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Commentary on Christian Campolo: “Rights, Reasoning, and Dissensus”

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Campolo’s excellent paper contains an insight that won me over from the outset – that the excessive reliance on rights rhetoric has led to, and reflects, a degradation of our reasoning skills in moral matters. Campolo argues that a key aim of reasoning is to attempt to reach, or re-establish, intersubjectivity or consensus, and that appeal to rights is an increasingly common way of achieving that end. Yet, there are occasions when the gap between moral contestants is too great and ascending to common ground – typically by reaching for a higher level of generality or abstraction shared by both contestants – is not only futile, but tends to ruin our ability (our ‘eye’ as he puts it) to correctly detect when the giving of reasons is appropriate. In time, this attempt to get ‘on the same page’ degrades our moral reasoning skills: like the batter who swings at every ball, his ‘eye’, which should tell him when to swing and when not to, degrades. Like the batter, we should have the skill to know that some gaps in consensus are just too great and cannot be repaired by reasoning and seeking common ground. Hence, rights claims can that attempt to find common ground can undermine our reasoning skills, and that is the source of the legitimate concern about the overuse of rights rhetoric in moral and political discourse.

A convincing case, certainly one that gives a better reason for objecting to the proliferation of rights rhetoric than provided by Sumner, Kass, and many others from both the right and the left. I have some concerns, however; more specifically two smallest issues, and one very large one.

SMALLISH ISSUE 1:

I don’t follow Campolo’s discussion of the ‘common ground’ to which rights rhetoric is supposed to appeal. It is common for rights rhetoric to be used as an argument stopper rather than a consensus-builder: ‘Sir, there is no smoking here. I have a right to smoke, so piss off!’ But, set that aside. What is the common ground that rights evoke? Campolo cites Mill’s rule utilitarian defence of rights as maximizing happiness in the long term. But I don’t believe that the common ground of ‘happiness is a good thing’ captures the intuitive appeal of rights. Campolo’s citation of ‘the Constitution’ truly mystified me for a moment, until I remembered that, unlike our *Charter of Rights and Freedoms* that enumerated recognized rights, the American Constitution sets out individual rights, the division of powers, and indeed the entire political arrangement of the U.S. So, in U.S.

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rhetoric, the Constitution is a kind of sacred text. But if, conceptually, rights harken to a common ground, that common ground can not really be a contingent document, however prized it may be.

Looking back at the genesis of universal human rights in the early 18th century, say in the writings of Cesare Beccaria, two things become clear. First, ‘rights’ were uniformly understood as legal entitlements, ones possessing the legally salient property of being enforceable. Of course, that sense of rights (which these days we need to tag with the adjective ‘legal’) still operate in our lives. But secondly, at the dawn of these notions in the early 1700’s, human or moral rights were metaphors, based on the legal model, but invariably pointing to the underlying moral and political value of universal human dignity.

This history may clarify things somewhat. To insist that one has a legal right to something does indeed call upon a common ground, namely respect for law, or, more cynically perhaps, the possibility of going to court and winning. What about moral or human rights? As mentioned, historically the common ground that rights evoked was human dignity. (Just as a footnote, recently Canadian courts have reinstated human dignity as the underlying rationale for all Charter rights.)

Granted that this common ground is, as Campolo predicts, a notion that occupies a very high level of generality and abstraction, does respect for human dignity not bridge the gap in intersubjectivity that characterizes a moral dispute? Or, putting it the other way, are there moral disputes where an appeal to common human dignity not only does not bridge the gap, but as a justification for continuing to reason would lead to a degradation of our moral reasoning skills?

I am perfectly willing to accede that if all two moral contestants shared were a firm conviction in the moral worth of human beings then they would not be able to successfully build on that common ground to reach a reasoned resolution to their moral dispute. But Campolo is saying much more than that reasoning may not resolve the dispute in such a case. What worries me is that he claims that if this is all they share then moral reasoning should stop because the gap remains too great to continue. Since this worries me because of the last point I want to make, I will come back to it.

SMALLISH ISSUE 2:

I am not sure about Campolo’s claim that an appeal to rights as an argumentative ploy is an awkward and blunt tool which, as Campolo puts it leaves “no room for compromise, dialogue, negotiation, prioritizing, etc.” Initially I thought that was spot on, since what could be more unproductive of compromise, dialogue and negotiation than (just to take one of countless examples) casting the abortion issue as a conflict between the right of the mother and the right of the fetus?

A moment’s thought, however, reveals that this is only a concern if we understand rights as absolute and non-defeasible. There are no legal rights of that sort (whatever the rhetoric one finds in constitutional documents), so why suppose there are moral rights that are not open to compromise, dialogue and negotiation? Indeed, the basic political strategy of marginalized people in society, such as persons with mental disabilities, is to insist upon their rights in order to get the standing to make an argument for equal concern and respect. That is, a rights claim is a claim to be heard. For many peoples in the world,

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counting as a political force and being heard is no minor achievement; it is revolutionary. Of course, Campolo is quite correct to make the point that reaching the common ground that both sides should be heard may not take us very far in resolving the moral dispute represented by the two sides. But it is a start, surely. And it is a start that need not degrade our reasoning prowess.

BIG ISSUE:

This leaves me with the big problem I have with, not so much the details of Campolo's argument, with which I am sympathetic, but with the thrust of his argument. Central to his claim is that moral dissensus may be both ubiquitous and rationally intractable. As he writes: "My point is just that reasoning, as a tool for establishing consensus, requires pretty extensive agreement to begin with....And that means that reasoning is a tool useful for restoring intersubjectivity only when the gap to be bridged is quite small."

I could dance around a bit and be clever, but suppose I just say this: What is the alternative? Try to ignore moral disputes? Increase social conditioning to the point where dissensus fades away? Go to war? Call me a dewy-eyed liberal academic, but in my view reasoning should never, ever end, because when it does the alternative is unthinkable. Reasoning is a moral imperative. Even if giving reasons seems utterly futile and the gap between the moral disputants is huge, and growing, irrationality is never justifiable.

Or as my old Jewish grandmother used to say when people commented on the number of Jewish comedians in the business, 'Yes', she would say, 'humour is a Jewish tradition, because Jews have learned that as long as non-Jews are laughing at you, they won't kill you.'

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