

Odera Oruka's Account of the Foundation of Human Rights: A Critique

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Odera Oruka Seventeen Years On

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Abstract

While H. Odera Oruka is best known for his views on sage philosophy, he spent a considerable portion of his philosophical career agonizing over the question of human rights. The present paper argues that there is need for further philosophical reflection on Oruka's account of the foundation of human rights with a view to refining it.

Key Words

Odera Oruka, human rights, human minimum, liberty

Introduction

While H. Odera Oruka is best known for his work in sage philosophy, he also spent a considerable portion of his philosophical reflections and writings on the question of human rights. This fact is most evident in his *Punishment and Terrorism in Africa* (1985), *Philosophy of Liberty* (1991), and *Practical Philosophy* (1997). Whereas some scholars have given some attention to Oruka's concern for human rights, many of them have sought to examine the internal coherence of his views and their relevance to contemporary society without delving into the question of the rational defensibility of his account of the foundation of human rights.

Consequently, the present paper seeks to answer the question: "To what extent is Odera Oruka's account of the foundation of human rights rationally defensible?" The task of this paper is undertaken with the conviction that the way to truly honour Professor Oruka is to use his ideas as a springboard for further philosophical reflections on Africa's overall development.

The paper sets out with an historical survey of human rights theory from ancient Greece to the present. Thereafter, it presents an exposition of Oruka's conception of human rights. This is followed by a critique of Oruka's account of the foundation of human rights.

Human Rights Theory: An Historical Survey

Human rights are entitlements that are morally owed to human beings by other human beings (Wiredu 1996, 172). The idea of human rights is predicated upon the notion that every individual human being, by virtue of his or her humanity, should have the freedom to define, pursue and realize his or her conception of the good life. From this fundamental conviction arises a whole series of rights designed to ensure that such basic conditions of liberty exist for all members of humankind (Preece 2001).

It is difficult to gainsay the fact that while indigenous African communities held the human person in high regard, they did not engage in elaborate discourse on human rights. Wiredu (1998) challenged African philosophers to utilize the resources of their indigenous languages to test the veracity of various assertions made about indigenous African thought. Leading by example, he subjected Tempels' assertion that for the Africans "Being is force and force is being" to scrutiny based on the Akan language, and concluded that it is impossible to translate it into Akan. The implication is that Tempels' claim cannot be true of Akan thought. It would be interesting to see similar analyses with regard to human rights discourse. On my part, belonging to the Luo ethnic group to which Oruka also belonged, I can confirm that the phrase "human rights" cannot be translated into Dholuo. In Kiswahili, the almost eubiquitous East African language, the term "right" is usually rendered *haki*, the same word used to refer to justice. This rendering makes sense in the light of the fact that rights are entitlements, and justice is all about ensuring people enjoy their entitlements. Yet while the West has long come to speak both of "rights" and "justice", the African languages I am familiar with (Dholuo, Kiswahili and Kikuyu) do not have separate terms for the two concepts. The upshot of these observations is that until the 20th century, human rights discourse was a distinctively Western affair. It follows that Oruka's contribution to this discourse can better be understood by taking cognizance of its Western roots, thus the outline of the history of that discourse below.

The development of Western theories about law and the state from the time of Plato and Aristotle has a direct bearing both on modern political theory and on the respect for the individual's dignity acknowledged by the state as the right of every individual (Vallat 1970, pp.viii-ix). The earliest Greek philosophers focused on investigating the "stuff" of nature, that is, to understand what the universe was made of. The problem of the nature of matter, and its

transformation into the myriad things of which the universe is made, engaged the natural philosophers, commencing with Thales, the leader of the Milesian school, who asserted that the primary principle in the universe was water. For Anaximander, Thales' pupil, the origin of all that is was "the Boundless" or "the unlimited" (Greek: 'apeiron', i.e. 'that which has no boundaries'). For the third and last of the three Milesian giants, Anaximenes, air was the source of all things. Other ancient Greek thinkers also explored the nature of the universe, among them Pythagoras, Heraclitus, Parmenides, Leucippus, Democritus, Empedocles and anaxagoras.

During the Golden Era of Greek philosophy (5th to 4th centuries B.C.E.), Greek thought went through the so-called Socratic turn - a shift from preoccupation with the universe to a focus on the nature of the human person, a shift, that is, from cosmocentric to anthropocentric inquiries. This is why this era is also often referred to as the "anthropocentric period". Thus Socrates, Plato and Aristotle had a lot to say about the nature of the human person, viewing the person as a being higher than plants and animals. In particular, Aristotle asserted, in his *Nicomachean Ethics* I.13, that the soul manifests its activity in certain "faculties" or "parts" which correspond to the stages of biological development, and are the faculties of nutrition (peculiar to plants), that of movement (peculiar to animals), and that of reason (peculiar to humans). Furthermore, in *De anima* III.13, Aristotle singled out that capacity for deliberative imagination as the human person's defining feature.

Aristotle's view that reason is what distinguishes humankind from other living beings had a significant impact on subsequent Western thought. This is perhaps best illustrated by the views of Immanuel Kant that reason is what distinguishes human beings from other animals. Kant holds that in contrast to sense data, human reason is universal and self-consistent - reason does *not* depend on circumstances and individual perception. It was Kant's view that the human person has infinite intrinsic value due to his or her ability to reason (Kant 1785).

Our account of the origins of human rights would be incomplete without a mention of the Judeo-Christian contribution to the topic. That heritage is based on the worldview presented in the Bible, in which the human person is superior to all other beings by virtue of being made in the image of God:

... God said, "Let us make man in our image, after our likeness: and let them have dominion over the fish of the sea, and over the fowl of the air, and over the cattle, and over all the earth, and over every creeping thing that creepeth

upon the earth.” So God created man in his *own* image, in the image of God created he him; male and female created he them. And God blessed them, and God said unto them, “Be fruitful, and multiply, and replenish the earth, and subdue it: and have dominion over the fish of the sea, and over the fowl of the air, and over every living thing that moveth upon the earth” (Genesis 1:26-28; see also Psalm 8:3-8; James 3:8-9).

The Protestant Reformation in the 16th and 17th centuries C.E. reinforced the biblical doctrine of the incomparable nobility of the human person through the affirmation of another biblical doctrine, namely, the priesthood of all believers, a doctrine which upheld the right of every individual believer to be guided by his or her conscience, with the ultimate authority being Scripture rather than a special priesthood (Burns 1970; see John 14:6; 1 Peter 2:3-10; Revelation 1:5-6).

Furthermore, ideas about human rights are drawn from the concept of natural justice, natural law or natural rights, also going back to the ancient Greeks (Sigmund 1971), but also influenced by Locke's interpretation of Judeo-Christianity. In distinguishing between “natural justice” and “legal justice”, Aristotle stated that “the natural is that which has the same validity everywhere and does not depend upon acceptance” (Aristotle 2000, *Nicomachean Ethics*, 189). Thus according to Aristotle, the means for determining the form and content of natural justice is the exercise of reason, without the influence of prejudice or desire.

Partly following Aristotle, John Locke, in his *Two Treatises of Government* (1688), claimed that individuals possess natural rights, independently of the political recognition granted them by the state. Thus the individual possessed these rights even before the state was formed. For Locke, natural rights flowed from natural law, which originated from God. This implied that it was incumbent upon us to rightly discern the will of God if we were to arrive at moral prescriptions that were in harmony with the natural rights that God had put in place. According to Locke, our duty of self-preservation to god entailed the necessary existence of basic natural rights to life, liberty and property. For him, governments existed to protect and promote the natural rights of their citizens (Locke 1690). Here we see an early expression of one of the salient themes in Western human rights discourse, namely, that governments ought to be restrained from interfering with their citizens' liberties. Indeed, even Thomas Hobbes, who advocated a sword-wielding sovereign, had held that it was impossible for the individual to concede his or her right to life to the sovereign (Hobbes 1904).

Thomas Paine, in his *The Rights of Man*, contended that the French Revolution of 1789 was justified on the grounds that popular political revolution is permissible when a government does not safeguard the natural rights of its people. For Paine, human rights originate in Nature. As such, rights cannot be granted via political charter, because that would imply that rights were legally revocable, and hence privileges. In his introduction to *The Rights of Man* in 1792, Paine graphically described the effects of the illiberal governments of the so-called old world prior to the American revolution as follows: “Freedom had been hunted round the globe; reason was considered as rebellion; and the slavery of fear had made men afraid to think” (see Paine 1972).

Neo-Darwinist evolutionism has also been viewed as a sound basis for human rights. This account of the origins of the universe is frequently divided into cosmic evolutionism (the big bang from which the stars, planets and their moons purportedly emerged), chemical evolutionism (the primordial soup from which, purportedly, the first single-celled life form emerged), biological evolutionism (through which the single-celled life form allegedly gradually developed into complex forms of life, culminating in the emergence of *homo sapiens* - the human being), social evolutionism (the development of human groups from simple hunter-gatherer communities to highly technologized societies), and conscious evolutionism (the process through which human beings are said to participate in determining the direction and pace of their further evolution through deliberative action) (see Andrews 1978; Johnson 1991; Ratzsch 1996). According to this view, the human person, by virtue of being the most evolved form of life, has the moral responsibility to consciously facilitate the further positive development of his/her species, a responsibility which must be fulfilled through respect for human rights.

The content of human rights discourse has undergone considerable change since 10th December 1948, when the General Assembly of the United Nations adopted and proclaimed the “Universal Declaration of Human Rights” (United Nations 1948). The Preamble to the declaration takes it to be self-evident that “recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world”. The preamble goes on to state that it is vital to protect human rights by the rule of law in order to circumvent rebellion against tyranny and oppression. Article 1 of the Declaration states that “All human beings are born free and equal in dignity

and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.” The Declaration goes on to recognize the kinds of rights typically espoused by the Western liberal democratic tradition, such as life, liberty and security of person (Art.3), freedom from slavery (Art.4), freedom from torture (Art.5), and equality before the law (Art.7).

The rights recognised by the Universal Declaration of Human Rights can be divided into six or more families: *security rights* that protect people against crimes such as murder, massacre, torture, and rape; *due process rights* that protect against abuses of the legal system such as imprisonment without trial, secret trials, and excessive punishments; *liberty rights* that protect freedoms in areas such as belief, expression, association, assembly, and movement; *political rights* that protect the liberty to participate in politics through actions such as communicating, assembling, protesting, voting, and serving in public office; *equality rights* that guarantee equal citizenship, equality before the law, and nondiscrimination; and social (or “welfare”) rights that require provision of education to all children and protections against severe poverty and starvation (Nickel 2012).

The Universal Declaration of Human Rights was codified into two Covenants, which the UN General Assembly adopted on 16th December 1966, and which came into force in 1976. These were the *International Covenant on Economic, Social and Cultural Rights* and the *International Covenant on Civil and Political Rights* (United Nations 1966a, 1966b respectively). Together with the Optional Protocols, they constitute the so-called “International Bill of Human Rights”.

Since the UN’s “Universal Declaration of Human Rights” in 1948, we have witnessed growing agitation for women's rights, right to a healthy environment, and collective rights, among others (Twiss 2004). Discourse on human rights currently acknowledges three categories of entitlements, referred to as “generations” of rights.

First, there are the entitlements that constitute free and equal citizenship and include personal, political, and economic rights, usually jointly referred to as “civil rights”. These have been advocated most articulately by the Western liberal tradition, and espoused in numerous political documents such as the constitutions of many countries, including Kenya’s independence constitution as well as the current one (see Republic 1963; Republic 2010).

Second, there are economic welfare entitlements, including rights to food, shelter, medical care, and employment. The increasingly dominant view is that such welfare rights are preconditions for promoting free and equal citizenship envisaged by the first generation rights described above (Marshall 1965; Waldron 1993; Sunstein 2001). The United Nations' "International Covenant on Economic, Social, and Cultural Rights" provides that the state parties to the agreement "recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions" (United Nations 1966a, Art.11 (1)).

Third, there are what may be broadly termed "rights of cultural membership". These include language rights for members of cultural minorities and the rights of indigenous peoples to preserve their cultural institutions and practices, and to exercise some measure of political autonomy (Kymlicka 1995). There is some overlap between this category of rights and the first-generation rights above, as is evident with regard to the right to religious liberty, but the rights of cultural membership are broader. The United Nations "International Covenant on Civil and Political Rights" declares that third-generation rights ought to be protected:

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language (United Nations 1966b, Art.27).

In our day, the study of human rights has largely been undertaken from an interdisciplinary perspective. Experts in varied fields such as philosophy, law, political science and sociology have all contributed to it. Among the varied approaches to the justifications of human rights are pragmatic agreement, moral intuitionism, overlapping consensus, and cross-cultural dialogue (Twiss 2004). Furthermore, while nongovernmental organizations have been at the forefront of human rights education, scholars have neglected the increased activism of states, especially national human rights commissions (Cardenas 2005). Wotipka and Tsutsui (2008) argue that normative pressure from international society, along with historical contingencies during the Cold War, encouraged many states to ratify international human rights treaties. They urge that normative pressure and imitation have been important factors shaping states' decisions to ratify international human rights treaties.

Thus we see that current human rights discourse has been informed by a range of perspectives, including ancient Greek and modern European thought on rationality as the distinguishing characteristic of the human being and on the existence of natural rights, the Judeo-Christian doctrine of the human being's uniqueness by virtue of being made in the image of God, neo-Darwinist thought on the human being as the most evolved species that can take charge of its further positive transformation, and the growing influence of the United Nations in shaping current human rights discourse. We next examine Odera Oruka's conception of the foundation of human rights.

Odera Oruka's Conception of the Foundation of Human Rights

Oruka was deeply concerned about the rampant abject poverty in many African countries and other regions previously under the yoke of European colonialism, and viewed it as a human rights issue. He was especially perturbed by the rampant abuses of human rights in many African countries, which he thought deserved to be called African Republics of Inhumanity and Death (ARID) (Oruka 1997, 143).

Oruka had a passion for the total liberation of underprivileged people all over the world. Even his sage philosophy project was an attempt at restoring a sense of dignity to the millions of Africans whom Europe had consigned to an imaginary congenital irrationality. In this regard, he contended that there are individual indigenous Africans who guide their thoughts and judgment by the power of reason and inborn insight rather than by the authority of the communal consensus. He was convinced that if the thought of such individuals were put in writing, it would form an interesting aspect of current African philosophical literature (Oruka 1990, 16-17). Indeed, he spent considerable time seeking to make the thought of such individuals available to academia, efforts that culminated in the publication of *Sage Philosophy* (see Oruka ed. 1991).

Furthermore, Oruka saw close connections among liberty, human rights and the fulfillment of basic human needs. According to him, we can only speak of liberty with regard to an individual in a society where he or she has, in equality with others in the said society, ability and opportunity to satisfy his or her primary and secondary needs; or else that he or she (even though lacking ability and opportunity) has all his or her primary and secondary needs met in

the said society. The assumption here is that the individual is a member of a society that exercises authority over him or her, but also has some obligations towards him or her (Oruka 1991, 55-56).

Thus for Oruka the concept of human rights is inextricably bound up with that of liberty, and the two of them can only be defined in terms of the removing of obstacles to the meeting of human needs. In this regard he asserts that “one cannot survive if one is restricted in all ways” (Oruka 1991, 86). He identifies six kinds of liberties, namely, economic, political, intellectual, cultural, religious and sexual - which for him jointly constitute the complex freedoms necessary in any social order whatever else may be necessary, and all based on human needs, and with economic liberty being basic to all the rest (Oruka 1991, 67-84). What is more, Oruka avers that in so far as all human beings have qualitatively similar needs, the formal meaning of liberty in terms of needs can be established as an objective truth (Oruka 1991, 87). He goes on to identify three basic rights:

I wish to refer to the three basic rights (the rights to physical security, health and subsistence) as “the inherent rights of persons.” They are “inherent” because, for any individual to be able to exercise the function of a person (the function of being a capable moral agent), he needs at least the fulfilment of these rights as a necessary condition. Whatever we may take as the meaning of the term “person,” there is a general agreement among philosophers that a person must have characteristics which are additional to those qualities sufficient for the definition of a human being, i.e., a member of *homo sapiens* (Oruka 1997, 86).

Oruka is emphatic that the meeting of the three basic needs that imply the three basic rights constitutes the minimum that a human being must attain in order for him or her to function as a person:

For all human beings to function with a significant degree of rationality and self-awareness, they need a certain amount of physical security, health care and subsistence. Let us, for simplicity, refer to this minimum amount as the *human minimum*. Below this minimum, one may still be human and alive. But one cannot successfully carry out the functions of a moral agent or engage in creative activity.

Access to at least the human minimum is necessary (even if not sufficient) for one to be rational and self-conscious. Without it, man is either a brute or a

human vegetable; he loses the very minimum necessary for a decent definition of human being (Oruka 1997, 87).

He goes on to argue that since the right to the human minimum is absolute, there is morally no other right of persons which can justifiably compromise its enforcement. Its fulfilment is the starting point for the exercise of any other right (Oruka 1997, 88).

In *A Theory of Justice*, John Rawls (1971) had proposed two principles of justice:

- The supreme principle of equal liberty for all, with the only justification for any limitation on an individual's liberty being the guaranteeing of equal liberty to others.
- The principle of difference in the distribution of primary goods, with the only justification for any differentiation being the promotion of the welfare of the least advantaged in society.

However, according to Oruka, Rawls' principle of difference ought to take precedence over that of liberty. This would ensure that the principle of liberty is more than a formal affirmation, since the material well-being of citizens is pivotal to their ability to make real choices regarding various facets of their lives. Oruka (1997, 120) asserts that in Rawls' theory, the egalitarian principles or expressions are only formal, not substantive, requirements. By this he means that the equality enunciated does not directly and positively govern the day-to-day interaction of individuals within a polity, because the differences allowed by a capitalist economy such as the one Rawls envisages override any such influence:

Generally, Rawls considers political liberty (the right to vote and stand for public office, freedom of speech and assembly) and intellectual liberty (freedom of thought and conscience) to be more fundamental than economic equality and social welfare. But in a society where the majority are illiterate and there is widespread poverty, political and intellectual liberties are luxuries. The people either do not understand them, or they have no motivation to exercise them. Poverty-stricken people want bread, not freedom of thought and speech. Neither do they care about the right to vote and stand for public office, unless this is clearly explained to them in terms of their social frustration. Otherwise, a potential voter would easily sell his voting card for a loaf of bread or a small sum of money. What the majority of semi-literate and poverty-stricken people want is not liberty as "equal freedom". What they want is "the worth of liberty". Such people long for economic equality, not for the materially valueless political democracy (Oruka 1997, 123).

The purpose of the proposed reorganisation is to salvage the egalitarian element in Rawls' theory and to make it serve the aims of ensuring a communitarian social order (Oruka 1997, 124).

In a manner reminiscent of Oruka's emphasis on the link between basic rights and basic needs, Wiredu (1996, 34-41) contends that ethical norms have a biologic basis, as they contribute to the survival of human groups, and of humankind in general. Wiredu further contends that there are connections among our logical, epistemic and ethical norms with our situation as organisms in necessary interaction with the environment and with our kind, illustrating the fact that we are a part of "nature".

In the African struggle against single party dictatorships from the late 1980's, a major point of contention among scholars was the kind of democracy the continent needed. On the one hand, some like Kibwana (1990) vouched for liberal democracy as espoused by classical Western political theory. On the other hand, some thinkers saw both multipartism and one-party systems of government as versions of Western liberal democracy, and therefore inapplicable to the unique socio-economic conditions in contemporary Africa. Consequently, they argued for social democracy in place of liberal democracy. Thus Ake (1996) advocated a form of democracy that places emphasis on concrete political, social and economic rights, as opposed to liberal democracy which emphasizes abstract political entitlements. Similarly, for Mafeje (2002), social democracy in Africa means, in practice, that over and above the civil liberties championed by liberal democracy, citizens by virtue of belonging will be entitled to decent livelihood and access to productive resources. Oruka (1991, 1997) presents arguments for social democracy very similar to those of Ake (1996) and Mafeje (2002).

With regard to the question of global poverty, Oruka was very clear in his mind that it was a moral issue. He distinguished between "positive economics" and "normative economics": "The former is economics as a pure empirical science with its own laws and methods which are best known to the experts and professional economists, while the latter presupposes the existence and findings of positive economics but strives to utilise such findings for recommending ethically appropriate actions and the rational reorganisation and redistribution of resources" (Oruka 1997, 81). He pointed out that normative economics is often referred to as welfare economics, and went on to assert that although philosophers may be too ignorant or innocent concerning matters of positive economics, they definitely should have something important to say concerning matters of welfare economics: "Experts in economics should not close the door to the non-experts, for the subject is too important in the everyday life of everybody to be left simply to the monopoly of the experts" (Oruka 1997, 81). For Oruka, the

issue of foreign aid falls within the field of normative economics. Among the problems of normative economics are ethical questions concerning matters of the legitimate acquisition and transfer of wealth, as well as the rectification of past and present moral injustices (Oruka 1997, 82).

Prof. Oruka was extremely unhappy with the fact that international practice exalts the view that every state has the right to ensure its own preservation. This view, explained Oruka, implies two principles, namely, the principle of territorial sovereignty (that states have the right to use their possessions in whatever way they see fit without external interference), and the corollary principle of national supererogation (that states are not dutybound to alleviate the suffering of people in other states, so that if they do so it is purely out of magnanimity deserving of gratitude, and that the assisting states have the right to dictate the terms of their assistance) (Oruka 1997, 82, 90).

Oruka went on to point out that as things stood, principles that justify aid or loans from rich nations boil down to the following three: (1) the law of international trade, (2) the principle of historical rectification and (3) the maxim of charity. Nevertheless, all the three principles do not need to be presupposed in any one case of one nation aiding another (Oruka 1997, 83). However, for him, none of the three principles or even all of them together is an adequate ethical rationale for global justice in our time. He believed that what we need is a principle that would form a base for an ethics that can help ensure the practice of global justice, as contrasted with international justice, among the inhabitants of the globe regardless of the question of racial or geographical origins and political affiliations (Oruka 1997, 84). He went on to state:

We need a principle which would make it *ethically obligatory* for affluent nations to aid poor ones as an unqualified moral duty for humanity, and for the latter to receive such aid without feeling a sense of *self-pity*. Such a principle would also help to invalidate the use of "national supererogation" in the relations between nations without thereby discrediting the principle of national sovereignty and the equality of nations. It should also be a principle from which any nation (however independent) that treats its citizens as "subhumans" would legitimately call for *humane* external interference in her internal affairs (Oruka 1997, 84).

Oruka Proposes that the right to a human minimum is the basis for a justified demand by anybody that the world (not just his or her society) has the duty to ensure that he or she is not denied a chance to live a basically healthy life; and should he or she find himself or herself in a situation denying him or her this right, he or she will be tempted to disown himself or herself as a moral agent; and if he or she does this, the world will have no adequate moral ground for expecting him or her to abide by anybody else's right to anything, including even those rights that are protected by the principle of territorial sovereignty and national supererogation (Oruka 1997, 88). In sum, for Oruka the foundation of human rights is the imperative to secure for all human beings conditions that enable them to attain the human minimum.

Critique of Oruka's Account of the Foundation of Human Rights

Oruka's account of the foundation of human rights can be commended on at least two counts.

First, Oruka accurately observed the fact that rights are only meaningful if they can be enjoyed. This simple point seems to have escaped several renowned Western liberal theorists, not least John Rawls, who, in his *A Theory of Justice* (1971) asserted that equal freedom for all took precedence over the need to address the material needs of citizens. The typical freedoms of the individual espoused by Western liberalism, such as freedom of movement, freedom of assembly, freedom of expression and freedom to run for office are next to meaningless for the masses of poor people living in abject poverty in many countries. For example, to tell Kenyans that any of them can be President of their republic when ascendancy to that coveted position heavily depends on a person's ownership of vast financial resources is to feed them with an illusion. Oruka therefore made the commendable recommendation that Rawls' cardinal principles of liberty and difference be rearranged to have the latter take precedence over the former. Furthermore, the adequacy of a needs-based definition of rights as espoused by Oruka seems to be supportable by a consideration of the fact that it is our collective existence that gives rise to the necessity for the limitation of the individual's actions. For instance, an individual's freedom to sing at the top of his or her voice at midnight is limited by his or her neighbours' need for undisturbed sleep (Oduor 2012, 374).

Nevertheless, we must not exaggerate the novelty of Oruka's needs-based account of human rights, because it is in line with a long Western tradition, which Abraham Maslow (1943)

expressed in terms of a hierarchy of needs. Thus Heywood (2004, 296) writes that "The attraction of a needs-based theory of social justice is that it addresses the most fundamental requirements of the human condition. Such a theory accepts as a moral imperative that all people are entitled to the satisfaction of basic needs because, quite simply, worthwhile human existence would otherwise be impossible."

Second, Oruka plausibly argued against a charity model of foreign aid. He saw that our common humanity is a more sound basis for alleviating the plight of any of us. Perhaps nowhere has this fact been as well demonstrated as in the area of public health, where the West has come to deeply appreciate the need to control the spread of killer diseases such as Ebola and HIV-Aids in poorer countries in order to enhance the health of the populations of the Western countries.

However, Oruka's account of the foundation of human rights can be faulted on at least seven grounds.

First, there is some inconsistency in Oruka's assertion that the right to subsistence, health and security are absolute, while also insisting that it is difficult to formulate a universal theory of social justice, which, to be relevant, needs to take into account the level of economic advancement, historical traditions and experience, and ideological realities of the societies for which it is meant. For Oruka it is precisely these factors that would dictate what the people regard or ought to treat as primary goods and fundamental rights in any society which they must want to have whatever else they may want (Oruka 1997, 115 ff.). It is difficult to see why the absolute rights to subsistence, health and security could not be a basis for a model of social justice that is relevant to any society.

Second, while Oruka's idea of the human minimum seems to adequately address the question of the moral responsibilities of individuals and societies towards the poor at the global level, it is faced by at least one formidable shortcoming, namely, subjectivity. This is due to the fact that it is pegged on the idea that there is a quality of life that is distinctively human. This idea must surely rely on the kind of life that Oruka witnessed in the world in which he lived not only in Kenya, but also in the various countries to which he travelled. However, what our generation or culture considers to be basic to a truly human existence might be regarded as sheer luxury by a different generation or culture. For example, while a New Yorker might

consider a washing machine to be crucial to attaining a human minimum, a peasant in Ugenya in the Western part of Kenya might not even be aware of the existence of washing machines. It then remains a matter of opinion as to what is really entailed by the human minimum.

Third, to tell wealthy individuals and states that their only obligation towards the world's destitute masses is to aid them to attain the human minimum is tantamount to telling them that once that meager objective is achieved, they can live in as much opulence as their purses enable them. For example, this would imply that as long as the rich can ensure that all poor Kenyan children have food, basic schooling and security, the rich would have adequately fulfilled their moral obligations to the poor. The trouble with this approach is that those who barely live at the level of the human minimum are not likely to compete adequately in a world where others enjoy far better nutrition, education and security, not to mention the many other things that they can afford. The debate in Kenya about the intake into national schools of children who attended high quality privately sponsored schools, and who therefore easily performed better than their counterparts in poorly funded public schools is a case in point. One wonders why Oruka did not address the systemic causes of rampant poverty and gaping inequalities rather than restrict himself to the fluid concept of the human minimum.

Fourth, Oruka seemed to be considerably oblivious to one of the concerns of some human rights theorists - that the West presents human rights as being universal when they are actually an outgrowth of a particularistic Western culture. Pagden (2003) argues that the concept of human rights is a development of the older notion of natural rights, and that the modern understanding of natural rights evolved in the context of the European struggle to legitimize its overseas empires. The French Revolution changed this by, in effect, linking human rights to the idea of citizenship. Human rights were thus tied not only to a specific ethical-legal code, but also implicitly to a particular kind of political system, both of inescapably European origin. In both cases, however, being employed was an underlying idea of universality whose origins are to be found in the Greek and Roman idea of a common law for all humanity. Pagden ends by arguing that to defend human rights against its non-Western critics, one must be aware of the genealogy of the concept, and then be prepared to endorse an essentially Western European understanding of what it means to be human.

Fifth, Oruka did not seem to be concerned about the way in which Western countries have actually used the human rights agenda for their own interests. For example, during the Cold War, heavy-handed African leaders such as Mobutu Sese Seko of Congo and Id Amin of Uganda enjoyed robust support from Western powers because they professed to be “anti-Communist”, while more humane African leaders such as Julius Nyerere of Tanzania and Kenneth Kaunda of Zambia were frustrated for not submitting to the Western agenda. At the height of the Cold War, Falk (1981, 4) noted that the human rights agenda was being manipulated by various Western elites with vested interests of one kind or another. He noted that there were two sides of this issue - the “politics of invisibility” (where the West pretended not to see the gross violations of human rights in states allied to them), and the “politics of supervisibility” (where the West used charges of violations of human rights as a weapon against states in which they wished to bring down certain regimes). This observation strikes resonance with the situation in East Africa in the early 1990s, where the West pressurized Daniel arap Moi in Kenya to adopt multipartism, while happily supporting Yoweri Museveni in Uganda despite his one-party system camouflaged as a “no-party system”.

Sixth, in relating basic rights to humankind's biological needs, it is evident that Oruka subscribed to a materialist worldview. The most widely accepted biological, and therefore materialist, account of human rights is neo-Darwinism, which we briefly outlined in the second section of this paper. Oruka evidently subscribed to this worldview, since he happily referred to human beings as *homo sapiens*. Yet an neo-Darwinist account of ethics in general, and human rights in particular, must encounter certain challenges. The most immediate challenge is the one, first highlighted by David Hume, of deriving a moral value from a factual statement. This is often referred to as the “Is-Ought” problem. Hume discusses it in book III, part I, section I of his work, *A Treatise of Human Nature* (1739):

In every system of morality, which I have hitherto met with, I have always remarked, that the author proceeds for some time in the ordinary ways of reasoning, and establishes the being of a God, or makes observations concerning human affairs; when all of a sudden I am surprised to find, that instead of the usual copulations of propositions, *is*, and *is not*, I meet with no proposition that is not connected with an *ought*, or an *ought not*. This change is imperceptible; but is however, of the last consequence. For as this *ought*, or *ought not*, expresses some new relation or affirmation, 'tis necessary that it should be observed and explained; and at the same time that a reason should be given; for what seems altogether inconceivable, how this new relation can be a deduction from others, which are entirely different from it. But as authors do not commonly use this precaution, I shall presume to recommend it to the

readers; and am persuaded, that this small attention would subvert all the vulgar systems of morality, and let us see, that the distinction of vice and virtue is not founded merely on the relations of objects, nor is perceived by reason (see Hume 2010).

Neo-darwinist evolutionism purports to be descriptive - to accurately report the state of affairs in the physical realm. However, moral values are prescriptive - they seek to recommend certain courses of action. Following Hume, one could ask how, for example, Oruka moves from the bare fact that people living in abject poverty do not have the ability to enjoy their civic rights to the conclusion that all human beings who are endowed with abundant material resources ought to ensure the poor attain the so-called “human minimum”. While several neo-Darwinist evolutionist ethicists have sought to respond to the “Is-Ought” problem (see for examples Searle 1964; Richards 1986; Sober 1988; Thompson 1995), Oruka presents his biological account of the basis of human rights as though the “Is-Ought” problem does not exist. G.E. Moore’s open question argument, in which he seeks to show that to equate moral values with physical attributes is to commit the naturalistic fallacy, is also relevant in this regard. Moore contended that it would be fallacious to explain that which is *good* reductively, in terms of natural properties such as “pleasant” or “desirable” (see Moore 1903).

Further shortcomings associated with neo-Darwinist evolutionary ethics include the problem of altruism in a framework in which organisms compete for food and for opportunities to pass on their genes, the apparently deterministic nature of evolutionary ethics which seems to preclude the place of free will, and the danger of the misuse of biological knowledge in the name of ethics, as happened with Hitler’s so-called “eugenics”. Yet Oruka seemed to expound his views on a neo-Darwinist biological orientation of ethics in general, and of human rights in particular, without taking cognizance of these difficulties.

It will be recalled that in *Beyond Good and Evil*, Friedrich Nietzsche, who firmly believed in Darwinist evolutionism, challenged the view that domination of the weak by the strong is universally objectionable from a moral point of view. In line with Darwin’s idea of natural selection, he was convinced that living things do not have inherent compassion, but rather aim to express their “will to power”. He actually went as far as denying that there is a universal morality applicable to all human beings. For him, there is a series of moralities in a

hierarchy, each one suitable for people in specific social roles. From his perspective, the idea of wealthy persons and states being morally obligated to raise every human being to the level of the human minimum is the kind of morality advocated by the weak in a bid to restrain the strong. Indeed, in an environment of "survival for the fittest", Nietzsche's outlook seems easier to infer than Oruka's. From such a perspective, the weak are naturally weeded out by the strong. Yet Oruka does not tell his readers why he thinks his moral principle of the human minimum can be supported from an evolutionist perspective

Seventh and finally, Oruka's naturalistic account of human rights raises a pertinent question, namely, that of the feature that distinguishes human beings from all other beings and infers unparalleled dignity to them. One possible answer to this question is the Judeo-Christian teaching that human beings are made in the image of God; but Oruka did not base his philosophical reflections on human rights on this teaching. Similarly, the deistic doctrine of natural rights as postulated by Aristotle and John Locke among others was not appealing to him. Furthermore, while Aristotle and Kant might reply to this question by pointing to the human person's rationality, evolutionists would reply that reason is merely a function of a more evolved brain, and that the higher primates also exhibit a tendency towards this capability (see for examples Leakey and Lewin 1977; 1992). Indeed, if the human being is merely a highly developed primate, it is difficult not to see all the talk about human dignity as nothing more than the egocentric chatter of *homo sapiens*. Yet Oruka insists that no human individual ought to be abandoned below the human minimum. Indeed, the very idea of an evolving universe suggests that even the concept of human rights is evolving, which further suggests that Oruka's claim that basic rights are absolute is itself not absolute. Yet Oruka, like most of us, would be unwilling to abandon the idea of human dignity and the human rights that are implied by it. For this reason, there is need for further reflection on the philosophical foundation of human dignity, a question which necessarily touches on the more basic issue of the worldview from which a philosopher operates. Discussing the question of worldviews, James W. Sire writes:

The crucial questions, ..., to ask of a worldview are, how does it explain the fact that human beings think but think haltingly, love but hate too, are creative but also destructive, wise but often foolish, and so forth? What explains our longing for truth or personal fulfillment? Why is pleasure as we know it now rarely enough to satisfy completely? Why do we usually want more - more money, more love, more ecstasy? How do we explain our human refusal to operate in an amoral fashion?

These are, of course, huge questions. But that is what a worldview is for - to answer such questions or at least provide the framework within which such questions can be answered (Sire 1988, 216).

Conclusion

Prof. H. Odera Oruka undertook his philosophical reflections on human rights against the backdrop of the realities of African populations still reeling from the devastating effects of colonialism and the ravages of poor governance in their so-called independent countries. His account of the foundation of human rights contributed significantly to the domestication of human rights discourse in present day Africa. However, in view of its shortcomings, there is need for further philosophical reflection with a view to determining if it ought to be refined or abandoned.

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