



Zysset, A. (2019) Human rights: moral or political? *Jurisprudence*,
(doi: [10.1080/20403313.2019.1575617](https://doi.org/10.1080/20403313.2019.1575617)) [Book Review]

There may be differences between this version and the published version.
You are advised to consult the publisher's version if you wish to cite from
it.

<http://eprints.gla.ac.uk/180818/>

Deposited on: 30 April 2019

Enlighten – Research publications by members of the University of Glasgow
<http://eprints.gla.ac.uk>

***Human Rights: Moral or Political?*¹ (ed. Adam Etinson, OUP, 2018)**

Alain Zysset, School of Law, University of Glasgow

alain.zysset@glasgow.ac.uk

The dispute between the moral and the political conceptions of human rights – the main theme of this collection of essays – has had all the ingredients of a healthy academic debate. First and foremost, the dispute has developed based on a set of shared premises. One premise is that, for a majority of participants in the debate, the notion of human rights is not reducible to neighboring categories of thought, such as ‘rights’, ‘justice’ or ‘legitimacy’. Another is that the notion has not been properly and/or sufficiently theorized despite its exponential use in (international) law and politics. As we shall see, *how* to fill this vacuum is the source of deep disagreement and some precisely think that the whole enterprise, while valuable, is premature – that ‘there is not enough discipline underpinning the use of the term “human rights” to make it a useful analytical tool’.²

Another ingredient is that the dispute has had ramifications in tangential disciplines, in particular law and history. Contributors from these fields have not only offered their ‘perspective’ on the notion and practice of human rights – e.g. through intellectual or global history. They also have to come to bear on the terms of dispute – see in particular the debate between Samuel Moyn and Seyla Benhabib in *Qui Parle?*³, a rare and admirable encounter. The exchange goes both ways; Allen Buchanan’s recent attempt to build a normative theory of international human rights *law* specifically is the reverse indication⁴ that normative theorists aim to appropriate another discipline to satisfy a project of their own – a form of *extra-disciplinarity*. What explains that the dispute is so porous to other disciplines – in contrast to other debates in normative theory – is a question worth exploring.

In addition, the debate has given rise to a multitude of publications and events over the last ten years or so – articles, monographs, special issues and symposia, as well as another anthology recently published⁵ – that have consistently informed and re-framed the terms of the dispute without sliding towards orthodoxy. A special issue of *Ethics* in 2010⁶ on James Griffin’s *On*

¹ Adam Etinson, ed., *Human Rights: Moral or Political?* (Oxford, New York: Oxford University Press, 2018).

² Joseph Raz, “Human Rights without Foundations,” in *The Philosophy of International Law*, ed. Samantha Besson and John Tasioulas (New York: Oxford University Press, 2010), 336–37.

³ Seyla Benhabib, “Moving beyond False Binarisms: On Samuel Moyn’s *The Last Utopia*,” *Qui Parle: Critical Humanities and Social Sciences* 22, no. 1 (2013): 81–93.

⁴ Allen Buchanan, *The Heart of Human Rights* (Oxford: Oxford University Press, 2013).

⁵ Rowan Cruft, S. Matthew Liao, and Massimo Renzo, *Philosophical Foundations of Human Rights* (Oxford: Oxford University Press, 2015).

⁶ *Ethics* 120, no. 4 (2010): 647-760.

*Human Rights*⁷ – a prototypical example of the moral conception – can be seen as setting the terms of the initial debate. One will notice the some prominent contributors to that issue are also part of the collection reviewed here, which can provide a good measure of the dispute’s trajectory until today.

This collection of essays – followed by short responses – hence offers an excellent and timely occasion to measure the dispute’s state of health. The three variables outlined above – the dispute’s philosophical premises, its main variations and developments and its inter-disciplinary dimension(s) – will guide this review. This exercise is inevitably selective and regrettably I shall not refer to all the contributions of the collection. Rather, I shall concentrate on the contributions (in Part I and II) that directly come to grips with the core dispute, forming a thread throughout the collection. This is problematic in itself. Some of these authors have developed a wider and richer account of human rights than what a review of their contribution here allows saying. The work of Allen Buchanan⁸, Samantha Besson⁹, James Nickel¹⁰ or John Tasioulas¹¹ on the foundations of human rights indeed pre-dates the emergence of the moral/political dispute. Similarly, the collection contains contributions from some of the most prominent figures in the broader fields of moral, political and legal theory today (e.g. Rainer Forst, Joseph Raz, Jeremy Waldron) whose prior and independent work has implications for thinking about human rights. In both cases, it is painful to refer to these contributions without a broader context. The collection, it should be repeated, by far does not only address the dispute. Subsequent sections (Part III and IV) expand on connected methodological and substantive issues such as feasibility, power, humanitarian action, self-determination and immigration. Another review is required to shed light on these parameters.

The binarism opposing ‘moral’ and the ‘political’ built into the title on its own suggests that the dispute is both enduring and philosophically profound. Samuel Moyn in his chapter ‘Human Rights in Heaven’ provides an excellent overview of the dispute’s binaristic premises. He traces the ‘political’ conception back to the work of John Rawls’ *The Law of Peoples*¹², and to the functionalism of human rights in the Rawlsian reconstruction of the international system. On Rawls’ view, Moyn explains, human rights define ‘a

⁷ James Griffin, *On Human Rights* (New York: Oxford University Press, 2008).

⁸ Allen Buchanan, *Justice, Legitimacy and Self-Determination: Moral Foundations for International Law* (New York: Oxford University Press, 2004).

⁹ See in particular Samantha Besson, “Human Rights: Ethical, Political...or Legal? First Steps in a Legal Theory of Human Rights,” in *The Role of Ethics in International Law*, ed. Donald Earl Childress (Cambridge: Cambridge University Press, 2012).

¹⁰ James W. Nickel, *Making Sense of Human Rights* (John Wiley & Sons, 2007).

¹¹ John Tasioulas, “the Moral Reality of Human Rights,” in *Freedom from Poverty as a Human Right*, ed. Thomas Pogge (New York: Oxford University Press, 2004).

¹² John Rawls, *The Law of Peoples: With “The Idea of Public Reason Revisited”* (Harvard University Press, 2001).

code of conduct that all states must satisfy in order to avoid being subject to justified foreign intervention'.¹³ In other words, unlike constitutional rights the function of human rights is not conceivable – for the purposes of both description and normative theory – outside the deep structure of the international system shaped by the prerogative of equal state sovereignty. This functionalism is also salient in Rawls' closest correspondent in the dispute (although absent from the collection), Charles Beitz' *The Idea of Human Rights*¹⁴, for whom 'we understand the concept of human rights by asking for what kinds of reasons, in what kinds of circumstances, human rights claims may be understood to give reasons'.¹⁵

And this is precisely where the dispute arises: to make the very existence and content of human rights contingent upon their sovereignty-disabling role (or their capacity to general 'international concern'¹⁶ in Beitz' more recent account) conflicts with the explicit, intuitive and philosophically relevant meaning of human rights, namely that they are 'inherent to the human condition'. The political conception is an affront to the idea that the existence and normative force of human rights is independent from recognition in law and politics. How does one move from this 'inherence' concept to a proper conception? That should be, the moral camp summons, the prior and distinctive question for human rights theorists to answer before drawing any justified implication in the practical world – be it interpersonal, political or international.

Moyn's brief genealogy already helps identify a few lasting traits of the dispute. One aspect is *empirical* to the extent that functionalism depends on variables that cannot but be empirically grasped. It is also *methodological* – for the tenants of the moral conception – as functionalism 'misses precisely the philosopher's proper goal of proffering a theory of normative principles at first separate from its implications for the international order'.¹⁷ Moyn himself suggests that while Rawls' empirical premises might simply be wrong, 'there is not too much functionalism in the current philosophy of human rights; there is far too little'.¹⁸ Moyn refers to the "realities of global human rights culture"¹⁹ as the correct object of normative reconstruction. Ultimately, however, Moyn does not provide such a reconstructive account; his contribution is only deconstructive – 'to point out the significance of the debate itself'²⁰ – and programmatic – 'a normative heaven is not the place to keep our utopias'.²¹

¹³ Samuel Moyn, 'Human Rights in Heaven', 71.

¹⁴ Charles Beitz, *The Idea of Human Rights* (New York: Oxford University Press, 2009). See also Charles Beitz, "Human Dignity in the Theory of Human Rights: Nothing But a Phrase?," *Philosophy & Public Affairs* 41, no. 3 (2013): 259–90.

¹⁵ Beitz, *The Idea of Human Rights*, 8–9.

¹⁶ *Ibid.*, 109.

¹⁷ Moyn, *Human Rights in Heaven*, 73.

¹⁸ *Ibid.*, 82

¹⁹ *Ibid.*

²⁰ *Ibid.*, 85

²¹ *Ibid.*

In his short response to Moyn, John Tasioulas – the defendant of a pluralistic yet fully moral conception – directly addresses Moyn’s concern. Tasioulas’ solution – developed throughout several articles²² and a long expected book – is to construct a ‘threshold that enables us to pass from universal human interests to duties generated by those interests that are owed to all human beings’.²³ A concrete example would be the right to an adequate standard of living, which, as Tasioulas explains, is available only in the ‘context of modernity’.²⁴ Tasioulas’ response helps refine one parameter of the dispute, namely how the moral camp understands its own *feasibility* and *applicability* criteria. Note that ‘fidelity to practice’ is something that the moral camp – James Griffin in particular – had already and seriously considered as a necessary requirement of a satisfactory theory.²⁵ The logical order still places the specification of the concept – by ordinary moral reasoning – first.

The political camp however, still ardently disputes this logical order for reasons that are further clarified the exchange between Jeremy Waldron and Joseph Raz. Waldron articulates a functional ‘Armed Intervention View’ (found in slightly dissimilar versions in both Rawls and Raz²⁶) according to which the prototypical function of human rights is for a state (or an international organization) to remedy, punish for or prevent violations in another state. This correlatively implies that respect for human rights guarantees non-intervention and a legitimate place in the international system. Waldron notably points to the multiple factors that count toward such an intervention, which ‘makes their theory look *ad hoc*, if it turns out not only that many of the rights we thought were human rights are not human rights on this account, but also that right-based grounds for humanitarian intervention are usually entangled with other grounds’.²⁷ Using a different angle of counter-attack, Raz in his response emphasizes the ‘place of rights in the normative domain’²⁸, which cannot but be historically and functionally sensitive. Echoing another defender of the political camp, Charles Beitz, Raz admits that the moral conception could in principle fit his account of rights but contends that the ‘historical dependence of rights implies that most of the rights that are taken to be human rights are not of that kind’.²⁹ In other words, Raz seems to make an empirical point, not

²² See in particular John Tasioulas, “Taking Rights out of Human Rights,” *Ethics* 120, no. 4 (2010): 647–78. See also John Tasioulas, “Towards a Philosophy of Human Rights,” *Current Legal Problems* 65, no. 1 (2012): 1–30.

²³ “‘Philosophizing the Real World of Human Rights’: A Reply to Samuel Moyn”, 98.

²⁴ For more on this project, see in particular John Tasioulas, “Human Rights, Legitimacy, and International Law,” *The American Journal of Jurisprudence* 58, no. 1 (2013): 1–25.

²⁵ See Griffin, *On Human Rights*, 37.

²⁶ See Raz, “Human Rights without Foundations”

²⁷ Jeremy Waldron, ‘Human Rights: A Critique of the Raz/Rawls Approach’, 141.

²⁸ *Ibid.*

²⁹ *Ibid.*

a conceptual one. He does not rebut the moral significance of the practice of human rights and the *applicability* of the moral conception, only its *validity*.

That exchange might leave the reader perplexed. What, then, makes the dispute properly philosophical if the disagreement is ultimately empirical? In 'Assigning Functions to Human Rights: Methodological Issues in Human Rights Theory' James Nickel successfully unpacks another apparent binarism. He shows with that functionalism in fact spreads across the moral and the political conceptions. What applies to functional claims in general – that they 'often presuppose or impose temporal restrictions, limit spheres of use, and adopt distinctive points of view'³⁰ – applies to human rights theory in particular. What makes the moral and the political accounts both functional is that it is "directing the *behavior* of persons and institutions (...)'.³¹ What distinguishes them is their focus; 'the spheres in which human rights operate, the level of abstraction at which a theorist proceeds, and special points of view'.³² Rawls, Beitz and Raz focus on international politics, while Tasioulas and Griffin extend and/or prioritize their inquiry at the inter-personal level. Nickel hence suggests that 'self-consciousness and explicit debates about disciplinary orientations and methods would be helpful'.³³ In his response to Nickel, Etinson helpfully notes that a theory of human rights still 'must achieve a degree of fit with the ordinary concept of human rights – with the ordinary *meaning* of the term'³⁴ if it aims to be recognizable as a theory of human rights at all. Once that criterion is met, "being faithful to practice" can take different routes; *substantive*, when "a theory validates the same (or roughly) the same set of human rights as the practice does" or *interpretative* 'when a theory captures the normative considerations that underlie or justify the various rights proclaimed in practice'.³⁵

The same quest for balance between fidelity to the concept of human rights and fidelity to the practice animates the exchange between Andrea Sangiovanni and Rainer Forst. Among Sangiovanni's four desiderata for a satisfactory theory, one is that 'human rights theories must demarcate and explain the sense in which human rights are proper subset of the set of all moral rights *simpliciter*; if they are unable to do so, then talk of human rights is redundant; one might just as well talk about moral rights'.³⁶ Another is that 'human rights theories must be sufficiently faithful to the human rights culture that has emerged since 1945 and that is captured in the main human rights instruments (...)'.³⁷ This practice might very well be multifaceted; yet

³⁰ James Nickel, 'Assigning Functions to Human Rights: Methodological Issues in Human Rights Theory', 146.

³¹ *Ibid.*, 148.

³² *Ibid.*

³³ *Ibid.*, 158.

³⁴ Adam Etinson, 'On Being Faithful to the "Practice": A Response to Nickel', 168.

³⁵ *Ibid.*, 169

³⁶ Andrea Sangiovanni, 'The Concept of Human Rights: The Broad View', 176.

³⁷ *Ibid.*, 176.

Sangiovanni believes in the possibility of a 'single project' delineated by the kind of universal concern required by the subset desideratum. While sharing the aims of Sangiovanni, Forst in his response expresses doubts about delivery. The desideratum of a sub-set of moral rights may simply be too indeterminate – 'some reference to a thicker moral language like that of dignity or normative status might be unavoidable'.³⁸ Similarly, Forst does not believe that a single project transcends the variety of practices; 'a very broad understanding' of human rights does not suffice; rather, what is needed is a conception that no one can reasonably reject³⁹ – echoing his own approach to human rights based on 'the right to justification'.⁴⁰

It is worth pausing here to examine whether any philosophical progress has been made. To the extent that at least two 'false binarisms' were revealed – around empiricism and functionalism – one is tempted to say 'yes'. Unraveling apparent distinctions and oppositions, and gaining further clarity on what disagreement exactly concerns, are usually praised outputs in analytic philosophy. These achievements should be applauded and the collection's dialogic structure is certainly helpful. Yet, a basic consensus on a methodological road map seems inextricably missing. Two philosophical aspirations take the very project of a human rights theory in opposite directions, which prevents methodological unity; *fidelity to the concept* and *fidelity to the practice* – and, more precisely, the degrees of *thickness* (concept) and *specificity* (practice) that should be adopted in constructing the theory. Furthermore, how these two desiderata should be combined implies a further margin of maneuver. As Etinson rightly notes, it is one thing that a theory happens to 'match' the practice (as to what rights are human rights); it is another that a theory *consists* of an immanent interpretation and justification of that same practice. The challenge of combining the two fidelities applies to both.

From that standpoint, the collection reveals that what seemed like a deep philosophical opposition has transformed into a programmatic discussion around broad substantive and methodological pre-requisites – but without any clear road-map on how to *actually* build an appropriately designed theory. Now, taking into account this state of affairs, I believe that the next logical step – following Nickel's call for disciplinary awareness – would require that human rights theorists across the spectrum more rigorously identify, distinguish and reconstruct the human rights practice(s) they deem relevant to their pre-determined theoretical endeavors. This directly speaks to the inter-disciplinary dimension of the dispute. It is quite surprising that the collection displays such a wide consensus on the requirement of (some form of) practice-responsiveness without a subsequent and structured discussion on how to even select – an eventually reconstruct – relevant practices.

³⁸ Rainer Forst, 'Human Rights in Context: A Comment on Sangiovanni', 202.

³⁹ *Ibid.*, 203.

⁴⁰ In the context of the dispute, see in particular Forst, 'The Justification of Human Rights and the Basic Right to Justification'.

Human rights practice *qua* normative practice is reason-based. Human rights give situated agents (some) reasons to take or not to take action(s). If anything, practice-responsiveness requires objectifying these reasons and establish whether there is a recognizable practice at all; whether there is a 'single project' – to use Sangiovanni's term – that sufficiently represents practice; and whether the concept of human rights (*concept-fidelity*) can be reconciled with that project. In my view, these intermediate tasks are strictly required not only because the practice-type may widely vary (e.g. the Amnesty International activist's views or the reasoning of a supranational human rights court), but also because their practice's degrees of authority and compliance are constantly evolving. For that portion of the investigation, the human rights theory project requires mastering neighboring (be they social-scientific or legal) disciplines and their respective methodologies. Objectifying reasons or patterns is not an intuitive or an analytic process; it is first and foremost empirical. Otherwise put, I worry that professional human rights theorists have proposed far too many variations of the same research program ('practice-responsiveness') without *actually* carrying out their investigation due to disciplinary fault-lines. Raz diagnosed that 'there is not enough discipline underpinning the use of the term "human rights" to make it a useful analytical tool'.⁴¹ I am wondering whether in fact there is not enough *self-discipline*.

The embryonic stage of this research program is seen, I believe, in how the collection addresses international human rights law, which is widely assumed to constitute a relevant – perhaps the most developed – practice-type. Allen Buchanan and Gopal Sreenivasan's contribution⁴² aims at transitioning from the initial, rather abstract debate surveyed above to what they call the 'international human rights legal system' specifically. Yet, the transition is abrupt. Surely, the project of distinguishing *moral* human rights and *legal* human rights as independent objects of justification is cogent. Yet, is their 'system' sufficiently practice-sensitive? And how are we to assess this question without a prior description – as impartial observers – of that 'systemic' practice? This explanatory gap prevents, in my view, from even situating Buchanan and Sreenivasan's contribution in any legally (or practically) recognizable context. Surprisingly, the authors readily dismiss regional and constitutional practices of human rights without much justification – when regional systems are, by far, the most compliance generating. This dismissal is also found, it should be noted, in Beitz' 'global human rights practice'.⁴³ Further, it is unclear *when* and *why* an international human rights treaty becomes a 'system'.⁴⁴ Buchanan and Sreenivasan take 'recognition by a valid international treaty that describes itself as a human rights treaty (such

⁴¹ Raz, 'Human Rights without Foundations', 336–37.

⁴² Allen Buchanan and Gopal Sreenivasan, 'Taking International Legality Seriously: A Methodology for Human Rights'.

⁴³ See Beitz, *The Idea of Human Rights*, chapter 2.

⁴⁴ I have elaborated on this point in my review of Buchanan's *The Heart of Human Rights*. See Alain Zysset, "The Heart of Human Rights, *Written by Allen Buchanan*," *Nordic Journal of International Law* 86, no. 2 (2017): 267–273.

as the ICCPR or the ICESCR) as sufficient to qualify a right an international legal human right'.⁴⁵ But how a treaty – which, on its own, can remain totally inert – generates a 'system' is left unexplained. Buchanan and Sreenivasan are fully "aware of the myriad specific features of rights that together define the character of a system of rights"⁴⁶ but that remains an *awareness of the questions*, not of their answers – for instance, how much authority the international system should have vis-à-vis the domestic legal system, or who bears the primary legal duties correlative to rights. These questions have answers – even provisional and indeterminate.

Interestingly, the subsequent contributions of Mattias Kumm⁴⁷ and Andreas Follesdal⁴⁸ contain some of these answers. Both contributions build upon prior and seminal research (e.g. Follesdal on subsidiarity⁴⁹, Kumm on proportionality⁵⁰) and each surely deserves a review of its own. Yet, for the purpose of the collection, these contributions have the opposite – but still undesirable – effect to Buchanan and Sreenivasan's contribution in severely circumscribing the context of investigation. Their context is not only constitutional and/or regional (ECtHR/CJEU); Kumm and Follesdal also immerse the reader in a particular *judicial* context – the proportionality test for Kumm, the margin of appreciation for Follesdal – that make their answers irremediably contingent. Follesdal posits that, in examining the level of authority of the European Court of Human Rights to determine cases in which human rights may be limited (one of Buchanan and Sreenivasan's questions), granting states a margin of appreciation to the latter ones is 'appropriate in case where the ECtHR recognizes that there is reasonable disagreement about whether the state violates the ECHR (...)'.⁵¹ In these cases, the Court's authority should be limited to reviewing the proportionality of the interference and that is 'to ensure that the domestic decision procedures have indeed been conducive to deliberative processes'⁵²; resistant to this filter are the rights that are necessary to democratic deliberation itself. However illuminating, his analytical frame can hardly be extended beyond Strasbourg's jurisdiction. Indeed, the margin of appreciation – or any other form of deferential device – is notoriously absent from the jurisprudence of the Inter-American Court of Human Rights, for instance. And the reader has not yet

⁴⁵ Ibid., 213.

⁴⁶ Ibid., 221.

⁴⁷ Mattias Kumm, 'The Turn to Justification: On the Structure and Domain of Human Rights Practice'.

⁴⁸ Andreas Follesdal, 'Appreciating the Margin of Appreciation'.

⁴⁹ See in particular Andreas Follesdal, "Survey Article: Subsidiarity," *Journal of Political Philosophy* 6, no. 2 (1998): 190–218. See also Andreas Follesdal, "Subsidiarity and International Human-Rights Courts: Respecting Self-Governance and Protecting Human Rights—Or Neither?," *Law and Contemporary Problems* 79, no. 2 (June 20, 2016): 147–63

⁵⁰ See for instance Mattias Kumm, "The Idea of Socratic Contestation and the Right to Justification: The Point of Rights-Based Proportionality Review," *Law & Ethics of Human Rights* 4, no. 2 (2010): 142–175.

⁵¹ Andreas Follesdal, 'Appreciating the Margin of Appreciation', 289.

⁵² Ibid.

seen a trace of the quasi-judicial practice of UN Treaty Bodies or the UN Human Rights Committee – and that applies to the entire collection.

True, Kumm's contribution addresses the *concept-fidelity* desideratum directly, but to rapidly denounce it: 'the problem is that actual human rights practice generally does not fit very well with the any limited domain conception. Human rights claims do not, in legal practice, occupy a narrow domain limited to things fundamental'.⁵³ Spanning the reasoning of European courts, both national and supranational, Kumm points to the distinctive *method* of adjudication – the three-ponged proportionality test (assessing the legitimate aim of the state interference, its necessity, and whether a least restrictive means was available) – as distinctive of the practice of (human) rights; 'they are inextricably connected to the idea of politics as the process of establishing justice among free and equals under conditions of reasonable disagreement'.⁵⁴ The more basic notion arbitrating right-claims for Kumm is 'reasonableness' (he also refers to the Rawlsian notion of 'public reason' and in other works to Forst's 'right to justification', which does not satisfy the *concept-fidelity* desideratum either), which expresses a blend of liberal and democratic morality with a pinch of the rule of law. Clearly, the limited domain flies in the face of *that* human rights practice. If anything, human rights have instilled a 'culture of justification'⁵⁵ on the part of public authorities.

Kumm's and Follesdal's insights have much in common. They brilliantly illustrate that the judicial practice of human rights – an objectified one based on the available case law – amounts more to *filtering* the claims of individuals vis-à-vis the democratic state and *structuring* the state's response, rather than injecting a novel and independent layer of normativity. I myself have found that the European Court of Human Rights is most judicially active – and protective – when the right-claims under scrutiny are particularly important to the democratic process⁵⁶, which fits one of Follesdal's points. I have hence suggested that there is a 'single project' – to keep using Sangiovanni's notion – that helps the Court systematize its justificatory work, including the margin appreciation. Yet, beyond these localized findings there remains a recurring gap to be filled between Buchanan's abstract notion of the 'international legal human rights system' and the technicalities of the margin of appreciation or the proportionality test in Europe. In that sense, the collection not only evidences an increasing difficulty to maintain the two legs of the human rights theory project – there is a clear correlation between the theorist's inclination to reconstruct a given (legal) practice and the somewhat fatal finding that human rights extend beyond a limited domain. As far as human rights law is concerned, the collection also points to a difficulty to map, delimit and accordingly conceptualize the domain in terms that are sufficiently representative of the ongoing practice.

⁵³ Kumm, 'The Turn to Justification: On the Structure and Domain of Human Rights Practice', 249

⁵⁴ Ibid., 242.

⁵⁵ Ibid., 258.

⁵⁶ See Alain Zysset, *The ECHR and Human Rights Theory: Reconciling the Moral and the Political Conceptions* (London: Routledge, 2016).

At least three junctures are regrettably absent from the main discussions of the collection. These do not involve talking about the rights' content and scope yet – only about their *addressee*. One is the national/international divide noted above. The question here is whether, on a global scale, 'legal practice' refers only to the authority and effectiveness (or the lack thereof) of human rights law within the state (while human rights law is international in origin, it can be domestic in its sources – say, when a human rights convention takes precedence over domestic legislation in the constitution, or when the constitution is itself modeled upon a human rights convention). Or whether 'practice' extends to is the authority and effectiveness of international human rights courts and bodies.⁵⁷ Another juncture is the *extra-territorial* application of human rights law – when a state exercising authority beyond its territorial boundaries – and its *horizontal effect* – when a non-state actor may bear human rights duties. I believe that a systematic study of these questions could fill the gap identified above because they concern the principled boundaries of the domain independently of the rights' content and scope. Human rights theorists need to unlock the junctures through legal and empirical relays and integrate them in their conceptual mapping.

Rather than attempting to exhaustively review its contributions, this critique's limited ambition was to briefly reconstruct the dispute's initial premises, to track its developments since the beginning and throughout the collection, and then to critically engage with its inter-disciplinary dimension. The last of these aspects – in particular regarding law – remains in my view crucial to develop the field of human rights theory further. The collection does an admirable job with respect of the first two. And that may be what an anthology of that kind can realistically achieve.

⁵⁷ See for instance Theresa Squatrito. Oran Young, Andreas Follesdal and Geir Ulfstein, eds, *The Performance of International Courts and Tribunals* (Cambridge: Cambridge University Press, 2018).

