

What is the point of human rights? Against human rights minimalism

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This article offers a moral and logical critique of human rights minimalism, by which is meant an account that restricts human rights to a level of sufficiency above or beyond which inequalities have no moral relevance, and which makes duties prior to rights, such that rights are dependent on assumed or actual institutional capacities. The argument is that human rights minimalism fails by its own standards – to represent moral equality – on two counts. First, it is predicated on a principle of moral equality of human beings, yet can produce no arguments against even the starkest inequalities of living conditions. Second, by making rights a dependent variable to the reasonableness of duties, what rights people have will in effect be the product of contingent institutional capacities. For a truly egalitarian commitment to human rights, minimalism is the wrong philosophy. A point made is that inequality is politically constructed, and institutional capacities will partly be a function of such constructed inequalities. Any reasonable account of human rights needs to have resources within itself to criticise those constructed inequalities that negatively affect institutional capacities to protect and promote rights. With inspiration from Anderson's analysis of the point of equality, it is argued here that human rights have a dual rationale: a negative one to end oppression, and a positive one to establish a political culture of democratic equality.

Introduction

In this paper I will provide an analytical framework for thinking about human rights in a politically challenging and egalitarian direction. I regard human rights as a contested yet potentially fruitful political value concept and as an analytical tool for conceptualising and giving structure to ideas of freedom and political justice. I am worried by certain stubborn features of human rights philosophy: a focus on satisfying basic interests or the most urgent causes of concern rather than promoting distributive and relational justice. If the role of human rights in political philosophy is to level down our ambitions for justice in that way, then what is the point of them?

Samuel Moyn has shown, from a historical perspective, how the human rights movement and human rights philosophy came to disregard matters of economic

inequality.¹ From the 1970s onwards, human rights became a “subsistence ethic for an unequal world.”² This is the minimalism that I will try and disentangle here. Moyn sees no way out of the subsistence trap for human rights philosophy, but I do.

The question that I will be mainly concerned with here is this: If you are an egalitarian, what does that imply for what theory or approach to human rights you have reason to develop and endorse? A possible reaction to this question is that the answer to it is trivial: the very notion of human rights is predicated on moral egalitarianism, so anyone who endorses human rights is an egalitarian; it is part of the concept of human rights that they hold equally for all. This reaction refers implicitly to what can be called “the human rights formula”, which says that the impetus to thinking in terms of human rights at all lies in a prior moral commitment to regarding all human beings as equal in some operational sense, like equally entitled to concern.³

The puzzle that I will articulate and then try and undo is that many of the most influential human rights philosophies proceed from a principle of moral equality, to a theory of what human rights are and what human rights require that justify even stark political and economic inequalities, thus undoing in practice the moral equality that was meant to provide the urgency for the whole project. This is what I refer to as human rights minimalism and my purpose here is to show why we should reject it for philosophical reasons.

Human rights minimalism

In this first section, I will work my way towards the puzzle that I have in mind: the equality puzzle. Most philosophical as well as practical accounts of human rights insist that it makes good sense to keep the meaning and scope of human rights restrictive, for two interconnected reasons. The first reason is a kind of practical intuition that the language of human rights should be reserved for protections of whatever is regarded as particularly important. In order to retain urgency and the commanding nature of human rights claims, we should guard against human rights inflation.⁴ What counts as particularly important and protection worthy – in other words, what human rights should protect or promote – is of course an open question and provides a lot of the stuff of debate in human rights philosophy.

The second and related reason is logical. The classic argument is that rights are distinguished by having the form of claims or entitlements, and claims necessarily correlate with duties: they need an addressee, some identifiable agent on whom the obligation falls.⁵ And since no agent can have a duty to do what it is impossible for them to do or – the moral version – what it is unreasonable to expect them to do, the outer limits of what rights there can be and what those rights require, will be set by whatever it is

¹ Samuel Moyn, *Not Enough. Human Rights in an Unequal World*. Cambridge, Mass.: The Belknap Press of Harvard University Press, 2018.

² Ibid. p.147.

³ Ronald Dworkin, *Sovereign Virtue. The Theory and Practice of Equality*. Cambridge, Mass.: Harvard University Press, 2000, p.6.

⁴ Dominique Clément, “Human rights or social justice? The problem of rights inflation.” *The International Journal of Human Rights*, 22(2), 2017, pp. 155–169.
<https://doi.org/10.1080/13642987.2017.1349245>

⁵ Wesley Newcomb Hohfeld. Fundamental Legal Conceptions as Applied in Judicial Reasoning. *The Yale Law Journal*, 26:8, 1917, pp. 710-770.

possible or reasonable to expect the corresponding duty holder to deliver (“ought implies can”).⁶

These two things together prompt what I will refer to as human rights minimalism (I will expand on this as we go along). One seminal example of human rights minimalism is Henry Shue’s definition of human rights as “protections of vital human interests against standard threats”, where vital human interests translate as “a minimally decent human life” and standard threats as threats that are “predictable and remediable.”⁷ Shue stresses that rights must not be extended beyond the capacities of duty bearing individuals and institutions.⁸ We find a similar account in Charles Beitz, who sees human rights as protections of “urgent individual interests” against “certain predictable dangers.”⁹

It is not difficult to appreciate the point of this kind of reasoning. If human rights are restricted in this way, it is nearly impossible to forge a reasonable argument against them. They will – at least in theory – be sharp tools against the worst kinds of deprivations, and what they protect will undoubtedly be universal human needs. Whatever contested and conflicting things people want, we all need food, physical security, and basic human contact or we will wither and die. Hence the Shue/Beitz position: human rights as a red line that may not be crossed under any (normal) circumstance.

The structure of human rights minimalism is compatible with a more inclusive account of what a decent human life requires and consequently what it is that rights protect, but the more expansive the range, the more contestable the account will be. A well-known example is Martha Nussbaum’s capability approach to human rights. Nussbaum’s list of ten central human capabilities (including bodily health, emotions, practical reason, and affiliation)¹⁰ is designed to capture the ethical components of a flourishing human life. A life that is good in a distinctly human way – not only minimally acceptable – is constituted of these capabilities instantiated as real freedoms, by which is meant that they are actually – not only nominally – available for each person to choose and pursue. Nussbaum’s is basically an ethical theory of what a good human life looks like, but she regards it also as an account of human rights.

It needs to be noted that in Nussbaum’s version, the capabilities approach does two things: it identifies a set list of components of a good human life, and it makes a distinction between the actual enjoyment or exercise of these good things (functionings) and real opportunities for enjoying or exercising them, should one so wish (capabilities). Whether or not a person exercises freedom of speech or enjoys community with others should be a matter of their own choice and nothing else – the right to it is the right to the capability to use it or not – so Nussbaum’s account makes human rights into a pure opportunity concept.¹¹

⁶ Chris Fox & Guglielmo Feis, “‘Ought Implies Can’ and the Law.” *Inquiry*, 61(4), 2017, pp. 370–393. <https://doi.org/10.1080/0020174X.2017.1371873>

⁷ Henry Shue, *Basic Rights: Subsistence, Affluence, and US Foreign Policy*, 40th Anniversary Edition. Princeton: Princeton University Press, 2020.

⁸ Henry Shue, “Interlocking Rights, Layered Protections. Varieties of Justifications for Social Rights”, in: *Being Social: The Philosophy of Social Human Rights*. K. Brownlee, D. Jenkins, and A. Neal (eds.). Oxford: Oxford University Press, 2022, pp. 18–30.

⁹ Charles R. Beitz, *The Idea of Human Rights*. Oxford: Oxford University Press, 2009, p.109

¹⁰ Martha C. Nussbaum, *Creating Capabilities: The Human Development Approach*. Cambridge, Mass.: The Belknap Press of Harvard University Press, 2011, p.33f.

¹¹ Martha C. Nussbaum, *Creating Capabilities: The Human Development Approach*. Cambridge, Mass.: The Belknap Press of Harvard University Press, 2011, p.25. See Amartya Sen’s critique of Nussbaum’s conflation of capabilities and rights in Amartya Sen, “Human Rights and Capabilities”. *Journal of Human Development*, 6(2), 2005, pp. 151–166. <https://doi.org/10.1080/14649880500120491>

Framing her capabilities approach as an account of human rights, Nussbaum introduces a feature that is familiar from the minimalist theories of human rights that we have just looked at, but which seems odd in the context of an aspirational theory of the morally good life: a threshold level of sufficient capabilities.¹² The right to human capabilities (or maybe rights *as* human capabilities; she describes her account as a “species” of a human rights approach)¹³ is, we are given to understand, not an opportunity right to a flourishing life, but an opportunity right to a sufficient capacity to choose a flourishing life. What that might mean is left unspecified and it is not immediately obvious what the condition for it would be. What is a sufficient level of capacity to choose to live a good life? The question just barely makes sense, and the approach cannot produce a criterion from within itself to settle it. The one criterion one could think of is the one offered by the logics of the rights-duties correlation and the ethical restriction that duties need to be reasonable and actionable. Consequently, the only non-arbitrary criterion I can think of for settling the level or range of capabilities that people can claim as their human rights is the capacities of the duty holders – governments and their institutions – to deliver, which means that people’s human right – conceived as real opportunities – to choose to live a good life is determined by the contingent condition of whether they live in a poor or rich society. Surely this cannot be good enough, particularly not if the moral imperative from which we are supposed to start is the inherent equality of all human beings.

The traditional minimalist theories, exemplified by Shue and Beitz, are explicit about the fact that they do not aspire to capture anything resembling a good life. They restrict the function of human rights to bare necessities with the intention of making them actionable, politically unobjectionable, and universal in a practical sense. The more complicated minimalism of Nussbaum’s capabilities approach introduces a morally arbitrary cut-off point into an allegedly universal theory of the good human life, leaving the question of what it means to have sufficient opportunities to choose to live a good life to the logic of reasonable duties, which are politically contingent.

One thing that these accounts have in common is that they are designed so as to not have applicability to inequalities above or beyond a certain cut-off point and so cannot provide arguments for why such inequalities might be wrong. I say “above or beyond” for a specific reason: the cut-off point can be horizontal or vertical. (I do not mean to load the terms horizontal and vertical with too much significance; they are mainly heuristics to illustrate a point.) By a horizontal cut-off point, I mean a *sufficiency* restriction such that the right to some good (say education or food) is satisfied in full by a sufficient (by some standard) provision of that good.¹⁴ Say that the right to education is spelled out as a right to literacy and numeracy. In that case, the right to education is satisfied *in full* by making sure that everyone can read, write, and do arithmetic. The fact that a few do not get any education beyond that, while some get vocational training and others study poetry or quantum physics at university, would then be neither here nor there for the *human right* to education, conceived as a right to literacy and numeracy. The horizontal cut-off point can be higher or lower depending on the range of interests one takes human rights to protect; it would be higher for Nussbaum than for Shue.

¹² Nussbaum, *Creating Capabilities*, p.45, 76.

¹³ Ibid. p.62.

¹⁴ Lena Halldenius, “Human Rights and Republicanism”, in *The Oxford Handbook of Republicanism*. Frank Lovett and Mortimer Sellers (eds.). Oxford: Oxford University Press (online edn), 2024, <https://doi.org/10.1093/oxfordhb/9780197754115.013.36>

By a vertical cut-off point, I mean a *relevance* restriction such that the protection or promotion of some interests do not qualify as human rights at all because they are not seen as vital enough, or are of the wrong kind, or cannot be satisfied on any level without unacceptable costs to others. What qualifies as a human right at all will vary depending on your theoretical commitments. The most well-worn example is the notion that socioeconomic interests do not qualify as human rights, either because they are of the wrong kind (they are seen as aspirational goals for societies, not claims that individuals can make against those societies) or too costly to qualify as duties. The relevance restriction disregards the interdependence of various determinants for even basic rights satisfaction. We know, for example, that the single most important factor for a child's capacity to benefit from education is not the quality of teaching, but their family's socioeconomic position.¹⁵

Theorists who employ these restrictions might still believe that inequalities above or beyond them are or could be wrong but, if so, they are wrong for other reasons than rights, since their human rights theory does not apply to them.

The equality puzzle

With human rights minimalism in mind, here is the puzzle. It has two components: first, highly influential theories of human rights such as the ones I have discussed are predicated on a commitment to the moral equality of human beings, yet are designed to be inapplicable to even stark inequalities in living conditions and opportunities, thus implicitly justifying such inequalities. In order to appear commanding, politically unobjectionable, or actionable, they exclude inequalities that would count as unjust from the point of view of distributive or relational justice – both morally and logically – from their range of concerns. The presumed moral equality of persons does not even function as a side-constraint for what real-life inequalities that can be acceptable. It is worth bearing in mind that wherever the cut-off point is, only the relatively disadvantaged are affected by it; the privileges of the rich and powerful are not impacted at all.

The second component of the equality puzzle is to do with the rights-duties correlativity. On this logic, what rights people have and what those rights require function as a dependent variable, whereas the duties of whoever is the duty-bearer (normally the state and its institutions) is the independent variable. It is not independent in the sense of being changeable, but rather in the sense that it does not depend on anything other than itself; it sets its own conditions.

Shue maintains that “society must not multiply rights beyond necessity or beyond the capacities of individuals to bear the duties inherent in the institutions protecting the rights.”¹⁶ It would be “excessively burdensome” to try and protect “unlimited numbers of interests”, as if there is no middle ground between unlimited interest satisfaction and a “minimally decent life”. But more to the point here: what we can note with some consternation is that the capacities of the institutions feature merely as observable facts to which the range of claimable rights must defer.¹⁷

¹⁵ Karl Alexander, Doris Entwisle & Linda Olson, *The Long Shadow: Family Background, Disadvantaged Urban Youth, and the Transition to Adulthood*. New York: Russell Sage Foundation., 2014

¹⁶ Shue, “Interlocking Rights, Layered Protections.” p.20.

¹⁷ For critique of this position, see John Tasioulas, “The Moral Reality of Human Rights”, in: *Freedom from Poverty as a Human Right: Who Owes What to the Very Poor?*. Thomas Pogge (ed.). Oxford: Oxford University Press, 2007.

This means that as long as the actual or assumed limitations of institutions' capabilities restrain what rights people have in relation to them, there cannot be a claim to more or better institutional capacities. But what if the capacities of the institutions are what they are for reasons that are unfair or suboptimal? Say that the capacities of the institutions to satisfy human needs and interests would be vastly improved if the rich were taxed more. Well, if we have already decided that the concept of rights is constructed in such a way that rights have a cut-off point above or beyond which rights-reasoning has no applicability, that the cut-off point is set in terms of what is "sufficient" for a human life to be acceptable by some standard, and the outer limit of that standard is set in terms of actual or assumed limits to institutional capacities, then the range of claimable rights necessarily defers to institutional *status quo* and cannot function as demands for institutional change towards stronger rights supporting capacities.

Compare the approach of a vaguely Rawlsian account of justice, where the overarching question is something like "how do the institutions of society need to be (re)organised in order for the outcome or their workings to be fair for all?" or "how do the institutions of society need to be (re)organised in order for the worst off to be as well off as possible?" On human rights minimalism, the overarching question instead seems to be "what subsistence level can the worst off reasonably expect to have to settle for, given that the institutions that control their circumstances are (assumed to be) what they are?" For anyone who is concerned with distributive justice for egalitarian reasons, this should be the wrong question to ask.

If we are seriously committed to the moral equality of human beings, and the function of human rights in political philosophy is to promote some morally arbitrary threshold above which inequalities are unobjectionable however big they are, then maybe one should abandon human rights thinking and go for distributive justice or relative egalitarianism directly. But that is not what I will suggest. I will instead go on to suggest that we explore the potential of thinking of equality and human rights in a different and more challenging way.

For a moral commitment to equality of persons to have any bearing on those persons' real-life circumstances, then equality cannot merely be an honestly felt yet practically inert moral starting-point, but a requirement of political justice on the *function and outcome* of institutions and the practices we live by.¹⁸ This requires that we address both components of the equality puzzle: the idea and logic of a cut-off point and rights as a dependent variable. The first thing we need to do in order to get there is to address this question: what is the point of human rights?

The rationale: what is the point of human rights?

What is the overarching aim or point of human rights? What do we want human rights to represent and do in the world? For what purposes should we reason in these terms at all? In this section, I take inspiration from Elisabeth Anderson's analysis of "the point of

¹⁸ There are affinities between my discussion of the equality puzzle – the political inertness of this moral principle in combination with minimalism – and Michael Goodhart's critique of "dignity" as the foundation of human rights. Making dignity the moral foundation of human rights disregards how power shapes dignity in practice. Instead, he argues, human rights should have an emancipatory function that constitutes dignity in practice. Michael Goodhart, "Constructing dignity: Human rights as a praxis of egalitarian freedom". *Journal of Human Rights*, 17(4), 2018, pp. 403–417. <https://doi.org/10.1080/14754835.2018.1450738>

equality.”¹⁹ Anderson argues that whichever criteria one suggests for what equality requires or does not require, or whatever critique one puts forward concerning what equality requires or does not require, will reveal what one takes the main aim or point of equality to be. So why are we concerned with equality?

The main target of Anderson’s critical analysis is “luck egalitarianism”, the highly influential idea in philosophy that “the fundamental aim of equality is to compensate people for undeserved bad luck.”²⁰ This principle has undoubted intuitive appeal. It seems reasonable that people whose circumstances are worse off than others through no fault of their own should be compensated for that. Think of people who are born into poor or dysfunctional families, or with a genetic disease, and who live a life of relative poverty or ill-health because of it. It seems obvious that their relative disadvantage is unjust and should be rectified as far as reasonably possible. But is it really the fact that their poverty or ill-health is caused by bad luck that make their situation unjust? And if it is, what does that require? Should they be compensated up to a counterfactual point of what their situation might have been if they had not been unlucky? And what is that? The average?

Anderson notes that if we take compensation for bad luck to be the main aim of equality, we will find ourselves preoccupied with the wrong kinds of questions, and philosophers have indeed devoted a good deal of effort to questions that frankly seem beside the point, such as: if there is an equal right to family life yet I am unattractive to potential partners, should I get the opportunity to bid for one in a pool of eligible single people? If I am born with a tendency to envy and therefore suffer terribly knowing that other people have more than I do, should some of their resources be redistributed to me so that this undeserved character trait is not allowed to lower my quality of life?

If compensation for bad luck is the point of equality, then we will also be locked in practical riddles like: if I am poor partly because of inherited poverty and partly because of some ill-advised decisions that I took, should I then be partly compensated and, if so, compared to what? How much does it matter if my ill-advised decisions are also a matter of bad luck (say that my parents worked long hours on minimum wage and were too tired to teach me practical reasoning).

The fact that luck egalitarianism prompts these kinds of questions as serious matters of concern shows that it has lost touch with why equality matters, and particularly why and how it matters politically. It assumes that every morally relevant aspect of a person’s life situation is in principle traceable to a cause in that person’s history, and that looking for such a cause is a morally and politically meaningful endeavour. It individualizes responsibility in a condescending way, blames people for their misfortunes, and focuses narrowly on privately enjoyed goods, as if inequality is sorted out one person at a time. As Anderson points out, this kind of egalitarian thought is oblivious to the political aims of egalitarianism and the concerns of actual egalitarian movements, but also, I would add, to political explanations of inequalities and why they persist.

Anderson contrasts luck egalitarianism to her favoured political account of why equality matters for justice: democratic equality. Democratic equality has two interconnected aims: the negative aim to end oppression and the positive aim “to create a community in which people stand in relations of equality to others.”²¹ Historically, what egalitarian movements have opposed are social orders based on hierarchies, where people are ranked as superior or inferior and the disadvantaged need to present themselves as

¹⁹ Elizabeth S. Anderson, “What is the Point of Equality?” *Ethics*, Vol. 109, No. 2, 1999, pp. 287-337.

²⁰ Ibid. p.288.

²¹ Ibid. 288f.

pitiable or deserving in order to qualify for a hand-out. The primary egalitarian concern here is equality of status: to be socially and politically included and not vulnerable to contempt, exploitation, and domination.²² Luck egalitarianism, she claims, does not conceptualise the basic egalitarian principle to treat everyone with equal concern and respect; it violates it, by ranking people's worth according to their conditions, talents and personal histories, willing to leave people to their fate if general opinion is that they should have made smarter choices.

I agree with Anderson on the point of equality. Her explication of the negative and positive aims of what she calls democratic equality also fits perfectly with the republican account of political freedom as non-domination, which I am on record for having defended.²³ Securing non-domination, such that no one lives precariously under arbitrary or unaccountable powers, be it in social life, the workplace, or the public domain, is a matter of institutional arrangement, distribution of resources, and a culture of respectful deliberative practice.

This is the point of equality, but we can put it in a different way in order to show that it should also be the point of human rights: if we really are committed to the moral equality of all, such that everyone is equally a rights holder, then a society characterized by what Anderson calls democratic equality is the society to prefer, for reasons of human rights.

I will soon expand on this. For the moment, let me note that human rights minimalism is similar to luck egalitarianism in these two regards: first, having lost sight of the political point of their respective projects, they apply conditions for equal treatment or rights satisfaction in discrete situations that leave them with nothing to say about inequality overall. Second, they disregard the import of institutional design. We will take a quick look at the logic of luck egalitarianism in relation to these problems, and then move over to how this relates to human rights minimalism. Luck egalitarianism, as we will see, breaks down the moment we zoom out from distinct cases and look at the political picture. And so, I will suggest, does human rights minimalism.

Here is an example: say that I already live on a relatively low income when a change in tax policy leaves me even worse off than before, both in absolute and relative terms. It so happens that the income-bracket I am in is hit hardest by the new rules, while top-earners get a tax relief. I now need to get by on less, while the gap between me and the rich has increased. The policy change is prompted by a wealthy elite with the power to influence politics to their advantage by threatening to move their assets off-shore. Is this outcome a matter of bad luck for me? It seems obvious that it is, even more obviously so if I did not even vote for whoever is now in office. I am made worse off through no fault of my own and so have a luck-egalitarian reason to be compensated. It is not my relative poverty that grounds the compensation claim, but the fact that I did not bring it upon myself.

By the same logic, comparatively privileged people should also be compensated if, say, they are made worse off than before as a consequence of a new wealth tax that redistributes resources to the poor. Say that they now suffer terrible anxiety because they

²² Ibid. p.312.

²³ Lena Halldenius, "Freedom Fit for a Feminist? On the Feminist Potential of Quentin Skinner's Conception of Republican Freedom." *Redescriptions: Political Thought, Conceptual History and Feminist Theory*, 17:1, 2014, pp. 86-103. Lena Halldenius, "Neo-Roman Liberty in the Philosophy of Human Rights". In: *Rethinking Liberty Before Liberalism*. Hannah Dawson & Annelien de Dijn (eds), Cambridge: Cambridge University Press, 2022.

had to give up their much treasured summer house and are no longer as admired for their lifestyle as they once were. This is a matter of bad luck for them: the new law is not their doing and it is not their fault that they have grown up in a society that makes people addicted to wealth.

From the point of view of luck egalitarianism, this implies that anyone who is relatively disfavoured by a political decision they cannot control, no matter what the decision is, should *pro tanto* be compensated for its effects on them. Consequently, any political or policy decision that has a relative negative impact on some individuals or groups could generate a compensation claim based on bad luck. Any such decision would need to unravel its own effects, making luck egalitarianism practically useless on the level of politics and policy.

A point I wish to make is that luck egalitarianism might have intuitive appeal in everyday interactions and discrete cases, but by refocusing our attention to structure and policy, we can see that its logic makes it politically self-defeating. I suggest that human rights minimalism suffers from a similar problem: it may be predicated on a principle of moral equality, but it sees the point of human rights to be the satisfaction of basic human interests against certain threats, not to end oppression and promote a culture of democratic equality. The outer limits of those claimable interests are set by whatever duties the requisite institutions can reasonably take upon themselves. These are the two components of the equality puzzle: why would an egalitarian subsume human rights under the idea and logic of a cut-off point and make rights into a dependent variable? Let us now do what we did with luck egalitarianism: by zooming out to the level of institutional structure, we will see human rights minimalism defeating itself.

Incapacity by design

What makes institutional capacities to be what they are? If institutional capacities determine reasonable duties, which in their turn determine what rights can be claimed, then this seems to be a question of crucial importance. A point that I will try to make in this section is that institutional capacity is partly shaped by prevailing inequalities in the priority of interests, and that this goes some way in showing that we have reason to reject human rights minimalism if we care about moral equality. Let's start with an example.

Economic inequalities in Sweden have increased rapidly since the 1990s,²⁴ and the reasons are not mysterious. Some of the drivers are the marketization of public services and access to housing, which have increased segregation and keep people in poverty, while tax-reliefs on wealth, inheritance, and top earnings have accelerated capital income and wealth-concentration. Sweden is a rich country, but things like public-service spending, level of tax progressivity, and labour rights are indicators of economic inequality in all economies.²⁵ What this shows is something we already know: inequality does not just happen. It is not a circumstance to be observed and maybe compensate for after the fact. Inequalities are constructed and to a large extent a function of political decisions and institutional design. Inequalities by design can be deliberate – like tax relief for the rich –,

²⁴ Swedish Fiscal Policy Council, *Economic inequality in Sweden. An overview of facts and future Challenges*. Särskilda studier från Finanspolitiska rådet, 2024/1, 2024. Lars Calmfors and Jesper Roine, "Increasing Income Inequality in the Nordics" *Nordic Economic Policy Review*, 2018.

²⁵ Jo Walker, Matthew Martin, Emma Seery, Nabil Abdo, Anthony Kamande & Max Lawson, *The Commitment to Reducing Inequality Index 2022*. Development Finance International, Oxfam, 2022. DOI 10.21201/2022.9325, pp. 8-14.

they can be unintended but foreseen side-effects – like increased health inequalities after cost-saving cuts to medical benefits –, and they can conceivably also be unforeseen side-effects, if the links are sufficiently indirect or uncertain.

Still, the personal-history approach to justified inequality that luck egalitarianism exemplifies is widely present in social perceptions about inequality. It informs the stubborn norm of meritocracy, which depends for its reasonableness on it being true that people's opportunities are wholly under their own control and that the rich and powerful are so because of talent and graft, while the poor are poor because of bad choices.²⁶ Inequality is, it seems, easily normalised into what people take for granted. The acceptance of inequality as normal is piggybacking both on the intuitive appeal of meritocratic principles and a wide belief that they actually work, and that existing inequalities reflect choices that people have made. It has been shown in empirical studies that increases in inequality do not prompt as much critique as one might expect because people's attitudes adapt and become more accepting of inequalities the more unequal their society is or the more unequal they believe it to be. People's perceptions of legitimacy favour existing circumstances.²⁷ In unequal societies, people are also more prone to attribute inequalities – however incorrectly – to meritocratic factors (like the rich being rich because they work harder) rather than to structural factors, like discrimination, fiscal policies that favour the rich, labour exploitation, and inherited poverty.²⁸ In its latest report on poverty and economic inequality, Oxfam notes that billionaire wealth is rising sharply and wields immense oligarchic power. Their calculation is that “60% of billionaire wealth comes from either inheritance, cronyism and corruption or monopoly power.”²⁹

The capacities of various institutions depend, of course, on general resource levels, but like inequalities also on structure and design. This fact is disregarded if you make the scope and level of rights defer to institutional capacities as if they are just *there*, like a stable reference point. So, first, institutions do not just *have* certain capacities. Institutional capacity is a matter of funding priorities, staffing, and budget allocation, which are practical matters but also ideological ones. This is part of what I mean by institutional design. Second, there is a feed-back loop between whatever inequalities, hardships, and disadvantages that exist in a society and the capacities of relevant institutions. Capacities are relative to the size and difficulty of the task. If budget and staffing resources of a social service institution remain stable, while the social problems the institution is meant to deal with increase, then the institutional capacity decreases. When Swedish public housing companies were marketized, homelessness increased. Homelessness is a constructed problem, a function of the commodification of housing, which then lands as a task for

²⁶ Michael Young, *The Rise of the Meritocracy*. London: Thames & Hudson. Sandel, Michael J. (2020) *The Tyranny of Merit. What's Become of the Public Good?* New York: Farrar, Straus and Giroux, 1958.

²⁷ Kris-Stella Trump, “Income Inequality Influences Perceptions of Legitimate Income Differences”, *British Journal of Political Science*, 48, 2017, pp. 929–952. doi:10.1017/S0007123416000326

²⁸ Jonathan J. B. Mijs, “The paradox of inequality: income inequality and belief in meritocracy go hand in hand”. *Socio-Economic Review*, Vol. 19, No. 1, 2021, pp. 7–35, doi: 10.1093/ser/mwy051. See also my egalitarian arguments against threshold thinking in Lena Halldenius, “Why Limitarianism Fails on its Own Premises – an Egalitarian Critique.” *Ethical Theory and Moral Practice*, 25, 2022a, pp. 777–791. <https://doi.org/10.1007/s10677-022-10337-1>.

²⁹ Anjela Taneja, Anthony Kamande, Chandreyi Guharay Gomez, Dana Abed, Max Lawson and Neelanjana Mukhia. *Takers, not Makers. The unjust poverty and unearned wealth of colonialism*. Oxfam International, 2025. DOI: 10.21201/2024.000050

under-resourced social services. What, then, is the institutional capacity to deliver on the duty to protect the right to housing, and where is that duty located?

When Shue says that “society must not multiply rights beyond necessity or beyond the capacities of individuals to bear the duties inherent in the institutions protecting the rights,”³⁰ it is worth bearing in mind the complication that the hardships or disadvantages that a right is meant to address – like homelessness – can itself be an institutional construct. What institutional capacities there are will reflect the priority of the problem. There are no “duties inherent in the institutions”. Which institutions protect which rights against what threats will depend on the analysis of what kind of problem the right is about. What right can be inferred from the fact of homelessness? A right to temporary shelter? A right to a permanent and safe home if you do not have one? Institutional security against the risk of losing your home if you do have one? The best ways to secure people against the risk of losing their homes might be to regulate the tenants’ market (which in itself does not cost the public institutions anything) or – since unemployment is a main cause of homelessness – to protect people against the risk of losing their jobs through employment security and the right to unionize.

The point is that there is no set of duties inherent in an institution that can settle any of these questions, partly for the reason that different institutions are involved and different capacities required depending on what the right is supposed to be about.

Another complication that sufficiency levels in human rights minimalism ignore is that inequalities (regardless of whether they are under or above some cut-off point) negatively affect things that unequivocally are basic human interests or standardly accepted as human rights. Economic inequalities – not just poverty – have social costs³¹ as well as psychological ones: wealth inequalities prompt hierarchical thinking, cause stress, and lower wellbeing.³² We know from before that economic inequalities have detrimental consequences for public health, and not only for the deprived but throughout the economy.³³ This means that inequalities lower the capacities of health care services, since capacities are relative to needs.

Another crucial factor for human rights is that wealth concentration enables the rich to nudge politicians into favouring their interests, thus negatively affecting the political rights of the relatively poor.³⁴ Inequalities – also above sufficiency levels, wherever such levels are set – threaten institutional capacities to protect and promote also basic human interests, like health and political liberties.

There is no way to escape the fact that the primary question is not what institutions can do – because what institutions can do and which institutions that are involved, etc., are contingent matters in the way I have shown – but the normative one of what institutions need to be able to do, given what we take the point of human rights to be. Only then will

³⁰ Shue, “Interlocking Rights, Layered Protections.” p.20.

³¹ Joseph E. Stiglitz, *The Price of Inequality: How Today's Divided Society Endangers Our Future*. New York: W. W. Norton & Company, 2012. Danny Dorling, *Injustice. Why Social Inequality Still Persists*. Bristol: Policy Press, 2015. Thomas Piketty, *The Economics of Inequality*. Translated by Arthur Goldhammer. Cambridge, Mass.: The Belknap Press of Harvard University Press, 2015. Ruth Lister, *Poverty*. Cambridge: Polity Press, 2021.

³² Richard Wilkinson and Kate Pickett, *The Inner Level: How More Equal Societies Reduce Stress, Restore Sanity and Improve Everyone's Well-being*. London: Penguin Books, 2019.

³³ Richard Wilkinson and Kate Pickett, *The Spirit Level: Why Equality is Better for Everyone*. New Edition. London: Penguin Books, 2010.

³⁴ Olivier De Schutter, *Eradicating poverty beyond growth. Report of the Special Rapporteur on extreme poverty and human rights*. United Nations, Human Rights Council, A/HRC/56/61, 2024.

accounts of human rights be accounts of political justice, rather than of institutional convenience.

To reiterate: by human rights minimalism I mean an account that restricts human rights to a level of sufficiency above or beyond which inequalities have no moral relevance, and which makes duties prior to rights, such that rights are dependent on assumed or actual institutional capacities. I have argued that human rights minimalism fails by its own standards on two counts. It is predicated on a principle of moral equality of human beings, yet can produce no arguments against even the starkest inequalities of living conditions, thus showing the arbitrariness of the notion of a sufficiency line. And by making rights a dependent variable to the reasonableness of duties, what rights people have will in effect not be the “sturdy objects to ‘stand upon,’”³⁵ that human rights minimalists want them to be, but the product of contingent institutional arrangements.

Towards human rights as levers for equality

My critique of human rights minimalism importantly includes critique of the human rights logic according to which rights function like a dependent variable under allegedly stable institutional duties that restrict what can be claimed as rights. A possible inference could be that I favour moving away from rights language and the rights-duty correlation towards principles of distributive justice that do not incorporate any notion of claiming. But given the point of human rights that I have just defended – the point of human rights is to end oppression and promote a political culture of democratic equality – there are important values to appreciate in the notion of claiming and the status position that claiming entails.

Human rights are not just another name for things that we value. Human rights also have a deontic feature: they mark a commanding relation of claims and obligations. Violating someone’s right is not merely wrongdoing, it is doing wrong to somebody who is recognized as having morally significant standing in relation to other members of the community and to society’s institutions. Seeing people as claimants is to see them as agents and not as passive beneficiaries. This means that satisfaction of interests can be rights affirming or not depending on the conditions and circumstances. A good – be it education, housing, religious freedom, or something else that we accept as the proper object of a right – can be enjoyed *as a right* or as a matter of chance or charity. Being subordinated to unaccountable powers is domination and nullifies the point of human rights, even if those powers happen to satisfy basic interests like food and shelter. Human rights can therefore not simply be a list of things that people should be able to enjoy; human rights importantly have a certain *modality*.³⁶ The goods on the lists need to be enjoyed securely as claims within a rights supporting democratic culture. Rights do not merely protect people from the worst forms of hardship; they invest them with powers to act and recognized status positions as claimants to such powers to act.

Consequently, rights should protect against subjection to powerful interests and artificial interference, but restricting rights to *claims* alone gives them a too restricted conceptual space: claiming is predicated on status positions, and the point of claiming is to secure powers to act freely.

Here is an example. One thing that I wish to emphasize with it is that things that we are used to thinking about as *one* right is in fact made up of a bundle of status positions,

³⁵ Joel Feinberg, “The Nature and Value of Rights”, *Journal of Value Inquiry*, vol. 4, 2970, pp. 245-257.

³⁶ Halldenius, “Neo-Roman Liberty in the Philosophy of Human Rights.”

claims and powers to act; and have a variety of social determinants. I will use health as an example.

Onora O'Neill has famously argued that the right to health, as it is formulated in article 12 of ICESCR as a "right to the highest attainable standard of health", does not make sense as a right because it cannot be anybody's duty to secure it. It is too vague, complex, and excessively demanding.³⁷ O'Neill insists that for rights to be claimable, duties need to be well specified and clearly allocated, like the duty of a physician to provide appropriate healthcare. This is classic human rights minimalism.

It is certainly true that health is a complex and demanding phenomenon, but that does not mean that the interpretation and achievement of it is mysterious or cannot be analysed in terms of a program of action.³⁸ The determinants of health are susceptible to social analysis and indicative of something of crucial importance and wider application, beyond matters of health: people suffer ill-health as a consequence of circumstances that have nothing to do with access to healthcare, but with other things like anxiety from poverty, or loneliness.³⁹

But if, even for the sake of argument, we were to restrict the right to health to a right to healthcare, we would need to reckon with the fact that within a healthcare institution I can claim care only if I am credited with the status position of a patient to whom care is due, which (as I point out in "Neo-Roman Liberty in the Philosophy of Human Rights")⁴⁰ I might not be if I am an undocumented migrant or too poor to have health insurance. The institutionally relevant status position is logically prior to the capacity to claim anything at all. So, the entry ticket to the institution – say a public healthcare system – might have very little to do with the specifics of what that institution does – provide healthcare – or with my interest in being treated for an illness. My status position in relation to the healthcare system will be predicated on other things, like migration laws, income security, or risk pooling in social insurance.

Importantly, the implication is not that a recognised status position needs to be established first in order for anything that follows to count as rights. Again, the point of human rights is to end oppression and establish a democratic culture, with the space for protest and contestation that democracy mandates, and we need to recognize how activism and resistance work: by acting out powers that you do not have or making claims you know will not be recognised, as a kind of performance of status positions you are denied.⁴¹

Now, if we were to acknowledge that the right we have in mind when talking about health is not merely a right to healthcare but a right to actually live a life which is as healthy as possible, then the analysis of what the protection and promotion of such a right require will be an analysis of those circumstances of life that are usually referred to as the social determinants of health.⁴² Since we know that health is inhibited by poverty,

³⁷ Onora O'Neill, "The Dark Side of Human Rights", *International Affairs*, 81, 2, 2005, pp. 427-439, p.429. For a critical discussion, see J. Wolff, "The Demands of the Human Right to Health". *Proceedings of the Aristotelian Society, Supplementary Volumes*, 86, 2012, pp. 217-237.

³⁸ World Health Organization, *Operational framework for monitoring social determinants of health equity*. Geneva, 2024. Licence: CC BY-NC-SA 3.0 IGO.

³⁹ Lister, *Poverty*. Liao, S. Matthew, "Do Older People Have a Right to Be Loved?", in: *Being Social: The Philosophy of Social Human Rights*. Kimberley Brownlee, David Jenkins, and Adam Neal (eds). Oxford: Oxford University Press, 2022, pp. 110-126.

⁴⁰ Halldenius, "Neo-Roman Liberty in the Philosophy of Human Rights."

⁴¹ Alison Kesby, *The Right to Have Rights: Citizenship, Humanity, and International Law*. Oxford: Oxford University Press, 2012, p.118f.

⁴² WHO, *Operational framework for monitoring social determinants of health equity*.

homelessness, and insecure working conditions, the right to health will have to include protection from poverty, homelessness, and insecure working conditions.

There is nothing weird about this conclusion, in fact it is logically mandated. If you want X, then you are logically committed to want the necessary means to X. If you do not, your commitment to X is spurious, or nominal at best.

The language of social determinants to refer to those lived circumstances that are known to be necessary, or empirically reliable securities for a desired end, is well established in the case of health. But in fact, all goods that we talk about in terms of rights have social determinants. Given that the point of human rights is to do away with oppression, exploitation and precarity (negative aims) and establish equal standing in a democratic culture (positive aims), then social determinants of rights will also be both negative, that is, removing hindrances, and positive, that is to secure real capacities, all the while remembering the modality of rights: a good can be enjoyed or practised *as a right*, with the security that entails, or it can be held contingently, under precarious conditions, as a matter of chance or charity.

Let me use a familiar example in order to show how the interpretation of something as a right, what that means, and why it is important are affected by thinking of the point of human rights in the way that I have suggested, while acknowledging rights modality. One of the articles in the Universal Declaration of Human Rights which is most routinely criticised as not the proper object of human rights is article 24: 'Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay'. The reasons for dismissal of this provision have been that it is not basic or urgent enough to qualify as a proper human rights concern or that it is of the wrong kind entirely; these are classic minimalist arguments.⁴³ In fact, predictable time off from work is crucial for life quality. And, crucially given the rationale of human rights that I am defending – this is a matter of countering vulnerability to arbitrary power on the labour market. Elizabeth Anderson has pointed out how partial we tend to be in our concerns regarding power relations.⁴⁴ As democrats, we are committed to guarding the rights of citizens against the dominating power of the state, while accepting as normal that paid work – which for most people is necessary for survival – takes place in de facto dictatorships. Regulating the labour market and the conditions of paid employment along the lines of article 24 is thus not primarily a matter of making sure that workers get holidays, but to rectify the unaccountable powers that employers have on an unregulated labour market and to equalize relations between employers and employees. That is why a right like Article 24 should be regarded not only as fully justified labour right, but as a fundamental political right to the capacity to assert oneself in vital relations that shape one's circumstances of life. Without provisions like article 24, all people who depend on paid employment – and that is most of us – would be dependent on employers' good will and subject to their arbitrary power.⁴⁵ So, Article 24 does not only express a claim to regulation of working hours and paid holidays but, more fundamentally, a status-position

⁴³ For a discussion of arguments for and against labour rights as human rights, see Mathias Risse, "A Right to Work? A Right to Leisure? Labor Rights as Human Rights", *Law & Ethics of Human Rights*. Vol. 3, issue 1, 2009.

⁴⁴ Elizabeth Anderson, *Private Government. How Employers Rule Our Lives (and Why We Don't Talk about It)*. Princeton and Oxford: Princeton University Press, 2017, p.48ff.

⁴⁵ For a radical view of labour rights as human rights using a similar argument, see Alex Gourevitch, "The Right to Strike: A Radical View." *American Political Science Review*. 112:4, 2018, pp. 905-917. doi:10.1017/S0003055418000321

in relation to employers. Remember that I said that rights typically are a bundle of status positions and claims, supporting powers to act. Before you can claim, you need to be credited as a claimant: a free person to whom others are accountable. For this rationale, the sufficiency and relevance criteria of human rights minimalism are neither here nor there. They are, if nothing else, not designed to say anything about the conditions in which I stand to others, nor to acknowledge the impact of relative economic power, be it on the labour market, housing market, or any other sector of life.

The primary function of human rights must be to support the equalisation of power, institutionally securing status positions requisite to claiming. In formulating the equality puzzle, I emphasized that equality cannot merely be a moral starting-point, but a requirement of political justice on the function and outcome of institutions and the practices we live by. Human rights should work as levers for equality, by which I mean that what rights are and what they require need to be interpreted such that they support and set relations on a path towards equality. Human rights minimalism instead disregards inequalities above levels of alleged sufficiency, thus institutionalising inequalities that keep people dependent and subordinate to unaccountable powers.

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