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سهیل کلچین



Human Rights, Pragmatism and the Limits of Moral Theory: A Review of Human Rights as Politics and Idolatry

حقوق بشر، پراگماتیسم و محدودیت‌های نظریه اخلاقی: مروری بر حقوق بشر به مثابه سیاست و بت‌وارگی

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Abstract

This article provides a critical examination of Michael Ignatieff's "Human Rights as Politics and Idolatry," delving into its analysis of the philosophical and practical underpinnings of human rights. The paper aims to evaluate Ignatieff's assertion that human rights should be justified based on their tangible benefits rather than abstract moral theories. Using a critical-analytical approach, the study scrutinizes Ignatieff's emphasis on the political aspects of human rights and assesses his position in light of criticisms that highlight potential oversights in moral and practical considerations. The analysis explores how Ignatieff grapples with the challenges of nationalism and exceptionalism, advocating for a more balanced approach that reconciles theoretical justification with practical concerns. By integrating moral, political, and practical perspectives, the article endeavors to offer a comprehensive framework for comprehending and promoting human rights in contemporary global politics, underscoring their pivotal role in fostering justice and human dignity.

Keywords: Human Rights, Pragmatism, Exceptionalism, Moral Theory.

چکیده

این پژوهش به بررسی انتقادی کتاب «حقوق بشر به مثابه سیاست و بت‌وارگی» نوشته «مایکل ایگناتیف» می‌پردازد و تحلیل‌های او درباره بنیان‌های فلسفی و عملی حقوق بشر را واکاوی می‌کند. هدف این پژوهش ارزیابی ادعای «ایگناتیف» است که باور دارد حقوق بشر باید بر اساس فواید ملموس آن و نه مبتنی بر نظریه‌های انتزاعی اخلاقی توجیه شوند. با استفاده از رویکرد تحلیلی-انتقادی، این مقاله بر تأکید «ایگناتیف» بر جنبه‌های سیاسی حقوق بشر تمرکز کرده و موضع او را در پرتو انتقاداتی که به نادرده گرفتن ملاحظات اخلاقی و عملی اشاره دارند، بررسی می‌کند. همچنین به بررسی چگونگی مواجهه «ایگناتیف» با چالش‌های ملی‌گرایی و استثناء‌گرایی می‌پردازد و از رویکردی متوازن‌تر که توجیه نظری را با نگرانی‌های عملی سازگار می‌سازد، پشتیبانی می‌کند. با ترکیب دیدگاه‌های اخلاقی، سیاسی و عملی، این پژوهش تلاش دارد چهارچوبی جامع برای درک و ترویج حقوق بشر در سیاست جهانی معاصر ارائه دهد و بر نقش کلیدی آن‌ها در تقویت عدالت و کرامت انسانی تأکید نماید.

واژگان کلیدی: حقوق بشر، پراگماتیسم، استثناء‌گرایی، نظریه اخلاقی.

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Introduction

In the theoretical chapter of his book “Human Rights”, Michael Freeman raises the question, “Why Theory?” He starts by explaining how the United Nations¹ members agreed upon a set of human rights norms without engaging in philosophical debates about human rights or considering the criticisms made against the earlier notion of natural rights. He adds that the UN activists, including diplomats and international lawyers, actively promoted human rights by setting standards and establishing institutions and tirelessly worked together to champion human rights by addressing issues such as racism, colonialism, and political oppression. Nevertheless, these rights' philosophical foundations, particularly those listed in the 1948 Universal Declaration of Human Rights², still require strong evidence and convincing justification. Yet the question of their theoretical underpinnings remains fascinating and problematic. Therefore, it is undeniable that the theoretical foundations of human rights, as reflected in the Declaration, at least from a philosophical perspective, lack self-justification (Freeman, 2022, 64).

Human rights are studied extensively in politics, law, and social studies. However, there needs to be more focus on their philosophical foundations and reasoning and inference structure. Less attention has been paid to the theoretical dimensions of human rights partly because human rights are seen more as

1- UN

2- UDHR

something to be acted upon rather than to be thought about. Therefore, their urgent and practical need for implementation leaves little room for philosophical and theoretical contemplation. Additionally, some believe that questioning the natural foundations of human rights could disrupt their promotion, encouragement, and development. For these reasons, the origin of natural human rights and its theoretical foundations are often taken for granted (Mardiha, 2008, 298).

Human rights theory generally seeks to answer questions such as: Are there any human rights? What are their content and scope? How are they related to each other? Are any of them absolute, or may they all be overridden in certain circumstances? However, in this paper, we hope to see how pragmatism as a theory relates to human rights. Is it possible to justify human rights based on their real-world consequences instead of relying solely on abstract moral or philosophical arguments? This paper explores how human rights can be defended by emphasizing their practical benefits, such as fostering social stability, cooperation, and progress. All these efforts will be addressed from an analytical and critical overview of Michael Ignatieff's arguments, specifically his description of human rights as politics and idolatry.

Throughout the history of legal philosophy, there have been lengthy debates surrounding the philosophical and theoretical foundations of the concept of law. One of the most enduring debates is between natural rights proponents and positivists. Natural rights theories encompass a range of opinions traced back to Aristotle and Cicero, which were then combined with Christian ideas by Saint Aquinas. In the Enlightenment period, however, these ideas became secular. Again, in the 20th century, new supporters, like Leo Strauss, emerged, although today's proponents like Dworkin defend a thinner version of the natural rights theory (Wacks, 2006, 40).

The positivists also have different viewpoints on human rights. Some individuals, such as Jack Donnelly, defend the universality of human rights without relying on the natural rights theory. On the other hand, philosophers like Richard Rorty are pragmatists and do not believe in the ultimate truth in their theories. They see human rights as a pragmatic subject that needs to be progressed practically through sentimentality (Wacks, 2006, 30–40).

The abovementioned overview does not claim to be an exhaustive overview of the history of legal philosophy spanning the past two millennia. Nonetheless, it is a good starting point for addressing a practical justification of human rights. In this paper, we do not aim to delve deeply into the history of human rights theories or analyze the numerous criticisms of their foundations. Instead, we assume that almost all critical theories, including the natural rights theory that tried to justify

the foundations of human rights, have been subject to severe attacks and criticisms. However, briefly mentioning some of the most essential critiques in the next section may be beneficial.

1- Why Human Rights Pragmatism?

Human rights must be defined in relation to a diversity of values, conflicts of values, and value dilemmas within a pragmatistic theory grounded in a conception of human nature as vulnerable to harm and having moral and political agency. “To achieve this, we have to move from theory to practice”, as Michael Freeman says, or as we formulated in this paper, we should provide a “practical theory” (Freeman, 2022, 91). Unfortunately, even the best theories about human rights can't solve all these dilemmas (Jones, 1994, 94).

It is essential to understand why pragmatic justification for human rights is needed. Although works on human rights by renowned authors are thought-provoking and encouraging, it should be noted that attempts to ground human rights are fraught with difficulties. Various methods are used to ground human rights, and no simple criticism can wipe away all such attempts once and for all, except for a radical world-denying skepticism. However, each attempt is open to severe challenges, and there has yet to be a definitive answer to this problem.

All claims of human rights assume that they are justified. However, the reasons for this belief often need to be clarified. Nonetheless, political theories are divided into two types: “ideal theory” and ‘non-ideal theory.’ Ideal theory sets standards for evaluating reality, while non-ideal theory distinguishes between what is ideal and what is feasible. “Human rights theory has to steer a path between the unattainable ideal and the unacceptable non-ideal”, Freeman says (Freeman, 2022, 66).

A pragmatic approach to human rights theory is needed since the idea of human rights is subject to debate, and the various theories about human rights are bound to be controversial. Therefore, focusing too much on theory can undermine the practical application of human rights. However, the implicit theory behind human rights practice can significantly influence it, and disregarding theory may result in unsuccessful practice and an insufficient justification for such practice (Forsythe, 1989, 60).

Historically, the dominant approach to human rights is based on the theory of natural rights, which seeks to strengthen the idea that laws are based on rights and obligations grounded in the realities of the world. Legal propositions are affirmative propositions primarily deduced from mere descriptions in this theory. Does everyone have rights at birth, based on their existence as human beings? According to the theory of natural rights, the answer is yes, and the origin of these

rights is God. In secular terms, the theory posits that these rights are inherent to human beings due to their rational nature. However, Since the concept of natural rights had been based on Christian natural-law theory, the secularization of the concept called its foundations into question. When the validity of the concept could no longer be guaranteed by the will of God, the Rights of Men were said to be derived from reason and/or nature. However, this derivation was very controversial (Freeman,2022,64).

In the nineteenth century, social science was hostile to natural rights theory on two grounds: first, the concept was unscientific since the meaning of "reason" had been turned to "scientific reason", and sciences were hostile to the natural understanding of men's rights. Second, the individualist natural theory of rights was anti-social since the notion of society had become the primary concept of political philosophy following the revival of the Aristotelian idea of Collectivism. Thus, according to the perspective of modern philosophy and social science, the UN's adoption of human rights remained problematic (Freeman,2022,65).

In his influential book, Jeremy Waldron argues that the critics of the Rights of Men, such as Burck, Bentham, and Marx, have appealed to reason and nature in different ways to reject the concept during the Enlightenment. Waldron's analysis explores the complexities and contradictions of discussing human rights, delving into different philosophical traditions that have engaged with and challenged the idea in various ways. He highlights the ongoing relevance of these concepts in the contemporary world.

The concept of natural rights, embodied in the 1789 Declaration of the Rights of Man and the Citizen, has been criticized in three classic ways. Burke, Bentham, and Marx all believed that declarations of rights, like the one made during the French Revolution, had significant problems, and each had their own reasons for this. Interestingly, these criticisms are a bedrock for modern attacks on 'rights-based' theories and can be used to examine the contemporary concept of human rights, applying to the UDHR.

Jeremy Bentham, known for his association with utilitarianism, challenges the idea of natural rights as abstract concepts, emphasizing the importance of legal rights grounded in utility and social welfare instead (Waldron,2014,76). Edmund Burke, a conservative English philosopher, also criticizes the universal claims of natural rights. He believes in a more pragmatic approach to political change, focusing on gradual reform informed by historical experiences. Burke values tradition, custom, and gradual reform over revolutionary upheaval (Waldron,2014,118). Karl Marx, indeed, critiques both liberal and conservative ideas of rights. He views rights as products of specific historical and economic

conditions and believes that true human freedom can only be realized by replacing capitalist social relations with a classless society (Waldron,2014,150).

The Utilitarian theory also has long questioned the concept of natural rights, considering it unscientific and harmful to the social order. Instead, it recommends the principle of utility to justify social actions. This principle can also be interpreted as the common good or public benefit, which advises actions that maximize happiness and well-being for all individuals involved, ensuring the greatest good for the greatest number. (Philip,1973). Human rights theorists often prioritize human rights over collective welfare, as explained by Dworkin's theory (Dworkin,2013,92).

How can we ascertain human rights and be sure that they have been bestowed upon the human race by God or nature? The well-known opening paragraph of the American Declaration of Independence reads as follows: “We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable rights, that among these are life, liberty, and the pursuit of happiness”³. Evidently, the declaration's authors intended to avoid engaging in philosophical debates. However, stating something as natural and God-given does not assume its inherent correctness. Presenting a statement and advocating for the rights it contains only promotes an idea and supports its validity without necessarily providing evidence to prove it. As Rorty believes, belonging to a biological group does not necessarily confer rights. He argues that the idea of animals having inherent rights is a metaphysical foundation for comforting thoughts rather than being a truth (Rorty,1998a,31).

Even if this idea is true, there is no way to criticize it. Suppose human rights are something that all humans naturally understand and accept. If this is the case, why do some people deny them? It could be argued that some people's nature has deviated, or they deny human rights due to personal or group interests that conflict with those rights. However, this argument cannot be proven or disproven, so it falls under the category of beliefs and faith and is outside the scope of discussion. Therefore, even if this argument is valid, there is no way to criticize those who deny human rights (Mardiha,2008,301).

To explain this concept, let us take an example. Suppose “nutritious food is available”, and “a group of people are hungry”. Based on these two statements, we can deduce other descriptive statements, such as “eating this food can make hungry people happy”. However, we cannot logically deduce imperative statements from these descriptive statements, such as stating that “surplus food

3- American Declaration of the Rights and Duties of Man, 10/31/2023, Preamble

ought to be given to the hungry” or that “it should be sold to them at an exorbitant price. Relying on human rights based on the foundations of nature is also flawed, as demonstrated by the example above.

Nevertheless, natural rights theory was efficient enough and useful that its falsity and fallacy were not apparent. This raises the question: Why can't we understand human rights based on a theory grounded in practical utility and pragmatic efficiency? In other words, what is the issue with basing human rights on a theory that works in practice? (Mardiha, 2008, 306).

Supporters of the naturalness of human rights often aim to prove these rights' generality, universality, and inviolability. However, even if we accept that human rights are natural, we still need to solve the problem of non-compliance. There are always motivations to violate human rights, and the argument that these rights are natural has not prevented violations from occurring. Oppressive governments, economic groups, and gangs, for instance, often do not see the observance of human rights as being in their interests and will violate these rights. These groups do not submit to theories, which alone do not guarantee respect for human rights. In such situations, if we assume that human rights have no basis other than pragmatic efficiency, no new problem will be added.

The diversity of philosophical beliefs worldwide makes it impossible to reach a consensus on the justification of human rights. While there may be agreement on certain human rights, there is no agreement on why these rights exist. Therefore, different philosophical justifications for human rights must coexist. These different philosophical justifications may lead to disagreements about the contents and limitations of human rights and the best way to relate them to each other. Expecting theoretical agreement on this matter is unrealistic, but practical agreement can still be achieved (Carr & Jacques, 1949, 17).

Hence, since skepticism towards the theory of human rights can be supported theoretically, we will argue that human rights have a pragmatic value and are necessary to reduce human suffering. This includes claims to the fundamental rights listed in numeral international instruments like the UDHR, as Ignatieff refers to them as evidence of a 'rights revolution.' To begin discussing pragmatic human rights by revisiting Michael Ignatieff's perspective, we must quickly overview his significant work in the field. This will help better understand how human rights are viewed as politics and idolatry.

2- Understanding Human Rights as Politics and Idolatry

Michael Ignatieff, a well-known Canadian academic, writer, and former politician, has held various positions in academia, journalism, and public service, including

serving as the leader of the Liberal Party of Canada. Ignatieff is renowned for his human rights, ethics, and political theory work. One of Ignatieff's remarkable works is an essay called "Human Rights as Politics and Idolatry", which he initially delivered as the Edward W. Said Memorial Lecture at Columbia University in 2002 (Ignatieff,2024). In two parts, Ignatieff describes the situation of human rights in the world and his pragmatistic understanding of the rights concept in his essay. Ignatieff discusses the tension between moral ideals of human rights and their practical implementation in politics, highlighting complexities and challenges in their discourse.

1-2- Human Rights as Politics

The author begins with "Human Rights and Moral Progress" by challenging the concept, addressing the real conversation of Primo Levi, a Jewish writer of the book 'If This Is a Man,' being interviewed by a Nazi scientist at Auschwitz. While standing on one side of Dr. Pannwitz's desk, Levi explained that he might be spared from the gas chamber if he could convince him of his competence as a chemist. By referring to this story, Ignatieff concludes that moral progress can be a topic of debate in such a situation; however, given the unfair and inhumane conversations between Dr. Pannwitz and Levi, we can say that we have progressed enough to understand that Dr. Pannwitz was morally wrong. As members of the same species, we must treat others how we want to be treated to avoid causing unnecessary suffering and cruelty, and human rights represent this moral intuition, Ignatieff argues (Ignatieff,2001,287).

Richard Rorty's definition of progress also applies here: "an increase in our ability to see more and more differences among people as morally irrelevant" (Rorty,1998b,11). Ignatieff's argument is based on Rorty's definition that living by such a moral intuition can help reduce unmerited cruelty and suffering in the world. Therefore, spreading the language of human rights, which represents moral progress, is based on our historical and pragmatic experiences that could protect and enhance the 'agency' of individuals with defensible rights (Ignatieff,2001,288).

Ignatieff stresses the importance of promoting "human agency" and argues that the "rights revolution" has led to such significant moral progress, as evidenced by the current international legal documents. He believes that these documents provide a sufficient basis for making moral judgments about human rights violations without the need for complex philosophical arguments (Ignatieff,2001,294).

Although it can be challenging to convince others in complex cases, despite the apparent history of Europe and the motivations behind the adoption of the UDHR,

according to Ignatieff, the authors of the Declaration intended to rebuild order and norms and connect post-war relations from a historical perspective. However, human rights laws are not confined to a specific time or region but rather embody the moral imperative of rights that transcends borders and aims to eliminate slavery, combat apartheid, prevent genocide, and halt mass murder. Consequently, Ignatieff insists that legal enforcement mechanisms back such a universal concept. He believes that “beyond the power to name and shame governments^۴ who violate human rights covenants, the international community has also created new instruments to punish violators, and this has led to the enforcement revolution in human rights’ (Ignatieff, 2001, 294).

Historically speaking, the human rights treaties established after 1945 responded to the destructive nature of European nihilism and its aftermath. The Universal Declaration, in particular, represented a return to the natural law heritage of the European tradition. This return was intended to restore agency and provide individuals with the legal resources to resist when the state ordered them to do wrong. Through this, the Universal Declaration aimed to give power back to individuals and protect them from potential abuses by the state (Ignatieff, 2001, 288).

The signatory states of the UDHR did not intend to limit their actions, as it had no enforcement mechanisms. Later, the UDHR became an international custom, and ratifying human rights treaties is now a requirement for new states. Ignatieff says that even oppressive regimes pay lip service to human rights instruments, which allowed shaming and controlling such regimes in impossible ways before 1945 (Ignatieff, 2001, 290).

Although human rights may not have stopped the villains, they have undoubtedly given power to bystanders and victims. By creating human rights instruments, bystanders and witnesses have been given a vested interest in stopping abuse and oppression, both within and outside of their borders. This refers to what Ignatieff calls the “advocacy revolution”, which has given rise to a network of non-governmental human rights organizations^۵ that put pressure on states to follow through with their promises. Thanks to this advocacy revolution, victims now have more power than ever before to bring their cases to the world's attention. This revolution has broken down the state's monopoly on international affairs, empowering what is now known as global civil society (Ignatieff, 2001, 291).

4- and also private corporations

5- such as Amnesty International and Human Rights Watch

Ignatieff has a strong and convincing beginning in defending the human rights revolution and humankind's moral progress in this area. He argues that human rights are deeply political and cannot be divorced from the realities of power struggles, competing interests, and geopolitical dynamics. However, he sees the worldwide spread of human rights culture as moral progress despite doubts about the intentions of those who promoted human rights. At the same time, when it comes to "American Exceptionalism" as one of the obstacles against this progress, he argues that the U.S. resistance to human rights and their legal narcissism conflict with human rights norms. Ignatieff also points out that this issue stems from the American belief that their legal legitimacy comes from their democracy and national legal system (Ignatieff,2001,295).

Ignatieff argues that human rights are inherently political, and their practical implementation often faces significant challenges. He also illustrates that exceptionalism is not limited to the USA, using the state of Israel as an example of a preference for national rights over human rights. Consequently, Ignatieff points out that constitutionalism, a balance of powers, and enforceable minority rights guarantees are necessary to reconcile democracy and human rights, even in democratic societies like the USA (Ignatieff,2001,301). "Democracy without constitutionalism is simply ethnic majority tyranny", Ignatieff says (Ignatieff,2001,306) and recommends that to reconcile democracy and human rights, Western policy will have to place more emphasis on constitutionalism, the entrenchment of a balance of powers, judicial review of executive decisions, and enforceable minority rights guarantees (Zakaria,1997,43).

Despite the challenges created, Ignatieff aims to maintain his pragmatic view of human rights and recognizes the significance of states as international realities in the "Human Rights, Democracy, and Constitutionalism" section. He believes it is unrealistic to expect a future where state sovereignty does not exist. State sovereignty is crucial for international stability, and constitutional regimes protect human rights best. Weak states pose a threat to individual rights, and therefore, strong institutions are needed to protect them. Thus, strengthening states can strengthen human rights, as NGOs cannot fix state failure (Ignatieff,2001,310).

Overall, in the first section of his essay, Ignatieff sets the stage for a critical examination of human rights as inherently political phenomena, urging for a more nuanced and pragmatic understanding of human rights advocacy that considers the messy realities of global politics. In his view, the human rights crisis is caused by our inability to consistently apply human rights criteria to both the strong and the weak. Additionally, we struggle to balance individual human rights with our commitment to self-determination and state sovereignty. Finally, our interventions

on human rights grounds often fail to establish legitimate institutions that protect human rights effectively. As a result, inconsistent enforcement and application of human rights standards have led to cultural consequences. Non-Western cultures perceive human rights principles as a justification for Western moral imperialism due to their selective implementation and unclear boundaries of state sovereignty. They conclude that there is something wrong with the principles themselves. This inconsistency has resulted in an intellectual and cultural challenge to the universality of these norms (Ignatieff, 2001, 319).

2-2- Human Rights as Idolatry

Ignatieff stressed the need to recognize the political nature of human rights advocacy. He emphasized the need for pragmatic engagement with conflicting interests and values while pursuing human rights goals, and he acknowledged that human rights discourse has limitations in addressing complex geopolitical realities. As a result, he recommends a more nuanced and realistic interpretation of human rights that is integrated into broader political processes in the Idolatry section.

The term “idolatry” in the title refers to the inclination to elevate human rights to a sacred status, making them immune from scrutiny and criticism. Ignatieff cautions against treating human rights as absolute moral principles disconnected from their political context, believing such an approach can result in dogmatism and ideological zealotry. Ignatieff asserts that the basis for human rights is both historical and prudential. According to him, this foundation will be most solid if it rests upon our collective “memory of horror” instead of abstract arguments in support of human rights (Ignatieff, 2001, 338). He bases his approach on the commitments made after the horrors of World War II, which resulted in the establishment of the UDHR, with the aim of ensuring that such atrocities never happen again (Ignatieff, 2001, 328).

The author views the universal human rights norms as a set of beliefs with a negative quality. Ignatieff refers to the Declaration as it has become a holy text to the extent that Eli Wiesel regards it as a “worldwide secular religion” (Danieli et al., 2018, 3). Moreover, Kofi Annan calls it a “yardstick” for human progress. Although human rights, within Ignatieff's perspective, are essential for promoting a secularized culture and a universal language, since they are not metaphysical, believing in them may become superstitions (Ignatieff, 2001, 320).

In the initial section of his book, Ignatieff delves into the perception that the global spread of Western human rights may appear Eurocentric from certain perspectives. It's important to acknowledge that the human rights treaties and

agreements developed post-1945 were not a manifestation of European imperial dominance, but rather a sober reflection on the devastating impact of European nihilism and its consequences (Ignatieff,2001,288).

In the opening of the second section of his essay, Ignatieff focuses on the importance of establishing a global consensus on human rights to prevent violence and suffering. He suggests that instead of debating the fundamental nature of humanity, we should concentrate on enhancing our ability to prevent such atrocities. Ignatieff argues that trying to justify human rights based on a single doctrine will only lead to division based on philosophical, religious, or cultural factors. Therefore, he reassures us that it is more practical to remain neutral on differing ideas about humanity while promoting human rights, leaving the meaning of "human" in human rights unspecified for individuals to interpret according to their own beliefs.

Ignatieff's proposal is of utmost importance. He suggests that the strongest consensus on human rights norms can be achieved through a negative approach. He believes that despite cultural differences, people can agree on what is undeniably wrong, in line with the spirit of liberalism. According to Ignatieff, there can be cross-cultural agreement on what must be unequivocally avoided, such as torture, rape, or massacre. Ignatieff emphasizes the prioritization of human rights over differing conceptions of the good life and advocates for neutrality between divergent ideas about humanity (Ignatieff,2001,323).

Here, as a mainstream American political theorist, Ignatieff is strongly influenced by liberals such as Judith Shklar and Isaiah Berlin, who take the protection of negative liberty and the avoidance of cruelty as the chief ends of politics. This emphasis on what Shklar famously named "the liberalism of fear" (Shklar & Hoffmann,1998,11) is such a negative orientation that leads to a somewhat world-weary distrust of any politics founded on positive conceptions of freedom, humanity, or the good, given the frequency with which such ideals have degenerated into tyranny throughout history.

In his research analysis of Ignatieff's ideas, James Souter concludes that Ignatieff defends human rights pragmatism, arguing that avoiding suffering and brutality as a negative effort according to the UDHR norms can provide a broadly satisfactory foundation for most human rights (Souter,2009,46). He adds, "Although some human rights implicitly offer positive visions of humanity and the good, the negative reduction of suffering and cruelty remains one of their chief functions. Thus, to a great extent, human rights can be justified by their capacity to reduce these ills" (Souter,2009,52).

In the second part of his work, Ignatieff delves into the intricate ethical and

moral challenges faced by human rights activists and policymakers. He categorizes these challenges into three main areas: “the Islamic challenge”, “Asian values”, and “the spiritual crisis”. Ignatieff thoroughly explores the complexities of making moral decisions in the midst of conflict, violence, and injustice, emphasizing the significance of ethical reflection and practical engagement. Additionally, he delves into the concept of “idolatry” in relation to human rights, cautioning against the tendency to elevate human rights to a sacred status immune from criticism or scrutiny. Ignatieff warns against ideological fanaticism and advocates for a more balanced and pragmatic approach to advancing human rights. He suggests a balanced approach to human rights advocacy and policymaking, stressing the importance of reconciling moral ideals with political realities. While acknowledging the limitations of the human rights discourse, he remains steadfast in his commitment to the core principles of dignity, freedom, and equality.

3-2- Formulating a Pragmatic Critique

In this section, we will evaluate Ignatieff’s arguments from the perspective of human rights pragmatism, examining the strengths and weaknesses of the author’s viewpoint. Michael Ignatieff delves into the role of politics in human rights discourse while recognizing its practical importance in the field. He endeavors to uphold human rights without relying on intricate natural or philosophical foundations. He acknowledges the temptation to associate human rights with concepts such as the inherent or natural dignity of human beings, their intrinsic self-worth, and their sanctity. However, he argues that the practical and historical justification for human rights, rather than philosophical notions of human nature, is the key to their understanding and implementation (Ignatieff, 2001, 321). Hence, he claims that when propositions related to human rights are unclear and controversial, they are more likely to undermine rather than reinforce the practical obligations linked to a dedication to human rights (Ignatieff, 2001, 320).

He perceives human rights as tools of politics rather than as guiding principles for addressing issues. This is why he maintains that “individuals from different cultures may hold differing views on what is good, but can come to a consensus on what is undeniably and universally wrong”. Ignatieff acknowledges that establishing a universal human rights protection framework must accommodate moral diversity. He needs to articulate a moral pluralist theory to underpin his assertions (Ignatieff, 2001, 321). His perspectives call for an elucidation of an ethical and pluralistic theory rooted in pragmatism, which has not yet been theoretically expounded.

Ignatieff’s analysis, however, puts more emphasis on the political side rather

than creating a pragmatic human rights theory. This serves as a reminder of how a careless pragmatic justification of human rights can become problematic. He suggests that No authority whose power is directly challenged by human rights regimes is likely to concede its legitimacy. Human rights advocacy must be biased toward the victim. The objections of those who engage in oppression can be heard; [however], the claims of victims should count more than the claims of oppressors (Ignatieff, 2001, 322).

While he acknowledges the link between human rights and politics, his focus on this aspect can, at times, oversimplify the role of human rights in shaping societal progress. Ignatieff primarily views human rights as tools for political maneuvering rather than as guiding principles for effective conflict resolution.

Ignatieff's viewpoint on rights is based on the concept of conflict. He contends that rights inherently involve a conflict between a rights holder and a rights withholder, thus rendering them inherently political. However, this perspective does not fully acknowledge the role of moral values in ensuring the enforcement of rights (Ignatieff, 2001, 330). Furthermore, while critiquing the concept of "idolatry" in human rights, he neglects to acknowledge the moral significance of idealism. It is important to recognize the constraints of absolutist approaches, but disregarding the moral fervor driving human rights advocacy, it fails to appreciate its ability to spark impactful action and societal transformation. Embracing a pragmatic approach does not entail reducing human rights to mere political instruments, but rather entails striking a reassuring balance between moral principles and practical considerations (Hayden, 1999, 60).

In his examination of the ethical challenges encountered by human rights advocates, Ignatieff underscores the intricacies of making moral decisions in real-life situations. While Ignatieff cautions against the tendency to assume uniformity in the moral debate between the "West" and the "Rest", his analysis occasionally overlooks a practical emphasis on viable solutions and tangible results. However, the urgency of the situation demands that we focus on these viable solutions, as they are crucial in effectively confronting human rights abuses and enhancing the well-being of individuals, even if doing so necessitates challenging moral trade-offs (Ignatieff, 2001, 347).

The freedoms and rights outlined in the Universal Declaration can only be fully realized in societies with a certain level of cultural and civilizational development. For example, freedom of speech may not hold much significance in societies where there is no systematic structure for people to communicate or express themselves. Similarly, in societies that lack options or resources, the right to choose a job or a lawyer may be considered insignificant. Therefore, Ignatieff's

notion that one need not be Western to defend human rights is incomplete in today's world, where economic development and wealth generation often align with adopting Western ways of life.

He argues that "Defending individual agency does not necessarily entail adopting Western ways of life". Believing in the right not to be tortured or abused need not mean adopting the Western dress, speaking Western languages, or approving of the Western way of life (Ignatieff, 2001, 331).

Upon initial consideration, Ignatieff's assertion that the call for the prohibition of torture is not linked to Westernization but rather to complex issues such as women's rights appears accurate. However, his proposed solution to the issue is problematic and fails to address the root of the problem. A pragmatic approach would acknowledge the necessity of navigating between universal norms and cultural particularities, seeking solutions that are relevant to local contexts while upholding fundamental human rights standards.

In discussing the conflict between universalism and cultural relativism in the context of human rights, Ignatieff suggests achieving a balance between universal principles and cultural specificity. He emphasizes the importance of recognizing cultural backgrounds while maintaining the universality of human rights standards. He asserts that "human rights have become global, but they have also become local as they empower the powerless and give voice to the voiceless" (Ignatieff, 2001, 332). Ignatieff's exploration of universalism versus cultural relativism underscores the importance of a balanced approach to human rights theory. While he rightly acknowledges the significance of cultural context, his approach sometimes leans towards cultural sensitivity at the expense of the universality of human rights principles.

While a practical and pragmatic approach to human rights is crucial, it can be challenging to identify specific solutions that steer clear of mere rhetoric. A close examination of Ignatieff's solutions, which are often conflicting and ambiguous, reveals the complexity of the issue. His stance on human rights often vacillates between state-centered and victim-centered perspectives, leading to ambiguous or contradictory conclusions.

For instance, Ignatieff's assertion that 'human rights do not have to delegitimize traditional culture as a whole' underscores the importance of considering cultural traditions in the context of human rights. However, his view of women in Kabul as simply seeking education, healthcare, and their rightful rights while adhering to their Islamic traditions, may oversimplify the complex interplay between culture and human rights (Ignatieff, 2001, 332). On the other hand, he believes that "Western human rights activists have surrendered too much to the cultural

relativist challenge. Relativism is the invariable alibi of tyranny” (Ignatieff, 2001, 335).

Conclusion

Human rights have been the subject of criticism from various perspectives. They have been criticized from the right for being too liberal and from the left for not being radical enough. This echoes the classic criticisms of natural rights by thinkers such as Edmund Burke and Karl Marx. Some critics argue that human rights alone cannot bring about social justice, but they often fail to consider the complexities involved in defining social justice, both in theory and in practice. Nevertheless, the concept of human rights is rooted in a theory of justice that encompasses both social justice and human rights. The Universal Declaration of Human Rights⁶ underlines the fundamental importance of recognizing human rights in achieving justice on a global scale.

Michael Ignatieff’s “Human Rights as Politics and Idolatry” critically examines the concept of human rights, challenging the broad approach favored by most activists. Ignatieff argues for a minimalist understanding of human rights, focusing on protecting individual “agency” or the ability to make choices with dignity. He believes that this approach enhances the moral force and universality of human rights by avoiding accusations of Western imperialism. While his minimalist approach is praised for defending human rights against cultural and political criticisms, it is also criticized for potentially limiting the scope of human rights protections. Ignatieff delves into the intricate nature of human rights and their application, shedding light on the criticisms and obstacles they encounter from both Western and non-Western perspectives. Ignatieff acknowledges the significance of a justice theory as the basis for human rights but also recognizes that relying solely on it can limit the achievement of social justice.

While human rights form the bedrock of justice, they do possess limitations and constraints. Ignatieff points out that they are not comprehensive enough to offer definitive solutions to complex issues or to provide a complete social ethic. Furthermore, their direct derivation from nature is not straightforward. Justifying human rights demands a multifaceted and pragmatic approach that encompasses human dignity, moral agency, and human capabilities.

However, Ignatieff’s analysis may tend to prioritize the political aspects of human rights while overlooking their moral and practical significance. While he identifies challenges such as nationalism, which can lead to a prioritization of

6- UDHR

national interests over human rights, and exceptionalism, which can lead to the belief that certain groups or nations are exempt from universal human rights, a pragmatic approach that fully engages with the complexities of human rights challenges is essential. This approach would require balancing theoretical justification with navigating the practical realities of global politics.

In conclusion, Ignatieff's essay offers valuable insights into the interplay between human rights and politics. Nonetheless, a more comprehensive engagement with human rights pragmatism is necessary to address the complexity of human rights discourse and effectively advocate for their realization. By integrating moral, political, and pragmatic considerations, a robust framework, not just any framework, can be established to confront challenges facing human rights in today's world, ultimately advancing the cause of justice and human dignity.

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References

- American Declaration of the Rights and Duties of Man, 10/31/2023, Refworld - UNHCR's Global Law and Policy Database.
- Carr, Edward Hallett, Maritain, Jacques., 1949, Human rights: comments and interpretations; a symposium edited by UNESCO.
- Danieli, Y., Stamatopoulou, E., & Dias, C. J. (Eds.), 2018, The universal declaration of human rights: Fifty years and beyond. CRC Press.
- Dworkin, R., 2013, Taking rights seriously (New edition). Bloomsbury Revelations. Bloomsbury.
- Forsythe, D. P., 1989, Human rights and World Politics (2nd ed.). University of Nebraska Press.
- Freeman, M., 2022, Human rights (Fourth edition). Key concepts series. Polity Press.
- Hayden, P., & for Philosophy in the Contemporary World, The Society, 1999, Sentimentality and Human Rights. Philosophy in the Contemporary World, 6(3).
- Ignatieff, M., 2001, Human rights as politics and idolatry. Princeton Univ. Press.
- Ignatieff, M., 2024, Michael Ignatieff: Biography.
- Mardaha, M., 2008, The Philosophical Kind of Human Rights. Law Quarterly, 38(4).
- Philip P. Wiener and Others., 1973, Dictionary of the History of Ideas: Studies of the Selected Pivotal Ideas. University of Virginia Library.
- Rorty, R. (Ed.), 1998a, Human Rights, Rationality, and Sentimentality: Philosophical

- papers. Cambridge University Press.
- Rorty, R., 1998b, Truth and moral progress: Philosophical papers. Cambridge University Press.
 - Shklar, J. N., & Hoffmann, S., 1998, Political thought and political thinkers. University of Chicago Press.
 - Souter, J., 2009, Humanity, Suffering and Victimhood: A Defence of Human Rights Pragmatism. Politics, 29(1).
 - Wacks, R., 2006, Philosophy of law: A very short introduction. Very short introductions. Oxford University Press.
 - Waldron, J., 2014, Nonsense upon Stilts: Bentham, Burke and Marx on the Rights of Man. Routledge Revivals. Taylor and Francis.
 - Zakaria, F., 1997, The Rise of Illiberal Democracy. Foreign Affairs, 76(6).

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