



Human Rights as a Kind of Hermeneutical Justice

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By reference to the Ethics of Care and Miranda Fricker's theory of Hermeneutical Injustice, I argue that human rights may serve as a type of hermeneutical justice, which allow people to understand and express their moral concerns and care for others across the globe.

Keywords: Hermeneutical Justice, Ethics of Care, Miranda Fricker.

Introduction

Over the last fifty years, significant progress has been made in the realm of human rights¹. As Joseph Raz notes, "this is a good time for human rights"². Yet, important controversies have been raised surrounding human rights, which have been criticized as being "little more than moral goals...taken seriously by only a few practitioners and theorists"³. Borrowing from Miranda Fricker's⁴ theory of

¹ V. Held., "Care and Human Rights." In R. Cruft, S. M. Liao & M. Renzo (Eds.), *Philosophical Foundations of Human Rights*, 2015.

² J. Raz., "Human Rights Without Foundation." In S. Besson & J. Tasioulas (Eds.), *The Philosophy of International Law*, 2010, 1.

³ Held., 2015, 1.

⁴ Fricker, M., "*Epistemic Injustice: Power and the Ethics of Knowing*", 2007.

“Hermeneutical Injustice,” I argue that human rights function as a kind of hermeneutical justice which allow people to understand and express their moral concerns and care for other humans around the world.

The Puzzle of Care

Across the globe, millions of people are impoverished and continue to die from hunger and preventable diseases⁵. Individuals such as philosopher, Thomas Pogge, are concerned with the rest of the world’s moral obligation to help care for those who are suffering. Pogge believes that “the advanced countries of the world have a moral obligation to rapidly reduce the hunger and deprivation that afflicts so many millions of people in the poor countries”⁶. He is not alone in his concern. Many people struggle with the fact that “millions of children die from hunger and preventable diseases”⁷, and they want to do something about it. For example, Peter Singer claims that rich nations have the capacity to reduce suffering, but “human beings have not made the necessary decisions” to provide this type of assistance⁸. Singer is frustrated by the fact that, generally speaking, individuals have done little to respond to the situation. He argues that “people have not given large sums to relief funds; [and] they have not written to their parliamentary representatives demanding increased government assistance” in order to attempt to provide the impoverished “with the means to satisfy their essential ends”⁹. However, Singer’s frustrations fail to acknowledge individuals like him, who

⁵ Held., 2015.

⁶ Held., 2015, 14.

⁷ Held., 2015, 14.

⁸ P. Singer, “Famine, Affluence, and Morality” In *Philosophy & Public Affairs*, 1(3), 1972, 229.

⁹ Singer., 1972, 229.

engage in activist work, donate to organizations to support poverty relief, and volunteer/work locally or abroad in an attempt to improve the lives of the suffering.

Unfortunately, for individuals who share similar views with Singer and Pogge, it is often difficult to explain why caring for others is important and should be done. For example, it can be difficult to articulate why it is important to care for others who are strangers, who live far away, or who have different cultural or religious backgrounds. It is often easier for people to explain and make sense of the importance of caring relationships for people they are close with, like friends and family members.

I aim to suggest that one way to explain this puzzle of why we ought to care is through the concept of human rights. I argue that the concept of human rights, as well as human rights documents and language, provide a type of hermeneutical justice for people who provide care to others around the world.

Epistemic Injustice: Hermeneutical Injustice

In her book *Epistemic Injustice: Power and the Ethics of Knowing*, Miranda Fricker (2007) explores different forms of epistemic injustice. Epistemic injustice refers to distinctive kinds of injustice with regards to “epistemic goods such as information or education”¹⁰. Epistemic injustice is concerned with potential unfairness related to knowledge and knowledge access. One of the types of epistemic injustice that Fricker focuses on in her book is *hermeneutical injustice*. Hermeneutical injustice occurs “when a gap in collective interpretive resources puts someone at an unfair disadvantage when

¹⁰ M. Fricker, “*Epistemic Injustice: Power and the Ethics of Knowing*”, 2007, 1.

it comes to making sense of their social experiences”¹¹. In other words, hermeneutical injustice involves a lack of social tools (e.g., language, terminology) to make sense of one’s life and/or certain experiences. She claims that hermeneutical injustice typically occurs in marginalized groups. An example of a type of hermeneutical injustice involves the case of sexual harassment. For many years, women were experiencing what we now refer to as “sexual harassment,” but lacked the critical concept of “sexual harassment,” to define their experiences. Fricker claims that the case of sexual harassment is an example of a hermeneutical injustice because “prior to the collective appreciation of sexual harassment as such, the absence of a proper understanding of what men were doing to women when they treated them like that,” was limiting women from both understanding and explaining their experiences¹². Thus, we can say that when the term “sexual harassment” was coined, it provided women with a kind of hermeneutical *justice*, to make sense of, and explain their experiences in the workplace, and for others to understand their experiences as well. Along these lines, I aim to make the move that human rights discourse and documents serve as a type of hermeneutical justice for people to make sense of, as well as explain, their moral concern and care for all humans.

Human Rights as a Hermeneutical Justice

Virginia Held notes that although human rights “still have a long way to go in becoming enforceable claims,” they are still “taken very seriously not only by many

¹¹ Fricker., 2007, 1.

¹² Fricker., 2007, 151.

theorists but by activists pressuring governments to improve all sorts of conditions, and by courts deciding cases”¹³. Raz argues that “it is a good time for human rights in that claims about such rights are used more widely in the conduct of world affairs than before”¹⁴. He explains that there is no shortage of “declarations of and treaties about human rights, international courts and tribunals with jurisdiction over various human rights violations”¹⁵. Let us examine different conceptions of human rights in greater detail.

Human rights are often conceived of as negative rights against others, to ensure that people are left free from interference¹⁶. However, many theorists and some of the early human rights documents also acknowledge positive rights. Positive rights are “rights to basic necessities, to what [people] need to live and act”¹⁷. For example, the recognition of positive rights is indicated by the fact that economic and social rights were added to human rights documents like the “International Covenant on Economic, Social, and Cultural Rights (ICESCR)”¹⁸. The recognition of positive rights acknowledges the idea that humans need food and resources “to live their lives and pursue their interests”¹⁹. However, many theorists have worried that little is achieved by simply declaring that all people have rights to things such as food, healthcare, education, and security²⁰. They claim that rights only gain meaning “when we have some clarity about how and by whom they are to be fulfilled”²¹. As a result, the

¹³ Held., 2015, 2.

¹⁴ Raz., 2010, 1.

¹⁵ Raz., 2010, 1.

¹⁶ Held., 2015., 4.

¹⁷ Held., 2015., 4.

¹⁸ Held., 2015., 4

¹⁹ Held., 2015, 4.

²⁰ Held., 2015.

²¹ Held., 2015, 4.

fulfillment of positive rights has often received less attention and has been a lower priority compared to the fulfillment of negative rights. I argue that the concept of human rights can also function as a hermeneutical justice for people who provide care to others. Thus, for my theory, the fulfillment of positive rights is just as (if not more) important than the fulfillment of negative rights. I will explain this point in greater detail later in the paper.

Arguably, human rights also serve a purpose as a kind of linguistic tool. For example, “John Tasioulas notes: ‘discourse of human rights [has acquired] in recent times...the status of an ethical *lingua franca*’”²². In other words, human rights are themselves a kind of common language adopted around the world by many nations. Thus, regardless of differences in language and culture, many countries have acknowledged human rights as a common ground that should be respected. Similarly, it can be argued that “spelling out the arguments for every person’s fundamental rights, and how we ought to respect persons and their rights, gradually persuades more and more people to pay attention to such rights and to shame those who disregard them”²³. Therefore, it is important to acknowledge that human rights documents and language have been adopted by more and more countries as the documents and discourse have become more widespread. As Held states, this is important “progress at work and [we] should not fail to appreciate it”²⁴. While human rights clearly serve a great function as a linguistic tool between nations, I argue they also serve a broad epistemic purpose, which can be further indicated through their role as a hermeneutical justice.

²² Raz., 2010, 1.

²³ Held., 2015., 2.

²⁴ Held., 2015., 2.

My theory argues that the concept of human rights provides a kind of broader epistemic justice to explain care and caring relations directed towards other humans. The discourse and language surrounding human rights and found in human rights documents, offer a type of explanation for how people should care about other humans. Moreover, the distinct language containing powerful words and definitions give readers concepts and vocabulary which they may lack. This, in turn, enables people to understand and express their caring intentions in ways that were not possible prior to the emergence of human rights concepts and language. In other words, human rights are an example of a hermeneutical justice. In addition, I argue that human rights also serve as a moral standard in themselves that we aspire to reach. Furthermore, I suggest the idea of human rights functioning as a kind of hermeneutical justice to explain care, can be understood more deeply through the ethics of care.

The ethics of care is a relatively new moral outlook that was first developed in the 1980s²⁵. Beginning with work from Sara Ruddick, Carol Gilligan, and Nel Noddings, the ethics of care “has been developed into a widely discussed and influential new approach to moral issues”²⁶. For the ethics of care, the focus is on caring relations between people. The theory “values the emotions of empathy, caring, and concern for others”²⁷. While it has been argued that the “value of caring relations is most obvious in the case of personal relations between friends or members of families or small groups,” it can be expanded to include “valuing caring relations between all persons and encompassing the moral considerations of justice”²⁸. In fact, it is evident that caring

²⁵ V. Held, “Morality, care, and international law” In *Ethics & Global Politics*, 4(3), 2011.

²⁶ Held., 2011., 183.

²⁷ Held., 2011., 183-184.

²⁸ Held., 2011, 183.

emotions such as empathy and concern for family and friends, “can also be felt for distant others”²⁹. This explains why certain individuals and groups of people work, volunteer, or provide donations to those who are suffering around the world; they care about them. For those people who care for others around the world and for humanity as a whole, human rights are something they can point to in order to explain their caring feelings and experiences. Thus, the critical concept of human rights represented in human rights language and documents functions to further peoples’ knowledge and understanding of distant (as well as proximal) caring relationships. Therefore, in this way, human rights as a kind of hermeneutical justice, may serve to further explain the ethics of care.

Alternatively, the ethics of care may also serve to explain human rights. For example, in order to care whether the human rights of other people around the globe are being respected or not, “we need to care for sufficiently distant people”³⁰. In fact, without enough people *caring* that other people around the world have adequate living conditions and are treated fairly, human rights will not be implemented³¹. Therefore, I argue that for people who care deeply about distant others, the establishment of human rights through documents and international law have provided a hermeneutical justice to explain their feelings of care. Furthermore, the ethics of care may additionally provide an explanation for human rights, though I will not discuss this point further.

The establishment of documents and treaties such as the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights

²⁹ Held., 2011, 183-184.

³⁰ Held., 2011, 185.

³¹ Held., 2015.

(ICCPR), and the International Covenant on Economic, Social and Cultural Rights (ICESCR), provide people who care deeply about other humans around the world, with a way to further understand their feelings of care, and also with a way to explain *why* they care about others, to other people. The concept of human rights provides a hermeneutical justice for care providers because they are able to point to these major documents and international law, as mechanisms which indicate that their experiences and feelings of care for humans are important. Human rights documents and language provide these people with empowering terminology which allows them to further make sense of their feelings of care within themselves and, in turn, explain them to others. I argue that human rights are able to do this knowledge-empowering work because I argue they provide a kind of epistemic good that provides people with information about human importance. Human rights documents serve as an epistemic tool that provides caring individuals or even organizations aimed at helping those in need (e.g., Red Cross, Doctors without Borders, etc.) with a conceptual foundation of language and terminology to make sense of their caring feelings and/or practices. Without human rights, people who engage in activist work, volunteer, or donate to distant people who are living in poverty and suffering around the world, may struggle to explain their actions and why they feel the need to attempt to help others. Without the concept of human rights, it may be difficult to make sense of and explain why one believes that every person should have fundamental access to education, should be allowed to vote, or should be able to live a torture-free life.

Human rights are uniquely positioned to do this work because they are legal and moral concepts aimed at protecting and promoting human welfare. Human rights

provide a moral framework that has international legal pull, which sets them aside from other theories like Utilitarianism or Deontology for example. Having a publicly recognized and supported concept to point to, allows caring people to further advance their social understanding of their caring relationships, and be able to better articulate and justify the difficult concept of caring about distant others or humanity as a whole to their peers. Human rights are widely acknowledged in the international arena and thus help to articulate the perspective of an ethics of care more broadly. Thus, in this way, human rights serve a deeply moral purpose in terms of providing people with a hermeneutical justice to understand and explain their care for other human beings.

The Strengths of My Approach

My theory that the concept of human rights serve as a kind of hermeneutical justice has several strengths. First, my view is compatible with different foundational theories. It does not matter what theory you believe grounds human rights, this will not conflict with my theory. For example, Griffin argues that the foundation of human rights is “personhood”, while other theorists have different ideas about the foundational nature of human rights³². Regardless of whether or not you endorse a theory that grounds human rights in personhood, or whether or not you believe they are grounded in love, my theory argues that human rights serve a broader epistemic function, regardless of what grounds them.

³² J. Griffin, “*On Human Rights*”, 2008.

Second, my view is also compatible with both political and moral conceptions of human rights. I have acknowledged that human rights serve a political function in their role in international law and through their influence on the behaviour of countries, however, I have argued that this is not their *only* function. My theory is also open to the idea that human rights may serve moral purposes. For instance, my theory holds that human rights serve the moral purpose of providing a hermeneutical justice for care providers. This is not to say that this is the only moral function of human rights. I simply suggest that hermeneutical justice is one of the many potential moral purposes of human rights.

Third, and importantly, my theory is sympathetic to both negative and positive rights. It is evident that within various human rights documents, both negative rights and positive rights exist. Negative rights are security rights (e.g., right to be free from torture, etc.), and positive rights are rights to basic necessities (e.g., food, water, housing, etc.). My theory argues that viewing human rights as a kind of hermeneutical justice to explain why people care about the living conditions and lives of others indicates that ensuring people have both negative rights *and* positive rights is particularly important. Clearly those individuals such as Pogge, Singer, and others who advocate for engaging in work that provides care to the needy, also advocate for the importance of positive rights, (such as adequate, food, water, shelter, etc.), in order to live and survive. Thus, the concept of human rights as a hermeneutical justice for care providers emphasizes the importance of including positive rights as necessary human rights.

Fourth, my theory avoids worries surrounding duties and obligations. Often times theories surrounding human rights and rights in general run into trouble in terms of

determining who is responsible for the corresponding duties assigned to a right. For example, if we have positive rights to subsistence, it is difficult to explain who has the corresponding duties to fulfill that right. The view that human rights serve as a type of hermeneutical justice does not require engaging with the debate surrounding duties and obligations. My theory simply offers an explanation as to why some, and arguably many, people believe we should care about other people. It views rights as an important concept and critical epistemic tool for those who believe caring relations with all humans are important. More specifically, it provides people who care about others with the knowledge and understanding that their feelings of care are both valid and important, according to international human rights documents.

Potential Objections & Replies

A potential major objection to my theory is that it does little to contribute to the fulfillment of human rights for people all around the world, which is the ultimate goal of human rights, and the current challenge some face.

I have two replies to this objection. First, my theory does not argue that hermeneutical justice is the only purpose of human rights, or the only good that they accomplish. I simply posit that providing a hermeneutical justice is *one* potential purpose of human rights. Therefore, other theories about human rights may be better suited to do this work. Second, my theory supports the idea of the progressive realization of rights. Progressive realization is the notion that there is ongoing progress towards the fulfillment of human rights. Thus, certain rights such as socioeconomic rights, might be something we are slowly trying to fulfill over time. As long as there is

some ongoing progress towards this goal, this is morally satisfactory. Ultimately, my theory that establishes the concept of human rights as a case of hermeneutical justice, is a major step with regards to progressively realizing such rights. Acknowledging human rights as important moral goals and as mechanisms to explain why we should care about others, is a crucial step to attaining fulfillment. Part of what human rights talk is doing in the first place is acknowledging that peoples' lives are missing something, and human rights make these issues politically important and publicly known. Take the example of sexual harassment discussed by Miranda Fricker. One of the key first steps to establishing justice for women who were victims of sexual harassment was to coin the term sexual harassment, which then allowed them to further make sense of their experiences, and then speak about those experiences publicly and in courts in order to receive legal and social justice. The same can be said about human rights. Establishing human rights as important international standards and common language and knowledge between nations, allows people to make sense of their feelings of care for others and thus formulate plans to act on those feelings of care and attempt to fulfill human rights.

Another potential objection to my account is that it presupposes human rights as an important concept. A critic may ask why people should care about human rights as a political, universal notion. Not everything that people care about is important and should be universalized.

I can reply to this objection by simply stating that it is evident that some people care about others around the world. This is made evident by arguments from people like Singer and Pogge who advocate for people to take action and end suffering. However,

this does not assume that *all* people care about others in this way. In fact, I think it is safe to assume that many people do not care about others by virtue of their humanity. This is clear due to the fact that we still have a large percentage of the world's population starving, living in extreme poverty and dying, while the rich continue to prosper. However, my theory does not rely on the notion that all humans care. I simply argue that some group of people (whether it be big or small), care about others and that human rights language and discourse provide a type of hermeneutical justice for such people. This allows this group of caring people to make sense of their caring feelings and actions, and to explain those feelings and actions to others. For example, this is made evident because the term sexual harassment was coined regardless of the fact that not all people have experienced the phenomenon. Rather, the terminology provides a deep sense of knowledge and understanding for those who have experienced sexual harassment and gives them the opportunity to explain their experience to others. Similarly, not everyone has to care about humanity in order for human rights to serve an epistemic function.

A different potential objection to my view is that according to Miranda Fricker's theory, hermeneutical injustice tends to occur in marginalized groups. People who care are not marginalized like women are with regards to the case discussed about sexual harassment. Therefore, human rights cannot be a true hermeneutical justice on this view.

My reply to this objection is to look more closely at the meaning of "marginalized". The verb "to marginalize" can be defined as "to treat someone or

something as if they are not important”³³. I would argue that while many people do engage in caring practices and feel concern for other humans, people who care deeply about distant others and all of humanity are often largely ignored when it comes to putting their views into practice. Perspectives like those of Peter Singer, who argues people ought to donate large portions of their income to charity, are not popular. Rather, they are criticized for being too demanding to take seriously. According to the above definition, I maintain that since a broad ethics of care for all humans around the globe is not necessarily the popular opinion, people who endorse the view may be considered a marginalized group. Therefore, human rights may serve as a hermeneutical justice according to Fricker’s view.

A final potential objection to my view is that referencing rights is not the best way to explain caring feelings or actions. Critics may argue that a rights framework has little to offer in terms of guaranteeing caring relations like those discussed in theories like the ethics of care.

My reply to this objection is that the human rights framework provides a standard that is built upon and emphasizes care for other humans. While rights themselves do not tend to guarantee entitlements to all humans, they do provide a kind of moral standard for both individuals and governments to attempt to fulfill. I argue that human rights presuppose caring relations. Why would we offer humans unique rights to life, liberty, security, or to be free from torture, if we did not have some essence of care for their well-being? While rights do not necessarily provide guaranteed entitlements, they successfully outline a framework that encourages global caring relations.

³³ Marginalize [Def. 1]. (n.d.). In *Cambridge Dictionary Online*. Retrieved August 4, 2019.

Conclusion

In conclusion, human rights may serve various functions, including those that are both political and moral. My theory argues that human rights serve as a kind of hermeneutical justice for people who care for others in virtue of their humanity. I believe this conception is particularly important in terms of demonstrating how language and knowledge can empower people. Human rights serve as empowering epistemic tools that help people who provide care to others understand their actions and feelings and allows them to further explain their caring to others who may not share the same view. Understanding the important empowering aspects of human rights language is a key first step in ensuring that human rights, particularly positive rights, are progressively realized.

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