

Reconceptualizing Human Rights
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Abstract: This paper defends several highly revisionary theses about human rights. §1 shows that the phrase “human rights” refers to two distinct types of moral claims. §§2-3 argue that several longstanding problems in human rights theory and practice can be solved if, and only if, the concept of a “human right” is replaced by two more exact concepts:

International human rights: moral claims sufficient to warrant coercive domestic and international social protection.

Domestic human rights: moral claims sufficient to warrant coercive domestic social protection but only non-coercive international action.

§3 then argues that because coercion is central to both types of human right, and coercion is a matter of justice, the traditional view of human rights – that they are normative entitlements prior to and independent of substantive theories of justice – is incorrect. Human rights must instead be seen as emerging from substantive theories of domestic and international justice. Finally, §4 uses this reconceptualization to show that only a few very minimal claims about international human rights are presently warranted. Because international human rights are rights of international justice, but theorists of international justice disagree widely about the demands of international justice, much more research on international justice is needed – and much greater agreement about international justice should be reached – before anything more than a very minimal list of international human rights can be justified.

This paper defends several highly revisionary theses about human rights. §1 shows that the phrase “human rights” refers to two distinct types of moral claims:

(A) Moral claims sufficient to warrant coercive domestic and international social protection,

(B) Moral claims sufficient to warrant coercive domestic social protection but only *non-coercive* international protection.

§§2-3 then argue that several longstanding problems in human rights theory and practice – e.g., concerns about the determinacy of the concept of a human right, skepticism that some or all “human rights” are not even *rights*, but rather (culturally imperialist) goals or

aspirations, etc. – can be resolved if and only if the concept of a “human right” is replaced by the following two more specific concepts:

International human rights: moral claims sufficient to warrant coercive domestic and international social protection.

Domestic human rights: moral claims sufficient to warrant coercive domestic social protection but only non-coercive international action.

§3 then argues that because coercion is central to both types of human right, and the justification of coercion is a matter of *justice*, the traditional view of human rights as normative entitlements existing prior to and independently of substantive theories of justice is incorrect. Human rights must instead be seen as emerging from theories of justice, with domestic human rights emerging from a theory of domestic justice and international human rights emerging from a theory of international justice. Finally, §4 shows that the central normative question about international human rights – namely, which international human rights actually exist – is mostly unsettled. I show that theorists of international justice agree that a few fundamental human interests (e.g. freedom from genocide, torture, etc.) warrant coercive international protection, there is still widespread disagreement over whether a broader array of domestic rights (e.g. rights to freedom of speech, democracy, etc.) also warrant coercive international enforcement. I conclude that much more work on international justice must be done, and greater theoretical agreement reached, before anything more than a few minimal claims about international human rights can be justified.

Three caveats are necessary before we begin. First, in distinguishing between domestic and international human rights in §§2-3, I make assertions about which sorts of

moral claims are “plausibly” examples of each. For instance, I shall use the Universal Declaration of Human Rights’ assertion of a human right to equal pay for equal work (Article 23) as a “plausible example” of a domestic human right (one warranting coercive domestic protections) that *may not* be an international human right (one warranting coercive international protections). It is crucial to note that I use these examples only to illustrate the conceptual difference between domestic and international human rights. I ultimately argue (in §4) that precisely which human rights are domestic and which ones are international is mostly an open question — one to be resolved by theories of justice.

Second, although I hold that both domestic and international *human* rights warrant domestic or international coercive enforcement, respectively, I do not assume either that (a) *all* rights warrant coercive enforcement, or (b) all *human* rights must be feasible to enforce. There are good reasons not to make either of these assumptions. First, it is unclear that all rights warrant coercive enforcement. For example, it seems plausible that people have an interpersonal moral right not to be lied to (since we generally believe that people are morally entitled to be told the truth), but that it would be wrong to coercively enforce this right. Human rights, however, are not ordinary interpersonal rights: they are *moral-political rights* – rights that governments have a moral responsibility to promote and protect.¹ Because governments have a moral responsibility to promote and protect human rights, and governments are essentially coercive entities, all human rights do involve some notion of warranted coercion. Next, consider whether something can be a human right only if it is feasible to enforce. Although a few theorists do defend such a

¹ Just about all human rights theorists accept this, for reasons Beitz (2009) explains on p. 109. Only a few theorists (e.g. Simmons 2001) hold that human rights are “natural” rights having no essential relation to coercive political enforcement.

view², most theorists reject the notion that human rights must be feasible to enforce³, and for good reason. The idea that human rights must be enforceable is profoundly implausible. Consider the human right to be free from slavery. It seems clear that this was always a human right, even if it was ever feasible to enforce. Indeed, it is necessary to regard it this way in order to explain the injustice of slavery. We say that slavery was unjust because, although people always had a right to be free from slavery, the right sadly went unenforced for far too long, and (at least in the US) a bloody Civil War had to be fought for it to become feasible to enforce. On my analysis, domestic and international human rights are not necessarily characterized by the feasibility of their enforcement. Rather, they are moral claims that ought to be enforced *if and when it becomes feasible*.⁴

Finally, I will not defend any clear or substantive definition of coercion in this paper. Since the correct definition of coercion is deeply contentious (and I cannot resolve the debate about its nature here⁵), I will not assume any specific theory of coercion but instead work with *paradigm cases*. For example, I will assume the paradigm case of coercive domestic protections to be the construction and enforcement of civil laws by police and military (i.e. “law and order”). In the international case, I will take coercion to include war, military action short of war, punitive political and economic sanctions (including embargoes), and finally, genuine and credible threats of any of the above. As we will see in §4, I consider it to be a central question of a theory of international justice (and by extension, a theory of international human rights) to determine which types of

² See e.g. Geuss (2001).

³ See e.g. Beitz (2009), Buchanan (2004), Griffin (2007), Nickel (2007), Miller (2007), Raz (2007).

⁴ Notice that this is consistent with something being a human right even if it *never* becomes feasible to implement. This is straightforwardly intuitive: even if liberating slaves never became a realistic possibility, most of us would still say that slaves had a right to freedom (we would simply say that enforcing the right is sadly impossible).

⁵ See the Stanford Encyclopedia of Philosophy entry, “Coercion”, for an introduction to this debate.

international coercion are warranted in response to which types of human abuses (or threats of human abuses).

§1. Human Rights as Two Very Different Sorts of Moral Claims

Existing theories of human rights fall broadly into two categories: those that understand human rights as moral claims sufficient to warrant coercive international protection⁶, and those that understand human rights as moral claims sufficient to warrant international concern ranging from international coercion (e.g. punitive sanctions, military force) to non-coercive international pressure (e.g., criticism, assistance, cooperation).⁷ Let us call the first of these views the International Juridical View and the second the International Concern View.

The International Juridical View is widely rejected today, and for good reason. Generally speaking, the canonical criticism of the International Juridical View is that many purely *domestic* rights (rights that do not justify coercive international enforcement) deserve to be called “human rights.”⁸ As James Griffin argues,

The point of human rights, on the almost universally accepted conception of them, is far wider...For example, they quite obviously have a point *intra*-nationally: 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. And they are used by the United Nations and by non-governmental agencies to criticize institutions within a single society. Many hospitals are condemned for denying

⁶ See e.g., Buchanan (2004): 118; and Rawls (1999): 79-80. Also see Shue (1996): 13, 31, although Shue’s concern is with “basic” rights, not “human rights.”

⁷ See Beitz (2009): 106-125; Griffin (2007): 101-103; Ignatieff (2001): 22; Miller (2007): 46-8, 185-194; and Nickel (2007): 101.

⁸ See Beitz (2009): 106-125, 141-159; Caney (2005): 78-85; Griffin (2007): 23-7; Nickel (2007): 98-102; and Raz (2007): §§2, 4.

patients really informed consent. And some parents can reasonably be criticized for violating their mature children's autonomy and liberty.⁹

This criticism of the International Juridical View has, I believe, two distinct parts. First, the International Juridical View seems morally inadequate. Because the language of human rights is morally useful on a purely domestic level – it enables people to voice and fight more effectively for certain domestic social protections, even in cases where international coercion is unwarranted – there are compelling moral reasons to reject the International Juridical View. Second, the International Juridical View seems semantically inadequate. From a literal perspective, the phrase “human rights” means “the rights of all human beings”, or perhaps “the rights that all human beings have ‘simply in virtue of being human’.”¹⁰ But if this is the correct semantic analysis, then purely domestic rights (those that do not warrant international coercion) *are* human rights. For whatever purely domestic rights there are, *all* people seem to share them.¹¹ If all human beings have a purely domestic right to freedom of speech, then literally speaking, that is a human right. If all human beings have a purely domestic right to a fair trial, then that too is a human right. Thus, the International Juridical View appears to be both morally and semantically inadequate.

The International Concern View – a view that is gaining greater currency¹² – avoids these problems by identifying “human rights” with,

- i. Moral claims sufficient to warrant coercive domestic social protection, which,

⁹ Griffin (2007): 24.

¹⁰ See Caney (2005): 64; Gewirth (1986): 41; Griffin (2007): 2; Miller (2007): 178; Nickel (2007): 37-8; and Simmons (2001): 185.

¹¹ See e.g., Buchanan (2004): esp. ch. 1 and 142-7; Cohen (2006): 226-48; and Rawls (1999) esp. 78-80.

¹² The International Concern View is defended by Beitz (2009); Griffin (2007); Nickel (2007); and many others.

- ii. In some cases warrant coercive international social protection, but
- iii. In other cases warrant only *non-coercive* international action.¹³

As we see here, “human rights” ultimately divide into two types of moral claims,

(A) Moral claims sufficient to warrant coercive domestic *and* international social protection,

and,

(B) Moral claims sufficient to warrant coercive domestic protection but only *non-coercive* international action.

By understanding “human rights” as having this broader moral and semantic scope, the International Concern View accounts for precisely what the International Juridical View wrongly omits: the dual international/domestic nature of human rights discourse. It supports the idea that human rights are *always* moral claims that people have reason to fight for domestic social protections of, as well as the idea that human rights are *in some cases* moral claims for which people have reason to fight for coercive international social protection. It is thus not surprising that the International Concern View has attained such popularity.

§2. The Case for Reconceptualizing Human Rights

We have seen that the International Concern View of human rights is semantically and morally superior to the International Juridical View, and that the International Concern View applies the concept of a “human right” to two very different moral claims:

(A) Moral claims sufficient to warrant coercive domestic and international social protection,

¹³ Again, see Beitz (2009): 106-125; Griffin (2007): 101-103; Ignatieff (2001): 22; Miller (2007): 46-8, 185-194; and Nickel (2007): 101.

and,

(B) Moral claims sufficient to warrant coercive domestic protection but only *non-coercive* international action.

Some may believe that once this is recognized, we should continue to use the concept of a “human right” as we always have, as long as we are careful to publicly and theoretically distinguish between the two different sorts of moral claims the language refers to. However, there are compelling practical reasons to supplant the concept of a “human right” with the following, more precise concepts:

International human rights: moral claims sufficient to warrant coercive domestic and international social protection.

Domestic human rights: moral claims sufficient to warrant coercive domestic social protection but only non-coercive international action.

For, as we will now see, the failure to explicitly distinguish domestic from international human rights is responsible for four of the most serious and widely discussed problems surrounding human rights theory and discourse.

Let us begin with two well-known worries about human rights. First, there is a remarkable amount of disagreement among theorists over the *concept* of human rights (i.e. what they are “for”), their *justification*, and finally, their *substance* (i.e. which things actually are human rights). As Beitz writes,

[A]lthough the idea and language of human rights have become increasingly prominent in public discourse, it has not become any more clear what kinds of objects human rights are supposed to be, why we should believe that people have

them, or what follows from this belief for political practice...[This is] a problem for anyone inclined to believe that our political ideas should have some clear and distinct significance in our thinking about how to act. This is especially so when the ideas play such a central role in framing public concerns of great importance.¹⁴

And, as Griffin writes,

In what state is the discourse of human rights today?...The term ‘human right’ is nearly criterionless. There are unusually few criteria for determining when the term is used correctly and when incorrectly – and not just among politicians, but among philosophers, political theories, and jurists as well. The language of human rights has, in this way, become debased.¹⁵

Here are just a few examples of how profoundly theorists disagree about the concept and substance of human rights. Some theorists believe there are many human rights¹⁶; others very few.¹⁷ Many theorists see human rights as “minimal standards”¹⁸; others deny that they are necessarily minimal standards.¹⁹ Some theorists take human rights to be protections “necessary for a minimally decent life”²⁰; others take them to be protections necessary for agency²¹; others understand them as protections of personhood²²; others as protections of “urgent” human interests²³; others as protections of “central human

¹⁴ Beitz (2009): xi-xii.

¹⁵ Griffin (2007): 14-5.

¹⁶ See Beitz (2009), Nickel (2007).

¹⁷ See Miller (2007), Rawls (1999).

¹⁸ See Buchanan (2004), Ignatieff (2007), Nickel (2007), Miller (2007), and Rawls (1999).

¹⁹ See Beitz (2009) and Raz (2007).

²⁰ See Buchanan (2004), Nickel (2007), and Miller (2007).

²¹ See Gewirth (1986).

²² See Griffin (2007).

²³ See Beitz (2007).

capabilities”²⁴; others as “fundamental” human interests²⁵; and others still as simply rights of international justice.²⁶

The second notable feature of human rights theory and discourse is the prevalence of skepticism about human rights. For example, Charles Beitz begins his recent book, *The Idea of Human Rights*, by cataloguing an array of skeptical worries.²⁷ Human rights theory and practice have been repeatedly criticized as categorizing mere moral goals or aspirations as “human rights.”²⁸ Oftentimes this objection is accompanied by a charge of moral or cultural imperialism, the typical claim being that many “human rights” are simply parochial Western goals.²⁹

The source of these problems — both the skepticism and profound substantive and conceptual disagreements — can be traced to the failure to explicitly distinguish domestic and international human rights. First, let us ask ourselves why there are so many different criteria for human rights. The reason for the enormous amount of disagreement is only clear once domestic and international human rights have been explicitly differentiated. Consider the fundamental difference between the two types of rights. International human rights seem to call out for one kind of justification. Intuitively, international coercion is a very serious matter – most of us tend to think that coercing other nations requires a very strong moral justification. Therefore, we can conclude that international human rights plausibly *are* “minimal standards.” After all, if international coercion is ever completely justified (more on this in §4), it is justified to

²⁴ See Sen (1999) and (1985); Nussbaum (2000) and (1992): 202-46.

²⁵ See Rawls (1999).

²⁶ See Caney (2005).

²⁷ Beitz (2009): 3-12 gives a nice overview. See e.g., Cranston (1973): ch. 8; Holcombe (1948); and Geuss (2001): 144.

²⁸ See e.g. Beitz’s (2009) discussion of the worry that some human rights are mere “manifesto” rights (pp. 117-121). Also see Feinberg (1973): 67, 95; O’Neill (2000): 97-8, 101-5; and O’Neill (2005): 428, 430.

²⁹ See Beitz (2009): 4-7 and Ignatieff (2007): 58-77 for an overview of these worries.

protect people against the very worst sorts of abuses – abuses that threaten individuals’ most urgent, fundamental interests necessary for living a minimally decent life (e.g., genocide or famine). Domestic human rights, on the other hand – rights that plausibly warrant domestic coercive protection but only *non-coercive* international promotion (a good example is the Universal Declaration of Human Rights’ assertion of a human right to equal pay for equal work) – call for a very different kind of justification. Because domestic human rights only warrant coercive domestic protections, they seem not to be protections of a minimally decent life but protections of something else: human agency, perhaps (or more plausibly, as we will see in §4), *domestic justice*.

My reconceptualization of human rights thus explains the immense amount of disagreement about human rights. The disagreement is due largely to the fact that theorists have failed to recognize “human rights” as two kinds of very different things in need of two very different kinds of justification. My reconceptualization also shows the path of resolution for these disagreements. For as I discuss in §§3-4, once we have explicitly distinguished domestic and international human rights, the respective justifications they require are clear: domestic human rights will be specified by the correct theory of *domestic justice*, and international human rights will be specified by the correct theory of *international justice*.

My reconceptualization of human rights also accounts for, explains, and (to a certain extent) justifies skeptical concerns about human rights. Let us begin with the the worry that many so-called “human rights” seem to be mere moral goals or aspirations. It is hard not to share this skeptical given the strange, incoherent sounding things human

rights theorists often say about “human rights.” For example, James Nickel asserts that human rights are “minimal” international standards,³⁰ but then says the following:

[Human rights] serve as standards for noncoercive persuasion. They say to countries: “Here are the standards for *good* government that the world community endorses. *Consider adopting them!*” Second, [human rights] serve as standards for domestic *aspiration* and criticism, as rights to enact and implement nationally.³¹

These claims seem incoherent. How can human rights be “minimal” international standards – or even *rights*, for that matter – if they are mere standards for *aspiration* that governments should “consider adopting”? Intuitively, *goals* are things to consider adopting. Rights are supposed to be *mandatory*.

Now consider some similarly strange things that Beitz asserts about human rights. Beitz simultaneously claims that (a) human rights are *not* necessarily minimal standards,³² (b) all human rights are protections of “urgent” human interests,³³ (c) many human rights only warrant *non-coercive* international action³⁴, and (d) some human rights only specify general political *goals*.³⁵ Again, this sounds incoherent. How can human rights be protections of truly *urgent* human interests but only state *political goals* sufficient to warrant *non-coercive* international action? If a right is not important enough to warrant international enforcement, can the interests it protects said to be “urgent”? Finally, even Beitz seems to recognize how odd his claims are. He not only concedes

³⁰ Nickel (2007): 36-7.

³¹ Ibid: 101; italics added.

³² See Beitz (2007): 29-30.

³³ Ibid: 109-110.

³⁴ Ibid: 109,

³⁵ Ibid: 30.

that, “it is unclear...whether the objects called “human rights” within this practice [and his model] are in any familiar sense *rights*”³⁶; he also states that, “human rights on [my] model...are less rigorous than ordinary rights.”³⁷

Finally, consider David Miller’s statements about human rights. Like Nickel, Miller claims that human rights are minimal international standards, and protections of a minimally decent life.³⁸ However, just like Nickel and Beitz, Miller then lapses into the language of aspiration. He writes, “The purpose of human rights is not simply to guide the behavior of those who have to deal directly with people. They can also be used to set *targets* for governments, international organizations, etc.”³⁹ Again, it seems bizarre to describe rights as “targets”; that term sounds more characteristic of goals. Rights are intuitively more than mere targets — they are mandatory.

It is no wonder that so many people are skeptical about human rights. Human rights theorists often talk about human rights as though they are more like moral goals than *bona fide* rights. My reconceptualization not only explains why human rights theorists say such strange things; it also reveals that there is some truth to the skeptics’ worries. As we have seen, domestic and international human rights are two very different things. International human rights plausibly *are* minimal international standards, in that they are important enough to justify coercive international enforcement. Domestic human rights, on the other hand, are not plausibly minimal international standards. They are genuine *domestic* rights, but at the international level – insofar as they do not warrant coercive enforcement – they can also be called *international moral goals*. My

³⁶ Beitz (2009): 2.

³⁷ Ibid: 119.

³⁸ Miller (2007): ch. 7.

³⁹ Ibid: 193.

reconceptualization demonstrates that domestic human rights are simultaneously *bona fide* rights (domestically) but also *mere moral goals* (internationally). This explains why human rights theorists say such incoherent-sounding things. The overly broad concept of a “human right” cannot coherently conceptualize the sense in which domestic human rights are genuine (domestic) rights but also mere international moral goals. We can only become clear on this feature of domestic human rights when we explicitly distinguish them from international human rights.

Accordingly, my reconceptualization also reveals that skeptics have had a valid complaint about human rights assertions. Domestic human rights are genuine domestic rights. However, *internationally*, they are better described as (international) moral goals. Moreover, they are also plausibly *imperialist* moral goals. For whereas international human rights – those that warrant coercive international protection (such as the right to security of the person and freedom from torture) – generally enjoy wide (though by no means universal⁴⁰) cross-cultural agreement, many domestic human rights do *not* enjoy wide cross-cultural agreement. Most moral and political theorists in the West today believe that the correct theory of domestic rights is *liberal* in nature. Purely domestic human rights, therefore, really *are* distinctly “Western”: they embody a Western, *liberal* conception of justice.⁴¹

My reconceptualization of human rights also reveals that a longstanding “debate” about human rights is in a certain sense a *pseudo*-debate (though, as we will see in §4, this debate can be *recast* in a more coherent way). Let us examine the debate over

⁴⁰ It is not hard, for example, to find cultures that deny the right to life to women.

⁴¹ It is, of course, a further question whether a liberal theory of justice is *objectionably* parochial. Liberals, obviously, maintain that it is not, and that illiberal conceptions of justice are unjustified. We cannot settle this matter here.

whether human rights are “minimal” international standards. International human rights, those that are serious enough to warrant coercive international protection, surely *are* minimal standards because they are important enough to trigger international enforcement. Domestic human rights, on the other hand, are *not* plausibly minimal international standards for the simple reason that they’re just not important enough to warrant coercive international protection. The entire philosophical debate over whether human rights are “minimal” standards is, therefore, a red-herring. Some human rights are minimal standards, others are not – and we need distinct theories of each.

Finally, it is only when we reconceptualize human rights that we are in a position to see how truly impoverished existing theories of human rights are in terms of *action-guidance*. Because existing theories of human rights lump domestic and international human rights together under a single heading (calling them both “human rights”), human rights theorists have all but ignored many of most important normative questions separating the two. How, for example, are we to draw the line between human rights urgent enough to warrant coercive international action and those not urgent enough to do so? I do not know of a single theory of human rights that gives a clear answer to this question.

To illustrate, consider a small (but representative) example of what human rights theorists have said about coercion and military action on behalf of human rights. In his entire book on human rights, Beitz only mentions coercive international force on a single page, stating that coercion and military force are “dramatic” and “exceptional” means for enforcing human rights. He does not provide any clear analysis of which human rights warrant coercive international enforcement (not to mention military force), when, or

why.⁴² Beitz's analysis, in other words, is that human rights are something like rights to the following disjunction: they are rights to international criticism *or* assistance *or* sanctions *or* military force. The obvious problem is that this analysis is not very helpful or action-guiding. A good theory of X should not merely tell us that X is *either* a requirement to A or a requirement to B or a requirement to C. A good theory of X should tell us *which X's* are requirements to A, *which X's* are requirements to B, and so on. By lumping domestic and international human rights together, Beitz's account of human rights fails to answer the most important normative/moral questions about human rights: what various human rights require in terms of international force, coercion, non-coercion, etc.

Beitz is far from alone in this regard. With only one exception – Simon Caney, who argues (implausibly⁴³) that coercive intervention and force are justified by human rights whenever those actions can be expected to successfully protect human rights – literally all of the human rights theorists I have mentioned in this paper make, at most, extremely broad pronouncements about when and why international force and coercion are justified. For example, Rawls devotes a paltry two paragraphs in *The Law of Peoples* to the relationship between human rights and international coercion and force, broadly stating that respect for human rights is sufficient to exclude coercion or, in “grave” cases, military force (fair enough – but when is their violation sufficient to warrant coercion and

⁴² Beitz (2009): 39.

⁴³ Caney's (2005): 233-5 argument is implausible because he never gives a moral justification of the costs that interventions ought to impose upon various parties for the sake of human rights. Although Caney's claim that political institutions are legitimate only when they respect human rights is plausible, without a detailed analysis of the costs that can be justly imposed upon people for the sake of realizing legitimate conditions, Caney lacks a clear moral justification for the kinds of very real costs (e.g. people die in military intervention) that coercion and military force involve.

force?).⁴⁴ Similarly, Allen Buchanan states that “armed intervention may be needed as an ultimate sanction for the [human rights] principles I have proposed”, without providing much insight into when or why human rights might warrant such extreme international action.⁴⁵

The same is also true of James Nickel who, in his book-length treatment of human rights, devotes a scant two sentences to the question of when human rights warrant international coercion and force. Nickel writes, “Because enforcement efforts are costly and dangerous it is reasonable to restrict their use to the most severe human rights cases. These tend to be situations in which large numbers of people are being killed.”⁴⁶ Or consider Ignatieff, who asserts that, “where a state fails in its elementary obligations – maintaining physical security and an adequate food supply for its population – or where its army and police are engaged in sustained violence against minority or dissident political groups, it may temporarily forfeit its rights of sovereign immunity within the international system.”⁴⁷ Then there is David Miller, who is even more silent on the matter: his entire book on global justice contains no analysis or justification of international coercion and force, including the chapter on human rights.⁴⁸

Finally, in his book on human rights, James Griffin purports to show how his theory of human rights coheres with international law and practice. However, he ignores the fact that two primary human rights covenants – the International Covenant on Civil and Political Rights (ICCPR), and the International Covenant on Social, Economic and

⁴⁴ Rawls (1999): 79-80.

⁴⁵ Buchanan (2004): 442-3.

⁴⁶ Nickel (2007): 101.

⁴⁷ Ignatieff (2007): 38.

⁴⁸ Indeed, the only mention of force or coercion in Miller’s book (2007) occurs on pp. 92-3, in the context of a highly hypothetical case of a bank robber.

Cultural Rights (ICESCR) – treat their respective “human rights” in two completely different ways.⁴⁹ On the one hand, the ICCPR is governed by the First Optional Protocol – which, although it does not explicitly state any policies for coercive enforcement, is increasingly understood in practice as implying a Responsibility to Protect through coercive force in grave cases.⁵⁰ The ICESCR, on the other hand, explicitly affirms [in Article 1] the right of nations to determine their own social, economic, and cultural status, asserting additionally [in Article 2] that the social, economic and cultural rights it lists are to be promoted, “progressively...through *international assistance and cooperation*.”⁵¹ Insofar as Griffin only applies his theory of human rights to international law and practice at an extremely broad level, never giving an account of why only some human rights warrant international coercion and force, Griffin, like the other theorists discussed, has failed to give a clear analysis of exactly what human rights are. Once again, we are missing the answer to a crucial question: why do only some human rights warrant coercion and force, and when?

To be fair, Griffin often mentions “practicalities,” holding that the responsibilities associated with different human rights depend in part on what is practical.⁵² One might think that it is possible to distinguish between domestic and international human rights – and that Griffin has an account of the differences between the rights in the ICCPR and the ICESCR – in terms of what is practical to internationally enforce (e.g. the ICCPR rights) and what is not (the ICESCR rights). As we will soon see in §§3-4, however,

⁴⁹ See Griffin (2007): chapter 11.

⁵⁰ I thank an anonymous reviewer for drawing this to my attention.

⁵¹ An anonymous reviewer has asked whether I understand these human rights instruments as a basic way of distinguishing between domestic and international human rights. The answer is no. Although I believe the ICCPR and ICESCR provide a *plausible* map of the distinction, according to my reconceptualization of human rights, the question of whether they divide rights up correctly can only be decided by the correct theories of domestic and international justice.

⁵² Griffin (2007): 37-39, 44, 192, 235.

practicalities alone are deficient in settling these issues. The question of which rights ought to be the subject of coercive domestic protections and which rights ought to be the subject of coercive international protections are fundamentally matters of domestic and international justice – and while justice plausibly includes practicalities (i.e. justice should be practical), it is more than merely practical: it is a *normative* matter of what people are owed. Thus, insofar as Griffin aims to account for human rights and the differences between the ICCPR and the ICESCR merely in terms of practicalities, his account is deeply impoverished. Again, I discuss this more in §§3-4.

Perhaps the most distressing thing about the fact that human rights theorists say so little about whether (and to what extent) human rights are rights to international force and coercion, is that they typically give inadequate justifications for the little they do say. Why, one might ask, should international coercion be restricted to particularly “grave” cases of human rights violations? Literally none of the leading human rights theorists discussed in this paper give clear or convincing answers. We have already seen (see footnote 43) how Caney’s attempt to justify force and coercion is implausible. He entirely ignores moral questions about the costs that force and coercion impose upon people for the sake of human rights. Next, recall Nickel’s pronouncement that coercion and force are usually warranted only when large numbers of people are killed because “enforcement efforts are costly and dangerous.” Military force is certainly dangerous and costly – but how dangerous and costly are political or economic sanctions? In many cases, particularly when imposed by powerful states on less-powerful states, the costs and dangers of sanctions are likely to be lower than military force.⁵³ Thus Nickel’s claims

⁵³ Though, of course, this is not always the case. It is important to note that in order for sanctions to have lower costs than military force, countries imposing sanctions should closely monitor their effects on the

about when human rights violations warrant international coercion or force are not only far too broad – when it comes to certain types of coercion (e.g. sanctions by powerful states on non-powerful states), the grounds he gives for restricting coercion only to grave cases are simply unconvincing. If this is right – if human rights theorists have generally neither stated nor justified *when or why* human rights warrant international coercion or force, as opposed to mere “concern” (e.g. international criticism) – we can concede that these theorists have also not told us, with any clear justification, what exactly various human rights are rights *to*. Assuming that freedom of religion is a human right, is it a right to international coercive enforcement, military force, non-coercive criticism, or something else? Again, we are given no clear answers.

It is natural to ask *why* human rights theorists have so ignored these issues.⁵⁴ Although one can only speculate, my reconceptualization of human rights provides a very plausible answer. As we will see in more detail shortly, most human rights theorists have adopted what I like to call the “Basic View” of human rights – a view according to which human rights are normatively *more basic* than the normative demands of complete theories of domestic and international justice. Because force and coercion impose costs on people, *and how costs should be distributed among people is a matter of justice*, the Basic View is *inherently* incapable of providing a detailed analysis exactly when or why international force and coercion are morally justified. Human rights theorists have largely ignored the issues of international force and coercion because their approach to human rights *precludes* it.

population enduring them. The goal of sanctions should be to weaken a human-rights violating government, and should aim to avoid dire hardship among its people

⁵⁴ I again thank an anonymous reviewer for pressing this question.

As we will see in more detail in §§3-4, human rights theorists never provide clear answers to questions about international force and coercion because, again, they have been giving the wrong of type of theory. It is only when we reconceptualize human rights into the two classes I propose that it becomes clear that there can be no such thing as a single theory of human rights (of the type that is so common today). In order to account for domestic and international human rights, each type of right and the specific coercive protections they require need to be provided by (A) a complete theory of domestic justice, and (B) a complete theory of international justice.

Some readers of this paper have responded⁵⁵ that I ask too much of human rights. Why *should* human rights tell us precisely who has an obligation to provide the things they are rights to, at what cost, in what circumstances, etc.? Why not think that human rights are simply basic, or “core”, normative claims about “goods” that all people are entitled to? Some could argue, for example, that the human right to freedom from torture is nothing more than a right not to be tortured by anyone. Why should we suppose that the human right not to be tortured must also include claims about who has obligations to protect people from torture (e.g. the UN?), under what circumstances, etc.?

I have two things to say in response to this worry. First, the worry itself illustrates how inert (i.e. less than adequately action-guiding) human rights are if we understand them in the way suggested. Consider, for example, the human right to be free from torture. If saying this is a human right tells us nothing more than that people should not be tortured, then it tells us *nothing* about who should do what (and at what cost) to actually *protect* people against torture. *What we really want to know* – and what a theory of human rights should tell us – is *what sorts of protections human rights require* (i.e.

⁵⁵ Once again, I thank Bas van der Vossen and two anonymous reviewers for raising this issue.

coercive international protections?, military force?, etc.). The problem, in other words, is not that I ask too much of a theory of human rights. The real problem is that human rights theorists have been asking far too little. It is only once we see that there are two fundamentally different types of human rights – and that theories of domestic and international justice are necessary for specifying each type of human right – that it becomes evident that an adequate theory of human rights *will* be action-guiding in all of the ways that existing theories of human rights are not. After all, adequate theories of domestic and international justice presumably *should* specify which types of domestic and international coercive protections are required by justice, when, and why (as these are precisely the sorts of questions that theories of justice aim to answer).

Finally, the claim that human rights are basic normative claims – claims stating nothing more than entitlements to certain goods (e.g. not to be tortured by anyone) – contradicts both ordinary and philosophical language. It makes perfect sense, for example, to ask if the human right to freedom from torture is a right to international coercive intervention. The proponent of this “Basic View” of human rights – the person who thinks the human right to freedom from torture is nothing more than a right not to be tortured by anyone – has to say that this is an ill-formed question (that the human right to freedom from torture *itself* is nothing more than a right not to be tortured by anyone, and thus, that questions of enforcement are external to the content of the right). Yet what justifies the Basic View? What if, as I expect, any adequate theory of international justice says that the international community has an obligation to use coercive force to prevent torture within individual states? It would seem perfectly intuitive to say that the human right to be free from torture is a right *to* international intervention held by every

tortured person, or any person threatened with torture. The Basic View, however, must deny this. The Basic View must say that the obligation to intervene is something external to the right, not part of it. This claim, however, seems utterly arbitrary – particularly if we understand rights in the usual philosophical sense (as comprised by Hohfeldian incidents – i.e. powers, immunities, etc.⁵⁶). For suppose every human being did have a moral entitlement to international intervention in the case of torture (or threat of torture). Why shouldn't we say that this is part of the human right to be free from torture? It is both (a) something the person has a right to (qua Hohfeldian incidents), and (b) it pertains to the person not being tortured. The Basic View of human rights, then – the one that says that we need not answer questions about precisely who has what obligations in order to give an adequate theory of human rights – runs up against not only ordinary language but also against *philosophical* language (i.e. the language of Hohfeldian incidents). As such, I submit that despite its great popularity, we lack sufficient reason to accept the “basic” interpretation.

§3. Domestic and International Human Rights as Rights of Domestic and International Justice

Almost all of the human rights theorists I have discussed here, with the exception of Caney and Rawls (though even Rawls takes human rights to be “basic” normative requirements of international justice), have sought to understand human rights independently of a well-developed theory of international justice (i.e. in terms of “urgent” human interests, as protections of a “minimally decent human life”, etc.). We can now see that this is a mistake. Both types of moral claims that “human rights” refers to –

⁵⁶ See the Stanford Encyclopedia of Philosophy entry entitled, “Rights”, §2 for an introductory discussion.

moral claims to coercive domestic social protections (domestic human rights), and moral claims to coercive international protections (international human rights) – involve claims about *coercion*. Coercion is the sort of thing of which we can (and should) always ask, “Is it *just*?” On the one hand, one can ask “When does justice require, permit, or forbid *domestic* coercion?” On the other hand, one can also ask, “When does justice require, permit, or forbid *international* coercion?” Because domestic and international human rights are both moral claims regarding the use of coercion at two different social levels, one simply cannot give a clear and adequate analysis of human rights independently of well-developed theories of domestic and international justice, respectively. Andrew Clapham is right: human rights *just are* rights of justice.⁵⁷

Some readers might maintain that we can give a moral justification for international coercion (a theory of international human rights) *without* a theory of international justice, by reference to (e.g.) the notion of a “minimally decent human life.” After all, didn’t I state earlier that if *anything* can morally justify international coercion, a universal right to a minimally decent human life can? There are, however, two problems with taking the idea of a minimally decent life to be a sufficient justification of international human rights. First, the concept of a minimally decent life seems essentially contestable. Who decides what constitutes a minimally decent life?⁵⁸ People from different cultures are apt to give very different answers. People in Western cultures, for example, will probably define a minimally decent life in terms they view as universal: for

⁵⁷Clapham (2007): 162.

⁵⁸ I thank an anonymous reviewer for pressing this point. This further supports my argument that the idea of a “minimally decent life” is insufficient to provide an adequate analysis of justified international coercion.

example, individual human capabilities, or human needs⁵⁹, etc.⁶⁰ Many people in Islamic cultures, however, might a minimally decent life very differently (e.g. as conformity with the Koran), as might people in Eastern Asian cultures (e.g. conformity to the greater social good and traditions).⁶¹ Second, even if it is possible to provide a universally acceptable definition of a minimally decent life, we lack any account of whether justice requires the international community to coercively enforce *more* than protections of a minimally decent life without a theory of international justice. This is Caney's point when he says that once we recognize certain domestic human rights – for example, a domestic right to equal pay for equal work⁶², which is not obviously necessary for a minimally decent life⁶³ – it is hard to see why *global* justice doesn't permit using international coercion to protect *all* of those rights, both domestic and international.⁶⁴ After all, if something is a domestic right, why shouldn't it *also* be coercively enforced internationally (as an international right)? Only a substantive theory of international justice can answer this question. Thus, there is no way around my main argument: one simply *cannot* give an appropriate account of international human rights prior to or independently of a substantive theory of justice.

§4. Where Domestic and International Human Rights Stand Now, and How to Move Forward

My reconceptualization of human rights provides relatively clear answers about which sorts of domestic human rights people have. While there is still considerable

⁵⁹ See Nussbaum (1992, 2000) and Sen (1985).

⁶⁰ See Miller (2007): 179-181.

⁶¹ See Ignatieff (2007) for an extended discussion.

⁶² I do not mean to assert that this is a domestic human right; I mention it as a possible example (whether it is a domestic right depends on the correct theory of domestic justice).

⁶³ And again, who defines a "minimally decent life"?

⁶⁴ Caney (2005): 232-3.

disagreement about domestic justice, there is also quite a lot of agreement (at least among Western liberal theorists). For example, it is widely agreed that domestic justice requires things like freedom of speech, freedom of religion, an equal right to vote in elections, etc. I argue that all of these requirements of domestic justice are domestic human rights.

International human rights, on the other hand, are a very different story. Theorists of international justice only agree on a few basics – for example, that the worst sorts of human suffering and abuse (e.g. genocide, ethnic cleansing, etc.) are sufficient to warrant coercive international action. Beyond this, however, there is very little agreement about when (and to what extent) international coercion, including military force, is justified. Indeed, as a general matter, theories of international justice are still very much in their infancy. Substantive theories of global and international justice have only begun to emerge in the last several years, and there is a great deal of disagreement about a number of fundamental issues – particularly the question of whether, and to what extent, unjust regimes should be conceived as having an international right to self-determination. Some theorists of international justice – for example, Rawls, Miller, and Reidy – argue that international justice assigns a great deal of self-determination to certain types of nations, and that international coercion is *only* warranted to protect against the worst types of abuses.⁶⁵ In contrast, a number of other theorists contend that international justice denies much self-determination to nations, and that coercive international institutions are warranted to enforce domestic equal liberal rights (e.g. freedom of speech, etc.) all around the world.⁶⁶

⁶⁵ See Rawls (1999), Miller (2007), and Reidy (2004)

⁶⁶ See e.g. Caney (2005), Kuper (2004), and Moellendorf (2002).

So what can we presently say, *with justification*, about international human rights? The answer is: very little. Because there is a great deal of agreement that international coercion is warranted to protect people against a few very severe types of abuse or neglect (genocide, ethnic cleansing, etc.), we can comfortably assert that people have international human rights to be protected against these severe abuses. In other words, we can confidently assert the traditional international Responsibility to Protect (R2P). However, because there is very little agreement beyond this, much more work on international justice is required, and more agreement reached among theorists, before we can reasonably assert anything more than the minimal aforementioned list of international human rights.

Some readers might be tempted to respond that because violations of the most “minimal” international human rights almost always begin as violations of less minimal rights (e.g. suppression of the right to vote or associate freely), a much more extensive array of international human rights is justified *as protections* against violations of the minimal ones.⁶⁷ For example, Nickel provides “linkage arguments” that purport to derive an array of human rights from a few basic ones.⁶⁸ And indeed, such linkage arguments are broadly consistent with the new “Human Security Doctrine” (HSD), which advocates broad (though underspecified) international protections of human security (including protections against domestic violence, unemployment, starvation, and lack of health care).

My reply is that the new Human Security Doctrine and Nickel-type linkage arguments can only be adequately evaluated with much further theoretical work on (and

⁶⁷ I thank an anonymous referee for encouraging me to discuss this doctrine.

⁶⁸ See e.g. Nickel (2007): 129-131 and 144-146.

greater consensus about) international justice. Let me explain. Even if violations of a broader array of rights (e.g. to employment, health care, freedom of speech) is found to preempt violations of the most important international human rights — and this is a difficult argument to prove empirically (as many nations have extensively violated lesser rights for a very long time without lapsing into genocide or ethnic cleansing) – it is still not clear whether something like the new Human Security Doctrine is morally justified as a doctrine of *international human rights*. There are two reasons for this. First, it may be possible to adequately protect a wider range of rights – i.e., those “lesser rights” included in the Human Security Doctrine – while only treating them as domestic rights: rights that the international community should promote but not necessarily coercively enforce. Again, this is a difficult empirical question to answer. Second, whether a broad array of rights should be treated as international human rights depends on the outcome of theoretical debates about *national self-determination*. After all, even if violations of lesser rights have a certain tendency to lead to violations of the most important rights (e.g. rights against genocide), many theorists of international justice still argue that each nation has a right to national self-determination, free of coercive international interference, *until* the most egregious violations begin to occur.⁶⁹ For both of these reasons, I conclude that it is presently unclear whether the new Doctrine of Human Security and assertions of more extensive lists of international human rights are warranted. Until theorists of international justice arrive at a greater consensus in answering these questions, we can only confidently assert the traditional Responsibility to Protect the most minimal international human rights.

⁶⁹ See e.g. Miller (2007) and Rawls (1999).

Conclusion

The theory and practice of human rights have been subject to an extraordinary amount of disagreement, skepticism, and confusion, and existing theories of human rights have all but ignored the most important normative questions about human rights. We have seen why these things have occurred. Human rights theorists have long supposed that human rights have a certain kind of nature when, in reality, they are two fundamentally different types of things: domestic human rights, which only warrant domestic coercive protection, and international human rights, which warrant both domestic *and* international coercive protection. Finally, we have seen that because coercion is always a matter of justice, substantive theories of domestic and international justice are necessary for specifying each type of right. Thus, human rights theory must dramatically change course. Most human rights theories today understand human rights as being more basic than justice. As we have seen, such theories cannot tell us with sufficient clarity what human rights are exactly rights to. Finally, we have seen that because there is very little agreement among theorists of international justice on the justification of international coercion above and beyond the protection of a few “minimal” international rights, we are presently only justified in asserting a very minimal list of international human rights. Much more work needs to be done on international justice – and much more agreement reached among theorists – before we can confidently state whether more international human rights exists than the “minimal” ones, and before we can state, with any precision, what sorts of international coercion (e.g. military action, sanctions, etc.) international human rights require, when, and why.

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