

Review

Rowan Cruft - S. Matthew Liao - Massimo Renzo (Eds.): The Philosophical Foundations of Human Rights¹

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The Philosophical Foundations of Human Rights form the part of the series of the Philosophical Foundations of Law from the area of legal philosophy and doctrinal law from highly distinguished authors. The aim of this review is to give a quick insight to the current status of the idea of human rights after the publishing of *Griffin's* and *Beitz's* relevant books.²

Human rights are the contribution of the last six decades; this period seemed to be a “good time for human rights” according to Joseph Raz.³ Contrary to overall trends, this volume is dealing with the medieval, Kantian and alternative roots of human rights. The scope of the questions to answer is the following: *Are there human rights at all, what is their content? What is the ground for human rights? Does a classification exist between human rights, etc.?* This volume intends to answer those questions or at least to attempt to do so.

According to the authors, human rights are *a) moral rights b) possessed by every human being c) anytime anywhere d) simply because of her/his human existence e) duty-bearers of human rights are all able people in appropriate circumstances.*

These criteria are disputed and discussed by the contributors of this volume, claiming that there might not be an overall ‘*opinio iuris*’ in this regard. The conflict in the theory has several sources, some of the most well known are the questions concerning the dichotomy between morality *and/versus* legality of the universality of human rights, those questions accompany almost every four sections of this volume.

As for the *nature* of human rights, alternative approaches can also be found. John Rawls’ political conception of human rights, which emphasizes the function of human rights, has become very popular which the several authors of this volume welcome, not to mention the dilemmas arising from the Rawlsian ‘*overlapping consensus*’.

As for the *grounds* of human rights, let’s briefly sum up the possible justifications: these may be instrumental (*i.e.* human rights are useful or essential means to realize or further valued features of human lives), non-instrumental (which basically shares the same structure) and the practice-based justifications.

Which New Human Rights are Actual Human Rights? This question may seem a bit strange, but let’s see an example. If we take the second generation socio-economic right as *e.g.* the right to a decent standard of

¹ Philosophical Foundation of Human Rights edited by: Rowan Cruft, S.Matthew Liao, Massimo Renzo Oxford University Press 2015.

² James Griffin: On Human Rights Oxford University Press 2014. And Charles R.Beitz: The Idea of Human Rights Ocford University Press 2011.

³ *Ibid.* p. 6

health care it seems quite utopist to claim this right in a country where even the most fundamental rights are often violated. And yes, the question arises is it an actual right then to claim right to a health care in Mozambique? As Nickel⁴ states, Mozambique will not be able to provide health care to its citizens so the above-mentioned right will be just a *sham*. Furthermore the authors are also critical regarding *group human rights*.

Are There Any Genuine Human Rights? Some authors of the volume claim that human rights are ‘Western’, expressing the western outlook of human rights. Human right will be considered as a right if it is considered as a right in western society from the western viewpoint. *Is it illegitimate* to enforce human rights within societies that do not recognize them, and perhaps even illegitimate to criticize such societies? Marxists even go further with those allegations, not to mention *Marx’s* public/private distinction.

Another problematic interpretation arises from the *feministic* approach. To clarify it let me cite *Mac Kinnon*: “power to act against public acts is left exclusively in the hands of those who commit those acts.” The final brand of human right concerns are connected to the (un)enforcement of human rights while according to *Bentham* and *Raymond Geuss* rights do not exist at all unless they are actually enforced.

After so many boosting questions addressed in the introduction, the real *in merito* examination of the volume is divided into four main chapters. Firstly on human rights’ foundations, secondly, on human rights in law and politics, thirdly, on a range of canonical and contested human rights and fourthly, on concerns about and alternatives to human rights.

It goes beyond the scope of this paper to analyze each and every one of the thirty-eight individual contributions contained in the volume. Thus I have arbitrarily chosen to reflect only on some of them that seemed the most comprehensive to me.

The first section –among others– covers dialogues between *John Tasioulas* and *Onora O’Neil*. The main question arising from Tasioulas is the following: “For an interest-based approach to rights, the operative question is whether any particular interest of ours – any aspect of our well- being – suffices to generate duties on others to respect or protect that interest.” O’Neil partly agrees with Tasioulas’ allegations but rather leans on plural justification.

S. Matthew Liao deals with the question already mentioned about genuine human rights. Substantive account – the key to check the geniuses of the rights claim. This is closely connected to the Fundamental Condition Approach *i.e.* the fundamental conditions for pursuing a good life (mostly by basic activities, the author warns that good life is characterized on other way than the excellent life. Speaking generally this conception forms part of the Naturalistic Approach of human rights. Liao also examines deeply the alternatives that, according to him, are not applicable, when doing so he deals with the Agency, Capability and Political Conception, which are again a reaction to the Rawlsian concept. *Rowan Cruft* challenges the above-mentioned Fundamental Condition Approach. According to his view, respect for human rights does not automatically correlate with that person’s right to a good life. Cruft further mentions the human rights violations and deficits which he consider to be overlooked, and also raises the question of what can be identified as a form of good life, and furthermore what is the minimum of it?

This chapter goes on with the contribution of *Jeremy Waldron* entitled *Is dignity the foundation of human rights?* The paper addresses a not so innovative approach when dealing with the foundations of human rights while *John Simmons*, *Zofia Stemplowska* and other authors’ contributions broaden and challenge our philosophical horizons.

⁴*Ibid.* p. 25.

Chapter two, dealing with human rights in law and politics starts with *Joseph Raz's* contribution, which introduces the role of human rights in the emerging world order and demonstrates that the legally created rights teach us that (moral) rights that people have can change. As the law creates new ones or terminates the existence of old ones, our (moral) rights change. Secondly, moral rights can rest on factors other than basic moral rights. Allen Buchanan's paper ("*Why international legal human rights?*") starts with the motivation behind establishing international human rights. It gives us some practical and logical answers, and justifies the system of international legal rights.

Samantha Besson's study describes the dual regime of safeguarding human rights, *i.e.*, the dichotomy and juxtaposition of international / constitutional law and the need for two-level protection. Though according to Renzo (in Chapter VI entitled Human Needs, Human Rights) the role played by human rights at the domestic level tends to get less attention but(?) still the most important human right provision are incorporated into domestic law, and states bear primary responsibility for their protection and enforcement.

Chapter three, connected to canonical and contested human rights, starts with *Corey Brettschneider's* essay on Free Speech as an Inverted Right and Democratic Persuasion. The question of a cross in public schoolrooms– a highly controversial issue which was also posed before the ECtHR some years ago, Brettschneider's answer lies in '*value democracy*' which gives us a possible solution to handle inverted rights, *e.g.* in the case of hate speech. *Larry Alexander* gives a critical response. *Liora Lazus'* paper on the right to security gives us an explanation starting with the theory of Hobbes and Locke and concludes with the problem of the *in merito* definition of security (instead of the simple procedural reference to personhood or capabilities or other rights).

Chapter four, dealing with concerns and alternatives starts with *Matteo Renzo's Human Need, Human Rights*, which deals with the questions already mentioned in the introduction. The naturalistic conception of human rights and its critic and the reconciliation of the latter are the aim of his analysis, introducing the idea of *minimally decent human life*.

It is clear that the questions posed by the contributors are very similar; at least at their core these issues all have something in common. As for the response to the overall question, there is no simple, easy answer. Probably no one can tell us what the actual philosophical foundation of human rights is, as this issue is too contested. The answer lies in pluralism. Answers can be given, different approaches and horizons that all contribute to the complexity and resolving of the topic, but one should not forget that this foundation is primarily metajuristic.