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Beyond the Political–Orthodox Divide

The Broad View

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The current debate in philosophy about the concept of (moral)[1] human rights is split between two camps.[2] Orthodox theorists claim that human rights are those individual moral rights that we possess merely in virtue of our humanity.[3] Political views contend that human rights are those individual moral rights (or morally urgent interests)[4] whose violation (primarily) by states makes sovereignty-overriding interference or

[1] In this chapter, I focus on the question of what *moral* rather than *legal* human rights are. It is a further question what the relation between legal and moral human rights ought to be. See A. Buchanan, *The Heart of Human Rights* (Oxford: Oxford University Press, 2013) for the importance of drawing this distinction, and A. Sangiovanni, *Humanity without Dignity: Moral Equality, Respect, and Human Rights* (Cambridge, Mass.: Harvard University Press, 2017), ch. 5, and A. Sangiovanni, 'Are Moral Rights Necessary for the Justification of International Legal Human Rights?', *Ethics & International Affairs* 30 (2016): 471–81 for an evaluation.

[2] This chapter is reprinted, with permission, from Sangiovanni 2017, Ch. 4.

[3] J. Tasioulas, 'The Moral Reality of Human Rights', in *Freedom from Poverty as a Human Right*, ed. T. Pogge (Oxford: Oxford University Press, 2007); J. Griffin, *On Human Rights* (Oxford: Oxford University Press, 2008).

[4] This is Beitz's preferred formulation. See C. Beitz, *The Idea of Human Rights* (Oxford: Oxford University Press, 2009), esp. ch. 6. The distance between a morally urgent interest and a moral right seems, however, less wide than we might otherwise believe if we assume that what makes an interest 'morally urgent' is not (merely) how important it is for the agent but how stringent the third-party duties required for its satisfaction are. We should assume the latter for the following reason. Someone might have, say, a very pressing and morally urgent interest (in the former sense) in a medical treatment that costs millions. But the mere fact of its urgency would not be enough to ground obligations for states to satisfy it (and generate reasons for the international community to be concerned when the state fails to satisfy it); the interest would not therefore provide a ground for a human right on Beitz's view. Interests must therefore be morally urgent in the different sense that they generate stringent third-party duties—falling on states and owed to the individuals whose interests they are—to protect or satisfy those interests. But if this is true, then 'morally urgent interests' would entail the existence of a moral right (at least according to the Razian notion of a right). As Beitz himself recognizes, 'not every threat to an important interest is best made the subject of a [human] right' (p. 139). From now on, in the text, I therefore drop the parenthetical reference. I thank John Tasioulas for discussion on this point.

other forms of international action (including kinds of action that are *not* sovereignty-overriding, such as international assistance) permissible or required.[5]

In this chapter, I will argue that both views face insurmountable challenges and that, even if we overlook these challenges, the debate between the two camps risks dissolving into a mere verbal disagreement. I will suggest a path for moving beyond this stalemate by defending what I will call the 'Broad View' about the concept of human rights. Along the way, I will also reject a central assumption that is shared by both views (and that in part explains how the debate has ended up). This assumption is that there is a *single* overarching practice of human rights. The primary task of a philosophical theory of human rights should therefore be to reconstruct its moral core, derive a 'master list' of human rights from that core, and then to use that list as a critical standard to reform and improve the practice. Tasioulas (who defends an Orthodox view) is a good representative of this assumption: '[Our aim is] to identify the core or focal concept, the basic normative idea that enables us to make the best sense of what we pre-reflectively identify as the . . . practice of human rights.'[6] Similarly, according to Raz (who defends a Political view), 'The ethical doctrine of human rights should articulate standards by which the practice of human rights can be judged, standards which will indicate what human rights we have.'[7] Call this the Single Practice Assumption.

Once we adopt the Broad View and abandon the Single Practice Assumption, we will be in a position to conclude that we also ought to reject the search for a philosophically grounded master list of moral human rights by which the practice as a whole can be judged. The search for a master list of human rights that will both reveal the moral unity underlying *all* of human rights practice and serve as a standard for its criticism is chimerical. But this is not to say that more contextually focused *conceptions* of moral human rights cannot be developed. The chapter ends by showing how context can matter in developing particular conceptions of human rights.

Desiderata

All Political and Orthodox views begin in the same way, namely by drawing a distinction between the *concept* (or idea or nature) of human rights and their *content, scope,* and *grounds.* Roughly, the *concept* of human rights is meant to identify what human rights are, and an account of their *content, scope,* and *grounds* is meant to tell us what rights we have, who has them, and why we have them. For both of the going approaches, the

[5] J. Rawls, *The Law of Peoples* (Cambridge, Mass.: Harvard University Press, 1999); Beitz, *The Idea of Human Rights*; J. Raz, 'Human Rights without Foundations', in *The Philosophy of International Law*, eds. S. Besson and J. Tasioulas (Oxford: Oxford University Press, 2010).

[6] J. Tasioulas, 'On the Nature of Human Rights', in *The Philosophy of Human Rights: Contemporary Controversies*, eds. G. Ernst and J.-C. Heilinger (Berlin: Walter de Gruyter, 2011), at p. 39.

[7] Raz, 'Human Rights without Foundations', at p. 321. See also Griffin, *On Human Rights*, p. 25; Beitz, *The Idea of Human Rights*, p. 8.

task of identifying the concept is taken to be primary. To specify what human rights we *have,* we need to know what human rights *are* first.

How do we decide who has the better view? There are four desiderata that any theory of moral human rights should satisfy.[8] First, human rights theories must demarcate and explain the sense in which human rights are a proper subset of the set of all moral rights *simpliciter.* If they are unable to do so, then talk of human rights is redundant; one might just as well talk about moral rights. (Call this the Subclass Desideratum.) Second, human rights theories must be sufficiently faithful to the human rights culture that has emerged since 1945 and that is captured in the main human rights instruments, such as the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR). By 'sufficiently faithful,' I mean that human rights theories must not interpret human rights to be something so alien to the dominant practices that it would count as changing the subject. The desideratum is explained by our goal: in interpreting what human rights are, philosophers take themselves to be engaged in a collective project of identification, critique, and defence that is shared with practitioners.[9] (Call this the Fidelity Desideratum.) Third, human rights theories must be able to explain why we have *good normative reason* to be *un*faithful to human rights practices in cases in which the human rights theory diverges from the culture's self-understanding. The rationale for this desideratum should be clear: the ultimate goal of a human rights theory is not descriptive and explanatory but normative and critical. Our human rights theory should therefore give us good (though not necessarily exhaustive) reasons to depart from current practices where it would improve things to do so. (Call this the Normativity Desideratum.) Fourth, human rights theories should be reasonably determinate. They should, that is, provide a set of standards that are informative enough to aid us in evaluating and improving human rights practices (including, but not limited to, the system of international human rights law). This desideratum follows directly from a general worry that human rights talk is excessively loose and free-flowing. (Call this the Determinacy Desideratum.) As I will now seek to argue, I do not believe that either the Orthodox or Political view alone can successfully meet all four. To meet all four, we must adopt the Broad View, which subsumes both as distinct applications of a broader concept adapted for different contexts.

Against Orthodox Views

There are many and diverse criticisms of Orthodox views. In this section, I will focus on two that I believe to be decisive, the first one directed at James Griffin's theory of

[8] The Subclass, Fidelity, and Determinacy Desiderata are commonly recognized. See e.g. Tasioulas, 'On the Nature of Human Rights', at pp. 18–19. The Normativity Desideratum is surprisingly overlooked, with important consequences that I discuss in more detail in the sections 'Against Orthodox Views' and 'Against Political Views'.

[9] Cf. R. Dworkin, *Justice for Hedgehogs* (Cambridge, Mass.: Harvard University Press, 2011), p. 158.

human rights and the second at John Tasioulas's. Although I cannot show that any Orthodox view must fail in the same way, I hope to provide some progress to that conclusion by directing my criticism at two of the foremost Orthodox theories currently available.

Recall that for all Orthodox theorists, human rights are those moral rights that we possess merely in virtue of our humanity. To meet the Subclass Desideratum, therefore, Orthodox views must explain what it means to possess a moral right 'solely in virtue of our humanity.' Griffin attempts to solve the subclass problem by appealing to those moral rights that are *necessary for the protection of normative agency.* But what counts as 'normative agency' in the relevant sense? There is a danger here. If Griffin identifies 'normative agency' as a fully realized capacity 'to choose one's own path through life,' as he sometimes seems to, then *all* moral rights could be construed as contributing to such a life.[10] For example, do we have a human right that others' promises to us are kept (given that promise-keeping is important to one's capacity to pursue our conception of a worthwhile life)? A human right that others not cheat on their taxes (given how important tax-paying is to the functioning of the public services on which we depend)?[11] A human right that others not steal from us (given how important the stability of external property relations is to our 'path through life')? A human right to a proportionate prison sentence (given how important the curtailment of our freedom of movement is to one's exercise of agency)?[12] Interpreted in such an expansive manner, the account would fail the Subclass Desideratum.

As a result, Griffin often emphasizes that the moral rights must be *necessary* to the protection of agency.[13] But what does 'necessary' mean in this context? Suppose we take 'necessary' as delimiting those moral rights such that, without them, we could not live a worthwhile life as agents. But then the resulting human rights theory would be implausibly narrow; even slaves, or those who have been tortured, can still live worthwhile lives as agents. Simply being tortured or enslaved doesn't render one's life worthless. Similarly, being tortured or enslaved doesn't (in most cases) make us incapable of exercising *any* agency; it just makes it much harder.[14]

Griffin is alive to these concerns and tries to address them by appealing instead to the idea of a 'minimum.' He writes: '[Human rights] are protections of that somewhat austere state, a characteristically human life, not of a good or happy or perfected or flourishing human life. . . . There is a minimalist character to human rights. . . . The element of austerity, that reference to a minimum, must not be lost.'[15] Welfare rights,

[10] Griffin, *On Human Rights*, p. 45. See also pp. 32–3.

[11] Cf. Griffin, *On Human Rights*, p. 273: 'We do not say that a man who free-rides when filling out his income tax return violates his fellow citizens' human rights; he is a cheat, clearly, but not a human rights violator.'

[12] Cf. Griffin, *On Human Rights*, p. 273: 'Nor do we say, of a woman given an unjust prison sentence, either too little or too much, that her human rights have been violated; she has, though, not been fairly treated.'

[13] See e.g. Griffin, *On Human Rights*, p. 263.

[14] Raz makes a similar point in Raz, 'Human Rights without Foundations'.

[15] Griffin, *On Human Rights*, pp. 34, 53, 263; see also p. 41.

for example, secure 'minimum provision'; other rights secure a 'minimum' of health, education, information. As we have already noted, agency is not, however, an intrinsically 'minimalist' concept, especially if one includes, as Griffin does, protections for its realization and exercise. So from what normative source does Griffin draw the standard for how 'minimal' the protection afforded by a given right should be? What, in other words, determines the threshold above which a protection of agency ceases to be a human right? Griffin writes: 'For one thing, it seems that the more austere notion is what the tradition of human rights supports. For another, it seems to be the proper stipulation to make. If we had rights to all that is needed for a good or happy life, then the language of rights would become redundant.'[16] Griffin appeals here to both what we have called the Fidelity and Subclass Desiderata: we ought to append a 'minimalist' rider to the demand to protect the exercise and realization of agency because it tracks the way human rights are conceived by practitioners and solves the Subclass Desideratum. Although arguable—consider how 'maximalist' the International Covenant on Economic, Social and Cultural Rights (ICESCR)[17] is, for example—let us grant the assumption. With the Normativity Desideratum in mind, we now wonder: Do we have *good normative reason* to tailor our human rights theory to practice in this way? Why are practitioners (or those in the longer human rights tradition) *correct* to think of human rights as 'minimal' protections? (Or, alternatively, if practitioners are not using the term properly, what normative reason do they have to reorient their uses of the term in ways suggested by Griffin?) Griffin's account, I am suggesting, does not have the resources to provide us with an answer. And it is doubtful, even if he were to explain why we have good normative reason to think of human rights as *minimal* protections, whether the theory would be able to meet the Determinacy Desideratum. What criteria should we use to draw the 'minimum' threshold in a determinate place?[18]

Perhaps Griffin could turn here to what he calls 'practicalities,' namely the requirement that for something to be a human right it must not only be grounded in some aspect of agency but also reflect a 'socially manageable claim[] on others.'[19] On this interpretation, human rights claims must be 'minimal' because otherwise they would impose an 'unmanageable' range of moral duties on third parties. And one might understand 'unmanageable' here as 'unfeasible.' If there were a human right to more than a minimum, then it would impose moral duties on others to secure the object of

[16] Griffin, *On Human Rights*, p. 34.

[17] See e.g. Article 12.1, which promises the 'right of everyone to the enjoyment of the highest attainable standard of physical and mental health.'

[18] Though I won't be able to make good on this claim here, I also believe that Orthodox accounts of human rights that try to ground human rights in some account of basic human needs, or basic capabilities, also will fall afoul of both the Normativity and Determinacy Desiderata. See e.g. A. Sen, 'Elements of a Theory of Human Rights', *Philosophy & Public Affairs* 32 (2004): 315–56; D. Miller, 'Grounding Human Rights', *Critical Review of International Social and Political Philosophy* 15 (2012): 407–27. Why can only *basic* needs ground human rights claims? Why only *basic* capabilities?

[19] Griffin, *On Human Rights*, p. 38.

the right so onerous that they would be unfeasible. The problem here is that Griffin accepts that we can have a range of 'manageable' or 'feasible' moral duties grounded in correlative rights that *don't* count as human rights. We have, for example, a range of promise-keeping duties, justice-based distributive duties to others to secure more than a minimum of welfare, and justice-based corrective duties to pass proportionate sentences. All of these duties, furthermore, are 'directed' to a respective rights-bearer, such that someone who has had a promise broken without excuse, someone who has been denied their fair share, and someone who has been unfairly sentenced can all properly say that they have been *wronged*. So why couldn't all of these rights plausibly count as *human* rights? In the response envisaged here, Griffin must be able to say that these can't be *human* rights because they are 'socially unmanageable' or 'infeasible.' But this doesn't seem to be the case with any of the moral duties correlating with the rights just mentioned. And, given that any genuine moral right correlates with some duties, the response will fail comprehensively for all moral rights. The 'practicalities' defence, in short, does not succeed in meeting the Subclass Desideratum.

As noted by Tasioulas, Griffin's account also fails to explain why *only* personhood interests should count in generating human rights claims. Why shouldn't interests in, for example, 'accomplishment, knowledge, friendship, and the avoidance of pain'[20] also be sufficient (under the right circumstances) to ground third-party duties? Put in our terms, the restriction to personhood interests cannot satisfy the Normativity Desideratum. Take, for example, Griffin's exclusion of the severely mentally disabled and children from the scope of human rights.[21] What normative reasons do we have to exclude children and the disabled? The potential gain in determinacy is purchased at the price of arbitrariness.

Tasioulas's Orthodox account attempts to go beyond Griffin in two main ways: first, his account appeals to a much wider array of interests as grounds for human rights claims; second, his account puts much more emphasis on the directed duties that are triggered by any purported human right. The former aids Tasioulas in meeting the Normativity and Fidelity Desiderata. The latter is necessary to specify more carefully what can count as a rights-grounding interest in the first place, and therefore helps Tasioulas to satisfy both the Determinacy and Subclass Desiderata. Tasioulas's account is therefore well placed to become the champion among Orthodox theories. Is it successful?

I will argue that Tasioulas's view does not satisfy the Subclass Desideratum. Recall that Griffin attempted to meet the Subclass Desideratum through a *content*-based restriction that was meant to qualify and explain which moral rights we have 'merely in virtue of our humanity.' Griffin claimed that those moral rights we have in virtue of our humanity are those we have in virtue of our agency. Given Tasioulas's more pluralistic account of the grounds for human rights, he cannot do this. Instead, he appeals to the

[20] J. Tasioulas, 'Taking Rights out of Human Rights', *Ethics* 120 (2010): 647–78 at p. 662.
[21] Griffin, *On Human Rights*, p. 92.

idea that human rights are *general* rather than *special* moral rights. According to Tasioulas, 'the possession of a human right cannot be conditional on some conduct or achievement of the right-holder, a relationship to which they belong, or their membership of a particular community or group.'[22] But what about justly convicted criminals? They lose the right to free movement and association, and in many cases, also the right to political participation, hold office, and so on in virtue of their previous conduct. Does that mean that their human rights have been violated? Or that rights to freedom of association, free movement, political participation, and so on don't count as human rights since they are held conditionally on the basis of things one has done (or not done)? On this restriction, the only human rights there would be are the rights that could not legitimately be stripped from justly convicted criminals. However short the list is, it is far shorter than the list envisaged by Tasioulas or by any human rights movement. The suggestion risks purchasing the Subclass Desideratum at the price of the Fidelity Desideratum. But there is also the problem of the Normativity Desideratum: What normative reason do we have for thinking that human rights are limited to those rights that prisoners[23] cannot lose?

There is also the problem that the right to a fair trial, the right to vote, and the right to education, for example, also seem conditional, not on what one has done, but on whether one is subject to the legal authority of a political community (in the first two cases) and on whether one can benefit from an education (in the other). One holds a right to a fair trial only if one is relevantly subject to a legal authority, just as one holds a right to vote only if one is a member, in some relevant sense, of a political community. Similarly, one has a right to education only if one can benefit from it. These rights, therefore, don't appear to be rights that we have 'merely in virtue of our humanity.'

Tasioulas's solution is to fold the condition into the statement of the right: one has a general right to [vote *only if* one is a member of the political community in question];[24] one has a general right to [an education *only if* one can benefit]. One could apply, of course, the same strategy to the right to freedom of movement: one has a general right to [free association *only if* one has not been justly convicted of a crime of kind *x*]. The conditionalized general rights are possessed by all human beings (even those who have committed crimes or do not belong to a political community or cannot benefit from education), and so can be human rights.

The trouble is that this manoeuvre won't satisfy the Subclass Desideratum. The reason is that *any* moral right can be converted into a general right, including any *special* right, by folding its factual precondition into the statement of the right. For example, the special right that others keep their noncontractual promises to us (barring exceptional circumstances) can also be stated as a general right: we have a general right that

[22] Tasioulas, 'On the Nature of Human Rights', at p. 37.

[23] It is revealing that Griffin claims that prisoners' human rights are indeed infringed, but that this is justified, all things considered, on the basis that they morally deserve to be punished. See Griffin, *On Human Rights*, p. 64. I thank Rowan Cruft for pointing me to this passage in Griffin.

[24] The brackets indicate the scope of the rights claim.

[others keep their noncontractual promises to us *only if* they have actually made a promise to us and *only if* exceptional circumstances do not hold]. When we include the conditions in the content of the right, the right becomes fully general: even people who have not had any promises made to them have the (general) right that [others keep their promises to them *should they ever make such a promise*]. The right is held by people who have no special relations or history. Similarly, any *derived* moral right, such as my right to vote in Italian elections, can also be restated as a fully general right, and hence, on this account, a human right: one has a (general) right to [vote in Italian elections only if one is an Italian citizen]. All (genuine) moral rights, using this strategy, can be converted into general rights. The advantage is that Tasioulas can then deal with the prisoner, fair trial, and education counterexamples. The disadvantage is that he then fails to meet the Subclass Desideratum.

A potential response is to impose conditions on the *kinds* of antecedents that can be folded into the statement of the right. In response to a similar objection by Nicholas Wolterstorff, Tasioulas does just that.[25] To deal with the objection from derived rights (such as the right to vote in Italian elections), Tasioulas bans the use of proper names. And to deal with the fair trial and education objections, he requires that 'the conditions specifying the duties [and hence the rights which are their basis] must refer to circumstances that are not unduly remote for all human beings given the sociohistorical conditions to which the existence of the right has been indexed.'[26] But what about the promising counterexample? What about the right to a proportionate sentence? And what about other moral rights that also look to be entirely general, such as the moral right not to be insulted? All of those rights could easily be conditionalized, none of them uses proper names, and their corresponding duties do not refer to circumstances that are unduly remote.

Tasioulas could say (as he seems tempted to say)[27] that these are indeed human rights on a correct understanding of what human rights are. But this would be a difficult bullet to bite. It would undermine at a stroke one of the main advantages of an Orthodox view, namely its fidelity to the human rights movement (especially when compared with Political views, to which we turn in a moment). No human rights practitioner takes such an expansive view. We might try to add further conditions on admissible conditionals until we have a view that looks about right. It is unclear to me, however, whether any such general criteria could *exclude* things like promises or taxes or insults but *include* fair trials and education. But there is another problem. How do the stipulated conditions on admissible conditionals meet the Normativity Desideratum? What *normative reason* do we have to accept them? The addition of further conditions would seem *ad hoc*.

[25] See N. Wolterstorff, *Justice: Rights and Wrongs* (Princeton: Princeton University Press, 2010), pp. 314–15. Tasioulas responds in Tasioulas, 'On the Nature of Human Rights' at pp. 38–41.

[26] Tasioulas, 'On the Nature of Human Rights', at p. 39.

[27] See Tasioulas, 'On the Nature of Human Rights', p. 39.

I conclude that the going Orthodox approaches to human rights are insufficient on their own to satisfy the four desiderata. While there may be other Orthodox views that can respond to these objections and meet all four desiderata, the two most promising ones, I have argued, cannot.

Against Political Views

Political views are tailor made to satisfy the Subclass Desideratum, and hence do well where Orthodox views do poorly. The way they do so is by jettisoning the idea that human rights are those moral rights human beings possess *in virtue of their humanity.* Instead, they say that human rights are those moral rights that *have a certain function in international affairs.* As we have seen, Political views vary in the kinds of functions believed to be definitive of human rights. In this section, I will press a criticism that affects all subvariants, namely that they fail the Fidelity and Normativity Desiderata. By making the conditions for the existence of a human right depend too much on shifting contingencies, they depart significantly from the aims and purposes of an important aspect of current human rights culture.[28] And they provide no good normative reasons to do so. What is gained by satisfying the Subclass Desideratum is lost with respect to the Fidelity and Normativity Desiderata.

Imagine someone is tortured in Pakistan. And imagine that any criticism or other international action (whether sovereignty-overriding or not) would severely destabilize the region such that it would not be justified. According to the Political view, while there is certainly a moral right that has been violated, it is not a *human* right. But now imagine that international circumstances change enough that international action (whether sovereignty-overriding or not) becomes justifiable. Has the person tortured acquired a human right in the process—a right that they previously lacked? Can we gain and lose our human rights in virtue of shifting international circumstances?[29]

Political views therefore are a far cry from the way claims are pursued within human rights organizations, which are mostly concerned with bringing to light severe abuses in other states *whatever* the international circumstances supporting a particular course

[28] I am indebted to discussion in Jeremy Waldron, 'Human Rights: A Critique of the Raz–Rawls Approach', in this volume, for the arguments I make in this section.

[29] This also strikes me as applying to Beitz's discussion of women's human rights. He claims that many of the concerns defended in the Convention on the Elimination of All Forms of Discrimination against Women cannot be bona fide human rights because it would be infeasible to pursue international action to change them: 'The inference is that a government's failure to comply with those elements of women's human rights doctrine that require efforts to bring about substantial cultural change does not supply a reason for action by outside agents because there is no plausibly effective strategy of action for which it could be a reason. But if this is correct, then these elements do not satisfy one of our schematic conditions for justifying human rights: they are not appropriately matters of international concern. . . . But human rights are supposed to be matters of international concern, and if there are no feasible means of expressing this concern in political action, then perhaps to this extent women's human rights doctrine overreaches' (Beitz, *The Idea of Human Rights*, p. 195). Whether women have human rights turns out to vary according to how feasible international efforts at social change in fact would be.

of action.[30] And they don't even seem to track the usage of human rights law within the UN system (where one might think a Political view would find the most traction). In human rights law, whether something counts as a human rights violation, and the kinds of remedies that are available for such violations, are two different things.[31]

Political theorists have a ready response to this objection.[32] They can claim that the existence conditions for a human right vary not with the *all-things-considered* reasons for undertaking international action, but only with *pro tanto* reasons for such action. On this clarification, there can be *pro tanto* reasons to take international action with respect to the torture victim even if current international circumstances make it all-things-considered unjustified to do so. The objection to this common move comes in the form of a dilemma. The dilemma is raised when we consider what kinds of considerations we need to take into account in determining whether there is in fact a *pro tanto* reason to take some specific form of international action. The point is easiest to see with an intervention-based variant (I will generalize the point immediately thereafter). On such a view, human rights are those moral rights whose violation would give third parties a *pro tanto* reason to intervene militarily. We face a number of questions: Holding constant the harm involved in the violation of a given moral right, under what circumstances do we have such a *pro tanto* reason to intervene? What kinds of countervailing considerations can override or outweigh the reason? How strong is the reason? We now confront a choice. Do we answer these questions by identifying what a 'normal' set of circumstances for such intervention would be? Or do we identify the strength, weight, and presence of the reasons with more idealized circumstances?

Suppose we take the former route (this is the first horn of our dilemma). On this route, we begin by listing the most common consequences of military intervention, given what we generally know about the current international situation, the degree of support that can be expected for intervention among general populations, and so on. In this way, we abstract from any particular situation that we may face here and now. And then we ask: Would we have an *all-things-considered* reason to intervene militarily in the typical situation envisaged in the first step, in light of the violation of some moral right (or set of moral rights) *x?* If we answer yes, then the moral right (or set of rights) in question is a human right. It is a human right because the moral right's violation would warrant an intervention *under normal circumstances.* While the warrant is only provisional—it could be overridden or outweighed by more specific knowledge of any actual conflict—it is sufficient to ground the existence of a human right.

The problem is that this line of response faces the same difficulty as the first-cut, all-things-considered variant. Why should the human rights we have vary with what count as 'normal' circumstances? For example, military interventions can become much

[30] See e.g. A. Neier, *The International Human Rights Movement: A History* (Princeton: Princeton University Press, 2012), ch. 3.

[31] See e.g. P. Alston and R. Goodman, *International Human Rights in Context* (Oxford: Oxford University Press, 2008).

[32] See e.g. Beitz, *The Idea of Human Rights*, p. 109.

more difficult with subtle shifts in the international balance of power (consider how different the prospects for military intervention seem after the 2003 invasion of Iraq, for example). Do we say that before the shift (before 2003), individuals in Pakistan had one set of human rights, and after 2003 they have another? Once again, such a move would be wildly at variance with practitioners' self-understanding. What normative reason could there be to accept it? What it gains in meeting the Determinacy and Subclass Desiderata, it loses with respect to the Fidelity and Normativity Desiderata.

This horn of the dilemma is just as difficult to surmount for an international-action (rather than military-intervention) version of the Political view. For there too we wonder: What are the 'normal' circumstances that would warrant international action of type *x?* And there too we worry that this leaves human rights too dependent on the shifting sands that determine what count as 'normal circumstances.'

There is pressure to take the second route, namely to idealize the circumstances against which we determine the presence, weight, and strength of the *pro tanto* reasons. And here the Political view faces the second horn of our dilemma. Rather than point to 'normal' circumstances, the idealizing interpretation abstracts further from the things that we know about military intervention. It claims: There is a *pro tanto* reason sufficient to ground the existence of a human right as long as there would be all-things-considered reason to intervene militarily in *ideal* circumstances. To avoid the charge of contingency, the interpretation imagines what we might call a *frictionless* case, namely a case in which, say, military intervention was both costless and sure to succeed. Would we intervene in that case (again, given some specified violation of a moral right)? If so, then there is *some* reason to intervene, and this is sufficient to say that there is a *pro tanto* reason to intervene, and hence that the moral right is a *human* right. The danger here is that the view would then fail the Subclass Desideratum. If it were really true that military intervention were both costless and sure to succeed, then, absent countervailing considerations, the violation of *any* moral right would warrant such intervention. The verdict seems to hinge on what, exactly, we mean by 'costless' and 'sure to succeed.' Notice that the more realistic we make the costs and prospects of military intervention, the more the contingency objection begins to bite. And the less realistic we make them, the more the Subclass Desideratum impinges. This is a set of simultaneous equations with no solution. Any amount of contingency will seem to make the existence of a human right depend on the wrong kind of thing, and any elimination of such contingency will make human rights indistinguishable from moral rights.

Notice further that the second horn of the dilemma impales international-action variants with greater force than intervention ones. Because the range of legitimate remedial actions that can ground a human rights claim will be much less costly and disruptive than a military intervention (converging, at the limit, to mere criticism), the international-action variant will fail the Subclass Desideratum much more quickly than its interventionist cousin. After all, one might reasonably think that *any* violation of a moral right would give us *pro tanto* reason to criticize the violation publicly *especially* if such criticism is sure to succeed in preventing or stopping the violation and has

no other costs. And even if the Subclass Desideratum would be satisfied—by isolating, for example, only morally more significant rights—it would fail to satisfy the Normativity Desideratum: of what use would the (long) list of claims that give us *pro tanto* reason to subject violators to international criticism be, given the diversity of concerns that practitioners within human rights organizations, international institutions, and states have? I conclude that Political views also cannot, on their own, meet all four desiderata.

A Merely Verbal Disagreement

Even if we assume that my criticisms of both views do not succeed, there is a further problem: debates between Political and Orthodox views have a tendency to resolve into merely verbal disputes. In this section, I illustrate how this happens. In the rest of the chapter, I provide a solution.

Imagine a proponent of the Orthodox view argues that there is a human right to education. The Orthodox theorist claims that this is because a moral right to education is possessed by each human being in virtue of their humanity alone.[33] The proponent of the Political view joins the discussion, claiming that the Orthodox view says something false. There is *no* human right to education. This is because a violation of a moral right to education does not (even *pro tanto*) justify sovereignty-interfering action by third parties. Are they really disagreeing? Or is this just a verbal dispute?

We can use what Chalmers calls the 'method of elimination' to test whether this disagreement is merely verbal.[34] The idea is to eliminate use of the key term—'human right'—and see whether any substantive dispute remains. The Orthodox theorist, let us suppose, claims that (a) there is an individual moral right to education that generates third-party duties on modern states to supply a basic minimum of education to each citizen, (b) this right is ultimately grounded in universal human interests in being able to live one's life free from deceit and domination by others, and hence is held 'in virtue of our humanity,' and (c) violations of the moral right to education would not justify, in current circumstances, kind of foreign, sovereignty-overriding interference (or other international action) to secure it. It strikes me that the Political theorist could happily *agree* with propositions (a)–(c). The only thing that the two parties are disagreeing about, I conclude, is whether to *call* that moral right a human right. This suggests, therefore, that they are engaged in a merely verbal dispute.

The Broad View

Is there a way out of this impasse? To sketch a way out, I proceed in two steps. First, I provide an articulation of the concept that is broad and ecumenical and that captures what is best in both the Orthodox view (the focus on moral rights) and the Political

[33] I here imagine that we have answers to the criticisms made in the text above.
[34] D. J. Chalmers, 'Verbal Disputes', *Philosophical Review* 120 (2011): 515–66 at p. 526.

view (the focus on the moral and political significance of human rights claims) while avoiding the worst in each one (the Contingency and Subclass objections). Second, I will distinguish more clearly the *concept* of human rights and particular *interpretations* of that concept, and demonstrate how doing so allows us to abandon the Single Practice Assumption and to account for the broad and diverse range of usages in contemporary human rights practices. I end by arguing that the Broad View satisfies all four of the desiderata with which we started.

I. The concept

According to the Broad View, human rights are not those moral rights *possessed* in virtue of our humanity, but those moral rights whose systematic violation ought to be of universal moral, legal, and political *concern*. Any violation[35] of a moral right that ought to garner universal moral, legal, and political concern is a human right.

It is worth highlighting four main features of the Broad construal of the concept. First, the concept is intended to have very wide scope, encompassing most contemporary usage. On the Broad construal, it is enough for a protest group, for example, to sincerely believe that the systematic moral rights violations they raise and reforms they pursue under the banner of human rights ought to garner universal moral, political, and legal concern for their claims to count as a *conceptually correct*—though not necessarily substantively valid—use of the term. It is a further question whether the systematic moral rights violations they believe ought to garner such concern *really are* moral rights violations and *really do* merit universal, concern just as it is a further question what *counts* as the relevant kind of universal concern. And, with a sideways look toward Political views, it is also a further question whether any specific remedial or corrective action is warranted given some set of systematic violations.

Second, the Broad construal is not so broad as to be meaningless. The Broad View tries to capture the distinctiveness of human rights claims in all their diversity. On the Broad View, the most distinctive aspect of human rights is the idea that the morally most urgent claims of individuals and minorities are taken to be matters of *universal* rather than only of local moral, legal, and political concern. (As we will see in Section II, what counts as relevantly 'universal' and relevantly 'moral,' 'legal,' and 'political' and what count as the rights' correlated duties will vary by context.) This basic feature of human rights was central to the American and French revolutions and their accompanying declarations, and connects those revolutions with the spread of liberal constitutionalism throughout the globe (including its near obliteration in the years leading up to the end of the Second World War).

Third, notice that the Broad construal does not isolate the subclass of human rights from the class of moral rights *simpliciter* via a reference to a property shared (equally) by all human beings, such as their humanity, or dignity, or normative agency. For all

[35] The violation must be systematic. To determine whether the assassination of Archduke Franz Ferdinand was a human rights violation, we need to assess whether assassinations *qua* assassinations merit universal concern, rather than the particular fact that a single such assassination led to a chain of events with global significance. I thank Adam Etinson for stressing the need to clarify.

I have said, there could be moral rights that are possessed by nonhumans[36] (or, indeed, the severely handicapped or children[37]) or by collectives.[38] As long as the systematic violation of those moral rights ought to be of universal moral, legal, and political concern, then they are not conceptually disqualified before the discussion ever gets started. This feature, as I will discuss in more detail in Section III, prevents further useless verbal disagreements.

Fourth, the Broad View does not isolate human rights, as Political views do, in virtue of a unique political function or role they play in international affairs, such as 'human rights are moral rights whose systematic violation would *pro tanto* justify humanitarian intervention, or sanctions, or diplomatic intervention,' or some other remedial action. Rather, it isolates them by reference to their moral *significance* for some (yet to be specified) moral, legal, or political context. Because it does not yoke the existence of a human right to the justification for some remedial action *as a matter of conceptual necessity,* it does not fall prey to the contingency objection. Notice, for example, that the Broad View allows for someone to *specify* (as the relevant form of universal moral, legal, and political concern) that they are only interested in those human rights whose systematic violation would trigger some form of intervention; what it bars them from saying is that this is all there is to the concept of a human right, or that these are the only human rights that are genuinely human rights, or that people who focus on other types of universal moral, legal, and political concern are necessarily misguided. As a result, a Political view stated as a specification of the Broad View no longer faces the contingency objection; a proponent of such a view can always say, 'Just because the human rights I am interested in are those that trigger some form of intervention doesn't mean that we can't have human rights in other senses, too.'

The Broad View, furthermore, leaves entirely open, as a result, who the duty-bearers can be as well as the particular remedial actions that ought (normally) to follow particular violations. As a conceptual matter, the Broad View allows for the primary duty-bearers to be not only states but also transnational corporations, nongovernmental organizations, paramilitaries, guerrillas, and indeed even nonaligned individuals. As long as the systematic violations in which each of these duty-bearers are engaged (are perceived to) merit universal moral, legal, and political concern, then the use counts as conceptually correct.[39] So-called interactional accounts of human rights are therefore *not* excluded on conceptual grounds (as they are according to the Political view).[40]

[36] In 2007, Austrian animal rights activists fought to have a chimpanzee (named Matthew Hiasl Pan) declared a person. See also the Nonhuman Rights Project, on which see more here: <http://www.nonhumanrightsproject.org/>.

[37] Cf. Griffin, *On Human Rights*, p. 92, where he denies that children or the cognitively disabled have human rights.

[38] Therefore, if the right to self-determination is a moral right held by a collective, then it can be, on the Broad construal, a human right. It is a further, normative and substantive question whether, in a particular context, its violation *qua* collective right merits universal moral, legal, and political concern.

[39] Cf. Beitz, *The Idea of Human Rights*, p. 122.

[40] For the distinction between 'interactional' and 'institutional' accounts, see T. Pogge, *World Poverty and Human Rights* (Cambridge: Polity, 2002), ch. 2.

Similarly, the Broad View does not exclude Orthodox views as long as they allow for other specifications of universal concern to count as legitimate interpretations of the concept of human rights and as long as they specify both what type of universal concern they envision and how that particular kind of universal concern allows them to meet the four desiderata (especially the Subclass Desideratum). An Orthodox view developed as an interpretation of the Broad concept might, for example, say that the human rights are those *basic* moral rights that we possess in virtue of our humanity and whose enjoyment is a necessary precondition for the enjoyment of any other moral right and then argue why a right's being basic merits some specific kind of universal concern.

The Broad View therefore subsumes both Orthodox and Political views, explaining each as a special interpretation of the overarching concept. We now face two questions: How can a view as broad as this meet any of the desiderata mentioned here? And: How does the Broad View avoid merely verbal disagreements? I will spend the rest of this chapter answering these questions.

II. The diversity that stands between concept and conception

The key to the Broad View lies in the way it conceives of the *relation* between concept and conception.[41] One natural way to proceed would be to list all the moral rights and correlated duties whose systematic violation would merit universal moral, legal, and political concern. Call a list generated in this way the 'Extended List.' (For the moment, I will assume that such a list could, in fact, be drawn up, even though I will soon question that very assumption.) The Extended List would constitute the endpoint of a fully fledged human rights theory that accepts the Broad construal of the concept, and be a competitor to similar lists generated by Political and Orthodox views (in their fullest articulations). It would be an attempt to specify the list of human rights and their correlated duties that underlies and justifies human rights practice as a single, coherent whole. I will argue that is *not* the way in which a defender of the Broad View ought to articulate a conception of human rights. Seeing how it would fail will help motivate our rejection of the Single Practice Assumption, which, of course, the Extended List approach also accepts.

While the Extended List approach would satisfy the Subclass and Fidelity Desiderata, it would straightforwardly fail the Determinacy and Normativity Desiderata. The Extended List would satisfy the Fidelity Desideratum because it would capture a central feature of all human rights claims, namely their universal and peremptory status. And it would also satisfy the Subclass Desideratum by isolating a subclass of all moral rights and their correlated duties, namely those moral rights and correlated duties whose systematic violation merits universal moral, legal, and political concern. Take the

[41] I am indebted to Rainer Forst for how to conceive of this relation and to helpful discussion with Massimo Renzo. I note in particular the structural similarity between Forst's 'right to justification' and its articulation in a system of political *cum* human rights, and my appeal to higher-order moral rights and how they are construed in different contexts of justification. See R. Forst, *The Right to Justification: Elements of a Constructivist Theory of Justice* (New York: Columbia University Press, 2011), ch. 9.

violation of promissory rights. Barring exceptional circumstances, such violations are not morally significant enough to warrant universal moral, legal, and political concern (on any plausible construal of 'universal' and 'moral, political, and legal concern'). Systematic violations by states of individuals' right to bodily integrity, on the other hand, clearly do.

But there would be insurmountable problems with a conception developed along the lines of the Extended List. First, notice that the Extended List is severely indeterminate. What particular duties and duty-bearers, for example, ought to be associated with the List? Should, for example, the List be taken to correlate with duties owed by states, by public, nonstate actors, or by any individual anywhere? How stringent are the duties? To whom are they owed? In the absence of some more determinate conception of 'universal moral, political, and legal concern' that can help us to answer these questions, it will be impossible to know what follows from one's acceptance of the List, and so what, in practice, the List would commit us to.

The Extended List would also fail the Normativity Desideratum. Imagine one has in hand a determinate version of the Extended List. What normative relevance would it have? Suppose we were called to the House of Lords with a freshly printed copy of our List. Of what use would it be to judges deciding whether to allow the indefinite detainment of foreign nationals suspected of terrorism on national soil (or, alternatively, judges deciding whether the European Convention on Human Rights [ECHR] ought to be applied extraterritorially to those detained by UK forces in Afghanistan)? How would the List help them determine a morally informed reading of the content and scope of the right to a fair trial according to the Convention? What moral rights and correlated duties, that is, warrant the *specific kind* of universal moral, legal, and political concern triggered by a Law Lords' ruling under the Human Rights Act? Knowing that there are moral rights and correlated duties that ought to merit some kind of (unspecified) universal moral, legal, and political concern would be irrelevant to their decision.

Or imagine we went to Human Rights Watch with our list. Human Rights Watch wants to know whether to mount a monitoring effort to track homophobia in South Africa. Once again: What good would it do to know those are moral rights and correlated duties that merit some kind of (unspecified) universal concern? What Human Rights Watch wants to know is whether moral rights to engage in homosexual relations warrant a global monitoring campaign designed to pressure governments and individuals into action. This is the same sort of scepticism that motivated a (wrongheaded) move away from the Orthodox to the Political view.

As a way of deriving a conception of human rights, the Extended List is a nonstarter. How can we do better? The solution begins by abandoning the Single Practice Assumption. Both Political and Orthodox views (and the Extended List approach) assume that there is an underlying moral unity to human rights practice, such that one can derive a single, unified list of moral rights that can be used to criticize any particular human rights practice. But why assume that there is any such master list there to be

discovered? And why assume that practitioners—including the UN High Commissioner, the Justice on the European Court of Human Rights, the South African or German judge, activists in Amnesty International, domestic movements across Latin America, sub-Saharan Africa, and Asia—must all be implicitly appealing to such a unified list by using the term 'human rights'? Why not instead be faithful to the multiplicity? That is what the Broad View tries to do.

The way it does so is by treating 'human rights' as a context-sensitive term such as 'tall,' or 'every bottle' in the expression 'every bottle was empty.' 'Tall' has a general linguistic meaning that doesn't vary across contexts, namely *having a maximal degree of height above some threshold*. But the *content* of particular uses of 'tall'—and hence the property picked out by a particular use of the term—will vary according to the context. So when I say that 'Michael Jordan [who is six feet, six inches tall] is short,' I might be saying something true. The expression is true when I am speaking *about basketball players*. It is false when speaking *about men in general*. The term 'tall' does not, that is, refer to any property until the parameter determining the specific threshold above which one counts as tall has been settled—either explicitly by interlocutors (for example, when one participant in a conversation clarifies the reference class they intend for their usage of 'tall,' say, *basketball players*) or implicitly by the conversational context (for example, when the participants are at a basketball game, discussing the players).[42] Similarly, the expression 'every bottle is empty' may be true in a conversation at a dinner party, but false in the cellars of Möet et Chandon. In the latter case, the parameter that sets the domain of the quantifier is set implicitly by either the conversational context (we are in the cellars) or explicitly by the interlocutors themselves ('no, no, I meant every bottle *in the cellar* not every bottle *in this room*'), just as in the case of 'tall.'

I want to say the same about the expression 'human rights.'[43] While the term has a general linguistic meaning that doesn't vary across contexts (i.e. 'moral rights whose violation merits universal moral, political, and legal concern'), the term's specific content varies with the context referred to by the speaker, which determines what *kind* of universal moral, legal, and political concern is at stake. Put another way, there is no single, master list of human rights and correlated duties against which one can evaluate

[42] For one interpretation of the context-sensitivity of gradable adjectives, see Christopher Kennedy, 'Vagueness and Grammar: The Semantics of Relative and Absolute Gradable Adjectives', *Linguistics and Philosophy* 30 (2007); on quantifier domain restrictions, see J. Stanley and Z. Gendler Szabó, 'On Quantifier Domain Restriction', Mind & Language 15 (2000): 219–61. I here remain neutral on how, among other things, the semantic and pragmatic aspects of an utterance in a context combine to establish and fix the parameter, and what the best account of the parameter itself is.

[43] Here I note in passing that although I am focusing in this chapter on *moral* human rights, the same thing could be said regarding *legal* human rights, i.e. legal human rights are those legal rights that ought to garner a particular kind of universal legal concern but where the type of 'legal concern' envisaged varies by context (ECHR, ICCPR, etc.). So when I mention legal contexts in this chapter, I refer to moral human rights that might provide reasons for the realization of a corresponding legal right or norm or some other legal right or norm that, though not the same in content, is necessary to protect or promote the realization of an underlying moral human right.

expressions of the general form '*y* has a human right to *x*' just as there is no all-purpose threshold above which someone counts as tall. As we will see in a moment, this context-sensitivity enables the Broad View to meet both the Determinacy and Normativity Desiderata in a way that the Extended List approach alone could not. (Call this the Context-Sensitive way of developing conceptions of human rights within the Broad View—or CSBV for short.)

To determine which particular specification of universal moral, political, and legal concern is appropriate for a given context, the CSBV theorist begins by asking: given the uses to which human rights are put in a certain context *x,* what moral rights and correlated duties would warrant the *specific kind* of universal moral, legal, and political concern relevant for that context? To answer this question, the CSBV theorist needs to provide an interpretation of the kind of universal moral, legal, and political concern at stake in the particular context he or she is interested in. This lower-level, and hence *mediating*, concept of human rights *for context x* helps to give shape and determinacy to the overall account, and is equivalent to explicitly fixing the domain for the quantifier 'every' in 'every bottle' or fixing the reference class and threshold for a gradable adjective like 'tall.'

For example, imagine you are a philosophically minded human rights activist within Amnesty International. You want to know what human rights violations should define the main aims of Amnesty's advocacy. You resist the temptation to answer: 'Just the ones in the UDHR' since you want to be able to evaluate whether the UDHR lists all (and only) the human rights we actually have or otherwise contributes to their realization. It would be a mistake (as we have seen) to make this evaluation by trying to find only those moral rights and correlated duties that we possess merely in virtue of our humanity. Instead, we ask: 'Which systematic violations of moral rights ought to garner universal moral, legal, and political concern?' You realize, however, that there will be no determinate, truth-evaluable answer to this question until we have specified exactly what *kind* of universal concern we have in mind.

The CSBV then says: 'Don't look for a single, general-purpose type of universal moral, legal, and political concern that will be adequate for *all* contexts in which human rights are invoked (as the Extended List approach did). Rather, accept the great diversity in the kinds of universal concern relevant to different contexts. With this in mind, begin by asking yourself what the point and purpose of Amnesty is; begin, that is, by giving an account of the role that human rights claims are meant to play in the particular practice you are interested in. What uses does Amnesty's invocation of human rights serve?' To this question, we might then respond: 'Human rights advocacy of the type pursued by Amnesty aims to protect individuals against standard state-authorized (and often also state-enforced) threats to liberty, especially (but not exclusively) in civil and political domains.' A fuller interpretation would refer to the history of Amnesty, and in particular to Amnesty's aim to be 'nonaligned': human rights were meant to be 'above politics,' and hence not identified with the particular aims of any one liberal democracy or communist state, Islamic regime, or more straightforwardly authoritarian

regime.[44] Amnesty aims therefore to protect all individuals against the abuse of political power, wherever it occurs; hence the importance to Amnesty of the 'prisoner of conscience.' This also explains why Amnesty makes a special effort to monitor human rights abuses in the West (e.g. prisoners' rights in the United States).[45] In turn, Amnesty uses a variety of methods in its official campaigns. The strategies deployed seek mainly to 'name and shame' governments via public forms of pressure (e.g. letter-writing), to provide a monitoring and informational function, and to extend and monitor international human rights law (e.g. via its support for treaty-making and revision).[46] And while Amnesty sometimes urges third-party governments to take (or continue) some form of international action[47]—e.g. the imposition of sanctions or trade embargoes, the establishment of post-conflict tribunals, or the maintenance and expansion of peace-keeping operations—it never urges outright military intervention.[48]

With this mediating concept in hand—the kind of universal moral, legal, and political concern relevant from the point of view of a human rights activist within a non-governmental organization like Amnesty—the CSBV theorist can now turn to the defence of a specific *conception* of human rights under the mediating concept. What moral rights and correlated duties warrant the specific types of universal moral, legal, and political concern called for by an actor within Amnesty? To answer this further question, we say that the CSBV theorist ought to deploy the best and most comprehensive theory of the moral rights and correlated duties we have. What they should not do is to search for a single, master list of human rights and correlated duties that we can then use as a template or standard for the evaluation of all human rights practices and

[44] Cf. Peter Benenson's 1961 *Observer* article, 'The Forgotten Prisoners', which founded Amnesty International: 'The force of opinion, to be effective, should be broadly based, international, non-sectarian and all-party. Campaigns in favour of freedom brought by one country, or party, against another, often achieve nothing but an intensification of persecution' <http://www.amnestyusa.org/about-us/amnesty-50-years/peter-benenson-remembered/the-forgotten-prisoners-by-peter-benenson>. See also S. Moyn, *The Last Utopia* (Cambidge, Mass.: Harvard University Press, 2010), and Neier, *The International Human Rights Movement*, on Amnesty's neutrality.

[45] See also its very first campaign, launched in Benenson's 'The Forgotten Prisoners', which focused on the rights of prisoners from Romania, the United States, Angola, Portugal, Czechoslovakia, Greece, and Hungary.

[46] The monitoring and informational function is predominant in an organization like Human Rights Watch.

[47] An example is its recent call for the United Kingdom to accept greater numbers of refugees from Syria. See also its 2007 calls to impose economic sanctions on Sudan in the Darfur conflict <http://www.globalpolicy.org/images/pdfs/sudanamnesty.pdf>: 'Amnesty International is urgently calling upon the international community to assert its authority and immediately adopt steps to strengthen the implementation of the UN arms embargo and stem the flow of arms to Darfur as part of a package of immediate measures to help protect civilians and uphold their human rights as is required by international law.' No *military* action, on the other hand, was called for in 1997 in Zaire or in 1999 in Kosovo.

[48] See P. Redfield, *Life in Crisis: The Ethical Journey of Doctors without Borders* (Berkeley: University of California Press, 2013), pp. 104–5. Médecins Sans Frontières' (MSF) 1994 calls for outright military intervention in Rwanda under the slogan 'You can't stop genocide with doctors.' The internal struggle over this decision was crucial in the development of MSF. And cf. the internal dispute between MSF and one of its founding members, Bernard Kouchner (later the head of a splinter group, the Médecins du Monde), on the right (and duty) to undertake (often coercive) interventions *in situ*. See D. R. Dechaine, *Global Humanitarianism: Ngos and the Crafting of Community* (Oxford: Lexington, 2005); Redfield, *Life in Crisis*, p. 12.

claims whatever their specific scope, origin, or aims. This is because, I have argued, there is none that can be faithful to the multiplicity of human rights practices.

Had we been the framers of the ECHR (or, indeed, the International Covenant on Civil and Political Rights [ICCPR]), we would have begun in a very different way. The ECHR governs a set of regional signatories and is a legal instrument created by treaty. The moral rights and correlated duties that ought to (partially) guide the formation of a list for the ECHR, as well as how they should be interpreted, will invoke a type of universal moral, legal, and political concern and a set of moral considerations of a different nature from the ones that went into the development of a human rights conception for Amnesty.[49] Therefore, we would have ended up with a different mediating concept and hence a different conception of human rights and their correlated duties. And it will be different again if we are statesmen and -women evaluating whether intervention would be justified (in part) in Syria or Libya or Egypt on the basis (partially) of moral human rights violations, determining how wide the scope of the right to self-determination in the ICCPR ought, as a moral matter, to be, or—to name a last example—deciding which legal human rights, if any, merit some recognition as *jus cogens* (or, alternatively, *erga omnes*).[50] In none of these cases would grasping for a master list of human rights be helpful.

III. Avoiding merely verbal disagreement

One of the main merits of the CSBV is that it helps us avoid verbal disagreement. In this section, I explain how. This will also help us to further motivate our rejection of the Single Practice Assumption.

Recall the apparent disagreement between our Political and Orthodox discussants regarding whether the moral right to education should be considered a human right. I have argued that the disagreement was only apparent since elimination of the term 'human rights' from the dispute would make no substantive difference to their normative conclusions regarding violations of the underlying moral rights. I suggested that, if this was the case, then they should simply agree that they were talking at cross-purposes. I now want to argue that there are two ways that we can reframe their disagreement such as to restore its meaningfulness. Doing so, however, requires us at the same time to recast their disagreement in terms of the CSBV.

The first way the two participants could restore real disagreement would be to accept the Broad View and then simply adopt, for the sake of argument, either a Political reading of the parameter 'universal moral, legal, and political concern,' or a

[49] On the ECHR, see G. Letsas, *A Theory of Interpretation of the European Convention on Human Rights* (Oxford: Oxford University Press, 2007).

[50] See e.g. K. Parker, 'Jus Cogens: Compelling the Law of Human Rights', *Hastings Int'l & Comp L Rev* 12 (1988): 411–63; B. Simma and P. Alston, 'The Sources of Human Rights Law: Custom, *Jus Cogens*, and General Principles', *Aust YBIL* 12 (1988): 82–108; A. Bianchi, 'Human Rights and the Magic of Jus Cogens', *European Journal of International Law* 19 (2008): 491–508; and, on the distinction between *erga omnes* norms and *jus cogens,* see e.g. Bianchi, 'Human Rights and the Magic of Jus Cogens' at pp. 501–3.

more Orthodox one. For example, they might continue in the following way: 'Assuming, for the sake of argument, that human rights are those moral rights whose systematic violation would merit some kind of sovereignty-overriding interference, ought we to consider the moral right to education a human right?' Or: 'Assuming that human rights are those moral rights whose systematic violation would be sufficiently urgent to justify an international advocacy campaign to stop them from occurring, ought we to consider the moral right to education a human right?' If they were to proceed in this way, they would be, in effect, converging on a single mediating concept and then exploring what follows regarding which moral rights we ought to count as human rights. Converging in this way on a mediating concept would mean that any disagreements about which moral rights can play the assigned roles would become *substantive, normative* disagreements rather than merely verbal ones. To continue our analogy, this would be equivalent to two interlocutors discussing Michael Jordan's height and agreeing to stipulate whether they are talking about Michael Jordan *as a basketball player* or *as a man* simpliciter, and then seeing what follows once they do so.

There is, however, a problem with this approach to restoring the possibility of disagreement. The problem is that the decision to use one or the other concept looks ad hoc. In particular, it is not clear what is normatively at stake in adopting one or the other (or some further concept under the Broad View). We can diagnose why the choice looks ad hoc using the CSBV. The choice looks ad hoc because neither party to the dispute has specified the particular context for which they are proposing their mediating concept of human rights. Are they wondering which human rights ought to govern the expansion of the legal rights protected by the ECHR? Are they trying to determine whether Amnesty should be more active in advocacy designed to prevent mass illiteracy in countries whose governments have the capacity to extend it to all? Are they trying to evaluate whether the moral right to education should have ever been part of the UDHR in the first place? Are they assessing to what degree the failure to educate children in US inner cities should be considered a human rights violation from the point of view of the American Convention on Human Rights (i.e. despite the fact that the United States has not signed or ratified the Additional Protocol protecting that right)? Are they doing the same as Black Lives Matter activists? And so on.

The CSBV claims that the most appropriate concept of human rights to deploy in each of these contexts should be allowed to vary depending on the interpretative specification of the role human rights claims are meant to play in that context. For example, if the context was the ECHR, then the relevant concept of 'human rights' to use might be the Political one, given that the rights protected by the ECHR *do* license sovereignty-interfering judgements by the Court.[51] In the context of the ECHR, it would be very

[51] As a particularly interesting example of a strategic adoption of a more Political approach, consider that nongovernmental organizations (NGOs) like Amnesty and Human Rights Watch often file amicus briefs in particularly high-profile cases. See, for example, the joint amicus filed by Interights and Human Rights Watch, among others, in *Al Skeini and Others v. UK* (2011), 55721/07 ECHR, or Amnesty's amicus

unclear what role the more Orthodox reading would have to play. But now let us say we are activists in the Black Lives Matter movement, who are considering whether it is appropriate to speak of the inadequate provision of education in US inner cities as a human rights violation. In *this* context, the Political view might seem an odd one to adopt: our primary concern is not (let us suppose) to get the international community or other states to interfere directly in the US government's policies in a sovereignty-overriding way. The Orthodox view, on the other hand, would be much more consonant with our aims. As activists, our use of the term 'human rights' is intended to signal the gravity of the violations in light of the very point and purpose of any liberal democracy, and, in light of that fact, to seek a higher, constitutional status to the right to education within the United States. Finally, imagine we are wondering whether the right to education should have ever been included in the UDHR. Here we might be much less clear about what to think, given that the UDHR doesn't sanction any sovereignty-interfering action, and given the much broader role it has played in all kinds of political advocacy across the globe. Whatever concept we adopt in each of these cases, it should be clear by now that it would be a mistake to think that any single concept could pick out a single master list of human rights and correlated duties that meaningfully applies across all these different contexts.

Once we reject the Single Practice Assumption and adopt the CSBV, a new possibility for meaningful disagreement opens up: two interlocutors could be disagreeing about which mediating concept to use in light of either (a) a disagreement about the particular uses to which human rights claims ought to be put within a particular context or (b) a disagreement about which concept we ought to use given an underlying agreement about the role human rights claims are meant to play in that context. To return to our examples, two interlocutors might (a) disagree about the particular role that the UDHR ought to play in the international system, and so about which mediating concept of human rights is best suited to determining what counts as human rights for the purposes of the UDHR, or (b) two interlocutors might disagree about which mediating concept is best suited to play a role on which they already agree. Accepting this way of proceeding—and hence the CSBV—allows the interlocutors' conceptual disagreement to make sense in a way that it otherwise wouldn't have.[52]

It is useful to refer again to our example about height. The type of meaningful conceptual disagreement I have identified between an advocate of a Political view and an advocate of an Orthodox view is like the conceptual disagreement between two

in *Cayara v. Peru* (1993), Series C No. 14 IACHR. In those cases, NGOs take on the perspective of the court in question and adopt a particular concept of human rights that fits that perspective (while seeking, simultaneously, to extend the reach and ambit of the court's jurisprudence). On the role of NGOs generally in filing such briefs, see L. Van den Eynde, 'An Empirical Look at the Amicus Curiae Practice of Human Rights Ngos before the European Court of Human Rights', *Netherlands Quarterly of Human Rights* 31 (2013): 271–313. I thank Matthias Mahlmann, Steve Ratner, and Chris McCrudden for helpful discussion.

[52] These two kinds of disagreement would be examples of what D. Plunkett and T. Sundell, 'Disagreement and the Semantics of Normative and Evaluative Terms', *Philosopher's Imprint* 13 (2013): 1–37 call 'metalinguistic negotiations.' I am grateful to Eliot Michaelson for discussion.

interlocutors advocating different thresholds for evaluating tallness. The disagreement makes little sense if it is construed as an attempt to derive a single threshold for tallness that will be valid in *all* contexts, but does make sense once we assume, for example, that they are basketball coaches selecting players to purchase in the draft. We now know *why* they are interested in tallness as a property of players, and so we have a background against which it makes sense to evaluate and disagree over the use of particular thresholds. In the same way, the conceptual disagreement between the Political and Orthodox theorists makes little sense if it is construed as an attempt to fix criteria for universal concern across all contexts, but does make sense if we assume they are, for example, activists in the Black Lives Matter movement (as opposed to, say, drafters of an international treaty).

IV. How does the CSBV help to satisfy the four desiderata?

In this section, we review how the Broad View satisfies the four desiderata with which we began.

THE SUBCLASS DESIDERATUM

The Broad View meets the Subclass Desideratum at both the conceptual and substantive levels. At the conceptual level, the desideratum is satisfied by the qualifier that the systematic violation of the moral right must merit some specific kind of universal moral, legal, and political concern. But, more importantly, the Subclass Desideratum is also met at the substantive level. In moving from the general construal to a mediating concept, the Broad View qua CSBV isolates a particular *kind* of universal moral, legal, and political concern as relevant to a particular context. This further delimits the scope of 'universal moral, legal, and political concern' and thus further precisifies and bounds the subclass.

THE FIDELITY DESIDERATUM

As I have argued, the CSBV strikes me as faithful to the *diversity* of practices under the banner of human rights—indeed much more faithful than either the Political or Orthodox view, precisely because of the latitude it allows in identifying appropriate usage of the concept, and precisely because it allows us to explain the sense in which all the different practices in which human rights are invoked are referring to the *same* general concept (though with very different content). Again, the analogy to 'tall' is instructive. The concept of tallness picks out a distinctive property of objects with a vertical dimension, namely that they are of above some threshold in height, just as the concept of a human right picks out a distinctive kind of moral right, namely a moral right whose systematic violation merits universal concern. And, just as thresholds for tallness will vary with the contexts to which speakers intend to refer, what counts as the relevant kind of universal concern will vary with the contexts to which practitioners, advocates, and so on intend to refer.

But, at this point, someone might worry: 'The Broad View doesn't strike me as very faithful to practitioners—whether lawyers, politicians, activists, professors—who overwhelmingly believe they are engaged in a *single* project.'[53] Given the diversity of practitioners' motivations, aims, and cultural, institutional, political, and social backgrounds, there may be reason to doubt that practitioners in all these contexts really do conceive of themselves as engaged in a single project.[54] But let us assume, for the sake of responding to the objection, that human rights practitioners around the world really do conceive of themselves as engaged in a single overarching project. Even if we grant this assumption, it strikes me that abandoning the Single Practice Assumption does not require us to abandon the idea of a single project. An analogy: it seems clear that we can all be engaged in the project of building a vibrant city together, even though we have different ideas about what makes for a vibrant city, and even though we are each engaged in very different aspects of city-building (some of us are artists, others engineers, planners, restaurateurs). As long as we conceive of our activity as coordinated in the right kind of way, there is no need for us to conceive of ourselves as engaged in a single practice of 'vibrant city-building' or to share much in the way of agreement on the truth-conditions for 'vibrant city.' It is enough if there is some very broad understanding of 'vibrant city' that we can all be understood to be promoting, each in our own way, each in our own context. It is the same with the human rights project: we can each participate in a project that can loosely be described as securing the realization of moral rights that merit universal moral, legal, and political concern, but at the same time have very different, noncompeting ways of understanding what kind of universal concern we are interested in securing and how we conceive of ourselves as helping to secure it. On this reading, the Justice of the European Court of Human Rights and the Amnesty activist can both rightly conceive of themselves as participating in a single project but with different, noncompeting ideas of what that requires in the more specific, circumscribed contexts in which each of them work. Indeed, one might argue that the term's protean, yet still unifying, character is in fact part of what makes it such a powerful political ideal.

THE NORMATIVITY AND DETERMINACY DESIDERATA

The Normativity and Determinacy Desiderata can be discussed together. If one looked only at the conceptual component of the Broad View, then one might worry that it would have difficulty meeting the Normativity and Determinacy Desiderata. As we have seen, the Broad construal of the concept is so broad as to be *very* indeterminate. So indeterminate is it that one might wonder how one could have a normative reason to adopt it (other than that it permits us to encompass most contemporary usage). On the Broad View qua CSBV, however, the satisfaction of the Normativity and Determinacy

[53] I am grateful to Charles Beitz for helping me to see the need for responding to his objection.
[54] I thank Philip Alston for discussion on this assumption.

Desiderata are relocated to the contextual and *substantive* level. Determinacy is gained by specifying a mediating concept that fixes a particular context of action and makes it clear what kind of universal concern is mandated by that context. And normativity is achieved by specifying the substantive moral rights that would justify the specific kind of universal concern envisaged. The Normativity Desideratum is satisfied, that is, by pointing to the normative force of the set of moral rights that can play the required roles.

Conclusion

In this chapter, I have argued that we should reinterpret both of the dominant philosophical accounts of the concept of human rights, namely Political and Orthodox views, as special cases of the Broad concept. According to the Broad construal of a human right, something counts as a (putative) human right when it is a moral right whose systematic violation ought to garner universal moral, legal, and political concern. I then argued that the evaluation of the truth of a human rights claim (understood in these terms) requires us first to specify a context, then a role that human rights are meant to play in that context, and finally the type of universal moral, legal, and political concern that is envisaged given that role. There is therefore no master list that can serve as a unitary system for the evaluation of all human rights practices. If I am right, then we should abandon the search for an overarching, general-purpose philosophical conception of human rights and turn rather to the piecemeal evaluation of particular human rights practices.

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