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Human rights, international human rights, and sovereign political authority: a draft model for understanding contemporary human rights

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Abstract

Over the past few years, two main approaches have been suggested for analyzing human rights: the natural rights model and the political approach. This essay argues that neither of these accounts offers an accurate understanding of contemporary human rights and introduces an alternative model to think about them that combines elements of both views: the two-tier model. The first layer of the model reconstructs the concept of human rights as a moral category. This moral category articulates conditions that any agent wielding sovereign political authority must fulfill in order to treat human beings with the respect and concern they deserve, and postulates five abstract rights that may lead to alternative lists of concrete human rights in different social and historical settings. In contrast, the second layer of the two-tier model aims to illuminate the practice of international human rights. Although, upon this view, international human rights are grounded on the notion depicted by the first layer of the model, they constitute a historical practice that cannot be completely reduced to any prior idea. As a result of this, current human rights practice may include elements that were not already present in the concept of human rights. Thus, human rights turn out to be at the same time natural and political, conceptual and historical, moral and positive, domestic and global.

Keywords: *international community; natural rights model; political model; equal concern and respect; international cooperation*

Human rights are one of the most extraordinary moral devices of all times. No other notion has an even comparable potential to bring about changes in political life. But they are also one of the most opaque notions of our moral repertoire.

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Since the adoption of the Universal Declaration, theorists have been discussing their true nature. They have been discussing, for instance, whether human rights are moral or positive rights; whether they must be observed by every human society or only by liberal or Westernized peoples; whether violators can include governments alone or non-state actors as well; whether they are negative rights or positive rights admitting claims for certain goods and services; whether they have a purely domestic scope or a global reach as well.

Over the past few years, two main approaches have been suggested for thinking about human rights. The first is the natural rights model, under which human rights are moral rights aimed at preserving paramount interests or features of the human person, such as autonomy, personhood, or purposive agency.¹ The second is the political approach, under which human rights are viewed as norms that states must respect in their treatment of their inhabitants the violation of which may trigger remedial actions on the part of outside agents.²

It is important to notice that these models lead to opposite understandings of human rights in three critical aspects. The first of these is the procedure they recommend for deciding which human rights exist. Proponents of the natural rights model believe that, to decide whether a certain right is a human right or not, we must examine the nature of the human interests or human features that the right seeks to preserve. Proponents of the political approach argue, instead, that in order to decide whether a certain right can be regarded as a human right or not, it must be shown that its violation would justify the adoption of remedial measures by the international community. The second aspect is the normative scope they assign to human rights norms. According to the natural rights approach, human rights are moral claims that human beings can exercise against all other agents, including governments, transnational corporations, and other individuals. For the political approach, however, human rights are standards regulating only the conduct of governments and official agents.³ The third aspect involves the conditions required for the application or existence of human rights. According to the natural rights approach, human rights apply at all times and places. Instead, according to the political approach, human rights apply exclusively to the world as we currently encounter it: a world of modern political institutions operating within a framework of separate sovereign states.

In this essay, I argue that neither of these accounts offers an accurate understanding of the concept and practice of human rights and I suggest an alternative model to frame them which combines aspects of both views. I start by explaining the main shortcomings of the natural rights model and the political approach. Then, I outline four key desiderata that any plausible conception of human rights ought to fulfill and introduce a new approach: a two-tier model on human rights. This model aims at illuminating contemporary human rights by articulating a two-level analysis. The first level reconstructs the concept of human rights as a moral category. This moral notion refers to several conditions that any agent wielding sovereign political authority must satisfy in order to treat people with the respect and concern they deserve as human beings. The second level, in turn, explores the particular practice

that the international community developed around this concept over the past decades, namely international human rights. This practice not only refers to what states owe to their residents under current conditions but also to what sovereign political communities owe to each other as members of a community of nations that are bound together by common rules, values, and goals. Finally, I argue that the two-tier model is superior to the natural rights model and the political approach in that it explains why contemporary human rights are at once natural and political, conceptual and historical, domestic and global and involve two alternative kinds of accountability relations.

The main contribution this article expects to make to the ongoing debate on the nature of human rights is to show that, far from being incompatible views, the natural rights model and the political approach may work as complementary accounts. The reason for this is that, even though the practice of international human rights hinges on a prior moral concept, it cannot be completely reduced to it. Therefore, since the practice of international human rights and the concept it embodies constitute connected but distinct spheres, the challenge for human rights theorists is to discover what is specific to each of these spheres, spell out the particular moral concerns underpinning them, and explain how they connect and interact.

THE NATURAL RIGHTS APPROACH

The natural rights model has dominated philosophical theorization about human rights for decades. It has been advocated by influential authors such as Alan Gewirth, Martha Nussbaum, James Griffin, and Amartya Sen.⁴ These authors regard human rights as pre-institutional claims, that is to say, claims that people hold against all other agents, including governments, non-state actors, and other human beings, solely in virtue of their humanity.⁵ According to them, human rights are moral rights aimed at preserving, protecting, and promoting important human features or interests that are normally related to our capacity to lead a self-shaping or distinctively human life. Thus, human rights norms entitle people to enjoy important freedoms, including, for instance, freedom from slavery, assault, and arbitrary imprisonment; religious freedom; freedom from torture; freedom of expression, freedom of conscience, freedom of movement, and political freedom. They also entitle us to a provision of goods and services, such as education, healthcare, housing, drinking water, and adequate nutrition.⁶

In spite of its popularity, the natural rights model is vulnerable to several objections. I would like to consider two of them. The first objection claims that the functional role this model assigns to human rights is not consistent with the role human rights actually play in contemporary human rights practice. Most participants of this practice, including international law experts, regard human rights as norms aimed at regulating the behavior of political institutions. This means that if I discover, for instance, that my neighbor has been periodically inspecting my mailbox, this would not count as a human rights violation unless I could show that he/she was a government agent looking for political dissidents.⁷

There are, of course, some prominent human rights theorists who reject this view by pointing out that under current human rights doctrine, human rights standards are supposed to apply to agents other than governments and their officials.⁸ In this vein, the Universal Declaration states, for instance, that every individual and every organ of society shall strive to promote respect for the rights and freedoms it proclaims. Along the same lines, other documents, such as the Convention on the Elimination of all Forms of Discrimination Against Women, appear to suggest that domestic violence may constitute a human rights violation not only on the part of negligent governments but also on the part of violent partners.⁹ After all, if violent partners are not under a duty to refrain from mistreating their wives, why should the state punish them for so doing? If these authors are right, then responsibility for human rights could not be reduced to governments and official agents.¹⁰

I partially agree with this view. As we will soon see, many agents other than governments bear second-order obligations for human rights. But this does not imply that the functional role of human rights is to regulate relations among human beings and non-official agents. Of course, if we have reasons to place governments under an obligation to protect people from being tortured, we also have reasons for placing individuals and other third parties under a similar obligation not to torture them. Yet, this does not force us to conclude that failure to fulfill these obligations constitutes a human rights violation or a human rights infringement by them.

To illustrate the point, consider my children's obligation not to murder me. The same reasons that justify placing them under this obligation justify placing all other agents under a similar duty. However, only if I am murdered by my children are we authorized to speak of parricide. When we speak of parricide, we suggest that a particular kind of wrong has taken place, a wrong that cannot be reduced to my being murdered. The same is true for human rights language. Since the notion of human rights relates to what political authorities owe to those people subject to their power, even if non-official agents are placed under a duty not to harm the interests that human rights seek to preserve, their failure to do so would not amount to a human rights violation.

This understanding of the role of human rights standards is completely consistent with the idea that we all are under an obligation to promote their realization. It is also consistent with the idea that husbands must refrain from exercising violence against their wives and transnational corporations must refrain from exploiting their workers. But if you think that, in view of the particular authority they claim, political agents have special responsibilities toward human beings, you have good reasons not to refer to these wrongs as human rights violations. Otherwise, we would have to coin some new term to denounce the unique kind of wrong that states commit when they abuse their power. Moreover, if human rights were reduced to moral rights that individuals would enjoy even in a pre-political state of nature, they would be exactly the same as natural rights and would make no distinctive contribution to our moral vocabulary.

The second objection against the natural rights model I want to consider sustains that this approach may face serious difficulties in accommodating cultural pluralism and national self-determination. This is because most advocates of the natural rights

model aim to derive an expansive list of human rights from distinctively liberal interpretations of values such as autonomy, purposive agency, or personal freedom, while people with different cultural backgrounds may interpret these values and their requirements differently. This is not to deny, of course, that there are values that all human societies ought to recognize regardless of their particular cultural, religious, or political heritage. That such values exist, and include autonomy, purposive agency, and personal freedom, is actually one of the main assumptions of the contemporary human rights project. But even within liberal societies, there are persistent disagreements in terms of what honoring these values actually entails. Thus, it seems that no conception of human rights that grounds an ambitious list of human rights on a partisan interpretation of these values is well equipped to accommodate cultural pluralism.

There is, however, a strategy that advocates of the natural rights model may attempt in order to overcome this problem. This strategy consists of proposing some modest criterion for identifying human rights norms. In this respect, it has been argued that human rights constitute mere conditions for living a decent or minimally good human life.¹¹ Needless to say, this strategy has a predictable deflationary effect over human rights standards since it leads to the abandonment of many currently recognized human rights, including freedom from discrimination, freedom of expression, and representative government, which are often regarded by human rights minimalists as bare liberal aspirations.

Although it is true that this strategy may contribute to making human rights more broadly sharable in a deeply pluralistic world, this new reformulation of the natural rights approach succeeds at responding to the criticism we are now considering only at the cost of facing the first criticism even more strongly. Contemporary human rights are anything but minimal. Current human rights doctrine proclaims an extremely wide array of rights, which taken as a single package look more like conditions for social justice than conditions for living a decent or minimally good human life. No conception of human rights that neglects this fact can offer an accurate understanding of the role and nature of contemporary human rights.

THE POLITICAL APPROACH

In view of the shortcomings of the natural rights model, several theorists have suggested an alternative approach for thinking about human rights, namely the political approach. According to this approach, human rights are norms aimed at regulating the behavior of governments toward their own residents, the violation of which may justify remedial actions by outside agents. Depending on the author, these actions are either restricted to coercive sanctions against offenders or may also include non-coercive activities, such as holding states accountable for their conduct, offering incentives to increase human rights fulfillment, and assisting societies that lack the capacity to satisfy the human rights of their inhabitants.¹²

This approach appears to succeed in overcoming the difficulties of the natural rights approach. It proposes a distinctive functional role for human rights, which consists

of setting limits to the sovereign power of states. And it may also manage to accommodate cultural pluralism as long as it defines human rights as norms protecting interests of human beings that could be considered as urgent from a perspective that is not specific to a single culture or way of life.¹³

Having said that, the political approach exhibits three significant shortcomings I would like to point out. The first shortcoming is that the functional role it proposes for human rights norms is extremely restrictive. When we look at human rights practice, we immediately discover that human rights norms play many other relevant roles apart from the one envisaged by the political model. They serve, for instance, as guides for domestic constitutions and policy making even in the absence of a vigilant international community; they impose constraints upon the extraterritorial conduct of states; and they regulate the behavior of non-state actors such as armed groups, guerrillas, and occupation forces.¹⁴ There is no reason to think that a right should be included in the list of recognized human rights only on the basis that its possible violation by governments could constitute a reason for action by well-placed external agents. In fact, this basis is never mentioned by human rights documents, which simply present human rights as a common standard of achievement for all peoples and all nations.

The second shortcoming of the political approach refers to the conditions it proposes for the existence or application of human rights. There are at least three conditions. First, human rights require the existence of modern or modernizing political institutions. In this respect, advocates of the political approach believe that human rights do not apply at all times and places. They do not apply, for instance, to the political institutions of ancient Babylon, the Roman Empire, or Feudal Europe. And they may not apply to future societies with alternative institutional setups either.¹⁵ Second, human rights require the existence of an international system of separate sovereign states with the capacity to interfere with each other. Otherwise, the very idea of rights attracting the interest of the international community would be rendered senseless. Third, human rights require the existence of well-placed external agents who have reasons for bearing the burdens that would be imposed on them for taking action when human rights are violated.¹⁶

To see why this understanding of the conditions required for the existence of human rights is problematic, imagine if current institutions were replaced by more rudimentary forms of social organization; or if the relevant functions of states were transferred to local administrations, international institutions, or non-governmental organizations¹⁷; or if all societies fell victim to a natural catastrophe and became utterly unable to protect human rights abroad. The political approach would force us to conclude that in such scenarios human rights would not apply and may even cease to exist. Yet, most competent participants of human rights practice would be reluctant to accept this conclusion. If human rights derive from the inherent dignity of the human person, then human beings should enjoy them regardless of how the political domain happens to be structured.

The third shortcoming is that the political approach partially neglects the global scope of human rights norms under current international law. The reason for this

is that as long as human rights are defined as standards regulating the conduct of states toward their own inhabitants, they are conceptually unable to restrict either the conduct of global governance institutions or the extraterritorial behavior of states.¹⁸ It is true that, according to some advocates of the political approach, the international community may have reasons to revise the functioning of global governance structures when they contribute to causing human rights deficits. Yet, even if human rights deficits provide reasons for bringing about such reforms, global governance institutions have no obligation to make sure that their activities will not hamper the satisfaction of human rights in advance. Likewise, the impairment of the fundamental interests of individual human beings by actions, decisions, or policies undertaken by these actors or by states acting beyond borders will not constitute a human rights infringement or a human rights violation.¹⁹

This view is extremely problematic. This is so not only because there is now conclusive evidence that the activities of agents others than one's own state may severely interfere with the capacity of our state to satisfy our human rights but also because it is completely inconsistent with current human rights doctrine. As we will see in the next section, this doctrine consecrates a principle of international cooperation for human rights that imposes concrete human rights obligations upon international institutions and states acting across borders and commits the international community to proactively improve the international order with the aim of maximizing human rights satisfaction worldwide.²⁰ This suggests that human rights norms have a global scope that the political approach fatally fails to explain.

THE TWO-TIER MODEL

It is now time to introduce an alternative model for thinking about human rights. The preceding analysis authorizes us to conclude that there are four desiderata that any plausible conception of human rights must satisfy. First, it must propose a distinctive, non-redundant role for human rights; a role that shows why this concept makes a valuable contribution to our moral reasoning. Although the proposed concept does not need to accommodate all the features of current human rights practice, it must, nonetheless, accommodate at least some of its most salient characteristics. Otherwise, there will be no guarantee that we are developing a model for an already existing practice rather than creating a completely new one. Second, the model must explain why human rights ought to be respected by all human societies without neglecting cultural diversity and national self-determination. This explanation must avoid, as much as possible, the proposal of radical revision of current human rights doctrine. Third, it must provide a reasonable account of the conditions for the existence and application of human rights. This account must be consistent with human rights doctrine, which suggests that human rights derive from the intrinsic dignity of the human person and are thus not dependent on historical or political contingencies. Finally, it must accommodate the global scope of human rights norms by explaining why these norms have normative implications for global governance

institutions and states acting across borders and why the international community must constantly cooperate in order to bring about their universal realization.

The model I suggest for thinking about human rights is a two-tier model, combining two levels of analysis. The first level reconstructs the very concept of human rights as a moral category, whereas the second level intends to articulate the concrete historical practice that the international community developed around that concept, namely the practice of international human rights. Although, as we will see, this practice is partially reliant on the concept of human rights, it is not completely determined by it.

Before presenting the model, I would like to clarify that this approach does not presuppose that the concept of human rights may be elaborated without reference to the practice of international human rights. The two-tier model simply assumes that the framers of the Universal Declaration were not creating a new moral category, but rather trying to institutionalize, enforce, and develop a preexisting idea under the conditions of the post-World War II era.²¹ Even though current human rights practice provides us with extremely valuable help to reconstruct the concept of human rights it embodies, the existence of that concept is independent from current human rights practice.

First level: the concept of human rights

In accordance with the two-tier model, human rights are requirements that any agent claiming political authority must fulfill in order to treat human beings subject to its authority with the respect and concern they deserve as human beings. There are several aspects of this conception I would like to explain.

The first of these aspects is the notion of political authority. This notion does not refer to every political agent, authority, or institution. It refers to agents exercising a particular kind of authority, namely sovereign political authority. I understand sovereign political authority as the authority to make final decisions regarding the distribution of the entitlements, goods, and services required for fulfilling human rights. Although this kind of power is now commonly exercised by states, it can be exercised by other agents as well. It was exercised by tribes, clans, sacred people, feudal lords, and kings in the past; it is sometimes exercised by guerrillas, armed groups, or occupation forces in the present; and it may be exercised by regional bodies, international organizations, or a global government in the future. As long as an agent has final jurisdiction over those conditions and goods tracked by human rights, human rights norms apply to it regardless of any other distinctive feature.

The second aspect is that human rights are presented as conditions for treating human beings with the respect and concern they deserve. In accordance with the two-tier model, treating people with respect and concern entails satisfying the following fundamental claims of human persons:

1. A claim to life, security, and bodily integrity.
2. A claim to avoid discriminatory, arbitrary, and exploitative treatment.
3. A claim to lead a self-shaping life.

4. A claim to an adequate level of well-being.
5. A claim to equal participation in political life.²²

These five claims constitute abstract rights that human beings can demand before agents exercising sovereign political power over them. In turn, these abstract rights may help us articulate more specific rights ranging over different historical circumstances. In a modern institutional order, they could easily result in a list of specific rights similar, though not identical, to those proclaimed by contemporary human rights documents. In other scenarios, they may lead to alternative lists of rights, depending on the standard threats to which the interests they protect are vulnerable, the particular shape that political institutions adopt, the means available for their effective protection, and the political traditions in which they are to be implemented.²³ Although the fundamental interests these claims protect constitute mutually irreducible roots, in conjunction they may provide a particular interpretation of the idea of human dignity invoked by human rights documents: when political authorities reasonably fulfill these five claims, they treat human persons as intrinsically valuable beings, rather than as mere means for the realization of collective goals or the self-serving objectives of those in power.²⁴

The two-tier model derives these fundamental claims from a conception of human beings as free and equal agents with the capacity to form and pursue their own conception of the worthy life. Needless to say, this image of the human person is deeply embedded in the liberal tradition. However, there is no reason to assume that it is exclusively liberal. As an abstract image, it may be endorsed by many other perspectives. Indeed, this appears to be the conception of the human being that underlies the Universal Declaration of Human Rights, which was framed by a multicultural working group and adopted by most nations as a common standard of achievement after a free debate among their representatives.²⁵ Therefore, there are reasons to think that this image of the human person and its higher-order interests constitute a reliable starting point for reflecting on the content of human rights: it is normatively appealing for us and it does not undermine the free-standing status of human rights as it may be embraced by people holding diverse moral, religious, and metaphysical beliefs.

The third aspect I want to mention is that the two-tier model views individuals as possessing human rights regardless of whatever characteristics may differentiate them from one another or regardless of where they happen to live or reside. It also views us as possessing human rights in our capacity as human beings, not as citizens of a certain state, legal residents, or cooperating members of society. Human rights are in this sense truly universal.

The fourth aspect is that, although the concept of human rights is mainly domestic, it nevertheless has some evident international implications. Let me explain why. When sovereign authorities systematically fail to treat their residents with the concern and respect they deserve, they may become liable to interference by outside agents since they have no moral authority to rule over their territory and their population. At the same time, even if a full-blown international community is

missing, sovereign political authorities can be placed under a duty to refrain from unfairly undermining the capacity of other societies to satisfy human rights, to refrain from contributing to human rights violations abroad, and to rescue non-nationals from genocide, famine, or an extremely cruel dictatorship if they can do so at a reasonable cost. These extraterritorial obligations may be easily derived from any sound conception of international political morality; no reference to the UN Charter or the Universal Declaration is required to account for them.

Finally, it is important to make it clear one more time that the concept of human rights I have just articulated is ontologically independent from current human rights practice and enjoys relative authority over it. Consequently, it may help us reorient international human rights doctrine. It may help us do so by providing us with reasons to purge human rights practice of any rights that cannot be derived from the five fundamental interests outlined above. Or, it may help us reorient human rights practice by providing us with reasons not to extend its application to non-political agents such as transnational corporations, terrorist cells, or individuals. This does not imply, however, that the concept of human rights exhausts the domain of international human rights.²⁶ Although the concept of human rights constitutes the core of international human rights, international human rights may develop this concept in several ways in view of prevailing conditions provided it remains reasonably consistent with it.

Second level: international human rights

Let us now move on to the second level of analysis. The two-tier model conceives of international human rights as a concrete practice adopted by the international community in the aftermath of World War II. The main goal of this practice is to foster cooperation in the international domain for achieving a world in which all political authorities treat human beings with the respect and concern they deserve. International human rights are thus a particular development of the prior moral notion depicted in the first level of the model.

From a historical point of view, international human rights arose as part of the new international order envisaged by the UN Charter, which replaced the law of coexistence adopted after the Peace of Westphalia by a law of cooperation among nations willing to work together to foster common interests, values, and goals.²⁷ Motivated by the abhorrent crimes of the Nazi regime, the emerging international community decided to include the promotion of human rights among its common aspirations by sanctioning a principle of international cooperation for human rights and turning respect for these rights into a condition for full membership in the community of peoples. It also produced a list of internationally recognized human rights. Although this list may be traced back to the five fundamental claims identified in the first layer of the two-tier model, the international community adopted a particularly demanding interpretation of these claims in view of existing social conditions, the broad consensus reached among nations during the framing process and the growing confidence on liberal ideas and institutions registered immediately after World War II.²⁸

The normative implications of the principle of international cooperation for human rights are yet to be clearly outlined. However, during the past decades, it has been progressively filled with substantive content by treaties, jurisprudence, international declarations, and general comments issued by human rights treaty bodies. My suggestion is that we conceive of this principle as entailing four general obligations for members of the international community:

1. An obligation to respect the human rights of their residents as spelled out by current human rights doctrine.
2. An obligation not to engage in activities that may result in human rights violations in other countries or that may undermine the capacity of other states to fulfill human rights demands.
3. An obligation to contribute to the enforcement of human rights worldwide.
4. An obligation to progressively enhance the capacity of all states to fulfill the human rights of those subject to their authority.

The first of these general obligations requires that states refrain from violating the human rights of their residents, protect their human rights from the activities of third parties under their jurisdiction, and progressively fulfill the human rights of people who have no access to the objects of their human rights by adopting public policies and institutional setups that advance human rights.²⁹ When states fail to accomplish this general obligation with no reasonable justification, they violate the human rights of their residents and are accountable not only to them but also to the international community.

The second general obligation has concrete groundings in current international law and has been recently fine-tuned by international courts and human rights committees.³⁰ It negatively constrains the extraterritorial activities of states, such as arms sales, international negotiations, development cooperation, participation in international organizations, and security and military activities. This obligation also constrains the activities of global governance institutions such as the IMF, the World Bank, and the WTO.³¹ In order to honor this general obligation, these institutions must not adopt policies or regulations that could seriously impair the capacity of governments to deliver on the human rights of their people. This means, for instance, that they must refrain from providing loans conditional on structural adjustment programs that could leave thousands of human beings unprotected or from promoting unfair trade regulations predictably leading to the impoverishment of developing countries and their populations.³²

The general obligation to contribute to the enforcement of human rights worldwide requires, in turn, that states cooperate in monitoring the compliance of other governments with human rights standards and carry out reasonable actions to protect human beings from mass atrocities, including military actions and humanitarian interventions.³³

Finally, the general obligation to progressively enhance the capacity of all states to fulfill human rights involves the provision of direct assistance to societies lacking

the resources to deliver on human rights.³⁴ This obligation also demands the introduction of progressive reforms in the current international order, facilitating the full realization of human rights around the globe. For that purpose, the international community may consider the implementation of some of the measures suggested by recent international conferences, human rights treaty bodies, and international law experts. These measures include, for instance, alleviating the external debt burden of developing countries³⁵; adopting trade regulations that allow the poorest countries to protect their industrial sector and also provide them with improved access to markets in developed countries; encouraging the pharmaceutical industry to make essential drugs available and affordable to people living in the Global South³⁶; ensuring an international economic order geared toward the reduction of poverty³⁷; and strengthening the role of developing countries in global governance structures. International human rights thus contain a complete program for global political reform.

It is important to notice that, as I have already argued, some of these obligations may be derived from a reasonable conception of international morality, which means that no reference to the legal and historical process that began with the adoption of the UN Charter is necessary to make sense of them. Others, such as the obligation to positively contribute to the capacity of all societies to fulfill human rights, may be better explained as stemming from the voluntary commitment undertaken by sovereign political communities to create a genuine international community working together to foster shared values and goals. Thus, the practice of international human rights articulates concerns that were not fully operative within the original moral notion. Contemporary human rights practice is not merely historical, but it is not completely conceptual either.

THE TWO-TIER MODEL ASSESSED

In this section, I wish to show that the two-tier model is superior to the natural rights model and the political approach on the basis that it fully satisfies the four desiderata outlined in the previous section.

Functional specificity

The two-tier model proposes a distinctive role for the concept of human rights. This role is to regulate how any agent exercising sovereign political authority may treat its subjects, even in the absence of an international community with the capacity and responsibility to ensure their realization. Whenever the five abstract claims identified by the first level of the two-tier model are reasonably satisfied, agents exercising political authority may be said to treat their subjects with minimum concern and respect. On the contrary, when any of these claims are persistently infringed, people have a right to engage in civil disobedience and, eventually, to revolt against their government.

The functional role that the two-tier model proposes for human rights is thus distinctive. No other notion in our moral vocabulary enunciates what human beings

are owed by agents wielding sovereign political authority over them just because they are human beings rather than citizens, permanent residents, or participants of a social cooperative scheme. From this perspective, the notion of human rights is one of the main categories of political morality, a category comparable in importance to other key notions such as justice. This role perfectly fits the dominant use of the concept of human rights by most participants of contemporary human rights practice, including international organizations, international NGOs, and international law experts, and is also consistent with current human rights doctrine, which presents human rights as ‘a common standard of achievement for all peoples and nations’, and cautions that when human rights are not duly protected people are compelled ‘to have recourse, as last resort, to rebellion against tyranny and oppression’.³⁸

The practice of international human rights developed the concept of human rights in two particular ways. It adopted a demanding interpretation of what human rights require under present conditions, and it expanded international responsibility for human rights by burdening global governance institutions and states acting across borders with positive obligations for human rights. These particular developments, however, presuppose the preexisting moral concept articulated by the first layer of the model and must remain reasonably consistent with it.

Cultural diversity and national self-determination

The two-tier model also seems to be better equipped to accommodate cultural diversity and national self-determination. Since the five abstract claims outlined by the first level of the model express abstract rights, every political community enjoys relative freedom to interpret them in light of their own particular traditions and cultural backgrounds. Some societies privileging more communitarian attachments may choose to be less protective of personal freedom and autonomy than liberal societies. Others, subscribing an individualistic ethos, may choose to restrict social and economic rights to mere sufficientarian entitlements. This does not mean, of course, that nations are free to interpret these abstract rights as they wish as these claims limit the specific lists of human rights that sovereign peoples may derive from them. A government that forbids the exercise of any religion except the one it designates, severely restricts freedom of expression, prosecutes political dissenters, condemns women to a domestic existence, severely discriminates against ethnical or cultural minorities, or adopts a non-representative form of government is undoubtedly violating the human rights of its subjects.

Unlike human rights, international human rights result from a particular interpretation of the five abstract claims identified by the first layer of the two-tier model consented by the international community. Although this is a demanding interpretation that considerably restricts the self-determination of political communities, it has been freely endorsed by states subscribing the Universal Declaration and other human rights documents after an intense debate among their representatives. Thus, we can conclude that they find it acceptable from their own points of view, and freely endorse it as self-determining nations. If for some reason they decided in the future that the rights proclaimed by international human rights doctrine

are unacceptable from their particular cultural perspective, they would be free to quit this practice.

This does not mean, of course, that rogue states may liberate themselves from their human rights obligations by unsubscribing international human rights documents. Considered as a moral category, human rights are demands that any agent wielding sovereign political authority must observe regardless of any other considerations. Consequently, individual human beings can always demand that these claims be satisfied no matter what particular worldview their government seeks to promote, and the international community would be morally justified to demand that they are realized everywhere. No free acceptance on the part of offending states is required for this.

Now, if a political community rejected the particular interpretation that the international community developed around these fundamental claims, no outside agent would have the authority to enforce the whole list of rights proclaimed by current international law. Having said this, the international community may, nonetheless, exclude this nation from international cooperative schemes, criticize its behavior, and offer its government incentives to modify its conduct. The observance of international human rights is, as the second level of the two-tier modal explains, a condition of full membership to the international community and there is no reason why the community of peoples should refrain from peacefully advancing its own conception of how human beings may be treated.

Conditions for existence

The two-tier model offers an accurate account of the conditions for the existence of human rights. In this view, the practice of international human rights presupposes the existence of modern political institutions and a system of sovereign nation-states. As advocates of the political approach argue, international human rights are designed to operate under present political conditions and many of them only make sense in the world as we currently encounter it. Therefore, if the shape of contemporary political institutions were significantly altered, international human rights could no longer apply.

However, the concept of human rights articulates moral conditions that any agent exercising sovereign political authority must fulfill at all times and places. In this respect, the five fundamental claims identified by the first level of the two-tier model may render alternative sets of concrete human rights depending on existing historical circumstances. This means that human beings living in Ancient Greece certainly may not have had a human right to social security, to form trade unions, or to freedom of the press, but did enjoy a human right to life and security of the person, to avoid slavery, to due process, to express their ideas, to a reasonable level of well-being, and to be treated as political equals. These rights derive from the inherent dignity of the human person and human beings hold them against any agent exercising sovereign political authority over them just for this reason. Therefore, even if the practice of international human rights were abandoned, sovereign political authorities would

be morally obliged to fulfill them and could lose both their internal and external legitimacy if they systematically failed to do so.

International scope

Finally, the two-tier model perfectly accounts for the international scope of human rights norms under current international law. The concept of human rights explored by the first layer of the model already had some clear implications for the international domain. However, it did not have all the implications attached to human rights norms under current international law. By subscribing the UN Charter and other human rights documents, sovereign nation-states made a commitment to cooperate at the international level to bring about a world where the extended list of human rights proclaimed by these texts is fully realized. This explains why global governance institutions and states acting across borders bear positive obligations to promote the global satisfaction of human rights and may be accused of infringing human rights standards when they fail to accomplish them.

Most of the obligations deriving from the principle of international cooperation for human rights are, of course, of a second-order nature. This means that they do not constitute obligations of political communities toward individual human beings to fulfill human rights across borders; instead, they constitute obligations to contribute to developing the capacity of other sovereign political authorities to satisfy the human rights of their residents. Some of these obligations, mainly positive obligations, may have the status of imperfect duties, meaning that governments can decide how to implement them in view of various considerations, including their obligation to promote domestic justice and the interests of their citizens. Others, in particular negative obligations, such as the obligation not to engage in activities that may result in human rights violations abroad or not to hamper the capacity of states to deliver on human rights, may be constructed as perfect duties that have priority over any other obligation that states may bear. Whatever the precise content of these obligations is, members of the international community are accountable to each other for reasonably accomplishing them. In turn, this explains why contemporary human rights practice involves two distinct kinds of accountability relations, namely accountability of governments to their residents and accountability of sovereign political authorities to one another.

Is it really a distinct model?

There is an important objection I need to tackle before concluding. Some of my readers may wonder whether the two-tier model really offers an alternative account of human rights. Some of them may think that the two-tier model is just a refined version of the natural rights view, while others may argue, instead, that it simply amounts to a charitable reading of the political approach.

Although the two-tier model combines aspects of the natural rights model and the political approach, it is clearly distinct from them. Unlike the natural rights model, the two-tier model intends to grasp the concept of human rights, not by the means of pure theoretical reflection on human nature, but rather by taking into account the

role that human rights play within contemporary political life. As a result of this, it conceives of human rights as norms regulating the behavior of political authorities rather than as norms aimed at preserving some salient features of human creatures from the activities of all other agents. The two-tier model also differs from the natural rights approach as it refuses to reduce the practice of international human rights to a preexisting moral idea. Even if international human rights are a development of a prior concept, they may nevertheless articulate components and concerns that were not operative in this notion. As we saw, to a certain extent, international human rights result from contingent variables, including a commitment of the international community to actively cooperate to bring about a world where human rights are fully realized. Therefore, contrary to what advocates of the natural rights model believe, the authority of the concept of human rights over the current human rights practice is not absolute; the practice of human rights does not simply mirror a prior philosophical idea.

On the contrary, the two-tier model is distinct from the political approach. To begin with, it postulates an alternative functional role for human rights. This role is not to attract the attention of the international community or to regulate external interference with the sovereignty of states but to regulate the treatment that sovereign political authorities may give to their residents at all times and places even if a vigilant international community is missing. At the same time, the two-tier model assumes that the concept of human rights is ontologically prior to contemporary human rights practice. Although the practice of international human rights provides us with privileged epistemic access to the concept underpinning it, this concept had moral force even before the practice of international human rights was adopted. This is why under the two-tier model human rights are not completely tied to present political conditions and would make sense even under completely alternative scenarios. Finally, even though, on the two-tier model, the concept of human rights does not exhaust international human rights, it nevertheless enjoys relative authority over it and may help us reorient human rights practice in several ways.

CONCLUDING REMARKS

In this essay, I have suggested that the two most prominent views about human rights available in academic literature fail to capture the true nature of human rights and developed an alternative model for thinking about them. Upon this view, the core of contemporary human rights practice is constituted by a moral concept that regulates how sovereign political authorities may treat their residents at all times and places. When political authorities fail to fulfill these demands, they are treating human beings as mere instruments and undermining their dignity and their intrinsic value. The practice of international human rights is a particular historical development of this pre-existing moral category.

The main contribution I expect the dualistic model will make to the ongoing debate on human rights is to show that contemporary human rights are at the same

time natural and political, conceptual and historical, moral and positive, domestic and international. As a result of this, they can neither be regarded as a contingent activity dependent on a fleeting political setup, nor completely reduced to a preexisting moral idea. Since the concept of human rights and the practice of international human rights are to a certain extent distinct domains, the challenge for human rights theorists is to explain how these domains interact and how they may be articulated. Therefore, even if my readers find the details of the dualistic model unsatisfactory, I hope it is now clear to them that in order to think about human rights we must combine aspects of the natural rights model and the political approach rather than choose among these apparently rival accounts.

Naturally, more work needs to be done in order to construct a complete theory of human rights; a theory that provides an explicit argumentative justification for the five fundamental claims grounding human rights, examines whether these claims are accurately captured by the rights currently recognized by international law, fixes the precise content of the obligation to cooperate for human rights across borders, explains whether failure to accomplish second-order human rights based duties is on par with a human rights violation, and discusses whether present human rights doctrine is sufficiently tolerant toward non-liberal peoples. However, what I hope to have shown is that the two-tier model offers a promising framework for thinking about human rights.

Whenever we face controversies regarding how to continue contemporary human rights practice, we must thus recall that international human rights are subsidiary to a prior moral notion referring to what political authorities owe to those human beings subject to them. This means, for example, that human rights standards do not apply to the conduct of individuals or transnational corporations, but do apply, instead, to the conduct of guerrillas, armed groups, or occupation forces in effective control of a population. It also means that, in order to decide what rights constitute genuine human rights, we must bear in mind that human rights are based on an image of human beings as free and equal moral agents with a fundamental interest in leading self-shaping lives. Finally, the two-tier model may also illuminate ongoing debates on the global scope of human rights obligations. The precise scope of these obligations is to be determined not by pure moral reasoning but also by figuring out what self-governing peoples have agreed to do for each other as members of a true community of peoples.

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NOTES

1. Alan Gewirth, *Human Rights. Essays on Justification and Application* (Chicago: The University of Chicago Press, 1982); James Griffin, *On Human Rights* (Oxford: Oxford University Press, 2008); Martha Nussbaum, 'Capabilities and Human Rights', in *Global Justice and Transnational Politics. Essays on the Moral and Political Challenges of Globalization*, ed. Pablo De Grieff and Ciaran Cronin (Cambridge, MA: The MIT Press, 2002): 117–50; John Tasioulas, 'Human Rights, Universality and the Values of Personhood: Rectifying Griffin's Steps', *European Journal of Philosophy* 10 (2002): 79–100; Amartya Sen, 'Elements for a Theory of Human Rights', *Philosophy and Public Affairs* 32, no. 4 (2004): 315–56; Pablo Gilibert, 'Humanist and Political Perspectives on Human Rights', *Political Theory* 39, no. 4 (2011): 438–67.
2. Charles Beitz, *The Idea of Human Rights* (Oxford: Oxford University Press, 2009); John Rawls, *The Law of Peoples with the 'Idea of Public Reason Revisited'* (Cambridge, MA: Harvard University Press, 1999); Joseph Raz, 'Human Rights Without Foundations', http://www.ucl.ac.uk/laws/jurisprudence/docs/2008/08_coll_raz.pdf, (accessed October 6, 2014); Andrea Sangiovanni, 'Justice and the Priority of Politics to Morality', *Journal of Political Philosophy* 16, no. 2 (2008): 137–64; Joshua Cohen, 'Minimalism about Human Rights: The Most We Can Hope For?' *Journal of Political Philosophy* 12, no. 2 (2004): 190–213.
3. An exception to this may be Raz, who admits that human rights standards may regulate the behavior of non-state actors, such as international agents and individuals, provided their infringement also constitutes a reason for action against the offending state in the international arena. See Raz, 'Human Rights without Foundations', 10.
4. See note 1.
5. See Allen Buchanan, *Justice, Legitimacy and Self-Determination: Moral Foundations for International Law* (Oxford: Oxford University Press, 2004), 119; Raz, 'Human Rights without Foundations', 3; Gilibert, 'Humanist and Political Perspectives', 440; Laura Valentini, 'Human Rights, Freedom and Political Authority', *Political Theory* 40, no. 5 (2012): 575; Beitz, *The Idea of Human Rights*, 49; Sangiovanni, 'Justice and the Priority of Politics', 16–7; Tasioulas, 'Human Rights, Universality and the Values of Personhood', 82. It may be worth mentioning that some advocates of the natural rights model distinguish between basic human rights and derivative human rights. Basic human rights, such as freedom of expression, stem from moral values such as autonomy, normative agency or personhood alone. Other human rights, such as freedom of the press, derive instead from basic human rights under specific social or institutional circumstances. See, for example, Griffin, *On Human Rights*, 49–50.
6. Griffin, *On Human Rights*, 33–5; Nussbaum, 'Capabilities and Human Rights', 129–31; Gewirth, *Human Rights*, 55–8.
7. Thomas Pogge, *World Poverty and Human Rights* (Cambridge: Polity Press, 2002), 57; Beitz, *The Idea of Human Rights*, 57; Cohen, 'Minimalism about Human Rights', 196; Jack Donnelly, *Universal Human Rights in Theory and Practice* (Ithaca: Cornell University Press, 2003), 23; Valentini, 'Human Rights, Freedom and Political Authority', 576; James Nickel, *Making Sense of Human Rights* (Oxford: Blackwell Publishing, 2007), 36.
8. See, for example, Andrew Clapham, *Human Rights Obligations of Non-State Actors* (Oxford: Oxford University Press, 2006).
9. UDHR, Preamble.
10. Nickel, *Making Sense*, 39.
11. Nickel, *Ibid.*, 62; Michael Ignatieff, *Human Rights as Politics and Idolatry* (Princeton, NJ: Princeton University Press, 2001), 56; Buchanan, *Justice, Legitimacy and Self-Determination*, 127; Cohen, 'Minimalism about Human Rights', 210.
12. Rawls, *The Law of Peoples*, 79–80; Raz, 'Human Rights without Foundations', 9, footnote 14; Sangiovanni, 'Justice and the Priority of Politics', 18–9; Beitz, *The Idea of Human Rights*, 31–40.

13. Beitz, *Ibid.*, 137.
14. Nickel, *Making Sense*; Laura Valentini, 'In What Sense Are Human Rights Political? A Preliminary Exploration', *Political Studies* 60, no. 1 (2012): 183.
15. See Sangiovanni, 'Justice and the Priority of Politics', 17; Beitz, *The Idea of Human Rights*, 57; Raz, 'Human Rights without Foundations', 40.
16. Beitz, *Ibid.*, 140; Sangiovanni, *Ibid.*, 19; Raz, *Ibid.*, 12.
17. Lafont, *Global Governance and Human Rights* (Amsterdam: Van Gorcum, 2012), 19; John Tasioulas, 'Are Human Rights Essentially Triggers for Intervention?', *Philosophy Compass* 4/6 (2009): 945.
18. As already noted, an exception to this may be Raz, who claims that human rights may also be held by international organizations. See Raz, 'Human Rights without Foundations', 9–10.
19. Lafont, *Global Governance*, 27; Beitz, *The Idea of Human Rights*, 124.
20. Sigrun Skogly and Mark Gibney, 'Transnational Human Rights Obligations', *Human Rights Quarterly* 24 (2002): 781–94; Mark Gibney, Katerina Tomasevski and Jens Vedsted-Hansen, 'Transnational State Responsibility for Human Rights', *Harvard Human Rights Law Journal* 12 (1999): 268–83; Cassese, *International Law* (Oxford: Oxford University Press, 2005), 384–93; Andrew Clapham, *Human Rights Obligations of Non-State Actors*, 137–93; Salomon, *Global Responsibilities. World Poverty and the Development of International Law* (Oxford: Oxford University Press, 2007), 180–95; Lafont, *Ibid.*, 39–43. See more on the global scope of human rights norms under current international law in the next section.
21. In support of this thesis, it is worth mentioning that in its Preamble, the UN Charter speaks of reaffirming faith in fundamental human rights. This strongly suggests that the framers did not intend to create a completely new practice, but rather to institutionalize a prior category that they assumed as pre-existent and, to a certain extent, already operative. On this point, see Carl Wellman, *The Moral Dimensions of Human Rights* (Oxford: Oxford University Press, 2011), 54–5; Cristian Barry and Nicholas Southwood, 'What Is Special about Human Rights', *Ethics and International Affairs* 25, no. 3 (2011): 1–15.
22. For similar, though not identical, lists of fundamental human rights, see Nickel, *Making Sense*, 62; Buchanan, *Justice, Legitimacy and Self-Determination*, 129; Donnelly, *Universal Human Rights*, 44–6.
23. Gilibert, 'Humanist and Political Perspectives', 443–7; Lafont, *Global Governance*, 31; Wellman, *Moral Dimensions*, 28.
24. Ronald Dworkin, *Justice for Hedgehogs* (New York: Harvard University Press, 2011), 335; Donnelly, *Universal Human Rights*, 38–47. The five abstract claims put forward by the two-tier model only express necessary or minimal conditions for treating individual human beings with the respect and concern they deserve. Specific political conceptions may demand additional requirements in order to speak of full respect, such as, for instance, implementing Rawls' Difference Principle.
25. Gilibert, 'Humanist and Political Perspectives', 17–20; Donnelly, *Universal Human Rights*, 51–3.
26. The thesis that international human rights practice should not be reduced to a prior moral category has been forcefully defended by Allen Buchanan. In spite of this similarity, I am afraid that Buchanan would denounce the two-tier model as just another version of what he calls the 'Mirroring View'. See Allen Buchanan, *The Heart of Human Rights* (Oxford: Oxford University Press, 2013), Introduction.
27. Cassese, *International Law*, 39; Salomon, *Global Responsibilities*, 13, 21; Allen Rosas, 'State Sovereignty and Human Rights: Towards a Global Constitutional Project', *Political Studies XLIII* (1995): 61–6; Lafont, *Global Governance*, 21–3.
28. The two-tier model does not maintain that all the rights contained in international human rights documents derive from these five fundamental claims. Although international human rights doctrine is to be regarded as a particular development of those abstract claims, the

- international community may have partially misinterpreted the content of these claims and current human rights doctrine may, thus, need revision.
29. Beitz, *The Idea of Human Rights*, 111; Donnelly, *International Human Rights*, 24.
 30. UN, *Universal Declaration of Human Rights*, Arts 1, 55, 56; UN, *International Covenant on Economic, Social and Cultural Rights*, Art. 2 (1); UN, *Convention of the Rights of the Child* (1986), UN Doc A/44/49, Art. 4; United Nations Human Rights Committee, Sergio Euben López Burgos v. Uruguay, UN Doc. Supp. N. 40 (A/36/40) 1981; UN Committee Against Torture, *Conclusions and Recommendations of the Committee against Torture: United States of America* (2000), A 55/44, 175–80. For a comprehensive account of the legal grounds of this obligation, see Skogly and Gibney, ‘Transnational Human Rights Obligations’ and Gibney, Tomasevski and Vested-Hansen, ‘Transnational State Responsibility’.
 31. UN, *United Nations World Summit for Social Development and Beyond: Achieving Social Development for All in a Globalized World* (2000), General Assembly Res A/RES/S-24/2 149b; Clapham, ‘Human Rights Obligations’, 137–57.
 32. To discharge their human rights responsibilities, global governance institutions may consider setting-up mechanisms for assessing the human rights impact of their policies before they are implemented, monitoring the effects of their activities over the satisfaction of human rights and redressing any adverse effects that their programs may have.
 33. UN, *United Nations World Summit Outcome 2005* (2005), UN Doc A/60/L 1; Luke Glanville, ‘The Responsibility to Protect Beyond Borders’, *Human Rights Law Review* 12, no. 1 (2012): 15–30.
 34. UN, *International Covenant on Economic, Social and Cultural Rights*, Articles 2, 22 and 23; UN, *Declaration on the Right to Development* (1986), General Assembly Res. A/RES/22004A (XXI) 993 UNTS 3.
 35. UN, *Vienna Declaration and Program of Action*, I, 12; UN, *United Nations Millennium Declaration*, UN DOC A/55/2, III, 13; UN.
 36. UN, *United Nations Millennium Declaration*, III, 20.
 37. UN, *Vienna Declaration*, I, 14; Pogge, *World Poverty and Human Rights*, 64–70.
 38. UN, *Universal Declaration of Human Rights*, Preamble.