



# **Are there natural welfare rights?**

**Adina Preda**  
**[Predaa@tcd.ie](mailto:Predaa@tcd.ie)**

# Some legal rights

- Welfare or socio-economic rights
    - Associated with the welfare state
- UDHR, ICESCR

Examples:

- Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.
- Everyone, without any discrimination, has the right to equal pay for equal work.
- Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.



# Legal rights

- ▶ Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.
- ▶ Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages.
- ▶ The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. (ICESCR)

# Issue

- Legal rights (?) – progressive realisation, by states – aspirations
- Are there **moral** universal rights to socio-economic goods?

*‘The States Parties to the present Covenant **recognize...**’*

*‘Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world’; ‘All human beings are born free and equal in dignity and rights’*

- Rights – prior/independent of legal recognition – moral rights
- Can they be (universal)?

# The objection

*What is the point of discussing a man's abstract right to food or medicine? The question is upon the method of procuring and administering them. In that deliberation, I shall always advise to call in the aid of the farmer and the physician rather than the professor of metaphysics.*

(Edmund Burke)

- The professor of metaphysics (Onora O'Neill) (sort of) agrees!
  - Rights should be 'claimable' (from the farmer/physician)
  - But these ones are not; not clear who has duties and what they are



# Onora O'Neill

## *Towards justice and virtue*

p. 132: 'there is systematic unclarity about whether one can speak of **violators**, and not just contingent uncertainty about who they might be. If it is not in principle clear where **claims should be lodged**, appeals to supposed universal rights to goods and services are mainly rhetoric.'

'This is not an argument to show that there can be no universal rights to goods and services. It is an argument to show that they would have to be a particular sort of right whose counterpart obligations were distributed according to one or another institutional scheme, hence strictly speaking a special right'

# Concepts/assumptions

- ▶ Rights/claims have correlative duties
  - ▶ Rights and duties – two sides of the same coin
  - ▶ One right – one duty
- ▶ Human/universal rights – in virtue of being human
  - ▶ General = rights **of all against all**
  - ▶ Held by individuals against individuals – the ‘standard’, ‘traditional’ conception
  - ▶ Assumed by the claimability objection
- ▶ Different conception:
  - ▶ Political/practice-based – tracks the international practice of human rights
  - ▶ Rights against states; progressive realisation
    - ▶ (mere) aspirations?



# Duties

- ▶ Positive vs. negative
  - ▶ Not a matter of how it's phrased
  - ▶ The content of the duty
- ▶ Negative: to abstain/refrain from something
  - ▶ Non-interference
  - ▶ Positive to *do* or give something (to feed someone)
- ▶ Example:
  - ▶ Right to work – can be either (not be prevented from seeking work vs. be given a job or at least helped in finding one)
  - ▶ Right to education – probably positive – to be provided with education



# Clarifying the objection

- ▶ The objection:
  - ▶ rights to goods and services – not general;  
Can be held by all **but not against all**
  - ▶ Positive rights – cannot have general correlative duties
  - ▶ A positive duty cannot be owed to each and every person in the world

So not human rights in the traditional sense; 'natural', maybe 'special' (citizens' rights?)



# So what?

Fussy? Maybe

But if the objection is correct,

- the welfare state **creates** new rights; does not merely recognize/implement existing ones
- Only held (at best) against one's state – so different depending on the state
- No transnational duties that correspond to welfare rights!
- If **moral rights** to welfare – not a matter of charity or... 'pity'.



# Responses

- **2 types**
- 1. There are sufficiently determinate duty-bearers – so can be claimed from those
  - Individual or collective
- 2. Rights against states (political, practice-based conception of human rights)

# Response 1

- ▶ Positive general rights – do have correlative duties
  - ▶ (all) individuals
  - ▶ Collectives (the whole humanity)
- ▶ **Problems:**
  - ▶ Individuals
    - ▶ Cannot owe a duty to provide education or health(care)
    - ▶ But maybe different general right
    - ▶ still...duty to do/give something to each and every person in the world??
  - ▶ Collectives
    - ▶ States – not general rights
    - ▶ The whole of humanity ?? – can it have duties?



# Response 2

- ▶ Rights against states
  - ▶ Effectively denies that we should understand human rights as 'natural', pre-institutional rights
- ▶ But then
  - ▶ 1. it doesn't answer the problem we wanted to answer
  - ▶ 2. (socio-economic) rights don't have the same content for everyone
    - ▶ It depends on the state
    - ▶ Doesn't seem to be what we want of human rights; citizens' rights?

# My suggestion/illustration

- ▶ A right to food – as a general/ab initio right
  - ▶ An abstract right to a good against each and every person = an indefinite number of rights against anyone
  - ▶ Can translate in more complex special/legal rights
- ▶ Similar to a right to feedback that my students have!
  - If everyone claimed it, not possible (feasible?) to comply
  - Set aside some time for feedback
  - Still owed to each and every student