

The Intension of Human Rights

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Abstract

This essay argues that conceptions of human rights that can be modeled by a mere extension fail. If human rights are claims grounded in the fact that the agent belongs to the human species then when claims become meaningless due to conflict, for example with democratic values, one is entitled (by modus tollens) to assert that any agent who cannot make a claim is not human. This illustrates the need to consider rejecting the liberal conception of human rights as unreasonable. Furthermore, these types of arguments demonstrate that there is a problem with our current conceptions of human rights and our deeper intuitions that give rise to human rights in the first place. I argue in this essay that by positing intension in human rights, that this satisfies the apparent non-linearity of human co-existence, productivity and history. I will then offer a theory of intension in human rights grounded in a (Neo) Marxist account and a conception that all human rights are negative rights and that all democratic rights are positive rights.

Résumé

On argumente dans cet essai que les conceptions des droits humains formées seulement à partir d'extension échouent. Si les droits humains sont des réclamations fondées sur le fait que l'agent appartient à l'espèce humaine et que ces réclamations deviennent sans significations durant un conflit, lorsqu'il s'agit par exemple de comprendre des valeurs démocratiques, on peut donc (par modus tollens) affirmer que quelque agent ne faisant pas de réclamations n'est pas humain. Ceci oblige de considérer le rejet de la conception libérale des droits humains comme étant irraisonnable. J'argumente dans cet essai qu'en prenant comme vrai l'intension des droits humains, on aboutit à une explication pour l'apparente non-linéarité de la co-existence, la production et l'histoire humaine. Je propose ensuite une théorie d'intension des droits humains fondée sur un compte néo-marxiste et une conception que tout droit humain est un droit négatif et que tout droit démocratique est un droit positif.

This essay¹ is an attempt to demonstrate that the liberal or traditional approach to human rights is oversimplified and thus an injustice to the complexity of the human life. For this reason, we will examine one problem that putatively undermines universal human rights by offering clarification and a distinct formulation of it. The thesis of this paper is in two parts; firstly, I attempt to demonstrate that the liberal or traditional paradigm regarding human rights is unreasonable because of its dependence on a simplistic and individualistic account of the human species. It then follows that an insurmountable problem with human rights occurs since there can be no exceptions in the extension of human rights if one is to maintain their truth-value. However, because democratic rights can be

seen to be in conflict with human rights, there are justifiable exceptions to the recognition of some human rights in some cases.

Secondly, I attempt to show that intension in human rights follows from these considerations. Since the liberal conception of human rights is incapable of accommodating such intension, the liberal paradigm needs some shifting.

The first section of this paper will establish two arguments by *modus tollens*. Their premises appear uncontroversial. Their conclusions may be controversial, but it serves to demonstrate the common misconception arising out of a simplistic account of 'being human'. The second section will examine human rights and democratic

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rights occurring as preliminary procedural obligations and rights. The third section will offer evidence and arguments that a (Neo) Marxian theory is the best framework for explaining the occurrence of intension in human rights.

THE RIGHTS FORMULA

My first formal premise is a derivation of the rights formula. By the 'rights formula' I mean, 'x has a claim, R, against y in virtue of z'. Here, 'x' is the subject of the right, 'y' is the right respondent or duty-bearer, 'R' is the specific right, and 'z' is the basis or foundation of the legitimacy of the right. So for example, 'My wife Robyn has the claim, 'free to determine the use of her body' against the Canadian government in virtue of being a member of the human species. Here is the derivation for the first premise:

If x has z then x has claim R against y

With human rights, let 'z' represent *being a member of the human species*. Since all possible instantiations of x will be members of the human species, then all possible rights' bearers will be actual rights' bearers.

For the second premise, 'Q' is a specific democratic citizen of a liberal democracy; since Q satisfies x in the human rights formula for the human right of 'free to determine the use of one's own body', and since her respective government would satisfy y, we should expect that Q has the claim 'free to determine the use of one's own body' in virtue of being a member of the human species. But in virtue of Q being also a democratic citizen, Q is (putatively) justifiably coerced into spending a certain amount of Q's total time and effort i.e. her body, in working for Q's government (paying taxes)². If 'being a member of the human species' determines absolutely whom possesses human rights and obviously this condition is satisfied also absolutely, then the extension of human rights is necessarily likewise absolute. This entails that since one is either a human being or not, there is no possibility of intension in this corresponding

human rights claim. This is to assert that if one only needs to be a human to possess a certain right, there is nothing in 'being human' to indicate to what degree one possess a certain right while some other human may possibly possess the same right to a different degree i.e. some very wealthy citizens do not pay taxes in Canada. The second premise illustrates that with only an extension of the concept being considered, one ought to regard any limitation on a human right as constituting a lack of that human right given these conditions. These considerations entail that the second formal premise should also be straightforward for the liberal:

Q does not have claim R against y

Therefore, by *modus tollens*, we ought to deny the antecedent in the first premise: effectively, that it is not the case that Q is a member of the human species. Since it is absurd to assert that a specific human is not a member of the human species, it must be that z, i.e. being a member of the human species, is *insufficient for determining the distribution of the human right*. Rather than recognize this reasoning, some may want to reject the second premise instead. The following points are representative of arguments I find most plausible in undermining the second premise; and why I find them failing in making a critical distinction:

a) If one were to argue that the obligation to pay taxes is instead a qualification of Q's right R, not an exception, then this problem remains, as quality presupposes intension in the concept which is not obtained in 'being human'

b) If one were to add a caveat i.e. 'Q has a limited claim R against y', this too is a qualification of the claim and if the accepted z is the only source of justified human rights claims, this qualification or caveat is unjustified as demonstrated above.

c) If one argues that Q agrees to limit her claim R, this still results in the second premise being straightforward; any agreement to limit a claim presupposes an intension in the claim which does not occur in the formula implicit in the first premise.

d) That the second premise illustrates not a limitation on the human right but rather demonstrates a violation of the

² or for the Marxist: q by agreement spends some portion of her total time and effort working in reproducing herself in society, for which the government takes the responsibility in distributing the value produced

human right. For a violation of a right to occur, the possession of the right is always presupposed. This line of argument depends upon the notion that democratic interference can justify such a violation. This in turn depends upon some higher ground for rights than merely being a member of the human species.

Therefore to deny the second premise is to deny the soundness of the first premise. This argument should persuade the reader that 'being human' is insufficient for determining the distribution of 'human rights' if 'being human' is considered as an abstract, universal or objective standard³. On the other hand, if for any x , 'being human' is examined as being embedded in a particular society and not abstractly (communitarian) human rights can hardly be universal.

Liberal theorists may claim that pluralism can solve this dilemma by appealing to 'plural selves'. Nancy Rosenblum grounds pluralism on the negative rights found in liberal democracies⁴ and furthermore these negative rights are based on the liberal notions of 'impartiality' and 'personal liberty'. Surely there is intension in a 'plural self'; but if impartiality and personal liberty are grounded by such a plural self, it is meaningless to talk about an impartiality that can be had by degrees, and likewise personal liberties that have intension based on location in a society are inconsistent with any plausible account of autonomy.

Without a liberal or a communitarian conception of the self i.e. being human, taking into account either the complexity or the universal quality of 'being human' (which appear incommensurable with each other) these traditional paradigms are also incapable of doing justice to our everyday experience of the relevance of human rights.

A SECOND FORMULATION OF THE PROBLEM

³ Abstract, universal, or objective standards can only be modeled by a mere extension.

⁴ Rosenblum, N. (1989). *Pluralism and Self-Defence. Liberalism and the Moral Life*. Harvard, Cambridge: pp. 207-227.

A reformulation of this problem will shed further light upon the incoherence that results from asserting that being a member of the human species grounds the distribution of human rights. The first premise of this argument is identical to the previous instantiation:

If x has z then x has claim R against y

Again, z is 'in virtue of being a member of the human species'. In this second version of the problem P is the last human alive after some catastrophe. Clearly P still satisfies the condition required by z but it becomes meaningless to consider P as possessing any human rights⁵: for when any set is coterminous with an empty set, that set is also empty.

The second premise is:

There is no R that P can claim against y

The result by *modus tollens* is a denial of the membership of P in the human species, which is clearly unacceptable to common sense. Though limited by the scope of this essay, it appears likely that this particular formulation will also do some harm to any attempt to ground political reasoning in some abstract or 'original' position.

These two formulations of grounding human rights in being a member of the human species and the incoherence that results necessitate a further distinction to be drawn. Consider: 'if x is a human being then x has human rights' where a 'human being' is understood as referring to the satisfaction of certain biological or mental (or both) conditions; contrast with: 'if x is a human being* then x has human rights' where a 'human being*' is understood as referring to the satisfaction of certain biological or mental (or both) conditions and also the condition of being embedded in a rational⁶, historical and non-linear coexistence. Where being a member of the human species is a linear set (simple on-off switches), on the other hand, being human* is unavoidably non-linear (codeterminate relationships with no simple distinctions).

⁵ This line of reasoning presupposes that the domain of y cannot include P

⁶ By rational I mean the 'capacity to set ends'.

This distinction solves the dissonance created by both *modus tollens* arguments. One no longer denies an obviously true biological/mental fact, but rather reinforces the essential non-linearity of being embedded in a material and historical process of developing human production. There is no simple extension in a non-linear system by definition, but in fact is replete with descriptions involving the intension of relevant concepts. This distinction also avoids a communitarian reduction of human rights to merely instantiating pre-existing community values and interests. These considerations are made explicit when Marx theorizes that the processes by which material production interacts with social relations does so according to apparent regularities (albeit framed by complex and sometimes indistinct expansion) which is common to all human social systems.

THE DISTINCTION BETWEEN NEGATIVE AND POSITIVE RIGHTS

Tom Pocklington wrote in *Democracy, Rights, and Well-being in Canada*, that the mere extension of "democratic values" engender contradictions, both at the level of the regime and at the level of particular public policies.⁷ For example, a 'thoroughgoing freedom of choice requires a predominantly capitalist economy⁸ whereas rights to 'equal opportunity ... are inconsistent with the flourishing of capitalism, which ensures that inequalities are legion.⁹ Pocklington then argues that to solve such contradictions one is to 'confine freedom of choice to the freedoms essential to democracy and, likewise, impose *limitations on the range* (my italics) of equalities required by democracy.¹⁰ Pocklington seemingly grounds his argument in the intension of rights, not their mere extension. He argues implicitly that this intension is based on what is essential to democracy, but a democratic being has no intension¹¹ in

the same manner in which being human has no intension. His other option is that these rights have intension derived from the structural nature of democracy; unfortunately, this entails a communitarian basis of democratic values (and it seems implausible that democratic values would exclude human rights), rather than an individual basis. David Morrice argues convincingly that such a communitarian basis reduces to cultural or ethical relativism¹². On the other hand, it is presumably a fact that such intension does occur in political rights, so it must be that we should look elsewhere for the respective grounding of these rights.

The argument so far presupposes the relevance and value that both human and democratic rights have in ordinary and political discourse. This paper is an attempt to give a fuller account of the force behind human and democratic rights; therefore this section is designed to illustrate that human rights and democratic rights are preliminary (or if preferred, *prima facie*) procedural obligations whose relevance are conditioned by the circumstances which complicate the moral¹³ lives of various agents. I will argue that the basis upon which circumstances operate upon the preliminary procedural obligations is how and where the agents involved are situated in the productive relations of their society. This is a Marxian account of how an agent's location in the productive forces of a society can eliminate some preliminary procedural rights and obligations in virtue of helping to create or sustain a system approaching optimal extraction of value from the society's productive forces.

In the formula for rights, 'x has a right against y in virtue of z', there are two distinctive grounds for z that are of importance in this discussion. The first has already been outlined: 'in virtue of being a human'. The second is 'in virtue of being a democratic citizen'. The second may superficially

⁷ Don Carmichael, T. P., Greg Pyrcz (2000). *Democracy, Rights, and Well-Being in Canada*. Toronto, Harcourt Canada.

⁸ *ibid*

⁹ *ibid*

¹⁰ *ibid*

¹¹ At least not in liberal theory

¹² Morrice, D. (2000). "The liberal-communitarian debate in contemporary political philosophy and its significance for international relations." *Review of International Studies*(26): 233-251.

¹³ I am using 'moral' here indicating rule-based expectations, but not as an exhaustive nor definitive claim.

appear to be a form of legal positivism, i.e. some rights may exist only in law because of the whim of legislators. However, I would argue that in this overall discussion, the truly interesting aspect is that the rights which are given in virtue of being a democratic citizen are rights which are pre-conditions for being democratic citizens. This would mean that in order for any particular person to function as a democratic citizen they need these particular rights.

We have two formulae for political rights thus far: I will argue that one establishes a set of preliminary entitlements necessary for the possibility of human society, and the other establishing preliminary entitlements necessary for the possibility of a democratic society i.e. a particular type of human society. There is nothing so far in this analysis to give any explicit indication that these two groups of entitlements would conflict. I understand that the essential distinction between negative rights and positive rights will give some guidance in examining human rights vis a vis democratic rights because of the presumably dependent origination of all rights on human co-existence. Negative rights are entitlements to be free from some action, whereas positive rights are entitlements to have some thing for free. When outlined in this fashion, to consider these both as 'freedoms' it is apparent that 'free' is abused linguistically; there is an equivocation regarding the meaning of the word 'free'.

I wish to argue that all 'human rights' are negative rights, since negative rights are the type of entitlements which are the necessary and sufficient conditions for the abrogation of the *security dilemma* or alternatively, the *prisoner's dilemma*. The conditions which propel the dilemma forward are ambiguity, uncertainty, opaque intentions, and concern with self-protection and values. To solve the dilemma in a social situation, a structure needs to be built in which agents can be reasonably certain of freedom from basic security concerns. In fact, being 'reasonably certain' defeats one of the criteria necessary for a security dilemma. Human rights are necessary to solving the security dilemma, and the security

dilemma is sufficiently undermined with recourse to negative rights; therefore human rights are negative rights (though not all negative rights are necessarily human rights). This is demonstrated by the following sentential function: (x , being reasonably concerned that y will do harm, takes steps to diminish as much as possible y 's capacity to do such harm; likewise y , being reasonably concerned that x will do harm, takes steps to diminish as much as possible x 's capacity to do harm) & (x and y are not permitted to do harm) results in: x needs the condition ' y cannot harm me' against y in virtue of this claim being necessary to the possibility of co-existence i.e. human society. The weaker claim also follows: x has a claim 'I am to be free from being harmed' against y in virtue of this claim being necessary to human society.

I understand that human rights derive their emotional force and intuitional content from this aspect, which is that all humans should be reasonably free from fear. This would be sufficient for human society to flourish if the only thing we had to fear was humans (which is not the case). Concerns that this treatment forgets the intrinsic value of human rights, in favor of an instrumental conception should recall that being a member of the human species should be considered insufficient for determining the distribution of rights. This treatment does not necessarily ignore any putative intrinsic value of humans, but merely contextualizes such value in a sphere in which such putative intrinsic value has meaning. Thus I am arguing that the putative intrinsic value of humans which ground human rights ground human rights as only preliminary procedural obligations, not absolutely. Likewise, I will argue that democratic values ground only preliminary democratic rights.

So I believe that it is evident that human rights are negative rights because in order for social coexistence to be even possible, which is to live as humans, preliminary negative rights are necessary, whereas I will now argue that any particular positive right is only possible and preliminary in its particular type of society.

Then the other half of my agenda lies with convincing the prudent and reasonable person that all democratic rights are positive rights but that not all positive rights are democratic rights. This would mean, in part, that for anything to qualify as a democratic right, it would need to be demonstrated that this right entails distributing something to citizens for free because it is necessary to their participation in the democratic process or democratic society at all. The 'right to vote' is an object which readily satisfies the implicit sentential function in the following sentence: 'My wife Robyn has a claim "I must be given the opportunity to vote" against the Canadian government in virtue of being a Canadian citizen.' The formula that establishes this statement is: 'x has the claim 'I need to be given R for free' against y in virtue of R being necessary for participating in the democratic process/society.' Human society, by which I mean the preliminary structure necessary for any human co-existence, is produced by the recognition and establishment of preliminary negative rights, but that the establishment of a democratic society and its preliminary positive rights is then merely a particular and concrete style of human society.

In order for democracy to be successful, the positive rights necessary to its success must obtain, by definition, for each of its citizens. For any particular type of society, it will be positive rights which will establish its solvency, as negative rights can never be used in designing a specific type of system, as systems are sets of positive relations interacting with preliminary negative relations. Purely negative relations i.e. anarchy, don't operate as a definable system, as 'anarchy' is most plausibly construed as a-systematic¹⁴. But sometimes in designing a specific type of society, some presumably new negative rights might show up as part of a strategy for introducing a set of positive rights.

To call these 'new' negative rights democratic rights is a hasty conclusion. If no

procedural right or obligation is absolute, but can always be conceivably overridden by some condition, then all procedural rights and obligations are preliminary and contingent upon circumstances to some degree. It would be conceivable that when a 'new' negative right appears due to the instantiation of a set of positive rights, the 'new' negative right is only the epiphany of a latent and preliminary human right given rise according to a new condition. This model, while simple, is still elegant enough to account for the occurrence of intension in human and civil rights, whereas liberal or communitarian models are informative, but ultimately incoherent.

This argument, that the distinction between human rights and democratic rights is the same distinction between negative and positive rights respectively, presupposes that it is implausible that there is any human right to a particular type of society. Preliminary human or negative rights are necessary but not sufficient for establishing any particular type of society, since any particular type of society relies on its specific set of positive rights to distinguish itself from other types of societies. And no positive right occurs exclusively on its own, but in the various sets that compose diverse societies. Then to claim that a human right entitles humans to some positive right, is to claim that there is a human right which entitles humans to a particular type (or types) of society. Since there is no relevant duty-bearer to such a claim (though a world government could conceivably satisfy such a requirement), such a right loses any context and thus meaning. Therefore there should be no intelligible positive human rights, only negative human rights since so-called imperfect rights i.e. without a relevant duty-bearer, are by definition¹⁵ an empty set in human rights discourse.

For positive rights to be anything more than nominal, the rights must be furnished by the right respondent and at the right respondent's own cost. This statement should be sufficient for establishing the in-

¹⁴ Anarchy here is distinguished from a chaotic system: anarchy is without rules, while a chaotic system still operates from rules, albeit of a very complex nature.

¹⁵ Insofar as the formula for a right's claim is comprehensive.

evitable conflict between meaningful positive rights and negative rights. There will be inevitable conflict between human rights and democratic rights. This argument should also hold for any type of particular social arrangement, not just democracy.

THE INTENSION OF POLITICAL RIGHTS

I find that the most plausible manner in which to theorize the reconciliation of a conflict between positive and negative rights is to consider these rights not merely to whom they are extended, but also the comparative intension of the rights¹⁶. For when *Q* has a human right, say *R(h1)* which conflicts with *F* who has a democratic right, say *R(d1)*, the resolution tends towards whomever possess their respective right to the largest degree, which is to rely on the intension of the rights, rather than a mere extension. Since there is no intension in either the human species or in democratic being¹⁷, we ought to look elsewhere for the actualization of these rights. I assert that the most plausible explanation for the operation of these rights is 'in virtue of economic (or productive) being' because as fundamental to human society, it also explains the intension of various rights by itself having an intension.

By 'economic being' I mean the function and role an agent is assigned¹⁸ within the productive forces in a society as well as the overall social relations¹⁹ that are constituted by productive, human, and communitarian conditions. When examined, economic being will be, and is in contemporary market economies, had by varying degrees; in these type of polities respective rights would also be possessed in varying degrees, hence the intension we find in 'human' and 'democratic' rights. 'Economic

being' is also essential to being human, for humans are productive beings, but in degrees. This sense of productive being is simply that humans interact with nature in order to satisfy human needs and desires: we produce from nature what we desire, rather than being merely sustained by nature.

This is not to argue that one should be persuaded that human rights and democratic rights don't exist, but that the basis for justifying how circumstances operate as an eliminative function on the preliminary rights and obligations is in virtue of economic being. Liberal theorists tend to ignore the implications of community i.e. ethical decisions presuppose a context, communitarians seem to ignore the presumably intuitive universality of some rights, but both camps ignore the inherent and complex interaction that occurs between the human species and nature vis a vis human productivity.

HOW TO SOLVE THIS PROBLEM OF HUMAN RIGHTS

I would expect that the previous conclusion is unsettling to liberal sensibilities. But the problem with human rights, as formulated earlier, is that it is impossible for any exception to occur in order to maintain their truth-value; but because of democratic rights existing in conflict with human rights, there are exceptions in liberal theory to the recognition of some human rights in some cases. In order to justify the reasonableness of these exceptions, we presuppose some higher objective which does not in fact 'exist higher', but rather any such putative objective does exist already within such a conflict. Essentially, any 'exception' is arbitrary, not impartial, and unfair, no matter how much putative reasonableness is attached to such an exception. On the other hand, if intension is seen as determining rights conflict, while we may disagree with the outcome of its resolution, it will at least be non-arbitrary.

The most potentially satisfying solution to such a problem would rely on discovering what social structure would most efficiently and optimally extract resources from the most fully developed of material

¹⁶ This is clearly seen in *R. v. Keegstra*, as well as in many judicial decisions weighing the freedom of expression against various conflicting rights.

¹⁷ According to liberal theory

¹⁸ The word 'assigned' does not necessarily entail that the role is determined solely by factors external to the agent. One could assign oneself after all.

¹⁹ Welfare considerations are embedded in the concept of social relations. The intension of rights may very well be determined in some part by welfare considerations.

productive forces. This strategy presupposes that given a fully developed productive force, any social structure capable of extracting optimal value is also a fully developed social structure. A fully developed social structure, by definition has no betters, and most likely no equals²⁰. With such a structure in place one could reasonably claim that there is no possible better way in which to resolve antinomies of rights in conflict than how the values embedded in such a structure would in fact resolve such antinomies. So that when asked 'why is this right able to trump this other right?' the only possible answer that does not fail to take the question for what it is, is the answer: 'because there is no possible better way to organize society'²¹.

If I have demonstrated that we cannot claim fairness, equality, or justice²² i.e. based merely on being a member of the human species, as our condition for structuring the hierarchy of rights in a society without begging the question, then we must critically examine our approach to spreading and encouraging human and democratic rights in different societies; for to putatively demand that certain prejudices and biases that are embedded in our specific social structures be recognized as part of the content of human and democratic rights is "To say...of what is not that it is"²³, which is the classic definition of falsity.

IN CONCLUSION

Due to theoretical commitments to the Analytic tradition in Marxism, I find the most plausible 'fully developed social structure' to be one in which all humans are owners. I understand that this appears to call for a monolithic community, but disregarding

Marx' commitment²⁴ to central planning i.e. macro-socialism, as inconsistent with his own theory of history²⁵, I posit that a micro-socialism i.e. economic democracy or workplace democracy is far less repugnant to many people's romantic aspirations of diversity. Economic democracy coupled with political democracy is the best fit for determining the intensions of what we now know as 'human' and 'democratic' rights. Likewise, if one finds repugnant that the intension of rights as based on the intension within economic being, a thoroughgoing socialism i.e. all members are owners, creates a society in which all citizens possess the same rights and in the same degree.

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²⁰ In relation to other societies

²¹ But this would only be reasonable in regards to the productive forces this structure fits; any other type of productive forces i.e. less developed, would deny such a fully developed structure much relevance

²² Fairness, equality and justice appear to be satisfied only in a linear model of human interaction, with the linearity and homogeneity grounded in some common biological or mental trait.

²³ Aristotle *Metaphysics*

²⁴ In at least one stage of developing the communist state

²⁵ See charts on pg 65 in particular. Cohen, G. A. (1978). *Karl Marx's Theory of History: A Defence*. Princeton, Princeton University Press.