

The philosophy of human rights III

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Overview of today's lecture

- I. Justification of human rights (continued)
- II. Cultural relativism and HR



I. A common structure for non-consequentialist justifications of 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



A non-consequentialist justification (Nickel)

Step 1: Identifying «four secure claims»:

- 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)

Step 2: use these claims as part of an argument for specific human rights (chapter 5)



Filter: Nickel's six tests for specific rights(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? [More correctly: does it fit our concept of a human right?]
4. Would some weaker norm be as effective?
5. The burdens are justifiable
6. Feasibility in a majority of countries



5. The burdens are justifiable

Cf. Beitz: "rights talk tends to focus on the beneficiaries of rights, so it might seem that we can explain the moral importance of an adequate standard of living without having to refer to anything other than facts about the beneficiary's 'humanity' - for example, her physical needs. However, this is only half the story - and the easier half at that. A complete explanation of the right would also have to say where the resources should come from to satisfy the right and why anyone has a duty to provide them." (Beitz, "What Human Rights Mean" (2003) 42-3)



6. 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.
- 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)

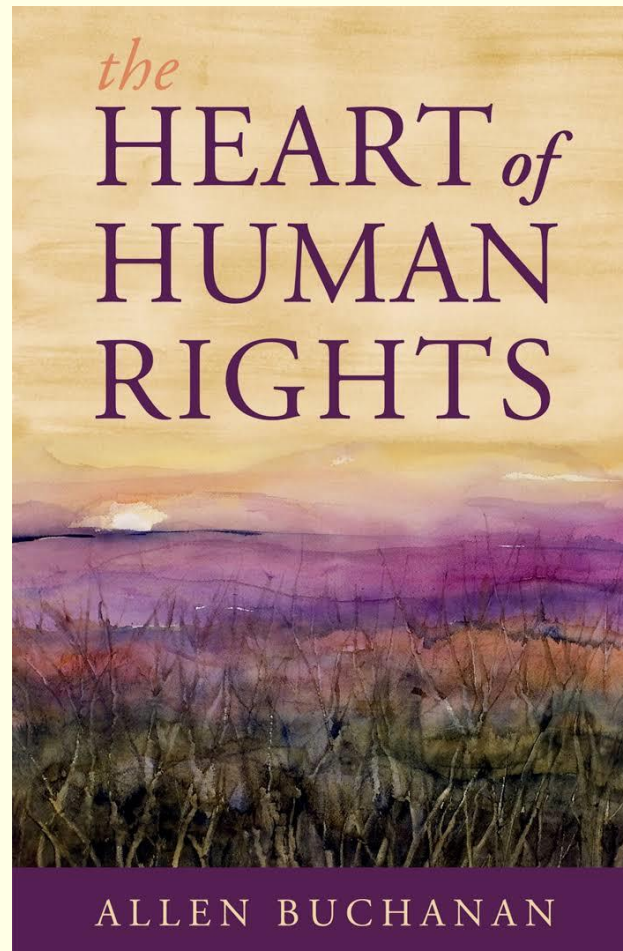


Other filters?

- 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?



Buchanan on the justification of international legal human rights



According to the mirroring view,
justifying a ILHR can take three
forms:

1. Arguing that the corresponding MHR exists
2. Arguing that the ILHR is a specification of an existing MHR
3. Arguing that the ILHR is instrumentally necessary for realizing an existing MHR.



Two aspects of the Mirroring View

1. A MHR is necessary in order to ground a ILHR
2. Any MHR is sufficient in order to ground a ILHR.



The mirroring view and the founders

Cf. UDHR, preamble:

“Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,”

Cf. the preambles to ICCPR and ICESCR

"Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Recognizing that these rights derive from the inherent dignity of the human person,...



Possible implications of the Mirroring View

1. New ILHR should be introduced
2. Some existing ILHR should be removed or «downgraded»
3. If a proposed new ILHR is not grounded in a MHR, it should not be adopted

In short: the mirroring view provides us with a critical «test» for accepting or rejecting ILHR



Buchanan's first line of criticism

MHR are **insufficient** for grounding ILHR

1. Not all MHR are fit for legalization, ex. the right to be treated with respect
2. MHR do not have sufficient weight for justifying extensive duties
3. MHR do not allow for the social coordination necessary to justify extensive duties



MHR do not have sufficient weight for justifying extensive duties

- Many ILHR are quite costly to realize, e.g. the right to health, the right to due process, i.e. they involve costly duties
- A MHR only exists if the corresponding duties can be justified
- The duties corresponding to MHR must be «*solely subject-grounded*»: something about the individual subject having that right must be sufficiently important to justify the cost



Buchanan's second line of criticism

- MHR are **not necessary** for grounding ILHR

- Buchanan's instrumental approach:

“The fundamental and quite general point is that legal rights, whether domestic or international, do not presuppose corresponding moral rights. This should be no surprise, given that individual legal human rights are instruments that can serve a number of purposes, including moral ones of various types. The moral purposes for which individual legal rights are instrumentally valuable are not restricted to the realization of antecedently existing individual moral rights” (Buchanan, HoHR)



An example of the instrumental approach

The legal right to health can be justified because it:


- “can promote social utility
- contribute to social solidarity
- help to realize the ideal of a decent or humane society
- increase productivity and to that extent contribute to the general welfare
- and provide an efficient and coordinated way for individuals to fulfill their obligations of beneficence”

(Buchanan, HoHR)



Briefly on Buchanan's second line of criticism: the moral force of ILHRs is lost

David Luban, “Human Rights Pragmatism
and Human Dignity”.

Luban: “Why should state leaders (pretend
to) feel ashamed about violating [ILHR], any
more than they feel ashamed about violating
technical regulations about the size and
 shape of cartons in international shipping?”

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»)

