

## The Existence of Human Rights

The Existence of Human Rights The most obvious way in which human rights exist is as norms of national and international law created by enactment and judicial decisions. At the international level, human rights norms exist because of treaties that have turned them into international law. For example, the human right not to be held in slavery or servitude in article 4 of the European Convention and in article 8 of the International Covenant on Civil and Political Rights exists because these treaties establish it. At the national level, human rights norms exist because they have through legislative enactment, judicial decision, or custom become part of a country's law. For example, the right against slavery exists in the United States because the 13th Amendment to the U.S. Constitution prohibits slavery and servitude. When rights are embedded in international law we speak of them as human rights; but when they are enacted in national law we more frequently describe them as civil or constitutional rights. As this illustrates, it is possible for a right to exist within more than one normative system at the same time. Enactment in national and international law is one of the ways in which human rights exist. But many have suggested that this is not the only way. If human rights exist only because of enactment, their availability is contingent on domestic and international political developments. Many people have sought to find a way to support the idea that human rights have roots that are deeper and less subject to human decisions than legal enactment. One version of this idea is that people are born with rights, that human rights are somehow innate or inherent in human beings. One way that a normative status could be inherent in humans is by being God-given. The U.S. Declaration of Independence (1776) claims that people are "endowed by their Creator" with natural rights to "life, liberty, and the pursuit of happiness." On this view, God is the supreme lawmaker and enacted some basic human rights. Rights plausibly attributed to divine decree must be very general and abstract (life, liberty, etc.) so that they can apply to thousands of years of human history, not just to recent centuries. But contemporary human rights are numerous and specific (the right to a fair trial, the right to freedom of religion, the right to equality before the law, etc.) Even if people are born with God-given natural rights, we need to explain how we get from those general and abstract rights to the specific rights found in contemporary declarations and treaties. Attributing human rights to God's commands may give them a secure status at the metaphysical level, but in a very diverse world it does not make them practically secure. Billions of people do not believe in the God found in Christianity, Islam, and Judaism. If people do not believe in God, or in the sort of god that prescribes rights, then if you want to base human rights on theological beliefs you must persuade these people of a rights-supporting theological view. This is likely to be even harder than persuading them of human rights. Legal enactment at the national and international levels provides a far more secure status for practical purposes. Human rights might also exist independently of legal enactment by being part of actual human moralities. It appears that all human groups have moralities, that is, imperative norms of behavior backed by reasons and values. These moralities contain specific norms (for example, a prohibition of the intentional murder of an innocent person) and specific values (for example, valuing human life.) One way in which human rights could exist apart from divine or human enactment is as norms accepted in all or almost all actual human moralities. If almost all human groups have moralities containing norms prohibiting murder, these norms could constitute the human right to life. Human rights can be seen as basic moral norms shared by all or almost all accepted human moralities. This view is attractive but filled with difficulties. First, it seems unlikely that the moralities of almost all human groups agree in condemning, say, torture, unfair criminal trials, undemocratic institutions, and discrimination on the basis of race or sex. There is a lot of disagreement among countries and cultures about these matters. Human rights declarations and treaties are intended to change existing norms, not just describe the existing moral consensus. Second, it is far from clear that the shared norms that do exist support rights held by individuals. A group may think that torture is generally a bad thing without holding that all individuals have a high-priority right against being tortured. Third, human rights are mainly about the obligations of governments. Ordinary interpersonal moralities often have little to say about what governments should and should not do. This is a matter of political morality, and depends not just on moral principles but also on views of the dangers and capacities of the contemporary state. Yet another way of explaining the existence of human rights is to say that they exist in true or justified moralities. On this account, to say that there is a human right against torture is just to say that there are strong reasons for believing that it is almost always wrong to engage in torture. This approach would view the Universal Declaration as attempting to formulate a justified political morality. It was not merely trying to identify a preexisting moral consensus; it was also trying to create a consensus on how governments should behave that was supported by the most plausible moral and practical reasons. This approach requires commitment to the objectivity of moral and practical reasons. It holds that just as there are reliable ways of finding out how the physical world works, or what makes buildings sturdy and durable, there are ways of finding out what individuals may justifiably demand of governments. Even if there is little present agreement on political morality, rational agreement is available to humans if they will commit themselves to open-minded and serious moral and political inquiry. If moral reasons exist independently of human construction, they can when combined with premises about current institutions, problems, and resources generate moral norms different from those currently accepted or enacted. The Universal Declaration seems to proceed on exactly this assumption. One problem with this view is that existence as good reasons seems a rather thin form of existence for human rights. But perhaps we can view this thinness as a practical rather than a theoretical problem, as something to be remedied by the formulation and enactment of legal norms. After all, the best form of existence for human rights would combine robust legal existence with the sort of moral existence that comes from being supported by strong moral and practical reasons.

## About the Author