

DO HUMAN RIGHTS DERIVE FROM NATURAL RIGHTS? THE STATE OF NATURE, POLITICAL AUTHORITY AND THE NATURAL RIGHT TO INDEPENDENCE*

JULIO MONTERO

I. INTRODUCTION

Imagine a group of human beings living in caves ten thousand years ago under no centralized political authority. Would they enjoy human rights? Or imagine that a transnational corporation operating in an extremely weak state murdered certain people who opposed its activities. Would this count as a human rights violation? Or imagine, lastly, that the current states system were replaced by a single world state? Would human rights discourse still make sense?

For a long time philosophers tended to understand human rights as claims that human beings hold against any other agent simply in virtue of being human. This position is known in specialized literature as the natural rights approach to human rights. From this perspective, people living in caves would enjoy human rights, transnational corporations could be blamed for human rights violations, and human rights discourse would make sense under any configuration of the political space. However, in the last decade or so, this approach has been emphatically rejected by a group of authors suggesting an alternative political approach to human rights. According to these authors, human rights are not norms constraining the conduct of all agents, but standards imposing external restrictions on the sovereignty of modern nation-states. On this approach, human rights are a device designed to operate exclusively under present conditions and would cease to exist if the current system of states were significantly reshaped.

*An earlier version of this article was presented at the IV Colloquium Carlos Nino on Legal and Political Philosophy. I am grateful to participants in this event for their helpful comments. I am also grateful to Osvaldo Guariglia, Steve Macedo, Mariano Garreta Leclercq, Facundo García Valverde, Fran García Gibson, Pablo Gilabert, Marcelo Alegre, Martin Farrell, Roberto Gargarella, Carlos Rosenkrantz, Paula Gaido, Horacio Spector, Ezequiel Spector, Eduardo Rivera, Vladimir Chorny, and Paula Arturo for their comments and suggestions.

In this article, I explore whether human rights may derive from natural rights. It is important to note from the very beginning that human rights may be considered to derive from natural rights in two different ways. They may be considered to derive from natural rights because they are natural rights or a subgroup of them; or they may be considered to derive from natural rights because they are grounded on natural rights without being natural rights themselves. Most advocates of the natural rights approach have argued for the former. In this essay, I will argue for the latter.

I will start by briefly considering some of the main objections formulated against the natural rights approach in order to show that human rights cannot be equated to natural rights. However, after examining the political approach, I also expect to prove that there are compelling reasons not to discard the natural rights perspective altogether. In particular, I will argue that human rights may be grounded on a natural right to independence: a right not to be subjugated or treated as instruments by others. This is not a right to be provided with secure access to protections, resources and opportunities. It is rather a purely negative right to set and pursue our own aims provided we let others do the same. I will then proceed to explain why the view I am suggesting may accommodate the main features of current human rights practice, why it may justify a reasonable list of human rights, and why it may account for the international dimension that human rights are considered to have under present international law. Finally, in the conclusion, I will highlight some important implications of my argument.

This article is expected to make three original contributions to the ongoing debate on the nature of human rights. The first contribution is to prove that, contrary to the claims of many prominent authors, the natural rights approach may make a valuable contribution to the philosophical analysis of contemporary human rights. It is also expected to show how a natural rights approach should proceed in order to provide a suitable ground for current human rights practice and to highlight the challenges it may face when so doing. Finally, the article is aimed at suggesting that, far from being incompatible views, the natural rights model and the political approach are to a certain extent complementary. It is a methodological mistake to develop an account of human rights that pays no attention to the functions that human rights perform within current political life. Yet, in order to justify, evaluate and make sense of current human rights practice, we may need to resort to natural rights talk.

Three prefatory remarks are in order before I begin this exploration. First, by invoking the notion of a state of nature I do not mean that such a state ever existed as a historical reality. The state of nature is rather a purely methodological resource aimed at helping us figure out what rights, if any, human beings would hold in absence of political institutions. Thus, the state of nature is a heuristic device that entails no particular metaphysical or ontological commitments.

We can resort to this device at any point in time to try to understand how human beings deserve to be treated simply in virtue of being human and use this information to amend our laws, institutions and social practices.


Second, I am perfectly aware that natural rights discourse is commonly considered to be distinctive of liberal political philosophy. However, throughout this essay, I hope to prove that the idea of natural rights is an integral part of the contemporary human rights project. Indeed current human rights doctrine is pervaded of references to the intrinsic dignity and inherent rights of the human person. Yet this does not mean that non-liberal traditions cannot share the ideal that human rights embody. Different cultures may manage to justify the existence of natural rights on their own terms, and natural rights may become the object of an overlapping consensus among alternative moral, political and philosophical views.¹

Finally, this essay does not intend to prove that natural rights are the only possible ground for human rights. It is only aimed at showing that, contrary to the claims of advocates of the political approach, natural rights may provide a coherent ground for them. Of course, as long as there is agreement on current human rights practice, it may be convenient to forget any foundational questions. However, when disagreement about human rights arises—as it sometimes does—reflection on their naturalistic origins may help us decide what side to take in the debate and define our aims before we being to negotiate or persuade.

II. A CONCEPT IN SEARCH OF FOUNDATIONS

The natural rights approach has been defended by authors as influential as Alan Gewirth, James Griffin, and Martha Nussbaum, among others.² In accordance with this approach, human rights are norms aimed at preserving and promoting certain salient features, capacities or interests attached to our human standing, such as autonomy, the capacity for purposive agency, or the conditions for leading a distinctive human life. On this view, human rights are claims we have against any other agent, including governments, international organizations, transnational corporations, and even individuals simply because we are human.

¹ In this respect, a UNESCO group created in 1947 under the auspices of the United Nations concluded that there was agreement across cultures regarding certain rights that “may be seen as implicit in man’s nature as an individual and as a member of society [...]”. See Mary Ann Glendon, *A World Made New* (New: York: Random House, 2002), 77.

² See Alan Gewirth, *Human Rights. Essays on Justification and Application* (Chicago: The University of Chicago Press, 1982), esp. chapter 1; James Griffin, *On Human Rights* (Oxford: Oxford University Press, 2008), esp. chapters 1 and 2; Martha Nussbaum, “Capabilities and Human Rights,” *Global Justice and Transnational Politics*, eds. P. De Grieff and R. Martin (Cambridge:  The MIT Press, 2002), 117–50.

Some of these claims are negative demands not to have the relevant features, interests or capacities harmed, while others are instead positive demands to have those features, interests or capacities protected and promoted by others.

The natural rights model has several advantages. It accounts for the widespread conviction that human rights derive from the intrinsic dignity of the human person; it provides us with guidance to decide what rights should count as human rights; and it explains why human rights occupy a privileged place in our moral hierarchy. However, in recent years, it has been heavily criticized by a group of theorists proposing an alternative political understanding of human rights.³ The main tenet of these authors is that, in order to figure out what human rights are, we must try to capture the functional role these standards play in contemporary political life. In their opinion, this function is not to preserve certain human features in general but to restrict the behavior of states towards their own residents. This is a task they perform by justifying some kind of international response when governments systematically fail to fulfill the interests that human rights norms aim to protect.

Advocates of the political approach also object that the natural rights model is unable to justify a convincing list of human rights. Consider, for instance, rights to political equality, an adequate level of living, or freedom of the press. Although these rights undoubtedly preserve important human interests, they are not strictly necessary for behaving as purposive agents or leading a distinctive human life.⁴ Of course, no theory of human rights needs to account for the whole list of human rights recognized by current international law. But it must account at least for the most important ones and help us understand why the framers were tempted to adopt such a broad list of protections. If, on the other hand, human rights are considered to protect all the interests that are somehow important for human beings, then the naturalistic approach overreaches by including many rights that are normally associated with social justice.⁵

Although the political approach is more consistent with current human rights practice, it is nevertheless vulnerable to several objections. It has been argued, for instance, that this view renders human rights unduly dependent on the status

³ See Charles Beitz, *The Idea of Human Rights* (Oxford: Oxford University Press, 2009), chapters 5 and 6; 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," *The Philosophy of International Law*, eds. S. Besson and J. Tasioulas (Oxford: Oxford University Press, 2010), 321–37; Andrea Sangiovanni, "Justice and the Priority of Politics to Morality," *Journal of Political Philosophy* 16 (2008): 137–64.

⁴ Joseph Raz, "Human Rights Without Foundations," op. cit.: 325.

⁵ Joseph Raz, "Human Rights Without Foundations," op. cit.: 325.

quo.⁶ If human rights are defined as standards whose violation by states may justify the adoption of remedial measures on the part of the international community, then human rights would make no sense in absence of a world order composed of separate sovereign states with the capacity to interfere with each other. To see why this conclusion is implausible, imagine if the functions currently performed by states were transferred to regional bodies; or if the current states system were replaced by a single global state; or if all nations became completely unable to look after the fulfillment of human rights abroad. Most participants of human rights practice would be reluctant to accept that under such scenarios human rights would render meaningless or cease to exist.⁷

The political approach may also be deficient in terms of justifying the content of human rights standards. In this respect, most advocates of the political approach think that in order for a certain right to qualify as a human right it must be shown that its violation constitutes an accurate matter of international concern.⁸ Consider, however, rights to freedom of expression, freedom of association, or political participation. Before deciding whether a violation of such rights should trigger an international response, we need to know how important their enjoyment is for human beings. Some proponents of this view have tried to bypass this difficulty by defining the interests that human rights protect as interests that would be reasonably recognized as important across a wide range of possible lives.⁹ But this does not help. Unless we put forward some independent account of the human person, it is impossible to discriminate those interests that happen to be valued here and now and those that are really fundamental from a normative perspective.

Furthermore, there are reasons to think that the role of human rights should not be restricted to regulating the conduct of states towards their own residents. Imagine, for instance, that France provided weapons to a foreign dictator knowing that the dictator will use them to murder innocent civilians. Or that a global governance institution such as the International Monetary Fund pushed a poor country to implement reforms depriving its most vulnerable people from access to their means of subsistence. Or that during its military invasion of Irak, U.S. occupation forces engaged in torture or prosecuted political dissidents. It is

⁶ Cristina Lafont, *Global Governance and Human Rights* (Amsterdam: Van Gorcum, 2012), 19; John Tasioluas, "Are Human Rights Essentially Triggers for Intervention?," *Philosophy Compass* 4/6 (2009), 495; Laura Valentini, "Human Rights, Freedom and Political Authority," *Political Theory* 40 (2012): 577.

⁷ Cristian Barry and Nicholas Southwood, "What is Special about Human Rights?," *Ethics and International Affairs* 25 (2011): 369–89.

⁸ Charles Beitz, *The Idea of Human Rights*, op. cit.: 136–37; Joseph Raz "Human Rights Without Foundations," op. cit.: 336.

⁹ Charles Beitz, *The Idea of Human Rights*, op. cit.: 11.

evident that such actions are relevant from a human rights perspective. If this is so, then the role of human rights is not simply to regulate the behavior of states towards their own residents; to a certain extent, they also constrain the activities of global governance institutions and states acting across borders.¹⁰

Finally, it would be hard to make sense of the very idea embodied in contemporary human rights practice without assuming, at the same time, that people enjoy some claims that are prior to the existence of political institutions. In this vein, human rights are generally considered to exhibit three key characteristics. First, they are rights possessed by all human beings irrespective of any particularities; second, they constitute standards of behavior that all societies ought to respect, regardless of their particular constitutional arrangements, conceptions of justice, or vernacular conventions; third, when governments violate human rights, they not merely infringe their moral obligations, but wrong individual human beings. When considered together, these three features strongly suggest that human beings are grounded on naturalistic considerations whose normative force is independent of the existence of political authorities. It is because human beings are morally entitled to a particular kind of treatment just in virtue of their common humanity that they enjoy human rights against governments. If so, natural rights discourse is not only a constitutive part of current human rights doctrine, but may also be essential to making sense of the very idea that contemporary human rights embody.

The conclusion of this section is twofold. On the one hand, it is evident that human rights are not reducible to natural rights. Natural rights are by definition claims that human beings have against all other agents, while human rights are standards of behavior exclusively addressed at governments and other official agents. However, on the other hand, there are compelling reasons not to completely discard the natural rights approach. Not only because current human rights doctrine explicitly relies on this tradition, but also because natural rights discourse may help us critically assess the content of human rights norms, account for the widespread conviction that human rights would be operative under alternative political setups, and make sense of the idea that they derive from the intrinsic dignity of the human person. The challenge is now to produce a version of the natural rights approach that overcomes the problems of the traditional natural rights approaches identified above.

¹⁰ James Nickel, "Are Human Rights Mainly Implemented by Intervention?," *Rawls's Law of Peoples. A Realistic Utopia?*, eds. R. Martin and D. Reidy (Malden: Blackwell), 270; Laura Valentini, "In What Sense are Human Rights Political? A Preliminary Exploration," *Political Studies* 60 (2012): 183.

III. THE STATE OF NATURE AND THE NATURAL RIGHT TO INDEPENDENCE

In the remainder of this essay I want to suggest that human rights may be grounded on a natural right to independence.¹¹ I borrow the idea of a natural right to independence from Immanuel Kant, but it can also be found in the thought of other prominent political theorists such as John Locke.¹² In his *Metaphysics of Morals*, Kant claims that “Freedom. . . insofar as it can coexist with the freedom of every other. . . is the one sole and original right belonging to every person by virtue of his humanity.”¹³ The natural right to freedom is developed, however, as a right to set and pursue one’s own aims without being subject to the arbitrary will of others; freedom is just a necessary condition for preserving our status as independent rational beings. Thus I prefer to call it a right to independence.

The natural right to independence may be constructed in two alternative ways. According to some authors it is not a purely negative right not to be dominated by others, but a more ambitious claim to have secure access to the protections, resources and opportunities required to act as genuine self-directing agents.¹⁴ On this account, human rights may be interpreted as norms preserving this more fundamental natural right. When it is constructed in this expansive way, the natural right to independence becomes impossible to fulfill in the state of nature, however. No individual is able to provide others with a secure sphere of personal independence, not only because of lack of resources but also because single persons have no authority to sort out conflicts and adjudicate competing demands. This is why, on this reading, the natural right to independence places people in the state of nature under a duty to leave such condition and create centralized authorities protecting everyone’s independence.¹⁵

This understanding of the natural right to independence may help us refurbish the natural rights approach to human rights. It may explain why human rights are at once natural and political and may manage to justify a reasonable list of human rights, including civil, political and subsistence rights which are crucial for being

¹¹ For a similar account see Laura Valentini, “Human Rights, Freedom, and Political Authority” op. cit. Although Valentini’s conception of human rights is also inspired on Kant’s views, she develops this approach in a different way by constructing the natural right to freedom as entailing positive obligations. As I will soon explain, I understand the right to independence as a purely negative right not to be dominated by others.

¹² John Locke, *Two Treatises of Government* (Cambridge: Cambridge University Press, 2004), chapter 2.

¹³ Immanuel Kant, *The Metaphysics of Morals, Practical Philosophy*, ed. M. Gregor (Cambridge: Cambridge University Press), 399 [6:237].

¹⁴ Laura Valentini, “Human Rights, Freedom, and Political Authority,” op. cit.: 579.

¹⁵ Laura Valentini, “Human Rights, Freedom and Political Authority,” op. cit.: 581.

able to behave as genuine self-directing agents. But in spite of its initial appeal, this view faces a fatal objection. It assumes that human beings enjoy a right to be provided with protections, resources and opportunities they have not helped to produce, simply in virtue of being human. It is because we enjoy this right in the first place that others bear a duty to bring about centralized political authorities when they are absent. But this right may be hard to justify. The mere fact that we value certain human features or capacities does not suffice to impose upon others a general duty to contribute to securing their enjoyment.¹⁶

It is true that we bear a duty to assist others in dire straits if we can do so at a reasonable cost. We may also bear a duty to help others achieve their ends when this has no significant costs for us. But these are not duties to continuously contribute to providing the rest of humanity, including people who do not cooperate with us in any relevant way, with secure access to protections, resources and opportunities. Indeed, this would impose an unreasonable burden on us and may severely interfere with our own right to pursue our legitimate goals and life plans.¹⁷ Now, if there is no duty to contribute to providing others with a secure sphere of personal independence, then there is no duty to work towards bringing about political institutions capable of so doing either.¹⁸ There is, at most, a duty not to resist their creation and to support them once they exist if this is beneficial for others and does not undermine our own independence.¹⁹

In order to avoid this problem, I would like to suggest an alternative understanding of the natural right to independence. On this understanding, the right to independence is not a right to a certain state of affairs, to receive certain benefits, or to have certain interests or capacities protected by others. It does not protect us from lack of means or capacities to achieve our goals, from our own unfortunate decisions, or from the effects of any legitimate choices of others. In other words, the right to independence is not a right to the conditions required to behave as autonomous agents or to lead a valuable human life. It is rather a

¹⁶ Joseph Raz, "Human Rights Without Foundations," op. cit.: 323; Charles Beitz, *The Idea of Human Rights*, op. cit.: 70.

¹⁷ Saladin Meckled-García, "Giving Up the Goods: Rethinking the Human Right to Subsistence, International Duties, and Perfect Justice," *Journal of Applied Philosophy* 30 (2013): 75.

¹⁸ Along these lines, Locke appears to think that nobody has a right for others to assist her in escaping the state of nature. See, e.g., John Simmons, *On the Edge of Anarchy: Locke, Consent, and the Limits of Society* (Princeton: Princeton University Press, 1995), chapters 1 and 2.

¹⁹ This is not to deny, of course, that the existence of a natural right to be provided with protections, resources and opportunities may be supported by reasonable arguments. My only claim is that, from a philosophical point of view, any such arguments would be too controversial to function as a starting point for thinking about human rights. Many reasonable people, including non-egalitarian liberals and even some egalitarian ones, would reject assumptions of this kind. See, e.g., Robert Nozick, *Anarchy, State and Utopia* (Englewood Cliffs: Basic Books, 2013), 26–42; Thomas Nagel, "The Problem of Global Justice," *Philosophy and Public Affairs* 33 (2005).

purely negative right that prevents us from being used as instruments: a right to have no master or to enjoy an equal standing as moral persons in the most basic sense.²⁰

The natural right to independence is violated when others injure us because this interferes with our capacity to use our means to pursue our own ends. For example, if someone brakes my arm, she limits the ends I am able to set and pursue while my arm is broken and dominates me by treating my powers as subject to her arbitrary choice. It is also violated when others prevent us from using our abilities to pursue our own ends. Thus, if someone threatens to harm me if I express my views, associate with others, or practice my religion, she subjugates me, thereby destroying my status as an independent person. Yet, if the reason I am unable to pursue my own goals is that I happen to be poor, weak or unintelligent, my independence is not compromised. No one refusing to provide me with the means I require to achieve my aims would be violating my natural right to independence.²¹

There is, of course, a common objection I need to tackle. It is sometimes believed that in absence of political institutions or comparable enforcing mechanisms no rights can exist. From this perspective, natural rights talk is nonsense upon stilts and the state of nature constitutes by definition a pre-moral domain.²² While popular, this view is misleading.

It is true that when political institutions are absent, people may often be justified in interfering with others or even harming them. This is so because they have no guarantee that others will respect their own independence. Yet this does not authorize us to conclude that the right to independence would be suspended in the state of nature. To see why, imagine that a terrorist attack resulted in the collapse of political institutions. There are no courts of justice, no government, and no police forces. This situation would be similar to the state of nature in most relevant aspects. Under this scenario, you may be justified in harming anyone representing a real risk to you or to your family. But, after careful consideration, no one would reasonably hold that you are morally authorized to treat other

²⁰ This reading of Kant's natural right to freedom/independence is defended, for instance, by Arthur Ripstein. See Arthur Ripstein, *Force and Freedom*, op. cit.: chapter 2.

²¹ Immanuel Kant, *The Metaphysics of Morals*, op. cit. [6:312]; Arthur Ripstein, *Force and Freedom* (Cambridge: Cambridge University Press, 2009), 43–48; Wolfram Kersting, "Kant's Concept of the State," *Essays on Kant's Political Philosophy*, ed. H. Williams (Chicago: Chicago University Press, 1992), 153.

²² Thomas Hobbes, *Leviathan* (London: Penguin Books, 1968), chapters 13–15; Susan James, "Rights as Enforceable Claims," *Proceedings of the Aristotelian Society* (2005): 103, 133; Jeremy Bentham, "Anarchical Fallacies Being an Examination of the Declaration of Rights Issued During the French Revolution," *Nonsense Upon Stilts: Bentham, Burke and Marx on the Rights of Man*, ed. J. Waldron (London: Routledge, 1987), 46–75.

human beings as you wish. Even if it is hard to figure out what counts as a real threat in such a miserable situation, there are certain moral limits that you are supposed to observe. For instance, you must not harm people who represent no threat to you, and if you cannot avoid harming them, the harm must be proportional to the risk they represent. Likewise, you must refrain from torturing, enslaving or otherwise subjecting others to your arbitrary will. If you agree with this, then you accept that the natural right to independence may exist even in an imaginary state of nature. After all, the existence of moral rights depends on reasons, and any reasons we may have for respecting the dignity of human beings here and now would in principle apply even if political institutions were absent.

When the natural right to independence is understood in this modest sense, it becomes a suitable starting point for thinking about human rights. This right is, for sure, at the heart of liberal thought. However, it may also be recognized as fundamental by other reasonable moral traditions, as it is just a minimal development of the idea that human beings have an equal status; denying its existence would imply assuming that some persons may be bound to serve or obey others by nature.²³ There is no reason to accommodate any view of this sort when discussing human rights. Not only because it represents a morally unreasonable perspective, but also because it is completely inconsistent with current human rights doctrine and the picture of the human person it presupposes.

IV. FROM NATURAL RIGHTS TO HUMAN RIGHTS: INDEPENDENCE, COMMUNITY, AND SOVEREIGN AUTHORITY

In this section, I will try to explain why human rights may be grounded on the natural right to independence. In particular, I will try to explain why human rights are addressed at political institutions, why this is a valuable role for them, and why they include rights to protections, resources and opportunities, such as those proclaimed by current human rights instruments. In the next section, I will in turn examine whether this view may account for the international dimension that human rights are considered to have under current human rights practice.

Although people living in the state of nature are supposed to respect the independence of others, it is evident that they would be highly motivated to enter the civil condition. This is so because political institutions serve certain fundamental human interests. They serve, for instance, the interest of having our freedom secured by the rule of law; they reduce conflict by enforcing adjudicating mechanisms; they increase the pool of resources available to us by facilitating social

²³ Arthur Ripstein, *Force and Freedom*, op. cit.: 36; John Locke, *Two Treaties of Government*, op. cit.: 330.

cooperation; and they allow us to pursue common goals, such as the promotion of a particular culture or the realization of a common good conception of justice.

To be able to satisfy these fundamental interests, political institutions must exercise a particular kind of authority, namely sovereign political authority. By this I mean the authority to make final decisions on the distribution of rights, benefits and resources and to impose obligations and burdens on individual human beings. Sovereign authority is thus the authority to decide what actions we may carry out, what kind of personal relations we may develop, what ideas we are allowed to express, what convictions we may hold, and what life plans we may legitimately pursue.²⁴ As long as political institutions claim this unique kind of authority over beings enjoying a natural right to independence, they must meet unique conditions for being morally acceptable. I propose to understand human rights as expressing such conditions.

There are three complementary categories of human rights. The first category refers to liberty rights. These are rights to bodily integrity, freedom of movement, freedom of conscience, freedom of expression, and freedom of association. The reason why human rights include such an expansive list of liberty rights is that freedom is essential to set and pursue one's own goals. Consequently, political authorities can only restrict it to make it compatible with the equal freedom of others. Any further restrictions would illegitimately undermine our independence.²⁵ Likewise, as long as they demand that we refrain from protecting these liberties by our own means, political authorities must make reasonably sure that these rights are not undermined or threatened by third parties.

The second category of human rights is composed of welfare rights. While in the state of nature there is no right to be provided with access to services, resources and opportunities, people subject to sovereign political authorities hold a right to an adequate level of living. This is so because entering a civil condition entails adopting and coercively enforcing some kind of property regime that interferes with our independence by depriving us from access to goods owned by others.²⁶ As a result of this, unless individuals are ensured reasonable living conditions for themselves and their dependents, these restrictions would not be morally justified and human beings would have permission to keep using

²⁴ Mathias Risse, *On Global Justice* (Princeton: Princeton University Press, 2012), 25.

²⁵ There are, of course, alternative ways for making one's freedom compatible with the freedom of others. In the U.S., for instance, freedom of speech is considered to include the right to engage in racist speech. In contrast, this is not part of the right to freedom of expression for Germans. This is not a problem for my view. Different political communities may interpret the scope of rights in different ways provided their preferred interpretation can be reasonably justified as an effort to accommodate the equal freedom of all.

²⁶ This is so not only under capitalist private property regulations, but also under collective property regimes as they prohibit any unauthorized use of public assets.

whatever goods they need to survive. When resources are scarce, the right to an adequate standard of living would amount to a right to subsistence. Yet when societies are richer and more complex, this right may require more than that. It may require, for instance, that people enjoy secure access to health services, education, and social security.

It may be countered, of course, that in order to honor the natural right to independence political institutions must not redistribute resources but simply protect any holdings that people have legitimately acquired. From this perspective, taxing the rich to improve the situation of the needy would infringe their independence by interfering with their ability to realize their projects and life-plans.²⁷ This argument is unpalatable, however. It is unpalatable because it assumes that people may legitimately acquire things in the external world in absence of a justifiable system of property.

As Kant explains, holding property over something entails excluding others from access to it. If, for example, I own property over an apple tree, this means that other people are no longer allowed to pick its apples without my authorization. Thus, when someone unilaterally acquires an external object, she undermines the independence of others by reducing their capacity to pursue their own aims. This is why legitimate acquisition can only take place as part of a general framework of regulations that may count with the consent of all those subject to it.²⁸ In order to meet this condition, property regulations do not need to sanction equality in holdings, of course. Yet my suggestion is that they will not be justifiable unless they ensure that, as far as possible, everyone enjoys a reasonable standard of living. Adopting a system of property involves a major risk: the risk of leading a miserable life because of lack of resources, and it is reasonable to assume that people will reject any property regulations that offer no protection against destitution.

Finally, the third category of human rights has to do with the right to political equality. As already explained, sovereign authority is the authority to restrict the freedom of human beings in order to make it compatible with the independence of others; to decide how to distribute the advantages and burdens entailed by social cooperation; and to determine what common goals will be fostered with public resources. Therefore, people must be recognized a right to play an equally meaningful part in the decision making processes. Otherwise, there is no guarantee that their freedom will not be illegitimately curtailed or that they will not end up pursuing ends unilaterally set by others.²⁹

²⁷ Robert Nozick, *Anarchy, State and Utopia* op. cit.: chapter 7.

²⁸ In the state of nature people enjoy, of course, a right to use whatever resources they need. However, their property over them is only provisional. See Kant, *The Metaphysics of Morals*, op. cit.: 409 [6:256]; Arthur Ripstein, *Force and Freedom*, op. cit.: 88; Paul Guyer, *Kant on Freedom, Law, and Happiness* (Cambridge: Cambridge University Press, 2000) chapters 7 and 8.

²⁹ Laura Valentini, "Human Rights, Freedom, and Political Authority," op. cit.: 583.

When political authorities reasonably satisfy these three categories of rights, they succeed at respecting our natural right to independence. When, on the contrary, human rights are not fulfilled, political institutions treat those subject to their authority as mere means to promote the goals of political majorities or the self-serving goals of those in power. It is important to bear in mind, however, that although failure to fulfill human rights undermines the legitimacy of governments, human rights are not minimal conditions for legitimacy. Otherwise, we would have to accept that a reasonably fair government, which exercises some kind of censorship may lose all its authority. Even though we would have reason to resist regulations infringing any of our human rights, taken as a single package human rights constitute conditions for full rather than threshold legitimacy.³⁰ This means that when all our human rights are reasonably satisfied, there is no justification for engaging in protest or civil disobedience. If we think, for example, that in spite of honoring human rights our government is partially unfair, we must strive to bring about changes only through legal mechanisms and political campaigning.

There are three aspects of the account I am proposing I would like to emphasize. First, this account manages to justify a reasonable list of human rights, covering many of the rights recognized by current human rights doctrine. It covers, for instance, extensive civil and political rights such as those proclaimed by the Universal Declaration. Likewise, particularly in modern or modernizing conditions, it covers a wide array of social and economic rights, such as social security, elementary education, healthcare and leisure time. This account may, of course, fail to illuminate some of the rights recognized by current international law. This may be the case, for instance, with the the right to the highest attainable standard of physical and mental health, the right to choose the kind of education that shall be given to our children, or the right to periodic holidays with pay, among others. Far from being a drawback of the theory, this proves that it has critical capacity and may therefore help us reorient current human rights practice.

Second, the account I am suggesting explains why human rights are exclusively addressed at political authorities without rendering them unduly dependent on the status quo. As I have already explained, political authorities claim a unique kind of authority over us, one that no other agent claims, and it therefore makes plain sense to impose particularly demanding conditions on them.³¹ Yet

³⁰ Charles Beitz, "What Human Rights Mean," *Daedalus* 132 (2003): 39.

³¹ It is important to note, however, that the fact that human rights are conceived as regulating the conduct of sovereign authorities does not mean that other agents bear no obligations concerning the fundamental interests of human beings. Yet these are ordinary moral obligations and there is no need to resort to human rights language to make sense of them. Human rights discourse refers to what political authorities owe to those human beings subject to them and aims to single out the particular kind of wrong they commit when they infringe our independence and our equal status as moral persons.

the existence of human rights is not tied to the current system of states. Although in the world as we now encounter it, sovereign authority is mainly exercised by states, it may be exercised by other agents. It was exercised by tribal leaders, kings, and feudal lords in the past; it is sometimes exercised by guerrillas, armed groups and occupation forces in the present; and it may come to be exercised by regional bodies, international organizations or a global government in the future. As long as an agent exercises sovereign authority over human beings, it is responsible for fulfilling their human rights. Therefore, under the view I am suggesting, human rights derive from the intrinsic dignity of the human person and would keep their normative force even if the political space were dramatically reshaped.

Finally, I want to point out that the account I am suggesting may help us adapt human rights to alternative contexts. In this respect, the three categories of human rights I have just identified constitute abstract rights which may lead to alternative lists of specific rights depending on the circumstances. In contemporary societies, for instance, liberty rights may be considered to include a right to unionize, to form civil associations, and to freedom of press; wellbeing rights may be considered to include rights to housing, social security and leisure time; and rights to political equality may be considered to include a right to representative or even democratic government. Under other scenarios such list of rights may nevertheless turn out to be extremely demanding, unfeasible or even uninteresting.³²

V. HUMAN RIGHTS IN THE INTERNATIONAL DOMAIN

There is a final challenge I need to undertake before concluding. This challenge is to explore whether the approach I have put forward may account for the international dimension of human rights. Why would political communities created to foster the interests of their members bear obligations regarding the human rights of people who are not subject to their authority?

In the account I am suggesting, governments bear three evident obligations regarding the human rights of non-nationals. First, they bear an obligation to fulfill the human rights of any human beings kept under their control even if they are foreigners or if they are placed outside of their territory. This means, for instance, that the government of the United States is responsible for fulfilling the human rights of the residents of any country under its military occupation as well as the human rights of the Pakistani or Syrian citizens it keeps illegally detained in Guantanamo Bay. This is so because the relevant characteristic to bear human

³² Pablo Gilabert, "Humanist and Political Perspectives on Human Rights," *Political Theory* 39 (2011): 443–47.

rights obligations is not territoriality but rather the exercise of real authority over human persons.³³

Second, governments bear a duty not to illegitimately undermine the capacity of other states to deliver on the human rights of their residents by, for instance, subjugating or imposing exploitative conditions on them. This obligation is easy to justify. The most fundamental responsibility of states is to deliver on the human rights of their residents and, for obvious reasons, all agents must refrain from illegitimately obstructing other agents' attempt to comply with their moral duties. To see this, consider my children's right to be well nourished. This is, of course, a right my children have against me. But it also burdens other agents with an obligation not to illegitimately render me incapable of feeding them. If they did so, they would commit a moral wrong and become partially responsible for the resulting state of affairs.

Finally, governments bear a duty not to contribute to human rights violations abroad by, for instance, selling arms or financing activities that may lead to human rights abuses. Human rights violations constitute a grave moral wrong, and no agent is permitted to contribute to the perpetration of moral wrongs by others, even if she has no direct responsibility towards the victims. Although such conduct may not be on a par with a human rights violation, it amounts to complicity with a human rights abuse and constitutes a human rights-related wrong.

The question I would like to consider now is whether governments may bear any further obligations for the human rights of foreigners, such as duties to promote them or to look after their realization, which certainly are a constitutive part of current human rights practice.³⁴ In order to address this crucial issue with some detail, imagine a world composed of several political communities lacking any supranational institutions, regulations and enforcing mechanisms. In this scenario, it appears that, from the perspective of the account I have suggested, governments would bear no further obligations for the human rights of people living abroad. Of course, if some of these people were severely oppressed by domestic authorities, or lived in a miserable condition, foreign governments would bear a duty to rescue them if they could do so at a reasonable cost. Likewise, they may also bear a general duty to help other societies improve the life prospects of their residents and develop decent institutions. But these obligations constitute duties of rescue, humanity or beneficence that are not based on human rights. While

³³ Indeed, effective control over individuals rather than territoriality seems to be the relevant condition for bearing human rights obligations under current international law. See Antonio Cassese, *International Law* (Oxford: Oxford University Press, 2005), 384–85.

³⁴ Charles Beitz, *The Idea of Human Rights*, op. cit.: 33–42; Margot Salomon, *Global Responsibility for Human Rights* (Oxford: Oxford University Press, 2008), chapter. 2.

infringement of these duties is undoubtedly condemnable and may in some cases constitute a serious moral offense, it is not the same as a human rights violation: they have an alternative normative origin, trace other moral relationships, and play a different role in our moral thinking.

The current world order has nothing to do with this imaginary setup, however. It contains a myriad of supranational institutions regulating international interactions, including war, trade and property. Considering the significant restrictions that this order imposes on its participants, some authors think that those sustaining it are responsible for satisfying human rights around the globe. Along these lines, Thomas Pogge has famously argued that unless the global order is rearranged with the aim of maximizing human rights fulfillment worldwide, those who contribute to maintaining it would become responsible for a massive human rights violation.³⁵

The tenet that human rights have normative implications beyond borders makes plain sense and lies at the heart of the contemporary human rights project. Indeed, the principle of international cooperation for human rights is one of the cornerstones of contemporary international law and pervades current human right doctrine. However, this does not imply that participants of the present international order have a duty to deliver on human rights on a global scale. It is true that the wide array of institutions and regulations created after World War II exercise some degree of coercion over domestic societies and has an indirect impact on the life prospects of human beings.³⁶ Yet the international order claims no sovereign political authority over us. It completely depends on the reliance of states to exist and function, and even when it resorts to sanctions to ensure compliance with its provisions, these are normally not so heavy as to justify the claim that real sovereignty has shifted from governments to international institutions.³⁷

For reasons I have already explained, participants of the global order must prevent international institutions from illegitimately undermining the capacity of governments to fulfill the human rights of their residents or from contributing to activities that may lead to human rights abuses. So, for example, they should make sure that the International Monetary Fund, the World Bank or the World Trade Organization do not finance infrastructure projects that hamper the fundamental interests of human beings or adopt policies that may predictably produce

³⁵ Thomas Pogge, "Recognized and Violated by International Law: the Human Rights of the Global Poor," *Leiden Journal of International Law* 18 (2005).

³⁶ Thomas Pogge, "Severe Poverty as a Human Rights Violation," *Freedom From Poverty as a Human Right*, ed. T. Pogge (Oxford: Oxford University Press, 2007) 25–38.

³⁷ Thomas Nagel, "The Problem of Global Justice," op. cit.: 139; Samuel Freeman, "Distributive Justice and The Law of Peoples," *Rawls' Law of Peoples*, eds. R. Martin and D. Reily op. cit.: 247; Mathis Risse, *On Global Justice*, op. cit.: 53–59.

severe poverty or stimulate the emergence of authoritarian regimes.³⁸ But an obligation to deliver on human rights worldwide cannot be fairly imposed upon them.

Having said this, two further duties may be assigned to governments in view of the particular features of the present global order. First, current international law recognizes, enforces and protects the sovereignty of states over their peoples. As a result of this, participants of the international order become responsible for looking after the realization of human rights everywhere. This requires that they monitor the conduct of other governments, impose progressive sanctions on those unwilling to satisfy human rights, and intervene to stop grave human rights violations when they can do so at a reasonable cost. Otherwise, political authorities may use the sovereign power they are recognized by the international community to hamper the dignity of human beings and the whole system of states will render illegitimate. Leaving the state of nature in the international domain has considerable advantages for nations, but it comes at a price.

Second, the international community must strive to make sure that sovereign authorities do not lack the means they require to fulfill the human rights of their residents due to lack of natural resources. This is so because the present global order recognizes states ownership over the resources located within their jurisdiction. In the domestic case, any distribution of property is legitimate only when individuals have access to the means they need to enjoy an adequate level of living. Similarly, in the international sphere, property regulations are morally acceptable only when every state has access to the resources they need to reasonably fulfill their human rights responsibilities. Consequently, under present conditions, rich countries bear a human rights-based obligation to assist burdened societies which are unable to deliver on the human rights of their residents due to lack of natural resources or severe inability to exploit the ones they own. This is an obligation they can discharge, for instance, by adopting trade regulations favoring the development of the poorest nations, transferring knowledge and technology, offering cheap credit for key infrastructure projects, or implementing other global policies aimed at reducing severe poverty worldwide.

None of the above implies, however, that governments may not bear other more demanding obligations beyond borders. They may have, for instance, a duty to rescue people who are starving because of corruption or a negligent management of their economy rather than lack of resources; or a duty to ensure that international institutions are completely fair; or a duty to achieve global equality. While these obligations cannot be derived from human rights, they may perfectly be constructed as requirements of beneficence or global justice. Human rights

³⁸ Margot Salomon, *Global Responsibility for Human Rights*, op. cit.: 71–98.

constitute, in this respect, an extremely important category in our moral hierarchy. Yet this is not the only existing category, not even the only important one. There is no reason why human rights should solve all our moral concerns or cover the whole spectrum of moral reasoning.

VI. CONCLUDING REMARKS

In this paper I have discussed whether human rights may derive from natural rights. If we take the role that human rights norms play within contemporary political life seriously into account, then human rights cannot be reduced to natural rights. By definition, natural rights are claims that human beings hold against all other agents simply in virtue of being human. In contrast, human rights are claims that human beings hold only against agents exercising sovereign authority over them. However, contrary to what advocates of the political approach claim, it is perfectly possible to ground them on natural rights. In fact, unless we assume that human beings enjoy some kind of moral claims preceding the existence of political institutions, it may be impossible to account for current human rights doctrine and to explain why political institutions owe people certain things regardless of the particular conventions or conceptions of political justice they uphold.

This essay may also help advocates of the natural rights approach better understand how they must proceed in order to produce a suitable naturalistic conception contemporary human rights practice. From a philosophical perspective, it is extremely controversial to ground human rights on a demanding natural claim to be continuously provided with protections, resources and opportunities we have not contributed to produce, just because we are human. It is much more promising to start from a more modest right, such as the right not to be subjugated by others. But if we take this path, then we must provide sophisticated additional arguments in order to explain why human rights impose positive obligations on governments and to account for the international dimension that human rights standards are considered to have under current international law. There is no easy transit from natural rights to human rights.

Finally, I hope this article may contribute to showing that, far from being incompatible views, the natural rights model and the political approach are to some extent complementary. As advocates of the political approach suggest, understanding the concept of human rights entails grasping the functions that human rights norms perform within current human rights practice. However, this practice appears to presuppose the existence of claims that human beings enjoy just because they are human. If this conclusion is sound, the challenge for human rights theorists is both to capture the role that human rights play within

DO HUMAN RIGHTS DERIVE FROM NATURAL RIGHTS

contemporary political life and to produce a cogent account of natural rights that may help us justify and evaluate the nature, content and scope of current human rights doctrine.

National Research Council of Argentina, Buenos Aires University, and Center for Philosophical Research of Argentina