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BOOK REVIEW

Human Rights and Human Well-Being

by William J. Talbott

Oxford University Press, 2010. xiv + 410 pp. £55.00 / $99.00

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In his first volume on human rights, *Which Rights Should be Universal*, William Talbott made the case for a set of human rights that ought to be regarded as universal. Now comes the second volume, very much related to the first, though not dependent, in which Talbott puts forward a consequentialist argument for basic human rights that governments ought to guarantee to their citizens. This list is an expansion of the one generated in the first volume, based on the idea that the philosophical argument in this volume allows for such an expansion.

Because Talbott's project is a consequentialist one, the goal is to make a case for human rights based on the notion that such rights increase human well-being. This project isn't entirely unique; think of the consequentialist argument of T.M. Scanlon or the modified version presented by Robert Nozick, both discussed at length in this volume. Nonetheless, Talbott's (2010: 26–27) book offers a new account that is worth serious exploration, both because of the breadth of the scholarship and because of the depth of analysis when it comes to putting forward his own theory, designed—in his own words—to contribute to the project of improving "our ground-level moral judgements" by establishing "a meta-theory of human rights" that provides "guideposts for improvements in current opinions and … resources for understanding why future changes are improvements."

The difference between the ground-level and a meta-theory, Talbott explains, is that the latter explains the judgements we make about the former. As an example, Talbott considers what most people take to be an obvious ground-level moral judgement, namely that coercion is wrong. While we recognize the general principle at work here, we also intuitively understand that it does not hold in all cases; that is, co-

ercion is not *always* wrong even if it is *usually* wrong. What we need, then, is to consider "that there is a higher level of explanation at which it is possible to explain the moral appropriateness of ground-level moral judgements, including particular moral judgements, norms, and principles (when they are appropriate) and their moral inappropriateness (when they are inappropriate)" (2010: 15).

It is at this meta-level that Talbott (2010: 15) identifies what he terms the main principle, "an exceptionless principle that not only explains the moral appropriateness of changes to the ground-level particular judgements, norms, and principles, but … also explains why substantive ground-level norms and principles always (or almost always) have exceptions." Talbott (2010: 66) fully develops this main principle in the book's third chapter, finally arguing that its content can be expressed as follows:

> A change in or exception to status quo moral or legal practices is endorsed as an improvement by the main principle just in case the change, when evaluated as a substantive social practice and as a practice of implementation, would not reduce the life prospects of bystanders and would make the overall system of social practices one that does a better job of equitably promoting life prospects of all participants, except those covered by the responsible non-compliance exclusion, than the status quo system of practices, and also does a better job than any of the relevant alternatives.

Looking at a series of examples based on different human rights, Talbott then proceeds to explain the various ways in which the main principle and the consequentialist grounding of human rights that proceeds from it should be seen as superior to alternative conceptions. But the exhaustive nature of the examples undertaken by Talbott might well serve to undercut his argument, as he occasionally fails to explore the non-consequentialist arguments as fully as he might have done if he had pursued fewer examples. As Murphy (2011) notes, in taking Rawls to task on the question of reasonable and unreasonable views, Talbott unsuccessfully employs the example of the rights of women:

> He asserts, without argument, that there is reasonable disagreement about whether women should enjoy many of the rights covered by the UN list of human rights. In Talbott's terminology, reasonable disagreement means that there are good reasons supporting views both for and against such rights. It is unclear what he takes to be the good reasons that support the denial of human rights to women. Talbott never spells out the standards for distinguishing good versus bad reasons for supporting a particular view. He also never spells out what the reasons are in this particular case, gesturing towards the potential religious grounds for such denials (which presumably are the grounds to which the Taliban, for example, appeals) without considering the controversy surrounding the legitimacy of such interpretations.

While these sorts of problematic examples occasionally crop up and are not solved, they do not really stand at the centre of Talbott's impressive argument, which rests on the presumption that moral reasoning occurs in a bottom-up rather than a top-down manner, a presumption that I happen to share with Talbott. In my own work on the subject of human rights foundationalism, I make the argument that the con-

temporary human rights regime is the result not of our having discovered some truth about the universe but instead of the international overlapping consensus—on both rights and the dignity that grounds those rights—that is represented by the Universal Declaration of Human Rights (cf. Kohen 2007).

The benefit of a bottom-up approach is that it doesn't suffer from what Talbott (2007: 113) refers to as epistemic immodesty, namely that proponents of a top-down approach believe themselves to apprehend some "source of infallible moral knowledge." But one important problem with any such bottom-up approach is that it is necessarily radically contingent and could, therefore, change at any moment. There are many ways to come to terms with this problem, including referencing the problem of epistemic immodesty or simply embracing contingency and stressing the need to continue to provide good reasons in favour of maintaining (or even expanding) the human rights regime.

But while we can certainly get around the problem of bottom-up approaches to human rights foundationalism, the challenge for consequentialists is to explain why their version of human rights stands up to the same scrutiny as non-consequentialist theories. In other words, if Talbott's list of human rights stands on its ability to produce greater human well-being when protected, then it will necessarily also be the case that rights can be abrogated whenever doing so would produce even greater well-being. This, it seems to me, is that fundamental challenge facing any consequentialist view of human rights of the sort that Talbott wants to put forward, namely that the rights can be disregarded with a sort of ease that non-consequentialist theories would never allow.

Nonetheless, Talbott's *Human Rights and Human Well-being* is a fascinating read for anyone—consequentialist or not—with an interest in the theoretical arguments surrounding the origins of human rights.

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