Reason, Morality and Recognition: On Searle’s Theory of Human Rights

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J. Angelo Corlett (2016) has written an essentially negative assessment of John Searle’s (2010) theory of human rights. He faults Searle principally because “Searle construes human rights in purely institutional terms”, but also because, according to Corlett, “Searle does nothing to address, refute or render dubious the dominant ethical notion of human rights as being essentially non-institutional (moral)” (2016, 461). Finally, Corlett counters this understanding of Searle’s analysis of human rights by suggesting that “human rights contain a morally normative element, one which is non-institutional and is not and cannot be fully captured by Searle’s analysis” (2016, 461-62).

In this dialogue with Corlett’s piece I will draw on the same text on which he most relies to characterize, and criticize, Searle’s position: Chapter 8, “Human Rights”, from Searle’s 2010 book Making the Social World. I will be arguing that Corlett’s representation of Searle’s thinking on human rights is not accurate, and that, in fact, Searle’s position on human rights is actually very similar and perhaps even identical to the one Corlett appears to prefer. In other words, I will be hoping to demonstrate that Searle does not construe human rights in purely institutional terms; that Searle in fact argues for an ethical, non-institutional understanding of human rights—one quite in line with what Corlett calls the “dominant ethical notion of human rights”; and that, indeed, Searle argues that human rights demand an ethically normative foundation, on which his analysis built.

The Moral (and Institutional) Ontology of Human Rights

According to Corlett, “Searle’s conception of human rights is purely institutional, e.g. he believes that such rights are products only of social construction” (2016, 454, my emphasis). At a later point he refers to “Searle’s wholly institutional conception of human rights” (2016, 458, my emphasis). Now, it is true that Searle conceives of human rights as being the product of social construction, insofar as human beings articulate them using speech acts, using in particular what he calls the status function declaration. But it is not true that Searle thinks that human rights are purely or wholly institutional. In fact, Searle explicitly rejects the pure institutionalist vision of human rights. He unambiguously aligns himself with the position Corlett is defending when he compares real pure institutionalists, people like “Bentham and MacIntyre, who think of themselves as stating obvious commonsense facts

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1 Apart from any logical criticisms of Searle’s theory, what equally seems to motivate Corlett’s negative assessment of Searle’s theory of human rights is to be found in the third endnote to his article, where he writes that “the aim of this article […] is to expose Searle’s total lack of even recognizing a human rights tradition that speaks loudly against his own analysis” (2016, 472). Corlett is not the first to take issue with Searle’s blasé indifference to the work of others. Becker (2011) complains of his failure to “show any great engagement or familiarity with the work social scientists do” (2011, 274), while Armstrong, who declares himself a “sympathetic” reader, nonetheless notes that Searle “fails to engage” with ideas that conflict with his own, and tends to ignore the works of philosophers—especially women—that “bear directly on the themes” he discusses (2017). As Armstrong suggests, Searle often writes as if the only important philosophical voice is that of “Searle and Searle alone”. And indeed, I myself was taken aback by Searle’s total failure to mention even once the Berger and Luckman classic The Social Construction of Reality (1966) in his book The Construction of Social Reality (1995). None of this, however, is central to the present discussion.
when they say there are no such things as universal human rights, and most of the rest of us, who think there are indeed universal human rights” (2010, 182-3, my emphasis). Against, for example, Bentham’s “claim that any genuine right has to be backed by law” Searle argues that there are “lots of informal rights that one has that are not legally sanctioned” (2010, 192) or institutionalized.

When, then, Corlett insists that, pae (his reading of) Searle, human rights “exist quite apart from (whether or not they are recognized by) law and society” (2016, 456), it turns out that he is not arguing against Searle’s actual position. For Searle does not argue that human rights only exist when recognized by law and society; he clearly states that one of the things he wants to defend and explain in his chapter on human rights is the “claim that human rights continue to exist even when they are not recognized” (2010, 181). This seems to be Searle agreeing with Corlett. And he gives a simple example of what he means: the right of a spouse to be consulted on major decisions that will affect him or her, “is a perfectly valid right, even though there is no law that guarantees it” (2010, 192), Searle argues. He also believes that humans have a right to silence, which he believes exists, even though there is little institutional recognition of it (2010, 195). Thus, Searle’s position is not as Corlett represents it. Corlett, again, states that Searle’s positions entail that “human rights cannot be both institutional and moral (i.e. non-institutional)” (2016, 455), but as we have just seen, Searle allows for rights both institutionalized and not.

Still, according to Corlett, a real problem with Searle’s “notion of human rights is that it does not even address the reasons that leading philosophers of human rights have provided in favor of a non-institutional analysis of human rights”, where by non-institutional “is meant that such rights have essential moral properties” (2016, 454). But here is what Searle actually says in this regard: “I do not think you can have an intelligent discussion about human rights without discussing certain biological characteristics of human beings, and […] what is valuable in human life” (2010, 192).

I read Searle to be saying here that pre-institutional factors—human nature, if you will—have to be taken into account when thinking about human rights, which suggests he is not the pure institutionalist nor the naïve social constructionist that Corlett maintains he is. But Searle is also insisting here on the need to talk about what is valuable in human life when thinking about human rights; that is, he is talking about a basic morality, only with regard to which human rights can be enunciated. Corlett’s criticism would seem to be misdirected, since the target of it seems to be in agreement with him. Indeed, the italics in the following sentence are Searle’s own:

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\text{the justification for human rights cannot be ethically neutral. It involves more than just a biological conception of what sorts of beings we are; it also involves a conception of what is valuable, actually or potentially, about our very existence (2010, 190).}
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Here, I think, Searle is making the very argument for moral reasoning in thinking about human rights that Corlett faults him for not even pondering.

**Rights and Reason**
Corlett then explores the possibility that “human rights might not be […] mere human creations […] but rather human discoveries by the light of reason” (2016, 455). We are to understand that he thinks that Searle thinks that they are “mere human creations”, the more or less arbitrary product of sophistry and whim rather than reason as such. As if arguing against Searle, Corlett makes the point that “[h]uman rights may be both institutional recognitions (social constructs) as well as discoverable by way of reason to be what are moral rights above and beyond what societies say they are” (2016, 455). But again, Searle does not disagree with this assertion: he is not in disagreement with Corlett on the role of reason in elucidating human rights.

In a response to commentators on his 2010 book, Searle (2011) avers that a right can be considered legitimate “only if it can rationally be justified by a correct conception of human nature, a set of values about human beings, and can rationally impose an obligation on all human beings to respect it” (2011, 740). I see no substantive difference between this analysis of the basic reasoned, moral ontology of human rights and that given by Corlett. Are not Corlett’s “moral rights” more or less exactly the same as Searle’s rights, which must be based on “a correct conception of human nature” and “a set of values about human beings”? When Searle asserts a belief that a justified human right can constitute a rational (reasonable) obligation on all human beings is he not echoing (but really, is not Corlett echoing Searle?) Corlett’s insistence that there are moral (human) rights above and beyond what particular societies recognize? If the answer to both these questions is affirmative, then Corlett is disagreeing with someone who actually agrees with him.

In keeping with the idea that Searle is a pure institutionalist and anarchic social constructionist, Corlett also reads Searle as saying that “human rights are epistemically subjective” (2016, 454); however, what Searle says about this is not that human rights are epistemically subjective, but that “arguments” about human nature and morality, while essential to a discussion of human rights, “are not demonstrative, in the sense that any rational person is bound to accept them on pain of irrationality” (2010, 192). Such arguments—but not the rights themselves—thus are condemned “to have an element of epistemic subjectivity” (2010, 192). But given the fact of epistemic subjectivity, Searle insists (and contrary to the view that Corlett seems to impute to him), “it does not follow that they are arbitrary or beyond the scope of argument” (2010, 192). While Corlett goes so far as to invoke the specter of a white supremacist society justified by “Searlean madness” (2016, 456), which can only be stopped by a conception of human rights as reasoned moral rights, I think I have quoted enough from Searle to prove that his theory does not lack an understanding of human rights as essentially reasoned moral rights, quite in agreement with Corlett.

**Recognition**

According to Corlett’s reading, Searle’s theory of human rights “would seem to imply that social recognition is […] necessary for X to be a human right” (2016, 457). Searle does not argue this. He allows that some people (his foils are people be characterized as pure institutionalists like Bentham and MacIntyre) can make a convincing argument that this is the case (2010, 183), but Searle himself partakes of the “commonsense assumption that you
do not lose your rights in cases where they are denied or not recognized” (2010, 183). Rights exist as rights even if they are not recognized, and indeed, as Searle more pointedly puts it: “you are [not] entitled to the existence of rights, but rather, you are entitled to the recognition of rights that already exist” (2010, 183, my emphasis). The issue is not social recognition of the right, but social recognition of the right of the person in question to enjoy the right.

We can understand more clearly the difference if we follow Corlett’s take on Searle. According to Corlett, contrary to “Searle’s purely institutional conception of a human right [which] makes room for the idea that a human right may change as society’s attitude toward that right may change, the moral conception of a human right holds that such rights do not change” (2016, 457). But Searle too is seeking to enunciate more or less eternal human rights. His problem, to which he flatly admits, is that on the basis of his moral and theoretical reason, he can only firmly articulate two: the right to life and the right to freedom of expression. But although it seems evident to me that different times and places produce different understandings of what rights exist (of course, it is quite possible that advances in moral reason will finally elucidate a definitive set of rights sometime in the future), what is crucial for Searle is society’s attitude towards the potential bearers of those rights.

The history is clear: at different times and places peasants, workers, criminals, women, victims of imperialism, gay people, trans people, but also the bourgeoisie, the royalty, and so on, have all been deprived of being recognized as humans, that is, as bearers of human rights, of being entitled to their rights. One might put it this way: one can say that human rights have always existed. But all members of the human species have not always been recognized as humans entitled to those rights.

**An Example: On Being American, On Being Human**

In order to drive home his point about the problems of Searle’s theory—problems which, I have been trying to show, do not actually exist, Corlett turns to the example of Brown v. Board of Education of 1954. According to “Searle’s wholly institutional conception of human rights”, as Corlett again characterizes it, Black Americans “had no valid claims to equal opportunity in education prior to Brown v. Board of Education in 1954” (2016, 458). As we should now be able to appreciate, Searle’s analysis entails nothing like this. Searle in fact would agree that U.S. blacks had valid claims—but he would ask, was their right to have such claims recognized? Not recognized as fully-fledged humans and/or Americans, did the dominant social perspective even recognize them as being able to have valid claims? Many people tried to ignore their claims; many could not conceive of black people even having claims. Searle would make much of this, no doubt. But he would not and does not argue that their claims were invalid or non-existent because institutions did not recognize the claims.

Searle is not a strict institutionalist, but he is fundamentally concerned with the role of symbolic operations in realizing the social world, that is, in causing it to be, to happen, which means that Searle’s focus is fundamentally on recognition. Thus, his theory points to what is so momentous about Brown—not that the Supreme Court recognized the valid claim to equal education, but that, based on rationality, reason, morality, and so on, it recognized that Black Americans actually had rights—in this case the right to equality of opportunity in education. That is, they were recognized as beings, citizens, Americans, having the right to have rights.
Nonetheless, certain very influential sectors in the states of Arkansas, Alabama, Tennessee, and elsewhere of course, did not recognize the Court’s recognition of the right of Black Americans to have rights—and here of course the emphasis (not exclusive by any means) on institutionalism remains incredible important. So the valid claims existed, the rights existed too, even before the Brown decision, and Corlett is mistaken when he says Searle's theory denies their existence before the decision. But on top of this error, he entirely misses the point that Searle's theory actually illuminates: what Brown did, or tried to do (and might still be trying to do in an America still plagued by racial inequality), was recognize Black Americans as Americans, entitled to all the already existing rights that other Americans enjoyed.

To be clear: for Corlett, the Brown decision “did not imply that all of a sudden blacks gained a right that they did not previously possess” (2016, 458)—and Searle would agree. But he would not agree with Corlett that the Brown decision meant that a “moral right was finally recognized by law” (2016, 458). Rather, Searle’s position would be that Brown institutionalized (attempted to institutionalize, in the face of opposition from other institutions particularly at the state and local levels) the recognition that Black Americans were in fact fully-fledged Americans and thus entitled to the right to equal opportunity in education (had the right to that right).

And just as being an American is a status, so “we must treat [in analytical terms] being human as a status”, Searle insists (2010, 181). For many people, this will not do. What I mean to say is, while most of us want to say that being human is not a status, not an existential condition, but an essential and self-evident fact, often times, in societies even today, certain people hardly enjoy the status of being human at all—at least from the perspective of certain other people and/or institutions. Thus, a person who kills a cop becomes a cop killer and is thought of as something less than human.

In wars, including civil wars between, as they say, brothers, the enemy becomes something other than and generally less than human. For certain Islamists, and in some Islamic States, Jews and infidels are not human. Some men often do not seem to treat some women as humans, and to be fair, vice versa. The so-called counter-revolutionary dissident is not human, but an enemy of the people. The bourgeois is a parasite, a leech. And so on. The all too simplistic notion that “if you qualify as a human being, you are automatically guaranteed human rights” (Searle, 2010, 181), is, well, all too simplistic. For, indeed, you have to first qualify as a human being.

Searle clarifies this when he explores the case “in which something satisfies the X term [i.e. it is an instance of the species homo sapiens] but is denied the recognition that goes with the Y term [i.e. it is not seen as a symbolic human being, but is seen rather as something other and less than human] and correspondingly denied the functions [the rights] that go with the Y status” (2010, 181). The rights exist, but an instance of the human species might well be denied those rights because he or she or it is not recognized as a member of the human community (the old sense of the outlaw, of being beyond the protection of law is relevant here), and thus is not understood to have a claim on, or a right to, those rights. It may be
biologically human, but it is not symbolically human. This is the basic logic behind the reasoning of all those who are accused of violating human rights.

Searle purports to “share the commonsense assumption that you do not lose your rights in cases where they are denied or not recognized” (2010, 183). But he also says that to be human does not mean that “you are entitled to the existence of the rights”. Contra Bentham and MacIntyre (and Corlett’s representation of Searle’s thinking), the rights exist. What being human means, or counting as human means, or should mean, is that “you are entitled to the recognition of rights that already exist” (2010, 183, my emphasis). To be human means, or should mean, that you have a right to human rights. The argument then, for Searle, is not that rights do not exist if they are not institutionalized, for he seems to be saying: they do exist. They question is: is the claimant recognized as having the right status and thus having the right to have the rights? What this then means is: “the justification of any rights that are assigned to [or claimed by] beings solely in virtue of being human will have to depend on our conception of what a human being is” (2010, 192).

Some people still don’t see political enemies, or women, or minorities, or gay people, or foreigners, or immigrants, or fetuses, or persons in vegetative states, or criminals, as human beings, and thus do not feel that they are entitled to human rights, or at least certain human rights. Perhaps a pithy way to grasp the importance of Searle’s notion that being human is a status (which, if recognized, entails the right to have rights) is to remember that animal rights activists want everyone to understand that animals, in fact, are humans too.

**Conclusion**

Corlett seems to be at loggerheads with Searle because he, Corlett, asserts or argues for the non-institutional existence of rights grounded in moral reason, and claims that Searle argues against such rights. I hope to have shown that Searle does not do this, and, to the contrary, seems to be on Corlett’s side. For Searle argues too that rights exist, that their existence can be deduced or constructed or discovered by reasonable, rational, ethical, perhaps disinterested (that is to say, impartial, neutral), members of our species—but he insists that their existence, which is not in question, does not entail the practical recognition that every biological member of the species is entitled to the right. Because in addition to the reasonable, rational, ethical people who are given to discovering or constructing, and feeling themselves bound by, human rights, there are many people who are less ethical or perhaps differently ethical, who are quite partial and very far from being disinterested, and who thus are not given to recognizing either certain people—minorities, gays, women, differently abled, Jews, poor people (the list unfortunately is quite endless)—as really human and thus automatic bearers of human rights, or the rights as rights per se.

One must recall that the point of departure for both of Searle’s book length investigations into social construction and institutionalization are what he calls the basic, non-constructed, ontologically given “brute” facts. Despite being a social constructionist, he believes that “we should at every point try to consider the biological basis of what we are discussing” (2010, 192), which leads to his “completely naturalistic conception of human life and society [which] is consistent with a belief in the existence of universal human rights” (2010, 198).
In his conclusion to his chapter on human rights, Searle reaffirms that his view of things is “consistent with a belief in the existence of universal human rights” while insisting that debates on “human rights […] cannot be ethically neutral” and in fact “require […] a certain set of values” (2010, 198). With regard to human rights he says, explicitly: “This does not mean that they are arbitrary, or that anything goes” (2010, 198). He insists that rights exist, and that they be grounded in moral reason, and thus his view is far from being incompatible, much less antithetical to that propounded by Corlett. Additionally, however, he makes a contribution to the philosophy of human rights whose importance, I think, is hard to exaggerate, when he points out that what is crucial is that their potential bearers be recognized as actual bearers, that each and every member of the human species must be recognized as a fully-fledged member of the human community and thus as entitled to the rights that accrue, automatically and inalienably, to each and every member of said community.

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References


