

**Human Rights: who bears the correlative  
positive duties?**

**A defense of the thesis that we *all* do**



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**ABSTRACT**

Starting from the assumption that human rights protect universal interests, I focus on duties correlative of human rights and, in particular, on positive duties- i.e. duties to perform an action. I address the issue of their scope: I assess, that is, who bears these duties. The goal of the dissertation is to defend what I call the ‘Universal Scope Thesis’, according to which everyone bears the positive duties correlative of each person’s human rights, except in cases in which agents are prevented from performing specific actions by constraints they cannot modify.

## INTRODUCTION

Human rights play a central role in the current political and legal discourse. They provide a common language which is able to mark the special urgency of the issues they refer to. Being shared by a wide variety of actors, human rights also offer a common platform of discussion. This makes them an extremely powerful tool for political change on the international scene. However, as Amartya Sen points out, “despite the tremendous appeal of the idea of human rights, they are also seen by many as being intellectually frail — lacking in foundation and perhaps even in coherence and cogency” (Sen, 2004, p315). It is thus extremely important to develop coherent and solid theoretical tools, to strengthen and secure the way in which human rights claims are expressed, communicated and fulfilled.

Much present scholarly attention is given to accounts of human rights which ground them in universal human interests (Nickel, 2007, Caney, 2007, Griffin, 2008, Tasioulas, 2010). This thesis is embedded in this wider research project. Raz's influential account of rights holds that an agent has a right if and only if she can have rights and one of her interests is a sufficient reason for holding some other person(s) to be under a duty (Raz, 1988, p166). Following this definition, we can thus say that there is a human right in so far as a universal interest is a sufficient reason for holding some other person to be under a duty. The interest account of human rights is therefore rooted in two fundamental concepts: a universal interest and a duty. The universal interest of the right-holder is the underlying value; the duty of the duty-holder is a way of protecting this value.

In this paper I focus on duties correlative of human rights. Duties are reasons for action,

i.e. considerations in favour of doing, or not doing, something. They are very weighty reasons, reasons to which we should give a substantial role in our decision making process. They are moral reasons: they are issued by the authority of morality, as opposed -for instance- to the authority of prudence. 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. Thus, the duty not to torture someone is an example of a negative duty, while the duty to feed someone is an example of a positive duty.

One of the most important questions we need to address when analysing duties correlative of human rights is - who holds these duties? I refer to this issue as the problem of the *scope* of duties correlative of human rights. Addressing this issue is crucial to ensure that these duties are fulfilled and the rights respected. Traditionally, the answer to this question has differed from positive to negative duties. It is generally thought that negative duties correlative of human rights are held by everyone: that everyone is under the duty not to torture, not to enslave, and so on. The same is not true for positive duties: it is generally argued that no one, or only some, hold the positive duties correlative of human rights. The goal of the thesis is to defend the thesis that everyone holds positive duties correlative of human rights- i.e. that they have universal scope.

In Chapter One I outline my starting assumptions and put forward the research question addressed in this work. I then present the precise thesis defended, the Universal Scope Thesis- according to which everyone bears the positive duties correlative of each person's human rights, except in cases in which agents are prevented from performing

specific actions by constraints they cannot modify. In Chapter Two I consider the most influential alternative answers to the research question. I assess three alternative accounts presented in the literature and argue that each suffers deep problems. In Chapter Three I present a first argument for the Universal Scope Thesis. I focus on the interests protected by human rights and argue that the nature of these interests entails that human rights have universal correlative positive duties. In Chapter Four I present a second argument for the Universal Scope Thesis. I focus directly on duties correlative of human rights and put forward an argument by analogy: starting from the assumption that negative duties correlative of human rights are universal, I argue that negative and positive duties correlative of human rights are closely analogous and that positive duties correlative of human rights therefore have universal scope. I then conclude by outlining some considerations about the accounts of universal interests and correlative duties defended in this dissertation.

## **CHAPTER ONE: Starting assumptions and specification of the thesis**

This chapter is devoted to outlining the starting assumptions of this research and specifying the thesis defended. In Part I begin by setting out the research question and presenting three possible answers. In so doing, I offer a first formulation of the thesis here defended- the Universal Scope Thesis. In Part II I clarify the assumptions from which this dissertation starts. The clarifying remarks focus on different stages of the moral thought, starting from the notion of a human right and moving “backwards” to clarify its conceptual underpinnings: the notion of a right in general and then the concepts of duty and interest. In Part II I specify the Universal Scope Thesis, offering a formulation which takes into account feasibility constraints.

### **Part I: A Research Question and the thesis defended**

To begin with, let me start by outlining the research question. In this dissertation I am focusing on duties correlative of human rights and, in particular, on positive duties- i.e. duties to perform an action. Specifically, I here wish to assess who holds these duties- who, that is, bears the responsibility to perform actions needed to uphold human rights. The research question from which I start is thus: what is the scope of the positive duties correlative of human rights? The possible answers to this question can be subdivided in the following mutually exclusive and jointly exhaustive categories:

1. Universal Scope Thesis:

Each moral agent bears the positive duties correlative of each person’s human rights

2. Limited Scope Thesis:

Some moral agents bear the positive duties correlative of each person’s human

rights

## 2. No Scope Thesis

No moral agent bears the positive duties correlative of each person's human rights

I shall defend the first thesis, the Universal Scope Thesis.

In the recent literature on human rights it is possible to find claims that are in the vicinity of the Universal Scope Thesis. Ashford and Caney, in particular, both hold that everyone bears the positive duties correlative of human rights to subsistence. Specifically, Ashford holds that positive duties correlative to human rights to subsistence ought to be fulfilled by everyone in a position to do so at a reasonable cost (Ashford, 2006, p222). Caney holds that these duties fall on other persons who can help (Caney, 2007, p 278).

However, Ashford and Caney's positions do not amount to a defence of the Universal Scope Thesis. First of all, both focus on rights to subsistence, while I am here considering the positive duties correlative of all human rights. Secondly, their positions about the existence conditions of duties differ from the one here defended. Ashford takes the reasonableness of the cost to be an existence condition for the correlative duty: as I argue in Part II below, this is an unwarranted assumption. Caney, on the other side, does not clarify what he means by "can help" while, as I argue in Part III, this point is an extremely important step in the clarification of the duties correlative of human rights. Finally, neither Ashford nor Caney are directly tackling the issue of the *scope* of positive duties. On one hand, Ashford is concerned with the *claimability* of duties. She replies to O'Neill's argument against the existence of positive duties correlative of

human rights and holds that duties correlative of human rights can be imperfect<sup>1</sup>. The thesis that positive duties correlative of human rights can be imperfect helps to address some of the objections to the Universal Scope thesis, in particular issues concerning their feasibility and costs.<sup>2</sup> However, this claim is not, by itself, sufficient to support the Universal Scope Thesis, since it is of course possible to have imperfect positive duties which are limited in scope. On the other hand, Caney's account focuses on the *nature of duties and duty-holders*. He puts forward an objection to Pogge's institutional account which relies on negative duties and argues that positive duties held by individuals are necessary to adequately protect interests in subsistence. However, this claim cannot, on its own, support the Universal Scope Thesis, since it is clearly possible that moral agents have positive duties which are limited in scope.

## **Part II: starting assumptions**

### **a. Human rights**

Let me start with two clarifications concerning the interest account of human rights in general. In *World Poverty and Human Rights* Thomas Pogge has introduced the distinction between institutional and interactional conceptions of human rights (Pogge, 2002). The interactional conception of human rights holds that they are claims held primarily against other individuals- i.e. that individuals are the primary duty-holders of the duties correlative of human rights. Conversely, the institutional conception of human rights holds that they are claims held primarily against coercive social institutions and secondarily against those who contribute to upholding such institutions- i.e. that institutions are the primary duty-holders of the duties correlative of human rights. I here endorse an interactional approach. I am choosing to do so for two main

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1 For a more detailed assessment of the argument, see Chapter Two below

2 I shall argue this at length in Chapter Four below

reasons. First, as Caney points out, institutional accounts can be discriminatory, in so far as they condone situations in which people are left in miserable conditions even if others, who do not share the same institutions, can help (Caney, 2007). Secondly, there is no conceptual tension in talking of human rights in conditions of anarchy: believers in human rights can be political anarchists' without falling in any contradiction (Tasioulas, 2009). Thirdly, as Ashford has stressed, if we take it to be a conceptual constraint on human rights that they are addressed only against institutions, then individual cases of domestic violence or of parents starving their children cannot be human right violations. Yet, many would consider these to be human rights violations and it is implausible to say that they are misusing the concept (Ashford, 2007). Accordingly, I here assume that individuals are the primary duty-holders of the duties correlative of human rights.

It is also worth clarifying that the interest account of human rights is not meant to be a complete moral theory, nor a complete theory of moral rights. Rather, it is meant to be a specific area of morality- specifically, the area focusing on the most basic moral requirements. Second, the interest account of human rights is a teleological theory, in the sense that it takes the good as basic in the structure of morality and the right as derived from it. Moreover, it should be stressed that the interest account of human rights need not be a part of a wider teleological account of morality: it is compatible with the claim that other moral requirements are non-teleological in nature.

## **b. Rights**

There are two main theories of the function of rights: the will theory and the interest theory.<sup>3</sup> Will theorist asserts that the function of a right is to give its holder control over another's duty. So, for instance, a promisee has a right because she has the power to waive the promisor's duty to keep the promise. Interest theorists, on the other side, maintain that the function of a right is to protect the right-holder's interests. Accordingly, a promisee has a right because promisees have some interest in the performance of the promise, or (alternatively) some interest in being able to form voluntary bonds with others (Wenar, 2010)

In this essay I endorse an interest theory approach to human rights. The dispute between will theories and interest theories is a complex one and it would be unreasonable to try and present an exhaustive case for one of the two sides in the space of this dissertation. My choice though, can be justified by the different scope of right-holders allowed by the two theories. The endorsement of the will account requires excluding from the set of possible right-holders all people who lack the ability to assert or waive the claim to the performance of a duty; this would, for instance, leave infants, severally mentally disabled and comatose people out of the set of right-holders. Accordingly, severe harms against these individuals would not count as human rights violations: starving a child or torturing a man in a coma, for example, would not constitute violations of human rights. I find this unacceptable, for two reasons: to begin with, we ordinarily would not doubt that these harms are human rights violations. Moreover, legal, political and social discourse employs the language of human right to call for the protection of fundamental

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<sup>3</sup> For a defence of the first analysis, see Hart, 1982; Wellman, 1985, and Steiner, 1984; for a defence of the second analysis, see Kramer, 2001; McCormick, 1984 and Raz, 1988.

interests of children, comatose and severally mentally disabled people.<sup>4</sup> Hence, excluding these groups from the set of human right-holders would make human right theory so far removed from human rights practice that the analysis would fail to satisfy a minimum requirement of fidelity. This is why I here endorse the interest-account of human rights.

Secondly, I need to make a clarification about the interest analysis of rights. Interest theorists have followed two alternative approaches to describe the relation between rights and interests. The first approach consists in the endorsement of what I call the Strict Correlativity Axiom, according to which rights and duties stand in a relation of mutual entailment (Hohfeld, 1919; Kramer, 2001). I call this approach the Strict Approach. The second approach consists in rejecting this axiom and holding that, rather, rights are sufficient reasons for duties (Raz, 1988; McCormick, 1982; Waldron, 1984). I call this approach the Sufficiency Approach. I use the word “correlativity” to refer to the relation between rights and their corresponding duties independently of the analysis endorsed.

Each approach has its advantages. The main advantage of the Strict Approach is that it clearly distinguishes rights from interests and it strengthens the relationship between rights and duties; conversely, the advantage of the Sufficiency Approach is that it gives rights the role of a bridge between interests and duties in our moral thought. However, the difference between these two approaches should not be overestimated. Two points are especially important. First, under both approaches, the existence of a right entails the existence of a duty. For the Strict Approach rights and duties are perspectives on the

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4 For some examples, see <http://www.unicef.org/crc/>; <http://www.comacare.com/cgi-bin/giga.cgi?c=1784>; [http://www.who.int/mental\\_health/policy/legislation/policy/en/](http://www.who.int/mental_health/policy/legislation/policy/en/).

same thing: hence, the existence of a right obviously entails the existence of a duty. For the Sufficiency Approach an interest can ground a right only in so far as it is, so to speak, “successful” in justifying a duty: so under this second account, too, the existence of a right entails the existence of a duty. Secondly, rights are dynamic under both approaches. This is because both approaches can give an account of how a change in circumstances determines a change in duties. The Strict Approach does so through the relation between abstract and concrete rights: under this approach a change in circumstances makes it the case that the same abstract rights justifies different concrete rights<sup>5</sup>. The Sufficiency Approach gives an account of dynamism in terms of the relation between interests and duties: under this approach a change in circumstances makes it the case that the same interest justifies different duties.

In what follows I endorse the Sufficiency Approach- i.e. I talk of interests offering sufficient reasons for duties. This is because this approach has been highly influential in the literature on human rights (Tasioulas, 2002, 2007, 2009, 2010; Shue, 1988, 1996). However, my argument does not depend on this assumption: each step could be, so to speak, “re-formulated” in terms of the Strict Approach. In order to ensure that this is clear to the reader, I make this point explicit whenever needed.

### **c. Duties**

Let me now clarify my assumptions about duties. The first clarification concerns the strength of the duties. I assume that human rights are not absolute and that, accordingly, duties correlative to human rights are not *conclusive* reasons for action. This is because, under the interest account of human rights, rights protect individual universal interests

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5 For a precise formulation of the relation between abstract and concrete rights, see Part III below.

and it is always possible that universal interests conflict. Imagine, for instance, the following case: Sam and Luke are both severely ill and will survive only if they are provided with a particular medicine. Carl has that medicine, but he has enough for only one person. *Ex hypothesis*, let us imagine that Sam and Luke are in exactly the same conditions and that they stand in the same relation to Carl. It seems to me clear that both Sam's and Luke's interests provide sufficient reasons to hold Carl under a duty to provide the medicine. Moreover, since *ex hypothesis*, they are in the same health condition and stand in the same relation to Carl, there is no ground for holding that Carl ought to give the medicine to one but not the other. So both Sam and Luke have a human right to that medicine, but their rights conflict. Whatever Carl does, he will violate a human right. Accordingly, neither of the rights can be absolute and neither of the correlative duties can be a conclusive reason for action. Notice that one might want to make the following point: that given the conflict of interests, neither of the interests is a sufficient reason to hold Carl to be under a duty to provide the medicine, so that neither Sam nor Luke have a right. However, I doubt this would be a satisfactory way to face the issue. This is because the claim that in this situation no one has a human right is highly counter-intuitive. Imagine, for instance, that Carl decides not to give the medicine to either Luke or Sam: it seems hard to deny that a human right violation would be occurring- indeed, the most plausible way of describing the situation is to say that Carl would be violating *both* Luke's and Sam's human rights.

The second clarification concerns the existence conditions of the duties correlative of human rights. I assume that these duties have to satisfy conditions of feasibility, but their existence is not constrained by considerations of utility, priority and cost. Let me start with feasibility. Rights are distinguished from interests in so far as they entail the

existence of duties. This means that the existence of a right entails the existence of (at least one) “ought”. However, as the renowned dictum summarizes, “ought” implies “can”: one cannot have a duty to do something she is not able to do. Imagine a man with a life-threatening illness; assume that no medicine has been discovered for this illness so that it is not possible for anyone to provide the man with a cure. Clearly, while the situation is *bad*, there is no *wrong* done to the man: no human right has been violated. The content of human rights is thus constrained by considerations of feasibility.

The situation, however, is different for considerations of utility, priority and costs. These considerations can determine what one is permitted or even morally required to do *all things considered*, but do not constitute existence conditions for duties correlative of human rights. To see why it is so, imagine three scenarios: in the first scenario, a man –Rob– has to choose between torturing another man –Carl– with an electric charge and allowing that five hundred people suffer the same amount of pain. In the second scenario, Rob has to choose between torturing Carl with an electric charge or torturing someone else with a more painful charge. In the third scenario, Rob has to choose between torturing Carl and suffering an electric charge himself. Imagine that Rob decides to torture Carl in all cases. There are here two set of issues. The first set of problems concern whether it was wrong for Rob to do what he did. In order to address this question, one has to “weigh” torturing Carl against different kinds of considerations: utility, in the first case; priority, in the second case; cost, in the third case. The outcome of the weighing will tell us what is the all things considered best thing to do. However, there is also a second set of issues, concerning Rob’s duties and Carl’s human right. It seems to me hard to deny that Carl’s human right against torture

has been violated. Rob did have a very strong reason for action -a duty- not to torture Carl; this is the case even if he might have had other, stronger, reasons to do otherwise. Rob is thus infringing a human right, even though it might have been permissible or required for him to do so. Considerations of utility, priority and cost, then, might affect all things considered reasons, but do not prevent the existence of duties correlative of human rights. Later in this paper, I also consider whether claimability is an existence condition for duties correlative of human rights; however, this issue is more complex and I do not take my position on it to be an assumption, but I rather argue for it in Chapter Two below.

#### **d. Interests**

Let me now focus on interests. First, let me start with a terminological point. The interest account of human rights holds that human rights fulfill the function of protecting interests. However, human rights do not protect *all* human interests- but rather some, particularly important, ones. I use the term “universal interests” to refer to the interests protected by human rights. What I specifically mean by “universal interests” will become clear in Chapter Three, when I will lay out the set of necessary and sufficient condition that an interest has to satisfy in order to ground a human right.

Secondly, let me clarify the way I interpret the relation between interests and rights, and in particular the notion of “protection”. The notion of “protecting” an interest can be interpreted in two ways: in a “weak” interpretation, protecting just means “doing something towards the fulfillment of”; in a “strong” interpretation, protecting means “ensuring it is fulfilled”. When providing an account of universal interests I endorse a “strong” interpretation: I assume that if one has a right to a universal interest, then the

duty-holders have the duty to ensure that the universal interest is fulfilled. The reason I endorse this reading is that it better captures the normative force that human rights claims have in practical thought: when someone makes a human right claim, she is not simply claiming that there is something that could be done towards the fulfillment of her interest- rather, she is claiming that that interest ought to be fulfilled.

Thirdly, let me clarify a distinction between two different kinds of interests. The ultimate measure of one's interest is her well-being: what makes someone's life go well, what makes it valuable for who lives it (Scanlon, 1998; Griffin, 1986). An interest is something we have a stake in, something from which we stand to lose or gain (Feinberg, 1984). 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. In the first case, the interest is intrinsically valuable; in the second case, it is instrumentally valuable. Intrinsically valuable interests are constitutive of well-being, and their value is therefore "fundamental"; instrumentally valuable interests are means to well-being and their value is thus "derivative". For simplicity sake, in what follows I use the term "fundamental interest" to refer to intrinsically valuable interests, i.e. components of well-being, and the term "instrumental interest" to refer to instrumentally valuable interests, i.e. means to well-being.

Finally, it is worth clarifying how the last two points affect the analysis of universal interests. Since fundamental interests are the "ultimate" values, they have explanatory priority over instrumental interests: they explain why instrumental interests are valuable. In order to understand the nature of the interest protected by human rights we should thus start from the analysis of fundamental interests. Accordingly, this is where I

will start when laying out the set of necessary and sufficient condition that an interest has to satisfy in order to be a universal interest. However, the endorsement of a “strong” reading of “protection” constraints the set of universal interests, since according to this reading, the interest has to be such that it is possible for a duty to *ensure* its fulfillment. As I argue in Chapter Three, this entails that universal interests ought to be characterized as instrumental interests, rather than fundamental ones.

### **Part III specification of the thesis**

#### **e. Abstraction**

In Part I I provided a first formulation of Universal Scope Thesis. However, now that I have specified the framework endorsed in this dissertation, I can outline the thesis more precisely. There are two further points to address. The first concerns levels of abstraction of rights: we can distinguish between abstract and concrete rights, to the effect that a general right comprises several concrete rights which instantiate it in particular circumstances (and, conversely, a concrete right consist in the application of a general right to specific circumstances). A right against being assaulted, for example, encompasses any number of rights against being assaulted in specific ways. Since abstraction and concreteness are matters of degree, a right can be abstract in relation to a right and concrete in relation to another. So, for example, while the right against being assaulted is abstract in relation to the rights against being assaulted in specific ways, it is specific in relation to the abstract right to security (Kramer, 2000 p24)<sup>6</sup>.

The practice of human rights includes both very abstract and more concrete claims: in their most abstract formulation, human rights are rights that protect universal interests

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<sup>6</sup> Notice that this distinction holds regardless of whether or not one endorses the Strict Correlativity Axiom and it is in fact endorsed by Raz (Raz, 1988 p184)

regardless of specific circumstances; in more concrete formulations, human rights protect these interests in specific circumstances. Consider the legal context: some of the rights in the Universal Declaration are extremely abstract (e.g., Art. 3: “everyone has the right to life, liberty and security of person”), yet most of them largely operate at a rather specific level and some of the rights that appear in the Covenants, international treaties, national constitutions and laws are even more specific (Gilibert, 2011). The reference to different levels of abstraction also plays an important role in social and political contexts, since the link between concrete abuses and abstract rights is a powerful way to underline the moral significance of the concrete abuse. So, for example, one might stress that domestic violence is a violation of the human right to security or that a certain social policy violates the human right to health in order to give these issues the attention they deserve. An adequate analysis of human rights should thus be able to capture the different degrees of abstraction which are employed in human rights practice.

#### **f. Feasibility**

The second issue concerns feasibility. As I said in Part I, feasibility is an existence condition for duties. However, this leads to an important question: exactly which factors should constrain duties correlative of human rights? Should the present political, economic and social circumstances limit our duties?<sup>7</sup> Should we relax the constraints, as to include general legal and political structures?<sup>8</sup> Or should we only take into account the psychological constraints set by human understanding and motivation?<sup>9</sup> In order to answer these questions we need to differentiate between different kinds of “feasibility”.

A useful distinction can be found in Gilibert’s recent discussion of the problem.

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7 Nickel puts forward a proposal along these lines (Nickel, 2007)

8 Tasioulas puts forward a proposal along these lines (Tasioulas, 2007)

9 Griffin puts forward a proposal along these lines (Griffin, 2007)

Gilbert distinguishes between ‘hard’ and ‘soft’ constraints. ‘Hard’ constraints are constraints beyond our control- among the others, they include logical, metaphysical and physical factors; conversely, ‘soft’ constraints can be changed and modified – they include, for example, economic, political and cultural circumstances (Gilbert, 2009). This distinction can help us clarify how feasibility influences the duties correlative of human rights.

**g. Putting together considerations about abstraction and feasibility**

Putting together the distinction between levels of abstraction and the distinction of different types of feasibility, we can draw a set of important considerations. First, different types of feasibility constraints apply to different levels of abstraction. As I said above, concrete human rights protect universal interests in specific circumstances. This means that concrete human rights will be sensitive to both soft and hard constraints. However, abstract human rights protect universal interests regardless of specific circumstances. This means that abstract rights are not influenced by soft constraints, since those are- so to speak- “abstracted away”.

Secondly, we can now better clarify the way ‘soft’ constraints inform duties correlative of concrete rights. ‘Soft’ constraints are malleable: agents *can* change and modify the relevant circumstances. This means that, while it might take time, it is possible to eliminate these constraints: the feasibility condition is thus met in the long run. Accordingly, soft constraints give us two sets of duties: short term duties to protect universal interests given the present economic, social and political circumstances and long term duties to modify the present economic, social and political constraints which impair the protection of universal interests. Notice that, in extreme cases, soft

constraints might make it impossible for agents to protect universal interests in the short term; however, it is worth stressing that, even in these cases, duty-holders still have a duty to protect the universal interests, since they still have long term duties to modify the soft constraints. Soft constraints do not *prevent the existence* of duties to protect universal interests, but rather *influence their content*: they require us to adopt a long run strategy for the protection of these values.<sup>10</sup>

Before moving on, it is worth considering an objection to the account here proposed: the objection which holds that soft feasibility constraints are *conceptual* constraints on the notion of human rights. So, the objection runs, soft constraints *do prevent the existence* of duties correlative of human rights, since meeting these constraints is part of what it means for a right to be a human right. This thesis enjoys some support in the current literature of human rights: Nickel, for instance, points out that an existence condition of a human right is that it is 'feasible to implement in an ample majority of countries today' (Nickel, 2007, p70); Tasioulas, on the other side, suggests that 'very general facts about feasible institutional design in the modern world, e.g. forms of legal regulation, political participation and economic organization [...] play a role in determining which human rights we recognize' (Tasioulas, 2007, p3). The problem with this kind of interpretation is that it takes away too much of the critical power of human rights. Holding that the concept of human rights is *constrained* by political, cultural and economic factors makes these factors "immune" from any human-right based critique.

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<sup>10</sup> It is worth clarifying that the Sufficiency Approach and the Strict Approach provide different descriptions of the rights obtaining in this situation, since they have different *identity conditions for rights*. Under the Sufficiency Approach rights are identified by interests: hence, there is just one right and the long term and short term duties are both correlative of this right. Conversely, under the Strict Approach rights are identified by duties: hence, there are long term and short term human rights. Notice, however, that, under both the Strict and the Sufficiency Approaches, long term and short term duties fulfil the same function: they protect the same universal interest. Hence the *existence conditions for the duties* under the two approaches are the same. In other words, the two approaches outline the same duties, but they diverge when describing the situation at the level of rights.

But this is unduly restrictive. A theory of human rights should be able to make sense of the fact that we can use these claims to criticise the current political, cultural and economic practices. Indeed, given the special role that human rights play in the current political and social scenario, they could prove to be a very strong tool for change. The concept of a human right can (and should) be used to ask for economics, social and political reforms and to convey the normative strength of these demands.

Finally, let me clarify the relation between feasibility and scope of duties. As we have seen, soft constraints do not impede the protection of an interest neither in the case of abstract nor in the case of concrete rights. Yet, hard constraints do: there might be, that is, logical, metaphysical or physical constraints on agents' ability to protect universal interests. Let us consider the case of abstract rights: these rights concern the protection of universal interests regardless of specific circumstance. Hence, in order to meet these constraints, it has to be logically, metaphysically and physically possible for duties in general to protect universal interests. Onora O'Neill, for instance, puts forward a worry about this kind of feasibility constraints when she points out that there can be no human right to health: it is not feasible, she argues, to ensure the protection of such a good, since one could suffer of incurable illnesses or handicaps (O'Neill, 2004, p100). However, this worry can be addressed by an adequate account of universal interest: an account providing a set of necessary and sufficient conditions which ensure that it is logically, metaphysically and physically feasible to protect universal interests. In Chapter Three I put forward an account of universal interests which ensures that this desideratum is met.

Consider now the case of concrete rights: these rights concern the protection of

universal interests in specific circumstances- so they are subject to constraints limiting the actions of specific duty holders in specific cases. Among this kind of constraints there are factors such as incurable illnesses or handicaps which prevent agents from performing certain actions. We can therefore add the following Feasibility Constraint on the Universal Scope Thesis:

Universal Scope Thesis: Every moral agent bears the positive duties correlative of each person's human rights, except in cases in which agents are prevented from performing specific actions by constraints which they cannot modify.

## **CHAPTER TWO assessing the alternatives**

In order to defend the Universal Scope Thesis it is useful to start by outlining and assessing the most influential accounts of the alternative theses. This is the task I take up in this chapter. I consider three alternative accounts presented in the literature: I start with O'Neill's defense of the No Scope Thesis and then focus on Shue's and Wenar's accounts of the Limited Scope Thesis. I argue that each one of these accounts suffers deep problems- the analysis of these problems will help me put forward the positive case for the Universal Scope Thesis in the following chapters.

### **Part I The No Scope Thesis: O'Neill and the Claimability Objection**

Let me start by addressing O'Neill's influential objection to the existence of positive duties correlative of human rights<sup>11</sup>. This objection relies on two traditional taxonomical points. The first point consists in distinguishing between perfect and imperfect duties. Perfect duties are fully specified and the agent has no discretion over their content. Conversely, imperfect duties allow the agent discretion over how, towards whom and when to fulfil the duty. The second point consists in the traditional alignment between, on one side, positive and imperfect duties and, on the other, negative and perfect duties: it is generally thought that negative duties are perfect- i.e. that one is under the duty not to torture, not to enslave, etc everyone else all the time. The same is not true for positive duties: it is generally assumed that one can choose to provide education, nutrition or shelter to some people some of the time.

Starting from these assumptions, O'Neill puts forward a case in support of the thesis that positive duties are not correlative of human rights. She argues that duties

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<sup>11</sup> O'Neill endorses the Strict Correlativity Axiom and she thus presents the arguments as an argument against the existence of positive human rights; however, the argument directly focuses on the nature of the correlative duties and it is thus directly relevant to the issue here explored.

correlative of rights must be claimable: 'Where anyone is to have a right there must be identifiable others (either all others or specified others) with accurately corresponding obligations' (O'Neill, 2005, p431). She then holds that positive duties, being imperfect, are not claimable since there is not, so to speak, "mapping" from a particular right-holder to specified duty-holder. Since positive duties are imperfect, O'Neill argues, they are not correlative of rights. Yet, she adds, positive duties can be made perfect: specifically, institutions can be used to specify particular time and beneficiaries and "map" right-holders to specific duty-holders. When this happens, positive duties become claimable and can thus be correlative of rights. However, in this case positive duties are correlative of special, rather than general, duties. Hence, they are not held by each human being simply in virtue of being human and are thus not duties correlative of *human* rights. (O'Neill, 2000, 2005).

O'Neill's argument has been extremely influential and it elicited a number of replies. Notably, Waldron, Tasioulas and Ashford have presented forceful objections against the claimability condition. Waldron's and Tasioulas' arguments rely on the rejection of the Strict Correlativity Axiom (Waldron, 1993; Tasioulas, 2007). They endorse the Sufficiency Approach and argue that, since rights and duties are not perspective on the *same* normative relationship, we can have specified rights without having specified duties; so as long the interest is adequately salient and conditions of feasibility and cost are satisfied, a universal interest is a *sufficient reason* to hold other to be under a duty and we thus have a specified human right. While this argument will persuade someone who endorses the Sufficiency Approach, it will not address the problem for someone endorsing the Strict Approach.<sup>12</sup> And since, as I said in Chapter One, the argument here

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<sup>12</sup> As Tasioulas himself points out (Tasioulas, 2007)

presented is neutral with respect to the two versions of the interest-analysis of human rights, I will move on to consider other ways in which we can address O'Neill's objection.

Let me then consider the reply put forward by Elisabeth Ashford. Her rejection of the claimability condition relies on pointing out that human rights can have imperfect correlative negative duties. She questions the traditional alignment between, on one side, negative and perfect duties, and, on the other, positive and imperfect duties. Rather, she argues, negative duties too can be imperfect, in so far as it might not be possible to identify "agents which can be specifically singled out as individually responsible for any specific serious harm" (Ashford, 2007, p194). I shall consider Ashford argument in detail because the analysis of its merits and shortcomings will prove useful later on- specifically, for the second argument in favor of the Universal Scope Thesis, which I present in Chapter Four.

Ashford argues that there are three types of cases in which we can have imperfect negative duties: additive direct harms, multiplicative direct harms and indirect harms. From now on, I shall refer to these three types of harm as "collective harms". The first type of 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 behavior of a set of agents results in an extremely serious harm. The second type of harm – multiplicative harm- obtains when the agent's action magnifies the harm caused by other agents. The third type of harm- indirect harm- occurs when harm is caused through institutions: in this case, Ashford argues, the institutions ought to be reformed, but no single member can accomplish the duty of achieving institutional reform, and the

shared duty has not been parceled out among members. In all these cases, we have situations in which serious harms have been caused and, yet, there are no specified duty-holders (Ashford, 2007).

There are two problems with this response. First, it is not clear that Ashford's argument successfully proves that the negative duties correlative of human rights lack specific duty-holders. Rather, her argument seems to show that there are occasions in which duties have to be assigned to a *group* of agents. This is because the harmful actions she describes result from interactions between individual agents. Hence, it *is* clear who has the negative duties: in the case of additive and multiplicative harms, the duties are held by all the agents participating to the harmful action; in the case of indirect harms, the duties are held by all the agents who support the harmful institution. We can thus "map" duty holders onto right-holders. Secondly, it is not clear that Ashford's argument successfully proves that the content of the negative duties is not specified. In the cases described it *is* clear what the content of the duties is: in the case of direct harms, the agents ought to stop participating to the harmful action; in the case of indirect harms, the agents ought to stop supporting the harmful institution. Ashford's reply, then, does not by itself address O'Neill's objection.

In order to address O'Neill's argument we need to identify the different steps it consists of. Let me start from the assumption that positive duties are imperfect. As I said, traditionally a duty is imperfect if the specific action, time and beneficiaries are left to the discretion of the duty-holder. However, while traditionally presented together, these features are not bundled together by any conceptual necessity. So, for instance, it is logically possible for a duty to have an identified action, but lack specified timing and

beneficiary; or, alternatively, to have an identified beneficiary and timing without having specified action, and so on. Secondly, claimability is a matter of degree. For example, a duty specifying a group of possible beneficiaries, or a time-lag of possible times, or a set of possible actions is more claimable than a duty providing no indication at all and less claimable than a duty providing exact beneficiaries, times and actions.

These points are important because they allow us to clarify the content of the claimability objection and, relatedly, its bite. The claimability objection is extremely powerful if we interpret it as claiming that *some* level of specification of the correlative duty is an existence condition for the right. So, if we had no indication of the type of action, time and beneficiaries of the duty, it would be impossible to specify any set of right-holders, what they are entitled to and when: it would then be hard to see what role rights would be playing in moral thinking. However, the claimability condition is extremely implausible if we interpret it as claiming that the *complete* specification of the duty is an existence condition for the right. Imagine, for instance, we had completely specified beneficiaries and actions, but only a time-lag of possible times: it seems to me hard to deny that the existence conditions of a right would not be satisfied. This is because, in this case, the level of specification is surely high enough that we can say a right exists and that this right plays a role in our moral thought. So, for instance, imagine that Alex is ill, he needs to be given a certain medicine and he needs to have it in the next 48 hours; imagine, moreover, that Alex is too ill to take the medicine himself and that Bob is the only one who would be able to give Alex the medicine. It seems clear that Alex has a human right to be given the medicine, that Bob is the duty-holder of the correlative duty to provide Alex with the medicine and that there is a time-lag of 48 hours for him to do so.

Let me then focus on the general features of duties correlative of human rights. Clearly, the set of beneficiaries is completely specified: we ought to respect everyone's human rights. What about the actions and times? These factors are specified in so far as we know what the goal of these actions is: they are the actions needed to protect universal interests. This of course leads to the problem of having to clarify what universal interests are- I shall take up the task of providing a characterization of universal interests in Chapter Three. However, for the time being, I assume that we have a reasonably fine-tuned understanding of the interests protected by human rights- we would not, otherwise, be able to formulate human rights claims or recognize human rights violations.

There is, however, a further problem. As O'Neill points out "Universal rights to goods and services are distinctive in that they could be satisfied in countless different ways" (O'Neill, 2000, p125). It seems to me hard to deny this is the case. Yet, this need not worry us. This is because the presence of alternative options does not prevent the existence of the duties correlative of human rights. So, for instance, imagine now that, just like in the previous case, Alex is ill and he needs to be given a shot of medicine in the next 48 hours and that Bob is the only one who could do so. However, assume now that Alex could be given *either* medicine Y *or* medicine Z. It seems clear to me that Alex has a human right to be given the medicine, that Bob has the duty to give Alex either medicine Y or Z and that there is a time-lag of 48 hours for him to do so. So Alex has a human right claim and Bob has a correlative duty even if neither the action nor the time-lag are fully specified.

Moreover, it is also useful to consider an analogy with another kind of positive rights:

the positive rights recognized in national constitutions. The formulation of these rights is likely to be quite abstract and, as such, indeterminate. The rights recognized by constitutions cannot take into account the specific circumstances which will characterize the national political life through time. Moreover, at the national level, too, there are various ways in which constitutional rights can be implemented. Hence the actions and times are far from being perfectly specified. Yet, we would not doubt that the duties of the national institutions are determinate enough that the citizens hold institutional positive rights. We can then conclude that the positive duties correlative of human rights are specified enough that these duties and the correlative rights have a meaningful role in moral thought.

Finally, it is true that there are countless ways in which it is possible to fulfill the positive duties correlative of human rights, but it is not clear that the choice between them is- so to speak- “morally neutral” and left to the agents’ discretion. This is because there are considerations which could be extremely morally important, such as, for instance, how effectively the selected system protects the right holders’ interests, whether it respects other non-human rights, or whether it complies with other non-right based moral requirements. Notice that, if there is one specific way in which we ought to protect universal interests, then the action and times of the positive duties are perfectly specified, so that the rights are clearly claimable. But, if the choice between the different strategies is morally neutral, this does not, as I have argued, mean that there are no rights, since the content of the correlative obligations is specified enough that it can play a role in moral thinking. Indeed, in these cases rights play an especially important role, a role distinct from the one played by duties and interests. They draw attention on the need to select and implement one of the countless ways in which the

interests can be protected and they remind us that doing so is a matter of justice.

**Part II A first version of the Limited Scope Thesis: Shue and the division of moral labour**

Let me now consider Henry's Shue's influential 'Mediating Duties', in which he supports the thesis that positive duties correlative of human rights have limited scope (Shue, 1988). In order to adequately grasp Shue's argument, let me start from few remarks about the underlying debate. In his article Shue aims to defend the validity of subsistence rights. In particular, he aims to defend these claims against two objections: that the duties correlatives of these rights are infeasible and that they are excessively costly. In order to reply to these worries Shue puts forward the notion of division of moral labor: he holds that "in order for everyone to have a certain right [...] it is not necessary for everyone else to have all the duties required to fulfill the right -it is necessary only for some others to have each of the duties required. On the side of duties there can be a division of labor." (Shue, 1988, p690). He argues that positive duties need to be divided up and assigned among duty-bearers so that each duty-holder has positive duties towards "some relatively small minority of the world's people" (Shue, 1988, p689-691)

To assess Shue's argument, it is useful to start from the distinction drawn by John Rawls between pure, perfect and imperfect procedural justice (Rawls, 1999, p74ff). Pure procedural justice obtains when a procedure is necessary to determine the just outcome. So, for example, we do not know who deserves the World Cup independently from the tournament which is designed to select the winner: we knew that the victory of Spain was a just outcome because Spain won a fair tournament. On the other hand, perfect

and imperfect cases of procedural justice occur when the standard for the just outcome is independent from the procedure: specifically, if it is possible to design a procedure which guarantees the just outcome, it is a case of perfect procedural justice; otherwise, it is a case of imperfect procedural justice. For the purpose of assessing Shue's argument, the important distinction is the one between pure procedural justice, on one side, and perfect and imperfect procedural justice, on the other. I shall thus group perfect and imperfect procedural justice together and label them as cases of "non-pure procedural justice". Notice that these two accounts are mutually exclusive, since they are two alternative accounts of the explanatory priority between a procedure and a just outcome.

With this distinction in hand, we can now go back to Shue's division of labor to consider whether it is a case of pure or non-pure procedural justice. The problem is that Shue seems to oscillate between the two accounts. Some remarks suggest that the procedure of division of labor determines the distribution of the duties, other remarks suggest that the division of labor tracks an independently just distribution. Let me start with the first set of remarks. First, Shue's description of the division of labor seems to imply that this procedure determines the just distribution, rather than tracking an independently just outcome. So, for instance, he tells us that the division of labor "assigns" and "divids up" the relevant duties (Shue, 1988 p689-690). Secondly, he outlines a set of procedural desiderata: he tells us that the positive duties need to be divided up and assigned among bearers in some "reasonable" and "non arbitrary" way" (Shue, 1988, p690, p698). Outlining such desiderata would not make sense if the division of moral labor simply consisted in tracking independently valid principle. Thirdly, he describes the procedure as a strategy to solve a problem, rather than the

tracking of independently just outcome. He thus takes the question of how to specify the minority of assigned right-holders to be an open question (Shue, 1988 p691). All these points suggest that Shue's division of labor is a case of pure procedural justice.

Yet, on the other side, Shue's account of the principles which should guide the division of labor suggests that he endorses a non-pure procedural account. He puts forward two suggestions: the principle of priority of intimates (according to which one's duties are strongest to those immediately around her (Shue, 1988, p691)) and principle of institutional justice (according to which well-off people have a duty of assistance towards needy of their institutional community (Shue, 1988, p701)). Both these principles are independent of any procedure: they assign duties on the basis of the existence of prior special relationships. This means that, if the division of labor follows these principles, then it is a procedure tracking an independently just distribution. It would then seem that the division of moral labor is a case of non-pure procedural justice. There is thus an ambiguity in the way Shue outlines the notion of division of moral labor.

This ambiguity undermines Shue's argument. Shue aims to argue that positive duties correlative of human rights are limited in scope and that they can all be allocated. However, his argument is affected by an equivocation: one side, Shue's claim that *all* positive duties correlative of human rights can be allocated is true only if he endorses the pure procedural reading; on the other, the claim that positive duties correlative of human rights have *limited scope* is true only if he endorses the non-pure procedural reading. Let me explain. Shue wants to argue that the division of moral labor makes it possible to allocate all positive duties correlative to human rights. This is plausible if we

are concerned with a case of pure procedural justice: if the distribution simply depends on the procedure of division of labor, then one can stipulate that one of the features of the procedure is that all the duties will be allocated. However, if the distribution does not depend only on the procedure, but rather on other principles, there is no guarantee that all the duties can be allocated- it will depend on the specific nature of the relevant principle. Take the two principle mentioned by Shue: the principle of priority of intimates and the principle of institutional justice. Neither of these two principles necessarily obtains, since they are both grounded in the existence of contingent relationships. Some people do not have close relationships because, for instance, their family and loved ones have died; similarly, some people who do not live under any institution because, for example, they live in an anarchic society. This means that Shue cannot claim that the positive duties correlative of human rights can always be allocated.

Could then Shue simply endorse a pure-procedural reading? The problem is that, if he does so, he needs to abandon the claim that positive duties correlative of human rights have limited scope. Under the non-pure procedural reading the distribution of duties follows an independent principle; since the principle selects some particular duty-holders, the distribution allocates duties to particular duty-holders. However, under the pure procedural reading there is no independent principle selecting particular duty-holders; accordingly, there is no reason to believe that the scope of the duties is limited. To fully appreciate why this is the case, we need to distinguish two sets of duties. The first set includes the duties that agents have *after* the division of labor has taken place. Let us call them “post-procedural” duties. These duties are the outcome of the division of labor and can vary from agent to agent. The second set of duties includes the duties

that agents have *before* the division of labor takes place. These duties are the duties that justify the division of labor. The division of moral labor is a procedure which allows us to discharge a moral labor: this means that there are duties which are conceptually prior to the procedure, duties which constitute the “moral labor” to discharge and justify the procedure itself. Let us call these duties “pre-procedural duties”. To flesh out the point, let me use an example. Imagine Hans and Katie have two children: Tom and Rob. Both Hans and Katie have duties towards Tom and Rob: *ex hypothesis*, let us imagine that both children have a right to develop their musical and sportive talents and both parents have correlative duties to support their children in the development of these talents. These are Hans and Katie’s pre-procedural duties which constitute the moral labor that both have to discharge. Imagine, moreover, that Hans and Katie both work and that, if they both had to drive both Tom and Rob to sport and music classes, they would not have enough time for their jobs. In order to discharge their duties they therefore divide their moral labor: Hans has to drive Tom to his football and piano classes and Katie has to drive Rob to his swimming and violin classes. These, then, are their post-procedural duties.

Once we have drawn the distinction between pre-procedural duties and post-procedural duties and we have clarified their relation, we can notice two things. First, it is true that post-procedural duties can be limited in scope, but it is not clear that they ought to be. This is because there are two ways in which it is possible to distribute moral labor across agents. One, suggested by Shue, is to distribute *different subsets of right-holders*, so that each duty-holder (or group of duty-holders) performs the same kind of action, but some duty-holders perform these actions towards some right-holders, some duty-holders toward other right-holders. Let us call this division of labor a “Right-Holder

Division”. Alternatively, it is also possible to distribute *different tasks*, so that each duty-holder (or group of duty holders) performs a different kind of action, which, together with other the actions performed by other duty-holders, will ensure that all the right holders receive the necessary goods and services. We can call this a “Task Division”. So, to go back to the previous example: there are two ways in which Hans and Katie might distribute their duties: they might endorse a “Right-Holder Division”, so that Hans has to drive Tom to his football and piano classes and Katie has to drive Rob to his swimming and violin classes (or *vice versa*). But they could also endorse a “Task Division”, so that Katie has to drive both children to music classes and Hans has to drive both children to sport lessons (or *vice versa*). In Chapter Four, I shall come back to this point and explain how it helps us defend the Universal Scope Thesis. However, as far as the discussion of the Limited Scope Thesis is concerned, the crucial point is that Shue does not offer any reason why we should prefer the first kind of division of labor to the second. Accordingly, he does not offer us any satisfactory reason to believe that the scope of post-procedural duties is limited.

However, let us, for the sake of argument, assume that the “Right Holder Division” is the only, or best, way to solve problems of feasibility and demandingness. If we grant this, then Shue has offered an argument to the effect that post- procedural duties are limited in scope. Yet, this is not enough to support the thesis that positive duties correlative of human rights are limited in scope. As I have pointed out above, under the pure procedural reading, division of moral labor is a way to ensure that some moral labor is discharged: post-procedural duties are simply a means to discharging the pre-procedural duties. The fact that assigning duties with limited scope is the best way to discharge some fundamental obligation does not tell us anything about the scope of

these fundamental obligations. The “normatively fundamental” question still remains: who holds the pre-procedural duties? *This* is the question we need to answer in order to determine the scope of positive duties correlative to human rights. And Shue’s argument offers us no reason to believe that some people, but not other, hold these duties. Indeed, when describing the division of moral labor, Shue does not specify any subset of agents to which it is relevant, but he rather seems to assume that it is a process involving us all. Hence, Shue's argument gives us no reason to think that positive duties correlative of human rights are limited in scope.

**Part III A second version of the Limited Scope Thesis: Wenar and the cost principle**

I shall now outline and assess the version of the Limited Scope Thesis recently put forward by Leif Wenar. Wenar offers a general account of the allocation of responsibility to prevent threats to basic well-being. He holds that this allocation follows the “least cost principle”, according to which “the responsibility for averting harms should be located in the agent who can most easily avert the harm” (Wenar, 2007, p258). He also adds three specifications: first, there is an “excessive burdens” qualification- i.e. the responsibility for averting harms should be located in the agent who can most easily avert the harm, but only as long as doing so will not be excessively costly (Wenar, 2007; p260). Secondly, the principle can apply either directly or indirectly- i.e. either on the basis of individuals’ specific circumstances or on the basis of the general descriptions that individuals fall under; at the latter level, the cost principle explains why certain general descriptions correspond to social roles and responsibilities. So, for example, -Wenar argues- reasoning about costs explains why the neutral description ‘biological parent’ is turned into the social and legal role of

‘parent’(Wenar, 2007, p262). Finally, there is a provision for “stepping back to secondary responsibility”: if the person with the primary responsibility is unwilling or unable to fulfil her duty, a secondary responsibility is allocated to the person besides her who can most easily bear the burden (Wenar, 2007; p264).<sup>13</sup> So, he suggests, the duties 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 (Wenar, 2007, p270-271).

I shall present two objections to Wenar's thesis. The first concerns Wenar's account of indirect application of the least cost principle. As I said, Wenar argues that responsibilities can be allocated to individuals indirectly, on the basis of the general descriptions they fall under, and that the cost principle explains why certain general descriptions correspond to social roles and responsibilities. He then argues that, in order to deal with many serious threats, we construct systems of roles. As an example, he asks to consider the way we deal with the threat of house fires. He argues that we apply the least cost principle to a set of roles, so that each group does what it can most easily do: those who have income and wealth are responsible for using their funds to equip fire-fighters, fire-fighters are responsible for fighting fires, and so on. (Wenar, 2007, p263).

The problem with this account is that it relies on an equivocation. The crucial question is: is Wenar's account descriptive or normative? If the claim is descriptive -i.e. he is

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13 As I clarified in Chapter One, I am here endorsing an interactional account of human rights. Wenar holds an institutional 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, p270). 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 of human rights under the interactional account of human rights here endorsed and this is why I am addressing it in this chapter.

claiming that (system of) roles *are* constructed according to the least cost principle- then it is simply false. In reality, social roles are not defined according to the least cost principle. Take the example of house fires: Wenar suggests that the economic support of fireman is an example of the application of the cost principles. However, this is true only in very specific circumstances- if, that is, there is welfare state supported by a system of proportional or progressive taxation. This is, of course, not always the case. Specifically with reference to the case of positive duties correlative of human rights, the general descriptions he employs in his argument fail to track groups of agents for whom discharging the positive duties is least costly. Locating responsibilities to members families, communities and countries would respect the least cost principle only if other things were equal: if, that is, 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 of wealth among households, regions and countries: all these units vary enormously in their ability to produce, access and deliver material resources. Given this indubitable empirical fact, it is hard to claim that assigning responsibilities to families, communities and countries respects the least cost principle.

Alternatively, Wenar's claim might be normative: he might be claiming that (systems of) roles *should* be constructed according to the least cost principle. The problem is that, under this interpretation, the cost principle does not define the roles that *do* characterise the current national and international scenario. Hence, distributing positive duties according to these roles would not constitute an application of the cost principle. He can therefore not conclude that responsibility should be allocated to the families, and then communities, and so on.

Yet, one might argue, this does not prevent one from making a purely normative claim about the way political and social roles should be determined: one could, that is, hold that social roles ought to be determined according to the least cost principle and that duties then ought to be distributed according to the roles so defined. There are two reasons why this reading, too, is not satisfactory. First, Wenar's principle only focuses on the duty-holder side: it only considers the cost for the duty holder; in so doing, it ignores the variations on the side of the right-holder: it does not take into account how efficiently the duty is discharged and the interest is protected. However, human rights have the role of protecting fundamental human interests: considerations of how efficiently they can be protected ought to feature when we consider the allocation of the duties correlative of human rights. Secondly, Wenar's account only focuses on single individuals and single general descriptions. In so doing, it does not consider the fact that interests can be protected through *aggregate* efforts: though the interaction of different individuals and categories of individuals. As Shue points out, the "aggregate of individually small investments by large numbers of persons could reach a significant sum, especially if cooperation and coordination occurred among those acting in fulfillment of duty" (Shue, 1988, p695). Allocating responsibilities to some individuals, leaving others out, misses out an important way in which universal interests can be protected and this is why Wenar's proposal does not offer a satisfactory account of the scope of positive duties correlative of human rights. In Chapter Four below, I shall show how this insight helps us defend the Universal Scope Thesis.

## **CHAPTER THREE A first argument for the Universal Scope Thesis: the interest account and the nature of universal interests**

This chapter is concerned with presenting the first argument for Universal Scope Thesis. According to the interest analysis of right, rights fulfil the function of protecting interests. Hence, under this account, interests are explanatory prior to duties. This is important because it tells us that the nature of universal interests shapes the nature of the duties correlative of human rights. Specifically, I argue that the nature of universal interests implies that they have universal correlative positive duties. The argument consists of five steps. First, I put forward an account of the necessary and sufficient conditions that an interest has to satisfy in order to be a universal interest. Secondly, I argue that universal interests justify positive duties. Thirdly, I argue that universal interests provide normative standards for all moral agents. Fourthly, I hold that the value of these interests is agent-neutral. Finally, I present an argument from exclusion to the effect that universal interests justify positive duties which are universal in scope.

### **Part I: Specifying universal interests: the necessary and sufficient conditions that an interest has to satisfy in order to be a protected by a human right**

#### **a. Fundamental interests and pluralist accounts**

##### Personhood vs well-being

In Chapter One I said that I would have used the term “universal interest” to refer to the interests protected by human rights and that I would have later clarified how exactly this term should be interpreted. Accordingly, I now take up the task of outlining the necessary and sufficient conditions that an interest has to satisfy in order to be protected by a human right. In order to do so, I start by focusing on fundamental interests since,

as I pointed out in Chapter One, those are the explanatory basic interests. In particular, let me begin by reconstructing the dialectic between the proposals put forward in the most influential interest-accounts so far developed. I consider three proposals: the first proposal, put forward by Griffin, holds that human rights protect the interest in agency; the second proposal, put forward by Nickel, holds that human rights protect the interest in a minimally good life; the third proposal, put forward by Tasioulas, Sen and Nussbaum, holds that human rights protect a plurality of interests. The analysis of these theses and of the objections to which they are exposed will enable me to identify the desiderata for an adequate account.

Let me start with Griffin's account, which holds that human rights only protect certain interests: autonomy, liberty and minimum provision, in so far as those interests are constitutive of human *status*- what is distinctive and unique of human beings (Griffin, 2008, p51). He argues that human rights can be seen as protections of our agency – what one might call our personhood: “They are protections of that somewhat austere state, the life of an agent and not of a good or happy or perfected or flourishing life. It is not that what human rights protect is the only, or the most, important aspect of our life. But we attach special importance to it, and that is reason enough to mark it off, too, with the language of human rights.” (Griffin, 2001, p25).

There are two major problems with this thesis. First, human rights do not protect *only* agency. 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 (Gilbert, 2011; Tasioulas, 2010). Secondly, the thesis that human rights protect agency has unacceptable implications for

the scope of the right-holders. The problem is structurally similar to the one faced by the will analysis of rights: if agency is the only value protected by human rights, then human rights protect choice; hence, one can be a human right-holder only if she has or can acquire the ability to choose. This means that vulnerable groups- such as people in an irreversible coma or severely mentally disabled people- are excluded from the set of human-right holders, in so far as they are physically unable to ever be autonomous agents<sup>14</sup>. This excessively restricts the set of right-holders: so much so, as I argued in Chapter I, that it does not respect the desideratum of fidelity to human rights practice<sup>15</sup>

#### Well-being: aggregative vs discrete accounts

Another influential proposal is the one put forward by Nickel, who holds that rights protect things that are central to a decent life, what he later calls a 'minimally good life' (Nickel, 2007, p.62). Nickel's proposal relies on a wider set of interests, and it thus seems to provide a more promising approach. However, it is doubtful that this strategy can successfully support a theory of human rights. The problem with this account can be 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 in the street and inflicts him a serious physical harm, for instance repeatedly hitting him very strongly, but without leaving him with any permanent injury. It seems very difficult to argue that that man's life is suddenly not a minimally good life. Yet, it is clear that he has been victim of a human right abuse.

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14 Notice, though, that Griffin can hold that children have human rights, in so far as they can develop in autonomous agents.

15 For a further discussion of the problems faced by Griffin's approach, see also Tasioulas, 2002, 2010; Raz, 2007; Buchanan, 2010.

The problem with Nickel's proposal is that it offers an *aggregative* interpretation of the interests protected by human rights: his focus is thus on interests taken together, to make up the composite concept of well-being. But the thought experiment just presented shows that this framework cannot capture our intuitions about human rights. In order to address the objection it is thus necessary to drop the aggregative framework and endorse a *discrete* approach. We can then move to a pluralist strategy, on the lines of the ones put forward by Tasioulas, Sen and Nussbaum (Nussbaum, 1997, 2006, 2007; Sen, 2004; Tasioulas, 2007, 2010). Tasioulas defends a pluralist account appealing to a number of different basic components of human well-being, which might plausibly include "autonomy, liberty, accomplishment, knowledge, friendship, and the avoidance of pain" (Tasioulas, 2010). Sen and Nussbaum see human rights as claims protecting central human capabilities- i.e. opportunities for objectively good states or activities. In particular, Nussbaum's account includes capabilities with respect to life; bodily health; bodily integrity; the use of their senses, imagination, and thought; the engagement of their emotions; the use of their practical reason; the development of social affiliation; the concerned relation with other species; activities involving play; and the control of their political and material environment (Nussbaum, 2006).

### **b. A challenge for pluralist accounts**

#### The Exceptionality Objection, the answer provided so far and its shortcomings

The endorsement of a pluralist strategy has to face a deep challenge: providing an account of the exceptional role that human rights play in our moral reasoning. This issue is pressed by Raz, who points out that it is essential for the traditional approach to explain how human rights "mark a normatively exceptional domain, [why] they deserve protection even if that requires exceptional measures", and stresses that "This task can

only succeed if people do not have human rights to everything which will or may improve the quality of their life. For if people have such rights, they are not exceptional, and they fail to play the role that traditional accounts assign them” (Raz, 2007, p8). I shall refer to this challenge as the Exceptionality Objection.

In order to address this challenge Tasioulas, Sen and Nussbaum endorse the same strategy: they suggest that an interest grounds a human right if and only if it meets a certain *threshold of importance*. However, the accounts put forward are not very specific: it is not clear what this threshold is and how it should be identified. Tasioulas recognises the challenge posed by this issue, but does not offer any strategy to solve it (Tasioulas, 2007). Nussbaum and Sen suggest that it ought to be identified by public debate, but do not provide a clear indication of the way this would work (Nussbaum, 1997; Sen, 2010).

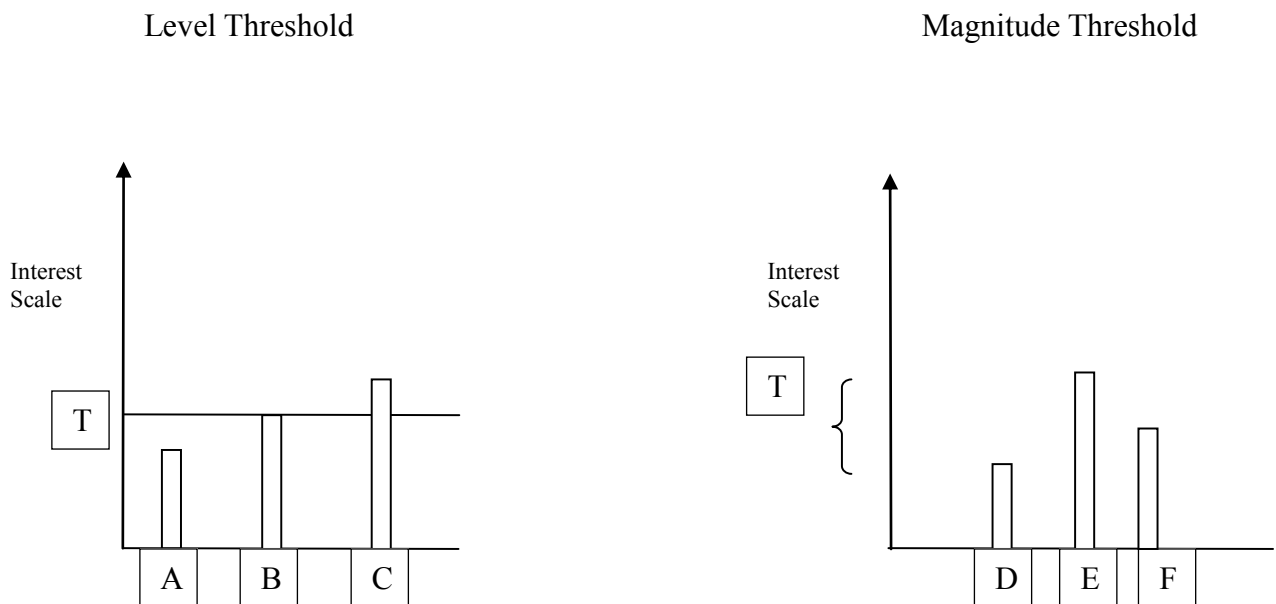
However, the indeterminacy of these accounts is not the deepest problem. Rather, the biggest challenge lies in the fact that the notion of a threshold is far from being unproblematic. In order to understand why, let me start from few preliminary remarks. The notion of a threshold is a quantitative notion: a threshold is a morally relevant *amount* of the interest considered. The notion of a threshold thus requires a background framework in which interests are scalar values. A clear and useful characterization of such a picture is offered by Scanlon in “Preference and urgency” (Scanlon, 1985). 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”. 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, an interest can be interpreted in two –sometimes non clearly distinguished- ways: either as a scale, or as a change on such a scale (that is a benefit or a harm). So, for instance, take the interest in health. When talking about an agent’s interest in health, one might be referring to how much health the agent enjoys at a given time; however, one might also refer to change in such a level: a benefit or harm to her health.

Accordingly, we can distinguish two kinds of threshold. First, the threshold can refer to a level on the scale: a point after which improvements change moral significance. The focus is here on how much of the interest the agent is enjoying. I shall call this kind of threshold a *level-threshold*. If we endorse this interpretation, an agent has a human right claim if and only if the amount of interest she enjoys is below a certain level T. Specifically, an agent would have a human right claim to benefits which would increase the level of her interest up to T and against harms which would lower the level of her interest below T. To give an example, let us take the interest in health, and consider it as a scale, in which we can have upward movements (i.e. health benefits) and downward movements (i.e. health harms). For argument sake, let us assume that life expectancy is a measure of health. So, for instance, we could say that the threshold level of health corresponds to a life expectancy of 80 years, so that that people who have a lower life expectancy have a human right claim, and people who have a life expectancy of 80 years or higher do not.

Secondly, the threshold can refer to the magnitude of changes 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*. Hence, if we endorse this interpretation, an agent has a human right claims if and only if the benefit or harm she enjoys or suffers has at least a certain magnitude T. Going back to the case of health, one might think that the benefit of being cured from a life –threatening disease is clearly weighty enough to be able to ground a human right. Conversely, the benefit of having one’s broken nose straightened is not weighty enough to ground a human right.



In his article 'Two kinds of satisficing' Thomas Hurka draws a distinction between two types of thresholds: ‘comparative’ and ‘absolute’ ones (Hurka, 1990). These two kinds of threshold are distinguished by their relation to the maximum: 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 interest protected by human rights, the maximum is the highest point on the scale of an interest.

Putting together this distinction with the one I drew above between magnitude-thresholds and level-thresholds, we can now distinguish four kinds of thresholds: comparative magnitude-thresholds, absolute magnitude-thresholds, comparative level-thresholds and absolute level-thresholds.

It is not clear which of these notions of threshold is endorsed by Tasioulas, Sen and Nussbaum, since, as I said, they do not outline such a concept in detail. Accordingly, I shall consider all the options in turn. Let us start with the absolute magnitude-thresholds. The problem with adopting this kind of threshold is best brought out by an example. Consider the case of two men: Carl, whose life expectancy is 80 years, and Ed, whose life expectancy is 30 years. Imagine, *ex hypothesis*, that the absolute magnitude-threshold is 1 year of life expectancy, to the effect that increases or decreases in life expectancy higher than a year ground human rights. Imagine now that David has a medicine which increases life expectancy of 2 years, but he only has enough medicine for one person. According to the absolute magnitude-threshold thesis, Carl and Ed *both* have a human right claim to that medicine. But it seems clear that this does not capture our intuitions about human rights: Ed clearly has a human right claim in this situation, while Carl most plausibly does not. It might be good to increase Carl's life, the two cases are not comparable: Ed's is worse off than Carl, his interest is more urgent and, as such, it is the one which grounds a human right claim.

Notice, moreover, that the problem would remain even if we endorsed a comparative magnitude-threshold. To see that this is the case, imagine two further scenarios: in the first, Carl and Ed have the same life expectancies as before; only, the maximum life expectancy is now 100 years and the comparative magnitude-threshold is set at 10 % of

the maximum amount. Imagine now that David has a medicine which increases life expectancy of 11 years, but, once again, he only has enough medicine for one person. In the second scenario the threshold is always set at 10 % of the maximum amount, but the amounts are now doubled: Carl has a life expectancy of 160 years and Ed has a life expectancy of 60 years and the maximum life expectancy is 200 years. Imagine now that David has a medicine which increases life expectancy of 22 years, but, once again, he only has enough medicine for one person. If the concept of a human right is rooted in the notion of a comparative magnitude-threshold, Carl and Ed *both* have a human right claim to that medicine in these two scenarios. But it seems once again clear that this is not the case and that, rather, only Ed has a human right claim. These examples show that our intuitions about which interests can ground human rights are sensitive to considerations concerning the *agents' interest levels*. The fact that an interest-magnitude is larger than a certain threshold amount is not enough to determine whether the agent has a human right claim. The notion of a magnitude- threshold is thus not sufficient to ground the concept of a human right.

Given that we have noticed that our intuitions about interests grounding human rights are sensitive to the agents' interest levels, the notion of a level-threshold might seem more promising.<sup>16</sup> Here again we have two options: an absolute level-threshold picks a fixed level of interest which is determined regardless of its distance from the highest level; conversely, a comparative level-threshold is determined by a percentage or a

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16 This concept of a threshold has recently received a notable amount of attention in discussions on distributive justice, as it is the key concept behind the doctrine of sufficiency, which holds that a distribution is just if and only if each agent has enough- i.e. at least a threshold amount of the currency distributed. The doctrine of sufficiency has received wide amount of support (Frankfurt, 1987, 1997; Crisp; 2003, 2004; Huseby, 2010; Benbaji,2005,2006). However, it has also elicited a number of critiques aiming to show that sufficiency is not an adequate principle of distributive justice (Holtug; 2007; Casal, 2007). My discussion here is strongly influenced by Holtug's work on this issue.

distance from the maximum level of interest. The case for a fixed threshold is particularly implausible. This is because the threshold level would have to be the same regardless of any change: it would have to be the same for a man living in the Bronze Age and a man living in the 21<sup>st</sup> century and it would have to stay the same regardless of any miraculous medicine we might discover. But this is clearly implausible: I will thus leave absolute level thresholds aside and focus on comparative level thresholds

The concept of a relative level threshold does not face the obvious objection outlined above and it might then seem a very promising candidate. Yet, not even relative level-thresholds can offer a plausible account of our intuitions about the interests protected by human rights. To see why, let me outline another thought experiment: assume, *ex hypothesis*, that the maximum life expectancy today is 100 years and that the threshold is 80% of the maximum level. Imagine that a man, Carl, has a life expectancy of 90 years. In this case, the threshold is 80 years, so Carl is above the threshold and has no human right claim. But now imagine that Carl's life expectancy depends on the provision of a certain medicine, which Bob delivers; imagine moreover that Bob himself does not need the medicine and that he can deliver it at a reasonable cost for himself. Let us then assume that Bob decides to stop delivering the medicine, and to keep it instead (even if he does not need it), so that Carl's life expectancy decreases up to 80 years. According to the threshold account, Carl has no human right claim against this being the case. But this is clearly implausible: decreasing the level of one's universal interest without improving anyone's condition clearly is a sufficient condition for a human right claim. This is because our intuitions about what interests can ground human rights are *sensitive to considerations of utility*. A threshold approach can thus not satisfactorily capture our intuitions about universal interests.

However, one might decide to adopt a composite approach and “add” a utility clause to the threshold approach, to the effect that one has a human right claim to benefits which would increase her the level of her interest up to the threshold and against harms which would lower the level of her interest below the threshold or that would decrease her interest level without increasing others<sup>17</sup>. Yet, there is also a further problem. To see what it consists of, let us consider a second scenario. Imagine someone discovers a miraculous medicine which moves life expectancy to 500 years, so that the threshold shifts to 400 years. Imagine that Carl acquires access to the medicine, enough of it to ensure that his life expectancy is now 400. If interests grounding human rights were based on a relative threshold, then- given the assumption outlined above- this information would be enough to claim that Carl has no human right claim. However, imagine now that everyone else in the world, but Carl, has access to enough of the medicine to guarantee that their life expectancy reaches 500 years. It seems to me clear that, in this case, Carl *does* have a human right claim to the medicine. This tells us that our intuitions about which interests can ground human rights are sensitive to comparisons of levels of interests *above* the threshold. There is thus no level T after which an agent’s interest has no longer significance for human right claims. Hence, the notion of a level-threshold does not ground the concept of a human right. This means that the concept of a human right does not rely on the notion of a threshold interest. We thus need another way of addressing the Exceptionality Objection.

### **c. An egalitarian pluralist account**

#### The nature of the fundamental interests: Objective List Theory

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17 On similar lines, Crisp suggests that above the threshold, judgments of justice are sensitive to the principle of utility (Crisp, 2003)

In order to provide a satisfactory answer to the Exceptionality Objection, we first of all need to clarify a very important point: we need to go back to fundamental interests and clarify the analysis of well-being which underlies the concept of human rights. Only once this is done, we will be able to adequately address the Exceptionality Objection. There are three main competing analyses of well-being: Hedonism, Desire Fulfilment and Objective List Theories. Hedonism holds that the necessary and sufficient condition for well-being is a particular state of mind consisting in the greatest balance of pleasure over pain. Desire Fulfilment theories hold that well-being consists in the fulfilment of one's desires. Objective List theories hold that there are certain goods and bads, and what things are good and bad is not wholly determined by the agent's evaluative perspective (Arneson, 1999).

Objective List theories offer a very plausible analysis of well-being and have recently enjoyed a wide support (Parfit, 1984; Arneson, 1999; Kagan, 2009; for a discussion, see also Crisp and Moore, 2006). I here defend the thesis that the Objective List account is the best candidate for grounding an interest account of human rights. From now on, I shall use the term "goods" to refer objective fundamental interests, unless otherwise specified. I shall endorse a reading of the Objective List Theory according to which an agent possesses a good if and only if two individually necessary and jointly sufficient conditions are met: first, the agent performs a valuable activity or is in a valuable state; secondly, she enjoys such an activity or state. Notice that this account of goods is not independent of the agent's evaluative perspective, since it requires the agent to be in some positive mental state. Notice, however, that dropping this requirement would be extremely implausible since, as Railton suggests, it is an 'alienated conception of someone's good to imagine that it might fail in any way to engage him' (Railton, 2003,

p 47). Yet, it should be stressed that this account is still an objective account, since the objectively valuable activities and states are not determined by the agent's mental states; rather, the agent's enjoyment is explained by such activities and states. Finally, the list of valuable states and activities will likely include items such as knowledge, rational activity, friendship, autonomy, accomplishment (Parfit, 1984; Arneson, 1994; Kagan, 2009; for a discussion, see also Crisp and Moore, 2006).

Why, then, should we favour the Objective List Theory as an account of well-being underlying the concept of human rights? First of all, there are independent reasons to favour Objective List Theories analysis of well-being. This is in part due to the shortcoming of the competing theories- Hedonism and Desire-Fulfillment. Hedonism is unable to give an account of the role non-mental states play in our well-being. Nozick brings this out in his famous "experience machine" thought experiment: he ask us to imagine a machine which is able to reproduce experiences of whatever kind we thought most enjoyable and argues that most of us would not plug into it, because 'we want to do certain things ... we want to be a certain way ...[while] plugging into an experience machine limits us to a man-made reality' (Nozick 1974, p. 43). Desire Fulfilment theories hold that that well-being consists in the fulfilment of one's desires. However, this type of theories are caught on the horns of a dilemma. On one side, they can claim that the relevant desires are *actual* desires; but in this case they are forced to defend the implausible claim that ill-considered or misinformed desires enhance well-being. On the other side, they can claim that well-being consists in the satisfaction of *ideal* desires, such as fully informed or fully rational desires; however, in this case they struggle to defend the thesis that these desires are explanatory prior to the goods they aim to. The Objective List theory avoids the shortcomings of the alternative approaches: on one

side, it holds that both mental and non-mental states are necessary conditions for well-being, avoiding the problems faced by Hedonism; on the other, it takes objective goods to be prior to both ideal and actual desires- solving the difficulties faced by Desire Fulfilment theories.

Secondly, an objective analysis of well-being is the best candidate for grounding claims of justice. This point is forcefully made by Sen, who asks us to think of the case of a beggar living in terrible degradation and oppression; notwithstanding his situation, the man takes pleasure in his life, because he has never known anything different, and has everything he wants, because he adapted his preferences to his circumstances (Sen, 1998). If either Hedonism or Desire Satisfaction analyses of well-being were correct, we would be forced to say that the man is well-off and he does not have any claim of justice. However, this is clearly mistaken: the man is badly off and his situation ought to be improved. This shows that pleasure and preference-satisfaction are not sufficient to determine claims of justice; rather, these claims are based on what we objectively believe to be good for an agent.

Thirdly, I here want to argue that, in particular, an Aristotelian objective analysis of well-being can provide an extremely solid underpinning for the concept of a human right. The core idea of such an analysis is that each person has the capacity to engage in certain activities and be in certain states and that well-being consists in enjoying the good performance of these activities and states. So, for instance, if one has the capacity for cognitive thought, the enjoyment of knowledge will increase her well-being. If one has the cognitive and emotional skills required to be able to choose, then the enjoyment of autonomous choices will increase one's well-being. It should be specified that what

one has the “capacity” to do is limited by *hard* feasibility constraints, but not by soft ones. Hence, incurable disabilities constrain one’s capacity in the sense adopted here; conversely, curable disabilities, economic and political limitations, do not. So, if one has the cognitive ability for knowledge, but this capacity is constrained by a curable disease, curing the disease and enabling the agent to employ her cognitive skills would enhance her well-being.

Following Crisp, it is useful to distinguish between enumerative and explanatory theories of well-being, where enumerative theories specify *which* things are valuable and explanatory theories explain *why* something is valuable (Crisp, 2006). Aristotelian ethics has deeply influence much recent work in political and moral philosophy- among the others, notably, Nussbaum and Sen’s capability approach. This theory is rooted in Aristotle's *enumerative* thesis of well-being, in so far as it holds that well-being consists of the good performance of activities which are central to human life. It does not, however, rely on Aristotle's *explanatory* account of well-being. Both theorists hold that the normative significance of the items on the list is given by a different factor: Sen holds that it comes from the endorsement given by public reasoning (Sen, 2005); Nussbaum holds that it comes from a political overlapping consensus (Nussbaum, 2000). Conversely, I am also endorsing the explanatory side of Aristotle's theory: I am holding that certain activities and states are valuable *because* they constitute the good performance of certain human capacities. It is worth stressing that naturalistic character of the account here proposed makes it a solid starting point for an interest account of human rights, in so far as it provides an account of well-being which is independent of any contingent endorsement. Moreover, the explanatory side of Aristotle’s theory allows us to understand how the structure of human capacities influences the structure

of well-being. As I shall now explain, this is extremely important for a plausible account of universal interests.

First of all, this model of well-being is inclusive: it entails that *all* the good activities and states one has the capacity to perform and instantiate contribute to one's well-being. Secondly, this model entails that well-being differs for individuals with different capacities. So, for instance, for individuals who have the capacity for sensory perception and full cognitive abilities, well-being includes enjoying absence from pain, correct perception and autonomy. For individuals who are so severely mentally disabled that they lack the cognitive ability to choose, well-being will not include the enjoyment of autonomy; yet, it will of course still include enjoying correct perception and absence of pain.

Thirdly, the relation between capacities provides us with an indication of the relation between goods. Specifically, in so far as some states and activities are preconditions for other states and activities, some goods are preconditions for others. Knowledge, for instance, is necessary to enjoy autonomy, while health (at least at a minimal level) is necessary for any other kind of good. Notice that to appreciate the significance of this statement we need to focus on the diachronic dimension of these goods- their enjoyment through time. Hence, for instance, at a fixed point in time, someone might choose not to pursue any education and not to be informed: in so doing he would be enjoying autonomy by disregarding knowledge. However, in the long run, the lack of knowledge will prevent him from making any informed and thus meaningful decision. Similarly, at a fixed point in time, one might be able to enjoy political participation without enjoying good health. Indeed a political activist fasting in order to protest might

be able to enjoy the goods of political participation and autonomy *because* he does not enjoy the good of health. However, in the long run, the lack of adequate nutrition will lead the agent to illness and, down the line, death- which of course will prevent him from enjoying any good.

Fourthly, the distinction between different kinds of capacities allows us to distinguish different types of goods. So, for instance, perceptual and cognitive capacities give us the ability to enjoy pleasure and knowledge. Moreover, in so far as individuals have emotional capacities to create personal bonds, some goods consist in the enjoyment of personal relationships. Goods such as the enjoyment of love or friendship are quite obviously part of what makes life valuable for who lives it. Most plausibly, also the enjoyment of other kinds of relationships, such as being part of cultural or political communities, is constitutive of well-being. It is also clear that these goods play an important role to the determination of our reasons for action. So, as Sheffler suggests “If I do have a relationship with you, and if I attach non-instrumental value to that relationship, then I shall be disposed to see your needs, interests, and desires as providing me, in contexts of various kinds, with reasons that I would not otherwise have had, and with which the needs, interests, and desires of other people do not provide me” (Sheffler, 2011, p 104 ). This is generally taken to be a problem for universalist moral theories. However, as I shall argue below, a careful understanding of these goods can indeed help us clarifying the content and the exceptional character of our universal positive duties correlative of human rights.

The structure of well-being gives us very important indications about the nature of universal interests and the scope of human right holders. On one hand, it explains how

the interests protected by human rights can vary according to the capacities possessed by the agent. On the other hand, this account allows us to preserve the link between human rights and autonomy. This is because the enjoyment of autonomy is a good for people who do have the cognitive and emotional ability to choose. Indeed, as I shall explain below, the reference to autonomy is extremely important to explain some of our intuitions about human rights. Moreover, this account allows us to draw important distinctions about goods: the distinction between more and less “basic” capacities, allows us to distinguish between more and less “basic” goods, while distinguishing between perceptual, cognitive and emotional capacities allows us to distinguish between perceptual, cognitive and emotional goods. Finally, this account allows us to provide a more solid account of the scope of human right holders. This is because all humans share some - so to speak- very minimal capacities, such as the ability to feel pain or to be healthy. We can, in this way, do justice to our intuitions that comatose people and infants have human rights to health or against torture.

#### The interests protected by human rights: opportunities for goods

I have so far outlined the notion of well-being underpinning the concept of a human right: I argued that an Aristotelian objectivist account of well-being can offer a solid basis for our understanding of human rights. So far, then, I have focused on components of well-being, i.e. fundamental interests. This is because, as I pointed out in Chapter One those are the explanatory prior values. However, as I also pointed out, I am here endorsing the “strong” reading of “protecting”. The endorsement of this reading constrains the set of universal interests, since the interest has to be such that it is possible for a duty to *ensure* its fulfillment. In this section I take up the task of clarifying exactly how the strong reading of “protecting” shapes the concept of

universal interest. To do, I go through the steps which take us from the concept of objective well-being to the concept of a human right. I outline four steps- the “movement” from aggregative well-being to discrete goods; the “movement” from discrete goods to duties; the “movement” from duties in general to duties correlative of rights and the “movement” from duties correlative of rights in general to duties correlative of human rights in particular. In what follows I shall argue that each one of these steps gives us a reason to say that human rights protect instrumental interests- specifically, that they protect *opportunities for goods*.

Let me start with the “movement” from aggregative well-being to discrete goods. The important thing to notice is that goods are plural: there are many different goods which could contribute to one’s well-being. This opens up the possibility of *conflicts* between goods: a certain situation might be beneficial as far as one good is concerned, but detrimental as far as another type of good is concerned. Take, for instance, the case in which a man decides to fast as a means to express his political position. In this case fasting is constitutive of the enjoyment of political participation; yet, it is also detrimental to the man’s health. What, then, should we say in the case of conflicting goods? It is particularly important to specify the role played by the autonomy in these cases. Since the enjoyment of autonomy is a good, the agent ought to be able to choose which good he wants to pursue. Hence autonomous agents have an interest in opportunities for goods.

Let us now focus on the “movement” from discrete goods to duties. The crucial point here is that some goods are outside *anyone’s* control: they depend on factors that cannot be controlled by either the agent or anyone else. So, for instance, health cannot be

guaranteed by anyone, since it might be prevented by incurable illnesses or handicaps. Accomplishment cannot be guaranteed by anyone, since the achievement of one's goals might be prevented by uncontrollable circumstances, such as natural disasters or physical constraints. In these cases duty-holders cannot ensure the fulfilment of the goods, but rather only the opportunities for such goods.

Let us now focus on the "movement" from duties in general to duties correlative of rights. Duties can aim to either the improvement of others' conditions or the improvement of one's own condition- so that there are duties that one holds towards others and duties one holds towards oneself. The latter category of duties plays an important role in many moral theories. However these duties are not correlative of rights- rights capture normative relations *between* people. This is important because, under the account presented here, the possession of goods depends on the *agent himself*. As I pointed out above, there are two necessary conditions which need to be satisfied for an agent to possess a good: she has to perform a valuable activity or be in a valuable state, and she has to enjoy it. Since, under this reading, the possession of goods is conditional to the agent being in certain states and performing certain actions, other agents can only provide opportunities for goods.

Finally, let me focus on the "movement" from rights in general to human rights in particular. As I pointed out above, it is more than plausible that many goods are constituted by personal relationships. However, this means that these goods can only be *ensured* by the people with whom we stand in such relationships. Take for instance, the good of friendship: it is constituted by sharing experiences and thoughts, by the awareness of being able to rely on another person and having a particular role in

another person's life. However, these states and activities cannot be shared with *any* person: they have to be shared with those particular persons- friends. Accordingly, these goods can only be delivered by particular agents. Something similar can very plausibly said for romantic love, the parent-child relationships and might be extended to cultural and social relationships- such as relationships linking people who share the same language or religion.

It is here important to stress two points. First, human rights are rights which human beings have in virtue of being human- regardless of any relationship they have with others. They thus cannot ensure the delivery of goods that one can only obtain through particular relationships. Secondly, we should not, however, think that human rights cannot further these goods in any way. People who do not stand in a particular relationship with a person still have the ability to enhance her particular relationships in many ways. Take, for instance, the enjoyment of romantic love: most plausibly the legal recognition of couples is a way to further such a good. Accordingly, there is no human right to the enjoyment of the personal relationships which constitute one's well-being, but there is a human rights to the opportunities for such relationships.

Hence, each one of the steps that take us from the concept of objective well-being to the concept of a human right, thus provides us with a reason to characterize universal interests in terms of opportunities for goods. In Chapter One, I suggested that the account of universal interests put forward in this dissertation would help dispel some of the worries concerning the feasibility of human rights. In particular, it would ensure that there are no hard feasibility constraints on the duties correlative of abstract human rights, providing a set of necessary and sufficient conditions which ensures that it is

logically, metaphysically and physically feasible to protect universal interests. We can now see that the distinction between well-being and universal interests and the analysis of universal interests in terms of opportunities for goods allows us to meet this desideratum. Hence, O'Neill is right in pointing out that we cannot *ensure* health: as I stressed in the second step outlined above, the obtainment of certain goods is beyond the control of any agents. However, it is of course feasible to ensure that agents have opportunities for health: goods and services which provide the needed material support.

#### Which opportunities for goods: an egalitarian pluralist account

I have so far argued that human rights protect opportunities for goods. However, this does still not allow us to meet the exceptionality desideratum. In order to do so, it is still necessary to assess *which* opportunities for goods are protected by human rights. The first question is, so to speak, qualitative: *which* types of interest ground human rights? The framework outlined above provides us with an indication to solve this problem, since the notion of a "human capacity" connects every component of well-being with the concept of humanity. The human capacities for rational activity, knowledge, love, play are all human capacities whose exercise, if enjoyed, increases one's well-being. This allows us to claim that *all* interest types can ground human rights and enables us to explain why: even less urgent interests are expressions of human capacities and this is why the opportunity of exercising them should be protected by human rights.

The second question is, so to speak, quantitative. As we have seen, interests are also scalar notions: each interest type can be associated with a scale, so that the level on the scale designates the degree to which the interest is enjoyed, while movements upwards and downward on the scale correspond to benefit and harms with respect to that

interest. The question then is: *how much* of the interest do human rights protect? In section (b) above I argued that the threshold approach is misguided since universal interests are sensitive to comparisons between agents' levels of interest and to considerations of utility. This gives us two hints about the quantitative nature of interest grounding human rights. The first hint suggests that human rights protect an *equal* level of opportunities for goods. The claim for human rights can be described as the claim for an equal distribution of opportunities for goods, "seen"- so to speak- from the perspective of each individual. The second hint -suggesting that human rights are sensitive to considerations of utility- is perfectly in line with the thesis defended here, according to which human rights are grounded in the value of well-being. Given the role played by human rights under the interest account, it would be absurd to think that they might protect an equal distribution in cases in which this would lead to "level down" someone's well-being. The egalitarian distribution behind the concept of human right is thus a distribution which respects following principle:

Principle of Personal Good: if one distribution gives some person more wellbeing than another distribution does, and if it gives no person less wellbeing than the other does, then it is better than the other. (Broome, 1991)

We can thus outline the following set of necessary and sufficient conditions that an interest has to satisfy in order to be a universal interest, i.e. in order to be protected by a human right:

An interest is protected by a human right claim iff

a. protecting that interest would bring about a benefit which

(i) brings the agent's opportunity for a good closer to the level of equality or

(ii) increases her opportunity level without decreasing others'

b. failing to protect that interest would bring about a harm which

(i) lowers the level of the agent's opportunity for the good below the level of equality or

(ii) decreases her opportunity level without increasing others'

It should be stressed that interests which satisfy these conditions might still vary in moral importance. Three factors, in particular, will determine such variations. The first factor is qualitative: different types of interest have different moral importance. Recall that, according to the Aristotelian account of well-being here defended, capacities and goods have different degrees of "basicness". The protection of "basic" capacities is clearly more morally important than the protection of less "basic" ones, since the former are preconditions for the latter. Accordingly, the protection of the opportunity for certain goods is more urgent than the protection of the opportunity for other goods. So, for instance, the ability to have a functioning body, holding knowledge and the absence of pain are preconditions for the exercise of other capacities. Hence, the protection of opportunities for the enjoyment of health, education and freedom from pain has a special moral urgency.

The second and third factors are quantitative: priority and magnitude. Priority holds that benefiting people matters more the worse off these people are (Parfit, 1998). Applied to interest scale, priority tells us that benefiting someone with respect to an interest matters more the worst off that person is with respect to that interest.<sup>18</sup> So, for instance,

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<sup>18</sup> Since equality and priority are often contrasted as alternative distributive ideals, it might seem strange to put forward an account endorsing both. However, there is here no tension between the two principles, since I am here not concerned with evaluation of states of affairs, but rather with the characterization of universal interests. Specifically, I am taking equality to be one of the factors that

improving the health conditions of an agent with a life expectancy of 20 years is more morally important than improving the conditions of an agent with a life expectancy of 30 years. Finally, there are also considerations concerning magnitude. The magnitude of an interest can of course vary: one's life expectancy can be increased of one, two or more years; an agent can be subjected to different degrees of pain for different length of times, and so on. Following the Principle of Personal Good we can of course say that, 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 three factors will determine the moral importance of the universal interest.<sup>19</sup>

Variations in moral importance can help us specify how feasibility constraints influence the duties correlative of concrete rights. Specifically, we I can now clarify that, in case of conflicts between interests, we have a duty to protect the most morally important universal interests. So, for instance, imagine there are two men- Luke and Ben: Luke's opportunity for health is lower than the point of equality and Ben's opportunity for leisure is lower than the point of equality. Luke, who is very ill, could obtain the opportunity for a medicine who would significantly improve his health; Ben could obtain the opportunity for extending his holiday time for a week longer. Imagine that there is a third man, Greg: Greg has enough resources to benefit either Luke or to Ben, but not both. Since considerations of basicness, priority and magnitude make Luke's

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informs the *content* of universal interests (i.e. part of the necessary and sufficient conditions that an interest has to satisfy in order to be a universal interest) and I am taking priority to be one of the factors that influences the *moral importance* of universal interests (i.e. how morally important it is to protect the universal interest)

19 It is not possible, in the space of this dissertation, to fully consider how these three factors interact. However, it is worth stressing that, plausibly, basicness and priority should not be interpreted in lexical terms: a small benefit for someone who is very badly off could be outweighed by a large benefit for someone who is better off; similarly, a small harm in a very basic good could be outweighed by a large harm in a less basic good.

interest more morally important than Ben's, Greg ought to employ the resources to protect Luke's interest. Accordingly, Greg has no duty to provide Ben with the material resources needed to protect his opportunity for play.<sup>20</sup> Considerations of basicness, priority and magnitude thus ensure that, in cases of conflict, concrete human rights protect the most important universal interest.

#### **d. Meeting the challenge**

The account proposed here can help meet the challenge set out by the Exceptionality Objection. This is so in two ways. To begin with, the account of universal interests helps us clarifying why one does not have a human right to anything that would improve her life. As we have seen, there are three sets of restrictions: there are constraints due to the possibility of *conflicts* between an agent's own goods; constraints on what *anyone* can do to promote goods; constraints on what *others* can do to promote goods and constraint on what others can do when they *do not stand in particular personal relationships with us*. Moreover, the account allows us to explain why not all moral claims to what would improve one's life are human rights. First of all, many improvements in one's life derive from personal relationships and can only be brought about by people with whom we have such relationships. Secondly, improvements in one's life could be improvements which cause others to have a less than equal level of opportunity for goods. Finally, the account here proposed offers an explanation of the strength of human rights claims. On one side, clarifying that human rights protect opportunities for goods helps us underline that the respect of human right is a precondition for right-holder's well-being. On the other side, focusing on basicness,

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<sup>20</sup> Notice, however, that this does not mean that Greg does not have *any* duty to protect Ben's universal interest in these specific circumstances. There might in fact be other ways to protect the opportunity for the less urgent interest: in the case of play, for instance, this might include the establishment of regulations ensuring that Ben has some leisure time.

priority ad magnitudo allows us to distinguish more and less important universal interests and to ensure that, in case of conflict among them, concrete human rights protect the most morally important ones.

## **Part II Why universal interests provide positive duties**

In the previous Part of this chapter I outlined the set of necessary and sufficient conditions that an interest has to satisfy in order to be a universal interest. I now want to argue that the protection of these interests provides positive reasons for action.

The crucial point to stress is that negative duties are not sufficient for the protection of universal interests. First of all, a large variety of factors might lead to unequal levels of opportunities for goods: first, agents might naturally have different physical conditions and vary in their ability to access material resources.<sup>21</sup> Secondly, other agents might have brought about an unequal distribution of opportunities for goods. Finally, it might be possible to benefit people without harming others. In all of these cases, we have a positive duty to ensure that agents obtain equal opportunities for goods.

To flesh out this point, let me present a thought experiment. Imagine there are three men: Paul, Ollie and Lorenz; Paul and Ollie suffer of the same a very painful illness and are in exactly the same conditions. Lorenz has a medicine for this illness. In order to put on the side any consideration concerning cost for the duty holder, imagine that Lorenz is perfectly healthy, that he does not need the medicine and that distributing this medicine is not very costly for him. It seems to me clear that, since Lorenz can protect Paul and Ollie's interests without decreasing others', he is under a duty to provide them

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<sup>21</sup> Caney puts forward an argument on similar lines to show that negative duties are not sufficient to protect an interest in subsistence (Caney, 2007)

with the medicine and, specifically, with the same amount of the medicine. Let us now slightly change the scenario. Imagine Paul is now in more pain than Ollie; it now seems clear that Lorenz has the duty to provide Paul with more medicine- indeed, enough medicine to ensure that Paul and Ollie have the same opportunity of freedom from pain. Finally, imagine that, once again, Paul and Ollie suffer of the same a very painful illness and are in exactly the same conditions; only, this time a fourth man –Tom- distributes the medicine giving 10 units of the medicine to Paul and none to Ollie; Lorenz has no access to further doses of the medicine, but he can redistribute the medicine Tom gave to Paul; once again, it seems clear to me that Lorenz has the positive duty to ensure that Ollie and Paul have the same amount of the medicine, and he thus ought to redistribute the medicine so that they both have five units. The crucial point is that, whatever the starting condition, Lorenz has the positive duty to ensure that Paul and Ollie have the same opportunity for freedom from pain.

The above is probably not very controversial when we are considering freedom from pain. Plausibly, this is also true for other very urgent interests, such as, for instance, opportunity for health or physical security. In these cases, we have strong intuitions to the effect that the interests are important enough to call for agents' action. And, if the account presented above has been convincing, one should now see why we have positive reasons to ensure equal opportunity for these goods. However, things might be less intuitive when it comes to less urgent interests, such as opportunity for friendship and play. Let us then test our intuition in these cases. Notice that the account here defended holds that there are more or less basic interests and, in case of conflict, human rights ought to protect more basic interests. It seems hard to deny that in the current world people have completely different levels opportunities for freedom from pain,

enjoyment of health or education. Given this state of affairs, it might be difficult to bring out our intuitions about less basic interests. In order to, so to speak, “isolate” our intuitions about these interests, let us then imagine a world in which each human being has an equal opportunity for freedom from pain, enjoyment of health, knowledge, autonomy and so on: equal opportunities for all goods, except play. Imagine that there is a group of people that has equal opportunities for all goods, but one: play. They have an otherwise perfectly fulfilling life, but for the fact that they have to work all day long every day, so they do not have the opportunity to enjoy play and leisure. It seems to me clear that these people do have a claim to an equal opportunity to enjoy play and leisure and that this claim is a *human right*: the capacity to play is an important human capacity and that a life without it is, to a great extent, impoverished. What this thought experiment brings out is that even non-basic universal interests have the ability to ground positive duties correlative of human rights. We can thus conclude that the protection of equal opportunities for goods is a sufficient reason to hold other people to be under the duty to perform an action.

### **Part III Why universal interests provide normative standards for all moral agents**

In Part I I argued that human rights protect interests in the equal opportunity for goods. These interests are instrumental: they are means for well-being, as opposed to being constitutive of well-being itself. As I said in Chapter One, fundamental interests have explanatory priority over instrumental interests. Hence, the nature of fundamental interests will determine the nature of universal interests. Moreover, under the interest account of human right, human rights fulfil the function of protecting universal interests, to the effect that universal interests are explanatory prior to duties. Hence, the nature of universal interests shapes the nature of the duties correlative of human rights.

Putting together the two steps, we can then see that the analysis of well-being offered in Part I will enable us to understand the nature of the duties correlative of human rights. This and the following part of this chapter focus on the way in which the account of well-being offered above informs the nature of duties correlative of human rights. In this part, I specifically focus on the objective nature of well-being.

In Part I defended the thesis that the concept of human rights is underpinned by an *objective* analysis of well-being and argued that, accordingly, universal interests are to be characterised as equal opportunities for *objective goods*. Since, under the interest account of human rights, the nature of universal interests shapes the nature of the duties correlative of human rights, the duties correlative of human rights are *objective* reasons for actions. The objective nature of the duties correlative of human rights entails that every moral agent *ought* to recognise them as reasons for action. No difference— be it physical, cultural, cognitive or emotional or so— provides an exemption. Rather, these reasons for action provide a normative standard: if an agent fails to recognise the value of objective interests and fails to appreciate the force of objective reasons for action, this tells us that the agent's dispositions and mental states are defective.

In order to appreciate the significance of the last point, let me once again distinguish between soft and hard constraints. Let me start with soft constraints, which, as I said, might include cultural, social or political factors. Consider the case of a woman living in an extremely patriarchal society. Imagine she is regularly battered and no one, her included, believes that there is anything wrong with her situation (Scanlon, 2003). This situation amounts to a violation of human rights and this is so regardless of the content of any cultural tradition. The content of one's cultural practices does not limit the

validity of human rights: rather, human rights provide a normative standard which constraint the acceptability of cultural practices. Indeed, it is plausible to say that the ability to recognise reasons provided by universal interests is a capacity which should, itself, be protected by human rights. So, for instance, the protection of the woman's human rights requires that she receives the education necessary for her to appreciate the value of enjoying physical security.

Consider, now, the case of hard constraints. It is possible that an agent's natural conditions might prevent her to grasp the reasons provided by universal interests. So, for instance, severe cognitive or emotional disabilities might prevent someone from understanding why torture is bad. Notice, however, that in this case we would not consider the individual to be a *moral agent*: rather, we would think that he is so severally ill that he does not carry responsibility for the way he acts. The individuals who are exempted from appreciating the value of universal interests are the ones whom we do not consider bound by moral norms. This is of course consistent with the Universal Scope Thesis, according to which positive duties correlative of human rights are held by every *moral agent*, except in cases in which agents are prevented from performing specific actions by constraints which they cannot modify.

#### **Part IV Why universal provide agent-neutral reasons**

In this part of the chapter I focus on a second way in which the account of well-being offered in Part I informs the nature of duties correlative of human rights. In particular, I concentrate on the *agent-neutrality* of the value of well-being.

Traditionally, teleology has been associated with agent-neutrality: it was assumed that

value was not affected by the identity of the evaluator, so that the fact that something is valuable and how valuable it would be independent of whom is formulating the evaluative judgement. It might then seem that in so far as the interest account of human rights is a teleological theory, it should start from the assumption that value is agent-neutral. However, this long-standing assumption has been recently challenged, in so far as some have sought to reconcile teleology with agent-relative reasons.

The classic formulation of the distinction between agent-relative and agent-neutral reasons is the one offered by Nagel, who suggests that agent-relative reasons are reasons which contain an essential reference to the person who holds them, while agent-neutral reasons can be given a general form which does not include an essential reference to the person who has them (Nagel, 1986). The three main types of agent-relative reasons are: constraints, i.e. the prohibition to perform certain actions; permissions, i.e. the possibility of pursuing one's own personal projects and interests, even if greater good overall could be done in some other way; and special obligations, i.e. the particular obligations that we have in virtue of our own individual circumstances and history (Kagan, 1992; Portmore, 2001). Some teleologists are eager to find a space for agent-relative reasons, since they believe that these reasons capture a very important part of common sense morality. Since teleological moral theories are committed to the thesis that reasons are determined by values, the only way to reconcile teleology with agent relative reasons is by defending the thesis that there are agent-relative values. Accordingly, much current debate among teleologists is currently focused on whether value is an agent neutral or an agent relative property (Sen, 1982, 1993; Regan 1983; Portmore, 2001, 2003; Schroeder, 2007; Broome, 2004). In order to address the issue of agent-relativity of value, we thus need to focus on this debate.

The possibility of an agent-relative value has been put forward by Sen, who outlined a theory of ‘positional objectivity’ according to which value depends on the position from which it is evaluated. Evaluative judgements would then be similar to judgements of the form ‘From here, the sun and the moon look similar in size’. Importantly, he does not reject the idea that value is an objective property, in the sense that it is mind independent: it does not have its source in the mind, nor it is peculiar to an individual subject. What we objectively observe is how the ‘object appears from a specified position of observation’ which is specified according to ‘positional parameters’, including any condition that may influence observation, and can apply parametrically to different persons (Sen, 1982, p127). Similarly, Portmore suggests that “The statement "S2 is better than S1" is objective in the same sense that the statement "The sun is setting" is objective in the sense of intra-positional invariance” (Portmore, 2001).

I here wish to defend the thesis the value of well-being is agent-neutral. I only focus on the value of *well-being*: I will not consider, that is, impersonal values, such as for instance the value some attribute to the environment, art or equal distribution regardless of the way they affect well-being. Specifically, I will focus on *human* well-being. Since I focus on human well-being and not on human status, there is nothing in what I will say that cannot be extended to other types of well-being, such as animal well-being or the well-being of other conscious creatures. However, this dissertation focuses on human rights and I shall thus remain in the sphere of human well-being and human rights.

To begin with, let me start with a distinction: the one between intrinsic and extrinsic properties. An intrinsic property is a property something has purely in virtue of the way

it is. Conversely, an extrinsic property is a property that something has in virtue of the way it interacts with the world. Take, for instance, two physical properties: mass and weight. Mass is the amount of “matter” that constitutes a body, while weight is the force experienced by an object due to gravity. So, mass is an intrinsic property, while weight is an extrinsic property. What I want to show is that the value of well-being is an intrinsic property.

A brief reflection on the issue will show that the thesis that the value of well-being is intrinsic is strongly supported by our intuitions. The thought is the following: whether someone’s life is going well or badly is something that matters and it is worthy of concern in *itself*, regardless of any external factor. While I believe that this is an intuitive claim, a brief thought experiment might help focusing on our value judgements. Imagine a world which simply contains a human being, and nothing else. Let us focus on a good which does not (conceptually) require the interaction with other factors: the enjoyment of freedom from pain. The question now is, would it matter if the person in this empty world were in pain or not? Would it be better if she were free from pain? Would it be very bad if she were in excruciating pain, and so on? It seems to be difficult to deny that it would be very bad if the person in the empty world were in excruciating pain and it would be better if she were free from pain. To formulate judgements about the fact that her well-being is important we need not know anything about how it relates to any other feature. In fact, we need not even add other features to that world: it can be an empty world, with just a person in it. Already, this is a world with a certain value. So value is a property that well-being has simply in virtue of what it is: it is an intrinsic property. This means that it does not depend on the existence, let alone the position, of any observer. Sen and Portmore’s thesis of positional objectivity

is thus not an adequate account of the objective nature of well-being.

It is here worth addressing a worry. In his article ‘Can an Act-Consequentialist Theory Be Agent Relative?’ Portmore suggests that the assumption that value is agent-neutral comes from the conflation of two separate distinctions: the one between intrinsic and extrinsic value and the one between fundamental and instrumental value. He holds that the second, but not the first distinction, is relevant to teleology: teleology is concerned with fundamental values, but should not be limited to intrinsic goods, since this ‘would exclude [...] a whole class of goods, namely, extrinsic goods. Yet the consequentialist is always concerned with whether or not something is good. The source of that goodness- whether it derives from its own intrinsic nature or some other source- is irrelevant.’ (Portmore, 2001, p370).

However, this alleged explanation of the assumption is misconceived, for two reasons. First of all, it is not true that teleological theories should only be concerned with fundamental values. Teleological theories ought to offer an account of how values determine reasons for action. As I pointed out above, fundamental values are outside the control of agents: some goods are outside *anyone’s* control, in the sense that they cannot be guaranteed by either the agent or anyone else (for instance, health cannot be guaranteed by anyone, since it might be prevented by incurable illnesses or handicaps). Moreover, the possession of all goods is conditional to the agent being in certain states and performing certain actions. Finally, some goods can only be ensured by the action of specific people (such as. friends, parents, lovers, etc) yet give reasons to a wider set of agent. As I argued, this means that duty-holders have reasons to protect *instrumental interests*- i.e. opportunity for goods.

Secondly, and more closely related to the issue of agent-neutrality, Portmore's point relies on an equivocation. Portmore focuses on the extrinsic and intrinsic nature of *goods*. But what is at stake is the nature of the *value* of these goods, not the nature of the *goods themselves*. It is plausible that some goods are extrinsic. In fact, as I said, this is clearly the case in the account here defended. I here endorse the thesis that well-being consists in the enjoyment of certain states and activities; the performance of some of these activities and the obtainment of some of these states depend, at least in part, on the way the agent interacts with the world. So, for instance, knowledge depends on the interaction with truth and friendship depends on the interaction with other people. Accordingly, the related goods are extrinsic. However, this is not what is at stake. What is at stake is whether *value* is an intrinsic property. So, the question is whether an agent's enjoyment of knowledge and friendship is valuable in virtue of what it is, or in virtue of how it relates with the world. And, as I argued, well-being is valuable for what it is: the value of well-being does not depend on the relation between well-being and other factors. Accordingly, it does not depend on the relation between well-being and the agent evaluating the value: the value of well-being is thus agent-neutral. The nature of the fundamental interests determines the nature of the corresponding opportunities for goods: accordingly, the agent-neutrality of well-being implies that universal interests are agent-neutral values. Finally, since the nature of universal interests shapes the nature of the duties correlative of human rights, we can conclude that duties correlative of human rights are agent-relative reasons.

#### **Part V The final step: an argument from exclusion**

In this final step, I argue that universal interests justify universal duties. To do so, I set

up an argument from exclusion. As I said in Chapter One have three mutually exclusive and jointly exhaustive theses about the scope of positive duties correlative of human rights: the No Scope Thesis, the Limited Scope Thesis and the Universal Scope Thesis. In Part II I argued that universal interests justify positive duties; moreover, as I argued in Part I, the account of universal interests here provided enables us to say that there are no hard feasibility constraints to the protection of these interests: this allows us to put the No Scope Thesis on the side. I now focus on the Limited Scope Thesis and outline two mutually exclusive and jointly exhaustive ways in which this thesis can be specified. My aim is to show that, given the nature of the universal interests, both specifications of the thesis are untenable and thus conclude that the Universal Scope Thesis is true.

Let us then assume, *ex hypothesis*, that the Limited Scope Thesis is true. This means that the set of duty holders is a subset of the wider set of moral agents. But how is this subset defined? What is the property which picks out the set of duty-holders? The subset of duty-holders can be picked out either by a general or by a particular property. General properties are properties that do not include any reference to particulars. They are properties such as: 'being red', 'being tall', 'being German', 'being a teacher'. Conversely, particular properties are properties that contain reference to particulars. They include properties such as: 'being Paul', 'being my pen', 'being my co-national', 'being the person I love the most'. Let us then consider these cases in turn.

Let me start with particular properties. There are two types of particular properties: proper and indexical (Firth, 1952). Proper particular properties are those properties which cannot be defined without the use of proper names, such as 'being Paul' or 'being

Paul's brother'. The thesis that the subset of duty-holders is defined according to proper particular properties amounts to the claim that the set can only be defined by identifying individual particular persons. This is clearly and implausible thesis, so I shall leave it aside. Conversely, it is extremely important to focus on the case of indexical properties. Indexicals are linguistic expressions whose reference shifts from context to context: some paradigm examples are 'I', 'here', 'now', 'today', 'he', 'she', and 'that' (Braun, 2007). Accordingly, indexical particular properties are those properties which cannot be defined without an essential reference to the speaker. So, for instance, properties such as 'my son', 'my co-national' or 'the person who lives in my country' are indexical properties. The thesis that duty-holders are identified by indexical properties can be reformulated in very familiar terms: it is simply is the thesis that these duties constitute *agent-relative reasons*. The argument presented in Part IV above shows that this thesis is false, so we can rule out this option.

Let us now consider general properties. According to this thesis, there is some general property which picks out a subset of duty-holders. However, as I argued in Part III the duties correlative of human rights are objective reasons for actions. This means that every moral agent *ought* to recognise them as reasons for action. Hence, no general property- be it physical, cultural, cognitive or emotional or so - selects a subset of duty holders. Since there are neither particular nor general properties which constrain the scope of the positive duties correlative of human rights, we can thus conclude that the Limited Scope Thesis is false. Accordingly, positive duties correlative of human rights have universal scope.

In this chapter I focused on universal interests and argued that the nature of these

interests provides us with an argument in support of the Universal Scope Thesis. I shall now focus on the other concepts underpinning the analysis of human rights: the correlative duties. In the next chapter I argue that the analysis of these duties provides us with a second argument in favour of the Universal Scope Thesis.

**CHAPTER FOUR A second argument for the Universal Scope Thesis: an analogy with the scope of negative duties**

**Part I The scope of negative duties**

The argument presented in this chapter focuses directly on duties correlative of human rights and it is an argument by analogy: I start from the assumption that negative duties correlative of human rights are universal. I then argue that negative and positive duties correlative of human rights are closely analogous in so far as they are justified by the same interests and perform the same role in our moral thinking. I consider some possible dis-analogies between the two kinds of duties and point out that they only have a *prima facie* plausibility. I then conclude that positive duties correlative of human rights are universal.

The first step consists in pointing out the similarities between positive and negative duties. The crucial point is that both types of duties fulfill the same *function*: they protect universal interests. Moreover, since in the framework of the interest account of rights, duties are grounded in interests, positive and negative duties are *justified* by the same values. We can distinguish two levels of analysis. First, they protect the same *kind* of interests, since both positive and negative duties protect universal interests. Secondly, they protect the same *token* interests. It is often thought that positive duties correlative to positive rights and negative duties to negative rights. However, this is far from being the case. Consider, for instance, the interests protected by the so called welfare rights, such as the opportunities for health and education. These interests justify both positive and negative duties: they justify a positive duty to provide goods and services; but also, for instance, a negative duty not to deprive others of these goods and service. Similarly,

consider the interests protected by the so-called liberty rights: the opportunity to be free from pain and slavery or to participate to political life. These interests justify negative duties not to torture, enslave or violently prevent political participation; but they also justify positive duties to provide police forces, criminal courts, voting facilities, etc. (Shue, 1996; Fabre, 1998).

The second step consists in pointing out that negative duties correlative of human rights are universal. This is an uncontroversial statement. So, for instance, it is uncontroversial that everyone has a duty not to torture or enslave anyone else. Each human being's human right not to be tortured is correlative to everyone's duty not to torture; similarly, each human being's human right not to be enslaved is correlative to everyone's duty not to enslave, each human being's human right to nutrition is correlative to everyone's duty not to deprive him of food and so on. The third step consists in pointing out that if negative duties are universal and positive and negative duties are similar in very fundamental respects, then, by analogy, this tells us that positive duties are universal.

I should here probably clarify that I do not expect the argument to sound already conclusive at this stage. This is because our common sense understanding of duties is characterized by a deep dichotomy which sharply distinguishes positive from negative duties. This dichotomy is likely to make the reader inclined to think that the similarity of function and justification of positive duties correlative of human rights is not sufficient to determine a similarity in scope. However, the crucial move here is to shift the burden of the proof. The argument by analogy starts by pointing out the striking fact that, in order to protect universal interests, we are *all* required not to act in certain ways. Hence, we already accept that the interests protected by human rights are important

enough to ground universal reasons for action. This is uncontroversial. Hence, what needs to be explained is why, such important interests would be able to ground universal negative duties, but not positive ones: why, if we are *all* required *not to* act in ways that violate these interests, are we not *all* required *to act* in ways that protect them? The burden is now shifted: it is the objector's task to find dissimilarities between positive and negative duties which explains the difference in scope. In what follows I consider the most plausible candidates and argue that they cannot ground objection to the Universal Scope Thesis here defended.

### **A preliminary clarification: acts and omissions**

Let me start by making a preliminary remark. It concerns the moral difference between actions and omissions- between doing something and letting something happen. Many think that acts and omissions have a different significance: being causally responsible for a bad state of affairs is worse than letting a bad state of affairs occur. So, for instance, killing is worse than letting die. The debate concerning the moral significance of the difference between acts and omissions is a very complex one, and it is not possible to address it in the space of this paper<sup>22</sup>. However, in order to meet the worry we need not engage with the debate, but we can rather clarify its (limited) significance for the issues at stake. The crucial point is that the distinction between acts and omissions concerns the strength of reasons, not their scope. The thesis that there is a moral difference between acts and omissions entails that, when considering the prospect of a violation of the same interest, negative duties are stronger than positive duties. However, this is perfectly compatible with the thesis that *everyone* holds both the positive and the negative duties. Accordingly, one can hold that there is a difference

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<sup>22</sup> For a treatment of the issue, see Foot, 1972, 1978, 1985; Thomson, 1986; Lichtenberg, 1982; MacMahan, 1993

between acts and omission and still argue that positive duties correlative of human rights are universal<sup>23</sup>.

## **Part II The Feasibility Objection**

Let me then consider how one might object to the argument by analogy presented in Part I. The first objection concerns the different feasibility of these two kinds of duty. The objection runs as follows. On one side, it is always feasible to fulfill negative duties: the fulfillment of negative duties requires the abstention from certain actions and it is always feasible for an agent *not to* perform an action. An agent can always restrain from torturing, enslaving and so on. Conversely, it is not always feasible fulfill positive duties: the fulfillment of positive duties requires performing certain actions. But the performance of many actions requires meeting certain material conditions. So, for instance, providing food or health services requires one to have the requisite good- such as food and medicines. Moreover, it requires being able to physically reach the recipient of the distribution in order to deliver the relevant goods. The problem is that sometimes these conditions cannot be met: one might, for instance, not have enough food to give to everyone or it might be the case that there simply is no medicine for some of the illnesses which afflict people.

The strength of this argument 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* universal interests. This seems to lead to implausible consequences. Onora O'Neill argues 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

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23 Indeed, Simon Caney holds this position in his article 'Global Poverty and Human Rights: The case for positive duties' (Caney, 2007).

obligation to feed the hungry cannot be a universal obligation” (O’Neill, 1986, p 101-102). In ‘Towards Justice and Virtue’ she argues that positive duties correlative of human rights cannot be universal “if only because agents are embodied, hence spatially and temporally dispersed, so not all of them can have the access to one another that universal ‘positive’ intervention would demand” (O’Neill, 1996 p130). Shue similarly argues that feasibility poses limits to the scope of positive duties. He holds that “If a universal right to food meant that I ought to provide something toward the nutrition of every hungry child, [then presumably I would have to invest] at least one penny on behalf of each child”. However, “the number of hungry children in the world times one penny is [...] far more than any ordinary person is worth.” So while some “fabulously wealthy folks could manage to provide some assistance to each child [...] most of us literally cannot” (Shue, 1988 p 689).

In order to address this objection, let me start by the remarks I outlined in Chapter One. In that chapter I distinguished between abstract and concrete rights (to the effect that concrete rights consist in the application of general rights to specific circumstances) and between soft and hard feasibility constraints (to the effect that we have the power to change the former but not the latter type of constraint). Let me now interpret Shue’s and O’Neill’s worries in light of these distinctions. On one side, the Feasibility Objection might be interpreted as arguing that there are ‘soft’ constraints limiting the scope of the duties correlative of human rights. This option does not sit very well with the constraints mentioned by O’Neill and Shue in their objections, since these writers seem to be more concerned with ‘hard’ constraints than ‘soft’ one- i.e. with cases of physical impossibility, rather than economic, political or cultural one. However, some remarks (especially the ones presented by Shue) can be interpreted as worries about economic

and political circumstances and, therefore, ‘soft’ constraints. Either way, as I have argued in Chapter One soft constraints do not prevent the existence of duties to protect universal interests: in the case of abstract rights, they are simply not relevant, since these rights protect universal interests regardless of specific circumstance; in the case of concrete rights, soft constraint might influence the content of the duties, but do not constrain their existence, since we have the power, and thus the duty, to change these constraints in the long run. Accordingly, we have *all* have short term duties to protect universal interests given the economic, social and political circumstances we face and long term duties to modify the present economic, social and political constraints which impair the protection of universal interests.

Alternatively, the Feasibility Objection might be interpreted as arguing that there are ‘hard’ constraints limiting the scope of the duties correlative of human rights. This option seems more in line with O’Neill and Shue’s remarks. However, the distinction drawn above once again helps us meeting this challenge. As I argued in Chapter One, a satisfactory theory of human rights ought to provide an analysis of universal interests which ensures that it is logically, metaphysically and physically possible to protect these interests with duties. The account offered in Chapter Three above ensures that this desideratum is met: as I argued, outlining universal interests in terms of *opportunities* for goods ensures that there are no hard constraints to the fulfilment of these interests. Finally, I accepted that hard feasibility constraints do limit the scope of duty-holders of duties correlative of concrete human rights. Hence the thesis here defended is that ‘Everyone bears the positive duties correlative of each person’s human rights, *except* in cases in which agents are prevented from performing specific actions by constraints which they cannot modify.’

It might then seem that, regardless of how we interpret the Feasibility Objection, the considerations outline in Chapter One allow us to meet the challenge. Yet, there is a further, more complex, worry that needs to be addressed. The issue concerns the case of hard constraints on duties correlative of concrete rights. While the Feasibility Objection might not disprove the thesis here endorsed, it might still significantly reduce its significance. This is because, while it might be *possible* to meet the Feasibility Constraint, it is not clear that many agents do. Plausibly- the objection goes- most people do not, in so far as *most or many* agents are prevented from performing specific actions by constraints they cannot modify. If this is the case, then the Feasibility Objection successfully proves that the Universal Scope Thesis is not particularly significant, since it does not really show that most moral agents hold the positive duties correlative of concrete human rights.

In order to respond to this objection we need to expose a set of misconceptions concerning the duties. The crucial insight is the one I outlined in Chapter Two, when presenting an objection to Wenar's version Limited Scope Thesis. Recall that I pointed out that Wenar's account was misconceived because, only focuses on single individuals and descriptions. In so doing, it does not consider the fact that interests can be protected through *aggregate* efforts: though the interaction of different individuals and categories of individuals. The feasibility objection implicitly relies on the same individualistic mistake: it assumes that positive duties correlative of human rights are only duties to individually protect universal interests. But this is a false assumption. The individual protection of an interest is not the only way to ensure that an interest is fulfilled: it is possible to outline two further ways in which an agent can protect the interest. First, the action might be an action which enables someone else to protect the interest. Let us call

this a causal chain positive duty. Secondly, the action might be an action which protects the universal interest when taken in conjunction with other actions. Let us call this a collective action positive duty<sup>24</sup>.

Let us start with the causal chain positive duty. There are here two options. First, one could enable the agent to protect the interest himself. So, for instance, economically empowering women might be the best way to ensure that they are not victim of psychological abuse (Shue, 1993). Secondly, the action might be an action which causes or enables someone else to protect the interest. So, for instance, educating mothers might be the best way of protecting children's health. Enforcing the negative duty not to torture might be the best way of upholding people's right of freedom from torture.

Let us now consider the collective action positive duty. To do so, let me start by recalling a previous observation: in Chapter Two I outlined O'Neill's claimability objection, according to which positive duties of assistance are not correlative of human rights; this is because, O'Neill argues, positive duties of assistance are imperfect and human rights only correlate with perfect duties. I then presented Ashford's reply to this objection, in which she puts forward three putative cases of imperfect negative duties correlative of human rights. When presenting Ashford's reply, I pointed out that her argument would have proved useful in formulating one of the arguments in favor of the Universal Scope Thesis. We can now see why this is the case: Ashford focuses on what I called "collective harms"-i.e. cases in which the aggregation of small individual harms can result in harm serious enough to count as a human right violation. We can though "reverse" her argument and outline an account of "collective benefits"- i.e. the ways in

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<sup>24</sup> Notice that I am here still endorsing the strong reading of protection, according to which if one has a right to a universal interest, then the duty-holders have the duty to ensure that the universal interest is fulfilled

which group action can result in a benefit weighty enough to result in the protection of universal interests. Starting from Ashford account of additive direct harms, multiplicative direct harms and indirect harms, we can thus provide an account of additive direct benefits, multiplicative direct benefits and indirect benefits.

The case of indirect benefit is the most obvious: we have a duty to set up and support just institutions. The case of additive benefits is almost as obvious: a clear example is provided by the taxation schemes that enable collectives to set up and running hospitals, schools and social services. These goods and services are so complex that each individual would not be able to provide these goods by himself- however, the sum of small contributions of many individuals ensure that there are enough resources to set up the relevant services. Finally, it is arguably the case that, in many cases, the collective effort leads to multiplicative benefits: that the aggregate benefit exceeds the sum of benefits. The discussion of Shue's proposal can help us clarifying this point. Recall what I called the "Task Division" of labor, according to which in order to achieve a given goal, one allocates people different tasks- so that each duty holder (or group of duty holders) performs a different kind of action, which, together with other the actions performed by other duty holders will ensure that all the right holders receive the necessary goods and services. When labor has been divided according to different tasks, the duty holders constitute a chain and each participant magnifies the benefit caused by other agents. Take the case of health-services: we have researchers, doctors, nurses, administrative staff and so on. Each is performing a task which magnifies the benefit caused by other agents, so that, at the end, they can ensure that hospital is running. The "Task Division" of labor is thus an example of multiplicative benefits.

Finally, it is important to go back to the point about claimability brought about by the discussion of O'Neill's argument in Chapter Two. When replying to O'Neill's argument I argued that claimability is a matter of degree and that complete claimability of a duty is not an existence condition of a right. I held that the positive duties correlative of human rights are specified enough in so far as set of beneficiaries is completely specified: we ought to respect everyone's human rights. After providing an account of universal interests in Chapter Three, we can now also provide a better specification of the actions- we ought to protect interests that:

a. would bring about a benefit which

- (i) brings her opportunity for a good closer to the level of equality or
- (ii) increases her opportunity level without decreasing others'

b. if not protected would bring about an harm which

- (i) lowers the level of her opportunity for the good below the level of equality or
- (ii) decreases her opportunity level without increasing others'

Notice, moreover, that since this account is based on a "strong" reading of protection, this provides a precise description of the goal: doing something towards the fulfillment of these interests: rather, we ought to ensure they are fulfilled.

Agents, then, can act in order to protect universal interests individually or collectively- through causal chain benefits, additive direct benefits, multiplicative direct benefits, and indirect benefits needed to safeguard the interest protected by human rights. Once we stress the variety of ways in which it is possible to fulfill the relevant conditions, it is clear that only very few people will not meet the constraint. Notice, moreover, that the distinction between long term and short term duties drawn in Chapter One allows us to further specify two levels at which it is possible to apply these considerations.

Accordingly, the distinctions here drawn apply to *both* short term duties to protect universal interest given the present economic, social and political circumstances *and* the long term duties to modify the present economic, social and political constraints which impair the protection of universal interests. The Feasibility Objection is thus not a threat to the Universal Scope Thesis.

### **Part III The Cost Objection.**

One might then think that the objection voiced by Shue and O'Neill is best expressed in terms of costs and point to the difference in the costs of negative and positive duties. Shue seems to be pointing in this direction when he claims that "All that I give up in performing a negative duty are opportunities to do or to take what I have duties not to do or take. 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, p689). This interpretation is also pursued in secondary literature on Shue's work: Lichtember, for instance, interprets Shue's worries in term of "over demandingness" (Lichtember, 2009; Murphy, 1993). O'Neill, too, moves towards this direction in her recent work, when she stresses that the fulfillment of positive duties requires extremely complex arrangements which "can be dementing for the institutions and individuals that are to carry the first-order obligations." And that "requirements for control and accountability impose heavy human and financial costs, and are often damaging to the performance of primary tasks." (O'Neill, 2005)

The core thought is the following. Human rights are universal, so that their correlative duties protect everyone's universal interests. However, so the objection runs, the cost-implications are very different in the case of negative and positive duties. The fact that

negative duties are universal entails that we have *not to* perform certain actions *against* everyone. But this is not, so to speak, too bad: what it really amounts to is refraining from performing certain really bad types of actions. The case of positive duties is very different. If positive duties are universal, it means that we have to *perform* certain actions *for* everyone: we have to give everyone food, education, and so on. The implicit assumption behind this objection is that, on one side, the cost of *not performing* an action stays constant regardless of the number of people against which we do not perform this action; on the other, the cost of *performing* an action increases with the number of beneficiary of the action. This creates a mismatch between the cost of negative and positive duties. In particular, the objection runs, the fact that human rights are held by all human beings makes it implausible to hold that everyone has the positive duties correlative of human rights. There are more than six billion people on the planet: it is just not plausible to think that each one of us has the duty to feed, or provide education for each one of these six billion people.

It should be pointed out that, as I stressed in Chapter One, considerations of cost do not constrain the existence of duties correlative of human rights. Hence, the cost objection does not provide an objection to the Universal Scope Thesis. However, they surely influence what an agent has as all things considered reason to do. So, if we found that the positive duties correlative of human rights were extremely costly, this would provide an indication of the fact that they are always or at least often “out-weighted” by cost considerations and thus never, or rarely, provide all things considered reasons for action. This would considerably reduce the significance of the Universal Scope Thesis, and this is why it is crucial to address this objection.

This worry can be addressed by unmasking two false assumptions: one concerning the nature of positive duties, the other concerning the nature of negative duties. Let me start with the former. First, this objection implicitly relies on the same assumption that underlies the Feasibility Objection: the assumption that positive duties are only duties to individually directly protect universal interests. But, as I just argued, this is false. Once this has been clarified, we can now see that we also ought to consider the cost of protecting the interest in various other ways: through causal chain benefits, additive direct benefits, multiplicative direct benefits, and indirect benefits. Of course the issue of costs then becomes completely different. The problem can no longer be reduced to how costly it is to individually directly provide a good or a service, but rather requires of evaluating the costs of the many different ways in which it is possible to protect the interest.

Let us now consider the assumption concerning negative duties. It is generally assumed that negative duties are not very costly or, in any case, less costly than positive ones. This is because it is generally thought that refraining from performing an action is less costly than performing an action. Yet, this is simply not true. Imagine the following case: John, Carl and Carl's child have been kidnapped by a sadistic man, who tells Carl that, if Carl does not torture John, he will kill the child. Clearly, in this case, not performing the action is more costly than performing it: it comes at the cost of the child's life. But we need not create fancy cases: imagine I realized I dropped my wallet in the bin. I know where it is, and I can easily go and pick it before the bin is emptied. Here, too, the cost of not acting is clearly higher than the cost of acting. The point is that, on any plausible interpretation, the cost of an event is affected by the effect that the resulting state of affairs has on the well-being of the agent. So, when someone has to

assess the cost of acting, he ought to consider how well-off he will be if he acts; when someone has to assess the cost of non acting, he ought to consider how well off he will be if he does not act. But there is no reason to believe that the states of affairs in which one does not act will be better, for one's well-being, than the states of affairs in which one does act. There is thus no reason to believe that acting is always more costly than non acting and, accordingly, no reason to think that positive duties are more costly than negative ones.

However, one might still object, that, while there is no analytical reason to think that the cost of positive duties will be higher than the cost of negative duties, we surely have an empirical one. Surely, we are still left with the fact that there is a mismatch between positive and negative duties correlative of human rights. Cases like Carl's are- to say the least- not the norm. Most of the time, refraining from killing or torturing people does not have particularly bad effects on one's well-being. As Shue puts it "I can easily leave alone at least five billion people, and as many more as you like" (Shue, 1988 p 690). Hence, regardless of the many ways in which it is possible to collectively fulfill positive duties, there still is a difference between positive and negative duties correlative of human rights.

However, this empirical assumption too is false. To understand why, we need to go back to Ashford's account of collective harms and simply point out that these harms are extremely widespread. We live in a highly globalized world, in which what we do has deep impact on an extremely high number of people. Many of our actions are likely to affect others' economic, political and environmental conditions. The way we vote, what we buy, what we eat, the means of transportation we use: all these factors, and many

others, when aggregated can have very negative implications for the life of people across the world. Let me go through some examples. Consider the first type of harm, additive harms: recall that this kind of harm obtains in cases in which each the agent's action, by itself, does not cause a serious harm to any particular victim, but the cumulative behavior of a set of agents results in an extremely serious harm. Examples of this kind of harm include, for instance, the harm caused by buying products made in sweatshops or through child labor, the environmental damages caused through eating factory-farmed meat, using plastic bags or taking flights. While taken by themselves these actions only cause small harms, taken together they provoke extremely serious damages. (Lichtenberg, 2010) The second type of harm –multiplicative harm– obtains when the agent's action magnifies the harm caused by other agents. Pollution is a very strong case of this type of harm: when combined, polluting substances might cause more damage than they would cause when taken separately (Pogge, 2005). The third type of harm– indirect harm– occurs when harm is caused through institutions. Examples of such harms are the harms caused by “resource” and “borrowing” privileges, which allow illegitimate political leaders to sell natural resources and to borrow money in the name of the country and its people (Pogge, 2002).

This shows, as Lichtenberg points out, that “fulfilling negative duties may require that we modify practices integral to our daily lives. Not least of these duties will be learning which of our routine activities are unacceptable [...] These tasks alone will be costly and time-consuming” (Lichtenberg, 2009). The present degree of interconnection and the way it pervades our daily lives strongly suggests that the difference in costs of positive and negative duties is a misguided empirical assumption. The Cost Objection thus fails to provide a challenge to the argument by analogy in favor of the Universal

Scope Thesis. We can thus conclude that the argument by analogy between positive and negative duties supports the claim that, except in cases in there are constraints we cannot modify, we are *all* required *to act* in ways that protect universal interests.

## CONCLUSION

In this dissertation I addressed the issue of the scope of positive duties correlative of human rights. I defended the Universal Scope Thesis, according to which every moral agent bears the positive duties correlative of each person's human rights, except in cases in which agents are prevented from performing specific actions by constraints which they cannot modify.

After outlining my assumptions and presenting the thesis defended in the dissertation, I considered the most influential alternative answers to the research question. I assessed three alternative accounts presented in the literature: O'Neill's defense of the No Scope and Shue and Wenar's versions of the Limited Scope Thesis. The analysis of the problems faced by these accounts has brought out important insights, which I have later used to support Universal Scope Thesis. In particular, it has emerged that an adequate analysis of duties should consider what duty-holders can achieve when they join forces and act together in order to ensure that each person's universal interests are protected.

The first argument I presented in support of the Universal Scope Thesis focused on the nature of universal interest. I started by putting forward an account of the necessary and sufficient conditions that an interest has to satisfy in order to justify a human right. I argued that human rights protect equal opportunities for objective goods and that these interests justify positive duties. I then presented an argument from exclusion in favour of the Universal Scope Thesis: I argued that the agent-neutrality and objectivity of the value of well-being allow us to claim that positive duties correlative of human rights are held by all moral agents.

Drawing these conclusive remarks, it is worth underlining the advantages of the account of universal interests defended in this dissertation. First, it captures the normative force of human rights, as it assumes that duty-holders ought to *ensure*, rather than simply promote, that fulfillment of right-holders' interests. Secondly, it respects our intuition that human rights protect a variety of different interest, while at the same time recognizing the special role that autonomy plays in defining human right claims. Thirdly, it grounds a plausible account of the set of human-right holders, in so far as it ensures that vulnerable groups, such as children, mentally disabled and comatose people do have human rights. Fourthly, it provides an explanation of the exceptional role played by human rights, since considerations of basicness, priority ad magnitude allows us to distinguish more and less important universal interests and to ensure that, in case of conflict among them, human rights protect the most morally important ones.

Finally, I put forward an argument by analogy in support of the Universal Scope Thesis. Here I focused directly on duties correlative of human rights: starting from the assumption that negative duties correlative of human rights are universal, I argued that negative and positive duties correlative of human rights are closely analogous and positive duties correlative of human rights therefore have universal scope. I then held that, while it might seem that feasibility and costs constrain our positive duties, these worries can be dispelled once we realize what duty-holders can achieve by acting together.

It is once again useful to recapitulate the advantages of the account proposed, this time focusing on the side of correlative duties. First, the account here proposed clarifies the

feasibility condition, distinguishing between soft and hard constraints. Secondly, it allows us to adequately grasp the significance of the claimability condition, and the requirements it sets on the specification of duties. Thirdly, it enables us to give an account of both abstract and concrete rights. Fourthly, it goes beyond a purely individualistic approach to duties and it captures the normative significance of aggregating harms and benefits. Fifthly, it unmasks some of the false assumptions which underpin the widespread dichotomy between positive and negative duties.

This research has opened up new questions, which it was not possible to address in the space of this dissertation. The interest account of human rights relies on the thesis that interests are explanatory prior to duties. Following this insight, I have argued that, in order to fully capture the nature of duties correlative of human rights, we need to focus on the concept of well-being. An important part of the argument presented in this dissertation consists in drawing out the different ways in which the objectivist Aristotelian account of well-being informs the concept of universal interests and, in turn, the duties to protect these interests. However, more work needs to be done in this respect: first of all, it is necessary to provide a fuller explanation of the connection between human capacities and goods; secondly, it is worth exploring the relation between the structure of human capacities, the “basicness” of different types of goods and, relatedly, their moral importance.

Presenting the claimability objection, I recognised that there are countless ways in which it is possible to fulfill positive duties correlative of human rights. I then pointed out that it is not clear that the choice between them is- so to speak- “morally neutral”, since we ought to take into account other moral considerations, including how

effectively the selected system protects the right holder interests, whether it respects other non-human rights, or whether it complies with other non-right based moral requirements. While I could not pursue this line of inquiry in this thesis, for reasons of space, I believe that it is worth stressing the importance of this area of investigation.

Similarly, it is extremely important to explore the institutional repercussions of the argument here presented. Part of my argument relies on the possibility of protecting universal interests through collective actions. However, the performance of collective actions requires solving coordination problems and the solution of these problems plausibly requires setting up common institutions which can enforce shared rules. Fulfilling the positive duties correlative of human rights might then require setting up and upholding the institutions needed to enable the relevant collective actions. Following this line of argument, it would be worth exploring whether respecting human rights requires us to set up and uphold global institutions. Given the special role that human rights play in the current political and social scenario, they can be a very strong tool for change. The development of a coherent theory of human rights is thus arguably one of the most important contributions that political and legal philosophy can make to the current political and legal practice.

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