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On Searle on Human Rights, Again!

J. Angelo Corlett, San Diego State University

With regard to my article "Searle on Human Rights" (Corlett 2016), I have been accused of "misunderstanding" John Searle's conception of human rights due to an "uncharitable" interpretation of Searle's view as it is articulated in Searle (2010, chapter 8). Furthermore, it is found "puzzling" (even "perplexing") why the set of concerns were raised therein pertinent to Searle's view of human rights (D'Amico 2016). But this criticism, ironically, uncharitably misattributes to me an absurdly false position, one that I implicitly rejected in Corlett (2016) and have elsewhere explicitly rejected, and for good reason.

In fact, the position misattributed to me finds itself nowhere in my article on Searle on human rights—nor elsewhere in my corpus of writings. I am aware of no credible rights theorist who would endorse it. That it is attributed to me is suspicious in light of the careful and precise manner in which I formulate my case against Searle on human rights and especially given the fact that, to repeat, the claim is not found in my article on Searle on human rights nor in any other of my writings in the sense that I would endorse such an implausible claim. Indeed, it is both profoundly puzzling and perfectly perplexing that I would be accused of subscribing to it. It is my task in this brief article to attempt to render even more clearly what I stated clearly in my original article on Searle and human rights in hopes that such wild accusations might be avoided in the future.

Understanding Searle

It is claimed that "Corlett holds against Searle that rights have no correlative obligations or duties associated with them" (D'Amico 2016, 32-33) and that "…rights have no correlative duties" (D'Amico 2016, 35). But what is being attributed to me and what I actually wrote on rights and duties are two entirely different things. Perhaps what is being misattributed to me is a poor paraphrasing of part of the following:

> There is another problem with Searle's account of human rights. It is that he misstates the logical correlation between rights and duties, an issue that has already been explored with some precision (Feinberg 1973, 61-63). According to Searle, "all rights imply obligations" (Searle 2010, 177). By this he means that "the logical form of statements of rights always implies a correlative obligation on the part of others." Again, he writes: "Rights and obligations are thus logically related to each other." He considers and then dismisses one alleged counterexample to these claims of his, such as his further claim that "all rights imply obligations, because *all rights are rights against someone*…" and "To have a right is to have those people, against whom you have the right, obligated to you" (Searle 2010, 178). While Searle seems to admit that "not all cases of rights" follow this correlative form (Searle 2010, 179), he then affirms that "…if there are such things as human rights it follows immediately that there are universal human obligations." But this point is problematic in that, in some

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> instances of putative absolute positive human rights, there is no assignable person who is in a position to assist those in need (Feinberg 1992, 204). So against whom does the alleged right holder have the right? Who, then, has the duty to address the right in question? Searle fails to address this concern (Corlett 2016, 460-461).

As meticulously as I presented Searle's position from his most important works on social ontology (Corlett 2016, 440-454), I am being accused of misunderstanding Searle due to an alleged uncharitable reading of his work on human rights. Whether or not I have misunderstood Searle's view is up to the reader to decide. I suggest that readers consult Corlett (2016) in its entirety and that they do so with copies of Searle (1995; 2010) in hand. I am confident that readers will find my presentation of Searle's view to be descriptively accurate, perhaps even tediously so, leaving little or no room for misattributions or misunderstandings. Indeed, mine is a description of Searle's social ontology that is based on his two most significant contributions to social ontology. (Searle 1995; Searle 2010) I provided such a detailed account of Searle's social ontology in order to provide the philosophical backdrop for his standpoint on the nature of human rights.

Ironically, I have myself been the victim of significant misattribution in an uncharitable manner. To repeat: I nowhere in my entire corpus of writings [including (Corlett 2016)!] subscribe to the view either that "rights have no correlative obligations or duties associated with them" or that "rights have no correlative duties," as has been claimed. (D'Amico 2016, 32-32, 35) Nor am I ever quoted as stating such in D'Amico (2016). What is provided instead is an inaccurate paraphrase of what I wrote and said paraphrase appears to be based on a poor logical inference.

On Rights and Duties

First, we rights theorists understand that it is part of the Hohfeldian logic of claim rights that *for the most part*, rights are correlated with duties. Thus, for instance, if I have a claim right to freedom of expression [say, within the U.S. Supreme Court-defined limitations of such expression. Feinberg (1992, chapter 5)], then others have a duty to not interfere with my exercise or enjoyment of said right. So there is a general but imperfect correlation between rights and duties. *But as I explicitly note in the above quotation from Corlett* (2016, 460-461), there are exceptions to the rule. Following the most famous of all philosopher rights-theorists Joel Feinberg, I report that one cannot have a right to something in short supply, and this applies to human rights.

Searle seems to grasp something like this point with regard to human rights in particular, as I also note in the quotation, above. Yet he, as we see, seems to not take the point as seriously as he should have. It is noteworthy that the author who misattributes such an absurd claim to me with regard to this matter selectively quotes part of the above passage! But from what I can discern, said author seems to confuse "… *in some instance* [sic] of putative absolute positive rights, there is no assignable person who is in a position…." (D'Amico 2016, 33; emphasis provided), a statement that I did make as I

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quoted above, with his misattribution to me of "rights have no correlative obligations…," which I have never made in my entire professional life as a rights theorist [including, to repeat, in Corlett (2016)]. But from my statement that some rights, including some human rights, do not correspond to duties it hardly follows logically that none do. And this is a crucial confusion because then it would be incorrect to ascribe to me the position that "rights do not entail any moral duties…" as is done repeatedly (D'Amico 2016, 33).

Or perhaps the author misattributes to me the statements under consideration because of my statement that "… Searle fails to see that not all human rights—even the kind he imagines might be absolute positive ones—are correlated with obligations of others to the right holder" (Corlett 2016, 461). But nothing about this statement logically implies that I hold that rights have no correlative obligations, contrary to what my critic seems to think. That not all human rights are correlated with obligations or duties is not the same thing as stating that rights in general have no correlative obligations.

Perhaps one of the logical errors committed by my critic is the leap from discussion of some human rights to rights in general. Not only is it false to think that rights in general are always correlated with duties, but it is an error to think that the same is true in the case of human rights and duties. No wonder it is falsely asserted that "Corlett has staked out an extreme position on human rights." (D'Amico 2016, 34). The view that is attributed to me is so "extreme" (and, more importantly, false) that I do not even recognize it as my own even if I were to have propounded my theory of (human) rights therein! Thus much of the concern with my criticism of Searle's view on human rights amounts to an uncharitable and puzzling—even perplexing—misascription to me of an absurd position about the correlation between rights and duties. Now that this misattribution is exposed, it is difficult to understand what the concern amounts to. It is much ado about nothing about anything that I espouse.

It seems to be the articulation of a straw man argument that ironically accuses me of providing an uncharitable reading of Searle. Again, I meticulously quoted Searle point by point in order to present his view to those who might not be familiar with his work on social ontology in general and his work on human rights in particular. I provided, moreover, a balanced and nuanced criticism of Searle's view of human rights, recognizing that Searle makes certain points that capture the social construction an institutionalization of human rights. I even compliment Searle for presenting "a compelling general picture of social institutional reality" (Corlett 2016, 461).

Moral and Legal Rights

This leads to another problem with the views misattributed to me. Nowhere in the article do I set forth my theory of human rights, or of moral rights more generally.[1] So the assertion that "Corlett has staked out an extreme position on human rights" (D'Amico 2016, 34) is another misunderstanding of what that section of the article was doing. Even if the locution, "has staked out" is construed to mean something like "articulated some

[1] Some of my views on human rights in particular and moral rights moral generally are found in Corlett (2009, 78-84, chapters 5-6).

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position, not necessarily his own," it is problematic in that it states that the view "staked out" is "extreme." Anyone familiar with rights theories developed over the past few decades or so knows that what I articulated in my article is common amongst most human rights theorists in (analytic) philosophy. So the claim that it is extreme reveals a kind of ignorance that one would expect from someone unfamiliar with the mainstream work in rights theory more generally, and with human rights theories specifically. Rather, I juxtapose (however briefly) Searle's view of human rights to some of the most respected philosophers of human rights.

It is Searle who articulates a theory of human rights which is quite out of the norm insofar as he seems to think that the nature of human rights can be captured in purely institutional terms. My point, of course, is not that Searle's being out of the norm on this matter makes his view implausible, as I also make clear in my article. Rather, it is that he has not addressed the mainstream analyses and arguments for non-institutional theories of human rights.

So insofar as reason-giving epistemic justification is concerned, Searle's task in establishing his theory of human rights is found wanting in that it does nothing to either neutralize or beat competing theories of human rights in order to establish his own as the one that deserves the greatest philosophical respect. Indeed, one of my criticisms of Searle's work on human rights is that he ignores the many advances and nuances of human rights theories that have been developed over the past few decades. What one does not address one cannot refute, except perhaps, only accidentally.

Searle cannot hope to secure his theory of human rights as being superior to competitors absent his demonstrating why his theory is superior, and unproblematic. But this will require something to which Searle is, some observe, generally unaccustomed—studying the works of others with sufficient care that he is able to show why his theory is the best one on offer. Searle's is a fundamentally epistemic task, then: to study the works of other competing theories of human rights and then demonstrate why the competitors are inadequate compared to his and then show why his own theory satisfies the test of philosophical adequacy. Yet Searle does not even attempt to perform either one of these tasks as he is oblivious [for all he has written on human rights in Searle (2010, chapter 10)] to the mainstream positions in human rights theory in philosophy.

One major difference between Searle's institutional theory of human rights and the mainstream philosophical theory of human rights provided by the likes of Joel Feinberg, Judith J. Thomson, Carl Wellman, James W. Nickel and some others is that the latter generally concur with one another on the idea that human rights are species of moral rights in the requisite sense. By "moral rights" is meant that such rights are, as Feinberg puts it, those which are conferred by the balance of human (critical) reason (whether or not humans concur on or recognize such rights), while legal rights are rights conferred by the rules of a legal system and assume and require a certain degree of human concurrence on what counts as a right or not.

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While human rights advocates surely want human rights to be institutionalized (that is one of the main points of those who seek to establish a system of international law and global justice), the moral dimension of human rights, Searle's view aside, assumes a version of moral realism that grounds moral rights in something beyond institutional agreement or recognition. As I argue in Corlett (2016), Searle's purely institutional theory of human rights encounters, among other things, the problem of how to make good sense of *Brown v. Board of Education* (1954):

> Consider the following implication of Searle's wholly institutional conception of human rights. For all Searle states about human rights, U.S. blacks, for instance, had no valid claims to equal opportunity in education prior to *Brown v. Board of Education* in 1964. For such a right did not exist, on Searle's view, until and unless it is socially constructed or institutionalized (i.e. made legal). Yet this implicitly runs counter to the idea that such blacks already had the (moral) right (valid moral claim) in question and that it was being denied them by law and society, a view grounded in the *moral* principle that blacks are fully human and deserve (ought to have) equal opportunities in education, among many other opportunities that others would have by moral right. Yet this latter idea was not supported by most whites in the U.S. until several of them were morally persuaded to concur with the spirit and the validity of the *Brown* decision. Among other things, the *Brown* decision represented a moral shift in the U.S. conception of legal rights to equality of opportunity in education. But it did not imply that all of a sudden blacks gained a right that they did not previously possess—except of course in a legal sense. Rather, it was a moral right that was finally *recognized* by law, one to which many would refer as a "human right." It *was* a moral right that *became* an institutional one when the law "corrected" itself (against the backdrop of "true morality") … (Corlett 2016, 458).

This is what is usually meant by "human rights" by most philosophers and most legal scholars working in human rights theory. And it is precisely this non-institutional element that is missing from Searle's theory of human rights. [I refer readers to Corlett (2016) so that I do not have to repeat it in its entirety here. The article speaks for itself to anyone who approaches it with a charitable and careful mind]. There is no need whatsoever to become perplexed or puzzled as it is a straightforward argument that challenges Searle's purely institutional account of human rights. If there is any normative or moral sense to Searle's theory of human rights, it is not what most of us in rights theory mean when we categorize human rights as a species of moral rights juxtaposed to legal rights.

Again, as Feinberg points out, moral rights are non-institutional, while legal rights are institutional. (Feinberg 1992, chapters 8-10) To repeat part of what I argued in Corlett (2016), Searle has a theory of the formation of legal rights as institutional rights based on their social construction. But what he lacks is a defense of his theory against the plethora of human rights theorists who construe human rights to be something more than mere institutional and socially constructed ones. In other words, Searle needs to establish the

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superior plausibility of his own view of human rights compared to the mainstream view, that is, if he desires for it to be taken seriously by those who take rights most seriously.

Now if Searle were to argue that in the case of *Brown v. Board of Education*, U.S. blacks and others of us folk "of color" indeed did not possess a moral or human right to equality of opportunity in education until the *Brown* decision, then he would seemingly conflate moral and human rights, as moral and human rights are typically understood by positive moral rights theorists, with legal ones. However, not only would this line of reasoning be counter-intuitive given most people's understanding of the *Brown* decision, it is essentially a mere dismissing or denial of the positive theory of moral rights rather than a refutation of it. Nor does it defend Searle's own theory from the challenge it faces.

Neither dismissiveness nor denial count as good arguments when philosophy is done conscientiously. I hope that this seems neither perplexing nor puzzling to anyone, as it is just to point out, as I did in Corlett (2016) that Searle has some way to go in order to establish the viability of his theory of human rights in the midst of numerous live metaethical and normatively ethical problems that cannot be ignored by the mere statement of a position absent a serious investigation into said difficulties. One must, furthermore, be mindful that one's social ontology, whatever else it might do, does not make nonsense out of what already makes good sense. For as Bernard Williams writes:

> Philosophers often say that the point of their efforts is to make the unclear clearer. But they may make the clear unclear: they may cause plain truths to disappear into difficult cases, sensible concepts to dissolve into complex definitions, and so on. To some extent, philosophers do do this. Still more, they may seem to do it, and even to seem to do it can be a political disservice (Williams 2005, 64).

Contact details: acorlett@mail.sdsu.edu

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