

The philosophy of human rights III

HUMR 5131 Fall 2016, lecture 6

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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?
5. How do we deal with conflicts of rights?

Jeremy Bentham

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Bentham: some recommendations for further reading

H.L.A. Hart:

- «Natural Rights: Bentham and John Stuart Mill» (in *Essays on Bentham: Jurisprudence and Political Philosophy*)
- “Utilitarianism and Natural Rights” (in *Essays in Jurisprudence and Philosophy*)

Bentham's philosophy

- Utilitarianism: it is «the happiness of the greatest number that is the measure of right and wrong»
- Legal positivism: distinction between the law as it is and the law as it ought to be
- Analysis of language and a requirement of clear definitions

Bentham's criticism of the Declaration of the Rights of Man and the Citizen

- Not just a criticism of *this* particular attempt
- «the proposition with which I set out, is not that the Declaration of Rights should have been worded differently, but that nothing under any such name, or with any such design, should have been attempted.» (p. 62)

Bentham's criticisms (1)

1. The great difficulty of the project does not make it fit for being realized by the «sorry majority» of a national assembly.
- Contrast with more scientific approaches

Bentham's criticisms (2)

- The idea of natural rights makes no sense (contrast with legal rights)
- «Lay out of the question the idea of *law* and all that you get by the use the word *right*, is a sound to dispute about.» (quoted in Hart, «Utilitarianism and natural rights»)
- «What a legal right is I know. I know how it was made. I know what it means when made.» (p. 73)

Bentham's criticisms (3)

- Natural rights can lead to insurrection and revolution
 - Because they lead people to consider existing laws as non-existent
 - Because they are criterionless
 - Because they strengthen feelings of dissatisfaction

Bentham's criticisms (4)

A doctrine of natural rights is either absurd (if rights are absolute) or empty

- Ex liberty
- Ex property
- Ex freedom of opinion

Bentham's criticisms (5)

- Natural rights undermine altruism, which is necessary for society
- «What has been the object, the perpetual and palpable object, of this declaration of pretended rights? To add as much force as possible to these [selfish and dissocial] passions, already but too strong...» (p. 48)

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To whom do HR give obligations?

- Who can commit HR violations?
 - Only the government and government agents?
 - all human beings?
 - other types of agent?
- Who has HR-related duties?
 - Governments?
 - citizens as responsible for their governments?
 - human beings *qua* human beings?
 - other types of agent?

What kind of duties follow from a HR claim?

Two distinctions:

1. Positive vs negative duties
2. Perfect vs imperfect obligations

Sen: «Even though they differ in content, imperfect obligations are correlative with human rights in much the same way as perfect obligations are. In particular, the acceptance of imperfect obligations goes beyond volunteered charity or elective virtues.» (Elements p. 319)

An illustration (Sen)

The case of Kitty Genovese

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Must a HR claim always imply specific duty-holders?

«Both liberty rights and rights to goods and services are standardly seen as *claim rights* or *entitlements* that are valid against those with the counterpart obligations [...] We normally regard supposed claims or entitlements that nobody is obliged to respect or honour as null and void, indeed undefined. » Onora O'Neill

Strength of duties

- Sen: “Human rights generate reasons for action for agents who are in a position to help in the promoting or safeguarding of the underlying freedoms. The induced obligations primarily involve the duty to give reasonable consideration to the reasons for action and their practical implications, taking into account the relevant parameters of the individual case (p. 320).
- Nickel: “human rights are high priority norms. They are not absolute but are strong enough to win most of the time when they compete with other considerations.” (p. 9)
- Griffin: “Human rights are resistant to trade-offs, but not completely so.” (p. 76)

Conflicts of rights

Waldron: «When we say rights conflict, what we really mean is that the duties they imply are not compossible.» («Rights in conflict»)

Rights as «trumps» against utilitarian trade-offs: not all acts are permitted in order to maximize general welfare.

But conflicts of rights also requires trade-offs (Waldron)

Denying that there can be conflicts of rights

- Rights only entail negative duties/constraints (cf. Nozick)
- Sacrificing right A is actually not necessary in order to promote/protect right B
- We can «specify» rights such that there are no conflicts of rights
- Rights are only *pro tanto* (Sen?)

How to deal with conflicts of rights?

- Find some underlying «supervalue» (Cf. Griffin on «bridging concepts»: loss/gain in personhood)
- Intuition
- Give primacy to what we do over what we allow
- Not *all* duties linked to a right need be abandoned (Waldron)
- ...

Griffin on conflicts of rights

1. Is there really a conflict? See what the right actually entails (specification)
2. Some conflicts of rights are real, ex liberty vs security
3. We can solve conflicts of rights: which right protects personhood the most?
4. Against consequentialist approaches: it might be impossible to calculate which set of rules (dealing with conflicts of rights) best protect personhood
5. When choosing among such sets of rules, we make policy choices (which could have been different)

«At times, the only moral life open to us involves *respecting* values, not *promoting* them.»