

Two Approaches to Human Rights

by

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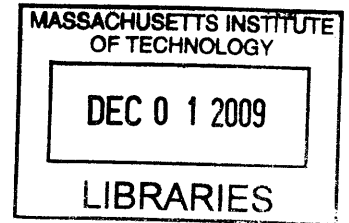
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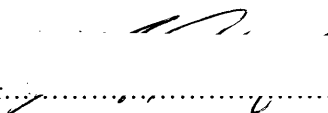
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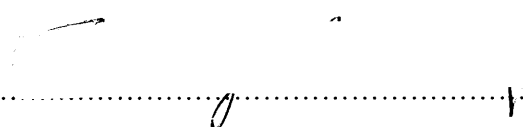


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Abstract

Contemporary philosophy of human rights is dominated by two seemingly opposed approaches. This dissertation is concerned with the choice between them.

The *traditional* approach to human rights is characterized by the belief that human rights are moral rights that all human beings possess simply in virtue of their humanity. The *political* approach to human rights is characterized by the belief that human rights are those rights that possess an essential political function. Each approach faces a unique challenge, and attending to how each challenge is met reveals that the two approaches are more similar than first supposed. However, there remains an important difference between the two approaches regarding the concept of a human right. I argue that the conceptual claim made by the political approach is false.

In Chapter One I focus on the traditional approach to human rights. It has an unclear connection to the existing international political discourse and practice of human rights. I call the challenge for the traditional approach the demand of *taking the practice seriously*. I argue that the traditional account can do so in at least three important ways that demand might be understood. In satisfying this demand, the traditional approach is shown to be in agreement with the political approach in an important way.

In Chapter Two I focus on the political approach to human rights. In focusing on the existing political practice of human rights, the political approach can appear overly descriptive in nature. Its challenge is to account for the distinctive moral authority of human rights. I call this challenge the *normativity challenge* and I argue that the political approach has an effective answer to this concern. However, that answer is indistinguishable from that offered by the traditional approach. Thus, the political approach is shown to be in agreement with the traditional approach in an important way.

However, there is an important difference between the two approaches. The political approach ties the concept of a human right to a distinctive political function. The traditional approach rejects this conceptual claim. In Chapter Three I argue that the political approach's conceptual claim is false.

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Introduction

Two Approaches to Human Rights

Consider two recent examples of human tragedy:

Protestor

On June 20, 2009 27-year old Iranian philosophy student Neda Agha-Soltan was shot and killed by a member of the Iranian government's Basij militia¹ while she was protesting Iran's June 12 presidential election results. Neda was one of many protestors who questioned the authenticity of election results that favored incumbent president Mahomoud Ahmadinejad over moderate contender Mir-Hossein Mousavi. Allegations that the government had tampered with the results, undermining the democratic process, began to appear after Election Day. Sporadic, largely peaceful protests began across the country. After Neda's death the protests went on but the Basij continued to violently suppress them, using police batons, pepper spray, and other weapons to disrupt the assemblies. Some estimates put the number of deaths during the protests at 250.²

Starvation

Wracked by years of civil war, Sudan is burdened by a terrible humanitarian crisis in the federal region of Darfur. By early 2009, nearly 300,000 people had died as result of the conflict and millions more face starvation without international aid. In March 2009 the International Criminal Court indicted Sudanese president Omar al-

¹ In Iran, the highest constitutional office belongs to a religious leader, the Supreme Leader of Iran (currently Ayatollah Ali Khamenei), who is also the commander-in-chief of Iran's armed forces. The Basij is a volunteer militia that is subordinate to the Iranian Revolutionary Guards and Supreme Leader Ayatollah Khamenei.

² Retrieved from <http://www.washingtontimes.com/news/2009/jun/25/opposition-alters-tactics-to-avoid-protest-deaths/> July 22, 2009.

Bashir for war crimes; in retaliation, he banned thirteen critical foreign aid groups from Darfur. A joint UN-Sudanese assessment team concluded that nearly one million people in Darfur would not receive their food rations by May as result of the expulsion. Rejecting calls to reverse its decision, Sudan's envoy to the UN stated "The decision of the government of Sudan is a legitimate sovereign decision, which we will never reverse."³ The international community wrestled with whether or not to ignore the government of Sudan in order to intervene and provide humanitarian aid.

Both examples illustrate great wrongs. Some of these wrongs involve the violation of rights. And some of these rights violations are specifically violations of *human rights*. But which human rights? According to the Universal Declaration of Human Rights⁴—the founding document of the modern international human rights doctrine—at least the following human right violations are present: the *Protestor* case depicts most clearly a violation of the right to life and security of person (Article 3)⁵. It also depicts, given the apparently excessive use of coercive force by the police against a peaceful political protest, the violation of the rights to freedom of association and assembly (Article 20 (1)). Finally, if we consider the broader context in which the protests and shooting occurred, then arguably, a violation of key aspects of the democratic rights posited in Article 21 precipitated the event. The *Starvation*

³ Retrieved from <http://www.alertnet.org/thenews/newsdesk/N20521830.htm>, August 13, 2009.

⁴ I will refer solely to the UN declaration. However, please note that the international doctrine includes not only the UN Declaration of Human Rights but also the two International Covenants: the Covenant on Civil and Political Rights and the Covenant on Social and Economic Rights. These covenants were created in 1966 but were only ratified in 1976. Together with the UN Declaration, these documents are referred to as the International Bill of Rights. The addition of the following four treaties comprise the international human rights doctrine: the Convention on the Elimination of all Forms of Racial Discrimination (CERD, entered into force in 1969), the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW, 1981), the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT, 1987), and the Convention on the Rights of the Child (CRC, 1990).

⁵ The full text of the Universal Declaration of Human Rights is available at <http://www.un.org/en/documents/udhr/>.

case most clearly depicts a violation of the rights to an adequate standard of living, to adequate food, and—given the pervasive impact malnutrition can have on health—the right to basic health (Article 25).⁶ Together, one might refer to these more generally as anti-poverty rights.⁷ Even in these two examples we can begin to see the impressive normative scope of the UN declaration—international human rights aim to protect significant areas of our overall well-being.

Some of the human rights found in the UN declaration are also controversial, however. There is, for example, reasonable debate about whether there is a human right to democracy or whether or not anti-poverty rights are genuine human rights. The assumption behind such disputes is that the UN Declaration is not authoritative with respect to the content of human rights—even the UN Declaration can be mistaken about which rights are genuine human rights.⁸ A difficulty arises, however, because the UN Declaration fails to propose a justifying theory for international human rights, with the exception of some vague references to human rights being grounded in the inherent dignity of the human person. Therefore, it is unclear how to determine *how* and *why* the UN Declaration errs when it does. The absence of a justifying theory was in some ways a virtue of the international doctrine at its inception, given its specific political aims. The original authors of the doctrine were wise

⁶ Article 11 of the Covenant on Social and Economic Rights is also relevant here.

⁷ The *Starvation* example is particularly important because it involves the appeal to state sovereignty as a partial justification for the Sudanese government's refusal of foreign aid. This raises critical questions concerning the permissibility of international interference to help protect human rights when such interference would involve violating state sovereignty and go against the express wishes of the government. These themes will occupy us in Chapter Three.

⁸ The international doctrine may be mistaken by not including rights that ought to be considered human rights and by including rights that ought not to be considered human rights. One could adopt a strong legalistic conception of human rights whereby the international doctrine is infallible—whatever the doctrine says is a human right is thereby a human right—but neither of the accounts considered here take this approach. Instead, both assume that the doctrine can get it wrong and both seek to exert critical leverage on the international doctrine.

to set aside controversial questions about the philosophical foundations of human rights, in their attempts to formulate a set of shared international standards acceptable to a wide range of ethical and religious worldviews. However, what was political wisdom in 1948 now breeds difficulties in the current human rights-intoxicated era.⁹ According to John Tasioulas, the discourse of human rights has attained the status of an ethical *lingua franca* in recent times.¹⁰ The prominence and power of the *idea* of human rights has fuelled the desire to frame important areas of human concern in the language of human rights. This has led to a proliferation of new human rights claims. These claims include human rights to sexual pleasure and education, to an ecologically sound environment, and even to globalization.¹¹ Although the UN declaration itself is testament to the fact that there is a broadly shared belief regarding the core content of human rights—and thus about what content a theory of human rights ought to accommodate—these more recent claims seem to stretch, perhaps beyond recognition, the notion of a human right. The need for principled means by which to distinguish genuine human rights from counterfeits is thus clear.

What we need is an account of the *existence conditions* for a human right: what must be the case for it to be true that a human right exists.¹² This will help clarify the notion of a human right. There is a clear relationship between the concept of a human right and the existence conditions for a human right—what human rights *are* in part determines what we have to show to establish the existence of a human right. Providing an account of the existence conditions of human rights is a central task for a theory of human rights. In addition, a theory of human rights will address a number of equally important questions

⁹ To borrow John Tasioulas' evocative phrase.

¹⁰ Tasioulas, 2004, p. 1.

¹¹ Raz, 2007, p. 2.

¹² This term was first introduced by L.W. Sumner (1987), p. 10.

concerning human rights: What are human rights and how are they distinct from other types of rights? How are human rights justified? What is the source of their moral authority? A comprehensive theory of human rights aims to answer such questions.

I will not attempt to provide such a theory here. Instead, I will focus on two distinct approaches to constructing a theory of human rights. These two approaches currently dominate the philosophy of human rights. I will refer to them as the *traditional* and the *political* approaches.¹³ Most philosophers will be familiar with the traditional approach to human rights. Although theories that adopt the traditional approach to human rights vary in their specific details, they are united by the belief that human rights are moral rights possessed by all human beings simply in virtue of their humanity. I call this the *central tenet* of the traditional conception of human rights. The principal debate between advocates of the traditional conception centers on how best to interpret this central tenet. Competing interpretations identify different features of our shared humanity that confer such rights on all human beings. Some identify our normative agency while others identify basic human interests or basic human needs, for example. To illustrate, assume that this feature is a set of shared basic human interests. In this case, determining which rights are genuine human rights proceeds by considering whether or not the right aims to protect a basic human interest that is of sufficient importance to impose duties on other agents to variously protect, respect, or fulfill it. For example, justifying a human right not to be tortured would involve, as a first step, arguing that human beings share a basic interest in not being tortured that is

¹³ These are not the only philosophical approaches to human rights, of course. However, the traditional approach is considered orthodox among philosophers, while political approaches are new and are believed to represent a radical challenge to traditional approach. Therefore, it is worth focusing specifically on these two overarching approaches.

sufficient to impose a duty on other agents to refrain from torturing individuals. According to the traditional conception, whatever moral authority those rights enumerated in the key international human rights documents possess derive from these underlying values conceived as rights. Moreover, the international political doctrine of human rights ought to conform to what the philosophical theory identifies as the genuine content of human rights—or so critics of the traditional conception often assume.

In recent years, a novel political approach to human rights has emerged.¹⁴ It presents itself as a radical challenge to the traditional approach. The political conception of human rights rejects the central tenet of the traditional conception—the idea that human rights are moral rights possessed by all human beings simply in virtue of their humanity. Instead, the political conception claims that human rights are characterized by their essential political function. This approach argues that the traditional conception fails to acknowledge this key political function of human rights that essentially characterizes them. For the political conception, fulfilling this political function is *definitive* of a human right, and constitutes one of their existence conditions.

There a number of possible versions of a political approach to human rights, and I will only focus on a sub-set of them here. The different versions can vary along at least two dimensions. The first dimension concerns the normative basis of human rights. Political accounts can differ over whether or not they propose that the normative basis for human rights is grounded in institutions, or whether it is grounded instead in a natural moral basis. The second dimension concerns the particular political function identified as essential to

¹⁴ See for[example, Rawls (2001); Beitz (2001, 2003, 2004, 2009); and Raz (2008).

human rights. Different political conceptions identify different political functions. Here, I focus on that account which holds that the distinctive political function of human rights is that the violation, or anticipated violation, of human rights provides *pro tanto* justification for interference into offending states to protect those rights—even when that interference would normally constitute a morally impermissible violation of state sovereignty. I call this the *functional claim* of this political conception. According to this conception of human rights the question of whether or not a proposed right is a genuine human right is determined in part by considering whether or not the proposed right could plausibly fulfill this political function. For example, justifying a human right to subsistence would involve, as a first step, arguing that certain forms of sovereignty-violating interference designed to protect or fulfill this right, would be justified under certain conditions.

Finally, we can note a further distinction within this second dimension. It concerns whether or not the account aims to identify the actual political function of human rights, or aims to stipulate that function. According to the approach I focus on here, a philosophical account of the concept and content of human rights is best developed by focusing on the actual political function of human rights within the existing international discourse and political practice of human rights.

So we have four main possibilities:

		Political Function	
		Interference-Justifying Function	Other Political Function
Normative Basis	Institutional grounding	1	2
	Natural (moral) grounding	3	4

In this thesis I will be considering only those versions of the political conception that occupy boxes 1 and 3. Although for ease I will hereafter refer to ‘*the* political approach’ or conception, it should be remembered that I am focusing here only a sub-set of the wider class of possible political accounts.

At first glance, the traditional and political approaches seem significantly different. Different enough, in fact, that one might question whether or not they are simply engaged in two distinct philosophical projects. I will consider a version of this suggestion in Chapter One. Even if we reject this suggestion, however, it is clear that these two approaches represent significantly different ways of thinking about human rights. And given that different conceptions of human rights yield different existence conditions for human rights, it also seems reasonable to think that these two very different conceptions might yield different lists of human rights—our conception of what a human right *is* will affect what human rights there *are*. This conceptual difference may have substantive implications.¹⁵ Just as important,

¹⁵ I suggest that these two conceptions ‘might yield’ different catalogues of genuine human rights only because it is possible that, despite the conceptual disagreement, each account might end up positing the same catalogue.

however, as a possible disagreement on the content of human rights, is the following: the fact that two prominent approaches to human rights apparently conceive of them in importantly different ways, might lend support to a general scepticism about human rights. We might wonder whether or not the idea of human rights represents a morally coherent notion at all. Deciding between these two conceptions is critical.

Both the traditional and political approaches face an important *prima facie* challenge. To understand the challenge the traditional approach faces, we must recognize the importance of the international political discourse and practice of human rights. For many philosophers, including those drawn to the political approach, the importance and prominence of this practice for contemporary international politics is now believed to pose a legitimate constraint on our thinking about the nature of human rights. The way we think about human rights can no longer plausibly operate in a vacuum and ignore the political practice. Indeed, for a number of otherwise divergent philosophers, a plausible desideratum for an adequate theory of human rights is that it show proper *fidelity* to the international doctrine and practice of human rights. This is a complex criterion, and what it might fully demand, is not perfectly clear. At a minimum, however, it would appear to require at least two things: i) that the list of genuine human rights posited by a philosophical theory of human rights cohere fairly well with the list found in the international doctrine; and ii) that an account of the nature of human rights also show due fidelity to the fact that human rights have important political functions within an existing international political practice, and that the international doctrine was constructed for certain political purposes. However, unless otherwise stated, in what follows when I speak of the condition of fidelity I will mean only requirement (i), that

concerning the content of human rights. Although it can be reasonably questioned, I accept this condition of fidelity as a desideratum for an acceptable theory of human rights.

One challenge that the traditional approach faces is satisfying this condition of fidelity. But there is another related concern. A philosophical theory of human rights can either float free of the international practice or seek to make sense of its main elements. The political approach stresses that a methodological requirement for an adequate theory of human rights is that it should aim to make sense of the main elements of the international practice. However, by endorsing a conception of human rights that makes no explicit reference to the international discourse and practice of human rights, the traditional approach yields a theory of human rights that seems to bear little relevance to that practice and its associated doctrine. For example, when the traditional conception advances a claim about the catalogue of genuine human rights and then claims that the international doctrine of human rights ought to conform to this catalogue, it has no justification for the claim that the theory ought to constrain the content of the international political doctrine in this way.

There are a number of distinct objections that are variations of the claim that traditional accounts cannot satisfy this methodological demand. I will disentangle some of them in Chapter One. But they all seem to be united by the belief that the traditional approach—perhaps by construing human rights too closely on the model of natural rights—fails to take the international political practice of human rights seriously when developing their philosophical theory of human rights.¹⁶ I call the general challenge for the traditional approach that of *taking the practice seriously*.

¹⁶ Cf. Beitz 2004, p.1.

The political approach, on the other hand, clearly adopts this methodological approach. They *begin* their theorizing about human rights with the practice as it actually exists. The international discourse and practice of human rights is considered a basic feature of the account they develop—there is no assumption of a prior layer of values whose nature and content can be discovered independently of reflection about the international practice.¹⁷ But this approach raises other concerns. By ‘considering the way that talk about human rights actually functions in the world today,’¹⁸ attempting to construct ‘a theory aimed at interpreting present practice,’¹⁹ focusing on ‘human rights as the international doctrine conceptualizes them’²⁰ and, looking generally to the existing practice of human rights to furnish the materials for an account of human rights, the political approach appears as a largely descriptive project. The concern is that this approach is *overly* descriptive—that it is preoccupied with sociological facts about the international political practice of human rights.

Importantly, these sociological facts will include facts about the behaviour and beliefs of members within the practice, concerning the moral authority of human rights and their normative grounding. The moral authority of human rights refers to the distinctive reason-giving force of human rights—the question of what makes human rights norms genuinely reason-giving for agents and binding on their behaviour. At first glance, the political approach seems to suggest that to say that there is a human right to X is simply shorthand for a complex description of regularities in behaviour and belief observed among the members of some group.²¹ But references to sociological facts about regularities of belief

¹⁷ Beitz, 2004, p. 6.

¹⁸ Beitz, 2003, p. 38.

¹⁹ Beitz, 2009, p. 10.

²⁰ *Ibid.*

²¹ Beitz, 2009, p. 165.

and behaviour, no matter how complicated, cannot account for the moral authority of human rights. However, human rights are understood to provide reasons for action—typically, categorical reasons for action, or duties. The observation that they are *believed* to provide reasons for action by participants in the practice, however, does not explain the source of their moral authority. The challenge facing the political approach is to account for the moral authority of human rights. I call this the *normativity challenge*.

Each approach thus faces a distinctive challenge. I will argue that each is able to meet their respective challenges. However, in doing so, it becomes less clear what the non-trivial differences are between the two: the traditional approach *can* take seriously the international practice of human rights in a plausible way, thus satisfying the distinctive methodological demand made by the political approach. This undercuts a primary motivation and supposed virtue of the political approach. The political approach ends up telling a story about the moral authority of human rights that is indistinguishable from the one provided by the traditional approach—although it may have seemed as though the political approach was committed to occupying only Box 1 of Figure 1, it turns out that box 3 is also an option for the political approach.

Do these approaches simply collapse into one another? Not exactly. Each approach can meet the individual challenges noted above, and in doing so, establish that there are critically important similarities between the two—the traditional approach can adopt the methodological approach distinctive of the political account, and the political approach identifies the same normative basis for human rights as does the traditional conception. So the difference between them cannot be found in either of these aspects. This is an important result, and sufficient to reject the initial assumption that the political approach represented a

radical challenge to the traditional approach—they seem better understood instead as engaged in an important debate within the same general approach. However, this important debate captures a critical difference between them: they diverge in a significant way when it comes to how best to conceive of human rights. This is because the political conception ties the very concept of a human right to its distinctive political function, that of justifying international interference. In contrast, although the traditional conception can, and should, justify this function and explain its importance, it makes no such conceptual claim. This is no small difference. As noted above, distinct conceptions of human rights can yield different responses to the critical question regarding the genuine content of human rights. Therefore, there is an important difference between our two approaches to human rights. However, I will argue that the political conception’s yoking of the concept of a human right to the political function of justifying interference should be rejected. It is not part of the very concept of a human right that it can play this role.

In Chapter One I begin by presenting a standard traditional conception of human rights. This will help clarify such conceptions. I then present three versions of the *taking the practice seriously* objection and show how a traditional approach can successfully meet each one. I conclude that both approaches can satisfy the methodological demand to take the practice seriously when constructing a philosophical theory of human rights—in this regard, there is no significant difference between the two approaches.

In Chapter Two I begin by presenting a standard political conception of human rights. This will help clarify such conceptions. I then consider how a political conception can meet the *normativity challenge*. I argue that the answer offered by the political conception is indistinguishable from the response offered by the traditional conception. I conclude that

when it comes to accounting for the moral authority of human rights, there is no significant difference between the two approaches.

In Chapter Three I focus on the conceptual claim made by the political conception: that the political function of human rights in international discourse and practice is part of the concept of a human right. I argue that this conceptual claim is false.

Chapter 1

Can the Traditional Conception Take Seriously the Practice of Human Rights?

1.1 Introduction

The traditional conception of human rights holds that human rights are moral rights that all human beings possess simply in virtue of their humanity. This conception of human rights makes no explicit mention of either the international political practice of human rights or their essential political nature. Philosophers who favor a political approach to human rights see this is a problem for the traditional conception. They claim that an adequate philosophical theory of human rights must acknowledge the importance of the contemporary international political discourse and practice of human rights—it must, as I will say, take the practice seriously. In this chapter, I identify three important ways we might understand the methodological challenge of taking the practice of human rights seriously. I argue that the traditional approach can successfully meet each. But before doing so, I discuss the traditional conception of human rights more generally.

1.2 The Traditional Conception of Human Rights

The central tenet of the traditional conception of human rights is that human rights are moral rights possessed by all human beings simply in virtue of their humanity. This claim is subject to various interpretations by those who accept it, and it is worth pausing over each of

its main elements. Doing so will help us clarify what is essential to the traditional conception.

I identify three such elements.²²

1.2.1. 'Moral Rights'

The first element of the central tenet is that human rights are *moral rights*. This attributes at least three important features to human rights.

The first feature of moral rights is that they are *sources of duties*. Therefore, to say that S has a human right to X entails corresponding duties on others variously to protect, respect or fulfill S's possession, access, etc. to X. Duties are moral reasons of a distinctive kind. First, they are categorical in application: they apply to the duty-bearer, irrespective of how the latter happens to be motivated.²³ Second, they are exclusionary in their normative force: unlike competing reasons of a regular sort, which, may be weighed against one another, duties simply exclude many of those competing reasons from even bearing on the duty-bearer's decision of what she ought to do.²⁴ This is in keeping with the widely held belief that human rights have a peremptory nature.

The second feature of moral rights is that they have an *individualistic grounding*. Human rights are not only rights held by individuals—they are also grounded in some normatively-salient feature of the individual right-holder. As mentioned in the introduction, various features are put forward by different traditional accounts: basic interests, basic needs, human dignity, or some combination of them.²⁵

The third feature of moral rights is their *directed character*. Violations of imperfect

²² This section follows a helpful discussion by Tasioulas in his 2009.

²³ Tasioulas, 2009, p.2.

²⁴ *Ibid.*

²⁵ *Ibid.*, p. 3.

duties—those with no corresponding right holder—do not wrong any particular individual. But specific individuals hold individual human rights, and violations of the duties corresponding to these rights, entail the wronging of the right-holder.²⁶

1.2.2. 'Possessed by All Human Beings'

The second main element of the central tenet is that human rights 'are possessed by all human beings.' There is much controversy over how to understand this claim. I will consider it more fully below when I address the *minimalism* objection to the traditional conception. For now, I note only that this feature captures the idea that human rights are in some sense *universal*—rights possessed by all human beings. Critical questions arise, however, concerning whether or not the traditional conception is committed to the claim that this universality requires that human rights are held by all human beings not only at all places but also at all past and future times as well.

1.2.3 'Simply in Virtue of Their Humanity'

The third element of the central tenet is that human rights are possessed by all human beings 'simply in virtue of their humanity.' Unlike rights based on desert, promising, and special relationships, this class of rights does not depend on the right-holder having engaged in some transaction or participating in some relationship. Human rights are thus a sub-set of moral rights more generally, distinguished by the fact that they are those rights we possess simply in virtue of some feature (or features) attributed solely on the basis of our humanity.

²⁶ *Ibid.*

Human rights thus have an existence in the moral order that is independent of their expression in international doctrine.²⁷ They are moral rights, discoverable by reason, that are pre-institutional in nature, at least in the sense that their existence does not depend on legal or institutional recognition or enforcement, as is the case with legal or conventional rights.

Thomas Nagel suggests the general idea:

The existence of [human] rights does not depend on their political recognition or enforcement but rather on the moral question whether there is a decisive justification for including these forms of inviolability in the status of every member of the moral community. The reality of [human] rights is purely normative rather than institutional—though of course institutions may be designed to enforce them.²⁸

The last line in this quote suggests two important implications of human rights as traditionally conceived. First, according to the traditional conception, the international doctrine and practice of human rights is regarded as an attempt to work out how political institutions, both domestic and international, must be arranged and operated in order to respect and protect these distinctive moral rights. And second, an important virtue of the traditional conception is that it has the potential for great critical power. Human rights can provide independent moral standards for political institutions and, for the international political practice of human rights itself. Whatever moral authority the human rights posited in the international human rights doctrine have are derived from these underlying values conceived as rights that serve as their foundation.

However, saying much more than this is likely to be controversial, even among those who accept the central tenet of the traditional conception. So, rather than attempt to remain completely neutral among competing traditional accounts, I will present a sketch of a version

²⁷ Beitz, 2004, p.5.

²⁸ Nagel, 2002, p.33.

that is prominent among modern proponents of the traditional conception. I call it the *Interest-Based Theory* of human rights.²⁹

1.3 The Interest-Based Theory of Human Rights

An Interest-Based Theory of human rights begins with the basic idea that moral rights provide important protections of interests. According to this view, X is a right if the interest provides sufficient reason for holding some other person(s) to be under a duty.³⁰ An Interest-Based Theory of human rights can run into trouble with a kind of rights-proliferation, however. Not every interest that can ground a right can ground a human right. We require some principled means by which to distinguish human rights from the broader class of general moral rights. This will involve drawing a distinction between different kinds of interests that different kinds of rights protect. Various strategies are employed within an Interest-Based framework for human rights. Some philosophers identify human rights as entitlements to the protection, respect and fulfillment of certain *central, urgent, important or basic* human interests. They then proceed to spell out the relevant notion they adopt. For example, if we distinguish human rights as those rights that protect certain *important* interests, we might spell out the notion of importance in terms of being sufficient to impose burdensome duties on others. For instance, our shared interest in not being tortured, seems sufficiently important to impose duties on others not to torture us. In contrast, my interest in eating a bagel for lunch is not sufficient to impose a duty on anyone to provide me with a bagel (unless I need that bagel to live).

²⁹ In my opinion, Allen Buchanan, James Griffin, James Nickel, and John Tasioulas, to name just four prominent thinkers, all develop versions of an Interest-Based Theory of human rights. Each also explicitly accepts the central tenet characteristic of the traditional conception.

³⁰ Raz, 1984, p. 195.

Many traditional theories also claim that human rights are specifically concerned with protecting *human dignity*. In this case, the identification of those interests protected by human rights involves determining which basic interests are constitutive of human dignity. This approach restricts the interests protected by human rights to those that must be fulfilled in order to secure this important normative status. The notion of human dignity is interpreted in different ways. Some philosophers, for instance, identify the values implicit in the notion of human dignity to be those associated with our normative agency. In one prominent example, the values implicit in our normative agency are identified as *autonomy* and *liberty*, as well as minimum provision of resources.³¹ Other interpretations identify the basic interests constitutive of the status of human dignity with those that protect a person's capacity to live a minimally *decent* human life. Still others identify a plurality of interests that are constitutive of the status of human dignity. We need not decide between the various possibilities here. In each case, however, it is important to recognize that human dignity is not to be articulated in value-neutral terms (for example, those of biology or metaphysics)—rather, any such articulation will employ evaluative concepts. Personhood, decency and the like are already normative notions—there is no danger here of falling into the fact-value gap. I will not undertake the task of determining which account of human dignity or which account of the exact nature of the basic interests protected by human rights is correct. But I will assume that the traditional conception of human rights conceives of them as protecting human dignity, in addition to accepting the standard Interest-Based claim that human rights seek to protect certain basic human interests.

³¹ This is the basic claim of James Griffin's *personhood* account of human rights, as developed most fully in his (2008).

That the traditional conception of human rights recognizes that human rights aim to protect human dignity is especially important because it coheres with the international political doctrine of human rights. The preamble to the UN Declaration, for instance, contains explicit reference to the inherent dignity of ‘all members of the human family’ as a basis of human rights. The international Covenant on Civil and Political Rights states that human rights derive from the inherent dignity of the human person. Admittedly, the notion of human dignity is left conspicuously vague in these documents, for reasons noted in the introduction. However, there can be no doubt about the prominent place of this idea in the modern practice of human rights. Given that we are concerned with whether or not the traditional conception of human rights can show due fidelity to the international practice of human rights, it is worth noting that at least in this regard, the Interest-Based theory fits well with it.

1.3.1 Standard Threats, Justifying Human Rights, and the State as Duty-Bearer

Interest-Based theories are often qualified in an important way that is relevant to our concerns here. Modern Interest-Based theories of human rights tie the specific protections human rights provide—and thereby the content of some human rights—to *standard* threats to human dignity. Human rights aim to protect certain basic human interests constitutive of human dignity from certain standard threats to them. The basic interests protected by human rights can be formulated more or less abstractly. For example, we have a basic interest in liberty, and the protection and fulfillment of this interest is plausibly constitutive of human dignity. These abstractly formulated interests remain relatively stable over time but the standard threats to these basic interests will change with evolving social and political contexts. The standard threats human rights protect against are those faced in modern societies today. For example, the rise of the modern information age has brought with it

unique threats to our basic interest in privacy. As such, in some cases the content of individual human rights will change, as will the list of human rights, even though the interests that ground them do not.

Our most important social and political institutions can have a profound impact on our basic human interests, and as such, human rights impose constraints on how social institutions ought to be arranged. Human rights principles signal the need for especially robust protections for the most important interests shared by all persons. The implication is that institutions should be structured to afford that protection. Protection of these basic human interests can plausibly be seen as motivating the development of the modern international political doctrine and practice of human rights.

I noted previously that perhaps the most important task facing a theory of human rights is to provide a principled means by which to distinguish genuine human rights from counterfeits. It is worth considering, if only as a sketch, how the Interest-Based Theory would approach this task. Recall the two examples presented at the very beginning of the introduction. The *Protestor* case focused on certain important civil and political rights, such as the right to bodily security, assembly and democracy. The *Starvation* case focused on key social and economic rights, particularly anti-poverty rights. But in each case, we can see how the Interest-Based Theory would approach determining whether or not the right found in the UN Declaration could be justified as a genuine human right. First, we ask whether or not the right aims to protect or fulfill a basic interest shared by all human beings and whether or not this interest is constitutive of human dignity. Then we ask whether or not this interest is a sufficient reason for holding some other agent(s) to be under a duty to protect, respect or fulfill this interest, in particular the state. If the answer to these questions is 'yes' then this suggests that there is a human right.

Finally, it is often said that the primary addressee of human rights claims are the governments of states and other agents occupying authoritative political positions. If this claim is advanced as part of the very concept of a human right, then the traditional conception would reject it.³² If instead, it is advanced simply as an empirical claim, then the traditional conception can accommodate the claim that human rights make especially important demands on states. The Interest-Based Theory makes sense of this in two ways: i) our basic interests are particularly susceptible to threats from those in authority, especially governments and the basic structure of one's society (including the legal system). Thus, it makes sense that human rights would impose the lion's share of duties on the primary source of standard threats to the interests protected by human rights. The failure of governments to respect human rights is certainly one of the most prominent threats to human rights today; ii) national governments, through legislation, constitutional implementation, and the maintenance of a legal system, as well as other domestic and international political institutions, also plausibly represents the most practical and effective means to protect and fulfill human rights and to enforce compliance with these norms.

This is, of course, merely a sketch of an Interest-Based Theory of human rights. But it is enough to see, in broad outline, how an approach that begins with the central tenet of the traditional conception of human rights might develop along interesting lines.

³² I will argue in Chapter Three that it is a mistake to understand this claim as part of the concept of a human right.

1.4 The Practice of Human Rights

The traditional approach to human rights is accused of not taking the international discourse and practice of human rights seriously when constructing a philosophical theory of human rights. The political approach to human rights grants the international practice of human rights a certain authority over our thinking about them. It is worth considering then, if only briefly, some of the main features of the modern international practice of human rights.

The modern international doctrine of human rights is a statement of standards intended to guide the structure and conduct of global political life in so far as they bear on the conditions of life for individuals in their societies.³³ The evolution of the international doctrine was motivated in large part by the atrocities of World War II. The war, and its aftermath, led many to believe that there are threats to certain basic human interests—to human dignity—from which all people should be protected, and that such protection should be a matter of global concern.

The original authors of the international doctrine sought to provide concrete institutional standards governing almost all significant areas of political life for “all peoples and nations”—common minimum standards for the legal, political and economic institutions and practices of states.³⁴ The doctrine of human rights is a political construction intended for certain political purposes³⁵ and, as we will see, this constitutes a principal motivating idea behind the political conception of human rights.

33 Beitz, 2001, p. 277.

34 Beitz, 2004, p. 2.

35 Beitz, 2001, p. 276.

How expansive is the list of human rights found in the international doctrine? It posits a set of rights and aspirations that are impressive in their normative breadth. Consider the following, incomplete list of human rights found in the international doctrine, organized into five general classes of rights:

- (1) Rights of the Person: includes rights to life, liberty and security of the person; rights to property; freedom of thought and conscience.
- (2) Rights associated with the rule of law;
- (3) Political rights: includes freedom of expression, assembly and association; the right to participate in one's government; and democratic rights;
- (4) Economic rights: includes subsistence rights; rights to elementary education; and
- (5) Rights of communities: includes rights to self-determination, and protection of minority cultures.

Human rights are often described as “minimum conditions for any kind of life at all.”³⁶ However, it is difficult to square this idea with the list above if we take this idea literally, and not elliptically for ‘any kind of *decent* life’ or some other normative notion.³⁷ The list represents many important values but some of them are not, strictly speaking, required for ‘any kind of life at all’ by any reasonable interpretation of that phrase. Consider primary education. It is undoubtedly an important interest and I believe that, properly understood, there is a human right to it. However, it is difficult to claim that primary education is necessary for any kind of life at all—surely, it is possible to live a life without any formal education. I believe we would make a similar judgment about many of the rights listed

³⁶ Ignatieff, 2001, p. 56.

³⁷ Ignatieff does not appear to be saying this, however.

above. But I do not need to make that case here. I point it out only to stress that the range of normative considerations covered in official human rights documents seem to go beyond the kind of minimum threshold necessary for any kind of life at all.

That is the international doctrine of human rights. The international *practice* of human rights is more encompassing. It includes the doctrine of human rights, the various instruments that operate within current human rights law, as well as the various international declarations, covenants, and treaties, as well as international and regional human rights courts and tribunals. However, it also refers to the various functions of human rights within international political discourse, such as justifying wars, providing a condition for participating in international trade or receiving financial aid. Finally, it also refers to the unique role played by non-governmental organizations, which monitor human rights violations and compliance throughout the world.³⁸ The impact of the extensive network of non-governmental organizations dedicated to monitoring, measuring, and protecting human rights—a ‘curious grapevine’ according to Eleanor Roosevelt³⁹—cannot be underestimated. They have established a culture of governmental public accountability that is global in its reach.

Finally, we should note that the *discourse* of human rights is a central element of the general practice of human rights. This is particularly important to some philosophers who are proponents of the political approach. Charles Beitz, for instance, claims that our best route to understanding how human rights are conceived within the practice, is to consider which practical inferences competent agents within the practice are committed to on the

³⁸ Cf. Raz, 2007, p.1.

³⁹ Quoted in William Korey, *NGOs and the Universal Declaration of Human Rights: "A Curious Grapevine"* (New York: St. Martin's Press, 1998), ix.

basis of valid human rights claims. Most importantly, for Beitz, all such assertions commit one to the claim that the human right would justify sovereignty-violating interference on its behalf. We will consider these issues further in Chapter Three. For now, it is sufficient to note that human rights play an increasingly important role in the discourse of global political morality.

1.5 Failing to Take the Practice Seriously: Three Versions

There are three related objections to traditional accounts that warrant being referred to as versions of ‘failing to take the practice seriously.’ I call them the Minimalism objection; the Conformity objection; and the Distinct-Project objection, respectively. I begin with the Minimalism objection.

1.5.1 The Minimalism Objection

The minimalism objection claims that the traditional conception is forced to restrict the content of human rights to a relatively small set of rights, usually a set of negative rights against interference and bodily harm. The international doctrine is obviously much more expansive than this. If satisfying a reasonable condition of fidelity is a genuine desideratum of an adequate account of human rights—and such a condition requires that the list of human rights posited by the philosophical account reasonably cohere with that found in the international doctrine—then we must conclude that the traditional conception fails to satisfy the condition of fidelity. Or, so the objection goes.

What are the reasons for thinking that the traditional conception must restrict the content of human rights in this way? The traditional conception holds that human rights

have an existence in the moral order that is independent of their expression in the international doctrine. They are moral rights that exist independently of political recognition or enforcement, and are possessed simply in virtue of our humanity. This general nature is said to entail that human rights possess certain features. According to Beitz, these features are captured well by John Simmons, who says:

Human rights are rights possessed by all human beings (at all times and in all places), simply in virtue of their humanity.... [They] will have the properties of universality, independence (from social or legal recognition), naturalness, inalienability, non-forfeatability, and imprescriptibility. Only so understood will an account of human rights capture the central idea of rights that can always be claimed by any human being.⁴⁰

Whether or not the traditional conception is necessarily committed to each of these features of human rights—and there are good reasons to think they are not—the claim need only be that they possess at least three problematic features that we have noted previously:

- (1) They are *pre-institutional*: interpreted to mean they are rights one would possess even in a pre-political ‘state of nature’;
- (2) They are *natural*: they belong to people simply in virtue of their humanity; and,
- (3) They are *universal*: they belong to all human beings at all times and all places.

Those advancing the minimalism objection claim that the traditional conception identifies human rights with natural rights, and that the three features defined above characterize natural rights.⁴¹ According to the objection, these features entail a relatively short list of human rights. Each individual feature can be seen to restrict the scope of human rights.

Consider feature (1), that human rights are pre-institutional. Many of the rights present in the international doctrine of human rights clearly presuppose specific institutions:

⁴⁰ A. John Simmons, “Human Rights and World Citizenship,” in *Justification and Legitimacy: Essays on Rights and Obligations* (Cambridge: Cambridge University Press, 2001), p. 185.

⁴¹ I would note that each of the traditionalists cited in footnote 29 would reject this identification.

the rights associated with the rule of law, to free speech, or to a certain level of education, for example. If human rights must be conceived as logically independent of the existence of institutions, then none of these rights—each of which are tied to specific social or political institutions—could possibly be genuine human rights. Even a cursory glance at the list of human rights in the international doctrine shows that many of the other rights included there are also tied to particular political or social institutions. If this pre-institutional nature is indeed an essential feature of human rights according to the traditional conception, then the list of genuine human rights it can posit will be severely truncated.

The first feature alone seems sufficient to motivate the objection. But additional support for the objection is found by reflecting on the second feature attributed to human rights by the traditional conception. This is the claim that human rights are rights human beings possess simply in virtue of their humanity. One way to understand this idea—the way adopted by those advocates of the political conception that advance this objection—is by following the idea developed by H.L.A. Hart in his seminal article ‘Are There Any Natural Rights?’⁴² Hart distinguishes between *special rights*—the rights that arise out of special transactions or relationships, including membership in political communities—and *general rights*—rights that belong to all people capable of choice in the absence of the specific conditions that give rise to special rights. Human rights, understood as natural rights, seem to fall into the general category on this distinction. But if this is so, then indeed, there are very few human rights. For many of the rights identified as human rights in the international doctrine will have to refer to social relations, and thus will be special rights, according to Hart—for example, the right to an adequate standard of living.

⁴² Hart 1955.

Finally, the universal feature of human rights is particularly problematic if understood to include the claim that human rights have ahistorical applicability—applied to all human beings at all points in history. This is to understand the universality of human rights in a very specific way. If genuine human rights are limited to those we can imagine being claimed by any human being in history, including, say, pre-Neolithic Revolution nomads, then the class of such rights will be limited to a relatively few abstract rights. Or, again, so the objection goes.

1.5.2. Response to the Minimalism Objection: Two Strategies

It is not clear this argument succeeds. There are at least two possible strategies for addressing it.

First Strategy

Even if we accept that the traditional conception is forced to accept the three features of human rights noted above, it is not clear that the objection succeeds. It seems to rule out the possibility—one already alluded to above—that a rather thin set of abstractly formulated human rights can entail more determinate protections in specific social, political and economic circumstances. These abstract moral rights—rights that have the particular features noted above—can have institutional *implications* that yield the more determinate rights found in the international doctrine. Let me illustrate.

Recall my brief characterization of Griffin’s personhood theory of human rights. On his account, human rights can be seen as protections of our *personhood*, where personhood is constitutive of human dignity and involves ‘our capacity to reflect on, to choose, and to

pursue what we ourselves decide is a good life.⁴³ This, Griffin says, represents our normative agency. The values implicit in our normative agency are *autonomy* and *liberty*, as well as minimum provision of resources. These are the values that human rights protect:

To be an agent, in the fullest sense of which we are capable, one must (first) choose one's own course through life—that is, not be dominated or controlled by someone or something else (autonomy). And one's choice must also be real; one must (second) have at least a certain minimum education and information and the chance to learn what others think. But having chosen one's course one must then (third) be able to follow it; that is, one must have at least the minimum material provision of resources and capabilities that it takes. And none of that is any good if someone then blocks one; so (fourth) others must also not stop one from pursuing what one sees as a good life (liberty).⁴⁴

Griffin identifies three highest-level and most abstractly specified human rights, those to autonomy, liberty and material provision. These three human rights possess the essential features of human rights noted above, including the ahistorical universality of human rights. This is an extremely short list. Does Griffin's theory succumb to the minimalism objection? Not necessarily. According to Griffin, there is a way to move from the rather abstract values of our personhood that are to be protected by human rights, to the more familiar rights found in the standard human rights documents. We move down a scale of abstraction, from dignity to the values we attach to normative agency, such as autonomy, minimum provision, and liberty. From this point, we can derive more determinate rights in more determinate contexts. For example, a right to freedom of expression can be seen as entailed by, or perhaps as a necessary condition of, both autonomy and liberty. Freedom of expression (and similar higher-level abstractions) can, with increasing attention to specific circumstances, yield more determinate rights. For example, the right to a free press is derived from freedom of expression in certain social circumstances:

⁴³ Griffin 2008, p. 33.

⁴⁴ Griffin, 2001, p. 311.

Applying the right in the setting of the medieval hamlet might produce different derived principles from the ones that it would produce in a large, modern, industrialized society. But there would still be a robust enough sense of the identity of the right through the various applications of it needed in different social settings.⁴⁵

Human rights are to be understood as existing in a non-institutional setting but institutional settings entail derivative human rights, and these derived rights can spell out how certain social institutions should be constructed and arranged in varying circumstances.

One might question this strategy, however. It seems to imply that the derivative human rights—those that would be commensurate with the international doctrine—are not genuine human rights at all. Many of the derivative rights will lack the essential *universal* feature of human rights. For example, freedom of expression is plausibly entailed by both autonomy and liberty and is arguably universal in scope. Freedom of expression in turn, entails a right to freedom of the press (Article 19), which is an implication of it in specific circumstances. But freedom of the press lacks the requisite universality—there are, and certainly have been, societies with no formal press at all. If this approach relegates the rights posited in the international doctrine to a status other than genuine human rights, then one might argue that this fails to show due fidelity to the content of the international doctrine.

How might we respond to this concern regarding the status of the derivative rights according to the abstraction strategy? There are at least two ways available.

The first is to reject the insinuation that the derivative status of the wider class of rights makes them any less important. What is important about the derivative human rights is that they are necessary in order for the more abstract human rights to be *respected*. Failure to respect or protect these rights necessarily violates a person's more basic human rights—

⁴⁵ Griffin, 2008, p. 49.

those rights that possess the requisite universality. What more could we want than this? We might even stipulate that the class of human rights is composed of the three abstract rights, plus those derivative rights that are necessary in order to respect and protect these abstract rights in specific institutional settings. This seems entirely consistent with how we described the traditional approach's understanding of the nature of the international doctrine—it is an attempt to work out how our political institutions ought to be arranged, so as to protect and respect our independently existing human rights. There is no claim here that those institutionally instantiated rights will share the universality feature of human rights, however.

The second way is to adopt what appears to be James Nickel's strategy.⁴⁶ Like Griffin, Nickel's grounds human rights in more abstractly formulated norms. He posits four secure claims shared by all human beings. They are: a secure claim to have a life; a secure claim to lead one's life; a secure claim against severely cruel or degrading treatment; and, a secure claim against severely unfair treatment. These abstractly formulated claims provide justification for many different human rights, including those found in the international doctrine. However, what distinguishes Nickel's strategy from Griffin's is that these abstractly formulated norms are not themselves identified as human rights. Human rights *are* the derivative rights, according to this view.

Second Strategy

The second strategy for addressing the minimalism objection is to argue either that human rights do not share one or more of the three features attributed to them, or, that the

⁴⁶ Nickel 2005.

features can be understood in such a way that they do not entail the minimalist conclusion. For instance, it is not clear that the traditional conception need accept the pre-institutional feature attributed to human rights. First, according to the Interest-Based Theory, many of the basic interests protected by human rights can be specified without reference to institutional facts. But if human rights aim to protect those basic interests shared by human beings against standard threats to them, then the determinate content of some human rights may make reference to institutional or social facts about those threats and, thus those interests. For example, we certainly have a basic interest in not being subject to debilitating or extreme pain. This interest need not refer to any institutional facts. But in the circumstances of modern states, a threat to this interest exists in the form of state-sanctioned torture. This supports a claim to a human right against torture. The nature of the threat determines the specific content of the human right—content that makes reference to institutional facts—but it is grounded in an interest we have simply in virtue of being human.

Second, the objection assumes that the claim that human rights are pre-institutional is a conceptual claim. However, according to modern traditional conceptions, this is a claim only about the conditions necessary for the existence of a human right: human rights do not require legal or institutional recognition to exist. They are, in this way, pre-institutional. The idea is not to claim that the content of all genuine human rights can be specified without reference to social or institutional facts.

Similarly, the claim that human rights must be universal in the sense of ahistorical applicability is to ignore the possibility that it is perfectly consistent with the traditional conception of human rights to reject this reading of the universality of human rights. For example, Tasioulas suggests that human rights are universal in the sense that they apply to all human agents. However, when discussing those rights possessed by human beings simply in

virtue of their humanity, it is appropriate to impose, explicitly or implicitly, constraints on the historical period to which reference is being made.⁴⁷ According to Tasioulas we can say that human rights must be possessed by

all human beings throughout history - but only at the apparent cost of excluding rights that require or presuppose the existence of non-universal social practices and institutions, for example, rights to political participation or to a fair trial. By contrast, I have suggested that human rights enjoy a temporally-constrained form of universality, so that the question of which human rights exist can only be determined within some specified historical context. For people today and the foreseeable future, human rights are those possessed in virtue of being human and inhabiting a social world that is subject to the conditions of modernity ... This historical constraint permits very general facts about feasible institutional design in the modern world, for example, forms of legal regulation, political participation and economic organization, to play a role in determining which human rights we recognize.⁴⁸

Thus, another way to respond to the minimalism objection is to reject the claim that human rights necessarily possess the three features attributed to them.

Both strategies can plausibly yield a list of human rights consistent with that found in the international doctrine. Having said that, it is unlikely that the traditional conception will yield a catalogue of rights perfectly consistent with the doctrine. What should we make of this fact? Below, I will consider an objection that relates to this concern but at this stage, it seems sufficient to say the following. The mere fact that there is disagreement between our philosophical account and the international doctrine, seems unobjectionable, at least insofar as no *political* conception argues that the theory will yield the exact same list of human rights as the international doctrine either. Both approaches aim at being at least potentially critical of the existing international doctrine's list of human rights.

⁴⁷ Tasioulas, 2002, p 87.

⁴⁸ Tasioulas 2007, p. 76-77.

I have argued that the traditional conception has at least two possible strategies for countering the claim that they committed to an objectionably short list of human rights.

1.5.3 The Relation Between the Theory and Practice of Human Rights

There is an important point I would like to address before considering the second objection to the traditional approach. The minimalism objection betrays an assumption on the part of the political approach that underlies the entire critical thrust of this chapter. It is therefore, worth making explicit before proceeding further. This is the assumption that the traditional approach must, as a methodological point, undertake the task of constructing a theory of human rights acknowledging neither the international doctrine nor the practice of human rights. This is false.

It is true that as a conceptual matter, the traditional conception begins with the idea that human rights are moral rights that we possess simply in virtue of our humanity. But one can believe this to be the essential nature of human rights, while at the same time seeking to explain and justify those human rights posited in the international doctrine. The doctrine and practice of human rights can provide ‘provisional, fixed points’ for our theorizing about them.⁴⁹ We can recognize that the doctrine represents an agreement reached after prolonged reflection and deliberation amongst a multidisciplinary and multicultural group of individuals. Even the traditional approach can aim, as a methodological starting point, to ground and explain precisely those rights. The traditional approach can take both the concept and content of human rights as found in the international practice, as starting points in a standard process of reflective equilibrium.

⁴⁹ Cohen, 2006, p. 230.

Alternatively, perhaps they can adopt the related methodological approach favored by Griffin. Responding to the concern that the traditional approach to human rights ignores the international discourse and practice of human rights, Griffin notes that there are at least two ways of constructing a philosophical theory of human rights: i) a top-down approach and ii) a bottom-up approach. The top-down approach begins with a highly abstract philosophical principle (or principles) provided by a comprehensive moral theory, under which the notion of human rights is then subsumed: for example, the Categorical Imperative or the principle of utility. Included here, I would contend, is any approach that begins with a philosophical account of natural law or natural rights and then attempts to assimilate the notion of human rights to this concept. One might initially think that this approach is the natural fit for the traditional conception. But Griffin disagrees—he favors a bottom-up approach. In contrast to the top-down approach, a bottom-up approach to constructing a theory of human rights does not begin with a prior commitment to a general moral theory or abstract moral principle. Instead, it begins with the rich and complex discourse and tradition of human rights itself. Here is how Griffin describes it:

I start with ethical judgments as applied to the assessment of our societies, the actual judgments not just of philosophers but also of political theorists, legislators, international lawyers, officials of NGOs, and civil servants. That is, I start with the continuous, developing notion of human rights running through the history I sketched earlier—call it the ‘historical notion.’⁵⁰

The bottom-up approach seeks to provide a grounding for human rights employing only enough abstraction as is necessary to make sense of the idea. It remains a traditional approach because it accepts the traditional conception of human rights as those rights we possess simply in virtue of our humanity discussed in section 1.2. It is true that Griffin appeals to a tradition that includes, but also predates, the modern international practice and

⁵⁰ Griffin 2008, p.9.

doctrine of human rights that began in the 1940s. However, I do not think this should seriously undermine the claim that this methodological approach represents an important example of how a traditional conception can take the practice of human rights seriously and satisfy the general methodological demand advanced by the political conception. It can regard those rights posited in the international doctrine—at least as a starting point—as what one hopes to explain and justify in a philosophical theory of human rights. The traditional approach, it seems to me, *can* begin with the practice, at least in this sense.

1.5.4. The Conformity Objection

One might argue that the problem is not simply that the traditional approach might yield a small set of human rights. Rather, the objection is to the way the traditional approach demands that the international doctrine should conform to its dictates. This concern is suggested by Raz in the following passage:

Theories like those of [...] Griffin derive their human rights from concerns which do not relate to the practice of human rights, and they provide no argument to establish why human rights practice should be governed by them. [...] There is no point in criticising current human rights practice on the ground that it does not fit the traditional human rights ethical doctrine. Why should it?⁵¹

The objection is that the traditional conception unjustifiably claims that the international practice of human rights should be governed by the philosophical theory. This is best understood as a concern about content—irrespective of whether or not the traditional conception can meet the minimalism objection discussed above, they should have no influence over the content of the international doctrine.

⁵¹ Raz, 2008, p. 10-11.

As Beitz puts it, the traditional conception claims a kind of authority over the international practice that requires the practice to *conform* to the dictates of the philosophical theory:

Why should we insist that international human rights conform to a received philosophical conception rather than interpret them, as they present themselves, as a distinct normative system constructed to play a certain special role in global political life?⁵²

Why is claiming this kind of authority over the practice objectionable? The political conception explicitly claims this kind of authority over the practice—their aim is to exert critical pressure on the doctrine and its content. So, it cannot be a general objection to attempts to exert critical authority over the international doctrine and practice. Rather, the claim is that both the traditional and political approaches are engaged in different philosophical projects. I will consider this objection in the next section. Here, I want to address the assumption made by the objection that the kind of relation the traditional approach claims to exist between their philosophical theory and the international doctrine of human rights is one of conformity. I will frame this assumption in the form of an objection that I think helps clarify what the traditional approach is committed to.

I believe we can frame the objection in the following way. The international doctrine and practice of human rights is a political construction designed for certain political purposes. Its primary purpose is to protect all human beings from certain, standard threats to their basic interests. But it also aims to govern interactions between states, limit sovereignty, and in general, provide a set of shared international norms for political action. The specific *political* aims of the doctrine places it in tension with the specific ethical aims of a traditional conception of human rights. The objection holds that the international doctrine of human rights can rightfully claim a kind of *independence* from traditional accounts of human

⁵² Beitz 2009, p. 109-110.

rights because the specific political aims of the international practice could be undermined if the doctrine is required to conform to the philosophical theory. By independence, I mean simply, that the doctrine may specify its content without requiring that it conform to the philosophical theory. For example, it may include rights that the philosophical theory concludes are not genuine human rights. Conversely, it may exclude rights that the philosophical theory concludes are genuine human rights.⁵³

Let's grant that requiring that the international doctrine strictly conform to a traditional theory of human rights is objectionable because such conformity might undermine the primary political aims of the international doctrine. Does the traditional approach actually demand conformity? I don't think so. I contend that the claim that they do, trades on a false assumption about what the traditional conception must claim about the relation between the philosophical theory and the international practice of human rights.

Does granting the international practice a measure of independence from the philosophical theory pose a problem for the traditional conception? I do not think so, because it conflates at least three distinct issues:

- What list of genuine human rights should *ideally* be recognized?
- Which human rights should find expression in the international doctrine and law of human rights?
- More generally, how ought the international practice of human rights *ideally* be organized in order to most effectively fulfill the primary aim of the international practice, namely, the protection of human rights?

⁵³ We can note, if only briefly, that this objection seems to ignore the possibility that the political practice of human rights may fulfill its primary aim of protecting human rights more effectively *by* conforming to the philosophical theory. I will not press this response here, but only wish to highlight that there is a complex, empirical question concerning how the international practice might best achieve its political aims. And, that we have been given no reason to believe that it might not do so precisely by modeling itself on the most compelling philosophical theory of human rights.

Why think that the best way to protect these basic human interests through a political and legal practice like that of human rights demands that practice *conform* to the dictates of the philosophical theory? If the aim is to protect human interests in the most effective manner, then there is no *a priori* reason to think the most effective way is for the practice to simply model itself on the philosophical theory, or accept what the theory takes to be the legitimate content of human rights. This is reminiscent of a well-known point regarding consequentialism. It might not be the case that the best way to maximize value is by *trying* to maximize value. It might be the case that the best way to satisfy consequentialist concerns about maximizing value is to act as a deontologist. Similarly, even if a proposed traditional conception of human rights provides a compelling account of both the nature and genuine content of human rights, it is a further question how the international doctrine ought to be organized in order to most effectively protect those interests.

As Allen Buchanan suggests, it is not always the case that there ought to be a legal human right to X because there is an independent moral right to X. It may turn out that there is merely an instrumental reason to have the legal right—with no corresponding moral right—because doing so helps protect some *other* moral human rights. Not all legal rights must be *justified* by appeals to corresponding moral rights. Now, for some human rights, their inclusion in both the theory and international legal doctrine is almost certain—for example, a human right against torture. But Buchanan's point is that it may be that our theory rules out a proposed right as a genuine human right—or fails to justify it—where the practice might include it as the best means to effectively protect some other right or interest. So consider, for example, the much-maligned human right to paid holidays. Most traditional accounts of human rights are quick to dismiss this right as a genuine human right. Let us assume they are

correct to do so. The point I am stressing here, is that it does not follow from this fact alone that the practice ought to conform to the theory and eliminate this right from the doctrine. It might be the case that, given the real threat to important human interests presented by severe work conditions, exploitation of labor, and indentured servitude; it helps to include rights against being forced to work without adequate leisure time. The philosophical theory has provided one good reason why the right might be eliminated—it fails to satisfy the existence conditions for a human right. But there may be additional instrumental reasons for its inclusion, most especially its ability to aid in the primary function of protecting other human rights.

The general point is to distinguish between those rights our theory identifies as human rights and the question of which rights ought to be recognized in the international doctrine. Given the important aims of the international practice, it seems misguided to suggest that our best philosophical account of human rights ought to demand conformity from the practice. The traditional approach sees current international human rights practice as working out how institutions, both domestic and global, ought to be arranged so as to respect and protect human rights. On this account, we can regard current international human rights practice as a response to the problem of effectively protecting and respecting those rights. In other words, the aim of the practice is to create and maintain institutional structures that effectively protect human rights. In evaluating the practice itself, we look to how well it is managing to do so. What is not required for this evaluation is how well the practice conforms to the theory. To think otherwise is to confuse the aim of a normative political practice with the nature of the values it aims to protect.

1.5.5. The Distinct-Project Objection

Advocates of the political conception advance a version of what I call the *distinct-project* objection. The traditional conception can meet the conformity objection and tell a plausible story about the relation between their theory and the international doctrine of human rights. However, it still intends to have some influence over the doctrine, even if it is weaker than outright conformity. But why think it should have even this influence, given that the traditional approach is engaged in a philosophical project that is unrelated to the concerns that animate the international practice of human rights? Or, so the objection goes.

In his article, “Human Rights Without Foundations,” Joseph Raz claims that traditional theories ‘fail either to illuminate or to criticize the existing human rights practice.’

He elaborates in a passage I previously quoted:

Theories like those of [...] Griffin derive their human rights from concerns which do not relate to the practice of human rights, and they provide no argument to establish why human rights practice should be governed by them. There is nothing wrong in singling out the capacity for agency, or more broadly the capacities which constitute personhood, as of special moral significance. They are of special significance, and arguably they provide the foundation of some universal rights. Nor is Griffin wrong in thinking that not only the capacity for personhood, but also the ways it is or can be used, are ethically significant. The problem is the absence of a convincing argument why human rights practice should conform to their theories. There is no point in criticising current human rights practice on the ground that it does not fit the traditional human rights ethical doctrine. Why should it?⁵⁴

There seem to be two related claims being advanced, both in this passage and in Raz’s paper, more generally. The first is that traditional theories are somehow unrelated to the concerns of the international practice. The second claim is that—perhaps as a result of the first claim—traditional theories lack justification for demanding that the international doctrine

⁵⁴ Raz, 2008, p. 8-9.

conform to their theory. I considered the second claim in the last section. Here, I focus on what might be meant by the first.

I shall interpret the contention that the concerns of the traditional conception of human rights are unrelated to the practice as claiming that such theories are engaged in a philosophical project that is unrelated to the international practice. This is supported by the suggestion in the passage above that traditional theories such as Griffin's can be engaged in a useful project, just one distinct from the concerns of the practice. This is, therefore, another way the traditional approach can fail to take the practice seriously—they are engaged in a philosophical project that is simply unrelated to the aims and character of the international practice.

According to Raz, the traditional approach does not aim to explain the features of human rights that the international practice attributes to them. Political approaches to human rights, in contrast, are designed precisely to avoid this problem. They, apparently, *do* take the practice seriously. More generally, Raz says that accounts of human rights manifest a political conception of human rights when they understand that the task of a theory of human rights is:

- (a) to establish the essential features which contemporary human rights practice attributes to the rights it acknowledges to be human rights; and
- (b) to identify the moral standards which qualify anything to be so acknowledged.⁵⁵

These two tasks characterize the distinct philosophical project advocates of the political conception are engaged in. If this characterizes the political conception but not the traditional conception, then they are best seen as engaged in distinct philosophical projects.

⁵⁵ Raz, 2008, p. 10.

What, then, are the “essential features which contemporary human rights practice attributes to the rights it acknowledges to be human rights”? Well, that would be a matter of substantive dispute between our two conceptions of human rights. Most importantly, it would include disagreement over the claim that human rights possess an essential political function. But that substantive dispute is actually secondary to the claim that traditional accounts cannot aim to satisfy either (a) or (b). But why can’t the traditional approach aim “to establish the essential features which contemporary human rights practice attributes to the rights it acknowledges to be human rights”? This is a *methodological* requirement, not a requirement about which features must be established as essential for human rights. However, a methodological approach that focuses on those rights called ‘human rights’ in the practice and attempts to establish their essential features, sounds surprisingly similar to the bottom-up approach to human rights described earlier. The claim is that an approach to human rights manifests a political conception of human rights when they understand that the *task* of a theory of human rights is to undertake the demands of (a) and (b). This seems perfectly compatible with the traditional approach, which can accept these methodological criteria, while disagreeing over which features are essential to human rights. There are not two different projects here—just one characterized by substantive disagreement.

What about (b), then, the claim that an account of human rights ought to identify the moral standards that qualify anything to be so acknowledged? As I noted above, the traditional conception aims to identify the moral standards that justify the important features of human rights. They identify human rights with independent moral rights. For example, if human rights genuinely justify sovereignty-violating interference on their behalf, the traditional conception will explain this by appealing to the importance of the basic human interests they protect and the individual moral rights these interests ground. It is the very

importance of these interests that can trump the normally overriding immunity afforded by state sovereignty. Recalling the *Starvation* example, any international justification for violating Sudanese state sovereignty in order to forestall massive starvation, would appeal to these independently specified moral rights, and to the urgent basic interest in not starving to death that grounds them. How then, is the traditional approach to human rights failing either to identify the moral standards that qualify something to be a human right, or to explain how those standards justify the principle features of human rights? In no way that I can see.

Short of saddling all traditional theories with the flaws of their least plausible versions, I see no reason to think this objection holds, particularly against Interest-Based theories of human rights. In fact, given Raz's characterization above, some properly formulated traditional accounts appear to meet the criteria necessary to be considered *political* conceptions of human rights. If this is true, then there are not, contrary to the suggestion, two distinct philosophical projects represented here.

1.6 Conclusion

The traditional conception of human rights conceives of human rights as moral rights we possess simply in virtue of our humanity. This central tenet of traditional accounts makes no explicit reference to the international political practice of human rights. This raised the concern that such accounts fail to acknowledge the importance of the international political practice of human rights and its proper role in constructing a theory of human rights. I referred to this concern as failing to take the practice seriously. I argued that the traditional approach can, in fact, take the practice seriously in at least three important ways:

1. Contrary to the minimalism objection the traditional approach can show proper fidelity to the content of the international doctrine of human rights. It has the resources to generate a list of human rights reasonably consistent with that found in the international doctrine. Moreover, it can adopt a methodological approach that aims to justify precisely those rights enumerated in the international doctrine.
2. Contrary to the conformity objection the traditional approach can acknowledge that the international practice is a political construction with specific political aims, and thus should enjoy a certain independence from a justifying theory of human rights. Contrary to a standard assumption made by proponents of the political approach, the traditional approach does not require that the international doctrine conform to its dictates. Instead, the practice is granted a certain degree of freedom to fulfill its primary aim of protecting human rights, in whatever is the most effective way to do so, even if that results in the doctrine failing to cohere with our best philosophical theory of human rights. The traditional approach can therefore posit an acceptable relation between the theory and the practice.
3. More generally, contrary to the distinct-project objection, the traditional conception human rights can adopt the methodological approach distinctive of the political conception and seek to establish the essential features that contemporary human rights practice attributes to the rights it acknowledges as human rights. In doing so, it can therefore satisfy Raz's criteria for being a *political* approach to human rights.

This is not an exhaustive rebuttal of the general concern, but I hope to have fulfilled a more modest aim—to show that the traditional conception of human rights can adopt the

methodological orientation distinctive of the political approach. In doing so, it undercuts the claim that a traditional theory must be radically different from a political theory in this regard. If a primary motivation for adopting the political approach is the belief that only it can take the international political practice of human rights seriously when constructing a theory of human rights, then this approach seems unmotivated.

Chapter Two

Can the Political Conception Account for the Moral Authority of Human Rights?

2.1 Introduction

In Chapter One I argued that the traditional approach to human rights can, when undertaking the task of constructing a theory of human rights, take the international political discourse and practice of human rights seriously in each of three important ways that demand might be understood. In recent years, a new *political* approach to human rights that “takes the doctrine and discourse of human rights as we find them in international political practice as basic”⁵⁶ has emerged. The political approach does not face the problem of taking the practice of human rights seriously. The reason is that this approach regards the existing international discourse and practice of human rights—specifically, its aims, its content and particularly, the *function* of human rights within it—as an authoritative guide to how we ought to think about human rights. One concern with this practical approach, however, is that it fails to account for the moral authority of human rights—for what makes a human right genuinely reason-giving for an agent. I explain this concern in Section 2.3. In Sections 2.5 and 2.6, I show that the political approach has an effective response to this concern, but argue that the answer is indistinguishable from that offered by the traditional conception of human rights. I begin first by considering the political conception of human rights more fully.

⁵⁶ Beitz, 2004, p. 6.

2.2 The Political Conception of Human Rights

The political conception represents a novel conception of human rights. Historically, the predominant conception has been that human rights are moral rights that we possess simply in virtue of being human—the traditional conception discussed in the previous chapter. For many contemporary philosophers, the traditional conception of human rights remains a defining one.⁵⁷ However, the political conception rejects the central tenet of the traditional conception. It argues that the traditional conception fails to acknowledge an essential *political* function of human rights.

The political conception begins with the idea of a human right as it is found within the international political discourse and practice of human rights itself. Advocates of this approach seek to provide an account of the concept and content of human rights by observing the actual political function of human rights within this discourse and practice. Here, I will focus on the version of the political conception that identifies the distinctive political function of human rights in contemporary international political discourse and practice to be the following:

The violation, or anticipated violation of human rights provides *pro tanto* justification for (various forms of) interference by outside agents into the offending states, even when such interference would normally constitute an impermissible violation of state sovereignty.

In this way, human rights serve as limitations on state sovereignty. I call this the *function claim*.

The political conception of human rights is distinguished by the belief that this functional claim is *definitive* of human rights: human rights *are* those objects that can

⁵⁷ “We may assume, as true by definition, that human rights are rights that all persons have simply insofar as they are human.” (Gewirth, 1982, p. 41).

play this interference-justifying role. According to the political conception, the ability to fulfil this political function is one of the existence conditions of a human right. In Chapter Three I will focus on the claim that the interference-justifying function is taken to be part of the concept of a human right. In this chapter, my concern is with how human rights can actually justify sovereignty-violating forms of interference.

2.2.1 The Political Approach

The political approach to constructing a theory of human rights proceeds by observing and describing the existing political discourse and practice of human rights. To illustrate this methodological approach, and the role observations of the practice play within it, it is worth considering more fully how this approach is characterized by those philosophers who adopt it.

Beitz states that in approaching the task of constructing a theory of human rights, we ought to:

Consider the way that talk about human rights actually functions in the world today. What are human rights as the international doctrine conceptualizes them?⁵⁸

On this approach, we are to consider how human rights discourse actually functions. The account is therefore not prescriptive but rather descriptive of an existing practice. This descriptive focus is further evidenced when Beitz contrasts his approach with that of Rawls:

In all of these respects, Rawls's conception of the political role of human rights is narrower than what we observe in present practice (though it is not inconsistent). Rawls offers no account of the variations, and I believe it would be better, in a theory aimed at interpreting present practice, to adopt the broader and more realistic conception.⁵⁹

⁵⁸ Beitz, 2003, p. 38.

⁵⁹ Beitz, 2004, p. 14-15.

We ‘observe present practice’ and interpret it in order to construct a more ‘realistic’ conception of human rights. And lest anyone think we are misrepresenting the role the existing practice is to have on the political approach, Beitz clarifies:

[The political approach] does more than notice that a practice of human rights exists; it claims for the practice a certain authority in guiding our thinking about the nature of human rights. But someone might wonder why the practice considered as an empirical phenomenon should be allowed any such authority.⁶⁰

We might indeed wonder the same. One might also wonder how this ‘empirical phenomenon’ is meant to guide our thinking about the *moral* authority of human rights in particular. I will consider this concern below. But first, it is worth quoting at length, a critical passage where Beitz details the political approach:

The [political] view [...] takes the doctrine and discourse of human rights as we find them in international political practice as basic. Questions like “What are human rights?” “What human rights do we have?” and “Who has duties to act when human rights are violated?” are understood to refer to objects of the sort called “human rights” in contemporary international life, however these are best conceived. There is no assumption of a prior or independent layer of fundamental values whose nature and content can be discovered independently of reflection about the international realm and then used to interpret and criticize international doctrine. Instead, the functional role of human rights in international discourse and practice is regarded as definitive of the idea of a human right, and the content of international doctrine is worked out by considering how the doctrine would best be interpreted in light of this role.⁶¹

This passage is important for two reasons. It provides a clear statement of the political conception of human rights; and it also makes explicit that for the political conception there ‘is no assumption of a prior or independent layer of fundamental values whose nature and content can be discovered independently of reflection about the international realm.’ There remains, of course, a need for a suitable explanation of the moral basis of human rights and the source of their moral authority.

⁶⁰ Beitz, 2009, p. 18.

⁶¹ Beitz, 2004, p. 6.

The political conception understands human rights to be those objects called ‘human rights’ in international political discourse and practice. In order to determine, then, how we ought to conceive of them, it focuses on the existing practice, and undertakes what Beitz refers to as a ‘practical analysis’ of the practice.⁶² Why might one be motivated to adopt this approach? Perhaps the most important reason is that the international practice of human rights is a widespread, complex, and emergent political practice that is critically important in contemporary global politics. It has given the idea of human rights a plausibly determinate meaning that has managed to gain widespread international acceptance. If our aim is to understand human rights as they are typically employed in practical reasoning about international affairs, we ought to focus on their most prominent and important uses in this context. To ignore the central uses of human rights is to ignore, one might think, what human rights most importantly are.

As an empirical exercise, there is nothing wrong with focusing on the actual discursive function of human rights, or, on how the international doctrine conceptualizes them. In fact, this might be a perfectly fine methodological approach to theorizing about human rights. But we are also concerned with the moral authority of human rights when we theorize about them. The broadly sociological orientation that characterizes the political approach, however, seems ill-suited to account for this moral authority. I develop this concern in the next section.

⁶² Beitz 2009, 167.

2.3 The Normativity Challenge

With the characterization of the political conception now in hand, and recalling the brief remarks about the normativity challenge in the introduction, let us clarify this challenge facing the political approach.⁶³

The political approach begins by observing a number of facts about the international discourse and practice of human rights. Importantly, when we inspect the practice of human rights, we will also discover facts concerning the behavior and beliefs of agents regarding the moral authority of human rights. The concern is that the political approach seems to suggest that to say there is a human right to X is simply shorthand for a complex description of regularities in behavior and belief observed among the members of some group regarding the reason-giving force of human rights.⁶⁴ For example, we might observe governments instituting protections against starvation for its citizens in situations where such a threat reasonably exists. Moreover, these governments may do so because they believe there is a norm grounded in a human right that they do so. And, we might further observe that governments, which undertake such protective measures on the basis of this norm, are apt to criticize those governments that do not do so, as illustrated in the *Starvation* example.

These would be important observations, not least because they would illustrate how human rights have become a powerful force in the world, constraining the actions and policies of governments. There is no question that human rights are *taken* to provide reasons for action by agents within the international practice. But this does not entail that human rights actually *provide* genuine reasons for action. The political approach undertakes an

⁶³ My development of the normativity challenge follows, in some ways, Beitz's version of the concern in his (2009), p. 164-165.

⁶⁴ *Ibid.*

analysis of the existing international practice in an attempt to determine how the objects called ‘human rights’ within it are conceived. This will yield a number of important facts about how such rights are conceived of by agents within the practice. But this analysis of the practice cannot alone yield an account of the genuine moral authority of human rights. Let me make this point more concrete.

The political approach seems to understand statements about human rights as nothing more than complicated references to sociological facts concerning the beliefs and behaviour of agents in the international arena. But references to sociological facts about regularities of belief and behavior, no matter how complicated, simply cannot account for the normativity of human rights. Human rights are supposed to provide reasons for action. The observation that human rights are *believed* to provide reasons for action by participants in the practice alone, however, does not provide us with a compelling explanation of the source of their moral authority. If we are told that there is a human right to X and we ask why this should provide us with a reason for action, it is insufficient to note that the members of some group believe that there is a human right to X and to take this belief as a reason for action.⁶⁵ This general concern is one that must be addressed by any philosophical theory of human rights. But it can be shown to be particularly problematic for the political conception given its central functional claim.

The political conception regards the distinctive political function of human rights to be the justification of various forms of interference into states in order to protect against or rectify human rights violations, even when such interference would normally constitute an impermissible violation of state sovereignty. As Raz says:

While human rights are invoked in various contexts, and for a variety of purposes,

⁶⁵ Beitz, 2009, p. 165.

the dominant trend in human rights practice is to *take* the fact that a right is a human right as a defeasibly sufficient ground for taking action against violators in the international arena, that is to *take* its violation as a reason for such action.⁶⁶

But again, it is insufficient to note this is how human rights are *taken* to function within the practice—a claim about what people believe is the political function of human rights. State sovereignty is a normative notion—it is a right possessed by legitimate states to non-interference by outside agents into their domestic affairs and designed to protect against violations of their right to self-determination. To trump the right to non-interference associated with state sovereignty, sovereignty-violating interference must be *morally* justified. Reasons for action provided by human rights must be sufficient to override the reasons for action generated by considerations of state sovereignty. But again, references to sociological facts about regularities of belief and behavior—including beliefs about the political function of human rights—no matter how complicated, cannot account for the genuine moral authority of human rights that is required to justify sovereignty-violating interference.

The general error illustrated here is confusing the claim that human rights provide genuine reasons for action with the claim that they are taken to provide genuine reasons for action within the international practice. The political approach's empirical analysis seems only to give us the latter. But the latter claim has no clear bearing on the prior, normative claim. At first glance then, political accounts seem ill-placed to meet the normative challenge, having adopted an excessively pragmatic approach to human rights.

2.4 Other Approaches

Before considering how the political conception addresses the normativity challenge, I want to take a brief detour and consider two alternative approaches that might be confused with

⁶⁶ Raz, 2008, p. 11. My emphasis.

the political approach to human rights. Doing so will help clarify the political conception, and also, illustrate alternative ways it is possible for a theory of human rights to account for the normativity of human rights while adhering closely to the practice.

One alternative approach might claim that the international doctrine of human rights represents a global agreement among political states, thus locating the source of their normative force in this agreement or contractual obligation. However, this proposal will not do, for no such agreement exists. First, not all existing states are signatories to the various declarations and treaties that in combination constitute the international doctrine. Second, among those that are signatories are states which became so only with serious reservations about many of the doctrine's principles.⁶⁷ Finally, many of those states not party to the international doctrine are precisely those states which most seriously threaten and violate human rights. Grounding human rights in actual agreement would leave many of the worst offenders outside the scope of the agreement.

The second alternative approach is to adopt a strongly legalistic conception of human rights—call it the *juridical* account of human rights. On this account, the content of human rights is established by international human rights law—which human rights there are is determined solely by which human rights are recognized in international law. Juridical accounts can plausibly account for the normativity of human rights in the same way any law gains normative force (although we might question whether or not such accounts can explain the distinctive moral authority of human rights). The juridical account can be construed as a version of the general political approach, one that would occupy box 1 or two in figure 1. Given that international human rights law is an important element of the

⁶⁷ In fact many parties to the international doctrine opted to become so only because they believed the human rights principles would *not* be binding on their behavior.

international *practice* of human rights, this might sound similar to the particular political conception being discussed here. But they are different in important ways. For one, we shall see that our political conception occupies box 3, not box 1 or 2 of figure 1. They differ over the normative grounding of human rights. Moreover, the juridical account holds that any genuine human right requires instantiation in international law. Our political conception rejects this existence condition for human rights. It says instead—at least in part—that human rights are those rights that can fulfil the interference-justifying political function. According to this political conception, there can be rights identified as human rights within the international doctrine that fail to satisfy this functional criterion, and thus should not be considered genuine human rights. Similarly, there may be rights not identified as human rights by the international doctrine that ought to be, given that they can satisfy this criterion (in addition, to whatever else are the existence conditions of human rights). This illustrates that the particular political conception focused on here, in fact, shares an important feature with the traditional conception—namely, that human rights exist prior to legal or institutional recognition. Thus, although the juridical conception can be understood to be included in the general category of political accounts of human rights, it is nevertheless importantly different from the version of the political conception discussed here.

2.5 Three Questions

I noted above that the political approach seems ill-placed to meet the normativity challenge, having adopted an excessively empirical approach to human rights. We might say that it appears as though the political approach aims to locate itself in Box 1 of figure 1 from the introduction, but in a way that makes it unclear how it can do so and still account for the

moral authority of human rights⁶⁸. First impressions, however, can be misleading. The political conception can both recognize and satisfy the demand to provide an explanation of the moral authority of human rights.

The first indication that the political approach can meet the normativity challenge is that it (perhaps unsurprisingly) *recognizes* the challenge. Beitz anticipates the concern in an early paper:

It may seem excessively pragmatic to regard human rights as a 'political conception.' Whatever else they are, human rights are surely moral standards whose authority rests on recognizably moral considerations. To suggest otherwise, the objection holds, fails to take seriously the character and the history of the idea of human rights.⁶⁹

This is a start. To understand the complete answer, let us begin by clarifying the role that the international political practice is meant to play in the political conception's theory. To do so, note three important questions any adequate theory of human rights must answer:

1. How should we conceive of human rights?
2. What is the source of the normativity of human rights?
3. What is the list of genuine human rights?

The normativity objection assumes that all three questions are to be answered by analysing the practice and discourse of human rights, particularly to determine the political function of human rights. But this is mistaken. The political approach distinguishes between three problems concerning human rights, which correspond to our three questions just stated: (1) the problem of clarifying the concept of a human right; (2) the problem of accounting for

⁶⁸ This is not, of course, to say that an account of human rights has difficulty accounting for the moral authority of human rights simply by occupying Box 1. This quadrant allows for much internal variation, and some accounts that might plausibly be seen as occupying it might not encounter the difficulties apparently facing the political approach focused on here.

⁶⁹ Beitz, 2001, p. 280.

the moral authority of human rights; and (3) the problem of determining and justifying the content of human rights. The political approach claims that in order to answer the conceptual question (1) we analyze the international discourse and practice to determine how participants within it understand the practical inferences to be drawn from valid assertions about human rights. The claim is that when we do so, we discover that human rights are understood to be those norms that have a specific political function. But we do not look to the political function of human rights as a source for their normativity and an answer to problem (2). This would be to attempt to get normative blood from the stone of political function.

According to the political conception, the political function of human rights is part of the concept of a human right. Human rights are political norms capable of justifying various forms of sovereignty-violating interference. That is, the political conception argues, their essential nature. And, the ability to fulfil this function is one of the existence conditions of a human right. The political function of human rights thus obviously helps determine the content of human rights. The list of genuine human rights is determined, in part, by considering which rights can plausibly fulfil this interference-justifying function. But the source of the moral authority of human rights is *not* to be found within the practice according to the political conception. Indeed, the moral authority rests on distinctly moral considerations.⁷⁰

Thus it seems, contrary to initial impressions, that the political conception does not look to the existing political practice of human rights for the source of their moral authority but only for guidance about how best to conceive of human rights and to determine their

⁷⁰ Beitz, 2001, p. 280.

content. The question of the source of their moral authority is to be addressed separately. In other words, it is not the case that the political conception is committed to occupying Box 1 of Figure 1. What, then, is the political conception's general account of their moral authority?

2.6 The Moral Authority of Human Rights

The question I have raised is how, on the political approach, are human rights to be understood as genuinely reason-giving? The answer is in fact fairly straightforward, as I will show.

Beitz hints at the moral basis of human rights when he says that “human rights are ultimately justified by considerations about the reasonable interests of individuals.”⁷¹ This sounds similar to the traditional Interest-Based Theory detailed in the previous chapter. There, I developed an account of human rights which grounded them in certain basic, shared human interests. Here, the suggestion is that the political conception likewise ground the justification of human rights in the shared interests of individuals. This similarity is further established when Beitz explicitly claims that:

Human rights are requirements whose object 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 order composed of states.⁷²

This now sounds almost identical to the Interest-Based Theory introduced in the last chapter. It seems both the traditional and political conceptions of human rights are grounded in the same basic interest theory of human rights. Human rights aim to protect

⁷¹ Beitz, 2001, p. 277.

⁷² Beitz, 2009, p. 172.

urgent human interests from standard threats they face in the modern world, and the importance of these interests can generate powerful reasons for action on their behalf.

However, it is important to pause over a potential problem. Beitz seems reluctant to identify human rights as a sub-set of moral rights more generally. Above, for instance, he identifies them merely as “requirements.” At other times, he sounds as if he is suggesting that they ought to be considered normatively *sui generis*, as international *norms* that protect certain urgent human interests against standard threats to them from governments. But they are not, on this view, to be conceived of as moral rights. One could take this route, but only at the expense of abandoning the widely held belief that human rights are actually *rights*. This seems a steep price to pay. In any event, it is not clear that Beitz is committed to this position. And given the high price he would have to pay to adopt it, I will not saddle him with it. So rather than undertake the exegetical project of trying to determine exactly what Beitz might say, I will instead focus on what Raz *does* say, for he is much more explicit about the underlying nature of human rights.

Raz says human rights derive from three layers of argument: (a) the first layer establishes the existence of a universally held individual moral right (in current social conditions); (b) then the second layer shows that states, under some conditions, are duty-bound to respect or promote the interest or right of individuals identified in the first part of the argument; and (c) the third layer shows that states do not enjoy immunity from interference from the international community regarding their compliance with these duties. The first layer of argument identifies an individual moral right—a right that is determined through moral reasoning, independently of legal and institutional implementation. Establishing a human right thus requires showing that it is first and foremost an individual

moral right. According to the political conception, then, human rights are a sub-set of moral rights more generally.

There is now an obvious answer to the normativity challenge available to the political conception. Human rights are reason-giving on their view because they are genuine moral rights. The nature of the interests these rights protect provide reason to hold other agents to have duties to respect, protect, and fulfil them. There is, contrary to initial impressions, no objectionable appeal to the practice of human rights to account for their normativity—the political approach is to be located in Box 3 of Figure 1. The political conception thus holds that human rights are a sub-set of moral rights more generally, but one distinct from that posited by the traditional conception. Instead of being rights we possess simply in virtue of our humanity, they are those moral rights that can also play the functional role the political conception identifies as essential to human rights.

As an account of the moral basis of human rights and their moral authority, how does this differ from the account provided by the traditional conception? Both conceptions identify human rights as a class of individual moral rights tied to basic interests that exist independently of the international doctrine. The political conception thus seems remarkably similar to the traditional conception—at least as it concerns the nature of the moral grounds of human rights, and the general account of their moral authority. In fact, it seems that in this regard we can view the political conception as compatible with the traditional conception in important ways. They differ only in one important manner: the political conception makes the interference-justifying function of human rights as *essential* to them.

2.7 Taking Stock

The political approach to human rights presents itself as a radical challenge to the traditional approach. But it is becoming increasingly difficult to see why we should believe this. Chapter One concluded that a suitably constructed traditional theory of human rights can take the international practice of human rights seriously in each of three important ways that demand might be understood. This result was important because by meeting an important set of objections raised by advocates of the political conception, it undercut a primary motivation for adopting the political approach to human rights. The traditional conception can adopt the methodological approach to human rights distinctive of the political conception, and in doing so, establish a critically important agreement between the two approaches.

The conclusion of this chapter is that both approaches regard human rights as a subset of moral rights more generally. Recalling Figure 1 from the introduction, we can say that both approaches occupy Box 3, at least with respect to the vertical dimension. The political conception thus has a ready answer to the normativity challenge: human rights are genuinely reason-giving and binding on behaviour because they are moral rights. This is in contrast to those accounts of human rights that regard them as legal rights, conventional rights, or not as genuine rights at all. The political approach can adopt an account of the moral authority of human rights indistinguishable from that distinctive of the traditional approach, and in doing so, establish a critically important agreement between the two approaches. So we cannot locate the important distinction between the traditional approach and the political approach in either a difference of methodological approach, or in a difference regarding the normative basis of human rights. So where, then, does this difference lie?

The difference, I conclude, is that each approach has a different understanding of the concept of a human right, and thus regarding the existence conditions of a human right. The traditional conception of human rights regards them as moral rights that we possess simply in virtue of our humanity; the political conception of human rights regards them as moral rights that have the essential interference-justifying political function. Modifying Figure 1 we get

Figure 2

		Concept of a Human Right	
		Concept includes political function	Concept doesn't include political function
Normative Basis	Institutional grounding	5	6
	Natural (moral) grounding	7	8

The political conception occupies Box 7; the traditional conception occupies Box 8. I will argue in the next chapter that occupying box 7 is not an option—the concept of a human right does not include its political function.

Chapter Three

The Concept and Function of Human Rights

3.1 Introduction

The political conception of human rights claims that what distinguishes human rights within the larger class of moral rights is that they have an essential political function. According to the political conception I am focusing on here, the political function is that the violation of (or threat to) human rights generates a *pro tanto* justification for intervention by outside agents into states—even when that violation would otherwise represent an impermissible violation of state sovereignty. This is not simply a claim about an important political function that human rights have. Rather, it is taken to be definitive of the concept of a human right⁷³—part of what it is to be a human right. In this chapter, I argue that this conceptual claim is false.

3.2 The Interference-Justifying Function of Human Rights

The traditional conception regards the primary function of human rights to be the protection of certain basic human interests against standard threats to those interests—what we might more easily call the protection of human dignity. They do not claim, contrary to the political conception that the concept of a human right is that of a right that has a particular interference-justifying political function. But this does not mean that the traditional conception does not hold that human rights have become genuine reasons for

⁷³ Beitz 2004, p. 6.

abandoning strict state sovereignty. Human rights *can* plausibly justify various forms of sovereignty-violating interference. Or, so I will assume here.

The importance of this normative political function in contemporary international affairs should not be underestimated. Prior to the emergence of the modern international human rights doctrine and the accompanying belief that they provide genuine limitations on state sovereignty, the principle of state sovereignty had preemptory normative force in international affairs. The Westphalian ideal of sovereignty conceived of states as effectively immune to outside interference regardless of the state's actions within its own borders regarding the treatment of its own people. This perception changed fundamentally after World War Two and the horrifying treatment of minority groups during the war. The fact that human rights now represent a set of generally accepted norms that set limits to state sovereignty—at least under certain conditions—is an important evolution in the international political system.

The traditional conception ought to take this political function seriously. In fact, if we assume, as I shall here, that this is a genuine function of human rights in contemporary international affairs then, given the importance of this function noted above, I argue that any complete theory of human rights should provide an explanation and justification for this function. The traditional conception could, it would seem, fulfil this demand in a relatively straightforward manner, although I only sketch the story here. The traditional conception and human rights theory more generally, holds the basic unit of moral concern to be the individual human person. If this is true, then the moral status of state sovereignty derives entirely from its role in protecting and furthering human rights and human interests. For this reason, if a state fails to protect or actively violates the rights of its citizens, then it can no

longer appeal to its supposed sovereignty to rule out forcible intervention, which is designed to secure those rights and protect those interests.⁷⁴ Moreover, there is a plausible relation between human rights and state legitimacy—states that fail to protect, or actively violate, human rights beyond a certain threshold are illegitimate. Thus, especially in cases of severe and systematic human rights abuses by a government, intervention becomes in principle permissible simply because the state is no longer a legitimate state: illegitimate states are not sovereign and they do not possess the right to non-intervention that sovereign states enjoy. Thus, interference into illegitimate states does not violate sovereignty and requires no justification as such (though, of course, it might require *other* forms of justification).

Clearly then, the traditional and political conceptions can agree that an important political function of human rights in contemporary international political discourse and practice is to limit state sovereignty by justifying various forms of external interference into states. Having this political function is simply not, on the traditional conception, part of the very concept of a human right. I will argue below that traditional accounts are correct in this judgment—it is not part of the concept of a human right that it play this political role. But first I sketch a basic framework for talking about concepts.

3.3 Concepts and Commitments

At issue in the debate between the traditional and political conceptions of human rights is whether or not human rights are conceptually tied to their interference-justifying function. To properly address what is at issue here it will be helpful to have a basic framework for

⁷⁴ Rodin, 2006, p. 244.

talking about concepts. I will not defend the framework, or elaborate it very far, but it should be enough for our purposes here.⁷⁵

The political conception claims that it is part of the concept of a human right that is play the interference-justifying role in international political discourse. But what does it mean to be part of the concept of a human right? Part of what it means is that when one makes explicit what is, and what is not, part of one's concepts, one is articulating norms for a community to which one belongs. Language is something we do—it is a social practice—and like all social practices it is governed by norms. Thus, when the traditional account claims that it is part of the concept of a human right that it has a distinctive political function, it is saying that part of being a member of the relevant discursive community (whatever that may be) it is to accept that human rights have this function.

According to the framework adopted here, there is an important connection between conceptual meaning and commitment. So, for example, suppose I tell you that my dog is a mammal. I have thereby expressed a whole range of commitments to you: to my dog being an animal, to at least some animals being mammals, to my dog not being an amphibian, and so on. I might not recognize all the things to which I have committed myself, or even intend to so commit myself. So I might not know that in reporting that my dog is a mammal I thereby commit myself to the claim that a domesticated sub-species of the Gray Wolf are mammals, or that my dog is a member of the *Canidae* family of the order *Carnivora*. We can tell that I have expressed many linguistic commitments, and also how crucial they are to linguistic practice, if we consider the following scenario. You challenge me saying 'oh, you

⁷⁵ To this end I follow a very helpful discussion by Stephen C. Angle in his book Human Rights in Chinese Thought. This framework has the benefit of being explicitly adopted by Beitz, and being consistent with Raz.

think some animals are mammals, to which I respond ‘No but my dog is a mammal’.
Puzzled you respond ‘Isn’t your dog an animal?’ Sure it is. Here I seem to be accepting commitments but disavowing many of their entailments. I am not playing by the rules.⁷⁶

The centrality of commitment to linguistic practice has led Robert Brandom—on whose work this framework is based—to characterize conceptual content in terms of inferential structure. So, for example, he asks what the difference is between a person reporting that the apple in front of him is ‘red’, and his pet parrot being trained to make the noise ‘red’ when presented with the same apple. Brandom claims that the difference is that the pet parrot does not treat ‘that is red’ as incompatible with ‘that is green’, nor as entailing ‘that’s colored’, for example. According to Brandom the parrot’s responses are not caught up in practical proprieties of inference and justification and thus not conceptual matters at all. Concepts are essentially inferentially articulated.⁷⁷

To understand the content of a concept, we need to consider the linguistic commitments one would undertake if one were to participate in good faith in the discursive practice. In this light we can see concepts as relatively stable patterns of commitments that are appropriately held by speakers across a given community. In our case we can approach the task of determining the content of our concept of a human right by attending to “what an ordinarily competent participant in the discourse of human rights would understand herself to be committed to if she were to acknowledge that a human right to such-and-such

⁷⁶ Angle, 2003, p. 34.

⁷⁷ Brandom, 1994, p. 89.

exists.”⁷⁸ The political conception’s focus on the existing practice of human rights aims to satisfy this task:

We inspect the practice of human rights because we are interested in the way participants understand the practical inferences to be drawn from assertions about human rights. We want to understand how these objects called ‘human rights’ operate in the normative discourse of global political life.⁷⁹

Given this discussion, the key question becomes this: in the central range of cases, does a competent speaker who makes a valid human rights claim commit herself to the claim that the actual or anticipated violation of that right justifies interference by outside agents into the offending state, even when such interference would normally constitute a morally impermissible violation of state sovereignty? I will argue that the answer to this question is ‘no.’

3.4 Problems with Content and Function

In this section I note a minor dilemma for the political conception but one that helps set the stage for the three specific objections I will raise against the political conception of human rights. There are a few steps needed before noting the dilemma, however.

Every plausible theory of human rights must specify the existence conditions for a human right: what must be the case for it to be true that a human right exist. Theoretical reasons for this should perhaps be clear, but there are also significant practical reasons for determining these conditions because they provide a principled means for distinguishing between genuine human rights and counterfeits. The modern human rights era has witnessed

⁷⁸ Beitz, 2009, p. 165.

⁷⁹ *Ibid.*

a proliferation of questionable human rights claims, as noted in the introduction. The idea of human rights has become increasingly powerful within normative political discourse and so every attempt is made to frame particular concerns about an interest or value in terms of human rights—if you have a human right to your preferred interest or value, you have a powerful moral claim at your disposal.

So we require an account of how we would justify the recognition of a proposed right as a human right. Doing so will proceed by establishing that the proposed right possesses the necessary and sufficient features of a human right as determined in part by the concept of a human right accepted by the theory. The political conception claims that human rights are best conceived of as those moral rights that can play the particular interference-justifying political function. Thus, according to the political conception an existence condition for a human right is:

X is a human right if and only if the actual or anticipated violation of X provides *pro tanto* justification for (some form of) remedial interference by outside agents into the offending states, even when such interference would normally constitute a morally impermissible violation of state sovereignty.

So, for example, if we are concerned with determining whether or not there is a human right not to be tortured, we ask (in part⁸⁰) whether or not various forms of interference by outsiders states that would otherwise constitute objectionable violations of state sovereignty would be justified in order to protect against, or stop, instances of torture. Following this procedure for each proposed human would yield a list of genuine human rights. It is worth

⁸⁰ The justification would also include showing that the proposed right seeks to protect or fulfil an urgent basic interest, and that the proposed right would, under suitable conditions, impose duties to protect, respect and fulfil the object of the right on other agents, perhaps including domestic governments.

pausing over a potential problem this existence condition engenders for the political conception.

In Chapter One we considered the *minimalism* objection to the traditional conception of human rights. There we saw that advocates of the political conception are quick to argue that the traditional conception is forced to posit a minimal set of human rights that is in tension with the more expansive catalogue found in the international doctrine. But they seldom stop to consider how the demand that genuine human rights must be capable of justifying sovereignty-violating interference might have a similar effect on the set of genuine human rights.

Rawls has been criticized along these lines. In *The Law of Peoples*, Rawls took rights to be human rights only if their serious violation could justify coercive military intervention. This is a very demanding threshold, and it lead Rawls to restrict the class of genuine human rights to a subset of those found in the international doctrine. For example, Rawls's list does not include rights to freedom of expression and association (though it does include "freedom of thought" and its "obvious implications") or the rights of democratic political participation. Rights against discrimination are also limited, as there may be may be reasonable religious or gender qualifications for access to higher public office. According to Rawls those rights left off of his list of genuine human rights are best understood to be "liberal aspirations" or to "presuppose specific kinds of institutions."⁸¹

Raz attempts to follow the actual practice of human rights more closely and opts for a more expansive notion of the kinds of interference which human rights can justify. The

⁸¹ Rawls, 2001, p. 80, n. 23.

aim is to avoid the concern with fidelity to the international doctrine that plagues Rawls' interventionist account. Raz says:

Unlike Rawls who took rights to be human rights only if their serious violation could justify armed intervention, I take them to be rights whose violation can justify any international action against violators: making conformity to rights a condition of aid, calling on states to report on their conduct re protection of human rights, condemning violation, refusing to provide landing or over-flight rights, trade boycotts, and others.⁸²

However, according to Raz's theory, this is provided that they are forms of interference, which normally would be impermissible violations of state sovereignty. Now, I do not have a theory of state sovereignty on offer, and I do not plan to present one here. So what I have to say will be suitably conditional on the development of such a theory (though one might think the burden to clarify what the substantive notion of sovereignty amounts to falls to those advocates of the political conception that tie the concept of a human right to it). Suffice to say, the importance attributed to human rights given that they can play this sovereignty-limiting role is testament to the fact that sovereignty is a morally significant notion:

But given the moral significance of rights, which set moral limits to sovereignty, human rights are inevitably morally important. If they were not they would not warrant interference in state sovereignty.⁸³

So state sovereignty represents an important value. It is not, nor should it be, easily overridden. But then it is not the least bit clear that the rights listed in the international doctrine are capable of justifying genuine sovereignty-violating forms of interference. We might easily grant that rights such as protecting bodily security and basic subsistence are capable of satisfying this requirement. But what about the (purported) human rights to

⁸² Raz, 2008, p. 11, n. 19.

⁸³ *Ibid.* p. 24.

education, freedom of expression and association and democratic political participation? My point is not that they cannot be so justified but rather, that the political conception owes us an explanation for *how* they can do so. The stronger we understand the notion of sovereignty to be, the smaller the set of genuine human rights becomes on the political conception.

One might argue that the political conception can adopt a strategy utilized by the traditionalist in Chapter One to address the minimalism objection. In Chapter One we saw how some traditionalists adopt an *abstraction* strategy: there are a limited number of abstractly specified human rights that entail a set of derived rights that themselves do not possess the same essential features as the abstract rights. In the political case, the claim would be that there is a set of limited, core, human rights that possess the characteristic political function, and then a wider set of rights that coheres with the international doctrine and stands in some suitable relation to the core rights, but do not themselves have the political function.

There are two things to say about this response. First, as we noted when we discussed the traditionalist's use of this strategy, it runs the risk of demoting the derived set of rights that do not share the essential features of human rights to a status other than that of being genuine human rights. This seems particularly problematic for an approach that accords all the rights in the international doctrine a certain privileged status as human rights. Second, the textual evidence does not support either Raz or Beitz adopting this strategy, and it seems to be in tension with the general political approach. For example, Raz presents his three-stage justification of a human right (detailed in Chapter Two) as what is required to establish each individual human right—there is no suggestion that there is a further division within the class of human rights between those that possess the political function and those that do not. This is in contrast to the traditionalist, who explicitly posits such a distinction.

Another way of avoiding the concern with fidelity available to the political conception is to loosen the tie with sovereignty *and* broaden further the notion of interference. This is Beitz's approach. Beitz never makes explicit the tie between human rights and the justification of *sovereignty*-violating interference. He speaks instead simply of the justification of interference. But his notion of interference seems quite weak. As Beitz says:

Whatever else is true of human rights, they are supposed to be matters of international concern in the sense that a society's failure to respect its people's human rights on a sufficiently large scale may provide a reason for outside agents to do something.⁸⁴

Also that:

Human rights are matters of international concern. A government's failure to carry out its first-level responsibilities may be a reason for action for appropriately placed and capable "second-level" agents outside the state [...].states and non-state agents with the means to act effectively have *pro tanto* reasons to interfere in an individual state to protect human rights in cases in which the state fails through a lack of will to do so.⁸⁵

This may not be intended to be significantly different from Raz's notion of interference. But the claim that human rights violations 'may be a reason for action' sounds like a weakening of the claim. In any event, I raise the issue here not to force the point, but instead to note how it raises the dilemma for political accounts I mentioned at the beginning of this section.

Here is the dilemma facing political accounts. Either the forms of interference human rights justify are normally sovereignty-violating or they are not. If they are, then the concerns raised above about limiting the number of human rights arise, as do the three additional objections I will raise below. If they are not, then at least two important conclusions follow. First, if the forms of interference are not, by nature, sovereignty-violating, then the kinds of interference justified by human rights are no longer unique to human rights alone—values

⁸⁴ Beitz, 2009, p. 166.

⁸⁵ *Ibid*, p. 172.

other than human rights can justify such weak forms of interference. For example, in responding to the question, “why did you undertake that particular initiative to build schools for young girls in Taliban-controlled Pakistan,” a non-governmental organization might respond “we did so because of concerns with the basic well-being of the girls,” or “because of concerns with fairness” (only boys have access to formal education in the area). Neither response appeals to considerations of human rights but both have *prima facie* plausibility as responses to the demand for a justification of the (by hypothesis, non-sovereignty-violating) interference into the region. If examples like this exist and we construe the kind of interference distinctive of human rights as something weaker than those constituting violations of sovereignty, then values other than human rights can play this role, contrary to our best account of the functional claim.

Second, and more importantly for our concerns here, there is perhaps little now present in the conceptual claim that the traditional conception cannot also accept. If the claim that human rights justify various forms of outside interference amounts only to the claim that their violation demands international *concern*, and that their violation may provide reason for various outside agents to undertake *some* action on their behalf, then this is not only relatively weak but plausibly acceptable to the traditional conception. Indeed, the weaker the reasons human rights violations generate for outside agents, and the broader the notion of interference human rights are taken to justify, the more this claim becomes compatible with a traditional conception of human rights. My claim is that either the notion of interference the political conception adopts is compatible with a traditional conception of human rights, or, it is incompatible. But then it is susceptible to at least three important objections. I turn to these objections next.

3.5 Objections to the Conceptual Claim

In this section, I consider three important objections to the conceptual claim made by political accounts. Each objection is designed to support the claim that it is not part of the very concept of a human right that it has the essential political function of justifying sovereignty-violating interference.

3.5.1 Other Functions of Human Rights

Human rights appear to serve a number of important functions other than to justify sovereignty-violating interference. So why does the political conception grant only this function the status of being part of the concept of a human right and thus one of the existence conditions of a human right? Some philosophers go so far as to claim that the interference-justifying function is not the function of human rights in contemporary political discourse and practice, not even merely the predominant function.⁸⁶

The other functions of human rights will include the use of human rights discourse in our domestic political life—uses that appear to make no reference to the justification of international interference. Consider the following story for illustration.

Revolution

Rodrigo is the head of a Central American revolutionary group intent on overthrowing the despotic leader of his country, under whose leadership the population has suffered widespread human rights abuses. Numerous opposition leaders, journalists and professors have disappeared. The torture of political opponents—their ‘confessions’ to seditious behavior broadcast on state television—is commonplace. Resources that could otherwise be spent on education and basic health care are instead diverted to military purchases, and extravagant expenditure on luxuries like summer homes, yachts and planes. Rodrigo and his group of compatriots make their case for revolution explicitly in terms of human rights. But

⁸⁶ Griffin, 2008, p. 8.

they also believe that the self-determination of their people requires a domestic-led revolution without outside interference or involvement. In fact, they make no claim that the human rights violations in their country that justify internal revolution also justify outside interference.

This is just one illustration of an important use of human rights in domestic political discourse. Other uses include the appeal to human rights “in campaigns against violations of liberty (for example in Guantanamo), in similar campaigns against torture[...] To justify rebellion, to establish a case for peaceful reform, to curb an autocratic ruler, [...], to criticize a majority’s treatment of racial or ethnic minorities.”⁸⁷ There are a multiplicity of political functions of human rights in political discourse distinct from that of justifying outside interference. And of course, political accounts recognize this. As Raz says:

[W]hile human rights are invoked in various contexts, and for a variety of purposes, the dominant trend in human rights practice is to take the fact that a right is a human right as a defeasibly sufficient ground for taking action against violators in the international arena, that is to take its violation as a reason for such action.⁸⁸

Given these important political uses of human rights, why is it that the interference-justifying role holds the unique honour of being definitive of a human right? Why is this particular political function singled out as being part of the concept of a human right and as being one of the existence conditions of a human right while the others are not? It is not enough, one would think, to claim that it is either a particularly important function of human rights, or that only human rights can fulfill this function. For neither of these seems sufficient to establish that a function constitutes part of the meaning of a concept. Consider the example

⁸⁷ Griffin, 2008, p. 6-7.

⁸⁸ Raz, 2008, p. 8.

of a computer. Allowing access to the internet is undoubtedly both an important function of modern computers, and a function that only computers can fulfill. And yet it is not part of the concept of a computer that it possesses this function. Something can be a computer without having the capacity to fulfill this function, despite it being both important and unique that it actually plays this role.

Instead, the claim must be that when making valid human rights claims competent participants in the discourse of human rights are, at least in core cases, *committed* to the additional claim that outside agents have *pro tanto* reasons to interfere to protect human rights in cases where the domestic state has failed to do so. The two objections developed below both, in their own way, raise doubts that participants are so committed. Here I wish to point out two things. First, advocates of the political approach have not provided any reasons for believing this claim. Raz, for instance, simply says that it is the ‘dominant trend’ in international practice is that human rights have this function. But the real dominant trend in contemporary political life is to appeal to human rights to justify all manner of actions. So once again, it is difficult to see why this particular function should be singled out. Second, singling out this function from among the many important functions human rights play as being definitive of human rights thus seems to misrepresent how we use the term in our moral and political discourse.

This is not intended to represent a conclusive objection but rather, to highlight the need for additional evidence on the part of the political conception. Short of that, we have been provided with no legitimate reason to identify the interference-justifying function of human rights as part of the concept of a human right.

3.5.2 Human Rights and States

Let us consider the second objection.⁸⁹ According to the political conception, human rights are characterized by their essential sovereignty-limiting function. Sovereignty is a normative property possessed by states. Thus, the function of human rights is tied to the existence of states—they could not play their sovereignty-limiting role in the absence of states. If the concept of human rights is of a right that plays this role, then human rights are conceptually tied to the existence of the modern state system.

But why think human rights are conceptually tied to the modern state system? This would seem to render their use outside of this system—or perhaps even in defence of a non-state international political system—inappropriate, or perhaps even incoherent. Notice first that this would not be an issue for the traditional conception. Under different forms of international political organization, the content of human rights would shift to include protections against whichever threats were standard from existing political institutions under that organization. But talk of human rights would still be appropriate because human rights do no presuppose the existence of the modern state system in the way that the political conception apparently does.

⁸⁹ Similar objections to this and the following one are briefly suggested by Tasioulas in his (2009). I had already been independently developing similar objections over the past few years before coming across Tasioulas' recent talk—in many ways the objections developed here against the political conception take the form of showing that concerns I had with Rawls' conception of human rights arise for more recent political conceptions as well, though perhaps in modified form. It was encouraging, nevertheless, to discover another author who believes that the political conception goes wrong in conceptually tying human rights to their political function (as Rawls went wrong, in my opinion, by conceptually tying human rights to the particular function of justifying coercive intervention), and my subsequent development of the objections was certainly influenced by Tasioulas' brief, but important, statement of them. My aim here is to develop these objections, though beyond the brief statement found in his talk. Tasioulas' overall influence on this thesis should be apparent.

Let us make the point slightly more concrete. Imagine a world very much like our own, but without nation states. Instead, this world is populated by a multitude of non-state political units that exemplifies some form of anarchism. The details are not particularly important, except for the key feature that these units do not possess anything resembling state sovereignty. Imagine that an inhabitant of this world Geetha—perhaps a young political philosopher—justifies this political system by appealing directly to human rights concerns. Perhaps our young philosopher believes that such an arrangement of decentralized non-state political units is precisely the best political arrangement to protect and fulfill human rights.

Now, if the political account is committed to conceptually tying human rights to the existence of the modern state system because human rights are *defined* as those rights which limit state sovereignty, then one of two things would have to be said about our young Geetha: either she is manifesting something like conceptual error and her claim is incoherent, or her term “human rights” is simply homonymous with ours. But is either claim really plausible? It seems perfectly reasonable to imagine her justifying the existing non-state system on the basis of genuine human rights concerns: the system is justified precisely because it protects human rights. On the other hand, to claim the terms are merely homonymous seems no more plausible. Consider a meeting between Geetha and Satya, an advocate of the political approach from our world. When the two engage in a lively debate over the merits of various forms of political organization best suited to protecting human rights, according to the political conception, they will simply be talking past one another. But other than a prior commitment to an account of human rights that conceptually ties them to the existing state system, we have been given no reason to draw this conclusion. It strikes me

that the simpler explanation is they are engaged in a substantive debate over the best political organization for protecting *human rights*.

A similar point can be made regarding Raz's apparent conceptual tie of human rights to states as the (primary) duty-bearers of human rights. Recall our discussion from last chapter of Raz's three-layers of argument designed to establish the existence of a human right. The second layer of argument requires showing that under some conditions states are to be held duty bound to respect or promote the interest (or the rights) of individuals identified in the first part of the argument. This appears to conceptually tie human rights to states in a different way, as the primary-duty bearers associated with human rights. But here we might also ask whether or not it fits our considered conception of a human right that it would cease to be a genuine human right just because the state cannot be reasonably identified as a bearer of duties associated with the right. In both cases the political account seems to put the institutional cart before the moral horse.⁹⁰ Raz sometimes speaks as though states are *not* the necessary duty-bearers of human rights:

So far states have been the main agents in international law, and I will continue to treat human rights as being rights against states. But I do not mean that human rights are rights held only against states, or only in the international arena. Human rights can be held against international organisations, and other international agents, and almost always they will also be rights against individuals and other domestic institutions. The claim is only that being rights whose violation is a reason for action against states in the international arena is distinctive of human rights, according to human rights practice.⁹¹

But then there is nothing here that a traditional conception cannot also accept.

Finally, we can see a tension between the political conception and the possibility of interpersonal uses of human rights claims. Consider the restrictions on expression, assembly,

⁹⁰ Tasooulas, 2009, p. 7.

⁹¹ Raz 2007, p. 12.

education and personal security of women that seem to be the outcome of a failure of private citizens, husbands, mothers and fathers, to respect these rights.⁹² This would seem to be an entirely appropriate use of an appeal to human rights, despite the fact that it couldn't possibly involve the claim that violations of state sovereignty would be justified in order to help stop these rights violations—states simply are not involved here. We need not deny that there is an important political use of human rights. We might even come to decide that such interpersonal uses of human rights claims are in error. But this would be a substantive conclusion of moral and political philosophy. The political conception instead seems to rule out such uses of human rights by a kind of conceptual fiat. We do better to hang onto such standard uses of human rights.

3.5.3 Human Rights and the Contingencies of the Global Political Order

The final problem I want to raise for the political conceptual is that it seems to tie the existence of a human right to contingent empirical facts of the international political order in a problematic way. To see why, consider a passage from Beitz. In it, he describes how the political approach—despite treating the international doctrine and practice of human rights as basic—can nevertheless exert some critical leverage on them. This is to avoid the caricature of the political conception that has it simply holding that the list of human rights is whatever the international doctrine says it is. In so doing, Beitz notes that the political function of human rights will plausibly limit the content of the doctrine in at least three important ways, and says that the third such way:

Concerns the means of interference. Whatever its form—and as I have suggested we must read “interference” or “enforcement” broadly—interference in a society to protect human rights constitutes political action and therefore falls under ethical constraints that apply to

⁹² Thanks to Rae Langton for raising this point.

any such action. These constraints have to do, broadly speaking, with economy of force and respect for innocent life. Here it may be suggestive to think of the *ius ad bellum*. So, for example, the means of interference should obey analogs of the conventional constraints of discrimination and proportionality, and there should be a reasonable expectation of success in accomplishing its aims. *Values for which there are no means of interference realistically available satisfying these constraints could not count as human rights.*⁹³

I have emphasized the last sentence because it is of crucial importance. It seems to make the very existence of human rights contingent on features of the global political order. Consider, for example, a sudden and rapid expansion in the distribution of advanced military weaponry—perhaps space-based platforms capable of launching devastating attacks from orbit. Assume that every state either has, or is allied with a state that has such weapons. States are apt to protect their sovereignty—it is what states do. This state of affairs might reasonably constrain the kind of interference realistically available to protect human rights. But should we also assume that this change in the geopolitical distribution of military power determines which human rights there are? This seems to confuse the existence conditions of human rights with the permissible means of protecting them.

The point does not trade on the fear of military retribution however—it is meant to be more general than that. Imagine instead, the following: you believe that there is a human right against torture. Suppose it was conclusively shown that all forms of interference undertaken to protect against violations of this right would be counter-productive.⁹⁴ Should we then abandon the idea that there is a human right against torture? This is not an abstract concern. There is a growing body of empirical work that shows, for example, that humanitarian interventions designed to protect against severe human rights abuses simply do

⁹³ Beitz, 2004, p. 17. My emphasis.

⁹⁴ Cf Tasioulas, 2009, p. 7.

not work. The long-term effects of coercive intervention can actually lead to an increase in human rights violations. The political conception, in being conceptually tied to the modern state system, seems to confuse two separate issues: the existential question of what human rights there are and the moral question of what actions are permissible to undertake in order to protect and fulfil them.

Together, these three objections cast significant doubt on the conceptual tie between human rights and their purported interference-justifying function. This is to dismiss the second major claim of the political conception, leaving intact only the methodological demand discussed in Chapter One.

3.6 The Prescriptive Reading

There is one possibility to consider in response to this conclusion. One might agree with the traditional conception—perhaps as a result of my objections—and claim that it is not, as a matter of fact, part of the very concept of a human right that they are those rights that can fulfill the interference-justifying function. In other words, a proposed right X can be a genuine human right irrespective of whether or not it can serve to justify sovereignty-violating interference. Nevertheless, one might argue for a revision of our concept and aim to restrict genuine human rights to those that can play this political role. This is clearly *not* what the advocates of the political conception we are considering here are claiming:

If our aim were to construct a conception of human rights for an idealized global order of decent and liberal societies, perhaps it would be sufficient simply to stipulate the role that human rights should play within the larger normative order. But our aim is to grasp the concept of a human right 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.⁹⁵

⁹⁵ Beitz, 2009, p. 161.

But this does not mean that one could not argue for a stipulation of that conception. This is, perhaps, one reading of what John Rawls attempts in The Law of Peoples. Rawls argues that human rights limit the justifying reasons for war—to him, human rights "specify limits to a regime's internal autonomy" and "their fulfillment is sufficient to exclude justified and forceful intervention by other peoples, for example, by diplomatic and economic sanctions, or in grave cases by military force."⁹⁶ But at no point does Rawls claim that he is attempting to provide an analysis and interpretation of existing practice, unlike both Raz and Beitz. For Rawls, the doctrine of human rights is constructed to play a particular role within his theory of the morality of international relations.

Of course, one need not accept Rawls' particular appropriation of the notion of a human right in order to believe that we *need* a normative doctrine of the kind he proposes to provide adequate norms for governing international affairs and limiting state sovereignty. Since World War Two states have shown an increased willingness—for various reasons—to engage in forms of interference that were historically debarred by considerations of state sovereignty. State sovereignty does not represent a value that simply results from acquiescence to political power, however. It is a normative notion, a principle of political morality grounded in the interests of citizens. Limits to state sovereignty should therefore be governed by clear principles of international political morality. The proposal being considered is that human rights should be appropriated to play this role, along with a suitable revision of our concept of a human right.

⁹⁶ Rawls, 1999, p. 79-80.

I think we should resist this proposal and reject theories of human rights that do not aim to provide a valid analysis of our actual concept of a human right but rather aim to stipulate its meaning. It is true that we require clear principles of international political morality designed to govern permissible violations of state sovereignty. Moreover, it is also true that on one reading, human rights can play a role in these considerations—human rights *do* provide reasons for limiting state sovereignty. However, the claim being considered here is that human rights should be *restricted* to playing this role.

I see no compelling reason to adopt this revisionary normative claim about how we ought to conceive of human rights. In addition, to the many reasons adduced in this chapter, if we are assuming that this is not the true concept of a human right, then the appropriation of this already contested term would only serve to further complicate an already complicated situation regarding how best to understand this term. I would claim that the burden is on those who seek to revise the concept to provide such reasons. I do not claim that this task is impossible, only that it falls to those who would offer the revisionary conception and we have been given no sufficient reason to accept it. We fare better when we attempt to make sense of our existing concept, one that plays an increasingly important role in our ethical and political practice and discourse. Having said that, in attempting to construct a doctrine aimed at providing normative principles to guide and regulate sovereignty-violating interference, it is perfectly reasonable to want to maintain the tie with human rights. If so, then it might be worth constructing a class of rights that has this particular function—perhaps call them *basic* human rights. This would maintain the tie with human rights without co-opting and radically revising an existing concept.

3.7 Conclusion

The political conception is correct to impress upon us the importance of the international discourse and practice of human rights for a proper understanding of those rights.

Moreover, it is correct to highlight the important political function of limiting sovereignty that human rights are now believed by many to possess. But it errs in claiming that it is part of the concept of a human right that that it can fulfill this function. Earlier we noted that in order to determine what the concept of a human rights is we ought to attend to “what an ordinarily competent participant in the discourse of human rights would understand herself to be committed to if she were to acknowledge that a human right to such-and-such exists.”

I have argued here that such a participant need not be committed to the claim that human rights have the essential function of justifying sovereignty-violating interference. If this is true, then the distinctive claim made by the political conception of human rights is false.

Conclusion

In this dissertation I focused on two approaches to human rights: the political approach and the traditional approach. The political approach presented itself as a radical challenge to the traditional approach. But, why?

One might have assumed that this was because the political approach, unlike the traditional approach, adopts a methodological approach to constructing a theory of human rights that takes the international discourse and practice of human rights seriously. However, in Chapter One I showed that in at least three important ways that demand might be understood, the traditional approach can also do so. It is true that not every traditional conception of human rights adopts this strategy. Some are happy to float free of the contingencies of the international practice and aim only for philosophical clarity about the nature of rights we possess simply in virtue of our humanity. But as I argued in Chapter One, it is possible for a theory that accepts the traditional conception of human rights to *also* adopt the methodological approach distinctive of the political conception. So, there is no significant difference between the two approaches to be found here.

One might have thought instead, that the critical difference between the two approaches lies in a difference concerning the normative basis of human rights. After all, the strong focus of the political approaches on the international practice first suggested an institutional grounding for the normativity of human rights and their moral authority. But Chapter Two showed this to be false. Like the traditional approach, the political approach regards human rights as a sub-set of moral rights. So, recalling Figure 1, it is not the case that the fundamental difference between the two accounts lies in the fact that the political account

can only occupy the first box. The third box in Figure 1 is seen to be a genuine possibility for a political account of human rights.

So, the two approaches do not appear as radically dissimilar as first suggested. In fact, they are similar in important ways, and stand together as distinct from those theories of human rights that conceive of them as legal rights, conventional rights, or as mere aspirations—and thus not genuine rights at all. If you thought that the important distinction between the two approaches was that between those accounts of human rights that locate their normative basis in an institutional grounding and those that locate it in a natural moral grounding, then there is no difference between the approaches. If instead, you thought that the important distinction between the two approaches was that between those that adopt an approach to human rights that takes seriously the international practice of human rights—and those that opt to float free of it—then again, there is no difference between the approaches. This is an important result. At least concerning these two important aspects, the two approaches are in agreement.

Of course, they are not in total agreement. There is an important difference between the two. The political approach advances a conceptual claim about what is part of the concept of a human right. It argues that the traditional conception fails to acknowledge an essential political function that is part of the concept of a human right. The concept of a human right yields determinate existence conditions for a human right and, given that the traditional account rejects the political function as part of the concept of a human right, the political conception argues that the traditional theory yields the wrong existence conditions for a human right—this approach fails to properly identify what it is that makes a right a human

right. However, in Chapter Three I argued that the conceptual claim advanced by the political conception is false.

This dissertation is in many ways a defence of the traditional approach to human rights. I sought to meet some of the standard objections levelled against this approach in Chapter One, and also sided with this approach in the debate over how best to understand the concept of a human right. However, I do not believe that this is the only important result argued for here. What began as an investigation of two seemingly opposed approaches to human rights has resulted in the discovery of much agreement. Thus, the human rights sceptic, who relished the apparent existence of radical disagreement between our two approaches, in fact faces a less divided front than she might have first thought. Although there remain important debates within the philosophy of human rights, this result should be comforting for those of us who believe that human rights can play an important role in rectifying gross injustices in our world today.

References

- Beitz, Charles "Human Rights as a Common Concern", *American Political Science Review*, June 2001; 95, 2. 269-282.
- _____. "What Human Rights Mean", *Daedalus*: Winter 2003; 132, 1
- _____. "Human Rights and the Law of Peoples", in The Ethics of Assistance: Morality and the Distant Neeedy, ed. Deen Chatterjee (Cambridge University Press, 2004).
- _____. The Idea of Human Rights. Forthcoming: Oxford University Press, 2009.
- Brandom, Robert. 1994. Making It Explicit: Reasoning, Representing, and Discursive Commitment. Cambridge: Harvard University Press.
- Buchanan, Allen. Justice, Legitimacy, and Self-Determination: Moral Foundations for International Law. New York: Oxford University Press, 2004.
- Cohen, Joshua. "Is There a Human Right to Democracy?", in The Egalitarian Conscience: Essays in Honour of G.A. Cohen. New York: Oxford University Press, 2006. 226-250.
- Griffin, James. "First Steps in an Account of Human Rights". *European Journal of Philosophy* 9;3, 2001. Pp. 306-327.
- _____. "Human Rights: The Philosophical Work Still Undone". Presented at the Human Rights and the New Global Order: An Interdisciplinary Conference 2008.
- _____. On Human Rights. New York: Oxford University Press, 2008.

- Hart, H.L.A. "Are There Any Natural Rights?". *Philosophical Review*, 64 (1955) 175-91.
- Korey, William. NGOs and the Universal Declaration of Human Rights: "A Curious Grapevine". New York: St. Martin's Press, 1998.
- Nickel, James. "Poverty and Rights". *The Philosophical Quarterly*, Vol. 55, No. 220. July 2005. 385-402.
- Rawls, John. The Law of Peoples; with, the Idea of Public Reason Revisited. Cambridge, Mass.: Harvard University Press, 1999.
- Raz, Joseph. "Human Rights Without Foundations", *University of Oxford Faculty of Law Legal Studies Research Paper Series*, 2008.
- Rodin, David. "The Ethics of War: State of the Art". *Journal of Applied Philosophy*, Vol. 23, No. 3, 2006. Pp. 241-246.
- Sen, Amartya. "Elements of a Theory of Human Rights". *Philosophy and Public Affairs* 32, no. 4, 2004. Pp. 315-356.
- Sumner, L.W. The Moral Foundation of Rights. (Oxford: Clarendon Press, 1987).
- Tasioulas, John. "Human Rights, Universality and the Values of Personhood: Retracing Griffin's Steps". *European Journal of Philosophy*, 10:1, 2002. 79-100.
- _____. "The Moral Reality of Human Rights" in Freedom from Poverty as a Human Right: Who Owes What to the Very Poor? 75 (Thomas Pogge ed., Oxford University Press, 2007).
- _____. "What is a Human Right?—The Right to Health". Retrieved from <http://www.ucl.ac.uk/cpih/hr-conf-tasioulas>, July 5th, 2009.