How Social Attitudes Can Create Human Rights Violations

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Abstract

The structure of this paper is, as I see it, in three sections. In the first section, I will explain and briefly defend a standard threats approach to thinking about the concept of human rights. Broadly, such an approach will monitor and declare human rights violations on the basis of an appropriately conceived, unacceptable risk of danger to rights, as opposed to on the basis of rights-relevant outcomes themselves. In the second section, I will motivate the claim that law and politics can have a meaningfully expressive function, which bear out real-world consequences, in particular with respect to social attitudes. Here, research in social science is helpful in bolstering what I take to be an intuitively plausible claim. In the third section, I will argue that social attitudes, thus altered, represent a real risk to some sets of protected interests which might plausibly be called human rights. I will present research here, as well, which demonstrates this effect. Given a standard threats approach to human rights, then, it might be fair to say that social attitudes create human rights violation, and that a plausible causal link can be drawn between an institution's laws, politics, and the genesis or exacerbation of relevant social attitudes.

Introduction

The United States had not successfully fulfilled its human rights responsibilities with respect to black Americans at the ratification of the 13th amendment. Black Americans remained a legally and institutionally oppressed people even after 1865, and this oppression largely took the name of "Jim Crow." Legal segregation abounded, differential access to public resources was enforced, and brutal extralegal violence, often by way of lynching, went unpunished. This continued, as endorsed institutionally, for a century, before a series of legal reforms in the latter half of the 20th century seemed to mark a change in official attitudes. President Truman's order of military integration, Brown v. Board

of Education, the Civil Rights Act, the Voting Rights Act, and the Fair Housing Act all served to correct institutional features that had contributed to the human rights abuses suffered by black Americans. Of course, elevated levels of violence against black Americans did not cease.[1] Black American oppression was no longer the direct result of a straight line drawn between institutional features and discriminatory outcomes, but it nevertheless persisted. Was it simply a matter of the United States failing to identify all of its institutional features that were in need of reform, or was something else the cause of elevated levels of human rights-relevant outcomes for black Americans?

In this paper I will not be attempting to provide an answer to the question "What are human rights?" I will also not be answering the question "What rights ought to qualify as human rights?" I will start with the assumption (following Joseph Raz) that human rights can be used as a political tool, and will then defend how I believe that tool is most usefully implemented, and offer an expansion of that use with reference to case studies, both past and present. This paper attempts to answer the question "Once we've decided what rights people have, how can we determine that those rights have been secured?" However inconclusive meta-ethically, most theories of human rights ground its justification in the notion of dignity interests [2]and the concept of human rights has real, normative force in the landscape of global politics. The concept of human rights is, at its very least, a discursive tool with which states blame, praise, justify and criticize. (Raz 2007, 1) Accordingly, human rights discourse has the potential to provide a meaningful source of accountability for states, and to be plausibly action-guiding. Given the appropriate framework, a state can survey itself, or other states, and ask "Are we/they fulfilling our/their human rights obligations?" Or, a citizen can survey their day to day life and ask "Am I experiencing a human rights violation?" I believe that, properly conceived, this is the role that human rights should be playing in the global landscape.

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1 FBI. 2017. Hate Crime Statistics. https://ucr.fbi.gov/hate-crime/2017/topic-pages/victims

2 For a longer explanation of establishing the nature of a human right without engaging its contentious meta-ethical grounding, Anthony Reeves, *Standard Threats: How to Violate Basic Human Rights,* (Social Theory and Practice, Volume 41, No. 3, 408)

The approach to thinking about human rights in the way that I will be defending, call it the standard threats approach, identifies a human rights violation by the relationship of outcomes to their severity of harmfulness and probability of occurrence. If there exists an unaddressed, unacceptably high level of background risk for a rights-relevant outcome to occur, the institution can be said to have violated the human rights of the parties affected by the failure to attempt to mitigate the unacceptably high level of risk. In discharging their human rights responsibilities, then, an institution must attempt to mitigate said risk to an appropriate level. In most cases, as in the aforementioned Jim Crow reforms, there are obvious institutional changes that need to be made. Legally enforced differential access to public resources created unacceptable levels of risk to dignity interests for black Americans, and so in discharging their responsibility for this risk, the United States government targeted the obvious cause, and reformed discriminatory policy and segregation. If a bridge has an unacceptably high risk of failing, in discharging responsibility for that elevated safety concern a state would need to fortify the bridge to an acceptable level.

My claim, though, is that this is not the end of the story in some important cases. Specifically, sometimes an institution can eliminate it's immediately causally responsible features (like the levels of risk created by a policy of segregation being mitigated by ending a policy of segregation) and unacceptable levels of background risk remain. I contend that laws and policies which work directly to alter the landscape of background risk to protected interest, and the operative background political culture, have a simultaneously expressive function, and that this expressive function independently and additionally contributes to levels of background risk.[3] I cite several pieces of research in making this contention. Research out of the Labor Institute of Economics and The Center for Global Development demonstrates that statistically significant changes in social attitudes occur *after* the adoption of a relevantly expressive policy, limited to the social issue addressed by the policy at hand. Similarly,

3 The expressive nature of law, as it relates to risks to dignity interests, is drawn largely from Joel Feinberg's discussion of the expressive nature of punishment. Joel Feinberg, *The Expressive Function of Punishment, (The Monist, 1965)*

research out of the University of Kansas and the Wharton School of the University of Pennsylvania demonstrate the effect that political cultures, not policies or laws specifically, might have on social attitudes. Finally, research out of the National Institute of Health which examines the elevated suicide rates among LGBTQ youth, and isolates its incidence from potentially causal factors other than social attitudes.

Demonstrating that unacceptable levels of background risk to protected interests exist is, on its face, satisfactory to trigger a states correlative responsibility[4], and identifying social attitudes as causally responsible provides the state with direction to aim reform. I will argue, though, that a link can be drawn, in some cases, establishing a plausible claim of causality between an institutions features and the prevalence of relevant social attitudes, and that establishing this link makes more plausible, to a wider audience, the argument that a state can have a responsibility, generated by a correlative human right, to try and affect attitudinal change in its populous. My two main claims in this paper, then, amount to: (1) Law and politics can have a meaningfully expressive function, which alters social attitudes and (2) social attitudes can alter levels of background risk to protected interest in a way that constitutes a human rights violation. In the first section, I will define the concept of rights I am working with, and both explain and defend a standard threats approach to thinking about them. In the second section, I will motivate the claim that law and politics can have a meaningfully expressive function, and attempt to demonstrate how they alter social attitudes. In the third section, I will argue for the claim that social attitudes alter levels of background risk to protected interests. In concluding, I will elaborate on my attempt to establish this link, and why I believe it is valuable.

Section 1

Even though I am avoiding deep moral questions about the justifications for human rights, I will need to briefly elucidate the concept of rights to lay the foundation of our recommendation for their

4 Assuming that the state has actions available to it which might potentially mitigate risk, and that these actions don't violate larger moral considerations. I discuss later, though, that it is difficult to conceive of a risk to protected interests that the state is entirely and forever powerless to aid in mitigating.

implementation. I am working with the concept of rights that Henry Shue lays out in "*Basic Rights*." For Shue, a right provides "… the rational basis for a justified demand that the actual enjoyment of a substance be socially guaranteed against standard threats." (Shue 1980) It will be helpful to unpack that statement, as I see it in three parts.

First, the right being a "rational basis for a justified demand" means for Shue that a right holder ought to be able to insist on their right being fulfilled without being in a position of deference to the party that fulfills it. If a person's demand is both justified and rationally based, then they are under no obligation to feel embarrassment or sheepishness about making it. This feature of a right ought to effectively motivate demand in appropriate circumstances. The recent Bangladesh traffic protests are a good example[5]; risk of traffic injury was too high, and demands were made by the populous in response. Excesses of public violence aside, a hypothetical detractor ought to have no room to insist that the affected population *negotiate* with traffic authorities instead of *demand* from them. This is inherent in the nature of the right, and what distinguishes it in its relationship with duties. Without a right to security, even if the state of Bangladesh held a duty to create adequate traffic safety conditions, the rightful component of demand might be lost.[6]

Second, the right also needs to target the "actual enjoyment of a substance," which is to say, it needs to be not just a nominal right. That some institution has declared my right to free speech does not mean my right to free speech has been fulfilled, unless I am actually enjoying the "substance" of the right, which is to say, unless I am actually (generally) free to speak. In this sense, you are never "enjoying a right," to be enjoying a right means to be enjoying the substance of a right. The general and reasonable degree of the enjoyment of rights brings us to the third and last point, that rights ought to be "socially guaranteed against standard threats."

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5 For a full explanation of the traffic and protest situation, see NPR article by Samira Sadeque, National Public Radio. 2018. "Angered By Traffic Deaths, Students Begin to Direct Traffic in Bangladesh." https://www.npr.org/sections/goatsandsoda/2018/08/07/635981133/angered-by-traffic-deaths-students-began-to-direct-traffic-in-bangladesh

6 For a full explanation of this position, see Feinberg on the distinct value of rights. Joel Feinberg, *The Nature and Value of Rights*, (The Journal of Value Inquiry, 4, 1970)

What it means empirically for a right to be socially guaranteed, and for a threat to be standard, is a large and complex topic, mostly outside the scope of this paper.[7] Briefly though, it is not plausible, or useful, to say that my right to something has been violated in every case that I lack it, or that my right against something has been violated in every case that I suffer it. Take, for example, the right to security. If person A is driving in a state with strong traffic laws, enforced speed limits, and reasonable programs for driver certification, but simply has an accident and crashes into a guardrail, and person B is driving in a state with weak traffic laws, unenforced speed limits, and a minimal driver certification program, and suffers the same guard rail crash, they are in very different positions with respect to the violation of their rights. Both are bad outcomes and qualify for moral concern, but importantly, with respect to the role of rights, what more could have been demanded by person A to have reasonably avoided that outcome? The concepts of rights as a political tool means that the content of our rights should be relevant to informing the action of the institution or state that has the correlative responsibility to fulfill our rights, but in the case of person A, the state had done reasonably all they could with respect to traffic laws and the right to security. Person B, on the other hand, was driving in circumstances that should have been reasonably foreseen, by the state, to create an unacceptable level of risk of injury, and so can invoke their right to make a justified claim that their security has not been – as Shue puts it in his third point - "socially guaranteed against standard threats."

Shue's argument depends on accepting the premise that everyone has a right to *something*. Shue argues that if everyone is entitled to something as a right, and there exist rights that would be prerequisites for enjoying any other rights, then they are also entitled to those prerequisite rights as "basic rights." (Shue 1980) For Shue, obvious as basic rights are security and subsistence. You cannot enjoy a social guarantee to right X if you lack a social guarantee to some other right Q, when the nature of right Q is such that it's failing to be socially guaranteed makes impossible a social guarantee to right

7 For a fuller discussion though, see again Anthony Reeves, *Standard Threats: How to Violate Basic Human Rights,* (Social Theory and Practice, Volume 41, No. 3, 403-434) Specifically, for the question above, section 4, pages 424-433.

X. For example, part of my social guarantee to a right to public demonstration must include a social guarantee against assault, otherwise I could be beaten and dragged off every time I made an attempt to demonstrate. The inverse does not hold; my social guarantee against assault does not depend on a social guarantee to demonstrate, and so my right to security is more basic than my right to demonstrate. Even if you are not subject regularly to security threats, Shue claims, there is something unique about having a social guarantee against your security, not just *happening* to remain secure despite a lack of guarantee. This is, again, the unique feature of the nature of a right detached from it's relationship to duties or obligations. Shue remains agnostic as to what other rights might qualify in this way as basic rights, as do I, but the question will be addressed later in discussing how a state might discharge responsibility for certain risks to protected interests, when one possible method of discharging responsibility includes the potential trading off of rights.

Point three of Shue's definition of a right is useful for the following: *If* we've decided what human rights certain people have, we need to know how they ought to be secured and checked for. What I'm calling a "standard threats" approach to human rights is not a tool for designing or evaluating the content of rights; it's a method of thinking about how and if given rights have been fulfilled, or are being violated. A standard threats approach to human rights looks at rights-relevant outcomes, say, violence, hunger, or housing, and then checks whether an institution has created an adequate social guarantee to either avoid or provide them. Instruction to build roads, bridges and highways that are acceptably safe is easier direction for an institution than the direction to "make sure citizens don't die while driving." This is the problem that traditional natural rights theories, which define a human right with respect to outcomes, encounter.[8]

Specifically, for human rights to be action guiding for an institution, or for the concept to create meaningful accountability, an institution must be capable of having a causal impact on relevant levels of background risk, otherwise there is nothing a person can demand of an institution to rectify their

8 On this point, for a fuller explanation, Anthony Reeves, *Standard Threats: How to Violate Basic Human Rights,* 411-413

situation. In the obvious case, if I trip and fall down my stairs, assuming my stairs were not shoddily built by a publicly funded construction company or something, there is no plausible claim I can make against my institution, and insofar as human rights are claim rights, my human rights have not been violated. There is nothing I could reasonably want to demand of my institution to avoid a similar outcome in the future, and nothing I can point to as an institutional feature, positive or negative, that has created an unacceptably high level of background risk of me falling down the stairs. Conversely, if homes were publicly built, so that the state was responsible for their construction, skimped on cost and produced shoddy stairs, and citizens were falling down the stairs at a disproportionately high rate (disproportionate to reasonable expectations), a standard threats approach could make the causal link between the institution and the rights-relevant outcome (in this case, bodily security). Here, a state discharging its human rights responsibilities is straightforward; they have an obligation to fix stairs in a way that eliminates the unacceptable level of background risk.

The upshot is that not every instance of a human rights-relevant outcome will qualify as a human rights violation, and in some cases a human rights violation can be declared even absent the relevant outcome. I believe this is a feature, not a bug, of a standard threats approach to human rights. It is suggested that outcomes as insufficient for declaring a human rights violation limits the scope of human rights concerns[9], but it also broadens it in important ways. Standard threats situates human rights in such a way that I can make a justified demand, on the basis of my human rights, in response to appropriately conceived risk, before harm has actually occurred. That I have a basis, rooted in a concept with normative force like human rights, for making demands that may prevent future harm, is a potential real world benefit of thinking about human rights through the lens of standard threats. Again, as in the case of the Bangladesh bus riots, I might have been a protester who was never an actual victim of traffic harm, but that I'm a participant in the unacceptable traffic scheme subjects me to a level of risk that is unacceptable, and that I'm justified in demanding fixed on the basis of my human rights.

9 Addressed here, Anthony Reeves, *Standard Threats: How to Violate a Basic Human Right*, 409-410, and in footnote 19.

Ideally, that I'm making demands on the basis of my human rights is a unique component of my situation politically; it ought, as Joseph Raz points to, mobilize state action in a way that a demand lacking the moral component of a human right might not. It doesn't put me in the same position as a neighbor who may have already been harmed in traffic. A victim of traffic harm in this instance is experiencing a human rights violation, but may also separately qualify for moral or legal concern, triggering compensatory measures. The value, again, is that a state can have a morally normative reason, in the form of a human rights concern, to prevent harms before they occur, and a populous can have a politically grounded way of demanding this of them. There is a real world difference, subjectively, in living day to day with no acceptable social guarantee of traffic safety and living with that guarantee fulfilled, even if in both cases one happens never to experience traffic related harm.

In the case that there is truly *nothing* an institution can do to rectify an unacceptable level of background risk to a protected interest, I contend that state responsibility falls away, largely concurrent with the formula that "ought implies can."[10] Here certain theories about assigning responsibility might conclude that responsibility now falls elsewhere, but that issue is outside the scope of this paper. Central to the concept of human rights discussed in this paper is not just the requirement that the rights protect dignity interests, but also the requirement that the concept be a *useful* concept. If it is actually the case that some level of background risk is entirely immutable, then declaring a human rights violation might serve only to confuse the landscape of human rights at large; it's worth noting, though, that it is hard to conceive of a type of unacceptable background risk to a protected interest that would be permanently unresponsive to institutional intervention. An interesting potential response to override "ought implies can" in the case of standard threats human rights can be made; if it is the case that nothing can be done *right now,* but there is no reason to think that the impossibility of rectification is

10 Here I acknowledge the possibility that the moral formula "ought implies can" is not an absolute rule. See Lisa Tessman, *Moral Failure: On the Impossible Demands of Morality,* (Oxford Scholarship Online, 2014) Discussion of the conflict of non-negotiable moral requirements is particularly relevant here; basic rights are, in a sense, non-negotiable and often in conflict. I contend, though, that the bulk of my argument in this paper is malleable to either position; particularly, establishing the causal link between institutional features and social attitudes, and the causal link between social attitudes and increased level of rights-relevant background risk.

permanent, then it might make sense to talk about a human rights violation taking place that the responsible state is powerless to address, insofar as the declaration of a human rights violation speeds up progress towards the set of conditions that would make state attempts at rectification possible. I remain ambivalent on the question of whether or not potential future mutability qualifies as fulfilling the "can" of "ought implies can."

Importantly though, my belief is that it will not always be obvious, in practice, whether or not a task set to an institution is impossible. In particular for the kinds of risks to protected interests that I'm concerned with in this paper, those created by social attitudes, identifying an efficacious approach to their mitigation is less obvious than identifying an approach to "hard" features, like laws or policies. I believe that subjective norms and social attitudes are epistemically accessible components of a society that play a role in risk levels for protected interests, and are distinct from institutional laws and policies, 'on the books.' If policy X is responsible for unacceptable levels of background risk, then we identify that we need to eliminate policy X, which, obviously, can be done by eliminating policy X. If social attitude Y, though, is responsible for unacceptable levels of background risk, then we identify that we need to eliminate social attitude Y, which can be done, hopefully, by institutional processes P, Q, or R. (For example, educational reform aimed at social attitude Y, or the introduction of additional policy with an expressive function relevant to social attitude Y) We will know immediately after taking the action which triggers the elimination of policy X that we were successful in eliminating policy X, but we will not know immediately after taking the action which eliminates (or mitigates to an acceptable level) social attitude Y whether or not we were successful.

The indefinite nature of discharging responsibility for background risks that result from social attitudes means that an institution might be responsible for making more than one attempt, but be appropriately lauded for addressing their human rights responsibilities in every instance in which they do make an attempt (successful or not). As the dust settles, so to speak, we can again evaluate whether the background risk which was being addressed has been appropriately mitigated. If, when surveyed, it

hasn't, then a new responsibility to mitigate risk has been triggered, and until another attempt is made, a human rights violation can be declared. An institution might avoid having to take substantive responsibility by making repeated hollow attempts at rectification; it's a potential problem that I believe can be addressed in two ways. One, repeatedly hollow attempts would almost surely fail, and so an institution would continue living with the political consequences of being appropriately labeled as guilty of regular human rights violations, even if grounded accusations were broken up by periods of human rights 'success'. Secondly, a sufficiently hollow attempt might not even qualify as a genuine attempt, and may be obviously transparent. A claim to have made an attempt does not amount to an attempt.

Section 2

I can now move on to the link between institutional features, social attitudes, and levels of background risk to protected interests. Ostensibly, if social attitude Y can be shown to create an unacceptable level of risk to some protected interest for, say, a particular population group, then the genesis of that harmful social attitude seems largely irrelevant with respect to the question of state responsibility. Relevant to human rights consideration is only that some population group is experiencing a failure to enjoy a right (and that the state has some morally appropriate power to fix it); some protected interest has not been socially guaranteed, and so state responsibility has been triggered. Accepting the sort of view on human rights and correlative responsibilities that I've adopted in this paper, this seems uncontroversial. This is far from the consensus view, though, throughout the landscape in which human rights discourse is invoked. Drawing the link between institutional features, social attitudes, and level of background risk is useful, then, in anticipating criticism from those who have a conception of responsibility that requires some sort of agential causal role. I might believe that a state is not responsible for some kinds of harms, or in this case risks, that it did not have a hand in imposing, or I might believe that unless they can be shown to be causally linked to institutional features, social attitudes are not the sort of thing that the state has a responsibility to address. Making

this link is an attempt to expand the utility of a standard threats approach to human rights considerations beyond those who buy into its premises, especially with respect to the link between rights and responsibilities. To this hypothetical objector, my claim is that a link can be established in the following way, in two parts: one, that some institutional features, generally taking the form of laws and policies, but also the culture of a political scheme at large, have an expressive effect that alters social attitudes, and two, that in some cases these social attitudes thus altered increase levels of background risk to protected interests.

It will be helpful to motivate the claim that there exists an expressive function of law and an expressive function of politics. The system of law and its relevant institutions makes claims of authority, and surely it is the case that they have a sort of de facto authority. The definition of a state is made, in places, with reference to its comparative advantage in violence, and so it is, at least by that mechanism, successful in commanding obedience, and demonstrating a sort of authority. The claim of its expressive nature goes further though; solely by the visible presence of some sorts of laws and political actors, normative attitudes are successfully propagated. Reference to research below attempts to make this argument by demonstrating that changes in social attitudes occurred after the introduction of some law or political event, where the changes in social attitudes were epistemically relevant to the nature of the law or political event being introduced. The claim can also be made without reference to its effects, though, by observing the nature of law and politics. A thorough examination of the way in which the nature of politics and law successfully claim authority is a separate project outside the scope of this paper[11], but my claim is that their de facto authority can position them as sort of normative road maps, for some people, for making judgments about the social sphere.

My argument is that, when a state has historically endorsed a discriminatory law or policy, even after it is eliminated, the message that it communicated to its populous does not disappear with it, and

11 For a more thorough discussion of the nature of the authority of law and its relevant institutions, see Joseph Raz, *Authority, Law and Morality,* (The Monist, Volume 68, No. 3, Pages 300-305)

the message has real, tangible effect. Law has normative force. If I see someone doing something, and in an attempt to stop them I say “Wait, that's illegal!” I am communicating an implicit normative judgment, beyond just a simple warning that they might face punishment. Similarly, if I am engaging in an action that might be morally questionable, and when confronted about it I declare, truthfully or with confidence “What? No, this is totally legal,” I seem to be communicating something about the nature of my action, not just a reassurance that I won't be punished. Picture the religious invocation, which I think is analogous in relevant places: If I declare that someone has sinned, I am not only making a claim about the afterlife sanctions I might believe they've incurred, I am also communicating a simultaneous normative judgment, because I believe the sanctions to be coming from a place of moral authority. “You have sinned” does not only mean you will be punished, it also means you have done something wrong, and so behavior which is codified as sinful is simultaneously codified as normatively wrong. Both laws and sins are, ostensibly, codified by an authority. When something is illegal, say, gay marriage, and especially when it's accompanied by an institutional message, something like “Marriage is between a man and a women,” the status of legality serves as a communication to the populous, which spreads normative information like a cultural memetic. That these expressive laws and policies are institutionally linked to politics, and that the public lens into politics is often through the viewing of political figureheads, means the nature of these political figureheads can have a similarly expressive effect. Insofar as this is the landscape of a state for some significant period of time, the memetic spreads, and the belief becomes, in some cases, more deeply rooted in a culture or society. As in the case of our state restricting same sex partnerships, and as in the case of Jim Crow era United States, the attitudes and beliefs that were communicated, both tacitly and explicity, by the operation of the institution and its relevant features are not eliminated in any acceptably expedient timeline once the relevant features are gone. This is unsurprising, but insofar as the social attitudes left in the wake of the now defunct institutional features are reasonably causally linked to those features, as in the examples above, it seems that the state or institution continues to have work to do to create social guarantees for

protected interests to the relevant population groups. The state has a responsibility to try to affect attitudinal change in its populous when attitudes serve to create unacceptable levels of background risk for some members of its society.

To establish the first claim, it will be helpful to discuss a paper by Kenny and Patel out of the Center for Global Development entitled "Norms and Reform: Legalizing Homosexuality Improves Attitudes," (Kenny, Patel 2017) and research out of the Institute of Labor Economics. (Aksoy, Carpenter, De Haas, Tran 2018) The upshot of which is that laws that provide rights to same sex partnerships successfully predict a subsequent increase in positive attitudes about same sex partnership. Additionally, laws associated with the restricting of rights for same sex partnership successfully predict a statistically significant increase in sentiments that respondents would not like to have a gay neighbor, believe that homosexuality is unacceptable, or that where they live is a not a good place for a gay individual to live. Of course it is possible that this research is only recording an unfortunate coincidence; it is conceivable that social attitudes *happened* to change, for some other reason, or no real reason at all, concurrent with the adoption of thematically relevant policy, but of course, I contend there is more reason than not to believe that this was not merely coincidence. This effect is the expressive function of law, and I don't believe there is good reason to think that it is isolated only to the relationship between LGBTQ focused policy and attitudes.

A similar effect can be seen with respect to political expression. Research by Crandall, Miller and White out of the University of Kentucky measured, after the 2016 United States presidential election, "(1) perceptions of social norms toward prejudice or (2) people's own levels of prejudice toward 19 social groups, shortly before and after the election." (Crandall, Miller, White 2018) They demonstrated an increased level of acceptability for prejudice towards population groups (Muslims, immigrants), that were the target of Trump's rhetoric during his 2016 campaign. My claim is that there is more reason than not to believe that expression of discriminatory attitudes by a political figurehead is capable of, and in fact does, propagate discriminatory social attitudes. A study by Low and Huang out

of Wharton was not initially aimed at identifying attitudinal changes caused by the 2016 election, but its research spanned pre-election to post-election, and they noticed a profound change in results immediately following the election. (Low, Huang 2017) They observed negotiations between men and women and monitored them for levels of aggression and cooperation, and noted a statistically significant increase in levels of aggression, by men, towards women, immediately following the election. Again, the claim is that the (specifically gendered) aggressive nature of a political figurehead, reaching a large audience, and commanding a sort of normative authority, has an expressive effect that works to change social attitudes. Of course, a deep causal claim cannot be made, but I believe a sufficiently plausible claim can be made.

Section 3

The second part in closing the gap between social attitudes and institutional responsibility is in establishing that social attitudes can have a causal impact on background risk to protected interests. It's a claim that the previously mentioned research out of the University of Kentucky touched on, making the suggestion that the uptick in bias-related incidence following the 2016 elections might be attributable in part to the shift in attitudes observed. Formatted differently, it's not difficult to imagine push back to the suggestion. As an example, social attitudes inform the type of media, en masse, that we consume. It might be said: “Gay jokes constitute a human rights violation.” An emphasis on “gay jokes” seems appropriate, given both the wide, mainstream reach of comedy media, and the lively social debate on questions of censorship and “political correctness.” Consider the construction of the “gay joke,” littered throughout sitcoms and children's shows. A season 5 episode of “Friends,” The One with the Cop, offers, all things considered, a tame example of the sentiment at play. A law enforcement character mentions his “partner.” Chandler responds with a look of disgust and says “You know when you say 'partner' it doesn't sound cop, it sounds gay.” Consider another example, so common as to almost be a television trope; a character accidentally engages in either potentially homosexual behavior, or behavior which is stereotypically associated with homosexuality, and another character

responds with the question “What are you gay?!” as less of a question, and more of an accusation. The first character recoils, becomes defensive, and denies the “accusation” as if they had been accused of something terrible, deranged, or unthinkable.

Imagine being an LGBTQ youth, on the couch, watching television, absorbing probably daily the sentiments that comedy television shows are communicating. Gay is bad. Gay is gross. Gay is embarrassing. Gay is wrong. Calling someone gay is not a statement, it is an accusation, and one that requires unequivocal denial. What would it take for these expressive attitudes not to affect the way you internalize feelings about your sexuality? The television is communicating to you that the world disapproves of the way you were born, and discriminatory laws are expressing something similar. Double that if a political figurehead, in a role with some sort of normative authority, is either by speech or action expressing something similar. Popular media is reflecting a social endorsement of its content by virtue of its popularity, and its popularity is in turn propagating the social attitudes that its content is relevant to.

Research by Dr. Mark Hatzenbuehler concluded that “Lesbian, gay, and bisexual youth were significantly more likely to attempt suicide in the previous 12 months, compared with heterosexuals (21.5% vs 4.2%). Among lesbian, gay, and bisexual youth, the risk of attempting suicide was 20% greater in unsupportive environments compared to supportive environments. A more supportive social environment was significantly associated with fewer suicide attempts, controlling for sociodemographic variables and multiple risk factors for suicide attempts, including depressive symptoms, binge drinking, peer victimization, and physical abuse by an adult ...” (Hatzenbuehler, 2011) I contend that a more “supportive social environment,” would necessarily include a decrease in negative social attitudes, and that a decrease in negative social attitudes would render the types of media that are both informed by and reinforcing of negative social attitudes less popular, and thus less instrumental in the propagation of increased levels of background risk to protected interests. The legal history of sexuality in the United States is a long one, but in many ways illustrates on a historical

timeline the effects of the previously discussed research.[12]

Insofar as we consider a higher background risk for suicide a protected interest that qualifies as human rights-relevant, and insofar as we assume that there are morally permissible options for state action available, it is clear that, as conceived by a standard threats approach, LGBTQ youth are suffering a human rights violation. Establishing the additional link between discriminatory policies aimed at the LGBTQ population might satisfy theorists who would not have found the previous fact sufficient for triggering correlative state responsibility. If accepted, the question becomes how ought a state go about attempting to affect attitudinal change?

It seems relevant to briefly discuss enforcement here. In the first instance, when there exist explicitly discriminatory laws and policies, and also harmful social attitudes, in discharging its responsibility a state eliminates its discriminatory laws and policies. If unacceptable levels of background risk persist, despite now officially equal policy and law for all population groups, it might be suggested that the problem is only ineffective enforcement. Take for example the issue illustrated by *United States v. Armstrong (1996).* Justice John Paul Stevens, writing for the dissent, admits of an empirically evident disproportionate severity of punishment for black Americans and white Americans in crack cocaine cases. Prosecutorial discretion allows a defendant to be prosecuted in either state or federal court, and controlling for relevant differences between cases, race was found to be a statistically significant indicator of where a prosecutor would choose to try a defendant. There exists no discriminatory law or policy that calls for black Americans to be tried differently than white Americans. It would seem, though, that black Americans can reasonably identify a human rights violation taking place; broadly, assuming a right to fair legal proceedings, protecting some dignity interest of equal treatment, it seems that black Americans are living with a disproportionately, unacceptably high risk of being subjected to unfair legal proceedings.

12 For a discussion for the legal history of sexuality in the United States, see Elizabeth Reis, *American Sexual Histories,* (Wiley-Blackwell, 2012, 34-52)

One potential response, side-stepping a call to repair social attitudes, is a call for additional policy reinforcing the mandate for equal legal treatment as it exists on the books. The problem is that enforcement and discretion are often individual-level phenomena, and any given individual is some percentage likely to be affected by the negative social attitudes identified. If I am pulled over by a police officer for speeding, the officer's decision whether or not to cite me is an individual-level decision. If I'm a member of a population group with an elevated and unacceptable risk of being cited for traffic violations, and that elevated risk is the result of negative social attitudes[13] held by some percentage of the population, then in restoring this hypothetical interaction to an acceptable level with respect to rights, one of two things, if not both, can be done. Either, (1), a number of policies can be introduced at the institutional level calling for equal enforcement of traffic laws, until they are sufficiently drilled in to individuals such that, even when an individual at the decision making level is experiencing a tension between acting on the basis of a negative social attitude and acting on the basis of equal enforcement policies, the latter consideration overrides and acceptable levels of risk are restored.[14] Or, (2), reform aimed specifically at the causally responsible negative social attitudes can be introduced, such that the original tension at the individual-level is not felt in the first place.[15] I regard option (2) as, all else equal, the better option; it addresses the human rights concern with respect to background risks, but also seems separately to address concerns of justice, distributional or social.

The social attitude concerns discussed relate in most instances to speech. Caution is appropriate when drawing a link between state responsibility and the impact of certain kinds of speech;

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13 Or, in tandem, the result of something like an implicit bias. The relationship of implicit bias to social attitudes seems unclear to me; it might be that implicit bias is largely absent without the influence of the broad category of things that fall under social attitudes, or that levels of implicit bias are modified by social attitudes. Either way, I believe implicit bias is the sort of thing that a state can have influence over in a morally permissible way.

14 Repeated emphasis or introduction of new equal enforcement policies might be behavior modifying by introducing an element of punishment to an individual who fails to follow them, but they might also have an expressive effect similar to the one I'm identifying as aimed at rectifying negative social attitudes. If an individual is witnessing an institutions attempts to rectify differential enforcement rates for some population group on the basis of race, it might have the expressive effect of reinforcing that people ought to be treated equally on the basis of race.

15 I largely avoid discussion of what shape this sort of reform might take, but offer something like comprehensive educational reform as a possible example, though it might take the shape of any sort of long-term authoritative expression of corrective attitudinal sentiments.

importantly, the suggestion is not that a state ban speech that is reflective of social attitudes that are responsible for background risk to protected interests, but it's not an unreasonable concern given our conclusions. If one were to argue that risks amounted to harms, and identified a sufficiently large degree of harm imposed by some social attitude, and identified some types of speech as contributing to the perpetration of that attitude, one might conclude that the government restrict that speech in the way it restricts some other speech, namely, from *Brandenburg v. Ohio,* 1969, speech that "is directed to inciting or producing imminent lawless action and is likely to incite or produce such action." There are several considerations that I believe bar this as a potential government response. Firstly, the backlash effect. From Nietzsche, "When we have to change our mind about a person, we hold the inconvenience he causes us very much against him." The contention is that there is something significant and different about being *forced* to alter speech in a way that reflects negative social attitudes. Secondly, an important element of legitimately legally restricted speech that protects against harm is the immediacy and obviousness of it; the process of the effect that social attitudes have on background risk is anything but immediate or obvious. Third, the restriction of speech to discharge responsibility for some other right would be trading off, in degree, one right for another. With consideration to Henry Shue's qualification of a basic right earlier, a right to free speech is not basic, but an important moral consideration regardless. My socially guaranteed right to security does not depend on, as I see it, a socially guaranteed right to free speech, but even if the right to free speech is not *more* basic than the right to security, the question of whether two basic rights can be traded off is morally dubious at best.

Finally, establishing the link that assigns causal responsibility to an institution for risk to protected interest generated by negative social attitudes insulates the original claim from accusations of excessive state interference. An institution seeking to fix social attitudes that *it caused* seems less objectionable from this standpoint than an institution simply seeking to address social attitudes because it identifies them as a problem from the standpoint of rights. One might imagine a hypothetical objector, concerned with the governments role in our private lives, viewing actions aimed at rectifying

social attitudes as an overreach of governmental power. While a sufficiently concerned objector might not be convinced by this argument, others might. It seems less objectionable, broadly, that the state have a responsibility to fix harms that it caused than it does that it have a responsibility to fix harms simply because they are harms. Specifically, this argument has attempted to convince a hypothetical objector that some social attitudes do in fact amount to harms (or, at least, harms to rights, on the basis of their creating unacceptable levels of risk), and that an institution can properly be held responsible for some severity or degree of these social attitudes on the basis of laws or policies they instituted. For example, with respect to rights, the United States government was not only responsible for institutionally endorsed, legal levels of unacceptable risk for black Americans pre-1965, they were, in part, also responsible for the increased risk of extralegal violence that black Americans lived with day to day, post-1965, insofar as that elevated risk was, in some proportion, attributable to social attitudes and the expressive effect of previous institutional features.

Conclusion

I have explained and elaborated on a standard threats approach to thinking about human rights, paying close attention to the role that social attitudes, a particular epistemically accessible component of elevated risks to protected interests, play. I've attempted to establish a link between institutional features like laws and policies, the social attitudes that they contribute to via an expressive function, and the increased risk to protected interests that are the result of those social attitudes. Buying into the premises of a standard threats approach to human rights, it is not a strictly necessary link to make. In theory, all we would need to know to trigger state responsibility is that some protected interest was suffering an unacceptable level of risk, and that were possible, morally permissible policy options availabe; but, I've established it in the hope that it expands the scope of the audience who would buy into my broader conclusion, namely: “There can exist negative social attitudes, which cause an elevated risk to dignity interests, and which a state has a responsibility to try to correct for.” I've argued that government intervention that bans or compels certain speech associated with the relevant attitudes is

not the appropriate course of action in discharging their responsibility, but remained ambivalent about what might be an optimal approach.

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