

EDITOR'S INTRODUCTION: RECONCEPTUALIZATION, RETHEORIZATION, AND RECONTEXTUALIZATION OF HUMAN RIGHTS

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The study of human rights faces an important turning point and must address a diversity of new perplexities and challenges. The reexamination of human rights in today's discourse has gradually emerged as the subject of a very particular and expansive academic field of study—a much more complex one, involving four aspects: re-conceptual approaches, re-theoretical enhancement, re-contextual arrangement, and re-applicable development. To discuss human rights, “not merely to analyze the interaction of theory and practice but also to contribute in some small way to improving practice” (Donnelly, 2013, 7). The study of human rights should be involved in the fundamental interrelation of all types of human values and social behaviors, since “The boundaries of the subject are steadily expanding” (Steiner, Alston and Goodman, 2012, 2). A convergence of goals of human rights means that an essential restructuring of basic research and its cross-cultural comparisons must be accomplished. Significantly, “understanding the history of the human rights idea is essential to understanding the debates and problems that arise when we try to theorize human rights” (Langlois, 2013, 12). The study's central theme is that questions and analytical modes of human rights in human development are rapidly being challenged as a fundamental framework for philosophical criticism, and in its place will appear new researches from more investigators with interdisciplinary, multi-methodological approaches and analytical examinations. Since the discussion of human rights is an important concern for political philosophers, it is necessary for us to define this concept analytically and critically. Any types of human rights can be considered an explanatory variable, a reference parameter, a conceptual framework, or an analytical mode, which will be examined on its possible grounds and according to its characteristics--the objects, the subjects, the motivations, the sources, and the extent. However, despite their differences in origins and expressions, “all these visions of human rights have confronted powerful opposition and forces of resistance every step of the way” (Lauren, 2011, 2). In recent philosophical debates two quite distinct ways of considering human rights have emerged: the “traditional” conceptions of Alan Gewirth and James Griffin² to be distinguished from the “political” or “functional” (Beitz) conception of rights, inspired mainly by John Rawls's work in *The Law of Peoples* (Benhabib, 2013, 38).¹

¹ Also see J. Rawls, *The Law of Peoples with “The Idea of Public Reason Revisited,”* (Cambridge, Mass.: Harvard University Press, 1999); Charles Beitz, *The Idea of Human Rights* (Oxford: Oxford University Press, 2009), p. 13.

More and more scholars attempt to recontextualize human rights in the new socio-political changes, regional situations, and specific fields. H. J. Steiner, P. Alston and R. Goodman discuss international human rights through a very wide contextualized socio-political, ethical and cultural conditions (Steiner, Alston and Goodman, 2012, 2). M. N. da Costa wants to “contextualize the human rights discourse, by looking at its emergence and transformation - from the political motivations to the extension of implications brought by the United Nations” (Costa, 2012, 270). L. Forman emphasizes contextualizing “the Implications of South African Socioeconomic Rights Jurisprudence for the International Human Right to Health” (Forman, 2009, 62). We may also list other examples. For A. Pittman, the concept of adaptability in “feminist strategy” begins to emerge and the ways in which global discourses such as “human rights and Islam” are adapted and “contextualized to the local setting is explored” (Pittman, 2010); J. Amador discloses “the challenges of protecting women’s human rights” in Southeast Asia through “contextualizing modernity” (Amador, 2013); T. Cruz tries to provide contextualizing “human rights in the Philippines” (Cruz, 2009); R. Mushkat advocates contextualizing “environmental human rights” (Mushkat, 2009); and J. Edwards addresses contextualizing “language rights” (Edwards, 2003).

What are the new perplexities and challenges in the studies of human rights? What are the resent responses and argumentative solutions by those scholars? We may make a brief review as follows. B. de Sousa Santos says that he has been puzzled by the extent to which human rights have become the language of progressive politics. Indeed, for many years after the Second World War human rights were very much part and parcel of Cold War politics, and were so regarded by the Left. Double standards, complacency towards friendly dictators, the defence of tradeoffs between human rights and development – all these factors made human rights suspect as an emancipatory script. Whether in core countries or throughout the developing world, progressive forces preferred the language of revolution and socialism to formulate emancipatory politics. “However, with the seemingly irreversible crisis of these blueprints of emancipation, those same progressive forces find themselves today resorting to human rights to reconstitute the language of emancipation.” (Santos, 1999, 214) P. Hayden tries to conceptualize human rights through a more philosophical way. In his view, the philosophy of human rights brings together an extensive collection of classical and contemporary writings on the topic of human rights, including genocide, ethnic cleansing, minority cultures, gay and lesbian rights, and the environment, providing an exceptionally comprehensive introduction. The author wants to base his discussion of human rights on the sources written by those great thinkers, and effectively selects those first hand reading materials from 1) classical authors such as Plato, Aristotle, Cicero, Aquinas, Grotius; 2) modern authors such as Hobbes, Locke, Rousseau, Burke, Paine, Wollstonecraft, Kant, Bentham, Marx, and Mill; 3) contemporary authors such as Hart, Cranston, Feinberg, Pogge,

Nussbaum, Rorty, and Derrida; 4) non-Western authors such as Confucius, Mo Tzu, The Buddha, The Dalai Lama, Kwasi Wiredu, Abdullahi, and Ahmed An-Na'im. In the second part of this book, Hayden deals with contemporary issues such as "universalism and realism," "minority cultures and group rights," "ethnic cleansing and humanitarian intervention, "women's rights," "gay and lesbian rights," and "human rights and the environment" (Hayden, 2001).

L. Wenar contrasts two conceptions of human rights which, following Beitz. For him, "we can call the orthodox and the practical conceptions. The orthodox, defines human rights as those rights that human has against every other, at all times, in all places, under all conditions, and simply in virtue of her humanity. This orthodox conception is familiar from the philosophical literature on human rights, and any philosophy will know how to construct an orthodox theory of human rights using the standard tools of a consequentialist or deontological moral theory. Accordingly, "The practical conception of human rights is quite different, and is more familiar from international politics than from the philosophical literature. On the practical conception, human rights define a boundary of legitimate political action" (Wenar, 2005, 285). For Wenar, human rights are obviously immensely important for our politics, and "so understanding which rights are such human rights should be a proportionately important topic for philosophical theory" (*Ibid*, 286).

J. Mahoney discloses "significant challenges of human rights" indeed to humankind. For him, it is necessary to examine the conceptualization of and justification for human rights. He addresses the major objections to human rights such as the risks of rights inflation, the encouragement of egoism, societal conflict, Western imperialism, and cultural relativism. Mahoney then asserts the acknowledgment of human rights logically culminates in an ethical cosmopolitanism which reflects the moral unity of the human race. According to him, the timely, universal and empowering discourses on human rights, "have inspired and shaped this study which is aimed at examining, and commending, their challenges today" (Mahoney, 2007, VIII). He supports the human rights discourse among philosophers such as Maurice Cranston, Wesley Hohfeld, Henry Shue, John Rawls and Alan Gewirth, as well as the economist Amartya Sen. In his understanding, a view of human rights can be concerned as universal claims that provide protection against collective intrusions, that include basic rights claims, and that help to create a community where rights and duties have an interrelationship (*Ibid*, 98–113). He continues to inquire into various possible bases for "establishing" human rights (*Ibid*, 119). He also clarifies theistic, natural law, intuitionist, pragmatic and dignity-oriented justifications for human rights. Mahoney emphasizes the impact of globalization on human rights. For him, globalization can be defined as "the expansion of the scale of human events, activities and interactions from a local to a worldwide, or global, level" (*Ibid*, 162). He supports a "global ethic" that rejects crude cultural relativisms, subjects all societies to evaluation, and includes a "principled cosmopolitanism" derived from "the moral consciousness of belonging to a single human race" (*Ibid*, 185). Consequently, he finds danger in having a morality

which is bound by kinship, community or citizenship in any restrictive sense of the word (*Ibid*, 180–187). More importantly, a “world government” is not needed to support human rights norms, but, rather, a range of global, supranational and transnational forms of governance, regulation, community, consciousness and identity alongside local ones can inform their implementation (*Ibid*, 185–186).

For K. Baynes, the last several decades have witnessed a dramatic increase in the attention given to human rights. There are clearly many reasons for this, including the exponential rise in the number of governmental organizations and NGOs within the international arena, debates about the role of the nation-state in a “post-Westphalian order”, the post-cold war debates about the grounds and limits of ‘humanitarian intervention’, and the emergence of a “global civil society” as one important aspect of the wider process of globalization. These and other factors have contributed to a condition in which human rights discourse has become the “lingua franca” of the international community. Generally, human rights have become a wider and more visible feature of our political discourse, yet many have also noted the great discrepancy between the human rights invoked in this discourse and traditional philosophical accounts that conceive of human rights as natural rights. For this reason, he wants to “explore the philosophical interpretation of this human rights phenomenon.” In particular, he wants to “examine a more recent approach to human rights that has been called a ‘political conception of human rights’ and my aim is to address two broad concerns that have been raised in connection with it.”(Baynes, 2009, 371-372). For him, central to this ‘political conception’ of human rights is the idea of human rights as special (in contrast to general) rights that individuals possess in virtue of specific associative relations they stand in to one another. This view is explored and defended through a critical review of four recent political conceptions – Michael Ignatieff, John Rawls, Thomas Pogge and Joshua Cohen. Baynes concludes: “At any rate, noting the wider function of human rights, I think, supports the virtues of a political conception and weighs against any identification of human rights with the more traditional and limited set of natural rights” (*Ibid*. 387). S. M. Liao and A. Etinson conceptualize human rights through a new perspective. For them, according to one longstanding account, “the Naturalistic Conception of human rights,” human rights are those that we have simply in virtue of being human. In recent years, however, a new and purportedly alternative conception of human rights has become increasingly popular. This is so-called Political Conception of human rights, the proponents of which include John Rawls, Charles Beitz, and Joseph Raz. These two scholars argue for three claims. First, they demonstrate that “Naturalistic Conceptions of human rights” can accommodate two of the most salient concerns that proponents of “the Political Conception” have raised about them. Second, they argue that the theoretical distance between Naturalistic and Political Conceptions is not as great as it has been made out to be. Finally, they argue that a Political Conception of human rights, on its own, lacks the resources necessary to determine the substantive content of human rights. Liao and Etinson think that if they are right, not only should the Naturalistic Conception not be rejected, the Political Conception is in fact incomplete without the theoretical resources which a Naturalistic Conception characteristically provides. These three claims, in tandem, provide “a fresh and largely conciliatory

perspective on the ongoing debate between proponents of Political and Naturalistic Conceptions of human rights” (Liao & Etinson, 2012, 327-352).

A. Iriye, P. Goedde and W. I. Hitchcock in their edited book attempt to examine “human rights revolution”, and “the globalization of human rights history” through the selected readings written by 15 well-known contributors such as K. J. Cmiel, G. D. Cohen, E. Borgwardt, W. I. Hitchcock, A. Grossmann, A. Black, and so on. For them, human rights have a long history, yet their tenure as a historical subject is surprisingly short. The absence of human rights history in these works suggests that even in an era of increased rights consciousness, historians did not consider human rights “a useful category of analysis” (Iriye, Goedde and Hitchcock, 2012, 3). Accordingly, “the history of history rights is local and global, particular and universal, and above all, it is a history of both advances and setbacks” (Ibid, 6). These contributors to this book look at the wave of human rights legislation emerging out of World War II, including the UN Declaration of Human Rights, the Nuremberg trial, and the Geneva Conventions, and the expansion of human rights activity in the 1970s and beyond, including the anti-torture campaigns of Amnesty International, human rights politics in Indonesia and East Timor, the emergence of a human rights agenda among international scientists, and the global campaign female genital mutilation. The book concludes with a look at the UN Declaration at its 60th anniversary. Bringing together renowned senior scholars with a new generation of international historians, these essays set an ambitious agenda for the history of human rights.²

S. Moyn regards human rights as “the last utopia”. In his discussion, the phrase “human rights” implies an agenda for improving the world, and bringing about a new one in which the dignity of each individual will enjoy secure international protection. “It is a recognizable utopian program: for the political standards it champions and the emotional passion it inspires, this program draws on the image of a place that has not yet been called into being (Moyn, 2012, 1). He claims that contrary to conventional assumptions, there was no widespread Holocaust consciousness in the postwar era, “so human rights could not have been a response to it.” For him, the best general explanation for the origins of this social movement and common discourse around rights remains “the collapse of other, prior utopias, both state-based and internationalist”; “human rights were born as the last Utopia—but one day another may appear” (Ibid, 8-10).

H. J. Steiner, P. Alston and R. Goodman contribute a very systematic course book which has 1497 pages, and attempt to provide a contextualization of international human rights movement. They examine the world of contemporary

²See <http://global.oup.com/academic/product/the-human-rights-revolution-9780195333145?cc=us&lang=en&tab=description>.

human rights more widely and deeply, including legal norms, political context, moral ideals, humanitarian laws of war, human rights discourse, state interests, international relations and institutions, governmental (state) and nongovernmental (nonstate) actors, and economic development. Further, “the three principal themes of law, politics and morals are interrelated, indeed inseparable, for an understanding of the human rights movement (Steiner, Alston and Goodman, 2012, 2). There are five tasks for their studies, the first is to provide “background to international human rights movement,” namely, to produce human rights issues in the large, as they arise and become known, including “introduction to human rights issues and discourse,” “up to Nuremberg,” “civil and political,” and “economic and social rights” (*Ibid*, 3-322). In order to establish a solid moral basis for the human rights movement, the three authors select many firsthand readings written by the great thinkers or well-known scholars such as Kant’s *The Metaphysics of Morals* (*Ibid*, 291). The second is to examine “challenges to universalism and conflicts among rights”; or the way that courts from different states address and argue about the alleged violations of rights that come before them, including “rights, duties and cultural relativism,” and “conflicting traditions and rights” (*Ibid*, 323-556) The third is “international human rights organizations,” including “the need for international institutions and their challenges to sovereignty,” “intergovernmental enforcement of human rights norms,” “treaty organs,” “regional arrangements,” “civil society,” interpenetration of international and national systems,” and “enforcement by states against violator states” (*Ibid*, 556-985). The fourth is “states as protectors and enforcers of human rights” (*Ibid*, 986-1130). The fifth is “current topic,” including “massive human rights tragedies,” “self-determination and autonomy regimes,” “globalization, development, and human rights,” (*Ibid*, 1131-1362). In A. J. Langlois’ discussion, despite the rhetoric of human rights—that they are universal, inalienable, inherent, and so on—the contemporary usage of rights is a very recent affair, emergent out of the history of the West. For him, neither Socrates nor Jesus, neither Confucius nor the Buddha, would have claimed—in the face of injustices they experienced—that their universal human rights were being abused. Today, however, the language of human rights has become globally recognized as a response to injustice. “The way in which we think about this transition, the emergence and spread of the idea of rights, is important for the way in which we seek to justify and theorize human rights” (Langlois, 2013, 12).

J. Donnelly aims to explicate an important interdisciplinary examination of human rights as universal rights. He addresses that any conception as well as the idea of human rights itself is historically specific and contingent. For this purpose, he attempts to examine “how human rights work?” and “how they both rest and help to shape our moral nature as human being?”; and considers the problem of philosophical foundation of substantive theories of human rights” (Donnelly, 2013, 7) In his discussion, the Universal Declaration and International Human Rights Covenants provide the norms of global human rights regime (*Ibid*, 162); and “Regional human rights machinery in Asia and the Middle East has until recently been almost

nonexistent (*Ibid*, 178). He points out that genocide was legally considered largely outside of the framework of internationally recognized human rights; one of the major changes in the post-Cold War politics of international human rights has been the development of a practice of multilateral armed intervention against genocide; and “international efforts remain largely focused on punishing violators rather than on the promotional and preventive activities characteristic of most other international human rights regimes” (*Ibid*, 183). Donnelly tries to assess multilateral human rights mechanisms through focusing on differences in regimes that arise from the source of their authority, but he says: “Each type of mechanism has its own strengths and weaknesses (*Ibid*, 190). Donnelly’s wide-ranging discussion looks at all aspects of human rights, drawing upon political theory, sociology and international relations as well as international law. Cogently argued, it seeks to construct a theory of international human rights. Donnelly deals successfully with “two of the principal challenges” to the notion of the universality of human rights: “the argument that some non-Western societies are not subject to Western norms, and the claim that economic development may require the sacrifice of some human rights.”³

In this *JET* issue, seven scholars develop a reconceptualization, a retheorization, and a recontextualization of human rights through diverse perspectives. According to Josef Seifert, moral obligations and basic human rights must be distinguished from each other and from positive rights and laws. Ethics and basic human rights rest on human dignity. The right to life is shown to be a natural and “absolute right,” but it is also in a certain sense the absolutely foundational concrete human right (*Urgrundrecht*) grounded in ontological dignity: all other human rights presuppose necessarily human life while human life has no more fundamental foundation in other goods but constitutes their ground. Other ideas about the most foundational right (such as the *habeas corpus*) are less foundational for the reason that they are more insignificant, can be suspended, are not immune to emergency states, such that their violation is not under all circumstances a grave violation. Moreover, they presuppose the right to life. These rights also refer only to a small sector of humanity, not applying to babies or comatose patients. The right to life is held by all human beings without exception, it is unrenounceable. The respect for human life would not necessarily prevent a person from depriving another person of all other human rights, selling her as slave, torturing her, etc. From this point of view the right to life is in no way the *Urgrundrecht*, but rather the “universal right to be respected in one’s human dignity,” as well as “the right not to be harmed.” The paper concludes to a trilogy of the most basic human rights respect for which includes respect for all human rights.

Xunwu Chen’s article purports to explore the conflict between the universal idea of basic human rights and Asian contexts, values, and concepts of good life and happiness. Doing so, it proposes to draw several conceptual distinctions in the present

³ See <http://www.foreignaffairs.com/articles/45171/andrew-j-pierre/universal-human-rights-in-theory-and-practice>.

global discourse of human rights. It then examines three Asian value-arguments, namely, the postmodern, the pragmatic, the critical. It further proceeds to defend the pragmatic and liberal argument on the one hand and insists the unity and integrity of the universal idea of basic human rights on the other hand. Thomas M. Besch's paper engages a recent attempt to provide such a grounding, namely, Forst's "reflexive" account. On this account, moral-political validity claims commit us to a constructivist requirement of reciprocal and general acceptability, while this requirement both commits us to accord to others a right to justification and allows for a justification of other human rights. The paper grants the substantive implications of this requirement, but takes issue with the claim that it is reasonably non-rejectable. The author argues that this requirement cannot be established reflexively in Forst's sense, and this is for reasons that mark general limitations of reflexive, presuppositional arguments for relevantly contested conclusions. He argues, as well, that we should not suppose in this context an idea of the reasonable that would entail that it is unreasonable to reject that requirement. Thus, this reflexive case for human rights fails, as it remains hypothetical. But it shifts the issue in an interesting direction.

In Vincent Luizzi's regards, of special interest is whether Russian laws, arguably discriminatory to its homosexual population, can figure into an argument that ultimately calls for some action to counteract this discrimination. Many calls to action invoke a comparison with the Olympics in Berlin when there was discrimination against Germany's Jewish population. Special consideration is given to what needs to be added to this analogy to create a moral obligation to address the wrongfulness of Russia's conduct although of comparable interest is what needs to be put on the table to establish an obligation to address Russia's treatment of its homosexual population regardless of whether the argument makes use of the analogy. For Cenyang Li, shared articulations of moral values across societies in the global age are like common currencies in a globalized economy. No currency is pre-determined to be a world currency; no single articulation of moral values is pre-determined to be globally shared. The ultimate goal of the international human rights discourse is to promote certain moral values through persuasion; it should not be merely forcing people to change their behavior, but rather convincing people to accept certain moral values which they have not explicitly embraced or to embrace certain moral values as more important than they have previously held. This, the author maintains, is the nature of the international human rights discourse.

Roberto Cantú argues one fundamental point: namely, that to understand our current globalized condition, one must first recall and rethink the first globalization of markets, exchanges of ideas, and the migration of peoples across the world's oceans in the sixteenth century under the flags of Spanish and Portuguese galleons. From this argument the critical task turns to the analysis of Tirso de Molina's *El Burlador de Sevilla* (*The Trickster of Seville*, 1620), a play that represents Spain's Golden Age in its artistic as well as political and religious dimensions, especially in its representation of Islamic and Christian conflicts that contain in embryo form question of religious tolerance and human rights across the globe from the Age of Discovery to the present. The study of Tirso de Molina's play is meant to open paths of reflection on sixteenth century forms of European nationalism that coincided with the rise of other imperial

nations—English, French, Dutch--resulting in caste-like hierarchies and religious conflicts in colonial settings, problems that continue to divide peoples across the world. John Zijiang Ding analyzes that the concept of rights has gradually emerged as the subject of a particular academic field of study—a complex one, involving three aspects: conceptual approaches, theoretical orientation, and practical development. The study of Chinese “rights” should be involved in the fundamental interrelation of all forms of Chinese human values and social behavior. This study will focus on the ways in which certain naïve, vague and implied consciousness and spontaneous and haphazard actions of Chinese rights have affected the processes of Chinese social changes and human development. A convergence of goals of “rights” means that an essential restructuring of basic research and its cross-cultural comparisons must be developed. The study’s central theme is that questions and analytical modes of “rights” in Chinese human development are rapidly being challenged as a fundamental framework for philosophical criticism, and in its place will appear new research from investigators with interdisciplinary, multi-methodological approaches and analytical examinations. This article attempts to recontextualize traditional Chinese “rights” through socio-philosophical and historical-cultural perspectives.

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