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RORTY AND HUMAN RIGHTS

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Introductory

The contemporary discourse of human rights is both passionate and puzzling---at least when considered from a philosophical point of view.

Indeed, to say that human rights are often invoked is not to say that they are well understood. Almost certainly they are not---there are many competing accounts of them.

There is, indeed, a vast literature on human rights, to which philosophers, political theorists, and others, have contributed. In this short talk on the subject I must simplify a great deal. My aim is to sketch some of the issues in human rights theory in order to locate and briefly describe Richard Rorty's contribution to the discussion in his well-known article entitled "Human Rights, Rationality, and Sentimentality". This article was originally presented in 1993 as part of a series of invited lectures on human rights at Wolfson College Oxford---the Amnesty Lectures.

Natural rights

According to a venerable though disputed tradition, Human Rights are “natural” in the sense that they exist independently of human agreements, conventions, treaties, and the like. Human Rights treaties may accurately represent such rights but they do not bring them into existence: they merely describe the way things are independently of any such treaties.

Many of those who believe in natural rights would say that natural rights fit into a larger realm, one that includes not only natural rights but also the rights that accrue to the parties to agreements and the like---which of course do not exist independently of those agreements. It also includes natural duties or obligations---as well as those duties or obligations accrued by the parties to agreements and so on. Perhaps the most familiar name for this larger realm is the realm of morality, the moral realm.

Rights

But what are rights? And how do they relate to obligations? And in what realm or realms are they found?

The term “rights” has correctly been described by contemporary philosopher Shelly Kagan as “horrendously ambiguous”. Still, following early 20th century the jurist Wesley Hohfeld, and without special reference to human rights, contemporary rights theorists generally agree that a central kind of right can be sharply defined: it is the “correlative and equivalent” of a special kind of obligation---known as a *directed* obligation.

Thus according to a familiar formula:

If I have a right *against you* to your not torturing me, say, then---and only then---you have *an obligation towards me* not to torture me---and vice versa.

Theorists refer to rights that fit this formulation “claims” or “claim-rights”. This kind of right was considered by Hohfeld to be a right “in the strictest sense of the term”.

What is it for you to have an obligation *towards me* not to torture me? Unfortunately there is little consensus on *this* question---so the reference to *obligation* is less helpful than one might at first think.

Still, many would say that if you have an obligation towards me not to torture me, then, by virtue of this, I have *the standing to demand of you* that you not torture me. In other terms, I have *the authority to demand* that you desist---perhaps thereby bringing you to your senses, to realize that you are violating my right.

The authority that claim-rights give us, on this conception of them, may appear to make them “particularly valuable commodities” to quote David Lyons. How then do we come by such rights, among others? And how do we know we have them?

As all rights theorists agree, one way we come by claim-rights is by making agreements: the parties to the agreement have rights against each other to each one’s conformity to the terms of the agreement. Indeed, they have the standing to demand such conformity. By what other means can we come by rights? In particular, by virtue of what are we supposed to come by our natural, human rights?

Humanity as a basis of rights

According to many, we come by our Human Rights simply by being human---a condition we can hardly escape. Thus Rhoda Howard-Hassman writes:

“Human rights adhere to the human being by virtue of being human, and for no other reason...they inhere in the human person...unmediated by social relations.”

So: if there is a human right not to be tortured I have that right simply by virtue of my humanity. And, if human rights are natural rights, I have that right “naturally”---by virtue of my humanity.

What is so special about being human?

This suggests that there is something special about being human---that it is more than simply being the member of one species rather than another.

Rather, it is being the member of a species that by virtue of its nature has rights, indeed a particular specifiable set of rights. Perhaps there are other such species; perhaps not.

What’s so special, one might ask, about being a “featherless biped”, one of the ways in which our humanity has been typified, to which Rorty refers in his article. What’s so special about the lack of feathers---or fur? What’s so special about being bipedal that it gives us special, human rights? What’s so special about the combination?

An alternative feature of humanness must surely be at issue. As Rorty observes, “Traditionally, the name of the shared human attribute which supposedly “grounds” morality is “rationality”” (He puts both the word “grounds” and the word “rationality” in quotation marks.)

One may wonder what rationality is supposed to be in this context---- “rational” is another ambiguous term as far as contemporary discourse goes. On some construals, one might think, it will be as morally irrelevant as featherlessness or bipedalism. On others, however, it could be morally relevant. Or perhaps something other than our human rationality---in any plausible meaning---is at stake. Perhaps some other feature that all---or almost all---human beings possess.

Rorty’s approach

Rorty brushes such thoughts aside. He denies that there are any morally relevant “transcultural facts” (p. 116).

I shall not attempt to explore his reasons for this denial. It is time to ask: what is left of human rights if we follow him and deny the existence of morally relevant transcultural facts? More precisely, what is left of human

rights if we give up the idea that there are natural rights grounded in some aspect of our humanity itself---and hence in something transcultural?

Rorty focuses on a specific, *cultural* fact: the fact of what he calls “our Human Rights culture”. He takes this phrase from the Argentinian jurist and philosopher Eduardo Rabossi. *This*, he suggests, is what is left of human rights when we give up the idea that there are natural rights grounded in some aspect of our humanity itself. We still have our Human Rights culture---something that “we”---or at least *some of us*---have made.

With Rabossi, Rorty sees our Human Rights culture as a something to be welcomed---without philosophical fuss. Quoting Rabossi, he agrees that philosophers should “stop trying to get behind or beneath this fact, stop trying to detect and defend its so-called “philosophical presuppositions” (p. 115-6).

Indeed, he agrees with Rabossi’s claim “that the question whether human beings really have the rights enumerated in the Helsinki Declaration is not worth raising.” (p. 115).

Presumably Rorty thinks that it is not worth raising because in his view the answer is negative: at least, there is no “universal human nature” that grounds the rights in question---or any other rights.

This statement---that there is no universal human nature that can “naturally” ground a set of rights---is something that may seem plausible to many, including those who would characterize themselves as moral realists, a position Rorty does not hold---any more than he holds the opposite position. Such issues are, he believes, beside the practical point.

What is to the practical point? Rorty recommends that we promote our Human Rights culture among the initially unwilling by concentrating our energies on “manipulating sentiments, on sentimental education”. The crucial sentiment here, he suggests, is sympathy. And sympathy is engaged not by argument but “long, sad, sentimental” stories.

“Such stories” Richard writes “repeated and varied over the centuries, have induced us, the rich, safe, powerful, people, to tolerate, even to cherish, powerless people---people whose appearance or habits or beliefs at first seemed an insult to our...sense of the limits of permissible human variation.”

As one might perhaps put it: what all human beings have in common--what is *important*---is not featherlessness, bipedalism, rationality, or even dignity. What they have in common is that they are *like us*. Or perhaps better: they are not *like us*---they *are* “us”.

I conclude with a pertinent passage near the beginning of Rorty's lecture, including one interpolation from an earlier part of the text:

The founder of my university was able both to own slaves and to think it self-evident that all men were endowed by their creator with certain inalienable rights. He had convinced himself that the consciousness of Blacks, like that of animals, “participate[s] more of sensation than reflection”. Like [those who tortured others during a recent campaign of “ethnic cleansing”] Mr Jefferson did not think of himself as violating *human* rights.

Clearly, Mr. Jefferson was ripe for a serious dose of sentimental education.....either in addition to, or after the exclusion of, his philosophical beliefs.

It was a pleasure to be asked to deliver a lecture at the conference in honor of Richard Rorty whom I have known since we were colleagues at Princeton University many years ago. This text represents the lecture as delivered and thus does not include bibliographical or page references. It is not for circulation, quotation, or paraphrase in any publication without express permission of the author who can be reached at Margaret.gilbert@uci.edu. Thanks to Christopher Lay for helpful comments on the previous draft.

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