

Human Rights, Freedom, and Political Authority

Laura Valentini
University College London

Forthcoming in *Political Theory*

Abstract: In this article, I sketch a Kant-inspired liberal account of human rights: the freedom-centered view. This account conceptualizes human rights as entitlements that any political authority – any state in the first instance – must secure to qualify as a guarantor of its subjects’ innate right to freedom. On this picture, when a state (or state-like institution) protects human rights, it reasonably qualifies as a moral agent to be treated with respect. By contrast, when a state (or state-like institution) fails to protect human rights, it loses its moral status and becomes liable to both internal and external interference. I argue that this account not only steers a middle course between so-called ‘natural law’ and ‘political’ approaches to human rights, but also satisfies three important theoretical desiderata – explanatory power, functional specificity, and critical capacity.

Key words: human rights; political authority; freedom; global justice; international intervention.

Introduction

The notion of human rights plays a central role in contemporary political discourse. Its rhetorical power is beyond question, and although some sceptics have challenged its theoretical coherence, it will certainly remain influential in years to come. The idea of human rights is not only politically salient, but also philosophically challenging. On the one hand, human rights seem to occupy the most fundamental layer of morality: they are universal entitlements people have *solely* by virtue of their humanity. On the other hand, they appear to be bound up with *contingent* features of contemporary international law and politics: their aim is to place constraints on the conduct of states, and their violation may trigger international intervention.

This tension is reflected in the literature on human rights. Some theorists conceive of human rights as pre-political ‘natural’ rights, others as socio-political constructs limiting state sovereignty.¹ On the latter view, without states, talk of human rights makes little sense. Each of these two rival approaches, I suggest, offers only a

partial account of the idea of human rights. Can a theory of human rights do better? In this article, I argue that it can. I lay the foundations of a liberal outlook on human rights, which I call the freedom-centered view. I argue that, unlike existing approaches, this view successfully explains how human rights can be natural and political at the same time. The view is inspired by some of Kant's political writings, but it is not Kant's own. It should therefore be assessed on its own terms, and not as an interpretation of Kant's philosophy.ⁱⁱ Moreover, my aim in articulating this view is to offer an account of the normative function of human rights, rather than a full substantive list of such rights. That is, I am here only laying the foundations of an approach to human rights which I hope will be judged worthy of further development.

The article is structured as follows. In the next section, I describe the two dominant philosophical approaches to human rights, and discuss the difficulties they encounter. Drawing on this discussion, I then outline three desiderata that any plausible account of human rights should meet: (i) explanatory power, (ii) functional specificity, and (iii) critical capacity. In the subsequent two sections, I introduce the freedom-centered view on human rights, which, I argue, meets them. On this view, human rights are derived from the universal right to freedom, namely each person's innate right to a sphere of agency within which to pursue her ends and goals without being subject to the will of others. Although this right belongs to each person by virtue of her nature as a potential or actual self-directing agent, its demands can only be met by state-like institutions.ⁱⁱⁱ In the state of nature, the right to freedom is thus what, following others, I call a *proto-right*, which becomes a full-blown *claim-right* only once the state – or a set of functionally similar institutions – is established.^{iv} I thus conceptualize human rights as those entitlements that any political authority must secure to qualify as a guarantor of its subjects' innate right to freedom, that is, to qualify as reasonably just or legitimate. This

approach explains why, even though human rights are ‘natural’, they also have a political dimension, and place constraints on the conduct of political agents claiming authority, primarily (though, crucially, not exclusively) states.^v When a state fails to respect them, it loses part or all of its moral privileges, and becomes liable to interference – either external or internal. I conclude by showing that the freedom-centered view successfully meets the three theoretical desiderata introduced in this article, and answers some of the most powerful objections routinely raised against theories of human rights.

Let me address one possible objection at the outset. Some might question the plausibility of building a theory of human rights on explicitly liberal (hence ‘partisan’) premises. Aren’t human rights meant to be universal, hence justifiable to those who belong to different cultures and traditions? In response to this worry, let me note that, before asking whether human rights may be cross-culturally justified, liberals need to address the question of how such rights may best be justified on *liberal* grounds.^{vi} The present article contributes to the latter task. Once a convincing liberal defence of human rights has been developed, liberals can then ‘strategically’ argue for them in whichever way is likely to maximize cross-cultural consensus.^{vii} That said, it should be noted that an *altogether* non-partisan theory of human rights would have to rest on whatever happens to be agreed upon by all cultures in the world. Since this approach would make our theory implausibly *status-quo*-biased, I do not pursue it in the present article.^{viii}

Human Rights: Natural or Political?

The recent philosophical literature on human rights is divided between what have become known as ‘natural-law’ and ‘political’ approaches to the topic. In this section, I briefly outline these approaches, and consider the objections that are most commonly raised against them. My aim in doing so is not to provide a comprehensive analysis and

critique of these outlooks, but rather to offer some background and motivation for the view I shall develop in the article.

For proponents of the natural-law approach, *at the fundamental level*, human rights are entitlements held by all human beings against one another, solely by virtue of their humanity. Advocates of this approach typically first identify those characteristics all human beings share, and then argue that human rights are grounded in them. The upshot is a family of views according to which human rights are protections for persons' dignity *qua* vulnerable physical creatures as well as rational, autonomous, agents.^{ix}

This outlook has some clear attractions. It is elegant and simple, and fully captures the sense in which human rights are fundamental moral claims whose validity is independent of contingent empirical facts. However, the outlook also has important shortcomings. Most obviously, the way we think about human rights suggests that they are political, as opposed to natural, in both their function and content.

With respect to their function, it has been pointed out that human rights place constraints primarily on the conduct of states and their officials, rather than on that of individuals.^x For example, it is beyond doubt that Josef Fritzl, the Austrian man who imprisoned his daughter in an underground cellar for over 24 years, and had seven children from her, committed a monstrous crime.^{xi} Yet it seems inappropriate to describe his notorious crime as a human-rights violation. If, on the other hand, the Austrian government had been involved in the Fritzl case, we would more readily consider it a human-rights violation, justifying international concern. There is something distinctive about rights-violations perpetrated by political authorities, and human rights appear to capture this distinctive class of wrongdoings.

Similarly, with respect to their content, human rights seem to presuppose the existence of political institutions, such as the state. The idea of a human right to free

elementary education, for instance, makes little sense unless there exists a relatively well-functioning school system. More generally, critics argue, there can be no universal welfare rights in a pre-political condition. Rights only exist when interests are weighty enough to place duties on others to protect them,^{xii} and duties must conform to the ‘ought implies can’ proviso. Since no individual has the capacity, hence the duty, to provide everyone else with the resources they need to lead worthwhile lives, welfare rights presuppose institutions capable of fulfilling them.^{xiii} In pre-political circumstances, critics conclude, the universal provision of goods and services is not a right proper, but a vague, aspirational, moral goal.^{xiv}

Faced with these challenges, some theorists might simply bite the bullet and argue: ‘So much the worse for the political content of human rights’. Human rights make up a very short list, roughly corresponding to rights of non-interference, which would also exist in the state of nature.^{xv} This response is disappointing. Substantively, such a shortened list of human rights would strike many as implausible. Functionally, if the idea of human rights reduces to that of pre-political natural rights, then one may wonder why it should be included in our moral vocabulary. A theory of human rights that is no different from a theory of natural rights is, for that reason, redundant.^{xvi}

Not all proponents of the natural-law approach would bite this bullet though. Some acknowledge that the ‘optimal’ fulfilment of some human rights requires establishing appropriate institutional mechanisms for their protection.^{xvii} But even this richer version of the natural-law view fails fully to capture the political specificity of human rights. For on this account, human-rights violations can still be perpetrated by individuals (e.g., Fritzl), and institutions matter only as a means of securing the relevant rights. Human rights once again have no role to play in our practical reasoning that is not already played by natural rights.

In light of the difficulties with natural-law views, let us turn to ‘political’ approaches to human rights. These approaches conceive of human rights as inherently tied to existing political practice. Theorizing about human rights, proponents of these views claim, should be informed by the particular function human rights play in contemporary international politics: namely placing constraints on the sovereignty of states, and triggering international responses in case they are violated. In turn, a normative account of what human rights there are – i.e., of what constraints should be placed on state conduct – will have to depend on a variety of ‘distinct justifying considerations’.^{xviii}

Needless to say, the political view seems well-equipped to explain the distinctively ‘political’ nature of human rights, and has the required flexibility (thanks to its appeal to a plurality of ‘justifying considerations’) to defend a rich enough list of such rights. As in the case of the natural-law view, however, these virtues come at considerable costs.

To begin with, the view seems to give excessive authority to human-rights *practice*. Why should the function human rights actually play in contemporary international politics shape their meaning? Human-rights practice may well be wrong, and the task of philosophical theorizing is to give us an independent point of view from which to assess and criticize it. Some proponents of the political view might want to counter that their approach allows for criticism and reform of existing human-rights practice, for instance when the practice does not instantiate its underlying values. Even conceding that political views have *some* critical capacity, sceptics would still complain that they do not have the right kind of critical potential. What, for instance, if the values underpinning certain practices are the wrong ones (think of hierarchical or oppressive social systems)?^{xix}

Moreover, and most importantly, the political view appears unable to explain the fundamental character of human rights as entitlements people have solely by virtue of being human, aimed at protecting their dignity. Indeed, why should we think of human rights as existing only under the state system, where the idea of international intervention makes sense? A global state, or some other international institution, could also conceivably perpetrate human-rights violations, but the political view does not seem to allow us to account for this claim.^{xx}

To sum up, a quick glance at the current literature on human rights reveals that both natural-law and political approaches have certain merits as well as shortcomings. What is more, their virtues and vices are complementary: where one goes wrong, the other seems right, and vice versa. Can we design a theory of human rights steering a middle course between these two? One that combines their virtues and avoids their vices? My aim in the rest of this article is to lay the foundations of such a theory.^{xxi}

3. Desiderata for a Good Normative Theory of Human Rights

Our overview of the leading philosophical approaches to human rights has given us an initial sense of what virtues a theory of human rights should have, and what vices it should avoid. For the sake of clarity, it might be useful to articulate these virtues in the form of theoretical desiderata. Three of them are particularly salient:^{xxii}

Explanatory Power: The theory explains our most deeply held convictions about the nature of human rights.

A good theory of human rights should be able to (i) account for their dual nature as moral demands that are at once natural and political, (ii) explain in what sense human rights are

genuine rights with correlative duties, and (iii) give some grounding to the widely held conviction that human rights are meant to protect the dignity of the person.^{xxiii}

Functional Specificity: The theory explains why human rights play a distinctive function in our practical reasoning.

If the notion of human rights, as defined by the theory, were entirely reducible to other normative concepts, it would be redundant. If, for instance, human rights indicated the same objects as natural rights, or social justice, why include them in our normative vocabulary?

Critical Capacity: The theory serves as a basis for evaluating existing human-rights practice.

Just as a plausible theory of social justice should allow us to evaluate existing social institutions, a normative theory of human rights should enable us to evaluate human-rights practice, and criticize it when it fails to instantiate the values human rights are meant to protect.

Is it possible to construct a theory of human rights that meets these three desiderata? In the remainder of this article, I argue that it is. I outline a liberal conception of human rights – the freedom-centered view – according to which human rights form the normative core of any plausible account of persons’ universal right to freedom, namely their right to the *social conditions* to lead autonomous lives pursuing their ends and goals.^{xxiv} While this abstract right belongs in principle to all human beings *qua* actual or prospective autonomous agents, I argue that only state-like entities have the *capacity* and

moral authority to meet its demands. As I said in the introduction, although my approach is inspired by some of Kant's political writings, it is intended to be free-standing, rather than an interpretation of Kant's philosophy.

4. The Right to Freedom and Its Political Dimension

At the heart of liberalism is a conception of human beings as self-directing agents, capable of acting in pursuit of ends they have set themselves.^{xxv} Respect for persons so conceived requires securing the conditions necessary for them to pursue their chosen ends and goals, without being subject to other people's will. That is, it requires protecting their right to freedom. Liberals thus have good reasons to follow Kant in thinking that:

Freedom (independence from the constraint of another person's will) ... is the one sole and original right belonging to every person by virtue of his humanity.^{xxvi}

To respect persons is to ensure that each may pursue her ends and goals so long as she does not infringe on others' right to do the same.^{xxvii} For this to be possible, each person must possess a well-demarcated sphere of agency (a certain 'quantity' of freedom), defined by her rights, in which she is *robustly* protected from external interference. Indeed, to form and pursue her life plans, an agent needs to be reasonably assured that she will be able to use certain means and perform certain actions without being hindered by others. Unless access to opportunities and resources is *secure*, the right to freedom cannot be fulfilled.

From this perspective, then, the predicament of a slave represents a paradigmatic example of violation of the right to freedom.^{xxviii} The slave lacks a sphere of agency *robustly* shielded from others' interference. Even if it just so happens that, in actual

circumstances, the master refrains from interfering with the slave's choices, such interference is always in principle open to him.^{xxix} The slave's access to opportunities and resources is not secure, but ultimately dependent on the will of others.

The asymmetrical relations which characterize slavery are therefore inimical to the right to freedom. As Kant puts it, to enjoy the right to freedom is also to enjoy '... innate equality, that is, independence from being bound by others to do more than one can also reciprocally bind them to do'.^{xxx} Domination and subjugation both violate individuals' right to freedom and show disrespect for their fundamental equality.^{xxxi}

In sum, for the right to freedom to be respected, each person ought *robustly* to enjoy an adequate sphere of agency, defined by her rights and entitlements. Under what circumstances is respect for persons' right to freedom so understood possible? Perhaps surprisingly, only in a civil condition. Given the circumstances of human existence, in a pre-political state of nature, it would be both *impossible and implausible* for agents to respect each other's right to freedom.

First, in the state of nature, the boundaries of each person's sphere of agency are indeterminate and nobody has the authority to fix them. Agents compete over scarce resources, and disagree about what they are entitled to – i.e., about where the boundaries of their spheres of agency should lie. Some, for instance, may believe that respecting persons' right to freedom presupposes a roughly equal distribution of material resources, while others may be convinced that resource-inequalities are justified provided everyone's basic needs are met. So long as their views are *reasonable* (i.e., plausible interpretations of the demands of the right to freedom), none of them has the authority to impose her view on others.^{xxxii} Indeed, such an imposition would amount to a breach of persons' right to freedom: by forcing my views on others who reasonably disagree with me, I would thereby subject them to my own, unilateral, will. Paradoxically, in the state

of nature, many attempts to respect persons' right to freedom would turn into a breach of that very right.

Second, even if (counterfactually) agents agreed on the boundaries of their spheres of agency, not trespassing such boundaries would be impossible for them. Individuals cannot foresee and control the cumulative effects that their actions have on their future selves, third parties, and distant others. No matter how well-intentioned people are, their actions, taken together, have a tendency to erode the conditions under which the right to freedom can be secured. This worry has been famously put forward by John Rawls, and has become known as the 'background justice' argument. As Rawls puts it, 'background justice' – which, in our context, might be translated as 'the conditions for individuals' enjoyment of the right to freedom' – tends to be undermined unless the macro-level effects of individual transactions are regulated by an all-encompassing agent such as the state.^{xxxiii} Individually fair market exchanges, for example, may end up leaving some people destitute through no fault of their own. Lacking means of subsistence, people can hardly be said to be in a position to shape their future, or to be independent of the will of others. Unless an agent with exceptional epistemic and coordination capacities, such as the state, is in place, the right to freedom cannot be respected.

Finally, in the state of nature, respecting others' right to freedom might also be morally implausible. Lacking centralized enforcement mechanisms, we cannot be morally required to respect others' putative entitlements. In Kant's words, '[n]o one is bound to refrain from encroaching on the possession of another if the latter does not in equal measure guarantee that the same kind of restraint will be observed towards him.'^{xxxiv} Since in the state of nature we have no such guarantee, by trying to respect

others' possessions, we make ourselves vulnerable to subjugation. In order to respect others' right to freedom, we give up our own.

In light of this, agents in a pre-civil condition have a 'proto-right' to freedom, which only becomes a full-blown, conclusive, right once they coordinate to set up a common authority. In the first instance, then, the proto-right to freedom places a general duty on us to leave the state of nature and create what Kant calls a 'collective, universal (common), and powerful will', speaking in the name of all, with the authority to define and the capacity to enforce our entitlements: the state.^{xxxv} On this view, the state, understood as a group agent – a tightly organized collective, whose decision-making procedures and capabilities warrant the ascription of agency to it^{xxxvi} – represents a solution to the problems of unilateralism, background justice, and assurance characterizing the state of nature, a solution which makes respecting the right to freedom genuinely possible, thus turning a proto-right into a full blown claim-right.^{xxxvii}

This moralized conception of the state is highly abstract, and clearly differs from standard legal and/or political understandings of this notion. To make it operationalizable, we need to gain a more concrete idea of what conditions have to be met for a *de facto* state to count as a legitimate authority, speaking in the name of all, which renders fulfilling the right to freedom possible. My answer is: respect for human rights.

5. The Right to Freedom and Human Rights

On the view I defend, human rights are defined as follows:

The Freedom-Centered View: Human rights are necessary and sufficient conditions for a reasonable implementation of persons' right to freedom.^{xxxviii}

On this view, human rights are what states that can *reasonably claim* to respect their citizens' right to freedom all share. Even though there may be reasonable disagreements about what precisely counts as a full realization of the right to freedom (i.e., about what counts as a *perfectly just* society) certain fundamental guarantees must unquestionably be in place for it to be fulfilled (i.e., for a state to be *reasonably just/legitimate*).^{xxxix} These guarantees, which are necessary and sufficient for legitimacy (and only necessary for perfect justice), are what I call human rights. Unless these rights are respected,^{xl} there is no meaningful sense in which we might regard the state as a common, 'omnilateral', will, speaking in the name of all.^{xli}

Two aspects of this account are worth emphasizing. First, human rights are not the same as the right to freedom and should not be confused with it. The right to freedom is both prior to human rights and more abstract; human rights are those protections that any state must provide for its citizens if it is to make *a reasonable claim* to respect their right to freedom. On this view, then, we can distinguish between three types of states, depending on how well they secure their citizens' freedom: (i) illegitimate states, which do not respect human rights and therefore certainly infringe on their citizens' freedom; (ii) reasonably just or legitimate states, which protect human rights and thus can *reasonably claim to* respect their citizens' freedom; (iii) perfectly just states, which secure all the guarantees necessary (and sufficient) fully to respect their citizens' freedom including, but not limited to, human rights.

Second, the freedom-centered view does not offer a mere descriptive account of what positive/conventional human rights are like. That is, it does not make the contingent claim that, for example, the rights specified in the Universal Declaration promote the right to freedom. Rather, the view provides a principled definition that can be employed

to (i) generate a plausible list of human rights and (ii) critically assess whether any conventional such list is the correct one.

In particular, I suggest (if only tentatively and for illustrative purposes) that we can distinguish between two categories of freedom-based human rights. First, fundamental *liberty and subsistence rights*. These include rights to life, bodily integrity, basic needs fulfilment, freedom of movement, conscience and expression, as well as equality before the law. Second, fundamental *political rights* ensuring that every citizen is in a position meaningfully to participate in collective decision-making.^{xlii}

Liberty and subsistence rights are obviously indispensable for persons to be able to act as self-directing agents. Basic needs fulfilment is a condition for agency as such, and so are bodily integrity and freedom of movement. Freedom of conscience and expression are also necessary for free agency, insofar as this involves setting ends for oneself, as well as interacting and communicating with others, especially if the ends are collective ones. Finally, equality before the law ensures that these important rights are equally guaranteed for all citizens, which is itself a necessary condition for their enjoyment of the right to freedom as independence.

To see this, consider the situation of women in the UK and the US prior to the 20th century, when they still lacked equal legal status. Under those circumstances, women were dominated by their male contemporaries, hence their right to freedom was violated. There is no meaningful sense in which, at the time, the laws of the UK and the US could be seen as expressing the *omnilateral will* of their citizens.^{xliii} Instead, they were expressing the partial will of a subset of them, namely men. This leads us to the second class of rights: political rights.

The need to establish such rights follows from the observation that nobody is in principle *better entitled* to determine the implications of the right to freedom, beyond

liberties and subsistence rights, than anyone else. If we want to avoid the problem of unilateral interpretation and imposition which occurs in the state of nature, we should make sure not to reproduce it within the state. This is why every citizen should have an equal opportunity to contribute to political decision-making. Only then can state decisions be authoritative in the eyes of all; only then can we regard the state as expressing the *omnilateral will* of all citizens. The freedom-centered view therefore points in the direction of a human right to equal political participation, namely a human right to democracy (a full defence of such a right falls outside the scope of this article).

Having outlined the main features of the freedom-centered view, I now consider how it fares in relation to the three desiderata set out earlier in the article. Doing so will allow me to highlight the strengths and distinctiveness of the view, and address a number of possible objections to it.

6. Explanatory Power

I have suggested that a good normative theory of human rights should be able to explain (at least) three widely held convictions about such rights. First, human rights have both a natural and a political dimension. Second, even though human rights often function as general goals for institution-building and reform, they also appear to be genuine claim-rights, susceptible to violation. Third, human rights are tightly connected to the notion of human dignity: a violation of any such rights offends the dignity of the person more than other types of rights-violation.

A. Natural and Political

Does the freedom-centered view account for the dual nature of human rights – natural and political? It does. On this view, persons have a right to freedom just by virtue of their

humanity, but this right *cannot be respected* by any single individual in the state of nature: it is a proto-right. Agents must therefore leave the state of nature and set up a common coercive authority: the state. Since only the state has the moral power to define the boundaries of, and the capacity to secure, the right to freedom, only the state can bear the duties correlative to it. Because human rights are grounded in the universal right to freedom, they too are political. They presuppose, and bind, the state and/or state-like entities – by which I mean group agents claiming authority, and with the capacity coercively to shape the conditions under which persons lead their lives.^{xliv} The freedom-centered view therefore allows us to explain how human rights can be both (i) held by human beings just by virtue of their humanity and (ii) eminently political, namely tied to political institutions such as the state, understood as ‘omnilateral and powerful’ wills.

To gain a clearer idea of what I mean when I say that human rights are political, it might be useful to consider the freedom-centered view in relation to Thomas Pogge’s ‘institutional’ account of human rights. On Pogge’s account, human rights generate duties to ensure ‘reasonably secure access’ to the objects of such rights. Since only complex institutions have the capacity to guarantee *reasonably secure* access to the relevant objects, only they, argues Pogge, can bear human-rights duties.^{xlv}

The freedom-centered view shares with Pogge’s the claim that only sufficiently complex institutions have the *capacity* to protect the right to freedom, and hence human rights. Only a comprehensive institutional structure like the state can ensure that each person enjoys a sphere of agency robustly shielded from others’ interference. That is, only state-like institutions can solve the problems of background justice and assurance arising in the state of nature. But recall that there is also a third, even deeper, problem in the state of nature that only the state can solve: that of unilateralism. Given reasonable disagreements about the boundaries of persons’ right to freedom, only a *group agent*

speaking in the name of all can define and enforce this right without in so doing violating it. To solve the problem of unilateralism, we need an *omnilateral will*.

On the freedom-centered view, then, states are bearers of human-rights duties not only because, and to the extent that, (a) they have the capacity to fulfil such duties, but also because (b) they are morally entitled to define and enforce the right to freedom. Pogge endorses (a) in relation to institutional structures generally – no matter whether they qualify as group agents with a capacity for collective will formation (he talks about the global institutional order, which certainly does not constitute a group agent) – while the freedom-centered view endorses (a) and (b) in relation to states and other powerful state-like group agents specifically. This emphasis on state-like institutional *agents* allows the freedom-centered view to account for the fact that human rights set standards for institution-building and reform, while at the same time being genuine claim-rights.

B. Standards and Claim-Rights

Can human rights be seen as genuine claim-rights, or are they best conceptualized as standards for institutional reform instead of rights proper? Rights ‘proper’ are relational notions, they always involve a claim on the part of an agent A (the right-holder) against one or multiple agents B (duty-bearers) who have a duty to respect or fulfil A’s claim. For example, A’s right to life entails a duty on the part of other agents to refrain from killing A. Similarly, A’s right to food entails duties on other agents to provide A with food. For A to have a genuine right to X, there must be agents (B, C, D) with an obligation to provide A with X or to refrain from undermining A’s X. Such an obligation can only exist if *agents* B, C, D etc. have the *effective capacity* to provide or refrain from undermining X, and if *it makes moral sense* to place an obligation on them to do so.^{xlvi}

Christine Chwaszcza, among others, has recently argued that human rights are not plausibly conceptualized as claim-rights proper, but should be understood as standards for institutional evaluation and reform. Institutions are not agents, and thus not the sorts of entities which may be appropriately seen as bearing rights-corresponding duties. On this account, we can say, for instance, that at present international law fails to meet human-rights standards, but we cannot say that it *violates* human rights understood as claim-rights. International law, unlike individual persons, is not an agent after all.^{xlvii} Moreover, international law as it is simply does not have the capacity to protect human rights. For it to be able to do so, it needs reform. When institutions and practices fall short of human-rights standards, it is not because they ‘act’ in the wrong way, but rather because they are in some sense defective: they need to be modified.

From this perspective, if we want to capture the political specificity of human rights, and treat them as standards of institutional legitimacy, we must give up the conviction that they are claim-rights, susceptible to being violated. On the view proposed by Chwaszcza, and to some extent also championed by Pogge, human rights assess the moral quality of institutions and, as such, cannot be *violated*, but can only be *underfulfilled*.^{xlviii} Of course, individuals may be responsible for such underfulfilments, by supporting imperfect institutions, or by failing to do what is reasonably within their power to reform them. But the language of rights-violations is misleading in this context.

The freedom-centered view, by contrast, illustrates how talk of human-rights underfulfilment can happily coexist with talk of human-rights violations.^{xlix} On this view, human rights can be at once standards for institution-building and reform, as well as claim-rights proper. To see this, let us go back to the state of nature. As we saw earlier, prior to the establishment of the state, human beings have a proto-right to freedom, generating duties to do what is reasonably within one’s power to bring about conditions

(i.e., a state) under which freedom can become a full-blown right. In this pre-political state of affairs, then, the right to freedom operates as a standard for institution-building. It would make little sense to insist that, in the envisaged scenario, the right to freedom is violated, given that there is no agent who bears the duties correlative to it. Rather, it is more appropriate to claim that the right is underfulfilled. This, in turn, may be either because individuals (culpably) fail to do what is reasonably within their power to set up a state, or because setting up a state takes time, and despite their efforts, individuals have not yet accomplished this goal.¹

Once a civil condition is established, however, the right to freedom becomes a full-blown claim-right which individuals hold against the state. Since the state is the sort of institution that qualifies as a group agent, and has effective capacity to secure the right to freedom, it is perfectly plausible to regard it as a bearer of the duties correlative to it (hence to human rights).^{li} While social practices and institutions as such cannot strictly speaking violate rights, states and state-like institutions, *qua* capable group agents, can. The freedom-centered view thus accounts for the political nature of human rights, without giving up the intuitively plausible thought that human rights are genuine claim-rights, susceptible to being violated.

C. Dignity

What is more, focusing on states (or functionally similar institutional agents) *qua* putative omnilateral wills allows the freedom-centered view optimally to capture the relationship between human rights, dignity, and politics. Human dignity is safeguarded when persons' status as equal, autonomous, and self-directing agents is recognized and affirmed. The reason why human-rights violations are particularly harmful to persons'

dignity can be easily explained once we conceive of the state as an omnilateral will, speaking on behalf of all its inhabitants.

On the view I have proposed, human-rights violations occur whenever the state either actively curbs persons' rights to freedom (e.g., it shoots protesting political opponents) or negligently fails to protect them (e.g., it neglects to enforce the law). In these circumstances, the state, which claims to speak in the name of an entire community, conveys the message that the community as a whole does not recognize the equal status of the victims.^{lii} When a state denies women the right to vote, for example, it tells them, on behalf of the entire citizenry, that they are not worthy of equal respect. Or else, when state officials physically abuse detainees, they express a public lack of recognition of their status as humans. If the state did not purport to be an omnilateral authority, human-rights violations would certainly be wrong and criminal, but they would not constitute such an affront to personal dignity. It is the collective disrespect implied by human-rights violations that explains their distinctive dignity-undermining character.^{liii}

7. Functional Specificity

The freedom-centered view also accounts for the functional specificity of human rights. To see this, consider a particular right, such as the right to freedom of movement. This is clearly a moral right, grounded in the right to freedom, whose existence is independent of its actual recognition within positive moral codes. Even if the boundaries of the right can only be rightfully defined by the state (*qua* omnilateral will), the fact that a particular state does not recognize this right does not mean that the right does not exist.

The right to freedom of movement is not only a moral right, but also a citizenship right, or a human right, depending on the circumstances. To see this, let us go back to

Josef Fritzl, the Austrian criminal we encountered earlier in our discussion. By segregating his daughters, Fritzl has clearly violated their moral right to freedom of movement, and is therefore morally blameworthy. In addition to a moral right, Fritzl has also violated a citizenship right. Whenever citizenship-rights violations occur, the state is legitimated to intervene and punish the violator. While moral-rights violations signal that an agent is blameworthy, citizenship-rights violations signal that the violator is not only blameworthy, but also liable to being prosecuted and punished *by the state*. Finally, if the violator of the right to freedom of movement is the state (or a similar political entity) itself, we are faced with a *human-rights* violation. The state, which has a duty to secure the conditions under which individuals can enjoy their right to freedom, is failing to do so. In turn, such violation attracts blameworthiness and opens the possibility for legitimate intervention against the state.

When a state actively oppresses its citizens, or negligently fails to secure the objects of their human rights, it no longer holds legitimate authority over them, and is thus open to intervention on the part of appropriately placed agents within or outside it.^{liv} In short, domestically, a human-rights respecting state commands obedience on the part of its citizens; internationally, it commands respect – i.e., non-interference – on the part of other states. In other words, a human-rights respecting state is not only a *de facto*, but a legitimate political authority with sovereign powers. When a state fails to respect human rights, its moral standing vis-à-vis citizens and outsiders declines.^{lv}

That said, two points of clarification are in order. First, on this view, human-rights violations are a *necessary*, but not a sufficient condition for intervention against a state. Whether intervention is justified or not depends on a range of other factors, including its likely consequences, and the moral position of the agents proposing to intervene. For example, a unilateral intervention on the part of a powerful state to impose

democracy in a war-torn society might not be justified under all circumstances, even if the society in question is one plagued by human-rights violations. Similarly, domestic rebellion against a despotic state might be wrong if its costs are likely to be too great.

Second, intervention (both domestic and international) might take a variety of forms – soft or hard – depending on the circumstances: from economic sanctions to military action, from civil disobedience to revolution. The important point is that a state has a right to govern its population undisturbed only so long as it respects human rights. When it fails to do so, it loses part of (or all) its moral standing vis-à-vis both insiders and outsiders.

This double emphasis – on the external as well as internal dimension of the moral standing of states – renders the freedom-centered view particularly flexible in light of changing empirical circumstances. Indeed, on this view, talk of human rights need not be tied to the state system as it is today. If, hundreds of years from now, the world were governed by a global state, or by multiple higher- and lower-level sovereign institutions, we could still meaningfully use the language of human rights. In this new scenario, human-rights violations would signal that our global state (or multi-level system) is no longer morally legitimate, and thus an appropriate target of disobedience or rebellion. The freedom-centered view is therefore political, but unlike standard political approaches to human rights, it is not excessively tied to the *status quo*. This virtue of the view will become all the more evident in the discussion of the next desideratum.

8. Critical Capacity

The freedom-centered view helps us develop critical standards by which to assess (A) what rights should count as human rights (i.e., their content) and (B) how responsibility for human rights should be allocated. From the perspective of content, the view allows us

to draw clear conclusions on some of the most heavily debated human rights. I shall consider two examples in particular: the right to democratic participation, and anti-poverty/welfare rights.

A. The Content of Human Rights

Some political philosophers, including Charles Beitz and Joshua Cohen, have expressed scepticism about the idea of a human right to democracy.^{lvi} By adopting the freedom-centered view, by contrast, we have reason to embrace such a right. This is because democratic participation most directly (though still less than perfectly^{lvii}) ensures that a state speaks on behalf of its citizens. Crucially, to proclaim a human right to democracy is not to legitimize the imposition of democracy, but to recognize that a political regime should strive towards democracy, so long as this is compatible with the fulfilment of its citizens' basic needs and liberties. For instance, in societies characterized by unfavourable economic conditions, curbing citizens' liberties and political rights might even be necessary in order to satisfy their basic needs.^{lviii} In such cases, there would be no point in insisting for society to become democratic, since the background conditions which would make democracy viable are simply absent in the context at hand. Similarly, a state where an enlightened elite is doing all it can to protect human rights, but cannot quite yet introduce democratic institutions because the necessary social conditions are lacking, is not one where the human right to democracy is *violated* by the state. At most, it is one in which it remains *underfulfilled*. In these circumstances, the human right to democracy functions as a standard or goal for institutional reform, rather than as a claim-right proper. So long as this is the case, that state has to be carefully observed, and its efforts towards democracy supported, but it does not qualify for intervention. Institutional reform takes time after all, and provided the state does what is reasonably

within its power to promote democracy, its actions are beyond moral criticism. By contrast, if a military group seizes power in a democratic society, and starts governing dictatorially, we can safely claim that citizens' right to democracy is not just underfulfilled, but violated. Democracy is possible, but those in power refuse to implement it.

Now consider welfare rights. Some political philosophers have suggested that these rights are in fact no human rights at all. On their view, human rights are held by every person against every other person. Negative rights to non-interference, they claim, obviously meet this description: it is clear that everyone in the world has to respect everybody else's rights to life, property and security. Positive rights to goods and services don't: it would be absurd to hold everyone under a duty to provide goods and services to everyone else in the world. Unless the correlative duties are allocated via appropriate institutional mechanisms, so the argument goes, this right is impossible to fulfil, hence it does not exist. Proponents of this view thus conclude that while negative rights are universal human rights, positive rights are not.^{lix}

The freedom-centered view helps us see why this position is misguided, and thus why we have reason to advocate human rights to certain goods and services. On this view, the sharp distinction between negative and positive rights is, to a large extent, an arbitrary one. The boundaries of one's liberties have to be authoritatively defined just as much as those of one's access to goods. It is naive to believe that, in the state of nature, without authoritative institutional mechanisms, one can immediately know, say, where one's freedom of movement ends and where others' property rights begin.^{lx}

Moreover, certain material goods are clearly a necessary component of one's right to freedom. To begin with, poverty and destitution place important constraints on freedom as non-interference. If I do not have enough money to buy means of subsistence,

my attempts to appropriate them will trigger interference from state authorities. When I am poor, my sphere of agency immediately shrinks.^{lxi} In fact, poverty threatens not only freedom as non interference, but also freedom as independence. Destitution breeds subjection to the will of others. Destitute people can easily be exploited. Their ability to pursue their life plans, in fact their ability to survive, is often altogether dependent on others. As a result, they are incentivized to do whatever will please those who control them in exchange for the hope of a decent life. For these reasons, on the freedom-centered view, we are bound to conclude that there are human rights to goods and services or, at any rate, to a genuine opportunity to acquire them (welfare rights).^{lxii}

B. Responsibility for Human Rights

Let me now turn to the second critical dimension of the freedom-centered view: responsibility for human-rights protection. Within contemporary human-rights practice, primary responsibility for human-rights fulfilment is typically placed on states, and secondary responsibility on other, appropriately located, international agents with the capacity to fulfil human rights.^{lxiii} For example, if a state fails to lift its citizens out of poverty, NGOs, international institutions, and state-sponsored development-aid programs can legitimately intervene to address their deprivation.

This view, which is arguably dominant in contemporary international practice, is insufficiently sophisticated.^{lxiv} Indeed, we can fruitfully distinguish between two possible causes of human-rights violations: abuse or misuse of state power, and state powerlessness. Of course, when a state abuses its power – for instance, as in the contemporary cases of Burma, China and Iran – it makes sense to consider the state itself as the primary human-rights violator, and the international community as having *remedial* responsibilities with respect to the fulfilment of the relevant rights.^{lxv}

However, human rights might fail to be protected also due to state powerlessness, for which other societies or international actors (e.g., WTO, IMF and others) may be morally responsible.^{lxvi} Some states, for instance, lack the effective capacity to govern due to a troubled past of colonial domination, which has prevented them from developing viable social and political institutions. In such cases, the states of former colonizers may also appropriately count as primary human-rights violators.^{lxvii}

Moreover, in an increasingly globalized world, a state's lack of the capacity to protect human rights may to a large extent depend on what other states, and international actors, do. The more states interact and become interdependent, the more the line between primary and secondary responsibilities for human rights becomes blurred, because a state's ability to secure human rights domestically depends on decisions and actions on the part of other states and international actors, even when these do not amount to recognized forms of external intervention.

Consider the domestic impact of WTO regulations. Thanks to their superior bargaining power, wealthy states participating in trade negotiations can easily take advantage of developing countries. This dynamic is clearly illustrated in the case of US and EU agricultural subsidies, which have seriously harmed the chances of farmers in developing countries to find markets for their produce.^{lxviii} Or else, think about phenomena such as the 'brain drain' from poor countries, or 'tax competition'.^{lxix} These international dynamics show the extent to which the domestic justice of a particular society may depend on what happens in other societies. For instance, the presence of attractive career opportunities abroad drains some countries of vital human and intellectual resources. Similarly, in a globalized world, countries compete for foreign investment by diminishing taxes on foreign capital; but in so doing, they also undermine

their ability to generate the necessary revenue to provide essential social services and protect the human rights of their citizens.

In sum, the more the world becomes interdependent, the more states and other powerful authoritative international actors become ‘primarily’ responsible not only for the human rights of their own citizens, but also for the human rights of others.^{lxx} Just as the unregulated effects of individual actions prevent persons’ right to freedom from being realized in the state of nature, the joint unregulated (or unfairly regulated) effects of state actions prevent states themselves from being able to secure their citizens’ rights to freedom. The coordination and interpretation problems that made freedom impossible in the state of nature make it equally impossible in a sufficiently integrated system of states.^{lxxi}

Solving these problems would seem to require the establishment of authoritative coordinating agents stopping international interdependence from undermining state sovereignty, and the promotion of greater human-rights sensitivity in those that already exist (e.g., the WTO and IMF). The idea is not to replace independent states with a global one. Instead, it is to guarantee the *equal* substantive sovereignty of all states, hence the conditions for them to be able to protect their citizens’ human rights.^{lxxii} Only once states are genuinely equally sovereign (i.e., when they are all independent and effectively capable of controlling their territories and populations) can we truly say that responsibility for the human rights of their citizens falls primarily upon them. If the environment in which states exist makes them *unable* to protect human rights despite their best efforts, how could we hold them primarily responsible?

The freedom-centered view I have proposed therefore allows us to give a more precise meaning to the widely accepted claim that the international community acts as a guarantor for human-rights responsibilities. Its role as a guarantor is twofold. First, it

guarantees these responsibilities by ensuring that states are equally sovereign. Second, it intervenes to restore human rights when, even against a background of equal sovereignty, one or more states misuse or abuse their power and thus fail to discharge their human-rights responsibilities.

10. Conclusion

Human rights are a complex notion. They are at once ‘natural’ and ‘political’. In this article, I have suggested that the most prominent existing views on human rights fail to explain their double nature. In response to this shortcoming, I have developed a freedom-centered view of human rights which brings together their natural and political dimensions, and satisfies three key desiderata. Of course, more work needs to be done in order to construct a complete theory of human rights – one that includes a full list of such rights and a ranking between them. All I hope to have shown in this article is that the freedom-centered view provides a fruitful framework for developing such a theory.

I am grateful to the audience at the ISA Roundtable on Charles Beitz’s *The Idea of Human Rights* (February 2010), and to seminar participants at Rutgers (Philosophy, April 2010), LSE (Government, April 2010), Essex (Government, May 2010), Oxford (Politics, November 2010), and Birmingham (Philosophy, December 2010) for discussion. I am particularly indebted to Charles Beitz, Kimberley Brownlee, Emanuela Ceva, Alasdair Cochrane, Ryan Davis, Kyla Ebels-Duggan, Cécile Fabre, Pablo Gilabert, Robert Jubb, David Karp, Mathias Koenig-Archibugi, Cécile Laborde, Melissa Lane, Seth Lazar, Andrew Lister, Catherine Lu, Stephen Macedo, Pietro Maffettone, Joseph Mazon, Victoria McGeer, David Miller, Miriam Ronzoni, Nicholas Southwood, Annie Stilz, John Tasioulas, Larry Temkin, Andrew Williams, Lea Ypi, the editor of *Political Theory*, Mary Dietz, and the anonymous reviewers of this article for their constructive suggestions and critical remarks. My biggest thanks go to Christian List for his perceptive comments and continued support.

ⁱ For each type of view, see endnotes in the next section.

ⁱⁱ Moreover, to the extent that Kant's views are situated within the social contract tradition, readers will probably detect Hobbesian, Lockean and Rousseauian elements in my discussion. See also my brief account in Laura Valentini, *Justice in a Globalized World: A Normative Framework* (Oxford: Oxford University Press, 2011), p. 103.

ⁱⁱⁱ I specify 'potential or actual self-directing agent', because human rights are meant to cover the entire life-span of a human being, from childhood to old age.

^{iv} For the notion of a proto-right see, e.g., Charles R. Beitz, 'Human Rights and Social Justice', in Peter G. Brown and Douglas MacLean (eds.), *Human Rights and U.S. Foreign Policy* (Lexington, MA: Lexington Books, 1979), pp. 45-63, p. 56.

^v The view that political authorities are the unique bearers of the duties correlative to human rights has also been suggested in Christian Barry and Nicholas Southwood, 'What Is Special about Human Rights?', *Ethics and International Affairs*, 25 (3) (2011), 369-83.

^{vi} Cf. John Tasioulas's claim that we first need to justify human rights to ourselves, and only later consider whether they can be justified to others, in his 'Towards a Philosophy of Human Rights', Inaugural Lecture given at UCL, in January 2012. Cf. also the two-stage original position sequence in John Rawls, *The Law of Peoples* (Cambridge, MA: Harvard University Press, 1999), where principles of international political morality (including human-rights principles) are first selected by liberal peoples, and only later approved by societies with a different (but still decent) political culture. Rawls sees acceptance on the part of non-liberal peoples as itself a demand of liberalism. As critics of Rawls have pointed out, however, this leads Rawls to defend a theory of international justice which fails to be true to liberal ideals. See, e.g., Thomas Pogge, 'Critical Study: Rawls on International Justice', *The Philosophical Quarterly*, 51 (203) (2001), 246-53.

^{vii} Regarding the account of human rights defended in this article, much of its *structure* could be retained while grounding human rights in values other than freedom but which, like freedom, are in need of political articulation and can be seen as placing constraints on the actions of state-like political authorities. In turn, such values (e.g., well-being, basic needs satisfaction, capabilities) could be chosen with the strategic aim of making one's justification of human rights robust across different cultures and conceptions of the good. Cf. the discussion in Joshua Cohen, 'Minimalism About Human Rights: The Most We Can Hope For?', *Journal of Political Philosophy* 12 (2) (2004), 190-213.

^{viii} On this see Charles Beitz, ‘Human Rights as a Common Concern’, *American Political Science Review*, 95 (2) (2001), 269-82, p. 274, and Laura Valentini, ‘In What Sense Are Human Rights Political? A Preliminary Exploration’, *Political Studies*, 60 (1) (2012), 180-94, p. 185.

^{ix} See, e.g., James Griffin, *On Human Rights* (Oxford: Oxford University Press, 2008), Alan Gewirth, *Human Rights* (Chicago: University of Chicago Press, 1982), Jack Donnelly, ‘Human Rights as Natural Rights’, *Human Rights Quarterly*, 4 (3) (1982), 391-405, Maurice Cranston, *What Are Human Rights?* (London: Bodley Head, 1973), Amartya Sen, ‘Elements of a Theory of Human Rights’, *Philosophy and Public Affairs*, 32 (4) (2004), 315-56, and Simon Caney, ‘Global Poverty and Human Rights: The Case for Positive Duties’, in T. Pogge (ed.), *Freedom from Poverty as a Human Right* (Oxford: Oxford University Press, 2007), pp. 275-302.

^x On this see Thomas Pogge, *World Poverty and Human Rights* (Cambridge: Polity Press, 2000), pp. 47-8 and 59-63.

^{xi} Mark Landler, ‘Austria Stunned by Case of Imprisoned Woman’, *The Times Online*, April 29, 2008. See <http://www.nytimes.com/2008/04/29/world/europe/29austria.html> (last accessed 15/2/2012).

^{xii} Joseph Raz, *The Morality of Freedom* (Oxford: Clarendon, 1986), ch. 7.

^{xiii} Charles Beitz, *The Idea of Human Rights* (Oxford: Oxford University Press, 2009), pp. 55-8, Onora O’Neill, *Towards Justice and Virtue* (Cambridge: Cambridge University Press, 1996), ch. 5, and Peter Jones, *Rights* (New York: St. Martin’s, 1994), p. 89.

^{xiv} For the idea of a manifesto right see Joel Feinberg, *Social Philosophy* (Englewood Cliffs, N.J.: Prentice Hall, Inc 1973), pp. 55-97.

^{xv} See O’Neill, *Towards Justice and Virtue*, pp. 131-2. Cf. Cranston, *What Are Human Rights?*

^{xvi} See Beitz, *The Idea of Human Rights*, ch. 3.

^{xvii} See, e.g., Griffin, *On Human Rights*, esp. his discussion of ‘practicalities’.

^{xviii} See, e.g., Beitz, *The Idea of Human Rights*, p. 138, Joseph Raz, ‘Human Rights without Foundations’, in J. Tasioulas and S. Besson (eds.), *The Philosophy of International Law* (Oxford: Oxford University Press, 2010), pp. 321-38, Rawls, *The Law of Peoples*, and Andrea Sangiovanni, ‘Justice and the Priority of Politics to Morality’, *Journal of Political Philosophy*, 16 (2) (2008), 137-64.

^{xix} See the discussion in Sangiovanni, ‘Justice and the Priority of Politics to Morality’, pp. 158-63.

^{xx} John Tasioulas, ‘Are Human Rights Essentially Triggers for Intervention?’, *Philosophy Compass*, 4 (6) (2009), 938-50.

^{xxi} Pablo Gilibert has also recently argued that the best account of human rights combines insights from both natural-law and political perspectives. For Gilibert, human rights are abstract moral rights individuals hold by virtue of being human, however, they can often be best protected through political institutions. As will become apparent in what follows, my view differs from Gilibert's in that it does not conceive of political institutions as largely 'instruments' for human-rights protection, but as the only agents which can be regarded as human-rights violators (for Gilibert, these also include individuals). Gilibert's view is thus closer to the natural-law approach than mine. See Gilibert, 'Humanist and Political Perspectives on Human Rights', *Political Theory*, 39 (4) (2011), 439-467.

^{xxii} Allen Buchanan and John Tasioulas have also recently set out a number of desiderata for a good theory of human rights, some of which partly overlap with mine. See Buchanan, 'The Egalitarianism of Human Rights', *Ethics*, 120 (4) (2010), 679-710, and Tasioulas, 'Are Human Rights Essentially Triggers for Intervention?', p. 939.

^{xxiii} As Jack Donnelly notes, 'Article 1 of the Universal Declaration begins, "[a]ll human beings are born free and equal in dignity and rights." Likewise, both Covenants assert that "these rights derive from the inherent dignity of the human person."...' See his, 'Human Rights, Democracy and Development', *Human Rights Quarterly*, 21 (3) (1999), 608-32, p. 613.

^{xxiv} Cf. Amartya Sen's capability-based conception of human rights in his 'Elements of a Theory of Human Rights'. As will become apparent, my view departs from Sen's in its emphasis on the key role of political authorities as unique bearers of the duties correlative to human rights.

^{xxv} This is what I mean by 'autonomous' agents. That is, unlike Kant, I do not use the adjective 'autonomous' to refer to actions performed out of duty.

^{xxvi} Immanuel Kant, *Metaphysical Elements of Justice*, translated by John Ladd (Indianapolis: Hackett, 1999), p. 38 [6: 237]. In developing this Kant-inspired account, I have learnt from Arthur Ripstein, *Force and Freedom: Kant's Legal and Political Philosophy* (Cambridge, MA: Harvard University Press, 2009), Anna Stilz, *Liberal Loyalty* (Princeton: Princeton University Press, 2009), ch. 2, Jennifer K. Uleman, 'External Freedom in Kant's *Rechtslehre*: Political, Metaphysical', *Philosophy and Phenomenological Research*, 68 (3) (2004), 578-601, and Katrin Flikschuh, *Kant and Modern Political Philosophy* (Cambridge: Cambridge University Press, 2000). For a discussion of Kant and Locke in relation to human rights see A. John Simmons, *Justification and Legitimacy* (Cambridge: Cambridge University Press, 2001), ch. 9.

^{xxvii} Cf. Immanuel Kant, 'On the Common Saying: This May be True in Theory, but it does not Apply in Practice', in Hans Reiss (ed.), *Kant's Political Writings* (Cambridge: Cambridge University Press, 1970), pp. 61-92, p. 74.

^{xxviii} Cf. the example in Arthur Ripstein, 'Authority and Coercion', *Philosophy and Public Affairs*, 32 (1) (2004), 2-35, p. 8. Note, however, that (unlike me) Ripstein defines freedom itself by appeal to individual rights. For Ripstein, the right to freedom does not indicate a right to a certain 'quantity' of freedom, but rather a right to 'use one's means and pursue one's ends robustly unhindered by others', namely the means and resources one has a right to. See Ripstein, *Force and Freedom: Kant's Legal and Political Philosophy* (Cambridge, MA: Harvard University Press, 2009), ch. 1. For discussion see Laura Valentini, 'Kant, Ripstein, and the Circle of Freedom', *European Journal of Philosophy* (forthcoming). The notion of freedom as independence is in line with the republican idea of freedom as non-domination, see Philip Pettit, *Republicanism: A Theory of Freedom and Government* (Oxford: Oxford University Press, 1997).

^{xxix} Christian List, 'Republican Freedom and the Rule of Law', *Politics, Philosophy & Economics*, 5 (2) (2006), 201-20.

^{xxx} Kant, *Metaphysical Elements of Justice*, p. 38 [6: 238].

^{xxxi} Cf. Thomas Pogge, 'Kant's Theory of Justice', *Kant-Studien*, 79 (4) (1988), 407-33.

^{xxxii} I have particularly benefited from Jeremy Waldron's interpretation of Kant's arguments about justice in the state of nature in his 'Special Ties and Natural Duties', *Philosophy and Public Affairs*, 22 (1) (1993), 14-15.

^{xxxiii} John Rawls, *Political Liberalism* (New York: Columbia University Press, 1996), p. 267. See also the discussion in Miriam Ronzoni, 'The Global Order: A Case of Background Injustice? A Practice-Dependent Account', *Philosophy and Public Affairs*, 37 (3) (2009), 229-56.

^{xxxiv} Kant, *Metaphysical Elements of Justice*, p. 114 [6: 307].

^{xxxv} Kant, *Metaphysical Elements of Justice*, pp. 114 [6: 307] and 53 [6: 256].

^{xxxvi} See Christian List and Philip Pettit, *Group Agency* (Oxford: Oxford University Press, 2011), Anna Stilz, 'Collective Responsibility and the State', *Journal of Political Philosophy*, 19 (2) (2011), 190-208, and Toni Erskine, 'Assigning Responsibilities to Institutional Moral Agents: The Case of States and Quasi-States', *Ethics and International Affairs*, 15 (2) (2001), 67-85.

^{xxxvii} Kyla Ebels-Duggan, 'Moral Community: Escaping the Ethical State of Nature', *Philosophers' Imprints*, 9 (8) (2009), 1-19.

^{xxxviii} For liberal interpretations of what reasonably respecting the right to freedom requires in line with the one I am about to propose see Stilz, *Liberal Loyalty*, chs. 2 and 4 (pp. 93-4), Susan Williams Holtman, ‘Kantian Justice and Poverty Relief’, *Kant Studien*, 95 (1) (2004), 86-106, and Paul Guyer, *Kant* (New York: Routledge, 2006), pp. 270-5.

^{xxxix} I am using reasonably just and legitimate as synonyms. Cf. Stilz, who uses a similar Kant-inspired criterion of state legitimacy, not to define human rights, but to identify the conditions under which citizens may be held responsible for their state’s acts, in ‘Collective Responsibility and the State’.

^{xl} There may be circumstances in which human rights are generally respected by a state, and yet a one-off violation occurs. Would this make the state in question altogether illegitimate? It would not. This is because judgements of legitimacy come in degrees, and full-blown illegitimacy only obtains when a state (or state-like entity) *systematically* fails to respect human rights. See Ronald Dworkin, *Justice for Hedgehogs* (Cambridge, MA: Harvard University Press, 2011), p. 322; cf. Christopher Heath Wellman, ‘Taking Human Rights Seriously’, *Journal of Political Philosophy*, 20 (1) (2012), 119-30. Thanks to an anonymous reviewer for raising this point.

^{xli} It has been brought to my attention that my independently developed outlook on human rights is *structurally* similar to Ronald Dworkin’s account of human rights in his *Justice for Hedgehogs*. For Dworkin, human rights set out standards of legitimacy, and require states to make *good-faith attempts* at respecting the dignity of their subjects. When a state’s behaviour can be intelligibly (though perhaps unconvincingly) interpreted as geared towards respecting its subjects’ dignity, that state respects human rights. Otherwise, it is a human-rights violator (pp. 332-9, esp. p. 335). Dignity, in turn, is defined in terms of two ethical principles, outlining the responsibilities individuals have towards their own lives (pp. 203-4). Despite this broad structural similarity (i.e., human rights are standards of legitimacy whose fulfilment does not require *perfect* respect for justice/dignity, but what I call *reasonable* respect for justice/dignity), my account of human rights does not share Dworkin’s *ethical* foundations (based on the duties of individuals towards their own lives), and instead rests on the ‘political’ right to freedom. Notice moreover that Dworkin does not explicitly discuss the natural and political dimensions of human rights, or how his notion of human rights meets the desiderata set out in this article. Thanks to Andrew Williams for discussion on this.

^{xlii} Cf. Henry Shue, *Basic Rights: Subsistence, Affluence and U.S. Foreign Policy* (Princeton, NJ: Princeton University Press, 1996, 2nd ed.).

^{xliii} This shows how the freedom-centered view also accounts for what Allen Buchanan calls the ‘status-egalitarian’ nature of human rights. See his ‘The Egalitarianism of Human Rights’.

^{xliv} For the notion of coercion I am implicitly employing here see Laura Valentini, ‘Coercion and (Global) Justice’, *American Political Science Review*, 105 (1) (2011), 205-20. On this definition, powerful international institutions such as the WTO would count as state-like agents. For a similar account of the political nature of human rights as binding state-like agents see Barry and Southwood, ‘What Is Special about Human Rights?’.

^{xlv} Pogge, *World Poverty and Human Rights*, chs. 1 and 2.

^{xlvi} Raz, *The Morality of Freedom*, ch. 7.

^{xlvii} See Christine Chwaszcza, ‘The Concept of Human Rights in Contemporary Human Rights Discourse’, *Ratio Juris*, 23 (3) (2010), 333-64.

^{xlviii} The notion of underfulfilment is Pogge’s in particular, see his *World Poverty and Human Rights*, p. 47. Pogge prefers it to the idea of a violation because, on his institutional account, respect for human rights depends on whether social institutions provide reasonably secure access (rather than fully guaranteed access) to certain goods. Respect for human rights, then, depends on meeting certain thresholds/standards.

^{xlix} Cf. Pablo Gilabert, ‘The Feasibility of Basic Socio-economic Human Rights: A Conceptual Exploration’, *Philosophical Quarterly*, 59 (237) (2009), 659-81.

¹ For a more elaborate discussion of this conceptual point see Laura Valentini, ‘On the Duty to Create Just Global Authorities: Bridging the Normative Gap’ (manuscript). See also my *Justice in a Globalized World*, p. 105, where the notion of an underfulfilment of *justice* is briefly introduced.

^{li} Of course, I am here referring to well-functioning states. Failed states do not have the relevant capacities.

^{lii} For a similar claim see the discussion of official disrespect in Katherine Eddy, ‘On Revaluing the Currency of Human Rights’, *Politics, Philosophy & Economics*, 6 (3) (2007), 307-28, p. 321ff., Pogge, *World Poverty and Human Rights*, pp. 56-63, and Valentini, ‘In what Sense Are Human Rights Political?’, pp. 187ff.

^{liii} Before moving on to the next desideratum, let me address an apparent explanatory deficiency of the freedom-centered view. How can the view account for the claim that children and the disabled are bearers of human rights, given that they lack a capacity for autonomous agency? The case of children can be addressed by pointing out that they are sentient creatures with a *potential* for autonomous agency, which explains why a particular subset of human rights applies to them (e.g., not rights to political participation,

but certainly rights to subsistence and education). With respect to the disabled, we can imagine different types of human rights applying to them depending on how well-developed their capacity for autonomy is. To the extent that they have some such capacity, they qualify as bearers of a relevant subset of human rights – perhaps similar to the rights of children. But what about someone whose mental and emotional abilities are, and are destined to remain, no greater than those of a cat or a horse? However counterintuitive, it may be that we have no principled reason to grant this agent any more normative standing than we should grant other non-human animals. It is crucial to emphasize, though, that the standing we ought to grant non-human animals may be much greater than what we currently recognize – i.e., non-human animals may have important rights we fail to protect. On these themes, cf. the discussion in Griffin, *On Human Rights*, ch. 4.

^{liv} This is not Kant's own view, at least not on an orthodox reading of it. Kant defends a strong notion of sovereignty and denies that states may legitimately coerce one another, or that citizens have a right to rebel against their state. See Katrin Flikschuh, 'Reason, Right, and Revolution: Kant and Locke', *Philosophy and Public Affairs*, 36 (4) (2008), 375-404, and 'Kant's Sovereignty Dilemma: A Contemporary Analysis', *Journal of Political Philosophy*, 18 (4) (2010), 469-93.

^{lv} Cf. Jack Donnelly, *Universal Human Rights in Theory and Practice* (Ithaca: Cornell University Press, 2nd ed., 2003), pp. 38-9.

^{lvi} See Beitz, *The Idea of Human Rights*, 174-85, and Joshua Cohen, 'Minimalism about Human Rights: The Most We Can Hope For?' and 'Is There a Human Right to Democracy?', both in his *The Arc of the Moral Universe* (Cambridge, MA: Harvard University Press, 2010), pp. 319-48 and 349-72.

^{lvii} Permanent minorities may, for example, be continuously outvoted in a democracy. This, however, does not disprove the point that, of all feasible social arrangements, democratic ones get closest to realizing the ideal of an omnilateral will.

^{lviii} See Rawls, *A Theory of Justice* (Oxford: Oxford University Press, 1999 rev. ed.), p. 132.

^{lix} See, e.g., O'Neill, *Towards Justice and Virtue*, ch. 5.

^{lx} Cf. Henry Shue's critique of this position in his *Basic Rights* (Princeton, NJ: Princeton University Press, 1980, 2nd ed. 1996), and Elizabeth Ashford, 'The Alleged Dichotomy between Positive and Negative Duties of Justice', in C.R. Beitz and R.E. Goodin (eds), *Global Basic Rights* (Oxford: Oxford University Press, 2009).

^{lxvi} See Jeremy Waldron, 'Homelessness and the Issue of Freedom', *U.C.L.A. Law Review* 39 (1991), 295-324, and G.A. Cohen, 'Capitalism, Freedom and the Proletariat', in David Miller (ed.) *The Liberty Reader* (Edinburgh: Edinburgh University Press, 2006), pp. 163-82.

^{lxvii} Onora O'Neill, *Faces of Hunger* (London: Allen and Unwin, 1986).

^{lxviii} See Beitz, *The Idea of Human Rights*.

^{lxix} See, e.g., Margot Salomon, *Global Responsibility for Human Rights* (Oxford: Oxford University Press, 2007), and Onora O'Neill, 'Agents of Justice', *Metaphilosophy*, 32 (1/2) (2001), 180-95.

^{lxx} For a detailed analysis of the notion of remedial responsibility see David Miller, 'Distributing Responsibilities', *Journal of Political Philosophy*, 9 (4) (2001), 453-71.

^{lxxi} Someone might wonder about the role of other large-scale corporate agents, such as Transnational Corporations (TNCs), in relation to human rights. Can they be human-rights violators? From the perspective of the freedom-centered view this will depend on whether, and to what extent, they exhibit state-like features. For the purposes of this article I remain agnostic about this issue. For discussion see David Karp, 'Transnational Corporations in "Bad States": Human Rights Duties, Legitimate Authority, and the Rule of Law in International Political Theory', *International Theory*, 1 (1) (2009), 87-118.

^{lxxii} Cf. Pogge's arguments in *World Poverty and Human Rights*.

^{lxxiii} One might object that developing countries are free, rather than forced, to join these international institutions. But this would be too quick. Being excluded from international trade is not a genuine option for developing countries. Since their decision to join is due to the lack of acceptable alternatives, it cannot be regarded as voluntary. See Barry Eichengreen, 'The Global Gamble of Financial Liberalization: Reflections on Capital Mobility, National Autonomy, and Social Justice', *Ethics and International Affairs*, 13 (1) (1999), 205-26, p. 221. Joseph Stiglitz, *Making Globalization Work* (London: Penguin, 2006), pp. 276-80.

^{lxxiv} Miriam Ronzoni, 'The Global Order: A Case of Background Injustice?'. See also Peter Dietsch, 'Rethinking Sovereignty in International Fiscal Policy', *Review of International Studies*, 37 (5) (2011), 2107-20, and Reuven S. Avi-Yonah, 'Globalization and Tax Competition: Implications for Developing Countries', *Cepal Review*, 74 (2001), 59-66.

^{lxxv} Cf. Pogge, *World Poverty and Human Rights*.

^{lxxvi} Cf. Ronzoni, 'The Global Order: A Case of Background Injustice?'.

^{lxxii} Valentini, *Justice in a Globalized World*, ch. 8, and Miriam Ronzoni and Elisa Orrù, ‘Which Supranational Sovereignty: Criminal and Socio-economic Justice Compared’, *Review of International Studies*, 37 (5) (2011), 2089-106.

About the author

Laura Valentini is Lecturer in Political Philosophy at University College London. Her research focuses on international political theory, democratic theory, and methodologies in normative theorizing. Her first book *Justice in a Globalized World: A Normative Framework* has recently appeared with Oxford University Press, and her work has been published or is forthcoming in journals including *American Political Science Review*, *British Journal of Political Science*, *Journal of Political Philosophy*, and *Politics, Philosophy & Economics*.