

# The philosophy of human rights II

HUMR 5131 Fall 2016, lecture 5

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## Follow-up: On the nature of morality and moral inquiry

1. Skepticism concerning the meaningfulness of moral inquiry

Fact: all cultures engage in moral inquiry

Fact: different cultures differ in their moral beliefs

2. Skepticism towards the possibility of universal moral knowledge

# Two approaches to understanding the concept of moral human rights

## **Naturalistic/orthodox approaches**

- 1789
- «The rights of the philosophers»
- «a right we have simply in virtue of being human» (Griffin)
- Does not depend on the existence of states

## **Political/practical approaches**

- 1948, 1966
- «The rights of the lawyers» (Nickel)
- Human rights are defined by their role in contemporary human rights practice (emphasis on «international concern» (Charles Beitz))
- Depends on the existence of states

# The difficulty of justification in ethics

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(This and next slide: Dagfinn Føllesdal, "The emergence of justification in ethics", European Review, vol. 13. no. 2. (2005))

# The problem with circular justifications?

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# Criteria for a valid justification of moral human rights

- Must give normative force to HR, and provide duty-bearers with reason for action
- Must provide the *right kind* of argument for HR (?)
- Must allow us to say *which* HR there are
- Must have critical force in relation to generally acknowledged human rights
- Must show fidelity to the concept of HR one is working with
- The list of rights must be suitable for public, practical use
- Must show why interference with sovereignty is acceptable (?)

# Prudential justifications

- Is it a *moral* justification?
- Can be motivationally useful
- Can be part of a moral justification

# Consequentialist justifications

Consequentialism:

1. A theory of value, allowing us to rank outcomes
2. A theory of right action, telling us to produce the best outcome of those available to us



# Relevance of causal structure?

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# Consequentialism and rights

- Is consequentialism the enemy of rights?  
(footbridge, surgeon)
- Consequentialism can tell us to adopt rules of thumb and/or institutions which recognize rights
- Consequentialism as a self-effacing theory/ government house utilitarianism
- Risk of backsliding?

# A schema for justifying HR

1. A feature of humanity which we value (human dignity)



2. A set of basic needs/interests/freedoms



3. A set of basic, general rights



4. Specification of the basic rights: a set of "proto"-HR



5. Various "filters" applied to the set of "proto"-HR



6. The final list of human rights

# Nickel on the basis for HR

- 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
- ”A unifying idea for these four secure claims is that, perfectly realized, they would make it possible for every person living today to have and lead a life that is decent and minimally good” (p. 62)

# Griffin on the basis for HR

1. Personhood/ normative agency: "*Homo sapiens* can form and pursue conceptions of a worthwhile life." (p 32)
2. HR are "protections of our human standing or [...] personhood"
3. Protecting personhood requires:
  - a. Autonomy
  - b. A minimum provision of resources and capabilities
  - c. liberty

# Why *rights*?

1. Rights are about more than protecting interests

Joel Feinberg:

“Having rights enable us to ‘stand up like men’, to look others in the eye, and to feel in some fundamental way the equal of anyone. To think of oneself as the holder of rights is not to be unduly but properly proud, to have that minimal self-respect that is necessary to be worthy of the love and esteem of others.”

( Joel Feinberg “The Nature and Value of Rights”, 1970, p. 252)

# Why *rights*?

2. Rights might not even be the most effective means for protecting interests

Frances Kamm:

“On this account, fundamental human rights, at least, are not concerned with protecting a person’s interests, but with expressing his nature as a being of a certain sort, one whose interests are worth protecting. They express the worth of the person rather than the worth of what is in the interests of that person, and it is not unimaginable that it will be harder to protect some interests of a person just because of the worth of him as a person.”

(*Intricate Ethics* (2007) p. 271).

# Filter: Nickel's list of tests (ch 5)

1. Substantial and recurrent threats  
("regularly present and dangerous" p. 74)
2. Importance of what is protected
3. Can it be a universal right?
4. Would some weaker norm be as effective?
5. The burdens are justifiable
6. Feasibility in a majority of countries



# Other filters?

- Is the need/interest such that it can meaningfully be made the object of a *right*? Ex tranquility of mind (Sen), romantic love (Tasioulas)
- A proper subject of international concern?
- ...

# Foundational vs derivative justifications of rights

- Nickel p. 87-91
- Derivative justifications:
  - specifying a recognized right
  - showing why a HR is necessary for/ supports the realization of a recognized right
  - "cantilever arguments" (David Miller): no relevant moral difference between the case for a recognized HR to A and a new HR to B

# What follows from a valid HR claim?

1. To whom do HR give obligations?
  - all human beings?
  - primarily governments
2. What kind of duties follow from a HR claim?
3. Must a HR claim always imply specific duty-holders?
4. What is the strength of the corresponding duties?