The Philosophy of Human Rights

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Introduction: The Philosophy of Human Rights

The concept of “human rights” has become a dominant framework by which the contemporary world begins to conceptualize and evaluate the structures, laws, actions, and values of states, non-state organizations, and individuals in terms of how they interact and secure the social, political, and economic conditions required to lead a good life. This is made clear by the ever increasing frequency of references in political discourse and compacts, as well as the burgeoning fields of study – philosophical, legal, and historical - centered on the concept. While this is descriptively true, we must be conceptually and normatively concerned (not just as philosophers, but as good thinkers and citizens) with the numerous theoretical and practical issues related to human rights which remain philosophically controversial.

For example, important issues remain to be resolved concerning the nature and scope of human rights: What should be included within the category of “human rights”? Should it include positive as well as negative rights? Should it include such things as education, national self-determination, indigenous rights, or the right to a minimal subsistence or a clean environment? How do we proceed in situations where human rights conflict? Are all human rights equal, or can they be ordered in a hierarchy?

Further issues remain concerning the justification and foundation of human rights: On what basis are human rights justified: equality, autonomy, human dignity, fundamental human interests…? To what extent do contemporary doctrines of human rights depend on notions of human nature and human interests which are culturally contingent or biased? If different cultures - such as liberal and communitarian cultures, Western and Eastern cultures, etc. - have differing views on what constitutes human nature, identity, or essential human interests, then what implications does this have for the project of negotiating, defining, justifying, and implementing “Universal Human Rights”?

Finally, even if the above issues were resolved there would still remain issues concerning the implementation and enforcement of human rights: What means are international organizations or particular countries justified in using to promote adoption of, and adherence to, human rights standards? By what criteria do we properly determine when, if ever, intervention in the operation of a sovereign state is justified to protect human rights?

These are only some of the issues surrounding human rights discourse and practices which are ripe for philosophical investigation and debate. Conceptual and normative issues such as these provide
cause for both concern, as we question the foundations and applicability of these new concepts, frameworks, and values, as well as for excitement, as a challenging and fruitful new field of philosophical study takes shape, and as philosophers find yet another area where philosophical inquiry and examination proves important and fruitful for fully understanding, coming to grips with, and navigating dimensions of practical life which are simultaneously complex and of fundamental importance and concern.

This issue of Essays in Philosophy contributes three essays to the dialogue on human rights. Each of the essays addresses implications for contemporary human rights frameworks and practices, and the third connects those to philosophical precursors in Hobbes and Locke. Furthermore, the first two essays, while dealing with different topics, both address implications for the negative-positive rights dichotomy, upon which many debates in political philosophy turn.

In the first essay, “The End of Duty”, Per Bauhn invites us to embrace a more balanced view of what justice and fairness require concerning fundamental rights. Bauhn argues that human rights theory and discourse has focused too heavily on what it means to treat rights-holders justly and fairly - what rights individuals are entitled to and how they are best secured - neglecting the equally important dimension of justice which should attend to what it means to treat duty-holders justly and fairly. He argues that when both dimensions of justice are properly attended to, treating individuals fairly, both in their roles as rights-holders and as duty-holders, will require certain limits to the duty to assist those in need.

In the second essay, “Henry Shue on Basic Rights”, Michael Payne examines Henry Shue's recent defense of a basic right to a minimal subsistence. This requires Shue to critique and reject the distinction between negative and positive rights. Payne argues that both of Shue’s main arguments, against the negative/positive rights distinction, and for basic rights fail. He locates the fatal flaw in Shue’s vacillation between an analytic and a moral argument for basic rights - the analytic argument being undermined by things Shue himself says about rights, whilst the moral argument requires a controversial premise – ultimately leaving Shue without a ground for his conclusion: the justification of basic positive rights.

In the third essay, “From Chaos to Contractarianism: Hobbes, Pojman, and the Case for World Government”, Eric Smaw articulates the difficulties facing attempts to use elements of a Hobbesian model to ground human rights. After laying out a substantial technical account of Hobbesian principles concerning human drives and powers, freedom, the state of nature, natural rights (human rights), and the establishment of the commonwealth, he locates structural difficulties in the Hobbesian model which problematize any attempt to ground a system of human rights upon it. Furthermore, he connects these difficulties to contemporary philosophy and Louis Pojman’s attempt to justify a moderate cosmopolitan world government that could secure global human rights. Here, he locates difficulties facing Pojman’s project which stem from his foundations in a Hobbesian model, as well as non-Hobbesian difficulties facing the justification for his Principle of Humanity and Principle of Equality grounding his moderate cosmopolitan world government. Since he ultimately agrees that something like Pojman’s model of world government is the right way to go, he ends by offering brief suggestions for how we might begin to justify such a move in a way that could avoid the problems he locates in Hobbes and Pojman.