

## BOOK REVIEWS

*Philosophical Foundations of Human Rights*. Edited by ROWAN CRUFT, S. MATTHEW LIAO, and MASSIMO RENZO [Oxford: Oxford University Press, 2015. xiii + 702 pp. Paperback £39.99. ISBN 9780199688630.]

AN ACCESSIBLE FORAY into contemporary philosophical debates on human rights within predominantly Anglo-American liberal philosophy is what is on offer in this impressive collection of essays. The philosophical issues implicated in human rights claims are incredibly complex, and one could be easily disorientated. But the reader is helpfully oriented by an incisive introduction and the arrangement of the essays under four guiding themes. The first part looks at the nature of human rights claims and the moral grounds of justification for such claims. The second explores the relationship and relevance of foundational philosophical questions to the emergent political and legal practice of human rights. The third examines the legitimacy and content of particularly topical human rights to free speech, religious freedom, security, health, and subsistence. And the fourth covers some critical or reformist perspectives on the dominant human rights theory and practice. Within each theme, the reader is treated to a variety of viewpoints from important contemporary thinkers in the field. And the essay-and-response format sustains a dialectical style which constructively reveals suppressed presuppositions and problems, questions, and avenues of inquiry. What comes to the surface through this dialogue is the amount of work that remains to be done on justificatory foundations to human rights.

Comment on the diverse range of theories and topics covered would be impossible, so I will focus my thoughts on a debate that captivates contemporary human rights theory and many of the book's contributors, between "naturalistic" and "political" conceptions of human rights. The "naturalistic" or "humanist" conceptions see human rights as moral rights possessed by all human beings simply by virtue of their humanity. This view is said to incorporate an "orthodox" consensus on the nature of human rights between contributors like John Tasioulas, Matthew Liao, John Simmons, Massimo Renzo, James Griffin, and David Miller, even though they diverge on the specific moral grounds that justify those rights. In contrast, "political" or "practical" conceptions eschew any necessary connection between the emergent human rights practice and specific moral foundations. In this vein, contributors like Joseph Raz, Allen Buchanan, and Charles Beitz would point to the importance of understanding the role or function of human rights within international political and legal practice, and may look to underpin its continued legitimacy with an account of the general moral-cum-political principles instantiated through the institutional practice or by the good of that practice as a whole.

The problem with this debate is that both sides seem to speak past the other, each capturing important features of human rights claims, while finding it difficult to account for others. On the one hand, human rights seem to implicate an evaluative priority to political ends, resting on some fundamental moral importance to human dignity, human agency, and various aspects of human well-being. On the other, they seem to presuppose a social framework of justice that explains why those interests, freedoms, capabilities, etc. are a matter for common concern, and why they seem dependent on socio-political context. It seems odd, as Raz argues, to think Stone Age cave dwellers had a right to education (pp. 224–25). There is a tension here which suggests the following question. If human rights are moral rights

independent of or prior to political practice, why do human rights claims provide good reasons for the correlative moral duties they entail from another agent? Beitz describes this line of questioning as a sceptical challenge (p. 537), but really it arises from the ordinary interrogative process for considering the quality of reasons for action.

The tip of that problem is broached in the contribution by Raz. In previous work, he identifies what he calls an “individualist fallacy” where the potential value of the right to the claimant is presumed to ground an adequate reason to impose duties, without due consideration of the constitutive social commitments necessary to make that value a matter for common concern. Essentially, Raz thinks there is a tendency in human rights theory and practice to focus on the abstract articulation of those rights in manifesto form (“right to X”), which over-emphasises the potential value of the right to the claimant as a conclusive consideration (pp. 221–22, 227).

Take, for example, the naturalistic theory developed by Tasioulas (pp. 45–70). In his opinion, the moral ground for human rights is secured by considering the basic human interests that are of sufficient importance for each human being, simply by virtue of their humanity, to justify imposing duties on others. What makes these basic interests moral considerations for other agents, according to Tasioulas, is the human dignity of the claimant. The problem is that this approach does not adequately deal with the social foundations that make a particular interest a basis for the moral obligations of another. Human dignity may be a necessary foundation for the equal moral respect due to human beings, as potential subjects of moral rights. In this respect, we might consider human dignity as a status concept, although not constituted by a given schedule of rights as Jeremy Waldron suggests (pp. 117–37). However, we still need to understand the normative importance of that dignity for other agents to explain how human rights provide sufficient reason for them to act one way rather than another. Equivocating on what is meant by an interest being of “sufficient importance” leaves our philosophical foundations to human rights open to the individualist fallacy. Thus, there is a challenge for any naturalistic theory to explain how we cross this “threshold” from individual interests, needs, capabilities, etc. to obligatory moral duties on others, and particularly the action of political institutions.

In the absence of accountability on the individualist fallacy, Raz is right to be anxious about the potential for proliferation when manifesto rights effectively become first principles for practical reasoning about the moral issues at stake. In this respect, Guglielmo Verdirame expresses deep concerns about the consequent ubiquity of human rights, because it undermines their categorical moral force and raises the practical need for consequentialist balancing with other interests and values through legal doctrines of proportionality (pp. 341–57). Ultimately, as we have seen on prisoners’ voting rights in the *Hirst* case, this can lead to a “crowding out effect” on moral argumentation within public discourse.

The difficulty explaining the categorical moral obligations of human rights, while sustaining their responsiveness to socio-political context, leads some theorists to accept a political conception. In this way of thinking, it makes sense to deflate the moral rhetoric around human rights and think of the correlative moral obligations as the product of the moral authority of political institutions, perhaps sustained by broader political commitments to free and equal citizenship. In other words, human rights become intrinsic to a justification for the authority of political institutions, and do not exist “outside” that institutional context. At the same time, the generality of the moral principles supporting the emergent human rights practice allows a pragmatic flexibility for the development of the practice.

Several contributors are quick to point out that this would seem to undermine the capacity for human rights to be sufficiently evaluative of political institutions. Liao claims that there is a need for more substantive moral resources to account for the content to human rights, as opposed to justifying whatever content is attributed to those rights within the practice (pp. 98–100). Renzo doubts the ability of political conceptions to adequately explain why human rights should play a justificatory role in respect of political authority (p. 571). David Luban thinks political conceptions lack the resources to explain the impassioned motivations of human rights advocacy within the practice (pp. 264–78). And, in Verdirame's judgment, naturalistic theories are better able to account for the association between human rights and human dignity within the emergent legal practice (p. 352).

Where does that leave us on questions of justificatory foundations? Can we sustain human rights as a good kind of reason for the categorical moral duties of others? I think we can, but only Carol Gould (pp. 177–95) and Virginia Held (pp. 624–41) venture deeply enough into the conditions of human dependency and the social ontology that human rights would seem to presuppose to sustain them as universal moral preconditions to political practice. Some of the contributors, such as Verdirame (p. 354), Renzo (pp. 584–85), and Pablo Gilabert (pp. 211–12), gesture to background commitments to some social framework of justice from human interdependence which can explain the correlative moral duties of human rights. But insufficient attention is given to the circumstances in which this background framework of justice can be thought to morally bind human action and what this presupposes about the extent of social dependency in human flourishing. If we are to explain the moral demands of human rights as specifications of what a prior common good requires, we need a general account of why the common good makes such demands and in what circumstances. In my opinion, this implicates the fundamental norms of natural justice constitutive of cooperative rational relations in a political community – the natural law, rather than “pre-social” natural rights.

In this respect, there is a glaring absence of any contribution from the scholastic natural law tradition, which might provide resources to think of human rights as expressing the constitutive moral requirements of a common good. John Finnis and Jacques Maritain receive only brief mentions. In fact, Maritain is appropriated by Beitz to justify a political conception (p. 541) and by Renzo to vindicate a naturalistic conception in the tradition of Grotius, Pufendorf, and Locke (p. 573). Both interpretations fail to appreciate Maritain's position, which relies on a crucial distinction between the gnoseological and ontological foundations to natural law. Regardless of one's views on the merits of a natural law approach, the dialogue in this book would benefit from the inclusion of interlocutors from the natural law tradition, to reveal some of the unacknowledged foundational presuppositions and push for more adequate responses to questions on the correlative moral obligations implicit in human rights. Perhaps what is missing is a section on the potential connections between human rights and debates on natural law and natural right.

The reasons for these shortcomings may rest on the fashionable antipathy to deeper commitments on natural human sociability and practical rationality, especially given the practical orientation of human rights theory. Many of the contributions seem influenced by the thought that, for theory to be relevant to human rights practice, it must work from some form of practical consensus, or with as minimal foundational commitments as possible. But I think this can foster a rather understated view of the foundations necessary to make intelligible sense of human rights claims as good overriding reasons for action. I think an adequate treatment of the justificatory foundations of human rights needs to go deeper, in excavating the foundations that are presupposed by human rights claims. Otherwise, perhaps more credit should

be given to the sceptical challenge by adding a question mark to the title. In any case, the book is an invaluable orientation to the state of current debates on liberal foundations to human rights, with a remarkable cast of contributors. It will hopefully serve to point theorists and practitioners to the work that remains to be done.

MARK RETTER  
TRINITY HALL

*The Impossible State: Islam, Politics and Modernity's Moral Predicament.* By WAEL B. HALLAQ [New York: Columbia University Press, 2012. xiv + 256 pp. Hardback £58.50. ISBN 9780231162562.]

This book argues that “*any* conception of a modern Islamic state is *inherently* self-contradictory” (introduction, p. xi, all quoted emphases as printed) and such a state is also “an impossibility” (p. vix). Professor Hallaq dismisses the last two centuries as unworthy models of an Islamic state (chapter 1: “Premises”, p. 2), thereby justifying limiting attention to the first 1,200 years of Islam. He brackets out the question of “what type of political rule are Muslims presently adopting or likely to adopt in the future?” (p. 1) as one that “is not integral to our argument and constitutes a separate field of enquiry for another book and decidedly for another author” (p. 1).

However, logically speaking, how can the last two centuries not be integral – indeed essential – in assessing whether or not a modern Islamic state is a possibility? It might reasonably be thought necessary to investigate how Muslims in the modern era have thought and are thinking about “Islamic governance”, and how they have attempted or are attempting to fashion anew or to improve the governance under which they (and others) are living. Such, in any event, is not the project undertaken in this book. Instead, the book’s answer to these questions is that the factors rendering the Islamic state a self-contradictory impossibility are entirely independent of Muslims and Islam. It claims that the culpable factor is modernity. Hallaq understands modernity as a development in European thought and history forcefully imposed on the rest of the world. Far from being a critique of Islamism, as might first appear, the book is instead a diagnosis of what ails modernity: “modernity’s moral predicament” (the third and final term in the book’s subtitle). The author evidently takes the view that modernity, which was bad to begin with, is now in crisis. In espousing this view, Hallaq places himself in the company of critics of modernity, naming political theorists Alasdair MacIntyre, Charles Taylor, and Charles Larmore. Criticism of the modern state and of the amoral or immoral modernity that birthed and raised it appears in each chapter. One key to evaluating the book is recognising that the critical edge, the one with teeth, is only applied to (this putatively Western) modernity.

Setting that general observation aside, the remaining paragraphs of this review consider the book’s attempts to reveal the notional Islamic state as an impossible illogicality. Professor Hallaq makes two types of claims in support of this conclusion, here classified as “the weaker” and “the stronger”. The weaker claim is that Muslims *cannot* opt for an Islamic state now because doing so would be to move from a better position (under the rule of shari‘a pre-dating the modern state) to a worse one. Chapters 3, 4, 5, and 6 make the weaker claim. The stronger claim is that the development of Islam over its first 1,200 years renders it incompatible with the modern state. Chapters 2 and 7 make the stronger claim.