

The philosophy of human rights III

HUMR 5131 Fall 2017, lecture 6

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Today's topics

- I. What follows from a valid HR claim? (and related criticisms)
- II. Cultural relativism and HR (in brief)
- III. Bentham's criticisms of natural rights

I. What follows from a valid HR claim?

Two appealing ideas:

«There cannot be a claim to rights that are rights against nobody, or nobody in particular” (O’Neill 2005)

“When appeal is made to human rights in the international context, the aim is to rest one's case on features of moral status so basic that they can be invoked without having to consider in detail the broader circumstances of the situation.” (Nagel 1995)

What follows from a valid HR claim?

1. To whom do HR give obligations?
 - all human beings?
 - primarily governments
2. Must a HR claim always imply specific duty-holders?
3. What kind of duties follow from a HR claim?
4. What is the strength of the corresponding duties?
5. Is it feasible to realize the right?
6. How do we deal with conflicts of rights?

1. To whom do HR give obligations?

1. Who can commit HR violations?

- Only the government and government agents?
- all human beings?
- other types of agent?

2. Who has HR-related duties?

- Governments?
- citizens as responsible for their governments?
- human beings *qua* human beings?
- other types of agent?

2. 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

3. 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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4. 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)

Is it feasible to realize the right?

- Ought implies can: If it is the case that I have a duty to X, it must be the case that I can do X.
- A right can imply «waves of duty»: which of these duties do we take to be covered by a feasibility requirement?
- Sen: “why should complete feasibility be a condition of cogency of human rights when the objective is to work towards enhancing their actual realization, if necessary through expanding their feasibility?”
- Nickel: “The duties imposed by rights should be ones that a majority of the addressees are able to fulfil.” (p. 81)

6. 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)
- There is an «internal» relation between rights telling us which we should prioritize (Waldron)

II. Cultural relativism and HR

The (alleged) fact of cultural relativism of moral beliefs might give rise to:

- Moral skepticism
- Requirements of tolerance
- Claims about moral relativism (= «the authority of moral norms is relative to time and place») (Steven Lukes, *Moral Relativism* p. 16)

III. Jeremy Bentham's criticisms of natural rights

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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)

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 imply that governments are illegitimate
 - 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 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)