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ARTICLE

Developments and Challenges for a Political Idea of Human Rights.

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Much ink has been spilt and hairs split in the battle between orthodox and political conceptions of human rights. No doubt, much in the confrontational approaches has been clarifying. There is a wide array of collected volumes and articles that illuminate obscure angles, pros and cons.[1] But since John Rawls made explicit a seminal conception of international human rights in his Oxford Amnesty Lecture in 1993 we have also had a fair share of straw-figures and shadow-boxing between misrepresented positions. The recurrent points of contention are: whether a political-not-metaphysical conception of international rights is necessarily an a-moral one; whether all elements in a human rights conception should mirror moral ones or whether they are best understood as part of a philosophy of international law (Buchanan, 2013; Raz, 2010); whether 'political' necessarily implies that we can make universal assessments of human harm without moral standards, without 'dignity' as moral standing (Luban, 2015), or without moral recognition in a discursive practice of rights (Benhabib, 2013); also, whether the subject of duties for universal rights should be the states, or any agent whatsoever; whether the political view must lead to maximalism about the list of human rights; whether the political account of human rights can be claimed for human rights politics by women's groups and other local activists (Ackerly, 2018); whether a practice-based conception can be critical, progressive and aspirational (Moyn, 2018); or whether statist human rights are just enough and not a distraction from real cosmopolitan justice (Beitz & Goodin, 2011; Song, 2019).

The purpose of this volume is not to add up to the pile of confrontational accounts. On contrast, we wanted to mark the 10th anniversary of the publication of Charles Beitz's *The Idea of Human* Rights (Beitz, 2009) – perhaps the best articulated and detailed elaboration of this political turn, as an occasion to take stock of this decade of developments and to figure out new challenges ahead. According to the political conception defended by Beitz, human rights are best understood as an evolving practice and, consequently, the public doctrine that articulates its purpose can only be conceived as a work in progress. Beitz's own

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work on the topic has also been developing for quite a long time but it eventually coalesces around the notion of a *global discursive practice* that, through a public doctrine, provides an array of arguments and justifications for normative criticism in the global order. These arguments and the important interests they protect do not need to rely on a unified moral conception of agency or moral personality to fulfill this discursive role of contestation and accountability. Human rights are a historical reality that makes sense in our particular world order of interdependent territorial states, which is defined by a wide dispersion of political authority and an entrenched disposition towards certain pathologies, like abuses of state authority toward the population they should protect or aggressive foreign policies toward their neighbors. Against this background, human rights are a normative patch for its institutional context. However, being normative and critical, a conception of human rights cannot be fully identified with the legal and doctrinal regime it regulates. Similarly, being historically meaningful, it cannot be understood as a blueprint for an ideal conception of global justice. It is internal and critically immanent to the status quo it regulates.

The new approach to human rights developed by Beitz apparently departs from his own previous contributions to the idea of global justice, or at least from the way these contributions are usually interpreted. In *Not Enough. Human Rights in an Unequal World*, Samuel Moyn (2018) attributes a prominent place to Beitz as a pioneering advocate of global justice and redistributive equality in the times of postcoloniality. His work by that time is presented as providing philosophical backing for a New Economic International Order, but also cosmopolitan criticism against repressive regimes in emancipated states. Beitz's work on global equality is contrasted there with the work of Henry Shue on basic rights as sufficient conditions, a debate that parallels the emerging discourse of human rights as a minimalist utopia. While Beitz's work on global justice continues questioning the historically contingent elements that define the interdependence of nations, his renewed interest in human rights finds in their contemporary factuality its main philosophical appeal. As creatures of its time, for Beitz human rights are still a statist reality. Even in its twilight (Benhabib 2011), the Westphalian order is not yet fully vanished (Buchanan 2000), and a public doctrine of human rights finds its place, purpose, and scope working from practice to theory (Beitz, 2013), as 'revisionist appurtenances' that first need to ask 'what human rights mean' (Beitz, 2003) as sources of reasons to care for the international community of states, particularly when one of its members fails to secure these standards.

Our symposium debates this work in progress since *The Idea of Human Rights* (Beitz, 2009) with the benefit of ten years of reflection about the evolution of our interdependence and its pathologies. The main challenges derive from the characterization of the practice regarding its site and unity. Three nodes of concern emerge in the debate around Beitz's practice-based view: first, the need for a humanistic reconceptualization that limits the state-centrism of Beitz's approach; second, the fragmentation of the practice in different cultural

contexts and practices of jurisprudence; third, the connection of the practice-based conception of human rights with conceptions of global and intergenerational justice.

On the reconceptualization front, Lafont questions the statist premises in the political turn and defends the need to retain the humanistic core of human rights as progressive realizations with the background of a global institutional order. According to her view, the political conception would be throwing the baby out with the bathwater if it discards the central role of notions of equal status and inherent human dignity – even if they are not substantiated (for a critique of Raz along the same lines see Rosas, 2014). Lafont contrasts what she considers the reductionist model of the political conception that interprets human rights as associative rights derived from state membership, with the humanist and legalist model that considers human rights as membership rights in the global order (Maklem, 2015). According to the latter view, international law produces systematic vulnerabilities when it distributes recognition and territorial authority to some groups over others, and human rights are justified as protections against these dysfunctional effects. Lafont's own humanist position would converge partly with Macklem while she focuses on the global institutional order as the best site for allocation of responsibilities for human rights (see also Álvarez, 2012).

However, these contrasting views sometimes sound like rival re-descriptions of the same practice. For instance, fidelity to the practice, as historically developed, leads Beitz to give a statist account in which international institutions are introduced as peripheral agents that fill specific functional coordination gaps in the state system, allow the states to keep each other in check, and express concern about the standards of performance of some of its members. In contrast, the legalist/humanist account starts form international law and distributes responsibilities all the way down among a plurality of agents (states, IOs, TNCs, etc.), which allows the recognition of a wider list of human rights that could not be justified as reasons for other states to intervene, one way or another. Lafont addresses here Beitz's example of gender violence as a case of overreach to show how in turn her account of transnational action can justify women's human right to equal treatment and non-discrimination. But in Beitz's opening contribution for our debate, he expands his exploration of the practice and its authority by incorporating the repertoire of empirical lessons from the social sciences to the different modes of engagement and remedial actions. This wider approach opens the way to consider other avenues for the effective protection of women's rights as human rights. There is room for convergence, for instance, when Beitz emphasizes the crucial relevance of the engagement of domestic actors for successful reform and, therefore, the national in the trans-national.

The fragmentation of the global practice emerges as a second node of concern in the debate about human rights through the recognition of a diversity of

practices (Sangiovanni) and through the multiplication of interpretive institutions (Follesdal, Krüger, Zysset). In 'Human Rights and Common Concerns' (Beitz, 2001) – later reformulated in *The Idea of Human Rights*, Beitz states that

> International practice has followed the controlling documents of international law in taking a broad view of the scope of human rights. Many political theorists argue, however, that this view is excessively broad and that genuine human rights, if they are to be regarded as a truly common concern of world society, must be construed more narrowly. I argue against that perspective and in favor of the view implicit in contemporary international practice. (Beitz, 2001, p. 269)

In this regard, Andrea Sangiovanni defends a conception that might be branded as 'an even broader view.' This inclusive approach to 'moral rights whose systematic violation ought to garner moral, legal and political concern' (Sangiovanni, 2017, p. 191) aims to cross the aisle between Orthodox and Political conceptions by incorporating a wide diversity of practices of right-claiming according to a context-sensitive methodology for the framing of every demand and its appropriate response without recourse to a master list. By broadening the spectrum of the varieties of concern (moral, legal, political) and by working through context-sensitive specifications of what counts as a claim worthy to be given the status of human right in a given domain, this ecumenical proposal may help register the wide diversity of variations within the practices. Sangiovanni is confident that this umbrella approach still allows the mutual recognition of practitioners as fellow travelers supporting a common cause, be it through constitutional recognition, humanitarian intervention, or campaigning for aspirational and progressive realization. This is, however, an open question that depends on what 'concern' means for the multiplicity of actors potentially involved.

In a different level, Andreas Follesdal addresses the problem of the fragmentation of the practice under a legal angle. In particular, his article explores the consequences of incorporating the output of international and regional courts and tribunals into the framework of *The Ideal of Human Rights*. These specialized interpretive institutions supplement the theory with an ever growing supply of considered judgments. And these in turn should be balanced within the general reflective equilibrium of a global practice that takes human right as *pro tanto* sources of reasons for state concern. With his nuanced account of the implications of this incorporation, Follesdal defends both the potential of Beitz's conception for guiding interpretations across this decentralized net of courts, but also the role of courts in defining the conception of sovereignty of the states in the international system.

In similar lines, Zysset makes a case for the inclusion of legal reasoning and the practice of International Human Rights Law, emphasizing the fact that effective enforcement of these claims depends on the same state that created these institutions. In addition to that, claims and interpretations normally have a domestic constitutional nature. This implies that in order to grasp the purpose

of the practice we need to keep in mind the plurality of constitutional references in their own terms. This point leads us back to the challenge ahead for the political conception as a practice that aspires to keep its global dimension and unity while our transnational order keeps producing fragmented normative articulations.

The tension between unity and fragmentation resurfaces through the relation between the political conception of human rights, on the one hand, and global and intergenerational justice, on the other hand. This is the third node of concern above mentioned. Taken as an element of global politics in the international system, Beitz's proposal is better understood in terms of a *sui generis* morality of states and not as a component in a theory of global justice. However, as Regina Kreide points out, there is a problematic connection between our judgments of injustice, the global order, and the current marketization of essential goods and services beyond proper state control. Therefore, massive deficits in human rights can be traced to global and transnational structures that frequently escape the remedial engagement of concerned states, or even the self-policing mechanism of non-state actors, like transnational corporations.

Analytically, we can differentiate four different articulations between international human rights and principles of global justice:

(a) Human rights understood as membership rights recognized for all individuals in a global basic structure regulated by principles of cosmopolitan justice (Beitz, 1999; Pogge, 1989).
(b) Human rights as ecumenical standards of minimal legitimacy of the current global institutional order and as guides for the implementation of remedial and progressive reforms (Pogge, 2008; Lafont, 2012; Maklem, 2015).
(c) Human rights as reasons for concern in the international community regarding the performance of some state-member. They provide the best interpretation of an emerging practice that counters pathologies of the international system of sovereign states (Beitz, 2009; Buchanan, 2013).
(d) Human rights as external constrains for practice-based transnational justice: it justifies the principles that should regulate the stable cooperation of international/transnational/global actors within a specific domain. This approach responds to the consolidation of vital areas of interdependence beyond state jurisdiction. Aaron James (2012) provides the most sophisticated account, focusing on the practice of international trade. In this proposal the best interpretation consists on a moralized reconstruction of the intrinsic principles regulating the practice in line with its internal goals. Although the practice should be compatible with external principles and standards like human rights, the justification of the principles of fairness is internal to the practice they regulate and independent of their relative impact in maximizing human rights globally or within the participating states (Beitz, 2014).

Kreide's contribution to the debate critically connects these approaches with the problem of transnational marketization of vital goods and services, like in the case of the financialization of the housing market and the difficulties for states to grant fair conditions of access. In a related way, Luise Müller's connects the political conception of human rights and the domestic conditions for social cooperation within a common good social project. In her account, concern about these conditions cannot be separated from the moralized core that is implicit in this social conception.

Finally, André Campos Santos explores the temporal limits of an emerging historical practice of the international system facing the urgent demands of future generations. He takes into account the accusations of an excessive «presentism» that can be drawn against the practice-based conception, but he shows that at least some of the rights that are part of the practice can be related to the future, even if the idea of human rights of future persons has no place in the view defended by Charles Beitz.

If the state is the principal responsible agent for the human rights of its population, projecting this priority concern into the future implies presupposing the institutional continuity and identity of this singular historical formation. Fidelity to the practice roots human rights in its present conditions in a relevant way. But as a global discursive practice, attachment to a statist order may tie our reasons to act to the very same institutional agents that create urgent concerns beyond their borders. This bond may also blind us to alternative institutional formations. The shape of our political imagination is certainly conditioned by this historical compromise.

In summary, we could close this assessment of the challenges ahead asking: to what extent can a political conception of human rights function as a revisionist appurtenance for systemic pathologies that exceed a vanishing Westphalian frame? Can we defend the relevance of human rights in our deeply interconnected global order without a plurality of sites of contextual specification? And finally, can we keep the unity of a discursive global practice through these institutional reforms without resort to a humanistic common core? We are confident that the contributions in this volume will keep the *Idea of Human Rights* alive and clarifying the practice for many decades to come.

Note

1. Most notably, Maliks and Schaffer (2017) and Etison (2018). Also interesting Baynes (2009) and Cruft et al. (2015).

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No potential conflict of interest was reported by the authors.

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