

is where the peculiar lack of consideration of the development of empires—and of its normative critique through the concept of sovereignty—is most telling.

As an increasing consensus of historians and geographers has indicated, globalization is not some naturally occurring development of global interconnections, but a result of the *political* initiatives of the world's most aggressive state, the U.S., in the last dozen years or so. Global markets, just as much as the legal institutions and the communicative infrastructure needed to sustain them, have grown as the result of the systematic coercion of small states and local communities by the U.S. to “open” their markets, allow foreign investments, internationalize their currencies, and so forth.

Given this meaning of globalization, what normative conclusions can be drawn? Mainly, that the protection of localities from their exposure to the armed coercion of hegemonic states and the destabilizing effects of integration into global markets must remain the necessary basis for any democratic governance or needs satisfaction in most of the world today (and tomorrow). While Gould argues that the formation of global political and cultural communities is independent of the process of economic globalization that has resulted in the widespread impoverishment of Black Africa, Latin America, Southern Asia, and the Middle East, this seemingly ignores the ways in which such political and cultural globalization has served and continues to serve imperial-hegemonic interests, whether through the accommodation of international agencies, from the UN on down, to imperial military adventures, or the use of globalized media systems to penetrate and colonize new markets.

The global justice movement has increasingly become, for very good reasons, an antiglobalization movement. The norms of popular sovereignty (an impossibility without a “people”), economic self-determination, and environmental security are more and more the common coin of fights for democracy, justice, and rights that Gould would surely endorse. She recognizes that the “communitarian” element in democratic entitlements is crucial; but it is the cosmopolitan element that is ambiguously combined with it that is troubling. This element, while widely accepted as a moral principle, has remained anathema to movements for political rights—not only in underdeveloped countries, but also in the recent democratic rejections of the E.U. constitution in France and the Netherlands.

Nevertheless, despite what may be a blind spot about the geographical and historical realities of contemporary international politics—something that is very common in recent philosophical debates in international ethics—Carol Gould has given us a book that asks all the right normative questions and that proposes unfashionable but necessary answers to many of them. What political institutions it is possible to craft on the basis of the ethical principles enunciated in her book remains a puzzling but exciting question for the future.

16.

Are There Human Rights?

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Carol Gould's *Globalizing Democracy and Human Rights* contains an extended argument for expanding democracy in a human rights framework beyond the limits of the modern state. The book is wide ranging and the position well argued, but the abstract spirit of Kant's cosmopolitanism pervades Gould's central claim that a global human rights regime, which she call “cosmopolitical democracy,” is both desirable and historically possible (184). *Globalizing Democracy and Human Rights* does not provide a satisfactory argument for the fundamental theoretical problem whether human rights *actually* do exist outside the context of the modern state without the institutional embodiment that renders them objectively real. I will raise four objections to the concept of human rights. These objections follow from Hegel's conclusion that the conditions of right are actualized only within the modern state.¹ I will extend the most pressing of these objections to argue that attributing human rights to individuals outside the modern state is incoherent without existing mechanisms for enforcing them. Absent such mechanisms the idea that humans have them, as a matter of their ontological status, is both illusory and pernicious for reasons I shall explain below.

Four objections

Human rights are claims that individuals have on other persons and institutions. They are moral as opposed to legal rights because we believe that it is a good idea to have them all things considered. Human rights are not legal rights because they are justified by an extra-legal conception of the person. If human rights are

the content of international law they still lack specific institutional mechanisms for enforcement. Gould claims that all human persons have rights in virtue of a social ontology in which individuals are always-already social members: "Thus these individuals are to be understood ontologically as individuals-in-relations or as social individuals" (33). In this conception, human rights are grounded in a moral conception of persons that does not presuppose any *particular* status like membership in this *polis*, that legal system, or any given ethical community. Part of the appeal of attributing human rights to all individuals is their *universality*, which provides an independent criterion for condemning authoritarian political regimes.

However, human rights raise notoriously difficult problems when it comes to their justification and institutionalization. There are several objections along these lines. First, human rights are negative and cannot sustain the positive value of self-development. They specify the rightful conditions of non-interference that presuppose a conception of agency. Subsequently, this raises worries about the value of ontologically deriving human rights from negative conditions. From the fact that it is a morally good idea that individuals are free from interference the positive value of attributing such rights to all persons does not strictly follow. What does it mean to say that individuals have a right to pursue their life-plans free from interference? They are entitled *not* to be obstructed in the pursuit of their ends, but such indifference, or "benign neglect," is not adequate for articulating the positive value of promoting individual self-development.² Gould's conception of human rights tries to avoid this objection by building into its basic formulation the idea that individuals have a right to conditions of "equal positive freedom." She draws on the extended argument that negative and positive conditions of self-development presuppose one another. Thus, rights to non-interference are necessary but not sufficient for self-development. This argument, from her *Rethinking Democracy* (1988), is extended in *Globalizing Democracy and Human Rights* and Gould's conception of social ontology is that negative and positive conditions of self-development are mutually dependent.

Second, it might be objected that a political philosophy emphasizing entitlements for individuals encourages passivity with respect to their own self-development. Human rights are claims or entitlements that others have an obligation to respect or fulfill. Individual agency is possible only through determinate forms of action. If individuals are entitled to things that others are obligated to provide for them, passivity to their own self-development is a potential consequence. This undermines the normative principle of independence that individuals take some responsibility for themselves. For example, Wilhelm von Humboldt claims that *Selbstätigkeit*, or "self-activity," is compromised by a political conception of rights

as entitlements.³ Gould anticipates this objection by emphasizing that they are not entitlements to *specific* goods but rather very general claims to the *conditions* of self-development. Thus, individuals in the developing world have a right to subsistence, but this does not invoke the specific duty of individuals in the first world to give them food (except perhaps in extreme circumstances). For example, the conditions of self-development require that individuals have "access to food" that is not blocked by corrupt regimes and bureaucracies.⁴ If the strength of obligations to fulfill human rights is debatable, it follows that the rights themselves are underdetermined and not easily justified consistently.

The third objection to the concept of human rights is that it is excessively individualistic. This is also a criticism of rights-discourse more generally. There are numerous reasons why one might object to a political theory that focuses exclusively on individuals as the basic unit of analysis. Gould tries to avoid this defect of traditional liberal conceptions by grounding human rights in the social ontology of individuals-in-relations. The claims individuals have on one another are therefore not a product of natural individuation or essential properties but depend on membership in a definite ethical community. However, Gould's conception is vulnerable to this objection in two ways. First, the restriction of rights to human persons seems unjustified. Why are non-human animals not entitled to the same protections as members of groups or individuals-in-relations? The question appears absurd on its face, but an unfortunate oversight in *Globalizing Democracy and Human Rights* is that neither non-human animals nor a sustained discussion of the environment are included among the practical implications of democracy and globalization. More importantly, if individuals have rights because they stand in associational relations to one another, the choice of drawing the line around the ethical community in which rights are entailed by membership is arbitrary and historically contingent. There is currently no global ethical community if that means something more substantive than standing in relation to one another as economic actors. Although globalization does make boundaries of nationality and political geography more porous, it does not necessarily follow that malnourished children in the Republic of Congo have a right to subsistence that any particular individual in the developed world is obligated to fulfill. There might be morally good reasons why alleviating starvation in sub-Saharan Africa is a good thing, but this reason does not have the same content and motivational force as my reason for respecting my neighbor's right to property. The intensification of globalization is shrinking the "size" of the geo-political order, but it does not follow that the boundaries of a definite ethical community for actualizing rights is taking coherent shape. If anything, the historical shape that the human rights regime is taking remains ambiguous.

The final objection to the concept of human rights challenges the foundations of Gould's constructivist conception. If human rights are assertions, or claims individuals make on one another, the problem of cultural relativism—that norms of action and principles of conduct are internally justified by features of particular cultures—is impossible to resolve. Gould argues that all persons have human rights regardless of their *particular* status. Thus, human rights are “universal” in the sense that all persons possess them by virtue of standing as individuals-in-relations to one another (61-65). They are essential to what it means to be a human being. Since groups of human beings, or cultures more generally, stand in relation to one another they generate what Gould calls “intersociative norms” (65). The alternative to this constructivist approach holds that rights are not assertions at all, but are discovered as part of a real moral order. In this respect, they are not asserted but discovered as part of the meaning of “human being.” And if human rights are discovered like that, then they rest on independent foundations that do not depend on individuals asserting them. However, the nature of calling them “rights” depends heavily on asserting that we have them. They are claims we make on one another in the course of formulating ends and taking action to achieve them. This means that they are not, in fact, discovered like the way regularities in nature are supposedly discovered by scientific theories. Rather, they are asserted to be essential to what it means to be a human being. Since human beings are essentially meaning-making creatures, it follows that human rights are asserted, posited, or otherwise invented by human beings themselves. So rights do not exist as an independent moral order in ways that can be discovered. In short, they are constructed.

The basic problem with Gould's constructivist conception of human rights is whether representations, ideas, ideals, values, and norms are causally efficacious in creating social reality or whether they are functional elements of it. Put another way, her constructivist approach remains open to the challenge that the concept “human rights” refers not to *actual* things but to representations we construct. Hegel argues consistently that the only way of coherently defending “right” (*Recht*) as the condition of actualizing freedom depends not on some conjecture about an independent moral order or practical ideal, but on concrete forms of ethical life that are internally justified. The concept of rights is only coherent if such claims are made, respected, and fulfilled by intersubjective conditions of mutual recognition. Outside these conditions the assertion of rights easily falls into the trap of referring to an independent moral order. Thus, the fundamental problem with all conceptions of human rights is whether they can be meaningfully asserted or justifiably discovered outside concrete forms of ethical life that actualize them.

Gould's conception of human rights appears to be vulnerable to this objection. If human rights are merely assertions or claims lacking institutional embodiment they do not have what Hegel calls “ethical substantiality.” According to his concept of ethical life (*Sittlichkeit*), the modern state is the actualization of a “system of right” in which the abstract idea that individuals have legitimate claims on one another is internalized as a norm of conduct and embodied by actually existing institutions enforcing such claims. Human rights like the kind that Gould defends are supposed to transcend the political boundaries of the state in ways that allow persons to assert them in order to overturn forms of oppression and domination. However, the political state demarcates the social space in which such rights are actualized by institutional mechanisms that enforce them. Such rights *actually* exist in the context of the modern state and nowhere else. This is not just because individuals-in-relations have internalized them as a norm of conduct, but also because institutions enforce them with regularity and predictability.⁵ In fact, it remains unclear historically whether individuals-in-relations really are capable of adapting norms and principles of democratic rights even when such institutions are set up by external authorities. Rights were not actualized prior to the protracted emergence of the modern state except in nascent forms, and they currently do not exist outside of it. In short, the actuality of human rights does not exist where political, legal, and socio-economic institutions are insufficiently developed or where individuals-in-relations have not internalized them as a way of life.

Are there “human rights” outside the modern state?

This last point about the institutional embodiment of and adequate enforcement for actualizing human rights is a crucial objection to Gould's conception. Without their substantial realization it is doubtful that human rights are rational entities, either constructively or independently, as opposed to a good idea morally speaking. This distinction is pervasively ignored in the rights-discourse of globalization where all kinds of human rights are attributed to persons not living in conditions of right. The question now is whether it is a good idea to articulate whatever interests individuals happen to have as human rights. There are two consequences to doing so. On the one hand, asserting rights can help to overturn relationships of oppression and domination. This entails the belief that ideas are independently efficacious, which is a perniciously “idealist” and abstract view of reason's ability to legislate reality. On the other hand, the claim that individuals have rights not dependent on their actual ethical community also justifies pernicious activity. Various interventionist wars initiated by the United States continue to be justified

by the idea that human beings have an absolute right to self-determination that we are obliged to fulfill.⁶ Thus, rights claims inevitably play into the hands of the ideology now so prevalent in the West that people should be “forced to be free” at the end of a gun. Surely, Gould would object to the idea that her conception of human rights justifies such interventionist wars. Nevertheless, the point remains that most rights discourse of this kind cuts both ways. We can claim that human beings have rights of all kinds, but determining who has duties to fulfill them gets immediately messy. In my view, this is what makes human rights such an unstable and inherently problematic normative force for directing or controlling the pace and intensity of globalization. They are too underdetermined to guide the ethics and politics of globalization with any certainty.

What are the implications of the line of argument I have raised against the concept of human rights? It might be thought that the criticisms presented here are more pernicious than the mere possibility that rights-discourse can be misused for ideological agendas. If human beings do not have rights outside an institutional context that respects and fulfills them, then where does that leave most of the inhabitants of the world? It might be argued in their favor that even if human rights are illusory, embracing them is a “convenient self-reinforcing fiction.”⁷ They do play a helpful role in speaking out against various forms of injustice. In this sense, the appeal to human rights is a strategic tool for putting pressure on authoritarian regimes to create conditions of right so that such rights can be actualized. Thus, human rights discourse is a “self-reinforcing fiction” that serves as a pretext for creating actually existing human rights by promoting their further institutional embodiment. The political strategy of using human rights as such a tool might be justified this way, and one cannot rule out either the descriptive or prescriptive role that rights-discourse might play in this regard.⁸

However, it is worth pausing before we endorse the idea that human rights are *necessarily* a normative force for the good. Tools can easily be turned to multiple uses. Since there are no adequate enforcement mechanisms for ensuring that human rights are properly attributed and efficiently institutionalized, there is no independent criterion for condemning their alleged misuse. In short, the indeterminacy of human rights falsifies the claim that there is one correct way of conceiving and enforcing them. If we are willing to engage in rights-discourse, then we have to be willing to accept that it will be used to justify all sorts of actions. Thus, the recent invasion of Iraq is justified by appealing to human rights for individuals of an ethical community who have the right to self-determination. From the fact that Saddam Hussein unjustly oppresses the Iraqi people, and since all human beings have the right to self-determination, it follows that regime change in the

service of democratic values is both justified and obligatory. I submit this is an unhappy and unfortunate conclusion that is, in part, supported by the discourse of human rights that Gould so admirably defends.

Notes

1. G.W. F. Hegel, *Elements of the Philosophy of Right*, ed. Allen Wood (Cambridge, UK: Cambridge University Press, 1994). Hegel's theory of *Sittlichkeit* is defended most recently in Frederick Neuhouser, *Foundations of Hegel's Social Theory: Actualizing Freedom* (Cambridge, MA: Harvard University Press, 2000).
2. Will Kymlicka, *Multicultural Citizenship* (Oxford: Oxford University Press, 1996).
3. Wilhelm von Humboldt, *Ideen zu einem Versuch die Grenzen der Wirksamkeit des Staats zu bestimmen* (Stuttgart: Reclam, 1967 [1795]).
4. Amartya Sen, *Development as Freedom* (New York: Knopf, 2000).
5. There is room for overturning rights in times of “national crisis.” For example, the detainment of Japanese Americans during World War II was upheld in *Korematsu v. United States*, or more recently, to keep American citizens from exercising their rights to peaceful protest during the 2004 Republican National Convention in New York City.
6. Charles Beitz, *Political Theory and International Relations*, 2nd edition (Princeton: Princeton University Press, 1999), pp. 83-92.
7. Raymond Geuss, *History and Illusion in Politics* (Cambridge, UK: Cambridge University Press, 2001), p. 147.
8. One might apply the distinction between “democracy as rhetoric, practice, and possibility” in assessing the degrees of actualization between asserting rights-claims and actually existing rights. See Immanuel Wallerstein, *The Decline of American Power* (New York: The New Press, 2003), pp. 159-68.