

Lecture on the Philosophical Foundations and Fundamental Questions of Human Rights

Master Theory and Practice of Human Rights

15.9.2015

Oslo

C.Corradetti

Question

- Why do we need a philosophy of human rights?

What are human rights for?

- State's Constraints
- Enabling conditions
- Minimum Guarantees
-

Where do human rights come from?

- God
- Natural Law theories
- Experiences of Wrongs:

threats from the modern state, experience of injustices
(see Nickel, p.71)

Question: can we agree on wrongs in the absence of an agreement on «the good and the right?»

Are Human Rights Descriptive or Normative?

The concept of Human Rights is problematic since there is no overall agreement on the criteria connected to valid uses of the term.

Should we just dismiss the term?

Are Human Rights Descriptive or Normative?

...Not necessarily since it can be distinguished:

-an intensional aspect: i.e. «human rights are rights that we have simply in virtue of being human»

But then what is "human" is to be explained

-an extensional aspect: all the documents connected with human rights issues, i.e. French Declaration, UN Declaration etc.

Are Human Rights Descriptive or Normative?

Nickel (2013) : «human rights are the rights of lawyers not of philosophers» (p.1)

What does it mean and what justifies human rights laws ?

Nickel «three levels of analysis» (p.3):

Are Human Rights Descriptive or Normative?

1 first level (normative):

A philosophical account of human rights! Possible candidates: humanity, dignity, equality, liberty etc...

2 second level (normative and descriptive/intensional and extensional)

norms following these basic accounts and showing to be «universal»

3 third level (descriptive)

measures to defend universal norms

Foundations of Human Rights

Two ways of interpreting the normativity of human rights:

1) Kantian-deontological

human rights have a value independently from the promotion of its ends: i.e. making life good. No-trade-off with other goods in life!

Foundations of Human Rights

2) Consequentialist: i.e. Utilitarianism

maximization of total happiness, ergo trade among different goods according to maximization of total happiness

Utilitarianism: Principle of (Total or Average) Happiness as Principle of Law (and Justice):

Total Happiness/Utility: maximization of the total utility by adding individual utilities

Case 1

$x_2, y_6, z_4 = \text{tot. } 12$ preferable to $x_4, y_4, z_3 = \text{tot. } 11$

Average Happiness/Utility: maximization of average utility

$x_4, y_4, z_4 = \text{tot. } 12$ preferable to $x_{10}, y_2, z_1 = \text{tot. } 13$

Foundations of Human Rights

One property of Human Rights: Teleology

Teleology of rights: promotion of human rights admitting also balancing for accomplishment of goods in life.

Foundations of Human Rights

Teleology is for overcoming right-conflicts

Rights cannot be reduced to goals («the mandatory character is missing»), but their potential conflict should be arranged in a teleological/goal oriented way

Are Human Rights Descriptive or Normative?

Whichever approach is chosen – either deontological or consequentialist – problems remain with the intentional «indeterminateness» of human rights

Therefore

One needs to articulate a philosophical argument to specify this indeterminateness and add a content.

Why a Philosophy of human rights?

- An example of intentional articulation:

Nickel's pluralist thesis: the 4-claim framework

- A secure claim to have a life
- A secure claim to lead one's life
- A secure claim against severely cruel or degrading treatment
- A secure claim against severely unfair treatment

All 4 protect human dignity!

Why a Philosophy of human rights?

- Nickel's pluralist thesis: the 4-claim frame protects human dignity!

Human Dignity is a richer notion than just "normative agency" as in Griffin

Why a Philosophy of Human Rights?

- A secure claim to have life
 - negative duties not to harm, use violence etc. Generally as «freedom from violence»
- A secure claim to lead one's life
 - protection of agency, freedom from slavery, servitude etc.

Why a Philosophy of Human Rights?

- A secure claim against cruel and degrading treatment
this is highly depending on the circumstances
- A secure claim against severely unfair treatment
-i.e. Duty not to imprison innocents etc.