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Social Mitigationism: Utilizing Harm Mitigation as a Ground for Human Rights and a Guide for
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Social Mitigationism: Utilizing Harm Mitigation as a Ground for Human Rights and a Guide for Social Relations

Nicholas Sayed

This paper proposes a new theory regarding human rights, which it coins Social Mitigationism. It attempts to provide grounding for the notion of rights, aims to determine the exact contents of these rights, and stipulates on how they would be applied in practice. This investigation utilizes 'the original position,' a thought experiment first introduced by John Rawls. While he concludes that those within the original position would agree to two principles of justice, this paper suggests that the contractors would agree to a third principle; that is, serious risks and harms should be mitigated within society and human rights are best understood as instrumental tools towards this aim. It proceeds to analyze what rights could be derived from this theory, what they would contain, and how they would interact. Finally, this paper discusses potential implications and criticisms of this theory on a domestic, international, and interpersonal scale.

Key Words: Human Rights, The Original Position, Rawls, Harm Mitigation.

Introduction

There has been much recent literature surrounding human rights in an attempt to determine their grounding, political and moral power, and their exact contents. Notably, there lacks even a shadow of a consensus about any of these topics, whether one attempts to ground them in a metaphysical notion of the particular status of human beings or conceiving of them as arising from a social contract. While I believe a metaphysical notion suffers some very significant shortcomings in terms of answering these questions, the social contract approach may yet have some potential. Consequently, this paper will propose a potentially new grounding for human rights,

suggesting that from Rawls' original position, the contractors would agree to a third principle of justice; that is, serious risks and harms should be mitigated within society and human rights are best understood as instrumental tools towards this aim.

On Misfortune and the State of Nature

It is nearly an indisputable fact that any one of us could fall to misfortune at any time. Anyone could become ill with a pernicious disease, suffer a serious accident, or lose all their economic assets and belongings to a bad day at the stock market or fraudulent business practice. The list is countless. Further, the very circumstances of our birth, our genetics, social conditioning and experiences are all fundamentally linked to luck, and we can only hope that it will be fortunate¹. While luck has a serious hold over our lives within society, I believe that outside of society, in a State of Nature (S.O.N.), the problem is especially acute. There is no medicine for the sick or disabled, no protection by police from wild animals or other individuals who happen to come across one's way. Inside of a society, individuals can have medicine that they would not have access to otherwise, being mass produced and largely available from various sources, and there are police and military forces which help prevent wanton threat of others through legislative enforcement. Without social cooperation, one cannot reasonably hope to have reliable protection from the elements or a lack of resources, whereas within society, homes and shelters are made by individuals whose job it is to build housing, and the same can be said of resources, being provided by specialized individuals and bodies such as farmers or manufacturers. Outside a society, attaining these protections and resources seems quite unlikely, but social cooperation allows these fundamentals, among many others one could imagine, to be more readily available.

In a State of Nature, it is survival of the fittest, or put another way, survival of the lucky, and failure of the unlucky. I suggest that this is not a desirable state of affairs, and

¹ T. Nagel, "Moral luck", 1979, 7.

that living in society, where one has some protection from these threats and harms is largely preferable.

Certainly, these sentiments appear similar to the writings of Hobbes, who believed that a State of Nature is a state of war and chaos, and that society should be a state of peace and order². Importantly, in suggesting this is the aim of society, Hobbes allows for tyrannical, authoritarian governments to justifiably take hold, as long as they secure peace and order. However, I believe he made a significant misstep. Rather than conceiving of the State of Nature as one of war and society as one of peace, what if one were instead to conceive of the S.O.N. as one of unmitigated luck and harm, and society as one of mitigated luck and harm? As previously mentioned, society, at the very least conceptually, somewhat mitigates luck's influence. People, who without society would fail, now have new opportunities available to them through social cooperation, and are protected from risks and harms that would befall them, were they outside of society. Medicine, food, shelter, physical and mental protections are all the more prevalent than in the S.O.N.

Consequently, I will propose in the next section of this paper that within a social contract framework, a *fundamental aim* of society is to limit bad luck, risk, and harm, and that we can derive instrumental human rights from this fact. Importantly, one may think this would get around the tyrannical Hobbesian worry, for it is difficult to see how a society would be succeeding in its goal to prevent harm and risk to its people, if it is a very *source* of that harm to be mitigated. Notably, subsequent work in the social contract tradition has generally moved away from Hobbesian justifications for tyranny (with Locke coming first to mind), potentially giving further weight to this suggestion³. However, there are certainly many questions left to be answered. For one, why limit bad luck and harms specifically? Secondly, what kind of social contract is at work here, and why would people choose it?

² S.A. Lloyd., & S. Sreedhar., "Hobbes's moral and political philosophy" In The Stanford Encyclopedia of Philosophy, 2018.

³ A. Tuckness., "Locke's political philosophy." In The Stanford Encyclopedia of Philosophy, 2018.

On the Social Contract and Harm Mitigation

For the purposes of this paper, I will appeal to a thought experiment and some aspects of the social contract model first proposed by Rawls in *A Theory of Justice*, though I will suggest significant additions and departures from his theory. Rawls argues that a just society is not only one which promotes the good of those within it, but also one that operates in accordance with the public conception of justice, meaning that “(1) everyone accepts and knows that the others accept the same principles of justice, and (2) the basic social institutions generally satisfy and are generally known to satisfy these principles”⁴. He argues that these principles, which would be agreed upon by all in forming the contract, should act as a guide to the basic structuring of a just society⁵. This leaves the question of what these principles would be in particular, which he answers by discussing a thought experiment calls the ‘original position’ and what he terms the ‘veil of ignorance.’ Simply, the original position is the hypothetical situation in which the initial choice of the principles constituting the social contract is made⁶.

Importantly, Rawls holds that for the principles to be decided justly, factors which are irrelevant to justice should be excluded from the decision-making process; factors like one’s ethnicity, gender, physical or mental capabilities etc.⁷. Essentially, the veil of ignorance is a hypothetical scenario where one engages in deciding these principles while knowing nothing about themselves, preventing personal bias and luck of one’s circumstances from entering into the considerations. The principles are hypothetically what would be chosen by all those in the original position, and he proposes that they would be: “First: each person is to have an equal right to the most extensive scheme of equal basic liberties compatible with a similar scheme of liberties for others. Second: social and economic inequalities are to be arranged so that they are both (a) reasonably expected to be to everyone’s advantage, and (b) attached to positions and offices open to all”⁸.

⁴ J. Rawls., & Blackwell Echo. *A theory of justice* / John Rawls, 1999, 4.

⁵ Rawls., 1999, 10.

⁶ Rawls., 1999, 16.

⁷ Rawls., 1999, 16-17.

⁸ Rawls., 1999, 53.

As previously discussed, luck pervades everyone's lives. In fact, Rawls makes explicit reference to this fact in suggesting that individuals should know nothing of their circumstance in the veil of ignorance to avoid luck of one's condition and character from entering as a consideration. However, unlike Rawls, I will suggest later in this paper that the veil of ignorance also requires one to be unaware of their geographic location or state to ensure the original position is completely unbiased and just. Further, I wish to propose that those in the original position, behind the veil of ignorance, would choose a society which operates in accordance with a third principle of justice; that is, a legitimate and just society is one which mitigates risks, harms, and bad luck as far as it reasonably can.

According to Dworkin, "almost everyone would agree that a decent life, whatever its other features, is one that is free from serious and enduring physical or mental pain or discomfort...Someone with such an infirmity did not choose it; he would cure it if he could, and none of his beliefs, judgements, convictions, or commitments would argue against such a cure"⁹. While it is difficult to determine exactly what a good life is, all those within the veil of ignorance could be one of these people, and if this condition is undesirable for virtually everyone, wouldn't those in the original position agree to structure society to avoid becoming this person by mere bad luck? This principle can be extended from the individual to society; it is difficult to conceive of what a community would look like that aims to provide a good life to everyone, but it is easier to conceive of a society that aims to remove risk and harms that constrain everyone's ability to achieve whatever a good life would look like. I believe those within the veil of ignorance would agree to this third principle, and that human rights, understood instrumentally, are a valuable tool in achieving this goal.

At this point, it is worth noting that I use bad luck that leads to harms and harms or risks that befall a person (potentially due to their own choices) nearly interchangeably. I am rather agnostic about a serious difference between these two interpretations, and do not think it makes much of a difference to the account generally. I am a skeptic of free-will and believe that harms, including those that come about due to one's choices, are still the product of bad luck and should be avoided wherever

⁹ Dworkin, R., "Sovereign virtue" In London, UK: Harvard University Press, 2000, 297.

possible. However, this is not necessarily a problem for this account to a defender of free-will, as individuals could seemingly still agree that harms should be avoided if possible, and one could frame the account in terms of general harm and risk mitigation instead if they wished. For example, if I were to make a poor decision, I would certainly still prefer not to suffer serious harms as a result, and I believe the same could largely be said of anyone.

Deriving Human Rights from Harm Mitigation

Assuming all within the veil of ignorance would choose a society which aims to limit harms as far as it can, human rights may serve as the most efficient way to implement this goal. There are multiple reasons for this. Firstly, human rights are understood to apply unanimously to all people, regardless of circumstances. Secondly, human rights are treated with a high priority of political and moral force, matching the degree of importance we would want society to place on a principle agreed upon in the original position. Both of these propositions serve our purposes very well. But with these considerations in mind, can one determine what the particular rights would be and how far they would reach? I believe so.

However, before proceeding we should clarify some things about the third principle of justice. First of all, it serves to determine what human rights would be, their contents, and how they would be applied, all of which will be discussed in further sections of this paper. Second, because it acts, in effect, as a clarification of the first principle of justice, it would not come in conflict with this principle, nor would it conflict directly with the second; only the first and second principles could conflict directly, and any conflict with the second would be through the first. Therefore, it does not need to be discussed in terms of priority of force, and I propose the first and second principles should retain their relatively priority; with the first taking precedence over the second.

Significantly, I stated that this principle acts *in effect* as a determination of human rights and their contents, but not that it is *just* that. I do believe that the first and third

principles would be chosen independently; people would always wish to have rights and for harms to be mitigated.

The reason that the third principle serves as a clarification of the first principle is due to instrumental, that is, pragmatic considerations. As was said, human rights seemingly would function well towards the end of mitigating harms, and the third principle goes a long way in clarifying the features of human rights. In this way, both principles are symbiotic, while still being distinct.

Moving on, as I have already mentioned, the legitimate society is one which aims to limit risk and harm *as far as it reasonably can*. Certainly, not all risks and harms can be mitigated, and not all risks and harms are of the same degree of danger or threat to a person and their life. I propose that the most serious risks and harms are those which should be limited, for it would fail to be pragmatic to attempt to limit all. Doing this may prevent the society from operating properly, defeating its purpose to begin with. For example, society could not guarantee protection of one's clothes from getting wet in the rain or being sun-bleached.

There are many outlandish examples of minor risks and harms one could imagine that would be entirely impractical for society to attempt to mitigate, as there is a limit in resources available, and they should be reserved for the most serious. It seems that those within the social contract would likely prefer that their society generally be able to limit the most serious harms and risks, rather than try to limit all and generally fail. So, what are the most serious risks and harms, and what human rights could we derive from them? The most evident example of a serious risk to a person is the risk of death. A constant threat of death is certainly undesirable for one attempting to live their life; a very bad misfortune indeed if it were to befall someone against their will. For this reason, we could derive a right to life from the agreement in the original position to avoid death where possible.

Perhaps another relatively evident example is security of person. Being unlucky enough to be tortured or abused is seen as especially heinous for most people, and is definitely a serious harm to any person. While these may be relatively obvious, there are other, perhaps more controversial human rights, which also could be derived from this account. For one, I wish to suggest that basic subsistence rights, such as food,

water and shelter would also be guaranteed. As previously stated, any person through bad luck could lose their finances or could be born into an economically unfortunate circumstance. Because those in the original position would not know the conditions of their life, they could be a person who is born without economic prospects or lose them, and could suffer the threat of starvation, homelessness or general poverty, all of which are great risks to one's life and somewhat resemble the S.O.N.

As was briefly mentioned earlier, I do not think that bad choices should make a difference as to whether a person is provided basic protections. For example, in terms of subsistence rights, I propose a social safety net for everyone if they fall below a reasonably livable condition, even if a person lost their money due to, say, a gambling addiction. Otherwise, the government would be putting their people unnecessarily at risk of harm if they were to leave them to their own devices in these instances, failing the aim of mitigating risk, and would further have to adjudicate on a case-by-case basis who 'deserves' these protections. Even though these people made bad choices, they likely did not wish to be put in serious risk or suffer significant harms. Perhaps the method of protection would have to be different in these circumstances, as we may not want to give a gambling addict money for example, but we could give them food stamps and provide shelter instead, still providing them with reasonable protections.

For nearly the same reasons as above, persons would also have rights to medical care, for they could be born with a serious physical or mental illness, or could suffer an accident or misfortune disabling them in some way etc. It is not difficult to imagine that society would fail its function to limit serious risks if its people are significantly subject to these misfortunes, of which they cannot control and may have no recourse to escape. We can also derive equality rights from this account. Those within the veil of ignorance would know nothing of themselves, and thus would not know if they were to be born a man or woman, their ethnicity, sexual orientation, or even whether they will be disabled. For these reasons, a person would have equality rights, for if they were to be discriminated against on one of these grounds, they would suffer risks and harms due to factors they did not choose and cannot control. Further, one may think that this also gives us a justification to give special attention to those who are within

marginalized or oppressed groups; it may take more in order for these people to be reasonably protected from harms and risks. We will return to this point later.

Let's place freedom of speech and religion (which may better be phrased as rights to protection of religion and speech) in a similar category for they are significant for potentially comparable reasons. The ability to practice religion and express one's views can be significantly attached to one's identity, and as those in the veil of ignorance would not know what their beliefs and opinions would be that partially define who they will be, they would probably wish these defining features to be protected from restriction as well. Lastly, I wish to discuss environmental rights. Certainly, a depletion of environmental resources or the progression of climate change is a serious risk to all people. For this reason, it is not a stretch to argue that this gives reason for placing duties and restrictions on governments and businesses in terms of protecting the environment, for otherwise they would, at least partially, constitute an existential threat to the lives of all people around the world.

Three more rights I wish to submit are freedom of movement, voting rights, and a right to education. In terms of freedom of movement, if people are actively restricted by a government in being able to move as they please, then it would seem that these individuals would be forced to live in a specific place or places. This is a harm for it limits one's self-identity and self-sovereignty, as it prevents individuals from being able to live their lives as they so choose; they would be excluded from many life prospects, including job opportunities, relationships, communities, and life experiences, to name a few. Notably, this right has defeasibility conditions, such as in the case of not allowing people to trespass on secure governmental facilities or other people's property etc. Further, it may be limited to a significant degree in the case where the individual in question commits a crime; their right may be revoked for a certain period of time in the name of protecting other people from harm (and potentially for other reasons involving criminal justice).

Turning to voting rights, a person who is excluded from the political process is being excluded from decisions which significantly affect their lives, forcing them and potentially coercing them into living in accordance with whatever is decided for them. Of course, this is a clear example of harm to a person's self-sovereignty, suggesting this

person should have a right to engage with this process. Lastly, I put forward that individuals should possess education rights, for if education is only open for select people, it would seemingly lead to the exclusion of some from job or life prospects that they may have excelled at, had they had the option. Just as with the two rights above, this would limit a person's self-sovereignty and thus is a harm. But, there is more to be said. Education is useful for informing people of the realities of the world, and those who remain ignorant of these facts are significantly more at risk of suffering or causing harm (unknowingly) than those who are in the know. One only needs to look at cases of negligence or individuals suffering manipulation to see this. Importantly, this paper only suggests that education should be *open* to all, not that all will be admitted (beyond primary and secondary levels) or that all will be successful. Therefore, it may be better to say that all have a right to have *access to* education, not a right *to be* educated in every case.

I do not believe this to be a fully comprehensive list of the rights one could derive from this account. Some of these will not be discussed for brevity, while others will be addressed in the next section. It is worth noting here that one strength of understanding harms as existing on a spectrum in terms of seriousness is that it may tell us how to determine what to do in cases of conflicting rights. For example, one's equality rights, while very important, would be overridden if it came into conflict with another's right to life, as a risk to one's life is more serious of a threat. I suggest that all rights should be understood as having a graded priority of force relative to the severity of the risk it aims to limit. One implication of this is a potential justification for limits on one's ability to practice religion or free speech. If one's religion calls for harm of another, it would be justifiably limited here, for one's security of person is more serious of a harm than one's ability to practice their faith. Alternatively, freedom of speech may be limited if it incites violence or serious discrimination upon a group of people or a person. Those in question's right to security of person or equality would trump the right of protected speech.

Potential Strengths and Implications

Now it is time to summarize some of the strengths of this account that have been outlined thus far. First, in using Rawls' original position, we avoid the mire of complex metaphysical questions concerning the nature of humankind. Second, in conceiving of the social contract this way, we have an explanation for rights' moral and political force, while also being able to derive specific rights and potentially their contents. Thirdly, while there is a great deal of disagreement about what constitutes a good life, individuals seem to generally agree that significant harms and risks are undesirable and should be avoided. Interestingly, for those who are sympathetic to Maslow's Hierarchy of Needs, this account would map onto meeting individuals' physical and safety needs, which are seen as necessary for one to be able to achieve the higher rungs of the hierarchy¹⁰. I think that if these human rights are reasonably met, that opportunity for love, self-esteem, and self-actualization, could very well follow.

This account places strong restrictions on and avoids tyrannous action of governments, either in the pursuit of peace or some other goal. Individuals would probably not want to be harmed or oppressed by the very government which they would have agreed in the original position to protect them from threats. Furthermore, this account has the potential to avoid some worries concerning human rights that have been proposed by Onora O'Neill. For one, she worries that if we conceive human rights as emerging merely through international convention and agreements (a political conception), that these rights would lack a moral justification¹¹. As already noted, if harm mitigation, as an aim of society and ground of human rights, would be chosen as a third principle of justice by all those within the original position, then human rights would have normative justification and force. They would not arise out of agreements between nations, but with the formation and idea of a just state.

Secondly, if rights are pre-political, she worries that there would be no explanation of whom the duty-bearers are for their fulfillment. This account may be able

¹⁰ Burton, N., "Our hierarchy of needs" In *Psychology Today*, 2012, May 23.

¹¹ O. O'Neill., "The Dark Side of Human Rights" In *International Affairs (Royal Institute of International Affairs 1944-)*, 81(2), 2005, 430-433.

to give us some guidance in avoiding this problem as well (at least more than say, a personhood account could), for the virtuous society is one that aims and is able to prevent harms as far as it reasonably can. Essentially, those with the capacity to limit harms, that is, government officials or powerful individuals, would have a duty to do what they can to guarantee these rights domestically. This echoes the basic structure of society, where governmental and social institutions are the main sources of rights, benefits, and protection guarantees, and must generally satisfy the three principles of the original position to achieve a just society.

To elucidate this point further, those within the veil of ignorance would not know if they were to be one who is at risk or one in a position of power, and certainly rational individuals, acknowledging this fact, would agree that there would need to be a way to ensure these protections. Otherwise the agreement would mean nothing. In recognizing that anyone could be the one in need, they would agree to a duty for those with the capacity to mitigate harms, as they would want this done for them if they happened to be the misfortunate. Something similar can be said of those not in a position of power. While they may not have the capacity to create significant protections, in recognizing that they could be the one at risk, they would agree to honor others' rights and not violate them, allowing the society to function properly. Those with power would have a duty to protect those at risk of harm, and all people would have a duty to respect each other's rights.

It is quite evident that this would require individuals not to kill each other or cause bodily harm or mental trauma to those they come in contact with. However, there are much more interesting examples of what 'respecting other's rights' would entail. Let us discuss the case of charity to elucidate instances of fulfilling duties to others. Notably, not everyone can give to charity or financially support others in need, at least, not without a significant cost to their own lives or ability to live their lives as they so choose. However, for those who do have this capacity, it would seem that they should do what they can (insofar as they are able without harm to themselves) to support those who are less fortunate. This person would wish this to be done for them if they were in an adverse situation, and rational individuals would recognize this, along with the fact that the actions of individuals on the whole would aid greatly in achieving the ideal version of

this society, where no persons are subject to significant harm; a rich individual should seek to financially support others, and persons generally should do what they can, within reason, to help those they know are struggling.

I wish to suggest that another potential implication of this theory would be evidencebased practice and policy, as a government is only just in so far as it attempts to mitigate harm, and how well it actually succeeds in doing this is significant. This would therefore appear to mandate a utilization of empirical evidence to determine whether or not political policies are working and what kinds of polices and strategies are expected to achieve this end; political and social mechanisms concerning harm should be implemented based on what is supported by evidence, rather than upon particular ideologies or political affiliations.

To demonstrate, take the punitive 'criminal justice systems' present in most places around the world for example. Empirical evidence largely demonstrates that punishment does not work well in terms of deterrence from crime and social rehabilitation, failing to mitigate harm to members of society¹². Further, it actually seems to cause *more* harm to society through the regrettable conditions of prisons and the socially destructive impact they have on the populations within. Immense stigmatization and isolation of offender populations "nurture criminal subculture formation; they create a market for oppositional identity"¹³. Those who feel distanced, through physical or social barriers from their community are more likely to harm those whom they do not have a personal relationship with¹⁴. Now, I believe there are multiple other reasons to hold that these so-called 'criminal justice systems' are, in fact, unjust, but that is beyond the scope of this paper. At the very least, in terms of harm mitigation, we can conclude that something needs to be changed, as these systems, as they are now, cause more harm than good, and if this is the case, significant modifications should be taken in order for them to truly be 'justice systems.'

¹² C. Boyes-Watson., & K. Pranis., "Science cannot fix this: The limitations of evidence-based practice" In *Contemporary Justice Review: Issues in Criminal, Social, and Restorative Justice*, 15(3), 2012, 271-272.

¹³ Braithwaite, J., "Shame and criminal justice" In *Canadian Journal of Criminology*, 42, 2000, 288.

¹⁴ Pranis, K., "Restorative Justice, Social Justice, and the Empowerment of Marginalized Populations" *Restorative community justice*, 2001, 297.

Here, I would like to say more regarding my previous suggestion that those who are part of a marginalized or oppressed group may require additional attention to be sufficiently protected from harms. Unfortunately, one need not look far to see that there has been a repeated history of groups oppressing or repressing each other for various reasons, all over the world, leading to significant social, economic, political, or physical harms and disparities, to name a few. These treatment disparities often lead to unequal opportunity and outcome. Importantly, even if there is no *active* or *overt* inequality in treatment, e.g. certain groups being discriminated against intentionally or discrimination appearing in the text of the law etc., in societies where there has been a history of discriminatory practice towards a certain group, it is regrettably often the case that individuals of this group are still disadvantaged due to *implicit* biases, such as in hiring practices, or are disadvantaged due to an unequal distribution of resources due to a history of discrimination and oppression.

As I am an individual from a Western society, I will focus on examples from the West to demonstrate my point, though there are certainly many other examples of discrimination and oppression and practices and policies which should be implemented to address these problems around the world. Let us take the current situation facing African Americans as an exemplar. Today, many African Americans suffer various repercussions of historical injustices, facing discriminatory hiring practices, are often portrayed unfavorably in the media, frequently are sequestered in ghettos where they have diminished access to education, healthcare, and resources (including food and job opportunities), and suffer prejudiced and violent treatment by the police. These individuals are starting from a place of reduced opportunity and are at a greater threat of suffering harms than those not within a marginalized group.

Surely then, this theory would mandate additional attention for people facing these repugnant treatments and situations. Social programs directed at those within the marginalized group would then need to be implemented to address these problems, including, for example, housing programs, education programs, and employment equity programs (also known as affirmative action) etc. However, it is not enough to focus solely on those of the marginalized group, as it is clear that discriminatory treatment would continue as long as those outside the marginalized group continue to hold

discriminatory and negative views towards these people. Therefore, social programs directed towards those outside the marginalized group would need to be implemented to address this aspect of discrimination, including, at the very least, education and diversity programs. Further, the government would need to pay special regard to how marginalized individuals are treated to ensure that they are respected, treated fairly, and reasonably protected from harm (with the example of the conduct towards African Americans by police coming first to mind).

While I made explicit reference to domestic rights guarantees, I think this account would imply international duties and dictate action on a global scale as well. Unlike Rawls, I propose that one aspect of the veil of ignorance is that those within it would not know all their circumstances, and resultantly would not know their geographical location or state. Otherwise, one may think that they could know what kinds of resources are available, the political and cultural norms in the area, or even the demographics, potentially creating bias in the original position and defeating the purpose of the veil of ignorance. For this reason, this account of human rights would seem to be cosmopolitan and apply equally to peoples all over the world (we are discussing *human rights* after all). As already proposed, those with the capacity to mitigate risks in the form of guaranteeing human rights as far as is reasonable, which in this case would be rich and powerful countries, would have a duty to ensure human rights protections to countries which cannot mitigate these risks themselves. This would suggest a duty to aid the misfortunate and seemingly implies some form of refugee or immigration rights.

This account would also suggest that if a country is the *source* of the risks and harms afflicting their people, then one would have a justification for political intervention. Just as a government internally would be justified in limiting threats and harms to their own people, they would also be justified in limiting the threats imposed by a tyrannical government. It is worth noting that imperialism and actions based on private interests should be avoided, and thus aid and intervention should be taken with great care. One's society and culture can be very significant in terms of defining one's identity (as similarly discussed in regards to religion or speech) and resultantly, if an external nation were to take imperial action, threatening the culture or people, it would become the threat which is to be mitigated.

Further, there are some clarifications which need to be made about the process and nature of intervention in these cases. Importantly, political intervention should aim to take the least potentially harmful approach to achieve the mitigation of the harm in question. That is, diplomatic processes such as consultation or negotiation should be the first step taken. If this is unsuccessful, then more coercive methods may be used, such as embargos. However, if all else fails, then military intervention could be justifiable. That being said, the potential modes of military action in these cases are significant. As already suggested, imperial action must be limited, but further, the kind of warfare used must be highly circumscribed. The harming or killing of civilians in the process of trying to help these very same people is horrendous and certainly a tragedy. Therefore, steps should be taken to limit situations such as these.

There should be as minimal utilization of tactics which cause destruction or fear on a mass scale as possible, for engaging in activities such as these defeats the purpose of the engagement to begin with. That is, no use of chemical weaponry, biological weaponry, radiological weaponry, and there should be an avoidance of targeting of civilian centers if possible. External governments should aim to minimize damage to infrastructure and psychological harm to those within the state. To provide an example of an unjust approach to warfare, take the American bombings which occurred throughout the 2003 war in Iraq. The Americans seemingly did little to differentiate hostile enemies from civilians, bombing both indiscriminately, and even going so far as to deliberately target hospitals and medical personnel to spread fear throughout the country with the goal to psychologically weaken the people of Iraq¹⁵.

Undoubtedly, this is deplorable, and actions like these have no place in legitimate warfare (that is, warfare with the goal of bringing about or preserving a just society). But, there is more to be said. I suggest that actions like bombings and drone strikes should not be used where feasible, as they cause significant mental trauma and have much potential to kill civilians. Instead, it is better to utilize ground soldiers; they have far more of an ability to avoid harming innocents. Of course, this puts the soldiers in harm's way, but for one, the lives of the soldiers from the country taking the interventional military

¹⁵ C. Aksan., & J. Bailes., "Introduction. In J. Bailes & C. Aksan" (Eds.), In *Weapon of the strong: Conversations on US state terrorism*, 2012, 6.

action are worth the same as the lives of the civilians they are aiming to protect, as this is a cosmopolitan theory.

Second, the soldiers have consented to fight for this cause, including potentially dying, whereas the civilians of the unjust society have not consented to be collateral damage. Let's return to the 2003 war in Iraq to demonstrate this point. As of January 13, 2020, the United States Department of Defense estimated a total of 4,432 American combatant fatalities. Conversely, "Iraq Body Count" estimates as of January 16, 2020, a *minimum* of 184,776 violent civilian deaths from the conflict. This theory would favour the numbers to be reversed; 184,776 American combatant deaths and 4,432 civilian. Of course, death tolls are detestable and it would be preferable for there to be none at all, but unfortunately, this may only occur in a realized, ideal world.

Potential Worries and Objections

With all that being said, there are some questions and potential objections which should be addressed. First, what distinguishes human rights from legal rights? While this is a difficult question to answer, I do have a provisional proposal. Human rights are derived from harms which would be agreed to be avoided by all in the original position, while legal rights are derived from within a society that already exists. Human rights would have a higher priority of force relative to legal rights, as legal rights would be biased by the specific circumstances of those within that society, whereas human rights would, in a sense, be more objective, as they would be agreed upon by all and apply to all.

Secondly, conceiving of society and human rights this way would require a large reformation and reconstruction of various aspects of society, and thus is problematic. I do not find this objection persuasive. Evidently, it is true that society would have to change greatly, but if it matches moral principles which would be agreed upon by

everybody behind the veil of ignorance, it would be just, and largely the biases of how society functions now and individuals are currently seems to stand in its way.

Thirdly, some may have noted that I discussed rights based on harms to a person's autonomy and self-governance (e.g. voting rights, freedom of movement, and education rights), but are uncertain how this would apply to individuals who are unable to act autonomously. This group would include individuals who have a severe mental disability or are a youth for example. I will turn to youth first. Youths are in the process of cognitive development and are often incapable of making informed life choices for themselves as they do not have access to a full range of information or reasoning capabilities. Therefore, while they are developing, they would not yet possess voting rights or freedom of movement. However, I submit that they would still possess education rights, for education and its ability to limit potential harms and open life opportunities still applies, and will continue to apply more and more as they develop.

Similar things may be said of those who suffer a severe mental disability, although they may be incapable of achieving a sufficient amount of reasoning capabilities or information to be able to reach a level of autonomy for rights such as freedom of movement or voting rights. However, education could have the potential to help these persons become more informed or develop further reasoning capabilities, and thus should also be applied where possible. The last thing to be said about both of these groups is that the other rights, that is, harms not on the basis of self-governance, would still apply, as violations of these rights would still be considered significant harms to these individuals and thus would apply to them equally and should be protected as such.

The final objection I find much more troublesome. That is, what is one to do when two human rights of about the same degree of risk come in conflict; how does one quantify their relative strength? For example, if one's subsistence rights conflicted with another's medical rights or one's religious rights conflict with another's rights of speech? I am not sure that I have a satisfactory answer here. However, I do think that this is a problem facing most human rights theories, and that the account's ability to explain what to do in cases of conflicting rights in varying tiers of threat is still quite valuable and should not be disregarded.

Conclusion

The discourse surrounding human rights has very significant implications for the lives of individuals politically, morally, domestically and internationally. However, there has been little consensus about human rights theories in terms of their grounding, exact contents, or even in determining duty-bearers. This paper proposed that in understanding human rights instrumentally, as tools which aim to mitigate the most serious risks, which would be agreed as a third principle of justice in the original position, we can answer many of these questions quite satisfactorily. I will term this novel approach *Social Mitigationism*. Importantly, *Social Mitigationism* isn't merely a guide for the actions and duties of governments, it serves further as a basic guide for human action and relations generally. Of course, this account is not without its limitations, but that said, it is also not without its various merits.

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