rights while disagreeing as to how those rights are grounded (Beitz 2004, 197).

The practical conception appears to align with the strategy adopted in drafting the 1948 Universal Declaration of Human Rights, such that forty-eight of the then fifty-eight members of the United Nations were able to ratify it (UN General Assembly 1948). The UDHR contained no enforcement mechanism, and it was not legally binding. The decades since the UN General Assembly's adoption of the UDHR have seen no shortage of crimes against humanity, and the world still lacks effective institutions and procedures that can protect the vulnerable against state-sponsored violence. Yet the Declaration is undoubtedly one of the most consequential documents of the twentieth century. The prominent human rights lawyer Geoffrey Robertson describes the UDHR as an "imperishable statement that has inspired more than 200 international treaties, conventions and declarations, and the bills of rights found in almost every national constitution adopted since the war" (Robertson 2013, 42).

Along with the Geneva Conventions, the UDHR was drafted in the climate of moral urgency that followed the Nuremberg trials (1945–1946), in which former Nazi leaders were brought before the International Military Tribunal on charges of war crimes. Its preamble asserts that "the barbarous acts which have outraged the conscience of mankind" were the consequence of "disregard and contempt for human rights" and declares "freedom of speech and belief and freedom from fear and want" as the "highest aspiration of the common people." Viewed in historical context, the UDHR was not an assertion of the universal validity of Western values. Rather, in the words of Michael Ignatieff, it was "a war-weary generation's reflection on European nihilism and its consequences." (Ignatieff 2001, 4). Ignatieff describes the UDHR as representing a return to the natural law heritage of European law, intended to promote the agency of citizens to stand up to the orders of an unjust state. The Nuremberg trials were a pivotal moment in international law because they brought the first indictments of political leaders for crimes against humanity. By asserting that a state's treatment of its citizens must manifest a basic respect for their human dignity, the trials directly challenged the Westphalian principle of state sovereignty and the international law principle of sovereign immunity. It is perhaps because the postwar understanding of human rights stresses their function of imposing moral limits on sovereign power that human rights discourse proved so effective for a broad range of political movements in the latter half of the twentieth century. From the 1950s the so-called human rights revolution (that is, the global deployment of human rights discourse in anticolonial revolutions, labor struggles, civil rights struggles, and other forms of political activism) transformed human rights into the primary tool of argumentation for social justice movements (Iriye, Goedde, and Hitchcock 2012).

However, the success of human rights in international politics and law has been achieved by defining human rights only at the level of practice and abstaining from theoretical commitments as to their basis and justification. The UDHR was able to be ratified by communist and capitalist states, by countries with state religions and countries with constitutional separation of church and state, because the text maintained a strict neutrality with respect to both religion and ideology. The Thomist philosopher Jacques Maritain, who was involved in the drafting of the UDHR, relates an anecdote: at a meeting of the UNESCO National Commission where human rights were being discussed, "someone expressed astonishment that certain champions of violently opposed ideologies had agreed on a list of those rights. 'Yes,' they said, 'we agree about the rights *but on condition that no one asks us why*'" (UNESCO 1948, 1). In his introduction to the UNESCO symposium on human rights, Maritain further states:

> Where it is a question of rational interpretation and justifications of speculation or theory, the problem of Human Rights involves the whole structure of moral and metaphysical (or anti-metaphysical) convictions held by each of us. So long as minds are not united in faith or

philosophy, there will be mutual conflicts between interpretations and justifications. In the field of practical conclusions, on the other hand, agreement on a joint declaration is possible, given an approach pragmatic rather than theoretical and cooperation in the comparison, recasting and fixing of formulae, to make them acceptable to both parties as points of convergence in practice, however opposed the theoretic viewpoints. (UNESCO 1948, 3)

This conviction about the possibility and value of "convergence in practice" lies at the core of John Rawls's approach to human rights in *The Law of Peoples*. In pluralist societies, neither religious, philosophical, nor moral unity is possible. Therefore, social stability "must be rooted in a reasonable political conception of right and justice affirmed by an overlapping consensus of comprehensive doctrines" (Rawls 1999, 16). For Rawls, human rights belong to a "reasonable political conception of right" precisely insofar as they do not presuppose any particular theistic, metaphysical, or meta-ethical premises.

> These rights do not depend on any particular comprehensive religious doctrine or philosophical doctrine of human nature. The Law of Peoples does not say, for example, that human beings are moral persons and have equal worth in the eyes of God; or that they have certain moral and intellectual powers that entitle them to these rights.… Still, the Law of Peoples does not deny these doctrines. (Rawls 1999, 68)

One important reason why human rights discourse has been able to acquire the political and legal authority that it has is that the human rights project has been conceived as a project of formalizing what Rawls called an "overlapping consensus." At the level of practice, there is broad agreement between mainstream theistic and atheistic ethical systems on the importance of human rights as goals and standards for moral progress in the world.

Yet, despite the pragmatism with which the foundational instruments of human rights protection were constructed, the UDHR and the key treaties that followed it cannot actually be classed as "practical" conceptions of human rights in Beitz's sense. This is because UN-authored human rights documents allude to an objective moral foundation for human rights, in *human dignity*. In the UDHR, a connection between human rights and dignity is implied but unspecified. Subsequently, in both of the 1966 International Covenants on Civil and Political Rights we find the explicit declaration that the human rights they enumerate are *derived* from human dignity (UN General Assembly 1966). This claim that human rights derive from human dignity has since been reiterated in other UN declarations (e.g., the 1993 Vienna Declaration), but all official references to human dignity carefully avoid imputing any religious or metaphysical content to that term.

For any orthodox theory of human rights, human rights declarations, treaties, charters, and laws do not *create* human rights. Human rights exist prior to and independently of the texts that aim to define, enact, and protect them. The concept of a human right is a right that one has *simply in virtue of being human*. Although the UN nowhere defines the meaning of "dignity," the reference to human dignity as the source of human rights can only be read as the claim that humanness carries some innate value or moral worth, from which substantive, deontic norms can be derived.

The most basic theoretical problem for any orthodox theory is explaining why being a member of the species *Homo sapiens* is both a necessary and sufficient condition for possessing human rights. Here we find a crucial difference between theistic and nontheistic accounts. A number of theologians and religious philosophers have argued that human rights require a religious foundation and that secular theories of human rights are untenable (see Perry 2006; Küng 1991; Stackhouse 2005; and the Organization of the Islamic Cooperation 1990). Any secular theory that endorses the uniquely human character of human rights needs to explain the moral significance of humanness without appealing to notions of human sacredness or the sanctity of human life. Because a survey of the key figures on this terrain is well beyond the scope of this section, for the purpose of illustration I briefly contrast just two approaches to this question, one theistic and one nontheistic.

A THEISTIC APPROACH

The Christian philosopher Nicholas Wolterstorff asks what the project of trying to ground human rights in human dignity requires, arguing that no secular ground for human rights is possible (Wolterstorff 2008, 319, 323–341). That project demands an explanation of why all and only human

beings possess a dignity that makes them morally inviolate in just the ways specified by human rights declarations. Given that any secular grounding of human rights cannot appeal to sacredness to explain the inviolability of every human, such approaches must identify some *capacity* humans possess, which is posited as the source and ground of human dignity.

Kant provides perhaps the most influential capacity-based account of human dignity. For Kant, personhood arises from the capacity for rationality, through which humans are able to grasp the moral law and to make the moral law the governing motive of the will. Against Kant, Wolterstorff contends that rationality cannot be the ground of human dignity because it is not possessed by all humans (it is lacking in babies and the cognitively impaired, for example). It is a capacity that a human person can lose without thereby losing his or her moral worth. It is also likely that some nonhuman animals possess reasoning abilities superior to some humans. Most important, however, rationality is a spectrum capacity. Some humans have significantly greater rational capacities than others. Any analysis that reduces dignity to the capacity for reason has the consequence that humans with greater rational powers also possess greater dignity, and hence greater moral worth, than others. Wolterstorff claims that an objection of the same form can be extended to any capacity-based account of human moral worth. For any capacity that might plausibly by identified with human dignity, not all humans will possess that capacity, even potentially. And given the unequal distribution of every capacity across the human race, capacity approaches cannot explain why dignity attaches to humanness and only to humanness in such a way as to confer dignity and moral value *equally* on every human being.

In Wolterstorff's view, a commitment to human rights requires that every member of the species *homo sapiens* is accorded a sacredness that other species do not possess. Human sacredness can only be grounded theistically, and that ground is found in the biblical doctrine that humans bear the image of God. The argument proceeds via a lengthy discussion about how the *imago dei* should be interpreted, which cannot be summarized here. The crucial claim, however, is that (correctly interpreted) the *imago dei* is an essential aspect of human nature, and that God loves "equally and permanently" (Wolterstorff 2008, 352) every creature that bears the *imago dei*, thus bestowing all humans with a special moral worth.

A NONTHEISTIC APPROACH

James Griffin, in his highly influential book *On Human Rights* (2008), takes on the task that Wolterstorff declares impossible for secular ethics. Griffin traces the concept of human rights to medieval theories of natural law, a law that was believed to be manifest in the form of innate, action-guiding, moral dispositions implanted in humans by God. Natural rights, understood as entitlements a person has, first appeared as a corollary of natural law. During the Enlightenment the theological content of natural rights was stripped away, and natural rights came to be understood as accessible through reason alone. The French Revolution's 1789 Declaration of the Rights of Man formalizes both the secularization of natural rights and their rebranding as human rights. The language of human rights largely fell out of favor in the nineteenth century, and was emphatically rehabilitated after World War II. The contemporary understanding of a human right is continuous with the Enlightenment notion of "a right that we have simply in virtue of being human" (Griffin 2008, 2). However, when the theological content of natural right was abandoned, "nothing was put in its place" (Griffin 2008, 2): the concept of human rights we have inherited from the Enlightenment is indeterminate. A consequence of this indeterminacy of sense is that arguments about what human rights there are, how those rights should be understood, and how conflicts of rights should be adjudicated, are undecidable. Lacking clear criteria for the application of the concept of a human right, "we often have only a tenuous, and sometimes a plainly inadequate, grasp on what is at issue" (Griffin 2008, 2).

Griffin's project is to remedy the indeterminacy of human rights, articulating what they are, how they are derived, and the role they have in ethical theory. Rather than attempt here to give a précis of a book-length argument, I will focus on Griffin's interpretation of *dignity* in the phrase "the dignity of the human person" (Griffin 2008, 6). For Griffin, the notion of dignity that is relevant for human rights is profoundly connected with human agency: "Human life is different from the life of other animals. We human beings have a conception of ourselves and of our past and

future. We reflect and assess. We form pictures of what a good life would be… And we try to realize these pictures. This is what we mean by a distinctively *human* existence" (Griffin 2008, 32).

Griffin variously refers to this essentially human power as "personhood," "autonomy," and "normative agency." The claim is not that human rights are *derived* from normative agency. Rather, the proposal is that defining the basic function of human rights as the protection of normative agency makes the concept determinate in a way that best preserves its role in ethics. We can see how the most basic and uncontroversial human rights—the rights to life, liberty, physical security, freedom of speech, conscience, religion, and association—are all essential for the enjoyment of meaningful normative agency.

Griffin insists that normative agency is not merely instrumentally valuable. It should be understood as an end in itself. The effort of self-direction makes our lives more meaningful, independently of whether our plans and our efforts are successful. Our dignity as human persons, then, consists in our status as autonomous beings, a status that can be destroyed or compromised when our human rights are violated.

Atheists and theists can agree, to a large extent, on what rights belong on the list of human rights. However, religious and secular theorists follow very different paths in explaining the basis of human rights, and each path has distinct advantages and disadvantages. Those who believe in a loving God have a more straightforward explanation of how it could be that all human beings possess an innate moral worth to an equal degree. That special form of value is bestowed by God on all humans and only on humans. Without recourse to the notion of sacredness, secular ethics faces the challenge of identifying the human capacity or attributes that warrant the protection of human rights, and that are sufficiently universal to explain the universality of human rights. Griffin's account of normative agency is one way. Of course, there are several other theories. Griffin is right, though, that human rights discourse is vague. This indeterminacy of human rights makes it impossible to give principled answers to practical problems about the scope and boundaries of specific rights, about their application in hard cases, and about how to resolve conflicts between rights. Some human rights aim to protect people from violence and oppression. Others aim to guarantee some minimum level of opportunity to lead a worthwhile life. A theoretical specification of the rights protections a person needs in order to construct a life that is properly her own must be informed by a theory of personhood, of what persons need to flourish, and of the ways in which personhood can be damaged or lost. If we accept that modern human rights doctrine is an outline plan from which a lot of essential detail is missing, then we should also accept that the resources of secular ethics are needed to supply the details.

An account of why humans have an innate moral value, which makes each human irreplaceable, is not the same as an account of what makes a human life valuable to the person whose life it is. These are distinct kinds of value. Crucially, the second kind of value can be gained or lost, but not the first kind. For example, a person experiencing unbearable suffering in the final stages of a terminal illness may rationally judge that life has lost all value and may wish to die. Yet that person still possesses the first kind of value and rightly commands the respect that follows from the fact that he or she is still a human being. Indeed, we extend that form of respect to the dead.

Our conception of human rights is answerable to both of these types of moral value. One way to characterize the difference between theistic and nontheistic theories of human rights is that theistic accounts tend to treat the first kind of value—the innate value of human life—as both independent of, and morally more important than, the second kind of value—the value one places on one's own life as it is subjectively experienced. Secular accounts largely focus on the second kind of value—on how life is valued from the inside—and tend to treat the first kind of value as, in some way, derived from the second. As a generalization, that is, of course, also an oversimplification. This contrast is by no means offered as an exceptionless taxonomic rule. However, I hope it is a useful way to bring into focus one fundamental difference between religious and secular theories of human rights.

CHAPTER REVIEW

This chapter examines whether general facts about morality, and the human capacity to make moral judgments, count in favor of theism or atheism.

Section A assumes moral realism and argues that God's will cannot be the source of moral reasons. Divine command theories face the Euthyphro problem: the dilemma of whether God commands right actions because they are right, or whether right actions are right because God commands them. In order to hold that moral reasons are born from God's will, the theist must believe that moral obligations do not arise from the natural facts alone. Thibodeau shows that a divine command account of morality cannot meet this challenge. The price of insisting on a divine command morality, in which God's commands are not determined by objective moral properties, is that such a view renders the connection between normative reasons and moral obligation unintelligible.

Section B considers whether the similarities and differences in the moral codes of different peoples are more readily explained from a theistic or atheistic standpoint. Metz contends that, if an omnipotent God communicated a single set of moral commands to all human beings, and made entry to heaven conditional on observance of those commands, it is hard to explain why we do not find far greater convergence in moral belief than there actually is. Atheism is consistent with the view that morality developed because it enabled forms of social cooperation that contributed to human survival and flourishing. If systems of morality evolved separately and in parallel, we would expect some fundamental similarities, arising from our common biological needs and vulnerabilities—and we would also expect many differences arising from the divergent developmental paths of different peoples and their cultures. An account of morality as something that emerges and develops within the history of human development provides a more plausible explanation of the plurality of moral systems.

Section C assesses whether atheists can hold that moral judgments are objective and truth-assessable. A common charge against atheistic ethics is that the practice of moral judgment appears to presuppose moral objectivism, and moral objectivism, the theist claims, requires a religious foundation. Atheistic ethics, here, refers to any meta-ethical theory in which God does not play an explanatory role. Russell shows that even views that find ethics in convention, social contract, or subjective moral dispositions can still make sense of practices of moral reasoning, and can hold that there are right answers to moral questions. However, there are atheistic ethical theories that comprehend morality as objective and mind-independent. These views assert that there are moral truths than can be known, just as there are knowable scientific truths. So it is not true that atheists must deny either rationality of moral judgment or the objectivity of moral facts. Russell also points out that moral epistemology is substantially independent of the metaphysics of morals. Despite their metaphysical disagreements, theists and atheists can share an epistemology that adequately grounds their ethical beliefs, irrespective of the truth or falsity of their moral metaphysics.

Section D looks at the rapid embrace of human rights, after World War II, as moving toward universal acceptance of the moral value of every human individual, and considers whether the idea of human rights has religious or secular foundations. The political project of achieving international acceptance of human rights, and of creating enforcement mechanisms in international law, has been successful because declarations and treaties have largely avoided any meta-ethical claims about the foundation of human rights. Here also we find that theists and atheists, despite their metaphysical differences, can find substantial agreement on the content of human rights. However, the idea of human rights does appear to presuppose that membership in the human species carries an inherent dignity that attaches to all human beings and only to human beings. Theists claim that humans can possess an inherent dignity only if it is bestowed by a loving God. There are, however, compelling atheistic accounts of human dignity that focus on what constitutes a distinctively human mode of existence. Neil suggests that the dispute between theistic and atheistic accounts of human rights derives from fundamental differences concerning the source of human values and the value of humans. A commitment to human rights does not present a risk of self-contradiction for either theists or atheists, but theists and atheists must construct their theories of human rights from different resources.

This chapter considers moral realism, our capacity for moral judgment, the diversity of systems of moral belief, and the normative force of human rights. It argues that the justification of moral practice, as we ordinarily understand it, does not require belief in God. Indeed, in some areas of ethical theory, atheism has explanatory advantages over theism.

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