

The philosophy of human rights III

HUMR 5131 Fall 2018, lecture 6

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Overview of today's lecture

I. What are the implications (in terms of duties) of human right claims?

- including: criticisms of socio-economic rights

II. Cultural relativism and HR



I. Implications: What follows (in terms of duties) from a valid HR claim?

1. To whom do HR give obligations?
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)



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)

5. 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. Can rights conflict with each other?

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»
- 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

Discussion: in your view, (how) does cultural relativism create a challenge for HR?



II. Cultural relativism and HR - overview

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

- Moral skepticism
- Claims about moral relativism
- Requirements of toleration
- Pared down lists of HR (jf. Beitz on agreement theories)



The recognition of cultural relativity as an empirical fact

- Relative to *what*?
- Can we identify cultures as a sufficiently homogeneous unity?
- Who speaks for the culture?
- How deep are the differences?
- Is history relevant?



Possible implications of cultural relativity (1): moral skepticism

- In the face of widespread moral disagreement, and no general method for ascertaining who is right, we must suspend our judgement on moral matters



Dworkin on moral objectivity

“it is startlingly counterintuitive to think there is nothing wrong with genocide or slavery or torturing a baby for fun. I would need very powerful, indeed unanswerable, reasons for accepting this, and I think most other people would as well. Can such reasons be found?”

Ronald Dworkin, “Objectivity and Truth: You'd Better Believe it”, *Philosophy and Public Affairs* 1996



Possible implications of cultural relativity (2): moral relativism

- Moral relativism = «the authority of moral norms is relative to time and place» (Steven Lukes, *Moral Relativism* p. 16)
- Cf. "Statement on Human Rights" The Executive Board, American Anthropological Association (1947): "World-wide standards of freedom and justice, based on the principle that man is free only when he lives as his society defines freedom, that his rights are those he recognizes as a member of his society, must be basic."



Possible implications of cultural relativity (3): Requirements of toleration

- Can be based on a concern for respect for self-determination
- Toleration can be combined with recognition of some HR violations of which we will not tolerate



Possible implications of cultural relativity (4): «agreement theories»

Cf Beitz ch. 4. Three varieties:

1. «common core»
2. «overlapping consensus»
3. «progressive convergence»



What can we learn from cultural relativism?

- Some questions might have no objective answer
- Open-mindedness: we might be wrong, and need to learn from other cultures

(cf. James Rachels, «The Challenge of Cultural Relativism»)

