

Applying universal moral truths to society

1. Introduction

Many of those advocating human rights believe those human rights should be universally accepted. It is argued that human rights denote the rights *humans* have in virtue of their humanity, and should therefore be secured across all cultures and countries (Griffin 2008). Human rights thus form part of a universal political morality that applies everywhere and has to be tied together coherently to all the different moral practices we find encounter.

In this paper, I will not discuss how such a universal perspective, if at all viable, can be justified, but I will instead focus on what it means to apply a universal morality to society. What questions of application pop up once one claims a norm to be universally valid? Importantly, this reflection will not engage directly with the practice of international human rights law – even though this practice has been understood as *the* practice concerning human rights (Buchanon 2013). I will instead focus on exploring the *moral* claim to universality, and apply what we expect of any universal morality to what we can expect of doctrines of human rights.

Central to this expectation is the challenge of explaining how moral human rights relate to *each* morally relevant action. Precisely this explanation is usually not provided when an account of *moral* human rights is set out. Authors such as James Griffin seek to limit the theory of human rights to a small, uncluttered kernel of norms that should be recognized as fundamental and deserve an elevated moral status (Griffin 2008). But he does not explain how this small kernel relates to all other possible moral norms – and at which point one leaves the sphere of moral rights and enters the sphere of, well, something else (Moller 2012). Now, when talking about the international legal domain, such a cut-off point is, at least superficially, not hard to find: the domain ends where the sources of law and jurisprudence seem to end. Human rights are simply those rights mentioned in certain sources. But this sort of argumentation cannot apply to a moral account of human rights. We have a need for comprehensive accounts that place human rights within the totality of moral structures.

In this paper I will shortly discuss three options for embedding a universally valid moral theory of human rights: the Rawlsian, the Habermasian and the Gewirthian option. Note that I will provide no knock-down arguments for refuting these accounts, but will point out attractive and unattractive features that, when taken together, offer some much-needed direction. Note also that, especially concerning the Rawlsian and Habermasian account, these accounts are inspired by the philosophers' works but do not reflect their claims directly.

2. Human rights and consensus

Starting with the Rawlsian approach, one way of pointing out the place of universal moral rights is by regarding them as the common ground between all kinds of positions. Arguing for an overlapping consensus, Rawls believed that the essentials of a liberal democracy could be accepted by all *reasonable* doctrines (Rawls 2005). So, applied to human rights, while Christians, Muslims and atheists disagree on many things, they would not disagree on a set of rights fundamental to a shared societal practice of mutual cooperation as equals.

One can see the usefulness of a Rawlsian approach in harmonizing human rights with other moral practices: those moral practices, which Rawls called 'general and comprehensive', still have their place and validity; they are practiced within the bounds set by a government applying the *right* principles – and why not understand those principles as set out precisely by human rights? Discussions about such rights would then turn out to be discussions about the scope of this uncontroversial sphere of political justice: is the right to a holiday with pay a part of those norms reasonable persons agree on, or can accepting it only be defended with reference to a comprehensive conception of morality?

Unfortunately, precisely the search for the reasonable consensus creates problems for the Rawlsian-inspired theorist: for which rights are *really* uncontroversial (Waldron 1996)? Indeed, the hallmark of an unconditional right, the right against torture, is anything but a world-wide taboo. And even within liberal democracies we would fool ourselves to think that, for instance, the right to privacy is a universal common ground – continuous conflict exists about the validity and extent of rights within liberal democracies. Now a Rawlsian might suggest that *reasonable* people would not differ on the core issues, and that all conflicts simply show how pervasive unreasonable people are. But such an assertion is question-begging without a further justification – and such a justification is not available to the Rawlsian.

Of course, in his account of international human rights Rawls acknowledged this problem: the plurality of societies urged him to distinguish between liberal, decent and immoral societies (Rawls 2001). And it might be that he was correct in asserting that at the international level, *some* common ground can be found that should be regarded as universal. But this would limit the account of human rights severely and estrange it from the international practice. And that at least should give us a reason to explore other options.

3. Human rights and rules of argumentation

In contrast to Rawls, Habermas did not rely on a foundational consensus but argued that *all* moral norms had to be appropriately related to his principles of discourse (Habermas 1997). Indeed, referring to the works of Karl-Otto Apel, Habermas argued that it is transcendently necessary for rational humans to strive to enact communicative actions, in which all respect each other as deliberative equals and attempt to come to an agreement (Habermas 1997, 1990, Apel 1980). Morality thus structures all conversations about norms, even if the norms are quite trivial or politically unimportant: whenever people coordinate their lives together, certain standards of deliberation must simply be upheld. This then is how human rights fit into the broader moral scheme: they form the procedural conditions under which we deliberate about all other norms.

Importantly, Habermas was very careful in not overestimating the claims that can be made with universal validity: he only wishes to provide *structures of argumentation*. Concrete norms

should be constructed in the discourse itself, where all individuals can, ideally, be heard and the specifics of the context of a decision can be taken seriously (Habermas 2001). The morally necessary claims thus only provide directions and limitations, but do not lead to concrete solutions. Indeed, the one place where Habermas did articulate certain fundamental rights, he did so only in a highly abstract way (Habermas 2001).

Although I think Habermas is right in combining a universal element to *all* more particular decisions, instead of divorcing the field of universal moral norms from a somehow less universal one, his restraint causes problems in terms of the concrete account of human rights that can be offered. The first difficulty lies in concretely formulating the correct procedural conditions: as Habermas offers only abstract structures, the participants in discourses must find the concrete rules of procedure themselves. Here a paradox threatens, as those rules of procedure must of course yet again be decided upon in some kind of procedure – so without concrete guidance, decision-procedures may still be organized in an unjust way, ruining the promise of enacting universally right moral norms (Honig 2007).

A second difficulty lies in weighing the worth of the decision-making procedure against the *results* of such a procedure. We do not only desire to know the way we should conduct a procedure, we also want to know when we should resist the results of such a procedure. One way to do this would be to regard the right conditions of the procedure as the content that must not be violated by the outcomes of the procedure. But here Habermas' abstractness yet again demands its toll: the conditions are not concrete enough to serve as a clear check on outcomes. And even when we accept this solution there remains a worry: as Habermas himself stated clearly, the point of a decision-making procedure is to respect the interests of the participants equally (Habermas 1997). So to know whether the outcomes of a procedure should be respected we should know more about these interests: have they actually been respected fairly? But this would require a theory of interests that goes beyond what Habermas believes possible from the perspective of a universal morality. We therefore have reason to consider projects that *do* hope to provide an account of universal human interests.

4. Universal and particular interests

My own work seeks to do this, mainly by building on the work of Alan Gewirth and recent developments in human rights theory and jurisprudence. Gewirth's main idea was to develop an account of the sort of goods rational agents necessarily have to want (Gewirth 1978). An obvious example of such a good is simply being alive, which is necessary for the success of all one's actions - whether one wants to cook, pursue a career in law or develop a romantic relationship. But Gewirth argues that political rights, education and even self-confidence should be seen as necessary goods. All these goods form the basis of *generic rights* that all rational agents have equally, and these in turn can serve as the basis for a human rights regime (Gewirth 1978, 1981). Accordingly, the divide between the moral and the morally trivial is also clear: if one is able to relate a good to a rational agents' necessary interests, claims to such a good are morally relevant. If such a connection cannot be made, for instance because the good, such as horse-riding, is only wanted by a few people, and cannot be rationally connected to the interests of all, the good falls outside of moral consideration.

My approach builds on Gewirth in the sense that I believe his methodology to be right: when humans understand what kind of beings they are, they understand that they should claim to be

morally significant and that they need certain goods. But the question is whether we should reduce the moral sphere to a sphere of generic goods necessary for all actions. Are human rights always relevant to *all* sorts of actions? It seems that some are, but some are not. Indeed, one will always require a right to a minimal standard of health or to protection from physical abuse in order to act with any expectation of success. But is a right to education or a right to cultural participation really generic to successful actions?

Gewirth's theory offers an account of necessary interests, which enables us to place human rights into a broader moral structure protecting agency. We can regard them as protecting the basic conditions of agency, and distinguish them from conditions of agency which are less central, such as for instance that one's general self-esteem is not impaired by the condescension of others. It also improves upon Habermas' account in its concrete articulation of interests. But in its rigorous claims of necessity connections are also lost: not all human rights present in the practice seem to fit into a generic scheme, and morality at large fits even less so: in everyday life we tend to respect persons by respecting their *particular* characters and preferences.

We thus end with a question: if connecting human rights with morality at large requires an account of universally shared interests, then how does such an account relate to the particularity that so characterizes human beings and their interaction? I believe answering this question provides an important key to judging contemporary human rights developments – which is why my dissertation is dedicated to this task.

Bibliography

Apel, Karl-Otto, 'Towards a Transformation of Philosophy', Marquette University Press 1980.

Buchanon, Alan, 'The Heart of Human Rights', Oxford University Press 2013.

Gewirth, Alan, 'Reason and Morality', Chicago University Press 1978.

_____ 'The Basis and Content of Human Rights, *Nomos* 1981, Vol. 23, pp. 119-147.

Griffin, James, 'On Human Rights', Oxford University Press 2008.

Habermas, Jurgen, Transl. Rehg, William, 'Between Facts and Norms', Polity 1997.

_____ 'Moral Consciousness and Communicative Action', Transl. Lenhardt, Christian, Weber, Sherry, MIT Press 1990.

_____ 'Constitutional Democracy, a Paradoxical Union of Contradictory Principles?', *Political Theory* 2001, pp. 766-781.

Honig, Bonnie, 'Between Decision and Deliberation: Political Paradox in Democratic Theory', *American Political Science Review* 2007, Issue 1, pp. 1-17.

Moller, Kai, 'The Global Model of Human Rights', Oxford University Press 2012.

Rawls, John, 'Political Liberalism', Columbia University Press 2005.

_____ 'The Law of Peoples', Harvard University Press 2001.

Waldron, Jeremy, 'Law and Disagreement', Oxford University Press 1999.