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Information Rights, Human Rights, and Political Rights: A Précis on Intellectual and Contextual Issues for Library and Information Science

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INFORMATION RIGHTS, HUMAN RIGHTS, AND POLITICAL RIGHTS: A PRÉCIS ON INTELLECTUAL AND CONTEXTUAL ISSUES FOR LIBRARY AND INFORMATION SCIENCE[1]

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The conference call for papers for the 2011 Information Ethics Roundtable on Information Rights as Human Rights asks a series of non-rhetorical questions such as: are information rights best conceived merely as liberties; are information rights instrumental; what are the possible conflicts between intellectual property and information rights; and what are the drawbacks of taking a human rights approach to information ethics? A prominent author on information ethics in the library and information science (LIS) field like Mathiesen (2008) works on information rights from the vantage of moral theory, and thus casts access to information as a welfare right. That is, as an obligation of the state. Another prominent author on information ethics in the LIS field – Samek (2007) – views information rights as a core value of librarianship to be put into action in a meaningful and global way. Both believe that other rights – human, educational, expressive, and political – are essentially fallow at best, or meaningless at worst without this primary right. Both also subscribe to an extension of the postwar global political settlement that Rawls describes: an agreement that war is justified only to protect international security and that state sovereignty is limited by human rights (Beitz and Goodin 2009, 1). Therein lies something of our quandary: rights (including informational rights) are formed, enforced, and come to life in political contexts. We should then query political theory – specifically the resources of democratic theory – as to the intellectual and contextual issues surrounding human and information rights because "it is now virtually axiomatic that constructive theorizations about politics must take their bearings from an acceptance of the priorities and principles of democratic theory" (Mara 2008, 1). Essentially, we should interrogate that central theoretical source that grapples with the fundamental political contexts of rights of any sort. That is the purpose of this paper, and it addresses a version of the last of those questions noted: what are some of the drawbacks to taking a human rights approach to information rights?

The Context: Sources of Rights and Some of Their Problems

To begin, if we take the formulation of the "right to have rights" (Benhabib in Catiglione 2005, 20) as foundational, then rights are fundamental and universal, they are quite often theorized to exist independently of particular legal and political systems, they are normative and binding on their face, they must be asserted and occasionally politically protected in some instances, and they are minimal (Brown 1993, 1-14). In other words, rights are enacted politically, but do not originate politically. Sitting lightly behind this conception are metaphysical or religious ideas: that a relationship to a higher or purer plane of existence is the source of what makes humanity special, and thus the repository of rights exists outside of any human political or social structure (Brown 1993). This tradition is not to be taken lightly. Man in the image of God was the source of ideas as basic as natural rights, the dignity of the human person, and the right to a living wage (Brown 1993, 25-36). The resolutely secular democratic theorist Sheldon Wolin notes that "the historical contribution of western religions to the political education of ordinary and poor people is almost impossible to exaggerate," leading to enhanced roles for women, an advocacy for the poor, and social solidarity (1996, 37). But, with this come all of the problems of belief and faith: lack of proof of the existence of the source of those rights, conflicting values that cannot be adjudicated because faith cannot be compromised, and so on. In a now-humorous illustration of this conundrum, the French representative to the UNESCO Commission in 1948, having agreed to support the Universal Declaration of the Rights of Man along with the Soviet Union and other representatives of wildly divergent political perspectives, said that "we agree on these rights, *providing we are not asked why*" (in Brown 1993, 25). Ignatieff writes that "Unless you think that human beings are sacred, there seems no persuasive reason to believe that their dignity should be protected with rights" (2000, 340). To have to rationally justify universal rights in 1948 would have descended into arbitrary dogmatism or the agreement itself would have been stopped by irreconcilable differences (Brown 1993, 25).

The famous counterarguments parallel the refutations of proofs of faith. Jeremy Bentham in the late 18th and early 19th century wrote two early and famous rebuttals: "right is with me a child of the law; a natural right is a son that never had a father" (in Brown 1993, 9). That is, rights are man-made and based in law. As Dewey put it, inhering negative rights are mythical and philosophically indefensible: the individual and her/his rights are "nothing fixed, given ready-made" and "already there" (1935, 227; 1960c, 268-269). Even more famous is Bentham's retort that "reasons for wishing there were such things as rights, are not rights; … want is not supply – hunger is not bread. That which has no existence cannot be destroyed. … Natural rights is … nonsense upon stilts" (1961, 347). Two hundred years later, MacIntyre famously wrote that "there are no such rights, and belief in them is one with the belief in witches and unicorns. The best reason for asserting so bluntly that there are not such rights is … the same … reason … for asserting that there are no unicorns:

every attempt to give good reason for believing there are such rights has failed" (in Dembour 2010, 17). At best, human (or natural) rights end up in an uneasy, untenable, or insoluble tension between metaphysical and secular bases (Dembour 2010, 6; Rorty 1990, 6-8, 22-23; Ignatieff 2000, 340). At the same time, post-metaphysical justifications (and there are several) seemingly avoid articulating the actual needs and responsibilities defined by belonging to the human species that moral traditions precisely draw upon to bolster human rights and human dignity (Mara 2005, 22). Ignatieff further points out the morally and ethically dubious result that such a grounding of human rights privilege humans above all other species by, for instance, allowing medical experimentation on the non-human (2000, 341).

Rights: Intellectual-Practical Issues

If those are the broad theoretical conundrums concerning human rights at the heart of democratic theory, there are a number of intellectual, practical, and theoretical issues as well. First and foremost, it is widely agreed that for rights to be truly universal, they should be minimal in order to "respect the right of those groups to define the type of collective life they wish to lead," and the illimitable variety that humans exhibit (Ignatieff 2000, 298; Nickel 2010; Mathiesen 2008). This means that rights are "more concerned with avoiding the terrible than with achieving the best," and so forbid slavery, genocide, rape, torture, discrimination, and so on (Nickel 2010). Three things flow from this. First, many societies and their religious and ethical traditions often limit the rights of women, children, orphans, un-dowered brides, and so on – yet those societies do have a right to self-define their collective lives (Ignatieff 2000). Second, the stateless do not have rights and are essentially abandoned, without rights (Bernstein 2010; Young-Bruehl 2010). However, those who advocate for human rights among the dispossessed, stateless, and dominated are, effectively, politically speaking *for* another group. They tend to be based in western societies both wealthy enough to support such advocacy, and where rights are both honored and legally protected. How far that representation extends goes to the heart of the question of just how far universal human rights extend and where political self-determination kicks in (Ignatieff 2000, 291-292). In contemporary terms, do *they* (the wealthier and more powerful) have the *right* to speak for *them* (the poor and powerless)? Is this just western cultural imperialism? Third and last, if rights truly are universal and thus minimal, extrapolating from expressive and conscience rights to education and access to information is open to charges of hostility to other traditions: "moral globalization—human rights—follows behind as the legitimizing ideology of global capitalism. 'Given the class interest of the internationalist class carrying out this agenda, the claim to universalism is a sham. Universalism is mere globalism'" (Ignatieff 2000, 332).

The universalism of human rights stands as a challenge to state sovereignty – as noted earlier. Yet the political reality is that democratic states are the most likely to actually protect and promote human rights generally

and vitally protect the most basic ones: "No substantial famine has ever occurred in any country with a democratic form of government and a relatively free press" (Sen in Ignatieff 2000, 346). Human rights in those states take the form of individual citizenship rights, developed in concert and in contention with capitalism and its legal structures and protections. In other words, the most successful models of human rights are deeply entangled with the development of capitalism, leading to pragmatic problems, contradictions, and tensions within democratic societies (Somers 1993, 587-588, Marshall 2009; Howard 2006). To give just one instance, Locke – the source of so much that came to fruition in an American Constitution and the original Bill of Rights – roots an enormous amount of his political thinking in property rights: only the propertied had the free time, education, and judgment for citizenship, and thus rights. "The working class was, in effect, in but not of civil society" for Locke; property accumulation (via competition) was rationality in its essence, and civil society was established to protect unequal holdings of property – there was no assumption that rights, rooted as they were in Locke, would or should be inherently respected (Macpherson 1966, 67-72; Locke 1996). Locke's thinking – the substantial basis of what we now experience as actual rights – would now fail as justification for universal human rights since they are fundamentally unequal based on property and there is no inherent human obligation to respect them (Macpherson 1967, 11). Rooted as we are in Locke, this is not an anomaly. Corporations are deemed to be persons for the purposes of equal protection (*Santa Clara County v. Southern Pacific Railroad Co*. 1886) and free speech rights: long before *Citizens United v. Federal Election Commission* (2010), the Supreme Court declared that "the inherent worth of the speech in terms of its capacity for informing the public does not depend on the identity of its source, whether corporation, association, union, or individual" (*First National Bank of Boston v. Bellotti* 1978). In contrast, citizenship guarantees (in the form of equal protection) and its necessary conditions (such as a minimum and equalizing education) were undermined for African Americans in the aftermath of Reconstruction (Liu 2006-2007, 353-356) and education is resolutely deemed not a right by the Supreme Court (*San Antonio Independent School Dist. v. Rodriguez* 1973). Furthermore, intellectual property is rooted in Locke (Biron), thus claims to share it as a human right (the core idea behind information rights), and obligations to limit accumulation based on intellectual property have a tenuous hold – mostly moral, but not political.

On the opposite end of the spectrum (and in tension with these intellectual trends), historically democratic citizenship rights have broadly extended beyond the merely basic to "rights of social citizenship" that have enabled some claims on the state like welfare and public education (Somers 1993, 587-588, Marshall 2009). Social citizenship rights are intellectually most comfortably situated in Marxist traditions that stress "positive entitlements to participate fully in the public life of society"; Marxist societies were admittedly friendly to human rights only to the extent that they were "consistent with the building of socialism," but that tradition *did* point out the hypocrisy of "allowing" the poor meaningless social, housing,

nutritional, and educational choices they could not afford (Hollenbach 1979, 20-24). Thus in the United States, there is no national right to an education, let alone an equal basic education for citizenship (Lui 2006-2007; Katz 1982; 2008). It is a good idea, but not a right. The Lockean trumping of economic rights over social citizenship rights can be seen in the advance of neoliberalism over the last thirty five years – and contemporarily in the Tea Party movement. We are seeing a sustained political attack on equal education and the social safety net in the name of economic competitiveness (King 2011; Bourdieu 1998). Closely related, we have seen a reaction against what has been called "rights talk"(Glendon 1991) itself: the "tendency to define anything desirable as a right ends up eroding the legitimacy of a defensible core of rights" (Ignatieff 2000, 346; Bryner 1987, 20-21). Hollenbach sensibly points out that the "heady rhetoric of … human rights … is frequently the language of protest, of the manifesto and of the political broadside. The appeal to rights has a flamboyance and volatility which make its use especially congenial in political conflict," but such rhetoric can quickly expand and come unmoored from its grounding concepts and its logical chains of connection (1979, 11-12). Glendon has argued that rights used as trumps – something asserted that one can't argue with or against – has led to an "intemperate rhetoric of personal liberty [which] corrodes" the discourse foundations on which democracy is built and operates, leading to standoffs politically (1991, 62) and Sandel sees in the rights-based discussion of citizenship the social dissolution of community (1987, 146-149). In more practical terms, new rights are rarely no-cost, and in providing them or enforcing them the public does not always acknowledge those costs, nor does the public particularly like the inevitable tradeoffs inherent in choices among a growing number of rights (Bryner 1987, 8-9). In this way, traditional arguments in favor of rights from the Left have come to characterize the aggressive, argumentative stance of the Right (an intemperate rhetoric of personal liberty corroding discourse), while at the same time drawing theoretical responses which advocate a slowing of the growth of rights to protect the ones in existence. That is a powerful combination ready to be deployed against information rights as human rights.

A Theoretical Approach for LIS

LIS arguments for informational rights reflect this broader context. Reviewing a sampling of the LIS literature on such topics as information ethics and the Library Bill of Rights (Fricke, Mathiesen, and Fallis 2000), information work (Samek 2005), the practical application of information work (Samek 2007), and information equity and democracy (Lievrouw and Farb 2003; Doctor 1992; Reynolds 1992) along with those noted earlier, reveals many of these same tensions shot through their analyses. Does that mean that our literature and any notion of human information rights are fatally compromised? No, I make these observations from a friendly perspective and I support a broad concept of open, public, cultural institutions, and believe that, in choosing to have such institutions, we enact a certain set of expectations about their role and their relationship to

individuals and their communities. That is a rather abstract way of saying that our best approach to human information rights – from the vantage of democratic theory – is pragmatic. Information rights as human rights begins with the example of what was taken away from African Americans for one hundred years after Reconstruction (Liu 2006-2007), and the practical problems for women and children when concepts of human rights elide their particular vulnerabilities (Bunch 1990). After all, if human rights can encompass a violently patriarchal society or one based on race, are they universal? If those rights are universal and human, it must extend to minorities, women and children as "the only universally available moral vernacular that validates [their] claims" – as it should have for African Americans 100 years ago (Ignatieff 2000, 330). Information rights thus begin in a form of reciprocity: we would not wish to be abused in mind or body, and so should not do so to others – strongly implying a freedom of thought and expression (Ignatieff 1999). From there, Rorty urges us not to appeal to reason, justice, or a contrast to a described reality to realize rights – all such bases have been fundamentally contested; rather, he urges us simply to make "invidious comparisons" and "invent a reality … by selecting aspects of the world which lend themselves to … the worth-while life" (Rorty 1990, 21-23). When we realize that laws and government are only legitimate when they earn our recognition and assent, and that human rights are at the core of that legitimacy (Habermas 1998), then the right to the means to support and inform common deliberative experiences should be "extensively empowered … and widely dispersed throughout the institutions of state, economy, and civil society" (Warren 1996, 242). In other words (and bringing these strands together), information rights as human rights are pragmatic assertions of a better social order and better arrangements for and among individuals through such state institutions as schools, universities, and libraries. These institutions and the rights they might pragmatically instantiate are not done *for* citizens, but *by* citizens for themselves. We have learned from the need to pragmatically look at the needs for human rights not among the powerful, but the disempowered, and to root those rights in particularity of those needs in the interests of invidious comparisons of an unrealized but possible future. This represents a brief sketch of at least one way to avoid the theoretical entanglements of human rights stopping information rights in their tracks.

Note

[1] An earlier version of this paper was delivered at the 2011 Information Ethics Roundtable on Information Rights as Human Rights, held at the University of Arizona, April 15 (http://sites.google.com/site/informationethicsroundtable/Home/conference-call-for-papers). This paper makes a distinction between those who link Information Ethics (IE) to rights (that is, they conceive of it in broad political terms), and those who contextualize it less politically, like Robert Hauptman (arguably, the founder of IE) who tends to focus on the application of regular ethical theory in new technological contexts for plagiarism, or Mark Alfino, Luciano Floridi, Adam Moore, Kit Wellman or Tony Doyle who all take different approaches (like utilitarianism or privacy theory or censorship). The contents of *The Handbook of Computer and Information Ethics* edited by Kenneth Einar Himma and Herman T. Tavani (Wiley, 2008) give a good indication of how I arrived at those distinctions. I am grateful to *PL* editor Susan Maret for raising this point with me.

References

Beitz, Charles R., and Robert E. Goodin. 2009. *Global basic rights*. Oxford: Oxford University Press.

Bernstein, Richard. 2010. Paper presented at the Conference on Reading Hannah Arendt for the 21st Century. University of Virginia. April 1.

Bentham, Jeremy. 1961. Anarchichal fallacies: Selections. In *Society, law, and morality; readings in social philosophy from classical and contemporary sources*, ed. Frederick A. Olafson, Englewood Cliffs, NJ: Prentice-Hall.

Biron, Laura. 2011. John Locke and the labour theory of intellectual property: A new interpretation. Paper presented to the Law & Philosophy Workshop, Georgetown University. February 18.

Bourdieu, Pierre. 1998. The essence of neoliberalism. *Le Monde Diplomatique* (English edition) December.

Brown, Richard Evans. 1994. *Theological interpretations of human rights : an analysis of recent Roman Catholic papal encyclicals and the ethics of Jürgen Moltmann*. Thesis (Ph. D.) University of Virginia.

Bunch, Charlotte. 1990. Women's rights as human rights: Towards a re-vision of human rights. *Human Rights Quarterly* 12, no. 4: 486-498.

Bryner, Gary C. 1987. Constitutionalism and the politics of rights. In *Constitutionalism and rights*, eds. Gary C. Bryner and Noel B. Reynolds, 7-32. Provo, UT: Brigham Young University Press.

Castiglione, Dario. 2005. Symposium on Seyla Benhabib's "The rights of others." *Democracy & Society* 3, no. 1: 20-21.

Citizens United v. Federal Election Commission, 558 U.S. 08-205 (2010).

Dembour, Marie-Bénédicte. 2010. What are human rights? Four schools of thought. *Human Rights Quarterly* 32, no. 1: 1-20.

Dewey, John. 1935. The future of liberalism. *The Journal of Philosophy* 32, no. 9: 225-230.

__. 1960c. Philosophies of freedom. In *On experience, nature, and freedom: representative selections*, by John Dewey, ed. Richard J. Bernstein, 261-287. Indianapolis: Bobbs-Merrill. (Orig. pub. 1928.)

Doctor, Ronald D. 1992. Social equity and information technologies: moving toward information democracy. *Annual Review of Information Science & Technology* 27, 43-96.

First National Bank of Boston v. Bellotti, 435 U.S. 765 (1978).

Frické, Martin, Kay Mathiesen and Don Fallis. 2000. The ethical presuppositions behind the Library Bill of Rights. *Library Quarterly* 70, No. 4: 468-491.

Glendon, Mary Ann. 1991. Rights talk: The impoverishment of political discourse. *The Social Contract* Fall: 62-64.

Habermas, Jurgen. 1998. Remarks on legitimation through human rights. *Modern Schoolman* LXXV, January: 87-100.

Hollenbach, David. 1979. *Claims in conflict*. New York: Paulist Press.

Howard, Marc M. 2006. The importance of national citizenship. *Democracy & Society* 4, no. 1: 6-8.

Ignatieff, Michael. 2001. Human rights as politics; Human rights as idolatry. In *The Tanner Lectures on Human Values*, ed. Grethe B. Peterson, 285-349. Salt Lake City: University of Utah Press.

___. 1999. Human rights: The midlife crisis. *New York Review of Books* 46, no. 9: 58.

Katz, Michael S. 1982. Critical literacy: A conception of education as a moral right and a social ideal. In *The public school monopoly: A critical analysis of education and the state in American society,* ed. Robert B. Everhart, 193-223. San Francisco, CA: Pacific Institute for Public Policy Research.

__. 2008. Is there a right to education? A philosophical analysis through U.S. lenses. In *Education, democracy, and the moral life*, eds. Michael S. Katz, Susan Verducci, and Gert Biesta, 31-45. Dordrecht: Springer.

King, Colbert I. 2011. GOP to have-nots: Tough luck. *Washington Post*. Opinion. April 9.

Lievrouw, Leah A. and Sharon E. Farb. 2003. Information and equity. *Annual Review of Information Science and Technology* 37, no. 1: 499-540.

Liu, Goodwin. 2006-2007. Education, equality, and national citizenship. *Yale Law Journal* 116, No. 2: 330-411

Locke, John. 1996. *Second treatise of government*. In *Princeton Readings in Political*

Thought, eds. Mitchell Cohen and Nicole Fermon, 243-279. Princeton: Princeton University Press.

Mara, Gerald. 2005. Symposium on Seyla Benhabib's "The rights of others." *Democracy & Society* 3, no. 1: 21-22.

___. 2008. *The civic conversations of Thucydides and Plato: Classical political philosophy and the limits of democracy*. Albany: State University of New York Press.

Marshall, T.H. 2009. Citizenship and social class. In *Inequality and Society*, eds. Jeff Manza and Michael Sauder, 148-154. New York: W.W. Norton.

Mathiesen, Kay. 2008. Access to Information as a Human Right. http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1264666

Macpherson, C.B. 1966. The social bearings of Locke's political theory. In *Political Theory and Ideology*, ed. Judith N. Shklar, 66-78. New York: Macmillan.

___. 1967. Natural rights in Hobbes and Locke. In *Political Theory and the Rights of Man*, ed. D.D. Raphael, 1-15. Bloomington: Indiana University Press.

Nickel, James, "Human Rights", *The Stanford Encyclopedia of Philosophy* (Fall 2010 Edition), Edward N. Zalta (ed.), URL = <http://plato.stanford.edu/archives/fall2010/entries/rights-human/>.

Reynolds, Dennis. 1992. The Bill of Rights and beyond. In *Citizen rights and access to electronic information: The 1991 LITA President's Program presentations and background papers*, ed. Dennis J. Reynolds, 3-31. Chicago, Ill: Library and Information Technology Association.

Rorty, Richard. 1992. Feminism and pragmatism. In *The Tanner Lectures on Human Values*, ed. Grethe B. Peterson, 1-35. Salt Lake City: University of Utah Press.

Samek, Toni. 2007. *Librarianship and Human Rights: A Twenty-first century guide*. Oxford: CHANDOS Publishing.

___. 2005. Ethical reflection on 21st century information work: An address for teachers and librarians. *Progressive Librarian* (25): 43-61.

Sandel, Michael J. 1987. The political theory of the procedural republic. In *Constitutionalism and rights*, eds. Gary C. Bryner and Noel B. Reynolds, 141-156. Provo, UT: Brigham Young University Press.

San Antonio Independent School Dist. v. Rodriguez, 411 U.S. 1 (1973).

Santa Clara County v. Southern Pacific Railroad Co. 118 U.S. 394 (1886).

Somers, Margaret R. 1993. Citizenship and the place of the public sphere. *American Sociological Review* 58, no. 5: 587-620.

Young-Bruehl, Elizabeth. 2010. Paper presented at the Reading Hannah Arendt for the 21st Century Conference. University of Virginia. April 1.

Warren, Mark E. 1996. "What should we expect from more democracy?." *Political Theory* 24, no. 2: 241-270.

Wolin, Sheldon. 1996. Fugitive democracy. In *Democracy and difference: Contesting the boundaries of the political*, ed. Seyla Benhabib, 31-45. Princeton, NJ: Princeton University Press.