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Ontology and human rights

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This paper examines the question of whether human rights are related to ontology. It examines perspectives on this question from human rights theories in the Western and African traditions of philosophy and defends the thesis that a good account of human rights requires an explicit ontology of the human, and that taking this seriously engenders divergent conclusions about what rights are. It then proceeds to claim that the African Charter on Human and Peoples’ Rights adds substantive features to the International Bill of Human Rights, and that the Charter expresses Kwame Gyekye’s ontology of the human being.

Introduction

A major object of this paper is to examine the question whether human rights are related to ontology at all, and if they are, then what is the relation that obtains between them. Paradigmatically, these rights have been conceived as standards of justice that are deemed sufficiently desirable for human welfare to merit observance. All the instruments that constitute the International Bill of Human Rights (IBHR) conceive of human rights in this way, as do several theorists of human rights. The cumulative meaning of this conception is that human rights constitute natural rights accruing to persons “simply in virtue of their humanity” (Beitz 2009, 60). This meaning is germane to the question I seek to examine, which is necessitated by a tendency in contemporary discourse on human rights to dissociate it from ontological claims, a tendency demonstrated in African philosophical debates by Metz’s insistence that moral philosophies are best formulated without ontologies. In Metz’s view, violating Hume’s observation that moral judgments cannot be derived from claims about matters of fact (Hume [1739] 1986, 469). According to him, all attempts to “bridge the ‘is/ought’ gap” are fallacious (Metz 2014, 189), and “nothing moral, just or otherwise prescriptive straightway follows from any ‘purely’ metaphysical view” (ibid., 190).

Two prominent strands of this orientation in human rights discourse can be delineated. One comprises a pragmatic argument advanced by Beitz (2009) and others, and which implies that human rights breaches have an enormous effect on the quality of human life and dignity of persons, and so resolving them requires some urgency. Therefore a resort to ontological considerations as a means of resorting them is redundant. The idea here seems to be that action to redress the causes and effects of the absence of certain human rights is philosophically more desirable than discourse on the grounds of such rights. The second strand of such rejection of ontology is characteristically rendered in the view that rights that are universally attributable to human beings can be self-justifying intuitively, and need no external justificatory grounds in ontology. This latter position indicates the brisk activity of Hume’s “is/ought” distinction in human rights debates.

The cumulative meaning of this is that the evaluative perspectives underpinning human rights claims commit a claimant to defending a particular kind of ontology. In motivating this claim, I observe that the naturalism of the paradigmatic conception of human rights proclaim norms of justice that, when heeded, lead to a humanly liveable life. These norms are rendered as entitlements.
and responsibilities that accrue to human beings by virtue of their being human. The entitlements are premised on the assumption that human being-ness confers an intrinsic value and dignity from which these rights derive, and that a fulfilled and dignified human life would seem to necessitate the realisation of the claims inherent in these entitlements and responsibilities. It is my view that these assumptions underlying human rights – assumptions about human good, about what counts as knowledge, and desirable responses to others’ needs and well-being in a political community – require an account of what the thing (the human) is to which these attributes are ascribed. If these rights accrue to persons “simply in virtue of their humanity”, then the question necessarily arises as to what is this being, to which certain attributes are supposed to inhere in her human-ness? This, then, is the ontological question that necessarily confronts claims of human rights.

In contrast to this, the view that normative theory presupposes some vision of the nature of reality is widespread in African philosophy. A general statement of this view can be found in Murove (2009) and Imafidon (2014), and an explicit statement of it in Gyekye’s assertion that moral considerations “may, in some sense, be said to be linked to, or engendered by, metaphysical conceptions of the person” (Gyekye 1997, 36). This paper will defend Gyekye’s position, and the following three claims: (a) a good account of human rights requires an explicit ontology of the human; (b) taking (a) seriously will engender divergent conclusions about what rights are, but that this need not result in moral relativism; and (c) the African Charter on Human and Peoples’ Rights adds substantive features to the IBHR, and expresses Kwame Gyekye’s ontology of the human being.

Ontology, subsistence rights and the Bill of Rights
Contemporary rights theorists are often content with observing Hume’s guillotine, and avoiding ontological claims. Several human rights theorists in the Western tradition of philosophy claim that their approach supports human rights independently of any particular ontological claims. This has been recently argued by Allen Buchanan in his book, The Heart of Human Rights (2013). Buchanan admits the persuasive weight of ethical pluralism, which he defines as “a plurality of valid moralities, none of which is uniquely rational” (249), and denies that this poses any serious challenge to the existing international human rights regime, which he takes to be fundamentally legal rights. When they satisfy appropriate epistemic and normative conditions, such multiple moralities accommodate no rational basis for asserting the superiority of one above another (Buchanan 2013). Let me set aside questions pertaining to the soundness of Buchanan’s position that provisions of the IBHR are fundamentally legal norms as it does not directly bear on my present concerns. Instead, I point to two noteworthy implications of it. The first is that belief in a plurality of valid moralities is a plausible position to uphold, and the other is that human rights can be defended from a wide range of moral outlooks involving different assumptions about human beings and their societies.

My interest in these implications of Buchanan’s ethical pluralism, specifically his position that human rights either are or are not compatible with a wide variety of ethical views, is that it is not inconsistent with the view that human rights approaches can be accommodated in ontologised ethical frameworks. In my view, it does not seem unduly uncharitable to attribute ontological claims to Buchanan, in spite of his ardent disinterest in using the term “ontology”. Such attribution is particularly warranted when we consider his assertion that the moral foundations of the international human rights regime recognise “the social nature of human beings and the role that community plays in their good” (Buchanan 2013, 274). I will return to the significance of this concession to “nature” during my discussion of rival ontologies in the next section. For now, suffice it to keep in mind that the fact that his ethical views are not devoid of ontological presuppositions is especially worthy of attention, precisely because he refrains from mentioning these presuppositions as framing those views. It is difficult to see how, with his validation of ethical pluralism, Buchanan can escape commitment to the belief that human rights ideas can be found present in different cultures, with differing ontological assumptions. If we acknowledge ethical pluralism and the grounding of ethics in ontology, then are we committed to ontological pluralism. With this, we also commit to human

3 By this I refer to Hume’s well-known insistence on the diametrical opposition and difference between factual statements and prescriptive or normative statements.
rights universalism. However, the condition for such commitment to human rights universalism is 
a determination to achieve it only through the mechanism of deliberation from plural ontologies 
and their attendant conceptions of the good, until an overlapping consensus is reached through 
a convergence of these different perspectives. The plausibility of such a convergence is well 
established in liberal political philosophy through Rawls’ *Political Liberalism* and *Law of Peoples*, 
where the fact of political pluralism is considered achievable from divergent conceptions of the 
good, including metaphysical pluralisms. As I state in the final section of this paper, commitment to 
ethical pluralism does not imply, on both the Rawlsian view and mine, aprioricity of the universality 
of human rights norms. There is no universally necessary basis of these norms, only contingent and 
divergent bases, which nevertheless can seek and achieve convergence.

Beside Buchanan’s tacit assent, explicit allusions to ontology occur in influential rights talk. 
Nussbaum, for instance, builds presuppositions into her capabilities approach4 to human rights that 
are stronger than mere approximations of an ontology. To begin with, she admits that “a notion of 
the [human] species” (Nussbaum 2007, 180) informs it, and that “the capabilities approach holds 
that the basis of a claim is a person’s existence as a human being – not just the actual possession of 
a set of rudimentary ‘basic capabilities’, pertinent though these are to the more precise delineation 
of social obligation, but the very birth of a person into the human community” (ibid., 285). I 
understand Nussbaum to mean by these that there is such a thing as human nature, that a normative 
aspect can be attributed to this nature, and that her approach has a normative perspective on it. Her 
perspective of what this nature is, is what I call ontology. It is worth noting that the ontological 
presuppositions of her approach disregard Hume’s law: “First of all, the notion of human nature 
in my theory is explicitly and from the start evaluative, and, in particular, ethically evaluative” 
(Nussbaum 2007, 181). Secondly, she does not discard the natural rights approach, as her theory’s 
evaluation of human nature proceeds by selecting from among characteristic features of human life 
normatively fundamental ones whose absence deprives one of “a fully human life, a life worthy 
of human dignity” (181). Thus, Nussbaum’s capabilities-based entitlements arise from what she 
considers to be basic and morally salient characteristics of human beings, and are derived from “the 
species norm” (285).

Covert adoption of ontological assumptions under explicit disclaimers of their insignificance 
characterises the claims of advocates of the human right to subsistence, which I consider as a specie, 
of particular importance, of the general orientation of civil, political and economic rights in the 
liberal conception of human rights. In his enthusiastic defence of the human right to subsistence, 
Jones affirms such rights to be necessary elements in any defensible list of human rights (Jones 
2013). He argues that they are so fundamentally significant that “it is hard to imagine how anyone 
could deny the importance” (62), that they “represent a rights-content that applies universally” (62). 
Furthermore, they are “emphasized by almost every major theorist who has recently thought about 
human rights” (63), and “widely affirmed by reflective theorists who have considered the arguments 
for themselves” (63–64).

As noted in the introductory section, a distinctive feature of subsistence rights theories is their 
pragmatic argument against the need for their ontological grounding. Such is implied in Beitz’s 
emphasis on “the urgency of the subsistence interests that anti-poverty rights are supposed to 
protect” (Beitz 2009, 166). Subsistence rights theorists hold that the right to minimal goods that are 
necessary for survival (food, clothing and housing) is a human right, and that this is a universally 
and intuitively valid claim, as nobody could possibly deny, or be denied, such a right regardless 
of their conception of personhood. Such rights are held to be legally and normatively anchored in 
Article 25(1) of the Universal Declaration of Human Rights (UDHR), which seeks to guarantee a 
standard of living

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4 A theory of social justice centred on entitlements of citizens, that are “necessary for a decent and dignified human life”(Nussbaum 2007, 
166); and which envisages human beings as cooperating to achieve, among others, “compassion for those who have less than they need 
to lead decent and dignified lives” (156–157). The capabilities approach represents moral reasoning about justice that does not rival the 
human rights approach. It is rather a species of human rights reasoning, as they both stress entitlements of the human being and outline 
goals for development.
adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control,

and to Article 2 of the United Nation’s International Covenant on Economic, Social and Cultural Rights, which enjoins states to

take steps, individually and through international assistance and cooperation, especially economic and technical, to the maximum of its resources, with a view to achieving progressively the full realization of economic, social and cultural rights.5

The claim to the universality of minimal and natural rights has been validated by developmental economists and philosophers. Jeffrey Sachs, a development economist, perceives ending the plight of those that live in extreme poverty to be a primary challenge for our generation in a global society (Sachs 2005, 24), and that “a global compact” comprising “a global network of cooperation among people who have never met and who do not necessarily trust each other” (226). In this compact, the rich world must assume an obligation to close the traps of poverty because the costs of doing so are now such a small fraction of the vastly expanded income of the rich world (289) and also because extreme poverty abroad can threaten the national security of rich countries (331). Several philosophers reason that the grounds of the responsibility to act by providing subsistence goods universally inheres in beneficent sacrifice, which enjoins the rich to not “exhaust our duty to aid others when we can” (Scanlon 2000, 224). These conditions of beneficence are affirmed by Ashford, who reasons that such obligation arises when an agent is in a position to give help to others in serious need as a result of extreme poverty (Ashford 2003).

Several critical thoughts have emerged against subsistence rights. Hope (2013) challenges their conception as natural rights that are philosophically justifiable on account of moral reasoning about common humanity. He maintains the view that the moral demands created by subsistence needs are plausibly imperfect duties and so cannot correlate to a natural right to subsistence. Meckled-Garcia also challenges the idea of the necessity to provide subsistence goods universally by reasoning that in both social and asocial arrangements, the right to subsistence turns into a diversion from social justice (Meckled-Garcia 2013). He reasons that in cases of social arrangements where designated institutions responsible for the equitable distribution of public goods exist reducing human rights to the provision of subsistence goods amounts to an injustice because the appropriate minimum standard of fairness required in such a context is “a fair share, not a minimal right” (74). Even in non-social contexts, such as at the level of individual relations, describing human rights in terms of entitlement of the needy to subsistence goods poses problems because it is difficult to justify the reasonable burdens that individuals owe to others in providing subsistence goods (Meckled-Garcia 2013). This, in his view, is a dilemma which human rights defined in terms of subsistence rights poses, and which necessitates his proposed alternative view of human rights as

not outcomes-driven, but rather respect-based. Burdens are not justified by a benefit-burden trade-off, but the permissibility of certain actions and omissions given what they say about respect for others and the separateness of persons expressed in condition R (Meckled-Garcia 2013, 84),

where R means: For a claim to some outcome to be a genuine entitlement, the implied burdens for others of securing or allowing the outcome must be justifiable as reasonable (which means that due weight is given to people’s capacity to develop and pursue their own legitimate commitments) and reasonably assigned.

To these criticisms, let me add that it is not at all clear how the conditions of beneficence specified by subsistence rights theorists suffice to justify a theory of human rights that prescribe responsibility to act to help those in need. Their allusion to cost as a major factor in justifying

5 Adopted by the General Assembly resolution 2200A (XXI) of 16 December 1966.
beneficent commitments terminates in a perception of human needs in economistic terms, and this displays a parochial view of moral obligations that questions its universal applicability. The view that the economic condition of people is the decisive determinant of their poverty or needfulness may not be universally valid. It may very well be that it is not financial resources that can alleviate the subsistence needs of a person, but rather disregard of what that person conceives herself to be that is appropriate evaluative criteria of a person’s needs. For instance, Wiredu has convincingly argued that the most fundamental precept of Akan moral thinking is *onipa na ohia* and interprets this to mean “human fellowship is the most important of human needs” (Wiredu 1992, 194, 201). The object of such fellowship is not material assistance. This is easily inferred from the epigram that Wiredu abridges, which claims: *onipa na ohia; se mefrɛ sika a sika ngye so, mefrɛ ntoma a ntoma ngye so; enti onipa na ohia* (“Human fellowship is the most important of human needs, for when I call on money, I receive no response; when I call on clothing I receive no response, so [it must be] human fellowship that is the most important of human needs”). I suggest that the cumulative point to be inferred from this is that it is credible to assert that for Akans, subsistence needs may not only be understood in terms of economic deficiency and morally admirable aid measured in terms of economic assistance. This allows for conceiving the normative agency that grounds human rights as extensive enough to include non-material attributes and events that enhance human welfare in the category of subsistence needs, because the absence of such, in some cultures may be considered a bigger affront to human dignity than hunger.

Furthermore, to say that subsistence goods are the minimal necessities for survival is to say also that they are the most important things about a person to be protected. In this way, the claim of minimal requirements simultaneously claims that these requirements are essential and therefore of maximum concern. It is hard to not detect an implicit ontology in these claims. For, they affirm certain physical attributes (need for enough food, for example) as the most important things that define the needs and identity of a type of animal – the human. Clearly, there is an allusion in this to what it is that marks that animal out as human, but in the literature on subsistence rights this ontological feature is, without exception, implicitly assumed, but not expounded and defended. In fact, the assertion that (subsistence) rights are universal human rights and intuitively self-justifying is configured to deny the relevance of ontology to human rights. But a decidedly African perspective is that in the context of normative theory, ontological claims cannot be left unrecognised and unclarified, and that when one says nothing about what one ought to say something about, one leaves oneself exposed to the suspicion that one is admitting several things. Hence the failure of subsistence rights theorists to clarify their ontological presuppositions makes their minimum requirements quite maximally noteworthy assertions, as the declarations of the universality of these requirements press for validation and defence. Rather than settling the question of what it is that *is* the being that deserves subsistence rights as minimally necessary rights, their assumed universality of the attributes of humanness and person-ness obscures the cultural specificity of the norms that they assume to be universally applicable. But this assumption itself amplifies the need to settle the question of the human-ness of the human being that is supposed to have those attributes.

**The liberal ontological presuppositions of the IBHR**

In spite of critical commentary on claims of the necessity and universality of the right to subsistence, its advocates continue to exert influence in human rights theory and practice. In this section, I call attention to the strategy of subsistence rights theorists of indexing subsistence needs to individuals and to them only. I wish to highlight this because the individual-ness of the subject owners of

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6 The Akan is a folk group that inhabits much of the south and middle belts of Ghana as well as the eastern part of the Ivory Coast. Akans are the largest folk group in both countries, and constitute about 40% of the population of Ghana. The largest and most politically and militarily successful of the constituent groups in Ghana, the Asante, established a kingdom in the late 17th century which flourished into an empire in 1701 and endured until it was defeated by the British in an anti-colonial war and made a British Protectorate in 1902. However, in 1935, the British granted the Asante self-rule as the Kingdom of Ashanti, a semi-autonomous polity in the fold of the Gold Coast Colony.

7 The vowel “Ɛ” that occurs in some of the words in the epigram is pronounced as the “e” in the English word “egg”.

subsistence rights mirrors the disposition of the entire International Bill of Human Rights (IBHR), which provides the dominant framework for discussing international cooperation and justice globally and has earned universal acclaim as the source of the best standards and definition of human rights. The component instruments of the IBHR avoid explicitly grounding rights in ontological claims. Yet there is good reason for claiming that the norms enshrined in those instruments proceed in disguise from a liberal ontology of the person.

Although the foundational instrument of the IBHR, the Universal Declaration of Human Rights (UDHR), renders no explicit endorsement of liberalism, its liberal orientation is easily intuited in the ubiquitous presence of paradigmatic terms of liberalism such as “freedom”, “liberty”, “equality”, and “reason”, and in the preponderance of the provisions affirming personal civil and political rights over those that espouse social and economic rights and duties. Of the thirty Articles of the UDHR, only one – Article 29 – makes any statement on the individual’s duties to the community. These illustrate a mode of thinking that upholds the primacy of individual freedoms and human rights. Furthermore, although the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) emphasise rights that are allotted trivial significance in dominant classical and neoliberal theories, such as the right of all peoples to self-determination and to economic, social and cultural development, various sections of these covenants also indicate a bias for civil and political liberties. Of the twenty-seven Articles of the ICCPR that relate to the rights of persons, only a few do not primarily defend civil and political liberties (Ajei 2015). The ICESCR places more weight on social and economic rights than the UDHR and ICCPR. However, I have argued elsewhere that its inherent ambiguities subvert its intent to espouse the equal value of all human rights (Ajei 2015).

The primacy accorded civil and political rights in these instruments assumes the primacy of the human individual, ontologically, over community. One might object that this supposed primacy does not spring from the precise content of these rights, but from the way in which they are described. The question to consider here is whether the focus on the individual is just packaging, or the content of the rights are divorceable from the language in which they are couched. Regarding this, however, I am inclined to think that the persistent use of the words that imply primacy of the value of individualism suffices to establish the conceptual preference for individualism. Denying this would mean asserting that the language of rights means nothing. If the contents of rights are described in rights language that has been consistently invoked and affirmed for decades, then rights language has to mean something.

Underlying this primacy is some version of a social contract in the liberal tradition, by virtue of which a measure of the individual’s sociality is negotiated and formalised, and the community made to bear substantive acknowledgement of her membership and needs. Accordingly, a most fundamental value of liberal political philosophy is an “a priori assumption in favour of [the] liberty of autonomous and self-directed beings” that must be enjoyed without interference or the need for the consent of others (Mill 1987, 262). This exemplifies how human rights in liberal political thought is conceived essentially as the rights of individuals which are justifiably claimed “against the state and against society as a whole” (Howard 1990, 159). The individual in liberal rights theory thus becomes a bearer of rights that are tied to state action. The state is the bearer of duties to the citizen, and bearer of its right to self-determination. This is understood as representing the ability...
of its citizens to maintain their status within the international system of polities and the state’s
domestic constitutional status (El-Obaid and Appiagyei-Atua 1996). This presumption in favour
of the moral pre-eminence of the individual over community harbours an ontology that the natural
state of the human being is that of a discrete being exerting her powers to fulfil her self-interest. We
find this exemplified, first, in the IBHR’s assignment of the individual human person as the central
subject of human rights and the principal beneficiary the rights and freedoms constituting the IBRH
and its tendency to prioritise civil and political rights over economic and social rights.12
What establishes more firmly the liberal ontological foundations of the IBRH is its notion of
self-determination, whose vacuity questions its practical usefulness. The two latter covenants of the
IBHR acknowledge the substantive priority of the provisions of the UDHR and UN Charters. Thus,
the covenants accept that the validity of their own provisions are contingent upon the consistency
of these provisions with those of the UDHR. But the UDHR proclaims standards of rights that are
supposed to be universal, meaning not only that they are necessary standards of justice for all human
beings, but also that they are universally applicable. What this means is that either (a) the universalist
aspirations of the UDHR and the claims of the Conventions to people’s self-determination are
inconsistent – inconsistent if the covenants’ vision of self-determination undermines the UDHR’s
universality claims, or (b) the right to self-determination declared by the covenants precludes the
right of a people to determine what qualifies for them as rights for human beings. But a vacuous
notion of self-determination such as is exhibited by (b) can hardly be helpful in substantiating the
universality of rights. I argue in the concluding section of this paper that the African Charter on
Human and People’s Rights presents a concept of the right to self-determination that differs from
the understanding of it in the covenants, and that Gyekye’s ontology is in accord with the Charter’s
concept.

A case for Gyekye’s ontological hybridity and ontologised ethics
Accepting ethical pluralism and Nussbaum’s strategy of grounding capabilities entitlements on
“the species norm” provides justification for the commitment that different cultures can hold rival
conceptions of the human. This in turn supports the reasonableness of different cultures formulating
and applying differing notions of right and wrong, and justice. As discussed above, none of these
diverse notions qualifies to be considered superior to the other once these others pass appropriate
epistemic and normative conditions. This affirms the view that rival conceptions of human rights
– including the right to determine what precisely comprises human rights – count as legitimate
conceptions by virtue of the reasonableness of ethical pluralism. And if ontologies need not be
universal in scope and application, then the soundness of the universalist aspirations of the IBRH,
grounded on liberal ontology of the person, is placed in question.

As established in the introductory section, the interdependence of ethics and ontology is well
accepted in African philosophy. Decades of discourse in support of the idea that African ethical
frameworks are ontologised begins with Tempels ([1945] 2010). This position has been most
recently affirmed by Chemhuru in his claim that the question of “being or existence in general
and morality are closely intertwined” in most African societies (Chemhuru 2014, 74; emphasis in
original), and by Imafidon who states that the
donation of being permeates the notion of the good in African traditions in the sense that the
validity, interpretation and justification of the good is intrinsically liked to the extent to
which such a good sustains and promotes unity in the structure of being (Imafidon 2014,
49–50).

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12 Some authors distinguish “negative” from “positive” rights, and identify negative rights as those that do not require state action (e.g.
refraining from torture), and positive rights as those rights that require state action (e.g. provision of food). This distinction often considers
civil and political liberties to be “negative” and economic rights etc. to be “positive”. Rhoda E. Howard-Hassmann, in dialogue with
me, established reasons for rejecting such a strict dichotomy, and illustrated this with the example that refraining from torture requires
committing resources to train the police (positive), and the right to food sometimes just means refraining from depriving small-scale
farmers of their lands (negative). I agree with her position, and will therefore aim in this paper to advance the view that these two supposed
categories of rights are not diametrically opposed but dovetail into each other.
These validate the position that a normative ethical theory is justifiable when it proceeds from or incorporates a conception of what human beings are. Justifications for human rights under this tradition of thought, then, cannot irrevocably excise the structure behind the existential conditions that generate the political obligations for observing human rights. For, if human rights as a species of moral reasoning about justice derives from normatively significant conditions that generate entitlements to decent and dignified lives, then it pays to proceed from conceptions of the antecedent subject matter of those existential conditions, i.e. of the substance of the thing whose being deserves dignified treatment. This substance subject, whose conditions are taken to merit ethical evaluation and response, needs to be explicitly identified, for it is only then that a meaningful list of conditions can be drawn up and ethically evaluated in a manner that generates appropriate responses to the security and welfare of that existent. In most African cultures, social structures and responsibilities are essential to the being of a person. For this reason I wish to resort to an African ontological account to defend my thesis. The one I elect to appropriate is Kwame Gyekye’s moderate communitarian theory.13

A strong consensus exists among African philosophers that African communitarian thought asserts the ontological and moral relevance of community in defining the essential attributes of personhood. Social roles matter in defining personhood, for our status as human is grounded in our participating in the humanity of others, or to put it differently, in our “being human with others”. The individual can only say: “I am because we are, and because we are therefore I am” (Mbiti 1970, 141). A person is, on this view, by nature simultaneously a post-communal being and inseparable from community ties. For community “defines the person as person…and personhood is something which has to be achieved, and is not given simply because one is born of human seed” (Menkiti 1984, 172). Kwame Gyekye has characterised this variant of a communitarianism as excessively strong and unwarranted. I devote the rest of this section to Gyekye’s contestation of this and elaboration of his “moderate” version of communitarianism as prelude to my showing in subsequent sections that his version affords a successful ontology for the norms of the African Charter of Human and People’s Rights (ACHPR), which is standardly taken to extend and defend provisions of the IBHR.

Gyekye holds that humans are simultaneously social and individual beings by nature. Humans are unavoidably dependent on social relations for the sustenance of their being, but this does not mean that they are fully defined by their social context. Rather, human beings retain these dual and relational sources of the self – relational in the sense that dependence on social relations is essential for their individuality – without dissolving this individuality in a communal pool of norms and beliefs. In Gyekye’s theory, natural membership of community inheres in the fact that human existence necessarily commences in a community of well-defined social affiliations. Although the right to discard these affiliations is considered so fundamental that it is granted a priori in African cultures (Wiredu 1990), this option is hardly exercised because community life per se is hardly considered as optional for the individual (Gyekye 1997). Individuals are not only naturally embedded in a context of social relationships, but they are also by nature mutually interdependent, and this makes them inherently orientated towards other humans in the bid to fulfil their humanity. The idea of mutual interdependence as a human mode of being in African thought, and the reciprocal responsibility it solicits from everyone, is based in Masolo’s (2004) view on a distinct fact of human life, which is that to be human is to differ and be different, but not to be indifferent, in the social setting.

In spite of the relevance of such a network of relations in defining the nature of a human being, the moral worth of autonomy is guaranteed. Gyekye is emphatic that the ontological primacy of community should not be mistaken for a negation of the moral worth of individuality, for the promotion of the common good of shared relationships does not merit violating an individual’s rights or dignity (Gyekye 1997). For, the common good, which Gyekye equates with “the social conditions that will enable each individual to function satisfactorily in a human society” (Gyekye 1997, 64) prohibits cultivating a “cramped and shackled self responding robotically to the ways and

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13 Gyekye has been among the most influential African political philosophers since the 1990s, and his moderate communitarian theory is well tested in African philosophical debate. This makes its appropriation to justify my thesis plausible.
demands of the communal structure” (ibid., 55–56). What this suggests is that for Gyekye the human being is an ontological hybrid, an inherently autonomous agent and an object of moral value whose moral autonomy is active enough to facilitate her rejection of imposed norms that do not accord with her deliberative conclusions. Thus, in Gyekye’s theory, self-directed pursuit of self-interest counts as a moral good provided it is not directed at wilfully ravaging the stock of common good. The foremost aim of his theory is to bridge an individual and her community’s interests by emphasising her duty to contribute to accruing the common good as well as the community’s duty to aid the individual in achieving this and of caring for the interests of its members.

Two objections may be raised against this account of Gyekye’s communitarianism. One may claim that it is indistinctive and does not contrast the liberal account of persons, as it approximates the views of progressive liberals. Secondly, one could express doubts about whether moderate communitarianism offers an ontology of the human rather than a normative account of personhood. I doubt that either of these objections can succeed. Moderate communitarianism differs substantially from liberal theories that advocate the relevance of community. It would be uncharitable – perhaps even false – to attribute to liberals with communitarian sympathies, like Rawls, denial of the relevance of community to the lives of persons. But in Rawls, social cooperation is attained by willing parties who pursue the realisation of their own conceptions of the good within the impartial constraints of the original position. What this means is that he thinks of persons as dependent on community for mutual benefit, and this makes community normatively important for the welfare of individuals. This does not repudiate reducing the human being to a self-contained, even if not self-supporting, fragment in a whole, and thus render the social dimension of a person an additional factor considered only to augment her individuality, but not as fundamental and necessary to her being human. For the constraints of the original position necessitate the self-interested conclusions of an individual detached from benevolent ties and ensconced in the pursuit of her own interests independently, even if this may circuitously serve the interests of others. Thus, Rawls’ liberal human is by nature a discreet individual that has social ties for reasons that are not constitutive of her being. Obligations of her sociality, if recognised at all, are only contingent on obligations to herself by virtue of her rights as an individual (Taylor 1992). The difference between this view and Gyekye’s is that for Gyekye the human person is by nature a composite of individuality and sociality. She is a “unity in duality, a duality in unity” (Gyekye 1995, 98), for whose being a commune is as natural and necessary as her individual autonomy. This statement at once emphasises Gyekye’s drawing on the metaphysical constitution of the person in Akan thought, and his drawing on ontology for his political philosophy and ethic of human dignity. The person is a duality in unity because two of her metaphysical constituents, although logically distinct are ontologically identical (Gyekye 1995). The two are not independent existents held together by an accidental bond. Rather, they are the two attributes of an integral whole that share a symbiotic relationship of mutual and indissoluble dependence. Gyekye’s moderate communitarianism abolishes the dichotomy between the human being and normative personhood, and thus does more than provide a normative account of personhood. It elaborates an ontology of the human person upon which a normative theory is structured. In “Human rights in a moderate communitarian political framework”, (Ajei 2015) I maintain that it is significant and apposite for Gyekye’s normative philosophy to draw on ontology for its ethic of human dignity, and I show how other frameworks of thought, such as liberalism, are not averse to founding secular morality on metaphysical roots.

Gyekye appropriates the Akan theory of the metaphysical constitution of a person as a theoretical support for the integrative person of his moderate communitarianism. I have indicated elsewhere that these metaphysical constituents exhibit a trans-individualist dimension, serve as an adhesive for social bonding and easily translate into normative reasoning such as the idea of an individual’s inviolable rights (Ajei 2014). Thus, in Akan thought, ontological elements play pivotal roles at the social level. They work in unison to insert persons necessarily into communitarian reality, and make reasonable talk of the co-originality of person and community, and of persons as composite realities

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14 I distinguish metaphysics, understood as what we take the first principles of things to be, without any certainty of what they actually are.
that are necessarily and mutually dependent on each other. It is in this way that the relational ontology of Gyekye’s communitarianism structures his normative theory.

The conclusions of ethical pluralism, Gyekye’s moderate communitarianism, affirm the soundness of committing to rival ontologies and their concomitant theories of rights. This may seem to entail a descent into moral relativism. But I doubt if such multiple ontologies would necessarily resist the possibility of a universal appeal of some norms. I think we can find within this framework an opportunity for universalising norms, but I do not think such can obtain a priori. A minimal framework of foundational principles grounded in the right to self-determination in the manner meant by the ACHPR is required as a condition for achieving a set of human rights norms that have universal appeal. The practical value of such a framework would be to guide rival conceptions of the human to develop their own systems of rights, but in such a way that no particular conception or conceptions assumes superiority over others and thus an entitlement to violate the foundational right to self-determination of others. Such minimal principles would serve as a universal source of justification for rival theories of rights. It would be the source from which peoples of the world draw their versions of human rights, and that to which these disparate theories will return for validation of their observance of the principle of self-determination for all peoples.

**Moderate communitarianism, the African Charter on Human and People’s Rights and the task of universalising ontologies**

It is now time to argue the claim that Gyekye’s communitarian theory expresses the ontology for the African Charter of Human and Peoples’ Rights which, in my view, has received less credit than it deserves for its contribution to international human rights norms and law. In this section, I intend to discuss some of these contributions, and to assert the basis of the Charter’s unique features in the relational ontology of moderate communitarianism. One such feature are the footprints of African cultural norms and knowledge in the Charter. The guidelines submitted to the committee of experts that drafted the Charter invited them to draft a document that reflects “the African conception of human rights, [and] African philosophy of law” (Amnesty International 1987, 8). Let us note, in parenthesis, that this is unique in as much as it departs from the temperament and content of the IBHR by recognising the validity of culture-specific values to inspire and characterise conceptions of human rights. The committee’s task appears to have generated distinctive ideas about human rights in the Charter. I discuss a few of these.

A unique feature of the African Charter is its introduction of the notion of “peoples’ rights” to human rights language. The notion of “peoples’ rights” occur in several provisions of the Charter, including the following: “the promotion and protection of morals and traditional values recognised by the community” (Article 17.3); the “unquestionable and inalienable right to self-determination” of peoples (Article 20.1); the right of peoples to their economic, social and cultural development (Article 22.1); and “a peoples’ right to an environment favourable to their [own] development” (Article 24). The Charter does not define “peoples”, and leaves the question of who is entitled to exercise the right of peoples unanswered. Yet, the tone of the provisions in which “peoples” occur suggests an understanding of it in terms of Rawls’s “Society of Peoples”, which he equates with well-ordered societies that seek “proper self-respect of themselves as a people, resting on their common awareness of their trials during their history and of their culture with its accomplishments” (Rawls 1999, 34). Various interpretations of the concept affirm this, which is significant in at least one respect. It suggests that the group of rights holders under the Charter are persons entitled to proclaim an identity that is different from that of a different group or groups of people, for the purpose of “seeking proper self-respect of themselves”, or for some other goal that they cherish. Construed as such, it becomes obvious that the right to self-determination is extremely important to the idea of peoples in the Charter. In fact, the Charter proclaims the right to self-determination. As a human rights standard, this proclamation is not unique, as it occurs in Article 1 of the United Nations Covenant on Human Rights.

15 By this I mean the view that moral or ethical propositions do not reflect objective and/or universal moral truths but instead make claims that are relative to social, cultural, historical or personal circumstances.

Nations Charter, and may be taken to correlate with the principle of sovereignty that regulates international relations. The United Nations has characterised the right to self-determination as a “prerequisite for the full enjoyment of all fundamental human rights” and “one of the pillars of the international human rights order”. I suggest that the African Charter’s notion of self-determination deserves a different interpretation from the standard interpretation of it in the covenants of the IBHR. In these covenants, self-determination is restricted largely to a people’s resolve on their political status within the international system of polities, and their right to choose their domestic constitutional arrangements (El-Obaid and Appiagyei-Atua 1996).

However, I think the African Charter’s self-determination demands more than this. The UDHR declares a priori the universality of the norms that it espouses, and the two covenants of the IBHR explicitly admit their subservience to the UDHR. This means that to interpret the covenants’ notion of self-determination in a manner that is inconsistent with the universality claims of the UDHR is to subvert the purposes of their parent – the UDHR. If so, then the covenants’ notion of the right to self-determination precludes the right by various peoples to determine for themselves what qualifies as the rights of human beings. Yet, it is highly unlikely that the drafters of the African Charter, stimulated by the entreaty to be sensitive to African normative frameworks, would envisage a logical or pragmatic need to repeat the UDHR’s meaning of self-determination, and I see no room for departure from or addition to it. In view of these, I suggest that the right to self-determination in the African Charter should be read as establishing a foundational right for (African) peoples to determine what they take to constitute human rights. The ensuing idea of peoples’ rights, as distinct from and complementary to human rights, would seem to constitute this determination. The African Charter, then, should not be seen as simply grafting peripheral variations onto IBHR norms, but as pointing to a new conceptual direction in the history of rights discourse. The Charter’s references to “peoples” is not accidental, but emphasises the foundational rule of the right to collective self-determination, as expounded in this section. Such emphasis is a conceptual innovation that can complement the idea of self-determination in the United Nation instruments. It is also an innovative approach, in the post-colonial context, to wrestling with the normative disorientation that colonial rule left in its wake. The innovativeness inheres in the Charter’s conception of the right to self-determination as basic, in the sense that obliging human rights articulations have to be in line with what a given people takes to be its particular conception of human rights. This seems to me to be a reasonable reading of the concept, as the drafters of the Charter would not have assembled to imitate what obtains in the IBHR. As mentioned in the next two paragraphs and in the next last section of this paper, I consider the Charter’s right to self-determination as not averse to human rights universalism.

This interpretation of the right to self-determination mirrors Gyekye’s hybrid ontology of the moderately communitarian person, for an idea of the ontological and moral priority of peoples and of community as a bearer of rights is embedded in the interpretation. But, as seen on Gyekye’s terms, the ontological relevance of community does not count for a negation of defining features of the individuality of a human being, and neither does his idea of individuality correspond to ontological atomism. The African Charter affirms this hybridity of human nature. This is established by the manner in which the Charter assigns in tandem the enjoyment of rights and performance of duties to persons and peoples. In my view, this mimics the dual ontology of moderate communitarianism by affirming the ineradicable value of communal goods and yet narrowing the focus of the individual’s communal relations “to bring to bear a sense of [her] liberation, initiative and creativeness” (Abraham [1962] 2015, 66). Thus, the model of human rights that the African Charter’s right to self-determination yields expresses the dual ontology of moderate communitarianism.

Rather than substantiating radical relativism, the possibility of the right to formulate rival ontologies and locally validated norms provides room for achieving a set of universally cherished human rights standards. In saying this I assume competent deliberative ability in the viewpoints

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17 Comment on the right to self-determination by Mr. Martenson, Under-Secretary for Human Rights, at the Third Committee (See UN GAOR C.3, 3rd meeting; UN Doc. A/C.3/45/SR.3 (1990), para.27

18 By this I refer to the position that every normative claim is as true or valid or justified as others, since the interpretation of such claims is relative to the context of the interpretation.
from where these ontologies and norms emerge, and ethical pluralism prescribes that we must accept these as valid or justified given the activity of such capacity. This allows for a sincere convergence of disparate sets of rights standard. But such convergence cannot be assumed beforehand. The condition for achieving this is for all involved in the quest for such standards to endorse the foundational right for all peoples to determine what they take to be human rights, and how these peoples choose to prioritise what they have determined. In view of these, I propose that the right to self-determination should be considered the most fundamental principle of human rights, and that which offers the basis for a possible universal set of rights observed by all. This makes the declaration of a universal set of human rights on the basis of the IBHR’s hollowed-out notion of self-determination look, as Onora O’Neill (2016) has it, like “a set of old shoes” which need replacement. I am inclined to think that Gyekye’s hybrid ontology of the human and the ACHPR’s idea of a peoples’ right to self-determination provide raw material for replacing such worn out “shoes”.

Articles 2 to 17 enumerate civil and political rights that are akin to the provisions of the UDHR instruments. However, several of the provisions of Articles 17 to 24 establish rights that resonate with Gyekye’s dual ontology/moderate communitarianism. In my view, the Charter’s references to “peoples” is not accidental as expounded, but emphasises the foundational rule of the right to collective self-determination. Such emphasis on “peoples” is a conceptual innovation that can complement the idea of self-determination in the United Nation instruments. It is also an innovative approach, in the post-colonial context, to wrestling with the normative disorientation that colonial rule left in its wake. The innovativeness inheres in the Charter’s conception of the right to self-determination as basic, in the sense of obliging human rights articulations have to be in line with what a given people takes to be its particular conception of human rights. As mentioned earlier, such right to self-determination is not averse to human rights universalism.

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