E-Human Rights

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INTRODUCTION

Human rights are "international norms that help to protect all people everywhere from severe political, legal, and social abuses" (Nickel, 2010). They have been called "an ethical *lingua franca*" (Tasioulas, 2007) and the "public morality" of the global community (Beitz, 2009). New and emerging information and communications technologies (ICTs) raise questions concerning how to respect human rights in the digital context. Do all people have a human right to Internet access? Is there a human right to be forgotten—that is, to have one's past misdeeds removed from the public record of the Internet? Do Indigenous peoples have a human right that images of their sacred ceremonies not be posted on the Internet? Do we have a right that corporations not track our movements via our cellphones? Developing answers to these and similar questions is the job of a theory of e-human rights.

The aim of this article is to explain what e-human rights are and how they are relevant to addressing the ethical and policy issues that arise in this global information society. To this end, human rights are defined and a brief sketch the history of the United Nations Declaration of Human Rights (UDHR) is provided. It is proposed that human rights are protections against standard threats (Shue, 1980) to those freedoms and resources necessary for living a minimally good human life (Nickel, 2007). Three sorts of e-human rights are discussed in more detail, those to (1) expression and access, (2) privacy, and (3) intellectual and cultural property. How ICTs create both opportunities for and threats to protecting, respecting, and fulfilling these human rights is considered.

BACKGROUND

Human rights are moral and/or legal norms that protect people from severe abuses by establishing a common standard of just treatment for all individuals. While rights generally may be customary, contractual, legal, or civil, a *human* right is one held by a person simply in virtue of the fact she is a human being. (Some human rights, however, e.g., cultural rights, may be held collectively by groups of human beings.) While the duty to *respect, protect, and fulfill* human rights (Eide, 1984) falls primarily upon states, human rights have implications for the obligations of others, including individual citizens, corporations, non-governmental organizations, and international actors (e.g., the World Trade Organization).

The modern conception of human rights arose after World War Two; the rights then articulated were designed to prevent states of the future from committing similar atrocities to those committed in that war (Morsink, 1999). The countries of the United Nations (UN) adopted the Universal Declaration of Human Rights in 1948. Since that time the UN has adopted a number of declarations and conventions further specifying and expanding that list of rights.

Representatives from a large number of UN member countries (among them China, Argentina, Lebanon, Cuba, India, France, Egypt, the USSR, the United States, and Pakistan), as well as non-governmental organizations, philosophers, and leaders from a number of different faiths around the world (Morsink, 1999), were included in the drafting process. Thus, there is little support for the claim that the Universal Declaration of Human Rights is culturally biased and based solely on "western" values (American Anthropological Association, 1947).

"First generation" civil and political rights and "second generation" social, economic, and cultural rights are included in the UDHR. The rights listed in the UDHR were further specified in two separate covenants: the *Covenant on Civil and Political Rights* (CCPR) and the *Covenant on Economic, Social, and Cultural Rights* (CESCR). Over time, the scope of human rights has been extended to recognize rights of women, children, and the disabled, as well as "third generation" cultural and group rights, including the

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rights of indigenous peoples (see, *Convention on the Elimination of All Forms of Discrimination Against Women* (CEDAW), *Convention on the Rights of the Child* (CRC), *Convention on the Rights of Persons with Disabilities* (CRD), *Declaration of the Rights of Indigenous Peoples* (DRI)).

The United Nations documents ground human rights in the dignity of the human person. While this idea is appealing, it is correspondingly vague. Philosophers have attempted to find some unifying principle for what makes something a human right. James Nickel has argued that we have human rights to what is necessary for "living a minimally good life," where this is a life that includes the conditions necessary for our having a range of important choices and access to basic resources (Nickel, 2007).

What exactly "a minimally good life" amounts to is a matter of debate among theorists. Some theorists, such as James Griffin, argue that a minimally good life for persons is one where we can exercise our "normative agency"—that is, our capacity to make important choices for how our lives will go (Griffin, 2008). Capability theorists, such as Amartya Sen and Martha Nussbaum, have argued for a similar view, holding that human rights should protect the exercise of important human capabilities. While Sen thinks that exactly which capabilities deserve protection should be determined through public reasoning (Sen, 2005), Nussbaum provides a list, which includes, life, bodily health, emotions, practical reasoning, affiliation, and play (Nussbaum, 1999, pp. 41-2). Whatever one's account of the moral foundation for human rights, there is the difficulty of limiting the proliferation of rights (Wellman, 1999). Henry Shue has suggested that we should think of human rights as protections against "standard threats" to fundamental interests (Shue, 1980). This practical view of human rights focuses on their role in protecting people from common abuses.

While the major human rights documents were written before the advent of modern ICTs they, nevertheless, are applicable to the just design and use of ICTs. Many of the human rights listed in the (UDHR) and other declarations and covenants are "information rights," i.e., rights that regulate the expression, access, use, and control of information. Not only do information rights constitute a significant portion of our human rights, many information rights support or enable our other human rights. The right to have access to information, for instance, supports the rights to a fair trial (UDHR, 10 and 11), to political participation (UDHR, 21), to work (UDHR, 23), to leisure (UDHR, 24), and to health (UDHR, 25). For example, without basic information about candidate positions, the right to voteis meaningless and accurate information about health is essential for the prevention of many diseases. While all human rights are relevant to determining how ICTs can be designed, distributed, and used justly, rights related to information access and control ("information rights") are particularly salient. Given the increasing use of ICTs for all forms of communication and information transfer, information rights are now frequently being exercised (or violated) in the online environment.

The concept of information rights and e-human rights has a predecessor in the "right to communicate" proposed by Jean d'Arcy in response to the advent of satellite enabled communications in 1969 (d'Arcy, 1969). While d'Arcy did not provide a detailed account of this right, later theorists further developed the notion based on the key ideas of participation and democracy (Hamelink & Hoffmann, 2008; McIver Jr, Birdsall, & Rasmussen, 2004). e-Human rights encompass the right to communicate, but extend beyond it in a number of ways. For instance, e-human rights include not just rights related to communication, but all human rights in relation to digital technology (e.g., the right to work, to a healthy environment).

HUMAN RIGHTS AND ICT

Increasingly, people engage in important life activities in a virtual environment enabled by ICTs. People work, shop, talk, play, create, and learn using ICTs. This means that the ethical issues that arise in any context of human activity arise in this on-line environment. James Moor famously argued that new information technologies create new possibilities for action, and thus, give rise to "policy vacuums" where the traditional ideas of what is ethical cannot easily be applied (Moor, 1985). Significant scholarly work has been done on the ethical issues that arise in the creation and use of ICTs. Some theorists focus on particular ethical issues, such as privacy (Moore, 2003; Nissenbaum, 2010; Van den Hoven, 1997), equitable access to information technology (Britz, 2008), or intellectual property (Himma, 2008; Moore, 2001). In addition, a number of theorists have proposed ethical frameworks

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