

THE HUMAN RIGHTS RELATIVIZED. PROJECT PREVENTION'S CASES OF PAID STERILIZATION

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Abstract: In 2010 a coordinator of the Kenya Treatment Access Movement, James Kamau, announced that Project Prevention – the organization founded by Barbara Harris which pays HIV-positive or drug addicted women for a short- and long-term contraception, including irreversible sterilization – violates provisions against discrimination in the Kenyan HIV and AIDS Prevention and Control Act of 2006. Commentators add that Harris' initiative violates also Kenyan women's autonomy, reproductive interests and especially their human rights, and therefore they find it unambiguously wrong, unethical and evil. On the other hand, Harris defends her organization against these accusations by claiming that in fact it protects human rights and the other enlisted values. In this article we aim to present Project Prevention's operations in Kenya and to demonstrate why answering a seemingly simple question – who was right in the dispute? – in current circumstances is impossible by definition. To illustrate that we show that it is mainly because of the human rights relative interpretations and we propose a political-philosophical solution to the discussed and similar problems in the future.

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Introduction

The concept of human rights has been introduced to provide and increase protection of people's lives and basic interests connected with simple survival. The intention behind it was to create a mechanism that would be universal, i.e. applicable throughout the world, cultures and societies, and common, i.e. possessed by all human beings. As many other concepts, the idea of human rights has been strongly criticized as well for its assumptions, nature and meaning as for more accidental properties such as its practical consequences and diasporas. In this article we present yet another case in which there is clearly observable discrepancy between the human rights idea interpretations. Proposing this particular example, we want to achieve one important goal: to demonstrate the failure of the concept on its most basic level and to claim its rejection by giving political-philosophical argument supporting our standpoint.

The example that we present in this paper is the case of Project Prevention and its international activism. In short, the foundation initially functioning in the United States and offering money for short- or long-term sterilization for drug addicted or HIV positive women, broadened its geographical scope and moved its members to Kenya to offer the same deal. The organization was accused for violating Kenyan law, Kenyan women autonomy, reproductive freedom and, the most importantly, their human rights. Interestingly, the members of Project Prevention were defending themselves by claiming that actually they were protecting the human rights of Kenyan women and their children. Who was right in the dispute? We believe that answering this question by the reference to the concept of human rights taken as the universal and common right is impossible because of the contradictory interpretations of the concept at its most basic level. That makes us to formulate our research question as follows: should the idea of human rights be rejected and why? The corresponding hypothesis assumes that: yes, because of varying interpretations of moral values across cultures. The main achievement of this paper is proposing a political-philosophical argument supporting the hypothesis. To illustrate its validity, we have taken a comparative perspective and have used the method of content analysis. The research was based on both primary and secondary sources including the statements of people involved in the case and the comments of scientists and journalists, respectively.

Accidental and Substantive Critique of Human Rights

One of the most prominent Polish scientists researching political philosophy, Jacek Bartyzel, proposed a distinction to substantive and accidental critiques of democracy (Bartyzel, 2014)). The substantive critique is a stream that directly touches the assumptions of some concept. In practice it means that one tries to prove that some idea is basically mistaken or even evil in its essence, and as such it should be completely and with no doubts rejected. The accidental type of critique is more optimistic. Its focus are drawbacks of an idea, even serious ones, but perceived as "curable" by the use of right remedies.

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Although the primary use of the idea was rather specific, the distinction may be applied to other concepts as well.

Following that logic, the substantive vs. accidental approach was applied by Bartosz Płotka to the idea of human rights to check which stream of critiques is dominant in this case (Płotka, 2016). In numerous references and literature, the author found that although the substantive stream is much more developed, the international organizations such as United Nations or European Union put a lot of effort to preserve the idea of human rights. This fact may be interesting, especially when we look at the content of the critique. In the study the author claimed that the introduction of the term “person” to public discourse and reasoning, and to the post-war Declaration of Human Rights has opened a window of critique towards the human rights concept. It is because it started a worldwide discussion about the meanings of such terms as human, human being, life, personhood, etc. An interesting example is a discrepancy between definitions of human and person – one can validly claim that a person is only a self-aware and self-conscious being. If so, then a human in a coma is not a person. Now if one attaches the status of citizen (i.e. possessing rights, duties, privileges, etc.) only to persons, a coma-state human must be marginalised. The declaration of human rights does not precisely indicate who or what is a person which opens it for a further critique. Another approach to the same problem was taken by Roberto Esposito, Hannah Arendt, Giorgio Agamben and Alasdair.

For Esposito the biggest problem with the human rights concept is following: “what holds true for the individual is not true for humankind, and vice versa. No matter how they are conceptualised, the three terms ‘individual’, ‘law’ and ‘humanity’ fail to line up along a single path” (Esposito, 2012). In other words, any legal rules which have been settled for individual human beings are not applicable to any audience bigger than this individual, because of differences in ethnicity, nationality, religion, morality, motives and interests. It creates a situation in which the enforcement of human rights is impossible because of a ‘personified unity of the legal norms’ (Esposito, 2012); 2) diminished significance of a human being (as a concept); 3) inferiority of the term human being to the term person; 4) the concept of person precedes a human being and eventually 5) ‘separates human beings from their rights’ and causes ‘that something like ‘human rights’ is impossible’ (Esposito, 2012).

Agamben, on the other hand, was more practical in his critique and focused on the paradox created by the contemporary humanitarian organizations. According to the author they usually perceive people as individuals deprived of almost everything except their biology. Therefore, humanitarianism, probably not intentionally supports the process of the exclusion of people in difficult situations because it leads to their further separation from the political rights and the legal protection (Agamben, 2008).

The critique closest to this article scope has been presented by Alasdair MacIntyre for whom the existence of any rights cannot be proven or at least evidence for their existence has been not yet discovered; human rights are a sheer ideological response to the social crisis which emerges when natural theology is abandoned; and for whom human rights are not universal. We support the author’s last claim which unmasks its biggest substantive weakness.

The Case of Project Prevention

Project Prevention is a non-profit organization formerly known as the Children Requiring a Caring Community that pays drug addicted or HIV positive women for short- and long-term contraception and sterilization. The assumption behind founding the organization was based on medical studies and records according to which children of drug addicted mothers inherit tendency to addiction. The most illustrative organization’s slogan was “She has her Daddy’s eyes and her Mommy’s heroin addiction”. The organization members claimed that for these children it is better never to be born because right from the very beginning of their lives they are severely biased and without chances for a good life. To realise its mission, the foundation offered drug addicted women even \$300 in cash for having short- or long-term contraception, including sterilization.

The Project Prevention’s activity raised many moral concerns in a society. The organization was criticized for infringing women autonomy and reproductive interests. The major objection, however, was raised by Michael Sandel in his book *What Money Can’t Buy – The Moral Limits of Markets*. The author claimed in it that paying women for using contraceptive methods including sterilization causes that people in general stop perceive parenthood itself as a (moral) value and start to quantify it and transform into commodity. According to Sandel it causes not only the corruption of parenthood but also diminishes the value of life. He wrote about it very strictly: “Harris (the founder and the face

of Project Prevention – the authors) treats drug-addicted and HIV-positive women as damaged baby-making machines that can be switched off for a fee. Those who accept her offer acquiesce in this disregarding view of themselves” (Sandel, 2012). The whole discussion about Project Prevention could be narrowed down to the problem of autonomous decision of woman whether she wants to accept the organization’s offer or not. Within this framework, for instance, Sandel’s objections would have no bigger meaning because it would be only the matter between involved people (the members of the organization and women) whether they want to have a transaction. The only problems then would be the price and the conditions and enforcement of agreements. In other words, the whole enterprise would be the concern of free market. The Project Prevention’s issue, however, became the matter of law and politics since it have entered the Kenyan territory and have announced its plan to broaden its range to countries in South Africa. In these regions “health officials and human rights proponents have voiced outrage and opposition” (Sandel, 2012).

It started in 2010 when a coordinator of the Kenya Treatment Access Movement, James Kamau, announced that Project Prevention violates provisions against discrimination in the Kenyan HIV and AIDS Prevention and Control Act of 2006. Commentators added that Harris’ initiative violates also Kenyan women’s autonomy, reproductive interests and especially their human rights, and therefore they find it unambiguously wrong, unethical and evil. On the other hand, Harris defends her organization against these accusations by claiming that in fact it protects human rights and the other enlisted values of these women. The most interesting event in the whole history of Project Prevention was its entrance to Kenya. It was a turning point from which the content of discussion changed dramatically. Initially, the debates were focusing on the morality of the offer and exchange, the corruption of moral values as we know them, e.g. life, parenthood, etc., and generally on its legal aspects. Entering Kenya changed the focus of debates to the protection of human rights. Intriguingly, both proponents and opponents of Project Prevention claimed that their aim is the protection of these rights. Who was right? Surprisingly, both answers “all of them” and “neither of them” are correct. How can that be?

Human rights vs. human rights in Africa

Human rights are rights that belong to every individual in a consequence of being human and independently of acts of national laws. It is stated that every human being, just because it is a human being, is entitled to some basic protections. This fundamental protection covers discerning a unique worth of every individual and assuring it right to life. With time it was broadened and now includes freedom from torture and slavery, freedom of speech, thought, conscience and religion, right to fair trial and freedom of movement. The most important of all enumerated rights is right to life. Today it is much broader than at the initial stages of its creation. Especially important here is that in 1994 at the Programme of Action of the International Conference on Population and Development there was established and internationally affirmed set of reproductive and sexual rights that are part of the continuum of human rights. Referring to these rights was exactly what did the opponents of Barbara Harris and her Project Prevention. They were convinced that the members of the foundation are choosing who should live and who should die in eugenic manner. Another objection was that Project Prevention’s offer is coercive – because the addicted women are unable to resist taking the amount of money. The human rights defenders then thought that the women are forced to resign from having babies in the future hence that they reproductive rights were violated.

Project Prevention’s line of defense was simple. The organization members claimed that first of all they do not force anyone to do anything. There is no obligation to take the money. The decision belongs solely to the women. They also defended themselves by the reference to the 1997 Declaration on the Responsibilities of the Present Generation Towards the Future Generation. Project Prevention claim was that the interest of quenching the addiction cannot be more important than the interest of unborn child to have a life free of addiction. Therefore, they are convinced that their activism serves defending the human rights and the prosperity of future generations.

The most intriguing matter showed up when Project Prevention has moved to Kenya. The African human rights activists were defending Kenyan women against the European and American human rights activists and because of that they indirectly supported the Project Prevention. The question is: was the support for Project Prevention the aim of the African activists? The answer is simple no. The only thing that they wanted to do was to protect their own people from the Western way of thinking.

Africa is a region in which the notion of human depends on the old traditions. One of the most important one is that a woman's purpose is to give birth to children and raise them. If a woman in Africa cannot give birth to a child for any reason (even if she is naturally infertile) she is no longer perceived as a member of community or even as a human being. This is why defending the addicted women autonomy on Kenyan ground could lead directly to their losing of the human rights according to the African comprehension.

Laura Koba claimed that the kinds of narrations proclaiming the existence of different human values dependent on place of origin is a threat because it leads to the intentional violations of human rights (Koba, 2018). In this article we propose to restructure her argument. We suggest that the existence of different human values is natural and characteristic across cultures. Only through their full understanding it is possible to elaborate rights that would appropriately serve a given culture. In our view, the concept of human rights is not such a set of rights. The idea was made in the Western cultures and this type of thinking deviates from the African reasoning (Tangwa, 2010). Therefore, it is simply impossible to apply the "Western" human rights in African countries. The only theoretical result is a contradiction, and the practical one is misunderstanding between people and arising conflict. This is why we strongly support Alasdair MacIntyre's claim that human rights are not universal. The presented case of Barbara Harris' Project Prevention activity in Kenya is the best example for this statement.

Conclusions

In this paper we analysed the example of substantive weakness of the concept of human rights. To illustrate that, we have summoned the case of Project Prevention and its international activism. Although the organization was accused for violating Kenyan law, Kenyan women autonomy, reproductive freedom and, the most importantly, their human rights, the African human rights activists defended their country mates from the human rights activists from other continents. They did not express support for Project Prevention but they wanted to show that their comprehension of the concept of human rights is different from the Western understanding because of culture-dependent perception of human. In Africa a woman is a human as long as she can give birth to a child and raise it. Based on the comparative approach we have taken in that study we claim to fully reject the concept of human rights as substantively mistaken. The set of human rights is still increased which causes that they start to resemble the national laws but despite of that there is still claim to enforce them globally. It is not possible even in the simplest cases as we presented in this study of Project Prevention's activism. First of all the organization tried to transfer their understanding of the concept to Africa, then the same thing was tried by their opponents and all failed, simply because of cultural differences in understanding basic moral values.

Our research question – should the idea of human rights be rejected and why? – then, is answered positively. Yes, it should be rejected because of varying interpretations of moral values across cultures. Opposing to the claims of other authors, we believe that the only threat is assuming that there is one universal idea for everyone and enforcing it even against the will of the people, who usually have another view on that matter.

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