More on Searle on Human Rights\textsuperscript{1}

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\textsuperscript{1} I wish to thank Professor Jim Collier, Editor of \textit{Social Epistemology}, for granting me this opportunity to further address some recent concerns raised about my critique of Searle’s view of human rights and Professor George Rainbolt for incisive discussion of the nature of rights.
In Corlett (2016), I articulated some concerns with Professor John Searle’s view of human rights. I hesitate to refer to his view on human rights as a theory in that the informational content of what Searle provides concerning human rights seems to fall short of a theory, that is, if the desiderata of a theory of human rights include its being compared to and contrasted with several leading philosophical works on human rights and an attempt is made to explain why one’s own account is more plausible than the competing views concerning at least the nature, value and function of human rights and it is obvious that the contributions to the discussion (in this case, on human rights) are significantly original in content. Searle’s view on human rights also fails to include an account of what exactly distinguishes human rights from various other rights.

On Searle’s View of Human Rights

Searle’s account also fails to provide analyses of the justification and role(s) of such rights in an overall political/legal/social philosophy. Indeed, these matters are inter-related as the justification of one’s own view would appear to engage the concepts and arguments of others if for no other reason than to not endorse that which has already been proven either problematic or implausible. This is not intended as a deprecation of Searle’s view, but rather as a distinction to be made between part of what might count as a theory of human rights and what does not count as such. For Searle’s view on human rights could turn out to be a plausible beginning to a theory of human rights even though his view does not amount to a theory of human rights in the sense noted.

The previous paragraph’s discussion about why I do not refer to Searle’s thinking on human rights in Searle (2010) as a theory of human rights does not address the philosophical-ethical plausibility of his view of human rights. However, had Searle managed to seriously consider the work of various distinguished contemporary philosophers of human rights and rights more generally (e.g., Dworkin 1978; Feinberg 1973; Feinberg 1980; Feinberg 1992; Nickel 1987; Rawls 1999; Wellman 1985; Wellman 2011), perhaps he would have gained several insights into what might have led him to thereby revise his view of human rights. This article constitutes an attempt to engage interested readers on Searle’s view of human rights and why certain features of it are problematic.

Along the way, I shall elaborate some points I made in Corlett (2016) for the sake of both further clarity and the possibility of making meaningful philosophical progress with regard to the nature and value of social knowledge and human rights. I concur with my closing conditional remarks in Corlett (2016, 461-462) that “… if human rights contain a morally normative element, one which is non-institutional and is not and cannot be fully captured by Searle’s analysis, then Searle’s analysis of human rights is problematic as noted.” My claim does not imply that Searle’s view on human rights cannot, upon elaboration which is

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2 Further desiderata of a theory of human rights might be gleaned from what Carl Wellman construes as important components of a general theory of rights in Wellman (1985, 4).

3 That is, problematic from at least the standpoint of what I am describing as the dominant human rights tradition.
genuinely consistent with what he states about human rights in particular and his social ontology more generally, be made plausible. Indeed, this appears to be in part what Professor Lobo (2017) attempts to accomplish. In the end, however, his attempt does not succeed in part because some of what he attributes to Searle appears to find no textual support in Searle (2010)\(^4\) and also attributes to Searle ideas which appear to convert what Searle states about human rights into something which resembles but is not the same as what I describe as the human rights tradition.\(^5\)

Even some of what Lobo attributes to Searle regarding human rights is not compatible with the human rights tradition in a fundamental respect. Of course, this does not mean that the human rights tradition is correct and Searle is incorrect about human rights. But it substantiates my original concern that there lies an important incongruity between Searle’s view of human rights and what I refer to as the dominant tradition of human rights. In such cases, someone such as Searle assumes the risk of arguing in favor of something that is not the same thing as the manner in which that thing is construed by many or most philosophers and others who use the term. And unless someone such as Searle is careful to define “human right” in such a manner so as to compare and contrast it with what, for instance, I am articulating as a human right according to said tradition, confusion is likely to result.

Implied in my examination of Searle on human rights is the possibility that Searle articulates a view about Y, wherein the human rights tradition articulates, rightly or wrongly, a view about X wherein in each case the Y or X term is construed as a human right. While this is not necessarily a bad thing, it might prove embarrassing if, for instance, either Searle or someone else thinks Searle is discussing the same conception of human rights held by the human rights tradition. For the sake of clarity, it is important to distinguish different attempts to articulate “human right” so that readers can decide for themselves which one is more plausible, and why.

But even if one grants the internal logical and conceptual consistency of Searle’s view of human rights, one might reasonably question the extent to which Searle’s view on human rights matches reality. For coherence is at best a necessary condition of knowledge. It is hardly sufficient, as even some leading coherentists admit. (Lehrer 2000, Chapters 6-7) In this article, I attempt to elaborate on what that tradition means when it mentions or uses “human right.” In so doing, I hope to shed more light on how it appears that Searle’s notion of a human right is dissimilar to that of the tradition’s.

\(^4\) I take Searle (2010) to be Searle’s most mature and systematic thinking on human rights and his social ontology which serves as the basis of his view of human rights.

\(^5\) Not unlike the tradition of just war theory, the contemporary human rights tradition is not all of one piece. There are differences between such theorists concerning various nuances of said traditions. However, I shall continue to refer to the “traditional” or “dominant” tradition of human rights insofar as many of those who would consider themselves in favor of human rights would have little difficulty accepting what I generally attribute to it. I write “many” in that, if the later Ludwig Wittgenstein is correct, what defines categories (such as “human rights tradition”) is not an essential property they share in common with one another as members of said tradition, but rather a set of overlapping and criss-crossing sincerely held propositions between members of the relevant category. I shall focus on some such propositions which I believe many positive human rights theorists seem to accept.
My hope is that the nature of Searle’s view will be seen for what it is (by all means, of course, accurately as respect for any plausible principle of charity requires as much) in the light of the established views and theories of human rights devised by leading rights theorists within the dominant human rights tradition. If this is accomplished, I am confident that readers who are reasonably well-versed in human rights theory and the nature and value of rights more generally will be able to better grasp what Searle is up to in his chapter on human rights. Often times when a position is contrasted with competing views on a topic clearly emerges pertaining to not only the subject matter at hand, but with regard to what each competing view is attempting to argue.

My guess is that Searle’s view of human rights as social and institutional rights depends on an unstated (by Searle) meta-ethic, one which requires independent defense. Of course, the same holds for any account of human rights and the meta-ethic which supports it. Perhaps Searle might have been able to argue plausibly that, amongst the soundest and most highly respected competing approaches to human rights, his is the most superior, and for whatever reasons. Moreover, this might have included his providing a defense of the meta-ethical foundations for his view of human rights. For in the end, any account of human rights would ultimately need to be justified on the basis of a plausible meta-ethic. This seems to hold true whether the account of human rights is a skeptical one which relies on the plausibility of some version of, say, moral anti-realism, or whether it is a positive view of human rights which might rely on, say, a realist meta-ethic.

But alas, Searle chose not to do this, and this is why, contrary to some (e.g., Lobo 2017, 22), it is (if not “central”) at least relevant to the discussion in that Searle conspicuously refuses to engage recent and distinguished philosophical work on human rights and in an era of human history wherein such rights are discussed with regularity throughout much of the world. Had Searle deemed it sufficiently worthwhile for him to study and engage leading contemporary philosophers of rights he might have avoided some of the following confusions and troubles with his own thinking on human rights.

Contemporary Philosophy of Rights

Alternatively, Searle might have succeeded in either demonstrating why the competing human rights views fare worse than his own and/or explaining why his view of human rights is superior to its competitors. Or, Searle might have been able to explain precisely what he states about human rights that is both important, plausible and original to human rights theory. After all, some think that Searle “…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 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” (Lobo 2017, 28).

Yet the content of “that their potential bearers 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” is either assumed, asserted, or argued by many doing rights theory during the past few decades. Indeed, this claim implicitly attributed to Searle as one of Searle’s alleged contributions to human rights theory might turn out to be what several positive human rights theorists (as opposed to the human rights skeptics) have in common with one another!

Part of the very idea of a right, especially a human claim right, is that the right-bearer is recognized as a proper subject to make a valid claim to said right, that she is in a position, morally speaking, to do so. And according to many human rights theorists, one must be a human being in order to be in a position to make valid rights claims. So as long as theorists argue for the importance of human rights, they explicitly or implicitly accept the point about how humans ought to be considered to be important bearers of rights protections in that they are members of the community of humans because, among other things, this fact about them places them in a position to possess human rights. However, as we shall see, even this apparently innocuous claim or assumption will be shown to be problematic, below, insofar as the claim is taken at its face value, lacking important qualifications. For if it is seen as a claim about human rights as absolute and non-conflicttable, it falls prey to some considerations of justice.

It is difficult to understand how Searle is responsible for contributing to human rights theory a claim such as “what is crucial is that their potential bearers 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” when it is hard to imagine, having studied many philosophers of rights, a positive human rights theorist who does not or would not accept such a claim. Furthermore, to think of such a claim as Searle’s “contribution to the philosophy of human rights” is to disregard what for decades has been a fundamental point of contention between several human rights theorists and the governments and peoples many in favor of human rights seek to convince about the “rights of man” and how such rights (human rights) ought to be respected and protected for the sake of all persons. How can Searle have made this alleged contribution to the philosophy of human rights when the point in question seems unoriginal with Searle?

Elaborating Searle on Human Rights

It is important to draw a distinction between an institutional right and a social one. For one can have an institutional (say, a legal) right without it being socially recognized, approved or accepted (that is, recognized, approved or accepted by, say, the majority of societal members). If X is a social right, X exists to the extent that society recognizes X as such. Thus with regard to social rights, possession and recognition are connected because such rights are socially constructed, that is, such rights do not exist except by way of societal agreement and recognition. For society must recognize such rights in order for it to agree

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6 In the interest of time as this is already a lengthy essay, I point out that the claim which is attributed to Searle as his “contribution” to human rights theory is already recognized in Corlett (2009, Chapter 5), though the general point in question is found in various other sources on the philosophy of human rights.
that they exist and under whichever conditions. But with human rights as moral or ethical rights, the possession of said rights is not necessarily connected to the recognition thereof as one can possess said rights without their being recognized by anyone whomsoever (even by the rightholder herself).

Human rights construed as ethical or moral ones in this traditional sense do not exist because society says they do. Rather, they exist because valid ethical or moral rules or principles confer on X that X has a human right, whatever a human right turns out to be. As I state in Corlett (2016), the United States Supreme Court’s 1954 Brown v. Board of Education ruling and its social and political aftermath demonstrates the divide between the Court’s opinion, on the one hand, and most of U.S. society at that time, on the other. In that case, the right was in 1954 recognized institutionally (by the Court) but not, at that time, by the majority of U.S. society. For it took many school districts throughout the U.S. decades after 1954 to comply “with all deliberate speed” with the Brown decision. Indeed, many would argue that even today said right is not adequately or fully recognized socially within the U.S. In any case, a right (including a human right) might be recognized institutionally while not being recognized socially.

Moreover, a human right or a right in general can be recognized socially but not institutionally. Searle’s example of this category of right is articulated in the context of his disagreement with the likes of Jeremy Bentham with regard to Bentham’s assertion that rights are those which are recognized institutionally (by a legal authority). Searle’s proposed counter-example to Bentham’s claim is that of a marital partner who has, Searle asserts, an “informal” (non-institutional, “not legally sanctioned”) “…right to be consulted beforehand about any life-changing decisions on the part of the other spouse.” (Searle 2010, 192) However, Searle fails to provide a reason to ground this assertion. Yet Searle’s proposed example is hardly self-evident. Nor is the point clear. Does Searle mean that each and every spouse possesses this right, and absolutely? Or, does he mean that only some such spouses do?

Absent qualification, his language seems to suggest that he believes that each spouse possesses such a right, and absolutely. If this is Searle’s meaning, and if no plausible reason can be provided for such an idea, then Searle has not given us an example of a socially recognized right that is not recognized by law (unless all Searle means is that some in society can agree that such is a right within their own marriages, regardless of whether it is really a

7 Indeed, one of the reasons why then U.S. Supreme Court Chief Justice Warren encouraged a unanimous vote of the justices in this case was precisely because he knew that most of the citizenry of the U.S. was against school desegregation and that the Court needed to send a message to that citizenry about equality of educational opportunity. Brown v. Board of Education was preceded by other cases which challenged racial segregation in U.S. schools. One notable case was the Mendez v. Westminster School District case (1947) which represented a significant step forward to end segregation of mostly Mexican-American school children in California. Nonetheless, these cases demonstrate how various moral rights of non-whites in U.S. society were not recognized institutionally (legally), though through a series of legal cases the rights were recognized institutionally. As decades past, most of U.S. society gradually, it seems, accepted said right to equality of education regardless of color, etc. So the Brown decision is one wherein a moral right gradually became recognized by law and then by most of U.S. society.
right). This can hardly make Searle’s view of human rights congruent with what I refer to as the “dominant human rights tradition” wherein human rights are construed, rightly or wrongly, as moral rights grounded by way of reason in valid moral rules or principles. By “valid” is meant objectively valid, all relevant things considered.

**Possible Counter-Examples**

In fact, there is at least one counter-example to Searle’s proposal [of an (unqualified) “informal” “…right to be consulted beforehand about any life-changing decisions on the part of the other spouse”] underlying his alleged counter-example to Bentham’s point. Consider a woman who is abused by her legal spouse and wishes to exert her legal and moral (ethical) right to self-determination quite independently of her abusive spouse’s interests or claims to the contrary. Would it not be reasonable to think that there are such cases where she has no duty to consult her spouse? If so, then Searle’s assertion, as stated and absent qualification, is problematic and there seems to be, for all Searle states in Searle (2010), no (general) informal and non-institutional right to be consulted by one’s spouse in the manner in which he seems to imagine. This is especially the case if the strong correlativity thesis about rights and duties is plausible according to which, say, a spouse has a right to be consulted which correlates strongly with the other spouse’s duty to consult.\(^8\) This does not mean that each spouse has no claim or interest along the lines stated by Searle. But if a right (including a human right) constitutes a valid moral claim or interest which one has over and against others, then the counter-example to Searle’s claim here undermines his proposal that said “right” is a right after all.

The spouse in Searle’s example has a claim or interest in being consulted. However, it is unclear that she always has a valid such claim or interest which would correlate with the other spouse’s duty to consult, especially in the kind of case I have provided, that is, if personal autonomy, self-determination, self-respect and the separateness of persons are moral values that trump Searle’s alleged spousal right to be consulted in the scenario he imagines.

Perhaps a better example of a right one has which is not recognized by law but socially recognized is one in which the majority of society or even a majority of a particular collective (I have in mind here especially a collective or the decision-making conglomerate type\(^9\)) within society recognizes but is not recognized by that society’s legal system. Perhaps what might be referred to as rights which are not recognized by “recently-established laws” (Corlett 2009, Chapter 2) which do not yet constitute “long-established laws” qualify here

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\(^8\) As pointed out in Corlett (2016, 460-461), Searle seems to endorse the strong correlativity thesis about rights and duties when he writes that “…all rights imply obligations” (Searle 2010, 177) (I assume here that Searle does not make a distinction between obligations and duties as has been made in some of the ethics literature during the past few decades.) On the other hand, Searle tempers his apparent endorsement of the strong correlativity thesis with his claim that “not all cases of rights” correlate with duties. (Searle 2010, 170)

\(^9\) By this I mean something akin to “plural subjects” (Gilbert 2014; Corlett forthcoming), “we-mode groups” (Tuomela 2013; Corlett and Strobel 2017), or otherwise agental groups (List and Pettit 2011).
wherein the legal system of a society takes some time to fully or mostly endorse a particular right that society in general or a particular group within society already endorses.

Perhaps given the complicated and sometimes inconsistent history of the Court decisions concerning the U.S. First Amendment right to freedom of expression (Rabban 1999; Corlett 2009, 22), a right to which Searle refers and attempts to make much of in his work on human rights (Searle 2010, 187-191),\textsuperscript{10} qualifies as one which for at least some period of time in its history was endorsed either by the majority of U.S. societal members or by certain groups within it but was simultaneously delimited in crucial ways by the Court during the “free speech fights” in the early 20\textsuperscript{th} century. It is plausible, more recently for instance, to think that even when the Court ruled against certain expressions (Cf. Federal Communications Commission v. Pacifica Foundation 438 US 726 1978),\textsuperscript{11} the American Civil Liberties Union and certain other civil libertarian groups and several individual U.S. citizens disagreed with the Court’s 5-4 ruling and sided with the dissenting opinion of the Court. Yet it is plausible to think that the right to freedom of expression was illegitimately delimited by the Court in said decision. But if true, this would hardly mean that there was not a legal and/or moral right to freedom of expression in precisely this case as the dissenting justices might have been correct that certain aspects of the law actually supported their position on this matter and not the opinion of the majority justices.\textsuperscript{12} Thus sense can be made of a socially recognized human right (wherein it is also a legally justified one) which is not legally recognized because it is not validated by the rules of that legal system which empower a court to make a decision (but wherein that decision turns out to be an unconstitutional one, all relevant things considered).

A legal positivist might disagree with such a claim in that for her a legal right just is what the law says is a right. But legal positivism requires independent justification for such a concern to gain adequate philosophical traction, and that would lead us into a fascinating discussion in the philosophy of law literature which I think for present purposes is, unfortunately, a bit too far afield given my more narrow interests in Searle’s view of human rights and my interest here in demonstrating the plausibility of Searle’s point that there might be socially recognized rights that are not recognized by the institution of law. Furthermore, even in light of the Court’s ruling in FCC v. Pacifica, the Court may have gotten it legally wrong in that a closer and more comprehensive consideration of the law (especially First Amendment law) may well have meant that the Court should have, based perhaps also on supportive plausible moral rules or principles, decided the case in favor of Pacifica and not the FCC.

If this is true, then it would suggest that the law and rights are not always what the institution of law says they are in a particular decision or case as the law (or those acting on its behalf) can sometimes make incorrect (institutionally unjustified, all relevant things considered)

\textsuperscript{10} Also see, for example, Dworkin (1996, 199f); Feinberg (1992, Chapter 5); Greenawalt (1989) for philosophical accounts of the right to freedom of expression.
\textsuperscript{11} In FCC v. Pacifica Foundation, the disputes were what constituted indecency and whether or not “indecent” expressions should be permitted over public airwaves wherein minors can access them.
\textsuperscript{12} What I have in mind here is similar to Ronald Dworkin’s point about Justice Joseph Story with regard to Prigg v. Pennsylvania (1842) concerning captured runaway slaves and the Fugitive Slave Laws: Dworkin (1975).
decisions which are based neither in the most plausible moral rules or principles or in the law itself, most plausibly considered.\textsuperscript{13} After all, it is argued, the law is often if not always a matter of principled interpretation\textsuperscript{14} (Corlett 2009, Chapters 1-2; Dworkin 1985; Dworkin 1986; Feinberg 2003, Chapter 1).

Thus while Searle is correct that not all rights such as “informal” ones are institutionally legal ones recognized by law, he seems to have provided a problematic example of such a right, that is, to the extent that personal self-determination [perhaps grounded in the Rawlsian conceptions of personal autonomy, self-respect and the separateness of persons (Rawls 1971) and in the Feinbergian notions of self-respect, respect for others, and human dignity which seeks to diminish servility (Feinberg 1980, 155; Feinberg 1992, 202, 226-227 as noted in Corlett 2016, 458)] is sufficiently important to ground a spouse’s right to decide for herself what to do with her life without consulting her spouse under certain conditions. Of course, much discussion of moral, social, political and legal philosophy revolves around such matters and serves as a reminder of how complicated are the tasks of attempting to ultimately ground human rights and rights in general as such rights are conceptualized by most human rights theorists.

By now the reader can discern that the allegation that I misrepresent Searle’s view of rights (Lobo 2017, 22) is problematic, as is the assertion that “Searle’s position on human rights is actually very similar and perhaps even identical to the one Corlett appears to prefer.” (Lobo 2017, 22) But it is also false or at least misleading to claim 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’.” (Lobo 2017, 22) And it is false that “Searle argues that human rights demand an ethically normative foundation, on which his analysis [is] built.” (Lobo 2017, 22) In what follows, these matters are clarified.

In Corlett (2016), I make the claim that, for all Searle states about human rights in Searle (2010), there is no normatively ethical (“moral”) component to Searle’s view on human rights and this fundamental fact distances Searle’s view of human rights from the dominant (contemporary) tradition on human rights which construes human rights as fundamentally ethical or moral in the normative sense. Whatever else human rights are, according to said tradition, they are non-institutionally moral or ethical, backed by valid moral or ethical principles or rules in, say, the Feinbergian sense. Rightly or wrongly, this is how human rights are normally construed by said tradition. This approach to human rights as moral rights in this sense is not endorsed by Searle. Rather, Searle briefly discusses the Bentham-MacIntyre notion of legal rights (Searle 2010, 175-176), the theistic conception of “natural” rights (Searle 2010, 183), and his own social construction view of “human rights.”

\textsuperscript{13} There is a rich literature in philosophy of law including discussions of legal positivism with regard to legal interpretation. One source with which one might begin one’s investigations therein might include Conklin (2001).

\textsuperscript{14} By contrast, for many critical legal theorists (and many critical race theorists), legal decisions are often, if not always, results of decisions made on the basis of political power often divorced from decisions about the “right” things to do by the courts. (Altman 1986; Corlett 2009, 47-55, 60f.)
My claim is not that Searle’s view of human rights cannot possibly be made congruent with the human rights tradition in question, though, as I note above, I come close to stating this in my final remarks when I state one of my main points conditionally. (Corlett 2016, 461-462) Rather, my general point about this matter is that, for all Searle actually writes in Searle (2010), Searle’s own view as presented in Searle (2010) seems to be incongruent with said tradition. Again, this fact in itself does not make Searle’s view implausible as it might turn out that said human rights tradition is itself implausible and Searle’s view on human rights might turn out to be plausible, all relevant things considered. However, to the extent that Searle’s view of human rights is not in accordance with said tradition on the nature and value of human rights and to the extent that the latter is plausible, Searle’s view is problematic in that it lacks a crucial component which said traditional view of human rights possesses: a normatively ethical or moral component in the sense noted above.

This component is not the same as one which allows for the social construction of certain rights, human ones, out of human morals. That would be better termed the social construction of “morality rights,” ones which for all we know can be constructed from the likes of invalid moral rules or principles and which deserve no respect—even if they might be rationally devised. For just as the Thomistic claim that “an [ethically] unjust law is no law at all” rings plausible when properly interpreted with regard to the nature of law, so does the claim that “an ethically or morally invalid rights claim or interest is no right at all” rings true according to this tradition with regard to rights. This is a crucial component found in what I am referring to as the dominant human rights tradition and what is lacking in Searle’s view of human rights.

Once again, that such a component is lacking in Searle’s view of human rights does not in itself prove that his view is implausible. But Searle needs to demonstrate why his view of human rights is philosophically superior to the most plausible competitors on offer. And it is problematic for Searle to not engage in such crucial analytic philosophical enterprise. After all, good analytic philosophy is not a matter of solipsistically asserting one’s own opinion on matters. It requires carefully juxtaposing one’s view with competing and leading views on a subject, and arguing as best one can why one’s own position is better than its competitors. Thus it is false to assert 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’ ” (Lobo 2017, 22).

If by “argues” is meant what I have just clarified as my meaning of one of the main aims of analytic philosophical reasoning, then Searle has done precious little to argue for his position in light of the several crucial questions and problems in human rights theory. And it is false that “Searle argues that human rights demand an ethically normative foundation, on which his analysis [is] built” (Lobo 2017, 22) if by this is meant what I have in mind when I use the locution “ethical or moral normativity” or its equivalents.

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15 I insert “ethically” here in that Thomas Aquinas was a natural law theorist who wrote of legal justification in terms of its underlying ethical base.
Agreement on the Meaning of ‘Human Right’?

A further difficulty with Searle’s view of human rights is that even the careful reader has little or no idea if by “human right” Searle means what the leading human rights philosophers mean by said category. As noted above, this courts the possibility of philosophical confusion in that it might well lead to Searle’s arguing for a conception of human rights which is importantly different from the one discussed in the dominant tradition of human rights discourse in philosophy that equivocation can result either on behalf of Searle or his readers.

In effect, this is part of what Corlett (2016) implies in its investigation of Searle’s view of human rights. In exposing the differences between Searle’s conception of human rights and that of what I refer to as the dominant tradition, I am implicitly wondering—even if one grants Searle everything in what he asserts about human rights—if Searle has perhaps demonstrated simply that human rights in some social sense exist. In other words, for all the reader of Searle knows, Searle is articulating human rights as social rights, or Searle has devoted his work to the sociality of human rights especially in terms of their social recognition. But this is not the same as demonstrating that human rights exist insofar as the dominant tradition construes the nature of human rights. Searle’s view lacks crucial components of what the tradition thinks lies at the heart of human rights, what I shall refer to as the “moral or ethical dimension of human rights.” If Searle, recognizing this fact, seeks to argue that his view of human rights is philosophically superior to that of the human rights tradition’s, so be it. But it is dubious to think that Searle has articulated the same (or anything like the same) conception of a human right as that of the tradition in that it courts confusion.

Furthermore, even if we accept the claim that “Searle explicitly rejects the pure institutionalist vision of human rights” (Lobo 2017, 22), it does not follow that Searle “unambiguously aligns himself with the position Corlett is defending when he compares real pure institutionalists….” (Lobo 2017, 22). First, I do not defend any such view of human rights as I share some of Searle’s own concerns about it as they are stated concerning positive rights claims in Searle (2010, 193-194), concerns that have been articulated by various other rights theorists and in Corlett (2009, Chapters 4-5) and Corlett (2010, Chapters 2-4). Rather, I am articulating (but not defending) a general traditional and (for better or for worse) dominant view of them and stating that Searle’s view of human rights runs afoul of that approach. If that view is plausible, then Searle’s view is wanting in a significant manner, as noted above.

Secondly, perhaps Searle, as Lobo wants us to think, believes that his own position on human rights is aligned with said tradition of human rights as I present it. But as I have clarified both in Corlett (2016) and herein, there is a significant disconnect between the two views. Rejecting a purely or largely institutional view of human rights (one lacking an essential normatively ethical or moral component as I articulate it above) hardly makes one a member of the traditionalist camp on human rights. Searle himself has implicitly rejected a purely institutional view of human rights when he attempts, unsuccessfully as pointed out above, to provide an example of an informal non-institutional (non-legal) right in the
institution of marriage between spouses. So rejecting human rights institutionalism in the purist sense is insufficient to qualify one as a human rights advocate in the traditional sense as I have articulated it in Corlett (2016) and herein.

Contrary to what is asserted, then, it is not the case that I am “not arguing against Searle’s actual position.” (Lobo 2017, 23) For even granting Searle’s claim that “human rights continue to exist even when they are not recognized” (Searle 2010, 181; Lobo 2017, 23), it does not follow from this that Searle concurs with either Corlett (Corlett’s view of human rights was not even presented in Corlett 2016) or the dominant human rights tradition about the nature and value of human rights. For what makes a human right valid is key here, as noted above. For Searle, it is society (either society at large or a subset of it) which validates such rights as they are socially constructed (again, either by society at large or by a subset of it). For the traditional human rights approach, it is valid moral/ethical principles or rules which confer validity on a human rights claim or interest and thereby confer the right in question to a particular individual or group. And this is a crucial difference.

It is difficult for me to see how Searle concurs with such a view given what he has written in Searle (2010) on human rights. It is not just that one is a human being that makes them possessors of human rights, as Searle seems to argue. (Searle 2010, 182f.) It is also that valid moral/ethical rules or principles confer on one said right and support, all relevant things considered, the claim and/or interest in question—regardless of whether or not any human being (or society) concurs with or recognizes said principles. Thus to construe a human right as a moral right in this sense means that a human right exists even without any societal recognition of said right whatsoever. This makes the social recognition of a human right as a fundamentally moral one neither necessary nor sufficient for the possession of said right.

One implication here is that such rights are understood or discovered by the light of reason. And it is the light of reason that is also said to underlie Searle’s conception of a human right. But other than that, the two conceptions of a human right have little else in common as pertains to human rights possession and the nature of a human right. To the extent that the above is plausible, then it is problematic to allege that “Corlett’s criticism [that Searle’s view of human rights is purely institutional] is misdirected” (Lobo 2017, 23). However, with all fairness to the reader, it is easier to understand this point in light of my current elaborations on such matters discussed in Corlett (2016).

In addition, while it might appear that I was hasty in arguing that Searle’s view of human rights is purely institutional, it is also the case that Searle’s example of a non-institutional right in marriage was found to be problematic and replaced with a better example of my own. So it is unclear whether I was incorrect in stating my point in question concerning whether or not Searle’s view of human rights is purely institutional. For all Searle (2010) states about human rights being non-institutional, he seems to get it wrong by way of his example of such a right. Perhaps if Searle concurred with my example of a non-institutional right in marriage based on each spouse’s right to self-determination and whatever moral or ethical values support it, then I would be willing to modify my point that Searle’s view of human rights is purely institutional, assuming of course that spouses do not constitute a
social institution of sorts.\textsuperscript{16} For I cannot reasonably retract said claim on the basis of Searle’s problematic example. I already concur with the claim that ethical (moral) rights can exist apart from the law’s recognition of them, but for reasons dissimilar to Searle’s attempt to ground an informal right apart from institutions.

Moreover, my task is in part to reconstruct what Searle actually states pertinent to human rights and related concepts. I believe that I have done so herein and in Corlett (2016). But it is important to note that, as we shall see, Lobo (2017) engages in some rational reconstruction of Searle’s view of human rights as Searle states it. It is not that Lobo, in his unsuccessful attempt to undercut my reading of Searle on human rights, fails to quote Searle and address some of what Searle actually states. Sometimes he does so when presenting Searle’s view. But as we shall see, in other contexts Lobo appears to engage in rational reconstruction of Searle on human rights as he attempts to elaborate on what Searle states about human rights while not quoting Searle to carefully demonstrate that Searle genuinely and unambiguously concurs with what Lobo attributes to him.

Rational reconstruction, as I understand it, is the activity of engaging but also going beyond what is written by an author to, say, answer alleged problems with the informational content of what is argued in a particular text. Analytic philosophers tend to engage in rational reconstruction more than they engage in historical reconstruction of texts, except in many cases in contemporary history of philosophy where contemporary analytic philosophers often attempt to engage in both. To be sure, there is nothing wrong per se with rational reconstruction, so long as one is careful to alert readers, and herself, that one is engaging in this project. Otherwise, one runs a serious risk of confusion in the form of making problematic allegations and misattributions.

Before noting some instances of problematic rational reconstruction, I shall expose some uncharitable readings of segments of Corlett (2016). One is found in Lobo (2017, 24) wherein my point about Searle’s view of human rights as “mere human creations” (Corlett 2016, 455) is taken to mean “more or less arbitrary product of sophistry and whim rather than reason as such.” However, a charitable interpretation of “mere human creations” would not pertain to either arbitrariness or sophistry, but to the fact that Searle offers a social constructivist view of human rights (which of course is my point). Nowhere do I state or even logically imply that Searle thinks that human rights are a matter of arbitrariness or sophistry. Another instance of uncharitable interpretation of what is found in Corlett (2016) is in Lobo (2017, 24) wherein I am aligned with the “idea that Searle is a pure institutionalist and anarchic social constructivist…”

As in the previous case of uncharitable interpretation, this misattribution to me is groundless. Just as the fact that something is a social construct does not make it arbitrary or sophistry, that something is institutional and a matter of social construction hardly makes it

\textsuperscript{16} One might bear in mind, however, that in the U.S. marriage is commonly referred to as an institution. I understand this to mean that marriage is both a social and legal institution, being both socially and legally recognized.
anarchical. Indeed, some anarchists tend to abhor social institutions! Moreover, there is logical slippage between my locution “would seem to imply” with regard to Searle’s view of human rights and “Searle does not argue this” (Lobo 2017, 24) as I do not state that Searle argues such. There is a difference between arguing a point and seeming to imply one. In order for my point to be rendered problematic, it must be demonstrated that in this case Searle does not seem to imply what I state he seems to imply. My point is not rendered problematic by showing that Searle does not argue what I stated that he merely seems to imply. Insofar as the trustworthiness of testimony is deemed vital to social epistemology and the possible acquisition of social knowledge, one seems justified in thinking that there is good reason to doubt the accuracy of Lobo’s interpretation, not only of Corlett (2016), but of Searle (2010). It is to these matters that I now my attention.

The previously noted violations of any plausible principle of charity in interpretation are followed by instances wherein rational reconstruction is mistaken for what Searle actually endorses in his published work on human rights. (Searle 2010) Consider the following statements making various attributions to Searle about human rights in response to my charge that Searle essentially socializes human rights relative to a particular society’s recognition of same:

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 (Lobo 2017, 25).

It is clear that Searle endorses the two alleged human rights mentioned in this quotation: the right to life and the right to freedom of expression. But several problems arise here. First, no quotation in Searle is provided for the reasoning in the quoted words, as it is a case of rational reconstruction of Searle’s words. The reasoning goes beyond what Searle actually states. But again, one of my general claims is that for all Searle states about human rights, there are various problems with his view. It is not, as I state above, that Searle’s view of human rights cannot be rationally reconstructed to evade such difficulties. Additionally, the description of human rights as “eternal” is problematic. What does it mean to say that a right is eternal? I do not recall in the philosophy of rights literature where rights are referred to as “eternal,” though perhaps some religious theorists might tend to at times refer to certain human rights in such a manner. Some explanation is required to make some sense of this strange notion as, absent careful qualification, it seems out of place in philosophical discourse.

Perhaps what is meant by human rights being “eternal” is that, consonant with the human rights tradition in question, they exist and have always existed and will always exist despite
human recognition of them. But I recall nowhere in Searle (2010) where Searle’s view of human rights comes close to this view of human rights as “eternal.” Nor does the notion of eternity seem to fit neatly within Searle’s social ontology of social construction. If I am correct about this point, then it appears that the above passage from Lobo (2017, 25) is a case of rational reconstruction and it behooves Lobo to demonstrate unambiguously in Searle (2010) where a conception of human rights as eternal is endorsed by Searle.

Furthermore, Searle’s discussion of the two alleged human rights noted above is itself problematic. Searle indeed endorses the two rights as human ones. (Searle 2010, 185) But he hardly defends or justifies such rights. If by his endorsement of such rights as human ones Searle means that they are absolute and non-conflicttable rights, then Searle would be endorsing an implausible (or at least a rather controversial) claim insofar as it would imply the duty of others to respect such rights with regard to all humans. For there are humans both throughout history and today who have neither a moral (in the requisite sense) right to life nor to freedom of expression, namely, those who deserve capital punishment based on their strong liability responsibility for, say, the illicit deaths and maimings and torturing of others.

Unless Searle adopts and successfully defends an abolitionist approach to capital punishment, and unless he wishes to disrespect or ignore considerations of moral responsibility, desert and proportionate punishment, he would seem to want to endorse a view of human rights which does not appear to imply (absent careful qualification) that everyone has a right to life in the requisite sense (above) because they are human beings. For not everyone has such a right, morally speaking, according to many who take sufficiently seriously considerations of responsibility, proportionality, and desert. By extension, the alleged (“eternal”? or universal?) human right to freedom of expression fails insofar as the alleged (“eternal”? or universal?) human right to life fails. For if one (subsequent to adequate due process, of course) genuinely deserves execution because of their strong liability responsibility for the illicit murders, maimings, torturing, etc. of others, then one hardly has a right to freedom of expression in that they deserve to have their life ended.

Further Considerations

In general, human rights need to be articulated and plausibly defended in light of deeper moral, social, political and legal considerations so that they do not run afoul of them. This point applies to Searle as well as to others philosophizing about human rights, and rights more generally. Indeed, this point might even serve as a plausible desideratum of a theory of human rights as one would want and expect that, all relevant things considered, a conception of human rights ought to comport well with broader and underlying considerations along such lines.

It is also stated that “[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’]” (Lobo 2017, 24). This is the closest
published statement by Searle of which I am aware that on the surface appears to align his view of human rights with the conception of human rights as moral ones which I attribute to the contemporary dominant human rights tradition. However, the statement does not quite succeed in doing so. For according to the conception of human rights which I articulate but do not endorse in Corlett (2016) and herein, being rationally justified by a correct conception of human nature is not a jointly sufficient condition of a human right, though it might be relevant to the issue of human rights possession (i.e., of who qualifies in having a human right).

Moreover, that a rights claim can be rationally justified by “a” set of human values is not sufficient for something to be a human right. According to the human rights tradition, such a set of values must itself be morally valid (conferred by valid moral rules or principles) in the sense noted above. Thus, it must be both rational and reasonable, as Rawls might put it. That something is rationally justified can be a subjective or relative matter. But that it is also reasonable suggests that it is also plausible aside from its being rational in the sense of its being internally consistent (internally coherent). The epistemic concept of coherence comes to mind here. As noted above, that something is internally consistent is insufficient for its being justified. It must also be consistent with reality, externally speaking. It must match the real world of facts. A similar point can be made of Searle’s claim that a right “can rationally impose an obligation on all human beings to respect it.” It must also do so reasonably, according to the dominant contemporary human rights tradition. Yet for all Searle states therein, there is no requirement to the effect that a human right is a right that is conferred by valid moral or ethical rules or principles. So it is rather difficult to understand the assertion that “I see no substantive difference between this [Searle’s] 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’” (Lobo 2017, 24)?

17 I assume here and elsewhere a realist metaphysic as well as some plausible version of moral realism.

18 In Lobo (2017: 24), “reasonable” is inserted as a parenthetical clarification of Searle’s “rational.” “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?” But comparing Lobo’s quotation of Searle and Lobo’s paraphrasing of it, Searle does not include “reasonable” in his statement. Hence my point about the difference between what is rational and what is reasonable with regard to human rights and the difference between Searle’s view 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’?” (Lobo 2017, 24)?
Aside from the problematic locution “more or less exactly the same as” and the fact that I do not necessarily endorse the conception of human rights of the dominant tradition (so it is not “Corlett’s [conception of] ‘moral rights’”), I hope that I have sufficiently clarified the difference(s) between Searle’s notion of a human right and that which has been articulated by the dominant tradition of human rights. I know of no other way in which to articulate the difference(s). Perhaps more time and energy ought to be expended in attempting to justify Searle’s conception of human rights than in attempting to align it with the dominant human rights tradition. For it is obvious that Searle’s view of human rights is not in accord with said tradition. However, as I have stated repeatedly, this in itself does not suggest that the Searlean notion of human rights is implausible.

It seems, rather, that Searle is attempting to articulate his own such notion of human rights, and its plausibility, not unlike the plausibility of competing views of human rights, is contingent on how well it stands the test of reason. And if one of my (above) points is plausible, then it appears that Lobo, perhaps in an implicit acceptance of the traditional view of human rights as moral rights in the above-described requisite sense, is attempting through rational reconstruction of Searle’s view of human rights to make it consistent with the tradition’s view to the effect that “human rights have always existed. But all members of the human species have not always been recognized as humans entitled to those rights.” (Lobo 2017, 25).

While this point, not quoted from Searle himself, seems consistent with the contemporary human rights tradition as I have described it, it is still not the same as that tradition’s addition of the important idea that human rights are valid moral claims and/or interests humans possess regardless of both whether or not there is social recognition of some humans qua humans and whether or not such rights are recognized as such. So one question here is whether or not Searle holds the view attributed to him by Lobo (2017), and another is whether or not such a view comports sufficiently well with the human rights tradition in question and yet another is which view of human rights is more plausible, and why.

Moreover, there are other issues with regard to Searle’s view of human rights. In Corlett (2016, 458), I write that

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 1954. 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) rights (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) equally 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 of 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 is alleged that “Searle’s analysis entails nothing like this.” (Lobo 2016, 25) Yet the explanation of why Searle’s view of human rights does not entail what it seems to me it implies, and no quotations from Searle are produced to explain why “Searle’s analysis entails nothing like” what I state that it seems to imply—only interpretation by way of rational reconstruction of Searle’s view. Thus, claims that “Searle is not a strict institutionalist” (Lobo 2017, 25) and “Searle’s focus is fundamentally on recognition” of the bearers of human rights, while possibly true, are difficult if not impossible to find in Searle (2010).

**Which Questions Does Searle Wish to Answer?**

Perhaps there is some confusion and possibly uncharitable reading of my above quoted point regarding the *Brown* decision. It is written of Searle’s “theory” of human rights and in implicitly alleged contrast to my take on the *Brown* decision that Searle’s “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” (Lobo 2017, 25).

However, the allegation that “Searle’s analysis entails nothing like” the manner in which I describe it in terms of what I take to be some of its implications is dubious in that, as it turns out, what is implicitly interpreted as my meaning is uncharitable, if not confused. My above-quoted point is clear about the issue of the *Brown* decision and how it involves the legal recognition of the right to equality of education for all persons in the U.S. But this implies that it was also about the recognition of the full humanity of all non-whites, inclusive of all blacks. For it is in the context of potential or actual rights-bearers that the recognition of the right to equality of opportunity in education is made. Thus the idea that my point about the *Brown* decision implicitly or otherwise ignores the “momentous” idea that “blacks actually had rights” makes no sense in light of both the background of U.S. law which already recognized some rights that blacks had, and the fact that it makes no sense for Corlett (2016) to construe the *Brown* decision as one about the Court’s recognition of the right to equality of education absent the Court’s additional recognition of the fact that blacks and other non-whites qualify as right-bearers in the relevant sense relative to the right in question. When this matter is considered, it is unclear that my point about what Searle’s view of human rights seems to imply is far from accurate in light of Searle's own writings on human rights (namely, Searle 2010).

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19 If this point is true of Searle’s view of human rights, then it might point to a deeper problem in Searle’s view, namely, one which I have identified: Searle’s myopic focus on one of the social aspects of human rights (their social construction and recognition) to the exclusion of various factors about human rights according to the human rights tradition.
Furthermore, if it is true that Searle’s view of human rights and their recognition is that “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” (Lobo 2017, 25), then another problem arises as mentioned above. For the description of Searle’s view as one which makes human rights based on “morality” is one which distances Searle’s view significantly from what I am describing as the human rights tradition. For that tradition would want to distinguish between what valid moral or ethical principles or rules would confer as a moral right and what morality (or even moralities) would recognize as a right.

Thus, the point raised in order to attempt to clarify Searle’s view on human rights recognition serves to further deepen concern about an allegation that Searle’s view is not strictly institutionalist. To be sure, I have already provided an example of what Searle refers to as an “informal” right, one that is not necessarily supposed to involve the institutionalization of said right. But whether or not that example is successful, it is unclear that Searle’s view of rights and their recognition comports well with the idea that it is not that human rights are conferred on humans (in part) because of what socially accepted “morality” or moralities say, but rather that the valid principles of ethics or morality confer such rights.

Moreover, another attempt is made to insist that Searle’s view of human rights is not what I think it seems to imply with regard to the Brown decision: “So the valid claims existed, the rights existed too, even before the Brown decision, and Corlett is mistaken when he says Searle theory denies their existence before the decision.” (Lobo 2017, 26) Again, I do not categorize Searle’s words on human rights as a theory (see the opening paragraph of this essay). But more importantly, no quotation from Searle (2010) is provided for the acceptance of the claim that “the valid claims existed, the rights existed too, even before the Brown decision…”

One is left to wonder whether what has occurred in the reading of my critique of Searle on human rights is that some have perhaps at a subconscious level found the critique so plausible that they have, in thinking that Searle could not have possibly made such unthinkable errors in his conceptualization of human rights, constructed (pun intended) reconstructions of “Searle’s theory” in order to make his view more compatible with what seems to them a more generally and intuitively plausible position on human rights, one which, seemingly accidentally, is somewhat congruent with some portion of the traditional view of human rights. Whether or not this has actually occurred is hard to discern and beyond additional interest on my part. But it is relevant to the point about rational reconstruction and careful explications of an author’s view.

For both critics and defenders of an author’s work owe it to themselves, the author, and others to carefully quote an author in constructing her position. I have not only attempted to do this, but the first several pages, the bulk of Corlett (2016), present Searle’s view of human
rights so fairly that they painstakingly summarize in some detail Searle’s social ontology from his two books on the topic in order to provide a suitable conceptual context for a discussion of his view of human rights. For one to provide replies to my concerns is what a philosopher is expected to do. But in order to avoid unnecessary confusion one must be careful to distinguish (when relevant) between construction and rational reconstruction of an author’s position, especially if allegations are made concerning misrepresentation of an author’s view. Corlett (2016) concerns a careful, oft-quoting (of Searle) construction of his view. It is not intended to be a rational reconstruction of it. That much is obvious by a study of it.

Moreover, Searle’s basic point about status recognition with regard to the Brown decision is articulated. (Lobo 2017, 26) He writes: “The all too simplistic notion that ‘if you qualify as a human being, you are automatically guaranteed human rights’ (Searle 2010, 81), is, well, all too simplistic. For, indeed, *you have to first qualify as a human being.*” In reply to these points, it is important to bear in mind that, though it might be simplistic to think that “if you qualify as a human being, you are automatically guaranteed human rights” if for no other reason than history and contemporary times reveal that not all humans are guaranteed rights of any kind, it is unclear that “you have to first qualify as a human being” in order to have or be recognized as having a human right if what is meant by this unclear claim is that all of those who possess human rights must be human beings.

For as it turns out, many human rights theorists and activists hold that, for instance, various non-human animals have at least one of the very rights Searle himself categorizes as a human right: the right to life. Yet these animals are not human ones. So, if it is true that said animals have a right to life, and if it is true that the right to life is a human right and uniquely possessed by humans, then it is unclear that one must be a human in order to possess or be recognized as possessing that right which is said to be a human one. For one to insist that by definition only humans can have a right to life begs the question, many would argue, about what counts as a human right.

The right to life, according to many, is often possessed by humans who are unable to be conscious of their possession of it, yet many would argue that it would be unreasonable to deny them human rights possession status. And many would argue that the right to life extends to many non-human animals even though they might not be conscious (as most humans might be conscious) of their possessing such a right. The point here is that even if it is assumed that the right to life is a human right, it is not according to several people a right possessed exclusively by humans, rendering dubious the claim that “you have to first qualify as a human being” in order to either possess or be recognized as possessing a human right. At the very least, such a claim requires careful clarification. Are human rights possessed exclusively by humans, as the assertion in question appears to imply? Or are some human rights such as the right to life shared with non-humans, and if so, might it be important to clarify that being human is perhaps a sufficient but not a necessary condition for the possession of a human right? If the latter, then this clarification should be made and its implications should be recognized in terms of a robust social/political philosophy insofar as such rights are basic to a plausible social/political philosophy.
Much of this discussion of Searle’s view of human rights raises the question of precisely which questions he is attempting to answer. If Searle is answering the question of how human rights might be socially recognized, then he has offered an interesting account of such a phenomenon whether or not it is original. However, if he is attempting to provide answers to questions about the nature and value of human rights, then his account raises the kinds of problems enumerated herein and in Corlett (2016). Again, a serious study of the philosophy of human rights in particular and of rights more generally might have enabled Searle to clarify such matters and juxtapose his “theory” with those of others. But one is left with the unfortunate situation where, when taken at his word, Searle articulates his ideas in ways which are, as I have explained, isolated and divergent from the mainstream discourse on human rights. While this is not in itself a bad thing, it runs the risk of confusing important issues and concepts.

Finally, it is stated that Searle “insists that rights exist, and that they are grounded in moral reason, and thus his view is far from being incommensurate, much less antithetical to that propounded by Corlett.” (Lobo 2017, 28) But as noted above, no quotation from Searle is provided which justifies the attribution to him of human rights being grounded in “moral reason.” But even if that information from Searle is provided, “moral reason” is vague when considered in the context of Searle’s view of human rights and his social ontology more generally. Would it mean, for Searle, the same as it means for the tradition of human rights that I have articulated? I am not aware of any concept from Searle’s social ontology that would justify such an ascription to Searle. Recall that “moral reason” can be construed, say, either relativistically to refer to social reasoning about morality rights, for instance, or in the manner in which so many human rights theorists understand it, as I describe above.

And pointing out that Searle states that “with regard to human rights he says, explicitly: ‘This does not mean that they are arbitrary, or that anything goes’20 (2010, 198)” (Lobo 2017, 28) is a far cry from (and not logically entailed by) the statement that human rights are ethical or moral rights that are conferred on someone or a people by valid moral or ethical rules or principles. Searle’s statement here can be understood reasonably to mean that whatever society decides is a human right and who ought to possess it is a matter of moral reason by that society. However, this is not the same as stating that the nature and value of human rights is beyond whatever society recognizes as such; indeed, it is a matter of whatever valid moral or ethical rules or principles determine as such, and that this is, at least in principle, discoverable by way of human reason.

Whether or not Searle’s view of human rights can be reconstructed into the most plausible account is an open question. I am cautiously optimistic that it might be if Searle’s view is importantly amended at least along the lines most central to this investigation. But that project might eventuate in the abandoning of some aspects of Searle’s view of human rights

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20 If this quotation from Searle is intended to serve as a corrective to my take on Searle’s view, it is yet another unfortunate uncharitable misattribution to me about Searle’s work. For nothing in either Corlett (2016) or herein implies that I think that, for Searle, human rights are either arbitrary or that “anything goes.” Again, Corlett (2016) is more precise and circumspect than any such crass statements about the informational content of Searle (2010).
which he himself deems most crucial to his social ontology. Or, it might turn out that either Searle or some of his disciples devotes sufficient time and energy to the study of the philosophy of rights and human rights such that it can be shown with significant precision that Searle’s view is the best one on offer, all relevant things considered.

Conclusion

In the end, Searle (2010) provides an interesting articulation of some social rights and how they come to be recognized by social institutions. However, his notion of human rights lacks critical ethical/moral components in the ways enumerated both in Corlett (2016) and herein. While Searle (2010) provides an interesting description of the social construction and recognition of social rights, it is unclear whether or not it is an accurate account of the social construction of human rights in that it is unclear that human rights are even social constructions as opposed to their being rights that are, quite apart from being socially constructed, conferred on persons by valid rules or principles of ethics or “true” morality as noted herein and in Corlett (2016).

And while it is the goal of human rights supporters to have a global recognition of human rights, it is not obvious that the possession of human rights is contingent on their being socially recognized. This may be true even though respect for human rights requires social recognition of them. In any case, there is far more to human rights, if they exist and if so, whatever they turn out to be in content, than what is found in Searle (2010). Perhaps the most plausible idea in Searle (2010) about human rights is how they can be socially recognized. Whether or not this is a notion original to Searle is one thing. It is quite another, however, to think that what Searle offers is anything close to a theory of human rights and one that is congruent with the dominant contemporary human rights tradition as I have described it.

This discussion of Searle’s view of human rights is relevant to social epistemology in at least the following ways. His view of human rights is an outgrowth of his social ontology. As far as I can discern, what Searle (2010) states about what he thinks are human rights is consistent with his social ontology. And insofar as social ontology and social epistemology are inter-related, not unlike metaphysics and epistemology, questions about Searle’s notion of human rights raise questions about how humans rights become real (assuming they are real). And this in turn raises questions about how we might come to know that they are real.

Finally, insofar as many social epistemologists deem testimony as an important element of social knowledge (Coady 1992; Goldman 1999; Lackey and Sosa 2006), I have relied on the testimony of many philosophers in the tradition of human rights and rights in general to compare and contrast that understanding of human rights with that of Searle’s. In the end, each position, whether one of these or another, must bear its own argumentative burden of proof against, for instance, the slings and arrows of anti-realists or skeptics about rights—especially human ones.

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