In what Sense Are Human Rights Political?
A Preliminary Exploration*

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The notion of human rights is one of the most politically powerful ideas of our time. Since their appearance in the 1948 Universal Declaration, human rights have been the object of intense political discussion as well as philosophical theorizing. Until very recently, the dominant philosophical approach to the analysis of human rights has followed natural-law theory. On this view, there are normatively salient interests attached to our status as human beings, and the task of human rights is to protect them. In other words, human rights are fundamental moral rights people enjoy solely by virtue of their humanity.

This *'natural-law approach'*[1] to human rights has been variously advocated by theorists such as Alan Gewirth (1982), James Griffin (2008), and John Tasioulas (2009). Central to this view is the idea that the function of human rights is independent of the existing political reality of human rights. To establish whether something (X) qualifies as a human right we need not look at human-

[1] The approach is often labelled 'orthodox' or 'traditional'.

rights practice, at the purpose human rights are supposed to serve in real-world politics. Instead, we need only consider whether X is a normatively salient interest attached to our status as human beings weighty enough to place duties on others to respect or protect it.[2]

Over the past few years, the adequacy of the 'natural-law approach' has been increasingly put into question. In particular, liberal political philosophers have started to doubt the appropriateness of a theory of human rights merely reproducing natural-law principles under a different name. The reason why we care about human rights, so the argument goes, has very much to do with their political reality. Human rights are a political-legal construct emerged under particular circumstances, and a good philosophical theory of human rights should be responsive to this fact. To offer a theory of the good life and call it a 'theory of human rights' is to make a category mistake (Raz 2007, 8).

Following this line of reasoning, liberal theorists including John Rawls (1999), Thomas Pogge (2002), Joshua Cohen (2004), Joseph Raz (2007), Charles Beitz (2001 and 2009), and Andrea Sangiovanni (2008) have started to develop a family of alternative conceptions of human rights, which they often call 'political'.[3] Although different proponents of the political view characterize it differently, they all share the same fundamental methodological commitment. In their views, the function of human rights is inherently connected to existing political realities. Consequently, to decide what qualifies as a human right, we cannot just appeal to moral considerations such as the value of personhood or

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[2] See Raz's (1986, ch. 7) account of rights.

[3] Beitz (2009) calls his 'practical', Pogge (2002) 'institutional'.

what counts as a good human life. Instead, we need to look at the role that human rights are meant to play in contemporary international politics. In short, while on the natural-law approach the function of human rights (and hence their justification) is practice-independent, on the political approach their function (and justification) is practice-dependent (Sangiovanni 2008).

I agree with proponents of the political view that a natural-law approach to human rights is unsatisfactory, and that a better alternative is needed if we want to make genuine progress in the philosophical analysis of this notion. However, I also think that there is considerable ambiguity with respect to what the 'political' view of human rights actually entails and, consequently, on whether it provides the needed alternative to natural-law approaches.

In light of this, my aim in this paper is twofold. First, I want to tease apart the different ways in which an account of human rights can be 'political', thus bringing greater clarity to this debate. In particular, I argue that there are three such ways:[4]

    i. A view of human rights can be political with respect to its *iudicandum*[5], if its principles are meant to evaluate political institutions (whatever these may be) rather than personal conduct (Section 1).

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[4] Tasioulas (2009) has independently drawn a distinction, somewhat similar to my distinction between (i) and (ii), according to which human rights can be political either with respect to their *nature*, or with respect to their *grounds*, or both.

[5] I borrow this term from Thomas Pogge, who uses it in several of his writings.

ii. A view of human rights can be political with respect to its *justification*, if it appeals to reasons which are or can be publicly endorsed (Sections 2 and 3).

iii. A view of human rights can be political with respect to feasibility constraints, if its content depends on what is *reasonably feasible in current political circumstances* (Section 4).

Second, I assess the merits of i, ii and iii, with a view to establishing whether it is plausible to think of human rights as political in any of these senses. I conclude that we can plausibly regard human rights as political in relation to *their iudicandum*, but should be somewhat sceptical about political justifications for human rights, and fully sceptical about placing certain kinds of feasibility constraints on them. Taken together, these conclusions suggest that the most plausible political approach to human rights is closer to natural-law theories than proponents of the political view typically acknowledge.

Before getting started, let me make one prefatory remark. Although what should count as a human right clearly depends on the particular approach to human rights one adopts, in the paper I make the following three assumptions which are endorsed by proponents of both the natural-law and the political approach. First, by a right I mean, with Joseph Raz (1986) an interest weighty enough to place duties on others to respect or protect it. Rights so understood are what Wesley Hohfeld (1919) called 'claim rights', i.e., rights that are always correlative to duties. Second, human rights are rights of special moral significance which protect people's *most important* interests. So, for instance, the

right not to be pinched and the right not to be lied to might be valid moral rights but they cannot plausibly qualify as human rights (Eddy 2007, 315). By contrast, the rights to life and to freedom of movement clearly fall within the category of human rights. Third, and finally, human rights are universal: they are possessed by each and every human being.[6] It is on the basis of these three assumptions that I conduct my discussion in what follows.

1. Human Rights and Political Institutions

For proponents of (some versions of) the natural-law approach, human rights are particularly important rights held by each person against every other person. On this view, if Sarah gets mugged on her way home and is badly injured as a result, she can be said to have suffered a human-right violation. In particular, her rights to property and physical integrity have been infringed (cf. Pogge 2000, 47-8). Similarly, if Mary's tyrannical father prevents her from leaving her house, on the natural-law model, we would have to say that her human right to freedom of movement has been infringed.

These judgments may appear somewhat counterintuitive. To be sure, Sarah's and Mary's rights are violated, but do such violations amount to *human-rights* violations? It would seem not, at least if we consider how most people think and talk about human rights. Proponents of the political view have a simple

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[6] For proponents of the natural-law view, persons have human rights *solely* by virtue of being human. For proponents of the political view, the existence of human rights requires the joint presence of human beings and (certain kinds of) political institutions. It is, however, true for both views that, *in the world as it is*, every human being is in principle a human-rights holder.

explanation for this. The rights violations involved in our examples are not human-rights violations because human rights have an eminently political nature. Whenever talk of human rights is in play, so they argue, the relevant duty-bearers are not other individuals but *political institutions*. Human rights do not tell us how we should act towards one another. Instead, they define standards of conduct applicable to political arrangements. This is why, unlike the cases of Mary and Sarah, arbitrary expropriation or confinement on the part of the state intuitively strike us as human-rights violations (Pogge 2002).[7]

Although proponents of the political view agree that human rights constitute standards for the conduct of political institutions, this claim is very general and can be interpreted in different ways. In particular, we can distinguish between two types of interpretations, each corresponding to a version of the political approach. I shall call them the narrow and the wide version.

1.1. The Narrow Version

On the narrow version of the political view, human rights set standards for states' foreign policy, and particularly for the legitimacy of foreign intervention (Sangiovanni 2008, 154; Raz 2007, 9; Rawls 1999).[8] In other words, they place

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[7] Note, however, that Pogge (2010, 199-200) has recently adopted a more ecumenical view, suggesting that human rights need not be exclusively political (or 'institutional'). While he previously rejected what he called the 'interactional' view, he is now agnostic about it.

[8] There are differences between these authors' views. Sangiovanni focuses on foreign intervention but admits that there are possibly other functions played by human rights in international affairs. Raz only talks about foreign intervention, but does not limit this idea to *coercive* intervention. For him, foreign intervention includes non-coercive measures and

limits on state sovereignty.[9] As Joseph Raz (2007, 9) puts it '[s]overeignty does not justify state actions, but it protects states from external interference. Violation of human rights disables this response, which is available to states regarding other misdeeds'. Whenever a state violates human rights, proponents of the narrow view argue, it no longer enjoys immunity from external intervention, be it military intervention or some 'softer' form of intervention such as diplomatic or economic sanctions.

By focusing on the legitimacy of international intervention, the narrow version of the political view is tied to the state system. On this view, the relevant institutions which ought to be evaluated by reference to human-rights standards are states. International organizations, international corporations, NGOs and so forth cannot qualify as human-rights violators on this account. Moreover, the account not only restricts violations of human rights to 'state actions', but it links such violations to *foreign policy* in particular. Whatever standards of justice legitimize a state domestically, if these do not include human-rights norms (or if

sanctions. Finally, Rawls places great emphasis on foreign intervention, but also thinks that human rights are a necessary condition for the internal legitimacy of states – i.e., they set minimal conditions for social cooperation. See Tasioulas (2009), for discussion of the differences between Rawls and Raz in particular.

[9] Tasioulas (2009) distinguishes between what he calls the 'coercive intervention account' (CIA) of human rights, defended by John Rawls, and the 'broad intervention account' (BIA) which also includes non-coercive intervention, defended by Raz. Tasioulas's distinction is more fine-grained than the one I am discussing here (i.e., that between narrow and wide versions of the political view). In particular, the CIA and BIA can both be subsumed under what I call the 'narrow' version. My objections to the narrow version are in line with Tasioulas's objections to the CIA and BIA.

such norms are not adhered to), that state is liable to being interfered with by others.

At first sight there seems to be an obvious difficulty with this account of human rights: it is implausibly tied to the *status quo*. As I have noticed, the narrow view presupposes the existence of the state system more-or-less as we know it. But what if we were to move towards a different kind of world order? Would we be forced to say that human rights no longer exist under those changed conditions, because the very idea of foreign intervention would become unnecessary? By tying talk of human rights to the current configuration of the international system, the narrow view makes the notion of human rights implausibly contingent on the way the world happens to be organized here and now (see Tasioulas 2009, 946).

This being the case, why should one want to restrict the function of human rights in the way proponents of the narrow version of the political approach do? In answer to this question, advocates of this view typically point to the existing international practice of human rights. As Sangiovanni (2008, 155) puts it 'human rights serve to justify various forms of (coercive and noncoercive) interference in the internal affairs of other states'. This is what, following John Rawls, advocates of the narrow view take to be the function of human rights.[10] But is it plausible to attribute such a narrow function to them?

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[10] It should be noted that Sangiovanni (2008, 154 n. 39) does admit that there are many dimensions to the international practice of human rights. However, like Raz and Rawls, he chooses 'the justification of foreign intervention' as being 'arguably the central case in current international practice' (154).

The discourse and practice of human rights is extremely complex and multi-faceted, and humanitarian or other forms of intervention do not obviously stand out as the most salient instances of it. As Charles Beitz (2001, 277) has pointed out, the doctrine of human rights can be seen as having at least three functions: (1) '[I]t constrains the domestic constitutions of states and the fundamental rules of international organizations and regimes.' (2) '[I]t describes goals for social development applicable to all contemporary societies.' (3) '[I]t furnishes grounds of political criticism to which it would be appropriate to appeal in the setting of global politics.' Perhaps Beitz's characterization of human rights is not entirely accurate, but it is certainly more accurate than the reductive one presupposed by proponents of the narrow version of the approach.[11]

Restricting talk of human rights to those considerations which legitimize foreign intervention seems to go against the very methodology endorsed by the advocates of the political view, who want to remain faithful to human-rights practice (cf. Tasioulas 2009, 942). If the functional role of human rights should condition their scope, we better get this role right. Clearly, human-rights practice is not only a matter of inter-state intervention, and any plausible political view must take due account of this fact. In light of these considerations, we should move on to what I call the 'wide version' of the political view.

1.2 The Wide Version

On the wide version of the political approach, human rights are conceptualized as a broad class of very important goals any political arrangement should strive

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[11] Notice that now Beitz (2009) defends a much more strongly statist account of human rights.

to achieve in order to count as legitimate. In the words of Thomas Pogge (2000, 52): 'a human right to X is tantamount to declaring that every society (and comparable social system) ought to be so organized that all its members enjoy secure access to X.' On this account, political institutions broadly conceived are the bearers of the duties correlative to human rights, and what sorts of sanctions would be appropriate in cases of human-rights violations remains an open question.

The obvious advantage of this view, compared to its narrow counterpart, is its robustness across different configurations of the world's political order. For instance, in a world of states, one could argue that human rights set standards for internal legitimacy and, when violated, they trigger external intervention. One might posit a shared responsibility on the part of the international community to ensure that human rights are fulfilled worldwide. Whenever a state violates its citizens' human rights, humanitarian intervention (through appropriate decision-making mechanisms fairly distributing the burdens of intervention between different states) would be warranted in the same way in which the state's intervention to punish and deter criminals is warranted in the domestic context (see Nardin 2006).

On the other hand, if we were to live under a world government, the distribution of responsibilities for the protection of human rights would probably be different. We would not have a two-tier structure (i.e., states and the international community) but some different allocation of duties on the basis of the nature of the political system in question.

Moreover, the wide account is to be preferred to the narrow one not only because it is more robust across different configurations of the world's political

order, but also because it is more faithful to current human-rights discourse and practice. Indeed, contemporary human rights seem essentially to function as standards of global justice. They set out what every human being is entitled to simply by virtue of her humanity, and condemn as morally flawed any political system which fails to secure them (see Beitz 2001).

So far, we have seen that the wide version of the political view is at an advantage compared to the narrow one. However, this advantage is meaningful only if the wide version can offer a plausible theoretical account of what 'the political' is. The narrow version can simply rely on the familiar thought that states represent the political domain *par excellence*, and need not interrogate the special reasons which identify a certain realm of human action as political. Advocates of the wide version cannot remain equally silent on this matter. So what makes a certain institution, or social arrangement, political?

Proponents of the wide version have not dwelt on this question at great length, and a fully satisfactory treatment of it goes well beyond the scope of this paper.[12] I will therefore limit myself to suggesting that any plausible answer to our question must refer to the sort of inescapability which typically characterizes state institutions (i.e., what I called the political realm *par excellence*). When we identify a particular realm of human action as political, and therefore as standing in need of special justification (in this case human-rights-based justification), we usually point to social arrangements, rules and institutions which heavily shape our opportunities to act, and from which we

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[12] The question 'what is the political' could clearly be the subject of a whole book.

cannot subtract ourselves.[13] This is why states, some powerful international organizations, and the practices of international finance and trade may be regarded as 'political'. They are political to the extent that they determine our opportunities and life prospects in virtually unavoidable ways.

Most people can decide whether to become members of a particular dining club or arts association, but they are not equally free to decide whether to be members of a state or to participate in international finance and trade. These institutions and practices are, in some sense, imposed upon us and this is why, from a liberal perspective (namely the perspective adopted in this paper), the effects they have on individuals' interests and life prospects need to be *justified* by appeal to stringent moral standards: human rights (cf. Rawls 1996 and 1999b, and Pogge 2002).[14] This last point leads us to the next section, where I shall look at the justification of human rights.

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[13] This way of defining what counts as a political domain is very much in line with, and inspired by, Rawls's (1999a) characterization of the 'basic structure of society'.

[14] A reviewer has pointed out that this criterion might be over-inclusive. For example, arguably families also determine our opportunities and life prospects in virtually unavoidable ways. This, in turn, means that the family itself qualifies as a political institution on my account. There are two possible replies to this challenge. The first, concessive reply, would simply acknowledge that the family is indeed political. This is not an unfamiliar thought, especially in feminist writings (with their popular slogan 'the personal is political'). Of course, this would stretch the domain of the political well beyond what proponents of the political view would be willing to accept. Luckily, this is not the only answer available to them. For the way in which one's family determines one's life prospects is, to a large extent, dependent on what the state itself does. In modern societies, it is the state's job to make sure that families are structured in such a way as to make it possible for their members to have decent life prospects. It is the state which lays down

2. Human Rights and Public Justifiability

A second dimension along which human rights might be understood as political is the way they are justified. Human rights are 'political' in this sense if they can be endorsed from a variety of different overall ethical and moral outlooks, what Rawls (1996) would call 'comprehensive doctrines'. For instance, a theory of human rights resting on theological foundations would fail to be political from a justificatory perspective. The claim that human beings are endowed with human rights because they were created 'in the image of God' could not be endorsed from the standpoint of different comprehensive doctrines. Only those who hold certain religious views can accept the doctrine of *Imago Dei* as a plausible foundation for human-rights principles (Waldron 2009).

Why should we want an account of human rights to be justifiable in the eyes of people whose moral convictions, conceptions of the good, and outlooks on life differ? There are at least two possible answers to this question. The first invokes the value of *stability*. Given existing cultural differences and value pluralism, an account of human rights can stably govern international politics only if it is capable of being upheld from different cultural and moral perspectives.

children's and women's rights, and is in charge of making sure that these are respected. Moreover, in a just state, there wouldn't be huge wealth disparities across families, which are nowadays some of the main determinants of people's different opportunities and life prospects. These disparities are once again the product of the state's lack of appropriate regulation. In short, the extent to which families determine our life prospects (at a macro-level) is for the most part a function of how the state itself is organized. For further reflections along similar lines see Rawls (2001, 162-8).

If stability is what we are primarily concerned with, then we have good reasons to defend a conception of human rights which lies in the area of overlap between the different political and ethical cultures existing in the world today. To make our doctrine politically justified, we take such cultures as a given, and then identify the areas where they intersect. This would ensure a high level of compliance with human-rights norms, and hence stability, at least in the here and now.

The problem with this strategy is that, however appealing it might be from the viewpoint of stability, it is obviously unacceptable from a moral point of view. All this approach to human rights would do is legitimizing the *status quo* (Beitz 2001, 272-3 and Cohen 2004, 200). Needless to say, a normative account of human rights should offer us a standpoint from which to evaluate and, if necessary, criticize existing practices, and not simply affirm the *status quo*. This being the case, we should abandon the stability-based defence of a political justification of human rights and turn to what I call the *'respect for persons'* account (or just 'respect' for brevity).

Central to this account is the following idea: political norms in general, and human-rights norms in particular, are meant to govern institutions which have a deep impact on our lives and from which we cannot subtract ourselves. A liberal commitment to respect for persons *qua* rational and autonomous agents requires that the principles governing these sorts of institutions be justifiable to them. Paternalistically imposing ethical norms on others is morally wrong because it shows a lack of appreciation for their equal status as rational agents. On this reading, the need for a 'public' justification of human rights follows directly from liberal normative individualism.

This gives us moral grounds for resorting to a 'political' justification of human rights. But how is this morally grounded political justification supposed to proceed? Following Rawls (1996 and 1999b), we might think that a political justification for human rights needs to draw on the shared public international culture, trying to interpret and articulate its fundamental moral ideals. Only principles that are justified in this way can be endorsed from the standpoint of the different cultures and value-systems characterizing the world in which we live. Call this the 'interpretive approach' to public justification. Let us see how we might construct an account of human rights out of it.

To start with, we have to look at the public human-rights culture. But how are we to identify it? We have already ruled out the 'greatest common denominator' approach on the grounds that it is unreasonably *status-quo* biased. Should we look at international Covenants and Charters? Should we take what activists think of as human rights as definitive of the concept? Should we look at the philosophical literature? It immediately appears that identifying what can be legitimately defined as a public culture of human rights is not an easy task. If we took into account everything that is couched in the language of human rights, we would inevitably end up with a deeply unsystematic account of what human rights are.

As I noted earlier, the practice of human rights is multifaceted. In fact, one could say, there is no such thing as *a* practice of human rights (Sangiovanni 2008). There are many practices which are legitimized by appeal to human rights, so many that they seem to make an interpretive approach to the design of a unitary list of human rights a non-starter. Either we select one particular aspect of the practice (as proponents of the narrow view do), but that seems

arbitrary, or we are left with too heterogeneous an account of 'what is to be interpreted' to offer a compelling interpretation of it.

At this point advocates of the interpretive methodology might protest that the picture I am offering is too bleak. For the interpretive methodology does not hinge on an accurate description of what human-rights practice consists of. Instead, it is meant to pick out and articulate the moral *values* that inform human-rights practice (James 2005, Dworkin 1986 ch. 2). Although the practice itself is varied and heterogeneous, the values underpinning it need not be. For instance, in *Political Liberalism* Rawls argues that the values informing the practice of social cooperation in liberal democratic societies are freedom and equality. Similarly, one could argue that a concern with human dignity lies at the heart of contemporary human-rights practice in its different forms (See Donnelly 1999, and *UDHR*, Preamble and Art. 1).

This sounds like a plausible conclusion. But notice that the answer to the question of what human dignity is, and how it should be articulated in a set of rights, cannot be found simply by looking at human-rights practice itself. As I said before, human-rights practice is 'too messy', and a philosophical theory of human rights is precisely meant to allow us to bring some order to, and evaluate, it. Once we dig deep enough into our human-rights practices and find that the value underpinning them is human dignity (or an analogue thereof), we are left with a philosophical puzzle about what human dignity itself requires. As proponents of the interpretive approach acknowledge (Dworkin 1986, ch. 2), the interpretation and articulation of the values informing specific practices is not itself practice-dependent, but is carried out through first-order moral reasoning.

A concern with our political practices has therefore brought us back to pure moral theorizing. We may be able to discover that certain values underpin our practices, but the answer to the question 'How can such values be best articulated in our practices?' cannot be found by looking at the practices themselves. To address this question we need moral reasoning of the kind proponents of natural-law views typically engage in.[15]

To recapitulate the argument advanced in this section: liberals are committed to public justification; the requirement of public justification prompts us to design our normative theories on the basis of the values already implicit in our shared practices; but the move from the values underpinning our practices to the principles that should govern them requires first-order moral reasoning. In the case of Rawlsian social justice, what respect for citizens' freedom and equality demands cannot simply be inferred by looking at existing domestic politics.[16] Similarly, in the case of human rights, what respect for human dignity demands is a genuine philosophical question, and its answer is not already contained in existing international practice.

That said, it is not my intention in this paper to offer an account of what respect for human dignity requires. This is a matter on which there is bound to be disagreement, especially across different cultures. While it is obvious that a

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[15] A similar point was made by Allen Buchanan (specifically in relation to Charles Beitz's work on human rights, but without reference to the interpretive methodology) in a talk given at Oxford in May 2009. Notice, however, that of all 'political' theorists of human rights Beitz (2009) seems to be the most aware of the need to engage in first-order moral reasoning.

[16] For a critical discussion of this interpretive methodology applied to justice in particular see Valentini (2011 forthcoming).

concern with human dignity grounds a human right against torture, the status of other rights, such as the right to political participation or to freedom of association, in relation to human dignity is more controversial. This means that even a political justification of human rights will have to be somewhat partisan after all. One's overall ethical commitments will inevitably influence one's favoured interpretation of human dignity, or of whatever value is found to be at the heart of human-rights practice.

From a heuristic point of view, focusing on human-rights practice might help us identify the specific values which human rights are meant to protect. So long as such values are stated sufficiently generally, public justifiability might be achievable. However, once we move from a general statement of these values to specific articulations of what they require, disagreements across cultures and persons are bound to arise. A genuinely publically justified theory of human rights, then, will have to be relatively thin, and it is not clear that the value of public justification is so weighty as to warrant sacrificing other substantive moral commitments (such as the commitment to freedom of association and democratic participation).

Even if the contested nature of dignity breeds scepticism about the possibility of developing a sufficiently rich and yet publically justified theory of human rights, I suggest that a focus on dignity might still lend plausibility to a political approach to human rights, but from the perspective of their iudicandum.

3. Human Dignity and Human Rights as Political

Let us begin by trying to gain a better understanding of the idea of human dignity. This is a rather elusive notion, and as I said, it is not my intention to offer

a detailed account of what respect for dignity consists of. By way of first approximation, however, we might say that the concept of dignity indicates an attribute human beings possess by virtue of their nature as free and purposive agents.[17] Respect for dignity therefore requires appropriate acknowledgement of human agency and its value.[18] When the value of human agency is adequately acknowledged, persons can be said to lead lives of dignity. In particular, leading a life of dignity involves both conceiving of oneself as an agent with inherent worth, and public recognition of one's status as a purposive, inherently valuable, being. In Joshua Cohen's words: 'having a sense of dignity, we want others to recognize that we have aims and aspirations and to acknowledge the worth of those aims and aspirations by, inter alia, providing conditions (…) that enable us to pursue them' (Cohen 1997, 115).

In sum, a person may be said to lead a life of dignity only if she thinks of herself, behaves, and is treated by others, as an agent worthy of respect. A life of dignity is a life of self-respect as well as of respect on the part of others, where the two are mutually dependent and supportive. How does the 'political' realm fit into this picture?

The idea of dignity has itself a strong political connotation. First, as I have already noted, political institutions are those which have the greatest impact on

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[17] This is broadly in line with the dominant Kantian understanding of dignity as tightly related to human self-directing agency. For an interesting corrective to that understanding, which places more emphasis on self-consciousness, and to which I am sympathetic, see Goodin (1981).

[18] This account of what respect for dignity demands is very broad. It is, in other words, an account of the concept of respect for dignity, as opposed to a specific conception of it. On the distinction between concepts and conceptions see Rawls (1999a, 5).

our life prospects and to a large extent establish the necessary social conditions for us to lead decent lives, and pursue our ends. Moreover, the context in which the dynamics of mutual recognition grounding a person's self-respect *actually* take place, is a political or public one (typically within societies). As Jack Donnelly says: '[a]ny plausible account of human dignity must include membership in society' or, I would add, in a functional equivalent thereof (Donnelly 2003, 26).[19]

We can then see how universal human rights relate to both *dignity* and *politics*: since they belong to human beings *qua* humans, and human lives are led in political communities, they set a standard that *each society's* political morality has to endorse to enable its members to lead lives of dignity. They determine what those who are subject to common political structures owe to one another not in their capacity as members of the same community, but simply, and more fundamentally, *qua* human beings.

Grounding the special importance of human rights in this 'politically-laden' understanding of dignity, and emphasizing their critical function, helps us to account for an apparently perplexing aspect of the way we think about these rights (on this see Eddy 2007, 321ff.). Namely, it explains why, as Thomas Pogge notes, whereas we do not identify violations of fundamental rights – such as the right to life, to personal property etc. – perpetrated by private individuals as human-rights violations, we do so when the perpetrators are officials (Pogge

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[19] See also Rawls's (1999a, 477-8) account of the social dimension of self-respect. I am indebted to Christian Schemmel for helpful discussions on self-respect and its partly moral (as opposed to merely psychological) nature.

2002, 56-63). We can indeed make sense of this seemingly bizarre distinction by considering that when respect for human rights is already ensured by a society's conventional political morality (and by its legal system), such private violations are officially condemned by the society as a whole and thus do not *fundamentally* undermine the conditions for the victim to lead a life of dignity.

On the contrary, like violations on the part of officials who by definition act *in the name of* the entire community, appear to us as human-rights violations because they symbolize a public form of disrespect towards one (or more) of its members (Pogge 2002, 56-63). According to the model proposed here, official violations suggest that the claims a person is entitled to make *qua* human being are not recognized as valid within her society, hence that her fellow-citizens do not regard her as an agent with intrinsic worth (cf. Feinberg 1980). In light of this, we can make sense of our thinking of these abuses in terms of human-rights violations precisely by virtue of their specific dignity-undermining character. Human-rights violations represent a lack of *public* recognition of one's status as an inherently valuable being, and this is why they are particularly harmful to human dignity.

The link between dignity and politics is a particularly interesting one, especially given that the notions of dignity and respect for human agency are at the heart of many natural-law accounts of human rights (see, e.g., Griffin 2008, Gewirth 1982, and Donnelly 2003). While in the previous section we saw that a political approach to the justification of human rights cannot do without practice-independent moral reasoning, this section suggests that natural-law views might be strengthened by making direct reference to the political dimension of dignity. It may thus be that the best theory of human rights is in

fact one that combines insights from both natural-law and political views.[20] Even though this strikes me as an intriguing possibility, my aim in the present paper is not to explore it, but to consider the different ways in which human rights might be political. A third one still remains, which I discuss in the next section.

4. Human Rights and Political Feasibility

Finally, let me now turn to the third and last respect in which human rights can be said to be political. In this sense human rights are political insofar as their existence depends on what is 'politically feasible' in the here and now. Whether X qualifies as a human right, depends on there being the necessary socio-political conditions successfully to secure X. As Joseph Raz (2007, 19 emphasis added) puts it, interests may be fundamental, but whether they give rise to a right or not depends 'on the *contingencies* of the current system of international relations'.

In a similar vein, Sangiovanni (2008, 155) argues that we should make sure that the human rights we advocate do not end up being 'instrumentalized or appropriated by states in the pursuit of unrelated foreign policy aims' (Sangiovanni 2008, 156, for a similar claim see also Raz 2007, 12-13)[21].

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[20] I try to lay the foundations of such a theory in Valentini (2010).

[21] In Raz's words (2007, 12-13) 'When the international situation is one in which it is clear that international measures will not be applied impartially, that they will be used to increase the domination of a super-power over its rivals, or over its client states etc., the moral principles setting limits to sovereignty will tend to be more protective of sovereignty than in the relationship among states which exists within a union, like the European Union, which has relatively impartial judicial institutions and fairly reliable enforcement procedures'.

Considering the right to freedom of speech, he goes on to argue that it should not be recognized as an international human right because of 'the danger that strong nations will instrumentalize the right to pursue self-serving goals', and 'the lack of adequate international mechanisms to ensure *ex ante* and *ex post* accountability' (Sangiovanni 2008, 160).

Making human rights contingent on the 'current system of international relations' strikes me as too conservative (see Tasioulas 2009). It definitely allows us to understand human rights as 'political' but, once again, at the cost of depriving them of much of their *critical capacity*. The fact that a human right to free speech might be instrumentalized does not seem to be good enough a reason for saying that the human right does not exist. If anything, it is a valid reason for arguing that those states which use such a right to justify action in pursuit of their self-interest act unjustly. This does not mean that the right does not exist, or that it should not be part of the conditions for the legitimacy of political communities. Instead, it means that, here and now, in our non-ideal world, we are better-off (strategically) if we do not treat it as a condition for foreign intervention.

Notice moreover that Sangiovanni (2008, 154) himself admits that a certain account of human dignity or human needs can be part of our justification of human rights, but such an account 'will be fundamentally shaped by the role human rights are intended to play in current international practice'. It seems, however, philosophically dubious to argue that (1) human rights are grounded in human dignity; (2) human dignity requires freedom of speech; (3) if, here and

now, we were to allow foreign intervention (whether soft or hard) on the grounds of freedom of speech we would probably do more harm than good, and hence (4) there is no human right to freedom of speech.

In so saying, I am not suggesting that feasibility considerations should not be part of a meaningful account of human rights. But when it comes to feasibility, we should distinguish between what we might call robust and weak infeasibility (see the discussion in Räikkä 1998). Let me consider each of them in turn.

Robust infeasibility represents the sort of infeasibility which makes the realization of a certain goal impossible or unreasonably costly for now and the foreseeable future. So, for instance, a right to 'superabundance' would be preposterous precisely because moderate scarcity seems to be one of the defining features of the human condition. If 'ought implies can', then there can be no duty to achieve something which, by definition, human beings cannot achieve. Similarly, think about a right to have the opportunity to go to the moon (Miller 1983, 74) or to a cure for a very rare disease (Griffin 2008, 99). In both cases, there is a sense in which the objects of these rights are feasible. If we devoted a large amount of resources to technological innovation in the area of space travel, or to medical research on that particular disease, perhaps trips to the moon, and cures for rare diseases, would become available to everyone.

The problem with these two proposals is that the interests they are meant to safeguard do not seem weighty enough to justify the costs involved in protecting them. It would be absurd to take political institutions to be bound by duties to make trips to the moon and drugs to cure rare diseases available to everyone given that this would involve removing resources from the pursuit of much more urgent and important goals, such as basic health care for everyone, the fulfilment

of fundamental physical needs and so forth. Denying the existence of a human right – i.e., of an interest which political institutions have a duty to protect – because of its robust infeasibility seems to be a perfectly legitimate philosophical move. Failing to take robust infeasibility seriously is likely to lead us to overinflate the language of rights in general, and of human rights in particular, thereby depriving it of much of its moral force. But what about weak infeasibility?

By *weak infeasibility* I mean the sort of infeasibility which does not depend on the tragic nature of the 'circumstances' in which we live, but on people's and governments' unwillingness to act in the ways morality requires. Consider the following example. Many believe that wealthy westerners have a duty to contribute to alleviating global poverty. From a moral point of view, the existence of such a duty seems to me rather uncontroversial. In the same way in which it would be morally monstrous to let a child drown in a shallow pond when saving him would only cost us a trip to the launderette (Singer 1972), letting children in developing countries die when saving them would only cost us a few dollars seems morally repugnant. That said, we are also very much aware of the fact that wealthy westerners are unlikely to be moved by this sort of argument. Typically, people seem to be prepared to make sacrifices for their fellow nationals, but are much less ready to do so when it comes to distant strangers. But should this generalized disposition to do good at home, but not abroad, count as a reason for denying the existence of a duty to relieve global poverty? I take it the clear and obvious answer is 'no'. People's weakness of will, or insensitivity to what morality requires of them, should have no effect on what morality actually requires of them (see Carens 1996, and Estlund 2007, ch. 14).

Proponents of the political view like Raz and Sangiovanni may agree with what I am saying here. After all, their views are not so implausible as to suggest that what human rights require corresponds to what states are likely to do. Their claim is more complex. Assuming the function of human rights to be that of legitimizing international intervention, they urge us to take into account the likelihood of *abuse* of human rights on the part of powerful nations. What if proclaiming a human right to X ended up having counterproductive effects?

I believe this is a reasonable worry, but I dispute the way in which proponents of the political view address it in their accounts of human rights. It seems hypocritical to suggest that, an interest which, under conditions of full compliance would generate a human right, should not be regarded as the basis for a human right in conditions of partial compliance, where agents are unlikely to do what morality requires of them. If we follow this sort of reasoning, we run the risk of becoming too complacent with existing political practice, making our moral theories hostage to injustice. A more promising way of taking into account practical difficulties in designing a theory of human rights would be to adopt the following two-tiered structure. First, at the level of ideal theory, we ask ourselves what human rights people have – i.e., what interests should be universally protected by the institutional arrangements under which they live, *given* robust infeasibility constraints. Second, at the level of what, following Rawls (1999a), we might call non-ideal theory, we ask which policies and distribution of responsibilities would best realize the human rights in question. It might very well be true that, under existing circumstances, we should not regard a human right to freedom of speech as a trigger of international military intervention because of the risks of abuses of power this would carry with itself. However, we

could very well posit that a violation of such a right legitimizes international criticism or some other form of international sanction.

The point is that, if freedom of speech is the type of interest which we believe should be protected by political institutions for them to be legitimate, then freedom of speech should count as a human right. The best, or most appropriate way to protect such a right – i.e., to define the duties correlative to such a right – will vary with circumstances.

Notice that this is not equal to robbing human rights of their deontological force, by somehow downplaying the duties correlative to them (O'Neill 1996). The point is not that human rights are 'vaguely defined goals' which some institutions, somewhere, ought to realize. Rather, the point is precisely that, to take the duties correlative to human rights seriously, we must look at the current configuration of our institutional order and allocate them accordingly. Moreover, we must also be able to identify moral failures when agents' lack of motivation leaves important human rights unfulfilled (cf. Sen 2004).

Conclusion

My aim in this paper has been to explore the different ways in which a conception of human rights can be 'political' and to establish whether any of these ways is worth pursuing. In particular, I have looked at three dimensions along which a conception of human rights can be political (dimensions which proponents of the 'political view' often fail to distinguish): its iudicandum, the way its principles are justified, and its relation to political feasibility constraints.

Specifically, I have argued the following. First, it is appropriate to regard the duties correlative to human rights as falling on political institutions rather than

individuals. However, it is mistaken to take states' foreign policy as being necessarily the relevant iudicandum. This makes a theory of human rights too tied to the *status quo* and fails to be loyal to the multi-faceted nature of human-rights practice. Second, the justification of human rights may plausibly be political not because of a practical concern with stability, but because of a moral concern with public justifiability. Interestingly, if we take such a concern seriously and proceed to justify human rights by appeal to the fundamental values informing human-rights practice, we are forced to engage in the kind of *controversial*, first-order, moral reasoning which proponents of the political view downplay or seem to want to avoid. This suggests that the difference between political and natural-law approaches is smaller than advocates of these two outlooks often suggest. Finally, I have argued that while it is important to take feasibility constraints into account in designing a theory of human rights, not *all* types of feasibility constraints matter. The fact that agents are unlikely to act on the basis of what morality requires of them does not suffice to deny the existence of certain human rights.

Of course, much more work needs to be done in order to design a full-blown political account of human rights. However, in this paper I hope to have shown that (i) human rights may be seen as political in a relevant sense, and (ii) where some of the existing versions of the political account go wrong.

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