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Human Rights

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Introduction

Perhaps no other topic better captures W. B. Gallie's notion of an "essentially contested concept" than human rights. Abstract yet evaluative, the concept "inevitably involves endless disputes about . . . proper uses on the part of their users [which] cannot be settled by appeal to empirical evidence, linguistic usage, or the canons of logic alone" (Gallie, 1956). Human rights discourse is nonetheless foundational to the theory and practice of international law and the laws of war.

The discursive character of human rights, commonly used as a mass noun, gives it no discrete historical origin, rationale, or definition. We refer instead to its various codifications in religious texts, moral philosophy, founding national documents, and the international treaties, charters, conventions, covenants, declarations, and protocols that outline the duties corresponding to these rights. Regarding the objects of human rights, philosopher Brian Orend (2002, p. 62) speaks of a "foundational five": (1) personal security, (2) material subsistence, (3) elemental equality, (4) personal freedom, and (5) recognition as a member of the human community.

Despite or perhaps because of its multivalence, the concept of human rights has been criticized as "foundationalist," "essentialist," or "ethnocentric" – its universalism being used as a weapon against itself by those wary of Western-led globalization and cultural imperialism (Prasad, 2007). However, the tolerance discourses popular in critical theory gain their normative force from the same menu of individual or group rights, though they tend to prioritize the value of "recognition" over liberal conceptions of liberty and equality. Illiberal and intolerant groups, including increasingly prominent Islamist factions, also criticize the international human rights regime and nations privileging egalitarian individualism.

Withstanding dissent, the concept of human rights has proved legally, politically, and philosophically robust. Though universal, it accommodates a diversity of justifications and supports diversity as a value (Appiah, 2006). Human rights represent pluralism in practice and serve to ground the basic "goods" agreed as necessary for human development the world over (Taylor, 1989; Malley-Morrison & Trosky, 2011).

Definition

The rights we call "human" are those whose most salient features are universality and equality – "universal" because they are owed to humans (though potentially to other sentient beings) and

“equal” owing to the recognition that all such beings possess basic moral worth. These qualities are conjured in the familiar praise words, “humanity” and “dignity.” Though this linguistic designation does not by itself serve as a justification for human rights, their frequent appearance in founding political documents and legal decisions gives some indication of their force and breadth in the “opinion of mankind.”

While the frequency of appeals to dignity and shared humanity might make them seem self-evident, “self-evidence” and “inalienability” are tempting but tautological grounds for human rights (McCudden, 2008; Etzioni, 2009). The notion of rights as “entitlements” better withstands scrutiny. “Entitlement” here does not indicate that rights are *properties* that human beings *have*, but refers to the compelling *reasons* humans have to treat each other in particular ways.

These rights entail reasons for decency that go beyond familiar formulations of reciprocal self-interest in private/interpersonal morality, such as the golden rule or the no-harm principle, to the heart of political or “public” morality. Such civil or procedural rights ensure familiar legal protections such as freedom of conscience, expression, movement, association, and due process, but also make possible the many secondary goods that come from human society.

A second tier of “substantive” social and economic rights have more concrete objects: health care, education, housing, work, subsistence wages, and basic utilities. These can be thought of as necessary complements to, even prerequisites of, the former tier (Vincent, 1986).

Human rights, therefore, come in both negative/inhibitive and positive/proactive varieties and are sometimes formulated to include a third, “cultural” tier encompassing elements of dignity and identity like the right to recognition and freedom from humiliation (Rorty, 2002; Taylor, 1994). As I discuss later, conflicts can arise when a proactive stance on recognition valorizes exclusionary identities or ideologies, such as those expressed in hate speech.

Though violators of the law can justly be seen as forfeiting their freedom for a time, the rights to life and liberty generally represent every

individual’s immunity from being treated as a means to a social or political end, no matter how noble or urgent. Because they are moral as well as legal, human rights claims act as a trump against unjust laws (Dworkin, 1984). Transcending cultural, religious, and national boundaries, human rights are the closest thing humans have to moral absolutes (against the intentional harm of innocents, for example). Their diversity, the exigencies of war and politics, and the elusiveness of human intention all raise issues of interpretation and enforcement that remain the source of controversy.

Keywords

Human rights; right; duty; dignity; justice; morality; international law; ethics; essentially contested concept

History

Rights are the modern, individualistic expression of an older conception of moral obligation focused instead on duty – the obligation to do what is right, good, or just. In East and West alike, these desiderata have historically been defined by the religious, political, and/or familial entities that constitute individual identity (Taylor, 1989). The identity-giving unit could be rooted in tribe, class, country, empire, ethnicity, civilization, religion, or some combination of these, but without neutral arbiter.

The historical confluence of duty-giving institutions into individual and/or familial obligations in East and West inspired not only traditions of inquiry, but their great works of art and drama, starting with Sophocles’ *Antigone* and the *Mahabharata*. Are there obligations that trump local custom, parochial power, religious injunction, blood loyalty, or common law? If not, what principles should determine priority?

The emergence of such “natural law” philosophy and jurisprudence in the West was halting and imperfect and eventually gave way to the sturdier formulations of positive international

law. The advent of the nation state, with its division of public and private spheres, facilitated the development of the values that have come under the heading “human rights” but also raised new dilemmas of authority and jurisdiction (Bellamy, 2008, 2001; Habermas, 1991).

In the modern, rights-based normative framework, individuals are responsible for choosing or fashioning their own identity but retain a reciprocal duty to respect others’ (Foucault, 1984). However, conceptions of duties that extend to the entire human family originated long before the Enlightenment era in the various religious traditions of the axial age and were gradually secularized. This process was anticipated by the meeting of Christianity and Stoic philosophy in the Roman Empire, which, despite global aspirations, balanced a respect for local custom with a rigorous and coherent legal code.

The cosmopolitan tendencies of these traditions, reincarnated in Renaissance humanism, Reformation conscience, and British common law, each setting the stage for the modern conception of right as moral possession: the idea that individuals are entitled to property aiding their survival, including their own person (Locke, 1980/1689). The ability to self-govern was to be granted irrespective of social status and/or religious affiliation – though not yet race and gender – as reflected in the ideas of the legal contract and political declaration.

In international law, jurists of this era developed an approach to natural right that also treated nations as sovereign individuals, though they retained imperfect duties to right wrongs in pursuit of justice (the so-called *ius gentium* or “law of peoples”). These scholars and statesmen sought to ground the transnational bonds between peoples in natural philosophy, thereby putting morality on more solid scientific, legal, and secular footing (Pufendorf, 2005/1672). The view that nations were moral entities with correlative duties proved difficult to enforce. Though there was some reduction in the number of religious wars, the Hobbesian world of anarchic international relations remained dominant until the twentieth century.

While positive international law long deferred to nation states to guarantee the civil and political rights of citizens, the expansion of war through increasingly lethal weapons technology spurred the development of the human rights claims that citizens and soldiers have against governments, foreign and domestic. These include *ius in bello* proscriptions of torture and killing of noncombatants and prisoners of war that were incipient in the centuries-old just war tradition. International humanitarian law found its first positive formulation in the American Civil War-era Lieber Code (1863), and the First Geneva (1864) and Hague (1899) Conventions which provisioned for the care and quarter of captured and wounded soldiers, and protection of civilians and their property from despoliation.

These conventions were repeatedly revisited and refined, but convulsive violence of World War II led to the adoption of in The Universal Declaration of Human Rights by the United Nations General Assembly in 1948. Its 30 articles canvass all “tiers” of rights: *basic rights* to life, liberty, and security of person; the *civil and political rights* to speech, assembly, affiliation, and trial guaranteed in several national constitutions and legal codes; and *social/cultural/economic rights* instrumental to recognition, dignity, and development, including rights to health, education, work, and recreation. The fact that this range of rights came out of war is an acknowledgement that their respect is cumulatively constitutive of peace (Trosky & Campbell, 2013).

In 1966, the UN General Assembly approved separate International Covenants on Civil and Political Rights and Economic, Social and Cultural Rights. After their ratification 10 years later, these became the most influential, if underappreciated, documents of their kind, creating accountability structures in international human rights law that could punish noncompliance. These advances have been accompanied by special treaties prohibiting genocide (1966) and torture (1984) and protecting individual and group rights against discrimination on the basis of race (1966), gender (1979), age (1989), ability (2007), or indigenous status (2007).

Traditional Debates

Even after the postwar flowering of an international human rights regime, debates persist regarding origin, authority, and enforcement. Add to these more recent accusations of “humanitarian imperialism,” whereby cynical politicians use human rights principles as cover for geopolitically motivated violations of national sovereignty, and you get Gallie’s “essentially contested concept.” I will discuss the dual challenges of enforcement and misrepresentation in the following two sections.

The provenance of human rights law relates directly to the charge of ethnocentrism and abuse: International law deals with the nation state, which is a Western invention, and, with the exceptions to national sovereignty granted under humanitarian law, has become the plaything of the most powerful states, especially in the developing world. Furthermore, the norms of humanitarian law have their basis in just war theory, which is a product of Catholic Church fathers – another demerit for its putative universalism and impartiality.

Proponents argue in response that it is precisely the combination of these two – the spirit of natural law and the letter of positive international law – that give the human rights framework its necessary combination of venerability and adaptability (Bellamy, 2008). The geographic, cultural, and historical situatedness of ideas, the counterargument goes, does not automatically compromise their truth or universality. As for that idea’s misrepresentation, a Catholic maxim puts it best: *Abusus non tollit usum* (abuse does not destroy a thing’s usefulness, but confirms it).

Critical Debates

Critical theorists and other postmodern observers remain dissatisfied with the long-standing effort to ground rights and duties in human dignity – that “shibboleth of all empty-headed moralists” (Schopenhauer, 1965 [1839]) – or in natural law that “brooding omnipresence in the sky” (Holmes, 1917). Broader appeals to human

biology or rationality or to simple consensus as the basis of human rights also strike moral skeptics as invalid arguments from authority or tautologies. They beg the questions: What exactly constitutes “human” or “rational”? And why should a majority get to decide?

Adhering to the fact/value distinction, science does not provide any definitive answers, but does provide evidence of the sociobiological value of humans’ empathic capacity from growing research in neuroscience, anthropology, and peace psychology. These findings have the potential to bolster the claim that respect for rights is an indicator of the health and progress of human civilization, but this functionalist explanation does not differ greatly from the consensus argument. By its own standards, however, science cares more about the utility of a theory than its truth.

This leads back to the traditional debate over human rights’ enforcement. Less fighting and more agreement seems good for any group, but has the consensus around the human rights regime led to less fighting? The disappointment of democratic peace theory – that liberal societies have in the past centuries been the most belligerent (though not with each other) – seems to indicate not (Doyle, 2011). There is a qualitative consideration, however, of *how* that consensus has been achieved nationally – with what level of coercion or violence – that is at least as significant as this quantitative measure. Additionally, lower levels of coercion or conformity manage to preserve diversity, which is survivally advantageous.

Extending the biological analogy to politics leads to less tractable debates over the reality (read universality) of moral norms generally. Are they, can they be, and do they need to be something more than successful memes? Much of social and critical psychology assumes not. Regardless of truth claims, the communitarian thinker Amitai Etzioni argues persuasively that the *normativity* of human rights is self-evident (2009). The salient feature of the human rights framework is that it represents an axiomatic “core principle . . . for the construction of international

law and norms” (2009, 193) and, as such, need not be defended. There *is* no alternative principle – be it states’ rights, divine rights, or raw power – nearly as compelling for creatures that wish to live together in peace.

International Relevance

Given the selectivity in application of human rights law, skepticism of it in critical theory and social psychological peace research is warranted. The prevalence of “prudential” realist rationales and competing national interests often stultifies Security Council. Leaders that circumvent the United Nations mechanism sometimes do so under the guise of the same principles they violate: The Cold War and the so-called War on Terror have themselves been occasion for atrocious violations of human rights, including torture, massacres, and mass displacements (Kinzer, 2006; Trosky, Salmberg, Marcucci, & O’Neil, 2013). Critics of such dissimulation nonetheless find themselves using the same vocabulary and concepts from human rights to condemn these actions (Bellamy, 2008; Kinzer, 2006; Walzer, 2006). Human rights’ supporters argue that this critique confuses (lack of) enforcement for (lack of) justification and that right and duty to aid remains justified even – indeed, especially – where government does not respect it (Orend, 2002). Equal protection under the law is what human rights demand, not what defines them.

Since militant nationalism is most often to blame for frustrating the international legal process, some critics advocate strengthening oversight of human rights law by compelling large nations like China, India, and Pakistan to become signatories to the International Criminal Court (ICC) and for signatories like Iran, Syria, Russia, and the United States to ratify the Rome Statute transferring jurisdiction for human rights violations and war crimes from the Security Council to the ICC. The USA has also denied accession to the United Nations’ International Court of Justice in The Hague to prosecute aggression since 1986. Even with the charter of the ICC in 2002, the absence of a comprehensive transnational

executor to apply humanitarian law and prevent atrocities still serves as an excuse to disregard human rights as useful fiction or pure idealism.

The supporter might retort that human rights mostly concern the “lower limits on tolerable human conduct” rather than “great aspirations and exalted ideals” (Shue, 1996). Or, one could plausibly argue, the *belief* in human rights – in human equality – long before their formal codification led to tangible progress toward those ideals in the abolition of slavery, achievement of women’s suffrage, and victories of the Civil Rights movement. In this narrative, such landmarks are all part of the same struggle, the inconclusiveness of which does not serve as a disproof of the reality of its objectives, but an imperative to realize them. The Nobel Foundation and the League of Nations; the Nuremberg Trials and the Marshal Plan; the extradition and conviction of war criminals, civil and military; and the establishment of more respectful regimes from Japan to Germany and Liberia to Serbia: these are also part of this narrative, countering skeptics’ objections that human rights’ imperfect enforcement evidences the subjugation of ethical considerations to powerful institutions. Ideas, too, have power, and the idea of human rights has proven to be among the most powerful (Crawford, 2002).

Practical Relevance

If the preceding arguments against the hegemony of human rights, real or imagined, prove to be moot in relation to the most obvious rights – to life, for example, or freedom from fear – a more exacting critique exists in relation to secondary rights, such as freedom from discrimination or, positively, recognition. In either case, if these rights truly are universal, wouldn’t they already exist in some form in every developed moral and legal code? “Why not just enforce or elevate the norms that we have?” communitarians and libertarians might ask.

As specific claims on governments and institutions supported by strong reasons, human rights are qualitatively different from, and superordinate to, ordinary interpersonal moral norms.

They prohibit private as well as public forms of discrimination, though, in most cases, they complement and support existing law. Individuals seeking to define themselves outside of customarily recognized categories might require an additional layer of protection from an insufficiently inclusive majority or state.

These cases can present an additional problem when individual or group expression of freedom of speech or religion is used to deny other rights – like those to health, life, or recognition. The rubric of “rationality” is of little help here, as part of what rights permit is the prerogative of individuals, families, and certain groups to balance identity against risk and, within limits, harm to themselves and those in their care. In the collision of rights claims, liberal democracies usually choose to accord religious communities similar exemptions, despite the fact that the right to self-determination sometimes endangers not only members, but, potentially, society at large, as in the right to refuse vaccination. Thresholds of tolerance of this tension between identity and safety are determined in nations’ highest courts, with the cases decided differently depending on the weight accorded to contested categories such as “property,” “self,” “good,” and “harm.”

The occasional messiness of this process and persistent absence of consensus can polarize the political spectrum. Dissensus drives some to the relative certainty of religion or other rightward havens and others on the Left to anarchical recalcitrance or smug cynicism. Constructivism and critical theory are among those camps that tend to view liberal consensus skeptically, though historicist lenses. Viewed from the poles, it is tempting to trivialize the international human rights regime as a postwar curiosity – a residuum of Western hegemony whose days are numbered in light of the apparent shift in geopolitical inertia to the East.

Perhaps we are coming full circle, to an era in which local law or norms are sovereign, and the reach of international law or norms’ is merely theoretical. Prescriptive moral relativism claims that even where enforceable, international norms should defer to tradition and actual cultural

practice (MacIntyre, 1988). Controverting this view, human rights aspire to a moral and legal expression of the core principles that are shared by any successful ethical code and therefore outrank particularistic mores that violate humane treatment of individuals in the name of group identity (Orend, 2002; Walzer, 2006).

At all events, cultural relativism is becoming less palatable in the post-positivist intellectual and political climate. Rather than a liability, the degree to which communities allow and preserve space for contestation can be seen as a confirmation of human rights – a rubric of the Rule of Law and health of a liberal polity. The negotiation of these rights’ content and application is potentially endless, but the rules by which civil discourse takes place are more fixed – a small comfort amidst globalization’s constant flux.

Future Directions

Whatever perils viral communications technology present in an age of mass democracy and inequality, the biological, cultural, and geographical determinisms promulgated in popular social psychology represent an equal threat, undermining self-efficacy and adaptability. These tend to discount the individual’s ability to judge, to change, to improve, and to become freer and more open. Worse, these memes have a self-fulfilling quality.

Contrary to this facile account of socialization, it seems to be in the very nature of rights to *not* depend on – in fact to protect *from* – majority will. Thus, the same principle that putatively enthrones democracy also shields individuals from it. Consensus may shift, for instance, from those who would wish to trade privacy for security in the wake of terrorist catastrophe – but human rights guarantee the perpetuation of community and preservation of liberty; however the political winds may blow.

Debate over the universality of human rights will affect the outcome of another contemporary conundrum, the legitimacy of humanitarian intervention. Interventions of questionable necessity (most recently Iraq 2003) have made the use of

force to halt widespread human rights violations in Darfur (genocide) and Syria (war crimes and crimes against humanity) more difficult. The challenge remains to educate populations, elevate debate, and keep leaders accountable, including in nations that have become the de facto (NATO) and de jure (UN Security Council) custodians of human rights.

The primary challenge in critical psychology remains squaring the value-free character of scientific inquiry with the substantive demands of human rights, which respect no such epistemological boundaries. Psychologists are among the best in respecting the rights of test subjects and client confidentiality but still face dilemmas in the application of their skill. Members of the American Psychological Association acted in an advisory capacity during the US government's adoption of "enhanced interrogation techniques" that were later categorized as torture. Others renounced their membership in protest. Knowledge and respect for human rights determine how psychologists and citizens balance personal, professional, and patriotic obligations.

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Humanism

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Introduction

Contrary to prevailing misconceptions, humanism is not a singular or coherent philosophy nor simply a movement within philosophy. Humanism is best defined as a sensibility shared by people of widely differing philosophical orientations who diverge sharply on political and religious issues (Fromm 1966). The humanist outlook has two main sources in the pre-Christian world. The first is the Biblical insistence that all human beings are made in the image and likeness of God. This ancient theological motif conveys the fundamental unity of the human species and the singularity and worth of each and every human being. Add to this the Prophetic insistence on justice, mercy, and a truth-loving disposition, and you have all the essential values that the Hebrew tradition bequeathed to the West (Fromm, 1966).

Among the Greek and Roman philosophers, the Stoics probably contributed most to the humanist outlook. They embraced and espoused the unity of the human species and the importance of cultivating inner freedom and rational self-mastery (or *wisdom*) as a response to the manifold injustices of the world. Status and ethnicity, which count for so much in the minds of most men, do not sway the judgment of Stoic philosopher. Thus Epictetus, a Stoic philosopher of the first and second century, was a slave and yet also a preceptor to the Emperor Marcus Aurelius. The Roman playwright Terence had one of his characters say, “Homo sum; nihil humani me alienum puto” or “I am a man; nothing human is alien to me.” The broad implication of this remark is that Terence’s hero refused to identify with one particular ethnic group. He regarded himself as what the Stoics called a *cosmopolite* – a citizen of the universe, and not the representative of a particular race, nation, or religious orientation. He embraced a *panhuman* identity that transcends the vagaries of ethnicity and religious belief (Cassirer, 1947; Bloch, 1961).

During the Italian Renaissance, humanism denoted the revival of pagan – and especially Stoic and neo-Platonic – learning by Marsilio Ficino and Pico della Mirandola, among others. These scholars stressed (1) the need for well-rounded people who study “the humanities,” in addition to Scripture and (2) the essential compatibility between neo-Stoic and neo-Platonic philosophies and the Christian faith. Later, during the Reformation, the term “humanism” was used to describe the sensibilities of nondogmatic and ecumenically minded Christians like Petrarch and Erasmus, who felt that Christianity is as germane to the problems of living in *this* world as it is to seeking salvation in the next.

Marsilio Ficino and Pico della Mirandola, who sought to emulate the ancients, gave humanism a somewhat “backward looking” character, and in due course, the term “humanism” was attached to the work of conservative historians like Jacob Burckhardt, who looked back at the Renaissance as a period worthy of veneration (Baker, 1961; Kristeller, 1979). But by the mid-nineteenth century, the term humanism took on a decidedly different inflection, being