

The Right to Community?

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The Community of Rights. Alan Gewirth. University of Chicago Press, 1996. Pp xvi, 380.

Does the modern state have a duty to implement basic economic and social rights for its population? If so, what program of action should the state adopt to realize this obligation?

At the dawn of a new American presidential term, as affirmative action programs come under severe threat and welfare entitlements are abolished, the answer to the first is increasingly negative (and the second therefore irrelevant). Conversely, in the realm of public international law, the human rights regime established after World War II answered the first question with a qualified affirmative. States have an obligation to promote the economic and social rights of their citizens *insofar as they have the available resources to do so*. Unlike the absolute and immediately binding standard imposed with respect to such rights as freedom of thought, and protection from torture or arbitrary deprivation of life,¹ the requirements on states to provide food, housing, medical care, and basic education were formulated in terms of contingency and progressive realization.² As to the second question, it was left up to states to decide what steps their resources permitted them to take to realize economic and social rights. The international monitoring and enforcement machinery established to ensure states' compliance with their obligations with respect to civil and political rights³ was not paralleled in the economic and social fields.

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¹ The so-called non-derogable civil and political rights are set out in the International Covenant on Civil and Political Rights, Arts 4-8, 11, 15, 16, 18, UNGA Res 2200(XXI), 999 UNTS 171, 174-78 (Dec 19, 1966, entered into force Mar 23, 1976) ("ICCPR").

² "Each State Party to the Covenant [on Economic, Social and Cultural Rights] undertakes to take steps, individually and through international assistance and co-operation . . . to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means." International Covenant on Economic, Social and Cultural Rights, Art 2(1), UNGA Res 2200(XXI), 993 UNTS 3, 5, (Dec 19, 1966, entered into force Jan 3, 1976).

³ The most significant is the right of individuals, under the Optional Protocol to the

At first glance, this dichotomous approach appears perverse. Civil and political rights are considered "first generation" rights, while economic and social rights constitute a "second generation," even though the former presuppose a certain attainment of the latter—if indeed the two types of rights can be disentangled in the first place. Access to food, shelter, and basic education is a necessary precondition for the exercise of freedom of thought; indeed, the failure to provide a minimal, life-sustaining standard of living in the modern world of plenty arguably represents an arbitrary deprivation of life.⁴ The constitutions of the Soviet Union and most of the old-regime East European states reflected this thinking by enumerating a wide range of social and economic rights.

In the West, however, a distinction between the two sets of rights has been justified by pointing to differences in the feasibility of their implementation. States can establish structures that protect their citizens' civil and political liberties, but they cannot create natural or social resources by fiat. Rights to social and economic goods, while worthy aspirations, are unenforceable. Enshrining such rights, the argument goes, is therefore pointless at best, and moreover runs the risk of dangerously discrediting the worth of other constitutional obligations.⁵ While this may well be true for impoverished states, it hardly reflects the situation of many affluent states where unequal distribution, not scarcity, is the principal source of deprivation.

In *The Community of Rights*, Alan Gewirth boldly takes on these questions. First, he proposes and substantiates a powerful philosophical argument in favor of the state's duty to provide basic economic and social rights for its citizens. Second, and perhaps surprisingly for a philosopher, he cogently elaborates a detailed account of the socioeconomic and political strategies necessary to turn his theory into practice. The book starts with a philosophical account of the relationship between human action and rights. It details the nature of positive rights and argues for the centrality of a principle of mutuality, which links individuals to the establishment of a just community based on human rights. The second half of the book then describes, in illuminating and

ICCPR, to present claims of human rights violations to the Human Rights Committee.

⁴ For a discussion of the implicit overlap between the two international human rights covenants, see Craig Scott, *The Interdependence and Permeability of Human Rights Norms: Towards a Partial Fusion of the International Covenants on Human Rights*, 27 *Osgoode Hall L J* 769, 771-72 (1989).

⁵ Cass R. Sunstein makes this argument in *Something Old, Something New*, 1 *East Eur Const Rev* 18, 18-20 (Spring 1992), and *Against Positive Rights*, 2 *East Eur Const Rev* 35, 35-38 (Winter 1993).

convincing detail, how the philosophical argument translates into concrete policies regarding welfare, education, property rights, employment, and industrial and political democracy.

Building on his earlier book *Reason and Morality*⁶ and drawing together a substantial corpus of writing by others, Gewirth traces the guiding socioeconomic principles—what he calls “the economic biography”—that would govern a society concerned with the protection of individual human rights (pp 99-100). He argues, in opposition to an adversarial conception of the relationship between community and individual rights, that the two have a relation of mutual support. Thus, it is a duty of the wider community (which he identifies with the state rather than the market, charitable organizations, or other institutions of civil society) to promote individuals’ ability to achieve a life of freedom and well-being. At the same time, it is an obligation of individuals, once they have the capacity to do so, to exert effort to realize such a life and to aid others in the same pursuit.

The Community of Rights focuses its argument particularly on those worst off and best off. According to Gewirth, the most vulnerable members of society—victims of the devastating material and psychic effects of prolonged poverty and deprivation, who are unable by their own efforts to achieve a minimal dignified standard of living—are entitled to particular kinds of assistance, such as welfare support, intensive pre-schooling on the model of Head Start, and public works jobs with child care provided. The most affluent—beneficiaries of positive socialization and heredity, and consumers of a disproportionate share of societal resources—have an obligation to support such programs, if only through progressive taxation schemes. For their tax dollars, affluent citizens receive dividends in the form of reduced social divisiveness. By eclectically combining a focus on the state’s obligations with an emphasis on individual effort and responsibility, Gewirth distinguishes his robust social democratic position from the approach of communitarians, socialists, and liberal theorists.

What sets *The Community of Rights* apart from other works defending social and economic rights is its dialectical underpinning. The starting point of the book is that all human action is necessarily connected with the concept of rights (p 18). Gewirth advances a deductive argument (elaborated in earlier work) to establish this. He begins from two assumptions: first, that human beings can act freely, and second, that they act purposively to attain “well-being.” Gewirth then moves from the human

⁶ Alan Gewirth, *Reason and Morality* (Chicago 1978).

rights of the individual to the necessity of rights for all human beings.

This argument concludes where modern international human rights law commences, with the proposition that all human beings (as rational and volitional agents) have inherent dignity and equal and inalienable rights.⁷ Despite its formal deductive nature, Gewirth's reasoning is of considerable interest for human rights lawyers precisely because it does not simply assert the "inherent dignity" of human beings as an *a priori* assumption, as does the Universal Declaration of Human Rights, or as a culturally specific construct.⁸ It is because human beings have the capacity to act purposively that they have the "inherent dignity" that distinguishes them from animals, plants or other forms of life, and require, as a matter of rational necessity, the fulfillment of basic economic and social rights.⁹ In the absence of the basic necessities of life, human beings lose some or all of their purposive ability to act and are therefore deprived of the possibility of realizing their inherent dignity.

This argument presents a difficulty with Gewirth's thesis. If being an agent requires having freedom and well-being, then either there is no point in claiming a right to these goods because all human agents already have them, or, given the massive extent of human deprivation and oppression for many millions around the world, they cannot be necessary conditions of action. In response, Gewirth invokes a notion of potentially different levels of human agency: agents may have freedom and well-being insofar as they are capable of purposive and rational activity, but their circumstances may change so that they lose these conditions of action. In other words, it is not inevitable that they will have these goods prospectively and indefinitely. Hence the necessity of human rights as a social safety net.

Alternatively, the deprivation of the world's poorest people may be taken to indicate not an inability to act or to achieve any purposive goals, but a mismatch between capacities and social conditions; they may well have the capacities but lack an adequate set of social conditions. Typically such populations have only a limited capacity for purposive activity because they only

⁷ Universal Declaration of Human Rights, Preamble, UNGA Res 217 A(III), Doc A/810 (1948).

⁸ See, for this approach, Rhoda E. Howard, *Dignity, Community, and Human Rights*, in Abdullah Ahmed An-Na'im, ed, *Human Rights in Cross-Cultural Perspectives: A Quest for Consensus* 81, 83 (Pennsylvania 1992).

⁹ According to Gewirth, the mentally and physically disabled have rights "to the degree to which they approach being normal agents" (p 24). More on this below.

have access to a basic, minimal level of well-being. But well-being comprises more than the bare minimum of subsistence; it includes the ability to have control over one's own life, and to achieve basic self-respect by virtue of education and the ability to earn. Without these, human endeavor is inevitably doomed to bare animal existence. So there are levels of well-being¹⁰ and correlative levels of purposive action (p 14).

It is the failure of states to ensure access to this more comprehensive well-being for the deprived masses that underlies the apathy, destructiveness, and low level of productive activity characteristic of many poor countries. Though *The Community of Rights* does not focus on questions of international distribution of resources, by linking human action to access to basic rights Gewirth's theory avoids the myopic culturalism of some recent accounts of global inequalities. Far from cultural anarchy or civilizational clash being at the root of human misery in the non-western world, as suggested by writers such as Robert Kaplan¹¹ and Samuel Huntington,¹² it is the failure of governments to institute effective socioeconomic reforms and redistributive programs that raises the most critical questions facing the international community today.

Gewirth's position also contrasts in two key areas with that of John Rawls, despite their common focus on the situation and needs of the most deprived members of society. As we have seen, Gewirth constructs his argument for a community of rights on the basis of the rational necessity of rights, proceeding by way of logical deduction. By contrast, the Rawlsian theory of justice stipulates, as is well known, that any actor must make his moral choices from an "original position," behind a "veil of ignorance." Gewirth notes critically that there is an element of contingency here, because no argument establishes why, as a matter of neces-

¹⁰ The book details a hierarchy of three different levels of well-being: "basic well-being" (the essential preconditions of action, such as life and health), "nonsubtractive well-being" (the abilities and conditions for maintaining one's effectiveness, such as not being lied to or stolen from), and "additive well-being" (the conditions for increasing one's capabilities, such as education and self-esteem) (p 14). Though Gewirth does not address this point directly, presumably civil and political rights, which enable individuals with the basic material preconditions to act effectively in the world, would fall within the third, additive level of well-being. For an alternative account of different levels of freedom and well-being required to act, see, for example, Amartya Sen, *Capability and Well-Being*, in Martha Nussbaum and Amartya Sen, eds, *The Quality of Life* 30, 33-38 (Clarendon 1993).

¹¹ Robert D. Kaplan, *The Coming Anarchy*, *Atlantic Monthly* 44, 46-68 (Feb 1994).

¹² Samuel Huntington, *The Clash of Civilizations?*, *72 Foreign Affairs* 22, 29-48 (Summer 1993).

sity, a human agent must accept Rawls's two principles of justice (p 27).

But surely it is precisely this element of choice that is crucial in the implementation of human rights. Herein lies a possible weakness of *The Community of Rights*. Freedom and well-being turn from normative abstractions to practical actuality only when individual citizens, politicians, and governments decide it is in their interest to move forward and implement them. In most cases, given the imbalances of power and other resources, redistribution is not mandated by mutuality or any other abstract principle. Revolutionary disruption and massive social upheaval do not threaten ruling elites within most countries. Nor does the position of the wealthy nations in the present geopolitical climate require them to attend to the well-being of the most needy nations and their citizens. Indeed, Gewirth distances himself from what he considers an excessively adversarial account of the power of the disenfranchised to effectively threaten the powerful (p 122). Instead, he sets out his position in more sanguine terms:

The state, as the community of rights, imposes taxes in order to secure the economic rights of those who are more deprived and thereby to narrow the inequalities that subject them to unwarranted superiorities of power. In this way rights and community reinforce one another, because these economic rights are fulfilled through the mutualist provisions of the community (p 179).

But he provides no account of how this extensive economic redistribution—involving progressive taxation and means-tested benefits, for example—is to be accepted as desirable (let alone necessary) by those burdened. Without being unduly pessimistic about human altruism, it is clear from the present distribution of resources, both within and between states, that the necessity for mutuality and redistribution has been singularly neglected in the interests of self-advancement.

A second difference between Gewirth and Rawls points in the opposite direction. It goes to the question of human achievement and effort. Rawls emphasizes the need for equal opportunity to access society's basic institutions, but he does recognize that effort (stimulated by economic incentives) and individual merit have a proper role to play in determining access to resources, jobs, and other social goods in that society.¹³ Gewirth, for

¹³ Gewirth's critique of what he considers to be Rawls's neglect of the responsibility of individuals to use their own abilities (p 190) confuses Rawls's account of the basic institutional structure that determines people's prospects in a just society (where he does indeed

his part, stresses the element of individual effort and responsibility as an essential basis for the principle of mutuality underlying the community of rights. Once individuals are in a position to be productive agents—either unaided if they are sufficiently well-endowed or as a result of the community's implementation of social and economic rights—they have an obligation to contribute to the community. Only an absence of productive potential, not a lack of personal effort, can justify welfare dependence.

But while Gewirth characterizes Rawls's position as being determinist (p 190), he does not adequately explain the genesis of the individual "effort" on which he relies. Consider Gewirth's treatment of two key areas where individual motivation relates to socioeconomic provision: entitlement to welfare and participation in worker cooperatives. In the first, Gewirth correctly highlights the fact that "[m]any welfare recipients come from a background in which the debilitating effects of poverty have already left a heavy mark" (p 128). They therefore frequently lack the psychological attributes necessary to seek work or even participate effectively in "workfare" and other social programs. The book sets out a persuasive account of the conceptual and practical limitations of these programs, a critique that could, *mutatis mutandis*, apply to a wide array of state welfare strategies (pp 128-31). Gewirth's solution is a form of social engineering designed precisely to change these individuals' motivational structure:

It is hence naive to expect that these persons *directly* have the emotional and intellectual abilities, including relevant skills and an effective sense of personal responsibility, needed to take adequate advantage of the opportunities they may be offered. In this regard, it is vitally important to seek out their children at a very early age and to *put them into educational programs in which these debilitating effects can be strongly countered* (pp 128-29, emphasis added).

Given this acknowledged association between institutional factors and individual motivation, it is not clear what place there is in Gewirth's account for individual effort as an independent variable.

Similar questions arise from the analysis of individual participation in forms of workplace democracy. In the optimal worker cooperative employment situation, for example, where

downplay individual effort) with the allowances Rawls makes for inequalities derived from differential effort or talent. I am grateful to Martha Nussbaum for this point.

industries are run and owned by the workers and exhibit a "flourishing kind of socialized entrepreneurship" (p 300), the solidarity essential to the system has to be developed and built in by institutional means so that each individual actor becomes, if he or she is not already, "a reasonable self" (p 304). The inherent rationality of the principle of human rights is thus a socially produced realization, which has to be consistently and constantly taught. Again, this seems to suggest that the motivational structure required to act in a mutualist manner is irreducibly a product of external factors rather than of any inherent individual ability to exert "effort."

But if the givenness of the individual bearer of rights is problematic in Gewirth's theory, so too, arguably, is the entity standing at the opposite end of his analytic stage, the community. The problems can be posed in terms of two questions. First, who is the community of rights to be composed of? Second, given that our current world includes multiple communities, what is the relationship of each community to the others?

According to Gewirth, all human agents are bearers of rights; however, he qualifies this general point in two ways. The first qualification is a contrast between "normal" agents and other humans who lack the ability or right to be purposive prospective agents. Mentally and physically disabled humans fit within this category (p 65) and at various points in the book, so do "criminals" (p 315). Gewirth argues that the less ability humans have for productive agency, the "less they are able to fulfill their purposes without endangering themselves and others, and this is why their generic rights must be [] reduced" (p 65).

This association of rights to agentive capabilities is questionable, as is the unqualified connection between disability and danger. True, the freedom (though not the material well-being) of severely mentally subnormal individuals may properly be curtailed for their own safety. Yet it is not clear that this utilitarian argument is sustainable for the overwhelming majority of affected individuals. Difference is not the same as danger, though some may perceive it that way. As Martha Minow has emphasized, this sort of vocabulary, "that distinguish[es] the self from others, the normal group from the abnormal, and autonomous individuals from those in relationships of dependency . . . ends up contributing to rather than challenging assigned categories of difference that manifest social prejudice and misunderstanding."¹⁴

¹⁴ Martha Minow, *Making All the Difference: Inclusion, Exclusion and American Law* 9 (Cornell 1990).

Moreover, Gewirth is silent on the question of how to resolve conflicts between the interests of the “normal” majority and of the “subnormal” minority. For example, he does not address the questions of integrating mentally and physically disabled children into normal classrooms, resolving disputes over the siting of residential facilities for the disabled, and the like. In the case of “criminals” (presented here as a strangely essentialized category), the conflicts with the interests of the majoritarian sections of the community are even clearer, yet Gewirth leaves the area completely unexplored.

Gewirth’s second qualification concerns the broader question of who should be part of the “us” of community. Given that the state has a duty to meet individuals’ needs for freedom and well-being, what criteria should determine the community of beneficiaries? Who is and who is not included within the polity? During an era of massive migratory flows, refugee displacements, and supra-national unions such as the European Union, NAFTA, and Mercosul, this is an increasingly urgent question.¹⁵ Yet Gewirth fails to discuss the rights of non-citizens to inclusion in polities, particularly affluent polities (p 289). He does allude to the critical issues at stake, for example, in restricting universal social and political rights to “members [does he mean citizens, legal residents, physically present individuals?] of societies geographically demarcated as countries or nation-states” (p 86), but he does not clarify whether this is a purely pragmatic or a normative restriction.¹⁶ Though he asks, “[H]ow can the resident of Chicago help to fulfill the pressing agency needs that the residents of Bosnia or Afghanistan or Somalia or Ecuador cannot fulfill for themselves by their own efforts?” (p 55), he seems to accept as inevitable restrictive or exclusionary state immigration and citizenship laws (p 294). This omission is significant. The stakes in having access to freedom and well-being—and the problem of mutuality—are raised sharply when destitute non-citizens, par-

¹⁵ See, for example, Will Kymlicka’s recent discussion of multicultural citizenship, and particularly his useful distinction between three forms of group-differentiated rights, in his *Multicultural Citizenship: A Liberal Theory of Minority Rights* 26-33 (Clarendon 1995).

¹⁶ The full passage runs as follows:

The universality here envisaged may be restricted, for reasons of practical convenience of effectuation, to members of societies geographically demarcated as countries or nation-states; but in principle it applies internationally as well. At the same time, this universality does not militate against the particularism whereby persons give special consideration to the members of their own families and other partial groups of friends or colleagues. Such particularism not only is consistent with but is justified by the universal principle of human rights (p 86).

ticularly those fleeing persecution, are denied access to more affluent countries.

In a larger sense, the question of ethnic or cultural coherence or diversity of the polity goes to the heart of one's understanding of what "community" is. One of Gewirth's models of economic democracy is the worker cooperative experiment at Mondragon in the Basque region of Northern Spain. It is clear that the ethnic coherence and cultural solidarity of the Basque work force, and the correlative absence of the "vast labor mobility and heterogeneity" that characterizes "existing capitalist industrial societies," (p 308) were critical components of the project's success (p 302). Indeed, Gewirth goes on to argue that a reduction in labor mobility is critical to the viability of such projects. But he does not explore the exclusionary consequences of this model for immigrants, migrant workers, and others.¹⁷

This problem raises the broader question of the relationship between nation-states. While *The Community of Rights* focuses unapologetically¹⁸ on the United States, Gewirth refers to the need for international cooperation and a universalist approach to the enforcement of the community of rights. He rightly acknowledges the primacy of the individual state as a vehicle for the translation of moral rights into human entitlements. Other theorists may argue that the nation-state is in terminal decline,¹⁹ but in the absence of effective international enforcement mechanisms, the state remains the appropriate custodian of the duties generated by a theory of human rights. Gewirth, however, neglects the complex nature of interstate relations and the critical effect of these relations on access to human rights.

¹⁷ He cites Switzerland as an example of an existing industrial society where "community attachments [have] markedly . . . decrease[d] labor mobility" (p 308). But Switzerland has one of the largest foreign labor forces, and its denial of citizenship rights to long-established migrant workers—particularly Italians—is notorious.

¹⁸ Gewirth defends his focus on the United States as follows:

Although the problems, histories and traditions of each country are to some extent unique, the American experience can be taken to be broadly representative of many other Western countries . . . insofar as other countries have been developing economically according to Western patterns, the American problems can be taken at least in part to apply to them as well, either in the present or in the not too indefinite future (p 111).

¹⁹ "[W]e are in the process of moving to a global order in which the nation-state has become obsolete and other formations for allegiance and identity have taken its place." Arjun Appadurai, *Patriotism and Its Futures*, 5 *Pub Culture* 411, 421 (1993). See also Mike Featherstone and Scott Lash, *Globalization, Modernity and the Spatialization of Social Theory: An Introduction*, in Mike Featherstone, Scott Lash and Roland Robertson, eds, *Global Modernities* 1, 1-2 (Sage 1995); Arjun Appadurai, *Modernity at Large: Cultural Dimensions of Globalization* 22 (Minnesota 1996).

Interstate relations affect rights in two ways. First, affluent states' policies are frequently a reflection of, or work in tandem with, massive transnational corporate interests. These interests operate to the detriment of the majority of residents of underdeveloped countries, through structural adjustment policies²⁰ and other forms of economic and political domination. Therefore, much interstate cooperation is principally characterized by a negative effect on the productive abilities of those worst off. This reality makes Gewirth's account of possible interstate intervention seem dangerously wishful:

Where governments do not have the will or the resources to fulfill the rights, they *must be helped* by other governments, especially through *facilitating* processes of democratization and developing in their own members the abilities of productive agency whereby they can provide the needed resources for themselves, and also by making international trade less subject to domination by richer nations (pp 353-54, emphasis added).

Such a consensual process is hard to conceive, and still harder to achieve.

Second, the post-war period has witnessed an increasing polarization between affluent and non-affluent states concerning access to human rights protection. This disjunction has become more marked since the end of the Cold War removed some of the equalizing checks and balances in the world system. At the same time that collaboration between states within regional blocs or economic networks is picking up steam, the processes of exclusion that have long operated between individual states are now being transferred to larger interstate groupings. Mutuality of a sort is at work, but only within circumscribed geographically or economically defined interest groups. Affluent states have made concerted moves to fortify their common borders against asylum seekers and to regionalize the responsibility for exilic relocation within refugees' region of origin.²¹ Gewirth does not provide an

²⁰ These policies are routinely demanded of third world governments by international organizations such as the World Bank and International Monetary Fund, in return for loans and debt forgiveness. The pursuit of free market policies, the reduction of state subsidies, and the economic liberalization associated with structural adjustment all impact most onerously on societies' most deprived members.

²¹ For a justification of this position by a prominent refugee advocate and scholar, see James C. Hathaway, *Can International Refugee Law Be Made Relevant Again?*, in U.S. Committee for Refugees, *World Refugee Survey 1996* 14, 14-19 (Immigration and Refugee Services of America 1996).

account of how the principle of mutuality would work in the context of this sort of regionally configured community of rights.

These omissions do not detract from the importance of this erudite and lucid work. In elaborating his vision of the community of rights, Gewirth succeeds in drawing together a huge literature on the social and economic policies that could improve the functioning of social democracies. He establishes persuasively, with great scholarly mastery of the field, just how crucial these "second generation" rights are for modern democratic society. This book draws together much of the material on which the critical debates of our times over social and economic policy must depend. Most usefully, *The Community of Rights* articulates a tension between normative and pragmatic considerations, raising fundamental questions about human rights enforceability, questions that are as difficult to resolve as they are urgent.