

Human rights, interests and duties



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ABSTRACT

This dissertation focuses on the concept of human rights, and in particular on how we should understand the interests protected by human rights and human rights' correlative duties. The work consists of three papers.

Human rights and interests

In the first paper I consider which conditions interests have to satisfy in order to be protected by human rights. I call these the Interest Conditions. I argue that we need to distinguish between two kinds of Interest Conditions: qualitative and quantitative ones. This means that we need to consider both which type of interests, and how much of these interests, human rights protect. I then consider the content of these conditions.

Political accounts and fidelity to human rights practice

In recent years, considerable attention has been received by so called "political accounts" of the analysis of human rights. According to these theories, one of the distinctive features of human rights is that they play a certain political function. In particular, a large number of political accounts hold that human rights have political correlative duties. I call this thesis 'Political Duties'. Political Duties has been defended on the grounds of the desideratum of fidelity, according to which the analysis of human rights ought to be faithful to human rights practice. I consider two ways of interpreting this desideratum and the corresponding versions of the argument in support of Political Duties. I argue that neither version successfully supports the thesis.

The universal scope of positive duties correlative to human rights

In the third paper I focus on duties correlative to human rights. We can distinguish between two different kinds of duties: negative and positive ones. Negative duties are duties not to perform an action, while positive duties are duties to perform an action. I focus on the latter and, in particular, I concentrate on the question of their scope—that is, on understanding who holds them. I defend a refinement of the thesis that all individuals hold positive duties correlative to human rights, which I call the Universal Scope Thesis.

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INTRODUCTION

This thesis is a collection of three papers, focusing on different problems in philosophy of human rights. I concentrate, in particular, on the interests protected by human rights and on the duties correlative to human rights.

An inquiry on human rights has many dimensions: it is helpful to distinguish between the analysis of the concept, its justification, and substantive issues concerning these rights. The analysis of human rights tells us how the concept itself should be understood. For instance, should we think of human rights as rights in a strict sense? If so, which analysis of rights should we endorse?

The justification of human rights gives us an explanation of their normative force. Some authors, for example, think that human rights are justified by human status (Nagel 1995; O'Neill 2000, 2005). Other authors rather think that human rights are justified by the importance of the values they protect. For example, James Griffin holds that human rights are justified by the value of normative agency, while Charles Beitz holds they are justified by a variety of urgent interests (Griffin 2008, Beitz 2009).

By substantive questions about human rights I mean issues that cannot be settled only by reference to the analysis or justification of human rights, but rather require engaging with further moral and non-moral facts. Some of these questions concern the content of human rights: for instance, is there a human right to democracy? Or a human right to subsistence? If so, what do these rights entail? Other questions concern the duties correlative to human rights: for example, who holds them?

In this introduction I briefly look at the analysis of human rights, their justification, and substantive questions concerning them. In doing so, I specify the starting assumptions of this thesis. After sketching this framework, I present my three papers, clarify how they fit in the wider area of enquiry, and outline the underlying thread that links them.

The analysis of human rights

Legal vs moral human rights

There are various senses of the term "human rights". Importantly, we can distinguish between legal human rights and moral human rights. The former are rights deriving from the authority of the law, and we can find them listed in a variety of documents, such as the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.¹ Moral human rights are rights deriving from the authority of morality, and consist in a distinct type of moral entitlement. Though legal recognition of these rights is an important way of ensuring their protection, it need not be the only one (Sen 2004).

In this thesis I focus on moral human rights. I do so because, independently of their legal recognition, moral human rights have become a powerful language shared by a large variety of actors across the globe. They are able to mark the special urgency of the issues they refer to, and they are able to do so at both domestic and international level. This makes them an extremely powerful tool in today's ethical life, and it is thus important to investigate the nature of this concept.

Stipulation vs analysis

When focusing on theories providing an account of a normative concept, it is helpful to

¹ For an account of international legal human rights, see Buchanan 2014.

draw a further distinction. On one side, we have accounts that stipulate the meaning of the term. James Griffin, for example, suggests this is the strategy endorsed by Kant when providing an account of natural rights (Griffin 2008: 3). On the other side, we have theories that analyse the concept as it is employed in ethical practice. These theories endorse what I call the desideratum of fidelity, according to which the analysis of human rights should be faithful to human rights practice (Pogge 2002; Beitz 2003, 2009; Cohen 2004; Griffin 2008; Tasioulas 2009; Raz 2010; Valentini 2012a; Barry and Southwood 2011).

I endorse the second type of approach. This is because developing conceptual tools to assess and criticise the practice can help us improve it. If we stipulate the meaning of the concept, then our analysis will be too detached from the practice of human rights to have any authority over it (Beitz 2009, Cohen 2004, Raz 2010). Conversely, embracing the desideratum of fidelity and offering an analysis of the concept as we find it in human rights practice will allow us to assess, criticise and ultimately improve the practice.

Before moving on, let me briefly add some remarks about fidelity. As I said, the desideratum of fidelity holds that the analysis of human rights ought to be faithful to human rights practice. Specifically, I interpret this to mean that the analysis of human rights has to be faithful to our intuitions about the application of the concept.² This is a common requirement in analytical philosophy: we often support, or reject, conceptual analyses on the basis of our intuitions about the application of a concept. Consider, for example, the hedonist analysis of well-being. In order to understand whether this analysis is correct, we consider whether we are willing to agree that a person is happy in all and only the cases in which he experiences pleasure. For example, Nozick's 'experience machine' thought experiment famously asks us to imagine a machine one could plug into for the rest of one's

² I elaborate on the desideratum of fidelity in the second paper of this thesis, "Political accounts and fidelity to human rights practice". I also consider, and argue against, an alternative way of interpreting this desideratum.

life, to enjoy experiences of whatever kind one thought most valuable or pleasurable (Nozick 1974). If we are not willing to agree that plugging into the machine would lead to a happy life, then we have a counter-example to the hedonistic analysis of happiness. This is of course only one of many possible examples, and philosophers often employ intuitions about the application of a concept in order to defend, or challenge, conceptual analyses.

There is, however, a problem to consider. The concept of human rights suffers from a high level of indeterminacy—we often lack precise intuitions on, or disagree about, the application of the concept (Griffin 2008, Raz 2010). One of the reasons for this indeterminacy is the problem of proliferation. Human rights language is extremely powerful and this gives agents a strong incentive to express their claims and concerns in these terms. While this has empowered many individuals and groups, it has also lead to a rapid increase in the use of human rights language, which has made the concept more indeterminate.

One might then wonder whether indeterminacy should be considered a reason to reject fidelity as a desideratum for the analysis of human rights. I do not think this is the case. First of all, determinacy is of course a matter of degree, and the fact that the concept is partly indeterminate does not mean it is completely so. Indeed, the authors who stress its indeterminacy also go on to offer analyses of the concept, and this would not be possible were the term "human rights" completely criterionless (Griffin 2008, Raz 2010). Secondly, lack of precise intuitions on, or disagreement about, the application of a concept is not uncommon even when we consider more "established" concepts.³ Thirdly, we do have intuitions about typical cases, so we can reason starting from those. For instance, torture is a

³ For instance, Gallie notoriously argues that some concepts are necessarily object of competing analyses: they are essentially contested (Gallie 1955). Essentially contested concepts are appraisive and complex: they concern a valuable achievement, which depends on a variety of different elements. Explanations of why the achievement is valuable make reference to these elements, which disputants weight differently. Gallie suggests that political concepts such as democracy or social justice are aptly described as essentially contested.

typical case of human right violation. A conceptual thesis that did not take this to be a human right violation would fail to provide an adequate account of the concept. Fourthly, it is useful to make our intuitions explicit and map them out. Finding the criteria guiding our intuitions might, in turn, help us make the concept of human rights more determinate.

When addressing the analysis of human rights, I mainly focus on the desideratum of fidelity, trying to spell out and systematise our intuitions about the application of the concept. This is because, for the reasons outlined above, I take fidelity to be an especially important desideratum: I thus believe that it should provide the basis for an overall analysis of the concept. Note, however, that fidelity is of course only one of the desiderata for the analysis of human rights. For instance, we might also think that the analysis of human rights should cohere with correct normative principles: Griffin, for example, holds that human rights should "fit into the best ethics that we can establish" (Griffin, 2008: 2). Though I mainly focus on fidelity, I will, at various points in my discussion, point out how other desiderata might influence the analysis of the concept.

Human rights as rights in a strict sense vs human rights as rights in a loose sense

Another question one needs to address when offering an analysis of human rights is whether they are to be understood as rights in a strict sense. Opinions on this matter differ. Some authors think of human rights as rights in a strict sense: Tasioulas, for instance, holds that human rights are moral rights possessed by all human beings simply in virtue of their humanity (Tasioulas 2012). Similarly, Raz holds that human rights are a subset of moral rights, and specifically, rights whose violation is a reason for action against states (Raz 2010).

Other authors disagree. For instance, Nickel holds that we should avoid putting a lot of weight on whether human rights are rights strictly speaking (Nickel 2014).⁴

I start from the assumption that human rights are rights in a strict sense. This is because I agree with Tasioulas that taking human rights to be rights is necessary to make sense of the role they play in moral reasoning (Tasioulas 2012). The concept of right, in particular, captures two important features which arguably characterise human rights. First, the existence of a right entails the existence of correlative duties: violating a right does not simply amount to failing to respect or promote a value, but it rather has a stronger moral implication—it implies that a duty has been breached. Secondly, the violation of a right entails that someone has been wronged: violators are required to compensate, or apologise to, the victim.

Interest accounts of rights vs Will accounts of rights

If one takes human rights to be rights in a strict sense, one needs to specify which analysis of rights one endorses. There are two main theories of the function of rights: the will theory and the interest theory.⁵ On one side, will theorists assert that the function of a right is to give its holder control over another's duty. Interest theorists, on the other side, maintain that the function of a right is to protect the right-holder's interests (Wenar 2011).

The dispute between will and interest theories is a complex one and it would be unreasonable to try and assess these two theories in the space of this dissertation. However, it is helpful to outline some brief considerations explaining my starting points. The will account excludes from the set of possible right-holders all people who lack the ability to

⁴ For a discussion of other authors who do not put much weight on human rights being rights in a strict sense, see Tasioulas 2012.

⁵ For a defense of the first analysis, see Hart 1982; Wellman 1985, and Steiner 1994; for a defense of the second analysis, see Kramer 2001 and Raz 1986.

assert or waive the claim to the performance of a duty. This means, for example, that infants, severely mentally disabled and comatose people cannot have rights. Accordingly, severe harms against these individuals would not count as human rights violations. However, the language of human right is often employed to call for the protection of these groups.⁶ Excluding them from the set of human right-holders would then fail to satisfy the desideratum of fidelity.

This suggests we should endorse an interest account of human rights. Yet, one might wonder if human rights only protect interests. For example, Allen Buchanan (2014) has put forward a disjunctive account according to which human rights protect the opportunity for a minimally good life or equal status (and thus require non-discrimination).⁷ Note that Buchanan's account provides an analysis of legal, rather than moral, human rights. However, it also outlines a *prima facie* plausible thesis about the analysis of moral human rights: for instance, one might think that discrimination on the basis of race always constitutes a human right violation, regardless of whether, or not, it sets back interests which would otherwise be protected by human rights.⁸ If we endorse this account, or a similarly structured one, the interest theory of rights is too constrictive an analysis. For the purpose of this thesis, I am neutral with respect to whether human rights only protect interests, or, rather, also protect other individual values (including, for instance, equal status).⁹ I will thus endorse a wider teleological account of rights, according to which the function of a right is to protect the right-holder's values.

⁶ For more details, see "Human rights and interests", the first paper in this collection.

⁷ For another mixed account see Sen 2004

⁸ As I argue in "Human rights and interests" it is plausible to think that human rights only protect very important interests, more important than the ones protected by rights *simpliciter*.

⁹ Note that I am here focusing on the analysis of human rights, and I consider equal status in a teleological framework, as a value that can be protected. This is different from taking status to explain the justification of human rights. I consider status in this latter capacity below.

Correlative duties

The existence of a right requires the existence of correlative duties. In turn, the existence of correlative duties requires the satisfaction of certain conditions. Some of these conditions are conditions on the existence of duties in general. A relatively uncontroversial condition on the existence of a duty is feasibility: as the renowned dictum tells us, "ought" implies "can"—one cannot have a duty to do something one is not able to do.¹⁰ For example, I cannot have a duty to provide someone with a medicine for an incurable illness. Another relatively uncontroversial condition on the existence of a duty is the reasonableness of the cost associated with upholding it. It is plausible to require that I provide others with assistance if I can do so at the cost of some luxury goods I possess, but less so if I can only do so at the cost of my arm, let alone my own life. Many thus think that there is a threshold of "reasonable cost" limiting the existence of duties, such that one does not have a duty if the cost is higher than the threshold.¹¹

A much more controversial question concerns the claimability of rights. A right is claimable if and only if the holders and content of its correlative duties are specified. Onora O'Neill has famously argued that rights must be claimable. We can distinguish between two different kinds of duties: negative and positive ones. Negative duties are duties not to perform an action, while positive duties are duties to perform an action. Starting from the assumption that rights must be claimable, O'Neill has outlined an influential argument to the effect that positive duties cannot be correlative to human rights. She starts from the assumption that human rights are rights held by each human being simply in virtue of being human.¹² She also assumes that the holders and content of negative duties correlative to

¹⁰ The "ought implies can" dictum is not unchallenged (see for instance, the counter example in Sinnott Armstrong 1984). I shall, however, take it for granted for the purpose of this thesis.

¹¹ The place of such a threshold is highly controversial. See Sonderholm 2013. I go back to this point in "The universal scope of positive duties correlative to human rights".

¹² In assuming that human rights are rights held "in virtue of being human", O'Neill endorses an orthodox

human rights are fully specified, in that everyone is under the duty not to torture, not to enslave, etc. everyone else all the time. The same is not true of positive duties: it is generally assumed that one only ought to provide education, nutrition or shelter to some people some of the time. It is possible, the argument goes, to specify positive duties: in particular, institutions can be used to settle a way of discharging the duties and assigning specific beneficiaries to specific duty-holders. However, the relevant rights would then be held in virtue of being part of certain institutions. Since these rights would not be held by each human being simply in virtue of being human, O'Neill argues, they would not be *human* rights (O'Neill 2005).

I do not take claimability to be an existence condition for rights. To begin with, it is important to stress that we need to distinguish claimability from feasibility (Tasioulas 2007). As I said, the feasibility of correlative duties is an existence condition for rights. Feasibility, however, does not entail claimability: sometimes we can tell that a duty is feasible even though it lacks specified duty-holders and content. This could be, for instance, because several agents can fulfil the duty in different manners. But once the distinction is drawn, it is unclear why the fact that correlative duties lack a determinate duty-holder and content should be a problem for the existence of a right. It seems more plausible to think that the specification of the holder and content of the duties is a further matter, one that can be settled after we have established whether a right exists.¹³

Finally, some think that the duties correlative to human rights are political, in the sense that they are held by political agents or require the performance of political actions. This thesis is

account of the analysis of human rights. I go back to this point below.

¹³ For other arguments against the thesis that claimability, as conceived by O'Neill, is an existence conditions of rights see Ashford 2006, Griffin 2008, Etinson 2013.

defended by political accounts of the analysis of human rights, which are often presented in contrast to orthodox (or traditional) accounts. I now turn to this further distinction.

Political and orthodox accounts (analysis)

The dispute between political and orthodox theories is, arguably, the debate which has received most attention in philosophy of human rights. It is, however, unclear how to best characterise the debate, and it is helpful to distinguish between the different points of contention that are often addressed under this umbrella.

When considering political accounts, we need to draw a distinction between theories that are political with respect to the analysis of the concept of human rights and those that are political with respect to human rights' justification. I focus on the former here and I will consider the latter below. Political accounts of the analysis of human rights hold that one of the distinctive features of human rights consists in playing a certain political function. Most of these political functions are characterised in terms of the duties entailed by human rights: human rights are said to entail political duties, by which I mean duties for political agents (such as states or peoples) or duties to perform political actions (such as intervention against, or support of, states).¹⁴ For example, Beitz holds that human rights provide duties held in the first instance by states and, if those are not fulfilled, provide reasons to show international concern, which includes interference in states' affairs, but also offering states various forms of support (Beitz 2009). Sometimes the political function is characterised in

¹⁴ I here use the term "people" in the way Rawls employs it, i.e. to refer to a group of individuals ruled by a common government, bound together by common sympathies, and firmly attached to a common conception of right and justice (Rawls 1999). The thesis that most political accounts hold that human rights have political correlative duties is further explored, and defended, in "Political accounts and fidelity to human rights practice".

terms of constraints: specifically, it is suggested that human rights provide constraints on legitimate political authority (Rawls 1999, Cohen 2004).¹⁵

Orthodox (or traditional) analyses of human rights take them to be rights human beings hold "simply in virtue of their humanity" (Simmons 2001: 185). The clause "simply in virtue of their humanity" is interpreted in different ways. For instance, Griffin (2008) interprets it as holding that human rights are rights grounded in the distinctive feature of human beings, which he takes to be normative agency, i.e. the capacity to form and try to realise pictures of a good life. Tasioulas, on the other side, takes the clause to exclude certain types of considerations from the set of conditions determining the existence, scope and content of human rights—for instance, he holds that human rights are not conditional on right-holders' relationships, achievements or memberships (Tasioulas 2012).

It should be stressed that the theses that make an account "political" or "orthodox" are often presented as necessary, but not sufficient, conditions for the existence of a human right. For instance, some theorists who endorse political accounts also hold that a right is a human right only if it protects a certain class of interests (Pogge 2002, Beitz 2009). On the other side, some orthodox accounts also hold that a right is a human right only if it is universal (Tasioulas 2012).

The two accounts need not be mutually exclusive. For instance, assume that we interpret the orthodox claim that human rights are held "simply in virtue of our humanity" as a thesis about the grounds of human rights. Assume further that we interpret the political claim that "human right are rights that play a certain political function" as holding that human rights have political correlative duties. In this case, the two accounts can be embraced together

¹⁵ For a similar taxonomy of political analyses of human rights, see Tasioulas 2012.

with no risk of contradiction.¹⁶ However, the two approaches can also be interpreted in ways that make them incompatible. For instance, assume we interpret the orthodox claim that human rights are held "simply in virtue of our humanity" as claiming that human rights are rights whose existence is not conditional on right-holders' relationships. Assume further that we interpret the political claim that "human right are rights that play a certain political function" as holding that human rights ground duties on political agents exercising authority over the right-holder. These two accounts are incompatible, since the latter asserts, and the former denies, that a right-holder needs to stand in a political relationship in order to possess a human right. Moreover, proponents of orthodox and political accounts generally reject the conditions set by the other type of strategy. For instance, Beitz (2008) stresses that human rights are not rights we have in virtue of being human, while Griffin (2008) and Tasioulas (2012) both reject the claim that political roles should be included in the analysis of human rights.

Let me briefly summarise the discussion so far. We can distinguish between moral and legal human rights: the former are rights deriving from the authority of morality, the latter are rights deriving from the authority of law. In this thesis, I focus on the former. We can distinguish between theories offering an analysis of the concept and those stipulating its meaning, and I endorse the former approach. I also assume that human rights are rights in a strict sense, and that the function of a right is to protect the right-holder's values. I am neutral with respect to whether these values only include the right-holder's interests, or also other values, such as equal status. The existence of a right requires the existence of correlative duties and, in turn, the existence of correlative duties requires that certain other conditions are satisfied. I assume that these conditions include feasibility and reasonableness of the cost, but not claimability. Finally, we can distinguish between political and orthodox

¹⁶ For a discussion of the compatibility of political and orthodox accounts, see Gilabert 2011 and Etinson and Liao 2012

accounts of the analysis of human rights: the former hold that one of the distinctive features of human rights consists in playing a certain political function, while the latter hold that human rights are rights which human beings hold "simply in virtue of their humanity".

The justification of human rights

Political vs orthodox accounts (justification)

As I said, an account of human rights can be political in two ways: with respect to the analysis of the concept, and with respect to its justification. After addressing the former type of theory above, let me now consider the latter. Political accounts of the justification of human rights take these rights to have a narrowly political justification, rather than a more broadly moral one. In contrast, orthodox accounts of the justification of human rights take human rights to be justified by "ordinary moral reasoning" (Tasioulas 2012).

The most influential account of political justification is of course John Rawls' political liberalism. Rawls' political liberalism holds that political principles should not be justified on the basis of controversial doctrines about the nature of the good life, but rather only on the basis of principles which are, or can be, object of an overlapping consensus among reasonable citizens. This is because, Rawls argues, we have to accept the existence of reasonable pluralism: differences in opinions about what is the correct conception of the good, that are not explained by irrationality or bad faith, but rather so called "burdens of judgment", constraints on our ability to formulate beliefs about moral, philosophical and religious facts. These include, among others, the complex and conflicting nature of empirical evidence, the vagueness of concepts, and the effect that life experience has on how we assess evidence and weigh values (Rawls 1993). Reasonable people, the argument goes, recognise the burdens of judgment and, accordingly, accept that political principles should not be based on controversial metaphysical and comprehensive doctrines. Rather, the

principles should be justified on the basis of the values implicit in the culture shared by participants to the political community. Principles of justice are then presented as a "module" which can be the object of an overlapping consensus from different comprehensive doctrines. Various authors have endorsed this strategy to justify human rights (Rawls 1999; Cohen 2004; Nussbaum 2001, 2003, 2006, 2011; Peter 2013).

I set aside political justifications of human rights, and endorse an orthodox approach. It is not be possible to defend this choice in detail in the space of this introduction, but let me outline some reasons why I do so. First, I believe Rawlsian political liberalism falls prey to the asymmetry objection. According to this objection, reasonable disagreement obtains both with respect to the good life and principles of justice. Yet political liberalism holds it is permissible to base political principles on the latter, but not the former. This asymmetry, the objection runs, is ungrounded (see, for instance, Sandel 1994, Caney 1995, Copp 1995).¹⁷ Second, it is unclear that political liberalism can actually do without a commitment to controversial epistemic doctrines, since it has to rely on the assumption that the correct theory of justice is the theory that enables the achievement of consensus-based stability (Raz 1990).

Status justification vs Contractualist justification vs Instrumental justification

There are different ways of providing an orthodox account of the justification of human rights. Just like in the case of the justification of moral rights, we can broadly distinguish three different approaches to this issue: status theories, instrumental theories and contractualist theories.

¹⁷ For a reply to the asymmetry objection see Quong 2010. For a criticism of this reply see Fowler and Stemplowska 2014.

Status theories take rights (and human rights) to be justified by the right-holder's moral status. Under this account, the moral status of the right-holder requires duty-holders to treat and refrain from treating him in certain ways. The nature of the right-holder therefore directly justifies the rights. This type of account is inspired by the Kantian tradition and has recently been endorsed by theorists such as Robert Nozick (1974) and Francis Kamm (2007). With respect to human rights more specifically, the status justification is endorsed by theorists including Thomas Nagel (1995) and Onora O'Neill (2000, 2005).

Contractualist theories take rights to be justified in virtue of the fact that they would be chosen by idealised agents having to agree about the principles regulating their relationships. For instance, if we endorse Scanlon's contractualism, we will think that an act is wrong if it is forbidden by a principle that could not be reasonably rejected as a "basis for informed, unforced, general agreement" (Scanlon 1998: 153). One can then argue that principles requiring the protection of (some) rights could in fact not be reasonably rejected. On these lines, Scanlon holds that reasonable individuals "have reason to insist [...] on basic rights, which give them important forms of protection and control over their own lives" (Scanlon 2003: 4).

Instrumental theories take rights to be justified by the consequences they bring about. Under this type of account we start by identifying a valuable state of affairs; we then argue that assigning rights to individuals is the best way to achieve such a state of affairs; from this, we can conclude that we should assign rights to individuals. Rights are thus justified indirectly, as a means to the achievement of a valuable state of affairs. There are of course different types of states of affairs that rights can bring about. J.S. Mill notoriously defended the view that rights are justified as a means to bring about the greatest aggregate utility (Mill 1895). However, the state of affairs brought about by rights need not be an overall

aggregation: it can also be the protection of a certain distribution of individualistic values. On these lines, for example, Griffin (2008) holds that human rights are justified by the value of personhood, while Beitz (2009) holds they are justified by a variety of urgent interests.

I am neutral between different accounts of the justification of human rights. However, status accounts of the justification of rights traditionally reject the thesis that rights protect interests, and rather endorse a will account of the analysis of rights: on this account "rights are a response to the good (worth, importance, dignity) of the person and/or his sovereignty over himself, rather than a response to what is good for the person (what is in his interests)" (Kamm 2002: 487). As I said, I assume that human rights protect the interests of the right-holders (though I also leave space for the possibility that they might protect other values). It might then seem more natural to couple the analysis I endorse with a contractualist or instrumental account of the justification of human right. However, I see no reason why, conceptually, one might not hold both that human rights protect interests and that they are justified by human status (rather than instrumentally, or as a result of an idealized agreement).¹⁸

Substantive questions

Recall that, by substantive questions about human rights I mean issues about human rights that cannot be settled only on the basis of their analysis or justification, but rather require engaging with further moral and non-moral facts.

Some of these questions concern the content of human rights. An example of this type of debate is the dispute on whether or not a human right to democracy exists. For instance, Joshua Cohen (2006) has famously argued against the existence of a human right to

¹⁸ This will, at least in part, depend on how we interpret the notion of status: whether, for instance, we focus on someone's status as a decision-maker or as an individual whose interests are intrinsically morally important.

democracy. He takes human rights to protect the necessary conditions for membership. He holds that these conditions do not include participation in a democratic government: democracy requires equal political participation, and one can be treated as a member even if such a demanding level of political participation is not achieved.¹⁹ Other theorists, however, argue in favour of a human right to democracy. Thomas Christiano (2011), for instance, makes an instrumental argument in favour of the human right to democracy, and holds that democracies are normally necessary and reliable ways to ensure the protection of what he calls rights to personal integrity, including the right not to be tortured, arbitrarily imprisoned, or murdered.²⁰

Note that, in settling this dispute, much depends on the truth of the empirical claim that democracies are normally necessary and reliable ways to protect certain basic human rights. If that claim were true, then many would agree that a human right to democracy does indeed exist. Cohen himself, for example, points out that "if democracy is a requirement for avoiding unacceptable circumstances, we do have a case for it" (Cohen 2006: 258). However, many doubt that democracy is indeed necessary to ensure the protection of basic human rights, and rather suggest that this role is played by other political arrangements, such as self-determination or the rule of law (Cohen 2006, Beitz 2009).

Other substantive questions about human rights concern their correlative duties. This type of question might focus, for example, on who holds the duties correlative to human rights, and why.

¹⁹ For other arguments against the human rights to democracy, see Beitz 2009, Rawls 1999, Reidy 2012, Peter 2013.

²⁰ For other arguments in support to the human right to democracy, see Buchanan 2004, Gould 2004, Gilabert 2012.

This thesis

Let me now introduce the three papers that make up this thesis.

Human rights and interests

The first paper focuses on the analysis of human rights. In particular, it investigates which interests are protected by human rights. I assume that, whether or not human rights protect other values, they protect a certain class of interests. However, it is plausible to think that not all interests are protected by human rights. It would seem strange, for instance, to say that an interest in not being pinched is protected by a human right. Conversely, an interest in not being tortured is plausibly the kind of interest that is protected by this type of right. Which interests, then, do human rights protect? This is the question I address in the first paper of this collection, "Human rights and interests".

Specifically, the paper asks which conditions interests have to satisfy in order to be protected by human rights. I call these the Interest Conditions. I argue that we need to distinguish two kinds of Interest Conditions: qualitative and quantitative ones. This means that we need to consider both which type of interests, and how much of these interests, human rights protect. I then consider the content of these conditions.

Political accounts and fidelity to human rights practice

The second paper also focuses on the analysis of human rights, but it concentrates on correlative duties. Many political accounts of the analysis of human rights hold that human rights have political correlative duties. I call this thesis 'Political Duties'. Political Duties has been defended on the grounds of the desideratum of fidelity. I consider two ways of interpreting this desideratum. According to the first interpretation, the analysis of human rights needs to be faithful to the way the concept is employed by anyone who uses it (Pogge

2002, Valentini 2012a, Barry and Southwood 2011). The second interpretation narrows down the focus: instead of looking at the way in which the concept is employed in general, it focuses on how it is employed, in particular, by participants in the political practice of human rights (Raz 2010, Beitz 2009). I assess these two readings and the corresponding versions of the arguments in support of Political Duties. I argue that neither version successfully supports the thesis.

The universal scope of positive duties correlative to human rights

The third paper of this thesis also focuses on duties correlative to human rights, but it concentrates on a substantive question: who holds the positive duties correlative to human rights. Recall that we can distinguish between two different kinds of duties: negative and positive ones. Negative duties are duties not to perform an action, while positive duties are duties to perform an action. I focus on positive duties correlative to human rights. In particular, I focus on the question of their scope—that is, on understanding who holds them. I defend a refinement of the thesis that all individuals hold positive duties correlative to human rights, which I call the Universal Scope Thesis. I provide an argument by analogy in its support, and outline three objections to the argument. I then lay out the notion of aggregative duties, whereby there are duties that can only be understood when we focus on the aggregate effect of the actions and omissions of different agents. I argue that focusing on aggregative duties allows us to meet the objections against the Universal Scope Thesis and, in the process of doing so, I specify the thesis.

While addressing different topics, these three papers are connected by an underlying thread: they are all motivated by, so to speak, practical concerns. As I said, human rights play a very important role in current ethical life. They provide a common language and are able to mark the special importance of the issues they refers to: holding that something is a human right

identifies it as an extremely strong requirement, one that cannot easily be outweighed. Moreover, the language of human rights is employed in both national and international contexts, by a large variety of actors. Properly understanding this concept can thus help us better communicate extremely important ethical issues in many different circumstances.

This insight leads to two, related, thoughts. The first is that we need to ensure that human rights language does in fact retain its power. In order to do so, it is especially important to address the problem of human rights indeterminacy— that fact that we often lack intuitions on, or we disagree about, the application of the concept. An important aspect of such indeterminacy concerns the interests protected by human rights. For instance, the Universal Declaration of Human Rights recognises a human right to periodic holidays with pay (Art.24), and some hold that there is a human right to access to the internet (Internet Society 2012). Yet, others doubt that these are genuine human rights (Tasioulas 2009, Cerf 2012). As I said above, however, indeterminacy should not lead us to discard completely our intuitions about the application of the concept. Rather, we should make our intuitions explicit and try to find the criteria guiding them. The hope is that doing so will help us make the concept of human rights more determinate, at least in one respect. This is the thought motivating "Human rights and interests".

The second practical concern underlying this collection is the following. Many people live in dire conditions, even though those are perfectly preventable. Just to mention some of the well-known figures, more than six million children die every year from completely preventable causes; every 3.6 seconds another person dies of starvation and more than 2.6 billion people lack basic sanitation (UN Millennium Project 2015). Around 36 million people are currently trapped in modern slavery (Walk Free Foundation 2015). As I said, the language of human rights is extremely powerful and resonates with a variety of different

actors. Framing our obligations to protect very important interests, such as health and freedom from slavery, in terms of human rights can be a very effective way of communicating the importance of the duties to protect these interests. We should thus employ this language to motivate individuals to act. In order to employ the language of human rights to motivate duty-holders, however, we need to understand the "reach" of this language: which actors can be assigned duties on the basis of human rights and which actions can human rights demand or forbid. This is the thought motivating the second and third paper.

As I said, the second paper, "Political accounts and fidelity to human rights practice", focuses on Political Duties, the claim that the duties correlative to human rights are political. This thesis significantly restricts the practical significance of human right language. If it were true, the "reach" of human right language would be rather narrow: it would only concern duties held by political agents and duties to perform political actions.²¹ This leaves out a wide variety of agents who might be able to protect interests such as freedom from pain, or health, and ways in which these interests can be protected. If true, then, Political Duties would have very important practical implications. However, I argue, the arguments presented by supporters of Political Duties do not give us conclusive reasons to endorse the thesis, and we thus have no reason to think that the "reach" of human rights should be so restricted.

In the third paper, "The universal scope of positive duties correlative to human rights", I defend a refinement of the thesis that all individuals hold positive duties correlative to

²¹ To be precise, this depends on the interpretation of Political Duties endorsed. We can distinguish two interpretations of this thesis: one, according to which human rights *only* have political duties; another, according to which they *distinctively* have political duties. The former, however, is the most common interpretation of the thesis. I expand on this distinction in "Political accounts and the fidelity to human rights practice".

human rights, which I call the Universal Scope Thesis. The upshot of this thesis is that each one of us has a duty to contribute to upholding human rights through a variety of actions, such as donating, volunteering, voting, and so on. This has two important practical implications: first of all, no one is exempt from addressing the issue—the question that agents need to ask themselves is thus not "Is it my duty to do something?" but rather "How can I best discharge this duty?".²² Secondly, this way of framing the problem helps us stress the moral importance of actions such as donating, volunteering, or voting. For instance, it suggests that donating and volunteering can be strong obligations correlative to human rights, when they protect interests such as health, education, freedom from pain and so on.

To summarise, in this thesis I focus on the concept of moral human rights. I assume that human rights are rights and I assume that the function of a right is to protect the right-holder's values. I leave open, however, whether these values should only include the right-holder's interests, or also other values (such as the right-holder's equal status). I assume that correlative duties exist only if certain conditions are satisfied, and that these conditions include feasibility and reasonableness of the cost, but not claimability. I endorse an orthodox account of the justification of human rights. I tackle three questions, all motivated by, so to speak, practical concerns: first, which interests are protected by human rights; second, whether fidelity to human rights practice supports the claim that duties correlative to human rights are political; third, who holds the positive duties correlative to human rights. These questions are addressed, in turn, in the papers that follow.

²² To be precise, the refined version of the Universal Scope Thesis holds that individuals are exempt from the responsibility in two cases: if it would be unfeasible or unreasonably costly for them to contribute. I elaborate on this in the paper.

HUMAN RIGHTS AND INTERESTS

Most accounts of human rights take (at least some of) them to protect a certain class of interests. However, it is plausible to think that not all interests are protected by human rights. It would seem strange, for instance, to say that an interest in not being pinched is protected by a human right. Conversely, an interest in not being tortured is plausibly the kind of interest that is protected by this type of right. In this paper I consider which conditions interests have to satisfy in order to be protected by human rights. I call these the Interest Conditions.

I start by explaining the relevance of the Interest Conditions and laying out my initial assumptions (Part I). I then argue that we need to distinguish two kinds of Interest Conditions: qualitative and quantitative ones. This means that we need to consider both which type of interests, and how much of these interests, human rights protect (Part II). I then move on to consider the content of these conditions. With respect to qualitative conditions, I argue that human rights protect discrete interests, that these interests should be understood in terms of objective goods, and that human rights protect the possession of (rather than the opportunity for) such goods (Part III). With respect to the quantitative conditions, I argue for a differentiated account: first I distinguish between different types of quantitative thresholds; I then hold that different quantitative thresholds are relevant for different qualitative interests (Part IV). Part V concludes.

Part I: The Interest Conditions

I assume an interest is something we have a stake in, something from which we stand to lose or gain (Feinberg 1984). The ultimate measure of someone's interest is his well-being: what makes someone's life go well, what makes it valuable for who lives it (Scanlon 1998,

Griffin 1986). There are two ways in which we can gain from something: either directly or indirectly. Hence, an interest can be either constitutive of one's well-being, or instrumental to it.

The Interest Conditions are conditions which interests need to satisfy in order to be protected by human rights. Many theorists have provided their own account of what I am here calling the Interest Conditions. For example Griffin (2008) holds that human rights protect normative agency, while Sen (2004) holds that human rights protect capabilities which satisfy threshold conditions of social influenceability and special importance. Nussbaum (2001, 2003, 2006, 2011) argues that human rights protect the capabilities entailed by the idea of a life worthy of human dignity, while Miller (2007, 2012, 2014) holds that human rights protect human needs.²³ In this paper I do not provide an in-depth assessment of those theories. Rather, I defend a set of theses about the Interest Conditions and argue why they are to be preferred to the alternatives.

Interest Conditions are the conditions interests have to satisfy to be protected by *human* rights. Therefore, the claim that something is an Interest Condition, in the sense employed here, does not amount to saying that it is a condition that interests have to satisfy in order to be protected by a moral right *simpliciter*. Plausibly, the conditions that interests have to satisfy in order to be protected by moral rights *simpliciter* are less stringent than the ones they have to satisfy in order to be protected by human rights. Sometimes this is because interests have to satisfy additional conditions in order to be protected by human rights (see Part III

²³ One might worry that Griffin's account is not adequately described as defending a set of Interest Conditions, since Griffin describes agency as a status. He also seems to contrast agency with well-being, when he writes that we "value our status as agents especially highly, often more highly even than our happiness" (2001: 4). Griffin, however, also claims that autonomy, minimum provision and liberty are "elements of a good life [...] features that characteristically enhance the quality of life" (2008: 38). He is thus best interpreted as taking the relevant status as a component of the good life. The above claim can thus be interpreted as claiming that we might value this specific component of our well-being more than other components. Under this interpretation, then, Griffin does defend a set of Interest Conditions.

below), sometimes it is because the conditions are of the same type, but they differ as a matter of degree (see Part II and IV). I will highlight how the former might differ from the latter below, at different junctures of the argument.

The Interest Conditions are relevant to different accounts of human rights. In particular, the need to outline these conditions cuts across the debate between orthodox and political accounts. Orthodox (or traditional) accounts of the analysis of human rights hold that human rights are rights human beings hold "simply in virtue of their humanity" (Simmons 2001: 185). Political accounts of the analysis of human rights hold that human rights are rights that play a certain political function.²⁴ The Interest Conditions are relevant to both orthodox and political accounts and both political and orthodox theorists have presented formulations of the Interest Conditions. On the political side, for instance, Beitz takes human rights to protect what he calls "urgent interests", that is interests 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: 110). Pogge (2002), another prominent political account theorist, takes human rights to protect access to a minimally adequate share of the goods needed for developing or realising a conception of a worthwhile life. On the other side, the accounts presented by Griffin (2008) and Sen (2004), which I mentioned above, are examples of orthodox accounts.

Satisfying the Interest Conditions is not a sufficient condition for the existence of a human right. This is because, as I pointed out in the thesis introduction, the existence of a right requires the existence of correlative duties. In turn, the existence of correlative duties requires that certain other conditions are satisfied. To begin with, there are conditions which

²⁴ For a more detailed account of the distinction between orthodox and political accounts, see the thesis introduction.

hold for duties in general. Some of them are generally agreed upon, such as requirements of feasibility, or cost: according to these conditions a duty only exists if it is feasible and reasonably costly. Other conditions, however, are more controversial. For example O'Neill (2000, 2005) famously holds that in order to be correlative to a right a duty ought to be claimable, that is, have specified holder and content. Other authors also hold that, in the case of human rights, duties need to satisfy some further conditions: as we have seen, for instance, some defenders of political accounts think that the duties correlative to human rights are held by political agents or require political actions. Call 'Duty Conditions' the conditions that a duty has to satisfy in order to be correlative to human rights. For the purpose of this paper I set the Duty Condition aside, and only focus on interests.²⁵

The satisfaction of the Interest Conditions need not be a necessary condition for the existence of a human right, either. For example, Allen Buchanan (2014) holds a disjunctive account according to which human rights protect equal status (and thus non-discrimination) or the opportunity for a minimally good life.²⁶ If we endorse this account, or a similarly structured one, the satisfaction of Interest Conditions is not necessary for the existence of human rights. Yet, even for disjunctive accounts, Interest Conditions are part of the relevant set of necessary and sufficient conditions.

This is not to say that Interest Conditions will be relevant to all accounts of human rights. Some accounts hold that human rights do not protect interests, but, rather, give right-holders control over other's duties (Nagel 1995). The Interest Conditions are of course not

²⁵ Note that this also leaves open the possibility of there being a further type of conditions, concerning the relationship between interests and duties. For instance, one might think that a human right obtains when a very important interests could be protected at a very low cost. I am not endorsing this type of condition, but simply flashing out the possibility. The Interest Conditions is compatible with there being this further requirement: it is simply silent about this matter.

²⁶ Recall that, as I said in the thesis introduction, Buchanan's account provides an analysis of legal, rather than moral, human rights. I am, however, considering his theory for the purpose of this dissertation in so far as it also provides a *prima facie* plausible thesis about the analysis of moral human rights, and it will be instructive to look at its structure.

relevant for these theories. Still, as we have seen, many of the current theories of human rights do think that human rights protect interests and they thus need to provide an account of the Interest Conditions.

This paper focuses on the analysis of human rights, and explores which interests are protected by these rights. However, one might argue that this question cannot be separated from questions concerning the justification of human rights. This is because, if we want human rights to be valid moral claims, then they need to be justifiable; in turn, this requires that, when we focus on the analysis of human rights, we select interests that can be justifiably protected by these rights.²⁷

This worry is especially pressing if we endorse a political account of the justification of human rights. As I said in the thesis introduction, political accounts take human rights to have a narrowly political justification, rather than a more broadly moral one. The most influential account of political justification is of course John Rawls' political liberalism, according to which political principles should not be based on controversial metaphysical and comprehensive doctrines. Rather, the principles should be justified by reference to the values implicit in the culture shared by participants to the political community. Principles of justice are then presented as a "module" which can be the object of an overlapping consensus from different comprehensive doctrines. A political approach to the justification of human rights would affect the Interest Conditions, since it would require that we specify the interests protected by human rights according to these constraints. However, as I said in the thesis introduction, I do not endorse a political approach to the justification of human rights. I thus do not take the Interest Conditions to be constrained by worries pressed by political liberals.

²⁷ This worry can be grounded in the desideratum I mentioned in the thesis introduction, according to which the analysis of human rights should fit with correct normative principles.

Part II: Qualitative and quantitative Interest Conditions

The first point I want to address concerns the structure of the Interest Conditions. We can distinguish two types of Interest Conditions: qualitative and quantitative ones. Qualitative conditions tell us what type of interests are protected by human rights, while quantitative conditions tell us, so to speak, "how much" of the interest is protected by those rights. The difference is best brought out by examples. Consider the two following accounts: Griffin's account (2008) holds that human rights protect normative agency, while Tasioulas (2010, 2012) holds that human rights protect objective goods. These accounts specify qualitative conditions: they hold that human rights protect certain qualitative interest-types. However, they do not specify quantitative conditions: they do not tell us how much of the interests human rights protect. Consider, now, these further accounts: Nickel (2007) holds that human rights ensure the negative and positive conditions of a minimally good life; Buchanan (2014) holds that (aside from protecting equal status) human rights help to ensure that all have the opportunity to lead a minimally good or decent life; Nussbaum argues that human rights protect a minimal level of capabilities (2001, 2003, 2006, 2011). These accounts specify both qualitative and quantitative conditions: they select a qualitative type of interests protected by human rights—specifically, they focus on capabilities, conditions and opportunities for a good life—but they also specify quantitative conditions: they hold that only a certain amount of the interests is protected by human rights.²⁸ In what follows I argue that Nussbaum, Nickel and Buchanan adopt the right approach: we should specify both qualitative and quantitative Interest Conditions.

To this end, I endorse the following strategy: I start by focusing on the desideratum of fidelity, which I take to be a plausible desideratum for the analysis of human rights; I hold that this desideratum supports two observations about the interests protected by human

²⁸ From now on, I use the term "type" to refer to qualitative types.

rights; I then point out that these observations are, *prima facie*, in tension; however, they can be reconciled if we adopt both qualitative and quantitative Interest Conditions. This, I argue, gives us a reason to specify both kinds of conditions.

As I said in the thesis introduction, according to the desideratum of fidelity the analysis of human rights ought to be faithful to human rights practice. Specifically, I interpret this to mean that the analysis of human rights has to be faithful to our intuitions about the application of the concept. This is a common requirement in analytical philosophy: we often support, or reject, a claim on the basis of our intuitions.²⁹

The desideratum of fidelity supports (among others) the following two observations. The first observation is that human rights protect a wide variety of interests. These seem to include, for instance, the interest in avoiding torture and slavery, the interests in having adequate education and health, the interest in enjoying freedom of expression, and so on. Call this the Scope Observation. The second observation is that human rights only protect important interests. Many agree that human rights provide especially strong moral reasons for action. For example, Nickel writes that human rights norms enjoy "high priority" (Nickel 2007: 70). Griffin holds that "there is a minimalist character to human rights" (Griffin 2008: 53). Since we are assuming that (at least some) human rights protect interests, it is natural to think that the interests protected by human rights are especially important ones. Call this the Importance Observation.

While these observations are independently plausible, they are not easy to reconcile, at least *prima facie*: on one side, the Scope Observation seems to lead to an expansionary account of the interests protected by human rights; on the other, the Importance Observation seems to

²⁹ For some more detail about fidelity, see the thesis introduction. I elaborate further on this desideratum in "Political accounts and fidelity to human rights practice".

require that we narrow down the set of interests protected by those rights. How, then, are we to react to this apparent tension? These two observations, I submit, can be reconciled by adopting both qualitative and quantitative Interest Conditions: in spelling out the qualitative conditions, we can say that human rights protect a wide variety interest-types, thus doing justice to the Scope Observation; at the same time, endorsing quantitative conditions enables us to claim that human rights protect a certain amount of these interests, thus doing justice to the Importance Observation. We can then dissipate the apparent tension between the inflationary and deflationary pressures generated by the two observations, in so far as they turn out to relate to distinct dimensions.

To further support the claim that we should specify both qualitative and quantitative Interest Conditions, let me consider two accounts of the Interest Conditions that do without the quantitative component, and highlight how they struggle to do justice to the two observations outlined above. The accounts I focus on are Tasioulas's and Griffin's. These accounts have been extremely influential, and have elicited a substantial amount of critical literature.³⁰ I do not aim to rehearse the arguments here. Rather, I simply wish to focus on this specific issue, and emphasize how the failure to spell out quantitative Interest Conditions prevents them from doing justice to the two observations outlined above.

Tasioulas takes human rights to protect components of well-being. He endorses an Objective List account of well-being, according to which well-being consists in the possession of certain objective goods, plausibly including autonomy, liberty, accomplishment, knowledge, friendship, and the avoidance of pain (Tasioulas 2010). Under Tasioulas's account, human rights are rights held simply in virtue of one's humanity, as opposed to being held in virtue of some special relationship, achievement, or membership

³⁰ This is especially so for Griffin's account. See Tasioulas 2010; Buchanan 2010; Liao 2010; Crisp, ed. 2014.

(Tasioulas 2010, 2012). Hence, human rights protect the interests that are able to ground rights held simply in virtue of one's humanity.

Tasioulas outlines a set of qualitative Interest Conditions, in so far as he tells us that human rights protect a variety of objective goods. He does not, though, tell us how much of those interests human rights protect, and he thus does not outline a set of quantitative Interest Conditions. This does not mean that he does not specify *any* quantitative interest condition. Recall that we can distinguish between interest conditions for the existence of moral rights *simpliciter* and interest conditions for the existence of human rights in particular (which is what I refer to when I use the term Interest Conditions). Plausibly, he simply takes the quantitative Interest Conditions to be the same as the quantitative conditions for the existence of moral rights *simpliciter*.

How does this account do with respect to the two observations outlined above? The account does well with respect to the Scope Observation. This is because Tasioulas takes human rights to protect objective goods, and he takes objective goods to be numerous and varied: they include interests such as autonomy, knowledge, friendship, the avoidance of pain, etc. The variety of these goods allows him to do justice to the observation that human rights protect a wide variety of interests. The account, though, seems to be unable to do justice to the Importance Observation. This is because there are objective goods that are protected by rights we have in virtue of being human, and yet are not important enough to be protected by human rights. Take, for instance, the interest in not being pinched. Plausibly, this interest justifies a moral right not to be pinched, and we hold such a right in virtue of being human. Yet this right does not seem to be aptly described as a human right, since it simply lacks the strength that characterises human rights.

Tasioulas (2012) insists that the interest in not being pinched is, in fact, protected by a human right. He holds that being subject to physical violence is an important interest, and one that is indeed protected by a human right; not being pinched is a concrete instance of such abstract interest, so it should be protected by human rights. Yet, this simply evades the question. There is no doubt that physical integrity is an interest that can be protected by human rights: what we are asking is whether *all* concrete instances of this qualitative type of interest are protected by human rights. And it seems that this is not the case: there are examples of concrete interests in physical integrity which might be protected by rights, but are not important enough to be protected by *human* rights. Specifically, this is because they do not satisfy the relevant quantitative conditions: the pain inflicted by a pinch is not strong enough to be protected by a human right. The problem with Tasioulas' account, then, is that it fails to recognise that the quantitative conditions that characterise the interests protected by human rights are different from the ones that characterise rights *simpliciter*.

Yet, one might think, we need not specify quantitative conditions in order to do justice to the Importance Observation. We can simply restrict the set of qualitative interest-types protected by human rights, as to find interest-types which are important enough to merit protection by human rights to the fullest extent of their satisfaction. Griffin (2008) proposes an account that might be thought to endorse this type of strategy. He holds that human rights protect normative agency, the capacity to form and try to realise pictures of a good life. This value, he holds, is the source of human dignity. More specifically, he outlines three components of agency: autonomy, which consists in the capacity to choose one's own path through life—that is, not being dominated or controlled by someone or something else; minimum provision, that is the possession of at least certain minimum resources and capabilities needed to realise the choice; and liberty, that is the lack of forceful interference.

Prima facie, this account seems to do well with respect to the Importance Observation, in so far as normative agency is an especially important interest. Note that I say *prima facie*, because further scrutiny will put pressure on this claim, and I will go back to this below. Meanwhile, however, note that Griffin's account fails to do justice to the Scope Observation. Take, for instance, the human right not to be tortured: plausibly, it partly protects our interest in agency, but it seems hard to deny that it *also* protects *other* fundamental interests, such as freedom from pain (Tasioulas, 2010; Liao 2010; Gilibert 2011).

The restrictive nature of Griffin's account is best brought out in cases in which people *cannot* have an interest in normative agency. Consider, for instance, infants, or severely cognitively disabled people, who are not normative agents. Under Griffin's account, they cannot have human rights. Accordingly, severe harms against these individuals would not count as human rights violations: starving an infant or torturing a man in a coma, for example, would not constitute violations of human rights. This is highly problematic, since many share the intuition that these harms are aptly described as human rights violations.³¹ For instance, the Universal Declaration of Human Rights holds that childhood is entitled to special care and assistance (Art.25) and the Convention on the Rights of the Child specifies that the term "child" refers to "every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier"(Art 1), thus including infants in the definition. The language of human rights is also employed to defend the rights of people in a coma: in June 2014, for instance, the European Court of Human Rights ruled that a man in a coma should still receive treatment, overruling a decision made by the French court (Lambert vs France). Independently of the merit of the decision, the ruling shows that a person in a coma is considered to have human rights. The case of individuals who are not

³¹ This problem is parallel to the challenge faced by will theories of rights, which I briefly mentioned in the thesis introduction.

normative agents is an important test-case for an account of the Interest Conditions, in so far as it allows us to assess whether human rights only protect normative agency, or rather a wider variety of interests. The desideratum of fidelity suggests that a wider variety of interests is indeed protected by human rights. This highlights an important shortcoming of Griffin's account.

Above, I claimed that Griffin's account is *prima facie* able to do justice to the Importance Observation. I now want to argue that this claim does not withstand further scrutiny. Griffin's account has been challenged on the basis that it relies on an ambiguity, in so far as it fails to distinguish between two conceptions of normative agency: a thin one, according to which normative agency simply requires intentional action; and a thicker one, according to which normative agency requires the ability to choose from a wide set of options, and a good chance to achieve the goals.³² Griffin has replied by insisting that he endorses neither interpretation of normative agency. He holds that the concept of normative agency captures a determinate threshold, and that the states referred to by the objections fare either below or above the threshold set by the concept of normative agency (Griffin 2010, 2014).

This reply, however, is not compelling. This is because, notwithstanding Griffin's insistence, normative agency is not a threshold concept, but is rather itself a value that admits of degrees. To put it differently: we can point to a threshold level of normative agency, but the concept of normative agency does not itself identify a threshold. To see why this is the case we can focus on Griffin's characterization of the concept. Griffin describes normative agency as the capacity to form and try to realise pictures of a good life; however, it seems plausible to say that such capacity comes in degrees: we are more or less able to form and try to realize pictures of a good life. Moreover, the scalar nature of the concept becomes

³² This charge has been pressed, for instance, by Raz 2010, Tasioulas 2010, Buchanan 2010 and Miller 2014.

apparent when we consider the components of agency: autonomy, material provision and liberty. All of these concepts are scalar: one can enjoy more or less of each. Interestingly, when describing these components, Griffin already includes a quantitative component for material provision: he holds that human rights protect a *minimal* material provision. However, autonomy and liberty must also have a similar qualification if the account is to explain the Importance Observation. For instance, it is not plausible to say that any form of domination or restriction of liberty constitutes a human right violation, otherwise we would be forced to say that even minimal cases of domination and restriction of liberty—like advertisements and having one's way obstructed when trying to catch a bus—would count as human rights violations. In order to have a plausible account, Griffin would need to add a quantitative dimension to the latter components as well, and argue that human rights protect a minimum level of autonomy, material provision and liberty. This suggests that failing to specify quantitative Interest Conditions also makes it difficult to do justice to the Importance Observation by itself (that is, aside from the need to reconcile it with the Scope Observation).

Let me briefly take stock of the argument presented in Part II. I outlined the desideratum of fidelity and argued that it supports the Scope and Importance Observations. I then showed that endorsing both qualitative and quantitative Interest Conditions allows us to do justice to these two observations. I then argued that two prominent accounts of the Interest Conditions that do not specify quantitative conditions are unable to do justice to these observations. This, I submit, shows that there is a strong reason to specify both qualitative and quantitative Interest Conditions.

Part III: Qualitative Interest Conditions

In Part III I focus on qualitative Interest Conditions. I consider four points concerning the qualitative dimension of human rights. First, I assess whether the interests protected by human rights are to be thought of as discrete, or aggregative. Second, I consider whether human rights protect objective goods, or rather needs, or functionings entailed by the idea of a life worthy of human dignity. Third, I focus on the content of concrete interests protected by human rights; I consider whether these interests are determined by the content of the abstract interests protected by these rights, and the factual conditions under which the rights operate; or, rather, whether they reflect the deliberation or attitudes of members of each political community. Fourth, I assess whether human rights protect opportunities for, or rather the possession of, the relevant items.

a. Aggregative vs discrete interests

How then, are we to spell out qualitative Interest Conditions? The first issue I want to consider is whether the interests protected by human rights are to be thought of as discrete interests, or rather as aggregative ones. Tasioulas' account, outlined above, is an example of the first type of account, since he focuses on objective goods such as autonomy, health, knowledge, etc. Nickel and Buchanan's theories are examples of the second type of account, since they focus on the notion of a 'good life'; and thus focus on how the agent is doing overall.

The thesis that human rights protect a (minimally) good life is appealing on the grounds of simplicity: it would be easier only to have to determine one quantitative threshold that picks out the interests protected by human rights, rather than having to specify many of them. However, it would be a mistake to think that human rights protect aggregative interests. I believe we should rather endorse a discrete approach. To argue for a discrete account, I will

adopt the following strategy: I focus on the aggregative account and outline what I take to be the two most plausible interpretations thereof. I then argue that both interpretations are inadequate, and that the shortcomings of the aggregative approach are remedied by the discrete approach.

The first interpretation of the aggregative account is diachronic, that is, it focuses on one's life from the beginning to the end. Under this account, human rights protect the right-holder's interest in having a (minimally) good life overall across time. The second interpretation of the aggregative account is synchronic, that is, it focuses on one's life at each moment. Under this account, human rights protect the right-holder's interest in having a (minimally) good life at each and every point in time.

The reason why the first reading is an inadequate account of the Interest Conditions is best brought out by a thought experiment: consider the case of a man, Bob, who has an extremely good life, which includes health, good nutrition, meaningful relationships, and so on. Imagine that, during a peaceful demonstration, a policeman stops him on the street and inflicts on him serious physical harm. The attack, however, does not leave Bob with permanent injuries and after the incident his life is as good as it used to be. It seems very difficult to argue that Bob's life is suddenly not a minimally good life in the diachronic sense since, notwithstanding the terrible episode, his life seems to be a good one overall. Yet, it is difficult to deny that he has been victim of a human right abuse, in so far as his right not to be treated cruelly and his right to peaceful assembly have been violated. This suggests human rights do not protect a (minimally) good life in the diachronic sense.

Let us then consider the second reading, according to which human rights protect a (minimally) good life at each and every point in time. This reading is stronger than the

previous one, as it does not allow the right-holder to be very badly off at any point in time. For instance, in the scenario outlined above, we could say that Bob's human rights have been violated in so far as, while he was violently attacked, his life failed to be minimally good.

Yet, this account is unable to make sense of the Scope Observation. To see why, let us go back to Bob. Imagine that, instead of being violently attacked, Bob is arbitrarily, but not violently, prevented from taking part in a peaceful protest. He still has, as I said, good health, good nutrition, meaningful relationships and he is (in contrast with the scenario painted above) not in great physical pain.

It seems implausible to say that failing to participate in such a protest would make Bob's life not minimally good at that specific point in time. Yet, it still seems plausible to claim he has been victim of a human right violation, in so far as he was unable to participate in a peaceful demonstration. The second reading of the aggregative account, then, can do justice to our intuitions only in a restricted set of circumstances: namely, those in which the setting back of one interest is sufficient to push the agent below the level of a minimally good life at one specific point in time (as, for instance, the interest in avoiding intense physical pain). However, the set of interests which satisfy this condition is very restricted: too restricted, arguably, to do justice to the Scope Observation.³³

³³ One might argue that what protects a minimally good life is not upholding each human right, but rather the fact that human rights are recognised as such. For instance, Miller holds that "a minimally decent life must include knowing that one is protected against unwanted kinds of bodily invasion; an effective right against torture provides this assurance in one domain" (Miller 2014:161). However, this version also seems to be unable to do justice to the Scope Observation, in so far as the set of interests which satisfy this condition is very restricted. For instance, not knowing that one is protected against unwanted bodily invasion might prevent one from having a decent life. However, it is not plausible to say that, if one's life is going extremely well in all other respects, one cannot have a decent life if he does not know that he is protected against threats to a minimal level of political participation, or education.

The problem common to both readings is that, in virtue of being aggregative, they allow for balancing. Consider the first reading, according to which human rights protect a minimally good life as a whole. This interpretation is problematic in so far as it allows for diachronic balancing: it leaves open the possibility that very high levels of wellbeing before or after the putative human right violation will ensure that the level of well-being across one's life does not go below a minimum level. This is problematic because there are some mistreatments that are intuitively human rights violation, even though the victim has before lived, or will go on to live, such an exceptionally good life that his life is a good one overall. Similarly, consider the second reading, according to which human rights protect a minimally good life at each and every point in time. Again, this interpretation allows for balancing, though this time the balancing is synchronic. This is because this reading leaves open the possibility that very high levels of other types of interests will make it the case that the level of overall well-being never goes below a minimum level. The problem with aggregative accounts is that they open the door for this kind of balancing. In order to avoid this problem we thus need to drop the aggregative framework and endorse a discrete approach.

It is here helpful to remember that what I call Interest Conditions are conditions on the existence of human rights. This is to be distinguished from conditions interests have to satisfy to be protected by moral rights *simpliciter*. My argument is not intended to impugn the view that (at least some) rights *simpliciter* protect aggregative interests, such as in having a certain level of well-being, be it at a specific point in time or over one's life.

In Part IIIa I have considered whether the interests protected by human rights are to be thought of as discrete interests (e.g. interests in education, health, freedom from pain, etc), or rather as aggregative ones (e.g. the interest in a good life). I outlined two plausible readings of the aggregative approach, and argued that neither is a plausible account of

qualitative Interest Conditions. This suggests that we should rather endorse the alternative discrete approach.

b. Objective goods vs needs vs functioning

But how should we characterise the discrete interests protected by human rights? To answer this questions, I focus on two related issues. First, I focus on the abstract characterization of the interests, and I investigate which discrete interest-types are protected by human rights. As we have seen, there are a variety of different accounts. For instance, Tasioulas (2010, 2012) takes human rights to protect objective goods, while Miller (2007, 2012, 2014) holds that human rights protect human needs.

Secondly, I focus on the relationship between abstract and concrete interests protected by human rights. We can distinguish two types of approaches. Under the first approach, the content of concrete interests protected by human rights is determined by the content of the abstract interests protected by human rights, and the factual conditions under which the rights operates. Under the second approach, the content of concrete interests protected by human rights reflects the deliberation or attitudes of members of each political community.

In Sections b.i and b.ii I outline my preferred accounts of the discrete interest-type protected by human rights and the relationship between abstract and concrete interests protected by human rights. In Sections b.iii and b.iv I outline and assess what I take to be the most compelling alternatives.

i. The Objective Goods Thesis

The discussion in Section a suggests that human rights protect discrete interests. But what type of discrete interests do they protect? The answer to this question, I submit, can be found by focusing on an independently attractive analysis of well-being.

Recall that well-being is the ultimate measure of someone's interest: what makes someone's life go well, what makes it valuable for who lives it (Scanlon 1998, Griffin 1986). Analyses of well-being are often divided in three categories: Hedonism, Desire Fulfilment and Objective List theories (Parfit 1984). Hedonism holds that well-being consists in enjoyable experiences (Crisp 2006: 622). Desire Fulfilment theories hold that well-being consists in the fulfilment of one's desires. Objective List theories hold that well-being consists in the possession of certain goods, and what things are good is not wholly determined by the agent's mental states (Arneson 1999).³⁴ Providing a complete list of such goods is outside the scope of this paper, but plausible lists include items such as health, knowledge, rational activity, engagement in deep relationships, autonomy, achievement, and the avoidance of pain (Parfit 1984, Arneson 1999; Kagan 2009, Tasioulas 2010).

The most plausible account of well-being, I submit, is an hybrid between Objective Lists and Hedonism; it holds that there are two necessary conditions for well-being: that one performs valuable activities or is in valuable states, and that one experiences positive qualitative mental states about such activities or states.³⁵ This type of analysis is receiving increasing attention in the debates on the analysis of well-being (Parfit 1984, Adams 1999, Darwall 2002, Kraut 2007, Kagan 2009). The debate about the correct analysis of well-being is of course extremely complex and I cannot hope to adequately engage with it in the space

³⁴ I say not "wholly" determined, because Objective Lists can hold that the possession of some items on the list depends on the agent's mental states (Arneson 1999: 117). For instance, we might think that a list of objective goods includes the achievement of one's goals.

³⁵ This does not specify whether well being is a mental state, a state of the world, or both. See Kagan 2009.

of this paper. It is nevertheless helpful briefly to explain the advantages of the analysis endorsed.

The hedonistic component is needed to make sense of two intuitions about well-being. First, that well-being is experiential: that is, that a state of affairs cannot make an individual better or worse off unless it enters the individual's experience, his mental life. To see why this is the case, consider the following thought experiment, famously presented by Parfit (1984). Imagine a man meets a stranger, who tells him about his projects. Imagine, further, that the man forms a desire that the stranger succeeds in his projects, and keeps holding this desire even though he never sees or hears about the stranger again. The stranger does indeed succeed in his projects, though the man never finds out. Desire-Fulfilment theories would say that the man is better-off, since his desire has been fulfilled. Yet, this is counterintuitive, since the stranger's success does not enter the man's experience. Objective Lists theories are subject to similar counterexamples. Consider, for instance, the case of a scientist who has worked hard to find a vaccine for a deadly illness. After working for years, she becomes extremely frustrated. Even though she has not yet received the result of her last experiment, she decides to move away to live in isolation, without any contact with other human beings. Yet, her last experiment does indeed work, though she never finds out. Objective Lists theories would say she's better-off since she has obtained an achievement (plausibly one of the objective goods). However, once again, it is counterintuitive to say the agent is better off, in so far as the achievement was not experienced.

Secondly, in order to make an individual better off, a state of affairs has to enter the agent's experience in a specific way: it has to create a positive qualitative mental state—it has to be

enjoyable, or, so to speak, "feel good".³⁶ To see why this is the case, consider this further thought experiment, again presented by Parfit (1984). Imagine a man can take a drug; this drug is highly addictive and, once one has started using it, not taking it will cause pain. The drug is free and there are no limits on its supply, but it does not give the man any pleasure. Desire-Satisfaction theories would suggest that taking the drug makes the man better off. However, this seems counterintuitive, since taking the drug does not feel in any way good for the man.³⁷ Again, Objective Lists theories are subject to counterexamples on the same lines. Let us go back to the example of the scientist. Imagine that, after living in isolation for years, the scientist comes back to her laboratory and finds out about the positive result of her last experiment. However, the years in isolation have made her extremely bitter, and she is now unable to enjoy her achievement. Objective Lists theories would hold she is better off; yet, it seems counterintuitive to make this claim if she takes no enjoyment in her achievement. Together, these two points suggest that an adequate analysis of well-being should hold that enjoyment is a necessary condition for well-being.

However, further intuitions about well-being also suggest it has an objective component. First, how well-off one is also depends on states of affairs different from one's mental states. To begin with, it matters whether one is actually acting in certain ways or being in certain ways, rather than simply believing he is. Nozick brings this out in his famous "experience machine" thought experiment. Recall that he ask us to imagine a machine which is able to reproduce experiences of whatever kind we thought most enjoyable. He then argues that most of us would not plug into it, because "we want to do certain things [...] we

³⁶ I use the word "enjoyment", rather than "pleasure" because the latter is often associated to experiences that "feel good" in a narrowly physical sense, while I here wish to capture a wider set of mental states. See also Crisp 2006: 622

³⁷ Note that Parfit presents this thought experiment in order argue against simple Desire-Fulfillment theory, that is, theories that appeal to one's desires in general. However, he stresses that a different Desire-Fulfillment theory would not be subject to this counterexample—for instance the Success Theory, which appeals only to someone's desires about her own life. I here do not endorse such a theory since it would fail to do justice to the intuition that well-being is experiential and requires a positive mental state, in so far as one might not experience, or not enjoy, the satisfaction of one's desires about one's own life.

want to be a certain way [...while] plugging into an experience machine limits us to a man-made reality" (Nozick 1974: 43).³⁸ Secondly, it matters whether the activities and states we are engaging in are in fact valuable or not. To see why, imagine a beggar living in terrible degradation and oppression, in bad health, with little knowledge or friendships; notwithstanding his situation, the man takes pleasure in his life and is fully satisfied, because he adapted his taste and preferences to his circumstances (Sen 1985).³⁹ It seems clear that the man is badly off and that his situation ought to be improved. Together, these two points suggest that an adequate analysis of well-being should hold that the possession of objective goods is a necessary condition of well-being. This is why I endorse a hybrid account of well-being according to which well-being consists in the enjoyment of objective goods.

While I endorse an hybrid account of well-being, I take human rights to protect only the objective components of well-being. That is, I take human rights to protect interests in objective goods: valuable states and activities. Call the thesis that the interests protected by human rights are best understood in terms of objective goods the Objective Good Thesis. The reason why I do not take human rights to also protect the subjective component of well-being is the following. As I argued above, the interests protected by human rights are best understood as having a quantitative dimension: human rights protect a certain amount of certain interests. If we take human rights to protect both the objective and the subjective components of well-being, the quantitative conditions will also apply to the subjective component. We have two options: either we apply the quantitative condition to the objective and subjective components taken separately, or we apply it to the two components taken together. Neither of the options seems to me to be adequate.

³⁸ For a defense of hedonism against the experience machine thought experiment, see Crisp 2006.

³⁹ Note that Sen presents the argument as an objection to the thesis that utility is an adequate currency of justice. However, the example can also be employed to show that well-being requires an objective component (see for instance, Kaplow 2007).

Consider the first option. It seems plausible to me that our intuitions give us some quantitative threshold for objective goods. I will expand on this below, but for the time being, consider, for instance, knowledge: it seems plausible that human rights protect a certain level of knowledge. For instance, we might plausibly think that human right protect the interest in obtaining primary school education. Yet, we do not seem to have similar intuitions about the *enjoyment* of those goods: intuitively, there does not seem to be a certain level of enjoyment of one's knowledge, such that human right protect such a level of enjoyment. I do not deny that, in some circumstances, the lack of a minimal level of enjoyment signals a human right issue. For instance, the inability to minimally enjoy one's life might be a human right issue. However, the focus is here on the lack of enjoyment of one's life overall, rather than each objective good. Moreover, this intuition can be explained without claiming that human rights protect the subjective component of well-being: the lack of enjoyment of one's life overall is often a sign of mental health problems, so that the protection of a minimal amount of health (an objective good) would require that the situation is addressed.

Alternatively, human rights might protect the objective and subjective components of well-being taken together. But this option is even more controversial: if we apply the quantitative condition to the two components taken together, then we open the door to the following scenario: someone who possesses a small amount of an objective good, but enjoys it greatly, might be better off than someone who possesses more of the objective good, but enjoys it less. Accordingly, the second, but not the first, person, might be thought to have a human rights claim. For instance, consider the following example: Carl has had only very basic knowledge, and enjoys it greatly, while Dan, who has had primary and secondary education, does not enjoy much the knowledge he has acquired. If we take well-being to have both an objective and a subjective component, then it is possible that Carl is better-off than Dan.

Hence, if we take human rights to protect (a certain level of) the subjective and objective components taken together, it is possible that we would have to say that Carl's, but not Dan's, human rights are protected. Yet, this is counterintuitive, since it seems to me plausible that Carl's but not Dan's human right is violated. Given that both these options are unpalatable, I think the best solution is to take human rights to only protect objective goods.

ii. The Derivation Thesis

I thus take human rights to protect (a certain quantity of) objective goods such as health, knowledge, rational activity, achievement, engagement in deep relationships, etc. This is of course a very abstract characterization of the interests protected by human rights. At the concrete level, I take an interest to be protected by human rights if it is a concrete instance of, or it is instrumental to the advancement of, (a certain quantity of) abstract objective goods. The content of concrete interests protected by human rights is thus determined by the content of the abstract goods and the factual circumstances under which the right operates. For instance, the interest in not being assaulted encompasses any number of interests in not being assaulted in specific ways.

The concrete circumstances determining the content of the concrete interests protected by human rights can vary from person to person. Consider, for example, being able to artistically express oneself; this might not *prima facie* seem to be the type of interest that is protected by a human right. Yet, we can imagine a case in which some agent is unable to communicate with other people verbally (for instance, because of some psychological inability) and artistic expression is the only type of communication available to him. In this case, it seems that the interest in expressing oneself artistically is an instance of the more abstract interest in being able to express oneself, and, as such, it does qualify as an interest that ought to be protected by a human right.

The account proposed is holistic, in the following sense: the content of concrete interests protected by human rights is determined by considering the overall set of abstract interests. To see what is meant by this, consider the following. The abstract interests of the same right-holder can conflict: for instance, there might be a medicine that causes excruciating pain but can save someone's life. Assume that the pain is strong enough that causing such pain in other circumstances, when the life of the individual is not at stake, would constitute a human right violation. However, if the person takes the medicine, he will be able to continue living his life, which is expected to go on for 20 more years. Assume, further, that the patient suffers from a severe cognitive disability and would not be able to choose what to do.⁴⁰ I think it is plausible to say that, despite the strength of the pain, providing such a medicine would not constitute a human right violation in any respect. In general, circumstances may make it the case that concrete specifications of abstract interests conflict; in these cases the content of the interest protected by human rights is determined making comparisons of weight at a more abstract level. In the case outlined above, then, the concrete specification of freedom from pain and the interest in life conflict; yet, the interest in life is in this case weightier than the interest in freedom from pain, and this is why the concrete interest protected by a human right is an interest in the provision of the medicine.⁴¹ This shows that, in order to determine the content of concrete interests, we need to endorse a holistic approach, and consider the overall set of abstract interests.⁴²

Two factors will determine variations in the importance of interests: priority and magnitude. Priority holds that benefiting people matters more the worse off these people are (Parfit

⁴⁰ I add this assumption in order to set aside intuitions concerning the patient's actual or hypothetical consent.

⁴¹ Note that I do not mean to say that the interest in life always outweighs the interest in freedom from pain: only that it plausibly does so in this instance. Moreover, I do not think it is always possible to determine which interest is the weightiest. This is because there are cases in which interests are equally valuable, or it is indeterminate which one is the most valuable.

⁴² The fact that the account is "holistic" is fully compatible with the fact that I reject "aggregative" accounts, given the way I define the terms: aggregative accounts hold that human rights protect aggregative interests (such as a 'good life'); in contrast, holistic accounts hold that concrete instances of the interests protected by human rights are determined on the basis of the overall set of discrete abstract interests.

1997). So, for instance, improving the health conditions of an agent is more important if his life expectancy is 20 than if it is 30. The magnitude of an interest can of course vary: one's life expectancy can be increased by one, two or more years; an agent can be subjected to different degrees of pain for different lengths of time, and so on. Other things being equal, promoting a larger benefit is better than promoting a smaller one, while avoiding a larger harm is better than avoiding a smaller one. The combinations of these two factors will determine the moral importance of the interest.

The conjunction of the Objective Goods Thesis and the Derivation Thesis allows us to do justice to the Scope Observation. Objective goods plausibly include items such as health, knowledge, rational activity, engagement in deep relationships, autonomy, accomplishment, and the avoidance of pain. As I said above human rights plausibly protect a variety of interests including: the interest in avoiding torture and slavery, the interests in having adequate education and health, the interest in enjoying freedom of expression. We can then easily explain this list of interests by pointing out that they are concrete instances of, or means to the achievement of, abstract objective goods. For instance, the interest in avoiding torture is plausibly a concrete instance of the abstract interest in autonomy, as well as avoidance of pain. The interest in free movement is a concrete instance of the interest in autonomy, but it is also instrumental to the achievement of other objective goods, such as accomplishment and engagement in deep relationships. The interest in education is instrumental to the possession of knowledge, as well as rational activity and autonomy; and so on.

At this point, though, a worry might arise. I have argued that my account allows us to do justice to the Scope Observation. However, one might wonder whether the Objective Goods Thesis is too wide: whether, that is, there are objective goods that are not plausibly

protected by human rights. It is difficult to assess this issue without a definite list of objective goods. However, as I said, providing such a list is beyond the scope of this paper. Let me, nevertheless, consider a *prima facie* plausible example: autonomy. I follow Raz in considering a person autonomous "only if he has a variety of acceptable options available to him to choose from, and his life became as it is through his choice of some of these options" (Raz 1986: 204). I take the conditions for autonomy to include appropriate mental abilities—that is the abilities to understand, plan, deliberate, etc; independence—that is the absence of coercion and manipulation; and an adequate range of options to choose from—including both ones with long term pervasive consequences and ones with short term little consequences (Raz 1986).⁴³

The reason why autonomy might be problematic is that, some argue, autonomy is considered to be a value in Western culture, but not so in other cultures. Many would think that excluding autonomy from the list of objective goods would be implausible. However, taking autonomy to be one of the interests protected by human rights would be disrespectful to those cultures and individuals who do not take autonomy to be a value.

Miller makes a point on these lines when assessing Griffin's account. He argues that:

The emergence [of the value of autonomy] signalled a transformation of values whereby the idea of 'a good life' was replaced by the idea of 'a self-chosen life'. [...The] close internal link between the (post-Kantian) idea of autonomy and the conditions of life in latter-day liberal societies [...] disqualifies autonomy as a ground of human rights (Miller 2012: 159).

Similarly, Nussbaum holds that political principles should not be justified on the basis of autonomy. This is because, she argues, holding that society is entitled to promote autonomy

⁴³ Two clarifications with respect to these conditions: first, Raz specifies that all these conditions, and thus autonomy itself, are matters of degree (Raz 1986: 373). Secondly, I take the relevant notion of opportunities to be substantive, rather than formal: so, for example, if there is a swimming pool next to my house, but I have no money to pay the fees, then I lack the opportunity to swim in the swimming pool under the reading considered (Fabre 2000).

"shows deficient respect for citizens whose comprehensive conceptions of the good human life do not make freedom and autonomy central human values" (Nussbaum 2003: 49).

These worries are instances of the more general concern that human rights should not be grounded in narrowly "Western" values, since they are meant to apply to all human beings and, accordingly, need to be justified in a variety of different contexts. This worry is generally labeled as a concern about "parochialism" or "ethnocentrism", and it is considered as a serious problem by many authors.⁴⁴ Note that this is a worry about the justification of human rights. However, it also pertains to their analysis. This is because, as I mentioned in the thesis introduction, one can plausibly think that the analysis of human rights should fit with correct normative principles. Accordingly, one might think autonomy should not figure in the list of interests protected by human rights.

There are different ways of explaining the worry of parochialism, and distinguishing them is an important step in identifying and addressing the challenge. One way to explain the parochialism worry is by reference to reasonable pluralism. This is, as I said in the thesis introduction, a worry pressed by some political liberals. The interests protected by human rights, the argument goes, need to take into account reasonable pluralism, and can therefore not be justified by reference to controversial comprehensive doctrines.⁴⁵ Another way of explaining the worry of parochialism is by reference to internalism about reasons. This is a thesis about the nature of reasons for action, and it holds that normative reasons for action should bear some relation to motivating reasons for action. Different varieties of internalism focus on different types of relations. For instance, one type of internalism holds that an agent has a normative reason to do something only if he is actually motivated to act in that way. With respect to human rights, internalism requires that they are formulated in such a

⁴⁴ Miller 2007, 2012, 2015; Nussbaum 2001, 2003, 2006, 2011; Griffin 2008; Tasioulas 2009, 2012.

⁴⁵ As it will be apparent from the quote, this is the worry motivating Nussbaum.

way that they bear the relevant relation to motivating reasons for action, and that this is the case for all different cultural contexts different agents might belong to.⁴⁶ Yet another way of explaining the worry of parochialism is by reference to moral relativism. Moral relativism is a thesis about the nature of moral claims: it holds that the validity or justification of these claims is not absolute, but relative to some group of persons. Applied to the case of human rights, ethical relativism entails that there is no universal moral code that applies across different cultures: rather, every code is only valid for the specific culture in which it is embedded.

However, none of these interpretations seems to me especially pressing. As I said above, I do not find political liberalism a compelling position, and I believe it falls prey to a variety of objections. I have of course not argued for this position in any detail, but I am taking it as a starting point in this thesis. Moral relativism is an extremely controversial view, which enjoys little support in moral philosophy (Gowens 2008). Moreover, much has been said to defend human rights against the challenge posed by moral relativism, so I will not tackle this interpretation in this paper.⁴⁷ I will also set aside the internalist worry. This is because, as it is often stressed, internalism struggles to provide an account of the intuitive fact that agents might have a duty to do something even if the relevant relation between the normative reason for action and motivating reasons does not obtain—for instance, agents might have a duty to do something even if they are not motivated to act in that way. Internalists might be able to reply to this challenge, but the most promising strategies require positing counterfactual conditions that would allow us to set aside actual normative beliefs. The fact that certain reasons and values are not actually endorsed would then not be appropriate ground to question their validity (Oberman 2013).

⁴⁶ Miller seems to endorse this view in 2007: 165.

⁴⁷ Moral relativism is discussed in Nussbaum 2000, Griffin 2008 and Nickel 2007.

Rather, I think that the worry of parochialism is best characterised in epistemic terms: we should take parochialism to be a bias towards the beliefs rooted in one's own culture, to the effect that one unfairly favours those beliefs. Among other things, this might consist in discarding evidence against one's cultural beliefs, or requiring that contrary beliefs meet higher evidentiary standards (Etinson, manuscript). In order to avoid parochialism we should thus ensure that the epistemic process of formulating the interests protected by human rights is not culturally-biased. This might require that, in order to compile a list of objective goods, we engage in an inter-cultural debate, and include perspectives from a variety of cultural backgrounds. Note that the list so arrived at remains a list of objective goods in so far the reason to engage in inter-cultural debate is epistemic, not ontological: the inter-cultural debate is a heuristic to arrive to the list of goods, but the content of these goods is not determined by agent's mental states.

We can now go back to the question of whether including autonomy in the list of interests protected by human rights is indeed parochial. Given the account of parochialism I find most appealing, the answer will depend on whether the belief in the value of autonomy will resist intercultural scrutiny. This is of course not something I can address here. Let me, however, outline two reasons to dispel worries. First of all, the account endorsed does not only focus on autonomy: autonomy is rather one among the objective goods. Secondly, the account only takes human rights to protect a minimal level of autonomy. This can help us give a first reply to the concerns pressed by Miller and Nussbaum. On one side, under the account I propose, taking autonomy to be a value does not entail that one endorses a 'self-chosen life' over a 'good life': rather, it simply entails that being self-chosen is one of the things that makes a life good. On the other side, people who belong to an authoritarian religion need not think that autonomy is a central value; nor they need to think that autonomy is generally good thing, in the sense that it will always be better to possess more,

rather than less, autonomy. Rather, they have to think that having some autonomy is one of the good things in life. For instance, they have to think that it is good for them that they are able, if they want to, to abandon the authoritarian religion they endorse. This is indeed quite a minimal, and highly plausible, requirement.

To recapitulate, in Part IIIb I have so far made three points. First, I have argued that the discrete interests protected by human rights should be understood in terms of objective goods—valuable activities and states. I have called this the Objective Goods Thesis. Secondly, I have focused on the relationship between abstract and concrete interests protected by human rights. I have argued that the content of concrete interests is determined by the content of the overall set of abstract interests and the factual circumstances under which the right operates. I have called this the Derivation Thesis. I have argued that the conjunction of these two theses allows us to do justice to the Scope Observation. I then considered the worry that the account might be too wide, and argued that this worry can be met.

iii. Alternatives to the Objective Goods Thesis

Let me now compare the Objective Goods Thesis with the two alternatives which I find most compelling: Miller's account of needs and Nussbaum account of dignity-based functionings (that is, functionings selected on the basis that the corresponding capabilities are entailed by the idea of a life worthy of human dignity). Note that the theories outlined by these authors hold that human rights protect *opportunities*—opportunities for the satisfaction of needs in one case, and capabilities, i.e. opportunities for functionings, in the other. However, whether human rights protect opportunities for, or possession of, the relevant items is an issue that I tackle below. For the time being I want to focus on whether the interests protected by human rights should be understood in terms of objective goods, or

rather in terms of needs (Miller 2007, 2012, 2014) or dignity-related functionings (Nussbaum 2001, 2003, 2006, 2012).

Let us start from needs. To begin with, it is helpful to distinguish between instrumental and intrinsic needs (Miller 1976, 1999; Wiggins 1987). The former are conditions we need to satisfy in order to achieve some goal; for instance, one might need a ticket to go and see a football game. The latter are conditions which need to be satisfied to avoid harm; for instance, one might need a medicine to carry on living, or avoid severe pain. The moral importance of the former depends on the goal they help achieve, while the latter are independently morally significant. It is the second type of needs that are relevant to the discussion on human rights.

Secondly, we can now ask how we are to identify the relevant kind of harm. To do so, we need to establish a baseline against which we can say an agent has been harmed. To begin with, we might just focus on bare survival: the ability to carry on living. Alternatively, we might focus on the thicker notion of a healthy life. But these interpretations seem to provide too narrow an account of the interests protected by human rights, as they would exclude interests which are paradigmatically protected by human rights, such as the interests in education, freedom of expression, political participation, and so on.⁴⁸ Such an account would then run against the Scope Observation.

If one is to argue that the interests protected by human rights are best understood in terms of needs, one has to provide a different way of spelling out the notion of need. Let me then focus on Miller's theory, which provides the most thoroughly developed account of the

⁴⁸ Unless, of course, one presented an instrumental argument to the effect that these interests are necessary or reliable means to the protection of survival, or a healthy life. However, it seems unlikely that this strategy would allow one to defend a set of interests wide enough to do justice to the Scope Observation.

thesis that human rights protect needs (Miller 2007, 2012, 2014). Miller aims to provide an account that is non-parochial in character, in the sense that the value of these interests can be recognised regardless of cultural or religious affiliations. Miller suggests that human rights protect human needs, which he takes to be the conditions necessary to live a decent life. He defines a decent life as one in which one can engage in a certain set of core activities without having to forgo others. The core activities are abstractly formulated activities which are reiterated across all different societies, unless unwanted constraints prevent members from performing them.

He argues:

I propose [...] that we should start with the idea of the human form of life, as a common element that runs through the many specific forms of life that human beings have evolved in different times and places. There is no society in which human beings do not, for example, participate in productive labour, raise families, play games, sing and dance, engage in religious rituals, and so forth—or to be more precise, no society in which they do not engage in these activities unless prevented from doing so by coercion, by material deprivation or some such cause. That allows us to speak of a human form of life: if we were to encounter a group of beings who appeared to have no interest at all in engaging in one of these activities, we would simply be perplexed. It is against this background that we can understand the idea of human needs, as conditions that must be fulfilled if people are to be able to live a human life at a minimally decent level. Where their needs are met, they will have the opportunity to engage in each of these core activities without having to forgo any of the others (2014: 160).⁴⁹

Yet, it is unclear that this approach can provide a satisfactory solution to the problem of identifying the interests protected by human rights. First, Miller worries about parochialism seem to be grounded in an internalist account of reasons (Miller 2007: 165). However, as I pointed out above, this is a controversial requirement (Oberman 2013). Secondly, this

⁴⁹ See also: "a person has a decent human life when he or she has the opportunity to engage in a range of human activities that are reiterated across societies in such a way that we can speak meaningfully of a human form of life" (2012: 416); "we must appeal to the fact that there are activities that humans engage in that are reiterated across contexts—activities such as working, playing, learning, raising families, and so forth—so that although the form the activity takes may vary from community to community, the activity itself can be described as universal." (2007: 84); "Basic rights correspond to biological or quasi-biological needs, along with those socially defined needs that are replicated across human societies" (1999: 319).

account does not seem to provide a set of necessary conditions for an interest to be protected by human rights. Miller holds that, if we found a society whose members had no interest in the core activities we would be "perplexed". This is certainly true, but we need to clarify the upshot of this claim. On one side, Miller might be making the strong claim that it would not be possible to find a society in which these activities are not reiterated. This, however, seems too strong a claim: for instance, we can certainly *conceive of* a society in which people have no religious rituals. Alternatively, Miller might be making the weaker claim that it would be strange to find such a society. However, if it possible to conceive of such a society, this seems to lead to counterintuitive implications. This is because, on Miller's account, only activities which are reiterated in all societies are relevant to the definition of human needs. If we found a society in which one of the listed activities were not reiterated, the activity would have to be discarded. But this seems problematic, since it seems to imply that the discovery of "perplexing" societies would lead to a curtailment of the list of human rights. This suggests that the conditions outlined by Miller are too restrictive.

Thirdly, this account does not seem to provide a set of sufficient conditions for an interest to be protected by human rights. This is because, if we focus on all activities that are repeated across societies, we will end up including activities which are bad, neutral, or not very morally important. For instance, we might plausibly find that all societies engage in lying, physical violence or killing, or that in every society people groom their nails. However, it is implausible to say that the opportunity to engage in these activities without having to forego the others is protected by human rights. It then seems that one would have to restrict the focus to a subset of the reiterated activities. But how should one do so? A natural proposal would be to focus on activities that different societies take to be necessary for a decent life. However, Miller explicitly (and, in my view, rightly) rejects this approach, on the basis that it would make the "definition of basic need hostage to what in some cases may be

ill-informed beliefs about the conditions for a decent life" (2007: 183). Alternatively, we might offer a substantive philosophical account of a decent life. However, it is unclear that this approach would meet Miller's own criterion of "non-sectarianism". Moreover, there is a problem concerning both these strategies: both lead to an aggregative understanding of the interests protected by human rights. This is because, under these readings, "core activities" would be defined in terms of the aggregative notion of a "decent life". However, as I argued, this type of strategy is not a successful one.

Let us now consider Nussbaum's approach which, as I said, focuses on dignity-based functionings. Functionings are activities and states that persons can perform and be in. There are good, bad and neutral functionings: for instance, being in a meaningful relationship is a good functioning, being in severe pain is a bad one and having a birthmark is a neutral one. Nussbaum holds that the capabilities relevant to human rights are identified by the idea of a life worthy of human dignity (Nussbaum 2001, 2003, 2006, 2011).⁵⁰ She then holds that this criterion helps us select a list of ten capabilities: life; bodily health; bodily integrity; senses, imagination, and thought; emotions; practical reason; affiliation; other species; play and control over one's environment. For the purpose of this paper, I will not focus on Nussbaum's list, but only on the criterion she employs to select the items: the notion of a life worthy of human dignity.

The notion of human dignity, as Nussbaum herself admits, is far from being determinate. She thinks that this issue can be addressed and that the concept can be given content by placing it in a network of related notions. Let me thus focus on the connections she makes, to assess whether the notion of dignity can adequately determine qualitative Interest

⁵⁰ Note that, as I pointed out in Part II, Griffin also holds that the interests protected by human rights are identified by the concept of dignity, though he interprets the latter in terms of normative agency.

Conditions.⁵¹ The first clarificatory point made by Nussbaum is the following: "although dignity is a vague idea that needs to be given content by placing it in a network of related notions, it does make a difference. A focus on dignity is quite different, for example, from a focus on satisfaction" (Nussbaum 2011: 30). She elaborates this point by presenting the example of people with severe cognitive disability who are not given the possibility to pursue education: in these cases, she claims, satisfaction might be achieved, but dignity will not be respected. Cognitively disabled people might not require the opportunity to pursue education in order to be satisfied, but such an opportunity is still necessary to respect their dignity.

However, it is unclear that the concept of dignity is what is doing the work in this case. Rather, the real opposition seems to be between a subjectivist and an objectivist account of the interests protected by human rights—that is, whether or not one thinks these interests are determined by the agents' mental states. Satisfaction is a subjective concept, in so far as whether or not one is satisfied is determined by the individual's preferences. As such it is exposed to the problem of malformed preferences, which I mentioned above when discussing subjective theories of well-being. As shown by Sen's example of the beggar, there are cases in which the agent is favourably disposed towards a certain state, even if the state is not very valuable (Sen 1985). The case outlined above seems to be a case in which malformed preferences are at stake: because of a cognitive disability, someone does not desire education and can be satisfied without it. Nussbaum's account does not face this problem in so far as capabilities and functionings are objectively valuable states—their value is not determined by the agent's mental states. However, the same can be said of an account relying on objective goods. The relevant contrast, then, seems to be between the subjective

⁵¹ I here focus on Nussbaum 2011 which is, to my knowledge, Nussbaum's latest discussion of the topic. For previous discussions, see Nussbaum 2001, 2006, 2008.

nature of the concept of satisfaction and the objective nature of the notion of functionings and capabilities. It is unclear what role the concept of dignity plays in this respect.

The second point made by Nussbaum is that "In a wide range of areas, a focus on dignity will dictate policy choices that protect and support agency, rather than choices that infantilize people and treat them as passive recipients" (2011: 30). One might then think that a focus on dignity is distinct from a focus on objective goods in so far as it gives agency a prominent role. There are two points to stress here. First, it is unclear what sense of "agency" Nussbaum is referring to. One might think that her understanding of "agency" is linked to the notion of choice: that agents are individuals who can choose, and should therefore not be treated as infants, patronised. This, however, is a problematic reading, since it connects dignity with choice and it thus entails that individuals who are unable to choose, such as infants and people living in a coma, lack human dignity. This reading faces the same problems faced by Griffin, which I outlined in Part II above.⁵²

Alternatively, her understanding of "agency" might not be connected to the notion of choice, but rather, might be understood as a way of stressing that valuable functionings are active, rather than passive: that they require agents to act, rather than simply receive. Yet, this reading also has implausible implications. This is because we can imagine cases in which individuals are simply recipients of the protection of the interests: imagine, for instance, someone who is unable to move and act, but is in excruciating pain, and who would no longer suffer such a pain if a painkiller were given to him. It seems that this is a case in which the person has a human right to such a painkiller, even though the individual is in no way actively engaging, but rather simply being the passive recipient of the protection of his

⁵² I will go back to the problem of formulating the interests protected by human rights in terms of choices below, when considering whether human rights protect opportunities for, or rather possession of, the relevant items.

interest. Note, further, that Nussbaum falls short of holding that dignity is necessarily connected with agency: she holds that a focus on dignity will require to protect and support agency "in a wide range of areas", but does not trace an analytical connection between the two concepts. It is thus unclear in which way agency helps selecting the relevant capabilities and functionings. It therefore seems doubtful that the notion of dignity can illuminate the qualitative dimension of the Interest Conditions.⁵³

iv. Alternatives to the Derivation Thesis

Let me now consider alternatives to the Derivation Thesis. Recall that, according to this thesis, the content of concrete interests protected by human rights is determined by the content of the overall set of abstract interests protected by human rights and the factual circumstances under which the right operates. Alternatives to this thesis have been put forward by authors who worry about the need to accommodate cultural and political differences. They have argued that, in formulating concrete interests, a substantial role should be played by cultural groups or political communities.

Nussbaum, for instance, holds that it is appropriate that different nations should determine the concrete interests protected by human rights differently, taking their histories and special circumstances into account. In order to allow for such latitude, she formulates her list of capabilities in an abstract way, so that, within certain parameters, citizens, their legislatures and courts of democratic institution can themselves deliberate about the content of the concrete items (2003: 42).

⁵³ The thesis that Nussbaum's account of dignity is under-theorized is also defended in Claassen and Duwell 2013 and Formosa and Mackenzie 2014. Let me stress that I do not mean to say that the notion of dignity plays not role in the analysis of human rights. While I do believe that such a notion needs to be spelled out further in order to play such a role, it is possible that doing so will be integral part of offering a complete account of human rights. For recent influential attempts to spell out the notion of dignity, see Rosen 2012 and Waldron 2012. On the relationship between dignity and human rights, see Beitz 2013, Tasioulas 2013. Note, however, that these authors do not take dignity to illuminate the Interest Conditions.

Note that the claim that concrete interests protected by human rights should take into account different "histories and special circumstances" can be readily endorsed from the perspective of the account I am here defending, since "histories and special circumstances" are part of the factual circumstances under which the right operates. This is, though, different from the claim Nussbaum then moves on to make, when she holds that the content of concrete interests should be determined by a deliberating process. It is here helpful to distinguish two interpretations. On one side, there is an ontological interpretation, which holds that citizens' deliberation makes up the content of concrete interests; on the other, there is an epistemic interpretation, which holds that citizens' deliberation is the epistemically best way to arrive to the formulation of the concrete interests.

Consider first the ontological interpretation. It is unclear how there can be space for such a thesis given the assumptions Nussbaum herself endorses. The interests protected by human rights are not dependent upon agent's preferences: this is a point Nussbaum herself explicitly agrees with. Moreover, concrete interests consists in the application of abstract rights to concrete circumstances. This seems to be an analytical truth deriving from the concept of abstract and concrete. It thus follows that the content of concrete rights is independent of the choices of group members. It is difficult to see how Nussbaum could resist this conclusion.

One might argue that citizens' beliefs are part of concrete circumstances and, as such, should determine the content of the concrete interests protected by human rights. This is correct, but it does not entail that citizens should deliberate about the content of the concrete interests protected by human rights. Consider, for instance, the case of a society which includes an ethnic minority and an extremely racist group. Assume, moreover, that the racist group would endanger the life and health of the ethnic minority and that, in the

circumstances considered, the minority has an interest in the racist group attending anti-racism educational programmes. It is plausible to say that this concrete interest would be protected by a human right. In this case the content of the concrete interest protected by human rights is dependent on citizens' beliefs, in so far as the programmes are set up in order to rectify the beliefs of racist citizens. Note, however, that this is very different from saying, as Nussbaum does, that the content of the concrete interest reflects the citizens' deliberation.

Consider now the epistemic interpretation, which (you recall) holds that that citizens' deliberation is the epistemically best way to arrive to the formulation of the concrete rights. This seems a more plausible claim: it seems less controversial to say that, while the content of concrete rights might not depend on collective decision making, groups are best placed to know the content of the relevant circumstances, and thus their collective decision making is, epistemically, the best way to arrive to the formulation of those interests. This reading is in line with an epistemic approach to democracy, according to which the aim of democratic decision making is to track independently correct principles. This interpretation of the democratic process is based on three elements: a standard of correct decisions that is independent of the outcome of votes; a cognitive account of voting, according to which voting expresses beliefs, rather than preferences, about policies; an account of decision-making as a process sensitive to the evidence about the correctness of beliefs (Cohen 1986: 34). Following this approach, one might hold that the formulation of concrete interests is independent of people's preferences, but add that democratic decision-making is the best way of tracking such interests.

However, if we endorse an epistemic approach to democracy, the proposal is perplexing. This is because it is unclear why, if democratic decision-making is the best way of tracking

the truth, this method should be employed to determine the content of concrete interests, but not abstract ones.⁵⁴ What makes the process apt in the former, but not the latter, set of issues? Nussbaum does not provide a reply to this question. Second, it is unclear why such decision-making should take place at the nation-state level. The problem of determining concrete interests will require knowledge of two types of facts: normative and non-normative. Knowledge of normative facts will be needed to have a grasp of the content of the abstract interests, their ranking, and the way to adequately solve conflicts of interests. Knowledge of non-normative facts will be needed to have a grasp of the content of concrete non-normative circumstances. As far as non-normative facts are concerned, it seems plausible that being a member of a certain political community might give a special vantage point about the circumstances that obtain in such a community. However, this is not clearly so in the case of normative facts. With respect to this category, being an insider might not be an advantage, and it might sometime also be a disadvantage. As an insider, for instance, it might be more difficult to morally assess the practices taking place in one's community: one might consider them normal, succumb to the power of authority or peer pressure, and lack the perspective required to formulate an adequate judgment. Given these possibilities, it is unclear that the deliberation of specific political communities is the best epistemic process to arrive to the formulation of concrete interests.

Another alternative to the Derivation Thesis is put forward by Miller. He holds that, though the list of abstract needs is universal, different cultures will assess the importance of these needs differently. Each society will then have a different set of concrete rights, reflecting these weightings. Accordingly, "we can show that there is a right to freedom of religion, for example, but our general theory cannot tell us whether this right entails that there can be no

⁵⁴ Note that many have criticised Nussbaum on the basis that the list of capabilities she provides is not adequately informed by empirical evidence. See, for instance, Okin 2003 and Jaggard 2006 and Clark 2013.

religious establishment" (2014: 165-66). Miller also thinks that this does not prevent human rights from playing the role they are required to play and holds that:

We include a right to freedom of religion as a tool to condemn states that oppress religious dissidents by criminalizing them or denying them jobs. But whether a country's constitution requires a strict separation of church and state, or on the other hand recognizes one particular religion as having official status, is not an issue that international human rights doctrine needs to address. The right itself is flexible enough that it can be implemented through either of these arrangements, and we should expect political communities on each side of this argument to claim that their interpretation is superior, without supposing that this gives them a licence to interfere with the other's practice (2014: 166).

I agree that the right to freedom of religion is flexible enough that it can be reconciled with both a strict separation of church and state, and the recognition of one particular religion as having official status. However, this is the case because, in both circumstances, a minimal religious freedom can be ensured—so that, for instance, agents can decide whether or not to engage in religious practices. But it does not seem plausible to argue, in either case, that the arrangement itself is required for the respect of human rights: it is implausible to argue that freedom of religion requires a strict separation of church and state, or granting official status to a particular religion.

Moreover, it is unclear that, under Miller's account, human rights can indeed play the role he assigns them. Consider, for instance, the case in which a state oppresses religious dissidents by criminalizing them or denying them jobs. This action can be justified by arguing that they are in line with the society's specific weighing of human needs. For instance, in the case at stake, we can imagine the official of a religious government arguing that the dissidents' needs to follow their false beliefs have been weighted against others' needs not to have their correct faith unwarrantedly challenged. The weighing, the official might say, was in favour of the need of the latter. The worry is then that, if the weighing is determined by each society's assessment, human rights will not be able to play the role Miller assigns them.

To summarise, in Part IIIb I have argued that the interests protected by human rights should be understood in terms of objective goods. I called this the Objective Goods Thesis. I argued that the content of concrete interests is determined by the content of the overall set of abstract interests and the factual circumstances under which the right operates. I called this the Derivation Thesis. I considered two influential alternatives to the Objective Goods Thesis: Miller's needs account and Nussbaum dignity-based account. I argued that neither is to be preferred to the thesis defended. I then considered two alternatives to the Derivation thesis: the first, put forward by Nussbaum, holds that concrete interests protected by human rights depend on citizens' decision-making. The second, put forward by Miller, holds that concrete interests protected by human rights depend on the way different societies value different abstract interests. I argued that neither is to be preferred to the Derivation Thesis.

c. Opportunities vs possession

A further important question is whether human rights should be thought as protecting the possession of objective goods, or rather opportunities for those goods. Many authors describe the interests protected by human rights in terms of opportunities: for instance, Miller (2007, 2012, 2014) holds that human rights protect opportunities for the satisfaction of needs; Sen (2004) and Nussbaum (2000, 2003, 2006, 2011) hold that human rights protect capabilities, which consist in the opportunity to achieve functionings; Pogge (2002) holds that human rights protect access to basic goods and Buchanan (2014) holds that (aside from protecting equal status) human rights protect opportunities to lead a minimally good life.

Let me then focus on the argument presented in favour of the opportunity approach. The defence of the opportunity approach to human rights is generally based on the normative

importance of choice.⁵⁵ In order to defend the opportunity approach on these grounds, Sen famously presents the following argument. He asks us to imagine a fasting man and a starving one; he points out that the two men have the same type of functionings as far as nutrition is concerned. If what mattered was the possession of goods, we would be concerned about the fasting man's condition as much as we are concerned about the starving man's condition. Yet, this is not the case: we consider the predicament of the latter, but not of the former, an issue of justice. This is because the fasting man, but not the

⁵⁵ There are two further reasons why one might think that opportunity, rather than achievement, is the appropriate focus for human rights. The first concerns responsibility, and the distinction between option and brute luck. Following Dworkin's canonical distinction, we can say that "Option luck is a matter of how deliberate and calculated gambles turn out—whether someone gains or loses through accepting an isolated risk he or she should have anticipated and might have declined", while brute luck is "a matter of how risks fall out that are not in that sense deliberate gambles" (Dworkin 2002: 73). Many think that a just distribution should be influenced by option luck, but not brute luck. For instance, one might think that if one is in good health, but repeatedly engages in risky sports that cause him injuries, then one loses a claim to his health being protected. On the other side, one might think that if one suffers bad health through no fault of his own, then his condition should be addressed. We thus ought to protect the opportunity for health, rather than the achievement of the good (for this reading of the opportunity approach applied to the idea of equality, see Arneson 1989: 88).

I do not consider this interpretation of the opportunity-approach. This issue is extremely complex, and cannot be adequately considered in the space of this paper. Let me however outline some general remarks. One might think that in virtue of the minimal nature of human rights, the interests protected by these claims should be protected even when they are endangered as a result of the deliberate gamble of the victim. For instance, imagine the case of a cyclist who cycles without an helmet, knowing the risk involved, and is victim of a life-threatening accident. It might seem plausible to say that he still has a human right claim to being succoured. This might be true, but it is still not enough to show that the interests protected by human rights *as a category* should be protected regardless of one's option luck. For example, it seems to matter which interests we are talking about. While the claim is plausible with respect to the interest in life, it might be less plausible with respect to other interests which are plausibly protected by human rights, such as the interests in education, or the possession of deep relationships. Moreover, our intuitions might differ depending on how the quantitative dimension is spelled out. In order to test our intuitions about these cases, we would need to have a list of the interest protected by human rights, and an account of the quantitative level up to which they are protected. However, I only provide a general characterization of the list and the threshold: spelling out the items on the list and the threshold for each of those is beyond the scope of the paper (with respect to the items on the list, I pointed out this above in Part III; with respect to the thresholds, I will come back to this point in Part IV). This makes it difficult to address the issue of brute and option luck in the scope of this paper.

The second further reason to think opportunities, rather than possession, is the appropriate focus of human rights has to do with the conceptual nature of interests protected by human rights: many objective goods consists in the performance of certain activities, and performing activities plausibly requires choosing to engage in them. For instance, it seems not possible to force someone to acquire knowledge: in order to possess such a good, one needs to read, complete exercises, etc; to do so, one must choose to act. I will, however, not consider this latter type of reasoning. This is because the sense of "choice" at stake in this type of argument is plausibly not the one relevant to the discussion of opportunities, as it is consistent with an agent being forced to perform the action. For instance, if the government makes it compulsory to achieve certain qualifications, reading and completing exercises will still require choice, but the choice in this case will be a forced one. Plausibly, this is not the sense of choice relevant to the concept of opportunity, and not the one that theorists endorsing the opportunity approach take to be normatively significant, so I will set this point aside.

Importantly, moreover, arguments in favour of the thesis that human rights should protect opportunities, rather than achievements, are to my knowledge based on the importance of choice, rather than the moral significance of responsibility, or the conceptual nature of objective goods (see below).

starving one, has a choice about whether to be nourished or not. This seems to show that the interests protected by human rights are best formulated in terms of opportunities (Sen 1992, 2009).⁵⁶

In order to support the opportunity approach, Sen also presents a second scenario. He asks us to focus on the case of immigrants joining new societies. It is especially important—Sen argues—to ensure that these immigrants have the choice as to whether, and to what extent, to maintain their cultural practices or embrace the cultural practices of their new country. In this case, we should be careful to distinguish between possessing a good, and the freedom to possess the good: and it is the latter, rather than the former, that ought to be protected (Sen 2009: 237).

On the other hand, however, there are reasons not to endorse an opportunity account of the interests protected by human rights. This is because there are cases in which the interests protected by human rights do not seem to require the agent's choice. For instance, it is plausible to think that human rights protect the interest in not being exposed to a high risk of contracting malaria. However, protecting this interest does not require the agent to make any choice, and it is enough for the individual simply to benefit from the choices of others (Cohen, 1990). This seems to be a counterexample to the claim that the interests protected by human rights are best described as opportunities.

Supporters of the opportunity approach have attempted to reply to this objection. Sen (1992), for instance, attempts to rebut this worry in the following way. He distinguishes

⁵⁶ Pogge (2002: 38) Miller (2012: 413-414) and Nussbaum (2011: 25), also endorse this argument. Note, however, that Sen acknowledges that, when concerned with persons who are incapable of being responsible agents, we should focus on achievement rather than opportunity (Sen 1985: 204). Nussbaum also holds that, in case of children, one should protect functionings rather than capabilities; she holds that this is so because protecting functionings is a way of protecting future capabilities.

between control-freedom and effective-freedom; the first consists in the ability to bring about a certain outcome by choosing it; the second consists in obtaining the outcome one would counterfactually choose if one had a choice. Sen argues that it is the second reading of freedom that is relevant to the capability approach. This can address the objection raised above: effective-freedom and the corresponding understanding of opportunities are wide enough to include the malaria case, in so far as the agent would have plausibly chosen not to suffer from the illness.

Yet, it is unclear that this distinction can solve the problems faced by the opportunity account. This is because the protection of the outcome that the agent would have chosen leads to implausible consequences in the case of malformed preferences. Return to the case of the beggar living in terrible degradation and oppression; notwithstanding his situation, the man has everything he wants, because he adapted his preferences to his circumstances (Sen 1985). Imagine now this man does not want to benefit from health services, because his circumstances have lead him to think that his health is not worthy of the use of such resources. Imagine, further, that the government is planning a malaria-prevention programme. Does the fact that the man does not value his own health mean that he should not benefit from such a programme? It seems strange to suggest this is the case.

Note, moreover, that it is possible to do justice to the intuition that human rights sometimes protect opportunities, without abandoning the thesis that human rights protect the possession of objective goods. This is because, as I said, one of the items plausibly included in the list of objective goods is autonomy. Recall that, following Raz, we can take conditions for autonomy to include appropriate mental abilities, independence and an adequate range of options to choose from (Raz 1986). In so far as autonomy requires options to choose from, the protection of autonomy conceptually requires the protection of opportunities.

The reference to autonomy can explain why human rights sometimes protect opportunities. Consider, for example, the cases outlined by Sen. In the scenarios presented above we implicitly assume that the fasting man and the immigrants deciding between cultural affiliations are able to understand, plan and deliberate, and are free from manipulation or coercion. Protecting different options would then be a way to protect their autonomy, and it is therefore appropriate that human rights should protect opportunities.

Moreover, the reference to autonomy can also explain why human rights do not always protect opportunities. First of all, while autonomy is an objective good, it is not the only one. Other goods that can be possessed without individuals having to choose between different options. When the interests protected by human rights are instances of, or instrumental to, such goods they need not be framed in terms of opportunities. This explains why one can have a human right to a malaria-prevention programme, even though one has not himself chosen the programme. Secondly, not all choices are exercises of autonomy: in some cases, the agent might lack the appropriate mental abilities, independence, or range of options. In these cases, choices are not an exercise of autonomy and, as such, should not be protected by human rights. This explains our intuitions in the case of the beggar who does not value his own health. In this scenario, we are likely to implicitly assume that the severe deprivation, and the past lack of an adequate range of options, impinged on the man's ability to deliberate. His choice (or hypothetical choice) is thus not an exercise of autonomy, and it thus not an interest protected by a human right.

To sum up, in Part IIIc I considered whether the interests protected by human rights should be understood in terms of opportunities for, or in terms of possession of, objective goods. I outlined Sen's influential arguments for the opportunities approach, according to which

focusing on opportunities enables us to do justice to the normative importance of choice. I then stressed that there are cases in which the protection of human rights does not seem to require agents' choices. I considered whether Sen's distinction between control-freedom and effective-freedom could help solve the problems faced by the opportunity account, and concluded that it does not. I then suggested that the possession account can make sense of the cases presented by Sen, in so far as it can hold that autonomy is an objective good, and that autonomy requires opportunities. This explains why in some cases, but not all, the interests protected by human rights should be formulated in terms of opportunities. We can thus conclude that the interests protected by human rights are best formulated in terms of the possession of goods and that, in some cases, this will require that opportunities are protected.

Part IV: Quantitative Interest Conditions

Let me now move on to the quantitative Interest Conditions. As I argued in Part II above, in order to reconcile our intuitions about the interests protected by human rights, we need to endorse quantitative Interest Conditions. This means that human rights protect objective goods up to a threshold quantity. Let me now investigate the nature of such thresholds.

We can distinguish between objective and subjective thresholds. A threshold is subjective if it is determined by the agent's mental states. If, on the other hand, the threshold is not determined by the agent's mental states, then the threshold is objective. Some examples will make the distinction clearer. Thresholds have received considerable attention in the last years in virtue of being the central feature of the doctrine of sufficiency. According to this doctrine we have strong reasons to ensure people live above a certain threshold, free from deprivation; once everyone has secured enough, no distributive criteria apply, though aggregative criteria might apply (Casal 2007). Different thresholds have been put forward in

this context by different authors. Crisp (2003), for instance, holds that the sufficiency threshold is at 80 years of happy life; he endorses an objective threshold insofar as the level at which the agent has enough is set independently from the agent's evaluation of his own situation. Frankfurt (1987), conversely, holds that the sufficiency threshold is set at the point at which the agent is satisfied with his own situation; he endorses a subjective threshold, insofar as the level at which the agent has enough is set according to the agent's evaluation of his own situation.

Thresholds for the quantitative dimension of human rights are best thought of as objective. This is because, as I discussed when considering Nussbaum's account in Part IIIb, subjective thresholds are subject to the problem of malformed preferences: the agent's evaluation might result from one's adaptation to one's negative conditions. For instance, Nussbaum suggests a cognitively disabled person might have a very low level of education, but be satisfied with it. Similarly, one might live in destitution and still be satisfied with his circumstances simply because she is used to them, or does not know better. Yet, this does not seem to make a difference with respect to claims of justice and, in particular, human rights: the fact that, because of adverse circumstances, someone is satisfied with having little does not mean that he has no human right claim to more.

The quantitative dimension presupposes a framework in which interests are scalar. A clear and useful characterization of such a picture is offered by Scanlon (1975) in "Preference and urgency". Here Scanlon argues that there are various types of interests and "associated with each of these there is a scale of the various levels or degrees to which the [interest] might be fulfilled at a given time" (1975: 660). Across time, the level at which the interest is fulfilled can of course change; when referring to these changes, I shall call an upward movement on one such a scale a "benefit", and a downward movement on one such a scale a "harm".

Given this general framework, we can focus on two features: either on the level of the interest-scale, or on changes on such a scale (that is a benefit or a harm). For instance, take the interest in health: we could focus on how much health an agent enjoys at a given time; or on changes in such a level—a benefit or harm to one's health.

Accordingly, we can distinguish between two kinds of threshold. On one side, a threshold can pick a level on the scale: the focus is here on how much of the good the agent possesses. I shall call this kind of threshold a "level threshold". In this type of cases, human rights protect the interest up to a certain level *T*. Specifically, an agent can have a human right to benefits which would increase the level of the interest towards, and up to, *T* and against harms which would lower the level of his interest below *T* or, if he already is below *T*, further away from it.⁵⁷ Let us take the interest in health as an example, and assume that health should be measured in terms of life expectancy. If we take health to call for a level threshold, then we might think that the relevant threshold is a life expectancy of 80 years. In this case, an agent can have a human right to benefits which would increase her life expectancy towards, and up to, 80 years and against harms which would lower her life-expectancy below 80 years or, if her life expectancy is already lower than 80 years, make it even lower. Note that I do not wish to argue that this is the correct way to think about the threshold for health as an interest protected by human rights. My aim is simply to provide an example of what a level-threshold would look like if applied to the case of health.

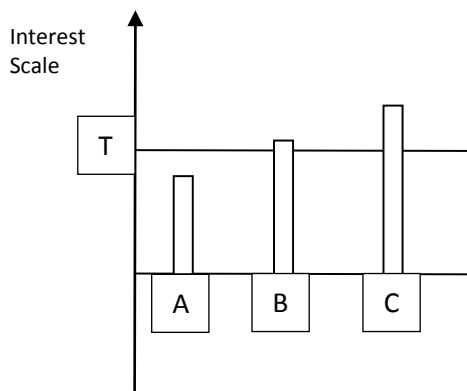
Secondly, the threshold can refer to a magnitude on the scale: a certain size after which a benefit or a harm become morally significant. The focus here is on how "weighty", so to speak, the benefit or harm is. I shall call a threshold under this interpretation a "magnitude-threshold". In this type of cases, an agent has a human right claim only if the benefit he

⁵⁷ I say that an agent "can" rather than "does" have a right so described because, whether or not the right exists will depend on whether the other existence condition for a rights are satisfied.

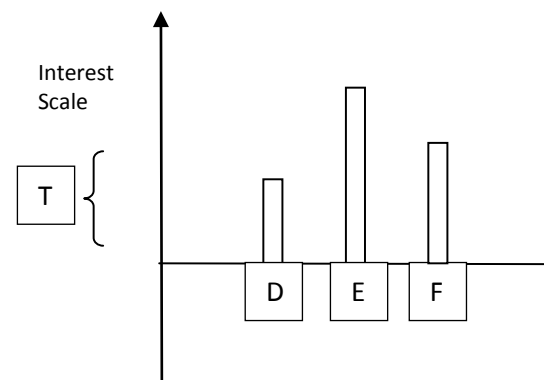
enjoys or the harm he suffers is at least of a certain magnitude T . Going back to the case of health, we can now focus on changes on the health scale, and, specifically, on the magnitude of those changes. For instance, one might think that the interest in not having one's life expectancy decreased of ten years is clearly weighty enough to be protected by a human right, while the interest in not having one's life expectancy decreased of few hours is not. Once again, I am not arguing that this is the correct way to think about the threshold for health: I simply want to provide an example of what a magnitude-threshold would look like if applied to the case of health.

The difference between level and magnitude threshold can be illustrated by the following graph:

Level Threshold



Magnitude Threshold



In his article 'Two kinds of satisficing' Thomas Hurka draws a distinction between two types of thresholds: 'comparative' and 'absolute' ones (Hurka 1990). An absolute threshold is set at a fixed amount, while a comparative threshold is determined by a percentage or distance from the maximum. If we apply this distinction to the case of the interests protected by

human rights, the maximum is the highest point on the scale of an interest. Note, however, that we can extend Hurka's definition of comparative thresholds in two ways. First, we can take comparative thresholds to include thresholds that are determined by a percentage or distance from points other than the maximum, such as, for example, the average, the median, and so on. These thresholds are still comparative, in the sense that they depend on the comparison between different levels. Secondly, we can take comparative thresholds to refer either to actual or to possible maximum points. To see why this is helpful, consider the following example. Imagine a scenario in which technology and medical discoveries would allow people to prolong their lives, but where someone had managed to take control of such technologies, and prevented their use. In this scenario the actual maximum life duration is 100 years, while the possible maximum life duration is 250. Since the actual maximum is determined by an unjust state of affairs, it seems problematic to say that the relevant level of interest in life should be determined by this threshold; rather, it seems more plausible to say that the threshold should be determined by the possible maximum.⁵⁸

Different types of goods call for different types of thresholds, and, for certain types of goods, both a level-thresholds and a magnitude-threshold might be relevant. It is not possible to consider the type of thresholds that would be relevant for each good in the space of this paper—to begin with, this would require having a list of the relevant objective goods, which I have not provided. However, it is helpful to go through some examples that have at least a *prima facie* plausibility. For instance, it seems plausible that the type of threshold relevant for the interest in freedom from pain is an absolute magnitude threshold: that there is a certain absolute amount of pain, such that human rights protect the interest in not being inflicted that an amount of pain (or a pain superior to that amount). For example, the pain caused by pinching is plausibly below such a threshold, but the pain caused by severe torture

⁵⁸ This is not meant to be an exhaustive list of the possible relevant types of threshold, but rather a provisional list of types of threshold that might be helpful in spelling out the quantitative conditions.

is above it. Accordingly the avoidance of the pain caused by torture, but not by pinching, is an interest protected by a human right. To see why this threshold is best understood as a magnitude one, consider the following case: imagine Ben is in excruciating pain; Carl did not cause the pain, nor can he do anything to lessen it. Imagine, further, that Carl causes Ben more pain, but a very minor one—say, equivalent to a pinch. If we endorsed a level-threshold, then we would have to say that Carl has violated Ben's human rights; this, however, seems to me counter-intuitive: Carl only caused Ben to suffer a very minor pain, and this action does not seem to count as a human right violation. This suggests that the interest in freedom from pain calls for a magnitude-threshold, rather than a level one.

On the other side, the threshold relevant for knowledge seems to be a level-threshold, to the effect that one has a right to a certain level of knowledge. Moreover, the level-threshold can plausibly be characterised as comparative. This is because the level is not fixed, but rather changes according to what is possible at a certain time. For instance, the level of knowledge below which one has a human right claim today is higher than it was in Middle Ages. This might be partly due to circumstances concerning the duties correlative to human rights: for instance, education might be less costly and more feasible today than it was in the Middle Ages; but it is plausibly also because today we have access to a wider body of knowledge. Moreover, the threshold is determined by a distance from the maximum possible level achievable: human rights do not protect an interest in all the knowledge available; rather, they protect a certain basic level of knowledge. For instance, plausibly human rights protect an interest in primary or secondary education, but not postgraduate studies.

The threshold relevant for an interest in life is also plausibly conceived as a level threshold, to the effect that humans protect the interest in having a life of a certain length. Again, the level-threshold should be understood as comparative. This is because the length is not

determined by a fixed amount, but rather seems to change according to what becomes possible. For instance, the length of life below which one has a human right claim today is higher than it was in the Middle Ages and this is partly because today technology and science enable us to live longer. Finally, it seems that in this case the relevant threshold is the maximum possible point: human rights protect as long a life as possible, rather than a level set at a certain distance from the maximum. This is because there does not seem to be a point after which, for instance, one may be killed or refused a life-saving treatment.

Three points are worth stressing. First, the thresholds can change in concrete circumstances. This is because, as I said, the account provided is holistic: when abstract interests conflict, we need to weigh them in order to determine the content of concrete interests. Recall the case outlined above: there might be a medicine that causes excruciating pain but is able to save someone's life. In these cases, human rights protect the interest in the maximum amount of the goods allowed by the conflict. In the scenario described above, human rights protect the interest in suffering the minimum amount of pain that is possible given the circumstances.

Secondly, as I said in Part I, the satisfaction of the Interest Conditions is not sufficient for the existence of human rights: Duties conditions also need to be satisfied. Hence, for instance, the fact that human rights protect the interest in life up to the maximum possible point does not mean that one has a human right to as long as life as possible, since protecting one's life up to that point might, among other things, be excessively costly.

Thirdly, it is helpful to stress that Interest Conditions are conditions on the interests protected by human rights, rather than rights *simpliciter*. It is plausible to think that, while there is also a quantitative threshold that interests have to satisfy in order to be protected by

rights *simpliciter*, these thresholds are different. For instance, as I pointed out in Part II above, when discussing Tasioulas' account, the interest in not being pinched is plausibly large enough to be protected by a right *simpliciter*, even though it is not large enough to be protected by a human right. Moreover, as I pointed out, rights *simpliciter* could protect aggregative interests, such as well-being: with respect to these interests, for instance, one might think that rights *simpliciter* protect an equal distribution. This is, however, a further, substantive, matter and one that does not concern the analysis of human rights.

In the proposal outlined above I tried to determine the nature of different thresholds by tracking our intuitions about the application of the concept of human rights on a piecemeal basis—that is, focusing on one interest-type at the time. One might wonder, however, whether our intuitions point to some unified criterion determining such thresholds. To assess whether this is the case, let me briefly consider some possible unifying strategies which seem to have at least a *prima facie* plausibility.

First, we can consider the possibility that the thresholds are determined by a certain "overarching" interest. For instance, we might think that the thresholds are determined by the interest in political participation, to the effect that human rights protect the amount of different interest-types that is necessary for the protection of (a certain level of) political participation. An account along those lines would be similar to the one proposed by Griffin, who, as we saw in Part II, holds that human rights protect the value of normative agency, and, relatedly, the interests that are necessary for the protection of this value.

This strategy, however, is not promising. This is because there will be cases in which agents are unable to possess the good of political participation. Consider, for instance, infants, or severely cognitively disabled people, who lack the capacities needed to possess the good of

political participation. The account would imply that these individuals have no human rights; but this, as I argued when discussing Griffin's account, goes against our intuitions about human rights. One might then think that another interest might play the required role. However, it is difficult to imagine an interest that would meet the relevant criteria. This is because, on one side, the relevant interest-type needs to be complex enough that its protection requires the protection of other interest-types. On the other side, however, the complexity of the "overarching" interest is likely to restrict the set of right-holders, since not everyone might have the capacity to obtain this good.

Alternatively, one might think that the thresholds are determined by a unifying concept which is not a component of well-being. One such candidate is, for example, dignity. As I said in Part III, Nussbaum suggests the notion of dignity can help select the capabilities relevant for human rights; she also suggests, however, that this concept can help determine the point up to which the capabilities ought to be protected. Yet, it is unclear that this concept can really play this role. The doubts raised above about the concept also undermine the claim that dignity can be employed to determine the quantitative dimension of the Interest Conditions.

Alternatively, one might think that the relevant notion is simply one of moral importance: that the thresholds for different interest-types are picked on the basis that they all have a certain threshold level of importance. To see how this would work consider the following case. Assume that human rights protect knowledge up to the threshold level of primary education. Assume, further, that human rights protect health up to the threshold level of a life expectancy of 80 years. According to the thesis under consideration, the interest in primary school education and the interest in having a life expectancy of 80 years are picked on the basis that they both have the same threshold-level of importance, so that interests up

to this level-threshold are important enough to be protected by human rights, while interest above this level-threshold are not. The same, *mutatis mutandis*, would be the case for magnitude-thresholds.

However, this suggestion, too, seems problematic. This is because human rights have different levels of importance and this difference seems to be explained, at least partially, by the difference in importance of the interests they protect. For instance, the protection of a minimal level of health, or life, seem to be more important than the protection of minimal knowledge—aside from their intrinsic importance, possessing the former is a precondition for possessing the latter. This suggests that quantitative Interest Conditions are not determined by the notion of moral importance.

Of course the above is not a complete list of possible unified criteria for the quantitative Interest Conditions, nor it is an exhaustive discussion of the options mentioned. However, it considers some options that are at least *prima facie* plausible and highlights that further considerations suggest that they are not plausible proposals. In light of this, I think that the best solution is to try to determine the nature of different thresholds on a piecemeal basis, considering what our intuitions tell us for each interest-type.

Yet, one might wonder whether this approach is in fact feasible. As I stressed in the thesis introduction, it is generally agreed that the concept of human rights is rather indeterminate, in so far as we often lack precise intuitions for, or disagree about, its application. One might then wonder whether our intuitions are fine-tuned enough to provide us with quantitative Interest Conditions for each objective good. There is, indeed, reason to doubt that our intuitions can point towards determinate thresholds. For instance, consider the case of health: should the threshold be set at a life expectancy of 80 years? Or, rather, 70, or 60? Or,

alternatively, consider knowledge: do we have a human right to primary education? Or rather a human right to a higher threshold, maybe to secondary education?

There are two points to make in response to this worry. The first is that, in finding thresholds, we can look at the relationship between objective goods. For instance, we might not have precise intuitions on whether human rights protect knowledge up to the level of primary or secondary education; yet, we might find that secondary education is needed in order to ensure the protection of a minimal level of autonomy; this, in turn, will suggest that the threshold should be placed at the level of secondary education. Similar considerations might hold for other types of objective goods.⁵⁹

Secondly, if it turns out (and it is likely it might) that our intuitions do in fact fail to point towards specific thresholds, we will have to accept that the concept of human rights is a vague one. Vagueness is a property of concepts and it is standardly defined as the possession of borderline cases (Sorensen, 2013). Borderline cases are cases "in which one just does not know whether to apply the expression or withhold it, and one's not knowing is not due to ignorance of the facts" (Grice 1989: 177). For example, it might be unclear whether someone is bald, and this is the case even if we know how many hairs they have. If our intuitions do in fact fail to point towards specific thresholds, the same might be true for human rights: for instance, we might be unable to tell whether or not one's right to education is upheld, even though we know what level of education they have achieved.

Note that to say that a concept is vague is not to dismiss it: vagueness is a property of many concepts which are widely employed in everyday life, such as bald, child, heap, red, etc. Moreover, vagueness is only problematic with respect to borderline cases. For instance, it

⁵⁹ Note, however, that this would not hold for people who are unable to be autonomous.

might be a borderline case whether a man with 1000 hairs is bald, but we are confident that a man with 10 hairs is bald and a man with 150.000 hairs is not. The same holds for human rights: for example, it might be a borderline case whether human rights protect education up to high-school level, but it seems plausible to say that they protect education up to primary-school level, and do not protect education up to postgraduate-level.

In Part IV I focused on quantitative Interest Conditions. I argued that human rights protect interests up to a certain objective threshold, and then distinguished level-thresholds from magnitude thresholds, and absolute thresholds from comparative ones. I pointed out that different types of goods call for different types of thresholds, and, for certain types of goods, both a level-threshold and a magnitude-threshold might be relevant. I then considered whether our intuitions point to some unified criterion determining such thresholds; I considered a variety of options, and concluded that none of them would provide an adequate criterion. This suggests that it might be best to determine the nature of different threshold on a piecemeal basis.

Part V Conclusion

In this paper I focused on the conditions that interests have to satisfy in order to be protected by human rights, which I called the Interest Conditions. While not all theories of human rights need to offer an account of such conditions, most, I argued, do. Our intuitions about human rights tell us that these rights protect interests that are very important and wide in scope. In order to do justice to these observations, I argued, we need to posit both qualitative and quantitative Interest Conditions: we need, that is, to consider both which type of interests, and how much of these interests, human rights protect. I then moved on to spell out how these conditions should be interpreted. With respect to the qualitative ones, I argued that human rights protect discrete interests, that these interests

should be understood in terms of objective goods, and that human rights protect the possession (rather than the opportunity for) such goods. With respect to the quantitative dimension, I distinguished between different types of thresholds and argued that different types of threshold apply to different interest-types.

POLITICAL ACCOUNTS AND FIDELITY TO HUMAN RIGHTS PRACTICE

In recent years, much attention has been received by political accounts of the analysis of human rights. These accounts hold that one of the distinctive features of human rights consists in playing a certain political function. In most cases, this political function is characterised in terms of the duties correlative to human rights. Specifically, many political accounts hold that human rights have political correlative duties, by which I mean duties held by political agents (such as states or peoples) or duties to perform political actions (such as intervention against, or support of, states). Call this thesis Political Duties.

Political accounts of the analysis of human rights have been developed in opposition to traditional ones. Traditional (or orthodox) analyses of human rights take them to be rights human beings hold "simply in virtue of their humanity" (Simmons 2001: 185). This type of theory has received, and continues to receive, widespread support (Gewirth 1996, Sen 2004, Griffin 2008, Tasioulas 2012). However, many political accounts accuse traditional ones of being irrelevant to the way the concept of human rights is actually employed. This is because, they hold, traditional accounts fail to adequately relate their analysis to human rights practice (Pogge 2000, 2002; Beitz 2003, 2009; Cohen 2004; Raz 2010; Valentini 2012a; Barry and Southwood 2011). But, these theorists continue, the analysis of human rights must be faithful to human rights practice. Call this the desideratum of fidelity.⁶⁰ Moreover, many argue that, if we attend to the desideratum of fidelity, we find that it supports Political Duties. Call this the Fidelity Argument.⁶¹

⁶⁰ For replies to the objection political account press against orthodox accounts, see Griffin 2008, and Etinson and Liao 2012.

⁶¹ I do not wish to suggest that Political Duties can only be supported by (a version of) the Fidelity Argument. As I mentioned in the thesis introduction, there are other plausible desiderata for the analysis of human rights. One might plausibly think, for instance, that the analysis of human rights should fit with correct normative principles. It is then possible to base the defense of Political Duties on this desideratum. See, for example, Sangiovanni 2008. As we will see, however, many theorists endorsing a political account support Political Duties on the basis of the desideratum of fidelity. This is why I chose to focus on this type of argumentative strategy.

In Part I, I outline Political Duties more precisely and present the starting assumptions of this paper. In Part II I briefly elaborate on the validity of the desideratum of fidelity. I then consider two ways of interpreting this desideratum. According to the first interpretation, the analysis of human rights needs to be faithful to the way the concept is employed by anyone who uses it (Pogge 2002, Valentini 2012a, Barry and Southwood 2011). The second interpretation narrows down the focus: instead of looking at the way in which the concept is employed in general, it focuses on how it is employed, in particular, by participants in the political practice of human rights (Raz 2010, Beitz 2009). I tackle these two readings and the corresponding versions of the Fidelity Argument for Political Duties in Parts III and IV. I argue that neither successfully supports Political Duties.

Part I: Political accounts and Political Duties

As I said, political accounts of the analysis of human rights hold that one of the distinctive features of human rights consists in playing a certain political function. In most cases, these political functions are characterised in terms of the duties correlative to human rights. Specifically, many political accounts endorse the following thesis:

Political Duties (PD): a right is a human right only if it has correlative duties that are held by *political agents* or require the performance of *political actions*.⁶²

Different supporters of political accounts will focus on different types of political agents and/or political actions. For instance, Rawls argues that one of the distinctive features of human rights is that their violation justifies, in extreme cases, forceful intervention against other peoples (Rawls 1999). Raz holds that they are rights whose violation is a reason for action against states in the international arena (Raz 2010). On similar lines, Beitz holds that,

⁶² The "or" in the thesis is to be interpreted as inclusive.

in the first instance, the duties correlative to human rights are held by states; if those are not upheld, various types of international agents have a duty to interfere in states' affairs, or offer states various forms of support (Beitz 2009).

Other accounts have offered a more abstract characterization of the relevant agents and actions. Pogge has famously argued that human rights are demands on the conduct of coercive institutions, so that only coercive institutions can directly uphold or violate human rights, while individuals designing and upholding institutions have a duty to support institutional conduct complying with these claims (Pogge 2000, 2002). Recently, Valentini has followed a similar approach, holding that human rights are demands on the conduct of political institutions, which she describes as institutions that heavily shape our opportunities to act, and from which we cannot extricate ourselves (Valentini 2012a).⁶³ Along similar lines, Barry and Southwood take human rights to be demands on political agents, which they take to be agents that claim for themselves a certain kind of authority, wield power, have the capacity to coerce those over whom they exercise authority on a large scale, and so on (Barry and Southwood 2011). Note that Pogge has later partly retracted these statements, claiming that he does "not object to calling ordinary crimes of torture, rape, etc., human rights violations" (2005: 43-44). Interestingly, however, Pogge's defence of political accounts has become a canonical statement of the argument, and it has been widely influential even

⁶³ It is unclear that these features pick out all and only political practices. For instance, as Valentini recognises, family practices might be considered heavily influential and unchosen ones. Yet, it would be counterintuitive to describe them as political practices. She replies by pointing out that "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" (Valentini 2012a: 193). But this reply seems to me unconvincing. It might of course be the case that the state influences families, but there is reason to think that the reverse holds too. For example, family practices are likely to influence a variety of laws. Among others, marriage and divorce laws, as well as laws regulating the economic support of children. Secondly, a state might attempt to structure families in a certain way, but this regulation has limits: for instance, the state does not regulate the amount of time parents spend with their children, whether they engage them in intellectually, etc. All of the above will influence the children life prospects. Hence, the fact that the state regulates some aspects of family life is not sufficient to show that family practices are not heavily influential and unchosen. Under Valentini's account, this would imply that family practices are political practices; but, as I said, this seems counterintuitive.

after he retracted the point.⁶⁴ I will thus consider the early version of his work in what follows.

For each of these accounts, human rights are political in at least one of two ways: they ground duties of *political agents* or duties to perform *political actions*. Consider, for instance, the nature of duty-holders: some accounts focus on peoples (Rawls 1999); some on states (Raz 2010 and Beitz 2009), others on political agents more abstractly described (Valentini 2012a; Barry & Southwood 2011). Similarly, when it comes to the nature of the actions: for example, some accounts focus on duties to support states (Beitz 2009); others are concerned with duties to uphold political institutions complying with human-rights (Valentini 2012a). Notwithstanding the variation, however, these political accounts assign duties on *political agents* or duties to perform *political actions*. For convenience, I shall simply use the phrase "political duties" to refer to duties held by political agents or requiring political actions.

Let me make a few clarificatory points. I here focus on political accounts that endorse Political Duties. As we have seen, this includes a large number of prominent political accounts. An account, however, need not endorse Political Duties in order to be political: one can characterize the political function played by human rights in different ways. For instance, some hold that one of the distinctive features of human rights is that they provide constraints on legitimate political authority (Rawls 1999; Cohen 2004). This thesis does not entail, nor is entailed by, Political Duties: one could hold that human rights have no correlative political duties and that a political authority is legitimate only if the human rights of its subject are upheld.⁶⁵

⁶⁴ See, for example, Beitz 2009 and Valentini 2012a.

⁶⁵ Consider, for instance, the following scenario: the citizens of a certain country subject each other to degrading treatment and violate each others' rights, while the state is unable to intervene. In this case, it is perfectly consistent to hold the three following claims: first, the citizens, but not the state, hold the duties correlative to the violated rights; second, the violation of these rights entails that the state has no legitimate

I here focus on moral human rights. I do not assume any specific analysis of rights, nor do I assume that the correlative duties always provide conclusive reasons for action. Political Duties is a claim about the *analysis of the concept*. Note that one can reject Political Duties and also believe that at least some rights have a political content, in virtue of substantive moral principles and contingent empirical facts. For instance, one could believe that abstract human rights, such as the right to health, justify concrete human rights which are political in content, such as the right to health provision from the political institutions one is subject to, because the protection of health requires complex services and political institutions are best placed to provide such services.⁶⁶

Political Duties provides a set of necessary, but not sufficient, conditions that a right has to satisfy in order to be a human right. Some political accounts, for instance, also hold that a right is a human rights only if it protects a certain class of urgent needs or interests (Pogge 2000, 2002; Beitz 2009).

I employ the term 'political agent' to refer to agents that are either paradigmatically political (such as, for instance, states) or are explicitly described as political. I use the term 'action' in a broad sense, and I take it to include omissions. I take an action to be political if and only if it is performed with the intention of affecting political agents, or it is reasonably foreseeable that it will. This includes, for instance, both forcefully intervening against states and providing them with financial support. Note that, as I am employing the term, political actions need not be performed by political agents. This is especially relevant for political accounts that distinguish between two sets of duties. Beitz, for instance, distinguishes between two levels: first level duties are duties to respect, protect and aid individuals, and

authority; third, the violated rights are human rights precisely in so far as they provide constraints on legitimate political authority.

⁶⁶ For an account of how traditional accounts can make sense of the political content of rights, see Griffin 2008 and Etinson and Liao 2012.

are held by states; second level duties are duties to hold accountable, assist and intervene in the affairs of states which are unable or unwilling to discharge first level duties, and are held by various types of agents in the international community. The second set of duties is not necessarily held by political agents—the duty to hold accountable, assist and intervene against states can be held by various types of agents in the international community. Yet, holding accountable, assisting and intervening against states are political actions in the sense relevant for this paper, in so far as they are performed with the intention of affecting a political agent.

Note that Pogge's account is not strictly speaking a political one, since he refers to coercive social institutions and takes leaders of large corporations to be possible duty-holders for duties correlative to human rights (Pogge 2002: 59). This account is thus better labelled as 'institutional'. For simplicity, and since most theorists focus on political agents and actions, I only focus on political duties, and set aside other types of institutions, such as multinational corporations and nongovernmental organizations. I consider Pogge's argument below in so far as it can be employed to defend Political Duties, since institutional agents plausibly include political ones.

We can distinguish two readings of Political Duties. Under the first interpretation, human rights *only* have political correlative duties. Call this interpretation Political Duties Only. This is a rather strong thesis, as it makes it conceptually impossible for human rights to entail that non-political agents have a duty to perform (or omit) non-political actions.

Under the second interpretation, human rights *distinctively* have political correlative duties: they can also have non-political correlative duties, but having political correlative duties is

what identifies them as human rights.⁶⁷ Call this interpretation Political Duties Distinctively. This is a weaker claim than Political Duties Only, since it does not conceptually require that all the correlative duties should be political. Yet, it does require that at least some of the correlative duties are political, and takes this to be a necessary condition for a right to be a human right.

Some supporters of political accounts explicitly endorse one or the other version, some do not address the issue. Pogge, Valentini, and Barry and Southwood, for example, explicitly endorse the Political Duties Only reading (Pogge 2000, 2002; Valentini 2012a; Barry and Southwood 2011). Raz, on the other hand, endorses what I am here calling the Political Duties Distinctively reading when he claims:

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 also be rights against individuals and other domestic institutions. The claim is only that being rights whose violation is a reason for action against states in the international arena is distinctive of human rights, according to human rights practice (Raz 2010: 329).

Since both readings are *prima facie* plausible theses, I will consider them both in this paper.

Part II: Fidelity

As I mentioned at the outset of this paper, political accounts argue that their thesis is supported by fidelity, which I defined as the desideratum according to which the analysis of human rights must be faithful to human rights practice. A practice is an activity that follows a set of rules which give it a structure. To be precise, the desideratum of fidelity holds that the analysis of human rights should be faithful to conceptual practice—to the way the concept of human right is employed. This can be distinguished from the social practice of

⁶⁷ Note that the specific political nature of the duties will change according to the political accounts endorsed.

human rights, by which I mean the social activities which are governed by human rights norms. The conceptual and social practice of human rights are of course intertwined, in so far as the way the concept is employed influences the way in which various social activities are regulated by human rights.

There are two main reasons why fidelity is a plausible desideratum for a theory of human rights. First, if an account of human rights were not faithful to human rights conceptual practice, we would no longer really be analysing the concept as it is employed in the social practice, but rather stipulating a new, theoretical, one. We would, effectively, be changing the subject. Secondly, as advocates of political accounts have repeatedly pointed out, if we do change the subject in this way, then our analysis will be too detached from the social practice of human rights to have any authority over it (Beitz 2009; Cohen 2004; Raz 2010). Since, plausibly, a central aim of a theory of human rights is to provide a way to criticise and improve the social practice of human rights, this would indeed be a very unfortunate outcome. So we have a very strong *prima facie* reason to take the Fidelity Argument seriously.

Moreover, note that fidelity is not exclusively a concern of political accounts. No doubt political accounts have repeatedly stressed the importance of this standard, but it is also endorsed by supporters of so-called traditional accounts. Griffin for example, defends a "bottom-up approach" to the analysis of human rights, according to which "one starts with human rights as used in our actual social life by politicians, lawyers, social campaigners, as well as theorists of various sorts, and then sees what higher principles one must resort to in order to explain their moral weight" (Griffin 2008: 29). Similarly, Tasioulas holds that "a credible account of human rights must exhibit an appropriate level of fidelity to the human rights culture" (Tasioulas 2009: 939).

Let me, however, consider a possible objection. This approach might be criticised on the grounds that fidelity is a desideratum for the analysis of legal human rights, but not for the analysis of moral human rights. A point along these lines has recently been made by Allen Buchanan (2014). He holds that moral human rights are rights that all human beings have in virtue of being human, while international legal human rights are rights established by the international legal practice and outlined in documents such as the Universal Declaration of Human Rights, the International Covenants, and so on. He claims that neither of those concepts can be reduced to the other: importantly, international legal rights are not the legal embodiment of (a subset of) moral human rights.⁶⁸ He also claims that if one focuses on the analysis of moral rights "one need not show how it makes sense of or provides a basis for criticizing modern human rights practice" (2014: 5). One might then think that it would be misguided to take the desideratum of fidelity to apply to moral, as opposed to legal, human rights.

I do not think, however, that Buchanan's remarks should lead us to abandon fidelity as a desideratum for the analysis of moral human rights. Buchanan takes legal practice to be the "heart, or core of modern human rights practice" (2014: 3). But even if we accept that this is the case, there is no reason to think that legal practice is the whole of human rights social practice. Rather, we can identify a wider practice which includes a legal core. The analysis of moral human rights will then be needed to make sense of, or provide basis for criticising, this wider social practice. To do so, however, the analysis of moral human rights will need to embrace the desideratum of fidelity.

⁶⁸ Specifically, Buchanan outlines and rejects the Mirroring View, according to which "to justify an international legal human right one typically must show that it mirrors an antecedently existing moral human right while allowing for the possibility that in some cases the legal right is a specification of such a right [...] or that it is instrumentally valuable for realizing a moral human right" (2014: 65).

As I said, supporters of Political Duties have defended this thesis on the basis of the desideratum of fidelity. There are two different versions of this argument. Under the first interpretation, we should focus on the broad conceptual practice: that is, the way the concept is employed by anyone who uses it. Call this interpretation the Broad Fidelity Argument. Pogge (2000, 2002) and Valentini (2012a) follow this interpretation when they claim that we do not employ human rights to describe private wrongdoings, and take it as evidence for PD. For instance, Pogge argues:

Consider first some ordinary assault, in a pub, perhaps, after some drinking and argument. Though the victim may be badly hurt, we would not call the assault a human-rights violation. A police beating of a suspect in jail, on the other hand, does seem to qualify. This suggests that, to engage human rights, conduct must be in some sense official (Pogge 2000: 47).

Under the second interpretation of the argument, we narrow down the focus. Instead of focusing on the way the concept is employed in general, we only consider how it is employed by participants to human rights social practice. Further, defenders of this type of argument focus on one specific type of social practice: the political one. Accordingly, they hold that Political Duties is supported by the way participants to the political practice of human rights employ the concept. Call this interpretation the Narrow Fidelity Argument.

This type of argument is presented by Beitz, when he defends Political Duties on the basis of the following method:

The role of human rights in practical reasoning about the conduct of global political life [...] defines the concept of a human right [...] We attend to the practical inferences that would be drawn by competent participants in the practice from what they regard as valid claims of human rights. An inventory of these inferences generates a view of the discursive functions of human rights and this informs an account of the meaning of the concept (2009: 102; see also 2009: 105).

Raz endorses a similar strategy. He takes human rights practice to include a series of political activities, such as drafting declarations and treaties, running of international courts and tribunals, justifying wars, etc (2010:31). He then defends his reading of Political Duties on the basis that :

While human rights are invoked in various contexts, and for a variety of purposes, the dominant trend in human rights practice is to take the fact that a right is a human right as a defeasibly sufficient ground for taking action against [violating states] in the international arena, that is to take its violation as a reason for such action (Raz 2010).⁶⁹

We thus have two interpretations of Political Duties (Political Duties Only and Political Duties Distinctively) and two interpretations of the Fidelity Argument (the Narrow Fidelity Argument and the Broad Fidelity Argument). Let us then consider if either interpretation of the Fidelity Argument can support either reading of Political Duties.

Part III: The Broad Fidelity Argument

Recall that under the Broad Fidelity Argument, we should focus on the broad conceptual practice: that is, the way the concept is employed by anyone who uses it.⁷⁰ As I noted above, this follows a common methodology in analytical philosophy: we often support, or reject, conceptual analyses on the basis of our intuitions about the application of the concept. Recall, for example, the hedonist analysis of well-being, according to which well-being consists in having pleasurable experiences. In order to understand whether this analysis is correct, we consider whether we are willing to agree that a person is happy in all and only the cases in which he experiences pleasure. For example, Nozick's 'experience machine' thought experiment famously asks us to imagine a machine one could plug into for the rest

⁶⁹ Note that, in the formulation cited, Raz employs the term "violation" rather than "violating state". I have substituted the terms for clarity, on the basis that, as we have seen before, Raz holds a version of Political Distinctively Duties according to which "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: 329).

⁷⁰ By this I do not mean to say that we should test each person's conceptual intuitions, but rather that we test conceptual intuition which we take others to share.

of one's life, to enjoy experiences of whatever kind one thought most valuable or pleasurable (Nozick 1974). If we are not willing to agree that plugging into the machine would lead to a happy life, then we have a counter-example to the hedonistic analysis of happiness. This is of course only one of many possible examples, and philosophers often employ intuitions about the application of a concept in order to defend, or challenge, conceptual analyses (from now on, I will use the term "conceptual intuitions" to refer to intuitions about the application of a concept).

Let us then consider whether Political Duties can be supported by the Broad Fidelity Argument. I start by considering the stronger interpretation of thesis, Political Duties Only. An influential version of this argument is presented by Pogge, who holds that human rights violations only take place when an official wrongdoing occurs. He argues that we would not employ the term human right to describe an ordinary assault taking place in a pub, while we would employ it to describe the misconduct of a policeman attacking a suspect in jail.⁷¹

Valentini also follows a similar argumentative strategy. For a vivid example, she argues, take the case of Josef Fritzl, the Austrian man who imprisoned his daughter in an underground cellar. He is of course guilty of a serious crime and cruel behaviour. Yet—Valentini argues— while Fritzl's actions are surely terrible wrongdoings, we would not intuitively describe them as human rights violations. This suggests that the concept of human right is employed only to refer to wrongdoings perpetrated by political agents (Valentini 2012c).

While this argument might initially seem to be persuasive, it is not ultimately successful. First of all, intuitions are not as aligned as political accounts take them to be. For instance, it

⁷¹ Pogge holds that unofficial violations of a right that is on the list of human rights do not constitute human-rights violations. However, he also believes that official indifference towards such private violations constitutes official disrespect, which is a form of human right infringement (2002: 62).

does not seem to me implausible to employ human rights language to describe Fritzl's wrongdoings. Secondly, even if Pogge and Valentini are correct in claiming that we would not employ human rights language to describe the cases they present, this is still not enough to support Political Duties Only. This is because one can agree that a pub attack and Fritzl's crimes are not intuitively described as human rights violations while thinking that *other* types of private wrongdoings are. Consider, for example, the abuses perpetrated by violent husbands, abusive parents, racist or homophobic groups against women, children, members of cultural minorities and homosexuals. They are not violations of political duties: they are not perpetrated by political agents (such as states, political institutions, etc), nor do they consist in the performance of political actions (such as intervening against states or supporting political institutions, etc). Yet, it seems very plausible to describe those as human rights violations (Ashford 2007: 185). One can, then, make sense of the intuitions elicited by political accounts by discriminating between private wrongdoings that are human rights violations and private wrongdoings that are not.

Of course one then has to address a further question concerning the criterion employed to distinguish these two categories: one needs to explain, for instance, what distinguishes a drunken attack in a pub from an instance of racist or homophobic violence which causes the same injuries to the victim. There are various possibilities. For example, one might think that the distinction should be drawn on the basis of the type of *threat* faced by the victims. Nickel, for instance, holds a thesis along those lines: "spousal and child abuse are human rights problems, but the threats do not come mainly from governments. Human rights deal with problems that are regularly present and dangerous" (2007: 74). This thesis would explain why we think that homophobic and racist attacks are human rights violation, but a pub attack is not, in so far as the latter is an isolated occurrence, while the former are regular and widespread threats. The account seems to have at least a *prima facie* plausibility: for

instance, if drunken pub attacks became a widespread and regular phenomenon, we might be more inclined to employ human rights language to describe the situation.

Alternatively, one might think that the distinction should be drawn on the basis of the *motive* of the attacker, to the effect that a private wrongdoing is a human rights violation only if it is motivated by certain attitudes to characteristics of the victim (such as ethnicity, sexual orientation, gender, etc). Again, this thesis would explain why homophobic and racist attacks are human rights violations, but a pub attack is not. This claim will strike many as at least *prima facie* plausible: for instance, if a drunken pub attack were motivated by hatred against a certain ethnicity, or sexual orientation, we might be more inclined to employ human rights language to describe it. I have suggested two ways of discriminating between private wrongdoings that are human rights violations and private wrongdoings that are not. Exploring these options in more detail and looking at alternative ways of drawing the distinction are beyond the scope of this paper. The important point, however, is that, even if we agree that some private wrongdoings are not intuitively described as human rights violations, we can explain this without endorsing Political Duties, in so far as we can discriminate between different types of private wrongdoings and take some, but not others, to be human rights violations.

Thirdly, the arguments presented in support of Political Duties Only rely on a particular type of intuitions: intuitions about the way we would actively and naturally apply the concept. However, these are not the only relevant intuitions. We should also consider, for example, intuitions about *denying* the application of the concept. Denying that a concept applies is different, and stronger, than simply refraining from actively employing it. Our intuitions about denying the application of a concept provide important clues about conceptual analysis. For example, one might not actively and naturally employ the concept

"animal" to describe a human being; but, if asked, one would also not deny that human beings are in fact animals. When considering if private wrongdoings can be human rights violations, then, we should not simply focus on the way we actively and naturally apply the concept. We also need to ask whether we would explicitly *deny* that abusive husbands, and violent parents violate their victims' human rights. Crucially, it seems to me unlikely that we would.

Note, moreover, that, even if it were true that we do not actively and naturally employ the concept of human rights to describe private wrongdoings, this could be explained without endorsing Political Duties Only. To see how, consider the following. The concern with wrongdoings such as murder or rape has long been part of moral language and practice. These wrongdoings are "traditionally" described using language related to other types of duties—the duty not to murder, not to kill, and so on. However, this is compatible with holding that these wrongdoings are *also* human rights violations. Since human rights language is relatively new, and since we already have an established language to condemn these wrongdoings, when we refer to the corresponding duties we most readily resort to the long-established language. However, this does not entail that these wrongdoings are not also human rights violations. On the contrary, the fact that it is counterintuitive to explicitly deny that the concept applies suggests that these acts are, indeed, also human rights violations.

The above shows that conceptual intuitions do not support Political Duties Only. However, as I said in Part I, Political Duties Only is not the only interpretation of the Political Duties thesis. There is also a second interpretation, which I called Political Duties Distinctively, according to which human rights can have both political and non-political correlative duties, but correlative political duties are what distinguishes them as human rights. This thesis is weaker than Political Duties Only, so one might think it is more easily defended.

One way to assess whether our conceptual intuitions support Political Duties Distinctively is to consider whether the concept of human rights applies in cases where there are no correlative political duties. To do so, imagine a situation of anarchy, in which no political agent exists. Political accounts, including the ones that defend Political Duties Distinctively, are committed to the view that the concept of human rights is not relevant to the description and assessment of this type of scenario. Conversely, one can employ human rights to describe and assess these scenarios if one rejects political accounts. However, conceptual intuitions about these scenarios diverge considerably. For example, in presenting their preferred account, Barry and Southwood hold that: "it does say that a world without political entities of any kind is a world without human rights, but this seems to be the intuitively correct result" (2011: 381). On the other hand, however, Tasioulas thinks that it is implausible to think that "quite intelligible positions in political philosophy [such as the one held by believers in human rights who are also political anarchists] would manifest something like conceptual error" (Tasioulas, 2009: 946). The fact that a world without political entities of any kind would be a world without human rights is the intuitively correct result for Barry and Southwood, but counter-intuitively restrictive for Tasioulas. It thus seems difficult to argue that intuitions in anarchy scenarios support Political Duties Distinctively in any clear way.

Alternatively, we can test our intuitions in cases in which political duties do not provide conclusive reasons for action.⁷² Consider then the following scenario.⁷³ Imagine a group of women who suffer severe discrimination. Any political action and any action performed by

⁷² Recall that, as I said in Part I, I am not assuming that duties correlative to human rights always provide conclusive reasons for action.

⁷³ This example is modified from Tasioulas 2009. Discussing Beitz' account, he argues "Imagine that empirical studies reliably establish that external efforts to encourage non-Western states to comply with rights to be free from severe poverty or discrimination on the grounds of sex, for example, are almost invariably either unacceptably intrusive or deeply counter-productive. Such a finding might plausibly render the violation of such norms no basis for 'international concern', as Beitz understands it (after all, can a 'practical' conception of human rights countenance a *pro tanto* basis for concern that is invariably defeated, all-things-considered?)" (Tasioulas 2009: 948)

political agents to support these women is so risky that there is no conclusive duty to undertake it. However, non-political agents are able to tackle discrimination by performing non-political actions—for instance, donating to a women's support group—without any significant risk. One might then plausibly think that non-political agents have a duty to donate, that this duty is correlative to the women's human right against discrimination, and that it provides a conclusive reason for action. Note, moreover, that a supporter of Political Duties Distinctively would have no difficulty accepting this is the case. This is because, as I said, Political Duties Distinctively is consistent with taking human rights to have non-political correlative duties.

We can outline two competing explanations of what goes on in the above scenario: one offered by supporters of Political Duties Distinctively, the other offered by those who reject the thesis. On both explanations women's right not to be discriminated grounds a duty to tackle the discrimination. Given the circumstances, this duty is best discharged by non-political agents through non-political action. Those who reject PDD would take this to provide the full explanation of the scenario. On the contrary, supporters of Political Duties Distinctively add a further feature to the explanation: they hold that the right also grounds a *prima facie* political duty. This duty does not provide a conclusive reason for action, since is outweighed by considerations of costs and risk. However, this is what makes the women's right not to be discriminated against a *human* right.

How are we to choose between these two interpretations of the scenario? To begin with, the first interpretation seems to fare better in terms of simplicity, as it only requires us to posit the existence of duties needed to protect the human right. By contrast, the interpretation proposed by supporters of PDD also requires us to posit the existence of a political duty, even though this type of duty is defeated by other types of considerations, and the relevant

human right can instead be protected by other types of agents and actions. Given this, supporters of PDD need to provide us with a reason to posit the existence of the political duty. But it is unclear what this reason would be. It is, furthermore, especially difficult to see how this *prima facie* political duty could play the crucial role Political Duties Distinctively attribute them. If, as I argued, it is unclear that our intuitions are best captured in terms of this *prima facie* political duty, it seems particularly hard to maintain that this duty is what makes the relevant right a human right, as defendants of Political Duties Distinctively argue.

In Part III I assessed the Broad Fidelity Argument, according to which Political Duties is supported by the way the concept of human rights is employed by anyone who uses it. First, I focused on Political Duties Only. I argued that this thesis is not supported by our conceptual intuitions for three reasons: it is unclear that the conceptual intuitions on which the argument relies are as shared as supporters of this thesis seem to think; one could share those intuitions without endorsing Political Duties Only; and the argument relies on an unwarrantedly narrow set of conceptual intuitions. I then focused on Political Duties Distinctively. I argued that it is not supported by conceptual intuitions for two reasons: first, our intuitions about this thesis can be tested in anarchy scenarios, but those cases elicit extremely contrasting responses; secondly, our intuitions about this thesis can be tested in cases in which political duties offer no conclusive reason for action. However, our intuitions in these scenarios do not seem to support Political Duties Distinctively.

Part IV: The Narrow Fidelity Argument

Let me now consider the Narrow Fidelity Argument. As I said, this second interpretation of the Fidelity Argument narrows down the focus; instead of focusing on the way the concept is employed in general, we only consider how it is employed by participants to human rights social practice. In particular, proponents of this type of argument focus on one specific type

of social practice: the political one. Accordingly, they hold that Political Duties is supported by the way participants to the political practice of human rights employ the concept of human rights. This type of argument is presented by Raz (2010) and Beitz (2009).

Raz focuses on the political practice of human rights, which he takes to include activities such as drafting declarations and treaties, running of international courts and tribunals, justifying wars, providing the condition of participation in various international programmes, the receipt of financial aid, running of non-governmental organizations. He claims that a theory of human rights has two tasks: to establish the essential features which political human rights practice attributes to the rights it acknowledges to be human rights; and to identify the moral standards which qualify anything to be so acknowledged (Raz 2010).

In answer to the first question, Raz puts forward a version of Political Duties Distinctively.

As we have seen above, he holds that:

while human rights are invoked in various contexts, and for a variety of purposes, the dominant trend in human rights practice is to take the fact that a right is a human right as a defeasibly sufficient ground for taking action against [violating states] in the international arena, that is to take its violation as a reason for such action (Raz 2010: 328).

This then leads him to argue, in reply to the second question, that human rights are those regarding which sovereignty-limiting measures are morally justified (Raz 2010).⁷⁴

⁷⁴ Raz's argument needs to be reconciled with the following claims, which he makes in the conclusion of his article: "I have not offered an analysis of the concept of a human right. There is not enough discipline underpinning the use of the term 'human rights' to make it a useful analytical tool. The elucidation of its meaning does not illuminate significant ethical or political issues. Focusing on the use of the term in legal and political practice and advocacy, I claimed that it either relies on the legal recognition of human rights as limiting state sovereignty, or claims that they should be so recognized. Given that, I posed the question of which individual rights warrant such recognition, and what precise limits to sovereignty they should be taken to set" (Raz 2010).

It is unclear what he means by this. On one hand, he seems to contrast the analysis of the concept *as it is employed in general* with the analysis of the concept *as it is employed in legal and political practice*. On this reading, while the former context lacks the required discipline to allow an analysis, the latter is disciplined enough to enable it (I go back to this suggestion below). On the other hand, he seems to contrast *his thesis* with *an analysis*

Similarly, Beitz aims to arrive to the analysis of human rights by focusing on the way the concept is employed by participants to the global political practice of human rights:

The role of human rights in practical reasoning about the conduct of global political life [...] defines the concept of a human right [...] We attend to the practical inferences that would be drawn by competent participants in the practice from what they regard as valid claims of human rights. An inventory of these inferences generates a view of the discursive functions of human rights and this informs an account of the meaning of the concept (Beitz 2009: 102).⁷⁵

As I said, Beitz defends a version of Political Duties Only, according to which, in the first instance, the duties correlative to human rights are held by states; if those are not upheld, various types of international agents have a duty to interfere in states' affairs, or offer states various forms of support (Beitz 2009). Beitz considers the possibility that his analysis is too state-centric (2009: 123). However, he dismisses this worry and argues in favor of Political Duties on the basis that:

The human rights treaties all place the primary responsibility for compliance on states and rely on states to regulate the behaviour of non-state actors. The formal mechanisms for monitoring human rights violations are overwhelmingly constituted of states and their reporting procedures rely primarily on states (nongovernmental organizations have an important but subsidiary role) (Beitz 2009: 124).

I do not think, though, that the Narrow Fidelity Argument is ultimately successful. First of all, it is not clear that the restriction proposed by supporters of this argument is justified. Two problems arise: first, one needs to justify restricting the set of agents whose conceptual practice one takes to be relevant. This is because such a restriction deviates from the standard way in which we conduct the conceptual analysis of normative concepts. Consider the methodology we normally employ for the analysis of concepts such as "equality",

of human rights. It is difficult to make sense of this second reading: for instance, it might be that he takes his account to provide a partial, rather than a full, conceptual analysis; or that he takes his account to concern the use of the concept, rather than its analysis. Regardless of which interpretation is correct, however, two points seem clear: first, Raz's thesis is either a conceptual thesis or it is relevant to conceptual analysis; second, the thesis is supported by the conceptual practice of participants to human rights political and legal practice. This is why, regardless of the interpretative difficulty, I assess his argument in this paper.

⁷⁵ See also Beitz 2009: 105

"justice", "freedom" and so on. When conducting the analysis of those concepts we generally focus on the broad conceptual practice—that is, the way the concept is employed by *anyone* who uses it. Why then should we restrict the scope when addressing the analysis of human rights? Supporters of the Narrow Fidelity Account need to provide an answer to this question.

Secondly, defenders of this argument focus on one specific type of social practice: the political one. However, they need to explain why the social practice of human rights should be conceived as narrowly political. The concept of human rights is also employed in non-political activities. For instance, charities might employ human right language to ask citizens to volunteer or donate. Some might also employ human rights language to ask consumers to buy (for example) fair-trade products, and so on. Human rights social practice could thus be taken to include non-political activities performed by non-political agents, such as donating, volunteering, buying, etc. Why then should these activities not be considered part of the social practice of human rights?

One might think that the restriction is warranted on the basis that it allows us to focus on a more uniform conceptual practice. For instance, Raz holds that:

There is not enough discipline underpinning the use of the term 'human rights' to make it a useful analytical tool. [...] Focusing on the use of the term in legal and political practice and advocacy, I claimed that it either relies on the legal recognition of human rights as limiting state sovereignty, or claims that they should be so recognized (Raz 2010: 336).

This suggests that, if we focus on the way everyone employs the concept, the evidence will be too conflicting to support any one thesis; conversely, if we focus on the way participants to the political practice employ the concept, we will be able to identify a dominant trend in support of a (partial) analysis of the concept.

However, as I argued in the thesis introduction, we should not overplay the indeterminacy of the concept of human rights: first, we do have intuitions about "typical" cases; secondly, divergence of intuitions about the application of concepts is not uncommon even in the analysis of more "established" concepts; thirdly, some intuitions that appear to be divergent to begin with might in fact converge after they have been adequately tested. In response to Raz's point we can also add that it is an empirical matter whether or not the beliefs of participants to the political and legal practice are more homogeneous than the beliefs of non-participants, and as such the claim needs empirical support. However, Raz does not provide such support.

Note, moreover, that even if we did agree that it is warranted to focus only on participants to the political practice, this would still not be enough to support Political Duties. This is because the argument also faces a problem concerning another empirical premise: namely that practitioners' use of the concept of human rights supports Political Duties. This premise needs to be supported by empirical evidence. But, as we shall see, it is unclear that any such evidence is available.

It is important to clarify the *kind* of evidence which would be needed to support Political Duties. To do so, we need to distinguish between conceptual and non-conceptual truths. Conceptual truths are truths that are knowable in virtue of the analysis of the constituent concepts. Non-conceptual truths are truths that are knowable in virtue of the analysis of the constituent concepts and something about the world. For instance, "cardiologists are doctors" is an example of a conceptual truth while "cardiologists are rich" is an example of a non-conceptual truth. The distinction between these two types of truths is important when we are interested in conceptual analysis. This is because the content of conceptual truths is

constitutive of the analysis of the concept, while the same is not the case for the content of non-conceptual truths. So, for instance, the fact that "cardiologists are doctors", is constitutive of the analysis of the concept of "cardiologist", while the fact that "cardiologists are rich" is not.

Let us apply the above distinction to the way the concept of human rights is employed. Assume that Raz is correct in saying that the dominant trend among participants to human rights political practice is to take the violation of a human rights to be a defeasibly sufficient reason for taking action against violating states. We can distinguish two reasons why participants to human rights political practice might hold this belief. On one side, they might believe this as a matter of conceptual truth: that this claim is true in virtue of the analysis of the concept of human rights. On the other side, they might believe this as a matter of non-conceptual truth: it is true in virtue of the analysis of the concept of human rights, *and* because of further normative and non-normative facts. For instance, they might believe that the duties correlative to human rights should be upheld in an effective way and that, given the current empirical circumstances, political action against violating states is the most effective way to ensure these duties are upheld. Note, however, that in the first case, but not the second one, the fact that there is a defeasibly sufficient ground for taking action against violating states can be taken to be constitutive of the concept of human rights.

This has an important upshot with respect to the evidence which can be taken to support Political Duties. Political Duties is a conceptual thesis: hence, in order to support it, one needs to focus on conceptual truths. Showing that practitioners infer the existence of political duties from assertions of human rights is not enough to support Political Duties. Rather, one needs to show that they do so *as a matter of conceptual truth*.

So how is one to find such evidence? Of course, the most accurate way of knowing about practitioners' conceptual beliefs would be to directly collect such information. But it seems difficult to gather this data. Yet, one might argue that, while we have no direct tests of conceptual intuitions, we can find *indirect* evidence for such conceptual beliefs in human rights documents, treaties, reports, and statements issued by international organizations, states and NGOs. I will thus present and assess the evidence which I take to be relevant to the argument, focusing on the main legal documents and the statements of prominent international organizations and NGOs. I start by considering Political Duties Only, and I'll move on to consider Political Duties Distinctively afterwards.

Let me first of all focus on evidence we can find in human rights international legal documents.⁷⁶ There is no doubt that much of what is written in these documents focuses on states. See, for instance, the Universal Declaration and the Covenants:

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant (International Covenant on Economic, Social and Cultural Rights, Article 3).

The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international cooperation based on free consent (International Covenant on Economic, Social and Cultural Rights, Article 11).

Everyone, as a member of society, has the right to social security and is entitled to the realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality (Universal Declaration of Human Rights, Article 8 & 22).

⁷⁶ The documents analyzed include: Universal Declaration of Human Rights, International Covenant On Civil And Political Rights, International Covenant on Socio Economic and Cultural Rights, Convention on the Prevention and Punishment of the Crime of Genocide, International Convention on the Elimination of All Forms of Racial Discrimination, Committee on the Elimination of Discrimination against Women, Convention on the Rights of the Child, European Convention on Human Rights.

A careful analysis, however, shows that this evidence does not support Political Duties Only. First, there is no reason to think those are expressions of beliefs about *conceptual truths*. The documents do not make any conceptual claim: they do not claim that states hold duties correlative to human rights as a matter of conceptual analysis. Rather, they just hold that states bear duties correlative to human rights. But this can of course be explained by further normative and non-normative facts: for instance, the fact that the protection of human rights requires the cooperation and coordination of individuals; that coercive social institutions are very effective means to obtain cooperation and coordination; and that states are the most developed coercive social institutions in the current political scenario.

Moreover, the documents refer to specific types of duties, such as the duties to "secure" and "ensure" the respect of the rights, prohibit and punish violations, and so on. But, of course, there is no reason to think those are *all* the duties correlative to human rights. Rather those could just be the duties allocated to states. This is of course compatible with holding that human rights also have non-political correlative duties. In fact, we can also find textual evidence in which individuals are taken to hold correlative duties:

The General Assembly, Proclaims this Universal Declaration of Human Rights as a common standard of achievement for all peoples and all nations, to the end that *every individual and every organ of society* [...] shall strive [...] to secure their universal and effective recognition and observance (Universal Declaration of Human Rights, Preamble).⁷⁷

The States Parties to the present Covenant [...] Realizing that the *individual*, having duties to other individuals and to the community to which he belongs, *is under a responsibility to strive for the promotion and observance of the rights recognized in the present Covenant*, Agree upon the following articles (International Covenant on Economic, Social and Cultural Rights, Preamble).⁷⁸

⁷⁷ Emphasis added

⁷⁸ Emphasis added

If we move from official documents to the wider public discourse, moreover, we find very similar results. Take, for instance, the following claims, made by international institutions and NGOs working on human rights:

Human rights entail both rights and obligations. [...] At the individual level, while we are entitled to our human rights, we should also respect the human rights of others (Office for the High Commissioner of Human Rights Website).

Within their respective spheres of activity and influence, transnational corporations and other business enterprises have the obligation to promote, secure the fulfilment of, respect, ensure respect of and protect human rights recognized in international as well as national law, including the rights and interests of indigenous peoples and other vulnerable groups (Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights).

Human Rights Watch is an international nongovernmental organization that monitors violations of human rights by states and non-state actors in more than 90 countries around the world (Human Rights Watch 2013a).⁷⁹

It thus seems that evidence in human rights treaties, documents, reports and statements does not support Political Duties Only.

One might then wonder whether the Narrow Fidelity Argument can support Political Duties Distinctively. Recall that this is a weaker thesis, in the sense that it does not require all correlative duties to be political. Rather, it holds that human rights can have correlative non-political duties, but having correlative political duties is what identifies them as human rights. One might then think that it could be easier, for the Narrow Fidelity Argument, to support Political Duties Distinctively than Political Duties Only.

Yet I have not been able to find any textual evidence in human rights documents suggesting practitioners endorse Political Duties Distinctively. This is not surprising: Political Duties Distinctively is a rather technical thesis, focusing not simply on the nature of correlative duties, but rather on the nature of correlative duties held *distinctively*. It would thus be

⁷⁹ See also Human Rights Watch 2013b and 2015

unusual to find its explicit formulation in a legal document. It seems equally difficult to find evidence of conceptual beliefs implicitly supporting the thesis since this support can only be tested by very specific intuitions, such as the ones discussed above—for instance, intuitions about the existence of human rights in scenarios in which there are no states or no political authorities.

To conclude, in Part IV I argued that there are two problems with the Narrow Fidelity Argument: first, there is a general worry about the corresponding interpretation of fidelity, in so far it is unwarranted to only focus on the intuitions of participants to the political practice. Secondly, the argument would need the support of empirical evidence. However, such evidence cannot be found in the main documents of human rights political and legal practice.

Part V: Conclusion

In this paper I focused on Political Duties, the thesis that human rights provide duties to political agents or duties to perform political actions. I argued that there are two interpretations of Political Duties, which may be called respectively, Political Duties Only and Political Duties Distinctively. I argued that this thesis is generally defended on the basis of what I called the desideratum of fidelity, according to which the analysis of human rights should be faithful to human right practice. I then considered two interpretations of the desideratum of fidelity: according to the first, Political Duties is supported by the way the concept is employed by agents in general; according to the second, Political Duties is supported by the way the concept is employed by participants to the political practice of human rights. I argued that these arguments do not successfully support Political Duties, in neither of the two readings of the thesis outlined. We can thus conclude that Political Duties cannot be defended on the basis of fidelity to human rights practice.

THE UNIVERSAL SCOPE OF POSITIVE DUTIES CORRELATIVE TO HUMAN RIGHTS

This paper focuses on duties correlative to human rights. We can distinguish between two different kinds of duties: negative and positive ones. Negative duties are duties not to perform an action, while positive duties are duties to perform an action. Here, I focus on the latter. In particular, I focus on the question of their scope—that is, on understanding who holds them. I defend a refinement of the thesis that all individuals hold positive duties correlative to human rights, which I call the Universal Scope Thesis.

In Part I I outline some initial assumptions. In Part II I present the Universal Scope Thesis, provide an argument by analogy in its support, and outline three objections to the argument. I then proceed to argue that these objections should not lead us to abandon the Universal Scope Thesis, but rather push us to specify it and refine our understanding of the positive duties correlative to human rights. In Part III I lay out the notion of aggregative duties: duties that can only be grasped when we focus on the aggregate effect of the actions and omissions of different agents. In Part IV and V I elaborate on positive aggregative duties correlative to human rights and lay out the implications of this framework for the Universal Scope Thesis. In Part VI I argue that this framework allows us to meet the objections presented in Part I. In the process of doing so, I specify the Universal Scope Thesis. In Part VII I argue that this framework also enables us to dispel the appeal of the alternatives to the Universal Scope Thesis. Part VIII concludes.

Part I: Initial assumptions

In recent years the analysis of the concept of human rights has received widespread attention and a large number of philosophers have attempted to give an account of human

rights as urgent moral concerns. Theories of human rights vary across many axes and in each dispute opinions are extremely divergent. Since each issue is very complex, an exhaustive discussion of these problems is outside the scope of this paper. Nevertheless, the position taken in many of these debates will influence the interpretation of the Universal Scope Thesis, and I shall therefore clarify the starting points of this paper, by outlining and briefly explaining the initial assumptions.

I assume that human rights are moral rights, and that their correlative duties are requirements of justice. I assume that the function of human rights is to protect certain values of the right-holder. This of course leaves unspecified exactly which values are protected by human rights. One might think that human rights protect basic needs (Miller 2007, 2012), the value of personhood (Griffin 2008), and so on. A precise characterization of the values protected by human rights is extremely important if we want to provide a full account of human rights. However, we need not wait for a precise characterizations of these values in order to investigate the scope and nature of the correlative duties. We do indeed have some, albeit imprecise, understanding of the type of values protected by human rights. Plausibly, for instance, they include interests in adequate health, nutrition, political participation, education and shelter.⁸⁰ Additionally, we might also think that human rights protect equal status. For instance, one might think that discrimination always constitutes a human right violation, regardless of the type of interests it sets back (Buchanan 2014).⁸¹ In the rest of this paper, I will use the term "fundamental values" as a place-holder to refer to the values protected by human rights.

⁸⁰ I investigate the nature of interests protected by human rights in the first paper of this thesis "Human rights and interests".

⁸¹ As I said in the thesis introduction, I am here considering equal status in a teleological framework, as a value that can be protected.

A further set of questions concerns the nature of the duty-holders. Some accounts of the analysis of human rights hold that human rights only provide duties to institutional or political agents (Pogge 2000, 2002; Valentini 2012a; Barry and Southwood 2011). This thesis is generally defended on the basis that it is faithful to the way the concept is employed in practice. However, as I argued elsewhere, I do not think that this argument is successful, so I shall not restrict the set of possible duty-holders.⁸²

I assume that a group can itself be a duty-holder, over and above its members, only if it satisfies the conditions for agency. I am neutral with respect to the specific content of these conditions: on whether, for instance, members of a group need to jointly commit to acting together, or share a decision making procedure, for a group to be an agent.⁸³ However, I assume that one such set of conditions needs to be satisfied for a group to be an agent and, in turn, bear duties. So I am assuming here that groups which are not agents cannot hold duties. I take this to be a relatively weak assumption: since duties are reasons to act, it is not clear what a duty would do for something that is not an agent.⁸⁴ I shall call the groups which satisfy conditions for agency "collectives" and the duties held by those agents "collective duties". Collective duties are opposed to "individual duties": duties held by individual agents (such as rational human beings or other intelligent creatures).

In what follows, I focus on individual agents and duties. I do so for two reasons: first, because including collective duty-holders in the picture requires addressing a separate set of questions, in so far as we need to clarify which collectives we should focus on. For instance,

⁸² See 'Political accounts and fidelity to human rights practice', the second paper of this thesis.

⁸³ See List and Pettit 2011 as examples of the first approach; Gilbert 2006; Bratman 1992 for an example of the second.

⁸⁴ As Lawford Smith puts it: "The fact that we can draw an arbitrary line around some set of persons isn't enough to make them a collective, and there cannot be collective obligations where there are not collectives (which is just to make the simple point that non-existent agents cannot have obligations)". Lawford-Smith 2012: 3. See also Collins 2013.

should we include economic actors? If so, all of them, or only a subset? While these questions are extremely important, they cannot be tackled in the space of this paper. Moreover, individuals are, so to speak, the most "typical" agents, and it thus seems natural to start from there. The picture I sketch can then be extended to include collectives and their duties.

Another important question concerns the claimability of rights. A right is claimable if and only if its correlative duties have specified holders and content. Onora O'Neill has famously argued that rights must be claimable. This grounds an influential argument against the thesis that positive duties can be correlative to human rights (O'Neill 2005). As I said in the thesis introduction, however, I do not take claimability to be an existence condition for rights, in so far as I believe that the specification of the holder and content of the duties is a matter that can be settled after we have established whether a right exists.⁸⁵

Finally, I assume that human rights have positive correlative duties. As Pogge has stressed in his work, focusing on negative duties—i.e. duties to refrain from acting—can bring us a long way in ensuring that fundamental values are protected (Pogge 2002). However, there are situations in which fundamental values are endangered by factors other than the violation of negative duties: for instance, by physical or mental infirmities, or poor access to natural resources.⁸⁶ Moreover, the violation of negative duties correlative to human rights is an undeniable reality. In these cases, upholding the right requires agents to act in order to

⁸⁵ For more details, see the thesis introduction.

⁸⁶ Pogge builds a picture of human rights which does not rely on positive duties, and he rather restricts the focus on negative ones. Famously, however, in order to provide a plausible account of the content of correlative duties, he ends up relying on an inflationary account of "harm". According to Pogge's analysis 'X (a person or an institution) unduly harms Y when there is a feasible institutional framework different from the one X is imposing on Y which would render Y's access to the objects of her human rights fully secure or as secure as possible' (Pogge 2002: 12). Under this analysis, harming someone becomes equivalent to failing to improve her condition. But this highly counterintuitive, since we generally think that harming requires worsening someone's condition, rather than simply failing to improve it. (Gilbert 2005). A much more straightforward, and plausible alternative is to include benefits, and positive duties, in the picture.

enforce the negative duties or compensate the victim. In all these situations, positive duties are needed in order to ensure that fundamental values are protected (Gilbert 2005, Caney 2007).

Part II: The Universal Scope Thesis and an argument to support it

a. The Universal Scope Thesis and an argument by analogy

As I said, in this paper I defend a refinement of the thesis that all individuals hold positive duties correlative to human rights, which I call the Universal Scope Thesis (UST). In order to provide a comprehensive defence of this thesis as the correct account of the scope of positive duties, I will do two things: defend it on its own merits—that is, argue that it is a strong account of the scope of positive duties correlative to human rights; and defend it comparatively—that is, argue that it is to be preferred to its alternatives. As I said in Part I, I am here assuming that human rights have positive correlative duties. Hence, I shall leave aside accounts which hold that no one holds the positive duties correlative to human rights. Rather, I shall focus on what I will refer to as the Limited Scope Thesis (LST), the claim that different subsets of duty-holders are responsible for different subsets of right-holders. In order to comparatively assess the Universal Scope Thesis I shall thus consider what I take to be the most persuasive versions of the Limited Scope Thesis. I shall tackle this task in Part VI. From this point until the end of Part V the paper is dedicated to the defence of the Universal Scope Thesis on its own merits.

The Universal Scope Thesis has not received much attention in the literature, though recent work on human rights has focused on claims in its vicinity. Ashford and Caney, in particular, both hold that everyone bears the positive duties correlative to human rights to subsistence. However, both Ashford and Caney consider the issue of scope as a tangential matter while focusing on other issues: the former on claimability, the latter on the nature of

duties and duty-holders (Ashford 2006, Caney 2007). Neither of them directly addresses the issue of the scope of positive duties.

Let me then start by putting forward an argument in support of the Universal Scope Thesis. The argument I propose is an argument by analogy. It consists of three steps: first, I point out the similarities between positive and negative duties correlative to human rights; secondly, I argue that negative duties correlative to human rights are generally thought to have universal scope; thirdly, I claim that, by analogy, this provides a reason to believe that positive duties correlative to human rights have universal scope.

Before outlining the argument more fully, it is worth clarifying a dialectical point. Our common-sense understanding of duties is characterized by a deep dichotomy which sharply distinguishes positive from negative duties. Because of this dichotomy the reader might remain unconvinced by the normative significance of the similarities I outline here in Part II. It is thus likely that the analogy will be fully persuasive only after I will have illustrated, and addressed, putative disanalogies which are relevant to the thesis. Since the completion of this task will have to wait until Part V, the argument I outline here might not sound fully persuasive. However, the crucial move of this part of the paper is to shift the burden of proof: to show that, in so far as we accept that human rights fulfil the function of protecting certain fundamental values, we have a strong reason to support the Universal Scope Thesis.

Let me then start from the analogies between positive and negative duties correlative to human rights. The important point is that both types of duties fulfil the same function. To begin with, they protect the same kind of values in the sense that they both protect fundamental values. But the analogy holds also at a more fine-grained level. This might not be intuitively obvious: *prima facie*, one might think that positive duties and negative duties

protect different categories of values, so that, for instance, the interest in not being tortured is protected by the negative duty not to torture, and the interest in adequate nutrition is protected by the positive duty to feed the agent. However, a more careful analysis shows this is not the case. Consider, for instance, the interests protected by so-called welfare rights, such as health and education. These interests are protected both positive and negative duties: they are protected by positive duties to provide goods and services; but also, for instance, negative duties not to deprive others of these goods and services. Similarly, consider the interests protected by so-called liberty rights: the interests in being free from pain and slavery or to participate in political life. These interests are protected by negative duties not to torture, enslave or violently prevent political participation; but also by positive duties to provide police forces, criminal courts, or voting facilities (Shue 1996). The same can be said for equal status: for instance, we might say, equal status is protected by the negative duty not to discriminate, but also by positive duties to provide means to prevent or redress discrimination. We can thus conclude that positive and negative duties fulfil the same function: they both protect fundamental values and, what is more, they both protect the same types of fundamental values.

The second step consists in pointing out that negative duties correlative to human rights are universal. So, for instance, it is uncontroversial that everyone has a duty not to torture or enslave anyone else. Each human being's right not to be tortured is correlative to everyone's duty not to torture; similarly, each human being's right not to be enslaved is correlative to everyone's duty not to enslave, and so on.

The third step consists in pointing out that if negative duties are universal, then, by analogy, we have reason to believe that positive duties are too. Positive and negative duties correlative to human rights play the same function. Accordingly, why should we think that they have

different scope? If it is everyone's responsibility *not to act* in certain ways in order to protect fundamental values, then plausibly the responsibility of *acting* in order to protect these values falls on everyone too. The burden of proof is now shifted. It is the objector's task to find dissimilarities between positive and negative duties which explain the difference in scope.

Note that positive and negative duties differ in many ways, but not all of those are relevant to the question of their scope. For instance, an important putative disanalogy which is not relevant to the issue addressed is the one concerning strength. Many think that acts and omissions have different significance: being causally responsible for a bad state of affairs is worse than letting a bad state of affairs occur.⁸⁷ So, for instance, killing is worse than letting die. The thesis that there is a moral difference between acts and omissions entails that, if we are considering the prospect of setting back the same value, negative duties are stronger than positive ones. However, this is perfectly compatible with the thesis that everyone holds both the positive and the negative duties correlative to human rights: one can hold that there is a difference between acts and omissions and still argue that positive duties correlative to human rights are universal.⁸⁸ Hence, the difference in strength is not a relevant disanalogy for the purpose of this paper.

In what follows, I shall consider three putative disanalogies which are relevant to the argument outlined: the first concerns the feasibility of the duties, the second concerns their demandingness, and the third concerns the relationship between duties and rights.

⁸⁷ For a treatment of the moral significance of the difference between acts and omissions, see Foot 1967, 1972, 1985; Thomson 1976; Lichtenberg 1982; MacMahan 1993

⁸⁸ Indeed, Simon Caney holds this position in Caney 2007.

b. The Feasibility Objection

The first issue I want to address concerns the difference between positive and negative duties with respect to feasibility. On one side, the objection runs, it is always feasible to fulfil negative duties: the fulfilment of negative duties requires refraining from certain kinds of actions, and this is always an available option—an agent can always refrain from torturing, enslaving and so on. On the other hand, it is not always feasible to fulfil positive duties. The fulfilment of positive duties demands the performance of certain actions, which in turn requires meeting specific material conditions. So, for instance, in order to provide food or health services one needs to have resources such as food and medicines; one also needs to have time to perform the action and needs to be able to reach physically the recipient of the distribution. But sometimes these conditions are not met.

Moreover, the objection goes, the problem is amplified by the fact that human rights are universal rights: they are held by all human beings. Accordingly, a duty-holder has to act in order to protect everyone else's fundamental values. This means that discharging positive duties correlative to human rights would require, for instance, an agent to have enough food to feed everyone. But, as Onora O'Neill argues, "No agent or agency can have obligations to provide services, help and benefits for all others. Nobody can feed all the hungry, so the obligation to feed the hungry cannot be a universal obligation" (O'Neill 1986: 101-102).⁸⁹ On similar lines, Shue claims that while some "fabulously wealthy folks could manage to provide some assistance to each child [...] most of us literally cannot" (Shue 1988: 689). As the renowned dictum tells us, "ought" implies "can"—one cannot have a duty to do

⁸⁹ As I pointed out above, O'Neill holds that the claimability of the correlative duties is a condition for the existence of rights. She would therefore not accept the starting assumptions of this paper, nor, as will become apparent, the solution proposed in defence of the Universal Scope Thesis. However, I am considering her objections in this paper because the worries she press stand independently of the underlying assumptions she endorses.

something one is not able to do. Hence, if not everyone has the resources to fulfil everyone's positive duties correlative to human rights, not everyone can hold these duties.

c. The Demandingness Objection

The second objection concerns the differences between positive and negative duties with respect to demandingness. Negative and positive duties, the objection runs, have very different costs: refraining from performing an action has no (or little) cost, while performing an action is generally extremely demanding: it requires facing costs with respect to time, material resources, intellectual and emotional resources, and so on.

Once again, the difference is amplified by the fact that human rights are universal rights. The claim that negative duties correlative to human rights are universal entails that everyone ought *not to* perform certain actions *against* everyone. But this, the objection runs, does not cost anything: it simply precludes the opportunity of benefitting from the performance of the action. The case of positive duties is very different. If positive duties are universal, it means that everyone ought to *perform* certain actions *for* everyone: we have to give everyone food, education, and so on. As Shue puts it "universal negative duties [...] are no problem (if "opportunity costs" are ignored). I can easily leave alone at least five billion people, and as many more as you like" (Shue 1988: 689), while "a duty's being positive [...] means that fulfilling it will require the expenditure of some resource I control, like time, money, energy, or emotional involvement" (Shue 1988: 690). So, the objection goes, even if it were possible for one to fulfil the positive duties correlative to everyone's human rights, it would still be excessively demanding for them to do so.

d. The Necessity Objection

The third objection concerns the difference between positive and negative duties with respect to their relationship to the correlative right. Negative duties, the objection runs, *need* to be universal for human rights to be respected. But the same is not true for positive duties: in this case, it is not necessary that everyone holds the duty, but only that *someone* does. Shue, for instance, seems to endorse this objection when he claims that "Negative duties—duties not to deprive people of what they have rights to—are, and must be, universal", while in the case of positive duties "it is necessary only for some others to have each of the duties required"(Shue 1988: 689-690).

By way of illustration, consider the right not to be tortured, and two of its correlative duties: the negative duty not to torture and the positive duty to support police forces protecting potential victims. The negative duty needs to be held by everyone, for the right to be upheld: only if everyone refrains from torturing can the right-holder's freedom from torture be protected. Things, however, are different when it comes to the positive duties: here, it is only necessary that someone fulfils this obligation. For instance, it is sufficient that co-nationals support police forces protecting potential victims: it is not necessary that every human being does so.

Part III: Aggregative duties

These objections are extremely forceful, and deserve attention. However, as I shall show, they should not lead us to abandon the Universal Scope Thesis. Rather, they should push us to do two things: firstly, refine our understanding of the positive duties correlative to human rights; secondly, specify the Universal Scope Thesis, so as to take into account the more sophisticated account of positive duties and some of the intuitions driving the objections. I

take up the first task in this part and the following one (Part III and IV) and will move on to the second task in Part V and VI.

Our common-sense conception of responsibility tends to focus on the outcomes deriving from our individual actions and omissions, taken in isolation. However, this does not give us the full picture. Some duties can only be adequately grasped when we zoom out and focus on the aggregate effect of the actions (and omissions) of different agents. When I say that these duties can only be "adequately grasped" when we focus on aggregate effects, I mean that one or more of the essential characteristics of these duties—that is, their strength, content, or existence—can only be assessed when we focus on these effects. I shall call the duties that so depend on aggregate effects "aggregative duties". By contrast, I shall call the duties whose fundamental features depend on the effect of the action (and omission) of single agents "single duties".⁹⁰

Aggregative duties have featured in recent discussions in both moral and political philosophy (Parfit 1984; Scheffler 2002; Ashford 2006, 2007; Stemplowska 2009). However, they have not been, so to speak, "labelled" as a distinct category of duties. Because of this, and because they might be easily confused with other types of duties arising in collective contexts, it is worth spending some time clarifying their nature.

⁹⁰ One might worry that these formulations are too broad, since agents might face situations in which the aggregate effects of their actions is unpredictable or not reasonably foreseeable. This is a particular case of a more general worry about the relation between foreseeability and duties. When considering the duties correlative to human rights, we can distinguish between different senses of 'ought': fact-relative, evidence-relative and belief-relative. We ought to do something in the fact-relative sense if we have decisive reason to act that way. We ought to do something in the evidence-relative sense if we would have a decisive reason to act that way if we believed what the available evidence gives us decisive reason to believe, and these beliefs were true. And we ought to do something in the belief-relative sense if we would have decisive reason to do if our beliefs were true (Parfit 2011). I shall leave the fact-relative sense aside in so far as it is not relevant to decision-making: during decision-making, one cannot focus on the fact-relative sense as opposed to the evidence or belief-relative one—we can only make decisions on the basis of the evidence we are presented with. I shall also leave the belief-relative sense aside because I take agents to be accountable to standards of epistemic rationality: agents ought to adequately respond to the evidence they are presented with. I thus take the duties correlative to human rights to be evidence-relative 'oughts'. Hence, by way of response to the worry in question, I shall assume that unpredictable or not reasonably foreseeable effects do not give rise to duties.

First of all, the distinction between aggregative and single duties is different from the distinction between collective and individual duties. Collective duties are duties attributed to a collective *itself*, over and above its members; by contrast, aggregative duties are attributed to each one of the agents contributing, or failing to contribute, to the relevant outcome. Aggregative duties can be attributed to both individual and collective agents (though, as I said in Part I, I shall here focus on individual agents). Moreover, the existence conditions for aggregative duties are different from the existence conditions for collective duties. As I pointed out in Part I, it is plausible to assume that a group can itself be a duty-holder, over and above its members, only if it satisfies the conditions for agency. Hence, depending on the analysis of collective agency one endorses, members of the relevant group might need to be organized in a certain way, or hold certain joint commitments, for a collective duty to arise. This is not so for aggregative duties. In order for aggregative duties to arise, agents need not be organised in any structure, nor need they have any joint commitment. Rather, aggregative duties obtain whenever the aggregate effect of the actions (and omissions) of different agents is necessary to determine the strength, content, or existence of their duties.

In order to best explain the notion of aggregative duties, let me present a couple of examples. Imagine the following scenario: a lake in a remote location hosts the last breeding population of an endangered species of fish. One day, this lake is discovered by some tourists; the following day, the lake is visited by a large number of tourists coming from different parts of the world. However, the tourists are careless, and each one of them drops something in the lake (packaging, or leftovers, and so on). Imagine, moreover, that each piece of litter would individually be enough to make the fish sick, but not to kill them. Yet, the overall amount of litter dropped by the tourists in the lake is enough to kill the fish, and the fish die as a result of the pollution.

In the above example, focusing on single agents and actions (be it individual or collective) will not be enough to adequately determine the essential characteristics of the duties, as it will not be enough to appreciate the content and strength of the negative duties violated. We might be able to say that the individual agents have violated *a* duty—that is, a duty not to harm the fish. But we would be unable to characterize the duty as a weighty duty not to contribute to killing the fish. We might then think that there is a collective duty not to kill the fish. But it is not plausible to hold the group of tourists to be a collective agent, since the tourists have no joint commitment, nor do they share a decision making procedure. So the duty not to kill the fish cannot be held by a collective agent. In order to adequately account for the existence, content and strength of the duties violated in the above scenario we need to switch focus from single to aggregative duties. Since the actions of the individual agents aggregatively result in the death of the fish, we can say that the individual agents have violated an aggregative negative duty not to contribute to killing the fish.⁹¹

The above example focuses on negative duties, but we can also find aggregative positive duties. Once again, this is best illustrated with an example.⁹² Imagine a man is drowning in the sea; on the nearby beach, ten people are sunbathing. The man could be easily saved by any two people, if one of them pushed the boat in the sea and the other ran to fetch the oars in the shed nearby, and they then rowed to pick the man up. Imagine also that each of the ten people on the beach can easily perform either task. However, no one of the people sunbathing does anything to save the drowning man, and the man dies. Here too, focusing

⁹¹ Not that "contribute to killing the fish" is not a precise characterization; the correct way of describing the situation is rather "contributing to bringing about the outcome 'the fish are dead'". This is because there is no action of "killing", in so far as there is no agent performing such an action. Rather, the outcome 'the fish are dead' is the result of the actions of the individual agents. However, we can loosely say that the fish are "killed" in the sense that their death is brought about by agency. Hence, for simplicity, I shall adopt the formulation "contribute to killing the fish", instead of "contributing to bringing about the outcome 'the fish are dead'", and I shall continue to use the formulation 'contribute to ϕ ing' when I want to refer to a case in which agents contribute to the outcome 'something/someone is ϕ -ed', in the sense that the protection or setting back of the interest is brought about by human agency.

⁹² The example is a modified version of the one presented in Collins 2013.

on single agents and actions (be it individual or collectives) will not be enough to adequately characterize the duties. On one side, no individual agent can save the man by herself. Since, as I said, one cannot have a duty to do something one is not able to do, no individual agent can have a duty *to save the man*. On the other side, the conditions for collective agency do not obtain (since the group has no shared decision making procedure, nor joint commitments), so no collective agent can hold a duty *to save the man*. In order to adequately account for the existence of the duties violated in this scenario we need to switch focus from single to aggregative duties. Since the individuals can aggregatively bring about the rescue, and the omissions of the individual agents aggregatively fail to prevent the death of the man, we can say that the individual agents have violated a positive duty to contribute to saving the man.

Part IV: Aggregative duties and human rights

Recent literature has repeatedly pointed out the relevance of aggregative duties to questions of global justice. In her article "Negative duties, Positive duties and New Harms", for instance, Judith Lichtenberg stresses how the aggregate effect of disparate actions are likely to harm others around the globe. Globalization has increased the way in which our actions can and do affect others. What we buy and consume, the way we vote, how often we travel, where to, and so on: the aggregate effects of these actions now have consequences at a global level (Lichtenberg 2010).

Aggregative duties have also influenced the recent literature on human rights. Elizabeth Ashford, in particular, has argued that (what I call) aggregative duties can be correlative to human rights. Ashford focuses especially on the nature of aggregative negative duties and outlines different types of harms that are the effect of agents' aggregative actions. I will call these "aggregative harms". The first type of aggregative harm—additive harm—obtains in cases in which each agent's action, by itself, does not cause a serious harm to any particular

victim, but the cumulative behaviour of a set of agents results in an extremely serious harm.⁹³ In order to explain how the notion of additive harm relates to human rights, Ashford presents a version of a thought experiment originally outlined by Parfit (1984). We are presented with two scenarios. In both scenarios, there is a very large number of torturers and a very large number of prisoners. In the first case, each torturer causes excruciating pain to one of the prisoners. By contrast in the second scenario, each torturer causes only a very small incremental amount of pain to each of the prisoners; however, since there are very many torturers, each prisoner suffers excruciating pain overall. Imagine, further, that in the second scenario the torturers are not intentionally coordinating their actions to cause excruciating pain, yet they could reasonably foresee the result of their actions (Ashford, 2006).⁹⁴ Plausibly, the prisoners are subject to a human right violation in both cases, regardless of whether the harm is inflicted by a single agent, or rather brought about by the aggregate effect of the actions of different agents. Additive harms can thus bring about human right violations, and causing such harms constitutes a violation of aggregative negative duties correlative to human rights.

The second type of harm—multiplicative harm—obtains when the agent's action magnifies the harm caused by other agents. Ashford presents the following example:

Two factories [pour] pollutants into the same river, where the two kinds of pollutant mix. The pollution produced by either of the factories in isolation would not cause any significant harm. However, the two kinds of pollutants in combination form a lethal cocktail [...which] leads to wide-scale death and severe health problems. [...] If it counts as a human right violation for one factory to cause such harms, it is not plausible to deny that it counts as a human right violation for the two factories in conjunction to cause them (Ashford 2006: 227).

⁹³ The example of the polluted lake above is a case of additive harm.

⁹⁴ In the version of the example outlined by Parfit, the torturers intentionally organise themselves in the scheme described. Plausibly, this makes the group a collective agent, which is responsible for the torture. Ashford modifies the example, to leave out the intentional nature of the arrangement: "the agents are each allocated responsibility for manufacturing or maintaining different components of the torture equipment, and the actual infliction of the pain is done by robots. [The agents] are not actually aware of the overall harm the equipment causes, though they have strong reason to suspect it" (Ashford 2006: 225) Crucially, this does not seem to make a difference to the intuition that the prisoners are victim of a human rights violation.

Multiplicative harms can thus bring about human right violations, and causing such harms constitutes a violation of aggregative negative duties correlative to human rights.

The taxonomy outlined by Ashford provides a starting point for understanding the aggregative positive duties correlative to human rights. Inverting Ashford's taxonomy of harms, we can identify two types of aggregative benefits: additive and multiplicative benefits. The first type of benefit—additive benefit—obtains in cases in which each agent's action, by itself, does not cause a significant benefit for any particular beneficiary, but the cumulative behaviour of a set of agents results in a significant benefit. The second type of benefit—multiplicative benefit—obtains when the agent's action magnifies the benefit caused by other agents.⁹⁵

The two aggregative benefits above are the mirror images of the aggregative harms outlined by Ashford. But they do not exhaust the types of aggregative benefits, and corresponding positive duties. Consider, for instance, the case of the drowning man described above, in which two people are needed to rescue the man. In this case without both contributions there would be no benefit at all: this is different from cases in which the action of one duty-holder adds to or magnifies the benefit caused by the another duty-holder. We should thus

⁹⁵Ashford includes a third type of aggregative harms: indirect harms. These occur when harm is caused through institutions and, specifically, when institutions foreseeably or even systematically lead to high levels of human rights violations, or themselves constitute a human rights violation (Ashford 2006: 229). In this case, agents are often unable to foresee the effects of their individual behaviour and are unable to withdraw from the institutions. However, they might have responsibility for the shape of the institutions. In what follows I shall not focus on this type of harms. This is because "inverting" this type of harm to focus on the "mirroring" benefit, we would have benefits caused through institutions and, specifically, when institutions foreseeably or systematically lead to high levels of human rights protection, or themselves constitute a human rights protection. These benefits can of course lead to aggregative duties, in so far as we might have a duty to set up and uphold such institutions. However, these duties can themselves be captured in terms of additive, multiplicative and combination benefits (which I will outline below). For instance, we might have a duty to vote for such institutions, or to campaign in their favour. I will thus not consider this category of benefit as a separate alternative category.

introduce a third category, as to include cases in which a number of different contributions are needed to bring the benefit about. Call these combination benefits.⁹⁶

With this taxonomy in hand, we can now consider the case of human rights and fundamental values. Let me then start from ways in which fundamental values can be protected through additive benefits: good examples of these kinds of cases concern benefits which come from small individual donations, or consumption of fair trade products. While a single donation of, for instance, a few pounds, might not cause a significant benefit for any particular beneficiary, the cumulative effect of many donations can be expected do so. Something similar can be said about ethical consumption: while one agent purchasing a fair trade product once or twice might not cause a significant benefit for any particular beneficiary, the cumulative effect of several fair trade purchases is likely to seriously improve the protection of farmers' fundamental values.

Similarly, there are ways in which fundamental values can be protected through multiplicative benefits. An example of this type of cases would be, for instance, a scenario in which some agents provides health infrastructures and other agents improve road infrastructures, so that the latter action magnifies the benefit brought about by the former. Finally, a good example of combination benefits is provided by the spreading of knowledge: disseminating knowledge about human rights violations, for instance, can enable others to vote, consume, or donate as to protect fundamental values. These are cases of combination benefits since a number of different contributions are needed to bring the benefit about.

⁹⁶ Combination benefits also plausibly have a harm "counterpart". Consider for instance, a modified version of the factory case, in which the chemicals poured in the river are individually innocuous, but lethal in combination. This is a type of aggregative harm which we can call combination harm. One important question, with respect to combination harms, would concern the timing of the actions. Since, however, this paper focuses on positive duties, I shall focus on the taxonomy of aggregative benefits, and aggregative positive duties, and leave aside questions concerning aggregative harms and aggregative negative duties.

There are a few reasons why focusing on aggregative positive duties is especially important for the protection of fundamental values. First of all, many fundamental values can only be protected through complex goods and services, such as schools, hospitals and so on. The resources needed to provide such goods and services are probably best acquired through the contributions of multiple agents. Moreover, the protection of fundamental values plausibly requires change in economic and political behaviours. So, for example, supporting fair trade products could considerably increase the protection of fundamental values. Similarly, the revision of international trade rules could have deep impacts on the achievement of this goal. These changes are most likely to be brought about by additive benefits, such as buying fair trade products and supporting fair international rules of trade. In this respect, then, additive benefits are extremely relevant to the protection of fundamental values.

Secondly, acquiring the resources and providing these goods and services is likely to require complex causal chains. A single agent might not be able to initiate and complete them. However, it is often still possible for an agent to take up one of the steps of such chains. So, for instance, increasing foreign aid might require changing a government's budget priority, which, under democratic institutions, would require citizens' attention to the problem. Hence, an agent might not be able directly to affect his government allocation of funds to foreign aid, but she can engage in political campaigning raising awareness on the issue. This would again be cases of combination benefits since a number of different contributions are needed to bring the benefit about.

Thirdly, globalization has increased the way in which agents can, and do, interact. What we buy and consume, the way we vote, how often we travel, where to, and so on: these actions can have effects at a global level. Much literature has focused on the way this affects harms and negative duties: on the way we should be aware of the negative effects of our actions,

and the duties deriving from those. But this is only part of the picture: the increased global interaction also provides us with new ways of benefitting others. We should thus also be aware of the positive effects of our potential actions, and the positive duties deriving from those.

This picture allows us to stress that, even though it is in no single agent's power to protect everyone's fundamental values, the outcome is within the reach of human agency, since it is in the power of different agents to act so as to aggregatively bring about the goal.

Part V: Implications for the Universal Scope Thesis

Let me now draw the implications of the above framework for the UST. Once we add aggregative duties to the picture, duties correlative to human rights can be understood as duties to act in order to contribute to the protection of fundamental values. This allows us to refine the UST as follows:

Universal Scope Thesis (UST): every agent has a duty correlative to human rights to act so as to contribute to the protection of everyone's fundamental values.

Let me clarify an important point. Duties can be specified at different levels of abstraction: for example, a duty to contribute to the prevention of life-threatening diseases is more abstract than a duty to provide malaria nets. I take the UST to be a thesis about abstract duties. The content of these abstract duties is to contribute to the protection of everyone's fundamental interests. However, there are many ways in which one can contribute to bringing about this outcome. Hence, the UST about abstract duties is compatible with different allocations of concrete duties. Broadly, we can distinguish three strategies. The first is to assign different duty-holders the responsibility for *different right-holders*. In this case, each

duty-holder (or group of duty-holders) is responsible for a different group of right-holders, so that, together, the duty-holders will ensure that all the right-holders' fundamental values are protected. This is what in Part II I called a Limited Scope Thesis. The UST with respect to abstract duties is compatible with holding a Limited Scope Thesis with respect to concrete duties.⁹⁷ Alternatively, it is also possible to assign different duty-holders the responsibility for *different tasks*. In this case, each duty-holder (or group of duty holders) performs a different kind of action, which, together with the other actions performed by other duty-holders, will result in the protection of everyone's fundamental values. Finally, it is possible to endorse a mixed account, in which we employ both types of distributions.

To see the difference between these different strategies, consider the following case. Imagine that Beth and Carl have a duty to contributing to bringing about the outcome in which Dave, Erin, Fred and Georg are fed. One first way of doing so would assign to Beth and Carl the responsibility for different right-holders. For instance, Beth might have the responsibility to feed Dave and Erin, and Carl might have the responsibility to feed Fred and Georg. Alternatively, it is also possible to assign Beth and Carl the responsibility for different tasks. For example, Beth might have the responsibility to produce the food for all right-holders, and Carl the duty to distribute it. Finally, it is possible to endorse a mixed account. For instance, Beth might feed Dave and produce food for Fred and Georg, while Carl might feed Erin and distribute food to Fred and Georg.

Which allocation is to be preferred will depend on both moral and non-moral facts. On one side, in order to evaluate the relevant moral facts we will have to consider which principles regulate the allocation of those duties. I will go back to this point below, when I present a set of the principles which I take to regulate the allocation of concrete duties. On the other

⁹⁷ For a defence of a thesis along these lines see Goodin 1988

side, the relevant empirical facts will include, for example, the nature of the specific problem addressed and of the possible solutions.

Note that the relevant moral and non-moral facts might entail that the Limited Scope allocation of concrete duties is the best way to discharge our abstract duties. One might wonder whether, if this were the case, the UST would simply collapse into the LST. This, however, is not the case. First, even if a Limited Scope allocation of concrete duties were the best way to discharge our abstract duties given the current non-moral facts, it might not be so in the future. Circumstances of course change: technological, political and economic factors, among other things, might change the nature of threats and possible ways of protecting fundamental values. Even if the Limited Scope allocation of concrete duties were the best way to discharge our abstract duties at the moment, in the future the UST might require each agent concretely to act to protect everyone's fundamental values.

Moreover, there are important difference between, on one side, endorsing the UST for abstract duties and the LST for concrete ones and, on the other, endorsing the LST as a thesis about abstract duties. Crucially, this will be significant in situations of less than full compliance. In the first case, agents have a correlative abstract duty to contribute to the protection everyone's fundamental values; the scope and content of concrete duties will be determined by the circumstances they face. If some agents fail to fulfil their duties, other agents will have a duty to deal with the effects of non-compliance, to ensure everyone's fundamental values are protected. This duty will be a correlative duty of justice, and thus extremely strong. On the other side, if LST is endorsed at the abstract level, agents only have a correlative duty to protect the fundamental values of a limited number of right-holders. Supporting the victims of non-compliance might be required by another type of obligation: for instance, a duty of beneficence; but this is likely to be weaker than a duty of

justice correlative to a human right and it will be outweighed by the latter in case of conflict.⁹⁸ Endorsing the UST for abstract duties and the LST for concrete ones, then, provides stronger protection for victims of non-compliance than endorsing the LST as a thesis about abstract duties.

The significance of the difference is best brought out by an analogy. Imagine the following two scenarios. In the first case Hans and Katie have two children, Tom and Rob, who have a right to develop their musical and sporting talents, which requires that they be driven to music and sport lessons. It is plausible to say that Hans and Katie both have an abstract duty to contribute to the protection of their children's interests. Assume, further, that the concrete distribution of duties is such that Hans ought to drive Tom, and Katie ought to drive Rob. However, one day Katie stops fulfilling her duties. It then seems that Hans has a concrete duty to protect both Tom and Rob's interests. The content of the concrete duty will depend on circumstances: if Hans is able to ensure Katie fulfils her duty, then he might be required to do so; alternatively, if Hans is able to drive both children to both lessons, he might be required to do so; otherwise, he might be required to drive both to one lesson each. Importantly, he has a duty to deal with the effect of non-compliance, and this duty is correlative to the children's rights. Consider now a second scenario. In this second scenario, Hans and Katie do not have children together: Hans is Tom's father and Katie is Rob's mother. Once again the children have a right to develop their talents. Once again, the concrete distribution of duties is such that Hans ought to drive Tom and Katie ought to drive Rob, but this time Hans and Katie do not have an abstract duty correlative to both

⁹⁸ Holding the UST at the abstract level implies that agents have a duty to address non-compliance. However, one might hold the LST at the abstract level and still hold that agents have a duty to address non-compliance. For instance, Wenar, whose account I consider below, holds that duties to avert serious harms ought to be allocated to agents for whom it would be least costly to discharge them; if the person with the original responsibility is unwilling or unable to fulfil his duty, the responsibility is allocated to the person besides him who can most easily bear the burden (Wenar 2007: 264). Positions on how to distribute duties in cases of non-compliance can vary greatly and I shall not discuss the alternatives here. For an outline of the different positions, see Valentini 2012b.

children's rights. Imagine again Katie stops fulfilling her duty. The case is now importantly different from the previous one. In this second scenario Hans does not have a correlative duty to help Rob, though he might have a duty of beneficence to do so. However, this is weaker than the correlative duty; hence, if the duty to help Rob conflicts with the duty to help Tom, the latter will take precedence over the former. This shows how the scope of abstract duties makes an important difference in cases of non-compliance.

Part VI: Replying to the objections

a. Replying to the Feasibility Objection

We can now reconsider the objections presented in Part II. Let us start with the Feasibility Objection. Recall that this objection holds that there is a disanalogy between positive and negative duties correlative to human rights, in so far as it is feasible for everyone to uphold the negative duties correlative to everyone's human rights but not the positive ones. Once we include aggregative duties in the picture, we can see how this objection is misguided. The problem with the Feasibility Objection is that it unduly restricts the focus on single duties, ignoring aggregative ones. In so doing, it ignores an important way in which the protection of everyone's human rights can be achieved. Hence Onora O'Neill is indeed right when she says that "No agent or agency can have obligations to provide services, help and benefits for all others. Nobody can feed all the hungry, so the obligation to feed the hungry cannot be a universal obligation" (O'Neill 1986: 101-102). But she is wrong when she takes this to be enough to disprove the UST. While no one can provide services, help and benefits for all others by *herself*, many can *contribute* to the achievement of this outcome. Hence, the Feasibility Objection should not lead us to abandon the UST.

Yet, this objection still carries a valuable insight. This is because, even taking into account aggregative positive duties, we will still encounter agents who are unable to protect others

fundamental values in any way. Consider, for instance, people who live in severe destitution, or suffer severe handicaps which make them unable to engage with their surroundings. These agents might not be able to perform any action to protect others' fundamental values, and they might thus be unable to discharge any of the positive duties correlative to human rights. We thus need to refine the UST, with the addition of the following clause:

Universal Scope Thesis: every agent has a duty correlative to human rights to act so as to contribute to the protection of everyone's fundamental values, *except those for whom it is unfeasible to do so.*

Note, however, that the point is completely different from the one pressed by the Feasibility Objection: the Feasibility Objection aims to show that no one, or very few people, are able to fulfil the positive duties correlative to everyone's human rights. Extending our understanding of positive duties as to include aggregative ones allows us to show that most people will be able to uphold such duties. The exclusionary clause is thus reversed: the point is not that some fabulously wealthy people might be able to uphold these duties, but rather that some specific agents might be unable to.

b. Two new worries about feasibility

A more refined understanding of positive duties correlative to human rights allows us to meet the Feasibility Objection as it was originally presented. However, one might worry that the feasibility issue returns in a different guise. We can distinguish between two types of feasibility assessment: binary and scalar.⁹⁹ The first type of feasibility concerns allowing and ruling out outcomes on the basis that they can or cannot be achieved. This is the type of feasibility relevant for the "ought" implies "can" dictum. This type of judgment is settled by

⁹⁹ See Gilabert and Lawford Smith 2012; Lawford Smith 2013.

"hard constraints". Hard constraints are constraints that cannot be changed and include, among other things, logical, conceptual, metaphysical, and physical facts. Conversely, scalar feasibility concerns how likely an outcome is to obtain. This type of judgment is settled by "soft constraints". These constraints are constraints that can be changed and include, among other things, economic, institutional, psychological, and cultural facts.

The worry is that while aggregative benefits are feasible in a binary sense, they have a low scalar feasibility. This is so for two reasons. First, because in order to achieve aggregative benefits we need a high number of duty-holders to contribute. For instance, voting for policies that protect fundamental values is only helpful if other people also do so. But in reality we have to face the fact of non-compliance, which makes it difficult to achieve the protection of fundamental values through aggregative benefits. Secondly, because in order to achieve aggregative benefits we need to coordinate. For instance, working on the production of food will only help to protect fundamental values if the food is then distributed, but in order to ensure that this will happen agents need to coordinate. However, in actual circumstances, we lack the mechanisms needed to achieve such coordination. While it might be feasible to achieve aggregative benefits in a binary sense—the objection goes—the achievement of these benefits has low scalar feasibility.

While these objections seem powerful at a first sight, they can be addressed. Consider first the worry concerning non-compliance. First of all, the effect of non-compliance depends on the type of benefit we are interested in. Specifically, it depends on how the contribution of each agent affects the overall benefit. In the case of additive and multiplicative benefits, each contribution increases the aggregative benefits to some degree; in the case of combination benefits, the aggregative benefit is achieved only once the required number of agents needed

participate.¹⁰⁰ So, for example, donating is an instance of additive benefit, in so far as the benefit is increased by every donation.¹⁰¹ On the other hand, voting constitutes an example of an action leading to a combination benefit, in so far as the aggregative benefit is only achieved when a certain number of votes is reached.

Non-compliance does indeed pose a challenge for combination benefits. So, for example, if only a very small percentage of the electorate votes for a government promising to increase foreign aid, then it is unfeasible that the government will be elected. Under those circumstances, it is plausible to say we have no duty to vote for such policy (or that, at any rate, we have no duty correlative to human rights). Yet, it would be a mistake to think that, in non-compliance situations, we will have *no* aggregative duties. First of all, as I said, some contributions do not depend on the level of complying agents. For instance, donating when most people do not donate will often not be superfluous. Secondly, sometimes enough people contribute notwithstanding non-compliance. For instance, it might be that, while some people will not vote for a certain policy, enough will do so. Note, moreover, that even if the combination benefit is not achieved, we need not conclude that agents are left with no duties. This is because aggregative duties might require one to tackle non-compliance. So, for instance, in case of non-compliance one might be required to engage in educational or awareness projects.

Consider now the worry concerning the lack of coordination. There are two points to make in reply to this objection. First of all, different outcomes will require different levels of coordination. In some cases, the outcome can be achieved without the need for any

¹⁰⁰ For a similar distinction, see Kagan 2011 and Miller 2011

¹⁰¹ This might not always be so. For instance, if a certain amounts of donations is needed in order to purchase a very expensive good, donations might provide threshold benefits.

coordination at all.¹⁰² In other cases, the outcome can be achieved through responsive action. This means that, in order to achieve the desirable effect, agents need to observe others and infer the best way to react in order to achieve the goal. Sometimes, the outcome can only be achieved if agents collectivize. This means the agents need to share a group-level procedure for distributing instructions and planning for contingencies.¹⁰³

The crucial point is that not all outcomes require the third level of coordination: there are outcomes that can be achieved without any coordination, or through responsive action. Consider, for example, additive benefits such as donating or consuming fair-trade products: agents will often not need to coordinate, and it will rather be sufficient that multiple agents independently perform certain actions. Moreover, many multiplicative benefits will be obtainable through responsive action. So, for instance, one could enable others to vote, consume, or donate for the protection of fundamental values by acting responsively, selecting and disseminating the relevant information. There are, of course, outcomes that can only be achieved through the highest level of coordination. But it would be a mistake to think that, in the absence of full coordination, we are unable to discharge any of our aggregative duties. Note, moreover, that even in the latter type of case (i.e. outcomes that require a high level of coordination), we need not conclude that agents are left with no duties. This is because, in these cases, aggregative duties might require one to act in order to bring coordination about.¹⁰⁴

Note that I do not wish to deny that non-compliance and lack of coordination can constitute a problem for aggregative duties. But it is important to stress two points: first, that many aggregative benefits, and deriving duties, will not be subject to this type of worry;

¹⁰² The distinction between different levels of coordination comes from Collins 2013.

¹⁰³ This can lead to the creation of a collective agent, which can then become the holder of the duty. See Collins 2013

¹⁰⁴ See Collins 2013

secondly, that even in these cases, agents might still have a duty to act, as it might be possible to tackle, respectively, indeterminacy or non-compliance. The feasibility objection to the Universal Scope Thesis can thus be met.

c. Replying to the demandingness objection

Let us now turn to the demandingness objection. To do so, let me start by outlining some initial general considerations about demandingness. There are two fundamental questions to address in this respect: whether there are limits to the costs that moral requirements can place on us; and, if so, what those limits are. With respect to the first question, I assume that considerations of costs can constrain the existence and content of a duty. I do so because it seems to me that considerations of cost do affect what is reasonable to require from a duty-holder.¹⁰⁵ For instance, it is reasonable to require that I provide others with assistance if I can do so at the cost of some luxury good I possess, but less so if I can only do so at the cost of my arm, or my own life.¹⁰⁶

With respect to the second question, the problem is that it is difficult to find a determinate threshold after which costs are "too high", whether this influences the existence or content of the obligation, or rather the blameworthiness of the agent.¹⁰⁷ Aside from the problem concerning duties in general, the issue of non-compliance poses a particular worry in the case of positive duties correlative to human rights: in a situation in which many do not uphold their positive duties, the ones who do will need to bear very high costs in order to protect fundamental values. The proposals for identifying the threshold vary hugely: Singer,

¹⁰⁵ See Lichtenberg 2010

¹⁰⁶ The concern outlined here focuses on what costs agents *should* be required to bear. There is another, connected, worry, concerning what costs agents *are likely* to bear. The latter worry grounds a type of feasibility objection. This is because we can plausibly assume that agents will naturally shy away from having to shoulder a burden. Accordingly, the existence of costs constitutes a psychological constraint on the achievement of an outcome. As I pointed out in the previous section, psychological constraints are relevant to the scalar feasibility of a theory. Asking agents to bear high costs will thus make the theory less feasible in a scalar sense. This problem can also be addressed by positing a maximum cost that agents are required to bear.

¹⁰⁷ See Sonderholm 2013 for a review and critique of the strategies adopted in the literature so far.

for instance, takes the threshold to be the point at which one would have to sacrifice something of significant moral importance (Singer 1972). Murphy, conversely, sets the threshold at what we would be required to sacrifice in a situation of full compliance (Murphy 2000). The issue is highly complex, and I cannot address it in the space of this paper. For the purposes of this paper, I will not argue for any specific threshold, but I will assume that one such threshold does exist. I shall employ the term "unreasonably costly" as a placeholder, and assume that duty-holders do not have a duty to act when it would be unreasonably costly for them to do so.

With these clarifications in hand, we can further refine the UST as follows:

Universal Scope Thesis: every agent has a duty correlative to human rights to act as to contribute to the protection of everyone's fundamental values, except those for whom it is unfeasible or *unreasonably costly to do so*.

Let me clarify two points about the way the "reasonable cost" should be understood. First, we can distinguish between cost and ability to bear the cost: on one side, costs measure how worse off one is made by the action; on the other, ability to bear the cost is the ability to shoulder the cost of performing the action, which depends on how badly-off one is to begin with. To see the difference between these different types of considerations, consider the following case. Ann needs a grant of £1,000. She can ask either Beth or Carl for money. Beth lives abroad, so she would have to transfer the money internationally; the overall cost of the grant would be £1,200. Carl lives in the UK, and would not have to transfer the money internationally, so the overall cost of the grant for him would be £1,000. However, Beth earns £100,000 a year, while Carl only earns £10,000 a year. While it would be more costly for Beth to give Ann the grant, Carl would be less able to bear the cost, since he is

worse off to begin with. Cost and ability to bear the cost are thus different types of considerations, and can diverge. It seems to me that the "reasonable cost" proviso should be thought of in terms of the ability to bear the cost: this is because what matters most, from the perspective of the duty-holders, is not that they pay a large cost, but rather that they are not left too badly-off by the performance of the action. For instance, in the case outlined above, the fact that Carl would be left badly off by the loan is more salient than the fact that Beth would have to pay a large sum of money to help Ann out.

I do, moreover, assume that what is "reasonably costly" is sensitive to the duty-holder's moral responsibility. I take an agent to be morally responsible for another agent's condition if he ought to be blamed for that condition. With respect to the allocation of concrete duties, it seems plausible that if one is morally responsible for the violation of one or more human rights, the cost after which one is no longer required to fulfil a duty is higher than it is for agents who do not have such responsibility.

We can now address the demandingness objection to the UST. Shue argues that the disanalogy between positive and negative duties with respect to their cost constitutes a threat to the UST. Recall that he claims that "Universal negative duties [...] are no problem (if "opportunity costs" are ignored). I can easily leave alone at least five billion people, and as many more as you like" (Shue 1988: 690). "A duty's being positive, on the other hand, means that fulfilling it will require the expenditure of some resource I control, like time, money, energy, or emotional involvement" (Shue 1988: 689). This challenge can be addressed by questioning two assumptions, one concerning the nature of costs, the other concerning the nature of duties: as far as the costs are concerned, Shue sets aside opportunity costs; as far as the duties are concerned, he exclusively focuses on single duties

(i.e. duties whose fundamental features depend on the effect of the action and omission of single agents). Both assumptions, however, are unwarranted.

Let me start with the former issue. Imagine the following case: Carl, Carl's child and their cat have been kidnapped by a sadistic man, who tells Carl that, unless Carl tortures the cat, he will kill the child. If we focus exclusively on the cost of performing the action, then it is more costly for Carl to torture the cat than not to do so, since the former will require him spending his physical energy and time, and it will be psychologically taxing. But clearly, this is not the only relevant consideration. What is relevant, rather, is the opportunity cost of the action: the fact that Carl would forego the possibility of saving his child. Hence, an adequate understanding of costs cannot simply focus on the action (or omission), but needs to take into account opportunity costs.

The assumption concerning duties is equally unwarranted. As I argued, aggregative duties play an important role in understanding the normative implications of many scenarios, and have a particularly important role in addressing issues concerning global justice. In order to consider the cost of duties correlative to human rights we thus need to take aggregative duties into account. As Lichtenberg has pointed out, the opportunity cost of fulfilling negative aggregative duties can be extremely costly: aggregative negative duties require us to change a very large variety of well entrenched behaviours, including, among others, what we buy, what we eat, and the means of transportation we use (Lichtenberg 2010). By contrast, once we spell out the different ways in which we can protect fundamental values through aggregative benefits, there is no reason to think that positive duties should be especially costly. As I argued, aggregative positive duties require us to perform actions such as donating, voting, volunteering, buying fair-trade and so on, which need not be especially demanding. Once we take into account both the cost of omitting and performing the

relevant actions, and the opportunity costs involved in upholding the duties, there is no reason to think that positive aggregative duties correlative to human rights should be more demanding than the negative ones.

There is, though, an obvious reply to the above: while aggregative positive duties *need not* be very costly, they *can be*—depending on how much we donate, how long we volunteer for, and so on, these actions can indeed be very demanding. Note, however, that this worry concerns the content, rather than the existence of the duties. Donating *a high percentage of one's income*, or volunteering *most of one's spare time*, are very costly activities. But this does not imply that there is no duty to contribute to donate or volunteer, and it certainly does not imply that there is no duty to contribute to the protection of fundamental values. Rather, it suggests that the "reasonable cost condition" constrains the content, as well as the scope, of positive duties. So, for instance, when it comes to donating and volunteering, we can say that there is a duty to donate a reasonable percentage of one's income, or volunteer a reasonable percentage of one's time. This is of course compatible with the UST, and in line with the specification outlined above. Note, moreover, that there is no reason to think that this restriction would pertain only, or especially, positive duties. As I said above, an appropriate understanding of duties and costs shows that aggregative negative duties can be extremely demanding too. Hence, we have no reason to think that positive duties as a category fall prey to the demandingness objection.

d. Replying to the Necessity Objection

Let me now focus on what I called the Necessity Objection. Recall that the objection holds that there is a disanalogy between negative and positive duties with respect to their relation to rights: while negative duties *need* to be held by everyone for a right to be respected, this is

not so for positive duties; in the case of positive duties it is only necessary that *someone* holds such duties.

In reply to this objection, I want to stress three points. First of all, taking the largest possible set of duty-holders allows us to distribute costs more fairly. Take, for instance, the case outlined above, in which Hans and Katie have two children, Tom and Rob, who have a right to develop their musical and sportive talents, which requires that they be driven to music and sport lessons. Assume each parent is able to drive both children to music and sport lessons. Imagine, then, that the duty is allocated to Katie. This allocation ensures that the children's rights are respected; however, it is arguably not a fair solution since it does not result in an equitable allocation of burdens. On the contrary, having the two parents share the tasks is a better solution as far as the allocation of burdens is concerned.

Moreover, it is important to notice that taking positive duties to have universal scope can itself extend the content of the rights. As I said above, for a right to exist, it has to have correlative duties; in turn, for a duty to exist, it has to be feasible (in the binary sense), since "ought" implies "can". A question, though, arises: who should we focus on, when we assess feasibility? Extending the picture so as to include everyone, and, correspondingly, the aggregative benefits deriving from everyone's contribution, allows us to consider the widest possible set of abilities, and it thus places the lowest possible set of feasibility constraints on the existence of human rights. This, in turn, will affect the ability to protect fundamental values and the content of the rights.

To see how this would work, consider the following example. Sam is ill, and will die unless he is provided with a certain medicine; furthermore, he will live longer the more medicine he is given. In the first scenario, only Jim can provide him with such a medicine; however,

Jim can only provide Sam with enough medicine to survive one year longer. In this case, it seems that Sam only has a right to a further year of life. Imagine now a second scenario, in which Luke is also able to provide Sam with a similar amount of the medicine. It is now the case that Sam has a right to two years of life. In general it is plausible to think that the wider the scope of the duty-holders, the less feasibility constraints will restrict the content of the rights.

Finally, the Necessity Objection can also be challenged with respect to its underlying assumption about negative duties. This is because it is not the case that negative duties need always to be held by everyone for a human right to be upheld. There are indeed cases in which it is only necessary that someone holds such duties. One type of example is provided by tragedy of the commons scenarios: cases in which common resources are overharvested. For instance, imagine the livelihood of a group of people depends on a field; however, if the field is overharvested, it will stop producing enough food to support them.¹⁰⁸ In this case, it would be enough for some people (rather than everyone) to refrain from using the field to avoid overharvesting it. The duty to refrain from using the field is of course a negative duty. Since the overharvesting of the field would threaten the livelihood of the group of people, the duty to refrain from using the field can plausibly be considered a duty correlative to a human right. In this scenario, it is sufficient that some people fulfil the relevant negative duty correlative duty for a human right to be upheld. We thus have an example of negative duties correlative to human rights which need not be held by everyone for the human right to be upheld.

The above concludes my defence of the Universal Scope Thesis in its own right. In Part II I put forward an argument by analogy for the UST. I argued that positive and negative duties

¹⁰⁸ This example comes from Jech 2012.

correlative to human rights are analogous in so far as they both protect fundamental values; that negative duties correlative to human rights are generally thought to have a universal scope; and that, by analogy, this provides a reason to believe that positive duties correlative to human rights have universal scope. I also claimed that, since our common-sense understanding of duties is characterized by a deep dichotomy between positive and negative duties, the reader might remain unconvinced until I illustrated the putative disanalogies, and show how they could be addressed. I thus outlined what I took to be the most worrying relevant disanalogies, and set out the feasibility, demandingness and necessity objections. In order to address these worries, I then argued that an adequate understanding of positive duties correlative to human rights ought to include aggregative duties. This framework, I argued, allows us to meet the objections, and thus address the most plausible disanalogies which threatened the argument for the Universal Scope Thesis. This concludes my defense of the UST in its own merits.

Part VII: Assessing the alternatives

As I said in Part II above, my defence of the UST consists in two parts: a defence of the thesis in it on its own merits and a defence of thesis in comparison to its alternatives. Below, I focus on the second, comparative, step. Before doing so, however, I want to undertake another task, and focus on the principles which determine the scope of concrete positive duties correlative to human rights. When discussing the UST above I clarified that it is a thesis about the scope of abstract duties. I argued that the allocation of concrete duties will depend on both empirical and moral facts. On one side, relevant empirical facts include, for example, the nature of the specific problem addressed and of the possible solutions. On the other side, relevant moral facts include principles that regulate the allocation of those duties. I now focus on the set of principles which plays this role. I do this for two reasons. First, because in so doing I can provide a more complete account of the scope of positive duties

correlative to human rights, since I will also include the concrete level. Secondly, because alternatives to the UST generally refer to concrete duties: in order to adequately compare the UST to those accounts we thus need to provide an account of the distribution of duties at the concrete level.

a. The scope of concrete duties

We can distinguish between two ways of thinking about the scope of concrete duties. On one side, we can ask what the overall correct distribution of duties is; on the other, we can ask what an individual ought to do. For the first type of question, we outline the overall distribution including all duty-holders and right-holders, on the basis of the relevant principles. We can then derive the scope of each duty-holder's duties from such distribution. This is best illustrated by an example. Assume that Dave and Erin lack adequate nutrition and that Beth and Carl are able to contribute to the protection of their interest in being adequately nourished. To simplify, assume that the only relevant criterion is that we make the protection of the interests as likely to succeed as possible. Assume Beth is able to feed both Dave and Erin, though she is more likely to succeed in doing the latter. Carl is equally likely to succeed in either case. In this case, we can determine that the best overall allocation is the one according to which Beth feeds Erin and Carl feeds Dave.

Things change when we are asking how a single agent should decide what to do. In this case he cannot pick the overall best distribution, since he cannot determine what other agents will do. Once again, this is best illustrated by an example. Assume we are now interested in Beth's decision-making, rather than the overall best allocation. Assume once again that Beth is able to feed both Dave and Erin, though she is more likely to succeed in doing the latter. However, she knows that Carl will feed Erin. In this case, Beth has a duty to feed Dave. Note that this is the case even though she might know that Carl is equally likely to succeed

in either case, and that the best overall distribution would thus be the one in which Beth feeds Erin and Carl feeds Dave. The point is that when a single agent is deciding what to do he can only optimise his own actions, rather than the overall set.¹⁰⁹

Note that the UST is significant both when we are assessing the overall distribution and when we are considering a single agent's decision-making. In the first type of case, the UST is significant because it tells us that everyone enters the set of duty-holders which determine the overall allocation, which in turn determines the scope of each duty-holder's duty. In the second type of case, the UST is significant because it tells us that every agent ought to consider in what way they should act to contribute to the protection of fundamental values.

In the examples above I assumed that the allocation should be determined by one principle, but what set of principles actually determines the content and scope of duties? In what follows I defend a set of principles which, I believe, determine the scope of concrete duties. Note, however, that the principles I defend below are not entailed by the UST: one can endorse the Universal Scope Thesis and think that the scope of concrete duties is determined by a different set of substantive principles.

The scope of concrete duties, I submit, is determined by principles concerning two types of considerations. The first type of consideration concerns correlative duties, the second type of consideration concerns fundamental values (by which, you recall, I mean the values protected by human rights). The versions of the LST I consider below are formulated in terms of overall distribution. To make the comparison more straightforward, I will thus formulate the principles with reference to the overall distribution; however, *mutatis mutandis*,

¹⁰⁹ Note that these two ways of thinking about the distribution of duties overlap in cases in which all agents have perfect knowledge and fully comply with their obligations.

the principles apply to a single agent's decision making—with one exception that I will highlight in due course.

Let us start by considering principles concerning the nature of correlative duties. Three types of considerations seem to be especially important: feasibility, cost and ability to bear the cost. Consider feasibility first. Recall that we must distinguish between binary and scalar feasibility: the first concerns allowing and ruling out outcomes on the basis that they can or cannot be achieved; the second concerns how likely an outcome is to obtain. When considering the allocation of concrete duties, feasibility will then require us to take into account whether the agent is at all able to perform a certain action, as well as how likely the agent is to succeed if he tries. The related principle tells us that duties should be allocated as to maximise the feasibility of the protection of fundamental values. For instance, assume that Adam is ill and he can be helped by either Ben or Claire. Ben's chances of successfully protecting Adam's health are 1% and Claire's chances are 99%.¹¹⁰ The principle tells us that Adam should be helped by Claire, rather than Ben.

Consider now cost and ability to bear the cost. Recall that by considerations of cost I mean how much worse off one is made by the action. The cost principle tells us that duties should be allocated so as to minimise costs. Cost is morally relevant for reasons of efficiency: it is best to allocate duties in a way that takes up as little resources as possible. For instance, imagine that Adam can be helped by Ben or Claire, and it would cost Ben £5000 and Claire £1000 to help him. The principle tells us that Adam should be helped by Claire. Note that efficiency also affects the content of human rights. As I stressed above, for a human right to exist, the correlative duty has to be feasible. The fewer resources are available, the less it will

¹¹⁰ For simplicity, I will only consider distributions in which different duty-holders have the responsibility for different right-holders. I will thus set aside distributions in which different duty-holders have the responsibility for different tasks, as well as mixed strategies. However, the examples can be modified as to include the two latter type of strategies.

be possible to satisfy the feasibility constraint, the narrower the rights will be. Hence, allocating positive duties to agents who are not the ones for whom it would be least costly to perform the action restricts the content of human rights.

Recall that, by ability to bear the cost, I mean the ability to shoulder the cost of performing the action; this type of consideration depends on how badly-off one is to begin with. The principle concerning the ability to bear the cost tells us that the duties should be allocated as to minimise the burden on the worst-off duty-holders. The ability to bear the cost is relevant for reasons of priority: to ensure that we prioritise the worst off among duty-holders. For example, assume that Adam can be helped by either Ben or Claire. Ben, however, is worse off than Claire. The principle tells us that Adam should be helped by Claire.

Let me make two clarifications about the ability to bear the cost. Recall that in Part V I argued that the "reasonable cost condition" which qualifies the scope of abstract duties is influenced by the duty-holders' moral responsibility, to the effect that, if one is morally responsible for the violation of one or more human rights, the cost after which one is no longer required to fulfil a duty is higher than it is for agents who do not have such responsibility. Moral responsibility is also relevant when considering the scope of concrete duties: it seems plausible that if someone is morally responsible for the violation of one or more human rights, then he might be allocated a concrete duty even though he is worse-off than other potential duty-holders. Note, moreover, that in the case of a single agent's decision-making the ability to bear the cost does not determine the scope of concrete duties: this is because the principle compares the conditions of different duty-holders, and such comparisons are not relevant for a single agent's decision-making.

Let us now focus on considerations concerning fundamental values. Two further features are relevant: priority and magnitude. Priority concerns how badly off one is, and the principle of priority holds that benefiting people matters more the worse off these people are (Parfit 1997). For instance, improving the health conditions of an agent is more important if his life expectancy is twenty than if it is thirty years. Finally, we can focus on magnitude. The magnitude of a benefit can of course vary: one's life expectancy can be increased by one, two or more years; an agent can be subjected to different degrees of pain for different length of times, and so on. The relevant principle holds that larger benefits are better than smaller ones. The reason why considerations about fundamental values are relevant to the scope of concrete duties is that duty-holders might be unable to protect all fundamental values, or to protect all of them fully effectively. When this is the case, they should prioritise the protection of badly-off right-holders and large magnitudes. For example, consider the following case. Dave and Erin are both seriously ill, and can be helped by Beth or Carl. Both Beth and Carl can help either Dave or Erin at a reasonable cost, but neither can help both. Beth can help both Dave and Erin with a very high probability of success, while Carl can help both at a very low probability of success. Dave's health, however, is worse than Erin's. It seems to me that in this case Beth should help Dave and Carl should help Erin.

These principles should be weighed against one another as to determine which one will establish the correct allocation. It is not possible, in the space of this paper, to go into the details of how such a weighting should proceed. However, it seems plausible to say that none of these principles enjoys lexical priority. Rather, large variations in one of those principles can outweigh small variation in the others. Finally, there might be cases in which various allocations of concrete duties equally satisfy these principles. In this and similar

cases, it seems plausible to think that the correct allocation should be determined by a fair procedure, such as coin flipping, or a lottery.

b. A first version of the Limited Scope Thesis: Wenar and costs

I shall now outline two versions of the Limited Scope Thesis, and assess whether they are to be preferred to the Universal Scope Thesis. The first one I consider is the one put forward by Leif Wenar. In his article 'Responsibility and Severe poverty' Wenar (2007) investigates who is morally responsible for alleviating severe poverty. To do so he offers a general account of the allocation of responsibility to prevent threats to basic well-being, and then applies such an account to the case of severe poverty.

He holds that the responsibility to prevent threats to basic well-being is allocated according to the least cost principle, according to which the responsibility for averting harms should be located in the agent who can do so at the least cost. He also adds that the principle can apply either directly or indirectly: in cases of one-off threats, the principle is applied directly to individuals; for instance, if a child is drowning in a pond, the responsibility to help that child falls on the person who could most easily save the child. But when predictable threats are at stake, we apply the principle through roles, which are created on the basis of general descriptions. For instance, the responsibility to care for a child is given to his parents, and the responsibility to avert car accidents is given to trailing drivers, etc. In order to deal with serious threats, Wenar argues, we construct systems of roles. For example, parents ought to feed their children, and officials ought to ensure parents are economically able to feed their children (Wenar 2007: 263). The principle includes a stepping back proviso: if the person with the original responsibility is unwilling or unable to fulfil his duty, the responsibility is allocated to the person besides him who can most easily bear the burden (Wenar 2007:

264).¹¹¹ Wenar's principle also includes an excessive burden proviso, according to which agents are only required to bear the cost if the cost is not excessively burdensome.¹¹²

Following this framework he claims that the duties to avert the threat of severe poverty are allocated in the first instance to the agent himself and, if the agent cannot take care of himself, it "steps back", progressively, to his family, his community, his national government and, finally, the international community (Wenar 2007: 270-271).

Let me then compare Wenar's account to the one defended in this paper. At the abstract level, I defend the Universal Scope Thesis, while Wenar endorses a version of the Limited Scope Thesis. Note that Wenar does take some aggregative duties into account, in so far he talks about systems of roles.¹¹³ However, this leaves many aggregative duties out of the picture. First, it only considers aggregative duties deriving from the interaction of specific sets of agents, rather than aggregative duties deriving from the interaction of all agents. Secondly, system of roles rely on what I called combination benefits: cases in which a number of different contributions are needed to bring the benefit about. However, those are not the only types of benefits: as I argued in Part IV, there are also additive benefit and multiplicative benefit (recall that the former obtain when single actions cause some limited

¹¹¹ Wenar holds a political account of human rights: he only calls the obligation to prevent a basic threat a 'human right' when such an obligation steps back up to the level of national government (Wenar 2007: 270). Conversely, as I clarified in Part I, I am here rejecting such an account. However, in the article here discussed Wenar offers a general principle which applies to the scope of all moral duties to protect threats to well-being. Accordingly, this principle also covers positive duties correlative to human rights under the assumptions endorsed in this paper, and this is why I address it here.

¹¹² Note that Wenar holds that there is another principle that regulates the responsibility for the prevention of threats to basic well-being: the Principle of Compensation, according to which when one person has harmed another, and the harm to the victim constitutes a continuing threat to their basic wellbeing, the agent harming the victim has a responsibility to compensate them. This principle is similar to Miller's principle of causal responsibility, according to which if A causally brought P's condition about, then A ought to remedy P's condition. I will discuss the latter principle below: the same considerations will apply to Wenar's Principle of Compensation. I will thus not discuss the latter here.

¹¹³ Note that systems of roles sometimes correspond to collective duties, rather than aggregative ones. For instance, consider the example of house fires. Wenar argues that to avert this threat we rely on the following system of roles: those who have income and wealth are responsible for using their funds to equip fire-fighters, government officials are responsible for training fire-fighters, fire-fighters are responsible for fighting fires, and so on. In this case the duty seems to be a collective one, in so far as it is held by a collective agent (the political community) and discharged through the creation of a system of roles.

benefit, but the cumulative behaviour of a set of agents results in a conspicuous benefit and the latter obtain when the agent's action magnifies the benefit caused by other agents).

As I said when replying to the Necessity Objection above, extending the picture as to include everyone, and, correspondingly, the aggregative benefits deriving from everyone's contribution, has two advantages. First, it allows us to distribute costs more fairly. For instance, consider one-off threats. Imagine a child is drowning and several people are on the beach. Each of them can perform the rescue at some cost. One of them is very strong, and would be able to individually perform the rescue at the least cost. According to the Least Cost Principle, the child should be saved by this person. But imagine further that the rescue can also be performed so that each beachgoer contributes to it, in such a way that the cost is distributed across the different agents. Why should we think that the strongest man should rescue the child by himself? Having the beachgoers share the task leads to a fairer allocation of burdens. The same can be said in the case of predictable threats. The Least Cost Principle suggests that we pick the general description (or a limited set of general descriptions) under which it would be least costly to protect the value. However, we could also distribute duties in such a way that costs are distributed across all agents. Doing so is preferable in so far as it would lead to a fairer allocation of burdens.

Secondly, extending the picture as to include everyone, and, correspondingly, the aggregative benefits deriving from everyone's contribution, allows us to extend the content of human rights. For instance, Wenar holds that the duty to avert the threat of severe poverty is allocated in the first instance to the agent himself and, if the agent cannot take care of himself, it "steps back", progressively, to his family, his community, his national government and, finally, the international community. But by focusing on these agents *in turn*, he does not consider the benefits which might derive from the interaction of these

categories of agents. This interaction might make it feasible to alleviate a higher degree of poverty. This is an extension of the point considered above, when replying to the Necessity Objection. Recall that I outlined the following example: Sam is ill, and will die unless he is provided with a certain medicine; furthermore, he will live longer the more medicine he is given. In the first scenario, only Jim can provide him with such a medicine, and he can only provide Sam with enough medicine to survive one year longer. In this case, it seems that Sam only has a right to a further year of life. Imagine now a second scenario, in which Luke is also able to provide Sam with a similar amount of the medicine. If we consider Jim and Luke *in turn*, then Sam still only has a right to one further year of life. Conversely, if we consider the two agents together, and we focus on the aggregative benefits resulting from their interaction, we can say that Sam has a right to two further years of life. As I argued above, in general it is plausible to think that the wider the scope of the duty-holders, the less feasibility constraints will restrict the content of the rights.

Let me then compare Wenar's thesis to the account I defend for the scope of concrete duties. There are two set of differences. First, Wenar's thesis does not take into account considerations concerning values, i.e. priority and magnitude. As I argued above, however, these considerations should influence the allocation of concrete duties. Secondly, Wenar's thesis does not seem to take into account some considerations concerning duties, such as the feasibility and ability to bear the cost. Note, however, that, while Wenar refers to the least cost principle as a unique principle, in practice he seems to refer to three different principles: the ones that I called cost, feasibility and ability to bear the cost. Considerations of cost underpin comments such as "Each competent adult is responsible for avoiding a great many threats to his own well-being because he is the agent who can do so at the least cost" (2007: 5). Feasibility underpins comments such as "When we reflect on why we hold the trailing driver responsible for an accident in a case like this, we will arrive at the

following explanation: the trailing driver is the person who can most easily keep the collision from occurring" (2007: 4). Finally, ability to bear the cost underpins claims such as "It appears that we think that the fairest and most efficient way to allocate responsibility for these potential threats is to put the burden on the agent who can most easily bear that burden"(2007: 5). Distinguishing among these principles is important in so far as these principles can conflict.

The possibility of conflict between cost, ability to bear the cost and feasibility is especially important when we consider Wenar's thesis about the responsibility for world poverty. Recall that he claims that the duties to avert the threat of severe poverty are allocated in the first instance to the agent himself and, if the agent cannot take care of himself, it "steps back", progressively, to his family, his community, his national government and, finally, the international community. This claim can now be tested with respect to the different principles identified above. On one side, this claim might be plausible if we focus on cost or feasibility. For instance, it might be plausible to say that these are the agents for whom it would be least costly to perform the action, because of physical and emotional closeness.¹¹⁴ Similarly, it might be the case that those are the agents who would be most able to effectively protect the values, in virtue of the same considerations. However, it is not plausible to say that these are the agents who can most easily bear the cost of the actions. Locating responsibilities with these agents would be in line with the ability to bear the cost principle only if resources and skills were equally distributed across families, communities and countries. But, needless to say, this is far from being the case. The current economic scenario is characterised by a high degree of inequality among households, regions and countries. Given this indubitable empirical fact, assigning responsibilities to families, communities and countries goes against the ability to bear the cost principle. As I said

¹¹⁴ I will go back to this point below, when discussing Miller's account.

above, then, in order to determine the correct allocation we will need to weight the principles against one another. Note, moreover, that the weighting should also include considerations concerning values, i.e. priority and magnitude.

c. A second version of the limited scope thesis: Miller and outcome responsibility

The second version of the Limited Scope Thesis I wish to consider is the one presented by David Miller (Miller 2001, 2007). Miller calls the responsibility to aid those who need help "remedial responsibility". He sets up the problem of remedial responsibility as follows:

Initially it seems that there is a moral requirement that falls on everybody else to provide the help or the resources that are needed. [...] The problem that arises, however, is that an undistributed duty such as this to which everybody is subject is likely to be discharged by nobody unless it can be allocated in some way. We need to pick out one person or several people (or perhaps an organized group) as having a special responsibility to put the situation right. This is what it means to be remedially responsible: to have a special responsibility, either individually or along with others, to remedy the position of the deprived or suffering people, one that is not equally shared with all agents; and to be liable to sanction (blame, punishment, etc.) if the responsibility is not discharged. Unless remedial responsibilities are identified, then even well-meaning people are likely not to intervene, either on the grounds that their intervention would be superfluous, or for the less generous reason that they do not see why it is their job to pick up the pieces when so many others are spared that cost (2007: 98-99).

He then puts forward a 'connection theory' of remedial responsibility, according to which A should be considered remedially responsible for P's condition when he is linked to P in one or more of six ways. The connections can be briefly described as follows:

- a. moral responsibility: A ought to be blamed for P's condition
- b. outcome responsibility: A brought P's condition about through his intentional agency (this might not entail moral responsibility if, for instance, the action or omission was morally justified or morally neutral)
- c. causal responsibility: A causally brought P's condition about (this might not entail outcome responsibility, if the agent did not bring the result about through intentional

agency, but was rather coerced or constrained, or the result of his actions or omission was not reasonably foreseeable)

d. capacity: A can relieve P of his condition at low cost, and/or effectively

e. benefit: A benefits from P's condition

f. community: A is linked to P through community ties

Miller then argues that it is not possible to rank the principles. In order to understand which principle determines remedial responsibility in the specific case we are addressing we have to rely on our intuitions about the existence and strength of each connection-type in the specific case (2007: 107).

He then focuses on the case of world poverty. He distinguishes between cases in which poverty was brought about by intentional human actions and cases in which poverty was not so brought about. In the first type of cases, he argues, remedial responsibility lies with people who hold outcome responsibility for those actions, or members of the same national community who have inherited the responsibility. When the poverty is not caused by human actions (but rather, for instance, by natural disasters), then the responsibility should be assigned according to the connection theory—that is, considering whether the other principles outlined above apply and how strong they are (Miller 2007: 247-261). He takes these obligations to be obligations of justice. However, he further also argues that, in cases of partial compliance, the remedial duty born by complying agents will be a humanitarian one, rather than a duty of justice (2007: 257-8).

I want to start by considering the way Miller sets up the problem. Two points are worth stressing. First, Miller claims that, to begin with, the requirement to help those in need falls on "everybody else", but that this duty is "undistributed" and in "need to be allocated"

(2007: 98). He then suggests that distributing this shared duty consists in picking out "one person or several people (or perhaps an organized group) as having a special responsibility to put the situation right" (2007: 98-99). Note, however, that, even if we accept that the initial duty is "undistributed" we need not think that it should be distributed to a limited set of agents. Once we bring aggregative duties in the picture, we find that the undistributed duty can be distributed to all agents, to the effect that all agents have aggregative duties to bring about the protection of everyone else's fundamental values.

Secondly, Miller claims that it is necessary to identify remedial responsibilities so that agents will not think their intervention will be superfluous nor wonder why they should be the only ones to bear the cost. I agree that unallocated responsibility might lead to the problems Miller outlines. However, these problems do not require responsibility to be assigned to a limited number of people. They can also be addressed by assigning aggregative duties to all agents. With respect to the first problem—agents thinking that their intervention would be superfluous—we can stress that the performance of aggregative duties is needed to bring about the desired outcome. With respect to the second point—that agents would wonder why they should be the only ones to bear the cost—this problem would of course not arise if we take, as the UST requires, everyone to hold the relevant duties.

Let me then compare Miller's account to the one defended in this paper. At the abstract level, I defend the Universal Scope Thesis, while Miller endorses a version of the Limited Scope Thesis. Like Wenar, Miller also considers some aggregative duties, in so far as he suggests that the duties could be allocated to several people (and he distinguishes this from cases in which duties are allocated to organised groups). However, like Wenar, he only seems to consider the aggregative duties deriving from the interaction of limited sets of agents, rather than aggregative duties deriving from the interaction of all agents. As I said

above, however, extending the picture as to include everyone, and, correspondingly, the aggregative benefits deriving from everyone's contribution, has two advantages: it allows us to distribute costs more fairly; and it allows us to extend the content of human rights.

Secondly, Miller argues that, in situation of non-compliance, other agents have a duty to address the deprivation, but that this duty will be a humanitarian one rather than a duty of justice (2007: 257-8).¹¹⁵ By contrast, as I said, the UST implies that in cases of non-compliance we have a correlative duty of justice to address non-compliance. Which thesis is then the most plausible? Miller defends the thesis that duties to address non-compliance are humanitarian duties, rather than duties of justice, in his article "Taking Up the Slack? Responsibility and Justice in Situations of Partial Compliance" (Miller 2011). As Miller himself stresses, many think it is obvious that, when important consequences are at stake, justice requires us to address the effects of non-compliance. For instance, in rescue cases, one might be required to go back and save more people at risk, if other duty-holders refuse to cooperate.

In order to dispel this intuition Miller presents the following argument. He holds that obligations of justice are characteristically enforceable in principle by third parties.¹¹⁶ However, we would not be justified in enforcing compliers to address the consequences of non-compliance, since they have already discharged their share of the responsibility (Miller 2011: 242). Yet, Miller continues, one might still point out that, though forcing the compliers to address the effects of non-compliance is unjust, it is less unjust than failing to protect the victims, since the victims will bear the more substantial costs. In order to rebut this point, he puts forward the following thought experiment:

¹¹⁵ Note that Miller does not take all duties correlative to human rights to be duties of justice (2007: 193, 248).

¹¹⁶ Miller adds that the nature of the justifiable enforcement depends on the specific case (2011: 242). This is because, as Miller himself stresses, it is doubtful that an obligation's enforceability is a necessary and sufficient condition for its being a duty of justice (Buchanan 1987).

A poor person has been robbed. I cannot force the thief to hand back what he has taken, but I can force a rich person (not involved in the robbery) to hand over an equivalent amount to the victim. The cost to the rich person, we can assume, is considerably less than the cost that the theft has inflicted on the poor person. In an outcome sense, therefore, a world in which the poor person has lost £1,000 is more unjust than a world in which the rich person has lost the same amount. How does this bear on the justice or injustice of the proposed enforcement? It would not be just to force the rich person to hand over his money. If I can persuade him to do so by appealing to his concern for the poor man, that would be good. But given that he is not responsible for the original theft, compulsion would fail to respect him as an agent (Miller 2011: footnote 16).

This, however, does not seem to me to be compelling. To begin with, in the example presented the cost is borne by only one duty-holder—the rich man. This might explain why we do not think the duty should be enforced, in so far as it seems unfair that one individual should bear the whole cost of non-compliance by himself. However, we need not assign the responsibility to only one agent: the duty to address non-compliance can be redistributed to all the complying duty-holders.

Secondly, the case presented by Miller focuses on resources—the man is robbed of £1000. However, human rights do not protect resources, but rather fundamental values—such as the interests in life, absence of severe pain, adequate nutrition, and so on. These values are very important and neglecting them entails agents will bear very high costs or (and) will be disrespected in fundamental ways. Our intuitions are significantly different when these values are at stake. Imagine that, instead of being robbed of £1000, the man were deprived of a medicine he needs to survive. It seems to me that, if it were impossible to enforce the duty of the non-complier, it would be justifiable to enforce compliers' duty to provide the medicine. In light of this, it does seem correct to think that the duty to protect fundamental values will be a duty of justice also in situations of non-compliance.

Let me then compare Miller's thesis to the account I defend for the scope of concrete duties. Both the connection theory and the account I defend include what Miller calls the principle of capacity, which includes considerations of cost and feasibility. So I will set those aside. The account I defend includes considerations of ability to bear the cost and principles concerning the nature of fundamental values, which the connection theory does not include; I defended those principles above, so I will not repeat the points here. The connection theory, however, also includes a variety of principles that I do not take to be relevant to the allocation of concrete duties: community, benefit, outcome, and causal responsibility. It offers, moreover, a different account of the significance of moral responsibility. Let me then focus on these differences.

Let me start with moral responsibility. Miller's account takes moral responsibility to affect the scope of concrete duties directly, in so far as agents have a duty to redress predicaments they are responsible for. Conversely, the account I endorse takes moral responsibility to affect the scope of concrete duties indirectly: I take moral responsibility to affect the reasonable cost proviso and the principle of ability to bear the cost—that is, if an agent is morally responsible for one or more of the right-holder's predicaments, then she might be required to reach a lower level of well-being and might be allocated a concrete duty even though she is worse-off than alternative duty-holders. However, under the principle I propose the concrete duty allocated to the morally responsible agent need not be a duty to redress his own misbehaviour, and it could rather be a duty to perform some other kind of action.

The account I endorse seems to lead to more intuitive results. To see why, consider the following case. There are four men: Al, Ben, Carl and Dan. Ben is worse off than Al. Ben culpably causes Carl a serious injury. However, Dan is also badly ill and needs help. If we

take moral responsibility to influence the scope of concrete duties directly, Ben has to bear the cost of the duty to protect Carl's interest. If we take moral responsibility to influence the scope of concrete duties indirectly, Ben might be allocated a concrete duty even though he is worse off than Al; however, this duty need not be a duty to protect Carl: it can also be a duty to protect Dan's interest. Imagine, for instance, that the medicine needed to help Carl costs £10 and the one needed to help Dan costs £20. However, for Ben to help Carl and Al to help Dan they would have to transfer money to a foreign account, and this would have a fixed cost of £100. If we take moral responsibility to influence the scope of concrete duties directly, Ben would have to bear the cost of Carl's predicament, spending £110, and (plausibly) half of the cost of Dan's, spending a further £10. Al would have to bear half the cost of Dan's predicament, spending £110. This seems implausible. Rather, it seems plausible to argue that Ben should bear the cost of helping Dan (£20) and Al the cost of helping Carl (£10), in so far as this would be better both as a matter of efficiency and for the other duty-holders (in this case, Al). This suggests that moral responsibility should not affect the scope of concrete duties directly, but rather indirectly, by affecting what counts as a reasonable cost and the way we account for one's ability to bear the cost.¹¹⁷

Let me now consider whether benefit, community, outcome and causal responsibility are morally relevant principles for the allocation of concrete duties. Let me start by considering benefit. Note that, as Miller himself stresses, benefit often tracks a higher ability to bear the cost: "Sometimes beneficiaries, by virtue of having been advantaged, are also the people most capable of supplying the remedy without incurring significant costs" (2007: 103).¹¹⁸ Moreover, we might add, benefit might track moral responsibility, in so far as agents who benefit from a predicament are often the agents who are morally responsible for it. Given

¹¹⁷ Note that I am here only focusing on duties correlative to human rights. Moral responsibility might affect the scope of duties directly for other types of obligations.

¹¹⁸ The notion underpinning this comment is plausibly what I call ability to bear the cost, rather than what I call cost.

this, it is unclear that we should think that benefit is independently significant. Imagine that the agent who has benefited is innocent, and is, notwithstanding the benefit, extremely badly off; why should we think the duty to help the right-holder falls on him?

Daniel Butt has offered an influential defence of the benefit principle. Though it is of course not possible to consider Butt's views in detail, it is worth briefly considering whether it supports the independent significance of the principle:

Four people, A, B, C and D live on a remote island.[...] In order for each person to support herself, she must produce 200 kilos of root per year. A is a very hard-working, industrious type, whose agricultural efforts, from dawn to dusk each day, mean that she produces 700 kilos per annum [...]. B, C and D are rather laid-back in their approach to agriculture, and work just five hours a day to produce the minimum 200 kilos a year. [...] D diverts the underground river away from B and C's sections of land. [As a result] A harvests her regular 700 kilos. C's land has had no water, and consequently she has no crop. She is destitute, despite her efforts over the past year. It also emerges that D (no water engineer) has in fact diverted the water away from her own land as well as that of C, and B, far from having a failed crop, has been the beneficiary. To her surprise, she harvests 400 kilos. D is also destitute, and in rage and despair hangs herself. [...] Either A or B could transfer the necessary 200 kilos to C, while retaining at least 200 kilos themselves, but evidently A's extra level of resources mean that her capacity is the greater. [Hence, if we only focus on capacity] A has the greater connection to C and bears the remedial responsibility. Yet does not such a conclusion seem intuitively objectionable? [...] Should we not hold that B's improved position, which has come about as a direct result of C's worsened position, constitutes just the sort of "morally relevant relation" between parties which might be considered when we ask who should bear remedial responsibilities? (Butt 2007: 132-33).¹¹⁹

Butt's argument has a strong *prima facie* plausibility. I do not think, however, that it can ultimately support the benefit principle. This is because our intuition that B should bear the cost can be explained in terms of the ability to bear the cost principle. In considering the upshot of his example, Butt only focuses on resources; however, the result is different if we widen the focus as to consider how well-off the agents are overall. A has put effort and worked hard for the crops, plausibly foregoing other valuable activities and leisure-time.

¹¹⁹ Note that Miller did not include benefit in the initial list of the principles relevant for the connection theory (Miller 2001). Butt was here arguing that Miller should include benefit in such a list.

Conversely, B has enjoyed much more leisure time than A. Since she also enjoys the additional crops, then, she is plausibly overall better-off than A. Accordingly, the ability to bear the cost principle would suggest we should assign her the concrete duty to support C. Imagine instead that A did not put any effort in the agricultural work and had 700 kilos because of sheer good luck: I doubt that we would then think that the cost of supporting C should be borne by B. This is because, in this latter case, we would identify A as the agent for whom it would be least burdensome to bear the cost. Our intuitions can thus be explained by reference to the ability to bear the cost principle, and there is no need to posit a further benefit principle.

Consider now the principle of community. Once again, this principle often tracks principles which are relevant to the allocation of concrete duties according to the account I defended above. First, it is plausible to think that community often tracks feasibility.¹²⁰ For instance, if we focus on the national community, we find that most of the better developed services and structures for the protection of fundamental values are set-up and upheld by nation-states. Moreover, it is plausible to think that community often tracks costs. This is because members of the same community are likely to be physically closer and might be bound by associative relationships. In this respect, then, it might be less costly for them to protect one another's fundamental values, with respect to both physical and emotional costs. Since feasibility and cost are principles which regulate the content and scope of concrete duties, it is plausible to think that contributing to domestic services will often be a way of discharging the abstract duty to contribute to the protection of everyone's human rights. Note, however, that there will be cases in which the principle of community does not track the principles of

¹²⁰ The discussion below is in line with what I argued above, when considering Wenar's thesis that the duties to alleviate severe poverty are allocated in the first instance to the agent himself and, if the agent cannot protect her own interests, it steps back, progressively, to her family, her community, her national government and, finally, the international community. This should not be surprising since Wenar's thesis can be read as focusing on different kinds of communities.

feasibility and cost, because, for instance, the relevant community lacks adequate resources and infrastructures. Moreover, other principles might outweigh considerations of cost and feasibility. In these cases the account defended holds that the allocation of concrete duties should not follow the principle of community. This seems to me to be an advantage of the thesis: if (for example) others would be able to protect the value at a lesser cost, more effectively, or are not made as badly off by the duty, it would be misguided to think that members of a community have the duty to protect the value.

Consider now outcome and causal responsibility. Recall that the first obtains when A brought P's condition about through his intentional agency (this might not entail moral responsibility if, for instance, the action or omission was morally justified or morally neutral). The second obtains when A causally brings P's condition about (this might not entail outcome responsibility, if the agent did not bring the result of intentional agency, but was rather coerced or constrained, or the result of his actions or omission was not reasonably foreseeable). Note that Miller takes both of them to be *ceteris paribus* conditions, and to be weaker than moral responsibility. Yet, even with those clarifications, it is unclear that those principles have any independent normative significance.

Consider outcome responsibility first: as Miller himself points out "people who drive others out of business in the course of fair competition are not expected to provide compensation, nor are athletes who win races expected to comfort the losers" (2007: 101). However, he also holds "if the costs are heavy—the defeated shopkeeper becomes destitute, or the losing athlete becomes suicidal—then remedial responsibilities cut in, and, other things being equal, they fall to the agent who was outcome responsible" (2007: 101). Miller himself points out that not everyone shares this intuition (footnote 19). I do not, indeed, share the intuition. On the contrary, it seems to me that an agent might stress she holds outcome,

rather than moral, responsibility in order to argue that she does not hold a certain duty. For instance, if one were to ask the competing shopkeeper and the winning agent to bear the cost for the destitute shopkeeper and the losing athlete, they could forcefully argue against this allocation of responsibilities by stressing that their actions were morally neutral. Moreover, even if we did share the intuition that the competing shopkeeper and winning athlete should bear the duty, it might be that our intuitions are simply elicited by the fact the agents are well-off: the relevant principle might then be ability to bear the cost, rather than outcome responsibility.

The same holds for causal responsibility. Miller asks us to consider the cases of people who hurt others in response to a threat, to escape harm, or because they could not reasonably foresee the result of their action. He claims that "the bare fact that I have caused [someone] to fall connects me to him in a special way and *ceteris paribus* makes me remedially responsible"(2007: 102). Once again I do not share the intuition. Again, it seems to me an agent could stress that he holds causal, rather than moral, responsibility in order to argue that he should not bear a certain duty.¹²¹ For instance, it seems to me that, if one were to ask someone bearing causal responsibility to bear the cost of his action, the agent could successfully decline the request by stressing that his actions were coerced, constrained or their result was not reasonably foreseeable. Interestingly, Miller himself writes:

There is of course no moral reason why agents who are causally responsible and nothing else beyond that should be judged remedially responsible for the conditions they have caused. But in the absence of other forms of connection,

¹²¹ Williams famously presents the case of an agent bearing causal, but not moral, responsibility: a lorry driver who through no fault of his own runs over a small child. He holds that "we feel sorry for the driver, but that sentiment co-exists with, indeed presupposes, that there is something special about his relation to this happening, something which cannot merely be eliminated by the consideration that it was not his fault" (Williams 1981: 43). Note that we can make sense of the special relationship between causally, but not morally, responsible agents and their victim without having to hold that the former hold duties of justice. We can, for instance, hold that they bear duties of charity or that it would be supererogatory for them to address the consequences of their actions. Wolf, for instance, suggests that we should posit a virtue, similar to generosity, which consists in "taking responsibility for one's actions and their consequences" and that this virtue "involves a willingness to give more than what is required by justice" (Wolf 2001: 13-14).

the importance of fixing remedial responsibility somewhere explains why bare causation can count (2007: 103).

This type of reasoning, however, seems to rely on Miller's claim, previously assessed, that remedial responsibility is special responsibility that is not equally shared with all agents. As I said, however, the worries underlying this line of thought are addressed if we endorse the Universal Scope Thesis.

This concludes my comparative assessment of the Universal Scope Thesis: I have outlined two interpretations of the Limited Scope Thesis and compared them to the account defended in this paper. I argued that in both cases the account defended is to be preferred to the alternatives.

Part VIII: Conclusion

In this paper I defended a refinement of the thesis that positive duties correlative to human rights are universal, which I called Universal Scope Thesis. In order to do so, I undertook two tasks: defending the thesis on its own merits and defending it comparatively. To accomplish the first task, I put forward an argument by analogy. I argued that positive and negative duties correlative to human rights are analogous in so far as they are both perform the same function; that negative duties correlative to human rights are generally thought to have universal scope; and that, by analogy, this provides a reason to believe that positive duties correlative to human rights have universal scope. I then outlined what I took to be the most worrying relevant disanalogies: one concerning feasibility, one concerning demandingness and one concerning the relation between rights and duties. In order to address these worries, I focused on the nature of positive duties correlative to human rights and argued that an adequate understanding of these duties ought to include aggregative duties. With this framework in hand, I then addressed the objections. In the process of

doing so, I also refined the Universal Scope Thesis. In order to defend the Universal Scope Thesis comparatively, I began by outlining the set of principles which I take to determine the scope of concrete positive duties correlative to human rights. I then focused the Limited Scope Thesis, the thesis according to which different subsets of duty-holders are responsible for different subsets of right-holders. I considered two versions of this thesis: the one put forward by Wenar and the one put forward by Miller. I argued that neither is to be preferred to the account defended. We can thus conclude that the Universal Scope Thesis is the correct account of the scope of the positive duties correlative to human rights.

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