Modern Perspectives on Human Rights: A Short Critique

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Abstract: Human rights and their universality are one of the most controversial topics that one can discuss, like other topics in the public sphere (i.e. religion, sexuality, etc). Human rights discussions are mired in a wealth of emotions, values, and politics. For many around the globe, human rights seems like a loaded term and can mean different things to different people. Can human rights, a mostly Western construction truly be applied around the globe? The purpose of this paper is to discuss and explicate this topic in human rights by critiquing some seven modern essays on Human Rights.

The first essay to be discussed is entitled, “Are There Any Natural Rights” by H.L.A. Hart. In his essay, Hart (1955) essentially argues that all human beings, notably adults of capable choice, have one natural right and that is to be free. He asserts that this right implies two things: (1) Freedom from coercion or restraint and (2) the liberty to do any action is not one coercing or restraining or designed to injure other persons (p. 151). This natural right exists independently and individually from any special relationship with each other (i.e. members of the same society), and it is not created by the voluntary actions of others.

Also in his essay, Hart tackles the notion of moral rights. He argues that “people manly, speak of their moral rights when advocating their incorporation into a legal system, but, that the concept of a right belongs to that branch of morality which is specifically concerned to determine when one person’s freedom may be limited by another’s and so to determine what actions may be appropriately made by the subject of coercive legal rules” (Hart, 1955, p.153). Along these lines, Hart emphasizes the importance of valid moral justification for inferring with another person’s rights. He further explains that there are two types of definitions of rights that we must distinguish and that’s the “right” which has a (moral) “duty” and “right” which is a “liberty” (Hart, 1955, p. 153). Later, he discusses general and specific rights as how and when moral justifications of interference are allowed within the contexts of those terms.

Having briefly summarized Hart’s work, let us now analyze and critique. Hart’s ideas and opinions on basic rights are indeed very interesting. However, one can argue that, it leaves a lot to be desired. One can agree with Hart’s assumption that all human kind by nature is inherently meant to be free. Despite what many may argue about the subjectivity of human and political rights, it has been seen throughout the world that nobody can live under a system of repression and be satisfied or pleased with it. Burton’s (1990) Human Needs Theory, argues that there are human development needs that must be satisfied and catered to by institutions (p.23). Without these basic needs met there lies many catalysts for conflict. We often hear western media pundits and some politicians proclaim that tyranny and repression are at the heart of both Islamic and Arab culture, so therefore people living under the system are use to it. However, the Arab Spring is proof that this is not the case. Of course , there is always the subjectivity of these needs across cultures, political philosophies, etc, upon which will be expounded upon later in this paper.

Furthermore, in his essay, Hart (1995) keeps talking about adults who have the capability of making free choices. But this can be deemed as problematic because, what about adults who do not have the ability to make a free choice? Are they devoid of these rights? It is understandable that Hart is arguing that all human kind should be free to do as they wish as long as they do not harm another person. And that this right is indeed a natural one. However, those who have mental illnesses or mental handicaps do not fall into this category and have been victims of brutal human rights violations. Many people who were mentally ill or handicapped were euthanized under the Nazi Regime. Or what about those who were forced to be lobotomized at the height of the procedures popularity? In both cases, these people were restrained and coerced in one way or another. The overall question becomes to Hart then is to whom does this responsibility fall to protect these people’s rights? Is it the moral right and duty of others to step in? What happens when that fails? One can argue that his argument could have been a little clearer on this issue of people with
who can exercise free choice versus those who cannot.

Another major criticism one can make is that Hart’s work is based on around generalities when he speaks with terms like restrained, coerced, or ever the concept of what a moral right is. One can also ask where and how does one define these terms, because surely they are very subjective. When does someone else’s right begin to infringe on that of others? At what point does one become restrained or coerced? Of course, these are issues we wrestle with domestically when dealing with civil rights, and in the larger global sphere when dealing with human rights. One example that continues to come up in civil rights and human rights discourse is the notion of gay rights. Gay rights, of course, is very controversial, because both those against and for are advocating for some type of right based around what they feel they are entitled. Those arguing for gay rights are arguing not to be restrained or coerced from being who they are and being recognized as (a) a human being and (b) a citizen of whatever particular country they come from. While those who are opponents of gay rights feel they too should not be restrained from openly living their opinions, ideas, and beliefs and should not be coerced into accepting what they see is a harmful lifestyle style that is against their core beliefs. And where do we draw the line as to whom and what can be restrained and coerced? The overall problem with Hart’s work is his generalities that are seemingly supposed to be universal, but, he gives no insight on how to achieve universality.

Having summarized, analyzed, and critiqued the first essay, let us now move on to do the same with the second, entitled “Human Rights Real and Supposed” by Maurice Cranston. Cranston (1967) presents an interesting essay where he presents a different take on human rights compared to that of Hart; he seems to delve further into the concept of what he believes human rights should be and what they should not include. Cranston’s overall argument is that human rights and social, economic and political rights are extremely different. And therefore social and economic rights cannot be considered human rights. He argues that many today have these rights confused with moral rights. Cranston (1967) attributes this to the fact that he believes social and economic rights (positive rights) are not translatable or accessible across the globe. Not every country or society will be able to culturally, politically, economically have access or provide the same type of rights, so therefore argues that these universally a declaration of human rights is impossible to enforce (p.166).

He posits that there are two tests that must be followed for true universality of human rights (1) test of practicability (2) test of genuine universality. The test of practicability is to indicate whether or not a society or country is able to adopt or extend certain rights, he maintains that each society essentially must work with what they have in terms of extending rights. The test of genuine universality examines whether this right can be implemented across the globe, an example of this is when he cites holiday pay for everyone. He states it is neither practical nor genuinely universal that every society or country be able to do this, this is what falls in the realm of a social or economic rights (Cranston, 1967).

Interestingly enough, Cranston presents two very appealing points from the work that has been summarized above. One that this author finds totally disagreeable, and another that is totally agreeable. The one major perceived flaw in Cranston’s view is that he argues social and economic rights are not human rights. In response, one can provide several examples where social and economic rights are tied to the well being and existence of a person. For instance, what about victims of moral exclusion, who are denied participation in certain social and economic opportunities or who have suffered the effects of structural violence? There are many examples that one can draw from, let us take the Jim Crow era in the U.S for instance. For many blacks, they were unable to have adequate access to food, work, education, healthcare etc, simply based on the premise that they were not white. This meant very poor living standards and had overall effects on health and therefore life span. This also created a cycle of generational degradation. Also, blacks were not equal under the law for a long time, which also meant very little legal protection from harm and exclusion from the political process. In this instance, blacks were treated with no regard to their humanity, nor any type of basic human rights. As Hart discussed above, they were indeed restrained and coerced in many cases from participating socially, politically and economically through the threat of violence.

However, what this author does find both agreeable and commendable with Cranston’s work is that he provides a test for the Universality of Human Rights, which is a very different from the approach Hart explored. As noted earlier, Hart talks about this universality of natural rights, but gives no real test to measure this; whereas Cranston is quite definitive about the process. One can agree with Cranston’s point that not every social and economic right should be considered a human right. However, one can suppose it also depends on how one individually defines human rights and also human rights violations; hence the reason for the
controversy of this entire topic. One can argue that economic and social rights become important when people cannot function and obtain their basic needs, because, they are excluded. The problem also with this argument is how do you define basic human needs? What we consider poverty in the U.S. is far different from what would be considered poverty in Asia or Africa. So along these lines, one can also agree that realistically each society must operate as they are capable of doing. However, that creates a point of contention and conflict because, if we say each society should do as they are able then what does this say about human rights as a whole. For me it means then that all human lives have different value, depending on where you come from.

Having discussed Cranston’s work, let us now move on to the third essay, “The Nature and value of Rights,” by Joel Feinberg”. In this essay, Feinberg emphasizes how rights are morally important and without the moral value of rights it would be to our detriment. To illustrate his viewpoint, he uses the fictitious Nowheresville, a world where its inhabitants are people who have no rights and are not treated equally (Feinberg, 1970, p.181). Feinberg (1970) also discusses the doctrine of the logical correlativity rights and duties. He states that all duties entail other people’s rights and all rights entail other people’s duties (p.184). He explains this by arguing that to have a right is to have a claim against someone whose recognition is valid and for validity the claim must make sense in a particular cultural, social, or legal context in order to be recognized as a right (Feinberg, 1970).

Feinberg’s assertions are rather agreeable for the most part, based on the fact that our rights in some ways do denote duty from each other and a sense of reciprocity. This falls along the lines of we treat others as how we want to be treated and goes very much along with laying the foundation for others respecting each other’s human rights. Another way of looking at this maybe empathy; often times in conflict resolution, dialogue with parties who have been in conflict is extremely important, because, it gives both sides a chance to see the other as human and to sympathize and empathize. On another note we can draw parallels between Feinberg’s work and that of Cranston in the sense that both argue that rights and claims to rights have to be valid within a certain context and those whom you are making the claim against, must recognize them.

However, is this a bit concerning, like in analysis of Cranston’s work, the same question can be asked, what happens in societies where culture practices stamp out any notion of human rights? Take for instance the practice of Female Genital Mutilation. One could personally argue that like men should have full authority over what happens to their bodies, however, in some very patriarchal and androcentric societies this is not the case. In fact, this author could guarantee that many feel this way and hence the many organizations dedicated to ending the practice of Female Genital Mutilation and furthering women’s rights in societies where this practice is prevalent. So rhetorically one could ask, does a woman lose control over the right to have total control over her body, because within her society her claims of rights are not recognized so are they therefore invalid?

With that, let us now move on to the fourth essay entitled “How Should Human Rights be Conceived?” by Thomas Pogge. In this essay Pogge (1995) argues that human rights claims should be understood by asserting that each society must organize itself so that its members enjoy secure access to those rights. He further says that “If a society does not organize itself, then it violates what he calls a “negative duty of justice”, mainly, the duty not to impose unjust social institutions on its members” (Pogge, 1995, p. 187). His focus on duties is important because he argues that having secure access to the substance of any right requires others to perform a plethora of duties, which includes challenging or ameliorating unjust social policies and institutions for the creation of just and fair ones (Pogge, 1995).

It appears that Pogge seems to in some way agree with Cranston and Feinberg about human rights and their availability being linked to individual societies, unlike Hart, who seems to advocate for these natural based rights that everyone is entitled to. What is really admirable about Pogge’s work is that his call for duty, seems to be a call for social justice. Or that he reminds his readers that we are all in one sense responsible for each other, again a sense of reciprocity. One can particularly appreciate how he talks about creating societal institutions that are cognizant of human rights and justice. However, there also must be importance placed on international influence, standards, and precedents on societies, one can argue that without certain pressures or standards human rights in individual societies may be poorer in many cases around the world. Or also, in some cases there are societies that cannot create institutions or will not. A good example of this is the creation of the war crimes tribunals for Yugoslavia and Rwanda, these two societies had fractured social and political institutions, not to mention divided peoples, and was unable or had factions that were not willing to create institutions that would investigate crimes or punish the perpetrators. Without the international community the precedent to punish and halt human rights violations of the magnitude that took place in
The fifth essay to be discussed is entitled “Capabilities and Human Rights” by Martha C. Nussbaum. In this essay Nussbaum (1997) presents her version of Amartya Sen's concept of substantial freedoms or capabilities. In her capabilities approach to human rights she argues that human rights claims are claims to resources and opportunities that promote the fully human functioning of every individual (Nussbaum, 1997). She presents 10 capabilities that all human beings should be able to do regardless of where a person lives: 1) Life; 2) Bodily health; 3) Bodily integrity; 4) Senses, imagination and thought; 5) Emotions; 6) Practical reason; 7) Affiliation through friendship and self-respect; 8) Other species; 9) Play; 10) Control over one’s environment (Nussbaum, 1997, p.222). By asking how people are actually functioning, Nussbaum asserts that a capabilities approach to Human rights provides a strong basis for understanding what people require in order to become capable of performing the major areas of human functioning (Nussbaum, 1997).

Nussbaum’s approach is interesting and unique from the other authors that have been discussed thus far, she seemingly echoes Hart’s sentiments in the fact that she holds that every individual should have the same rights. However, she seems to differ from Cranston in the fact that she believes that resources which may come in the form of social and economic rights are indeed human rights. This approach is admirable, because, one can indeed agree that understanding what human beings need to function and live is extremely important in determining what exactly maybe a human right. Based on what Nussbaum presents above with her 10 capabilities, one can argue that access to adequate healthcare is a human right. Of course, however, this is very subjective. Some may even consider this extremely naïve, as we have heard some say in American political discourse in recent years about universal care in the U.S. But, to consider healthcare a human right, there’s so many factors that must be considered like, (a) does everyone need access the same healthcare benefits, (b) does everyone want the same healthcare system? And (c) how does one define adequate healthcare enough to the point where it should be considered a human right? And I argue that it’s the same with the ten capabilities she presents.

We will now move onto to discuss the sixth essay entitled “Human Rights, Rationality, and Sentimentality” by Richard Rorty. In this essay Rorty (1993) rejects traditional moral, philosophical theory, citing that Platonic and Kantian ideals of Truth have accomplished nothing for us under the guise of human rights, but in Rorty’s view, a “sentimental education” that uses detailed stories to produce feelings of sympathy for others, combined with economic, financial, and emotional security can be extremely effective (Rorty, 1993). This then will allow us within our capabilities to foster a new generation of humanitarians, dedicated to principles of human rights for all (Rorty, 1993).

Many human rights scholars and experts would argue that Rorty’s concept is just as naïve as he claims moral philosophy is. Education is extremely important in combating human rights violations and creating a culture of empathy. As was noted above, empathy is very important in conflict situations, but, it is not the whole of it, the issue of human rights in far more complex than this. For instance, what about the issue of human trafficking, while education may create a sense of awareness, the issue is largely tied to poverty. To create a culture of human rights, there must be more than just an educational component. There has to be multiple systems and institutions dedicated to making the taught education a reality. And with no real enforceability in the international community, how is this totally possible?

The seventh and final essay to be discussed is entitled “Wears and Tears” by Jacques Derrida. In this essay Derrida discusses how current forms of technology, economic globalization, and expanded militarism present difficult challenges for democracy and justice worldwide (Derrida, 1994). In particular, he notes that the apparent “triumph” of capitalism following the end of the Cold war reveals the dangers of an international system that continues to expand without critical resistance or humane alternatives (Derrida, 1994, p.258). He notes ten key problems that plague the post- cold war world: 1) Unemployment; 2) Homelessness; 3) Economic War; 4) The Free Market; 5) Foreign debt; 6) Drug trafficking; 7) Nuclear weapons; 8) Inter-ethnic wars; 9) Phantom-States; 10) International Law (Derrida, 1994, p.266).

Compared to what some of the other authors discussed earlier, Derrida, based his theories and ideas in what was happening in the world at that time. One cannot certainly agree that globalization in some senses has hampered human rights, the example I used above about human trafficking is applicable here too. Aside from poverty, human trafficking has become more prevalent due to globalization, which has increased easier mobility to move human beings as well as goods. One can argue that he is surely onto something when he discusses the ten key problems that plague the post cold war world order. From what we are seeing now this
article written in the early 90s appear to be prophetic. The further deregulating of the free market as he states has been a major issue domestically and worldwide as was evident with the global financial crisis, militarization has only increased more hostility around the globe and more resentment, and unemployment has also been a major factor in global chaos, after all unemployment was a major contributing factor to the uprising of the Arab Spring. One major criticism that can be made of Derrida’s work is that he really does not give any real prescriptions or framework as how to ameliorate things in the post cold war world order. He seemingly points out a problem that we already know exists in the international community.

To conclude, one can surely claim that each author above has presented a very unique case concerning the legitimacy of human rights and their universality. For the fact that we have seven different perspectives in this short article alone, speaks to how truly complex this topic is. While, there will never be one quick fix to ending human rights violations, this author believes that getting people involved and talking about it is half the battle. And regardless of if we can agree with everything each author has to say or not, we certainly applaud their efforts for getting people involved and rousing social consciousness about the issues of human rights and social change by asking readers to imagine a world with a variety of different possibilities for furthering human rights..

References: