Philosophical Foundations of Human Rights, by R. Cruft (ed.), S.M. Liao (ed.) and M. Renzo (ed.), (Oxford: Oxford University Press, 2015), xiv + 706pp., paperback, £39.99, ISBN: 978-0-19-968863-0.

Moral and legal rights have been a subject of an intensive philosophical investigation, but until recently, human rights were left aside. Yet, once philosophers turned their attention to human rights, it appeared that the concept raises numerous controversial questions, starting from the most basic one: what are human rights? *Philosophical Foundations of Human Rights* is the first edited collection of essays featuring contributions by well-known philosophical and legal scholars that aims to address these questions in an all-encompassing manner. The book is organised into four parts that contain 38 chapters in total covering a broad range of issues. Part 1 deals with the moral grounds of human rights, such as dignity, agency, interests and needs. Part 2 discusses some of the political and legal dimensions of human rights regime. Part 3 focuses on specific human rights, some of which are canonical, such as freedom of speech or of religion, while others are more contested, such as a right to democracy or to subsistence. Finally, Part 4 goes back to more philosophical dilemmas by considering human rights from a set of critical perspectives, including relativism, feminism and Kantian views. Each part takes a dialogic form by containing several pairs of chapters each of which includes a defence of a specific position as well as a critical response to it. Such a dialogic structure gives a balanced approach to controversial issues, illustrating how challenging it is to sustain any particular position concerning any dimension of human rights. Since the topics covered are so numerous and diverse, it is impossible to address all of them within this review. For this reason, I will limit the review to what I take to be the most novel contributions of each part.

Part 1 is concerned with the foundations of human rights—are human rights grounded in fundamental moral ideas or we should search for its foundations somewhere else? It offers a new take on often discussed grounds of human rights, including dignity and a good life. It starts with John Tasioulas's pluralist interest-based account (Ch.1) that grounds human rights in a plurality of values that includes both a moral value, which is dignity, and prudential elements, which are human interests. Therefore, human rights are grounded in the universal interests of all human beings, each of which possesses an equal moral status arising from their humanity. For Tasioulas, such pluralist grounding has a two-fold advantage over alternative accounts of human rights. First, it can explain in what sense human rights are resistant to trade-offs. Since it is equal dignity that explains why interests generate human rights, it also ensures that rights of each individual matter equally. Secondly, by combining dignity with interests, it can offer a more determinate content of human rights, which pure, status-based accounts cannot. Importantly, rights have to be "compossible" in a sense that fulfilment of rights of everyone has to be jointly feasible (e.g. there can be a right to an adequate standard of living, but not a right to a luxurious life). In response, Onora O'Neill (Ch.2) adds that besides compossibility of rights, duties entailed by these rights have to be

compossible for each and every duty bearer. In her view, liberty rights entail compossible duties, while rights to goods and services are indeterminate in the absence of institutions. If joint feasibility is a necessary condition for identifying rights, and if, on the other hand, we cannot know if rights to goods and services are jointly feasible before institutions allocate them, then it follows that these rights cannot be human rights. The subsequent pair of chapters discusses an alternative account of foundations of human rights—a good life. In Ch.3, S. Matthew Liao argues that individuals have human rights to the fundamental conditions for pursuing a good life, where a good life consists of pursuing valuable, basic activities. These are activities that are important to everyone's lives taken as a whole. Since pursuing a good life is important for everyone, fundamental conditions that enable such pursuit are also important, and so individuals have rights to them. Liao further shows how such account can explain most of the human rights enshrined in UDHR. However, in the subsequent chapter, Rowan Cruft problematises the relation between the content of human rights and a good life. First, to argue that human rights are necessary for a good life would imply that those whose human rights are violated cannot have a good life, which in his view, amount to liberal imperialism. Secondly, establishing a strong instrumental connection between human rights and a good life would also mean that without a good life secured, there are no human rights. He proposes an alternative understanding of human rights as recognition-independent, which means that they exist irrespective of their recognition in specific societies. Therefore, human rights protect important values, but they cannot be directly grounded in it. Instead, it is dignity that explains why the fact that X is of a great importance grounds a recognition-independent right to X.

Part 2 moves to dilemmas concerning the political and legal dimensions of human rights. Since the political dimension of human rights, including its capacity to justify external intervention, has already been extensively discussed elsewhere, I will focus on the legal dimensions. In Ch.15, Samantha Besson sets to explain the duality of a human rights regime that includes both international human rights and constitutional rights. In the Arendtian spirit, she defines international human rights as rights to have human rights in a political community. Human rights are legitimated through domestic democratic processes, but at the same time, human rights, as external constraints, legitimise democracies. In her view, such mutual legitimation and legal validation is enabled by the development of shared democratic standards across democratic polities through "judicial dialogue". Importantly, this transnational interpretation of human rights does not suffice for the constitutionalisation of international law and so cannot be adequately captured either by constitutional or by international legal theory. Instead, we need a new legal approach—transnational constitutional theory. Yet, Saladin Meckled-Garcia (Ch.16) questions the role of democratic processes in determining the normative content of human rights. He argues that insistence on democratic specification of the content of human rights conflates two separate questions—what constitutes political legitimacy and what justifies moral rights. While questions of legitimacy have bearing on the legalisation and implementation of human rights, their content is determined by reference to context-independent moral values. Part 2 also includes an innovative discussion of the legal doctrine of proportionality. In Ch.17, George

Letsas offers an account of proportionality that is consistent with non-utilitarian accounts of rights. In his view, balancing rights need not necessarily involve utilitarian reasoning. He argues that what courts mean by balancing is considering effects of particular policies over interests of both individuals and a society, which need not lead to maximisation of interests. In support, he reminds us that courts, by using the doctrine of proportionality, often uphold the rights of minorities irrespective of majoritarian preferences. For this reason, proportionality is better understood as protecting the status of equal concern and respect, and consequently, is consistent with non-utilitarian accounts of rights. Yet, Guglielmo Verdirame (Ch.18) doubts that proportionality can be consistent with non-utilitarian accounts of rights since it can significantly limit the scope of enjoyment of rights. In his view, "limitable rights", as those set forth by ECHR, are "balanceable and negotiable", and as such, cannot be fundamental (p.354). He also adds that the basic principle of equal concern and respect is already protected by the principles of non-discrimination and equality, so the use of proportionality for this purpose is redundant.

Part 3 offers a set of views concerning specific human rights. Corey Brettschneider (Ch.19) takes up the challenge of "inverted" rights, i.e. when rights are used to undermine values the very same rights are based on. In Brettschneider's view, the lack of regulation of hateful speech does not show that the liberal state supports such speech, as has often been argued. To show this, he makes a helpful distinction between two types of state action: protecting expression of others and expressing views itself. He argues that the principle of equal democratic citizenship requires the protection of free speech, including the hateful one in a neutral way. However, the state should also express its disagreement with ideas undermining its legitimacy, but only by a non-coercive means, such as democratic persuasion. In the subsequent chapter, Larry Alexander harshly criticises such view on two grounds. First, once the state is allowed to interfere with the content of speech, it can make a subject of criticism any kind of speech it finds inappropriate. Secondly, democratic persuasion is coercive because it relies on coercive extraction of resources from hate groups in order to support views they oppose. Another canonical right discussed here is freedom of religion. In Ch.21, Lorenzo Zucca contests its role at the international level, since it is impossible to accurately define freedom of religion given its contingency upon local circumstances, including the relation between state and society. This has been reflected in transnational adjudication, by courts leaving a broad margin of appreciation to states in interpreting freedom of religion. Yet, Robert Audi (Ch.22) argues that we actually can define freedom of religion. In his view, freedom of religion is a special case of a natural right to liberty, so if there is such natural right, there is also a right to religious liberty. Restrictions of freedom of religion constitute a severe threat to one's sense of identity and so amount to harm. For this reason, freedom of religion is an important human right to protect worldwide. Another right whose existence is contested is the human right to democracy. The difficulty with this right is that it appears to be in tension with a collective right to self-determination. Namely, democracy is based on the principle of equality, which further entails that only egalitarian societies have a right to self-determination. In Ch.25, Thomas Christiano attempts to solve the tension by arguing that the human right to democracy, as a

fundamental moral right, is at the core of the right to self-determination, but this does not imply that only democratic societies have the right to self-determination. Since the human right to democracy is more fundamental, it constrains the right to self-determination in two ways. First, acceptance of non-democratic political values must be unanimous. Secondly, and relatedly, the human right to democracy must be individually waived by each and every member of a particular society. However, Fabienne Peter (Ch.26) rejects the existence of the human right to democracy by challenging basic premise of Christiano's argument that human rights are grounded in moral rights. In her view, human rights are instead standards of international legitimacy. Such a role constrains the justification of human rights in a sense that they have to be justified on non-parochial grounds. In her view, we may find such grounds in political norms, rather than in fundamental interests. Since the norm of inclusion is less parochial than the principle of equality, the right to political participation, which falls short of democracy, is the one that is at the core of the collective right to self-determination. Part 3 also includes economic and social rights that have a long history of contestation. In Ch.29, Elizabeth Ashford embarks upon the libertarian challenge to the existence of a human right to subsistence. She revisits Shue's well-known argument that destitute people are vulnerable to being coerced to forgo their negative rights in exchange for subsistence by accepting "subsistence exchange contracts" (e.g. cases of human trafficking, child labour, etc.). This shows that subsistence is necessary for the enjoyment of other rights. Ashford tries to reach the same conclusion while addressing objections to Shue's view. In her view, what makes destitutes' acceptance of such contracts non-voluntary is not a threat imposed by a wrongful interference of coercer, but structural conditions, including destitution, that pre-exist such exchange. Therefore, banning such contracts will not solve the problem. Instead, we should tackle the structural conditions by recognising the human right to subsistence. In a subsequent chapter, Charles Beitz aims to address another objection to the accounts of rights to subsistence, i.e. that we cannot identify duty-bearers. In his view, the human right to subsistence is action-guiding in an indirect sense — it offers reasons to create conditions where these rights would be accessible for everyone.

Finally, Part 4 considers possible alternatives to human rights. The last pair of chapters critically examine a broadly accepted view that Kant's concepts can serve as foundations of human rights. According to Kant, the innate right to freedom is the only right human beings have in virtue of their humanity. This has led some human rights theorists to interpret it as a "proto natural right" that serves as a foundation of Kant's theory of positive rights. Yet, in Ch.37, Katrin Flikschuh argues that such a foundationalist interpretation of innate right is *contra* Kant's basic methodological commitment to non-foundationalism. In her view, non-foundationalist interpretation of the innate right yields an account of the right such that it is conceptually different from human rights. Thus, innate right is justificatory (but not morally or logically) prior to positive rights in a sense that it ensures their legitimacy. On the other hand, human rights fall within the domain of right (i.e. juridical duties) and can play a role only at the end of law making process as a "reflective reminder of human fallibility" in the political context (p.665). Therefore, the only Kantian account of human rights consistent with his

practical philosophy would define human rights as a transcendent concept, i.e. a reflective, critical notion whose substantive content cannot be determined. Yet, she also argues that taking human rights as the transcendent idea that is objectively indeterminate well reflects what in her view is one of the main features of a contemporary human rights concept—its indeterminacy. In the subsequent chapter, Andrea Sangiovanni also argues that Kant's account of innate right cannot serve as a foundation of positive rights since it cannot justify what he takes to be the main feature of human rights—*pro tanto* licensing direct external intervention in a case of its violation. Following Sangiovanni, there cannot be a Kantian theory of human rights for three reasons. First, external intervention would amount to unilateral action that violates the moral right of political authority as omnilateral will to rule in state. Second, external imposition of the innate right would lead to divided sovereignty, which is *contra* Kant's conception of sovereignty as indivisible. For Kant, the same reasons that rule out the right to internal resistance to political authority also rule out external intervention. Thirdly, Kant's understanding of dignity cannot ground human rights since it belongs to the domain of ethics, i.e. it guides internal attitudes and reasons, while human rights belong to the domain of right, i.e. juridical constrains over actions. Similarly to Flikschuh, he concludes that contemporary interpretations of Kant in the context of human rights amount to "one of the greatest misappropriations in the history of political thought" (p.689).

This summary provides only a fragment of the very rich discussion that the book offers. Given that this book contains many diverse and often confronting positions, it is hard to evaluate such a comprehensive volume. Yet, if we accept that inclusiveness and originality are important evaluative criteria for an edited volume, then the book is surely a valuable contribution to our thinking about human rights, since it not only contains opposing views, but also brings new topics into discussion. Importantly, it does not offer any definitive response, but instead helps us broaden our perspectives and critically engage with practically overused, and yet philosophically under-theorised, concept of human rights.

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