

The Moral Foundations of Human Rights

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1. What are rights?

- Rights come in a variety of types: human rights that everyone holds, rights based in special relationships such as the family, contractual rights, property rights, rights created by regulations, rights that come with particular jobs (such as the rights of the president), legal rights, pre-legal moral rights.

What, if anything, is common to this wide range of things?

- Right and correlative duties

If a person P has a right to X, then (typically) some other person(s) and/or institutional bodies have a duty to do X for P.

Hohfeld's distinction between types of rights (see Jones 1994):

Claim-rights.

If a person P has a claim-right to X, then some other person(s) and/or institutional bodies have a duty to do X for P.

(E.g. my right not to be tortured; your right that I meet you as I promised)

Power-rights.

If a person P has a power-right, then P has the ability to create or remove some duties.

(E.g. my right to enter into contracts)

Immunity-rights.

If a person P has an immunity-right, then some other person(s) lack the ability to create or remove some duties.

(e.g. my constitutional right to freedom of religion)

Liberty-right.

If a person P has a liberty-right to X, then P does not owe anyone a duty not to do X.

(e.g. my right to walk along the streets)

NOTE: Each type of right depends centrally on the concept of *duty*. What are duties?

- Duties and agent-relativity

One of the central features of duties is that they are 'agent-relative': If I have a duty not to do X, then I should not do X even on some occasions when I could minimise the overall doing of X by doing X myself. Similarly, if a state or other institution has a duty not to do X, then it should not do X even on some occasions when it could minimise the overall doing of X by doing X itself.

(i) This doesn't imply that duties are *absolute*. (ii) And it doesn't imply that duties are always *morally important*.

2. How to justify any rights and duties

Bentham: ‘Natural rights is simple nonsense: natural and imprescriptible rights, rhetorical nonsense — nonsense upon stilts.’

The paradox of deontology: the non-maximising nature of rights and duties means that rights and duties sometimes prevent the maximisation of their justifying values.

What should we say, in response to the paradox of deontology?

My view is that we should use the following two theses:

- A. Rights and duties are not simply *means* to the achievement of valuable results; instead, rights and duties are *constitutive* of certain valuable things. In particular, rights and duties are always constitutive of valuable practices, relationships or communities.
- B. Each individual should respect the principles that we should recommend to be adopted by any number of people (one, many, everyone).

Summary of how these theses answer the paradox of deontology:

A. Many intrinsically valuable relationships and communities (family, friendship, the community of humankind) and instrumentally valuable practices (promising, property rights) are partially constituted by rights and duties that must be respected in a non-maximising manner (i.e. rights and duties that should not be violated on every occasion when their violation would have best consequences overall). Without such rights and duties, the relationships, communities and practices would lose their (intrinsic or instrumental) value.

B. Because we live as a human community, in fellowship with all other humans, we each owe each other duties to act towards each other only in accordance with the principles we should recommend any number of people (one, several, everyone) to adopt. [I shall call these ‘the collective principles’].

Intermediate Conclusion IC (implied by A): The collective principles will require us to respect our particular commitments (family, friendship, promises, perhaps the nation?) in a non-maximising manner. For otherwise, these principles would destroy the possibility of genuine friendships and genuine families etc.

Conclusion (implied by IC and B): We are each duty-bound, to everyone, to respect our particular commitments (including rights and duties) in a non-maximising manner.

3. Human rights: moral foundations.

Some of the possible meanings of the phrase 'human rights'.

- Category 1 Sometimes 'human rights' means all the legal rights on the international and regional lists of rights, such as the 1948 Universal Declaration of Human Rights.
- Category 2 Sometimes it means all the pre-legal morally justified rights that are held universally, by every human being.
- Category 3 Sometimes it means all the pre-legal morally justified rights that are universally binding on everyone (every individual? every nation?).
- Category 4 And sometimes it simply means all the pre-legal morally justified rights that are most morally important.

Two key components to the moral foundations of human rights:

- (a) Human rights are partially constitutive of the community of humankind.
- (b) Human rights are also justified by 'trumping' or 'powerful reasons of a certain sort.'

Interpreting (a):

If human rights constitute a 'community of humankind', then I think human rights are both universal (category 2) and universally binding (category 3).

Different ways of understanding this 'universal bindingness':

- Each person's human rights imply duties for every other individual in the world, and every institutional body in the world.
- Each person's human rights imply duties for everyone in the world, taken as a collective.
- Each person's human rights imply duties for every institutional body in the world, or for every state.

Interpreting (b):

In my view, the most morally important rights (all those that fit my category 4) are justified by what I call 'powerful' reasons.

Powerful reasons = reasons that cannot be defeated by most competing reasons. They are normative 'breakwaters' that can rarely be defeated; in particular they cannot be defeated merely by the collective interest or the greatest good.

(E.g. it is attractive to regard Fred's right not to be tortured as justified by powerful reasons that reflect the great moral importance of Fred's central interests in autonomy, in absence of pain, and in being treated in a humane manner.)

Many philosophers regard the most morally important rights as justified by powerful reasons:

"'X has a right' if [...] an aspect of X's well-being (his interest) is a sufficient reason for holding some other person(s) to be under a duty' (Raz 1986, p. 166).

Other philosophers also adopt the powerful reasons approach:

- some see *freedoms* as generating powerful reasons (H.L.A. Hart, James Griffin, perhaps Amartya Sen)
- some see *needs* as generating powerful reasons (David Wiggins, Thomas Pogge)

Try: A two-tier theory of rights:

- *Human rights* are justified by powerful reasons, based on the powerful importance of certain features of the individual right-holder, or the right-holding group, or some relationship (such as the parent-child relationship).
- *Other rights* (including promissory rights and various legally created rights such as my right to park in a residents' parking space) are justified on the basis of the importance of the collective interest (where this perhaps means the aggregation of everyone's interests).

The human rights are more important: they shape what other rights can be justified.

4. Human rights: to assistance as well as noninterference?

In the last section, I outlined two complementary approaches to the moral foundations of human rights. What rights and policies do these approaches justify?

My first approach, which says that *human rights partially constitute the community humankind*, implies very little about what particular rights are justified. It implies that each person has a human right to be treated as a fellow within the human community, but it is unclear what this means, because the notion of the 'community of humankind' is not something over which we have a clear pre-theoretical grasp.

My second approach, which says that *human rights are justified by 'powerful' reasons*, has more concrete implications. To see these, we should start by examining the following distinction:

- An *assistance* right = a right entailing duties of assistance from others. (sometimes called a 'positive' right)
- A *noninterference* right = a right entailing duties of noninterference from others. (sometimes called a 'negative' right)

What does the 'powerful' reasons approach imply about the justification of assistance rights and noninterference rights?

We've seen that different theorists pick out different features of people (interests, freedoms or needs) as generating powerful reasons in favour of rights. But whichever feature we pick out, it seems clear that *continued living*, *minimal autonomy* and *absence of severe pain* will be among the things that generate powerful reasons.

- These factors – continued living, minimal autonomy and absence of severe pain – clearly justify a range of noninterference rights that seem very familiar: the right not to be tortured or murdered, the right to bodily integrity, the rights to the political participation and religious freedom necessary for autonomy.
- And these factors – continued living, minimal autonomy and absence of severe pain – also justify a range of assistance rights: rights to the education necessary for autonomy, and to medical assistance, and perhaps most controversially, rights to subsistence supplies of food and housing.

Focus on the *right to subsistence supplies, to poverty relief*. Consider article 25 of the Universal Declaration of Human Rights on your handout:

'Everyone has the right to a standard of living adequate for the health and well-being of himself and his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.'

‘Some 2,800 million or 46 percent of humankind live below the World Bank’s \$2\day poverty line – precisely: in households whose income per person per day has less purchasing power than \$2.15 had in the US in 1993. On average, the people living below this line fall 44.4 percent below it. Over 1,200 million of them live on less than half, below the World Bank’s better-known \$1\day poverty line’ (Pogge 2002, p. 2).

Key point to note: the human right to subsistence supplies and to poverty relief, as encapsulated in article 25 of the Universal Declaration, seems to be fully justified by the ‘powerful reasons’ approach.

Two attempts to block this conclusion:

1. Assistance rights are likely to conflict. BUT surely a realistic moral picture must allow for the possibility that rights will sometimes conflict.
2. Assistance rights are sometimes very demanding. BUT we are all subject to many demanding rights and duties whose justification is not overridden by their demandingness (e.g. my duty to work to feed my children, my fellow citizens’ right that I serve on his/her jury, my friend’s right to make some stupid mistake).

So: if human rights are grounded in powerful reasons, then there seems genuinely to be moral justification for a right of the form articulated by article 25 of the UDHR.

Does it follow that we wealthy people are all human rights violators, morally akin to torturers? It depends on whether the human right to poverty relief implies duties for everyone *individually*, or whether this right implies fundamental duties for *states* or *people collectively*.

The ‘powerful reasons’ approach suggests that the human right to poverty relief binds everyone *individually*. This is a radical conclusion, but I don’t know whether that is a reason to reject it.

5. Conclusion: what kind of ‘human community’ are we?

A dilemma: our best accounts of the philosophical foundations of human rights have quite radical policy implications: they call urgently for the creation of a trans-national welfare system. To avoid these radical conclusions, we will have to search for alternative philosophical foundations for human rights, and I fear that none will be as satisfactory as the ‘powerful reasons’ approach. Let’s discuss this.

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