

Political Conceptions of Human Rights and Corporate Responsibility

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10.1 INTRODUCTION

Does a political conception of human rights dictate a particular view of corporate human rights obligations? John Ruggie, who served as the United Nations Special Representative for Business and Human Rights, drafted the “Protect, Respect, and Remedy” Framework, which specifies corporate human rights obligations. Ruggie’s “Guiding Principles on Business and Human Rights,” which aim to implement the Framework, were unanimously adopted by the UN Human Rights Council in 2011. However, there have been numerous critics of Ruggie’s approach. A primary point of contention is that Ruggie assigns to corporations only a responsibility to respect human rights, while states (or governments) bear the full range of human rights obligations, including duties to respect, protect, and fulfill these rights. Some critics have argued that corporations should be responsible for a wider range of human rights obligations, beyond merely an obligation to respect such rights. Furthermore, it has been argued that Ruggie relied on a political conception of human rights, and that this is what led him to limit corporate obligation to mere respect for human rights. In this chapter, I explore and critically assess this general claim about political conceptions of human rights. This will involve distinguishing different types of political conceptions of human rights, as well as specifying what makes a theory of human rights a “political conception.” In light of this clarificatory discussion, I argue that the general thesis is false; the

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mere fact that a theory offers a political conception of human rights does not necessarily entail any certain range of corporate human rights obligations. Finally, I identify some of the other aspects of a theory of human rights that do affect the range of corporate human rights obligations it will prescribe.

In Section 10.1, I provide a brief history of recent attempts by the UN to frame corporate human rights obligations. In Section 10.2, I outline the criticism of Ruggie's Framework, which contends that it was reliance on a political, rather than moral, conception of human rights that led him to limit corporate obligation to mere respect for human rights. In Section 10.3, I provide a brief characterization of the distinction between moral and political conceptions of human rights. In Section 10.4, I consider two approaches that have been suggested as underpinning the development of the Framework. I offer a criterion for determining whether an approach to constructing human rights norms constitutes a political conception of human rights, and claim that both of the suggested approaches constitute versions of a political conception of human rights. I then draw the preliminary conclusion that a political conception of human rights can endorse either no corporate human rights obligations or a narrow range of such obligations. In Section 10.5, I consider the most prominent political conceptions of human rights, those offered by John Rawls, Joseph Raz, and Charles Beitz. These theories of human rights will be assessed in terms of two aspects: the essential feature(s) or function(s) they attribute to human rights and the standard(s) they use to qualify a norm as a legitimate human right. I also discuss the degree to which each theory is more revisionary or more conforming with regard to international human rights practice. In Section 10.6, I show that human rights practice can be understood as including a broader or narrower range of the activities relating to human rights, and that this will tend to influence whether a political conception of human rights recognizes a more or less state-centric account of human rights obligations. If a political conception of human rights relies on a broader conception of the practice, this may make it more likely that the theory will prescribe corporate human rights obligations. Finally, I conclude that the range of corporate human rights obligations prescribed by a theory is underdetermined by the mere fact that a theory offers a political conception of human rights. The factors that play a role in this determination include the range of aspects included in the conception of the practice on which theory relies, and in turn, the degree to which this conception of the practice leads the theory to conform with existing human rights norms.

10.2 A RECENT HISTORY OF BUSINESS AND HUMAN RIGHTS AT THE UN

In the 1990s, as economic globalization and its effects became more pervasive, the UN began to direct more attention to the issue of multinational corporations (MNCs) and human rights. This led the UN Sub-Commission on the Promotion and Protection of Human Rights to create a working group to examine the issue. By 2003, the working group had produced the "Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights" (Sub-Commission 2003). The Norms identified a range of areas in which MNCs would have human rights responsibilities. Within the MNCs' "spheres of activity and influence," it assigned to MNCs the same range of human rights obligations as states. In other words, within this sphere, MNCs would have duties to respect, protect, and fulfill human rights. In 2003, the Sub-Commission voted to approve the Norms. However, the Norms faced strong opposition from the business community. When the Norms were brought before the Sub-Commission's parent body, the UN Commission on Human Rights, it decided not to adopt them.

While the Commission chose not to adopt the Norms, it nevertheless sought continued examination of the issue of business and human rights, and requested the appointment of a special representative to further investigate. In 2005, Harvard political scientist John Ruggie was appointed the United Nations Special Representative of the Secretary General (SRSG) on human rights and transnational corporation and other business enterprises. After extensive research, and consultation with governments, business, and civil society from around the world, in 2008 Ruggie released "Protect, Respect, and Remedy: A Framework for Business and Human Rights" (United Nations Human Rights Council 2008). The Framework was favorably received by a variety of stakeholders, which led the UN Human Rights Council to extend Ruggie's appointment and ask that he develop guidelines for its implementation. Ruggie proceeded with this task, and in June of 2011, the Human Rights Council voted unanimously to adopt his "Guiding Principles on Business and Human Rights," which seeks to operationalize the Framework (United Nations Human Rights Council 2011).

International human rights law, which applies primarily to states, divides the duties corresponding to human rights into three distinct obligations to respect, protect, and fulfill. The UN High Commissioner for Human Rights defines each of these duties as follows: respect for a right requires that states "refrain from interfering with or curtailing the enjoyment of a right," protection of a right requires that a state "protect individuals and groups against

human rights abuses,” and fulfillment of a right requires a state to “take positive action to facilitate the enjoyment” of the right (United Nations High Commissioner for Human Rights). Ruggie’s “Protect, Respect, and Remedy” Framework relies on this tripartite distinction of human rights obligations recognized in international law. As its name suggests, the Framework involves three dimensions: The first is the state duty to protect human rights, which requires states to “protect against human rights abuses committed by third parties, including business, through appropriate policies, regulation, and adjudication” (United Nations Human Rights Council 2008). The second is the corporate responsibility to respect human rights by “acting with due diligence to avoid infringing on the rights of others, and addressing harms that do occur” (United Nations Human Rights Council 2008). And the third is access to effective remedy, which involves an acknowledgment that “effective grievance mechanisms play an important role in both the state duty to protect and the corporate responsibility to respect” (United Nations Human Rights Council 2008). In relation to the state duty to protect, this requires that “states take the most appropriate steps within their territory and/or jurisdiction to ensure that when such abuses occur, those affected have access to effective remedy through judicial, administrative, legislative or other appropriate means” (United Nations Human Rights Council 2008). In relation to the corporate responsibility to respect, it requires that “company-level mechanisms should also operate through dialogue and engagement rather than the company itself acting as adjudicator of its own actions” (United Nations Human Rights Council 2008).

In short, the Framework attempts to clearly divide the human rights obligations of government and business. In keeping with international law, it reiterates that states bear the full range of human rights obligations, including duties to respect, protect, and fulfill human rights, while emphasizing that the duty to protect human rights includes ensuring protection against abuses by third parties such as corporations.¹ Additionally, it makes the determination that corporations simply have a responsibility to respect human rights. Respect for human rights requires corporations to “avoid infringing on the human rights of others,” and if they do, to “address human rights impacts with which they are involved” (United Nations Human Rights Council 2008). In other words, the Framework clarifies the respective roles of each party, by assigning to businesses

¹ The Framework requires that states “must protect against human rights abuse within their territory and/or jurisdiction by third parties, including business enterprises. This requires taking appropriate steps to prevent, investigate, punish, and redress such abuse through effective policies, legislation, regulations, and adjudication.” (United Nations Human Rights Council 2011).

an obligation not to cause harm through a failure to respect human rights, and when they do so, to address such harm, and reiterating that states have this same obligation, in addition to obligations to protect and fulfill human rights.

10.3 A CRITICISM OF RUGGIE’S FRAMEWORK

A number of critics have taken issue with Ruggie’s restriction of corporate human rights obligations to a mere responsibility to respect such rights. These critics believe that corporations ought to bear responsibility for a wider range of human rights obligations, including obligations to protect and fulfill such rights.² Throughout this chapter, I will refer to an obligation to merely respect human rights as a “narrow” range of human rights obligations, and the inclusion of an additional obligation to protect and/or fulfill human rights as a “broad” range of human rights obligations. There are a number of dimensions to this debate, but here I want to focus on a particular aspect. This is the claim that Ruggie’s endorsement of a narrow range of corporate human rights obligations derives from his (supposed) reliance on a political, rather than a moral, conception of human rights.

Florian Wettstein has advanced this criticism. Wettstein claims that accounts of corporate human rights obligations “typically are based on political or legal conceptions of human rights (which can then be extended into the private sphere), rather than on moral ones” (Wettstein 2012, p. 744). Furthermore, he adds, this is true of Ruggie’s Framework: “The SRSG’s framework is a case in point. It explicitly refers to the International Bill of Human Rights and the ILO core conventions and thus to a combination of legal and political conceptions of human rights as the benchmark against which to judge the human rights conduct of companies” (Wettstein 2012, p. 744). Finally, Wettstein points to this political (or legal) conception of human rights as directing focus on negative duties not to infringe on rights, and thus as the source of the Framework’s narrow range of corporate human rights obligations.

As a result . . . the discussion on business and human rights has been centered in large parts on wrongdoing and, accordingly, tends to adopt an overly narrow focus on corporate obligations of a negative kind, that is, on obligations of non-interference and “do no harm.” Symptomatically, also Ruggie’s

² For examples of those advocating a wider range of corporate human rights obligations, see Florian Wettstein, *Multinational Corporations and Global Justice: Human Rights Obligations of A Quasi-Governmental Institution* (Stanford Business Books, 2009); and David Jason Karp, *Responsibility for Human Rights: Transnational Corporations in Imperfect States* (Cambridge University Press, 2014).

tripartite framework defines human rights obligations of corporations exclusively in negative terms as duties to respect human rights, while assigning all duties in the positive realm to the state alone.

(Wettstein 2012, p. 745)

Thus, Wettstein contends that the endorsement of a narrow range of corporate human rights obligations, which he refers to as Ruggie's "human rights minimalism," is due to the fact that Ruggie relied on a political conception of human rights. However, even if one grants that the Framework relies on a political conception of human rights, is Wettstein correct that this is what led Ruggie to endorse a narrow range of corporate human rights obligations?

10.4 POLITICAL VS. MORAL CONCEPTIONS OF HUMAN RIGHTS

Let us now turn to the current controversy among philosophers about how to properly theorize human rights, which involves the distinction between moral and political conceptions of human rights. Political conceptions of human rights are typically characterized by their focus on the role(s) that human rights play in political relations between states at the international level.³ Such roles often include limiting state sovereignty and providing a criterion for legitimate interference by other states, among others. Political conceptions generally take the practice of international human rights as their starting point, and theorize human rights based on a characterization of this practice. The "practice" is usually understood to refer to the movement that began in the wake of World War II, beginning with the drafting of Universal Declaration of Human Rights (UDHR), the subsequent drafting of numerous legally binding human rights conventions and their adoption by the majority of states around the world, and the activities surrounding these documents, including the work of monitoring bodies, human rights courts, and so forth. But as we will see, the notion of human rights "practice" can have fuzzy borders, and may include a broader or narrower set of activities associated with international human rights.⁴ The focus

³ See, for example, John Rawls, *The Law of Peoples* (Harvard University Press, 1999); Charles Beitz, *The Idea of Human Rights* (Oxford University Press, 2009); and Joseph Raz, "Human Rights Without Foundations," in *The Philosophy of International Law* (Oxford University Press, 2010).

⁴ A broader or narrower set of the sorts of activities just mentioned should not be confused with the earlier reference to a narrow versus broad range of human rights obligations. The current discussion is concerned with the sorts of activities that comprise the practice of human rights, whereas the earlier reference was concerned with the range of obligations that human rights impose on duty bearers.

on the role(s) or function(s) which human rights play in the relations between states implies that political conceptions of human rights will tend to give primary attention to the obligations that human rights impose on states.

Moral conceptions of human rights may or may not appeal to the practice of international human rights, typically situate human rights within the natural rights tradition,⁵ and view human rights as the rights that individuals possess simply in virtue of their humanity.⁶ Thus, moral conceptions of human rights tend to see the human rights listed in the UDHR and subsequent human rights documents, as simply giving political or legal recognition to preexisting moral rights. The focus on human rights as moral claims tends to be taken to imply that human rights impose obligations on all agents, including both individuals and institutional agents, such as states, NGOs, and corporations.⁷

Based on these general and abstract characterizations of political and moral conceptions of human rights, a couple of things become immediately apparent. First, at this level of abstraction, we will be unable to determine whether political or moral conceptions of human rights necessarily prescribe a certain range of corporate human rights obligations. Second, the characterization of political conceptions of human rights just offered differs from what Wettstein has in mind when he uses that term. In other words, Wettstein is not using the term "political conception" of human rights in the same way that political philosophers typically do. When Wettstein claims that Ruggie relies on a "political conception" of human rights, he points to Ruggie's reference to the International Bill of Human Rights and the ILO core convention. In other words, for Wettstein, a political conception of human rights is constituted by appeal to international human rights treatises and conventions, rather than to the role that human rights play in the relations between states. So we will need to sort out these different uses of the term, and determine what qualifies a theory as a "political conception" of human rights.

10.5 POLITICAL CONCEPTIONS OF HUMAN RIGHTS: WETTSTEIN AND RUGGIE

Before turning to the most prominent political conceptions of human rights, which have been developed by political philosophers, let us first consider Wettstein's characterization of a political conception, as well as Ruggie's own

⁵ However, moral conceptions need not endorse all aspects of this tradition, such as the view that human rights must be pre-institutional.

⁶ See, for example, James Griffin, *On Human Rights* (Oxford University Press, 2008).

⁷ See, for example, Denis G. Arnold, "Transnational Corporations and the Duty to Respect Basic Human Rights," *Business Ethics Quarterly* (2010).

description of his approach to developing the Framework. As we shall see, Ruggie offers a different account of his methodology than the one Wettstein attributes to him.

When Wettstein uses the term “political conception” of human rights, he seems to have in mind a legalistic view, that is, one which appeals almost entirely to human rights treaties and conventions. For Wettstein, a political conception of human rights, in contrast to a moral conception, has little or no room for prescriptions beyond those embodied in current human rights law and conventions. This is why he believes that Ruggie’s appeal to the International Bill of Human Rights necessarily led to the endorsement of a narrow range of corporate human rights obligations. The International Bill of Human Rights imposes direct (legal) human rights obligations only, or primarily, on states, and thus does not necessarily allow for the recognition of direct corporate human rights obligations, and particularly not for a broad range of such obligations.

However, Ruggie himself claims to have taken a different approach when developing the Framework. Rather than relying on human rights treaties and conventions, Ruggie says that in formulating the corporate responsibility to respect human rights, he was specifying something that “already exists as a well-established social norm” (Ruggie 2013, p. 91). According to Ruggie, “a social norm expresses a collective sense of ‘oughtness’ with regard to the expected conduct of social actors, distinguishing between permissible and impermissible acts in given circumstances; and it is accompanied by some probability that deviations from the norm will be socially sanctioned, even if only by widespread opprobrium” (Ruggie 2013, pp. 91–2). Furthermore, Ruggie contends, while different people and societies hold different expectations about corporate conduct concerning human rights, “one social norm has acquired near-universal recognition within the global social sphere in which multinationals operate; the corporate responsibility to respect human rights” (Ruggie 2013, p. 92). Thus, Ruggie’s justification for codifying the corporate responsibility to respect human rights is that it is a more or less universally held social norm. In other words, this approach seeks to identify the human rights norms that all (or nearly all) parties agree upon, and endorses those as the legitimate ones. This type of approach can be referred to as an “agreement theory.”⁸

⁸ See Beitz’s discussion of agreement theories in *The Idea of Human Rights*, chapter 4. Beitz distinguishes three types of agreement theories: common core, overlapping consensus, and progressive convergence. Ruggie seems to employ the common core version of agreement theory, which appeals to the “lowest common denominator” that all cultures or societies agree upon. As Beitz points out, the common core idea would end up excluding substantial parts of

Now let us compare these two theories. First, both the legalistic theory and the agreement theory can be classified as versions of a political conception of human rights. They do not appeal to moral rights grounded in people’s humanity or human dignity, as moral conceptions are apt to do. Rather, the legalistic version appeals to the contents of contemporary human rights treaties and conventions in order to ground human rights norms, while the agreement version appeals to more or less universal agreement by all cultures or societies in order to ground human rights norms. Thus, both versions ground human rights in a political or social basis, rather than appeal to the moral rights of individuals. I believe this is sufficient to classify them as political conceptions of human rights, although they do not appeal to the functional role that political philosophers have generally taken to be characteristic of political conceptions, namely, regulating the political relations between states on the international level.⁹

Second, these two versions of a political conception may entail a different range of corporate human rights obligations. The legalistic version is constituted by appeal to contemporary human rights documents, namely, the International Bill of Human Rights and ILO core conventions. But it is not clear whether even a narrow range of corporate human rights obligations can be derived from these documents. These treaties and conventions impose human rights obligations on states, but do not necessarily impose direct

contemporary human rights doctrine, because these are not agreed upon by all cultures or societies. This may create an inconsistency for Ruggie. He appeals to common core agreement theory to justify the corporate responsibility to respect human rights, but then appeals to the International Bill of Human Rights to identify the list of human rights that corporations have an obligation to respect. But if not all human rights listed in the International Bill of Human Rights can be justified by common core agreement theory, there may be a conflict. This is because the corporate responsibility to respect human rights is based on one approach to justification, while the rights it refers to must be based on some other approach that is capable of justifying that set of rights. Whether this is genuinely a problem depends on whether it is necessary to have the same justificatory basis for human rights themselves as for the norms that assign the obligations to which the rights give rise. Regardless, Ruggie’s explanation of his justification for codifying the corporate responsibility to respect human rights seems to make it clear that he relied upon the common core approach in developing this norm.

⁹ As Alain Zysset has pointed out to me, political conceptions appeal to the practice of human rights, and the mere fact that states draft and sign treaties and conventions does not in itself constitute a practice. States may sign such documents, and then nothing more comes of it. In that case, a practice never arises. However, I believe that we can interpret Wettstein as assuming that the human rights treaties and conventions he refers to (the International Bill of Human Rights) are accompanied by treaty bodies, enforcement mechanisms, and other aspects that comprise a practice (loosely defined). In other words, it seems safe to assume that Wettstein does think of these treaties as embedded in a practice. However, his legalistic version of a political conception holds that treaties and conventions are the only aspect of the practice that serve as a source for identifying legitimate human rights norms.

human rights obligations on any other agents. This is certainly true of the legally binding human rights covenants (ICCPR and ICESCR), which impose legal obligations only on the states that are party to them. The UDHR, which is not a legally binding treaty, contains a clause that states “every individual and every organ of society” has an obligation to “promote respect for these rights ... and ... to secure their universal and effective recognition and observance” (United Nations General Assembly 1948, Preamble). Perhaps direct corporate human rights obligations could be derived from this particular clause. If so, however, it is extremely unclear precisely what range of corporate human rights obligations would be prescribed. There is reference to “respect,” but also to “effective recognition” and “observance.” Can these latter terms be understood as involving obligations to protect or fulfill human rights? The clause is open to multiple interpretations, which renders it difficult to determine whether it can serve as a basis for any direct corporate human rights obligations, and if so, what range of obligations. If no direct corporate human rights obligations can be derived from the legalistic version, then contrary to Wettstein’s claim, Ruggie could not have developed the corporate responsibility to respect human rights based on such an approach. But perhaps Wettstein believes it is possible to derive a narrow range of corporate human rights obligations from the UDHR, or from some other element of the relevant human rights treatises and conventions. He never explains precisely how he believes Ruggie derived this norm from the treatises and conventions in question.

In the case of the agreement version, a narrow conception of direct corporate human rights obligation can be justified, assuming Ruggie is correct that a corporate obligation to respect human rights is a more or less universally agreed upon human rights norm. However, it is important to point out that the agreement version does not *necessarily* entail a narrow range of corporate human rights obligations. It allows that the range of justified corporate human rights obligations can change as universal agreement shifts. So given time, it is always possible there could come to be universal agreement that corporations also have an obligation to protect or fulfill human rights, or that corporations have no direct human rights obligations at all. In fact, the international human rights regime is an evolving practice, as are the normative beliefs surrounding it. Direct human rights obligations of corporations is a relatively new issue, and there is not yet strongly settled opinion on the matter. Thus, rather than the agreement version necessarily entailing any specific range of corporate human rights obligations, it is a merely contingent empirical truth that it entails a narrow range of such obligations at the present time.

So far, then, we have seen that a political conception of human rights can potentially entail no corporate human rights obligations (according to a certain interpretation of the legalistic version), or, contingently, a narrow range of corporate human rights obligations (according to the agreement version, given currently held normative beliefs). And thus it might seem Wettstein was correct to claim that Ruggie’s reliance on a political conception of human rights dictated that the Framework would prescribe only a narrow range of corporate human rights obligations. So, given our investigation up to this point, Wettstein’s claim does seem to be correct, as long as he did not mean it as a necessary, rather than a merely contingent, truth (based on present facts about universal agreement). However, before settling on this conclusion, we should examine the most prominent political conceptions of human rights, those developed by political philosophers. Whereas Wettstein and Ruggie offer quite brief characterizations of the versions of a political conception they have in mind, John Rawls, Joseph Raz, and Charles Beitz have developed much more elaborate political conceptions. Examining these theories will put us in a position to more fully determine whether political conceptions of human rights entail a specific range of corporate human rights obligations.

10.6 POLITICAL CONCEPTIONS OF HUMAN RIGHTS: RAWLS, RAZ, AND BEITZ

Joseph Raz claims that a political conception of human rights will include two aspects: (1) it will establish the essential features that the practice of international human rights attributes to such rights; and (2) it will identify the moral standards that qualify a norm as a human right (Raz 2010). Let us refer to these two aspects of a political conception of human rights as the “essential features (or functions)” aspect and the “qualification standards” aspect.¹⁰ Before proceeding, I want to point out that given my view that the legalistic and agreement versions count as political conceptions of human rights, I do not necessarily accept Raz’s claim that every political conception will include these two aspects. While both the legalistic version and the agreement version include the qualification standards aspect, it is not immediately apparent that they include the essential features aspect. The legalistic version claims that inclusion in a human rights convention is the standard that qualifies a right as

¹⁰ I do not use the term “moral qualifications standards,” because I think Raz is wrong to assume that standards which qualify something as a legitimate human right must be moral in nature. For example, the legalistic version very clearly does not appeal to a moral qualification standard, and perhaps the agreement version does not either, depending on what we understand to be a “moral” standard.

a legitimate human right, while the agreement version holds that being a more or less universally agreed upon human right is the standard that qualifies a right as a legitimate human right. But neither of those theories, at least given the very brief characterizations offered by Wettstein and Ruggie, seem to explicitly identify the essential features attributed to human rights by the practice.¹¹ So, rather than Raz's two aspects being necessary features of a political conception of human rights, I maintain that it is appeal to a social or political basis for human rights which qualifies a theory as a political conception. Nevertheless, Raz's two aspects suggest a helpful way of approaching the political conceptions that have been developed by political philosophers. Indeed, we will find that both aspects are to be found in the theories of Rawls, Raz, and Beitz. So let us now proceed by assessing the remaining political conceptions of human rights in terms of these two aspects.

John Rawls has offered perhaps the most influential political conception of human rights in his book *The Law of Peoples*. In this work, Rawls presents a theory of international justice. His methodology is to provide a normative reconstruction of the principles of international law, which will yield a theoretical framework for determining just relations between societies of peoples. In the course of this reconstruction, Rawls presents his political conception of human rights. For Rawls (1999, p. 80), human rights play three roles:

- 1 Their fulfillment is a necessary condition of the decency of society's political institutions and of its legal order.
- 2 Their fulfillment is a sufficient condition to exclude justified and forceful intervention by other peoples, for example, by diplomatic and economic sanctions, or in grave cases by military force.
- 3 They set a limit to the pluralism among peoples.

This provides Rawls's account of the essential features aspect. For Rawls, the essential feature or function of human rights is to provide a criterion for the decency of the political institutions of a society, which if met, excludes the possibility of justified intervention by other states and the international community. As a corollary of this, human rights define the limits of acceptable pluralism among societies. In other words, if a society behaves in a way that violates human rights, then it has exceeded the limits of pluralism tolerable in international society, and other societies or the international community are then justified in intervening in that society.

¹¹ I will later argue that we can identify the essential feature(s) or function(s) attributed to human rights by the legalistic version and the agreement version, and that this will be derived from the qualification standards aspect of these theories.

When it comes to the qualification standards aspect, Rawls holds that human rights are "necessary conditions of any system of social cooperation" (Rawls 1999, p. 68). For Rawls, social cooperation is a matter of cooperation between "free and equal people," which entails fair terms of cooperation and a system of mutual advantage.¹² Based on these criteria, Rawls offers a very short list of human rights, which includes merely the rights to life, liberty, and formally equality (similar cases must be treated similarly) (Rawls 1999, p. 65). In comparison to the UDHR, and other international human rights documents, this is a sharply truncated list of rights. So, at least in this respect, Rawls's theory of human rights is quite revisionary, because it deviates drastically from the practice of international human rights.

At this point, we should notice that Rawls's theory of human rights has little to say about what, if any, should be the human rights obligations of corporations. Rawls has defined the essential feature or function of human rights exclusively in terms of the role they play in the relations between societies or states in the international arena. So when it comes to corporate human rights obligations, one can read Rawls in at least two different ways: First, Rawls could be read as providing an exhaustive account of the role of human rights, in which case, his theory prescribes no direct human rights obligations for corporations, because human rights (directly) apply only to societies or states. Second, Rawls could be read as merely focusing on a theory of international justice between societies or states, and thus only specifying the role of human rights in that context. On this latter reading, we do not know what Rawls would say about corporate human rights obligations, because he never provided a comprehensive theory of human rights. If the latter reading is correct, then Rawls's political conception of human rights is silent on the matter of corporate human rights obligations, and offers no prescription when it comes to a narrow versus broad range of such obligations.

Joseph Raz's political conception of human rights is perhaps less developed than Rawls's theory, but offers some interesting contrasts (Raz 2010). In terms of the essential features aspect, Raz holds that human rights set limits to state sovereignty. More specifically, he claims, "the fact that a right is a human right [is] a defeasibly sufficient ground for taking action against violators in the international arena, that is to take its violation as a reason for action" (Raz 2010, p. 328). So Raz and Rawls attribute nearly the same essential feature or function to human rights. However, the two theories differ when it comes to the qualification standards aspect. Raz holds that "human rights are those

¹² For further discussion of Rawls's notion of "social cooperation," see Luise Mueller, this volume.

regarding which sovereignty-limiting measures are morally justified" (Raz 2010, p. 329). He believes that Rawls's criterion for something being a human right, that it be a necessary condition of any system of social cooperation, is insufficient. This is because while Rawls's criterion may help to define the limits of state authority, which concern the morality of a state's actions, this criterion fails to define the limits of sovereignty, because such a criterion must also involve the right of others to intervene. Not all moral wrongdoing by a state will justify intervention by other states or the international community. The right of others to intervene will depend in part on the international situation (e.g., whether intervention will be used to increase the domination of a superpower over its rivals), and not merely on the morality of the actions of the state that is the potential subject of intervention.

Raz does not specify which types of wrongdoing justify intervention (the justified limits of sovereignty), and thus does not provide a list of justified human rights. However, it is safe to assume that his theory, like Rawls's theory, will offer a truncated list of human rights in comparison to the UDHR and other international human rights documents. This is because there are many rights included in such documents which surely Raz does not believe justify intervention. Examples of such rights in the UDHR include the right to periodic holidays with pay, the right to social security, and the right to education, to name just a few. For instance, if a state fails to provide a system of social security, or if it fails to provide basic public education for a large percentage of its children, this is not usually understood as a justification for intervention by other states or the international community. And, in fact, there are many states that currently fail in just these ways. But no one calls for forceful intervention in such states. Furthermore, Raz himself seems to suggest that the list of rights found in international human rights documents exceed those which he believes are justified, when he says, "International law is at fault when it recognizes as a human right something which, morally speaking, is not a right or not one whose violation might justify international actions against a state . . ." (Raz 2010, p. 329). So as with Rawls, Raz appears to deviate from the practice of international human rights, by offering a fairly revisionary theory in terms of the list of rights that qualify as legitimate human rights.

However, Raz differs from Rawls when it comes to the issue of corporate human rights obligations. While pointing out that states have been the primary agents addressed in international law, and that in accordance with this his theory treats human rights as being rights against states, he nevertheless allows that human rights may also be rights against agents other than states.

But I do not mean that human rights are rights held only against states, or only in the international arena. Human rights can be held against international organizations, and other international agents, and almost always they will be rights against individuals and other domestic institutions. The claim is only that being rights whose violation is a reason for action against states in the international arena is distinctive of human rights, according to human rights practice.

(Raz 2010, p. 329)

In other words, Raz treats the violation of human rights by government as a reason for action against states as the distinctive feature or function of international human rights practice, but he is not claiming that this is a complete characterization of human rights. Raz acknowledges that human rights can impose duties on individuals and domestic institutions, as well as non-state international agents. And if he allows that individuals can have human rights obligations, then it seems likely he will include domestic and multinational corporations among the "domestic institutions" and "non-state international agents" that can have human rights obligations. For surely if individuals can have human rights obligations, then corporations, with their far greater resources and power, can have human rights obligations. However, Raz says nothing further about this dimension of human rights. And thus Raz's theory is silent about whether it would prescribe a narrow or broad range of corporate human rights obligations. The difference between Raz's and Rawls's theories in this regard is simply that Raz seems to explicitly acknowledge that corporations can have direct human rights obligations, while Rawls (at least on the second reading) is silent about whether this is the case.

Charles Beitz offers the most developed political conception of human rights (Beitz 2009). His methodology involves first providing a close interpretation of the practice of international human rights, which can then be used to develop a model that best characterizes the practice. This model provides an account of the practice, including its values and purposes, which can be used to judge the various aspects of it.

After assessing and interpreting the practice, Beitz arrives at what he refers to as a "two-level model" of human rights, which is comprised of three elements. The first element defines human rights: "Human rights are requirements whose object is to protect urgent individual interests against predictable dangers ('standard threats') to which they are vulnerable under typical circumstances of life in a modern world composed of states" (Beitz 2009, p. 109). The second element specifies the "first-level" obligations created by human rights. Human rights apply first and foremost to the political institutions of states, including their constitutions, laws, and public policies, and require states

to respect, protect, and “aid” these rights. The third element specifies the “second-level” obligations created by human rights. It identifies human rights as matters of “international concern,” and holds that when states fail in their first-level obligations, human rights may provide a reason for capable outside agents to act. Such action is called for in the following circumstances:

states and non-state agents with the means to act effectively have *pro tanto* reasons to assist an individual state to satisfy human rights standards in cases in which the state itself lacks the capacity to do so, and . . . states and non-state agents with the means to act effectively have *pro tanto* reasons to interfere in an individual state to protect human rights in cases in which states fail through a lack of will to do so.

(Beitz 2009, p. 109)

This is a two-level model because, at a first level it assigns to states primary responsibility for respecting, protecting, and fulfilling the human rights of their residents, and at a second level it assigns to the international community the role of guarantor of those responsibilities.

The two-level model provides Beitz’s account of the essential features aspect. For Beitz the essential features of human rights are, first, to impose obligations on the political institutions of states, and secondarily, to create matters of international concern which give *pro tanto* reason for action by the international community when states fail in their obligations. Beitz’s theory is similar to Raz’s theory in that both treat human rights violations as (*pro tanto*) reasons for action (intervention), whereas Rawls takes the stronger position of treating human rights violations as requiring intervention.

In terms of the qualification standards aspect, Beitz’s theory holds that human rights are “protections of ‘urgent individual interests’ against ‘standard threats’ to which they are vulnerable” (Beitz 2009, p. 110). He defines “urgent interests” as those that would be “recognizable as important in a wide range of typical lives that occur in contemporary societies: for example, interests in personal security and liberty, adequate nutrition, and some degree of protection against the arbitrary use of state power” (Beitz 2009, p. 110). And he defines a “standard threat” as “a threat which is reasonably predictable under the social circumstances in which the right is intended to operate” (Beitz 2009, p. 111). Based on this account of the standards that qualify something as a human right, Beitz is able to justify more or less the list of rights found in international human rights documents. In this respect, his theory differs from the theories of both Rawls and Raz, because whereas they offer truncated lists of human rights which are quite revisionary compared to the list of rights found in the practice, Beitz is able to more or less recognize the list used in the practice.

Let us pause for a moment to consider a potential objection. Some commentators may object to my claim that Beitz offers a theory of human rights which closely conforms to the list of rights found in the practice. These commentators will likely point to Beitz’s discussion of “hard cases.” These cases concern specific human rights, or categories of human rights, which are recognized in the practice, but that Beitz believes his theory may not endorse. The human rights in question include antipoverty rights, women’s rights, and the right to political participation. More specifically, Beitz suggests that his emphasis on human rights as matters of “international concern” may have some potentially revisionary implications for these areas of human rights. However, I will argue that Beitz’s theory is not in fact very revisionary, and where he claims that it is, he is (mostly) mistaken in drawing such a conclusion.

The easiest case is that of antipoverty rights. The potential problem with treating this category of human rights as matters of international concern, according to Beitz, stems from two issues: first, determining which outside agents have reasons to act when states fail in their domestic obligation to fulfill such rights, and second, determining what kinds of reasons for action failure to fulfill these rights give to outside agents (Beitz 2009, p. 163). Beitz suggests that there can be a wide range of sufficient reasons for affluent states to act to reduce or mitigate poverty in impoverished states. Such reasons range from “strong beneficence” (Beitz 2009, p. 167) to harmful interaction, historical injustice, non-harmful exploitation, and political dependence (Beitz 2009, p. 171). This shows that there will not be one type of uniform reason for action provided by these rights, but rather, “an uneven web of disaggregated responsibilities” (Beitz 2009, p. 173). In other words, attributing responsibility to outside agents for ensuring these rights will involve different reasons in the case of different agents, and will depend on the details of particular cases (Beitz 2009, pp. 173–4). The fact that there is a range of sufficient reasons for outside agents to act in reducing or mitigating poverty leads Beitz to conclude that “there are antipoverty rights” (Beitz 2009, p. 173). In other words, while Beitz considers the possibility that his treatment of human rights as matters of international concern might challenge the legitimacy of antipoverty rights, in the end he concludes that his theory does indeed justify such rights. Thus, in the case of antipoverty rights, his theory is not revisionary of the list found in the practice.

Moving on to the case of women’s rights, Beitz believes there is no principled problem with such rights, even in societies where those rights conflict with deeply rooted cultural beliefs and practices. This is because men’s and women’s interests are of equal importance, and thus governments ought to, in principle, equally protect both (Beitz 2009, pp. 193–4). But a practical problem with such rights does arise, according to Beitz. The human rights of women

are concerned not merely with changes in law and policy, but with changes in social beliefs and practices. However, changing law and policy, which is the primary means available to the state, is unlikely to bring about changes in social beliefs and practices. Furthermore, if domestic governments lack the means to enact the necessary sort of change, the international community is even less capable of doing so (Beitz 2009, pp. 194–5). This seems to imply that women's rights cannot be matters of international concern on practical grounds, because there is no effective form of action for realizing such rights available to outside agents. "A government's failure to comply with those elements of women's human rights doctrine that requires efforts to bring about substantial cultural change does not supply a reason for action by outside agents because there is no plausibly effective strategy of action for which it could be a reason" (Beitz 2009, pp. 194–5). Thus, Beitz concludes that since women's rights fail (for practical reasons) to be matters of international concern, they therefore cannot be legitimate human rights according to his theory.

Now let us consider how revisionary Beitz's theory really is in the case of women's human rights. First, we should note that Beitz does not intend this argument to apply to the full range of women's human rights. He says that the majority of women's human rights "are perfectly general ... interests in physical security and personal liberty" (Beitz 2009, p. 188). In other words, most areas of women's human rights represent general interests of both women and men, and thus are perfectly legitimate human rights.¹³ Beitz singles out a few issues that he believes involve background beliefs and social practices that cannot be changed via law and policy: violence against women in the household, protection against rape, and abuses associated with prostitution (Beitz 2009, p. 194). It is only this limited set of women's issues that Beitz believes cannot (for practical reasons) be matters of international concern, and thus fail to be legitimate human rights. In short, Beitz does not claim his theory is so revisionary as to deny the legitimacy of all women's rights, but only a certain subset of such rights. Nevertheless, it can still be argued that in comparison to the practice, Beitz's theory would be quite revisionary in denying that these important women's issues are a matter of human rights.

However, I do not believe Beitz has correctly construed the implications of his theory in this area. First, he may be wrong to claim that changes in law and public policy are unable to influence the background beliefs and social practices necessary for the realization of the full range of women's human

rights. Kristen Hessler, for example, points to evidence which shows that changes regarding women's legal status in Tunisia were accompanied by major changes in women's general social status and status within marriage (Hessler 2013, p. 381). Hessler concludes that the subordinate social status of women is in part created by public policy, and can therefore be changed by making changes to law and policy (Hessler 2013, p. 382). Empirical evidence, such as that presented by Hessler, shows that Beitz may simply have been wrong to claim that a primary form of action available to the state – changing law and policy – will be unable to influence the background beliefs and social practices necessary for realizing the particular subset of women's rights that are in question.

Second, Beitz acknowledges that the implementation of human rights admits of a wide range of strategies and forms of action (Beitz 2009, pp. 33–42). It is worth remembering that rather than treating human rights failures as simply triggers for "intervention," as Rawls and Raz do, Beitz treats human rights as matters of "international concern" which generate "reasons for action." In other words, Beitz does not view failures to realize human rights as simply grounds for coercive or forceful intervention, but instead, as generating reasons to engage in an array of strategies for realizing these rights. He discusses six strategies for implementing human rights: accountability, inducement, assistance, domestic contestation and engagement, compulsion, and external adaptation (Beitz 2009, p. 33). As Hessler argues, each of these strategies of implementation is no less likely to be effective in the case of women's rights than in other areas of human rights (Hessler 2013, pp. 384–7). In the category of "accountability," Beitz includes the reporting and auditing processes carried out by the various human rights treaty bodies. This is perhaps the most common means of implementation used within the practice. Hessler points out that states are no less likely to implement women's rights in response to such auditing processes, than they are to implement, say, social and economic rights (Hessler 2013, p. 385). And if changes in law and policy can affect the social practices necessary for realizing women's rights, as was suggested above, then the reporting and auditing processes may encourage states to take the necessary actions to bring about such change. For example, in 2001, the Convention on the Elimination of Discrimination Against Women Committee encouraged Egypt to conduct a national survey of violence against women and to provide a reporting process so that more victims would come forward to report rape (Hessler 2013, pp. 384–5). Pursuing such a policy may in fact lead to changes in women's willingness to come forward and report cases of rape. If that does occur, then the accountability provided by the reporting and auditing process will have contributed to the implementation of an area of

¹³ However, see Hessler's claim that Beitz's argument will apply to women's rights more broadly (Hessler 2013, p. 380).

women's rights that Beitz believed could not be a matter of international concern.

Within the category of "compulsion," Beitz includes coercive interventions, such as economic sanctions, and within the category of "inducements," he includes strategies such as economic incentives for compliance. If the concern is a lack of state willingness to take action regarding the implementation of the full range of women's human rights, there is no reason to believe that in response to economic sanctions or economic inducements, a state would be less likely to take action regarding women's rights, than it would be to take action toward implementing, say, civil and political rights (Hessler 2013, p. 386). So given Beitz's acknowledgment that a wide array of strategies or measures can be employed in the implementation of human rights, and the evidence that changes in law and policy can help to influence the relevant background beliefs and social practices, it seems mistaken to claim that there is nothing the international community can do to implement the full range of women's human rights. Thus, contrary to Beitz's claim that the full range of women's human rights cannot be justified by his theory, a closer examination reveals that his theory can in fact justify such rights. Once again, as in the case of antipoverty rights, it seems that Beitz's theory need not be revisionary of the list of rights found in the practice.

Finally, let us turn to the case of the right to political participation. Beitz points out that this right is now generally interpreted as a right to democracy. His main concern with interpreting the right to political participation in this way is that such a right may only be justified in protecting a certain underlying interest (or interests), but not justified in imposing a specific type of institutional mechanism for realizing that aim. He points out that the empirical evidence is uncertain and does not support the claim that promoting democratic political institutions in poor societies will make it more likely that people's basic interests are satisfied (Beitz 2009, p. 180). Furthermore, he argues that the attempt to impose democratic institutions on a society would violate the society's right to political self-determination, at least in those societies that have a conception of the common good which they believe is best realized through a non-democratic form of political institutions¹⁴ (Beitz 2009, p. 182). For these reasons, Beitz does not believe that a human right to democracy can be justified.

While in the case of women's rights Beitz was concerned about the practical ability to implement such rights, in the case of a right to democracy he is more

¹⁴ However, Beitz believes there is even less clear evidence as to whether collective self-determination will make it more likely that people's basic interests are satisfied, so he is not convinced that there is a human right to collective self-determination either (Beitz 2009, p. 185).

concerned about the justification of this right in principle. Beitz notes that there is now "a pattern of international action" aimed at the development of democratic movements and regimes where they do not exist, and the support and protection of ones that do exist (Beitz 2009, p. 174). And nowhere does he indicate a belief that this action is ineffective. So in practical terms, the international community may indeed be able to promote democracy, and thus it can qualify as a matter of international concern. However, Beitz's argument in this case is that a right to democracy may not be justified in principle, both because it fails to make it more likely that the interests protected by human rights will be realized, and because it may conflict with other rights. Let us assume Beitz is correct that a human right to democracy cannot be justified in principle, for the reasons that he provides. Even if this is true, Beitz has not rejected a human right to political participation, which is the right explicitly listed in international human rights treaties. He has only rejected the interpretation of this as a right to a democratic form of government. This interpretation has become commonplace in the practice, although it is not a consensus belief (Beitz 2009, p. 174). In that case, Beitz's position will be to some extent revisionary in comparison with current human rights practice, but not radically so. We can understand Beitz as simply agreeing with the minority of practitioners, who reject this particular interpretation of the right to political participation and render it a non-consensus belief. Furthermore, Beitz's theory is intended to be prescriptive, not merely descriptive. So it is not surprising if we find it in some ways critical of the practice.

After assessing the "hard cases," we have found that Beitz's theory merely takes a minority position on the interpretation of a certain human right recognized in the practice, and in the other cases his theory seems fully capable of justifying the rights found in the practice. He either explicitly endorses the rights recognized in the practice (antipoverty rights), or as I have argued, should endorse such rights (women's rights). For these reasons, I think we are justified in claiming that his theory largely conforms to the list of human rights found in the practice. Now that we have dealt with a potential objection to this claim, let us return to the issue of corporate human rights obligations.

We can see that the second element of Beitz's model holds that states have an obligation to protect human rights against threats from non-state agents that are subject to the state's jurisdiction. Here Beitz's model echoes the "state duty to protect human rights" found in Ruggie's Framework, which requires the state to protect against human rights abuses by business through regulation and adjudication. But does Beitz's theory prescribe direct corporate human rights obligations? In the third element of Beitz's model, he states that both state and non-state agents (with the means to act effectively) have "*pro tanto*

reasons to assist an individual state to satisfy human rights standards in cases in which the state itself lacks the capacity to do so" and "*pro tanto* reasons to interfere in an individual state to protect human rights in cases in which states fail through a lack of will to do so" (Beitz 2009, p. 109). I assume that "satisfying" human rights is equivalent to fulfilling them. So Beitz's theory acknowledges that "non-state agents" can have reasons to both protect and fulfill human rights. However, Beitz's further discussion makes clear that the non-state agents he has in mind are not corporations, but rather human rights NGOs such as Human Rights Watch and Amnesty International. Indeed, the practice of international human rights can be understood as encompassing the roles played by these non-state agents. But given this clarification of the non-state agents in question, the third element of Beitz's model does not seem to include a role for corporate human rights obligations.

Furthermore, Beitz goes on to explicitly address the possibility of direct corporate human rights obligations, resisting the idea that such obligations can be derived from an account of the practice. "It is true that there have been efforts to frame human rights principles directly applicable to business firms, but thus far these efforts have lacked the independent structure and regularity to justify considering them as elements of an ongoing global practice" (Beitz 2009, p. 124). This is a revealing statement, and one which I believe holds an important lesson concerning the range of corporate human rights obligations that a political conception will prescribe. Beitz claims that despite efforts to specify direct human rights obligations for corporations, these efforts have lacked certain features that would justify treating them as part of the practice.¹⁵ Due to the fact that these efforts fail to qualify as part of the practice, there is no range of direct human rights obligations, narrow or broad, that we are justified in assigning to corporations. Since Beitz's methodology involves closely considering and interpreting the practice of international human rights, his theory is very practice-sensitive.

The implications of his approach become clear when we compare his theory to those of Rawls and Raz. Rawls and Raz employ qualification standards for justifying human rights that yield truncated lists of rights which are quite revisionary of the practice, while Beitz on the other hand, employs a qualification standard that yields more or less the list of rights found in the practice. Indeed, if Beitz's theory endorsed a list of rights that deviated much from the list found in the practice, he would likely consider this a flaw in his

¹⁵ Beitz's book was written just prior to the introduction and adoption of Ruggie's framework, so it is unclear whether Beitz would consider this development to provide enough "structure and regularity" to now consider direct corporate human rights obligations a part of the practice.

theory. After all, his methodology requires that he produce a normative model of human rights which is based on a close analysis and interpretation of the practice. This methodology implies that Beitz's theory will be rather conformist with the practice.¹⁶ An interpretation that takes close account of the practice is also confined by the practice. Since determining direct corporate human rights obligations is, at best, in its infancy, and may have yet to become an established part of the practice,¹⁷ a close interpretation of the practice is likely to suggest either that there are no direct corporate human rights obligations or that it is indeterminate whether there are such obligations. Indeed, Beitz's political conception of human rights takes the former position, because, at least at the time of his writing, he believed that efforts to frame direct corporate human rights obligations lacked structure and regularity, and thus did not constitute a part of the practice. With the subsequent adoption of Ruggie's Framework by the UN Human Rights Council, it is possible that Beitz would now recognize some form of direct corporate human rights obligations as part of his theory.

10.7 POLITICAL CONCEPTIONS OF HUMAN RIGHTS AND CORPORATE RESPONSIBILITY

I have suggested that Beitz's comment about direct corporate human rights obligations holds an important lesson as to whether political conceptions entail a certain range of such obligations. The political conceptions of human rights developed by political philosophers have tended to take a specific part of the existing practice of international human rights as their starting point, namely, the role that human rights play in the relations between states. However, as we have seen in our examination of Rawls, Raz, and Beitz, theories of human rights based on a political conception can vary in terms of how revisionary their prescriptions are in comparison to the practice. Beitz's theory is not very revisionary. But this is an artifact of his methodology, which requires his theory to be derived from a close examination and interpretation of the practice. Rawls and Raz, on the other hand, include some quite

¹⁶ This assumes of course that the norms underlying the practice and the list of human rights that it recognizes are coherent. It is of course a possibility that one could closely analyze and interpret the practice, and then find that the normative reconstruction is not compatible with the list of rights recognized in the practice. However, this possibility is likely only to arise in the case of a radically incoherent practice.

¹⁷ The adoption of Ruggie's Framework by the UN Human Rights Council may render this no longer true, depending on the criteria one employs for determining whether something constitutes part of the practice.

revisionary elements in their theories. Up to this point, I have suggested that the revisionary elements of Rawls's and Raz's theories derive primarily from the moral standards aspect, which produce lists of human rights that deviate significantly from the list found in the practice. However, we might also think their theories are revisionary in light of the essential features aspect. Both of these theories attribute one essential feature or function to human rights: a criterion for justified intervention in a state by other states or the international community. But it might be argued that the practice attributes more than one essential feature or function to human rights, in which case these theories are revisionary insofar as they focus on just this one feature or function of human rights to the exclusion of others. Beitz, by contrast, treats the essential features or functions of human rights in a broader manner, by holding that human rights first and foremost create obligations for a state with regard to its domestic constitution, laws, and public policies, and secondarily, as providing (*pro tanto*) reason for action by outside agents if the state fails in its obligations. Perhaps the theories of Rawls and Raz recognize the former element in an implicit way,¹⁸ but Beitz explicitly divides the operation of human rights into two different "levels." Thus, we might say that Beitz attributes at least two features or functions to human rights.

Here is the important point for our purposes: the practice can be understood as including more or less of the activities relating to human rights, and this will tend to influence the essential features or functions that a theorist attributes to human rights. For example, Beitz recognizes that human rights can give (*pro tanto*) reasons for action to human rights NGOs, and thus that the role of such agents is part of the practice, while Rawls and Raz do not seem to recognize the practice as essentially encompassing such agents. If a theorist appeals to a more narrow range of aspects as comprising the practice, for example, only those obligations that are legally binding under international human rights law, then the result will tend to be a more state-centric theory. This narrow conception of the practice is likely to lead to a narrower construal of the essential features or functions of human rights, which in turn makes it unlikely there will be recognition of corporate human rights obligations. On the other hand, if a theorist appeals to a broader range of aspects as comprising the practice, for example the activities of human rights NGOs, then this may result in a less state-centric theory. A broader conception of the

¹⁸ It seems to follow that a state must have domestic obligations regarding human rights, if violations of human rights are to provide grounds for intervention by other states or the international community. Yet Rawls and Raz seem only to focus on this second function, as a trigger for outside intervention.

practice is likely to lead to a broader construal of the essential features or functions of human rights, which in turn can make it more likely there will be recognition of corporate human rights obligations. Assume, for example, that a conception of the practice includes the activities of NGOs that monitor and pressure corporations to comply with certain human rights norms. In this case, the conception of the practice that encompasses such aspects may lead to recognition of essential features or functions of human rights that go beyond mere state obligations, to also prescribe corporate human rights obligations. The range of corporate human rights obligations prescribed by such a theory is likely to be determined by the norms and expectations involved in the activities that comprise the conception of the practice on which the theory relies.

To illustrate this last point, first consider the political conceptions of human rights developed by political philosophers. Raz did not give determinate prescriptions regarding corporate human rights obligations, and this seems to be a result of his theory focusing on just one essential feature or function of human rights, derived from a narrow conception of the practice. Similarly for Rawls (at least on one reading), his theory prescribes no corporate human rights obligations, and this also has to do with the fact that his theory focuses on just one essential feature or function of human rights, based on a narrow conception of the practice. Beitz's theory, by contrast, recognizes human rights obligations for agents other than states. His theory holds that human rights can create obligations (*pro tanto* reasons for action) for NGOs. This seems to result from attribution of a wider set of essential features or functions to human rights, based on a broader conception of the practice.

Next, consider the versions of a political conception of human rights characterized by Wettstein and Ruggie. While neither of these political conceptions focuses on the role that human rights play in the relations between states, we may nevertheless understand them as appealing to certain aspects of the practice. For the legalistic version, it is inclusion in international human rights treaties that qualifies a right as a legitimate human right. These documents are often thought of as part of the practice. Beitz's political conception, for example, gives a very prominent role to such treaties when offering a characterization of the practice. However, the political conceptions of Rawls and Raz do not focus on these documents. Rawls and Raz focus on just one aspect of the practice: the role that human rights play in the relation between states on the international level. They then allow this feature or function of human rights to determine the qualification standards (limitations on sovereignty) for identifying legitimate human rights. By contrast, the legalistic version focuses on a different aspect of the practice: international human rights treaties. In the case of the legalistic version, the qualification

standard aspect is treated as primary. As I discussed previously, when Wettstein's characterizes the legalistic version, he does not explicitly provide an essential feature or function of human rights. However, I believe that we can interpret the essential feature(s) or function(s) aspect as deriving from the qualification standard aspect, which he does provide. It would seem that on Wettstein's characterization of the legalistic version, the essential feature or function of the human rights found in international human rights treaties is to create "obligations of non-interference and 'do no harm'" (Wettstein 2012, p. 745). Again, it remains unclear precisely how Wettstein thinks Ruggie derived the corporate responsibility to respect human rights from those treaties, but Wettstein clearly states that the "political or legal" human rights found in the treaties essentially emphasize negative duties of non-interference.¹⁹

Ruggie's agreement version appeals to universally held social norms regarding human rights as the qualification standard for identifying legitimate human rights norms. One can conceivably think of these social norms as part of the practice, given a quite broad conception of the practice.²⁰ As with the legalistic version, Ruggie's agreement version does not explicitly state the essential feature or function of human rights. However, I believe that we can once again interpret the essential feature(s) or function(s) aspect as deriving from the qualification standards aspect, which Ruggie does provide. In this case, the legitimate human rights norm in question is the corporate responsibility to respect human rights, from which we can infer that an essential feature or function of human rights is to attribute to corporations an obligation not to harm.²¹ Thus, while Rawls and Raz seem to allow the essential features or functions of human rights (the role they play in relations between states) to

¹⁹ It may be difficult to reconcile this claim with the treaties and practice themselves, as they very clearly attribute to states an obligation not only to respect the human rights listed in the treaties, but also to protect and fulfill these rights. Nevertheless, Wettstein argues that we need a moral conception of human rights in order to generate positive corporate human rights obligations, because the "political and legal" human rights found in international human rights treaties are focused on negative obligations of non-interference.

²⁰ In fact, Rawls may endorse something similar, insofar as he treats as legitimate only those human rights that all reasonable peoples would endorse. This leads Rawls to reject certain human rights that only liberal societies would endorse, because non-liberal peoples will reasonably reject such rights.

²¹ Here the claim is simply that assigning to corporations an obligation not to harm is *at least one* essential feature or function of human rights. This is not to say that Ruggie holds that this is the only essential feature or function of human rights. In fact, the recognition of the state duty to protect human rights from abuses by corporations demonstrates Ruggie's recognition that an essential feature or function of human rights is also to create obligations for states. However, Ruggie derives the state duty to protect from international law and human rights treaties, not from the agreement theory which he relies on to justify the corporate responsibility to respect human rights. Here I focus only on Ruggie's appeal to the agreement theory.

determine the qualification standard for identifying legitimate human rights, the legalistic version and the agreement version allow the qualification standard for identifying legitimate human rights (inclusion in international human rights treaties or universally held social norms) to determine the essential features or functions of human rights. In other words, Rawls and Raz treat the essential feature aspect of a political conception as primary, whereas the legalistic version and the agreement version treat the qualification standard aspect of a political conception as primary. But in all cases, it is appeal to some part of the practice that determines the primary aspect.

10.8 CONCLUSION

Based on our examination of various political conceptions of human rights, we can now conclude that the range of corporate human rights obligations prescribed by a theory is underdetermined by the mere fact that the theory offers a political conception. A political conception of human rights will not necessarily prescribe any corporate human rights obligations, and if it does, not necessarily any particular range of such obligations.

Beyond this general conclusion, we can also identify some features of a political conception of human rights that will contribute to determining what, if any, range of corporate human rights obligations is prescribed by the theory. First, a significant factor is which part or parts of the practice a political conception of human rights appeals to. Generally, the part(s) of the practice appealed to will tend to determine its prescriptions. Furthermore, the practice may be used to determine either the essential feature(s) or function(s) of human rights, or to determine the qualification standard(s) for identifying legitimate human rights. In the political conceptions that we examined, one of these aspects was treated as primary, and the other aspect determined by the primary one.

Second, the more parts of the practice that a theory appeals to, the more conformist a political conception is likely to be, where "conformist" refers to how closely the theory mirrors current practice. Beitz appeals to a very broad conception of the practice, and this leads his theory to more closely mirror the existing practice of international human rights. As a result, his theory prescribes human rights obligations for a range of agents that play a role in the current practice. For example, according to Beitz, human rights NGOs have (*pro tanto*) reason for action when human rights violations or failures occur. Although Beitz's theory does not assign human rights obligations to corporations, this may be due to the fact that Ruggie's Framework had not been adopted at the time Beitz developed his theory. With the subsequent adoption

of Ruggie's Framework by the UN Human Rights Council, Beitz might now revise his theory to prescribe a narrow range of corporate human rights obligations. Rawls and Raz, on the other hand, focus on just one part of the practice, with at least some revisionary implications for the practice. They seem to have no room for prescribing corporate human rights obligations within their theories, despite the adoption of Ruggie's Framework by the Human Rights Council, because their account of the practice focuses only on the role that human rights play in the relations between states.

It should now be apparent that what range of human rights obligations, if any, corporations will be prescribed is determined by a range of factors and choices that a theorist must make. My hope is that this chapter has helped to identify some of the key considerations. The mere fact that a theory of human rights offers a political conception is not among the determinative factors.

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