

HUMAN RIGHTS AS POLITICAL DEMAND

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In this paper I show that we could read Pogge's conception of human rights as formulated from a political realist point of view. For such a reading I use as a tool Bernard Williams' division between political moralism and political realism in political theory and his reformulation of the first political question in Hobbesian terms as that of securing order and the conditions for cooperation in society by using coercion. I conflate Pogge's theory of human rights with his theory of global justice, and I highlight those elements related to the first political question in Hobbesian terms.

Key words: *Thomas Pogge, institutionalist conception of human rights, Bernard Williams, political realism.*

Introduction: the forgotten premises of Thomas Pogge's theory of human rights

My paper aims to bring to light some aspects of Thomas Pogge's conception of human rights as moral demands using Bernard Williams' theory of political realism as a mirror to reflect several less discussed traits of Pogge's philosophy. Pogge's conception on human rights as moral demands was formulated in a masterpiece of contemporary political thought entitled "How Should Human Rights be Conceived?", a paper originally published in *JarbuchfürRecht und Ethik* 3 (1995): 103 – 20, and republished with some improvements as a chapter of Pogge's seminal book *World Poverty and Human Rights* (2008). Bernard Williams' conception of political realism can be found in "Realism and Moralism in Political Theory," one of the chapters of his book, *In the Beginning Was the Deed* (2005), a synthesis of his latest political philosophy. I would like to stress that I do not want to compare the two conceptions and show which points the two philosophers share or do not share. Instead I want

to read Thomas Pogge's conception through the spectacles of Williams' distinction between political moralism and political realism, hoping that through doing so we can find some less emphasized and discussed aspects of Pogge's philosophy. Interpretation of Thomas Pogge's philosophy from a political realist point of view could remind us of some of its forgotten premises, its originality and capacity to suggest new theoretical foci.

There are at least two premises forgotten by different interpretations and criticisms of Thomas Pogge's philosophy.

The first one refers to the classical cut of his institutional theory of human rights. The classical political theory mainly focused on the state, its origins and fundamentals, and only second on how political institutions could be made or designed to work better. In contrast, the latest political theory privileges the moral in understanding the state, attempting to see what the better ways of improving political institutions are and what governments and individuals should do. But, we ought to remember that political theory can take not only a moral line of attack, but also a political one. The design of political institutions is above all about coercion and the exercise of authority by force. Even if our discussion is about social justice or other related ideas, with an idealistic focus on social justice or a more realist emphasis on social welfare, we should take into account that their embodiment in political institutions will inevitably be combined with the capacities and mechanisms of enforcement belonging to the political. That is the reason for which I think Pogge places his political theory – which of course is centered on human rights and justice, and very dedicated to the improvement of the situation of the poor, and, as some commentators characterized it, is so radical with regard the objectives of global justice – on the basis on an institutional theory of human rights and negative duties of individuals, and proposes only a minimal institutional arrangements for adjusting the international order. Pogge's point of view about the culpability and responsibility of the citizens and governments of wealthy and powerful countries for harming the poor could be better explained if we would accept that the premises of his institutional theory of human rights is not a libertarian one, as his critics claim (see, Jagger, 2010 and Pogge, 2005) somehow accepts, but rather is a political realism in the sense in which I will use this term below.

The second refers to the fact that at its origins the notion of human rights is closely related to the historical context of the Second World War

and the tragedy of the totalitarian states before and after the time of UNDHR. So human rights have an important political dimension, not just socio-economic or cultural, which has been stressed in the last dozen of years. In Eastern Europe human rights were until recently a recurring political theme, and I'm afraid that they will be back sooner than we would have expected, precisely in this political dimension, given recent developments in Hungary, Macedonia, etc. We in Eastern Europe must not cease to remind ourselves that the theme of human rights has been linked at its origin to the struggle against totalitarianism and to the topic of civil society, and that it formed the ideological basis of the anticommunist thought and movements. The UNDHR is not the only landmark in the discussions on human rights. There is also the 1975 Helsinki Final Act, which in the third basket highlighted the obligation for states to respect human rights and fundamental freedoms, including the freedom of thought, conscience, religion or belief, freedom of emigration and reunification of families divided by international borders, cultural exchanges, and freedom of the press and arts.

Thus my point is that the conception of Thomas Pogge has important realist traits in the sense that I will now try to explain.

Working political realist spectacles for reading Pogge

The opposition between moralism and realism in political theory is used by Bernard Williams to distinguish between those political theories which consider that the objective of politics is to implement moral conceptions (politics is applied ethics) and those which consider that politics has its own purpose unconditioned by moral terms. Utilitarianism and Rawls' theory of justice are the best examples of the first kind of conceptions. For the second, Williams gives as examples English republicanism, Hobbes, and Judith Shklar's liberalism of fear – as a political realist, Pogge's conception seems to have some features in common with this kind of liberalism.

For reading Pogge's theory I do not keep all of Williams' conception with all its components. I will detach just four components that I can use as realist spectacles in order to find and identify the forgotten or ignored veins of Pogge's conception – from my point of view, of course.

The first component is the problem of the relation between the moral and the political in the construction of political theories. According

to Williams, the conceptions in political theory could be divided according to the way in which they interpret the relation between the moral and the political. Those theories which prioritize the political over the moral are realist or political realist and belong to political realism, while theories which prioritize the moral over the political are moralist or political moralist and belong to political moralism.

The second component is the definition of the first political problem. Williams defines the first political question “in Hobbseian terms” as the question of “... the securing of order, protection, safety, trust, and the conditions for cooperation” (Williams 2005, 30). Politics, and also political theory, has nothing to do with applied ethics. Politics is about the first political question, which according to Hobbes is the problem of social peace, and we must separate this problem from all other moral problems – such as general happiness, social justice, or even global justice, for example.

The third component is Williams’ minimal requirement for the solution of the political question. The solution of the political problem should not become part of the problem. The state – the solution of the political problem by monopoly of violent coercion – should not harm its subjects, but protect them.

The forth component is Williams’ conception about I would call political inclusiveness. The state should include and protect equally every subject from “what someone would reasonably be afraid of if it were likely to happen to him/her in the basic Hobbesian terms of coercion, pain, torture, humiliation, suffering, death” (Williams 2005, 4).

At this point I would like to add several observations with regard to the components selected above.

Williams presumes the separation between the political and the moral both as social domains and as philosophical method. Both laypeople and philosophers must give to politics what belongs to politics and to morals what belongs to morals. He also takes for granted that the solution for the first political problem is a political hierarchy, the state. Nevertheless in the same or in different historical circumstances there could be more than one single set of institutional political arrangements meeting the requirements for a solution of the political problem. Yet, whatever arrangements could be designed, they should not become themselves part

of the first political problem. In these terms, an arbitrary or a terrorist state inevitably becomes part of the problem. It is also easy to imagine or exemplify that (every) state monopolizes an immense capacity of coercion, resources and mechanisms and instruments of applying it and that states officials can often be arbitrary or cruel in the exercise of the authority given to them by the state. Every state has the capacity to frighten, harm and subdue its subjects. This fear and subjugation could transform subjects into the enemies of the state at any time. The most vulnerable are those Williams (2005, 4) call *radically disadvantaged* in terms of “what someone can fear” with regards to coercion, pain, torture, humiliation, suffering, and death. So we can conclude that political inclusiveness is a condition not only for political stability, but also for legitimacy of the state.

Pogge’s conception of human rights in the light of political realism

Prima facie it appears that Pogge’s conception of human rights belongs to political moralism. Most of us would perhaps agree with this initial impression.

In what follows I will begin by presenting two arguments against aligning Pogge’s position with political moralism, despite the fact that he repeatedly speaks about the “moral notion of human rights” and the word “moral” appears in almost every context where the phrase “human rights” appears in his papers and books.

Then in a second part of this section I will show that Pogge formulates his institutional conception of human rights in terms of the Hobbesian first political question, “... the securing of order, protection, safety, trust, and the conditions for cooperation” (Williams 2005, 30).

I might directly proceed to this second part, mainly regarding the formulation of the institutional conception on human rights in terms of the first political problem, but the moral framework assumed by Thomas Pogge for his theoretical discourse obliges me to give, at least as outlined, supplementary arguments for my point of view here.

I must also say that Pogge usually uses the word “moral” in order to make a distinction between its philosophical connotation and the legal or judicial sense of the phrase “human rights.” In mentioning the “moral notion of human rights” he wants to stress that his understanding of human rights has a philosophical sense, not a judicial one. If we accept that, this

doesn't mean that the word "moral" can be replaced by the word "philosophical" every place where these words appear. However, this could be done in several places.

The first argument for political realism is that in Pogge's view human rights are defined as moral demands for the normative design of institutions. We cannot say that Pogge assumes a utilitarian conception or a deontological vision or whatever other ethical point of view on human rights originating in an ethical doctrine.

His view changes the perspective about the usual discussions regarding the "definition", the "foundation" and "nature" of human rights which are taken as the starting point by any moral conception on human right and their application in society.

Pogge doesn't ask metaphysically about the existence of human rights, their requirements for existence, or the possibility of knowing them. He only enquires about the conceivability of human rights: How human rights could be conceived, while a long tradition, an encompassing culture, an enormous national and international codex, and a well known philosophical dispute show that we cannot doubt their existence.

Thus, he doesn't work toward a comprehensive moral conception in order to be applied to political institutions: "I do not address the ontological status of human rights – the sense in which they may be said to exist and the way in which their existence (in this sense) might be known and justified" (Pogge 2008, 59).

From the above we can surely conclude that for Pogge the problem of their conceivability doesn't refer to the existence, knowledge, justification or strictly to the conceptual analyses of human rights.

Pogge only maintains that conceivability mainly refers to the substantive moral arguments pro and con used for settling what human rights are (Pogge 2008, 59). Despite the fact that he accepts that the substantive moral arguments must be informed by "understanding what human rights are" (Pogge 2008, 59), he sets aside this approach and replaces it with an enquiry aiming to identify those moral demands which institutions as states or other political orders or whatever social entities similar to these should meet. In this approach, human rights along with natural law and natural rights express a "special class of moral concerns" (Pogge 2008, 54) and not moral principles or moral theories. As moral concern, human

rights could be rather socially determined as being characteristic to different societies, cultures, and epochs. Thus “expressing moral demands in the natural-rights rather than the natural law idiom involves a significant narrowing of content possibilities by introducing the idea that the relevant moral demands are based on moral concern for certain subjects: right-holders.” (Pogge 2008, 54).

Therefore for Pogge conceivability refers to an *explanation* of a certain kind regarding the constraints that the design of an (political) institution must meet and not to the question on the suitable moral conception of human rights which must be applied in political institutions. In the same terms, this explanation has nothing to do with epistemology. It is important only as a necessary part of the argument pro and con used for settling what human rights are and not as an attempt to set up ethical or moral principles or expressing a moral doctrine about human rights.

My second argument is that Pogge’s institutional theory of human rights is not intended to be applied to institutions or individuals, but rather to evaluate or asses them. Since 1995 or even 1992, Pogge (2008, 77) has distinguished between two key ways of moral evaluation: evaluating individuals’ actions and evaluating institutions.

We can evaluate both moral conduct and character of individuals, and this is a problem of ethics. We can also evaluate social and political institutions, and this is a problem of justice or of a theory of justice. For evaluation we need standards, and human rights are such standards, not moral principles. I would like to say that Pogge is a partisan of a consequentialist approach in evaluating individual behaviour and institutions. Individual conduct has consequences, results, while institutions produce effects on individuals and society.

In these terms, I think that Pogge, as well Williams, has in the background of his conception of ethical evaluation of individual acts and institutions the distinction made by Max Weber (2008) between ethics of conviction (*Gesinnungsetik*) and ethics of responsibility (*Verantwortungsetik*). In politics, moral beliefs and moral convictions have no relevance in evaluating political activity; only the consequences, the social effects can say to us whether a political action is morally good or wrong.

Taking as premises these two arguments, we can conclude that Pogge does not intend to build his conception of human rights as an

ethical doctrine. Human rights must be conceived as only relating to political institutions.

Pogge's analysis of moral concerns, moral demands, and human rights addressed to the law, institutions, and officials does not constitute anything like a moral doctrine which must be applied to institutions. My argument for this is the fact that Pogge elaborates his institutional conception of human rights with a vocabulary belonging to moral theory, perhaps a theory of justice, but in the framework of the first political question.

Human rights are defined in the context of the first political problem

Remember that in Williams' interpretation the first political question is in Hobbesian terms that of "the securing of order, protection, safety, trust, and the conditions of cooperation" (Williams 2005, 4).

First, Pogge formulates his standards for evaluation of social institutions in terms of the securing of human rights: "... a society must ensure that persons are, and feel secure in regard to the objects of their human rights" (Pogge 2008, 68). In these terms, this could be seen as a condition of securing order in society because every coercive power could threaten or terrorize persons with regard to their human rights. Security in this relation is correlative to coercion. The coercion capacity of institution is ambivalent: it may both threaten and secure the access of persons to their human rights.

Second, Pogge explains the concept of human rights as a claim in terms of access of a person to the objects of their rights. The access to the object of a right can be either prevented or secured by coercive social institutions.

"In contrast to the ways in which human rights are currently understood, I thus propose to explain this concept so that the postulate of a human right to X entails the demand that, insofar as reasonably possible any coercive social institutions be so designed that all human beings affected by them have secure access to X. A human right is a moral claim *on* any coercive social institutions imposed upon oneself and therefore a moral claim *against* anyone involved in their design or imposition" (Pogge 2008, 52).

I think it would be difficult to find a more clear definition of human rights in terms of political realism, and this for two reasons:

The first reason is that human rights as claims are defined in the context of coercive social institutions. Perhaps individuals accept institutions which coerce them in order to have secure access to their rights. So, it is important to stress that Pogge's coercive social institutions neither provide the objects of human rights, nor facilitate access to them. They merely secure access and it is easy to think that the coercion is exercised by those able to do so in order to secure access to the objects of human rights for the rightsholders.

The second reason regards the fact that the above definition understands the coercive social institution as being designed and imposed by individuals upon other individuals seen as moralholders and claimers of their human rights.

In this case, we actually have the interplay of two variables: on the one hand, the coercive design and perhaps the enforcement of social institutions, and on the other hand, the moral claims of the rightsholders against those involved in institutional design and imposition. That means that as the consequence of this interplay every social coercive institution has its own levels or grades of integration or inclusiveness of those affected by it.

As I have just showed above, in my interpretation Pogge doesn't think that coercive social institutions must be a kind of providers of the objects of human rights or facilitators for better access to them for the rightsholders. The rightsholders could simply require of those who design and impose the coercive social institutions a better inclusiveness as a characteristic of the design of the institutions and less arbitrariness with regards to the imposing of the social institution based on this design.

From this point of view, coercive social institutions are hierarchical and perhaps could form a political hierarchy which radically disadvantages some individuals in terms of what someone can fear regarding coercion, humiliation, suffering etc.

This could be an interpretation of what Pogge calls "official disrespect". In his vision, "any society or other social system, insofar as this is reasonably possible, ought to be so (re)organized that all its members have secure access to X, with 'security' always understood as especially sensitive to persons' risk of being denied X or deprived of X officially: be the government or its agents or officials" (Pogge, 2008, 70).

Pogge gives importance to the exercise of official coercion practices related to them in these institutions because the simple mention of human rights in constitutions or other documents is not sufficient to ensure secure access to human rights. (Pogge 2008, 52). A more extended passage with regard to official disrespect deserves to be quoted at length: "...as is widely felt, there is something especially hideous, outrageous, and intolerable about official disrespect, why official moral wrongs are worse than otherwise similar 'private' moral wrongs, quite apart from the fact that they often harm more severely, and harm and frighten more people, than 'private' wrongs. Official moral wrongs masquerade under the name law and justice and they are generally committed quite openly for all to see: laid down in statutes and regulations, called for by orders and verdicts and adorned with official seals, stamps, and signatures. Such wrongs do not merely deprive their victims of the objects of their rights but attack those very rights themselves; they do not merely subvert what is right, but the very idea of right and justice. This conjecture explains, I think, why so many people feel more personally affronted by human-rights violations than by equivalent ordinary crimes, and also feel personally responsible in regard to them – why they see human rights as everyone's concern and feel implicated in. and experience shame on account of what their government and its officials do in their name" (Pogge 2008, 65).

Nevertheless the first candidates for official disrespect are needy people and the poor, but even before these are all these people who are helpless before coercive institutions which overlook and scorn human rights.

Summary

In this paper I wanted to show that we could read Pogge's conception of human rights as formulated from a political realist point of view. For such a reading I chose as a tool Bernard Williams' division between political moralism and political realism in political theory and his reformulation of the first political question in Hobbesian terms as that of the securing order and the conditions for cooperation in society by using coercion. I conflated Pogge's theory of human rights with his theory of global justice, and I highlighted those elements related to the first political problem as mentioned above. Some aspects of this approach may be objectionable. I intentionally overlooked such possible objections. Most likely

I will resume this paper in the future and attempt to respond to these. I'm convinced they will be many.

The elements which I consider as definitive of Pogge's theory of human rights as political realist were these:

– His understanding of human rights in the context of coercive social institutions: “A human right is a moral claim *on* any coercive social institution imposed upon oneself and therefore a moral claim *against* anyone involved in their design or imposition” (Pogge 2008, 52).

– His understanding of the fulfillment of human rights in terms of the secure access to the objects of those rights for rightholders, access provided by institutional design and those charged with imposing institutional coercion.

– The attention paid to the official disrespect for human rights with regard the secure access to the objects of them: officials can harm and frighten people and even deprive their victims of their rights.

– His understanding of social institution in terms of coercion, which implies disadvantages for those vulnerable to official disrespect as needy persons and the poor, etc.

We can add to these main realist characteristics other elements such as his definition of moral obligations as responsibilities, the consequentialist approach with regard to the effects of social institutions, etc. Stressing the political realist elements of Poggevis-a-vis human rights revives the political original demand for human rights which was, in my opinion, a political realist one.

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