ON THE NON-INSTRUMENTAL VALUE OF BASIC RIGHTS

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Abstract

Basic rights are often of great instrumental value in securing protection for important human needs and interests. The first two sections of this paper defend the thesis that basic rights are also valuable independently of their instrumental role. Taking my cue from Frances Kamm’s suggestion that basic rights reflect or express human worth, in the third, fourth and fifth sections I develop the proposal that the non-instrumental value of basic rights derives from their constitutive role in a universal form of community or fellowship. The importance of basic rights’ instrumental role is reaffirmed in the final section of the paper, which builds on the earlier sections to offer a ‘mixed’ theory according to which basic rights have both instrumental and non-instrumental value.

Keywords

basic rights, human rights, non-instrumental value, community, fellowship, friendship, Kamm, Raz, Dworkin

1. Introduction: Instrumental Approaches to Basic Rights

This paper examines the non-instrumental value of basic rights. I take ‘basic rights’ to refer to those morally justified rights that fulfil the following three conditions:

(1) They are of paramount moral importance, where this means both (i) that they take priority over other types of right in cases of conflict, and (ii) that we must make the greatest efforts to avoid violating them.¹

¹ For an interesting discussion of cases where dimensions (i) and (ii) diverge, see F.M. Kamm, Morality, Mortality, volume II: Rights, Duties and Status (Oxford: OUP 1996), p. 321.
(2) They exist whether or not they are recognized, demanded, accepted, endorsed, enforced, or complied with by institutions or individuals.

(3) All persons hold these rights, and their correlative duties are binding on all persons and all institutions.

Rights that meet these three conditions are sometimes called ‘natural rights’ or ‘human rights’; by using the phrase ‘basic rights’ I signal my rejection of the assumptions that these are the rights we would necessarily hold in a pre-social state of nature, and that all these rights necessarily either should be or already are codified in international human rights law.2

Many contemporary theorists seem to think that basic rights in my sense, along with all other rights, are justified by their instrumental value. They disagree over what the good ends are for which basic rights are a means: Fabre, Raz, Tasioulas, and Waldron think that a given person’s basic rights are justified because they serve that person’s important interests; utilitarian thinkers like Brandt, Hardin or Talbott take a person’s basic rights to be justified by how they serve the aggregate interest; Miller, Pogge, and Wiggins see basic rights as justified because they protect their holders’ fundamental needs; Dagger, Griffin, Lomasky, Nussbaum, and Sen focus in different ways on how basic rights secure their holders’ freedom, capabilities or autonomy; and Rawls takes what he calls ‘human rights’ to be means for achieving ‘a necessary […] standard for the decency of domestic political and social institutions’.3 Despite their differences, these

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2 Although they are common assumptions, not every theorist assumes that ‘natural’ rights must be those we would hold in a pre-social state of nature (e.g. this assumption seems to play no role in H.L.A. Hart, ‘Are There Any Natural Rights?’, Philosophical Review 64 (1955), 175–191) or that ‘human’ rights necessarily ought to be codified in international human rights law (see, e.g. Amartya Sen, Development as Freedom (Oxford: OUP 1999), p. 229). For a discussion of the bewildering range of possible meanings of the phrase ‘human rights’, see Saladin Meckled-García and Başak Çali, ‘Lost in translation: the human rights ideal and international human rights law’, in their The Legalization of Human Rights: Multidisciplinary perspectives on human rights and human rights law (London: Routledge 2006), pp. 11–31). I use the phrase ‘basic rights’, defined by conditions (1)–(3), to avoid these complications.