

The Concept of Human Rights

Political and Moral Approaches

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Contents

Chapter 1: Introduction	p. 3
Chapter 2: A Functional Account of Human Rights	p. 6
- 2.1: The Political History of Human Rights	p. 6
- 2.2: Introducing the Political Approach	p. 7
- 2.3: A Model of Human Rights	p. 10
- Assessing the Political Approach	p. 15
Chapter 3: The Moral Justification of Human Rights	p. 18
- 3.1: Personhood	p. 19
- 3.2: Against Autonomy	p. 21
- 3.3: Agreement Theories	p. 24
- 3.4: Needs	p. 27
Chapter 4: International Human Rights Responsibility	p. 33
- 4.1: Backward-Looking Responsibility	p. 34
- 4.2: Forward-Looking Responsibility	p. 38
Chapter 5: Conclusion and Final Remarks	p. 42
Bibliography	p. 47

Chapter One: Introduction

Since the drafting of the Universal Declaration of Human Rights after World War II, human rights has taken a central place within international politics. Human rights have a strong moral connotation: they inspire activists around the world, and some human rights documents have acquired legal status. While the development of human rights practice can be seen as successful, there is still much confusion about the concept itself. There is disagreement among countries about which rights belong to the domain of human rights. The United States, for example, has signed but not ratified the Covenant on Economic, Social and Cultural Rights, while China signed but did not ratify the Covenant on Civil and Political Rights (UN, 2015). Some rights that are included in actual human rights documents do not seem to be of an urgent nature at all: the right to holiday with pay, which is included in the Covenant on Economic, Social and Cultural Rights is infamous.

Another source of disagreement is the international nature of human rights. While the human rights discourse often has a strong international focus, some see human rights only as guidelines for the domestic affairs of nation states. China, for example, acknowledges the existence of human rights, albeit with a different focus than western countries: it sees them as an entirely domestic matter (Men, 2011). And, despite the universal connotation that human rights often have, some regional human rights treaties exist, such as the European Convention of Human Rights. Furthermore, some human rights documents are clearly inspired by one particular worldview, such as the Cairo Declaration on Human Rights in Islam.

The situation in the philosophical debate about human rights is not much different from that in politics, in the sense that philosophers also disagree about the nature of human rights. Issues such as the justification, scope and universality of human rights are sources of controversy among theorists. Broadly speaking, there are two strands of thought that try to ground human rights philosophically. The first is the moral tradition that seeks to ground human rights in features that are shared by all humans. Currently, the most well known example of such theory is Griffin's personhood account. Griffin (2010) sees his theory as a continuation of the natural rights tradition, which focuses on the moral properties of human beings.

The second is the political tradition. According to Beitz (2009) and Raz (2010), this tradition aims to ground human rights in its political practice. According to the political tradition, human rights should not be seen as a concept that is the product of moral theories. Instead, human rights originate in political practice. Current human rights documents are not the codification of already existing moral human rights, but were created by the drafting of those documents. The United Nation's Covenant of

Human Rights (1948) is the most important treaty in this respect, though some see the Treaty of Westphalia as the first predecessor of concurrent human rights practice (Gross, 1948, pp. 21-22).

While these two strands of thought are often seen as opposing theories, this thesis will take another approach. It will show that both approaches provide important insights. Combining aspects of different theories, this thesis will present a normative conception of human rights with a strong practical focus. Instead of being a full moral theory, the aim is to present a theory that can explain the moral force of human rights in relation to the political goals they serve. To ensure its political relevance, this thesis will not only discuss the political role of human rights and moral grounds for determining the content of moral rights, but will also try to normatively ground the duties associated with human rights. Thus, this thesis will address the following issues:

- What is the political function of human rights?
- How can human rights be universally justified?
- What kind of rights are human rights?
- Who is responsible for the protection of human rights?

The second chapter begins with a discussion of the first question in terms of the political approaches of Beitz and Raz. It argues that the political tradition approach provides useful insights for a philosophical theory of human rights that seeks to be relevant for human rights practice. However, the chapter also shows that this theory is not able to provide a satisfactory comprehensive theory of human rights. The political approach provides some interesting insights into the function of human rights and the protection against institutional threats to essential individual moral rights, but due to a lack of moral content it cannot define which moral rights should belong to the domain of human rights. So, while this chapter rejects political approaches as comprehensive theories of human rights, it does argue that they provide useful insights. First, the discussion of this chapter will show the inherent institutional character of human rights. Although a small role in human rights practice can be played by individual activists and NGOs, they are mainly aimed at states and state-like entities. Second, this chapter shows that human rights are political principles. Their international character shows that they aim to function as political principles that can be used in international politics. Human rights can only play a central role in international politics if they are universally applicable.

The third chapter discusses different moral theories of human rights using the insights of Chapter Two as background conditions, and thereby answers the second and third question. The insights of Chapter Two provide us with background conditions that must be fulfilled by moral theories to be of any practical significance. This chapter starts with a discussion of Griffin's theory,

arguing that it withstands some of its criticisms but ultimately runs into error because its focus is too liberal to be applied across cultures as basic norms. Agreement theories focusing on what we, across cultures, already agree on seem to be promising to avoid any charges of partiality. Unfortunately, my discussion will show that agreement theories run into problems. It will be shown that a satisfactory theory of human rights cannot exist without defining a concept that serves as the ultimate moral ground of human rights. The chapter finishes with a defence of David Miller's needs based theory. It will be argued that this theory is able to provide a clear moral grounding of human rights while still being able to accommodate for differences between moral cultures, especially by allowing cultures to respect more abstract human rights in their own way.

The fourth chapter discusses the fourth question by discussing issues of responsibility for human rights. The second chapter already showed that states have a duty to respect human rights at the domestic level. Furthermore, it should also be clear that states have morally good reasons to interfere in other countries if human rights are violated. International human rights practice will, however, be much stronger if some actors have actual duties to protect human rights. But how is it possible to argue that states have responsibilities for human rights protection abroad? This does not seem to be straightforward. It will be shown that sometimes causal and moral responsibility provides enough grounds to assign remedial responsibilities for international human rights protection, but when this is not possible it is harder to explain why international human rights responsibilities exist. Explanations based on the benefits countries receive from an international system of human rights or from the international order do not suffice as they rely on questionable empirical assumptions. We cannot explain international human rights responsibilities on the assumption that we have a moral obligation to do so. It will be argued that this is an intuitively strong assumption, but that it is not possible to provide an argument in favour of it on this occasion, not only because it is a complex issue, but because there is a high risk such an explanation will not be impartial.

Chapter Two: A Functional Account of Human Rights

This chapter aims to provide a functional account of human rights by discussing the political approaches of Beitz (2009) and Raz (2010) who share the idea that current philosophical approaches do not relate enough to actual human rights practice. 'Some theories (I will say that they manifest the traditional approach) offer a way of understanding their nature which is so remote from the practice of human rights as to be irrelevant to it' (Raz, 2010, p. 323). This approach understands human rights as principles developed in political practice itself, not as a doctrine based on a philosophical theory. The next section provides a brief overview of how the historical development of human rights is portrayed by as a political approach. The second section discusses the political approach to human rights on a conceptual level. The third section examines Beitz's model and proposes some modifications. The fourth and final section of this chapter discusses the strengths and shortcomings of the political approach, arguing that it cannot function as an alternative comprehensive conceptualization of human rights vis-a-vis the moral tradition. Instead, both approaches need each other to offer a satisfactory concept of human rights that is of importance to actual human rights practice.

2.1: The Political History of Human Rights

Proponents of the political approach to human rights often point out that the central role of human rights in political practice is a relatively recent event. Beitz, for example, notes that modern human rights practice started after World War II with the adoption of the Universal Declaration of Human Rights in 1948 (Beitz, 2009, pp. 14). He does, however, agree with many theorists from the moral approach that human rights has a tradition that started long before the adoption of the Declaration. The first precursor of current human rights practices acknowledged by Beitz is the Peace of Westphalia Treaty of 1648. This treaty not only laid down the foundation of the modern state system, but it was significant in limiting state sovereignty through a collective guarantee of religious tolerance, giving Catholics and Protestants equal status (Gross, 1948, pp. 21-22). While the Peace of Westphalia differs largely from current human rights practices in scope and aim, it is the first example of a legal treaty that acknowledges state sovereignty while at the same time defining some basic principles that limit state sovereignty. It is questionable whether Beitz's observation is historically correct. It has been argued recently that the Peace of Westphalia neither established state sovereignty nor anything resembling human rights (for example, see Asch, 2010). However,

Beitz does see the Peace of Westphalia and other diplomatic developments up to the nineteenth-century as predecessors of current human rights practice because he thinks they contain principles that limit the sovereignty of states (2009, pp. 14-16), something that is central to his conception of human rights, as the next section will show.

These first developments were much less extensive than the human rights practice that evolved in the twentieth century. After World War I some initial attempts were made to develop a more comprehensive notion of universal human rights. This is not to say that these developments occurred smoothly. For example, Japan failed in trying to include provisions against discrimination based on race and religion in the Covenant of the League of Nations. However, principles against discrimination were included in the Constitution of the International Labour Organization at the same conference, in addition to international standards on issues such as the elimination of forced labour, reduction of poverty and freedom of expression and association. The failure of the League Covenant to ratify human rights protections prompted further developments of transnational human rights movements. For example, in 1929 the Institute for International Law published a Declaration of the International Rights of Man. The momentum for human rights slowed down during the Great Depression but these earlier developments had an important influence on the drafting of the Universal Declaration by the UN in 1948, after the horrors of World War II. This declaration was the starting point for the development of current human rights practices. The Declaration formed the foundation for international human rights law that was created in the following decades (for example, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights) (see Beitz, 2009, pp. 15-18 for a more extensive overview). This brief historical illustration provides some first insights into the intellectual background of proponents of the political approach. Their inspiration comes from developments in international politics: they think that we cannot grasp the concept of human rights without reference to such political developments.¹ Whether this historical description of human rights developments is completely correct is not an issue to be discussed on this occasion, but these historical remarks are important insights into the development of the political approach on a conceptual level.

2.2: Introducing the Political Approach

Raz (2010) and Beitz (2009) are proponents of the political approach to human rights. Beitz's understanding of human rights 'is implicit in the view of human rights taken by John Rawls in *The Law*

¹ The significance of this observation becomes clearer after the short historical background of the moral approach outlined in the next chapter.

of Peoples' (2009, p. 97). While Beitz clearly sees the work of Rawls as his most important inspiration, he is clear that his view is not identical to Rawls': 'I shall not endorse this view as Rawls presents it' (2009, p. 97). A short overview of the Rawlsian view is necessary before an explanation of why Beitz does not fully agree with Rawls' approach. In the Rawlsian view, human rights are an element within a conception of public reason that is meant as a set of principles serving as guidelines for a 'Society of Peoples'. While Rawls's domestic theory of justice is clearly liberal, he also includes 'decent' states as legitimate members of the Society of Peoples. Decent states are those states that are not fully liberal, but still respect minimal standards of justice. This enables decent states to maintain a relationship of civility and stable, mutual peace with liberal states. Beitz presents four further essentials of Rawls's theory that are essential to his argument (2009, pp. 97-98):

1. Human rights are 'a special class of urgent rights' that are necessary to any reasonable idea of justice and thus, not 'peculiarly liberal or special to the western tradition' (Rawls, 1999, pp. 79-80). Included are rights to life, personal liberty, and equal treatment under law.

2. Rawls' list of human rights does not include all rights that are included in international human rights treaties. Rights to freedom of expression and/or association and rights to democratic political participation are not included. Rights against discrimination are limited. For example, religious qualifications for higher public office are compatible with human rights. The omitted rights are, according to Rawls, 'liberal aspirations' (1999, p. 80).

3. In addition to liberal and decent states, there are also 'outlaw states'. While some human rights might have no place in the moral beliefs held in the societies of these states, the moral power of human rights does extend to these states. Rawls' conception of human rights is universal as he holds that they apply to all contemporary states.

4. Human rights have a 'special role' in the public reason of the Society of Peoples. In order to remain 'in good standing in a reasonably just Society of Peoples' and 'sufficient to exclude justified and forceful intervention by other peoples, states must necessarily adhere to human rights (Rawls, 1999, p. 80).

It is crucial that Rawls does not base human rights on something like common humanity and does not derive human rights from 'a theological, philosophical, or moral conception of the nature of the human person' (Rawls, 2009, p. 81). In a sense, human rights are neutral between different conceptions of justice, 'the idea of an intercultural or intersocietal agreement plays no part in the definition or justification of human rights' (Beitz, 2009, p. 98). While liberal and decent states agree on human rights, they cannot be justified due to this agreement. As adherence to human rights is part of the definition of liberal and decent states, such an explanation would be circular. Human rights constitute a political doctrine independent of a philosophical one. They cannot be grounded by

any external philosophical concepts, but only by the functions they have within political practice; 'the discursive function of human rights (their 'special role') in the public reason of the Society of Peoples is basic: it defines their nature and explains, or helps explain, why human rights have the particular content they have' (Rawls, 1999, p. 99). It would, in fact, be impossible to base human rights on any external philosophical foundation, as each liberal and decent society must agree, for its own reasons, to ensure a high degree of inclusion.

While Beitz agrees with Rawls that human rights should not be based upon a comprehensive conception of moral theory but should be seen as political principles meant to foster stability and mutual peace in the Society of Peoples, he does not agree fully with Rawls' conception. He argues that Rawls merely stipulates the discursive role of human rights. While he acknowledges that Rawls' idea of human rights might be sufficient for 'a conception of human rights for an idealized global order of decent and liberal societies' (Beitz, 2009, p. 102), he does not believe that this theory works for a conception that aspires to be practical. Where Rawls' concept of human rights is based on an epistemological approach that is political in the sense that it tries to establish political principles in an idealized setting, Beitz attempts to establish political principles by taking a more historic approach, focusing on the actual development of human rights practice: 'the doctrine and practice of human rights as we find them in the international political life as the source materials for constructing a conception of human rights... our aim is to grasp the concept of human rights as it occurs within an existing practice, and for this purpose we need, not a stipulation, but a model that represents the salient aspects of this practice as we find it' (Beitz, 2009, p. 102). A disadvantage of such an approach based on actual practice might be that it lacks critical power as it gives too much power to the status quo. Beitz, however, states that this is not the case: using the status quo as a starting point for a theory of human rights does not mean the status quo is beyond criticism. Human rights as social practice, a 'norm-governed conduct whose participants understand it to serve certain purposes' (Beitz, 2009, p. 105), serves certain aims. Parts of the practice that are ill suited to the aims can be criticized on that ground. Furthermore, starting with actual human rights practice is not merely descriptive: recognizing the roles human rights actually play constrains the possible content and nature of human rights.

We now have a basic overview of the political approach to human rights. This approach will be applied in the next section where Beitz's model of human rights is critically discussed. After some critical points have been raised, a revised model will be presented. This model will provide a functional account of human rights, i.e. answer the first part of the bigger question about what human rights are. The functional account will prove to be a suitable foundation for further discussion of justification and content in the following chapters.

2.3: A model of Human Rights

The previous section outlined the goal of the political, or practical, approach to human rights. It analysed human rights in terms of the actual political practice related to it. Human rights are not seen as moral rights, but as political principles that are used to guide the Society of Peoples in a stable and mutually peaceful manner. This makes the view highly pragmatic in the sense that it includes a broad range of nation-states with different moral cultures in the domain of legitimate states. Instead of conceptualizing human rights as political principles for an idealized Society of Peoples, they diverge from Rawls in that they aim to use actual human rights practice as a foundation for their conceptualization of human rights. This section aims to develop a model of human rights practice by critically discussing Raz's and Beitz's models. This model should provide a functional account of human rights. Before I turn to a discussion of Beitz's model, I discuss the preliminary issue of whether a national or international level is appropriate for human rights.

The focus of the political approach is on the role of human rights within international politics. Rawls explicitly states that the human rights function within the Society of Peoples is one in which 'they restrict the justifying reasons for war and its conduct and they specify limits to a regime's internal autonomy' (Rawls, 1999, p. 79). Raz agrees: 'Following Rawls, I will take human rights to be rights which set limits on the sovereignty of states, in that their actual or anticipated violation is a (defeasible) reason for taking action against the violator in the *international arena*, even when, in cases not involving the violation of human rights or the commission of other offences, the action would not be permissible, or normatively available on the grounds that it would infringe the sovereignty of the state' (Raz, 2010, p. 328, own emphasis). Beitz is also mainly concerned with the international character of human rights practices, arguing that any human rights violations 'may justify some form of remedial or preventive action by the *world community* or those acting as its agents' (2009, p. 13, own emphasis).

However, one may wonder whether an exclusive focus on the international level is justified. Such a focus seems to imply that human rights do not exist without such an international context. For example, would human rights not exist in a state that is excluded from the international society of states? Beitz relies heavily on a historical narrative of the development of human rights practice, focusing on developments in international politics. It is questionable whether a focus on international developments is historically correct to describe the evolution of human rights practice (Mayr, 2012). Instead of historically originating in international treaties, the human rights tradition started with developments at the domestic level. Important examples are the documents that resulted from the American and French revolutions. These documents provided a list of rights that should prevent the modern state from too much interference in the lives of its citizens. Modern

states obtained much more power than their predecessors: 'the task of the state had been mainly restricted to outward defence and to the settlement of quarrels between smaller social organizations like clans, tribes or federations, so that the state's authorities were thought to have 'no business' settling quarrels arising merely within these organizations. In the 17th and 18th century, this view changed, and the state was gradually seen to have both a general duty and authority to safeguard the citizen's 'well-being' (Mayr, 2012, p. 93). Expanding the tasks of the states to include the well being of citizens made the modern states much more powerful than previous forms of state organizations so that citizens were exposed to a higher threat from the state (for example, the claim on the monopoly of power made by modern states). While such claims are meant to enable the state to protect the public, it is not hard to see that they can also be turned against the public. Constitutions defining citizens' rights tried to establish limits on how the state can use its powers. This argument shows that human rights practices existed well before the twentieth century. The drafting of the Universal Declaration and subsequent developments in human rights practice should not be seen as a separate historical event that defined a new political practice, but as an international expansion of a practice that already existed at the domestic level.

It is interesting to note that domestic lists such as the American Bill of Rights function in a similar way to current human rights practices by limiting the scope of legitimate actions a state can take. International human rights practice stipulates that states must protect, even though these states are normally free to make decisions as they please. Domestic rights lists function in a similar manner: they limit what states can legitimately do. Noting this similarity should make it easier to understand that domestic lists are true predecessors of current human rights practices. Of course, the possible consequences of violating human rights differ. In international human rights practice states that violate human rights can *in extremis* face military intervention from the international community. The option of international interference is an important feature of contemporary human rights practice. Older human rights practice based on domestic lists did not allow for the possibility of outside interference. Instead, human rights violations by the state could justify civil disobedience at the domestic level. Civil disobedience is characterized by the performance of actions that are technically illegal and unjust under normal circumstances (Brownlee, 2013). For example, under normal circumstances citizens face the obligation of paying taxes, but if a state violates human rights, (for example, does not protect the welfare of its citizens), this moral obligation no longer applies. Therefore, the possible actions a state can perform are also limited at the domestic level in the sense that the state's authority could be undermined by civil disobedience if the state violates human rights. Human rights are thus related, at least in a normative sense, to state actions at both the international and domestic level. International human rights are an extra safeguard to rights that should already be recognised by reasonable states.

Human rights primarily function to protect citizens at the domestic level. The responsibility for human rights at the international level is only secondary: it becomes relevant once a state fails to live up to its responsibilities at the domestic level. This might sound surprising, as proponents of the political approach focus on the international character of human rights. It is, however, only logical to focus on the domestic level. After all, human rights only become an international concern if national states fail to protect them. Therefore, it is not surprising that, although lip service is paid to the mostly international character of human rights practice, proponents of the political approach in fact agree on the primacy of the state at the domestic level: 'Human rights apply in the first instance to the political institutions of states, including their constitutions, laws, and public policies' (Beitz, 2009, p. 109); they do not, however, make the connection with the justification of civil disobedience. Following the insight that human rights are primarily directed at the domestic level, Beitz proposes a two-level model: 'The two levels express a division of labour between states as the bearers of the primary responsibilities to respect and protect human rights, and the international community and those acting as its agents as the guarantors of these responsibilities' (Beitz, 2009, p. 108). The two-level model contains the following three elements (Beitz, 2009, p. 109):

1. The object of human rights is 'to protect urgent individual interests against certain predictable dangers ('standard threats') to which they are vulnerable under typical circumstances of life in a modern world'.
2. Human rights primarily apply to the political institutions of states. 'These 'first-level' requirements may be of three general types: (a) to respect the underlying interests in the conduct of the state's official business; (b) to protect the underlying interests against threats from non-state agents subject to the state's jurisdiction and control; and (c) to aid those who are non-voluntary victims of deprivation'. Human rights also limit the means of government of human rights, depending upon the nature of the underlying interests and the threats that must be protected against.
3. 'Human rights are matters of international concern'. Domestic governments have first level responsibilities with regard to human rights, but when they fail fulfil these, 'second-level' agents outside the state have reason to take action. These actions can include: a) to hold states accountable for any human rights failure, b) to assist individual states that lack the capacity to satisfy human rights standards and c) to provide other states with *pro tanto* reasons to interfere when a state is not willing to respect human rights, *in extremis* by means of war.

This model evokes some critical observations. First, the notion of protecting against 'predictable threats' is important. Human rights only apply to hardship that can reasonably be foreseen; for

example, it makes sense that there are no human rights against natural disasters. Implicit in the first element is that human rights can only apply when the means exist to respect them. States can only protect human rights if the means to do so are available. Human rights always have an institutional character in the sense that they can only apply to what an institutionalized government can offer; for example, there can only be a right to healthcare if a healthcare system exists or can exist and if relevant treatments exist, but there can definitely be no general right to health. Thus, we only hold human rights in a particular context. No ‘manifesto rights’ exist that we have in every context, regardless of the existence of someone capable of undertaking the relevant duties. This observation is important in the arguments discussed in later chapters. For now it is enough to note that this is strength if we aim to have a practical notion of human rights. It would be unproductive to list human rights that we lack the means to protect or for which the associated duties cannot be ascribed to someone.

A second possible concern could be that the focus on ‘threats’ implies too heavy a focus on negative rights. Human rights are only meant to protect the freedom of citizens against their governments, but positive rights, such as the right to healthcare, are excluded if we focus only on possible threats from government. However, the notion of threats is broad enough to include positive rights as well. In the second element of the model, Beitz states that human rights demand of states, at the domestic level, ‘to aid those who are non-voluntary victims of deprivation’. It is important to note that individuals can be disadvantaged if they are neglected due to institutionalized wrongs. For example, if a healthcare system exists and particular citizens are systematically denied access this can be seen as an institutional wrong and thereby in the domain of human rights. To what extent positive rights must be included is left for discussion in the fourth chapter, which will deal with listing human rights. For now it is sufficient to see that, from the perspective of a functional view, and ignoring discussions of human rights content, it is not necessarily the case that human rights only function to constrain governments from harming their citizens; from a functional point of view it is perfectly possible that human rights ascribe positive duties to governments.

Thirdly, questions might arise about exactly whose duty it is to interfere when a state fails to adhere to human rights, and what means of interference are allowed. In Beitz’s model, states at the domestic level are the only ones that have a duty to protect human rights within their jurisdiction, but when they fail to do so external actors only have *pro tanto* reasons to interfere. This might seem too weak. Should legitimate states not have duties to protect the international system they are part of? A related question one could ask is: ‘What means of interference are allowed?’. This is a crucial aspect for a functional account of human rights. I have already suggested that, *in extremis*, armed intervention is possible if human rights are violated, but this hardly seems to be the only option. There are less far-reaching options, such as holding other countries accountable and economic

sanctions. Furthermore, human rights protection must not necessarily be practiced only by strictly legal and political means. Human rights also have discursive power in the sense that the idea can have such a normative appeal that it can influence the conduct of states. This normative power is exactly what organizations such as *Amnesty International* use to put pressure on governments to protect human rights. Realizing that human rights not only have legal but discursive power is also crucial in understanding how human rights work. At this point, it is impossible to give a more detailed account of duties of external actors. These tasks depend on the justificatory nature of human rights, the second question this thesis seeks to answer. Only when we know to whom human rights apply and why can we hope to give more detailed answers to the question about which actors have a duty to protect human rights. The fourth chapter will deal with this topic.

Fourthly, one might wonder why human rights primarily target state behaviour. Can non-state actors not violate human rights? For example, a feminist argument states that such a focus on the state might lead to the neglect of moral wrongs in private life, such as domestic violence. This is, however, not implied by the conceptualization of human rights provided by the political approach. Saying that moral wrongs in private life are not violations of human rights is not to say they should not be addressed: they should be, but instead of falling under the domain of human rights they fall under the domains of criminal law and retributive justice. As long as such cases are brought to court there is no case of human rights abuse. There is only a case of human rights violation when states systematically ignore cases of abuse such as domestic violence. States have the duty to protect at least the most vital interests of their citizens. If state institutions fail to do so in a systematic matter they are subject to human rights claims. It is not the criminal, but the state that systematically ignores criminality that can be blamed for violating human rights. Others might argue that the focus on states is misleading because large multinational corporations can also pose significant threats to individuals. For example, Amnesty International holds Shell accountable for human rights violations in Nigeria (2015). Some argue that in many cases corporations are more powerful than governments: sometimes 'markets matter more than states' (Ratner, 2001, p. 462). The international character of multinational corporations can make it especially hard to subject them to government control. If so desired, multinational corporations can move across borders relatively quickly. Whether it is truly the case that corporations are often more powerful than states is an empirical matter that cannot be investigated in this project. It is, however, conceptually possible that corporations are liable to human rights claims, and not just criminal law. This is the case if corporations have important influence on the lives of individuals, similar to the bureaucracy of modern government, and if there is

no state that can effectively constrain those corporations. Therefore, if corporations or other bureaucratic entities have *state-like* powers they can properly be subjected to human rights claims.²

Taking these points into account, the functional model of human rights proposed by Beitz requires some adjustment. To Beitz's model I add the idea that non-state actors with state-like characteristics can also be the proper subject of human rights claims and that the means of human rights protection not only includes legal, but discursive means. The model I propose in this chapter already provides significant improvements over Beitz's model. However, the following two chapters will provide new insights crucial to the understanding of human rights. Therefore, the last chapter of this thesis will contain another model that is an improvement of the model based on the insights of this chapter:

1. The object of human rights is to protect urgent individual interests against certain predictable institutional dangers that are typical for life under modern forms of government.
2. In the first instance, human rights apply to states, or state-like entities. The human rights duties of states can include positive rights including the duty to protect humans against injustices in the private sphere. Systematic exclusion from an institutionalized good can also constitute a human rights violation.
3. If a domestic state fails to adhere to human rights, external actors, states and non-state actors have good reason to interfere. The exact nature of these reasons will be discussed in the next chapter about the justification of human rights.
4. There are different means of human rights protection ranging from holding countries accountable through legal channels to full-blown military interference, to the discursive means that are often applied by NGOs.

2.4: Assessing the Political Approach

In this chapter I have discussed the political approach to human rights. Proponents of this approach see their theory as an alternative to moral approaches that do not use the actual practice of human rights as a starting point for their analysis, but try to ground human rights in moral theory instead. Using actual political practice as its point of departure makes the political approach refreshing. Political approach proponents suggest that focusing on the political role is necessary in order to grasp

² Another candidate for the ascription of state-like power could be a terrorist organization such as ISIS.

the special role human rights plays. Human rights are more than ordinary moral principles: they have the connotation of being of special importance. The mark of this special status is that they can justify outside interference into a sovereign state, otherwise the most important principle in international politics. Using this approach also makes it clear why we should have a concept of human rights. If human rights are deemed to be most important in a general moral theory, it is unclear why philosophical scholarship of human rights is necessary at all. Human rights are not the product of a general theory of human rights, but of a special class of political principles.

Both Raz and Beitz go to great lengths to show the superiority of their approach to human rights. For example, Beitz dedicates an entire chapter of his book to an explanation of why moral approaches fail (Beitz, 2009, ch. 4).³ Part of Raz and Beitz's criticism is that moral approaches fail to grasp why human rights are extraordinary in the sense that they justify external interference in states: 'my criticism of that tradition is primarily that it fails to establish why all and only such rights should be recognized as setting limits to sovereignty, which is the predominant mark of human rights in human rights practice' (Raz, 2010, p. 334). Unfortunately this is the point where the political approach gets confusing. While both authors make it clear that human rights function to limit the authority of states, it is not clear why this is, *normatively* speaking, the case. Why do particular rights justify this function? Beitz attempts to answer this in his two-level model of human rights with his reference to urgent individual interests. Thus, in the political approach human rights are seen as 'moral rights held by individuals' (2010, pp. 335). However, it remains a mystery what urgent individual interests actually justify human rights claims; it is implausible that all individual interests do. There is no explanation of which interests fit the bill; there are no criteria to judge whether, for example, the right to education should be included in human rights lists. One possible answer to this point exists in the political approach. Particular human rights are justified because they are part of the practice on which states have agreed, but this is hardly satisfactory. In this case, human rights would be no more than political agreements that can easily change as they are not backed up by any normative justification. To be successful, of Raz and Beitz's approaches need further explanation of which individual interests or moral rights are considered human rights and which not.

In conclusion I suggest that the political approach does provide a suitable *functional* account of human rights. It explains what human rights do as political principles. However, as a full account of human rights, political approaches are incomplete. They lack moral criteria to determine the content of human rights, making it impossible to define which rights are human rights; therefore, political approaches fail to provide criteria to determine which rights pass the hallmark of justifying outside

³ Their criticism of moral approaches will be discussed in the next chapter.

interference in states – it is necessary to refer to moral theory to provide these criteria. This is not to say that the political approach is irrelevant in deciding which moral criteria are best to justify the content of human rights. The functional account covered in this chapter requires that the content of a moral theory of human rights is applicable across cultures to make them justify political principles of international politics. The next chapter several moral theories to investigate how the moral content of human rights can best be justified. These moral theories of human rights might be insufficient in themselves to grasp the political nature of human rights, but they are inevitable if one wishes to construct a complete concept of human rights.

Chapter Three: The Moral Justification of Human Rights

The previous chapter provided both a functional outline of what human rights are or how human rights function and an evaluation of the political approach as a comprehensive doctrine for understanding human rights. The chapter concluded that the political approach provides some useful insights, most importantly the sovereignty limiting role of human rights, but also that the political account lacks moral content. In a sense the political account can define what human rights are (rights that protect individuals from institutional wrongs), but lacks evaluative criteria; the approach lacks principles for justifying the content of human rights. This chapter will fill that gap by discussing several moral accounts of human rights. It must be stressed that, while this question differs from the question on the function of human rights, it cannot be considered independently from the functional account. For example, the idea that human rights focus on institutional wrongs of states already limits the moral domain of human rights.

This chapter starts with a discussion of ‘foundationalist’ (Raz, 2010) or ‘naturalist’ (Beitz, 2009) approaches. These approaches base human rights on morally significant features such as principles or universal human interests. James Nickel (2007), for example, focuses on what is minimally necessary to lead a good life. His theory is plural in the sense that his account of human rights is based on different abstract rights: having a secure claim on having a life, to lead one’s life without being subject to cruel treatment, and a secure claim against unfair treatment. Others choose an overarching principle on which to base human rights. For example, Gewirth (1982) bases human rights in human agency and autonomy. According to this view, the possibility to lead one’s own life is necessary to achieve a minimal amount of decency. The leading author from the moral tradition in the current human rights debate, James Griffin, has a similar position. He bases human rights on personhood – on that which makes human persons more than mere organisms. A critical examination of his theory will be used as starting point for the discussion of moral approaches in this chapter. After having argued that Griffin’s approach is unsatisfactory, agreement theories will be discussed. Agreement theories are another kind of moral approach that base human rights on moral claims that are shared among cultures (Nussbaum, 1993 and 2007; Sen, 2004 and 2005; and Walzer, 1994). After having argued that this approach is also unsatisfactory the chapter concludes by suggesting that needs based approaches serve better as moral ground for human rights (Miller, 2012 and 2014).

3.1: Personhood

Griffin holds that human rights are a continuation of the natural rights tradition that started long before the adoption of the Universal Declaration or even before the French Declaration of the Rights of Man and the Citizen. While the nature of the concept of natural/human rights changed over the centuries, it continued defending roughly the same kind of moral principles; both ‘terms come from the same continuous tradition; they have largely the same extension, though different intentions’ (Griffin, 2008, p. 9). The concept of natural law and associated natural rights has existed since antiquity. The term natural law became widely popular after Thomas Aquinas’ mention of it in *Summa Theologica*. Aquinas’ conception of natural law is a property of a just state of affairs, differing from the modern conception of natural rights in which natural rights are the entitlements each person has – rights that every person has as a virtue of being a person. Initially the natural law tradition had a largely theological nature, but the link between God and natural law started to fade from the late Middle Ages to the Enlightenment. Francisco Suarez argued that natural law only had a status as law because of God’s will, but humans are able to understand this law unaided by a deity. Hugo Grotius took this further by arguing that obligations implied by natural law do not depend upon the existence of a deity: ‘what we have been saying [namely, that there are natural laws and that they obligate] would have a certain degree of validity even if we should concede that which cannot be conceded without the utmost wickedness, that there is no God, or that the affairs of men are of no concern to him’ (as cited in Griffin, 2008, p. 10). Everyone, regardless of religion, is capable of understanding natural laws due to their rational powers. This made the idea of natural law suitable for the enlightenment tradition as the rational powers of human beings have a central role in it.

The concepts of natural law and rights were widely used during the Enlightenment (Murphy, 2011). For example, Locke used these terms in his *Two Treatises of Civil Government* where natural rights could be derived from natural law. While Locke held that rational persons disagree about questions of the highest ends of life, he thought that rational persons were able to understand some basic moral principles. The notion of rational disagreement explains why Locke does not put much effort into explaining the derivation of natural rights from natural law. Among rational persons it would be virtually impossible to decide on this if they disagree about comprehensive conceptions of the good life. Locke’s natural rights are mainly meant to protect citizens against their governments, focusing on the rights of life, liberty and property. All should be able to agree on this as basic, or natural, rights, even if no agreement on their justification can be reached. While further secularization in the natural law tradition was important during the Enlightenment, another

important addition was that of proposing lists of natural rights. Some examples include the British Bill of Rights (1688), the American Declaration of Independence (1776) and the French Declaration of the Rights of Man and of the Citizen (1791) (Griffin, 2008, pp. 12-13). While there were numerous differences in opinion on the content of natural rights, and subsequently human rights, they contain one basic principle: all humans have them by virtue of being a human. This is clear from the opening line of the Universal Declaration of Human Rights: 'Whereas 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' (UN, 1948).

With this historical background in mind, Griffin continues by developing an approach that is based upon characteristics all human persons share. Further work on defining human rights is needed, according to Griffin, because the current usage of the term is not determinate enough. The concept of human rights suffers from inflationary pressure because there is a tendency to bring everything that is morally valuable under the umbrella of human rights: 'It is a great mistake to think that, because we see rights as especially important in morality, we must make everything especially important in morality into a right' (2010, p. 199). He argues that any theory of human rights must not only have a structural definition of rights, such as 'rights are side-constraints', but also substantive content (2010, pp. 20-21). Furthermore, though Griffin acknowledges the limited scope of human rights, his conception is outspoken moral, not legal or political. This implies that human rights do not only constrain states but also govern behaviour in the personal sphere: although human rights are mainly concerned with state behaviour, they also apply to personal conduct.

Griffin's notion of human rights is based on human interests, differing from deontological views based on principles. The interests involve autonomy, liberty and welfare (Griffin, 2010). Together, they constitute the notion of personhood. These three interests are what make us people with special moral values, instead of mere organisms. The right to autonomy must ensure that we are capable of forming a conception of a worthwhile life, while the right to liberty must ensure that we can not only make autonomous decisions, but also that we can act autonomously. Autonomy only has value if we have the possibility of acting upon it. The right to welfare ensures that we have a level of welfare sufficient for normative agency. 'If human rights are protections for a form of life that is autonomous and free, they should protect life as well as that form of it. But if they protect life, must they not also ensure the wherewithal to keep body and soul together – that is, some minimum material provision? And as to mere subsistence – that is, keeping body and soul together – if it is too meagre to ensure normative agency, must not human rights guarantee also whatever leisure and education and access to the thought of others that are also necessary to being a normative agent?' (Griffin, 2010, p. 180). With the inclusion of autonomy and liberty as essential interests for humans,

Griffin's theory is clearly liberal, as the freedom to pursue a life one chooses is seen as vital to having a worthwhile life.

The abstract rights of autonomy, welfare and liberty are basic human rights on which particular human rights, such as freedom of expression or the right to education, are based. There is, however, a danger that too many specific rights are included as human rights because virtually every right contributes to the three abstract rights that establish the notion of personhood. Full autonomy would require that a person could choose as he or she wishes. For example, everyone should have the means at his or her disposal to become a Formula One driver, no matter how costly. Griffin argues that this is not the case, as his theory is *minimal*: we only have human rights to a minimum degree of autonomy, liberty and welfare – enough to meet the minimum requirement of personhood; that is, we only have a right to meet the threshold needed to be a normative agent. For example, we do not have a right to all the education we want, but only to a 'certain minimum education' (Griffin, 2010, p.33). Furthermore, Griffin adds the notion of *practicalities* to his notion of human rights. The condition that rights must be practicable ensures that rights can only be human rights if we have the means to satisfy that right. The freedom of press can only exist if presses exist and we can only have a right to medical care if a relevant treatment exists. Practicalities include empirical information about the nature of humanity and human society and technical limits. This basic outline should provide enough information for a critical discussion of Griffin's theory in the next section.

3.2: Against Autonomy

Griffin's account is influential but not without criticism. Several arguments against Griffin's theory will be discussed in this section. First, Buchanan argues that Griffin holds the 'mirroring view' (2013, pp. 14-18). This view states that every human right should have a corresponding moral right. Buchanan argues that, in line with the political approach, human rights do not necessarily need to depend on moral rights. Human rights institutions, he believes, can be justified without an identity between moral and legal human rights.⁴ Such an identity relationship would be implausible, as some moral values cannot be translated into a discourse on rights. For example, it can plausibly be argued that gratitude for beneficial acts is of moral value, but it can hardly be translated into a right (Mayr, 2012, p. 84). Any effort to command gratitude would be self-confuted; any enforced instance of

⁴ Buchanan's approach will be discussed in greater detail in the next chapter.

gratitude is not real gratitude. The argument that moral and legal human rights, or even moral values and moral rights, cannot 'mirror' each other is valid. However, Griffin cannot be criticised for doing this. First, bear in mind that Griffin is explicitly worried about the inflation of the term 'human rights'. He acknowledges that too much moral values are brought under the umbrella of human rights. Second, Griffin does not argue that there is a strict identity between basic human interests, the central moral notion in his theory, and human rights. He cannot, as he only uses three basic interests as definition for basic human rights of an abstract nature: particular human rights are derived from those abstract basic moral rights. Third, Griffin's introduction of the notion of 'practicalities' in his theory also shows he does not hold a mirroring view. Legal human rights will always be based on *both* moral and practical considerations, adding some context sensitivity.

A second argument waged against Griffin is the threshold objection (Raz, 2010). The argument regards Griffin's account as minimalistic in the sense that only the bare minimum of human dignity is protected. Any differences between persons above that threshold do, at least from the point of view of human rights, not matter. As long as your 'personhood' is protected, your human rights are satisfied: 'Human rights, I propose, are rights to what allows one to act merely as a normative agent, not as a normative agent with a good chance of getting what one aims at. "Normative agent" is, I say, a threshold term: one above the threshold, remaining differences in practical rationality or in executive ability or in material resources – all of which there undoubtedly are – do not matter to one's possession of that status' (Griffin, 2012, p. 348). Human rights have a special status in the sense that they are not about whatever is of value, but about what is *essential* for the possibility of having a valuable life.

'Finding a threshold to human rights is essential for the traditional approach. It takes human rights to mark a normatively exceptional domain' (Raz, 2010, p. 326). Furthermore, Raz contends that it is going to be impossible for the traditional approach to set this threshold. Griffin's account of agency is more than just the capacity of intention, that is, the ability to form intentions. For example, doing this would lead to the implausible result that torture would not fall in the domain of human rights. Even when one is tortured, one can have thoughts and form intentions (for example, to resist or accept one's situation). If we go above this threshold of mere intentionality, it is not clear where to stop. For example, what should the threshold for the right to education be? According to critics such as Raz, Griffin lacks the resources to determine such thresholds, and thereby his theory is not as conclusive as he desires.

However, I do not agree that this argument cannot be overcome by Griffin's theory. First, it is not clear how Raz's political approach fares any better in this respect. He claims his theory is more

determinate because it offers the principle that human rights are those rights that justify outside interference in states. But it is not clear to me how Raz defines this threshold: his principle requires as much clarification as the personhood account in determining which violations are strong enough to warrant outside interference. Second, I doubt whether threshold problems imply that a theory is indeterminate. Threshold problems are not a particular problem for Griffin's theory. For example, in chemistry (Sober, 1980, p. 356) nitrogen can gradually change into oxygen, but it is not exactly clear where the line between both can be drawn. This does not imply that either nitrogen or oxygen lack an essence or are indeterminate. We know perfectly well what both are and what characteristics classify them as such. The problem with Raz's threshold objection is that he confuses indeterminateness with vagueness. Griffin provides a clear criterion for human rights, but the exact threshold is vague. While it is better if a theory suffers less from vagueness, it is not a decisive argument against that theory. If that were the case, too many theories would be discarded, even in successful sciences such as chemistry.

A third issue raised is the pre-institutional character of theories like Griffin's. Basing human rights on universal human features implies that human rights exist in all situations, even in a state of nature with no political institutions. One can wonder whether this makes sense. As the previous chapter showed, human rights practice is aimed at state behaviour. From this point of view it does not make sense to speak of human rights in a non-institutional context. Furthermore, many rights that often appear in human rights documents cannot exist outside an institutional context; 'consider, for example, human rights to political asylum, to take part in the government of the country, or to free elementary education. Because the essence of these rights is to describe features of an acceptable institutional environment, there is no straightforward sense in which they might exist in a state of nature' (Beitz, 2009, p. 55).

Griffin tries to make the concept of human rights more determinate by not including everything of moral value in the notion of human rights. But if one's conception of human rights does include values that exist without an institutional context, it is hard to see how we can avoid including too many rights. One could, however, reply by invoking the distinction between first- and second-order rights that Griffin makes. First-order rights are basic human rights such as autonomy, liberty and welfare, as outlined by Griffin and are abstract in nature. Second-order rights are particular rights based upon first-order rights; the notion of practicalities ensures that second-order rights are of a practical nature. Second-order rights can only exist if they are appropriate in a given institutional context. For example, the right to health can be derived from the abstract right of welfare, but this only makes sense when healthcare institutions exist.

A final issue with Griffin's theory is its universal, and especially liberal, character. His concept of human rights is one in which these are independent of any particular moral conventions and positive laws of society: they are supposed to be valid in any culture. One could question whether this is true. Griffin's focus seems to be on western liberal values that might not apply in other cultures. Thus, his conception is not as universal as he intends. However, Griffin is not impressed by this criticism; in fact, he contends that this feature of his theory is a strength (2010, pp. 137-142). We should not eschew using western values, as falling prey to particularism would hinder the critical power of human rights. According to Griffin, a conception of human rights that is strong enough to criticize practices that endanger the human status of some is required; this will not be possible in an account that is too particularistic. However, while there is some truth in the assertion that human rights must have critical power, a theory that is too universal might be useless in practice if many cultures do not agree. If we want human rights do have some *actual* power, they need to be accepted by many, though not necessarily all, cultures around the globe. To do so, human rights must be justifiable from different moral cultures. This idea was crucial in the drafting of the Declaration. For example, Jacques Maritain, a member of the UNESCO Committee on the Theoretical Bases of Human Rights, stated that 'we agree about the rights but on condition that no one asks us why', explaining that human rights are 'practical conclusions which, although justified in different ways by different persons, are principles of action with a common ground of similarity for everyone' (as cited by Beitz, 2009, p. 21). While human rights, by definition, hold for everyone, they do not presuppose any view about their justification and this might very well be the case for Griffin's theory. Raz (2010, p. 325) suggests that Griffin smuggles 'in a particular ideal of a good life' This criticism seems to be valid, it can be hard to convince moral cultures with less emphasis on autonomy to agree. It would be better to find a notion of human rights that fits many moral cultures better, but without losing critical power. The remainder of this chapter will seek such a conception of human rights.

3.3: Agreement Theories

Another influential theory in the debate about human rights is the capabilities approach developed by Amartya Sen and Martha Nussbaum. Capabilities are meant to measure welfare in a broader sense than a strict economic focus on GDP. The main question in the capability approach to welfare is not how much money or other resources one has, but about what one can choose to do with those resources. What activities can we undertake that make a human life worthwhile? It is important to

note that the focus is not on actual functioning; it is not about what we actually do. Instead, the approach is concerned with the capabilities we have to choose to perform the actions we want to perform. Capabilities refer to the opportunities for valuable choices we have. They are 'notions of freedom, in the positive sense: what real opportunities you have regarding the life you may lead' (Sen, 1985, p. 48). Nussbaum proposes a list of basic capabilities, containing, for example, features such as life, bodily health and integrity.⁵ While the capability approach has a broader focus than human rights, it is easy to see how the notion of basic functional capabilities can be used as a basis for human rights (see Nussbaum (2007), Sen (2004) and Sen (2005)). It is also straightforward to see the resemblance to Griffin's approach, as both use basic human values as grounds for human rights. However, at a more theoretical level both approaches differ in their justification for *universal* human rights. This section will continue to argue how these approaches differ, and whether the approach Sen and Nussbaum use is more promising to ensure the universal character of human rights. The outcome is that the approach used by Nussbaum and Sen does not succeed in providing a suitable approach to human rights.

Where Griffin clearly has a liberal outlook on human rights, and believes that this is a strength, both Nussbaum and Sen go to great lengths to accommodate cultural differences. Sen goes so far as to argue against defining a list of basic capabilities because that would make the capabilities insensitive to cultural differences (2005, pp. 157-160). The capabilities approach must not define a list of basic capabilities that function as universal political principles. Instead, it must be a product of 'an interactive process of critical scrutiny' (Sen, 2004, p. 321): the notion of basic capabilities is to be debated constantly and decided upon by 'the public'. While Nussbaum does propose lists of basic capabilities, her approach to the universality of them is similar. Nussbaum argues that 'universalism does not require such metaphysical support. For Universalism ideas of the human do arise within history and from human experience, and they can ground themselves in experience' (1999, p. 38); human rights are not based on a metaphysical view of morality or on human nature but on the empirical findings of shared global values – a kind of global 'overlapping consensus' (Nussbaum, 2006, p. 98)⁶. This implies that the capability approach is, rather than naturalistic or foundationalist, a type of agreement theory. Such theories rely on the idea that there is an overlap of the moral principles between the different moral cultures around the world, a kind of 'minimal moral code' shared by all (Walzer, 1994). There are two kinds of agreement theory. Sometimes an existing overlapping consensus is assumed, but more often the idea is that we should work towards an

⁵ It should be noted that Nussbaum has proposed different lists of basic capabilities over the years. Compare, for example, Nussbaum (1993, pp. 55-57) with Nussbaum (1999, pp. 41-42).

⁶ It must be noted that, while the concept of an overlapping consensus originates from Rawls' work, he himself does not justify human rights by reference to such a consensus.

‘unforced consensus’ between different cultures (Taylor, 1996). However, both approaches share the idea that human rights must be based on principles that are shared among different cultures. Agreement theories have one practical advantage: if human rights are based on those principles that are already shared across the globe, it will be much easier to implement them. Furthermore, theories based on agreement are not vulnerable to charges of paternalism.

While agreement theories are very good at accommodating cultural differences, they face too many difficulties to be a suitable alternative. First, one can wonder how many values are agreed upon by *all* cultures. If all cultures have to be taken into consideration, the odds are high that at least one of those cultures is against a particular human right. If all moral cultures have to agree, the list of human rights will be very small, making it questionable whether such a list is worth having at all. One strategy to obtain a richer account of human rights would be to state that only *reasonable* cultures have to agree. But then, how are we to determine which cultures are reasonable? This is impossible to determine if the starting point for justifying human rights is agreement itself. An external principle is required to determine who is reasonable before we can start reaching an agreement with the appropriate partners. There is, however, no room for an external moral principle in the logic of agreement theories. The only way to justify such an external principle would be agreement itself, making its reasoning circular.

Second, it might be harder than it seems to compare values of cultures with each other. The agreement approach assumes that cultures are relatively easy to define; ‘the idea of intercultural agreement relies on the possibility of identifying a reasonable stable and integrated structure of moral beliefs shared among the members of each society which is a party to the agreement’ (Beitz, 2009, p. 85). However, in practice cultures are not stable and not perfectly integrated structures. Cultures develop organically: their precise content is constantly changing. Furthermore, it is implausible that all, or even most, members of one culture share exactly the same moral outlook. There is probably as much moral disagreement within, as there is between cultures, and even if it was possible to define clear and stable moral cultures, it is impossible to remove a value from the system as a whole. Values depend on other values. For example, it does not only matter which values are adhered to in a culture but also how they rank relative to each other; perhaps all cultures value autonomy, but maybe one culture sees it as the most important value while another sees material well being as more important.

Finally, it is unclear how agreement theories can demarcate human rights from other moral principles. Jones (2012) argues that human rights are superfluous if all cultures already agree on those values. Would there be a need for human rights if we already agreed on the values on which

they are based? However, this seems too easy. It is a simple fact that humans do not always know what is morally desirable. So, even if all cultures automatically agree that human rights function as a safeguard to protect what we agree is valuable, human rights are not superfluous because of this agreement. Agreement theories still have a problem justifying why agreement justifies the special status of human rights, bearing in mind that human rights are not just moral principles, but have special importance. It is unclear why the observation of agreement between cultures is enough to justify a principle having a special status. After all, while agreement is probably a good proxy for determining human rights, it can also be a mere coincidence. Some explanation is required to explain why a particular moral principle should be granted the special status of being a human right. Agreement theories lack another criteria to justify this special status, except for agreement itself. Again, justifying the agreement approach by agreement itself would be circular. In conclusion, we still need a concept that can justify the special status of human rights. It is necessary to find an alternative that has a less liberal focus than Griffin's theory so that it can appeal to different moral cultures. The next section will defend such an approach.

3.4: Needs

We need a conception of human rights that is both able to accommodate pluralism and is also more definitive than agreement theories. A suitable alternative might be to formulate a pluralist theory that allows for different justifications of different human rights. For example, a right to torture would not be justified because it impacts someone's autonomy, but because the pain by itself is enough of a justification, 'it is puzzling in the extreme that the evil of pain in itself, independently of its corrosive impact on one's agency, forms no part of the justification' (Tasioulas, 2002, p. 93). Not relying on one single principle might have the advantage that we do not have to refer to one single value that has to reflect everything of essential importance to human life, but has the flexibility to let different reasons be used as justification. While this alternative sounds appealing, it has two serious downsides. For one, if a theory of human rights lacks a clear rationale, it may suffer from a lack of force. Instead of a theory with a strong appeal, it becomes a 'rag-bag of claims that we are defending on quite different grounds' (Miller, 2012, p. 411). Second, it is questionable to what extent a pluralist theory can be non-partisan. If a wide array of grounds for human rights is introduced, the odds are high that some of them are inaccessible to particular cultural backgrounds. Furthermore, pluralist approaches may invite those from different cultural backgrounds to put forward their own list of

rights, resulting in different and incompatible lists, an outcome that would be unworkable if human rights must function as principles in the international society of states.

Now that it is clear that we need to find one single rationale for human rights that appeals to different cultures, I will defend Miller's needs-based approach. Needs are the requirements for a decent human life across cultures. This might sound similar to Griffin's personhood account:⁷ after all, he proposes a set of requirements for a decent life as human person. They have, however, different ambitions in an important aspect. Griffin's ambition is to convince non-western cultures of western values by putting 'the case for human rights as best we can construct it from resources of the Western tradition, and hope that non-Westerners will look into the case and be attracted by what they find' (Griffin, 2008, p. 137). Griffin supports this ambition by stating that there is a global convergence of ideas about human rights made possible by processes of globalization. Miller, however, takes a different view. While many different nations may pay lip-service to human rights, it is possible that they see them as 'a Trojan horse whose purpose is to smuggle liberal values into societies whose political ethos is of a different kind, being based, for example, on religious foundations' (2014, p. 156). To avoid any suspicion of this kind, human rights might be more successful if they are recognized by both liberal and non-liberal cultures. This argument is especially strong if one wants a theory of human rights that can be practical in the sense that it provides guidelines that can be used in political practice. This makes it worthwhile to further explore the needs account. The remainder of this chapter will continue explaining Griffin's account of needs and how they relate to human rights, and why it is successful at providing a theory of human rights that takes cultural differences into account.

Needs have a kind of moral urgency: they are essential to human beings. We cannot choose to not have needs: all humans, in all societies have them. The advantage of focusing on needs is that the focus is on the most essential features of human decency, allowing diversity above that threshold. This makes needs a suitable basis for a conception of human rights sensitive to cultural diversity. There is, however, also a risk of 'undershoot' for this approach (Miller, 2012, p. 411). Some might worry whether the notion of basic needs is too thin to justify a substantive list of human rights. For example, some might argue that the focus on basic needs that applies across all cultures implies a focus on a strictly biological conception of need. Miller's notion of needs is, however, broader: 'Human beings are social as well as biological creatures and they can be harmed by being denied the conditions of social existence. I shall capture this idea by saying that a person is harmed when she is unable to live a minimally decent life in the society to which she belongs' (Miller, 2007, p. 181). Miller

⁷ And, for that matter, agreement theorists.

makes a distinction between basic and societal needs 'where the former are to be understood as the conditions for a decent human life in any society, and the latter as the more expansive set of requirements for a decent life in the particular society to which a person belongs' (Miller, 2007, p. 182). For example, all have a basic right to shelter, but there is no moral necessity for a fixed dwelling place in all cultures: not in nomadic societies, for example. Another example is the notion that education is a basic human right; but the minimum threshold of education differs across society. The threshold should be put at a level that allows development of a level of knowledge and skills necessary to function in a given society. In many non-liberal societies this implies the need for religious education, even though someone with a liberal world-view might not agree. In a simple farmer's society, the right to education would mean no more than learning basic farming techniques. It should be noted that the notion of societal human rights only focuses on the minimum required level of some goods in a given society, not on human flourishing. Matters of social justice are also outside the scope of Miller's notion of needs.

The notion of societal human rights assures us that the list of human rights is broad enough. The question arises whether the needs-based approach is able to define a limit to human rights that is low enough to avoid laying too many demanding claims on others. There are, however, limits to what rights can be demanded. Miller (2007, 2012) agrees with Griffin that practical restrictions automatically limit the possible content of human rights. Firstly, some needs cannot be satisfied by human agency. A need for medical treatment cannot be translated into a right if no cure is available. At most, the duty to fund research efforts to develop a suitable treatment can be demanded. Second, some needs cannot, by definition, be demanded from other agents. Love and respect, for example, can only be satisfied by unforced responses. If love and respect are the results of an obligation, no true love or respect exists. Needs like these can only justify rights that contribute to the possibility of fulfilling these needs, such as the right to marry between two consenting persons. Other restrictions are of a more normative nature. For example, when providing others with what is needed to meet their rights violates one's own human rights. A classic instance of such a case is that of organ donation. Someone with failing organs has a basic need for a donated organ. However, we cannot require others to fulfil this need, as it would violate their human rights. A crucial point in this case is that there is no utilitarian weighing of needs. Take the case of someone who needs a kidney and will die if he/she does not receive one. Her/his need is, in the utilitarian sense, clearly stronger than the suffering of a healthy person who donates one of his/her kidneys. This is, however, not how we should understand rights. It is not the case that we can demand that someone donates a kidney because of considerations of need satisfaction. Instead, we must weigh the need for a kidney against other normative rights. In the case of kidney donations, the right to bodily integrity that supports the

right to freedom of conscience disallows forcing persons 'to let her body to be used in ways that contravene her beliefs' (Miller, 2012, p. 418). Instead of making an analysis of needs satisfaction, we should consider what impact our decisions would have on the overall system of human rights. Allowing the use of someone's body against someone's will clearly has a negative impact.

With the basic picture of the needs-based approach in mind it is time to consider what rights would be considered human rights, and which would not. First, while negative rights are often considered to be the most straightforward, socio-economic rights are most easily justified in the needs-based approach. The most basic, biological, needs can only be met if one's level of welfare is high enough. One should note that the example of organ donation does not imply that we can never demand sacrifices for human rights fulfilment. As long as those sacrifices do not push someone's need satisfaction below the threshold of human rights, such sacrifices are justified. We can, for example, demand some offerings from the more affluent to better the lives of the most needy – those whose needs situation is clearly beneath the minimal threshold. Again, the notion of socio-economic rights must not be confused with the notion of social justice. While the needs-based approach can justify some global redistribution to meet the human rights of the worse off, it can only justify this to the extent of meeting unmet human rights. Human rights cannot justify any redistribution above this threshold to meet the objective of equality. Social justice is a matter for nation states.

Second, while it might seem harder to justify civil and political rights using the needs-based approach, the notion of societal rights ensures that those rights also have a place on the list of human rights produced by the needs-based approach. However, it is not the case that there is always a clear one-on-one relationship between needs and human rights in this instance. Sometimes a concrete human right is justified by reference to more abstract basic human rights. For example, in the case of freedom of religion it is hard to show that the freedom to choose your religion is a human need in all societies (Miller, 2007, pp. 195-196); in some societies religion only plays a marginal role and in others there is a strong cultural norm for everyone to have the same religion. In the latter case, there would be a strong need to practice that religion, but not to choose one freely. The more basic need of freedom of conscience, however, 'covers some of the same ground' (Miller, 2007, p. 196). It should be clear that if someone is forced to live according to norms one does not endorse, a need is clearly violated. Someone who has to live in a way that goes against her conscience would clearly feel in need. The right to freedom of religion is, however, more limited than is often believed. For example, there is no right to set up a new church or no right to perform missionary practices: the basic right of freedom of religion does not get beyond the personal sphere. Only in a particular social context will there be societal rights that move the right to freedom of religion into the public sphere.

Third, democracy will not be a basic human right. In some societies, liberal ones for example, democracy will be a societal right, but not in others. This is not to say that political rights cannot be included in the set of basic rights. I would propose that the freedom of expression is a human right as it is functional to freedom of conscience but also enables us to have meaningful social interaction. Nevertheless, it does not follow from freedom of expression that citizens in all societies have the right to an equal voice in politics. Adding equal political participation to the list of human rights would violate the ambition of impartiality. This is, however, not to say that there is no role at all for democracy in human rights discourse. Democracy could be functional to some basic rights. Sen's claim that no famines took place in modern democracies is famous. However, the claim is not uncontroversial (e.g. Rubin, 2009). The causal mechanism at work can be questioned. Furthermore, China performs comparatively better at social indicators than democratic India. For example, adult literacy is 15 per cent higher in China and life expectancy is nine years higher (Batsu et. al., 2007). This questions whether Sen's claims of famines in democracy can be broadened to performance regarding socio-economic rights in general, making it unclear to what extent democracy can be seen as functional to human rights. The only thing that is certain is that in the account, defended democracy can only be included as a human right for functional reasons. Democracy is not a human right in itself.

Fourth, another surprising omission from the list of human rights in the needs-based approach, at least from the liberal point of view, is that of rights against discrimination. Although there is a right to recognition, according to Miller, this right is less strong than the right against discrimination as it is usually understood. The need for recognition 'can be met by being recognized as a person who belongs to a certain category or occupies a certain role. So a society that enshrined clear distinctions of status, but nevertheless provided secure recognition for people qua members of each status group, could not be faulted from this perspective' (Miller, 2012, p. 421). However, this does not imply that all should have the same rights. Human rights do not demand, for example, that all have equal opportunity to obtain positions in higher political office. Again, there is no basic right against discrimination but there can be a societal one in particular societies. In liberal societies, for example, a clear right to equal access to public office exists.

In this chapter I have argued against two kinds of theories of human rights. First, I have criticized Griffin's personhood account for being too partisan in favour of liberal world-views. Second, I have shown that although agreement theories seem to be promising in avoiding problems of partiality, they run into other problems when justifying human rights. Agreement theories unjustly assume easily definable cultures and cannot explain why agreement on values can normatively justify their special normative status. Instead I have argued in favour of the needs-based approach as

presented by Miller. This approach takes human needs as the foundation of human rights. By making a distinction between basic and societal human rights, this approach is capable of accommodating differences between moral cultures. Basic human rights apply in all cultures, but what is needed to fulfil these rights can differ between societies. I finished by explaining why some rights are, or are not, included in the list of human rights by the needs based approach. Some rights, such as democracy and rights against discrimination – important in liberal culture – are omitted. The full list produced by the needs approach will be shorter than the lists of human rights included in legal documents. After this chapter the reader should have a clear picture of how we can explain which rights humans possess across cultures. This is, however, only half the picture of a full theory of human rights. Rights can only meaningfully exist when someone has the responsibility to help to fulfil them. The next chapter will consider this issue, discussing who has responsibilities with regard to human rights.

Chapter Four: International Human Rights Responsibility

The previous chapters established a functional account of human rights and their moral content. In the second chapter it was argued that human rights aim to protect individuals from institutional threats, to secure their basic moral rights. The third chapter defined those basic moral rights as basic needs. Human rights should protect what is essentially needed to live a decent human life. This includes the most basic needs such as food, but also social needs. While this approach holds that human rights are universally valid the exact content of human rights can differ between cultural contexts. In the second chapter it was argued that states, at the domestic level, have the primary responsibilities to protect the human rights of their citizens. It should be pretty straightforward why this is the case. The legitimacy of the state depends upon its protecting the well-being of its citizens. Different opinions on the exact responsibilities of the state exists, for instance on the issue to what extend states have the responsibility to redistribute resources amongst its citizens. But despite these differences of opinion on the role of the state we can expect that in every reasonable view the state ought to protect the human rights of their citizens; every citizen should be able to expect the state that their most essential needs are protected. In practice, however, some states are unable to protect the human rights of their citizens or are actively violating them. Human rights practice undeniable has a strong international character, chapter two already made clear that external actors have good pro tanto reasons to interfere in states that violate human rights; this is especially the case for other states. Having pro tanto reasons to interfere is less strong than having a responsibility to do so. Human rights would be much stronger if the international community not only has reasons, but also the responsibility to interfere. This chapter investigates to what extend remedial responsibilities for human rights violations abroad can be assigned to the international community. This chapter discusses different arguments about remedial responsibility to investigate whether it is possible to defend international responsibility for human rights protection. The first section of this chapter focuses on backward-looking responsibility, the second section on forward-looking responsibility.

Before this chapter proceeds it is important to consider why I focus on the international community of states instead of discussing a more general sense of duty. First, it is not the case that non-state actors do not have good reasons to help to prevent human rights violations. They do have because it is a morally good thing to do. The possibility to assign the responsibility to do so is, however, limited. This follows from the argument about organ donation presented in section 3.4. Even if the situation of someone else is dire we still cannot expect from others that they help to the

extent that this infringes on their own rights; even if this rights seem to be less urgent. The right to bodily integrity make it impossible to require that someone donates a kidney, even if any suffering that results from the donation is relatively minor. Similarly, we cannot demand from individuals to dedicate their lives to the world's poor. This would infringe on basic needs such as maintaining relations with friends and family, the possibility of performing paid work and to have free time. It is true that this does not imply that we cannot assign limited duties to individuals in which a contribution to human rights protection abroad is required up till a certain threshold. The exact level of this threshold will be hard to determine. While this is true it must be noted that individual citizens have to contribute to any of the responsibilities of the state. If a state has responsibilities to protect human rights abroad it requires resources to do so from its citizens, for example by using tax revenue. Second, international law and related institutions are in practice created and maintained by states. This makes it only natural that states are responsible for international human rights protection. Third, states are also especially well equipped to protect human rights. Because states have a military they have the means for a wide range of activities that can be needed from human rights. While it is true that also private organizations can assist in some cases this is not true if military action is required.

4.1 Backward-Looking Responsibility

Responsibility is a widely discussed topic in philosophy. In this case we are mainly concerned with remedial responsibility as we want to know who has to responsibility to rectify a situation in which the primary agent, the state at the domestic level, fails to protect the human rights of its citizens. Broadly speaking there are two kinds of responsibility that can be relevant in assigning remedial responsibilities, backward- and forward-looking responsibility (Eshleman, 2014 and Williams, 2006, for an overview). This section focuses on backward-looking responsibility as this kind is more straightforward in assigning remedial responsibilities. Backward-looking responsibility focuses on the past, it tries to answer the question of who is responsible for a given state of affairs. To understand a good understanding of how backward-looking responsibility relates to remedial responsibility it is important to make a distinction between causal- and moral responsibility. Causal responsibility is the most straightforward to explain. If an agent has a causal role in bringing about a state of affairs she is

causally responsible⁸. Moral responsibility differs from causal responsibility because not only the causal role of the agent's behaviour is taken into account, the conduct of the agent is also appraised. An agent is morally responsible for an outcome if not only her conduct has a causal relation to the relevant state of affairs but also can be assigned either blame or praise. For instance, when an agent drives a car and causes an injury in which a pedestrian is injured the agent is causally responsible for the outcome. But is she morally responsible? This depends on the circumstances. If she causes an accident because she got startled because a dog suddenly crossed the street she is probably not to blame for the accident. However, if she is distracted from driving because she is texting the situation changes, now she is to blame for the accident.

Causal and moral responsibility can both justify the assignment of remedial responsibility. It is, however, not the case that if one willingly acts against the right of someone else she is necessarily to blame. But being not to blame does not imply that one has no responsibility to rectify any injustices that have occurred due to one's actions. Take the following famous example presented by Feinberg (1978, p. 102):

Suppose that you are on a backpacking trip in the high mountain country when an unanticipated blizzard strikes the area with such ferocity that your life is imperiled. Fortunately, you stumble onto an unoccupied cabin, locked and boarded up for the winter, clearly somebody else's private property. You smash in a window, enter, and huddle in a corner for three days until the storm abates. During this period you help yourself to your unknown benefactor's food supply and burn his wooden furniture in the fireplace to keep warm.

It should intuitively be clear that the backpacker in this example is not to blame to appropriate to herself the property of someone else to keep herself alive, but it should also be clear that her actions are at the cost of the property rights of the owner of the cabin. To explain why the backpacker is not morally responsible Feinberg uses a distinction between right violations and infringements. When one acts against the right of someone else without a morally good reason we speak of a rights violation, when one acts against the right of someone else without being to blame we speak of a rights infringement. The backpacker in the example is clearly not to blame, but the owner of the cabin also has the rights over her properties. To say that the backpacker infringes on the right of the cabin owner should make clear that the backpacker is not to blame, she is not morally responsible,

⁸ While this sounds easy I do not mean to imply that the theoretical definition of causal responsibility is easy. However, I do think that a technical discussion of the issue is not necessary for the current argument. See Schaffer (2014) for an overview of the philosophical debate on causality and see Brahm and Van Hees (2012) for an example of a technical discussion of causal responsibility in the context of a discussion of moral responsibility.

but still should compensate the cabin owner for the damage done; the backpacker is not blame, but her causal role in bringing about a rights infringement still assigns her the remedial responsibility to rectify the situation. This example, is heavenly debated. An alternative is to argue that no rights is being violated or infringed because the cabin owner only has a *prima facie* right to her property that is not fully operative in the given circumstances (see for example Thomson, 1980 or Lomasky, 1991, for a more technical discussion of this issue). The exact nature of the backpacker's actions is not relevant in this discussion. It is, however, important to see that one can carry remedial responsibility because of having a causal role for a resultant state of affairs without being to blame for ones actions. In the domain of international politics this could apply in the case of just military intervention which result on collateral damage on innocent citizens. Even though the military actions of a given state are fully justified in such situation this state still has the remedial responsibility for the innocent victims that result of the state's actions. It is not necessary to stop the military actions, but the state has a duty to compensate the victims of its military actions as their human rights are being infringed. Another good example are the economic sanctions in place against Saddam Hussein's Iraq causing malnourished and lack of care amongst Iraqi children. 'If we think that Saddam's regime posed a serious threat to neighbouring countries' the economic sanctions were justified (Miller, 2005, pp. 99). The UN, and its member states, do not carry moral responsibility for the deprivation of the Iraqi children, but they do infringe to rights of the Iraqi children and therefore own compensation to them.

In other examples an agent can intentionally act in a way that causes harm to another agent without accruing remedial responsibility. Take the example in which some agents accrue losses due to fair competition to others. Normally no remedial responsibilities are created. Athletes that win in a fair competition own nothing to the losers, and if my company's success drives another company out of business under fair conditions I do not own anything to the owner of the bankrupt business. But what if the costs are heavy? Imagine, for instance, that the owner of the bankrupt business loses all his income and assets and as to rely on others to survive. It might be possible that in such cases 'remedial responsibilities cut in, and, other things being equal, they fall to the agent who was outcome responsible' (Miller, 2007, p. 101). Miller acknowledges that often safety nets are set up for to meet the basic demands of those that suffer under these circumstances, but holds that in the absence of such safety nets the agent that is causally responsible for the outcome, i.e. the 'winning' agent, carries remedial responsibility towards the agent whose basic needs are unmet. I do not share this intuition. As long as competition is fair the winners have no special responsibilities towards the losers. Of course, if basic needs become unmet the state has to step in by providing some kind of help, but there is no reason to other agent has to step in. This example shows that causal

responsibility, even if intentionally performed, does not necessarily accrue remedial responsibilities towards the deprived agent. The crucial difference with the backpacker's case is, I think, that the agent that caused the other agent to go bankrupt does not directly infringe the right of the other agent. The deprivation of that agent is the by-product of otherwise legitimate behaviour. Applying this example to the context of international rights might apply if low cost factory workers in a developing country lose their job because a developed country has heavily invested in productivity enhancing techniques in a given industry. The latter country fairly gains an advantage over the other country, and therefore accrues no special obligation towards those being deprived in the other country. It might, however, be the case that a more general international responsibility exists to help if the developing state is unable to assist the citizens that have lost their jobs in meeting their basic needs.

Backward-looking responsibility is not always useful to assign remedial responsibilities. Sometimes in which no agent can be identified as cause for another agent's condition. For instance, if someone gets seriously ill without an external cause no one is to blame for this, and no one can be assigned bare causal responsibility. Many would, however, be reluctant to hold that no one should be assigned remedial responsibility in such cases. A similar case, with a clearer connection to international human rights regimes, is that of disasters with natural causes. Under normal circumstances no agent can be held responsible for an earthquake, but it would be harsh to do not assign remedial responsibilities to help the victims. Of course, it is possible that we do not hold anyone responsible for the occurrence of an earthquake but to do so for any devastating consequences for the earthquake. For instance, the state can be held responsible for not put regulation in place that make buildings less vulnerable to earthquakes. However, this points at a more general problem for backward-looking approaches to responsibility. Natural disasters have more devastating consequences in poor countries that lack the resources for effective protective measures. From a backward-looking point of view the question asked is always "who is responsible for bringing this bad situation about?" and never, for instance, "who is best placed to put it right?". This problem is especially interesting in the case of international human rights. In this field it is often the case that the agent with primary responsibility, the state at the domestic level, fails to live up to its responsibilities. It either lacks the capacity to do so, or behaves badly by violating the rights of its citizens. The relevant question then is not about who is responsible for bringing this about, but who has to step in to protect human rights abroad. The next section discusses whether it is possible to assign remedial responsibilities to the international community for human rights abroad by a forward-looking approach to responsibility.

4.2 Forward-Looking responsibility

In some cases the agent that carries causal or moral responsibility for a state of affairs is unable to rectify the situation. In this cases another principle for assigning remedial responsibility is required if we do not want to run the risk that human rights are being unmet. An alternative is to use the principle of capacity, 'which holds that remedial responsibilities ought to be assigned according to the capacity of each agent to discharge them' (Miller, 2005, pp. 102). There is a very simple rationale available to explain the attraction of this approach, making the agent best equipped to make a bad situation right has the highest chance of success. The principle of capacity is not entirely straightforward because two factors can be important, effectiveness and costs. Effectiveness focuses on which agent is best in rectifying a given situation while costs focus on the sacrifice the responsible agent must make. This distinction makes assigning responsibility according to the principle of capacity much more complex, this will be discussed in the next section. The remainder of this section focuses on the question whether it is justified to use the principle of capacity to assign remedial responsibility. This is far less obvious than in backward-looking approaches because there is immediate connection between a state of affairs and an agent to be held responsible.

A first problem with this approach is the 'grasshopper and ant objection' (Miller, 2005, pp. 103). Imagine a group of grasshoppers in great destitute due to food shortage in the winter, and a group of ants with more than enough food for the winter. According to the capacity principle the ants have remedial responsibility of providing food for the grasshoppers. This seems intuitive, especially when it is the case that, for instance, the grasshoppers' food supply was washed away by rain beyond their fault. But this case gets more complex if we know that during summer the grasshoppers spend their time singing while the ants were working hard to collect enough food for the winter. This might make it unfair to let the grasshoppers have a claim on the ants food supply. The capacity principle is not able to discriminate about the case in which the food shortage of the grasshoppers was beyond their fault and the case where the shortage was due to laziness. In general this reply is strong. It seems reasonable that one can have the fruits of one's labour. To what extent distribution of welfare is right in such cases is another debate not directly relevant on this occasion. In the case of human rights, however, it is important that we deal with basic rights. Because human rights protect what is morally essential the obligation to meet them is particularly strong. In the

example it is simply too harsh to let the grasshoppers starve, it is intuitive that the ants have to obligation to provide the grasshoppers the minimal amount of food needed to survive the winter.⁹

There is, however, a second problem of a more fundamental nature. The above statement that the ants should help does only apply if they have a general obligation to assist the grasshoppers to protect their basic rights. In cases it is often straightforward why a particular agent carries remedial responsibility because there is a connection between their behaviour and the state of affairs. Such a connection is not always clear in the case of forward-looking responsibility. Why does a state that has the capability to do so help to protect human rights abroad when needed? There is no obvious relation between citizens of other states and the capable state that justifies such obligation. If we want to establish a general international responsibility for protecting human rights we need to find some justification to assign this responsibility. One starting point could be to consider the advantages a system of international human rights has for states, even if they are affluent. If such benefits exists international responsibilities could be justified by an argument of fair play (Rawls, 1964). The logic of such an argument is as follows: if states decide to institutionalize a system of international human rights for mutual benefit it is only fair that states do their part to uphold the system. Reaping the benefits without bearing the costs of the system would be unfair. This argument can be a strong one, but only if we succeed in establishing that all states benefit from such a system. Something that seems to be hard for affluent countries that seem to be able to take care of themselves in the case of disaster.

Buchanan argues in his 'argument from benefits' (2013, p. 107) that international human rights do benefit states in several ways. These reasons come basically down to the point that international human rights enhance the internal legitimacy of states, even if there are no direct reasons to have doubts about the state's legitimacy. The central idea is that if state's commitment to human rights is backed up by an international legal framework of human rights citizens have a kind of assurance that the state will continue to protect their human rights. A state is not only accountable to internal actors, but also to the international community. The international community functions as an extra insurance against human rights violations by the state at the domestic level. The enhancement of the internal legitimacy of the state can both be of a sociological and normative nature. Sociologically the authority of the state might be enhanced because more citizens will believe that state actions will be legitimate because the international community functions as final arbiter. The strength of this argument is, however, doubtful. One only has to consider the current popularity

⁹ It could be possible that the ants have a right to compensation in the future when the grasshoppers are able to do so. It might, for instance, be possible to make a case that the ants have to some of the work of the ants during next summer.

of right wing populism in Europe to understand that far from everyone, or even most, citizens agree that the international community is a legitimate arbiter over their state's action. Instead many will see it the other way, they might think that any interference from the international community diminishes the legitimacy of state action.

Another possible benefit that affluent state's can get from an international system of human rights is a kind of insurance when they have to deal with an exceptional disaster. The intuition behind this argument is very simple, you never know when you need help. A heavy, unforeseeable, natural disaster could happen everywhere. For instance, the Netherlands is not known as a country that is vulnerable to heavy earthquakes. But this does not mean it is inconceivable to happen. In fact some say that there is a small risk of a heavy earthquake in the Netherlands (De Jager, 2011). In such circumstances it would be good to have an international system of assistance, even for an affluent country. Especially in cases where countries are less prepared for a specific kind of disaster because of the low odds of happening. Given what is at stake if such a disaster happens it is simply not worth to not participate in an international scheme of assistance. Intuitively this argument, I think, sounds strong. However, there is one very important problem. It would probably be enough to only cooperate with the richest countries, this would ensure a high enough degree of insurance and has the advantage that contributing is required less because the neediest country do not participate. After all, it are the poorer countries where the most human rights assistance would be required. This argument does, thus, not work to establish a universal duty of human rights assistance.

A second argument relies on yet another form of responsibility in the backward-looking category. There is, however, one important difference with causal and moral responsibility: 'A has played no causal role in the process that led to P's deprivation. She has nonetheless benefited from that process' (Miller, 2007, p. 102). This argument applies to the claim some make about the international order favouring the status quo, and thus upholding current economic and political inequalities between states (e.g. Buchanan, 2013, and Pogge, 2008). A particular state might benefit from the situation because it has a strong position in the global order. However, this country played no noteworthy causal role in bringing this order about; for instance because it's a developed yet small country. The principle of benefit holds that one carries remedial responsibility to the deprived if one profits, even though not intentionally, from their deprivation. Unfortunately, whether or not we agree on the strength of the benefit principle for assigning remedial responsibility, this argument is weak in the case of international human right. The problem is that this assumption relies on disputed empirical evidence. While some hold that the global orders keeps economic and political inequalities in place, leading to the deprivation of the world's poor, others disagree. For instance, some argue that the current order of globalization has led to a sharp decrease of poverty (Wade,

2004). Strong empirical evidence lacks to use the principle of benefit to establish international responsibilities for human rights.

Where does this leaves us in the case of establishing international human rights responsibility? I do think that any argument based on mutual beneficence or the benefit from a system as a whole are prone to disputes about the empirical validity of such claims. Unless a clear causal relationship between some actions or institutional arrangements can be made it is often too complex to state any clear relation between the international order and particular human rights violations. It is not necessarily the case that a particular case of human rights violations would not have happened if the international order was organized differently; and if this is the case it will often be too hard to verify this empirically. The only way to establish an international responsibility for human rights protection is to hold that we simply ought to do this; morality requires that states care for human rights violations abroad. Buchanan argues that international human rights protection on a 'Natural Duty of Justice: that even if there were no global basic structure of cooperation or any form of interaction whatsoever among individuals across borders, we would still have a limited obligation to help create structures that provide all persons with access to just institutions' (Buchanan, 2004, p. 86). This idea depends on the assumption that we have to help to protect the basic moral right of others if we can because of a sense of equality. While this idea has intuitive strength it is hard to provide a solid argument why this is the case. Some might justify such assumptions of morality on religious grounds, others might refer to features of human nature. I do think that such arguments always have to rely on some kind of basic assumption that cannot be philosophically or logically defended, such as the essential equality of human persons. Furthermore, defending one particular argument why this is the case would jeopardize the universal application the current conceptualization of human rights wants to have. To agree with me that the international community has remedial responsibility to protect human rights in the absence of a, capable, actor that accrues remedial responsibility because of being either causally or morally responsible for a given state of affairs.

Chapter Five: Conclusion and Final Remarks

This thesis tried to reveal the concept of human rights. To do so, several steps were taken as the concept of human rights consists of different relevant parts. The second chapter provided a functional account of human rights by discussing the political approach. This approach holds that human rights must not be grounded on moral theory, but on the actual political practice of human rights. In this view, human rights are not general moral principles. Instead, in the footsteps of Rawls, human rights are seen as political principles that govern the Society of Peoples. Human rights are those political principles that all reasonable states, both liberal and decent, agree to. Current authors in the tradition of the political approach, most prominently Beitz and Raz, differ from Rawls in the sense that Rawls conceptualizes human rights within the context of an ideal situation, whereas the political tradition gets its inspiration from the actual practice of international human rights. Chapter Two continued by arguing that human rights serve to protect individuals from institutional threats. Despite the international focus of human rights discourse, human rights are primarily important for states at the domestic level. As states should protect the well being of their citizens, they are primarily responsible for human rights. Human rights do not apply directly to the private sphere, except in the sense that states have the duty to correct any violations against the basic needs of their citizens in the private sphere. While in practice human rights apply to states at the domestic level, it is conceivable that they also apply to state-like entities that have *de facto* powers similar to states. If states fail to protect human rights at the domestic level they become of international concern. In the case of human rights violations, both state and non-state actors have *pro tanto* reasons to interfere by different means.

While the political approach provides important insights into the concept of human rights, such as their nature as political principles and their focus on institutional threats, the second chapter concluded that this approach is insufficient as a comprehensive understanding of human rights. The approach lacks the resources to determine which rights or interests are urgent enough to count as human rights. To provide these resources, it is necessary to consider moral approaches to human rights that ground human rights in moral theory. Several of them were discussed in Chapter Three. First, Griffin's personhood account of human rights was discussed. His account consists of three abstract first-order human rights: freedom, autonomy and welfare. From these, second-order human rights are derived. Due to the notion of practicalities, these rights are of a more practical nature. The chapter continued by arguing that Griffin's account can withstand most of the criticism it receives. One point, however, is fatal. Griffin's notion of personhood is too liberal to be a strong candidate for

offering universal principles applicable across different cultures. Alternative agreement theories were considered. These theories focus on what different cultures agree on, seeing those principles as essential to morality. While appealing for the sake of cross-cultural validity, this approach cannot overcome some problems. Cultures are too complex and volatile to be easily compared.

The discussion continued by defending David Miller's needs based approach as being more determinate than agreement theories, but also able to accommodate for cultural differences. Basic needs have the connotation of being urgent: one cannot choose not to have them. Everyone, in every society, has them. Basic needs must not be understood as a purely biological notion. As human beings have a social nature, social needs ground human rights. These social needs are only universal in an abstract sense. Depending on the societal context, the exact concrete nature of them can differ across cultures. For example, while the right to shelter is universal, the right to a fixed dwelling place does not apply in a nomadic society. Positive needs are easier to justify in this account than negative ones. Also, civil and political rights can be justified by this account, although they are less extensive than in liberal societies. There is no full human right against discrimination, only recognition. Freedom of religion is a right in the private sphere, but not in the public sphere. In private, one has the human right to life according to one's conscience, but not necessarily to perform missionary work.

Chapter Four continued the discussion of human rights by considering the possibilities of international human rights protection. Do, especially affluent, states have a duty to help protect human rights abroad if other states fail to do so domestically? First, causal and moral responsibility was discussed. It was argued that causal responsibility, due to intentionally performed actions, does not necessarily imply remedial responsibility. And someone that is causally responsible without blame might still have remedial responsibility. Whether causal and moral responsibility do imply remedial responsibility depends upon the context, but in general they are strong in justifying remedial responsibility because of the clear connection between an agent's actions and a resultant state of affairs. Unfortunately, it will often not be possible to assign remedial responsibilities for international human rights protection using the notions of causal and moral responsibility. Often, no agent is causally connected, or the responsible agent is unwilling to live up to its responsibilities. In that case, a forward-looking approach to responsibility is needed. Capacity is a useful condition in this regard. The agents best placed to help ought to do so. However, the use of this principle is only justified if we can establish why the international community of states has a general duty to help protect human rights abroad. Arguments relying on the idea that (affluent) states benefit from either an international human rights system or the international order in general, in combination with the argument of fair play, rely too much on questionable empirical assumptions. Basing remedial responsibilities for international human rights protection on those kinds of arguments is not likely to

get very far. Instead, international human rights responsibilities can only be justified by something like a Natural Duty of Justice, based on the intuitive idea of an obligation to help those who are in great need.

At the end of Chapter Two I presented a model of human rights based on the discussion of Beitz's model. Now, with the insights of Chapter Three and Chapter Four, I presented a more elaborate model. While the model at the end of Chapter Two was functional, the final model of human rights contains moral elements from the discussions of the last two chapters:

1. The object of human rights is to protect urgent individual interests against certain predictable institutional dangers that are typical for life under modern forms of governments.
2. The individual interests to be protected should be defined as basic needs. These needs can be both biological and societal. Societal needs are universal in an abstract manner, but their exact content depends on cultural context. Also, the practical possibility of human rights must be considered.
3. In the first instance, human rights apply to states, or state-like entities. The human rights duties of states can include positive rights including the duty to protect humans against injustices in the private sphere. Systematic exclusion from an institutional good can constitute a human rights violation.
4. If a state fails to adhere to human rights at the domestic level, external actors, including non-state actors, have good reason to interfere.
5. The international community has remedial responsibility to try to rectify human rights violations abroad. This duty is justified by the Natural Duty of Justice, based on the intuitive idea that we have a moral obligation towards those in great need.
6. There are different means of human rights protection ranging from holding countries accountable through legal channels to full-blown military interference, to the discursive means that are often applied by NGOs.

This model addresses the function of human rights, their moral content and the issue of responsibility. While a broad area of human rights issues is covered, there are still some issues remaining. For example, nothing has been said about the distribution of international human rights responsibilities. It was only argued that the international community of states has the moral obligation to protect human rights abroad, but this does not help to determine which members of the international community ought to perform particular instances of human rights protection. This is an especially hard problem because often many states, or coalitions of states, will be able to

perform a given case of intervention. The capacity principle might seem to provide an easy solution in this case. However, this principle is a bit more complicated than it might sound. Both effectiveness and costs can be used to define capacity (Miller, 2005). Should we assign remedial responsibility to the country, or coalition of countries, that can provide the best solution or to those that can perform the necessary action with the least amount of costs?

This problem gets more complicated if we consider that a state has more tasks than protecting human rights abroad. Another important goal in international politics is that of stability and safety. This must always be considered when deciding about intervention, not only for the state's own safety but also because instability in international politics can lead to conflict, and thus even more human rights violations. Furthermore, states also need to take the welfare of their own citizens into account. This thesis focuses on states, implicitly seeing them as 'black-boxes'. In reality, however, the situation is more complicated. States have citizens with different interests. The citizens of the state eventually pay the cost of protecting human rights abroad. Not only is taxpayers' money used for human rights protection abroad, but also other efforts of citizens can be asked. For example, the lives of soldiers will be put at risk in the case of military intervention. Having to put your life at risk clearly infringes one's rights. It might be possible that soldiers are compensated in some way for the risk they take, but to what extent this can justify their role when military intervention is needed is a topic that needs more discussion on another occasion. In general, this points to another question: what means are justified in human rights protection? This is something important to consider as intervention can always have side effects. Economic sanctions can impoverish an already poor population, and military action can cause many casualties. As there is a wide array of possible means for human rights protection, they each need a separate discussion.

These points all show the need for some distribution of the burden of international human rights protection. We cannot expect one or a few countries to take on all tasks. All states that are capable to do so should contribute, but this will not be easy to accomplish. Given the number of states available that can perform the given tasks, and that they all have an incentive to contribute as little as possible, it will often be the case that states do less than they should. Because of the number of actors, it is hard to clearly establish an agent to be morally responsible: the problem of many hands arises (Thomson, 1980). As every agent contributes so little to the overall failure of not interfering, no agent carries responsibility according to this idea. In other words, the result will not be significantly different if one agent changes his/her behaviour.

I do not agree that this excuses agents from having moral responsibility, because as they still, willingly, contribute causally to the bad outcome they are morally responsible. However, in practice

this will still be a problem. It will often be too hard to determine who has to act. This is especially hard because there is no authority above the state level that can enforce a distribution. The distribution of international human rights is thus, necessarily, the result of negotiations between states. Finding a central mechanism to decide on the distribution of responsibilities could provide a suitable solution by pooling resources in one supranational organization, for example. But this too, will prove to be difficult. It is questionable whether states are willing to do so, as it will lessen their power. To what extent this might be possible is another topic, not only of an empirical nature, but also normative, as it must be considered to what extent powers must be moved from states to a supranational level. Tasks that must wait for another occasion.

Bibliography

Asch, R. (2010) Religious Toleration, the Peace of Westphalia and the German Territorial Estates.

Parliaments, Estates and Representation 20: 75-89.

Amnesty International. (2015) Shell in Nigeria: <http://www.amnesty.nl/shell-in-nigeria>, assessed 18 April 2015.

Fan, S. and Zhang, X. (2007) Welfare Comparison Beyond GDP: An Illustration from China and India.

Washington DC, USA: International Food Policy Research Institute. HEI Working Paper No: 08/2007.

Bauer, J. and Bell, D. (1999) *The East Asian Challenge for Human Rights*. Cambridge: Cambridge University Press.

Beitz, C. (2009) *The Idea of Human Rights*. Oxford: Oxford University Press.

Besson, S. and Tasioulas, J. (2010) *The Philosophy of International Law*. Oxford: Oxford University Press.

Braham, M. and Van Hees, M. (2012) An Anatomy of Moral Responsibility. *Mind* 121: 603-634.

Brownlee, K. (2013) Civil Disobedience. *The Stanford Encyclopedia of Philosophy*, online publication 21 December, <http://plato.stanford.edu/cgi-bin/encyclopedia/archinfo.cgi?entry=civil-disobedience>.

Buchanan, A. (2004) *Justice, Legitimacy, and Self-Determination*. Oxford: Oxford University Press.

Buchanan, A. (2013) *The Heart of Human Rights*. Oxford: Oxford University Press.

Crisp, R. (ed.) (2014) *Griffin On Human Rights*. Oxford: Oxford University Press.

Ernst, G and Heilinger, J. (eds.) (2012) *The Philosophy of Human Rights*. Berlin: Walter de Gruyter.

Eshleman, A. (2014) Moral Responsibility. *The Stanford Encyclopedia of Philosophy*, online publication 21 July, <http://plato.stanford.edu/archives/sum2014/entries/moral-responsibility/>.

Feinberg, J. (1978) Voluntary Euthanasia and the Inalienable Right to Life. *Philosophy & Public Affairs* 7: 93-123.

Gewirth, A. (1982) *Human Rights: Essays on Justifications and Applications*. Chicago: University of Chicago Press.

- Griffin, J. (2001a) Discrepancies Between the Best Philosophical Account of Human Rights and the International Law of Human Rights. *Proceedings of the Aristotelian Society* 101: 1-28.
- Griffin, J. (2001b) First Steps in an Account of Human Rights. *European Journal of Philosophy* 9: 306-327.
- Griffin, J. (2008), *On human rights*. Oxford: Oxford University Press.
- Griffin, J. (2012) Human Rights and the Autonomy of International Law. In: Ernst, G. and Heilinger, j. (eds.) *The Philosophy of Human Rights*, Berlin: Walter de Gruyter, pp. 3-16.
- Gross, L. (1948) The Peace of Westphalia. *American Journal of International Law* 42: 20-41.
- Kuper, A. (2005) *Global Responsibilities: Who Must Deliver on Human Rights?* London: Routledge.
- Hook, S. (ed.) (1964) *Law and Philosophy*, New York: New York University Press.
- Jager, P. (2011) Kans op zware aarbeving in Nederland is reëel. *New Scientist*, 1 June, <http://www.newscientist.nl/nieuws/kans-op-zware-aardbeving-in-nederland-is-reeel/>, accessed 6 June 2015.
- Jones, P. (2000) Human Rights and Diverse Cultures: continuity or discontinuity? *Critical Review of International Social and Political Philosophy* 3: 27-50.
- Lomasky, L (1991) Compensations and the Bounds of Rights. *Nomos* 33: 13-44.
- Mayr, . E. (2012) 'The Political and Moral conceptions of Human Rights – A Mixed Account. In Ernst, G. and Heilinger, J. (eds.) *The Philosophy of Human Rights*, Berlin: Walter de Gruyter, pp. 73-106.
- Men, J. (2011) Between Human Rights and Sovereignty: An Examination of EU-China Political Relations, *European Law Journal* 17: 534-550.
- Miller, D. (2005) Distributing Responsibilities. In Kuper (ed.) *Global Responsibilities: Who Must Deliver on Human Rights?* London: Routledge: 95-116.
- Miller, D. (2007) *National Responsibility and Global Justice*. Oxford: Oxford University Press.
- Miller, D. (2012) Grounding Human Rights. *Critical Review of International Social and Political Philosophy* 15: 407-427.
- Miller, D. (2014) Personhood versus Human Needs as Grounds for Human Rights. in Crisp (2014), *Griffin on Human Rights*, Oxford: Oxford University Press:152-169.

- Murphy, M (2011) The Natural Law Tradition in Ethics. *The Stanford Encyclopedia of Philosophy*, online publication 21 December, <http://plato.stanford.edu/archives/win2011/entries/natural-law-ethics/>.
- Nickel, J. (2007) *Making Sense of Human Rights*, 2nd edition. Malden, MA: Blackwell.
- Nussbaum, M. (1993) Social Justice and Universalism: In Defense of an Aristotelian Account of Human Functioning. *Modern Philology* 90: 47-73.
- Nussbaum, M. (1999) *Sex and Social Justice*. Oxford: Oxford University Press.
- Nussbaum, M. (2006) *Frontiers of Justice: Disability, Nationality, Species Membership*. Cambridge, MA: Harvard University Press.
- Nussbaum, M. (2007) Human Rights and Capabilities. *Journal of Human Development* 6: 21-23.
- Pogge, T. (2008) *World Poverty and Human Rights*. 2nd edition, Cambridge, UK: Polity Press.
- Ratner, S. (2001) Corporations and Human Rights: A Theory of legal Responsibility. *The Yale Law Journal* 111: 443-545.
- Rawls, J. (1964) Legal Obligation and the Duty of Fair Play. In Hook S. (ed.) *Law and Philosophy*, New York: New York University Press.
- Rawls, J. (1999) *The Law of Peoples*. Cambridge, MA: Harvard University Press.
- Raz, J. (2010) Human Rights Without Foundations. In Besson and Tasioulas (eds.) *The Philosophy of International Law*, Oxford: Oxford University Press, pp. 321-338.
- Rorty, (1993) Human Rights, Rationality, and Sentimentality. In Shute, S. And Hurley, S. (eds.) *On Human Rights: The Oxford Amnesty Lectures 1993*, New York: Basic Books, pp. 115-117.
- Rubin, O. (2009) The Merits of Democracy in Famine Protection: Fact or Fallacy? *European Journal of Development Research* 21: 699-717.
- Schaffer, J. (2014) The Metaphysics of Causation. *The Stanford Encyclopedia of Philosophy*, 21 July, <http://plato.stanford.edu/archives/sum2014/entries/causation-metaphysics/>.
- Sen, A. (1985) *The Standard of Living: The Tanner Lectures on Human Values*. Cambridge: Cambridge University Press.
- Sen, A. (2004) Elements of a theory of Human Rights. *Philosophy & Public Affairs* 32: 315-356.

- Sen, A. (2005) Human Rights and capabilities. *Journal of Human Development* 6: 151-166.
- Shute, S. and Hurley, S. (1993) *On Human Rights: The Oxford Amnesty Lectures 1993*. New York: Basic Books.
- Sober, E. (1989) Evolution, Population Thinking, and Essentialism. *Philosophy of Science*, 47: 350-383.
- Tasioulas, J. (2002) Human Rights, Universality and the Values of Personhood: Retracing Griffin's Steps. *European Journal of Philosophy* 10: 79-100.
- Taylor, C. (1999) Condition of an Unforced Consensus on Human Rights. In Bauer, J. and Bell, D. (eds.) *The East Asian Challenge for Human Rights*, Cambridge: Cambridge University Press.
- Thomson, D. (1980) Moral Responsibility of Public Officials: The Problem of Many Hands. *American Political Science Review* 74: 905-916.
- Thomson, J. (1980) Rights and Compensation. *Noûs* 14: 3-15.
- UN (1948) *Universal Declaration of Human Rights*. New York: United Nations.
- UN (2015) *Treaty Collection*. New York: United Nations.
- Wade, R. (2004) Is Globalization Reducing Poverty and Inequality? *World Development* 32: 567-589.
- Walzer, M. (1994) *Thick and Thin: Moral Argument at Home and Abroad*. Indiana: Notre Dame University Press.
- Willams, G. (2006) Responsibility. *Internet Encyclopedia of Philosophy*, <http://www.iep.utm.edu/responsi/>.