

On Human Rights

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This year marks the sixtieth anniversary of the Universal Declaration of Human Rights, which was adopted and proclaimed by the General Assembly of the United Nations on 10 December, 1948. According to the preamble the aim of the Declaration was that,

... [E]very individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of the Member States themselves and among the peoples of territories under their jurisdiction.

Since that time the language of human rights has become increasingly important both in academic debate and in political decision-making. It has become a commonplace strategy to appeal to human rights in order to make legitimate the case for political change; such strategies are used not just by the leaders of popular movements against their own governments, but also by governments themselves seeking to justify their interference in the domestic affairs of other states.

Ubiquity has not, alas, been matched by clarity: as the rhetoric of human rights has become widespread, so the meaning of the language of human rights has become confused and contested. We are, today, far more likely than our ancestors to be sympathetic to arguments based on the premise that human rights must count for something, even though we might not be able to say precisely how much they should count for and why.

Those who take an interest in questions of human rights face two related questions about the nature of human rights. First, what is their basis? Does it take the form of a fact about human nature or, by contrast, is it derived from some form of human agreement, such as a law or a constitution? Second, what is their scope? How do we determine whether any particular claim about human rights is to be judged valid or invalid? Our answer to the first question should assist us to answer the second

question, since once we know what counts as the basis for human rights in general, we should be in a position to determine whether any particular claim about human rights is soundly based.

Why does this matter? Well, for two main reasons. First, many moral philosophers argue that rights are claims and that claims imply duties. Human rights, being rights of a fundamental sort, will therefore imply duties of a fundamental sort. If we do not understand the basis and scope of human rights we will not be able to understand the basis and scope of some of our most fundamental duties to others. Second, in contemporary international politics, the alleged violation by governments of their citizens' human rights has been used as a justification for interference by one state in the affairs of another. Such interference may take the form of trade sanctions, exclusion from international bodies and, in certain cases, military action. Unless we know the basis and scope of human rights we will not be able to decide whether intervention by one state in the affairs of another is justified.

In *On Human Rights* James Griffin sets out the case for a traditional, precise, ethical account of the nature of human rights. By which I mean, first, he is interested in the idea of human rights that emerged in the seventeenth and eighteenth centuries. In this tradition human rights are natural and universal: they are based upon facts about human nature and they belong to all who share this human nature.

Second, Griffin is concerned to provide an account of human rights that is 'satisfactorily determinate' (p. 92) by which he means one that avoids absorbing all matters of justice and morality into claims about human rights. Just as monetary inflation leads eventually to debasement of the coinage so too, without some deflationary pressure on the use of the term, we risk a debasement of the concept of human rights: 'It is a great mistake to think that, because we see rights as especially important in morality, we must make everything especially important in morality into a right' (p. 199).

Third, he argues for an ethical account of human rights, based upon our normative status as persons. While human rights are grounded by a series of natural facts they are at the same time ethical claims because they concern our ability to exercise the agency we have as persons. Griffin is interested in providing the existence conditions for human rights: what must be the case for it to be true that human rights exist. These existence conditions are facts about the world, but Griffin believes that because they are facts about the nature of personhood they are also

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capable of providing the substantive evaluative content that an appeal to human rights presumes.

Griffin's account of personhood lies at the heart of the book: he proposes that human rights are protections of our normative agency and that the capacity for normative agency is what we mean by the term personhood. This capacity can be described in three stages, to each of which we can attribute a basic category of human right. The first stage comprises our ability to consider our lives as a whole, to reflect upon what makes our life worthwhile and to make decisions about the sort of life we want to lead: for us to exercise this capacity requires autonomy. The second stage comprises those various elements that make possible the pursuit of this conception of the good life: the skills, resources and support we need to enable us to exercise our autonomy are welfare provisions above some minimal level. The third stage comprises the freedom to employ our welfare provision in the exercise of autonomy, unhindered by interference from others: namely, liberty.

It is worth emphasising the importance of this account of personhood. Griffin might be seeking to rein in some over-inflated claims about human rights by limiting what can count as a human right to what counts as essential to normative human agency; but he is also seeking to give substantive influence to his reduced list of human rights. Since human rights are there to protect both our capacity for normative agency and the exercise of this capacity; and since the exercise of this capacity requires both welfare resources and freedom from interference; so, human rights arguments carry real weight in those (limited) cases when we make them.

If human rights protect not just our capacity for agency but also our exercise of it, then the *prima facie* duties correlative to the right to welfare will sometimes include political intervention in the affairs of another country. By parity of reasoning, it may also include bringing about radical change in our own country (p. 184).

While Griffin's account of human rights is traditional, precise and ethical, it is nevertheless capable of underpinning the demand for political change.

In the final chapters of the book, Griffin applies his concept to a number of contemporary debates about human rights, including: the proliferation of lists of human rights proposed in international treaties and declarations; the right to life and the right to death; the right to privacy; and the case for group rights in addition

to individual rights. He also considers the question whether to be effective human rights require democratic government and concludes that they do not as a matter of principle, but in modern societies as a practical matter they probably do.

How compelling is this account of human rights? Does Griffin's approach provide us with conceptual tools sufficient to determine the extent of our duties to others because they, like us, are persons? Will his concept of human rights help us to decide when we should intervene to overthrow despotic governments and which of the many autocratic leaders in the world today deserve to be hauled before an international court?

First, there are two things to say in Griffin's favour. His deflationary account is a useful corrective to the rampant expansion of the list of things that are said to be human rights. It is quite possible to argue that something is important, that it has moral significance, that it is a matter of justice, without also claiming that it is a human right. In Griffin's account, human rights are precious because they are protections of the exercise of our capacity for personhood; but they are not the only precious things in the world. There might be a good case for more public holidays, or for the protection of sites of natural beauty, or for free admission to art galleries, but claiming these things as human rights adds nothing to the case in their favour, although it risks bringing the idea of human rights into disrepute.

Second, by insisting that the idea of personhood includes both the capacity for human agency and the exercise of this capacity, Griffin rebuts the view that quantity-of-life is everything and quality-of-life nothing. What is important about being a human agent – about being a person – is the capacity for agency: 'deliberating, assessing, choosing, and acting to make what we see as a good life for ourselves' (p. 32). Life itself is, for sure, a necessary condition for living a good life; but access to welfare provision is also a necessary condition for living of a good life. If human life matters, then it matters that human agents have the resources necessary for that life to be properly and fully human. Which means that giving consideration to the well-being of others is an obligation for us all.

That said I suspect that many readers will not be wholly persuaded by Griffin's account of human rights. First, because they will not be persuaded by his claim that personhood is an appropriate basis for human rights claims; second because they will not be persuaded that the concept of human rights is primarily ethical

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rather than political. These lines of argument are related and have been set out by, amongst others, Richard Rorty [1] and Joseph Raz [2].

In basing his account of human rights on an account of human agency Griffin has continued the tradition in philosophy that explains an idea by examining that upon which it is founded. In this case the foundation is a belief about human agency, a set of human interests from which we can deduce some substantive content for human rights. Not all human interests will count, as Griffin emphasises, but ‘merely what is needed for human status’ (p. 34). Even so, the moral idea of human rights rests upon the moral idea of human agency, which in turn rests upon natural facts – some biological and some social – about our potential to be rational, choosing agents.

An objection to this account is that it is, in practice, impossible to identify a determinate set of natural features of human beings, which together are sufficient to generate the concept of human agency that Griffin requires, but which exclude the many other natural facts about humans that he considers irrelevant to human rights. For example, our ability to act as rational, choosing agents is impaired by unjust imprisonment but not destroyed. Prisoners do not lose their reason; they still have choices to make; they remain persons. So is unjust imprisonment merely unjust or is it also a breach of our human rights? Again, a university education is not a precondition of our ability to act as rational, choosing agents; but it might improve our ability to think clearly and to choose wisely. So is a university education merely a beneficial opportunity or is it a human right?

The problem with using natural facts to provide a foundation for moral values is that there does not seem to be a non-arbitrary way of drawing a line around the many natural facts we could include. We might end up with too few facts, and correspondingly a bleak and degraded conception of human agency; or we might end up with too many facts, and correspondingly an exaggeratedly affluent conception of human agency. How many natural facts we choose will most likely be determined by what we think we need in order to establish what Griffin calls our ‘human status’; but that suggests a prior conception of the human good, which will in turn need its own foundation in nature.

One way of avoiding the need to find a moral foundation for human rights is to argue that they are not primarily moral concepts, but political ones. Human rights are best understood as claims based on human agreements, notably public

declarations, treaties, laws and constitutions. This is not to say that they are not also moral concepts; they might be. Rather it is to say that their primary usage is in the making of political claims and that this usage is where we should place our focus. Questions about their moral basis should be treated as secondary.

This approach to human rights seems consistent with the way in which the language of rights was used in the eighteenth century. When the American States asserted their 'unalienable rights' on 4 July, 1776 they did not offer an argument for their moral foundations. Rather they claimed, 'That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed.' When a government fails to secure these rights for the people, then the people are entitled to 'dissolve the political bands which have connected them with another.'

Human rights are political claims, which citizens make against governments and against institutions that have been established by governments, such as courts and tribunals. On the basis of these claims citizens might appeal to a higher level of authority within the established legal and governance structure; or they might organise to bring down their government and replace it with a better one; or they might secede from a union or federation to create a new autonomous political community; or they might invite the government of another state to intervene to protect them from their own government. Human rights, then, are specific types of political claim, which challenge the established arrangements and demand that a new settlement be brought into being.

What reason is there to prefer a political conception of human rights to a moral one? When we make a judgement about a purported breach of human rights we are more likely to appeal to political facts – national or international law, or the content of a treaty or a constitution – than to moral facts about the nature of personhood. Disputes over human rights generally involve disagreements about the specific rights that particular humans have, not disagreements about whether some person or group should be counted as human.

It is true that there have been (and still are) cases where the very humanity of a particular group has been denied. Once the victims had been de-humanised, abusive treatment soon followed. Even in these cases we tend not to think that the perpetrators failed to understand the normative value of personhood: that they did not know the moral value that attaches to being a person. We tend to think instead

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that they made a category mistake: they knew the moral obligation to treat persons well, but failed to understand that these particular individuals were persons like them, and thus deserving of moral treatment.

Our problem, in summary, is not that we have a deficient ethical conception of personhood, although some of us surely lack a sufficiently broad concept of moral sympathy. Our problem is that some of our governments fail to live up to their obligations to treat persons properly as set out in laws and treaties. In some cases these laws and treaties need to be improved, better to reflect our understanding of the value of personhood. In other cases compliance with existing law needs to be better enforced. In both cases a political conception of human rights is most appropriate because the problems to be addressed are political problems. We need to improve the conditions under which human rights can be exercised. It is their use, which is a political matter, to which we should attend.

Not all grievances against a government will amount to a claim of breach of human rights. High tax rates and unimpressive public services do not amount to a breach of human rights. A slow-moving legal system that leads to undue delays in the start of a trial might amount to a breach of human rights. The absence of free elections and the confiscation of the property of government critics probably amounts to a breach of human rights. The systematic murder of members of particular ethnic, racial, economic or religious groups certainly amounts to a breach of human rights. In any given case the two questions that citizens must answer are: Do the actions of the government constitute a breach of human rights? And, is this a sufficiently serious case to justify political or military action to rectify it?

It is quite clear that politicians and political commentators need help to establish satisfactory methods for answering such questions. Was NATO intervention in Kosovo justified by actual breaches of human rights and the fear of imminent further breaches? Was Russian intervention in South Ossetia likewise justified? Philosophers undoubtedly have a role in helping to explain how such questions should be answered; so too do international lawyers. For all its interest and good sense I am not convinced that Griffin's *On Human Rights* will provide effective assistance. By searching for the foundations of human rights rather than examining their function, he turns our attention to their existence conditions when we would do better to attend to the legitimacy of their exercise conditions.

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References

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Notes

- [1] Rorty 1998.
[2] Raz 2007.