



TRANSCRIPT

Source: [Louv2.01x] The Duty to Fulfil

In this fifth section of the course, we examine the duty to fulfill human rights. One major debate about the duty to fulfill was, of course, initially, what was the content of this duty of the state? And essentially, the duty to fulfill comprises three components. First of all, the state is expected to facilitate the enjoyment of human rights by adopting measures that essentially allow the market to provide the social goods that are required for the human rights, such as the right to education, the right to food, the right to housing, the right to health to be adequately satisfied. And this means, for example, building infrastructures with adequate public investments, it means linking producers to consumers, it means having trade policies that facilitate the workings of the market so that the market can provide the results that will result in the enjoyment of human rights.

The duty to facilitate is one of three components of the duty to fulfill, and the second component is the duty to promote the various rights that lead to the imposition of the duty to fulfill. The duty to promote is really a duty for the states to inform people about the consequences of their choices, and to provide them the information required for them to make the right choices. For example, by teaching about adequate feeding practices in support of the right to food, or by providing information as to the health consequences of certain lifestyles, the state contributes to the right to health.

So the duty to promote is essentially the provision by the state of information allowing people to make the right choices. And then there's a third component of the duty to fulfill, and that is the duty to provide. In some cases, indeed, the market will not suffice to allow people to have access to the goods that they need, and it will be necessary for the state to provide these goods directly to the people in need. For example, in situations of natural disasters, where people risk starving, there is a duty for the state to provide food aid to the people and not to allow them to go hungry.

The state may have to provide people with access to health care centers, to schools, where, as is often the case, private initiatives would not suffice to do so. So the duty to facilitate, to promote, and to provide, are the three components of this duty to fulfill and, of course, the significance of these duties shall be different from right to right, and the concrete translations will be different from right to right.

Now, beyond the knowledge normative contents of the duty to fulfill, there have been, in recent years, two major developments that we will study in this section. The first development concerned the governance tools that states are expected to adopt in order to move towards the full realization of human rights. And we will examine two of these tools, the most important ones. The first one is the adoption by the states of national strategies for the realization of human rights. Now national strategies are conceived as multi-year action plans that define very clearly which measures should be taken within which time-frame, by which parts of government in order to move towards the full realization of human rights.

And the advantages of these multi-year action plans or these national strategies are manifold. For example, they allow better coordination across different ministerial departments of the state to move towards the full realization of the right in question. They allow for participation of the society in the shaping of the priorities and in identifying the measures that should be taken, thus also improving accountability. And third, and perhaps most important of all, these national action plans, because they define whom is responsible for taking which measures within which time frame, they improve accountability. Governments would not be able to remain passive. They would have to justify themselves if they fail to attain certain objectives within the time frame specified and they are expected, therefore, to make swift progress towards the full realization of the right in question.

National strategies, in the best of cases, are adopted through a formalized procedure, that is one that involves civil society organizations and the representatives of the weakest segments in society. And, ideally, these procedures by which a national strategy should be adopted are defined in a framework legislation. And framework laws are, indeed, the second governance tool that we will examine. They are, if you wish, laws that define the various institutions and procedures through which national strategies are to be adopted. And ideally, these framework laws should define which role NGOs should play in the shaping of such national strategies, how they interact with government, how their recommendations are to be considered in designing the national strategy for the country that can support the full realization of the rights in question.

So national strategies and framework laws are the governance tools that essentially will allow progressive realization not to remain, if you wish, too vague an expression, and will force the government to make swift progress towards the fulfillment of the right in question. Of course, that begs the question of how fast must a government go? Which is the kind of progress expected from governments in the context of scarce resources when they may not have all the budgetary means required for the immediate fulfillment of human rights?

And this is a second area, which we will study, a second debate we will examine, which concerns really the nature of the efforts that can be expected from states moving towards the full realization of human rights. What is sufficient progress exactly? How fast must a government move towards the full realization of a particular right? How many efforts should the state put into

realizing human rights if we consider the public budget as a whole and the various priorities that the government has set for itself?

That is still a heavily debated issue. There is no consensus on what exactly is to be measured and how fast a government must proceed towards the fulfillment of human rights, and we will examine the various proposals that have been made in order to assess the quality of the efforts provided by the states.