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# THE ONTOLOGICAL DIMENSIONS OF HUMAN RIGHTS

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## INTRODUCTION

Much has been written during the second half of the past century about various aspects of “Human Rights,” but students of law, politics and international relations are less acquainted with the ontological basis of this vitally important issue. Since the adoption of the Universal Declaration of Human Rights (UDHR) in 1948 and the subsequent international conventions and covenants<sup>(1)</sup>, we saw increasing criticisms from various circles on the rationale of such extraordinary emphasis on the inalienable rights of people around the

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world. Some have accused this trend as an unjustifiable intellectualism especially in traditionally backward countries.

In fact, reading through the immense literature on human rights conveys the false impression that this topic is an invention of Western power which is now being used as an instrument of political pressure against traditional and less developed authoritarian societies.

Proponents of universality of human rights believe that while secular cultures have institutionalized this matter as “major article of faith,”<sup>(2)</sup> we are witnessing a developing crisis in other parts of the world and especially since September 11<sup>th</sup> 2001 the legitimacy of human rights is under serious threat.<sup>(3)</sup>

Hannah Arendt<sup>(4)</sup> once said that “the ontological dimensions of human rights have been largely ignored in favor of the judicial”<sup>(5)</sup> This essay attempts to look at the issue by examining the matter from an ontological point of view. The main focus here is not “human rights” *per se* and the conventional norms governing its realm, rather, the aim is to investigate the preliminary requisites to it; that is the ontological basis that embraces man’s inalienable rights by virtue of his very nature as a “human being” and not necessarily as a member of society or the citizen of a political entity called state.<sup>(6)</sup> In the final account, the question is whether man-disregard of his race, faith, gender, creed and political or territorial affiliation- ultimately exists totally for or as a member of society or exists in some significant sense for himself independent of the socio-political environment? Another important question is whether the entitlement of such rights entails a correlative duty or it is merely a privilege as basic moral guarantees that people shall enjoy in all countries and cultures simply because they are human beings. It will be argued that the problem of human rights is essentially lack of effective enforcement in a disparate chaotic international system.

## THE ONTOLOGICAL PERSPECTIVES

The term *ontology*<sup>(7)</sup> has its origin in philosophy, and has been applied in many different fields of science. Historically, ontology arises out of the branch of philosophy known as metaphysics, which deals with the nature of reality – of what exists. This fundamental branch is concerned with analyzing various types or modes of existence, often with special attention to the relations between *particulars* and *universals*, between *intrinsic* and *extrinsic* properties, and between *essence* and *existence*. The traditional goal of ontological inquiry in particular is to divide the world "at its joints", to discover those fundamental categories, or kinds, into which the world's objects naturally fall.<sup>(8)</sup>

In simple terms, ontology is the study of categories. It has also been called the study of "being." It is often distinguished from metaphysics which has been called the study of being *qua* being. This is a subtle but important distinction. An ontology may include abstract concepts or concrete objects without addressing the typically metaphysical questions of whether they actually exist or not<sup>(9)</sup>.

The essential function of an ontology is to define a common understanding for researchers who need to share information in a certain domain. It includes machine-interpretable definitions of basic concepts in the domain and relations among them. The main tasks of ontology in any branch of knowledge can be categorized as follows:<sup>(10)</sup>

- To share common understanding of the structure of information among people or software agents;
- To enable reuse of domain knowledge;
- To make domain assumptions explicit;
- To separate domain knowledge from the operational knowledge;

- To analyze domain knowledge.

Though we may not necessarily consider all those aspects in this paper, from a methodological standpoint, social scientists adopt one of four main ontological approaches, depending the types and nature of their inquiries:

- *Realism*<sup>(11)</sup>: the idea that facts are "out there" just waiting to be discovered

- *Empiricism*<sup>(12)</sup>: the idea that we can observe the world and evaluate those observations in relation to facts

- *Positivism*<sup>(13)</sup>: which focuses on the observations themselves, attentive more to claims about facts than to facts themselves

- *Postmodernism*<sup>(14)</sup>: which regards facts as fluid and elusive, and recommends focusing only on observational claims.<sup>(15)</sup>

On the basis of the above methodological explanation, we are now able to enter into our main topic and examine the ontological aspects of human rights as a distinct category and field of knowledge. Among multiple postmodern approaches, we shall use “critical theory” as applied to legal studies, with an eye on “constructivism”<sup>(16)</sup> for the purpose of our investigation along with the concept of ontology.

## CRITICAL THEORY AND LEGAL ONTOLOGY

The doctrine of human rights has been subjected to various forms of fundamental, philosophical criticism. These challenges to the philosophical validity of human rights as a moral doctrine differ from critical appraisals of the various philosophical theories supportive of the doctrine for the simple reason that they aim to demonstrate what they perceive to be the philosophical fallacies upon which human rights are founded. Two such forms of critical analysis bear particular

attention: one which challenges the universalist claims of human rights, and another which challenges the presumed objective character of human rights principles.<sup>(17)</sup>

“Critical legal studies” CLS is a movement in legal thought that applied methods similar to those of critical theory (the Frankfurt School) to law.<sup>(18)</sup> Although the CLS (like most schools and movements) has not produced a single, monolithic body of thought, several common themes can be generally traced in its adherents' works. These include:

A first theme is that contrary to the common perception, legal materials (such as statutes and case law) do not completely determine the outcome of legal disputes, or, to put it differently, the law may well impose many significant constraints on the adjudicators in the form of substantive rules.

Secondly, there is an argument that all "law is politics." This means that legal decisions are a form of political decisions. The argument takes aim at the positivist idea that law and politics can be entirely separated from one another. Still, some argue that there is no 'pure' law or politics, but rather the two forms work together and constantly shift between themselves.

A third strand of the traditional CLS school is that far more often than is usually suspected the law tends to serve the interests of the wealthy and the powerful by protecting them against the demands of the poor and the alleged subordinate people such as women, ethnic minorities, the working class, indigenous peoples, the disabled, etc for greater justice.

Furthermore, CLS at times claims that legal materials are inherently contradictory, i.e. the structure of the positive legal order is based on a series of binary oppositions such as, for instance, the

opposition between individualism and altruism.

Finally, CLS questions law's central assumptions, one of which is the Kantian notion of the autonomous individual. CLS holds that individuals are tied to their communities, socio-economic class, gender, race, and other conditions of life such that they cease to be autonomous actors in the Kantian mode. Instead, they are determined in large part by social and political structures that surround them.<sup>(19)</sup>

Legal systems are perhaps most suited for developing adequate ontology in the social world. Codification of norms and customs into explicit laws are in fact categorizations of abstract objects at some level and often legal disputes turn on distinctions among categories. Specialists in the field believe that legal systems usually comprise the most perceptive ontologies in the field of social science. Thus, they are a good point of reference for researcher in legal theory and social scientists seeking to study social objects. In fact, many such objects only exist as legal norms.<sup>(20)</sup>

It would be interesting to inspect whether customary or conventional norms comprising the whole body of human rights can sustain charges put upon it by critical legal studies. Below we shall attempt to ponder upon this issue with an objective to find whether or not the universality of those rights owes their existence to law, or some other institution such as moral, customs, religions, ideologies or simply myths and superstitions.

In practice, the strength of the relevant ontology shall be determined by the result of such query. Due to widespread disagreement among publicists, social scientists and practitioners in political sphere, we ought to avoid pitfalls pertaining mutually exclusive norms and categories that lead to faulty conclusions and ambiguous ontology.

## CONCEPT OF “RIGHT” IN LEGAL THEORY

The common understanding about human rights is that these rights are moral guarantees towards the enjoyment of a minimally good life. In conceptual terms, human rights are themselves derivative of the concept of a right. In order to gain an adequate understanding of both philosophical foundation of rights and ontological dimensions of the concepts from which human rights emerges, we shall first focus upon the philosophical analysis of the concept of a ‘right’ and then, we shall investigate the ontological dichotomies related to it.<sup>(21)</sup>

## MORAL VS. LEGAL RIGHTS

The distinction drawn between moral rights and legal rights as two separate categories of rights is of fundamental importance to understanding the basis and potential application of human rights. Legal rights refer to all those rights found within existing legal codes. A legal right is a right that enjoys the recognition and protection of the law. Questions as to its existence can be resolved by simply locating the relevant legal instrument or piece of legislation. Ontologically, a legal right cannot be said to exist prior to its passing into law and the limits of its validity are set by the jurisdiction of the body which passed the relevant legislation.

Legal positivists argue that the only rights that can be said to legitimately exist are legal rights, that is, rights that originate within a legal system. On this view, moral rights are not rights in the strict sense, but are better thought of as moral claims, which may or may not eventually be assimilated within national or international law.<sup>(22)</sup>

There is no doubt that human rights cannot be reduced to, or

exclusively identified with legal rights. In other words, it can be argued that human rights in the final account should be identified as moral rights.<sup>(23)</sup>

Clearly, there remain numerous countries that wholly or partially exclude formal legal recognition to fundamental human rights. Supporters of human rights in these countries insist that the rights remain valid regardless, as fundamental moral rights. The universality of human rights positively entails such claims. The universality of human rights as moral rights clearly lends greater moral force to human rights.

However, for their part, legal rights are not subject to disputes as to their existence and validity in quite the way moral rights are. It would be a mistake to exclusively identify human rights with moral rights. Human rights are better thought of as both moral rights and legal rights. Human rights originate as moral rights and their legitimacy is necessarily dependent upon the legitimacy of the concept of moral rights.

## **CLAIM RIGHTS & LIBERTY RIGHTS**

Specific distinction between *claim rights* and *liberty rights* would lead us to a much more interesting concept in law known as “Jural Relation” proposed by W.N. Hohfeld<sup>(24)</sup>. Hohfeld identified four categories of rights: liberty rights, claim rights, power rights, and immunity rights.

Hohfeld noticed that in order to both facilitate reasoning and clarify rulings the term *rights* should be disambiguated by breaking it into eight distinct concepts. To eliminate vagueness, he defined these terms relative to one another, grouping them into four pairs of *Jural*

*Opposites* and four pairs of *Jural Correlatives*.

*Jural Opposites*: Right/No-Right; Privilege/Duty; Power/Disability; Immunity/Liability.

*Jural Correlatives*: Right/Duty; Privilege/No-Right; Power/Liability; Immunity/Disability.

This use of the words *right* and *privilege* correspond respectively to the concepts of claim rights and liberty rights.

Hohfeld argued that right and duty are correlative concepts, i.e. the one must always be matched by the other. Thus, each individual is located within a matrix of relationships with other individuals. By summing the rights held and duties owed across all these relationships, the analyst can identify both the degree of liberty — an individual would be considered to have perfect liberty if it is shown that no-one has a right to prevent the given act — and whether the concept of liberty is comprised by commonly followed practices, thereby establishing general moral principles and civil rights.<sup>(25)</sup>

However, many scholars have subsequently tended to collapse the last two corollaries within the first two and hence to restrict attention to liberty rights and claim rights.<sup>(26)</sup>

Liberty rights are thus defined as rights which exist in the absence of any duties not to perform some desired activity and thus consist of those actions one is not prohibited from performing. In contrast to claim rights, liberty rights are primarily negative in character.<sup>(27)</sup>

A liberty right can be said, then, to be a right to do as one pleases precisely because one is not under an obligation, grounded in others' claim rights, to refrain from so acting. Liberty rights provide for the capacity to be free, without actually providing the specific means by which one may pursue the objects of one's will.<sup>(28)</sup>

## HUMAN RIGHTS: ONTOLOGICAL DICHOTOMY

As Mentioned earlier, human rights are "rights and freedoms to which all humans are entitled." Proponents of the concept usually assert that everyone is endowed with certain entitlements merely by reason of being human. Human rights are thus conceived in a *universalist* and egalitarian fashion. Such entitlements can exist as shared norms of actual human moralities, as justified moral norms or natural rights supported by strong reasons, or as legal rights either at a national level or within international law.

However, there is no consensus as to the precise nature of what in particular should or should not be regarded as a human right in any of the preceding senses, and the abstract concept of human rights has been a subject of intense philosophical debate and criticism.<sup>(29)</sup>

Ontological queries relate to a number of conceptual dichotomies which ought to be addressed for better understanding the present status of human right in the world. A dichotomy is any splitting of a whole into exactly two non-overlapping parts, meaning it is a procedure in which a whole is divided into two parts, or in half. It is a partition of a whole (or a set) into two parts (subsets) that are: either jointly exhaustive (everything must belong to one part or the other), or mutually exclusive (nothing can belong simultaneously to both parts.)<sup>(30)</sup> Essential ontological dichotomies include concepts such as the followings: Universals and particulars; absolute and relative; abstract and concrete; essence and existence; determinism and indeterminism, etc.<sup>(31)</sup>

In the field of human rights, those ontological dichotomies are most determining because of the nature and substance of the norms involved and the context they are supposed to be applied. Two major ontological human rights dichotomies which have created much

controversy in the field are: Indivisibility vs. categorization on the one hand and, Universalism vs. Relativism on the other. Furthermore, in all human rights debates we face the recurrent positions of States and Non-States problem. Here is some clarification on these critical issues:

### **INDIVISIBILITY VS. CATEGORIZATION**

It is generally believed that what we call the “package” of human rights, containing all conventional legal instruments, is indivisible. However, this view has some strong critics and opponents. The indivisibility and interdependence of all human rights has been confirmed by the 1993 Vienna Declaration and Program of Action: “All human rights are universal, indivisible and interdependent and related. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis.”<sup>(32)</sup>

However, there is a tendency for categorization in splitting human rights into civil and political rights, and economic, social and cultural rights.<sup>(33)</sup> Opponents of the indivisibility of human rights argue that the two covenants are basically different and require completely different approaches.

In this sense, Economic, social and cultural rights are mere *aspirations or goals*, as opposed to real 'legal' rights. In their view, they are *ideologically divisive/political*, meaning that there is no consensus on what should and shouldn't be provided as a right.

Furthermore, opponents of indivisibility human rights argue that the matter is *non-justiciable* and *vague*, meaning that their provision, or the breach of them, cannot be judged in a court of law.

Similarly civil and political rights are categorized as: *real 'legal'*

*rights, precise, non-ideological/non-political and justiciable.* Also the negative aspect of the rules can protect states simply by taking no action.

The Universal Declaration of Human Rights included both economic, social and cultural rights and civil and political rights because it was based on the principle that the different rights could only successfully exist in combination:

“The ideal of free human beings enjoying civil and political freedom and freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his civil and political rights, as well as his social, economic and cultural rights.”<sup>(34)</sup> This is held to be true because without civil and political rights the public cannot assert their economic, social and cultural rights. Similarly, without livelihoods and a working society, the public cannot assert or make use of civil or political rights.<sup>(35)</sup>

Some authors questioning the rationale of giving priorities to one or other sets of rules or covenants argue that if every possible human rights element is deemed to be essential or necessary, then nothing will be treated as though it is truly important. They urge caution with prioritization of rights: “the call for prioritizing is not to suggest that any obvious violations of rights can be ignored.”

Some human rights are said to be "inalienable rights". The term inalienable rights (or unalienable rights) refer to "a set of human rights that are fundamental, are not awarded by human power, and cannot be surrendered."<sup>(36)</sup>

## **UNIVERSALISM VS. RELATIVISM**

The notion of relativism may encompass cultural, moral, ethical, ideological, local and regional. The Universal Declaration of Human

Rights enshrines universal rights that apply to all humans equally, whichever geographical location, state, race or culture they belong to. Constructivists and proponents of cultural relativism argue for acceptance of different cultures, which may have practices conflicting with human rights.<sup>(37)</sup>

Universalism has been described by some as cultural, economic or political “imperialism.” In particular, the concept of human rights is often claimed to be fundamentally rooted in a politically *liberal* outlook which, although generally accepted in developed countries in Europe, Japan or North America, is not necessarily taken as standard elsewhere.

Many Muslim countries argue that Islamic values are significantly different from those of Western civilizations and principles and claim that they be free to follow their own standard.<sup>(38)</sup> This contention has given some undue pretexts to authoritarian regimes to do whatever they please against their citizens.

There is no doubt that tyranny, injustice and oppression against human beings are detestable acts that no religion, culture or traditions can legitimately endorse. Thus, it appears that cultural relativism is a self-detonating position. Since, if cultural relativism is true, then universalism must also be true.

Relativistic arguments tend to neglect the fact that modern human rights are new to all cultures, dating back only to 1948.<sup>(39)</sup> Some authors<sup>(40)</sup> have argued that cultural relativism is almost exclusively an argument used by those who wield power in cultures which commit human rights abuses, and that those whose human rights are compromised are the powerless. This reflects the fact that the difficulty in judging universalism versus relativism lies in who is claiming to represent a particular culture.

Although the argument between universalism and relativism is far

from complete, it is an academic discussion in that all international human rights instruments adhere to the principle that human rights are universally applicable. The 2005 World Summit reaffirmed the international community's adherence to this principle.

### STATE VS. NON-STATE ACTORS

Non-states actors comprise legal and illegal entities such as NGOs<sup>(41)</sup>, international companies, political parties, terrorist groups and individuals. Perhaps these latter categories, i.e. terrorist groups, whether organized, such as Al-Qaeda or dispersed, have committed most abhorrent crimes against humanity during the past decade. In fact, terrorist groups around the world have changed the premise of human rights by forcing even democratic states to breach their legal obligation with respect to human rights rules in the process of combating terrorism.<sup>(42)</sup>

Other non-states actors can also commit human rights abuses, but are not generally subject to human rights law other than under International Humanitarian Law<sup>(43)</sup>, which applies to individuals. Also, certain national instruments such as the Human Rights Act 1998 (UK), impose human rights obligations on certain entities which are not traditionally considered as part of government or "public authorities".<sup>(44)</sup>

Transnational and multinational agencies play an increasingly large role in the world, and are responsible for a large number of human rights abuses. Although the legal and moral environment surrounding the actions of governments is reasonably well developed, that surrounding multinational companies is both controversial and ill-defined.

No international treaties exist to specifically cover the behavior of companies with regard to human rights, and national legislation is very variable.<sup>(45)</sup>

In August 2003 the Human Rights Commission's Sub-Commission on the Promotion and Protection of Human Rights produced draft *Norms on the responsibilities of transnational corporations and other business enterprises with regard to human rights*.<sup>(46)</sup> These were considered by the Human Rights Commission in 2004, but have no binding status on corporations and are not monitored.<sup>(47)</sup>

There are also a great number human rights NGOs that function as private entities and watch-dogs vis-à-vis states, ensuring and supervising the implementation and breach of rules. These organizations have grown in influence, both nationally and internationally. NGOs work to advance international human rights around the world principally by setting standards, documenting violations and lobbying for effective enforcement. "Standard-setting" is "the establishment of international norms by which the conduct of states can be measured or judged." They have played a "decisive role in transforming the phrase ['human rights'] from but a Charter provision or a Declaration article into a critical element of foreign policy discussions in and out of governmental or intergovernmental circles."<sup>(48)</sup>

Non-states actors have the capacity to influence the scope and substance of human rights with their negative or positive actions. Therefore they should be given special attention in the furtherance of human rights goals and aspirations around the globe.

## CONCLUSIONS

Ontological examination of human rights in this survey revealed the fact that some of the controversies surrounding this important world issue are related to different conception of rights and their domain of application. The opinion that human rights are basically moral guarantees for all people in all countries and cultures around the globe, simply because they are people, is a wishful unrealistic perception. In order to be considered effective guarantees, these “rights” should be given high priority for all people and their compliance by governments and institutions should be mandatory rather than discretionary. This requires efficient tools and instruments for strict observance.

Human rights are frequently held to be universal in the sense that all people have and should enjoy them, and to be independent in the sense that they exist and are available as standards of justification and criticism whether or not they are recognized and implemented by the legal system or officials of a country.<sup>(49)</sup>

The moral doctrine of human rights goes over and beyond conventional legal rules that aim at the fundamental prerequisites for each person to a minimum decent life free from hunger, torture oppression etc. But, this is an aspiration that only states can fulfill and guarantee. Otherwise, all covenants, conventions, declarations and resolution remain a series ambitious unreachable goal on the distant horizon.

Universality of human rights is a debatable issue that has not been settled to this date, partly because of non-compliance of some states claiming to be culturally or ideologically different from the others. As long as there are no efficient enforceable rules to guarantee their application, we shall witness their continuous breach. In practice, the

burden for securing human rights falls upon national governments which are themselves the prime culprits.

Human rights being the product of two complementary elements i.e. moral and legal rights should be thought of as such in culturally backward countries. Otherwise people cannot claim their rights to freedom and liberty.

Furthermore the core concept of human rights should not be taken for granted. This is to say that enjoying those rights requires the fulfillment of the correlative duties, as stated above. This means that the institutions of a civil society should educate people of their rights and duties as responsible citizens.

While the contemporary doctrine of human rights has come to occupy centre stage in geo-political affairs, we are still far from the existence of a consensus about the validity and applicability of its norms in the whole world. This is not of course due to the weakness of philosophical foundation of human rights, or ontological ambiguities and epistemological vagueness of the rules governing them. Rather, the anomaly should be seen in the paucity of effective tools for their enforcement in a chaotic international system governed by diverse, disparate and unequal sovereign states. ❖

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## NOTES:

1. The best-known are the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.

2. Canadian historian Michael Ignatieff, See: Ignatieff, M. (1999), *Whose universal values? The crisis in human rights. The Hague: Praemium Erasmianum Essay.*

3. Rob Buitenweg, *Human Rights and the Paradox of Humanism* 11 May, 2003

4. **Hannah Arendt** (1906 – 1975) was an influential German American political theorist.

5. See: Sarena Parekh, *Hanna Arendt and the Challenge of Modernity, A Phenomenology of Human Rights.* Routledg, 2008.

6. I have borrowed this approach from Raymond Dennehy, *The Ontological basis of Human Rights* University of San Francisco ,San Francisco, California.

7. **Ontology** (from the Greek ὄν, genitive ὄντος: "of that which is", and -λογία, -logia: *science, study, theory*) is the philosophical study of the nature of *being, existence* or *reality* as such, as well as the basic categories of being and their relations. Traditionally listed as a part of the major branch of philosophy known as metaphysics, ontology deals with questions concerning what entities exist or can be said to exist, and how such entities can be grouped, related within a hierarchy, and subdivided according to similarities and differences. Wikipedia

8. [http://en.wikipedia.org/wiki/Ontology\\_%28information\\_science%29](http://en.wikipedia.org/wiki/Ontology_%28information_science%29) : Wikipedia

9. *"Introduction to Applied Ontology: The Philosophical Analysis of Everyday Objects"* - featuring ontology defined as the "study of categories" of sociological objects

10. Natalya F. Noy and Deborah L. McGuinness *Ontology Development 101: A Guide to Creating Your First Ontology* Stanford University, Stanford, CA,

11. **Scientific realism** is, at the most general level, the view that the world

described by science is the real world, as it is, independent of what we might take it to be. Within philosophy of science, it is often framed as an answer to the question "how is the success of science to be explained?" The debate over what the success of science involves centers primarily on the status of unobservable entities apparently talked about by scientific theories. Generally, those who are scientific realists assert that one can make reliable claims about unobservable (viz., that they have the same ontological status) as observables.

12. **Empiricism** in philosophy is a theory of knowledge which opposes other theories of knowledge, such as rationalism, idealism and historicism. Empiricism asserts that knowledge comes (only or primarily) via sensory experience as opposed to rationalism which asserts that knowledge comes (also) from pure thinking. Both empiricism and rationalism are individualist theories of knowledge, whereas historicism is a social epistemology.

13. **Positivism** refers to a set of epistemological perspectives and philosophies of science which hold that the scientific method is the best approach to uncovering the processes by which both physical and human events occur. Though the positivist approach has been a recurrent theme in the history of western thought from the Ancient Greeks to the present day, the concept was developed in the early 19th century by the philosopher and founding sociologist, Auguste Comte.

14. **Postmodernism** is a movement away from the viewpoint of modernism. More specifically it is a tendency in contemporary culture characterized by the problem of objective truth and inherent suspicion towards global cultural narrative or meta-narrative. It involves the belief that many, if not all, apparent realities are only social constructs, as they are subject to change inherent to time and place.

15. Wikipedia

16. **Constructivism** is a theory of knowledge (epistemology) that argues that humans generate knowledge and meaning from an interaction between their experiences and their ideas. Constructivism is basically a theory -- based on observation and scientific study -- about how people learn. It says that people construct their own understanding and knowledge of the world, through experiencing things and reflecting on those experiences. When we encounter something new, we have to reconcile it with our previous ideas and experience, maybe changing what we believe, or maybe discarding the new information as

irrelevant. In any case, we are active creators of our own knowledge. To do this, we must ask questions, explore, and assess what we know.

17. See Internet Encyclopedia of Philosophy IEP, on Human Rights: <http://www.iep.utm.edu/hum-rts/#SH3b>

18. Although the intellectual origins of the Critical Legal Studies (CLS) can be generally traced to American Legal Realism, as a distinct scholarly movement CLS fully emerged only in the late 1970s. Many first-wave American CLS scholars entered legal education, having been profoundly influenced by the experiences of the civil rights movement, women's rights movement, and the anti-war movement of the 1960s and 1970s. What started off as a critical stance towards American domestic politics eventually translated into a critical stance towards the dominant legal ideology of modern Western society. Drawing on both domestic theory and the work of European social theorists, the "crits" sought to demystify the numerous myths at the heart of mainstream legal thought and practice. See *Wikipedia*, [http://en.wikipedia.org/wiki/Critical\\_legal\\_studies](http://en.wikipedia.org/wiki/Critical_legal_studies)

19. Due to the importance of the substance of the principal themes of Critical Legal Theory for this paper, I have reproduced substantial parts of the text here in order to facilitate reference to the main source. Cf.: *Wikipedia, Ibid.*

20. Cf. : David R. Koepsell "Introduction to Applied Ontology: The Philosophical Analysis of Everyday Objects" - featuring ontology defined as the "study of categories" of sociological objects.

21. Taken from: *Internet Encyclopedia of Philosophy* , A peer- Reviewed Academic Resource, IEP <http://www.iep.utm.edu/hum-rts/#SH3b>

22. For a legal positivist, such as the 19th. Century legal philosopher **Jeremy Bentham**, there can be no such thing as human rights existing prior to, or independently from legal codification. For a positivist determining the existence of rights is no more complicated than locating the relevant legal statute or precedent. In stark contrast, moral rights are rights that, it is claimed, exist prior to and independently from their legal counterparts. *Ibid*

23. Human rights certainly share an essential quality of moral rights, namely, that their valid existence is not deemed to be conditional upon their being legally recognized. Human rights are meant to apply to all human beings everywhere, regardless of whether they have received legal recognition by all countries

everywhere. *Idem*

24. **Wesley Newcomb Hohfeld** (1879-1918) was an American jurist. He was the author of the seminal *Fundamental Legal Conceptions as Applied in Judicial Reasoning and Other Legal Essays* (1919).

25. Cf.: Wikipedia topic on Hohfeld. [http://en.wikipedia.org/wiki/Wesley\\_Newcomb\\_Hohfeld](http://en.wikipedia.org/wiki/Wesley_Newcomb_Hohfeld)

26. The political philosopher **Peter Jones** (1994) provides one such example. Jones restricts his focus to the distinction between claim rights and liberty rights. He conforms to a well-established trend in rights' analysis in viewing the former as being of primary importance. Jones defines a claim right as consisting of being owed a duty. A claim right is a right one holds against another person or persons who owe a corresponding duty to the right holder.

27. Peter Jones, *Ibid*

28. *Ibid*

29. See: *Wikipedia* on human rights: [http://en.wikipedia.org/wiki/Human\\_rights](http://en.wikipedia.org/wiki/Human_rights)

30. The two parts thus formed are complements. In logic, the partitions are opposites if there exists a proposition such that it holds over one and not the other. In the community of philosophers and scholars, many believe that "unless a distinction can be made rigorous and precise it isn't really a distinction." Cf. : *Wikipedia*, <http://en.wikipedia.org/wiki/Dichotomies>

31. Cf. *Wikipedia*

32. Vienna Declaration and Program of Action, World Conference on Human Rights, 1993, This statement was again endorsed at the 2005 World Summit in New York (paragraph 121).

33. Civil and political rights are enshrined in articles 3 to 21 of the Universal Declaration of Human Rights (UDHR) and in the International Covenant on Civil and Political Rights (ICCPR). Economic, social and cultural rights are enshrined in articles 22 to 28 of the Universal Declaration of Human Rights (UDHR) and in the International Covenant on Economic, Social and Cultural Rights (ICESCR). See: *Wikipedia*

34. International Covenant on Civil and Political Rights and the International Covenant on Economic Social and Cultural Rights, 1966.

Since then numerous other treaties (pieces of legislation) have been offered at

the international level. They are generally known as *human rights instruments*. Some of the most significant, referred to (with ICCPR and ICESCR) as "the seven core treaties", are:

1. Convention on the Elimination of All Forms of Racial Discrimination (CERD) (adopted 1966, entry into force: 1969)

2. Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) (adopted 1979, entry into force: 1981)

3. United Nations Convention Against Torture (CAT) (adopted 1984, entry into force: 1984)

4. Convention on the Rights of the Child (CRC) (adopted 1989, entry into force: 1989)

5. Convention on the Rights of Persons with Disabilities (CRPD) (adopted 2006, entry into force: 2008)

6. International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (ICRMW or more often MWC) (adopted 1990, entry into force: 2003)

35. Wikipedia

36. *Wikipedia*, topic on human rights.

37. This is a constructivist view that believes in a multicultural world. For example female genital mutilation occurs in different cultures in Africa, Asia and South America. It is not mandated by any religion, but has become a tradition in many cultures. It is considered a violation of women's and girl's rights by much of the international community, and is outlawed in some countries. *Wikipedia*

38. For example, in 1981, the Iranian representative to the United Nations, Ambassador Rajaie-Khorassani, articulated the position of his country regarding the Universal Declaration of Human Rights by saying that the UDHR was "a secular understanding of the Judeo-Christian tradition", which could not be implemented by Muslims without trespassing the Islamic law. See: [http://en.wikipedia.org/wiki/Human\\_rights#cite\\_note-Littman1999-77](http://en.wikipedia.org/wiki/Human_rights#cite_note-Littman1999-77)

39. It is interesting to note that the 1948 Universal Declaration of Human Rights was drafted by people from many different cultures and traditions, including a US Roman Catholic, a Chinese Confucian philosopher, a French Zionist and a representative from the Arab League, amongst others, and drew upon advice from

thinkers such as Mahatma Gandhi. See: [http://en.wikipedia.org/wiki/Human\\_rights#cite\\_note-hysvvq-18](http://en.wikipedia.org/wiki/Human_rights#cite_note-hysvvq-18)

40. E.g. Michael Grant Ignatieff is a former Canadian politician who was the leader of the Liberal Party of Canada and Leader of the Official Opposition from 2008 until 2011. Known for his work as a historian, author, university professor and diplomat, Ignatieff held senior academic posts at the University of Cambridge, the University of Oxford, Harvard University and the University of Toronto before entering politics in 2006. Wikipedia.

41. Non-Governmental Organizations

42. Allegations against USA in the past decade in Guantanamo, Afghanistan and Iraq are examples of this kind.

43. The **Geneva Conventions** came into being between 1864 and 1949 as a result of efforts by Henry Dunant, the founder of the International Committee of the Red Cross. The conventions safeguard the human rights of individuals involved in armed conflict, and build on the 1899 and 1907 Hague Conventions, the international community's first attempt to formalize the laws of war and war crimes in the nascent body of secular international law. The conventions were revised as a result of World War II and readopted by the international community in 1949. See *Ibid*: [http://en.wikipedia.org/wiki/Humanitarian\\_law](http://en.wikipedia.org/wiki/Humanitarian_law)

44. Wikipedia

45. Jean Ziegler, Special Rapporteur of the UN Commission on Human Rights on the right to food stated in a report in 2003: [T]he growing power of transnational corporations and their extension of power through privatization, deregulation and the rolling back of the State also mean that it is now time to develop binding legal norms that hold corporations to human rights standards and circumscribe potential abuses of their position of power. Wikipedia

46. "Norms on the responsibilities of transnational corporations and other business enterprises with regard to human rights". UN Sub-Commission on the Promotion and Protection of Human Rights. Retrieved January 3, 2008. *Ibid*

47. "Report to the Economic and Social Council on the sixtieth session of the commission (E/CN.4/2004/L.11/Add.7)" (PDF). United Nations Commission on Human Rights. p. 81. Retrieved January 3, 2008. *Ibid*

48. William Korey, NGOs and the Universal Declaration of Human Rights 3

(1998).

49. Cf.: Nickel, James. Making Sense of Human Rights: Philosophical Reflections on the Universal Declaration of Human Rights, (Berkeley; University of California Press, 1987)