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Can Human Rights be Real? Can Norms be True?

On the 60th anniversary of the Universal Declaration of Human Rights

1. Introduction—can logic be ethics?

The problem I am going to discuss seems at first glance to belong to logic, semantics, or the philosophy of language. A basic course in logic for lawyers will describe the distinction of three major types of utterances: descriptive (declarative statements), such as "an apple is red"; evaluative (evaluations, axiological statements, value judgments), such as "an apple is good"; and prescriptive utterances (norms, orders), such as "people should eat apples", or "eat an apple!". Most Polish lawyers as students have probably come across the following words from Zygmunt Ziembiński's *Practical Logic*: "An utterance is true or false only if it describes some state of matter or some event in agreement with or contrary to reality. If an utterance does not describe anything, but expresses only somebody's evaluation, we cannot assert that it is either true or false" (Ziembiński 1976, 123).[1] An evaluation is then characterized as an emotional attitude (of approving or disapproving) toward a particular state of affairs.[2]

  Of course, according to Ziembiński, prescriptive utterances also may be neither true nor false. I am interested primarily in legal norms, which are an instance of norms of conduct. Ziembiński characterizes a norm of conduct as "a pronouncement which orders (or forbids) somebody directly to behave so

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[1] The Polish version of this manual, *Logika praktyczna*, has appeared in 26 editions, from the earliest in 1956, to the recent edition of 2007.

[2] "Some utterances formulated by us express not only our conviction that it is so and so, or that it is not so and so, but they can at the same time express our evaluation, that is to say our emotional attitude to this particular stat of affairs" (Ziembiński 1976, 122).

and so under definite circumstances" (ibid., 126). He argues that "the utterance '*x* should do *C*' does not in itself state that it is so and so, or that it is not so and so, hence it cannot be either false or true" (ibid., 126).

The above statements seem to be nothing more then basic clarifications belonging to logic. We tend to think that there is nothing less ideological or more morally neutral than logic. How wrong we are! When the above solutions are applied to morality—moral evaluations and moral norms—then the most fundamental metaethical dispute has already been solved: I mean the dispute between cognitivism and noncognitivism.

Cognitivism is generally characterized as "the claim that moral attitudes are cognitive states rather than noncognitive ones" (Dancy 1998, point 1). In this paper, I accept quite a "strong" version of cognitivism. By cognitivism I understand the claim that there are moral evaluations which are a result of cognition, and therefore they are judgments and they inform us about a certain reality, about certain states of affairs; consequently there are moral evaluations which can be true or false—accordingly there are also evaluative utterances which can be true or false. Noncognitivists deny that there are moral evaluations which result from cognition; such evaluations for them never inform us about reality, and cannot be true or false.

Ziembiński's position is a typical noncognitivist one, called emotivism. This view dominates in the contemporary education of lawyers in Poland, and it is taken for granted as an obvious statement in the field of logic or semantics that descriptive utterances can be true or false, while evaluative or prescriptive ones cannot.

I am going to challenge this view. Moreover, I accept a "strong" concept of truth based on a correspondence theory of truth. According to this theory, "every truth bearer: proposition, sentence, belief, and so on, is correlated to a possible fact. If the possible fact to which a given truth bearer is correlated actually obtains, the truth bearer is true; otherwise is false" (Kirkham 1998, point 1). In the traditions to which this theory refers, the main idea was expressed as a definition: "veritas est adaequatio rei et intellectus" (*truth is an adequacy between a thing and an intellect*).

The major problem in defending a view that a given evaluation or norm is true or false is indicating the fact to which this evaluation or norm is supposed to be correlated—a state of affairs that this evaluation is about. The simplest solution is to recognize that evaluations are about values which objectively exist (are valid), and are pure intellectual entities (like Plato's ideas), which we can get to know about by a special kind of intuition. Validity or normativity is something given, and it is a fundamental property of these en-

tities. A similar position can be outlined for norms—we accept that there is an objective correlate of norms which has a structure analogous to the norms and contains normativity as such. I do not share such convictions, especially because I have difficulties with the supposed intuition, and because of problems with the intersubjective discourse on values and norms, understood as specific entities. I have never had an intuition of the type required, but I am nonetheless convinced that there are evaluations, and even norms, which can be true or false in the strong sense. So I am looking for a more modest ontology. The first step is to give up the claim that the validity or normativity which is found in our mental states (or in their linguistic expression) has an objective correlate (similarly, recognizing generality as a property of concepts does not require recognizing the existence of objective entities of a general character, as Plato did, arguing for the existence of the world of ideas). It would be enough to indicate certain existing structures (relations), on which validity or normativity is based.

2. Human rights as an object of human rights law

I am going to base my considerations on evaluations and norms which pretend to be true independently from positive law but are in fact related to it. Such evaluations and norms are to be found in the domain of human rights and their legal protections. I am going to take seriously what the legal acts related to human rights state about the rights that are protected by them, and I aim to identify the basic elements of the ontology which allows us to explain the major features accepted in the legal protection of human rights. Human rights law seems to be a promising point of reference, because such rights are recognised by the very legal systems themselves as universal, inherent, inalienable, primary to the legal order, derived from the inherent dignity of human beings, and as rights which are not created by positive law, and should be protected by law; so that a clear distinction appears between human rights and human rights protection in positive law (cf. Piechowiak 1999, 110–124).

I am not discussing these features critically from a point of view external to the legal order. The very framework of my consideration is shaped by law, and is essentially internal to it; in other words, I am proceeding from law through ontology to objective reality, rather than from objective reality through ontology to law.

Taking into account the above listed features of human rights, we have to accept that they are something objective, given, "rooted" in the human being

(the inherent dignity of the human being). Consequently, the evaluations and legal norms which can be identified in the legal protection of human rights can be considered as truth bearers referred to human rights themselves, as independent and primary to the legal order.

A crucial question is, what are human rights? What are we talking about when we are talking about human rights? I would like to consider this question, starting from some analyses of the normative structure underlying human rights as subjective rights.

3. Evaluation in a basic structure of human rights as subjective rights

Let us take a simple example—the right to life. According to article 6, para. 1 of the *International Covenant on Civil and Political Rights* (1966), "Every human being has the inherent right to life."

What does this formula say about reality? First of all it states a relation between each human being and life. We can say that the life of a human being is a certain state of affairs which is of such special importance to the person, that it is due to the person. From a linguistic point of view, the formula analysed is not a norm of conduct in the strict sense. We are talking about a relation, let's call it the relation D, the relation of being due, between a subject p and a certain state of affairs A_1. Of course there are many such states of affairs, $A_1, \ldots, A_k, \ldots, A_n$, which can be the terms of a relation of being due to p. I understand A_k as a state of affairs in the broadest sense (possibly a natural object, an action, or also the absence of an object or an action).

What is the foundation of the relation D? Among theories of human rights, there are two major approaches. The choice theory claims that if p has a right to A_k, then A_k is at the disposal of p, and by exercising a right, what is decisive is the choice made by p, that, for example, p wishes A_k. But referring to human rights law, which without any doubts sometimes talks about something due independently of choices (e.g., the right to education, or freedom from slavery) one has to accept the so-called benefit theory. According to this theory, human rights protects the basic goods of a human being, where a "good" is understood as something beneficial, something needed independently of choices, and which is necessary for well-being. Being an object of a right, A_k is a certain kind of good for p. In other words, objects of rights constitute a subset of the set of goods. An utterance "A_k is a right of p", includes an evaluation stating that A_k is a certain kind of good for p.

In searching for an ontological foundation of good, and consequently of evaluations, let me revoke the classic attempt made by Aristotle in his theory of the "golden mean". An idea of being "proper", of "fitting" something, was central to Aristotle's concept of virtue, which was understood as the fundamental perfection, or fundamental good of a human being. Virtue seeks the mean, which is relative to us, and which is characterized as follows:

> *In everything continuous and divisible we can take more, less and equal, and each of them either in the object itself or relative to us; and the equal is some intermediate between excess and deficiency.*
>
> *By the intermediate in the object I mean what is equidistant from each extremity; this is one and the same for everyone. But relative to us the intermediate is what is neither superfluous nor deficient; this is not one, and is not the same for everyone.*
>
> *If, e.g., ten are many and two are few, we take six as intermediate in the object, since it exceeds [two] and is exceeded [by ten] by an equal amount, [four]; this is what is intermediate by numerical proportion. But that is not how we must take the intermediate that is relative to us. For if, e.g., ten pounds [of food] are a lot for someone to eat, and two pounds a little, it does not follow that the trainer will prescribe six, since this might also be either a little or a lot for the person who is to take it—for Milo [the athlete] a little, but for the beginner in gymnastics a lot; and the same is true for running and wrestling. In this way every scientific expert avoids excess and deficiency and seeks and chooses what is intermediate—but intermediate relative to us, not in the object* (Aristotle 1985, 1106a).

"The mean", which is nothing else but a good for a given subject, is something beneficial and proper, which allows the development of certain abilities. The relation of congruence between the things and the person is what is constitutive for being good.

In this approach to ethics, and to practical philosophy in general, a **good is by nature relational**. One cannot talk about a good as such, but only about a good for someone. Without this relation there is simply no good. The state of affairs A_k is good for p, if and only if there is a congruence C between A_k and p. An identified element of the ontological structure of a right can be represented in the following way:

$$A_k - p$$

However this approach, though relational, is not a relativistic one. The relation of congruence mentioned is something objective, something given that can be grasped cognitively.

If we accept the benefit theory, there is no problem in ascribing a value of truth to evaluations, even within the framework of a noncognitivist theory, such as Ziembiński's.

4. Instrumental evaluations

Let me again refer to *Practical logic*:

> *Of course, when we say that utterances that are exclusively evaluative cannot be either true or false, we have in mind the so-called basic evaluations, not the instrumental ones. The later are really statements about the usefulness or effectiveness of something as a means to a certain goal according to the knowledge we have concerning causal nexuses* (Ziembiński 1976, 123–124).

One of Ziembiński's examples of instrumental evaluations is as follows:

> *We often use a word which normally express our approval or disapproval of some object for the purpose of stating that the object corresponds to a certain characteristic, that it possesses definite properties. So, we would say, for example, "This is a good key, that is a bad key", having in mind that the former key fits some definite lock, while the latter key does not fit it. "A good key" is an expression corresponding to the properties of a key fitting some lock, though the same "good key" is a "bad key" for another lock. "Good" especially, may be equivalent to "adopted as a means to attain a wished goal" (instrumental evaluation).*

It is striking how close to classical tradition are the above characteristics of the foundations of instrumental evaluations. We can observe that instrumental valuations can be true, even when the object of evaluation does not actually exist. We may meaningfully characterize "a good key" before we get it— before it is produced. The reality to which an instrumental evaluation refers, from ontological point of view, is a relation of congruence between a subject and an object. This relation of congruence can be characterized as relation of "fitting", "being proper", and the like—in the field of human rights we can talk about being beneficial.

5. Why is *A* good for *p*?

What is constitutive for a relation of congruence between a subject *p* and state of affairs *A*? Have we already escaped from basic evaluations, and is our problem solved in favour of ascribing true values to evaluations underlying human rights? Of course not.

We have to ask why A_k is beneficial for *p*—what does it mean to say this? We have to ask about the aim to be achieved with A_k. We evaluate as positive certain states of affairs that we are striving for. If we are weak because of poor nutrition, we need food to achieve better health. Following this example, A_k is good, is beneficial, for a subject *p*, because it is capable of transforming a certain aspect of *p*, an aspect in which a subject *p* is (or can be) deprived of something—let's call it a_{1-}—into a state of balance, $a_{1=}$. The state a_{1-}, like $a_{1=}$, may be an actual or possible state. So we have another relation, the relation of a_{1-} being ordered, or directed, to $a_{1=}$, and we can call this relation O_{a1}. The subject *p* comprises many aspects *a*, such as $a_1, \ldots, a_k, \ldots, a_n$, and the relations of a_{k-} to $a_{k=}$.

We have to modify the previous schema, obtaining:

$$A_1 \; \text{—} \; \uparrow \begin{matrix} a_{1=} \\ \\ a_{1-} \end{matrix}$$

When we take into account the idea of dignity being the source of all human rights of a particular subject, and that "all human rights are universal, indivisible and interdependent and interrelated", and that "the international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis" (*Vienna declaration* 1993, I.5)—it then is possible to transform an evaluation of $a_{k=}$ into an instrumental one. A given $a_{k=}$ is a means to achieve the general well-being or flourishing of a human being. Using the language of classical tradition, a_k contributes to happiness of *p*. There is a certain state of the subject *p* as a whole, which is evaluated positively. Let's represent this state as p^w, and call it "p's well-being". Knowing that something is beneficial for someone, we presuppose something about well-being. Now we can enrich the schema:

$$p^w$$
$$/ \quad \backslash$$
$$a_{1=} \quad a_{k=}$$
$$A_1{\small—}\uparrow \quad \uparrow{\small—}A_k$$
$$a_{1-} \quad a_{k-}$$

What can be said about p^w? Is it really based on a basic evaluation[3] of a certain possible state of affairs? First we should notice that p^w correlates to a certain state of the subject p, a state of not well-being—let's call it p^{-w}, "p-not-well". We can say that $a_{k=}$ is valued positively because of the relation of p^{-w} being ordered to p^w, because $a_{k=}$ is capable of transforming, or rather contributing to the transformation of p^{-w} into p^w. So we need a further extension of our schema:

$$p^{-w} \rightarrow p^w$$
$$/ \quad \backslash$$
$$a_{1=} \quad a_{k=}$$
$$A_1{\small—}\uparrow \quad \uparrow{\small—}A_k$$
$$a_{1-} \quad a_{k-}$$

It can be seen that p itself has somehow vanished from our schema, and not without reason. A very important question arises: is the subject p equal to p^{-w}, or to p^w?

One possibility is that p equals p^{-w} or p^w. In this case, consequently, the relation O_p is something external, added to p (e.g., by certain paradigms present in a culture). Similarly O_p is an external relation if neither p^{-w} nor p^w equals p.

The other possibility, which I think more plausible, is that the subject p includes the relation O_p as an inherent relation. In this case, being human includes a relation to the development toward well-being. In particular, we have to go this direction in the case of rights which we recognize as inherent, or as derived from inherent dignity. Being a subject of a right includes also the relation O_p, and simultaneously the subject p also includes different aspects a_k of the development or well-being.

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[3] I mean "basic" as opposite to "instrumental". A basic evaluation in this sense can be a complex one, on account of various aspects that are taken into account in the act of evaluation.

$$p$$
$$p^{-w} \rightarrow p^{w}$$
$$/ \quad \backslash$$
$$a_{1=} \quad a_{k=}$$
$$A_1 \text{ —} \qquad \uparrow \quad \uparrow \qquad \text{— } A_k$$
$$a_{1-} \quad a_{k-}$$
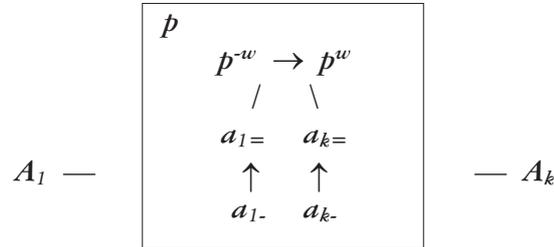
We can talk meaningfully about universal human rights with some defi-nite content if there are some a_k and relations of the O_a-type which are typi-cal of and inherent to each human being. There are possible states a_{k-} of a subject p, whose presence excludes the possibility of well-being or fulfilment of p—for example, being enslaved.

There is no need to know exactly what p^w is. We can accept that p^w is par-tially determined by free choices, agreements, and so on. Therefore not kno-wing p^w is not only a matter of difficulties of cognition.

What is specific in the approach presented here is the identification of the existence of relations and their terms, without an exact determination of their content. The questions of what exactly is the exact nature of the identi-fied relations, or what exactly are the terms of these relations, can be left open. Because evaluations do not constitute these relations, they can be re-garded as a tool used to refer to a certain reality, which has yet to be analysed concretely.

6. Why should t do A for p?

I have considered the question of why a state of affairs A_k is good for p. In constructing a theory of human rights, I am interested in a specific type of good—goods which are so important that they are due to p. One of the major features of such a good is that it is the foundation of an obligation on the part of other members of society. Relations of being due require another agent, which we can call t—someone who is under obligation, and who should be-have in a certain way because of the relation of A being due to p. The basic schema looks as follows:

$$t \text{ — } A_k$$
$$\uparrow$$
$$A_k \text{ — } p$$
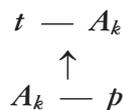
I call the relation between t and A_k the relation of obligation. When discussing the rights of p, being an object A_k of t's obligation involves a relation of A_k being due to p. There is a discussion whether it is possible to exhaustively characterize a subjective right in terms of obligation. Referring to our schema, we can say that it involves a question of the possibility of characterizing the relation of being due, by a relation of being obliged. I cannot go into details now (cf. Piechowiak 1999, 135–188; 2003), but let me only observe that in the legal protection of human rights, there is sometimes a reference to rights with clear presuppositions that the subjects who are obliged to do what is due to a subject of a right have not yet been determined (e.g. *International Covenant on Civil and Political Rights* 1966, art. 2, para. 2; cf. Piechowiak 1999, 150–162); on the other hand, an obligation of t is always toward p. My aim, however, is not to sketch an adequate theory. I am looking only for an ontological structure which allows us to talk meaningfully, at least in some cases, about true rights.

Referring to the example of the right to life, I would like to consider the question of why t should refrain from killing p, or why t should provide p with some life-saving services when p's life is endangered. Generally speaking—why should t do A_k for p? Why is the relation of being due the foundation of $p's$ obligation? A more general question is also involved—why should t act at all? I am interested in obligations which are independent of any act of norm giving—we can call them natural obligations. I am going to identify relations about which there could be statements of obligation, prescriptive utterances.

In the framework sketched above, the first answer is "because A_k is good for p". But why should being good for someone else be a **reason for t** to do A_k? Applying the benefit theory, we can answer thus: to do good to p is at the same time good for t. But actually A_k itself does not necessarily suit t; it is not the case that there is a specific deficit fulfilled by A_k. Providing A_k to p can very often be a burden for t, and t may lose something that he or she has. Staying within the framework of benefit theory, we can say that t benefits **from the very acting** for p, benefits as an acting subject as a whole. In accordance with the classic European philosophical reflection on the foundations of law, one can say that t becomes a just person, that he or she "has" less but "is" more. Tradition would add that justice is the highest virtue, and the highest perfection of a human being. Though this claim is simple, its justification is not. For our purposes it is enough to identify which relations we are talking about. Analogously with the relation O_p (p^{-w}, p^w), we can also talk about the relation O_t (t^{-w}, t^w). Acting for the benefit of others is an indispen-

sable, inherent element of well-being. This idea is expressed also in the *Universal Declaration of Human Rights* (1948). To take this document seriously, we have to accept what it states in article 1, about the human being as the foundation of human rights: "All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood". This article is stating what human beings are like. From a grammatical point of view, the only prescriptive element is contained at the end: "should act towards one another in a spirit of brotherhood". But taking into account the whole wording of this article and its function, this last expression can be treated not as a prescriptive utterance, but rather as a statement of what human beings are like. To be a human being includes not only being free and endowed with dignity, reason, and conscience, but to be a human being also includes the relation of acting for the benefit of others.

The basic ontological structure underlying the norm "t should do A_k for p" can be represented as follows:

$$
\boxed{\begin{array}{c} t \\ t^{-w} \;\rightarrow\; t^w \end{array}} \quad \rightarrow \quad \boxed{\begin{array}{c} p \\ p^{-w} \;\rightarrow\; p^w \\ | \\ a_{k=} \\ \uparrow \\ a_{k\text{-}} \end{array}}
$$

$$ -\;A_k\;- $$
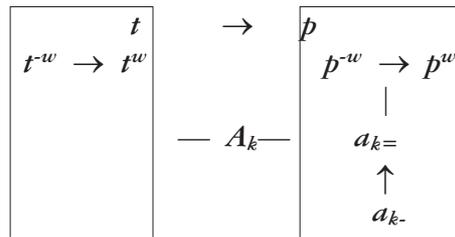
The utterance "t should do A_k for p" is correlated to a certain set of relations—it claims to describe it. It is true if these relations obtain. At least in some cases, it is very plausible to recognize that the indicated relations exist objectively and are a possible object of cognition, and consequently "t should do A_k for p" can be true in a strong sense.

Let us take the example of the right expressed in article 5 of the *Universal Declaration*: "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment" (similar rights are expressed in international treaties, e.g. in art. 7 of the *International Covenant on Civil and Political Rights* 1966; art. 37 of the *Convention on the Rights of the Child* 1989). This right certainly comprehends a more particular right: "No small child shall be subjected to cruel physical torture". In this case, the state of affairs A_1—which is the object of a right—consists of being free of cruel physical torture; the subject p is a small child. We can identify an evaluation, "A_1 is good for p". This evaluation is saying something about reality, namely that there is

a relation of congruence between being free of cruel physical torture, and a certain aspect a_1 of p. This evaluation is based on a relation between a possible or real state a_{1-} caused by torture, and a state of a certain balance, $a_{1=}$.

Intuitively it is very difficult to claim that this evaluation is based solely on emotional reactions, choices, education, or cultural standards. If this formula is true, then it informs us about reality, and consequently we can claim that someone who rejects it is objectively wrong.

We can also identify the norm, "subject t should refrain from A_1—the cruel physical torturing of a small child p", or a norm "t should prevent other subjects from cruelly physically torturing small children". If we accept the existence of the identified relations, there it possible to say that these norms are true in the strong sense. They inform us about reality.

Right can be regarded as a complex structure of relations. If these relations exist, then we can say that human rights are real and that statements about these rights may be true.

7. Final comments

The basic ontological condition for statements about rights, as well as for norms and evaluations being true, is the objective existence of relations. Relations have to be recognized as something given, and something more than the sum of their terms. Therefore all approaches which deny the real existence of relations (like nominalism) cannot be reconciled with the approach presented here, and it seems very doubtful if it is possible to talk at all about true norms or about true evaluations in the strong sense, in a framework of approaches which denies the real existence of relations.

In the proposed approach, true norms inform us about objective reality. We can say that it is so that t should do A for p. A normative element is borne in certain relations.

There is no need to know exactly the nature and the content of the terms of the relations (in fact, in the case of declarative statements like "the sun is shining", most people do not know exactly what the sun is and what is meant by "shining", and here also a certain relation is decisive for being true). Statements about inherent rights and norms comprised in these rights refer to an objective reality, which determines the content of rights, obligations, and so on.

Consequently, the relations and the terms of relations are subjects for discussion. Moral dilemmas and discussions about rights could be real in the sense that both parties are discussing something which is given, though so-

metimes very difficult to find out about. Such a discussion is something more than sharing evaluative convictions and seeking compromise.

There are some limitations to the theory sketched above. The provided schemes are related to norms which are individual and concrete. An extension which also includes general and abstract norms seems to be possible, but it is evidently more complicated, and it involves the old problem of universals.

The identified relations could also be useful in clarifying discussions on truth in a "weaker" sense, when one or more of the identified relations are not objective in the strong sense, e.g. are constituted by legal norms.

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