HUMAN DIGNITY & HUMAN RIGHTS

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Acknowledgments

I dedicate this book to my son Manuel. *Para vos, Manu.*

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Introduction

1.1. PROJECT AND CONTRIBUTIONS

The European Commission's President Jean-Claude Juncker recently called for a decisive response to the crisis triggered by the war in Syria, demanding that refugees be welcomed and allowed to work. He characterized the issue as "a matter of humanity and human dignity."[1] Human dignity is recurrently invoked by social movements. It is also stated as a central idea in national constitutions such as those of Germany and South Africa. And it has an unmistakable pride of place in the most important documents of international human rights law. Its central document, the Universal Declaration of Human Rights, affirms the "inherent dignity...of all the members of the human family" and expresses "faith...in the dignity and worth of the human person," and its core legal platforms (the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights) assert that human rights "derive from the inherent dignity of the human person." Human rights documents also construe specific rights in dignitarian terms. Thus, the Universal Declaration presents "economic, social and cultural rights as indispensable for [persons'] dignity and the free development of [their] personality." But what is human dignity, and why is it important for human rights? This book offers an answer to these questions. The key thesis is that human dignity is the moral heart of human rights. The idea of human dignity frames human rights discourse by making it a distinctive kind of discourse that articulates the most urgent claims of the human person in social life. These are the claims that people have in virtue of their valuable human capacities, not in virtue of their nationality, ethnic group, or other conventional or morally less weighty features. By understanding human dignity, we can explain the content and force of human rights as the urgent ethical and political project that puts humanity first.

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[1] "Migrant crisis: EU's Juncker announces refugee quota plan" (September 9, 2015), http://www.bbc.com/news/world-europe-34193568.

The philosophy of human rights is a flourishing field. There is increasing interest in the exploration of the uncertainties, risks, and opportunities generated by the ongoing process of globalization, and human rights identify the most urgent issues of global concern. Consequently, they have become the basic rubric under which assessments of justice across borders are made. Debate about the nature, contents, and justification of human rights is lively, and the core idea of human dignity, on which this book focuses, is itself becoming an important subject of discussion.[2] Although nobody denies the pervasive existence of references to human dignity, many scholars have expressed puzzlement about it, arguing that the idea of human dignity does not have a clear meaning, does not play any important role in the theory and practice of human rights, and lends itself to harmful uses that in fact undermine them.[3] This book provides a constructive response to these worries.

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[2] Early contributions to the philosophy of human rights in English were the first editions of Henry Shue, *Basic Rights* (Princeton, NJ: Princeton University Press, 2nd ed. 1996; 1st ed. 1980) and James Nickel, *Making Sense of Human Rights* (Oxford: Blackwell, 2nd ed. 2007; 1st ed. 1987). The debate intensified after the publication of John Rawls, *The Law of Peoples* (Cambridge, MA: Harvard University Press, 1999), with important books such as Thomas Pogge, *World Poverty and Human Rights* (Cambridge: Polity, 2nd ed. 2008; 1st ed. 2002); Carol Gould, *Globalizing Democracy and Human Rights* (Cambridge: Cambridge University Press, 2004); James Griffin, *On Human Rights* (Oxford: Oxford University Press, 2008); Charles Beitz, *The Idea of Human Rights* (Oxford: Oxford University Press, 2009). Also significant are the articles by Allen Buchanan in *Human Rights, Legitimacy, and the Use of Force* (Oxford: Oxford University Press, 2010), and various articles by John Tasioulas (e.g., "Taking Rights Out of Human Rights," *Ethics* 120 (2010), 647–78). Important recent collections are Rowan Cruft, Matthew Liao, and Massimo Renzo, eds., *Philosophical Foundations of Human Rights* (Oxford: Oxford University Press, 2015), and Adam Etinson, ed., *Human Rights: Moral or Political* (Oxford: Oxford University Press, 2018). For surveys, see James Nickel, "Human Rights," in Edward N. Zalta, ed., *The Stanford Encyclopedia of Philosophy* (Winter 2014); Rowan Cruft, Matthew Liao, and Massimo Renzo, "Philosophical Foundations of Human Rights: An Overview" (in Cruft et al., 1–41). The even more recent surge in philosophical work on dignity includes Christopher McCrudden, "Human Dignity and Judicial Interpretation of Human Rights," *European Journal of International Law* 19 (2008), 655–724; Christopher McCrudden, ed., *Understanding Human Dignity* (Oxford: Oxford University Press, 2013); George Kateb, *Human Dignity* (Princeton, NJ: Princeton University Press, 2011); Michael Rosen, *Dignity* (Cambridge, MA: Harvard University Press, 2012); Jeremy Waldron, *Dignity, Rank and Rights* (Oxford: Oxford University Press, 2012); Charles Beitz, "Human Dignity in the Theory of Human Rights: Nothing but a Phrase?" *Philosophy and Public Affairs* 41 (2013), 259–80; Jürgen Habermas, "The Concept of Human Dignity and the Realistic Utopia of Human Rights," *Metaphilosophy* 41 (2010), 464–80; Marcus Duwell, Jens Braarvig, Roger Brownsword, and Dietmar Mieth, eds., *The Cambridge Handbook of Human Dignity* (Cambridge: Cambridge University Press, 2014); Ariel Zylbermann, "Human Dignity," *Philosophy Compass* 11 (2016), 201–10. In this book, I will explain in detail how my own views relate to the various strands in this literature.

[3] See, e.g., Charles Beitz, "Human Dignity in the Theory and Practice of Human Rights: Nothing but a Phrase?"; Marcus Düwell, "Human Dignity: Concept, Discussion, Philosophical Perspectives," in Düwell et al., eds., *Cambridge Handbook of Human Dignity*, 23–49; Govert Den Hartogh, "Is Human Dignity the Ground of Human Rights?" in Düwell et al., eds., *Cambridge Handbook*, 200–7; Christopher McCrudden, "Human Dignity and Judicial Interpretation of Human Rights," and "In Pursuit of Human Dignity: An Introduction to Current Debates," in McCrudden, ed., *Understanding Human Dignity*, 1–58; Ruth Macklin, "Dignity is a Useless

It develops a philosophical conception of human dignity that articulates its substance and vindicates its moral and political importance. It presents an account of dignity as a distinctive normative status of the human person in social life, and shows that reference to it plays crucial roles in shaping the content, justification, and application of the universalistic humanism characteristic of human rights.

More specifically, this book makes four contributions, which I proceed to state programmatically, and develop in detail as the book unfolds. The first contribution is to advance a systematic conceptual proposal as to how to understand the idea of human dignity. I do this by identifying the key roles of the idea in human rights practice and by articulating its content as it arises, holistically, from a network of related notions fulfilling those roles—the *conceptual network of dignity*. This network comprises a fundamental concept of status-dignity and a host of related concepts of condition-dignity, dignitarian norms, the circumstances of dignity, endowment-based and achievement-based dignity, dignitarian virtue, and the distinction between basic and maximal dignity. For example, consider the pivotal distinction between status-dignity and condition-dignity. Status-dignity concerns the normative standing in accordance to which human individuals are entitled to the obligatory treatment that human rights state. Condition-dignity, in turn, concerns the states of affairs in which human beings enjoy the treatment owed to them. The distinction is necessary to accommodate two important uses of dignity without contradiction. Some critics argue that "dignity" is used incoherently to say, for example, that because of their dignity people may not be enslaved, and that when they are enslaved their dignity is destroyed. But with my proposed distinction this contradiction dissolves: even when they do not have condition-dignity, slaves retain status-dignity. They ought to enjoy the former because they have the latter. Through this and other conceptual clarifications and distinctions, the book charts the discursive territory of dignity to make it both coherent and ethically illuminating.

Second, the book advances a substantive normative proposal that articulates the normative requirements of human dignity in terms of the general ideal of *solidaristic empowerment*. This ideal says that we should shape our social life in such a way that they we support every person in their pursuit of a flourishing life by affirming negative duties not to destroy or block their valuable capacities and positive duties to protect and facilitate their development and exercise of them. By making our practices and institutions embody

Concept," *British Medical Journal* 327 (2003), 1419–20; Brian Orend, *Human Rights* (Peterborough: Broadview, 2002), 87–9; Steven Pinker "The Stupidity of Dignity," *The New Republic* (May 28, 2008); Michael Rosen, "Dignity: The Case Against," in McCrudden, ed., *Understanding Human Dignity*, 143–54.

this ideal, we enact appropriate respect and concern for the valuable capacities in virtue of which people have status-dignity. In addition to highlighting the universality and deontic force of this ideal (which are natural results of it, given that it articulates responses to human dignity), I will emphasize the importance of the fact that it generates positive duties. Although often neglected, these duties are crucial. Either temporarily or permanently, everyone will need help to maintain, develop, or exercise their valuable human capacities, and depend on others to provide it. Human rights can be seen as norms of dignified interdependence.

Third, this book offers an exploration of how the proposed conceptual and substantive accounts of human dignity and solidaristic empowerment are fruitful for articulating the content, justification, and feasible implementation of specific human rights. I concentrate on two sets of rights which are both important and controversial: the rights to *democratic political participation* and to *decent labor conditions.* Robust rights to political participation have instrumental significance in making political decision-makers accountable to decision-takers, so that the former track the claims of the latter. They also have an intrinsic significance as recognition of people's capacity for political judgment and for charting their own way of fulfilling their rights. In turn, strong labor rights to conditions of work that are not degrading, and to form and join associations such as trade unions, support workers' real ability to participate in the economy in ways that honor their dignity as agents capable of cooperative and creative production that generates goods that fulfill the needs of other people as well as their own.

Finally, I offer an explanation of how the dignitarian program and the development of solidaristic empowerment help articulate the *arc of humanist justice*, by illuminating both the difference and the continuity between basic requirements of *human rights* and more expansive requirements of *social justice*. There is a strong debate about how minimal or expansive human rights norms should be taken to be. I claim that although not strictly minimal, human rights are a subset of the requirements of justice. I distinguish between access to a decent life (which is the focus of human rights), and access to a flourishing life (which is the wider focus of social justice as conceived by some democratic socialists and liberal egalitarians). I argue that human dignity calls for both. There is thus a corresponding difference and continuity between *basic* and *maximal dignity*. This generates a two-tiered political horizon: human rights are the most urgent requirements of human dignity, but humanist social justice can, and (in a world of growing avoidable inequality it certainly) should, demand more. After we have secured basic civil and political rights, and the socioeconomic conditions for their effective enjoyment, we can and should go further. From the dignitarian perspective of solidaristic empowerment, people should have access to the highest levels of human flourishing that can feasibly

(and reasonably) be made available, and no one should have less access than others through no choice or fault of their own.

By offering one of the most systematic (and one of the first book-length) philosophical accounts of the content and significance of human dignity as a central idea for human rights, I believe that this book makes a theoretical contribution to lively scholarly debates. By articulating the moral heart of human rights, the book might also have practical significance. My hope is that it helps make sense of, and confidently to defend, one of the most important global political movements of our time. In the face of the simultaneous development of forms of globalization and nationalism that threaten individuals' social and political rights, the dignitarian perspective of the human rights movement is as urgent as ever.

1.2. OVERVIEW OF THE BOOK

The chapters of this book have been drafted in such a way that they can be read independently (with most technical terms defined and the main assumptions made explicit so that the reader can follow the main moves in the text). However, the book has a definite structure and an overall argument that is developed cumulatively. In this section, I offer an overview of the main contents in each chapter as well as of how they are integrated into a unified whole.

After this Introduction, which presents a summary of the project and a preliminary clarification of the concept of human rights, the book is organized in three parts. Part I polemically engages various central objections to ambitious moral approaches to human rights of the kind this book favors. They have in common the charge that such moral approaches are too remote from the vicissitudes of the pursuit of human rights in the real world, failing to properly address the extent to which the human rights project is variously constrained by specific factual configurations—such as legal and political conventions, feasibility parameters, and the power structures associated with the modern state, the capitalist economy, and their international entanglements. I elucidate the significance of these configurations, and argue that to properly understand how political practice, feasibility, and power affect the human rights project we must engage rather than dismiss core moral ideas and arguments. Part II then presents a positive account of these moral ideas and arguments by advancing the dignitarian program. This program offers a fresh moral perspective which is intrinsically appealing, and can also integrate the important insights animating the challenges discussed in Part I while sharpening instead of surrendering the ambition and universalism characteristic of the human rights project. The key moves in Part II are the systematic

interpretation of the role and content of the idea of human dignity in human rights practice and the defense of solidaristic empowerment as a fitting ideal for articulating the requirements flowing from it. The last part of the book, Part III, returns to the practical entanglements engaged in Part I, and explores the implications of the dignitarian perspective for the articulation and defense of specific human rights. I defend labor rights and democratic political rights as human rights, and conclude by exploring how human dignity and solidaristic empowerment generate requirements of social justice that go beyond human rights.

I take the idea of human dignity to constitute the moral heart of a universalist ethics and politics committed to supporting the autonomy and wellbeing of every human being regardless of their geographical location or position in existing social structures. Human dignity is a normative status that all individuals have equally, inherently, and which gives rise to strong requirements that are normally overriding when compared to other, competing considerations. When exploring this universalist ethics and politics my focus is on human persons. The key contrast is between them seen as human beings and as members of fairly circumscribed or conventional social categories like class, race, or nationality. Now, a central puzzle for this kind of approach is whether it can explain how universalist conceptions of human interests and rights can justify specific requirements in addition to general ones (that is, not only requirements that apply to people in all, or most, social circumstances, but also norms that arise only in certain contexts, such as those including a capitalist society or a modern state). I address this issue in chapter 2 by exploring the distinction and relations between abstract and specific rights. I show that both kinds of rights are constitutive of human rights practice when seen in its best light, each playing important and related roles. By developing this account, I show how to overcome a current debate in the philosophy of human rights—the confrontation between "naturalist" or "humanist" and "practical" or "political" perspectives on the nature of human rights.

The two remaining chapters of Part I address worries about the feasibility and realism of ambitious moral approaches to human rights. The worry about feasibility is systematically addressed in chapter 3 (and in appendix 2). Taking as an example basic socioeconomic rights to housing, water, food, education, and health care, this chapter offers a dynamic account of the feasibility of human rights that takes seriously the importance of feasibility constraints but also illuminates the flexibility and diversity of the implementation of rights across social contexts and emphasizes the prospects for progressive removal of feasibility obstacles over time. Finally, in chapter 4, I address the common complaint that human rights theory is oblivious to the power mechanisms that both limit and shape human rights practice. I identify and respond to the main versions of this worry, and explain that considerations about power are in fact

best seen as important resources for, not as disablers or debunkers of, human rights theory and practice.[4] Together, these chapters present one of the most systematic philosophical discussions currently available about the significance of feasibility and power for the articulation and justification of human rights.

Despite their predominantly polemical tone, the chapters in Part I introduce conceptual and substantive resources for understanding the relation between universal and particular requirements, the realistic yet normatively ambitious pursuit of the fulfillment of human rights, and the complex significance of power in political processes. These resources are certainly deployed in Part II. But the second part of the book recasts these discussions about universality and specificity, and about normative ambition, feasibility, and power, in the new light shed by the fresh, positive perspective offered by the dignitarian approach.

The dignitarian approach explains why the dispute between political and humanist perspectives on human rights can and should be overcome. According to the "political" or "practical" perspective, human rights are claims that individuals have against certain institutional structures, in particular modern states, in virtue of interests they have in contexts that include them. This perspective has been introduced in contrast to the more traditional "humanist" or "naturalistic" one, according to which human rights are fundamentally pre-institutional moral claims that individuals have against all other individuals in virtue of interests that are typical of their common humanity. I argue that once we identify these perspectives in their best light, we can see that their deepest insights are in fact complementary, that we need both to make good normative sense of the contemporary practice of human rights. The humanist perspective articulates the moral ideal of universal solidarity, and the political perspective highlights the significance of power in political and legal practice. The book develops an integrated account of the nature and justification of human rights that incorporates, in a coherent and systematic way, these key insights. This account is based on a new interpretation of the idea of human dignity, which is the moral heart of the human rights project. Respect and concern for human individuals as carriers of human dignity gives rise both to abstract rights that hold independently of particular institutional configurations and to specific rights that are intertwined with them. In my view, human rights practice should embrace a form of universal solidarity that seeks, where possible, to empower human beings to access what they need to live decent lives.

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[4] Another, related worry is that it is not feasible to simultaneously fulfill all the rights regularly invoked in the ethical, legal, and political discourse of human rights. Elsewhere, I suggest a pragmatic approach to the issue of the "indivisibility" of and "linkages" between various human rights that renders worries about their combined pursuit less pressing than they seem to be. Pablo Gilabert, "The Importance of Linkage Arguments for the Theory and Practice of Human Rights: A Response to James Nickel," *Human Rights Quarterly* 32 (2010), 425–38.

The dignitarian approach also helps explain how to address key concerns about asymmetric power. For example, its focus on solidaristic empowerment indeed helps illuminate a central substantive tension in the practice of human rights. On the one hand, empowerment is of great significance for human dignity. Emphasizing this point helps respond to the common charge that the politics of human rights works with a condescending picture that posits valiant powerful "saviors" galloping to the rescue of helpless "victims." Where possible, people should be protagonists in the political story of the fulfillment of their rights. This is partly why I argue that there should be promotion of democratic practices and institutions at domestic and international levels. On the other hand, the emphasis on empowerment is often associated with a view of dignity as radical independence or self-reliance, a radical ideal that is both infeasible and undesirable. Some disparities of power are not eliminable, and every person needs the help of others to live a decent life. Thus, I also argue that we need to challenge the pathological moral psychology, and political culture, that arises from embracing the radical ideal of independence, in which being helped produces shame, and helping produces guilt. To avoid this outlook, I suggest, we need to cultivate the ability to give and receive solidaristic support, a sense of dignified vulnerability, and a stance of responsibility to help when we have asymmetric power. In this way, we can position ourselves to honor central objectives of the human rights movement, such as the pursuit of universal "brotherhood" and the fulfillment of the right to assistance of those who cannot fully support themselves (as mentioned in the Universal Declaration of Human Rights, Articles 1 and 25).

The development of the dignitarian program, and its articulation in terms of solidaristic empowerment, proceeds as follows. In chapter 5, I offer an interpretation of the idea of human dignity that explains how it can play the several valuable roles that it does play in human rights discourse. (Appendix 1 provides, as a background resource, a survey of uses of the idea in some of the main human rights documents.) The valuable roles concern the contribution of human dignity to the articulation of a distinctive set of norms that are universalist and humanist in nature, the justification of specific human rights of the kind that are recognized in the main human rights documents, the grounding of the great normative force of these rights, the combined generation of both negative and positive duties that are correlative to them, the explanation of the significance of participating in the political process of struggle against their violation, and the illumination of the arc of humanist justice, running from basic requirements mandating people's access to a decent life to maximal requirements to support people's access to a flourishing life. The idea of human dignity is articulated through a conceptual network that includes an organic set of more specific ideas. These ideas

include status-dignity, condition-dignity, dignitarian norms, the basis of dignity, the circumstances of dignity, and dignitarian virtue. The interpretation of human dignity in terms of this conceptual network is first vindicated by showing how it illuminates the fulfillment of the six conceptual roles mentioned above. Further vindication is offered by showing how the interpretation helps counter challenges to the use of the idea of human dignity in human rights discourse. This is done in chapter 6, where dignity is defended against the most important charges levelled against it—such as those saying that the idea is empty, indeterminate, incoherent, politically pernicious, exclusionary, sterile, and redundant. A third form of vindication of the idea of human dignity is provided in the remaining chapters of Part II by displaying the explanatory force of the dignitarian perspective when it comes to making sense of various substantive normative requirements.

After providing an interpretation of the content, role, and general significance of the idea of human dignity, I proceed to develop a substantive account of how to articulate dignitarian normative requirements. I do this by first presenting, in chapter 7, the ideal of solidaristic empowerment. This ideal calls for supporting people's pursuit of a flourishing life by affirming both negative duties not to block or destroy, and positive duties to protect and facilitate, the development and exercise of their valuable capacities—the very capacities that give rise to people's status-dignity. An additional contribution of this chapter (together with appendix 2) is to develop further the discussions of feasibility and power started in Part I of the book. The notions of scalar feasibility and dynamic power are introduced and their theoretical and practical significance for the progressive fulfillment of human rights over time is explored.

With the ideas of human dignity and solidaristic empowerment in place, chapter 8 proceeds to explain the structure of dignitarian arguments for rights. Various puzzles are addressed. For example, I discuss the difficulty in moving from statements of human interests to statements of rights, showing that the dignitarian approach provides a bridge between these poles. Other topics addressed include the relation between facts and norms, the plurality of features of human beings that give rise to their status-dignity, the relations between the dignitarian approach and various theories in normative ethics, and the importance of a critique of ideological construals of human dignity and human rights. The chapter concludes with an outline of the main components of dignitarianism as a research program in moral and political philosophy.

The chapters in Part III proceed to show that the dignitarian approach, and its companion ideal of solidaristic empowerment, have important implications for the understanding, defense, and feasible implementation of specific human rights. I focus, in particular, on contentious and ambitious labor rights (to access safe working conditions, receive adequate wages, and form

and join unions) and the rights to political participation (including the full palette of rights of democratic citizenship). I provide a dignitarian understanding and defense of these rights in chapters 9 and 10. As it turns out, the dignitarian agenda of solidaristic empowerment can also shape more expansive requirements of social justice that go beyond human rights. Chapter 11 thus shows how dignity can indeed illuminate the ample arc of humanist justice. This chapter also offers a two-tiered, dynamic framework that arbitrates the current debate between minimalist and expansive conceptions of human rights. It explains why human rights constitute a relatively limited set of dignitarian requirements, but also why more ambitious demands of social justice can be justified as part of what the appropriate response to people's dignity calls for.

In sum, Part I of this book addresses the suspicion that human rights discourse, insofar as it affirms a high-minded stance of universalist humanism, is just too remote from the real world—it fails to illuminate actual political practice, it is unrealistic, and it is blind about the vagaries of unequal power. I respond by arguing that the moral universalism of human rights is in fact immanent to political practice, motivates a dynamic attitude that pushes the feasibility frontiers forward, and seeks to equalize power and orient its use in a solidaristic way. There is nothing otherworldly about human rights. They require, and express, a commitment of human beings to take each other seriously as givers and receivers of solidaristic support as they pursue a decent, or even a flourishing, life. Human dignity is the moral idea that animates this requirement and commitment as developed in human rights practice, and Part II is devoted to articulating it and to showing how it grounds the link between high-minded universalist humanism and real world politics. Human dignity is regularly invoked as the ground of human rights. At first sight, that idea may appear as yet another appeal to a remote or non-consequential moral concept. But it is, in fact, quite intuitive and practically significant. It requires, and marks, our recognition of each person as mattering intrinsically and as being owed supportive treatment. As beings with dignity, we matter, and we can see that we should engage each other with respect and concern rather than with contempt, hostility, indifference, or in exploitative ways. We should build practices and institutions that will help us succeed at making something good and meaningful of our lives. The core ideal of solidaristic empowerment articulates this recognition as we shape and develop the human rights project. The project calls for enacting the dignitarian approach in the shaping of social practices and institutions, especially those that have profound consequences for our life-prospects, such as the modern economy and state. The last part of this book, Part III, precisely takes up the task of exploring what dignitarianism specifically demands of those practices and institutions. It argues that we owe each other robust social and political rights to access the conditions for decent and perhaps even flourishing lives.

1.3. HUMAN RIGHTS: CONCEPT AND CONCEPTION

As we develop an account of human rights, we can distinguish between the questions of what it is for something to be a human right and what makes something a human right. An answer to the first question provides a view of the *concept* of human rights, whereas an answer to the second offers the basis of a substantive *conception* of human rights.[5] The division between concept and conception may be porous, but to enhance the prospects for fruitful debate it is a good idea to keep concepts as ecumenical as possible, so that the contenders do not talk past each other or dismiss each other's views merely by definitional maneuvers. This book will advance both conceptual and substantive claims about human rights. This section summarizes those claims, offering the reader a quick guide to the main statements developed in the book.

Regarding the concept of human rights (and I am focusing here on *moral human rights*, to be distinguished from legal human rights, national or international—on which more in a moment), I think that most practitioners and theorists could accept the following proposal:

> Something is a moral human right when it is (a) a right that (b) is held by all human persons at least in the contemporary world, (c) has normative force independently of whether it is already recognized in existing legal and political institutions and practices, (d) may however be (and normally is) such that at least in part it should be implemented through legal and political institutions and practices, (e) has extremely high priority, and (f) gives rise to global in addition to merely local concern.

That human rights are (a) rights is obvious but important. To say that something is a human right is more than to merely say that it would be desirable to see it realized; it involves saying that some agents have duties to take steps to make that realization a fact. In general, rights are justified claims that persons can make on others.[6]

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[5] On the distinction between concept and conception, see John Rawls, *A Theory of Justice*, rev. ed. (Cambridge, MA: Harvard University Press, 1999), 5; and H. L. A. Hart, *The Concept of Law*, 2nd ed. (Oxford: Oxford University Press, 1994), 160, 246.

[6] "Most if not all human rights are claim rights that impose duties or responsibilities on their addressees or dutybearers," and are in that sense "mandatory." Nickel, "Human Rights," in Zalta, ed., *Stanford Encyclopedia of Philosophy*, sect. 1. Joseph Raz argues that rights' "existence depends on there being interests whose existence warrants holding others subject to duties to protect and promote them." Raz, "Human Rights without Foundations," in S. Besson and J. Tasioulas, eds., *The Philosophy of International Law* (Oxford: Oxford University Press, 2010), 321–37, at 335. In this book, I complicate this picture by exploring what interests count for justifying rights, and by noting the importance of paying attention to the interests of multiple agents besides the immediate right-holder (such as the duty-bearer and other affected agents). See discussion of (C5) below.

As with any concept, there are borderline cases in which the application of these conditions is difficult. For example, some rights—such as political rights to vote or hold office—are held by adult persons but not (yet) by children. However, we still want to use (b) to mark a group of rights that people have independently of some particular social statuses and features like nationality, gender, and social class. Human rights are the rights of people as individual human beings, not as American, male, or property-owners.

On the present conceptual account, the universality of human rights is taken to apply at least in contemporary times. It is not claimed that every human right must apply in every conceivable situation in which human beings exist and interact. Some human rights clearly could have that strictly universal standing (the right against torture is an example) while others seem tied to rather specific institutional frameworks (as seems the case with workers' rights to form unions and receive adequate salaries). There may be different human rights of different levels of abstraction. The more specific ones may be justified on the basis of the more abstract ones. For example, contemporary electoral rules are tied to specific features of the modern state. But pretty much every society features mechanisms of political decision-making, and arguably agents in all of them have a strong interest in being able to shape that process (that is, to have political power), and face serious threats when they do not. I accept this view, but arguing about it is a matter for substantive debate—in which I engage in this book. I thus suggest that we keep the concept wide so as not to predetermine the outcome of substantive debate unreasonably. We all take human rights to be relevant at least for the contemporary world.

Conditions (c) and (d) are also quite ecumenical: human rights are critical standards we use to defend, challenge, and reform various legal and political institutional arrangements and practices: we want the former to relate to the latter, but not to be reduced to whatever the latter already encode.[7] My definition leaves it open for substantive debate whether some human rights are held by some persons against others directly in their interactions besides indirectly, via institutions. I also do not settle by definitional fiat what institutions, if any, are relevant (for example, whether states are always the crucial institutional agents when it comes to the identification of duty-bearers). My own view is that there are some rights that involve direct interpersonal claims. The case of domestic violence is a good example: a violation of bodily integrity is involved even if the violators are not acting in the capacity of government officials. I also have a broad view of relevant institutional agencies, which includes but goes beyond states to involve other entities such as corporations. But, again, our definition of human rights should not preempt important substantive debates, and there is indeed one about whether agencies under

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[7] As I say three paragraphs down, within some constraints the law can also make a morally generative contribution when it comes to some specific rights. This point qualifies (c).

and beyond a nation-state have human rights responsibilities. As the nation-state is weakened or altered by capitalist globalization, for example, it is quite significant to ask whether powerful domestic and multinational corporations have human rights responsibilities, and whether public international or even global institutional agents should be charged with (or perhaps be created to serve) the protection of human rights.

Feature (e) is also stated quite generally, allowing for different interpretations. But it is crucial to our understanding of human rights that they constitute extremely strong, and normally decisive, demands. Some see the fulfillment of certain human rights as constraints on the international sovereignty or domestic legitimate authority of governments. Most agree that policies and decisions (or their omission) regarding the violation and lack of fulfillment of human rights are grave faults that are extremely hard to justify by appeal to other norms or considerations. There is also significant debate about what can and should be done by agents within a certain state to protect the human rights of people abroad. But it is a fixed feature of our idea of human rights that their normative force is global, that it is, in some sense, everyone's business to respect and promote them everywhere. How this respect and promotion should proceed in practice is a matter of substantive debate, but feature (f) in its general form seems secure.

It is important to have, and to deploy, a concept of moral human rights that is different from that of legal human rights. We have reason to appeal to moral human rights in order to justify the existence of legal human rights, to defend some of their specific contents, and to address some potential conflicts concerning their application. When people introduce a legal practice regarding human rights, or reform it, they want to be able to think, and to understand why they think, that what they are doing is the morally right thing to do. Invoking moral human rights helps them explain why they have reason to try to construct legal frameworks that support the claims of individuals, why they do so in a general way (that is, by being directed not only to this or that individual, in this or that group or country, but to any and all of them everywhere), and enjoy great normative strength in the face of competing considerations. A picture of moral human rights provides significant normative guidance to the practice of legal human rights, its inception, maintenance, and change over time.

However, and to avoid misunderstanding, I should state a few caveats on the relation between moral and legal human rights. As Allen Buchanan has forcefully argued in recent work, we should not conflate them. I agree with him that it is a mistake to assume that identifying a moral human right to x provides by itself a sufficient condition for imposing a legal human right to x. In some contexts, coercive implementation of the right might not be feasible, or even desirable, and supporting people's access to x in more informal ways might be appropriate instead. I also agree that identifying a

human right to x does not provide a necessary condition for justifying a legal right to x. The latter could be given other forms of justification that invoke internal legal reasons that make no reference to morality, or which appeal to morality but not to moral human rights, or even to moral rights at all.[8] I acknowledge, in sum, that we should not assume that justifying claims about moral human rights exhausts the possibilities regarding the justification of the legal and political practice of human rights, or specific moves within it.[9] My project in this book is more limited. I claim that moral human rights provide a characteristic and powerful resource to orient and justify human rights practice. This justification is characteristic, as most central human rights are commonly seen by practitioners (activists, lawyers, legislators, and the public more broadly) either as expressing moral rights or as specifications or consequences of them in various contexts. And it is powerful, because moral rights mark the presence of entitlements individuals can claim (or sometimes others can claim on their behalf) independently of whether there is already any positive recognition of them by institutions or other people. So, although I humbly acknowledge that by focusing mostly on moral human rights my contributions in this book are limited, I also hope that they will prove fruitful for the dialogue amongst

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[8] Allen Buchanan, *The Heart of Human Rights* (Oxford: Oxford University Press, 2013), ch. 2. John Tasioulas responds by saying that he, and likely most other philosophers, do not really hold the "mirroring view" criticized by Buchanan—i.e., they do not believe that the existence of corresponding moral human rights is necessary or sufficient for the justification of international legal human rights. Tasioulas, "Exiting the Hall of Mirrors: Morality and Law in Human Rights" (February 10, 2017), King's College London Law School Research Paper No. 2017–19. Available at SSRN: https://ssrn.com/abstract=2915307, p. 10. Buchanan also worries that moral human rights might not be enough to justify the extensive duties correlating to some legal human rights because the former are only grounded from a standpoint that focuses on morally important aspects of the individual right-holder (see, e.g., 158–74). A stronger justification would consider also the perspective of the duty-bearer and the benefits of fulfilling a right for the interests of third parties. I think that these worries can be assuaged by noting that a justification of moral rights can factor in the perspective of duty-bearers and third parties by using a contractualist framework and by using linkage arguments that defend some rights partly in terms of the support their fulfillment provides to the enjoyment of other rights. As I explain in this book, a dignitarian framework in fact supports this holistic picture of moral rights and their justification: the dignity of all those that could be affected by a scheme of rights must be in view whenever any right within it is justified. This requires taking the perspective of all into account, exploring how each putative right would fare from them simultaneously (and this also includes considering how the enjoyment of other rights is affected).

[9] Buchanan himself takes important steps in outlining the key questions, and some of the answers, in the pursuit of the task of justifying international legal human rights. His book *The Heart of Human Rights* is a pioneer in this regard. He especially focuses on the system of international human rights law. I agree that this system is central to contemporary human rights practice, and, in this book, I will engage its core documents (such as the Universal Declaration and the two Covenants). However, although it constitutes a crucial innovation in international politics after World War II, and could grow in fruitful ways in the future, I do not claim that this system is the only central dimension of human rights practice. A lot of the action regarding the advocacy and fulfillment of human rights takes place in ordinary politics and through social movements at domestic and international levels without engaging the UN or other international human rights legal systems.

moral, legal, and political theorists—and for the human rights practitioners engaging the concepts and reasons which theorists make explicit or propose.

I should also note that we must be careful not to define moral human rights too narrowly. As my definition shows, we can understand them in such a way that some of them mention (or assume the operation of) certain institutions. Although some fairly abstract rights might not be tied to institutions that exist, or should exist, in only some particular contexts, the specification of what such abstract rights require in those contexts will often be linked to those institutions. Sometimes institutions render a right determinate, and, in this way, contribute to generating specific claims that did not exist before the institutions were introduced. The right to holidays with pay is rather specific, and would not hold in contexts that did not include wage labor. But it can be said to specify, in a context including wage labor, a more general claim of access to respite from socially necessary work. Now, notice that if the new, specific legal claims are among the several that could have been introduced that would appropriately specify the abstract right in the relevant context, then themselves count as moral rights in the context. The right to respite from toil, in a context including wage labor, could be appropriately specified through a specific right to holidays with pay, or through another specific right to higher pay during the month preceding unpaid holidays, or through some other specific entitlement. Before the new legal schemes are introduced, only the disjunction of the various appropriate possibilities is morally required. But once one of the items in the disjunction is selected, the selected item is what, morally speaking, people have a specific right to. What is key for the contrast between moral and legal rights, as I see it, is that moral rights are not conventional in the way that legal rights are. Fundamental moral rights exist even if nobody believes that they do, or states them as part of some convention or institutional system. No legal right, as a legal right, enjoys this normative force. As indicated, more specific, and derived, moral rights might intertwine with conventions and legal rights. But even here the normativity of such rights, because of being based on moral rights, has a distinctive force which cannot be reduced to their being creatures of legal conventions.[10]

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[10] A similar point can be found in Immanuel Kant's legal philosophy. In *The Metaphysics of Morals* (included in the volume *Practical Philosophy*; Cambridge: Cambridge University Press, 1996), Kant distinguishes between natural and positive rights, claiming that the actual juridical statutes stating the latter must track and develop the moral claims involved in the former (6:224, 229, 237; see also 291). The divisions in the Doctrine of Right identify the aspects of natural rights. Thus, the division between innate and acquired right (6:237) concerns unconditional natural rights people have in their own person (e.g., to control their body, avoid injury, speak) and their conditional claims to external objects of choice (through property, contracts, and status relationships, all of which require previous acts of—omnilaterally rather than unilaterally authorized—acquisition). The distinction between private and public right (6:242) concerns the natural rights of persons interacting with each other and the rights regarding the relation between citizens of a republic and their state (with its international or cosmopolitan extensions).

So much for the concept of human rights. I will have much more to say about the relation between abstract and specific moral human rights (and, to some extent, legal human rights), in the rest of this book, starting in chapter 2. Turning now to conception, what is crucial is to provide an account of what makes something satisfy the conditions mentioned in the account of the concept. When we move from conceptual to substantive judgments regarding an alleged human right, we move from possibility claims to existence claims— that is, from saying that something could be a human right to saying that it actually is a human right. To settle whether something is a human right, we need certain tests. Those tests would articulate substantive proposals for how to construe conditions (a)–(f) and justify the existence of certain human rights. If, in particular, we want to identify legal human rights (which are also moral rights), then we would have to add conditions regarding the appropriate functions of the relevant legal system (such as, say, the system of international human rights law, or the European human rights legal system, or the Argentine legal system), justify the introduction or maintenance of that system, and explain how the putative right would be an appropriate item in it.

An excellent example of how to build a substantive account is offered by James Nickel. He argues that to show that a proposed human right is indeed a human right we can show that it "deal[s] with some very important good," "respond[s] to a common and serious threat to that good, impose[s] burdens on the addressees that are justifiable and no larger than necessary, and [is] feasible in most of the world's countries."[11] Further, Nickel says that a substantive idea of human dignity or decency gives rise to four abstract claims to have a life, to lead one's life, to avoid severely cruel and degrading treatment, and to avoid severely unfair treatment.[12] That view provides the moral basis for identifying important goods. A substantive account of the other considerations mentioned helps justify specific human rights by illuminating whether the responsibilities imposed by them are reasonable and sufficiently feasible.

I think that Nickel's account has the right form and I accept much of its content. The dignitarian approach I propose in this book has a similar normative structure, as it offers a view of human dignity as generating abstract claims that are specified in different ways (including, often, but not in every case, legally) in different contexts, by looking at how concrete agents can articulate and fulfill them reasonably and feasibly to respond to the problems they effectively face. My own substantive account will add a detailed account of dignity (which Nickel does not provide), and several further concepts and principles to orient the construction of dignitarian arguments for abstract and

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Public right renders determinate and secure the rights which hold only provisionally in a social, but not yet fully institutionally structured state of nature (6:255–7, 264, 267; see also 312–13).

[11] Nickel, "Human Rights," sect. 3.   [12] Nickel, *Making Sense of Human Rights*, 62.

specific human rights. In a nutshell, this conception includes the following eight components, which I outline here briefly, and develop in detail in the book.

(C1)   An account of human dignity

(C2)   The ideal of solidaristic empowerment

(C3)   A distinction between abstract and specific human rights and a division of three dimensions of a conception of human rights

(C4)   An account of feasibility

(C5)   General and dignitarian schemas for justifying rights

(C6)   A contractualist framework of reasoning for justifying rights.

(C7)   The method of deliberative reflective equilibrium.

(C8)   The idea of a deliberative interpretive proposal.

Let me briefly explain each of these components. The first component (C1) is a proposal as to how to understand *human dignity*. Human dignity is a key idea in human rights discourse and practice, commonly invoked as the moral ground of human rights. As quoted in section section 1.1, the preambles of the two International Covenants present human rights as "derived from the inherent dignity of the human person." Dignity is a moral status in accordance to which people are entitled to respect and concern by agents that can affect them. People have this status in virtue of certain valuable capacities of them, such as their capacities for practical and theoretical reasoning, their sentience, and their ability to cooperate with others. I think that it is crucial that we link human dignity with a universalistic ideal of *solidaristic empowerment* (C2), which calls us to support people's development and exercise of their valuable capacities. By not ignoring them, by not treating them merely as tools for our own projects, and by helping them pursue theirs, we acknowledge people's intrinsic worth, and respond appropriately to the value of the features of them that form the basis of their dignity. We enact this response through our institutions and our personal interactions, by contributing to the creation and maintenance of conditions that enable people to live with autonomy and well-being. To the extent that people treat each other in this way, they achieve *condition-dignity* (to be distinguished from the *status-dignity* mentioned above). A conception of rights identifies the forms of condition-dignity people are entitled to in their social relations. A conception of human rights identifies the conditions that have the highest priority. However, dignitarian claims go further. Human dignity, and social justice, include but go beyond human rights. Thus, *human rights* target the basic condition-dignity of having access to a decent life, and *social justice* the wider condition-dignity of having access to a flourishing life.

An account of human rights would tell us what forms of condition-dignity people are entitled to in their social relations. But we can identify claims, and correlative duties, at different levels of abstraction. The third component of my

account (C3) introduces a distinction between *abstract* and *specific rights*. I can summarize it as follows. Specific human rights in the contemporary world are urgent claims that people have against their own government and fellow citizens, and against international organizations, foreign governments, and foreign citizens. Abstract rights are general claims based in extremely important interests shared by all (or most) human beings, and whose protection involves responsibilities for anyone who can affect their fulfillment. As stated, this distinction is of course too sharp. We could think of a spectrum going from more to less abstract rights. We could then identify, for example: (1) fairly abstract rights that hold in any (or most) social context(s); (2) the rights mentioned in the Universal Declaration; (3) the rights identified in international covenants, conventions, and treaties; (4) the rights stated in national constitutions; (5) the specific rights as construed by governments' laws and policies; and (6) individuals' claims in various situations (as addressed, for example, by courts' rulings or interpersonal judgments). Even this sequence is somewhat artificial. For example, some of the rights mentioned in the Universal Declaration clearly belong to (1) (for example, the right to life identified in Article 3). The main point is that we can make important distinctions regarding the abstraction of rights, and these are significant for our reasoning about the content and justification of different rights.

To introduce even more detail, we can identify three dimensions of a conception of human rights, including (DI) the core account of rights; (DII) an account of the social institutions and practices that would fulfill them; and (DIII) an account of the processes of change that might be appropriate to generate those institutions and practices (when these are not already in place). Claims about rights and duties become more and more specific as we move from (DI) to (DII) and from (DII) to (DIII). Here is an illustration:

(DI)   The first dimension involves the conception's core principles and underlying ideals. This dimension includes two components: one is a list of abstract rights that applies to all social contexts, and the other is a list of specific rights that articulates the embodiment of abstract rights in a more circumscribed social context under examination. For example, we can identify an abstract right to equal political autonomy according to which we should seek to organize the fundamental decision-making structures in society so that individuals subject to them have equal and effective opportunities to participate. Articles 19–21 of the Universal Declaration, with their reference to certain electoral mechanisms and other institutional devices, formulate a specific articulation of political autonomy for a modern state.

(DII)   The second dimension comprises the identification of social institutions and practices that could provide a desirable and stable implementation of the principles of the first dimension in an even more specific context. For example, in different countries, different political constitutions

could provide appropriate instantiations of democratic rights. Multinational polities will need more decentralization than less complex ones.

(DIII)   Finally, the third dimension concerns the processes of political transformation that could feasibly take us, without unreasonable costs, from where we are now to the circumstances in which the institutions and practices of the second dimension are introduced (if we are not already there). This dimension concerns reasoning about political transition, about how to render the fulfillment of human rights accessible. Here we ask questions like the following. How can those subject to non-democratic regimes struggle to change their political system in a democratic direction? How can established democracies help non-democratic countries transition to democracy? How could they do this without arrogant and potentially self-defeating interventions? What international political and economic institutions foster, and which undermine, the prospects for democracy in domestic and global governance? How can existing democracies be consolidated or deepened?

The fourth, related component (C4) of my account concerns an exploration of the concept of *feasibility*. Human rights give rise to duties, but duties hold only in cases in which they can be fulfilled, and the reasonability of their pursuit, in the face of competing considerations (including other duties), depends on the extent to which they are likely to be fulfilled if we try to realize them. The three dimensions DI–DIII mentioned in the previous paragraph engage feasibility considerations of different, and increasing, specificity. Thus, the political development of the human rights project must identify practical targets that are not only not incompatible with what is possible, given general facts about human beings and social organization, but also such that they have a significant probability of being accessed and rendered stable in the foreseeable future, given the specific obstacles conscientious agents will likely face.

The fifth component (C5) addresses the issue of how to identify and justify human rights at different levels of abstraction. What we need here is to find an impartial framework of reasoning that helps us cater to the urgent interests of all in feasible and reasonable ways. This can be done by using the following schema:

General Schema for Justifying Rights: A (a right-holder) has a right to O (an object) against B (a duty-bearer) just in case there are feasible and reasonable demands on B that they support,[13] in some significant ways to be specified, A's access to O. The specification of what B owes to A regarding O tracks the moral importance of A's interest in O, the feasible ways for B to support A's access to O, and the subset of such feasible forms of support

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[13] I use the term "support" as an umbrella term comprising both respect and promotion of the standard triad of duties to respect, protect, and fulfill.

that do not involve morally unacceptable burdens on B or others (given the importance of their own interests) and on A (given the importance of other interests of A besides that concerning access to O). Further normative considerations (e.g., regarding responsibility), and feasibility considerations (e.g., concerning progressive implementation over time) may be relevant, and considerations specific to human rights (e.g., their global scope and high priority) should be added.

In this book, I use this schema while giving it a distinctive rendering by reference to the dignitarian approach, including the ideal of solidaristic empowerment. I thus propose that we deploy the following device:

> *Schema for Dignitarian Justification*:   Rights are justified if, and to the extent that, their fulfillment (through certain institutions and practices) either is necessary for, or strongly contributes to, the feasible and reasonable support for certain important human interests regarding the existence, development, and exercise of certain valuable human capacities of the relevant individuals—the ones grounding human dignity.

To further account for the justification of human rights, we could use some additional resources from normative ethics. An example (which constitutes component C6) is the contractualist framework of reasoning (as developed by T. M. Scanlon[14]). *Contractualism*, according to which we should follow the principles that no one could reasonably reject, can be deployed to yield a test for human rights at different levels of abstraction. This approach to justification is distinctively helpful because it illuminates the standpoint of each person affected by the proposed rights under consideration (as well as allowing for the invocation of a plurality of normative reasons and the feasibility considerations that force us to explore their connections and relative weight). To make the exercise more precise, we would need substantive input to identify the relevant important interests that persons would have in the context of human rights discourse and practice. Given (C1) and (C2) (and the Schema of Dignitarian Justification stated above), this could be done by developing an account of conditions of human dignity, and of the valuable features of human persons that give rise to their status-dignity. At least to some important extent, people's autonomy and well-being coincides with the fulfillment of their interests in being able to develop and exercise their valuable capacities. They have reason to reject principles that are inadequate to the task of supporting this development and exercise. What each of us has reason to want everyone to accept includes principles demanding feasible and fairly distributed contributions to support the capacities that give rise to human dignity.

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[14] T. M. Scanlon, *What We Owe To Each Other* (Cambridge, MA: Harvard University Press, 1998).

A moral outlook can hold several theories of normative ethics simultaneously, and organize them into nested sets.[15] I do this by holding both contractualism and dignitarianism. The former helps organize moral argument so that each affected person's standpoint and interests are properly illuminated. Dignitarianism is also deployed to account for the content and significance of that standpoint and those interests. I see dignitarianism as a version of what Shelly Kagan calls a "reflection theory," according to which moral reasons are a matter of responding appropriately to (they reflect) the value of the entities or facts the agent relates to.[16] Dignitarianism calls for appropriate responses to the valuable capacities that give rise to people's dignity. The generic reasons that feed into the contractualist framework state the responses, and the framework helps manage them in a comparative way (exploring their interaction and relative weight). Dignitarianism also helps us argue for the significance of contractualism itself. It is a device of reasoning that appreciates, and engages, people's power of moral self-determination, and prompts them to track other valuable features of human beings to figure out what reasons they might give rise to when justifying various interpersonal and institutional patterns of action.

This two-tiered approach is helpful when developing an account of human rights. The idea of human dignity addresses the reflective part, and the articulation of rights the contractualist part. Status-dignity gives rise (in certain circumstances) to the human rights project. The contents of that project involve asserting certain rights and correlative duties, which target condition-dignity (where human rights are fulfilled). The identification of rights, abstract and specific, is done by considering what reasonable and feasible claims human beings in different circumstances can make on each other. This can be framed with the contractualist approach, which asks us to take the standpoint of different people in the relevant circumstances, attending to their interests and valuable features.[17] These two tiers of justification work in tandem with the development of the ideal of solidaristic empowerment mentioned above. The reflective tier urges us to respond appropriately to the basic capacities that ground persons' status-dignity, and the contractualist tier identifies the dignitarian norms which, in various social contexts, specify the

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[15] Shelly Kagan, *Normative Ethics* (Boulder, CO: Westview, 1998), 298–9.

[16] Kagan, *Normative Ethics*, sect. 7.4. Robert Nozick has an illuminating discussion on this kind of view in *Philosophical Explanations* (Cambridge, MA: Harvard University Press, 1981), ch. 5. He uses the idea of appropriate response—which I find more intuitive than "reflection."

[17] Further tiers in the account, lying further downstream, can be introduced. An example I entertain in the book is discourse ethics—the view according to which we should follow those principles which become the subject of agreement amongst those affected in actual reasonable argumentation. Jürgen Habermas, *Moral Consciousness and Communicative Action* (Cambridge, MA: MIT Press, 1990).

support for the development and exercise of those capacities the presence of which would afford the people who have them condition-dignity.

Of course, it is important to think about how the different dimensions of this account (the idea of human dignity, solidaristic empowerment, the distinction between abstract and specific rights, and their articulation through contractualist reasoning) can be developed so as to support each other and constitute a coherent whole that can clarify and orient our human rights practice. I think that the method of *deliberative reflective equilibrium* is a valuable tool to explore this point, and to help us reach—introspectively and in dialogue with each other—all things considered judgments about the acceptability of an account of human rights. I thus take it as the seventh component (C7) of my account.[18]

Related to the idea of deliberative reflective equilibrium is a certain approach to the development of an understanding of the core idea of human dignity (C8). The phrase "human dignity" is used in myriad ways in various contexts. My goal in this book is not the descriptive one of elucidating a concept that is already used everywhere. I also do not stipulate, in a top-down fashion, a concept that should be used independently of any existing assumptions or goals. I pursue an intermediate task, offering what I call a *deliberative interpretive proposal.* As I explain in chapter 5, such a proposal makes contact with assumptions and goals in practical contexts when these are ethically sound, and suggests an articulation of the concept that need not be already fully in place (at least not in every context in which I suggest that it be used). What I will propose is shaped by a substantive ethical and political ambition to articulate a normative perspective that extends, in a universalist fashion, the ideal of solidaristic empowerment. I think that elements of this perspective are present in debates about human rights and social justice. My proposal as to how to understand human dignity is meant to cohere, in explanatorily fruitful ways, with various valuable moves in those debates, and also to develop them further in ways that, hopefully, on reflection, will prove desirable.

I close this initial overview by noting that although this book is a piece of academic philosophy, the project it contributes to aims to have not only intellectual and theoretical importance but also political and practical relevance. Despite the increasing popularity of human rights talk—both inside and outside academia—there are many puzzling questions about the nature, content, justification, and feasible implementation of human rights. I believe that moral and political philosophers have a role to play in articulating and

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[18] On reflective equilibrium, see John Rawls, *Justice as Fairness* (Cambridge, MA: Harvard University Press, 2001), sect. 10; Norman Daniels, "Reflective Equilibrium," in Zalta, ed., *The Stanford Encyclopedia of Philosophy* (Winter 2016). Reflective equilibrium is deliberative when the primary aim of the exercise is to determine what *to* believe rather than to describe what one *does* believe. See T. M. Scanlon, "Rawls and Justification," in S. Freeman, ed., *The Cambridge Companion to Rawls* (Cambridge: Cambridge University Press, 2003), 139–67.

answering these questions, and that this role is not only theoretical. Philosophy could also help shape the agenda of human rights practice for international organizations, governments, social movements, and conscientious individuals. Such a political practice has momentous relevance for urgent global issues concerning global poverty, forced labor, involuntary unemployment, intense exploitation, the use of torture, environmental degradation, the opportunities and social status of women, migration, the self-determination of indigenous peoples, military intervention across borders, and the achievement of democracy. By clarifying the concepts used to make human rights claims, and by proposing compelling ways of justifying them, philosophy helps us to pursue more resolutely their realization.

Interestingly, morality may be significant for the feasibility of the fulfillment of human rights at levels DII and DIII, discussed in (C3) and (C4). This fulfillment does not always align with the self-centered preferences of powerful agents, and is not always immediately seen as desirable even by those who stand to gain the most from it—that is, the marginalized, impoverished, oppressed, or dominated world-wide. To render robust fulfillment of human rights accessible, and stable over time, people may have to embrace them wholeheartedly as something they ought to take seriously, even if that means sacrificing some of their privileges or risking the disruption of some of the ways of associating with others they have grown accustomed to. I am not saying that morality is always motivationally effective. But it does have motivational power. This is why every social order is routinely defended, and challenged, on moral terms in addition to by appeal to sheer force, coercion, and appeals to self-interested gain. Human rights discourse is part of the struggle for cultural hegemony in current societies. Because of that, philosophers have a potential contribution to make to strengthen (or weaken) the perception of their moral force, and with it, their effective influence on how people actually come to treat each other domestically and globally.

1.4. HUMANITY FIRST

I said in section 1.1 that by making sense of human dignity, we can explain the content and force of human rights as the moral and political project that puts humanity first. Human rights state the basic charter of the fellowship of humankind. Human dignity is the moral heart of this project. It is worth fighting for it. A note about the proximate context in which the penultimate draft of this book was concluded might help to convey to the reader my sense of relevance and urgency.

In his inaugural address as US president, Donald Trump rallied the crowd with various nationalist slogans. These included the signature call to "make

America great again." Trump also asked his fellow Americans to "pursue solidarity," and framed this call with reference to "patriotism," saying that "through our loyalty to our country, we will rediscover our loyalty to each other." Although at the beginning of his speech Trump addressed himself not only to the local officials and his "fellow Americans" but also to the "people of the world," his solidarity call was not to include them, for, he said, "from this moment on, it's going to be America First." He promised that "every decision on trade, on taxes, on immigration, on foreign affairs, will be made to benefit American workers and American families." The world stage was cast as a dangerous field. "We must protect our borders from the ravages of other countries making our products, stealing our companies, and destroying our jobs." Trump was not exclusively hostile to other nations, and he acknowledged their right to also prioritize their own interests: "We will seek friendship and goodwill with the nations of the world—but we do so with the understanding that it is the right of all nations to put their interests first."[19] One wonders, however, how much protection the fulfillment of that right could give to nations, and their people, who are poorer and weaker, when their interests conflict with a self-centered American policy. To seek serious friendship and goodwill toward them would require more than granting them the right to defend themselves in battles in which they will likely lose. Real friendship and goodwill would require an enlarged attitude of solidarity that gives the interests of foreigners—of workers and families—around the world, a greater significance, recognizing that their carriers are ends in themselves worthy of respect and concern. Above all, it would require recognizing a further category of rights—namely, *human rights*—which all human beings have regardless of their country of residence. This kind of *human solidarity*—a solidarity that puts Humanity First—would have to constrain national solidarity and patriotism, not be ignored or bullied into submission.

Trump's speech was ominous indeed. His ascension to the presidency of the world's mightiest country was built on a toxic ideological outlook including the scapegoating of ethnic and religious minorities, more or less covert racism and sexism, and an unlikely combination of the recognition of the suffering and needs of working-class people with the untrammeled affirmation of the power of the capitalist corporations that crushed them. This ascension of a neo-fascist brand of capitalism was possible in part because of the absence, in the United States, of a powerful Left capable to simultaneously defend the rights of workers and various ethnic, religious, and gender minorities. Other

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[19] Contrast Trump's egotistic rhetoric with that of the leader of the British Labour Party, Jeremy Corbyn, who, in his speech to International Human Rights Day in 2017, said that his party wants to "see close and cooperative relationships with our European neighbors, outside the EU, based on solidarity as well as mutual benefit and fair trade, along with a wider proactive internationalism across the globe." See: https://www.jacobinmag.com/2017/12/the-corbyn-doctrine.

countries, both in the global North and South, seemed to be displaying similar prospects. However, there were also immediate reactions and pushback. Big street protests followed Trump during his first weeks in office. The day after his inauguration, enormous marches rallying around the defense of the rights of women against Trump-style abusive talk, behavior, and policy prospects took place in the US and abroad. After Trump introduced a temporary ban on immigration and travel into the US by citizens from some countries with Muslim majority populations, crowds spontaneously took to the streets and to airports to voice their dismay at the discriminatory policy and to express their welcome to the excluded people. Expressions of human solidarity like these took place elsewhere as well. In Montreal, my city of residence, on January, 30, 2017, I participated in a vigil the day after a mosque in the province of Quebec was stormed by an armed right-wing extremist (who killed several people while they were praying). The crowd in this vigil was expressing alarm and outrage at the surge of racism and xenophobia in Quebec as well as in the US and elsewhere in the world. I was particularly moved by some slogans I saw inscribed in placards by some participants in this demonstration. They read: "1 *personne* = 1 *personne*," "We stand together in solidarity and power," "We are in this together," "Make humanity great again." I see my work on human rights, social justice, and solidaristic empowerment as a philosophical elaboration of the kind of humanist attitude expressed in such locutions.

These are dark times featuring deep domestic and global inequality, racist, sexist, and xenophobic aggression, and intense corporate domination. But they are also times of protest and resistance, and they may, perhaps, also come to carry the rebirth of a humanist Left that sees in the dignity of every human being a source of inspiration to resolutely pursue human rights and social justice for all—everywhere.

Part I

Preliminary Debates: The Relations between Human Rights and Political Practice, Feasibility, and Power

2

Humanist and Political Perspectives on Human Rights

2.1. INTRODUCTION

This chapter explores the relation between two perspectives on the nature of human rights. According to the "political" or "practical" perspective, human rights are claims that individuals have against certain institutional structures, in particular modern states, in virtue of interests they have in context that include them—and normally warrant international support. The political perspective has recently been developed by political philosophers such as Charles Beitz, Joshua Cohen, and John Rawls.[1] This perspective is introduced in contrast to the more traditional "humanist" or "naturalistic" one, according to which human rights are pre-institutional claims that individuals have against all other individuals that can affect them in virtue of interests characteristic of their common humanity.[2] This chapter argues that once we identify

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[1] John Rawls, *The Law of Peoples* (Cambridge, MA: Harvard University Press, 1999). Joshua Cohen, "Minimalism About Human Rights: The Most We Can Hope For?" *Journal of Political Philosophy* 12 (2004), 190–213; Joseph Raz, "Human Rights without Foundations," in S. Besson and J. Tasioulas, eds., *The Philosophy of International Law* (Oxford: Oxford University Press 2010), 321–37. Charles Beitz's relevant works include "What Human Rights Mean." *Daedalus* 132 (2003), 36–46 (henceforth WHRM); "Human Rights and the Law of Peoples," in D. K. Chatterjee, ed., *The Ethics of Assistance* (Cambridge: Cambridge University Press, 2004), 193–214 (HRLP); "Human Rights," in R. Goodin, P. Pettit, and T. Pogge, eds., *A Companion to Contemporary Political Philosophy*, 2nd ed. (Oxford: Blackwell, 2007), 628–37 (HR); and *The Idea of Human Rights* (Oxford: Oxford University Press, 2009) (IHR). See further note 61 below.

[2] Other terms are used to convey similar views: "pragmatic," "special," or "associative," are sometimes used instead of "political" or "practical," and "philosophical," "orthodox," "general," or "moral" are sometimes used instead of "humanist" or "naturalistic." For simplicity, I stick to "political" and "humanist," but I will refer to other uses when relevant. For a discussion of the traditional view of natural rights, see A. John Simmons, "Human Rights and World Citizenship: The Universality of Human Rights in Kant and Locke," in *Justification and Legitimacy: Essays on Rights and Obligations* (Cambridge: Cambridge University Press, 2001), 179–96. Contemporary defenses of the humanist perspective include Allen Buchanan, *Justice, Legitimacy, and Self-determination* (Oxford: Oxford University Press, 2004); Simon Caney, "Global Poverty and Human Rights: The Case for Positive Duties," in T. Pogge, ed., *Freedom from Poverty as a*

these perspectives in their best light we can see that they are complementary and that in fact we need both to make good normative sense of the contemporary practice of human rights. To put it briefly, the humanist perspective articulates the important point that there is a set of abstract rights that are held by everyone against everyone else in virtue of their common humanity, not their membership in any specific institutional structure; and the political perspective makes sense of the fact that human rights are, and should be, pursued in practice largely through the identification of specific rights connected with institutional frameworks. This chapter explains why these two core points are compatible and indeed crucial for a satisfactory account of human rights, and thus why their simultaneous articulation warrants a shift from the contrasting way in which the two approaches are currently framed.

To develop the proposed synthesis, I identify five analytic dimensions and consider five reasons motivating the view of human rights discourse as tied to specific institutional structures:

(1) *Content.* Institutional structures are not only instrumental in violating or protecting human rights. They also generate specific social relations, and thus specific rights.

(2) *Coherence with practice and justification.* The view of human rights as institutionally bounded is particularly coherent with current legal and political practice.

(3) *Self-determination and diversity.* Where there are institutions incorporating forms of political self-determination, agents can identify what rights have priority given their historical circumstances and autonomously decide what specific implementations to undertake.

(4) *Correlative duties.* Robust institutions help to routinely identify who has a responsibility to do what for whom. This is important for rendering duties correlative to human rights perfect rather than merely imperfect. Even when duties are imperfect, seeing institutions rather than individuals as duty-bearers is more appropriate, and provides a more flexible allocation of responsibilities.

(5) *Feasibility.* Robust institutions increase the feasibility of the fulfillment of human rights, making human rights demands more realistic and practically relevant.[3]

[3] As I will show, the issues in this conceptual matrix are related. E.g., a full account of content will need to address issues regarding correlative duties and feasibility.

I do not doubt that these considerations provide reasons for adopting the political perspective. My concern in this chapter is how we should think about the relation between this adoption and the humanist perspective. This adoption is not normally presented as entailing an outright rejection of the humanist view, but it does often rely on the claims that (a) the humanist perspective faces serious challenges in accounting for some of the intuitions mentioned and/or that (b) in accounting for the nature of human rights we do better by developing the political view independently of the humanist one. However, this chapter argues that the proper articulation of the intuitions is not only compatible with, but in fact calls for, humanist considerations. Regarding content, I argue in section 2.2 that the humanist perspective identifies a set of *abstract rights* that contribute to selecting the appropriate *specific rights* that the political perspective demands we pursue. Regarding justification, I advocate in section 2.3 a *deliberative reflective equilibrium* approach in which humanist considerations provide a substantive layer of reasoning cementing our ability to both defend and criticize aspects of current human rights practice. Such a layer, I claim in section 2.4, is also crucial for explaining why self-determination and sensitivity to diversity are important and what their limits should be. Regarding correlative duties, I show in section 2.5 that the abstract rights that humanism unearths yield specifically sharp demands that are nonetheless also appropriately flexible to fit varying circumstances. Finally, regarding feasibility, I argue in section 2.6 that humanism helps frame *dynamic duties* to expand feasible sets of political action and thus to be both sensitive to current political circumstances and critical of any premature view of them as indefinitely fixed. Hence, a humanist perspective is crucial to recognize the significance of institutions, frame their shape and impact, and explain why their creation or transformation is needed. Political reasoning, to be normatively plausible, should itself draw on humanist considerations. It is best to see humanist and political considerations about human rights, once properly construed, as working in tandem. We should not pursue a political approach independently of humanist considerations.

I have mentioned the core claims involved in the humanist and political perspectives. These claims can of course be developed in different ways. My concern in this chapter is not, however, to propose a detailed conception of human rights. My goal is more general and preliminary: it is to show that, and how, the core claims involved in the two perspectives should be simultaneously mobilized in order to develop any satisfactory specific conception. In section 2.2 I identify features of what I take to be a plausible humanist perspective. Regarding the political perspective, I largely focus on aspects of the formulation recently provided by Charles Beitz. I do this not only because of space constraints. Beitz presents an admirable (perhaps the strongest) case for a political view. And, crucially, Beitz clearly advocates versions of the two claims ((a) and (b) in the previous paragraph) that I contest. He argues that

the naturalistic view "distorts our perception of the human rights of international doctrine," and that "we do better to approach human rights practically, not as the application of an independent philosophical idea to the international realm, but as a political doctrine constructed to play a certain role in global political life."[4] His political approach is presented as a "fresh start" following a "debunking" case against the traditional presumption that human rights should be conceived as claims that all human beings have in virtue of their shared humanity.[5]

2.2. CONTENT

An obvious reason to see reference to political institutional structures as crucial for an account of human rights is that they are tremendously important in both the violation and the promotion of human rights. Large-scale violations of human rights, such as the Nazi genocide, are most often undertaken by highly organized state apparatuses, which are uniquely capable of mobilizing resources and imposing tasks on populations. For the same reasons, states have also been the main promoters of human rights. Bodily integrity and subsistence, for example, are best secured by fair and efficient juridical and security systems, and social services and regulations on the economy. But these considerations are not enough to motivate a contrast between political and humanist perspectives. The reason is that the significance of political institutions is here conceived as largely instrumental. The humanist can readily agree that we must pay attention to institutional structures given that they can serve to both violate and promote human rights in a particularly comprehensive way, while holding on to a pre-institutional account of the rights the institutions are said to violate or promote.

   The possibility of a serious contrast emerges once we notice that the content of human rights themselves may be determined by the presence of certain institutional structures. If we look at the Universal Declaration of Human Rights, we will notice that many of the rights mentioned would not make sense unless certain institutional structures were present. As Beitz argues in his challenge to traditional humanist views, rights such as those to impartial trial, to take part in the government of the country, and to free elementary education are such that they "describe features of an acceptable *institutional* environment," and thus "we can't give meaning to the thought that these rights might exist in a state of nature."[6] This appears to generate a dilemma for humanists: either they reject their core claim that human rights are to be

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   [4] IHR, 48–9, see also 102–4.   [5] IHR, 50–1, 96.
   [6] Beitz, WHRM, 41; see IHR, 55. The rights mentioned are included in Articles 10, 21, and 26 of the Declaration.

grounded in features shared by all human beings as such (that is, independently of any institutional context), or they run the risk of cementing arbitrary skepticism against central demands made in current human rights practice.[7]

This challenge to the humanist perspective relies on the first consideration mentioned in section 2.1. But the humanist perspective can be plausibly articulated so as to help account for it. To show this, let me introduce a distinction between *abstract* and *specific rights*. Human rights can be formulated at different levels of abstraction. We can, on the one hand, formulate a set of specific rights identifying claims that people in the contemporary world have against their own government and fellow citizens, and against international organizations, foreign governments, and foreign citizens. The rights formulated in the Declaration largely operate at this level.[8] We can, on the other hand, formulate a set of abstract rights concerned with extremely important interests shared by all (or most) human beings, and whose protection involves responsibilities for anyone who can affect their satisfaction. For example, one can, with Griffin, say that it is crucial for human rights to protect the conditions of human normative agency, which include some appropriate level of autonomy (ability to form and revise conceptions of a worthwhile life), minimum provision (material conditions enabling agents' successful pursuit of their conception of the good), and liberty (limits on the extent to which agents may interfere with other agents' pursuits).[9] Or one can, with Nickel, appeal to a set of general basic interests that people have and whose protection is a condition for living a decent life. These high-order interests might ground, for example, secure claims to life, to lead one's life, to avoid cruel or degrading treatment, and to avoid severely unfair treatment.[10] Finally, one can, with Sen and Nussbaum, see human rights as claims to develop a set of central human capabilities.[11] One can identify such a set as a precondition for living a life of human dignity, and thus as involving basic human interests. Once we have a

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[7] For the worry concerning skepticism, see Beitz, IHR, 50, 53, 66–7, 138.

[8] I say "largely," because some rights in the Declaration are extremely abstract (such as Article 3, which says that "everyone has the right to life, liberty and security of person"), and because rights as they appear in the International Covenants, and even more so in international treaties and in national constitutions and laws, are much more specific.

[9] James Griffin, *On Human Rights*, 32–3.

[10] James Nickel, *Making Sense of Human Rights*, 62. For similar approaches, see Allen Buchanan, *Justice, Legitimacy, and Self-determination,* 128–31; and Simon Caney, "Global Poverty and Human Rights: The Case for Positive Duties." Buchanan, Caney, Griffin, and Nussbaum (mentioned in the text shortly) explicitly defend a humanistic perspective.

[11] See Amartya Sen, "Elements of a Theory of Human Rights," *Philosophy and Public Affairs* 32 (2004), 315–56; and Martha Nussbaum, *Frontiers of Justice* (Cambridge, MA: Harvard University Press, 2006), 69–81, 284–91. Nussbaum's account includes conditions securing people's capabilities with respect to life; bodily health; bodily integrity; the use of their senses, imagination, and thought; the engagement of their emotions; the use of their practical reason; the development of social affiliation; the concerned relation with other species; activities involving play; and the control of their political and material environment.

compelling picture of these basic interests and the abstract rights protecting them, we can articulate specific rights ranging over different possible social and political contexts. Such specific rights identify the protection that the basic interests deserve in certain historical circumstances.

There are different ways of formulating abstract rights, of course. It is not crucial for the argument of this chapter to settle the discussion as to how to draw up the list. I will offer an approach to this issue in Part II of this book.[12] What is important now is that the distinction between abstract and specific rights helps us to show (i) that there is no problematic contrast between political and humanist approaches to the content of human rights, and (ii) that in fact both are important in providing a full picture of that content. This is so for several reasons. The first is that the distinction allows us to say that the two perspectives focus on making claims about two different kinds of rights. Whereas the political view largely focuses on the specific rights of contemporary legal documents, the humanist view largely focuses on more general moral claims. Since these rights belong to different categories of abstraction, claims about one category need not be faulted for not playing the role normally played by claims about the other. Thus it would not be warranted to challenge the humanist view by saying that some of the rights of the Declaration would not be included among the abstract rights it identifies. For the same reasons, it is false that a humanist would be dogmatically led to say that certain rights of the Declaration such as the ones mentioned above (the rights to impartial trial, to take part in the government of the country, and to free elementary education) are not human rights because they could not hold everywhere, regardless of certain specific social and political circumstances. This would assume that humanism must, as it need not, conflate the two categories of rights.

It might be objected that the distinction between the two categories of rights does not get us very far because one must, in addition, show that there is reason to talk about both in a full account of human rights. This would not be so, the challenge proceeds, because the abstract rights the humanist focuses on presuppose asocial circumstances that are radically discontinuous with the

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[12] I believe that some combination of Griffin's and Nickel's lists of abstract rights would be appropriate. Griffin is correct in highlighting the specificity of normative agency in distinguishing humans from other beings. No reasonable account of human dignity could fail to attend to the features of human agents as reasoning pursuers of good lives. But human rights need not only protect interests that all humans have which are not also interests of other beings. What is crucial is that human rights range over extremely important concerns that all humans have. The decisive contrast is between what humans need only as members of a specific group or society and what humans need in any context. Some of what they need in any context may be similar to what other beings need (such as staying alive, or avoiding excruciating pain). The capability approach, on the other hand, is well equipped to account for the whole gamut of basic human interests. However, the links between capabilities, interests, and rights are not fully worked out. The dignitarian approach I present later in this book fills the gaps.

actual circumstances for which the rights of the Declaration are formulated. But this reply wrongly presupposes that a humanist view must assume an atomistic picture of human nature. This picture may have been accepted by some early defenders of natural law theory, but there is no reason to suppose that humanism could not be formulated so that it sees human beings as essentially social.[13] We should think of a more plausible, charitable construal of humanism. On this construal, to formulate the abstract rights we assume quite general features of human beings in their social life. These include, for example, their capacity to reason prudentially and morally about what is good and right, their mortality and physical and psychological vulnerability, their use of language, and their relative capacity to modify their environment through their intentional action. We also assume that humans face relative material scarcity, and display certain tendencies to social conflict of interest and occasionally aggressive and non-cooperative dispositions, as well as more benign tendencies to cooperation, respect, concern, and sympathy. Such assumptions are irreducible to any specific social circumstance, but are still true of all of them. The humanist can still say that in any social context people have abstract claims to the conditions of their normative agency, to avoid certain forms of degrading and unfair treatment, or to develop certain central capabilities.[14]

Thus, humanists can develop a plausible picture of what humans "as such" have abstract rights to. A political approach could incorporate that picture. Beitz, for example, does not deny that a practical approach could appeal to deeper values such as those connected with the idea of personhood. But he worries that general ideas of this kind could be "too abstract to settle

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[13] This is why I think that the label "humanism" is more appropriate than "naturalistic theory." The former shares with the latter the view that human rights are, at the fundamental level, moral claims every person has against every other in virtue of their shared humanity, and that these have normative precedence over, and serve to judge, any specific set of institutions. But humanism need not also endorse the contentious assumptions many traditional defenders of natural law theory had regarding human nature and the methodology for deriving rights from accounts of it. Beitz recently acknowledged (when considering Griffin's and Nussbaum's theories) that a "naturalistic" view could be developed that is not asocial. But he argues that such a view faces four serious difficulties: (i) it fails to "incorporate or make use of considerations about the discursive functions of human rights within existing practice"; (ii) it is narrowly focused on the perspective of beneficiaries of remedial action regarding human rights deprivations, without illuminating the perspective of contributors; (iii) its "normative content" is "likely to fall short of the list of protections actually found in international human rights doctrine"; and (iv) it would problematically assume that where there are discrepancies between international doctrine and naturalistic theory the latter must have at least prima facie precedence (IHR, 65–8). In this section I defuse challenges (i) and (iii). I address (iv) and (ii) in sections 2.3 and 2.5 respectively. The dignitarian approach offered in Parts II and III of this book provides a humanist perspective that addresses all these challenges in a constructive way.

[14] Arguably, some general features of the human condition of this kind underpin the need for legal and political structures in the first place. See H. L. A. Hart, *The Concept of Law*, 2nd ed. (Oxford: Oxford University Press, 1994), 91–8, 193–200.

disagreement about the content of human rights doctrine or . . . arbitrarily constrain the doctrine's substantive scope."[15] I have already addressed the worry of arbitrary skepticism about content. But I also think that abstract rights are not trivial, and would prove important in identifying the more specific rights the political perspective is keen to focus on. Abstract rights are not only plausible in the absence of the kind of complex institutions typical of modern settings; they also help account for more specific rights once factual considerations about specific contexts of social action are taken into account. To return to Beitz's challenging examples, why should we care about people having access to impartial trials, to take part in the government of their country, and to free elementary education? To answer this question, we should not only refer to certain features of the modern world, such as the presence of juridical systems, frameworks of political decision-making, and formal educational institutions. We also need to understand what renders certain treatments of people by those institutions acceptable. An intuitively correct answer to this further question would appeal (inter alia) to the kind of human interests and abstract rights the humanist talks about. Juridical systems should include impartial trials because people have an extremely important interest in not being treated unfairly. Political decision-making should be open to people's participation because otherwise their autonomy would be compromised. And their autonomy would also be compromised if they did not have the level of education necessary to shape their life-plans in an informed and critical way in their social context.

Thus, the humanist story about abstract rights leads naturally to the political story about specific rights once we take account of the institutional context in which the protection of the abstract rights is engaged. And the political story naturally connects with the humanist story once we wonder how the specific provisions addressing institutional contexts are to be identified. Hence, we need not say, with Beitz, that instead of insisting that "human rights be justified by considerations of common humanity as such" we should just see them as "special rights" arising from special relationships that people have in the institutional landscape of the modern world.[16] This would assume that the categories of rights just distinguished are radically discontinuous when they are not. For another example, consider the Declaration's right to an adequate standard of living. As Beitz says, "any plausible explanation of the moral basis of this right will have to refer to features of people's social relations."[17] We cannot

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[15] IHR, 138.   [16] Beitz, WHRM, 42; IHR, 71–2.
[17] WHRM, 42. "International human rights, to judge the contents of the Declaration and covenants, are suited to play a role in a certain range of societies . . . that have at least some of the defining features of modernization: a reasonably well-developed legal system . . . , an economy with some significant portion of employment in industry rather than agriculture, and a public institutional capacity to raise revenue and provide essential collective goods" (p. 43). See IHR, 57–8.

account for them by simply considering "characteristics that people might be said to possess when they are considered in abstraction of any social situation."[18] But notice that the right to an adequate standard of living may be construed both as an abstract and as a specific right. People in any social context need minimum material provision to have a life and to lead their life, and thus the claim to an adequate standard of living is, in a sense, an abstract right. What exact form of material provision specific people require is a matter of specific needs they have in different contexts. To arrive at a more concrete list of demands at this level, we can apply the humanist list of abstract rights to those contexts to yield the political lists of specific rights.

2.3. COHERENCE WITH PRACTICE AND JUSTIFICATION

A central worry about the traditional humanist approach raised by Beitz is that it does not show proper deference to the actual practice of human rights as we find it today. It imposes on that practice a test of justification that is foreign to it. No claim that fails to fit the Procrustean philosophical picture—that human rights are derived from claims that all humans make on every other in virtue of their common humanity—deserves the name. Beitz suggests that we avoid this philosophical straitjacket and develop instead an account of human rights based on a description of the current international practice. Beitz thus formulates an explicit contrast between the traditional humanist view (which he calls "orthodox" or "philosophical") and his preferred political account, the "practical" conception. This contrast is motivated by a worry about a perceived dogmatism on the part of the traditional view. It suggests that, instead of imposing external strictures on the practice of human rights, we proceed immanently, trying to develop the "best conception" of its core aims, and work from there.[19]

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[18] Beitz, HRLP, 198.
[19] "The practical view, by contrast [to the 'orthodox' or 'philosophical' view], takes the doctrine and discourse of human rights as we find it in the international political practice as basic. Questions like What are human rights? What human rights do we have? and Who has duties to act when human rights are violated? are understood to refer to objects of the sort called 'human rights' in contemporary international life, however these are best conceived. There is no assumption of a prior or independent layer of fundamental values whose nature and content can be discovered independently of reflection about the international realm and then used to interpret and criticize international doctrine. Instead, the functional role of human rights in international discourse and practice is regarded as definitive of the idea of a human right, and the content of international doctrine is worked out by considering how the doctrine would best be interpreted in light of this role" (HRLP, 197; see IHR, 102–3).

To assess the practical view, we need to consider what it means. For example, does it ask us to take international practice as our heuristic starting point in the process of discovery of the appropriate list of human rights? Nobody would complain about this. Certainly humanists would not complain if we began our reflection about both specific and abstract rights by considering our reactions to what goes on in international practice. The difficult issue is not where we start, but where we end up going and why. Does the practical view tell us, more ambitiously, that international practice already provides us with the justification of any such lists? If it said this, then it would run the risk of sliding into an obviously problematic form of conventionalism. Surely we have reason to say that those involved in the practice of human rights should believe that there are certain human rights when and because people have them, not that people have them when and because those involved in the practice believe so. If the drafters of the Declaration and the delegates at the UN General Assembly had denied that freedom of speech or religious freedom are human rights, we would not be compelled to accept as correct the contents of such an alternative Declaration simply because it was claimed to be correct by those drafting it and voting for it. Noticing this elementary difference between something being the case and something being claimed or believed to be the case does not involve any deep philosophical foundationalism. It simply states a precondition of any critical thinking that aims at identifying what is true rather than merely reporting what some people take to be true.

Now, most defenders of the political approach are not crude conventionalists. They say that although we should start with practices as they are, we may come to criticize aspects of them, demanding that beliefs involved in them be changed. This is certainly Beitz's view.[20] But how do we come to criticize the contemporary practice of human rights? If we look at it, we find a myriad of often opposing views. Disagreements include contending views on what rights should be recognized, how they should be interpreted and applied, and how they should be weighed against each other in cases of conflict. Some accept, and others deny, that there are socioeconomic human rights.[21] Some accept, and others deny, that there is a human right to democracy.[22] Some accept, and others deny, that civil and political rights have priority over

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[20] Beitz's "hope is to replace conceptions of human rights that invite skepticism with one that is more sympathetic to the aims and conduct of the existing practice without sacrificing a capacity to criticize it" (IHR, 198–9). See WHRM, 46; HRLP, 205; IHR, 105. See also Beitz's critique of "agreement theories" (IHR, ch. 4), and his sharp defense of women's rights in the face of conflict with prevailing moral beliefs in some cultures (IHR, 191–4).

[21] See, respectively, the papers in T. Pogge, ed., *Freedom from Poverty as a Human Right*; and Maurice Cranston, *What Are Human Rights?* (London: Bodley Head, 1973).

[22] Carol Gould, *Globalizing Democracy and Human Rights*; and Joshua Cohen, "Is There a Human Right to Democracy?" in C. Sypnowich, ed., *The Egalitarian Conscience* (Oxford: Oxford University Press, 2006), 226–48.

socioeconomic rights.[23] How are we to settle such disputes? Beitz suggests that we critically arbitrate these disagreements by considering how the different claims fit the "aims" or "role" of the existing human rights practice.[24] But, as Beitz acknowledges,[25] contention exists not only regarding the content of the Declaration, but also about the aims and role of human rights discourse itself. Some claim, and others deny, that its role is reduced to identifying the conditions under which foreign interference with the internal life of states is warranted.[26] Some claim, and others deny, that human rights ground responsibilities of individuals that are as important as those of institutions (including states).[27] Some believe, and others deny, that the practice of human rights is mostly a veiled mechanism by means of which some powerful states rationalize their domination of weaker ones.[28] How do we identify and defend the standards of the "best conception" of human rights practice? The methodological demand of coherence with a description of the practice may be too indeterminate, as any participant in the practice could say that the doctrine of human rights should express their own (contentious) construal of that practice's point. Furthermore, the very idea that the justification of certain claims depends on their coherence with the practice in which they arise is itself a contentious

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[23] See the general discussion in Amartya Sen, *Development as Freedom* (New York: Anchor Books, 1999).

[24] IHR, 105–6.   [25] IHR, 108.

[26] Rawls, *The Law of Peoples*; and James Nickel, "Are Human Rights Mainly Implemented by Intervention?" in R. Martin and D. Reidy, eds., *Rawls's Law of Peoples: A Realistic Utopia?* (Oxford: Blackwell, 2006), 263–77.

[27] Henry Shue, "Mediating Duties," *Ethics* 98 (1988); and Thomas Pogge, *World Poverty and Human Rights*, 2nd edn. (Cambridge: Polity, 2008).

[28] These discussions were already present among the drafters of the Declaration. See on this the extremely rich historical account in Mary Glendon, *A World Made New: Eleanor Roosevelt and the Universal Declaration of Human Rights* (New York: Random House, 2001). An example regarding the issue of responsibility can be seen in the insistence by René Cassin that duties of individuals (as well as institutions below and above the state) are as crucial as the duties of states (pp. 93, 113–14). This is why Cassin proposed, just before its adoption, that the title of the Declaration be changed to "Universal Declaration of Human Rights" from "International Declaration of Human Rights." Glendon explains: "The title 'Universal,' [Cassin . . .] later wrote, meant that the Declaration was morally binding on everyone, not only on the governments that voted for its adoption. The Universal Declaration . . . was not an 'international' or 'intergovernmental' document; it was addressed to all humanity and founded on a unified conception of the human being" (p. 161). The last paragraph of the Declaration's Preamble confirms this view, saying that it presents "a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society . . . shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance." This approach has a powerful illustration in the Convention for the Elimination of all Forms of Discrimination Against Women, which ranges over "the political, economic, social, cultural, civil or any other field" (Art. 1). Another example is the emerging discussion on the need to see certain institutions such as the International Monetary Fund and the World Trade Organization as directly carrying responsibilities concerning human rights. See Cristina Lafont, "Democratic Accountability and Global Governance: Challenging the State-centric Conception of Human Rights," *Ethics & Global Politics* 3 (2010), 193–215.

philosophical claim whose defense must be philosophical (and thus engage the kind of inquiry that defenders of the political perspective might like to avoid).

I am not advocating an outright rejection of Beitz's "practical" account. My intention here is to suggest an amendment of it, and to urge that we acknowledge the importance of humanist considerations for its further articulation. Regarding the first point, consider Beitz's suggestion that we introduce a sharp distinction between the concept of human rights and their content and justification.[29] The idea here is that we can navigate disagreements by providing a description of the understanding of the former (of human rights' aims and role) in contemporary practices and then by engaging in substantive argument on the latter. Thus, for example, Beitz suggests that the meaning of human rights is that they are "the constitutive norms of global practice whose aim is to protect individuals against threats arising from acts and omissions of their governments."[30] Once we have this concept in hand, we can proceed to develop substantive accounts of the content and justification of human rights by identifying (i) urgent individual interests facing standard threats in modern states; (ii) "first level" requirements on governments to protect the interests of their residents; and (iii) "second level" pro tanto reasons for foreign governments and agents to assist or challenge governments that fail to fulfill their primary duties.[31]

One should notice that in this proposal the account of the concept of human rights severely constrains any account of their content and justification. For example, since as a matter of the meaning of human rights states are identified as the primary agents, any substantive account of the content and justification of human rights duties will also have to take states as primary. But this involves packing into a definition substantive claims (such as the primarily institutional, and state-centered nature of human rights, and the existence of basic positive duties[32]) that are in fact contested by many participants in the practice. As we saw, current debates run very deep. One could respond by revising the description of the meaning of the practice to make it less contentious. But perhaps the problem here is that an account of meaning cannot after all be so readily detached from issues of content and justification. Rather than going in sequence from meaning to content and justification, we may have reason to continuously address the three in an ongoing attempt to find a "reflective equilibrium" in our thinking about human rights. We will sometimes feel compelled to revise our account of the meaning of the practice when it collides with our considered judgments about the content and justification of certain rights made within it. Furthermore, we should see that such an

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[29] IHR, 10–11, 104–6, 126. Of course, an account of meaning affects any account of content and justification. Beitz acknowledges this, but as we will see he does not consider that the relation goes the other way around as well.
[30] IHR, 197.   [31] IHR, 109, 137.   [32] IHR, 114–15, 128–9.

equilibrium is a target of deliberation, not description: what we are primarily concerned with is not finding out what we (or others) *have been* thinking about human rights, but what *to* think about them.[33]

These suggestions (regarding reflective equilibrium and its deliberative nature) would involve a revised practical view that I would myself endorse. And in this revised view humanist considerations on what human persons as such may claim on all others can play a crucial role in shaping practice, our view of its meaning, contents, and justification.[34] Thus, as I said above, the idea of "starting" with the international practice of human rights is quite reasonable. It is true that we will not get a full picture of what specific human rights we have reason to endorse unless we consider the specific contexts in which discussions and demands about "human rights" arise. Without reference to such contexts, any list of abstract rights would be highly indeterminate and unfit for guiding domestic and international political action. But when we see things in the "deliberative reflective equilibrium" way I suggested, there is in fact reason to engage the humanist perspective rather than to proceed independently of it. I will make two points to elaborate on this claim. These points work in conjunction with the points made in section 2.2 (which shows that on a plausible construal, humanism accepts, and in fact demands, that we consider specific contextual settings in order to identify and justify specific rights applying the more general moral concerns articulated in abstract rights). I proceed to address the crucial issue of whether we should take states as definitionally central in sections 2.4–2.6.

The first point is that humanist considerations already operate within the contemporary practice of human rights. This is evident as soon as we read the Preamble and Articles 1 and 2 of the Declaration. The Preamble opens by referring to the "recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family" as being "the foundation of freedom, justice and peace in the world." That we have to "recognize" humans' dignity and their rights is incompatible with assuming that the utterances of the Declaration simply create them.[35] Article 1 says that "[a]ll human beings are born free and equal in dignity and rights," and "are endowed with reason and conscience and should act toward one another in a spirit of brotherhood," and Article 2 claims that "everyone is entitled to all the rights

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[33] On the distinction between descriptive and deliberative accounts of reflective equilibrium, see Thomas Scanlon, "Rawls on Justification," in S. Freeman, ed., *The Cambridge Companion to Rawls* (Cambridge: Cambridge University Press, 2003), 139–67.

[34] Even within a coherentist epistemological outlook certain substantive moral principles may operate as relatively invariant. See Geoffrey Sayre-McCord, "Coherentist Epistemology and Moral Theory," in W. Sinnot-Armstrong and M. Timmons, eds., *Moral Knowledge* (New York: Oxford University Press, 1996), 137–89, at 151.

[35] Glendon argues that this renders the Declaration incompatible with a legal positivist reading. The Declaration recognizes rights; it does not confer them. See *A World Made New*, 176.

and freedoms set forth in this Declaration without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status." These clauses clearly assume that there are features of human beings as such (such as their being "endowed with reason and conscience") that should ground universal concern ("brother-hood"), that human rights are appropriate to the "dignity" of all persons, regardless their specific circumstances (such as their "race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status"). These claims give a humanist framing to the whole Declaration—and I will in fact develop a positive account of this framework in Parts II and III of this book. They force us to keep in mind that, as we go about identifying specific claims for contemporary times (such as the specific socio-economic rights the Declaration goes on to mention, which clearly are bound to specific modern economies), we think about what humans seen in the way mentioned deserve. These assertions are intuitively plausible. And they are neither morally vacuous nor philosophically trivial. In fact, the drafters were involved in heated debates about them. It is true that they agreed to disagree on the most fundamental grounds of human rights, as they realized that they could not, and did not need to, agree on whether rights were grounded in any particular religious view, or any deep metaphysical or moral theory. But it is also true that some, less fundamental moral and philosophical views were very much at the center of their discussion. These included conceptions of "brother-hood," "dignity," "conscience," "freedom," "equality," and the relative standing of individuals, social groups and states.[36]

The second point concerns global public reasoning regarding the meaning, content and justification of human rights. My claim here is that humanist

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[36] See Glendon, *A World Made New*. In 1947, the drafters of the Declaration consulted an international UNESCO committee including thinkers from a great variety of traditions. They concluded that agreement was possible on some core convictions on the basis of which the Declaration could be articulated, but also that it would not be wise to go behind those convictions and try to reach an agreement on what more fundamental religious, moral or philosophical doctrine most successfully grounded them (77–8, 112, 222, 226). Notice that this conclusion does not say that no philosophical ideas or values are important to the international political debate on human rights, but that they need not be as deep as those that inevitably arise in more comprehensive philosophical exercises (within specific cultures, religions or foundational moral theories). For examples of debates on core ideas framing the Declaration, see pp. 38–42, 68–9, 75–6, 141–2, 146–7, 148–51. Although the drafters put ultimate principles aside, they certainly took substantive moral views on board. As an example, consider the discussion between Charles Malik and Hansa Metha during the first meeting of the Human Rights Commission. Malik said that when we talk about human rights, "we are raising the fundamental question, what is man? . . . Is man merely a social being? Is he merely an animal? Is he merely an economic being?" (p. 39). Metha complained that the Commission should avoid "ideological" disputes. Malik replied: "Whatever you may say, Madam, must have ideological presuppositions . . . and no matter how much you may fight shy of them, they are there, and you either hide them or you are brave enough to bring them out in the open and see them and criticize them" (p. 41). The drafters engaged in quite explicit humanist considerations regarding people's common human-ity, their basic interests and dignity in social life in general (pp. 227–33).

considerations can help in shaping the procedure and substance of it. As some defenders of the political perspective have argued, human rights are becoming the currency of contemporary debates about global justice, or at least of its most urgent demands. These debates do not have the structure of a philosophy seminar. Participants are not called to search for the ultimate foundations of human rights. Their aim (or, rather, the aim of many) is to achieve a consensus providing shared grounds for international political action. It is then important to avoid what might be seen as the foundationalist overtones of traditional philosophical versions of the humanist approach. To this extent, the political approach is likely right to recommend what Cohen calls a "justificatory minimalism" that brackets discussion on ultimate philosophical foundations.[37] But we should also avoid strategic abridgments. The goal is not just to seek consensus, but to build it on the basis of methods and assumptions that are normatively sound. Otherwise the consensus will be a mere *modus vivendi* lacking in stability and moral authority. Many defenders of the political view are of course aware of this, and they think that global public reasoning does not consist in merely reporting the intersection of already existing normative beliefs or in providing a medium for rhetorical manipulation and threats in international forums.[38] But the question is: How do we identify and defend any proposal about the appropriate procedures and goals of global public reasoning? Should we do it without appealing to substantive ideas of the kind advocated by humanism?

I believe that the answer is No. As we saw above, international debate on human rights is shot through with substantive general moral claims about the status of individuals in their social relations, claims that cannot be reduced to any current institutional framework because they are meant to ground the assessment of any such frameworks. Humanist concerns are already operative within the international practice of discussion on human rights in a way that seems, on reflection, correct. Such a discussion aims (at least in the view of some participants) not only at the amelioration of current institutional structures, but also at their progressive change. Our dignity as agents with "reason and conscience" and our duty to act in a "spirit of brotherhood" shape the moral motives for joining international discussions about what specific human rights we should acknowledge and how we should implement them. We care about having a form of non-strategic, respectful, and consensus-searching discussion because (inter alia) we recognize that the dignity of others is incompatible with imposing on them institutions they could not autonomously

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[37] "Minimalism About Human Rights," 192. The bracketing is only a prima facie recommendation, and it concerns political debates, not deeper philosophical ones carried out in civil society.

[38] Cohen, "Minimalism About Human Rights"; Kenneth Baynes, "Discourse Ethics and the Political Conception of Human Rights," *Ethics & Global Politics* 2 (2009), 1–21.

accept. For the same reason we also care about global public discussion being inclusive, open to all relevant voices, comprising not only representatives of governments, but also individuals and organizations of domestic and global civil society.

We can see the very ideal of justificatory minimalism as grounded in a combination of normative and empirical assumptions. The empirical assumption is that the modern world displays a depth of cultural diversity such that it is highly unlikely that public reasoning will yield converging results on ultimate philosophical foundations. The normative assumption is that political structures should track the reasoned consent of those they affect. A call for robust, but still relatively "minimal" practices of public justification makes sense precisely because our respect for the autonomy of others demands that we justify our shared institutions on substantive moral premises they can accept, while being mindful that we should not expect such justification to yield convergence on even deeper moral premises that are just too contentious for everyone to acknowledge (at least in the short term).[39]

As we saw in section 2.2, humanist commitments can also shape the content of the specific rights we come to recognize. It is true of many of the human rights of the Declaration that they are, as Beitz puts it, "standards appropriate to the institutions of modern or modernizing societies coexisting in a global political economy in which human beings face a series of predictable threats" and that "the composition of the list of human rights is explained by the nature of these threats."[40] But for us to recognize some threats as normatively relevant for the generation of human rights claims, we need to assume that there are certain morally important human interests that are affected by them. Now, humanism operates as a module within global public reasoning, searching for a shared understanding of what those interests and the abstract rights protecting them are. Thus, when we say that global public reasoning should seek shared grounds for assessing domestic and international institutional structures, we also want to say that such assessment should consider how alternative feasible orderings of those structures affect certain important interests which human beings typically have. Without this substantive layer of reason-

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[39] It might be said that we need not ask about the normative point of the practice of public reasoning because it is simply unavoidable given our modern institutional landscape, in which institutions with pervasive impact on people's lives cannot function without being deemed legitimate by those subject to them. But this would be too weak. Legitimation might be secured without open, critical, and cooperative public reasoning. And if this is unlikely, it might partly be because we have normative reasons (and care about them) to seek a specific kind of legitimation that does not circumvent our "reason and conscience." In any case, regardless of whether public reasoning is functionally unavoidable, we want to know whether it is morally desirable.

[40] WHRM, 44. See IHR, 58.

ing, the content of global public debate would lose a significant guideline, and much of its normative point.

2.4. SELF-DETERMINATION AND DIVERSITY

Another motivation for adopting a political perspective on human rights is that it is well equipped to recognize the importance of national self-determination and the need to address cultural diversity. Where there are institutions that incorporate forms of political self-determination, agents can identify the kinds of rights whose implementation has priority given their historical circumstances, and decide in an autonomous fashion what specific implementations to undertake. State sovereignty and diversity have always been important topics in the debate on human rights. Even among the drafters of the Declaration there were heated debates, with many participants worrying that human rights discourse might be used to threaten the independence of nations and their culture.[41] It is undeniable that the humanist perspective imposes severe constraints on the sovereignty of states and on any argument grounded in references to cultural traditions. But the political perspective would agree that one of the points of human rights is precisely to set limits on what can be done in the name of state sovereignty and cultural purity. So there really is not a serious contrast between the political and the humanist views here.

But there might be an issue of emphasis. The humanist view does not take the current organization of the world in terms of nation-states or peoples for granted.[42] What is crucial is that *individuals* are able to determine the shape of the political processes that affect their basic interests, and that *they* select the

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[41] Glendon, *A World Made New*, ch. 12.

[42] Here the contrast is particularly strong with Rawls's account in *The Law of Peoples*, which takes peoples rather than individuals as the ultimate units of international normative analysis, and shortens the Declaration's list of human rights to fit the preferences of certain cultural frameworks. Among the Declaration's rights missing in Rawls's list are the rights to freedom of expression, freedom of association (except for a circumscribed version of it required to enable freedom of conscience and religious observance), and participation in democratic political structures. Rawls also acknowledges only a meager set of socioeconomic rights focused on subsistence. A humanist might accept that some claims should not be pushed through foreign intervention. But they would not infer that they are not human rights, or that they should not be among the central issues in global public reasoning. For a critical discussion of Rawls's view, and a powerful account of why a humanist view would do better, see Allen Buchanan, "Taking the Human out of Human Rights," in R. Martin and D. Reidy eds., *Rawls's Law of Peoples*, 150–68; and *Justice, Legitimacy, and Self-determination*, 158–76. Other political views are less restrictive. Cohen takes individuals, not peoples, as the basic normative units, and sees global public reason as treating human rights as "norms associated with an idea of *membership or inclusion* in an organized political society," leaving it open whether the relevant political society is national or

kind of implementation of human rights that is most appropriate given their endorsement of their culture (or at any rate the aspects of it that do not undermine human rights). Governments and states have largely a derivative status. Whether we have reason to keep them as they are is largely a matter of what they do for individuals and their fundamental rights.

Thus, the humanist approach is particularly helpful in providing us with the critical distance we need toward political institutions and cultural frameworks. With that critical distance, we can notice that there are both positive and negative interactions between a humanist commitment to abstract rights and the recommendation that we respect cultural diversity and institutions involving political self-determination. The positive interactions are mainly of three types, all of which serve to show that the political and the humanist perspectives can and should work in tandem. At an epistemic level, we must of course notice that abstract rights can be given different articulations in different cultural contexts, and that the presence of mechanisms of political empowerment helps the agents affected to identify their appropriate implementation through specific rights, institutions, and policies. Such mechanisms would also provide those agents with a way to decide which rights to prioritize when their application is bound to conflict.[43] A second level of interaction is motivational. The willingness to sustain institutions and policies implementing human rights is strengthened when they are not imposed in a patronizing way but are accountable to those they affect. Such motivation is also strengthened if talk of universal human rights is linked to specific narratives concerning the experiences of communities and groups. An elaboration of the trauma of the Nazi years, and a revaluation of the *Aufklärung* tradition, provides Germans with a particularly rich medium to cement allegiance to human rights. Something similar takes place in Latin America through a critical revision of the complexities of the encounter between European colonialists and immigrants and native-Americans, or through a reflection on the costs in terms of civil, political, and social rights imposed by the military dictatorships in the 1970s and 1980s. Finally, political self-determination and the ability to relate to one's cultural communities are directly valuable. The first gives further expression to people's autonomy, and the latter services people's interest in developing strong fraternal bonds with others.

In all these respects, the humanist and the political perspectives complement each other. In fact, they are important to keep each other in check. The humanist approach runs the risk of relapsing into a foundationalist theory with little capacity to guide political action in specific social contexts. And the

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global ("Minimalism About Human Rights," 197). Beitz also challenges Rawls's "social liberalism," advocating instead a "cosmopolitan liberalism" that sees individuals rather than peoples as basic. Beitz, "Social and Cosmopolitan Liberalism," *International Affairs* 75 (1999), 515–29.

[43] See Sen, *Development as Freedom*, 31–3, 241–2.

political approach runs the risk of taking too much for granted from the status quo and of failing to make sense of the universalist moral aspirations that are crucial to render the practice of human rights a progressive development in modern politics. The political perspective's emphasis on specific political structures provides a way for humanism to avoid an "abstract universalism" that misses that human rights are elaborated and pursued in different ways in different contexts, and that it makes a moral, motivational and epistemic (besides, obviously, a prudential) difference if such elaborations and pursuits are undertaken by politically empowered agents. The humanist view, on the other hand, helps keep a critical distance from any existing political and cultural configuration, reminding us that their normative status is always dependent upon their consistency with a general project of securing the conditions for a dignified life for every individual. When current political and cultural frameworks become fetters rather than enablers in the realization of this project (when they engender domestic or international trampling with or indifference for the basic interests of individuals), then humanism helps us to keep an uncluttered sense of what the direction of political reform should be. Thus, it is not surprising that human rights discourse has been a major influence in proposals for limiting state sovereignty by strengthening sub-state and supra-state institutions to increase the ability of those affected by states' action to defend their basic interests.[44] From the point of view of human rights, there is nothing sacrosanct about the modern invention of nation-states. Where there is a negative correlation between the promotion of basic human interests and state sovereignty and cultural purity, the humanist view generates an appropriately sharp sense of where the priorities lie.

2.5. CORRELATIVE DUTIES

To say that someone (a right-holder) has a right to have access to a certain object O entails that other agents (the duty-bearers) have certain correlative duties. These duties may be negative, such as the duty not to deprive the right-holder of access to O. Or they may be positive, such as duties to provide the right-holder with O, or protect the right-holder's access to O from others' interference. Negative duties are normally easy to articulate, as they mostly impose obligations of forbearance. Positive duties, on the other hand, are notoriously difficult. This is particularly the case with socioeconomic rights. The Declaration mentions several (such as the rights to an adequate standard of living, education, and work), but it is not very specific about who the

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[44] David Held, *Global Covenant* (Cambridge: Polity, 2004).

duty-bearers are, and what actions they should take toward fulfilling the rights. To some extent this vagueness is intentional and indeed appropriate. The drafters wanted the Declaration to apply to diverse contexts, both in the present and in the future, and to allow each country to have some room to choose how best to implement the rights. For example, the quite general nature of the formulation of socioeconomic rights was meant to allow for different ways of articulating the relative contribution of market mechanisms, state provision, and voluntary assistance that would be most likely to work given different countries' historical circumstances and traditions. Taking into account the limits of resources faced by poor countries, the Declaration, and even more clearly the International Covenant on Economic, Social and Cultural Rights, also construed obligations to fulfill socioeconomic rights as being gradual and as involving international cooperation.[45] This led some critics to say that these human rights are not real rights, but just desirable goals. In response, some defenders have said that the goals are obligatory, and that there are institutional mechanisms to tighten them in such a way that specific targets, kinds of agents, and types of actions can be identified at different stages in the process of gradual implementation.[46] I will explore in later chapters how this process of tightening can be developed and justified.

Let us assume that this response to the critics is correct, that socioeconomic rights can be construed as yielding, in addition to certain perfect duties, a set of high-priority goals whose fulfillment may be gradual rather than complete and immediate, and require the intervention of multiple agents. This response would also defuse a motivation for a particularly narrow political view according to which for a human right to exist there must be institutional agents that have been assigned, and can discharge, perfect correlative duties to fully and immediately fulfill the right. But I want to consider the possibility of another challenge associated with a less narrow political construal. The response to the challenge just mentioned appears to enable a new challenge to a humanist view relying on a philosophical account of human rights as a species of moral rights.[47] The new difficulty, as formulated by Beitz, is that moral rights are normally assumed to ground perfect duties on the part of specific individuals to undertake specific actions that immediately and completely fulfill the relevant claims. But it seems that this model is not, as we have just seen, honored in the case of the socioeconomic human rights of the Declaration and the Covenant. First, these documents mostly focus on duties of institutions, and individuals' responsibilities appear to be largely secondary

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[45] See Preamble and Articles 22 and 28 of the Declaration and Articles 2.1, 11.2, 13.2, 14, and 23 of the Covenant.

[46] For a classical statement of the critique see Cranston, *What Are Human Rights?* For accounts of how human rights and goals might relate, see Nickel, *Making Sense of Human Rights*, 24–6, 81. I respond to Cranston in chapter 3.

[47] Beitz, HR, 631.

(such as to support the appropriate institutions). Second, they are quite open as to what specific institutions are to be involved and the extent to which their actions will fulfill the rights at stake. Given this, a humanist understanding of human rights as moral claims might give rise to doubts as to whether many rights in the Declaration, such as the socioeconomic rights, really are rights. No such skepticism would emerge from the broader political view, because it does not assume that the rights of the international practice of human rights need to fit any predetermined philosophical mold. These considerations may provide a reason to avoid the humanist strictures and develop the political perspective independently.

But the foregoing considerations do not provide such a reason. Four points are important here. The first is to recall that humanism is not forced to reject the institutional allocation of responsibilities. It does not assume that, at all times, the immediate duty-bearers must be individuals. The core idea is that individuals are the fundamental duty-bearers without necessarily being the immediate ones. They have a collective duty to protect basic human interests that is independent from any existing institutions, and would retain it in their absence. Institutions are human creations one of whose roles should be to discharge that duty. Once created, institutions may very well be the main immediate duty-bearers.[48] If a government is much more likely to secure that the people under its jurisdiction have access to food during a period of economic crisis, why would we want to say that individuals should act on their own instead? In this case, the hungry should make claims, primarily, on the government. But this is not because the government is the fundamental duty-bearer. Rather, it is because the government often provides the fairest and most efficient device by means of which people can act to secure the satisfaction of the right to subsistence of the hungry.

A second point concerns the nature of moral rights and duties. There is no reason for the humanist to assume a moral theory according to which something is not a right unless it has only correlative duties that are perfect. Moral rights can be construed as grounding different kinds of duties, some perfect and some imperfect. Consider the moral right to life. This right certainly grounds a perfect duty not to kill (assuming certain standard exceptions—such as permitting killing in self-defense). But it also makes moral sense to say that people should be rescued when facing life-threatening circumstances. Everyone else has strong prima facie reason to act to help the one facing

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[48] They are not the only immediate duty-bearers. If Harry is lying on the street and will die unless emergency assistance is provided, Mary may not say that she is permitted not to give Harry first aid before an ambulance arrives because it is only the duty of the official health care system to assist people like Harry. It is not unreasonable to construe Mary's obligation to help as grounded on Harry's human rights. Furthermore, since sometimes institutions work very badly and help is needed urgently, people may have reason to act on their own without waiting for institutions to intervene or to be appropriately reformed.

these circumstances if they can do so at reasonable cost to themselves. But who, if any, in fact turns out to have a perfect duty to perform a rescue cannot be determined in advance. We need to look at the situation, and see who can act, and at what cost, to decide if there is a perfect duty that anyone has. But as we go about determining this, we proceed on the assumption that the victim's condition of dire need creates strong reason for anyone able to act to seriously consider doing so. This broader, imperfect duty is perfectly intelligible, in the same way that the broad obligatory goals correlative to socioeconomic human rights of people in developing nations are. There is some indeterminacy in the identification of duty-bearers and acts fulfilling imperfect positive duties cor-relative to most rights. But this indeterminacy occurs at all levels of normative reasoning. So since we can reasonably conceive of both perfect and imperfect duties as correlative to rights at the level of moral theory and at the level of political theory, the challenge of mismatch between moral and political accounts of human rights loses its ground.

A third, and related, point is that the moves from imperfect to perfect duties, and from interpersonal to institutional mechanisms of assistance, are not radically discontinuous. The humanist would naturally demand them. Here again the political and the humanist approaches should, when properly construed, work in tandem. Since, normally, institutional frameworks clearly identifying duty-bearers with specific tasks to fulfill in specific ways the claims of the right-bearers are more likely to yield efficient and fair provision, the humanist will call for a political articulation of the relevant rights. As I argued elsewhere, it is because all individuals have reason to have their needs met and to be called to make no more than their fair share in assisting others that institutions are appropriate devices for accomplishing the fulfillment of rights. Thus, where those institutions are deficient or absent, individuals have a pro tanto obligation to reform them or to create them; and when they exist and work well, they have the obligation to sustain them. They articulate a division of moral labor that expresses rather than substitutes the kinds of moral considerations any set of individuals involved in social life would find reason-able.[49] The political conception can accept this. It need not embrace a fetish-ism of institutions according to which human rights exist only where and because the institutions scheduling their fulfillment exist.

Finally, consider another positive contribution of the humanist perspective regarding its practical implications in the allocation of responsibilities for the fulfillment of human rights. It is common to say that the primary duty-bearer when it comes to the protection of an individual's human rights is the govern-ment under which that individual lives. A government may fail, however, to make the necessary provisions. In these circumstances, it is often said that other

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[49] Pablo Gilabert, *From Global Poverty to Global Equality* (Oxford: Oxford University Press, 2012), ch. 2.

governments have "second level" responsibilities to challenge the first government (when it chooses not to help even though it can) or assist it (when it wants to but cannot provide what is demanded). Beitz endorses this picture in his "two level" model of human rights responsibilities.[50]

On a humanist perspective, this sequential picture of assignment of responsibilities may be too weak. It may be more reasonable to say that all governments should work in tandem rather than in sequence in order to foster conditions under which the human rights of all human beings are protected. This point (to which I will return in chapter 3) has a strong humanist rationale. Take into account the important, framing Article 28 of the Declaration, which says that "[e]veryone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized." This article can be interpreted in different ways. A humanist approach would be particularly sharp. If human rights are primarily claims that every person can make on everyone else, then domestic and international structures should be submitted to the critical test of whether they successfully work to secure the human rights of every individual. If some forms of international simultaneous action are speedier, or involve a more widespread and even allocation of burdens of contribution, then there is no need to assume that foreigners have only "second level" duties. Consider the case in which there is great poverty in country A, there is great wealth in country B, and the government of A can succeed at eradicating the severe poverty in A but only at the cost of erasing the middle class in A and weakening A's bargaining power in its trade relations with B. In such circumstances, would it not be fair that B step in by offering aid or by helping to organize trade so that unequal bargaining power does not translate into diminished economic opportunities for the weaker? This would not be a requirement if we held on to the "two levels" picture, but it might be so if we think that institutions, domestic and international, must be (inter alia) devices by which individuals across the world, in a spirit of brotherhood or solidarity, attend to the human rights of all.[51]

The point introduced in the previous paragraph has important consequences for addressing the problem of painful tradeoffs triggered by scarcity of some resources. The primary responsibility for the realization of human rights is not only a matter of domestic responsibilities. Certain states and their people may either hamper or enable the realization of human rights of people

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[50] IHR, 109.

[51] Similar considerations apply to rights that are less directly related to moral rights of all against all—such as certain civil and political rights framing the relation between governments and their citizens. As we saw in section 2.2, such rights can be seen as specifications of deeper, general abstract rights. Given that, and a humanist commitment to universal solidarity, we can couple agent-relative duties to improve the fulfillment of the rights of *one's* fellow citizens with agent-neutral duties to foster the rights of citizens in *any* political framework.

in other countries. The implementation of human rights in any single country should not, then, be assessed in isolation from the relations a country has with the others. An important consideration, then, concerns the shape of the international order. Given the blocking and enabling powers that such an order has, one should explore the proper ways of regulating it if one is serious about implementing human rights in specific (especially in poor) countries. This point is important in order to have a complete picture of what needs to be in place for human rights to be realized in any country in the world, including the proper treatment of the issue of the tradeoffs that some governments would have to make given scarcity of resources. Certain decisions to pursue certain rights at the expense of others would in fact not be necessary if international assistance existed, or harmful interference were lacking, ex ante (rather than merely ex post as the sequential view criticized here assumes).

A striking example concerns the discussion over how to respond to the risk of a swine flu pandemic that appeared to emerge in 2009. The UN Secretary General, Ban Ki-moon, called for "global solidarity" in the allocation of resources to respond to the crisis. This would mean, for example, that if vaccines are created, they should be made available to everyone, not only to wealthy countries that can pay high prices for them. Another worry here is that wealthy countries pre-ordered significant stocks of a flu vaccine before it was even produced, generating concerns about future global supplies. Addressing this issue, Michele Childs of Médecins Sans Frontières said that rich countries were "putting in place these agreements with vaccine manufacturers to basically jump the queue," and that instead "what needs to be done is all of the countries need to agree how [vaccines] will be equally shared, based on need, so if one country has got a huge outbreak then they need to be getting the vaccines first."[52] Now, if a solidaristic scheme securing universal access were not in place, poor countries might have to devote enormous resources to purchase the vaccines to save the lives of their people, or to respond to the consequences of a massive outbreak of the pandemic if they have no vaccines, and in the process abandon policies targeting the implementation of other human rights. Greater global solidarity would make these painful decisions unnecessary, and should then be pursued given that it would support the more complete fulfillment of human rights in many countries.

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[52] "Cases of Swine Flu Near 10,000." BBC News, 19 May 2009. Available at http://news.bbc.co.uk/2/hi/asia-pacific/8056808.stm. This paragraph and the preceding one draw on Pablo Gilabert, "The Importance of Linkage Arguments for the Theory and Practice of Human Rights: A Response to James Nickel," *Human Rights Quarterly* 32 (2010), 425–38.

2.6. FEASIBILITY

Let us consider the last reason for adopting the political construal of human rights, which turns on considerations of feasibility. As I discuss in detail in chapter 3, feasibility is significant for any normative conception, including one centered on human rights. A normative conception must be such that it does not only help us to criticize certain social frameworks by showing that they fall short of ideal ones we could conceive. Besides being an evaluative exercise, a normative conception should also be able to ground action-guiding prescriptions to move from the criticized frameworks to better ones. But this it cannot do without factoring in considerations of feasibility identifying the limits of our abilities to change our circumstances. More specifically, a normative conception of human rights must not only identify a set of putative rights R such that (a) their realization is morally desirable. R must also be such that (b) their realization is accessible from where we are now, and, once reached, be stable. In addition, desirability and feasibility considerations should combine to demand that (c) the process of reform leading to the realization of R be achievable without imposing unreasonable costs on those affected by it.

Condition (c) depends on the more general point that the justification of rights requires considerations of moral desirability and feasibility that are sensitive to the interests of all the agents involved. When we justify a right, we should not only consider the interests of the right-holder, but also those of the duty-bearers. In general, to say that A has a right to O against B involves saying that it is feasible and reasonable to demand from B that they respect and promote, in some ways to be specified, A's access to O. The specification of what B owes to A regarding O tracks the moral importance of A's interest in O, the feasible ways for B to respect or promote A's access to O, and the subset of such feasible forms of respect and promotion that do not involve morally unacceptable burdens on B (given the importance of B's own interests) and on A (given the importance of other interests of A besides that concerning access to O).

Now, the political perspective is particularly welcome because its focus on specific economic, institutional, and cultural frameworks allows it to account for (b) and (c) besides (a). In contrast, the humanist view might appear to be insensitive to political context, and thus limited to the proposal of desirable abstract goals without accounting for whether and how they are achievable at reasonable cost to those affected.

However, even regarding the issue of feasibility a political perspective should not be developed independently of a humanist one. First, recall that human rights claims can be construed at different levels of generality. We can distinguish between abstract rights, the rights of the Declaration, the rights as specified in international treaties and covenants and in national constitutions, and the claims that certain individuals may have against governments and other organizations and individuals in certain circumstances. This list involves

decreasing generality as we move from abstract moral statements to their specific articulation and implementation. Conditions (a) through (c) are relevant to all levels, but the sensitivity to specific context advocated by the political approach becomes increasingly acute as we move from the first to the last three levels. However, there is no reason to avoid the humanist perspective here, and there is reason to engage it. As we saw in section 2.5, robust institutions would greatly enable the efficient and fair implementation of human rights. Where they exist, many collective action problems can be solved, and thus the implementation of human rights can be more fairly and efficiently secured. And this is certainly an important motivation for adopting a political perspective. But for the reasons already mentioned, humanism properly construed would also recommend that we entertain the contextual considerations that would allow us to envisage the best articulation and implementation of abstract rights in specific historical circumstances. Importantly, it would also help frame that task. The accessibility and stability of a human rights regime would be enhanced by mobilizing people's humanist reasons for having it. And the appraisal of transition costs would itself need to consider such reasons.

Secondly, notice that human rights can not only be construed at different levels of generality; they can also involve complexity at the temporal level. Current cultural and institutional configurations may pose obstacles to the implementation of human rights, but those obstacles might be removed in the future. Thus, powerful countries have stood in the way of recognizing human rights as enforceable. To this day, the United States has not ratified the International Covenant on Economic, Social and Cultural Rights. Poor countries are often unable to fully realize the rights of their people due to institutional incapacity or lack of resources. And we are still a long way from securing a robust culture of global solidarity and international institutions capable of regularly coordinating and enforcing efforts to secure the human rights of all. This may make the full realization of the rights of the Declaration inaccessible in the short term. But in the long term these obstacles could be removed. We should not trim the Declaration's list of rights, for example, simply because we cannot fully and immediately implement them at reasonable cost. As long as their realization is compatible with general facts about human beings in social life in modern times, we can keep them as guidelines for cultural and institutional change. The practice of human rights is still politically underdeveloped. It is, as Beitz helpfully puts it, an "emerging practice."[53] And here no doubt the political and the humanist views should work in tandem to develop that practice. But it is important to warn against taking current contextual configurations as indefinitely fixed when they are the very object of critical appraisal

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[53] IHR, 42–4. See p. 121 on historical expansions of feasibility sets.

and the target of historical reform. There is a real danger of holding as constant what should be seen as variable. For example, in the age of globalization, an exclusive focus on states as agents of global justice may be too narrow. Our ongoing search for a deliberative reflective equilibrium may well lead us beyond it. This is not only because, as a matter of fact, states are losing capacity of action under the impact of global structural mechanisms resisting their control. It is also because, as a normative matter, the generation of non-state and supra-state agencies might prove desirable to foster the protection of human rights. The humanist perspective is distinctively helpful to cement this point, by affording us the kind of critical distance from the status quo that is indispensable for thinking about how to push the limits of the politically feasible in historical time.[54]

To conclude, the fact that some rights cannot be completely and immediately fulfilled in the present should not motivate despair. Instead, current cultural and institutional obstacles should motivate us to see that rights function at different levels of generality, so that certain categories of rights may be implemented in different ways and to different extents in different contexts. Furthermore, we should acknowledge *dynamic duties* to create cultural and institutional conditions enabling the further realization of rights that is not at present feasible.[55] These two points can be accepted by a political construal as long as it does not prematurely lower its normative standpoint to fit passing contingent features of the status quo. The humanist stance provides a constant and necessary corrective against any such normative adaptation by helping us to keep an eye on what human beings as such need and can aim at to secure a dignified life.

2.7. CONCLUSION

Let me step back and outline the main contours of the debate between the humanist and the political perspectives, and of the synthesis between

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[54] Thus, we can, with Rawls, see a conception of human rights as a "realistic utopia" whose demands are both desirable and feasible, and notice that the limits of the "practicably possible" are not easy to grasp because they "are not given by the actual, for we can to a greater or lesser extent change political and social institutions and much else" (*The Law of Peoples*, 5–7, 12). We can, however, argue that Rawls's own account of human rights fails to sufficiently probe the extent to which we can indeed change our contemporary institutions and the culture underpinning them. We may also reconsider Beitz's recommendation of a state-centric view of human rights practice, warning caution regarding the suggestion that we "take certain basic facts about the world's political structure as fixed and consider the purpose of a practice of human rights within this structure" (IHR, 128). It is not just that some of our normative aims may have to change when some facts change. We may also have to change some facts to fit our existing sound normative aims.

[55] See chapter 3.

them proposed in this chapter. Here is a summary statement of the two perspectives:[56]

> *Political Perspective*: Human rights are claims that individuals have against certain institutional structures, in particular modern states, in virtue of interests they have in contexts that include them. They normally warrant international support.
>
> *Humanist Perspective*: Human rights are claims that individuals have against all other individuals in virtue of interests characteristic of their common humanity.

Defenders of these perspectives might account for human rights in different ways. For example, some defenders of the humanist perspective focus on identifying general human entitlements, and see any institutional articulation of those entitlements in some context as contingent rather than as constitutive of the concept of human rights.[57] Human rights are primarily moral claims that humans have independently of any role in specific associations. They are grounded in the common humanity of all persons, and their justification can proceed by means of ordinary moral reasoning. Humanists criticize the political perspective for losing sight of these points. Defenders of the political perspective, for their part, see human rights as mandating constraints and goals for state institutions, and as warranting international action to support their fulfillment.[58] They in turn criticize the humanist approach for failing to address worries about the parochialism of the moral conceptions they rely on, or for not showing fidelity to the specific human rights practices and institutions that emerged after 1945.[59] Finally, some challenge humanists by saying that they cannot consistently account for rights such as the rights to impartial trial, to take part in the government of one's country, and to access free elementary education, as these rights only hold for certain specific modern institutional contexts.[60]

I have argued that we have reason to search for a synthetic articulation of the two perspectives. In fact, both seek to be faithful to valuable aspects of current human rights practice and develop a broadly shareable (rather than parochial) framework for normative reasoning within it, but they concentrate

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[56] The section draws on Pablo Gilabert, "The Capability Approach and the Debate Between Humanist and Political Perspectives on Human Rights. A Critical Survey," 301–5.

[57] John Tasioulas, "Towards a Philosophy of Human Rights," *Current Legal Problems* 65 (2012), 1–30, at 18.

[58] Joseph Raz, "Human Rights without Foundations," in S. Besson and J. Tasioulas, eds., *The Philosophy of International Law* (Oxford: Oxford University Press 2010), 321–37, at 334–5.

[59] These charges are discussed in John Tasioulas, "Taking Rights out of Human Rights," *Ethics* 120 (2010), 647–78, at 652, 654.

[60] See Articles 10, 21 and 26 of the Universal Declaration of Human Rights. Beitz, WHRM, 41; IHR, 55.

on capturing different important features of it. The political perspective captures the point that human rights should (at least in some social contexts) have some *institutional embodiment*. The humanist perspective captures a characteristic feature of human rights as *human entitlements*, and concentrates on unearthing the general moral basis and content of them (their underlying human interests and values). We should recognize both features of the human rights practice: this practice is geared to framing the domestic and global institutional landscape of contemporary social life, and is based on general human interests and values. We should seek to articulate the project of human rights in a capacious way that captures both points.[61]

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[61] My characterization of the two perspectives identifies their most basic and general points. But, of course, there are different specific developments of them. Regarding the political approach, different versions arise from different views of the relevant functions of human rights. Some see human rights as conditions on states' sovereignty, as triggers for international "intervention." See John Rawls, *The Law of Peoples*; Raz, "Human Rights without Foundations." Others see human rights more broadly as grounds for "international concern." See Beitz, IHR. The details about what forms of international action are warranted vary accordingly. E.g., since his aim is to articulate the *sui generis* international practice of human rights rather than to justify the foreign policy of a liberal state, Beitz's view does not yield a severely truncated list of human rights as Rawls's does. Furthermore, not all who embrace a political view accept that human rights should be characterized as a subset of universal moral rights. Some stress other functions besides the triggering of international action. E.g., some see human rights as benchmarks for the legitimacy of states. See Bernard Williams, *In the Beginning was the Deed* (Princeton, NJ: Princeton University Press, 2005). Different articulations emphasize different aspects of political practice. E.g., Joshua Cohen emphasizes the ideas of membership of a political community and global public reasoning, whereas Beitz thinks that such ideas are not central. The humanist perspective can also be developed in different ways. Human rights can be justified by reference to the preconditions of human agency (which in turn can be construed in various ways). See Carol Gould, *Globalizing Democracy and Human Rights* (Cambridge: Cambridge University Press, 2004); James Griffin, *On Human Rights*; William Talbott, *Which Human Rights should be Universal?* (Cambridge: Cambridge University Press, 2005); Talbott, *Human Rights and Human Well-Being* (Oxford: Oxford University Press, 2010). Or they can be based on a more pluralist view that draws on various interests, freedoms, or capabilities, some of which are not usefully reduced to constituents of or contributors to preconditions of agency. See Martha Nussbaum *Creating Capabilities*; James Nickel, *Making Sense of Human Rights*; Brian Orend, *Human Rights: Concept and Context* (Peterborough, ON: Broadview, 2002); John Tasioulas, "Human Rights, Universality, and the Values of Personhood: Retracing Griffin's Steps," *European Journal of Philosophy* 10 (2002), 79–100. Justifications might invoke interests of humans across history. See Talbott, *Which Rights Should Be Universal?* Or they may focus, more modestly, on modern times. E.g., in apparent contrast with the view presented in "Toward a Philosophy of Human Rights" (p. 18) in an earlier text, Tasioulas presents the more circumscribed view that "human rights are those possessed in virtue of being human and inhabiting a social world that is subject to the conditions of modernity." See Tasioulas, "The Moral Reality of Human Rights," in T. Pogge, ed., *Freedom from Poverty as a Human Right* (Oxford: Oxford University Press, 2007), 75–101, at 76–7. Furthermore, the proposed justification of human rights might be broadly consequentialist (Talbott), broadly deontological (Nickel), or teleological (Griffin). Finally, ideas of freedom and autonomy can be seen as having distinctive significance for the content and justification of human rights or as one aspect of a more fundamental and encompassing category of well-being. See Buchanan, *Justice, Legitimacy, and Self-determination.* More recently, Allen Buchanan posed a sweeping challenge to most contenders in the debate, arguing that they assume a mistaken "mirroring view" according to which there is a one-to-one correlation between moral and legal

I have introduced a distinction between abstract and specific rights, noting that the humanist perspective concentrates on the former and the political perspective concentrates on the latter, and that we should draw on both to get a full normative understanding of human rights.[62] We can use this distinction to simultaneously capture the two features of human rights practice mentioned in the previous paragraph, and thus to develop the desired synthesis between the two perspectives on human rights.

The political perspective is correct that institutional embodiment is crucial for contemporary human rights practice. This practice has developed with an explicit, and valuable goal of shaping modern institutions (in particular, states and international organizations[63]). Although most defenders of the humanist perspective do not deny that institutions are important for the pursuit of human rights, they sometimes take institutional embodiment as not essential for human rights. I think that a stronger recognition of the importance of institutions is necessary to make good normative sense of human rights practice in the contemporary world. To seriously protect general human interests, we should pay attention to the specific forms they take in specific contexts. We should consider both the institutional and the interpersonal threats they face. When certain institutions are necessary for the protection of those interests in a certain context, we should recognize specific rights (and correlative duties) in that context that mention them. A concern for the actual fulfillment of abstract rights requires the identification of specific rights, some of which will normally have institutional dimensions. Although no specific

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human rights. Buchanan, *The Heart of Human Rights* (Oxford: Oxford University Pres, 2013). For a response to Buchanan's challenge, see John Tasioulas, "Exiting the Hall of Mirrors: Morality and Law in Human Rights" (February 10, 2017). King's College London Law School Research Paper No. 2017–19. Available at SSRN: https://ssrn.com/abstract=2915307.

[62] See also section 5.3.3 of chapter 5, and Nickel, *Making Sense of Human Rights*, chs. 4–5 (where Nickel presents a different, but I think congenial, account of abstract and specific claims). Specific human rights in the contemporary world are urgent claims that people have against their own government and fellow citizens and against international organizations, foreign governments, and foreign citizens. Abstract rights are general claims based in extremely important interests shared by all (or most) human beings, and whose protection involves responsibilities for anyone who can affect their fulfillment. As I noted in chapter 1, section 1.3, we could, more carefully, identify a spectrum going from more to less abstract rights. I gave these examples: (1) fairly abstract rights that hold in any (or most) social context(s); (2) the rights mentioned in the Universal Declaration; (3) the rights identified in international covenants, conventions, and treaties; (4) the rights stated in national constitutions; (5) the specific rights as construed by governments' laws and policies; and (6) individuals' claims in various situations (as addressed, e.g., by courts' rulings or interpersonal judgments). This sequence can itself proved too schematic. Thus, some rights mentioned in the Declaration (such as the right to life in Art. 1) should be listed in (1). The main point, however, should be clear, and it is that rights differ in levels of abstraction in ways that are significant for their understanding and justification.

[63] However, I do not take this to imply that every human right must be an institutional claim, or that the relevant institutions must only be those that already exist. There are human rights claims at the interpersonal level, and the modern system of states is not the only conceivable institutional embodiment of human rights.

institution is essential for human rights as such, consideration of institutions when they are crucial for the identification and fulfillment of specific human rights certainly is. This consideration is clearly crucial in contemporary contexts.

On the other hand, we also have reason to appeal to abstract rights, and thus mobilize the insights of the humanist perspective. First, reference to general human values helps us understand key elements of current practice. Just consider the Preamble and Articles 1 and 2 of the Universal Declaration, which include universal ideas of "brotherhood," "reason," "conscience," "freedom," "equality" regardless of nationality, class, gender, and other "status," and (importantly for this book's project) the "inherent dignity" of persons. As pointed out in section 2.3, these intuitively attractive ideas give a humanist rationale to the whole Declaration.

Second, reference to abstract rights helps explain why some institutions and some treatments of people by them are morally justifiable. To justify certain specific institutions as securing *human* rights, we need to identify human interests and values and consider whether and how the institutions would affect their support. To avoid circularity (or conventionalism) we cannot take for granted the specific institutions we are trying to assess. A deeper and more general layer of moral reasoning must be uncovered. Importantly, this applies to three examples mentioned above (see five paragraphs back): the values of fair treatment in criminal trial and punishment, development of cognitive powers, and self-determination in collective decision-making are arguably quite general and relevant for explaining the specific rights listed. Any social context is likely to include mechanisms of trial and punishment, education, and collective decision-making, and the specific organization of these practices should track the important general values mentioned and frame them in specific ways appropriate to the challenges and possibilities of the contexts addressed.

Finally, by considering the extent to which certain institutions involve a reasonable and feasible specific articulation of abstract rights, we can make normative comparative judgments, both backward-looking and forward-looking. We are historical agents for whom these questions are practically relevant: (a) Do our modern institutions involve progress when compared to earlier ones, or should we restore the latter if we can? (b) Even if our modern institutions involve progress when compared to previous ones, might there still be fundamental changes we should try to make if we can? Question (a) has always been salient in advocacy for universal rights. It was present in the European and American revolutionary cycle starting in the late eighteenth century, in the development of the international human rights institutional framework following World War II, and during the emergence of democratic regimes following military dictatorships in Latin America in the 1980s. Question (b) is becoming salient in the current process of deepening globalization,

as the framework of nation-states (assumed as parametric by most defenders of the political perspective) is revealing itself as insufficiently equipped with effective problem-solving institutions. Our current international institutional landscape is undergoing dramatic change and displays many open possibilities we must choose from. Abstract rights provide us with a moral compass we can use to choose between alternative feasible institutional designs for the future. This is not the only conceivable compass, but it is one that springs naturally from the idea of *human* rights.

In sum, the distinction between abstract and specific rights helps us develop a view of human rights that absorbs the good intuitions in the humanist and political perspectives and moves beyond a dilemmatic construal of them. We can thus articulate a more appealing view of the normative structure of human rights practice, which includes the following points:

(i) Current human rights practice involves appeal to both kinds of rights.

(ii) There is no necessary conflict between the fundamental insights of humanist and political perspectives because they focus on different kinds of rights (the former on abstract rights and the latter on specific rights).

(iii) There is no radical discontinuity between abstract and specific rights. The humanist perspective need not involve an atomistic picture of human nature. It can formulate abstract rights assuming quite general features of human beings in their social life, and welcome (and indeed help explain the need for) institutional elaborations appropriate for different contexts.

(iv) Finally, abstract rights are not trivial. In fact, they contribute to the selection of the specific rights that the political perspective says we should account for (as I illustrated above in the case of rights to impartial trial and free elementary education, and to take part in the government of one's country).

The dignitarian framework offered in Parts II and III of this book will develop these points. But before proceeding with that constructive account, I will address, in chapters 3 and 4, two other preliminary debates that also call for attention to key features of the effective political practice of human rights. They concern the significance of feasibility and power.

3

The Feasibility of Human Rights

3.1. INTRODUCTION

To be justifiable, the demands of a conception of human rights must be such that (a) they focus on the protection of extremely important human interests; and (b) their fulfillment is feasible. This chapter provides a discussion of (b), the Feasibility Condition. I will focus on basic socioeconomic rights. The latter include access to food, clothing, housing, basic medical care, and basic education. It is hard to deny that these rights, which allow people to avoid severe poverty, are associated with extremely important human interests whose satisfaction, or real opportunity for satisfaction, are conditions for living a basically good or decent life. There is, however, some skepticism as to whether these rights meet the Feasibility Condition. They thus provide a good case for exploring how to understand the content and fulfillment of that condition.

The Feasibility Condition is animated by the common principle that "ought" implies "can." The idea is familiar. Rights imply obligations. If I have a right to a certain object O, then I have a claim against others that they take very seriously my interest in O (for example, by not depriving me of access to O, or by assisting me in gaining access to O). Obligations, however, are conditional upon the ability of duty-bearers to fulfill them. You cannot have a duty to do what you cannot do. Since rights imply obligations and obligations imply feasibility of compliance, infeasibility of compliance with certain obligations implies the absence of such obligations and the absence of their correlative rights.

A standard challenge to socioeconomic human rights is that they fail to satisfy the Feasibility Condition. Maurice Cranston provides a representative formulation of this challenge. Cranston contrasts socioeconomic rights with civil and political rights. The latter are clearly feasible, as they demand only that we refrain from harming others. The former, on the other hand, demand that we provide others with certain goods. This provision is costly, and indeed not possible in many poor countries. Since we will return to it often, it is a good idea to cite a central passage from Cranston's article:

Rights bear a clear relationship to duties. And the first test of both is that of practicability. It is not my duty to do what is physically impossible for me to do. You cannot reasonably say it was my duty to have jumped into the Thames at Richmond to rescue a drowning child if I was nowhere near Richmond at the time the child was drowning. What is true of duties is equally true of rights. If it is impossible for a thing to be done, it is absurd to claim it as a right. At present it is utterly impossible, and will be for a long time yet, to provide 'holidays with pay' for everybody in the world. For millions of people who live in those parts of Asia, Africa, and South America where industrialization has hardly begun, such claims remain vain and idle.

The traditional "political and civil rights" can . . . be readily secured by legislation: and generally they can be secured by fairly simple legislation. Since those rights are for the most part rights against government interference with a man's activities, a large part of the legislation needed has to do no more than restrain the government's own executive arm. This is no longer the case when we turn to "the right to work," "the right to social security," and so forth. For a government to provide social security it needs to do more than make laws; it has to have access to great capital wealth, and many governments in the world today are still poor. The government of India, for example, simply cannot command the resources that would guarantee each one of the 480 million inhabitants of India "a standard of living adequate for the health and well-being of himself and his family," let alone "holidays with pay."[1]

Cranston's contrast between civil and political rights and socioeconomic rights is misleading in many ways. As Henry Shue has shown, civil and political rights can be quite costly too, as they involve protection besides non-interference (think about the costs of maintaining an effective system of criminal law).[2] Amartya Sen has recently suggested that another serious problem with Cranston's challenge is that it construes the Feasibility Condition too strongly. According to Sen, immediate and complete realizability is not a condition for the cogency of a right. Even if we are currently unable to fully realize a certain right, if we are able to partially fulfill it, or if we are able to introduce political reforms expanding the extent of its possible fulfillment, then it does make perfect sense to say that the right exists. The Feasibility Condition should then be construed as demanding "social influenceability," not complete and immediate realizability.[3]

I find Sen's way of construing the Feasibility Condition attractive. Sen does not, however, provide a sustained account of what "feasibility" and "social influenceability" mean, or should mean, in the context of human rights. It is

[1] Maurice Cranston, "Human Rights, Real and Supposed," in P. Hayden, ed., *The Philosophy of Human Rights* (St. Paul: Paragon House, 2001), 163–73, at 69–70.
[2] Henry Shue, *Basic Rights*, 2nd ed. (Princeton, NJ: Princeton University Press, 1996), ch. 2.
[3] Amartya Sen, "Elements of a Theory of Human Rights," *Philosophy and Public Affairs* 32 (2004), 315–56.

not clear how influenceable, and in what ways, an interest or a freedom must be for it to qualify as the basis of a human right. In fact, the notion of feasibility has received little attention in philosophical texts about social justice and human rights. The objective of this chapter is to take some steps toward filling this gap. Taking my cue from Sen's insightful discussion, I will provide a more detailed account of why feasibility constraints should indeed be seen as flexible and dynamic. I begin by presenting, in section 3.2, some general introductory considerations on the relation between the notions of moral desirability, feasibility, and obligation in a conception of justice (which also apply to human rights). In section 3.3, I provide an analysis of the notion of feasibility. This idea is in fact quite complex, including different types, domains, and degrees. The same is the case with the obligations associated with human rights norms, and in sections 3.4 and 3.5 I discuss several ways in which we may have reason to respond to alleged circumstances of infeasibility regarding the fulfillment of basic socioeconomic human rights.

I emphasize that what follows is a conceptual exploration. My objective is to examine the notion of feasibility within the domain of basic socioeconomic human rights. I consider the results tentative. Some exploration of this sort is, however, of great importance given that the notion of feasibility remains widely used but hardly clarified. Furthermore, as I hope to show, what views we have about what infeasibility is and how we should respond to it will necessarily have serious implications for the theory and practice of human rights.

3.2. DESIRABILITY, FEASIBILITY, AND OBLIGATION

Is feasibility a necessary condition for a conception of social justice to be acceptable? This would be so if the principles of a theory of social justice were "ought"-statements imposing duties on the agents to which they apply. We need, however, to clarify how "ought"-statements and feasibility considerations relate to each other within a conception of justice (1), and to make sure that we do not conflate considerations of moral desirability and considerations of feasibility (2).

(1) Is "feasible" part of the meaning of "just"? Suppose that you compare three societies, S1, S2, and S3, and that your standard of justice is that there ought to be equal distribution of a certain advantage F. (Assume, for simplicity's sake, that no other standard of justice is relevant.) Now, suppose that the distribution of F in S3 is more egalitarian than in S2, and that the distribution of F is more egalitarian in S2 than in S1. From this it would follow that S1 is less just than S2 and that S2 is less just than S3. Now suppose that S3 is infeasible and that S1 and S2 are feasible. Does this mean that S3 is not just? This conclusion would be

awkward. Thus, in a sense, "feasible" is not part of the meaning of "just." You can, however, conclude that you ought to help establish S2, while you do not have a duty to help establish S3. How can we make sense of this situation? How is it possible that you have a duty to pursue an option that is less just than another? Surely you should pursue the option that is more just? Two points are necessary to clarify this problem.

The first is that we must distinguish between different senses of "ought."[4] An important distinction is between cases of "ought" which directly affect practical deliberation, yielding obligations, and cases of "ought" which do not. One can interpret the claim that "everyone ought to have enough to eat" as linked to a set of duties on the part of a set of agents to see to it that everyone has enough to eat. Or alternatively one can interpret it as saying simply that a world in which everyone has enough to eat would, in a certain respect, be a just world. We can call the first "ought" "the 'ought' of obligation," and the second "the 'ought' of moral desirability." The dictum "ought" implies "can" applies to the first interpretation of "ought," not to the second. Since discussions about social justice invoke "ought"-claims of the two kinds, it is important to make sure that we know which one we are dealing with when we apply the Feasibility Condition.

A second, related point concerns the distinction between "less justice" and "injustice." The judgment that the presence of S2 would be an injustice does not follow from the judgment that S2 is less just than S3. For S2 to involve injustice, it must be the case that S3 is feasible, which by hypothesis is not the case. For there to be injustice, people must be not treating one another in certain ways they could, or treating one another in ways they could avoid. If S2 is feasible but S3 is not, then there is no injustice, even if there is less justice. Judgments of injustice track the "ought" of obligation. It is, then, important to distinguish between comparative judgments about justice and claims about injustice. The conceptual difference is that claims about injustice link to obligatory actions directly, presupposing feasibility. Claims of comparative justice can link to obligation but only hypothetically. To say that S3 is more just than S2 can lead to the claim that one has an obligation to help establish S3 *only if one could do so*.

To conclude, we can put the points made here by distinguishing between something being *morally desirable, feasible, and obligatory*. For something to be obligatory, it has to be morally desirable (that is, service some moral value, such as, for example, equal access to advantages). But it must also be feasible. If you cannot do something, it seems absurd to say that you ought to do it. The question whether you ought to do A seems to appropriately arise only when

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[4] For an excellent analysis of "ought," see Ralph Wedgwood, "The Meaning of 'Ought'," in R. Shafer-Landau, ed., *Oxford Studies in Metaethics*, vol. 1 (Oxford: Oxford University Press, 2006), 127–60. I focus here on moral forms of "ought." Wedgwood's analysis is broader.

doing A is practically available to you (that is, it is feasible for you).[5] It is, then, perfectly possible for A to be more morally desirable than B and for you to have no obligation to do A as opposed to B.[6]

Does this mean that deliberations about social justice should avoid comparative judgments of moral desirability? It does not. Comparative judgments can have an orientating function. Knowing that S3 is more just than S2 is important because even though we cannot secure S3 now, in the future we might be able to. Furthermore, comparative judgments obviously help us to select among feasible options (for example, to explain why we should go for S2 rather than S1).

(2) A conception of justice, if it is in the business of identifying obligatory social action, must be sensitive to what is feasible. But it is also important that we do not conflate considerations of feasibility with considerations of moral desirability.

This conflation is not uncommon. An example occurs in a paper on socio-economic rights by James Griffin, which includes a powerful discussion of the consequences of the principle that "ought" implies "can." Griffin convincingly argues, against Cranston, that limitations of economic resources cannot be invoked to say that there are no correlative obligations, but only to say that they may not be as extensive as initially thought. He goes on to argue that there are some cases in which the principle does impose strong limits on welfare rights: "One cannot, in the relevant sense of obligation, meet a demand if the demand is beyond the capacity of the sort of people that on other especially important grounds one would want there to be."[7] People as we want them to be would have deep commitments (for example, through ties of love and affection), and as such they cannot comply with demands that impose serious limitations on the fulfillment of those commitments. I think that Griffin is right to say that a sensible discussion of obligations to promote socioeconomic rights must include a consideration of other important moral considerations, including people's deep commitments. It is a mistake, however, to see this as being, primarily, an issue of what people "can" do. If X cannot do A without failing to honor certain deep commitments, then the conclusion is not really that X cannot do A, but (if the moral weight of the prerogative to pursue one's deep commitments is sufficiently strong in the relevant circumstances) that it is not morally desirable to demand that X should do A.

We must then distinguish between what is infeasible for people to do and what is not morally desirable to demand from them. A conception of justice

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[5] See on this R. M. Hare, *Freedom and Reason* (Oxford: Oxford University Press, 1963), ch. 4.

[6] We can put this more formally. Let "p" stand for "X does A," "Op" for "it is obligatory that p," "Dp" for "it is morally desirable that p," and "Fp" for "it is feasible that p." The following are consistent claims: Op implies Fp; not-Fp implies not-Op; Dp; not-Fp; not-Op. The general point here is that Op implies Dp and Fp.

[7] James Griffin, "Welfare Rights," *The Journal of Ethics* 4 (2000), 27–43, at 36.

should identify points of intersection between moral desirability and feasibility without confusing them. The distinction is important because there are two quite different ways in which an "ought"-statement involving an obligation might fail. Imagine that you are told that (a) you have a duty to prevent every crime in your city. This is something you cannot do. But it is something you might consider doing if you could. The failure of the duty-statements is here one of feasibility, which must be distinguished from a failure of moral desirability. If someone told you that (b) you ought to kill everyone in your city that you intensely dislike, you could perhaps succeed at doing it. But you would not seriously consider doing it. Similarly with principles of justice stating rights and correlative duties: we must make sure, when we assess them, that we distinguish between failures of feasibility and failures of moral desirability. This distinction will prove important when we consider dynamic responses to cases of infeasibility. A failure of feasibility which is not also a failure of moral desirability may reasonably ground, as a response, an attempt to expand agents' feasible set. This would not happen when the failure is, as in (b), one of moral desirability. Thus, the element of moral desirability captured by (a) would ground, for example, your support for institutional reforms improving security and criminal justice in your city.

3.3. KINDS OF FEASIBILITY

The notion of feasibility is quite complex. We can, in fact, distinguish between different types (1), domains (2), and degrees (3). These distinctions have significant consequences for our treatment of the Feasibility Condition for human rights.

(1) *Types*. Let us start by considering different types of feasibility. What could it mean that the demands of an alleged human right are infeasible? In the passage from Cranston cited above, something to notice about it is the ambiguous use of the notion of "practicability." The "physical impossibility" in the Thames rescuer example is certainly different from the (alleged) economic impossibility in the example about India. What kinds of possibility should be really targeted by the Feasibility Condition?

We can distinguish between minimal and expansive accounts of feasibility. Minimal accounts focus on logical or physical possibility. The fulfillment of a right is feasible, in this sense, if a state of the world in which the correlative duties are honored is not logically or physically impossible. This constraint is obviously reasonable. The problem is whether we want to construe the Feasibility Condition as also imposing other constraints. Candidates that spring to mind immediately are economic, political, and cultural feasibility. Should the Feasibility Condition include these too?

Two intuitions seem to clash here. The first, motivating a more expansive account of feasibility, is that we should avoid impotent voluntarism. We can find innumerable historical examples of pursuits of highly desirable social schemes that failed even when they were logically, physically, and biologically attainable. Anarchism might be a case. International arrangements not backed by legal and economic sanctions and incentives might be another. Political wisdom seems to require, then, that we pay attention to economic, political, and cultural parameters. The second intuition pulls in the opposite direction, suggesting that we should avoid capitulation in the face of seemingly insurmountable obstacles that could be removed through lucid political reform. We also have historical examples showing that what seemed economically, politically, or culturally impossible turned out to be perfectly workable. Successful revolutions are an obvious example. Processes of deep reform such as the creation of welfare states in industrialized societies are another. More generally, there is a difference between something being hard, and something being impossible to do. Duties sometimes impose demands that are difficult to fulfill, but this is not a ground for deeming such a fulfillment impossible.[8]

Can we accommodate both intuitions? Yes. The incorporation of economic concerns about available resources is obviously important. We must, however, avoid a narrow view of where the relevant resources need to come from. In Cranston's passage, it is simply assumed that the resources for addressing poverty in a country should only come from that country. This is rightly not the view held by most human rights activists, and may be in tension with standard human rights documents. I will return to this issue below. What I shall do now is consider how the relevance of political and cultural parameters can be accounted for. We can, I think, do three things.

The first is to recognize the significant impact of political and cultural parameters. Sen's work is helpful to understand why. If we want to secure human rights, then our target must be the real opportunity for people to access the objects of those rights. The notion of "capability," central to Sen's framework, refers to what is "feasible" for people to achieve, what they are "substantively free" to do or be.[9] Promoting socioeconomic rights may require attention to specific parameters that affect the capabilities of people. We should, for example, notice that a focus on resources (such as income and wealth) is not sufficient for securing capability with respect to the avoidance of poverty. This is because people differ in significant ways from each other.[10]

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[8] This is emphasized by Kantians, who read the dictum "ought" implies "can" as highlighting agents' freedom to fulfill their duty. See Marcia Baron, *Kantian Ethics almost without Apology* (Ithaca, NY: Cornell University Press, 1995), 44–5.

[9] Amartya Sen, *Development as Freedom* (New York: Anchor Books, 1999), 75.

[10] A central point in Sen's critique of resources-based conceptions of justice is that they overlook the "conversion problem" (the fact that individuals with equal resources may have significantly unequal economic prospects—abilities to convert resources into valuable

Some differences are biological (think about congenital disability or age). Other differences are cultural. What people need to secure self-respect, and to "appear in public without shame," varies in different cultural environments. Political parameters are also significant. In the absence of public scrutiny and democratic accountability, rulers tend to fail to attend to the interests of their subjects. As Sen often notes, famines do not occur in democracies, and an increase in political freedom normally leads to an increase in social and economic opportunity.

The second thing we can do is to distinguish between strict impossibility and improbability. The talk of impossibility may sometimes be too strong. When we say that institutional design aimed at equal resources is not appropriate for securing equal capability, we do not want to say that it would be strictly impossible for equal capability to arise in a context where there is equal resource distribution. Perhaps those who need more than an equal share could get it, through voluntary transfers, from those who need fewer resources to achieve equivalent levels of capability. When we say that political empowerment is very important, we do not want to say that it would be strictly impossible, in its absence, for rulers to cater to their subjects' fundamental interests. Some "enlightened despots" might exist who will not let their politically powerless subjects starve. What we really want to say, when demanding a more fine-tuned analysis of capabilities, is that it would be highly improbable for people to achieve certain capabilities unless certain parametrical considerations are seriously addressed. The language of capability involves a more expansive use of the notion of feasibility. But the resulting notion includes "hard" aspects (the ones comprised by the minimal account of infeasibility as strict impossibility), and "soft" aspects (the ones comprised by the complement of the minimal account in the expansive one, which focuses on improbability).

A third thing to notice is that economic, political and cultural parameters are malleable. Though we cannot make possible what is logically impossible, we can make feasible, in the future, what is economically, politically or culturally infeasible now. I return to this crucial point in section 3.5.

Economic feasibility depends not only on the presence of resources, but also on the willingness of agents to create or use them in certain ways. Economic feasibility is, like political and cultural feasibility, of the "soft" kind. Does it really make sense to include soft parameters in one's account of feasibility?

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functionings—as a result of differences in their circumstances). Sen, *Inequality Reexamined* (Cambridge, MA: Harvard University Press, 1992), 27–30, 33, 37–8, 81–7, 110–12, 120–1. See also Ingrid Robeyns, "Assessing Global Poverty and Inequality: Income, Resources, and Capabilities," *Metaphilosophy* 36 (2005), 30–49. As Martha Nussbaum puts it, by focusing on what people can really do and be, the reference to capability "gives us a benchmark as we think about what it really is to secure a right to someone." Nussbaum, *Frontiers of Justice* (Cambridge, MA: Harvard University Press, 2006), 287.

Many authors are reluctant to do this.[11] They resist moves from "X is not willing, or motivated, to do A" to "X cannot do A." This suspicion is reasonable. Certainly, your not being willing to do something does not by itself make it impossible for you to do it. For example, the fact that you do not feel affected by the suffering of distant others (who do not speak your language, share your religion, etc.) is not enough ground for saying that it is strictly impossible for you to give up some of your money to help them. Furthermore, our willingness or unwillingness to do things is something that can change. We should not, however, be insensitive to the impact of psychological mechanisms. Even if they are not natural laws, they are still significant in shaping social life.[12] If we are careful to recognize that motivational structures affecting economic, political, and cultural frameworks impose only "soft" forms of feasibility constraints, and that these are malleable, then we will see that we have reason to factor them into our feasibility assessments. Doing so would help us to avoid the pitfall of impotent voluntarism without relapsing into capitulation with unjust social realities that we could change. In fact, to change these realities, it is important that we understand and address what so often makes them resilient to transformation. We could of course reserve the word "infeasibility" to refer to the "hard" instances involving strict logical or physical impossibility, and choose other words to refer to "soft" constraints. What is really important, however, is that in each case we know what type of constraints we are dealing with, and that we pay due attention to all of them.[13]

(2) *Domains.* The different types of feasibility considerations can apply to at least two important domains. To refer to them, some writers helpfully distinguish between stability and accessibility.[14] Thus, when we assess the feasibility of a moral and political ideal, we can first ask whether a social scheme fulfilling it would be *stable*. Assuming that we have such a scheme in place, we consider whether it would be sustainable, likely to remain in place. We can also ask whether the social scheme is *accessible*, whether there is a path of political action through which it can be generated when it is still not in place.

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[11] See Peter Singer, "Outsiders: Our Obligations to Those Beyond Our Borders," in D. Chatterjee, ed., *The Ethics of Assistance* (Cambridge: Cambridge University Press, 2004), 11–32. For the opposite view see David Miller, "The Ethical Significance of Nationality," *Ethics* 98 (1988), 647–62.

[12] See Jon Elster, *Explaining Social Behavior* (Cambridge: Cambridge University Press, 2007).

[13] The notion of "feasibility" is routinely used to include "soft" parameters. See Geoff Brennan and Philip Pettit, "The Feasibility Issue," in F. Jackson and M. Smith, eds., *The Oxford Handbook of Contemporary Philosophy* (Oxford: Oxford University Press, 2005), 258–79. Arjun Sengupta sees the feasibility test for a human right as stating that if the correlative duties are discharged, then the right "will be, with high probability, realized." See "Poverty Eradication and Human Rights," in T. Pogge ed., *Freedom from Poverty as a Human Right* (Oxford: Oxford University Press, 2007), 323–44, at 330.

[14] See, e.g., G. A. Cohen, *Why Not Socialism?* (Princeton, NJ: Princeton University Press, 2009). See also Allen Buchanan, *Justice, Legitimacy and Self-determination* (Oxford: Oxford University Press, 2004), 61–2.

The distinction is useful in classifying feasibility charges against conceptions of socioeconomic human rights. Those charges may target the sustainability of domestic or international human rights regimes, claiming that there could be no effective institutional structures enforcing them, that there are not enough economic resources for them to rely on, or that there would not be enough support for them by people in different countries, who might not acknowledge or feel motivated to support enforceable positive duties of justice to help satisfy the basic needs of their compatriots or, more likely, those of foreigners. Alternatively, these charges may target the accessibility of human right regimes, doubting that we can gather enough political will and power to create them in the face of strong opposition from certain key players.

(3) *Degrees.* Does it make sense to say that feasibility is a matter of degree? In a way it does not. It cannot be more or less possible for an agent to fulfill a certain demand. The fulfillment either is possible or it is not. There is, however, another way to refer to degrees of feasibility that does make sense. This arises when we consider different circumstances of fulfillment of a general demand. These circumstances include the number of duty-bearers, of right-holders, the extent to which the demands are fulfilled, and the time and place in which they are fulfilled. Though it does not make sense to say that a certain state F of fulfillment of demands is more feasible in the "hard" sense than another state G, we can say that more is possible (in the "hard" or in the "soft" sense) in F than it is in G with respect to a certain demand. Perhaps the circumstances in F and G are such that more agents can simultaneously do more of what is demanded from them in F than they can in G.

We can then distinguish, for example, between complete infeasibility, complete feasibility, and several degrees of partial feasibility with respect to the fulfillment of a certain right R. Complete infeasibility exists if it is impossible for any duty-bearer to fulfill R for any right-holder at any time and in any place. Complete feasibility exists when it is possible for all to fulfill R for all, at all times and in all places. Several degrees of feasibility arise when some but not all duty-bearers can do what they allegedly should, when some but not all right-holders can get what they are entitled to, when more or less can be done by those who can do something, and when these varying levels of fulfillment apply to some times and places but not to others. The idea of degrees of feasibility is naturally more significant in the case of "soft" forms of feasibility. And it is indeed routinely invoked in moral and political deliberation.[15]

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[15] E.g., an article engaging debates on the introduction of new transport technologies in the United States argues that some technical obstacles could be overcome but present some economic and political obstacles or varying degrees of difficulty. "With projects like this, though, good engineering is never enough. Politics and economics are more forbidding obstacles." Some states like "Texas—where bureaucracy is less stifling—might be a more feasible place to try" the new ideas than others. "The Future of Transport: No Loopy Idea." *The Economist*, August 17, 2013, 65–6.

In addition, we can notice that from the perspective of the agents, given their epistemic limitations, often what can be done is no more than to develop probabilistic assessments about the likelihood that certain demands would be fulfilled in F and G when agents try to fulfill them. Thus different schedules of fulfillment (of the kind mentioned above) might themselves be construed as involving probabilities of success upon trying.[16]

Something that is crucial here is that judgments of feasibility are indexed to circumstances. Demands that are infeasible in certain circumstances C1 may turn out to be feasible in circumstances C2. The insight by Sen, mentioned in section 3.1, that feasible sets can be expanded so that rights which are not fully realizable now become more realizable later on, actually requires that we think about feasibility in terms of degrees, and that we see extents of feasibility as open to change. Thus, the right to have enough to eat may be more realizable where there are democratic institutions, international cooperation, and a culture of human solidarity than in circumstances where these are not in place or are very weak. But when the latter is the case, changes might be made so that new, more favorable circumstances arise. Economic, political, and cultural frameworks, being "soft," are malleable. So feasible changes could then (at time t1) turn C1 (at t1) into C2 (at t2), thus making feasible at a later time what is not feasible at an earlier time.

(To make sentences less cumbersome, I will not always phrase references to feasibility in a scalar way. But it should be clear from what is said in this section that I take the concept of feasibility to often merit a scalar use.)

3.4. KINDS OF OBLIGATION AND FEASIBILITY

Can a putative claim be a human right if its fulfillment is infeasible? The answer to this question depends on how we conceive the "ought" involved in human rights statements. If we do it in the moral desirability sense of "ought," then infeasibility of fulfillment does not affect the existence of the right. If we interpret human rights as connecting with obligations, then the Feasibility Condition kicks in. But how it does apply depends on how we construe the notion of feasibility and what obligations it might be predicated upon. In this section, I will consider different kinds of obligations connected with socioeconomic human rights and their relation to the forms of feasibility identified in the previous section.

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[16] This point and further issues concerning the non-binary, or scalar nature of "soft" feasibility constraints are developed in appendix 2. See also Pablo Gilabert and Holly Lawford-Smith, "Political Feasibility: A Conceptual Exploration," *Political Studies* 60 (2012), 809–25; and Pablo Gilabert, "Justice and Feasibility: A Dynamic Approach," in M. Weber and K. Vallier, eds., *Political Utopias: Contemporary Debates* (Oxford: Oxford University Press, 2017), 95–126.

(1) *Interests and freedoms, reasons, and kinds of obligations.* Sen helpfully suggests that we should see human rights as statements about the ethical significance of certain central interests or freedoms. The recognition of human rights provides moral reasons to react in reasonable ways to various circumstances in which people's access to the objects of such central interests or freedoms is at stake. Reasonable responses may turn into duties of different kinds. Sen claims that there is a general obligation to "give reasonable consideration to a possible action," and that different kinds of duties may result from deliberation about how to discharge this general obligation in different circumstances.[17] Three sets of distinctions can be made about the kinds of more specific obligations discharging the general obligation of reasonable consideration. The distinctions are common in the literature on human rights, and I will simply recall them here.

One distinction is between negative and positive duties. We may have negative duties not to deprive people of access to the objects of their socio-economic rights. We may also have positive duties to help them maintain or gain access to such objects. Another distinction is between perfect and imperfect duties. The former duties involve a clear identification of who is to do what for whom in what circumstances, while the latter are more open-ended, leaving duty-bearers some playroom to decide who is to be assisted when, or how. Sen argues, plausibly, that obligations correlative to human rights must be seen as both negative and positive, and as both perfect and imperfect. Elsewhere I have also argued that we should reject narrow accounts of duties of justice that only focus on negative and perfect duties.[18]

Another distinction has to do with different levels of generality. A positive duty to help others avoid destitution may be articulated at different levels. First, the duty may be seen as a general ethical demand on all individuals, deriving its force from the importance of avoiding severe poverty for having a basically good or dignified life. Second, this general demand may be specified as a set of legal norms scheduling different responsibilities within a country or between countries. These norms would, for example, identify national governmental agencies, international institutions, and corporations as duty-bearers.

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[17] Sen, "Elements of a Theory of Human Rights," 338–42. Sen follows Scanlon in seeing principles of obligation as articulating the status and relative weight of different moral reasons in certain circumstances. E.g., principles of aid need to appropriately balance reasons associated with the standpoint of both providers and receivers. See T. M. Scanlon, *What We Owe to Each Other* (Cambridge, MA: Harvard University Press, 1998), ch. 5.

[18] Positive duties can be duties of justice, and imperfect duties can be articulated in such a way that specific requirements are generated. See Pablo Gilabert, "Contractualism and Poverty Relief," *Social Theory and Practice* 33 (2007), 277–310; "Kant and the Claims of the Poor," *Philosophy and Phenomenological Research* 81 (2010), 382–418; "Justice and Beneficence," *Critical Review of International Social and Political Philosophy* 19 (2016), 508–33. See also Elizabeth Ashford, "The Duties Imposed by the Human Right to Basic Necessities," in Pogge, ed., *Freedom from Poverty as a Human Right*, 184–218.

Third, the positive duty may be honored by officials and citizens through specific policies and practices. The latter would of course include support and application of existing institutional schemes aimed at fulfilling socioeconomic rights. They would also include the creation of such institutional schemes when they do not exist. In sum, as Shue has put it, any reasonable assignment of duties correlative to human rights will involve a complex "division of labor" among several agents who are in a position to help.[19]

(2) *Levels of generality.* How do concerns about feasibility relate to these different putative obligations? I want to focus on two specific ways in which we may have reason to respond to cases of partial infeasibility of the "soft" kind, affecting positive duties to help eradicate severe poverty. The first kind of response, which I address now, focuses on levels of generality. The second, to be discussed in section 3.5, focuses on temporal variation.

An alleged specific duty may be unrealizable, but the general duty from which it springs may receive alternative specifications that are realizable. Suppose, for example, that Cranston is right that many poor countries do not have enough economic resources to secure the putative socioeconomic rights of their people. This situation does not show that there are no socioeconomic human rights. What it shows is that certain *domestic* duties to fulfill socioeconomic human rights cannot be *fully* met. But this still leaves the possibility that there may be *international* duties to assist poor people in other countries to avoid poverty. It also leaves the possibility of duties to engage in *partial* fulfillment of socioeconomic human rights within a country. The two possibilities are in fact envisaged in human rights documents, which emphasize both international cooperation and assistance and duties of "progressive realization" of basic socioeconomic rights. In both cases, we see alternative specifications of the universal demand to give reasonable consideration to the extremely important interest that all persons have in the objects of their socioeconomic rights.[20]

Think about the human right to basic medical care. Perhaps a country may presently not be able to secure freedom from all curable diseases. But if it can eradicate some, then it has duties to partially fulfill this right. If other countries have medical technology that could help prevent diseases in the first country, then they should, in principle, make them available in fair ways. Here the difference between basic and advanced medical care is relevant, as even the wealthiest countries have to set limits on the extent to which they can supply medical care to their own residents. International assistance regarding basic

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[19] Henry Shue, "Mediating Duties," *Ethics* 98 (1988), 687–704.
[20] For references to international cooperation and to "progressive realization," see the Preamble and Articles 22 and 28 of the Universal Declaration of Human Rights, and Articles 2.1, 11.2, 13.2, 14, and 23 of the International Covenant on Economic, Social and Cultural Rights.

medical care has a level of moral urgency and feasibility that international assistance regarding advanced medical care does not have.

The point about international cooperation and assistance can, and I think should, be put in a more forceful way than it often is. Cooperation and assistance should not be seen merely as an example of "back-up duties." The common picture of "back-up duties" says that the primary duty-bearers in the promotion of human rights are the governments and peoples of each country, and that foreign governments have duties to step in only when domestic governments or their people cannot do all that would be desirable from the point of view of human rights fulfillment. This sequential approach is problematic. It overlooks the fact that the extent to which each country is able to secure the human rights of its people partly depends on the international economic and political order (including patents and trade regimes, military interventions, etc.).[21] It may also reinforce certain forms of inequality and unfairness in international relations. Imagine that a country A is quite poor, and that another country B is quite rich. Imagine that A can secure access to basic medical care for its poor residents but only at a serious cost to its middle class or to its bargaining power in international trade negotiations. If we follow the sequential picture, then there are no duties on the part of B. An alternative would be a *simultaneous* rather than *sequential* approach. This approach would recommend that A's people overcome their severe deprivations partly through B's assistance, without having to reduce part of its population to a condition close to poverty and without A becoming more vulnerable in international negotiations with B. This morally superior scenario would be even more reasonable if the government of B, as it often happens, has been using its asymmetric power to shape international relations in such a way that the people from A suffer more economic hardships than could have been the case had fairer terms of interaction been pursued.

I acknowledge that this sharp interpretation of the ideas of international cooperation mentioned in international human rights legal documents might be revisionary with respect to their usual interpretation. But if international legal frameworks, and the wider political practice of human rights, are to respond appropriately to the equal and inherent dignity of all human persons, then it seems that such revisions might be worth exploring.[22]

Is partial feasibility of fulfillment sufficient for the existence of a human right? Or should one demand complete realizability? Cranston seems to demand the latter. This, we saw, is not reasonable. If partial fulfillment is

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[21] On this fact's explanatory force, see Thomas Pogge, *World Poverty and Human Rights*, 2nd ed. (Cambridge: Polity, 2008).

[22] As Allen Buchanan notes, current international human rights legal practice is quite limited when it comes to international cooperation, even if a more expansive view might be appropriate on the basis of moral arguments. Buchanan, *The Heart of Human Rights* (Oxford: Oxford University Press, 2013), 26, 119, 120–1, 279ff.

possible, then there are duties and rights. I can imagine three worries with respect to this view. The first objection would be that there are really no universal rights when not everyone can obtain the object of such rights. But this need not be the case if we accept the plausible suggestion by Sen that the primary duty associated with a human right is not to secure the provision of the object of that right, but to give reasonable consideration to action leading to such provision. Sometimes reasonable consideration might not yield provision, or complete provision. There might be circumstances, for example, in which fulfilling a certain right would conflict with fulfilling weightier rights. But this possible result does not erase the claim involved in the right-claim. It does not even erase the existence of an *equal* claim by all. Suppose, for example, that A and B lay claim to an object O, and that C is the duty-bearer. Assume that C cannot provide both A and B with O. Does this mean that A and B do not have an equal claim to O? In the absence of relevant differences between A and B, C does not have any reason to prioritize A over B or B over A. A and B have *equal* claims. If C cannot satisfy both A and B, then perhaps the appropriate response is to choose by lot which one will receive O. This response seems to be reasonable because A and B are seen as having equal claims.

A second objection might be that this view of partial realizability tends to downgrade rights into goals. According to Cranston, for example, we must distinguish between "rights" and mere "ideals or aspirations":

> All these words—"right," "justice," "duty," "ought," "obligation"—are the key terms of what Kant called the "categorical imperative." What ought to be done, what is obligatory, what is right, what is duty, what is just, is not what it would be nice to see done one day; it is what is demanded by the basic norms of morality and justice.
>
> An ideal is something one can aim at, but cannot by definition immediately realize. A right, on the contrary is something that can, and from the moral point of view must, be respected here and now.[23]

This objection relies on the assumption that rights are necessarily distinguished from ideals or aspirations (in short, goals) in terms of obligatoriness. This assumption is mistaken. It is true that some goals are supererogatory (an example is heroism). But some goals may be obligatory.[24] This is particularly the case when the goals at stake are derived from human rights. The goal of securing that all persons avoid severe poverty may not be fully realizable now, or at times other demands may have priority. But this does not make the goal

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[23] Cranston, "Human Rights, Real and Supposed," 172.
[24] Kant himself argues that there are obligatory ends (such as beneficence) which one should adopt, and depart from only when other demands are, in the circumstances, stronger. See *The Metaphysics of Morals* in Kant, *Practical Philosophy*, ed. by M. Gregor (Cambridge: Cambridge University Press, 1996), *Ak* 390–4, 452–4.

optional rather than obligatory. Any departure from the realization of the goal needs special justification. The presumption is that when one can, one must fulfill it. To illustrate, the UN Millennium Development Goals (which included halving extreme poverty by 2015) were meant as obligatory goals, not just as things that "would be nice to see done one day."

It is important to notice that the language of human rights need not exclude the language of goals. In their general form, human rights statements are quite indeterminate and they do not specify their own implementation. They impose instead a duty of the highest priority for individuals and governments to identify ways to protect certain important interests through (a) specific rights and entitlements but also, when these are insufficient or not presently feasible, through (b) urgent goals of institution-building. Although only the former can be immediately realized, both involve obligation. Someone who is not treated in accordance with an obligatory goal is wronged just as much as someone who is denied a specific right. Consider the abstract right to basic medical care. A poor person who needs urgent medical care and is denied access to existing public hospitals is wronged. But so would be a poor person whose government either does not adopt the goal of building public hospitals when they are needed or does adopt the goal but does not take available and reasonable steps to fulfill it. Both cases involve failure to honor the human right to basic medical care. In the first case this abstract right is specified in terms of a more specific right (to have access to existing public hospitals), whereas in the second case it is construed as yielding obligatory goals (to take available and reasonable steps to build public hospitals).

The relation between rights and goals certainly merits a more detailed consideration than I can provide here. An excellent discussion has been presented by James Nickel in *Making Sense of Human Rights*.[25] Rights are usually distinguished by involving high priority, definiteness and bindingness. Nickel notes, however, that certain goals have high priority or make quite definite demands (whereas some rights have low priority or are quite indefinite). Thus, goals concerning specific forms of future action to protect important interests which cannot presently be protected may be "right-like" (p. 81). Furthermore, abstract rights claims (such as human rights) "may function in a way not too different from high priority goals" (p. 26). Nickel insists, however, that even if abstract rights are similar to high-priority goals, they are still different: "when abstract rights can be made concrete in particular cases, they differ from priority goals by conferring on the guidance they provide a binding character that high priority goals lack and cannot confer" (p. 26). It is not clear to me why high-priority moral goals cannot confer

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[25] James Nickel, *Making Sense of Human Rights* (2nd ed., Oxford: Blackwell, 2007), 24–6.

bindingness. In any case, since the goals I refer to here are derived from abstract human rights, their bindingness should be evident.

A third objection to the account of partial realizability is that it does not fully address the question "How much partial feasibility is necessary for rights to exist?" Even if Sen is right that "the condition of full feasibility cannot be a condition of coherence" of rights,[26] we may still want to know how much partial feasibility is necessary. Sen construes the Feasibility Condition in terms of "social influenceability." But how much influenceability of what kind is necessary? One can imagine different answers to this question. One answer could be quite demanding, even if it stops short of requiring complete feasibility. An example is Nickel's version of the feasibility test, according to which "a necessary condition for the justification of a specific right is the possibility of successfully implementing it in an ample majority of countries today." A somewhat less demanding condition would appeal to what can be done in modern times (that is, currently or in the foreseeable future).[27] The former answer drops full feasibility, but demands near-full feasibility in the present. The latter retains full feasibility, but construes the time-span of fulfillment more broadly. Sen's own account does not settle the issue. It does seem to preclude very low levels of feasibility, however. Sen says that if the social influenceability of a certain interest or freedom is very low, then it might not be a good candidate for grounding a human right. Sen gives the example of "tranquility." "While quite possibly extremely important for the person, [it] is too inward-looking—and too hard to be influenced by others—to be a good subject matter for human rights."[28]

How should we settle this discussion? I think that a hypothesis worth considering would be a partial revision of Nickel's proposal. The revisions would be four. First, the reference to a "majority" of cases would refer not only to countries, but also to instances of fulfillment within countries (this point is motivated by our previous discussion of duties of partial fulfillment). Second, we could refer to what is feasible not only today, but also in the foreseeable future. As I will argue shortly, part of the job of human rights talk is to orient political action aimed at the expansion of current feasible sets. Third, we can consider different types of feasibility. Nickel focuses on resources. But we should also factor in political and cultural parameters. In doing so, however, we must remind ourselves that political and cultural parameters are much "softer" than resource-related ones (even though the latter are also "soft" when compared to logical and physical parameters—as is evident if one considers

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[26] Amartya Sen, "Consequential Evaluation and Practical Reason," *Journal of Philosophy* XCVII (2000), 477–502, at p. 498.

[27] Nickel, *Making Sense of Human Rights*, 78. A version of the second view seems to me to be suggested in John Tasioulas, "The Moral Reality of Human Rights," in Pogge, ed., *Freedom from Poverty as a Human Right*, 75–101, at 81.

[28] Sen, "Elements of a Theory of Human Rights," 330.

technological innovation). It is not enough that sufficient resources are sitting around; it must also be feasible to generate institutions and practices allocating these resources in ways that will secure the relevant rights.

Fourth, we can see this revised Feasibility Condition as determining whether reference to a certain moral demand is to be at the foreground of our global political agenda (for example, by being carefully specified through domestic and international legal requirements). For something to be at the foreground of a political agenda, the level of its social influenceability (either currently or in the foreseeable future) must be quite significant. This does not mean that what is not greatly influenceable is not morally significant. It seems to me that, in a wider ethical sense, whenever there is some influenceability, there may be a duty. This applies, I think, to Sen's example of "tranquility." Securing "tranquility" for all or for most people may be "too hard," but securing it for some people in some cases could, and should, be done. But if access to a certain object could only be secured in very few cases for the foreseeable future then the social influenceability is extremely low. Once we see the talk of human rights as part of a global political project,[29] we realize that reference to a right to this object might be excluded, at least in some instances of that project such as in the statement of specific and legally binding requirements for the short or medium term.[30]

In identifying a set of basic human rights, we need to avoid both conceptions which are too maximal and conceptions which are too minimal. The former weaken the urgency of human rights talk. Not everything that would be morally desirable to see realized in politics is a matter of justice, and not everything that is a matter of justice is a matter of human rights. Human rights constitute the most urgent demands of basic global justice. On the other hand, a conception that is too minimal capitulates to grievous injustices which could otherwise be addressed. Capturing the middle way between these two extremes is not easy. What must orient us is, as we saw, considerations regarding the extremely urgent moral significance of the interests to be protected and the relative feasibility of their widespread protection in the foreseeable future. In this chapter, I stress the importance of avoiding conceptions that are

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[29] See Nickel, *Making Sense of Human Rights*, 7; and Charles Beitz, "Human Rights and the Law of Peoples," in Chaterjee, *The Ethics of Assistance*, 193–214.

[30] Another possibility worth exploring has been suggested to me by Rowan Cruft. It is to distinguish two kinds of duties correlative to a right: (a) those whose violation constitutes violation of the right and (b) those whose violation does not constitute violation of the right. Members of a government introducing discriminatory policies in the application of health care might exemplify (a), and voters choosing the politicians forming that government might exemplify (b). We can then identify two different kind of failures corresponding to these requirements: (a) those involving human rights violations, and (b) those involving human rights deficits. Some requirements which we might not want to state as legal requirements could still be important candidates for second category, which is arguably also important within human rights practice.

too minimal. But I acknowledge that certain rather maximal demands could also be problematic. As we saw with the case of "tranquility," some demands may be quite desirable but infeasible to secure for the majority of humans in the foreseeable future. Others may be more feasible but not clearly related to the extremely urgent demands whose satisfaction is a precondition for a basically good or decent life. I will return to the issue of how expansive human rights claims should be taken to be in Part III of this book.

3.5. DYNAMIC DUTIES AND POLITICAL EMPOWERMENT

In terms of the distinction between the two domains of feasibility, the most serious problems concern accessibility rather than stability. The stability of a global order securing basic socioeconomic human rights is not hopeless for two reasons. First, sufficient resources exist to eradicate severe global poverty at no grievous cost to anyone.[31] Second, there is a growing international consensus on the importance of human rights and global norms, and this consensus would be certainly deepened if people grew up under domestic and international institutions honoring them. Thus, arguably, a world order securing basic global justice would be stable. The real challenge concerns the issue of accessibility, of how to move from here to there. Institutions securing the fair and legitimate allocation of duties to secure basic socioeconomic rights are largely absent, and there is some resistance on the part of members of rich countries to embrace their introduction.

(1) *Dynamic duties.* As mentioned above, a second kind of response to situations of partial infeasibility focuses on temporal variation. A right may be unrealizable now, but may become realizable as a result of lucid political action that generates conditions for the feasibility of its fulfillment. Imagine a scenario such that (a) a certain institutional scheme S2 is considerably more morally desirable than another S1; (b) S2 is accessible in circumstances C2 but not in C1; (c) we are, here and now, in C1, not C2; (d) S1 is accessible in C1; and (e) S1 is very likely to generate C2. If (a)–(e) are true, and the moves to S1 and from S1 to S2 do not involve unacceptable moral costs, then it seems plausible to say that we have a duty to pursue the trajectory of reform leading to S1 in C1 and to S2 in C2. Notice that the second segment in this trajectory contributes to the justification of the first, and that the trajectory involves

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[31] According to Pogge's calculation, by giving up 1.2 percent of their annual aggregate income, the global rich can provide sufficient funds for eliminating global poverty. See *World Poverty and Human Rights*.

making accessible, at a later time, what may not be accessible now. Let us call duties of this sort, involving the expansion of the feasible sets of political action, *dynamic duties*. These duties are peculiar in that they are focused not merely on what is to be done within certain circumstances, but also on changing certain circumstances so that new things can be done.

In the context of human rights, dynamic duties differ from standard duties in the following way: the latter are duties to bring about certain states of fulfillment of human rights within given circumstances; the former are duties to bring about new circumstances in which further fulfillment of human rights can be secured. To illustrate, consider some of the claims in the Universal Declaration of Human Rights. Article 25 says that

> Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

Perhaps we cannot fully fulfill these demands now. We can, however, envisage successive reforms extending our capacity to secure food, clothing, housing, and basic medical care for all. The Preamble of UDHR presents the list of human rights as a "common standard of achievement for all peoples and all nations," which we are supposed to honor through "progressive measures, national and international." These measures might involve a process of reform introducing new social arrangements and a new international order. Such a process involves dynamic duties. In fact, we can understand the several references to processes of successive reforms in the Social Covenant as articulations of dynamic duties. We can also see the crucial Article 28 of UDHR, which says that "everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized," as stating an obligatory goal for dynamic duties to progressively achieve.

(2) *Political empowerment.* An appeal to dynamic duties helps address the flexibility of constraints on feasibility and obligation in a productive way. Particularly important is to pursue dynamic processes through which agents (a) identify general obligations and explore their alternative feasible applications while they also (b) entertain interventions generating conditions of feasibility that are not yet present. I conclude this chapter by making some remarks suggesting that certain mechanisms of *political empowerment* such as institutional experimentation, public reasoning, and protest are quite significant in addressing contexts where fulfillment of socioeconomic rights appears to be infeasible.

Institutional experimentation. A common obstacle in current debates on global justice and human rights is the spurious dilemma between (a) a

conservative approach that takes for granted the Westphalian view of states as fully autonomous and as unconstrained by international duties of justice and (b) ambitious though hardly realistic demands to institute a global democracy modeled on domestic democratic institutions. Our circumstances of globalization mean that the Westphalian framework is becoming increasingly unrealistic and, in any case, quite unsatisfactory from a human rights perspective. But assuming that a full global democracy is morally desirable, it is not feasible for the foreseeable future. What we need instead is to adopt a *transitional standpoint* seeking a dynamic middle way between the horns of the alleged dilemma.

Such an approach would emphasize institutional experimentation. We can entertain multiple paths of reform developing new domestic and international institutions increasing the political empowerment of people across the globe and enabling them to secure their socioeconomic rights.[32] Let me just mention some examples from recent literature, emphasizing their dynamic significance. Two of the most demanding proposals include the creation of a Global Parliament and (within the UN) of an Economic and Social Security Council coordinating and enforcing international policies of poverty reduction and development.[33] These may be inaccessible now. But they may become accessible as a result of other reforms that can be pursued now, such as the creation (already under way) of regional institutions (for example, the EU and the Mercosur). Other, less ambitious reforms are perhaps more immediately available. One example concerns changes in policies within wealthy countries, as with proposals for introducing taxation of the richest in the US to secure the funds necessary for the country to honor its pledge within the Millennium Development Goals[34] or subsequent commitments. Another example concerns the reform of international institutions such as the World Trade Organization (WTO). Joseph Stiglitz has recently introduced a number of short-term and long-term proposals. (Changes in the WTO to secure fair trade benefiting rather than exploiting developing countries are particularly crucial, as "rich countries have cost poor countries three times more in trade restrictions than they give in total development aid.")[35]

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[32] See Simon Caney, "Cosmopolitan Justice and Institutional Design: An Egalitarian Liberal Conception of Global Governance," *Social Theory and Practice* 32 (2006), 725–56.

[33] See, respectively, Richard Falk and Andrew Strauss, "Toward Global Parliament," *Foreign Affairs* 80 (2001), 212–20; and David Held, *Global Covenant* (Cambridge: Polity, 2004), 111, 164.

[34] Jeffrey Sachs, *The End of Poverty* (New York: Penguin, 2005), 307–8.

[35] Joseph Stiglitz, *Making Globalization Work* (New York: Norton, 2006), 78. Two short-term proposals are "strong freedom of information acts" making the proceedings of the WTO open to public scrutiny and a bolstering of "the ability of developing countries to participate meaningfully in decision making, by providing them with assistance in assessing the impact on them of proposed changes" (p. 253).

Multiple motivations. Surely the most appropriate motivation to secure human rights is one that appeals to the moral reasons backing those rights. Though certainly not impotent, such reasons are not always in fact motivating. A dynamic approach need not, however, only appeal to them (though of course it must also appeal to them). Institutional experimentation and protests may mobilize other forms of motivation. Important players in rich countries may come to support international schemes protecting socioeconomic rights because of the penalties involved in failing to comply with legal norms. And they may support the introduction and enforcement of such norms because of the fear of political turmoil that they may face in their absence. Furthermore, a world without poverty would also be a world where international economic opportunities would increase. As David Beetham has suggested, the development of an international human rights regime, like the introduction of the welfare state in industrialized societies, "is a matter of incentives as much as of exhortation or moral leadership."[36]

Challenging adaptive preferences and ideological assumptions. Nussbaum and Sen criticize some welfarist approaches to social justice that focus merely on the level of people's satisfaction with their condition.[37] A problem with these approaches is that they fail to see that in circumstances of severe deprivation, people develop "adaptive preferences," lowering their aspirations in the face of what they perceive as very limited feasibility sets. A related phenomenon, which we may call "ideological assumptions," consists in many people developing false beliefs about their condition of oppression or domination as one that is fair for them to face. The phenomena of adaptive preferences and ideological assumptions are clearly susceptible to critique, and practices of public deliberation are particularly helpful in this respect.[38] In spaces of open critical communication, people can subject to scrutiny their empirical and normative beliefs about what they can do and what they deserve. The result can very well be that they realize that they can do and strive for more than they initially thought and that, in fact, they deserve to get more than they have been getting. Such change of cultural parameters involves an expansion of the feasible set of political reforms, as the latter is partly shaped by the empirical and normative beliefs that agents have about what they can and are entitled to do.

Securing more inclusion. Protest is an important political resource, and right, for people whose voice and interests are systematically ignored by political

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[36] David Beetham, "What Future for Economic and Social Rights?" *Political Studies* XLIII (1995), 41–60, at 58.

[37] See Martha Nussbaum, *Women and Human Development* (Cambridge: Cambridge University Press, 2000), ch. 2.

[38] On the role of public debate in the critique of ideological assumptions, see Jürgen Habermas, *Legitimation Crisis* (Boston, MA: Beacon, 1975). Sen (in "Elements of a Theory of Human Rights") also emphasizes its role in the justification and application of rights.

institutions.[39] Institutional experimentation and public deliberation often emerge, or become more inclusive, as a result of practices of protest by those who are normally excluded. This is particularly so in the case of socioeconomic rights. A good example is provided by Argentina during the severe economic crisis at the turn of the millennium. New, serious attempts to redesign institutions and policies to combat poverty, and several forums of public debate, were generated only after massive protests in 2001–2. Similarly, current debates and reforms in international institutions are partly the result of international protests sparked by the burgeoning social movements focused on global justice. These practices of protest can clearly have a dynamic impact in expanding the power to secure universal socioeconomic rights. The World Social Forum slogan that "another world is possible" might, in this way, become self-fulfilling.

To conclude, I have argued in this chapter that the theory and practice of human rights must be sensitive to feasibility considerations, but that assertions about infeasibility, when accurate, should not be construed as simply muting claims about duties of justice. They should, instead, be seen as partially limiting the scope of such duties while also motivating us to envisage the transformation of what makes their realization infeasible. There are dynamic duties to expand agents' capability to shape the political processes under which practical possibilities are partially created and conceived.

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[39] See Roberto Gargarella, "The Right of Resistance in Situations of Severe Deprivation," in Pogge, ed., *Freedom from Poverty as a Human Right*, 359–74. For a discussion of the relations between protest, public deliberation, and institutional experimentation see Pablo Gilabert, "Global Justice and Poverty Relief in Nonideal Circumstances," *Social Theory and Practice* 34 (2008), 411–38.

4

Human Rights and Power

4.1. INTRODUCTION

Chapter 3 ended on a positive note. It argued that although human rights must be justified and pursued in a way that pays attention to feasibility considerations, what sometimes are presented as fixed and unsurpassable obstacles that make ambitious human rights requirements unrealistic are in fact malleable over time. Indeed, in the face of such political, cultural, or economic obstacles, we might have dynamic duties to expand our ability to successfully pursue morally appealing conceptions of rights instead of dropping them from our practical agenda. But this optimistic moral picture might sound naïve if we consider the fact that there are deep inequalities of power domestically and internationally. This chapter considers this worry. In fact, this provides a natural continuation of the discussion from chapter 3, as there the question of whether it is feasible to fulfill a putative human right is coextensive with the question of whether agents have the effective power to do so.

Human rights are particularly relevant in contexts in which there are significant asymmetries of power, but where these asymmetries exist the human rights project turns out to be especially difficult to realize. The stronger can use their disproportionate power both to threaten the human rights of others and to frustrate attempts to secure their fulfillment. They may even monopolize the international discussion as to what human rights are and how they should be implemented. This chapter explores this tension between the normative ideal of human rights and the facts of asymmetric power. It has two objectives. The first, pursued in section 4.2, is to reconstruct and assess a set of important power-related worries about human rights. These worries are sometimes presented as falsifying the view that human rights exist, or at least as warranting the abandonment of human rights practice. The chapter argues that the worries do not support such conclusions. Instead, they motivate the identification of certain desiderata for the amelioration of human rights practice. The chapter proceeds to articulate twelve such desiderata. The second objective, pursued in section 4.3, is to propose a strategy for satisfying the desiderata identified in the previous section. In particular, the chapter suggests

some ways to build empowerment into the human rights project that reduce the absolute and relative powerlessness of human rights holders, while also identifying an ethics of responsibility and solidarity for contexts in which power deficits will not dissolve. The main point, then, is that power analysis does not debunk the human rights project. Properly articulated, it is an important tool for those pursuing it.

Philosophical work about human rights has not systematically addressed issues of power. This is in part understandable because such issues involve empirical questions that philosophers are not best equipped to answer. However, given the tension mentioned in the previous paragraph, a full account of human rights must include considerations about power. More generally, a full account of human rights should include such considerations because human rights are to be pursued through political practice, and political practice often involves asymmetric power relations. Philosophers can in fact make a contribution when it comes to the conceptual and normative articulation of how power matters for our understanding and pursuit of human rights. This philosophical work may proceed at a relatively high level of abstraction and be primarily concerned not with empirical description of power structures or with specific policy recommendations but with the general concepts and substantive principles that shape the human rights project. Philosophers should not apologize for working at that level if they clarify how their inquiry connects to more specific descriptions and recommendations. Philosophical proposals are helpful to organize and orient our practical reasoning. And this is particularly needed in the case of the relation between human rights and power, on which conceptual clarity and normative articulation is largely lacking.

Before proceeding, let me briefly state the characterizations of *power* and of the *human rights project* that I will deploy in this chapter. These characterizations are general and broadly shareable, and allow for making thematic the relevant issues to be discussed. I start with power. In certain circumstances C, an agent A has power with respect to whether some outcome or state of affairs O occurs to the extent that A can voluntary determine whether O occurs. In certain circumstances C, an agent A has power over a subject S (where S is either a thing or an agent, be it agent A or some other) with respect to whether some final outcome or state of affairs O occurs to the extent that A can voluntarily determine whether S exists or behaves in such a way as to generate O.[1] The

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[1] I thank Adam Etinson for discussion on this formulation. As I explain further in chapter 7, this characterization is very open and does not preempt substantive debates: it allows for degrees of power; it includes power over oneself and over others; it can apply to both individual and collective agents; it includes "good" and "bad" ways of exercising power (e.g., through rationally convincing someone to do something or through force, coercion or manipulation); it includes power over things besides persons (e.g., technological power to transform material environments); it includes various possible subjects of power: not just someone's action, but also the

general idea is simply that an agent's power is their ability to shape aspects of the world as they choose. Regarding human rights, I am using the account of them (presented in chapter 1) as moral entitlements that have special moral urgency, hold universally at least in modern times, are primarily critical rather than positive standards, and should often at least in part be pursued through political action and institutions. The political project of human rights, at least since the end of World War II, comprises several forms of domestic and global action and institutions geared to the fulfillment of a set of basic civil, political, and socio-economic rights. The key international documents of the human rights movement, the Universal Declaration of Human Rights (UDHR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), and the International Covenant on Civil and Political Rights (ICCPR), include a general statement of such rights. The practice is emergent.[2] It rallies around a project that is itself in the making. There is dispute about what claims should be recognized as human rights and how they should be justified and implemented. We need an account of how power is significant for each of these areas of discussion, and the rest of the chapter provides reflections and proposals meant to contribute to such an account.

4.2. EXPLORING POWER-RELATED WORRIES ABOUT HUMAN RIGHTS

4.2.1. What Might Be the Upshot of the Worries?

Many scholars have voiced power-related worries about human rights. In this section I survey some of them. This is not an easy task because often the authors presenting such worries are not clear about what their upshot is supposed to be. There are at least three quite different possible judgments that might result from power-related worries:

Inexistence: there are no human rights.[3]
Abandonment: the human rights project should be abandoned.
Shaping: the human rights project should be (re)shaped in certain ways.

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formation of their beliefs, desires, and other features and circumstances. For a survey, see Steven Lukes, *Power: A Radical View*, 2nd ed. (New York: Palgrave, 2005).

[2] Charles Beitz, *The Idea of Human Rights* (Oxford: Oxford University Press, 2009), 42–4.

[3] The claim may be less sweeping, saying that *some* human rights do not exist. I assume here that human rights have the four features identified in section 4.1. In particular, I assume that human rights are not only legal rights but also moral rights. The legal existence of human rights is an obvious empirical fact. The target of the objectors I respond to is their moral existence.

In this subsection I present a preliminary argument for the claim that the most appealing practical judgment to entertain is Shaping. In section 4.2.2 I discuss several power-related worries and identify what I take to be their strengths and mistakes, with a particular focus on unearthing desiderata for the shaping of the human rights project.

A common difficulty in the literature on human rights and power is the lack of careful distinction between descriptive and normative talk. The former comprises reports, explanations, and predictions about what some people think, say, or do. The latter, in contrast, comprises claims as to what some people *ought to* think, say, or do. This difference should apply in human rights discourse. In this context, normative claims are about what human rights there are. They purport to refer to normative facts about what treatment individuals are entitled to in their social life. Descriptive claims, on the other hand, purport to refer to empirical (psychological, social, etc.) facts about what people believe they are entitled to in their social life, and they report, explain, or predict how people act with respect to some putative entitlements. Normative claims address such putative entitlements directly, affirming their existence or inexistence, and make judgments about the duties that correlate with them.[4]

To illustrate, consider the following utterances:

(a) "[P]ower and interests define the dominant conception of human rights in any historic period"
(b) "[R]ights should be understood as a process that reflects particular historic configurations of power relations"[5]

(a) is a descriptive claim. (b) is somewhat ambiguous, and the text in which it appears sometimes hints at a normative and sometimes at a descriptive interpretation. The normative version could be mistaken. We want to be able to distinguish between rights that are *taken as* existing and rights that *actually* exist. This distinction helps us make sense of a typical role of rights talk, which is to *challenge* dominant conceptions of rights. It could be problematic to say, in the normative mode, that a right to freedom of religion exists in a social setting in which the majority accepts it and enforces it institutionally but did not exist a generation earlier when only a minority accepted it or when it was not institutionally implemented. It is indeed important to

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[4] A source of confusion may be that normative talk, in purporting to refer to certain facts (in claiming their existence), seems to engage in a kind of description. But what is purportedly referred to is characterized in directly normative phrases (as what some agents are *entitled* to, have a *duty* to, etc.). The "normative facts" referred to concern what ought to be the case, not what is the case.

[5] Tony Evans, *The Politics of Human Rights: A Global Perspective*, 2nd ed. (London: Pluto, 2005), 26, 34.

ascertain whether a certain putative right is backed by a particular historical configuration of power relations. But such configurations do not settle the normative issue of whether people have the putative right. In other places the author of the text in which (a) and (b) appear insists that he is not contesting the ideal of human rights, but providing an analysis of power relations that would in fact support action geared to its fulfillment.[6] This kind of disclaimer is common in power-based critical discussions of human rights. Thus, Mutua speaks about the "basic nobility and majesty that drive the human rights project," and Kennedy recommends that we think pragmatically so that "the purposes of human rights are achieved."[7] But notice that the disclaimer makes sense precisely because there is a difference between descriptive and normative talk about power and human rights. As we will see it is of course also important to properly combine descriptive and normative claims in political reasoning. But their conflation frustrates clear thinking about how to achieve it.

Power-related worries often involve the claim that human rights practice fails to fulfill, or even sets back, its own aims. What is the normative significance of this descriptive point if true? Does it warrant Inexistence, Abandonment, or Shaping? It seems to me that it normally fails to warrant Inexistence. First, as we saw, those making the descriptive point sometimes presuppose the existence of the rights about whose fulfillment they puzzle. They embrace the aim of the practice that power relations allegedly set back, which is the fulfillment of human rights. They cannot say that we do not have the rights they think we should realize. More importantly, the truth of the descriptive claim does not by itself affect the existence of human rights. The existence of a human right is a normative fact about what people owe to each other. As such, it is independent from other facts about whether people pursue, or succeed at fulfilling, human rights. People may fail to seek (or achieve) what they ought to seek (or achieve). If the dominant powers successfully frustrate the pursuit of some rights, this does not entail that the rights do not exist. Saying the contrary would imply the absurd conclusion that human rights do not exist when the power asymmetries are maximal and the top dogs are systematically able to set back the urgent interests of the under dogs. It would actually generate a perverse incentive for human rights violators to become as asymmetrically powerful and dominating as possible, as the best way to respond to the criticism that they violate human rights.

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[6] Ibid., 8.
[7] Makau Mutua, *Human Rights: A Political and Cultural Critique* (Philadelphia: University of Pennsylvania Press, 2002), 10. David Kennedy, *The Dark Sides of Virtue: Reassessing International Humanitarianism* (Princeton, NJ: Princeton University Press, 2004), 4.

So power-related worries do not yield Inexistence.[8] What is really at stake is not the truth of human rights principles, but the practice seeking their fulfillment. Do the worries yield Abandonment? Abandonment is a normative recommendation. It may of course be simply based on the normative claim that there are no human rights. But we are considering the more circuitous (and prima facie more appealing) challenge based on the view that overall it is more desirable (taking the fulfillment of human rights themselves as our evaluative yardstick) to drop the human rights practice than to engage in it. This might seem to be so if the practice aimed at fulfilling human rights principles were systematically self-defeating. Perhaps trying to fulfill human rights is like trying to fall asleep. Perhaps we should abandon the practice in

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[8] There is an association between some power-critiques and the Inexistence claim. I have addressed a version of these critiques that stands at odds with its own moral character—i.e., its (explicit or implicit) commitment to basic norms of respect and concern which it regards as being violated by the practice of human rights as it stands. But I acknowledge that there could be other skeptical, relativistic, or nihilistic versions of power-critique. I believe that we must distinguish between human rights as moral entitlements and as conventionally articulated statuses. Normative argument is based on the former, not the latter. Conventions can be morally mistaken. My view of this distinction assumes a form of cognitivism about moral human rights. There are some irreducibly normative truths referring to what we have moral reason to do, and moral human rights are among them. (For a discussion of how this kind of cognitivism does not entail unsavory metaphysical assumptions that reason-involving properties exist as natural properties in the spatio-temporal world or in some non-spatio-temporal part of reality, see Derek Parfit, *On What Matters*; Oxford: Oxford University Press, 2011, sect. 113.) Given space constraints, I cannot address other power-related worries about the existence of moral human rights that challenge this view. One possible such worry surmises that human rights exist only where there are specific institutional articulations and effective mechanisms of enforcement of them and that since these are absent in the current world human rights do not exist in it. This view is counterintuitive because one of the roles of human rights talk is precisely to justify the introduction of enforcement mechanisms where they do not exist, are feasible to introduce, and are needed to protect important human interests. But a defender of this challenge could reply that my response is merely a move in "power politics," an attempt to impose the satisfaction of my moral beliefs on others. On this view, the existence of human rights is a subjective matter of what we invent and establish through power politics, not an objective matter of independent normative facts that we can discover. This nihilism is at odds with my intuitions that our moral beliefs about human rights track objective normative reasons, and that they need not be linked with a will to impose our moral attitudes on others. But I acknowledge that this challenge deserves further discussion. For exploration of the challenge just mentioned, see Raymond Geuss, *History and Illusion in Politics* (Cambridge: Cambridge University Press, 2001), 143–6.

A second challenge is perhaps inspired by Carl Schmitt's account of "the political" as a domain of radical antagonism in *The Concept of the Political* (Chicago: University of Chicago Press, 1996). It says that human rights talk is either at odds with political practice (which is fundamentally about how to fight our enemies, not about how to fraternize with every human being) or a tactical device within it. Human rights talk is either hopelessly naïve or it displays rhetorical manipulation. Although I believe that conflict is a common feature of politics, and that universalist discourse is often used hypocritically, I disagree that radical antagonism is in every case a necessary or desirable feature of politics, and that we cannot or should not disentangle universalist commitments from their manipulation. But, again, I acknowledge that this challenge deserves further discussion. I thank Adam Etinson and Elizabeth Frazer for their comments about the issues addressed in this footnote.

the hope of preventing mechanisms that set back its purpose. If this were the case, then although human rights principles would not be false, they would be deficient as action-guiding propositions. This is worrisome because we intuitively see normative principles as having the two roles of helping us determine whether certain practical outcomes are morally desirable and of helping us decide what to do. If pursuing the fulfillment of human rights principles were bound to be self-defeating, then those principles would not be action-guiding. But these considerations need not really yield Abandonment. If a principle does fulfill the role of determining the moral desirability of certain final outcomes of action, then even if it were to be self-defeating as a direct guide to action, it could be orientating in an indirect way. If the final outcome that is morally desirable according to the principle is not likely to be achieved by directly aiming at it, then we could aim at bringing about other outcomes that will cause the final outcome as a by-product. When we engage in this planning, it is the final outcome that guides us in the selection of intermediate outcomes. Returning to the example of sleep: we can decide to solve mathematical puzzles, read a novel, etc., which in turn will relax us or tire us out and make us fall asleep. We should not simply close our eyes and tell ourselves "Fall asleep now!" Something similar could be the case with human rights. Perhaps we could pursue changes in the international economic and political order that would create incentives for powerful agents to act in ways that would prevent human rights violations. We are familiar with indirect mechanisms at the domestic level. A state can motivate agents to do what is right by engaging their greed (through economic incentives) and fear (through threats of penalties).

The previous response to Abandonment accepts, for the sake of argument, that the direct pursuit of human rights is overall self-defeating. But I have not found in the relevant literature evidence for that overall claim. To support it, the defender of Abandonment would have to show that a global political environment in which we engage in human rights advocacy would likely be worse than another in which we do not. To show this it is not enough to mention a set of appalling examples about power-relations subverting human rights purposes. Abandonment is a sweeping proposal, and it requires comprehensive evidence. In fact, one of the most comprehensive recent empirical studies of contemporary human rights practice suggests that on balance the international practice has been positive.[9] Given the absence of comprehensive

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[9] Beth Simmons, *Mobilizing for Human Rights: International Law in Domestic Politics* (Cambridge: Cambridge University Press, 2009), ch. 9. Simmons says that the common sentiment that "international law has done very little to improve the rights chances of people around the world . . . has largely developed in an evidenciary vacuum" (p. 350). Kennedy acknowledges the difficulty of justifying sweeping comparative claims about the consequences of engaging and not engaging in the human rights project (*Dark Sides of Virtue*, 32–3). Beitz shows that general skeptics about the human rights practice cannot avoid defending a general claim about its

support backing its claim about the systematically self-defeating nature of human rights practice, the presence of important empirical support for the opposite claim, and the inherent moral desirability of human rights, we should be reluctant to embrace Abandonment.

But even if it were true (against the existing evidence) that the human rights practice has been overall self-defeating, this would not yield Abandonment. The relevant comparison in the assessment of the practice should be broader, including not only (i) what has happened in the human rights practice so far and (ii) what would have happened had the human rights practice not been pursued, but also (iii) what could have happened, or could happen in the future, if the human rights practice had been, or were, shaped in other ways.[10] This leaves us with Shaping, the most plausible upshot of power-related worries about human rights. The idea here is that the worries can provide us with reasons to arrange the human rights practice in certain ways. The rest of this chapter explores Shaping. Before proceeding, it is important to highlight the fact that the human rights project involves many possible patterns of domestic and global action,[11] and that the same power-related worries that warrant rejection of some forms of action in some circumstances may not defeat others. For example, even if unilateral foreign coercive intervention is likely to be a bad response to human rights violations in the overwhelming majority of cases, other forms of action including international diplomatic criticism, campaigns by grass-root international human rights movements, or domestic resistance may be appropriate.

4.2.2. Specific Power-Related Worries and Desiderata for Shaping Human Rights Practice

4.2.2.1. Parochialism and Imposition

A typical power-related worry about human rights practice is that it involves an imposition of particular values by stronger Western societies on weaker, non-Western ones.[12] This worry relies on two claims. The first, empirical

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relative undesirability (*The Idea of Human Rights*, 207). Allen Buchanan argues that on balance the introduction of a system of international legal human rights like the current one is morally good (even if it could and should be improved). See *The Heart of Human Rights* (Oxford: Oxford University Press, 2013), ch. 4.

[10] The comparison could be complicated further by including (iv) what could have happened, or could happen in the future, if a normative ideal different from human rights had been, or were, pursued in its stead.

[11] James Nickel, *Making Sense of Human Rights*, 2nd ed. (Oxford: Blackwell, 2007), 101. Beitz, *The Idea of Human Rights*, 33–40.

[12] Chris Brown claims that "[t]he contemporary human rights regime is, in general, and for the most part, in detail, simply a contemporary, institutionalized and universalized version of the

claim is that the origin and content of human rights doctrine reflect parochial values that are not widely accepted amongst people in non-Western societies. The second, normative claim is that it is wrong to disregard the will or opinions of others by externally imposing the implementation of human rights principles on them.[13]

These claims are problematic, especially if they are used to support Inexistence and Abandonment. The use of the empirical claim faces five familiar challenges. First, the origins of contemporary human rights doctrine were not so parochial. The drafters of the UDHR included members of different world cultures, and they consulted a variety of intellectuals across the world to develop an account that would resonate widely.[14] Second, the development of an international legal framework for the pursuit of human rights was primarily pushed not by representatives of the strongest Western countries (they in fact often blocked or delayed it), but by leaders of relatively weak democratic and Third World countries and by NGOs, public intellectuals, and activists.[15] Third, the content of most human rights stated in the UDHR protect interests that are widely recognized. For example, the interests in not being tortured, having enough to eat, being educated, having housing, accessing employment, and avoiding unfair trial are clearly not merely "Western." There are of course other claims in human rights documents that are controversial, such as those concerning more demanding social rights, strong political rights, and non-discrimination on the basis of gender. (Notice that some of these rights are disputed by some people in the West.) However, fourth, as Nickel has argued, even if the statement of some individual rights may have originated in the West, their wider relevance is now quite obvious given that they focus on protecting individuals (and groups) against some threats from the modern state, an institution that is now ubiquitous across the world.[16] Further, fifth, we should avoid a conventionalist view according to which a right exists only if those possibly affected by its implementation already accept that it exists. Normative claims about human rights are not reports of public opinion. We should avoid the fallacy of moving from the empirical claim that there is disagreement about a right to the normative claim that there is no such

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liberal position on rights." "Universal Human Rights. A Critique," *International Journal of Human Rights* 1 (1997), 41–65, at 43. Slavoj Žižek claims that "'human rights' are, as such, a false ideological universality, which masks and legitimizes a concrete politics of Western imperialism, military interventions and neo-colonialism." "Against Human Rights," *New Left Review* 34 (2005), 115–31, at 128–9. Kennedy argues that the human rights project is "tainted" by its parochial origins: it is less effective as a result, and its generalization of Western liberal ideas and political frameworks "impoverished local political discourse" in countries where other viable and potentially effective ideas were marginalized (*The Dark Sides of Virtue*, 18–21).

[13] Beitz, *The Idea of Human Rights*, 203 (Beitz construes the second claim differently).
[14] Mary Ann Glendon, *A World Made New* (New York: Random House, 2002), ch. 5.
[15] Simmons, *Mobilizing for Human Rights*, 40–1, 46–9, 352–3.
[16] Nickel, *Making Sense of Human Rights*, 173–4.

right. Women had rights against discrimination before the belief that they do
became an item in mainstream political agendas. Another common fallacy
that operates in the neighborhood is the genetic fallacy according to which we
should judge the plausibility of an idea by considering its origins. The truth
value of the normative claim that there is a human right to democracy is not
threatened by the truth (if it is a truth)[17] of an empirical historical report
saying that the belief in the value of democracy is Western in origin.

The normative claim seems plausible. But it should be qualified. It is not
necessarily always true that the disvalue of external imposition outweighs the
value of the outcomes that could only be reached through it. Serious emer-
gencies can warrant exceptions. But in any case we must see that the current
practice of human rights is not one in which coercive international action is
widespread. In fact, the two Covenants include (in their Article 1) strong
clauses stating the self-determination of peoples, and their implementation is
normally led by domestic political actors.[18] On the other hand, we should not
only worry about international imposition. We should also worry about
domestic imposition. It is not uncommon for worries about foreign interference
to be voiced by agents who want to maintain domestic practices of oppression
and domination. This is not only the case when it comes to some "non-
Western" leaders challenging strong political human rights whose fulfillment
would threaten their authoritarian rule. It was common for example in the
United States, when many political leaders worried about official recognition of
international human rights law that could be used to challenge the oppression
of African-Americans in the American south.[19] Certain forms of imposition
might (with the usual caveats regarding likely effectiveness and avoidance of
unacceptable consequences) be justifiable in extremis to protect some from
severe impositions by others. This need not be a form of paternalism, as those
protected may already resent their condition.[20]

But the empirical and normative claims involve genuine concerns for
Shaping. The history of colonialism and the contemporary global imbalances
in economic, military, and cultural power must put us on guard. It is indeed
problematic when the articulation of the content and implementation of
human rights is in the hands of disproportionately powerful agents and does
not seriously include all those to whom they would apply. It is also a problem
when some powerful agents act in self-righteous ways, without proper
acknowledgment of their own deficits. For example, Americans proselytizing
for democratic governance around the world should also pay attention to the

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[17] Amartya Sen argues that democratic values also sprung independently in many Asian
societies. See *The Idea of Justice* (Cambridge, MA: Harvard University Press, 2009), ch. 15. "Like
fire, or painting or writing, democracy seems to have been invented more than once, and in more
than one place." Robert Dahl, *On Democracy* (New Haven: Yale University Press, 1998), 9.
[18] Simmons, *Mobilizing for Human Rights*, 365–73.   [19] Ibid., 40, 43.
[20] Beitz, *The Idea of Human Rights*, 84–5.

serious pathologies facing their domestic politics, shaped as it largely is by the influence of people with large sums of money to fund campaigns, control the media, and offer lucrative jobs to public servants after they leave office. In response, human rights practice should accept the following desiderata:

(D1) *Epistemic openness*:   We should have a fallibilistic attitude towards the correctness and completeness of the set of human rights we currently accept. We should pay attention to the voice and point of view of people from diverse social settings.

(D2) *Presumption against external imposition*:   Absent strong countervailing considerations, the implementation of human rights in a social context should be such that the agents in that context have effective opportunities to control it.

(D3) *Humility*:   When criticizing others, those pursuing human rights should not be condescending and arrogant, and they should be open to criticism.

Who is the "we" addressed by D1 and similar formulations? Every agent insofar as they have duties correlative to human rights. I do not mean to erase the different responsibilities of individuals belonging to different groups, or occupying different positions in domestic and international power hierarchies. Quite the contrary, D1–D3 precisely call for awareness of inequalities in power—and this should include recognition of the history that created them. But the different responsibilities that are identified in this way should be geared to the fulfillment of a common human rights project that includes us all as equals (even if doing our part to fulfill it may involve different specific tasks).[21]

4.2.2.2. Hegemonic Manipulation

Antonio Gramsci argued that "the supremacy of a social group manifests itself in two ways, as 'domination' (*dominio*) and as 'intellectual and moral leadership' (*direzioni*)."[22] Whereas the former exacts compliance through force or coercion, the latter recruits the willing consent of the members of subordinated groups through persuasion. The achievement of the second kind of

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[21] Both the differences and commonalities mentioned in the text seemed important to critics of colonialism and imperialism. E.g., Frantz Fanon lampooned colonists' use of the "discourse of the equality of the human person" to mask their unequal concern for the lives of colonized people. He identified with clarity and precision the different causal and ethical roles of the members of the two groups in the history of colonialism and in the end of it. But he also characterized the revolutions by peoples in the Third World as aiming to "rehabilitate the human being, to make the human being triumph everywhere" (*réhabiliter l'homme, . . . faire triompher l'homme partout*). Frantz Fanon, *Les Damnés de la Terre* (Paris: Gallimard, 1991), 122–3, 140.

[22] *The Antonio Gramsci Reader*, ed. D. Forgacs (New York: New York University Press, 2000), 249 (see also 195, 205–6, 211–12, 306–7, 333–4, 345).

supremacy is what Gramsci called "hegemony." Hegemonic mechanisms involve (inter alia) normative discourses that capture some of the interests of the members of subordinated groups while being on balance tilted in favor of the interests of the members of the group shaping the discourses, thus cementing the power of the latter over the former.

Might human rights discourse work as a hegemonic device? Some believe that it does. Each contender in the Cold War used human rights discourse to bleed support from the other: the USSR emphasized the underperformance of the US regarding the civil rights of African-Americans and the social rights of workers, and the US criticized the violations of freedom of speech, association, and political participation in the countries under Soviet control.[23] Each funded purportedly non-governmental human rights organizations that articulated these criticisms.[24] Some characterize human rights discourse as a tool wielded by capitalists to cement their power in the contemporary global economy. According to Evans, "[h]uman rights are conceptualized as the freedoms necessary to maintain and legitimize particular forms of production and exchange"; they focus on a "set of values delimited by an assumed normative consensus that legitimizes activities associated with market discipline, specifically, negative rights and those associated with property."[25] There is also the general suspicion that the "enforcement of human rights by the international community is determined, in practice, by the foreign-policy imperatives of the major powers."[26] At the limit, human rights are invoked as part of the justification of coercive interventions that in the eyes of many are primarily motivated by economic or geopolitical interests rather than by human rights concerns. For example, many think that the American invasion of Iraq was about control of oil rather than about responding to international terrorism or promoting democracy. Finally, there is the widespread phenomenon of inconsistent implementation. The US ratified the ICCPR but not the ICESCR. While it criticized the Soviets for trampling on civil and political rights, it supported the dictatorship of Pinochet in Chile, which violated both in egregious ways. It is common for foreign aid to be focused on countries with which the donor country has extensive trade links, disregarding other countries even if they need more help.[27] International prosecution and criticism for

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[23] Glendon, *A World Made New*, ch. 11.

[24] Simmons, *Mobilizing for Human Rights*, 47–8.

[25] *The Politics of Human Rights*, 43, 44. Evans also stresses how socioeconomic (and even political) rights are ignored and undermined to create attractive conditions for investment and intensive exploitation of labor by multinational corporations. Such corporations have extensive influence on governments and international decision-making agencies (such as international trade organizations) (ibid., 44–5, 50).

[26] Brown, "Universal Human Rights: A Critique," 53–4. See also Žižek, "Against Human Rights."

[27] The Harper administration of the Canadian government decided to end its aid efforts toward several countries, alleging that the "operation costs" were too high. Many of those

war crimes commonly targets leaders of poor countries, but very rarely if at all leaders of powerful countries.[28] These phenomena seem to support the view that human rights discourse surfaces in strong ways only when it is likely to serve the strategic interest of powerful agents.

The foregoing considerations obviously do not warrant Inexistence. The instrumental use of human rights talk does not disprove the existence of the human rights talked about. In fact, it exploits the widespread and independent conviction that those rights exist. What about Abandonment? Would the relatively powerless be better off if human rights were not part of the domestic and international political vocabulary? As I said before, this is hard to ascertain. But there are reasons to think that the use of human rights discourse has very important positive effects. To begin with, human rights are not only invoked by the powerful. Appeal to them was, and is, a common normative resource in the struggle of subaltern groups such as women under patriarchal regimes, the working poor in wealthy and developing countries, and mistreated prisoners across the world. Second, hegemonic manipulations can be unmasked and criticized by referring to human rights. For example, contemporary international and domestic economic arrangements can be faulted for their violation of the human rights of workers in sweatshops and their association with political regimes that flout the civil and political rights of protesters. Third, although human rights discourse can be coupled with different wider normative conceptions of social organization (such as capitalism and socialism), it imposes constraints on them by identifying a minimum of decency and dignity for any agent subject to their rules. Even if human rights discourse is subject to hegemonic articulations, it involves recognition of a form of basic justice that should be welcomed rather than dismissed. It would be worse if such basic moral core were not on the table as something to reckon with (even through manipulation). Finally, as Koskenniemi points out, the hegemonic pattern of discourse has the pragmatic consequence of helping build an international political community in which general rights and duties are routinely invoked and discussed, and this forces players in the hegemonic game to be more inclusive of the interests of others.[29] I would go further: the moral language game of human rights has a tendency to subvert merely strategic reasoning. It does so by invoking constraints of symmetric regard and impartial concern between human beings. These are never reducible to

countries were among the poorest in the world. On the other hand, Canada would continue its support to countries with which it had ongoing trade agreements or in which it was carrying out significant business activity, even though several of them were significantly less poor. Fawzia Sheikh, "Canada cuts aid budget but middle-income trade partners unaffected," *Guardian* (May 2, 2012).

[28] Evans, *The Politics of Human Rights*, 31.

[29] Martti Koskenniemi, "International Law and Hegemony: A Reconfiguration," *Cambridge Review of International Affairs* 17 (2004), 197–218.

the search for strategic advantage: although they might at times coincide with it, they may also be used to challenge its tendency to select norms that downplay the needs of the weak, or to apply appropriate norms inconsistently. The moral component of hegemonic devices has independent significance.

So, we probably should not abandon the human rights project. But the worries about hegemonic manipulation are of course very serious. They give rise to the following desiderata regarding Shaping.

(D4) *Multilateral authorization*:   Responding to the problem of corruption of human rights discourse by unilateral international interventions, we should pursue "an international regime combining a mechanism for approval of unilateral protective efforts with a capacity to apply incentives to encourage fidelity to the efforts' purposes."[30]

(D5) *Prioritizing the worst off*:   In proposing and assessing the desirability of international actions to promote human rights, we should primarily focus on those whose human rights situation is the worst.[31]

(D6) *Encouraging imagination of multiple articulations*:   Human rights can be components in different wider conceptions of social justice. We should be open to these different articulations, both to respond to discursive manipulation and to foster wider support for the human rights project.

(D7) *Public reasoning*:   In proposing and assessing invocations of human rights in domestic and global politics, we should promote practices of public reasoning in which we can impartially test their fairness and consistency.[32]

4.2.2.3. Humiliation and Solidarity

Another power-related worry about human rights practice is that it encourages a pattern of social relations in which some people's agency is downplayed while others' is unduly exalted. Those undergoing human rights deprivations

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[30] Beitz, *The Idea of Human Rights*, 207. Allen Buchanan and Robert Keohane, "The Preventive Use of Force: A Cosmopolitan Institutional Proposal," *Ethics and International Affairs* 18 (2004), 1–22.

[31] This is a pro tanto consideration, which might be outweighed. One example concerns effectiveness: the situation in country A may be worse than in country B, but those in country C (the ones undertaking human rights supportive action) may be significantly more able to affect B than A. Another case concerns responsibility to compensate for harm: those in C may have to prioritize action regarding B if they have been complicit in bringing about the human rights deficit in B (but not in A, or less so).

[32] D7 is wider than D4, including domestic and international public debate that shapes opinion but not directly decision-making in specific institutions. Delving into the social epistemology of modern human rights practice, Allen Buchanan argues the practice seems to already have important resources to counter bias, which could be developed further. Buchanan, "Human Rights and the Legitimacy of the International Order," *Legal Theory* 14 (2008), 39–70. E.g., non-Western people have significantly influenced the shape of international human rights doctrine since their entrance into various international human rights forums after decolonization.

are seen as helpless victims, and those stepping in to help are seen as active saviors.[33] What is wrong with this pattern? Although critics are not fully explicit on this question, it seems that there are two worries, one factual and the other normative. The factual objection is that the description of processes of human rights deprivation and amelioration by reference to victims and saviors is inaccurate. Those undergoing human rights deprivations may have been causally involved in their own deprivation. Perhaps they are partly responsible for their current situation because of their not having taken available steps to protect themselves (for example, by engaging in political collective action more often to fight dictators, politicians' corruption, etc.). And perhaps they are, or could be, much more active in the process of amelioration. The "saviors," on the other hand, may not really be able to do much unless they engage the active agency of those undergoing deprivations. They cannot on their own reorganize the social life of the "victims."

A normative consideration operating in this worry is the following:

(D8) *Non-humiliation*:   When some agents help others to overcome situations of human rights deprivation, the former should acknowledge, and engage, the initiative and active agency of the latter.

This is an important desideratum for the shaping of the human rights project.[34] We should respect other people's agency by seeing them as active shapers of their own social life—at least so far as the fulfillment of their human rights is concerned. This point can indeed be used to criticize some forms of humanitarian intervention that see those whose human rights are violated as mere victims to be saved by other, powerful agents. Sometimes the "victims" bear some responsibility for their condition; and sometimes they can, and should, be among the key political players in the struggle for improving their condition. We disrespect people if we fail to recognize the extent to which they are active agents.

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[33] Mutua, *Human Rights*, ch. 1. See also Kennedy, *The Dark Sides of Virtue*, 29. Žižek claims that "[t]oday's 'new reign of ethics'... [invoked by human rights advocates] relies on a violent gesture of depoliticization, depriving the victimized other of any political subjectivation" ("Against Human Rights," 128).

[34] Its disregard of course does not warrant the claim that there are no human rights, and it has not in fact been so widespread as to support Abandonment. Simmons responds thus to Mutua's worry that the human rights movement is framed by a narrative of "saviors" rescuing "victims" from "savages": "*Treaty commitments are directly available to groups and individuals whom I view as active agents as part of a political strategy of mobilizing to formulate and demand their own liberation*. Rather than viewing international law as reinforcing patriarchal and other power structures, the evidence suggests that it works against these structures in sometimes surprising ways" (*Mobilizing for Human Rights*, 7). When governments explicitly commit to human rights international law, they raise the expectations of domestic and foreign political actors, who then press for the fulfillment of those commitments with various means (litigation being just one of them).

However, we should not exaggerate the concern about independent agency. Another important point is that we should take reasonable steps to help other human beings in need. It is a pervasive fact of human existence that people need help from others to avoid the bad and achieve the good. This of course also applies to the most urgent forms of the bad and the good, which human rights track. Sometimes others simply cannot successfully defend their rights on their own. Sometimes dictators will crush their dissent and systematically torture and kill them. Sometimes their hunger can end but is not terminated in the near future because the needed and reasonably available external help is not provided.[35] As a matter of fact, human beings can achieve little in the way of satisfaction of their most urgent interests without the active help of others. An ideal of radical independence or self-sufficiency is infeasible. It seems also unappealing because it misses the significance of cooperation and community in social life. We thus have reason to accept:

(D9) *Solidarity*:   We should help others achieve conditions in which their human rights are fulfilled.

In fact, the value underlying this desideratum is among the key ones animating the human rights project. Article 2 of the UDHR calls on all human persons to act in a "spirit of brotherhood." Solidaristic support to achieve the fulfillment of human rights is owed both domestically and internationally. To fully express and elaborate this value, the human rights practice needs to avoid a narrow emphasis on independence. Such emphasis undermines the application of D9: it fosters feelings of shame in those seeking help, and of guilt in those helping. This is unfortunate: rights can, and should be seen, as a way of marking our need for and commitment to support each other in the search for a decent or dignified life.[36] Human rights practice should be shaped by a form of *respectful solidarity* that combines D8 and D9.

4.2.2.4. Bourgeois Ideology and Deep Change

Although it was not focused on contemporary human rights but on the "natural rights" claimed in the modern bourgeois revolutions, Karl Marx's critical remarks on rights (especially in his early text "On the Jewish

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[35] Ironically, those who emphasize the worry about "victimization" risk embracing the bourgeois ideology they claim to combat: *they* may fail to attend to the phenomena of social dependency and solidarity that render the ideal of radical individual independence both infeasible and undesirable.

[36] The human rights project can involve a recognition and valuation of mutual dependency. The UDHR can indeed be seen, in Glendon's apt phrase, as a "Declaration of Interdependence" (*A World Made New*, ch. 10). On the relations between human dignity, empowerment, and solidarity, see chapter 7 of this book.

Question") have been extremely influential. Given this influence and the insights they involve, I will discuss four of them:

(A)   Modern bourgeois revolutions involve "political" but not full "human emancipation." They introduce a package comprising "the rights of the citizen" (that is, political rights to assemble, vote, etc.) and the "rights of man" (rights to free speech, personal security, private property, etc.) that achieves the dissolution of feudal society. But this package involves a dualism that is multiply problematic. The division between the political community or the state, and the private sphere or civil society functions in such a way that the former (and its abstract forms of equality, freedom, and brotherhood) masks, permits, affirms, depoliticizes, and is a means to preserving the latter (with its pervasive egoism and inequalities of social power).[37]

(B)   The specific "rights of man" invoked in the French and American Revolutions are the claims of "egoistic man, of man separated from other men and from the community."[38]

(C)   Rights discourse neglects the differences among individuals, condoning problematic inequalities. For example, in the first stage of a communist society in which distribution is based on a right of each to receive according to their productive contribution, those with greater native productive talents will be better off than others who exert the same amount of effort in their productive activities. The best society will be one in which we move beyond this inherent limitation. Thus, the final stage of communist society would instantiate the slogan "From each according to his ability, to each according to his needs."[39] This society lies beyond the realm of rights.

A general claim underlying much in Marx's (and many Marxists') challenges is this:

(D)   The "rights of man" are presented as universal, but often they articulate the specific interests of specific groups of people in specific societies (such as the interest of the bourgeoisie in private property over productive assets).

Each of these points involves important and true insights but also mistakes and exaggerations. I will briefly discuss them. I will also consider how they might apply to contemporary human rights. This is not the context Marx had in mind, of course. But some contemporary writers extend these points to

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[37] Karl Marx, "On the Jewish Question," in *The Marx–Engels Reader*, ed. R. Tucker, 2nd ed. (New York: Norton, 1978), 26–52, at 34–43. An insightful characterization of (A) can be found in Wendy Brown, *States of Injury* (Princeton, NJ: Princeton University Press, 1995), ch. 5.

[38] "On the Jewish Question," 42–3.

[39] "Critique of the Gotha Program," in *The Marx-Engels Reader*, 525–41, at 530–1.

human rights, and it is in any case a worthy exercise to consider the plausibility of such extension.[40]

(A) involves two important insights. First, rights-talk emerges in specific historical circumstances. To understand the former, we do well to attend to the latter, which include certain power dynamics. This point is relevant for understanding contemporary human rights talk, and is indeed a key motivation for this chapter. Marx is also correct to think that what he calls "political emancipation" is not enough: without important changes in the economy, the "freedom," "equality," and "brotherhood" announced in the political sphere will be compromised.

There are, however, two problems with (A). First, it seems to ignore that political rights can be exercised to reshape the egoistic economy Marx says they are bound to presuppose. In fact they have been exercised in that way in the development of welfare states. Welfare states stop short of socialism, of course, but they go well beyond laissez-faire capitalism. Political power and socioeconomic power interact in complex ways that do not always fit the functionalist picture involved in (A).[41] Second, it is true that the distinction between the public and the private can be, and has been, used to obscure the problematic power relations operating in the latter (such as the exploitation of labor in factories, or the physical abuse of women in households). But the idea that there should be areas of personal life that are relatively free from public monitoring is in fact an achievement of modern liberalism that should be retained. I think that Marx would have agreed with this given that his socialism had significant libertarian components and was explicitly opposed to forms of communitarianism (or what he called "primitive communism") that obliterate individuals' self-differentiation and liberty. But for as long as conflicts between personal and collective autonomy are likely (I think this likelihood is inescapable, but Marx disagreed—more on this below), some distinction between the public and the private, and some rights protecting the latter from abuses by majorities capturing the former, will make good normative sense. These personal freedoms are not *capitalist* liberties to own means of production and exploit workers, but entitlements (qualified by whatever important constraints of fairness are appropriate) to some levels of non-interference in our personal affairs and relationships.

(B) also involves important insights. It is true that some of the alleged rights advocated in bourgeois revolutions protected egoistic, instrumentalist, or exploitative forms of economic interaction, and this seems problematic from

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[40] E.g., Costas Douzinas invokes versions of (B), (C) and (D) in "*Adikia*: On Communism and Rights," in C. Douzinas and S. Žižek, eds., *The Idea of Communism* (London: Verso, 2010), 81–100. Žižek invokes versions of (A) and (D) in "Against Human Rights."

[41] For exploration of the debates on this issue within the socialist tradition, see Erik Wright, *Envisioning Real Utopias* (London: Verso, 2010).

the point of view of human emancipation. It is also true that rights-talk sometimes presents some capitalist liberties as if they protected universalizable interests. Marx is correct to worry about the tendency to make modern, capitalist, "egoistic man" into the "natural" or "authentic" one.[42] However, Marx's discussion of the "rights of man" of the French (and American) revolution is too narrow, and his sweeping dismissal of them is unacceptable. We simply cannot accept that liberal individual liberty rights are just shields for bourgeois egoism. Liberty of conscience and freedom of the press (both mentioned in the French Declaration) are extremely important rights that any social system that recognizes the significance of people's capacities to shape their own life from within would have to include. Marx is also mistaken to assume that "equality" is of no political significance. It is not true that it only means the "equal right to liberty...[for every man as a] self-sufficient monad."[43] The recognition of formal equality and equal liberty are (even if insufficient) enormous achievements. They were denied people in feudalism, and they would become templates to be developed further in substantive ways through the identification of various new specific liberties and through their extension to larger sets of persons (such as slaves, workers, and women).[44] The idea that all persons should have equal legal entitlements is an undeniable triumph against the earlier assumption that some deserve more rights than others, or are inherently more worthy of respect and concern. Second, Marx's criticisms definitely do not apply to standard contemporary lists of human rights (such as the UDHR). These do not entail capitalist property rights. And they include numerous socioeconomic rights (see UDHR, Articles 22–6, which include social security, appropriate remuneration for workers, rest and leisure, health care, educational opportunities, etc.). They also state domestic and global duties to cooperate with the fulfillment of socioeconomic (and other) rights. So even if Marx is correct to criticize the narrow emphasis on independence and separateness in early liberal individualism, current human rights discourse and practice is explicitly attuned to the need for, and obligation to give, solidaristic support.

Turning to (C), Marx seems to me correct to criticize the so-called "contribution principle" (captured in the slogan "To each according to their contribution") in that its application is consistent with inequalities of outcome that arise from morally arbitrary differences in individuals' natural endowments. I also find the slogan "From each according to their abilities, to each

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[42] "On the Jewish Question," 46.   [43] Ibid., 42.

[44] Lynn Hunt, *Inventing Human Rights: A History* (New York: Norton, 2007), chs. 3–4. On the need for socialists not to dismiss human rights, see Robin Blackburn, "Reclaiming Human Rights," *New Left Review* 69 (2011), 126–38. For a fruitful exploration of how human rights discourse involves many (sometimes opposed) strands, which include the articulation of various leftist social movements around the world, see Helio Gallardo, *Derechos Humanos Como Movimiento Social* (Bogota: Ediciones Desde Abajo, 2006), 62–97.

according to their needs" appealing as it involves a more desirable view of social cooperation that captures both the importance of reciprocal contribution and sensitivity to difference.[45] More generally, it is true that the application (and even the formulation) of rights often fails to capture the relevant differences among individuals. We can derive important desiderata from these points. The emphasis on responsibility towards others was captured in D9. We can add:

(D10) *Sensitivity to diversity*: In formulating, justifying, and implementing human rights, we should be sensitive to important differences among individuals.

Clearly, even if two individuals have the same rights, they may need different specific policies to attend to their fulfillment given relevant differences between them. This is already expressed in the human rights movement— for example, through the generation of instruments identifying specific needs and claims on the part of certain groups (such as the Convention on the Elimination of All Forms of Discrimination Against Women and the Convention on the Rights of the Child).

Marx's dismissal of the idea of rights is however too sweeping. As we saw, differences *can* and *should* be incorporated in rights discourse and practice. Even if people have equal rights to a decent standard of living, they may need different things to achieve it: some cannot walk and need wheelchairs or ramps to access buildings, others need special medicines, some are very young and need special nutrition, some are very old and need special care. Rights-talk need not be abstract in ways that obscure important differences. Even though relatively abstract, rights claims can be framed to protect individuals against likely threats and problems that arise in their social life. Their formulation could address types of social circumstances to be avoided or promoted. This can happen at different levels of generality.[46] On the other hand, some amount of abstraction is unavoidable in lumping cases under common headings (as any set of rules must). Some of the problems might be solved by breaking types into important sub-types either in the formulation of specific rights or at the level of the policies that implement them (this is what D10 would demand). But the tension between standardization and singularity is likely to remain. We can only seek to navigate it through lucid contextual judgment. Of course, this would not be necessary in a society of superabundance and dissolution of serious conflict of interests (which Marx might seem

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[45] Pablo Gilabert, "The Socialist Principle 'From Each According To Their Abilities, To Each According To Their Needs'," *Journal of Social Philosophy* 46 (2015), 197–225.

[46] As argued in chapter 2, rights can be articulated at different levels of abstraction or specificity. Differences among individuals can be articulated at any of these levels, depending on their practical relevance.

to envisage for the higher phase of communism in "Critique of the Gotha Program"). This society would be one in which rights-talk is no longer necessary: everyone would as a matter of course get what they need. But such a prospect seems wildly infeasible. In any case, for as long as it is not achievable, we will encounter scarcity, conflict, and power differentials. We will need normative guidelines for addressing such circumstances. And the rights idiom (properly understood) is suited to that important task.

Finally, regarding human rights, it is important to notice that they mostly are basic sufficientarian demands.[47] Thus, socioeconomic human rights fall well short of socialist demands of equality. But there is no necessary conflict here. Socialist rights can be seen as including human rights as a proper subset. One can campaign for both. Still, the distinction is morally and politically important. Human rights are far more morally urgent than their complement in the socialist ideal. And one should be willing to achieve broader political alliances with those who endorse human rights but not socialist rights if this is necessary to immediately stop the evils of human rights violations (such as torture, starvation, and political oppression). On the other hand, the Marxian suspicion about just focusing on human rights is in order. If inequalities outside the domain of human rights are too wide, then perhaps not even the most basic human rights will be secure. For example, if inequalities of wealth and economic power are very deep, they may corrupt the political system, making it unlikely to impose the regulations needed to keep people out of severe poverty. Many contemporary capitalist societies exhibit this problem. Thus, broader, even if not distinctly socialist, economic reforms may be necessary to secure human rights themselves.

I will not comment on (D) because I have already covered the relevant issues when introducing desiderata D4–D7. D4–D7 can also be seen as responses to the threat of ideological manipulation. Their fulfillment would help disrupt the presentation of the contingent as necessary, the particular as universal, and the temporary as invariant. Marx's concern is clearly worth taking on board. I will return to this issue in section 4.3.

Another important issue inspired by critical considerations of the kind Marx introduced is the issue of "structural change." Many power-related discussions about human rights worry that human rights discourse is superficial because it does not address the causes of human rights deprivations. To do so, we should focus on the economic and political structures that frame domestic and international relations. Mutua, for example, says that we should

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[47] I say "mostly" because, like Allen Buchanan, I believe that there is an important status-egalitarian dimension of human rights which is expressed in legal entitlements against discrimination in various social and political activities. See Buchanan, *The Heart of Human Rights*, 28–31. David Miller argues against this egalitarian component in "Human Rights and Status Egalitarianism," *Ethics & International Affairs* 30 (2016), 461–9. I return to the issue of the relative expansiveness of human rights in Part III of this book.

critically discuss capitalism, imperialism, and the market economy besides merely regulating their worst outcomes.[48] Others worry that the human rights movement is narrowly focused on developing legal frameworks for holding individuals responsible, without addressing the circumstances that enable or encourage them to undermine human rights. The underlying desideratum seems to be this:

(D11) *Deep change*: In pursuing the fulfillment of human rights, we should seek to change economic and political structures and other deep factors that constitute human rights violations or make human rights deprivations likely.

This desideratum is appealing. In fact, even many of those who focus on international human rights law accept it.[49] But this does not show that legal instruments are not important. They have enabled citizens to effectively force their government to act to protect their rights (as is the case, for example, with Colombian women fighting for their reproductive rights by pressing their government to honor its ratification of CEDAW[50]). Furthermore, some human rights directly capture deep structural dimensions, as is the case with the strong political rights envisioned in UDHR (e.g., Art. 21) and ICCPR (e.g., Art. 25). The practice can, and should, go further by addressing features of the international order. Thus, Thomas Pogge has recently discussed the need to change features of that order that enable and incentivize the formation of authoritarian governments that violate their citizens' rights (such as the international privilege to sell the natural resources they seize, and to purchase weapons they use to suppress dissent).[51] Others have emphasized the need to change trade regimes and the governance structures of international institutions such as the WTO in order to facilitate fair trade, which could help millions to escape severe poverty.[52] These efforts reflect (D11), and are in tune with the important, framing Article 28 of the UDHR, according to which "Everyone is entitled to a social and international order in which the rights

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[48] Mutua, "Human Rights and Powerlessness: Pathologies of Choice and Substance," *Buffalo Law Review* 56 (2008), 1027–34, at 1027. See also Kennedy, *The Dark Sides of Virtue*, 11. It is true that socioeconomic rights have been downplayed by Western governments and many international NGOs. But this has started to change. The UN Millennium Goals included targets regarding poverty eradication, and NGOs such as Oxfam and (recently) Amnesty International have been focusing on economic deprivation. Still, more focus on "economic tyranny" and "economic powerlessness" is necessary if "asymmetries of power" are to be seriously addressed (Mutua, 1029, 1033).

[49] Simmons, *Mobilizing for Human Rights*, 366.   [50] Ibid., 245–53.

[51] Pogge, *World Poverty and Human Rights*, 2nd ed. (Cambridge: Polity, 2008), chs. 4 and 6.

[52] Joseph Stiglitz, *Making Globalization Work* (New York: Norton, 2006), ch. 3. For a philosophical account of global justice centered on the responsibilities of powerful agents shaping international relations, see Richard Miller, *Globalizing Justice: The Ethics of Poverty and Power* (Oxford: Oxford University Press, 2010).

and freedoms set forth in this Declaration can be fully realized." More efforts of this kind are obligatory.

4.2.2.5. *Political Action in Non-ideal Circumstances*

A final desideratum I want to identify is this:

> (D12) *Non-ideal ethical reasoning*:   In pursuing the fulfillment of human rights we may encounter situations in which sufficiently many others act in ways that thwart that fulfillment, or do not act in ways that support it. In such non-ideal circumstances, we may follow special guidelines for action that would not apply in different, ideal circumstances.

The need for distinguishing between ideal and non-ideal normative reasoning, and the significance of the latter for politics, are important issues that are becoming salient in debates in political philosophy.[53] I have defended elsewhere the need to engage in non-ideal theorizing when it comes to the pursuit of global justice and human rights.[54] And, in chapter 3, I have emphasized the need for acknowledging what I call *dynamic duties*. These duties are focused on expanding agents' capacities for political action so that more extensive implementations of human rights become more realistic. In the present context of discussion, this requires a hard look at power relations: the power of those blocking human rights pursuits must be limited, the power of those seeking their fulfillment must be expanded, and choices involved in such processes will include tradeoffs that would not be necessary in ideal circumstances in which the implementation of human rights is more feasible and more systematically embraced by influential actors. I thus agree with Kennedy that we need to adopt a pragmatic approach that is sensitive to both desirable and undesirable consequences, including costs, risks, and uncertainty—the "darks sides" of the human rights practice—in order to better realize its goals.[55] This requires from political actors an ethical sense of responsibility: they have to weigh the moral significance of alternative forms of action (and inaction), and choose those that are, in their best judgment and overall, no worse than the alternatives.

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[53] Laura Valentini, "Ideal vs. Non-Ideal Theory: A Conceptual Map," *Philosophical Compass* 7 (2012), 654–64.

[54] Pablo Gilabert, *From Global Poverty to Global Equality: A Philosophical Exploration* (Oxford: Oxford University Press, 2012), chs. 4 and 7.

[55] *The Dark Sides of Virtue*, 3–8, 327–57.

4.3. BUILDING EMPOWERMENT INTO
THE HUMAN RIGHTS PROJECT

4.3.1. Power as an Obstacle and as a Resource
for Human Rights

In section 4.2.1 I emphasized the distinction between descriptive and normative claims about human rights and power. In section 4.2.2 I identified some desiderata for shaping the human rights project to attend to important issues regarding power. Such desiderata combine descriptive and normative considerations without conflating them. Their full exploration would of course require the identification of specific agents, institutions, and modes of action. But such an exploration is beyond the scope of this chapter. In what follows I will instead focus on a more general and framing issue about how to design a strategy that responds to the desiderata regarding power and human rights. The strategy I propose suggests that we build empowerment into our view of human rights. The first step in developing this view is that we notice that the moral valence of power for human rights is not always negative.

A way to get to this point is by considering the insightful account of the relation between power and human rights provided by Stammers.[56] At the level of description, Stammers claims that rights-talk has been used in history both to "challenge" and to "sustain" certain relations of asymmetric power. Thus, in some forms of liberalism, some "innate" rights to liberty were invoked to challenge state power, but they were also used to sustain capitalists' economic power in the private sphere. In some forms of socialism, the socioeconomic rights of workers and others were invoked to challenge the economic power of capitalists, but they were also used to sustain state power in societies that denied civil and political rights to their citizens. Finally, the right to the self-determination of peoples was invoked to challenge imperialism and colonialism, but was used by some elites within Third World countries to sustain their privileges and control of state power. Similar claims might hold for forms of power concerning gender, sexual orientation, and race. At the normative level, Stammers suggests that we see human rights as justified challenges to certain existing forms of power. We can see them as responding to "standard threats of power" (a notion he coins by modifying Henry Shue's notion of "standard threats"). Human rights can thus be seen as a "set of protection rights."

I find Stammers' descriptive and normative accounts illuminating and sound as far as they go. But they are insufficient and potentially misleading. First, the normative proposal is too narrow. Power is not only something human rights relate to by identifying forms of protection as an *obstacle or*

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[56] Neil Stammers, "Human Rights and Power," *Political Studies* 51 (1993), 70–82.

threat. Power can also be enabling for human rights—that is, a *resource*. To capture both possibilities we should focus on the significance of power for people's ability to access objects that satisfy important or urgent interests. *Protection rights* are rights that people have against others using power in ways that undermine access to those objects. *Enablement rights* are rights to have power *to* access those objects. Noticing this distinction (and the plausibility of both elements in it) suggests another problem with Stammers' normative proposal. Since what grounds human rights is not just the presence of power threats, but also the importance of the interests that are threatened (or whose fulfillment is not enabled), the content of human rights cannot simply be identified by looking at power relations. We also need to look more broadly at forms of social action that would facilitate access to the objects of urgent human interests. (There is a counterpart at the descriptive level: we need to explore *enabling* besides *disabling* forms of power relations.) Preventing undesirable power disparities, or blocking their undesirable consequences, should not be the only animating concerns. Human rights are about securing a decent or basically dignified life for all. This includes, but goes beyond, avoiding or protecting people from power threats. Our understanding of human rights should be power-sensitive but not narrowly power-centered.

4.3.2. An Expressive-Elaboration Model

In a way, normative talk about moral human rights and descriptive talk about power are like oil and water: they always come apart. Might doesn't make right (as Rousseau famously said[57]), and rights don't make might (as the history of rights violations amply show). But descriptions of power in human rights practice are relevant for a full picture of normative reasoning about human rights. We can incorporate power analysis *within* the normative framework to identify the feasibility and contents of various human rights. In this way, we integrate, and complement, the insight from the last two chapters regarding the importance of paying attention to feasibility considerations and the specificity of political practice.

   We can develop an *expressive-elaboration model* of empowerment within the human rights project. We can, first, elaborate the content of specific rights as requiring that the right-holders have power to access certain goods. To properly respond to an agent's right to a certain object O is to take reasonable and feasible steps to respect, protect, and promote the agent's capability to get O if they choose to do so. Second, when we engage in this elaboration we can express our commitment to agents' empowerment by recognizing their right

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[57] "[F]orce does not make right." Jean-Jacques Rousseau, *The Social Contract*, in *The Social Contract and Other Later Political Writings* (Cambridge: Cambridge University Press 1997), 44.

to participate in it as equal partners. We can see the meta-level practices of discovery, justification, and implementation of various ground-level human rights as themselves areas of empowerment that we should take reasonable and feasible steps to respect, protect, and promote. Both of these points would incorporate the dimension of power as a resource mentioned in section 4.3.1.

Let me note two important potential consequences of pursuing the approach recommended here. First, this approach has consequences for what human rights we should accept. The second point, for example, demands that we see strong political rights (including democratic rights) as part of the human rights package. Political rights are important in themselves because they involve the recognition of agents' capacity for political judgment and self-determination. They are also instrumentally significant because they enhance agents' power to identify, implement, and defend their other rights. (Notice that this includes both the protection and enablement considerations mentioned in section 4.3.1.) This is an important result given the skepticism that some philosophers have recently voiced as to whether there is a human right to democracy.[58]

Second, this approach would help us cater for the desiderata identified in this chapter. The kind of empowerment envisaged in the first (ground-level) point would cater for D2, D5, D8, D10, and D11. If we construe human rights as demanding capabilities to achieve their objects, then we foster right-holders' ability to determine whether they get the objects of their rights (D2), we can focus on bolstering the capabilities of the worse-off to do so (D5), we activate the initiative of rights-holders to shape their own condition (D8), we enable ourselves to focus on what they need to have the power to get the objects of their rights given their diverse circumstances (which affect their power) (D10), and we are moved to explore deep changes that give them abilities besides formal opportunities to achieve a decent or basically dignified life (D11). If we also incorporate the second (meta-level) point, then we will also be well positioned to cater for D1, D2, D3, D4, D6, D7, D8, and D10. If we construe the human rights project as fostering robust and cooperative practices of political self-determination, then we can foster multiple arenas of formal and informal, domestic and international political participation in which agents can engage in public reasoning (D7) and decision-making, revise their beliefs about what various agents do, can, and should do to fulfill rights (D1 and D3), minimize unilateral coercive imposition (D2 and D4), engage others as equal cooperators in the project of fulfilling human rights (D8), and

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[58] See the detailed discussion in chapter 10 of this book. I should emphasize that political empowerment involves many possible expressions, from democratic decision-making, to public reasoning, to protest and rebellion. The full panoply must be considered, especially when facing non-ideal circumstances as desideratum D12 demands. See Gilabert, *From Global Poverty to Global Equality*, ch. 4. For an earlier discussion of the idea of an expression-elaboration model, see Pablo Gilabert, "A Substantivist Construal of Discourse Ethics," *International Journal of Philosophical Studies* 13 (2005), 405–37.

envisage multiple possible ways of fulfilling human rights that are appropriate for different individuals in different circumstances (D6 and D10).

4.3.3. Power and Solidarity

The remarks made in sections 4.3.1 and 4.3.2 emphasize the need to build empowerment into the theory and practice of human rights. We should seek to reduce asymmetries of power, and bolster the absolute power of all to access the objects of their rights. Although these moves would help us cater for most of the desiderata identified in section 4.2, they are not sufficient for as long as significant levels of relative or absolute powerlessness (relevant for the fulfillment of human rights) persist. In fact, their complete elimination may not be feasible. But even if the elimination of relative and absolute powerlessness were feasible in the long term, in the immediate future they will exist. We will then have to think about proper ways of acting in the face of such circumstances of power. Our response should include the acknowledgment of dynamic duties to reduce relative and absolute powerlessness over time, and to immediately respond to human rights deficits in the present. But the agents of those duties here and now will often be unequal in their power, and will not always be able to thoroughly respond to existing human rights deficits. In facing these circumstances, we will be thinking about how to cater for desiderata D12 and D9. This will take us beyond the demand for empowerment, forcing us to articulate an ethics of power-wielding in non-ideal circumstances. The relatively powerful will have to wield their superior power responsibly. And the relatively powerless will have to accept the solidaristic help of others. So we will need to develop ethical standards for the use of unequal power, and envisage ways to recalibrate our sense of the importance of having power for living decent or basically dignified lives.

How can we construe the human rights project so that it gives pride of place to the solidaristic empowerment recommended by the model just sketched? In the next part of this book (Part II), I offer an interpretation of the central idea of human dignity, and argue that it helps us to systematically develop the polemical points I have been making in Part I: that we can, and should, combine universal humanist standard with specific claims in ongoing political practice, that such a practice encounters but also dynamically changes feasibility parameters, and that a solidaristic expansion and use of people's power is key for their fulfillment of human rights. A morally ambitious and practically attuned approach to human rights is one that takes these rights to support every person's valuable capacities. When people have the power to develop and exercise these capacities, they are able to secure for themselves and for others what is needed for a life that fits their human dignity. But what is human dignity? Chapter 5 turns to this question.

Part II

The Dignitarian Approach

5

Understanding Human Dignity
in Human Rights

5.1. INTRODUCTION

Calling for a decisive response that welcomes more refugees and allows them
to work, the European Commission's President Jean-Claude Juncker recently
characterized the tackling of the crisis triggered by the war in Syria as
"a matter of humanity and human dignity."[1] Human dignity is regularly
invoked by social movements, is enshrined by national constitutions such as
those of Germany and South Africa, and features centrally in the main
documents of international human rights law. It is certainly pervasive in
human rights discourse. But what is human dignity, and why is it important
for human rights? This book offers an answer to these questions. This chapter
starts to the develop this project, which defends the claim that human dignity
is the moral heart of human rights: it frames human rights discourse by requiring
it to articulate and specify the distinctive claims of the human person in social life.

 The philosophical exploration offered here proceeds as follows. In section
5.2, I identify six valuable roles that human dignity plays in human rights
discourse. In section 5.3, I develop an analytic framework and a proposal for
how to understand human dignity that illuminates its six roles. The analysis
yields a conceptual network including *status-dignity*, *condition-dignity*, *the
basis of dignity*, *the circumstances of dignity*, *basic and maximal dignitarian
norms*, and *dignitarian virtue*. The proposal argues that human dignity is an
inherent, non-conventional, non-instrumental, egalitarian, and high-priority
normative status of human persons; that persons have this status in virtue of
certain general, valuable, and important capacities; and that human rights
norms articulate and specify the appropriate responses to the dignity of the
human person in various social contexts. Thus, human dignity helps under-
stand human rights' nature, content, and justification. However, many

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[1] "Migrant crisis: EU's Juncker announces refugee quota plan" (September 9, 2015),
http://www.bbc.com/news/world-europe-34193568.

scholars have expressed puzzlement about the idea of human dignity, arguing that it lacks a clear meaning, does not play any important role in the theory or practice of human rights, and lends itself to harmful uses that in fact undermine them. This is why, in chapter 6, I deploy the resources of the account proposed in this chapter to defeat these objections. After responding to those challenges, I will proceed in the remaining chapters of this book to develop the dignitariarian program, showing how it can fruitfully frame the articulation and justification of specific rights.

5.2. USES AND ROLES OF HUMAN DIGNITY

I start by stating what I take to be key roles of the idea of human dignity in human rights discourse. In section 5.3, I propose an interpretation of the idea that illuminates how dignitarian claims can play these roles (thereby explaining them more fully).

Human dignity features quite often in political discourse. As noted above, the European Commission's President Jean-Claude Juncker recently characterized the tackling of the refugee crisis triggered by the war in Syria as "a matter of humanity and human dignity." In his speech at Trafalgar Square (in February 2005), Nelson Mandela invoked dignity to call for the end of poverty. He said that "overcoming poverty is not a gesture of charity. It is an act of justice. It is the protection of a fundamental human right, the right to dignity and a decent life."[2] Appeals to human dignity are common in public debates about abortion, assisted suicide, genetic experimentation, freedom of expression, workers' rights, democratic rights, and the rights of gay people. The appeal also surfaces in legal debates concerning torture, discrimination, privacy, forced labor, and religious freedom.[3]

The history of the idea of human dignity has been approached in different (although not necessarily incompatible) ways. One view focuses on how the Enlightenment brought about a shift in the previous construal of dignity as

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[2] See http://news.bbc.co.uk/2/hi/uk_news/politics/4232603.stm. Christopher McCrudden, "In Pursuit of Human Dignity: An Introduction to Current Debates," in C. McCrudden, ed., *Understanding Human Dignity* (Oxford: Oxford University Press, 2013) 1–58, at 1. McCrudden's text provides a valuable survey of some contemporary debates on human dignity.

[3] McCrudden, "In Pursuit of Human Dignity," 48. For illuminating surveys of appeals to human dignity in various legal frameworks, see Christopher McCrudden, "Human Dignity and Judicial Interpretation of Human Rights," *European Journal of International Law* 19 (2008), 655–724; Roger Brownsword, "Human Dignity from a Legal Perspective," in M. Düwell, J. Braaving, R. Brownsword, and D. Mieth, eds., *The Cambridge Handbook of Human Dignity* (Cambridge: Cambridge University Press, 2014), 1–22; and Paolo Carozza, "Human Rights, Human Dignity, and Human Experience," in McCrudden, ed., *Understanding Human Dignity*, 615–29.

"high status" by challenging its exclusive ascription to persons holding superior positions in social hierarchies. The French Revolution, for example, abolished aristocratic "dignities." Modern law and politics have progressively generalized what previously was seen as only appropriate for a few. The authority to make claims on others, the readiness to look them in the eye rather than be servile, and the entitlement to be treated in affirming rather than condescending ways have increasingly tended to be seen as appropriate for women, property-less workers, and the members of other disadvantaged groups.[4]

Another approach links the use of the idea of human dignity to the historical development of the human rights project.[5] Some historians start the narrative in 1848, with the decree that abolished slavery in the French empire. That decree said that "slavery is an assault on human dignity; that in destroying man's free will, it destroys the natural source of law and duty." Some subsequent deployments of the idea of human dignity challenged contemporary forms of humiliation and exploitation by linking them to the legacy of slavery.[6] Others highlight 1919, the year of the creation of the International Labor Organization and the adoption of the Weimar Constitution, both requiring dignified conditions for workers. Other landmarks are the adoption of the Irish Constitution in 1937, which refers to human dignity in its Preamble, and the adoption of the German Basic Law in 1949, whose first article declares that "[t]he dignity of man is inviolable," that "[t]o respect and protect it is the duty of all state authority," and that "[t]he German people therefore acknowledge inviolable and inalienable human rights as the basis of every community, of peace and of justice in the world."[7] More recently, the

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[4] Elizabeth Anderson, "Human Dignity as a Concept for the Economy," in M. Düwell et al., *The Cambridge Handbook of Human Dignity*, 492–7. Anderson notes the salience of these points within human rights discourse, and she emphasizes the "specifically symbolic, expressive aspects of dignity" (p. 497). See further Jürgen Habermas, *The Future of Human Nature* (Cambridge: Polity, 2003), 37; Habermas, "The Concept of Human Dignity and the Realistic Utopia of Human Rights," *Metaphilosophy* 41 (2010), 464–80; and the extensive historical discussions in Michael Rosen, *Dignity* (Cambridge, MA: Harvard University Press, 2012), and Jeremy Waldron, *Dignity, Ranks, and Rights* (Oxford: Oxford University Press, 2012).

[5] McCrudden, "In Pursuit of Human Dignity."

[6] Rebecca Scott, "*Dignite/Dignidade*: Organizing against Threats to Dignity in Societies after Slavery," in McCrudden, ed., *Understanding Human Dignity*, 61–77. Scott explores the invocation of human dignity and the retrospective references to chattel slavery in contemporary legal and political challenges to racial discrimination in the US and to the intense exploitation of workers in Brazil.

[7] See Samuel Moyn, "The Secret History of Constitutional Dignity" and Christoph Goos, "*Wuerde des Menschen*: Restoring Human Dignity in Post-Nazi Germany," in McCrudden, ed., *Understanding Human Dignity*, 95–111 and 79–83. Moyn emphasizes the impact of certain strands of political Catholicism as crucial to the emergence of the phrase "human dignity" within constitutions and international law during the twentieth century.

South African Constitution (1997) invoked human dignity as a foundational value,[8] and after the Lisbon Treaty (2009) the European Union Charter of Fundamental Rights enshrined human dignity in its title 1.[9]

Certainly 1948, with the adoption of the Universal Declaration of Human Rights (UDHR), was a crucial moment.[10] Human dignity undeniably features systematically in contemporary human rights discourse, and this will be my main focus. Here are some examples from central human rights documents. The first sentence of the Preamble of the UDHR refers to the "inherent dignity . . . of all the members of the human family." The fifth sentence expresses "faith . . . in the dignity and worth of the human person." Article 1 asserts that "[a]ll human beings are born free and equal in dignity and rights" and that they "are endowed with reason and conscience and should act towards one another in a spirit of brotherhood." Preceding UDHR, the UN Charter expressed a commitment to "reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small." Important documents following UDHR invoke human dignity as a key notion. The Preambles of both Covenants (the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR)) assert that human rights "derive from the inherent dignity of the human person." Human rights documents also construe specific rights in dignitarian terms. For example, UDHR presents "economic, social and cultural rights as indispensable for [people's] dignity and the free development of [their] personality" (Art. 22).

Before proceeding, let me say a word about the human rights project involved in human rights practice. At least since the end of World War II, it comprises various forms of domestic and supranational action and institutions geared to the fulfillment of a set of basic civil, political and socioeconomic rights. The key international documents of the human rights movement (UDHR, ICESCR, and ICCPR), offer a general statement of those rights. The practice of pursuing human rights is emergent.[11] It rallies around a project that is itself in the making. Human rights are a distinctive kind of moral rights.[12] A fairly ecumenical definition of them is that they are rights

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[8] Edwin Cameron, "Dignity and Disgrace: Moral Citizenship and Constitutional Protection," in McCrudden, ed., *Understanding Human Dignity*, 467–82.

[9] Catherine Dupre, "Constructing the Meaning of Human Dignity: Four Questions," in McCrudden, ed., *Understanding Human Dignity*, 113–21.

[10] Mary Glendon, *A World Made New: Eleanor Roosevelt and the Universal Declaration of Human Rights* (New York: Random House, 2001); Johannes Morsink, *The Universal Declaration of Human Rights: Origins, Drafting and Intent* (Philadelphia, PA: University of Pennsylvania Press, 1999).

[11] Charles Beitz, *The Idea of Human Rights* (Oxford: Oxford University Press, 2009), 42–4.

[12] For further commentary on the concept of human rights used here, see chapter 1, section 1.3. I focus on moral human rights, which are a characteristic and powerful resource to orient and

that are held by all human individuals at least in the contemporary world, have normative force independently of whether they are already recognized in existing legal and political institutions, may however be (and normally are) such that at least in part they should be implemented through legal and political institutions and practices, have high priority, and give rise to global in addition to merely local concern. I take these features as central to our understanding of human rights. There are of course debates about how to construe them. And it is common to qualify some of them (so that, for example, some rights are held by adult individuals but not yet by children). We will consider some of these issues as we proceed.

Reference to human dignity is pervasive in human rights discourse. But what is it? Given the wealth of uses of "human dignity" it is natural to ask whether the same concept is involved in all of them. Perhaps there are different concepts apt for different uses in different contexts. The phrase "human dignity" (and equivalents in various languages) might be uttered to express different concepts.[13] To make headway in determining what to think about human dignity in the context of human rights we could ask: What is the role, or point, of invoking the idea of human dignity in human rights discourse? The content of the idea depends on its function within the practice in which it operates. So, to understand human dignity, we must have a view of what the use of the concept is to accomplish within human rights practice. But before answering this question, we should notice that it could be construed in different ways. My goal in this chapter is not the descriptive one of elucidating an already existing concept that is used everywhere. I also do not stipulate, in a top-down fashion, a concept that should be used independently of any existing assumptions or goals. I pursue an intermediate task that consists in offering what I call a "deliberative interpretive proposal." Such a proposal is offered as a fallible contribution to ongoing debate, makes contact with some assumptions and goals in practical contexts when these are ethically sound, and suggests an articulation of the concept that may not be already fully in place. What I will

justify human rights practice. I do not assume that identifying a moral human right to x provides by itself a sufficient condition for imposing a legal human right to x (various practical considerations are also relevant to reach that conclusion), or that it provides a necessary condition for such imposition (legal rights might be morally justified on other grounds). See Allen Buchanan, *The Heart of Human Rights* (Oxford: Oxford University Press, 2013), ch. 2.

[13] And each of the concepts might be expressed with phrases other than "human dignity." Languages and cultures that do not have a phrase such as "human dignity" may have the concept of human dignity, or quite similar ones. This may have been the case in some Native American societies (such as the Iroquois) before European colonization. See Lars Kirkhusmo Pharo, "The Concept of Human Dignity in Moral Philosophies of Indigenous Peoples in the Americas," in Düwell et al., *The Cambridge Handbook of Human Dignity*, 147–54. Interestingly, some such concepts may capture not only universal ascription of intrinsic worth to all human beings, but also to the nature surrounding them (p. 152).

propose is shaped by an understanding of the valuable roles of human dignity in human rights discourse.

Let me say a word about what a *deliberative interpretive proposal* is. I will do so through a contrast with an *elucidation* and with a *stipulation*. An elucidation of a concept within a practice is a description of how agents who participate in the practice understand it. A stipulation of a concept is a recommendation that participants in the practice use it, regardless of whether they have done it already. A deliberative interpretive proposal falls somewhere in between. Like a stipulation and unlike an elucidation, its aim is not fundamentally descriptive. Its aim is deliberative in the sense that it seeks an answer to a question of the form "How am I *to* conceive of human dignity in human rights practice?" This question differs from the elucidatory question "How did I conceive, or have I conceived, of human dignity in human rights practice?" A deliberative proposal may recommend an understanding of human dignity that differs significantly from previous or current understandings, and it involves an ethical assessment of the practice. But although it is a proposal, it is not a mere stipulation. Its justification may require some continuity with the previous forms of the practice within whose continuation it is to play a role. It involves an interpretation of the practice, a view of what it has been and how it could be developed. To forestall misunderstandings, I do not say that the interpretation of the practice assumes that it is valuable. The result of the deliberative assessment may well be that the practice must be abandoned altogether. But if the practice is worthy of continuation, then one's understanding of the key normative ideas in it should take into account the valuable materials it itself provides. This is the case with the human rights practice (as opposed to, say, the practice of slavery).[14] When asking how this practice should be shaped from now on, a deliberative interpretive proposal is appropriate. A merely elucidatory answer would risk being unduly conservative, and a merely stipulative answer might turn out to be irrelevant to the practice, or involve a change of subject we would regret.

What desiderata should we have in mind when developing a deliberative interpretive proposal regarding the normative idea of human dignity in human rights practice? In general, we should seek a deliberative reflective equilibrium in which our understanding of human dignity fits well within the set of claims we have reason to make about the content and justification of

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[14] Notice, however, that the normativity of the values on which the ethical assessment of the practice relies does not depend on their having been operative, or accepted in the practice. My account of deliberative interpretive proposals is in some ways similar to the "constructive interpretation" approach to practices and normative concepts that Ronald Dworkin proposes in *Law's Empire* (Cambridge, MA: Harvard University Press, 1986), ch. 2. However, I do not simply adopt that approach because it is not fully clear to me how description and evaluation of a practice operate within it. I think it is important to distinguish the questions "What is this practice like?" and "What should this practice be like?" even if they are related.

human rights.[15] I think that at least four desiderata should play a role in this search. First, as we saw, we should seek some level of continuity with the practice if it is valuable. In this chapter, I try to honor this desideratum by surveying, and elaborating upon various uses of the idea of human dignity in human rights practice (see also appendix 1). Second, we should make proposals whose content has intrinsic ethical appeal. As I will go on to argue in the reminder of this book, human dignity should be used to pick out significant values in social life, and to help us articulate and defend morally appropriate responses to them. The practice of human rights is worth pursuing largely because, and to the extent that, it is framed in some such ethically desirable way. Third, and obviously, our proposal should offer a concept that is not intolerably indeterminate. Finally, our proposal should have justificatory power. Our account of human dignity should help us formulate and defend the human rights we have reason to accept. The account of human dignity in human rights which I start to the develop in this chapter satisfies these desiderata.

So much for the methodological preliminaries. Let us proceed with the development of the promised account of human dignity. We can start by returning to the question "What is the role, or point, of invoking the idea of human dignity in human rights discourse?" Human dignity indeed plays valuable roles in the human rights project. I will concentrate on six key roles.[16]

(R1) *Universalist humanism.* The first role of the idea of human dignity is that it helps us identify what is characteristic of human rights as norms applying to all human beings in virtue of their common humanity. As norms responding to every human being's dignity, human rights constitute a distinctive normative kind. They are humanist norms that state *universal and inherent* rights of human individuals. Human dignity raises people above their class, ethnicity, nationality, and other conventional or narrower statuses, making them basic units of moral concern and respect for everyone everywhere. "Everyone is entitled to all the rights and freedoms set forth in this Declaration without distinctions of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status" (UDHR, Art. 2).

(R2) *Justification of rights.* Second, human dignity is significant for the justification of the various civil, political, and socioeconomic human rights. Recall that the Preambles of ICCPR and ICESCR put forward the strong (and philosophically intriguing) assertion that the rights they list "derive from the

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[15] On deliberative reflective equilibrium see T. M. Scanlon, "Rawls and Justification," in S. Freeman, ed., *The Cambridge Companion to Rawls* (Cambridge: Cambridge University Press, 2003), 139–67.

[16] Although I take the roles I proceed to identify as quite significant, I do not claim that the list is exhaustive. I also note that the sixth role potentially extends beyond human rights.

inherent dignity of the human person." This point resurfaces in the Preamble of the Vienna Declaration and in the Helsinki Final Act, which says that "all" human rights "derive from the inherent dignity of the human person."

(R3) *Normative strength.* Third, human dignity underwrites the normative force of human rights. Reference to it enables us to move from statements about what is *desirable* to statements about what is *obligatory*, and from statements about human *interests* to statements about human *rights*. This bridging function is discharged by dignity because of its amphibious nature as a notion that is both evaluative and prescriptive. It signals the value of certain features of human beings (such as their "reason and conscience" and their capacity to "act in a spirit of brotherhood" (UDHR, Art. 1)). It also marks people's deontic statuses as right-holders and duty-bearers. In addition, and relatedly, reference to dignity enables us to present human rights as high-priority norms.

(R4) *Solidarity and combination of positive and negative duties.* Remarkably, human rights practice has as correlative both negative and positive duties. It requires that we do not hamper *and* that we further people's access to the objects of their rights. Reference to dignity helps understand why this combination makes sense. The dignity of persons encodes reasons to avoid destroying the valuable features that give them that status. But these reasons are also reasons to protect and help unfold such valuable features. Human rights discourse thus includes demands regarding empowerment and solidarity. For example, empowering entitlements to self-determination are affirmed through the rights to free choice of employment and to form and join unions (UDHR, Art. 23) and through the right to participate actively in the political decision-making process of one's society (UDHR, Art. 21; Vienna Declaration, Art. 25). Solidaristic duties to help the needy are affirmed through the recognition of "the right to security in the event of unemployment, sickness, widowhood, [and] old age" (UDHR, Art. 25) and through the obligation of international assistance and cooperation to secure the fulfillments of human rights in every country (ICESCR, Art. 2). It is important to support the ability of each and every individual to effectively shape the terms on which they live their lives. We have both negative duties to avoid damaging this ability in others, and positive duties to protect and enable its development. Either temporarily or permanently, everyone will need help to develop and exercise their valuable human capacities, and depend on others for it. Human rights can be seen as norms of dignified interdependence, or, as I will put it, *solidaristic empowerment*. I will articulate this ideal in chapters 7 and 8.

(R5) *Standing up.* Fifth, dignitarian language can be fruitfully used to characterize the way in which people react to social injustice. For example, the leader of the "Neo-Zapatista" movement in Mexico, Marcos, characterized (in 1996) the uprising to defend the rights of indigenous peoples as instances

of "insurrectional dignity" and "rebel dignity."[17] It is a common phenomenon that people gain a sense of dignity when they act to defend their rights, and a sense of indignity when they are servile and submit to unjust treatment.

(R6) *The arc of humanist justice.* Although my focus now is on human rights, the idea of human dignity has been used to propose norms that might go beyond them. For example, some claims of humanist justice state entitlements to access the conditions of a flourishing life, and lie beyond the common characterization of human rights as concerning access to a decent life. Human dignity frames a normative perspective that potentially includes more ambitious principles of social justice (such as those of liberal egalitarianism and democratic socialism). I will return to this point in chapters 9–11 of this book.

5.3. AN ACCOUNT OF HUMAN DIGNITY

How should we understand human dignity? A natural way to proceed is to develop an account of human dignity that explains how it can play the six roles mentioned in section 5.2. In what follows, I propose an account of this kind. I proceed by outlining a network of related notions. The idea of human dignity and its roles in human rights discourse become clear and plausible once we see how they emerge holistically within this network. Figure 5.1 identifies the key components of the network.

Dignitarian norms (e.g., human rights)

Endowment-based ——→ Status-dignity   Condition-dignity   Basic/maximal

Achievement-based

Basis of dignity   Dignitarian virtue   Abstract/specific

Circumstances of dignity
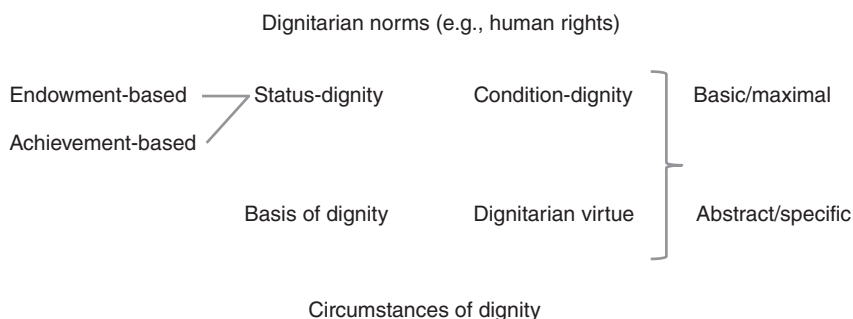
Figure 5.1. The conceptual network of human dignity

[17] The Spanish expressions are *"la dignidad insurrecta"* and *"la dignidad rebelde."* See http://enlacezapatista.ezln.org.mx/1996/01/01/cuarta-declaracion-de-la-selva-lacandona/

Understanding human dignity through a conceptual network allows us to capture, in a coherent and fruitful way, the various valuable roles that the phrase "dignity" is used to perform in human rights discourse. As will become evident in the text, this network is not a mere heap or amalgamation of disjointed notions, but a structured set. The various notions making it up are tightly related. They are also unified by the project of shaping social life—our actions and institutions—so that they satisfy distinctive claims which individuals have, whoever and wherever they are, as human persons rather than as members of this or that nation, class, racial group, or corporation. This universalism, which puts humanity first, is captured by the notion of status-dignity, which (together with the companion idea of the basis of dignity) is the fundamental component of the network.[18] I thus begin my exposition with it.

5.3.1. Dignitarian Norms and the Distinction between Status-Dignity and Condition-Dignity

The first step in understanding human dignity is to distinguish between *status-dignity* and *condition-dignity*. Human rights are dignitarian norms. As such, they relate to dignity in two ways. The first, marked by status-dignity, concerns the normative standing in accordance to which human beings are entitled to certain obligatory treatment (which the norms state), and the second, marked by condition-dignity, is the state of affairs that human beings enjoy when they are given the treatment that is owed to them (that is, when the norms are honored).

The distinction is necessary to accommodate two common uses of "human dignity" without contradiction. It is sometimes said that because they have human dignity, people may not be enslaved. It is also said that when they are enslaved, people's dignity is destroyed. Some critics use examples like this to charge dignitarian talk with incoherence.[19] But the problem dissolves once we deploy the distinction just introduced. We can coherently say that persons who are enslaved lack *condition*-dignity even though they still have *status*-dignity. It is precisely because they have status-dignity that slaves ought to be given the treatment that is wrongfully denied them.

What is status-dignity? It is a deontic normative status, a moral standing, of human individuals such that every agent who can affect them ought to treat them in certain respectful and concernful ways. There are certain (dignitarian) norms, certain rights and duties, which must be honored if the dignity of

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[18] I thank Rainer Forst, Miriam Ronzoni, and Laura Valentini for discussions on this point.
[19] Steven Pinker, "The Stupidity of Dignity," *The New Republic* (May 28, 2008).

human individuals is to be properly responded to by agents that can affect them through their actions and social institutions.[20]

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[20] As a normative status, dignity grounds certain kinds of treatment toward those who have it. If A has dignity, then every agent B ought to treat A in certain respectful and helpful ways. Moreover, in our context of discussion, if A has dignity, then A is *entitled* to certain kinds of treatment by B. The details of my account of dignity as a normative status will become apparent as the exposition of this chapter proceeds, but it is useful to have a summary statement of the contrasts with other views. So, first, the view proposed here is not based on the notion of a *ranking status*, which ties dignity to a position (with its alleged claims and privileges) held within a comparative and hierarchical social structure. Waldron explores the latter in *Dignity, Rank, and Rights*. (He suggests—although he does not develop—the possibility of a broader view of status in "Is Dignity the Foundation of Human Rights?" in R. Cruft, M. Liao, and M. Renzo, eds., *Philosophical Foundations of Human Rights* (Oxford: Oxford University Press, 2015), 117–37, sects. IX–X.) Waldron says that the modern concept of dignity extends, in a general and egalitarian fashion, a high ranking that was previously reserved to only some people at the top of social hierarchies. My notion of normative status is more general, and more basic, than that of social status. To justify or criticize forms of the latter (as they might appear in the law and other social conventions) we can appeal to the former. A normative status holds independently of whether it is recognized within existing practices, systems of law or bodies of moral doctrine. Furthermore, dignity as a normative status need not be presented in contrast with dignity as inherent worth or value. In fact, the status-dignity of human individuals is partly grounded in facts about their value (i.e., the individuals' valuable features), and the justified norms articulating the appropriate response to that dignity are informed by that value. It may be true that, as a matter of historical genealogy, the term "dignity" comes from the idea of ranking status. But even that idea must assume some connection with (beliefs about) worth or value: there must be something about those to whom high positions are ascribed that provides the ascriber with reason to treat them with respect and concern (and that, in part, must be their valuable features). Now, once we acknowledge that there are quite general valuable features of human beings that are independent of their social positions, we can link whatever hierarchical connotations remain in the idea of human dignity to the view that the equal and universal normative status people have in virtue of those features has greater normative weight than, and constrains, any specific conventional statuses they may acquire through their social (legal or other) positions.

In my account, dignity as a normative status involves reasons for agents to have respect and concern towards those who possess it. Like status-dignity, respect is understood here fairly generally (and the same goes for concern). It should not be reduced to what Rosen calls "respect-as-respectfulness" (i.e., respect that involves an expressive or symbolic component). I agree with Rosen that when someone degrades, insults, or shows contempt for someone else a specific dignitarian harm occurs. But I reject his view that it is *essential* to dignitarian harm that it is symbolic or expressive. Thus, I am not forced to accept Rosen's argument that since there are violations of human rights that do not involve expressive harm (such as the swift murdering of innocent civilians), we cannot take human dignity as important for grounding all human rights. We can justify our judgments that some forms of non-expressive disrespect involve violation of human rights by saying that such disrespect amounts to failure to comply with other, non-expressive dignitarian norms about the proper treatment that human beings are owed. See Rosen, "Dignity Past and Present," in Waldron, *Dignity, Rank and Rights*, 79–98, at 95.

My account also differs from John Tasioulas's in "Human Dignity and the Foundations of Human Rights," in McCrudden, ed., *Understanding Human Dignity*, 291–312 (see pp. 305–6). I do not present dignity as a "valuable status," but as a deontic status. What I characterize as "valuable," instead, is the features making up the basis of dignity, which in turn I construe more narrowly than Tasioulas, as ranging not simply over "the characteristic elements" of human beings, but over a valuable subset of them. Furthermore, I take these valuable characteristics, not the mere fact of being a human being, as the relevant ground for rights.

Status-dignity is a normative property of human individuals which has certain core characteristics. First, it is inherent.[21] Individuals have it as human beings rather than as Americans, white, men, Christians, or property-owners. They do not have it because they are parties to some special relationship or as holding some conventional status. Second, it is non-instrumental. The dignitarian treatment owed to human beings is due them for their own sake rather than as a way of bringing about something else that might benefit the duty-bearer, or some third party. Third, status-dignity is egalitarian.[22] Dignitarian duties are, in principle, owed to every human individual equally. No one can be said to have more human dignity than anyone else. Finally, the normative status marked by human dignity has high priority. This means that the norms flowing from it normally outweigh competing considerations. Human dignity marks a peak in the normative landscape. This need not mean that dignitarian norms are absolute. They may operate as pro tanto norms that can be defeated. But the burden of argument is on the competing considerations, and is typically hard to shoulder. For example, one cannot justify the killing of innocent civilians in an invasion of a country aimed at easing access to its oil even if the aggregate level of welfare resulting from it is higher than in the status quo. Furthermore, the relevant competition often really comes from other dignitarian norms whose simultaneous fulfillment in the circumstances is problematic (as when someone's speech is curtailed in an emergency to prevent violent acts it would trigger).

By contrast, condition-dignity is a state of affairs in which dignitarian norms are fulfilled. It concerns a more contingent situation human beings come to enjoy (and this includes certain treatment by others). The idea of status-dignity is presupposed by the common utterances in human rights discourse that take human rights to derive from human dignity (as in the Preambles of the Covenants). Examples regarding condition-dignity are the following. "[E]conomic, social, and cultural rights [are] indispensable for [persons'] dignity and the free development of [their] personality" (UDHR, Art. 22). Workers are entitled to remuneration ensuring "an existence worthy of human dignity" (UDHR, Art. 23).[23] People can fail to enjoy the dignified condition required by these norms. For example, workers often receive salaries that are insufficient for affording nutritious food and safe housing while those deciding how much they get paid live in luxury. But workers do not thereby

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My view of dignity as an inherent, deontic moral status of human individuals is importantly similar to Kant's. I discuss the similarities, and some differences, in "Kantian Dignity and Marxian Socialism," *Kantian Review* 22 (2017), 553–7.

[21] The Preamble of UDHR speaks of the "inherent dignity . . . of all members of the human family" (see further section 5.3.2 below and chapter 6, section 6.5).

[22] "All human beings are born free and equal in dignity and rights" (UDHR, Art. 1).

[23] See also statements concerning education rights (ICESCR, Art. 13) and treatment of refugees (Vienna Declaration, Art. 23).

lose status-dignity. Human rights norms are prescriptive precisely because status-dignity requires that condition-dignity be achieved. Since human beings retain status-dignity in the face of undignified treatment, they still have a claim to be treated differently. Workers can justifiably demand a higher remuneration.

Now, what could it mean to say that human rights are "derived from" human dignity (as is claimed in the Preambles of the two Covenants)? There is a sense in which having dignity already involves having rights. As a normative status, status-dignity involves being entitled to respect and concern. But here I focus on how to identify the set of norms (such as human rights) that state the relevant claims and duties of respect and concern that are to be associated with status-dignity. How are these derived from human dignity?

To frame our discussion of this question, let me make two points. The first concerns the meaning of "derivation." In this context, I understand the relation of derivation of y from x as involving the development or articulation of x—that is, the rendering of x more determinate, through y. The relation is not one of logical deduction (like that holding between a statement "q" and the statements "if p then q" and "p").[24] We cannot hope to logically deduce the statements of the various human rights from the mere assertion that human beings have status-dignity. The derivation of the former from the latter can instead be seen as a matter of figuring out what the normative status of human dignity amounts to in practice, by identifying various norms that make certain requirements on agents in certain relevant circumstances.

The second preliminary point is that there are in fact two derivations at stake. One, obviously, concerns the identification and defense of various civil, political, and socioeconomic human rights norms such as those stated in human rights documents (including rights to avoid torture, to political participation, to access decent work, etc.). The other derivation is less obvious but is also crucial. It concerns the vindication of the very idea that there is a category of rights that protect all human beings as such.[25] These derivations roughly correspond to

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[24] "Derivation" is polysemic. E.g., the *Oxford English Dictionary* includes both inferential and developmental senses. See http://www.oed.com/view/Entry/50604?rskey=Ye4Stv&result=1&is Advanced=false#eid (sects. 3 and 5).

[25] The drafters of UDHR seem to have understood this more basic role of human dignity. Eleanor Roosevelt rejected a proposal that reference to human dignity in Article 1 be removed (since it stated no right) by saying that "the Commission . . . decided to include it in order to emphasize the inherent dignity of all of mankind" (UN General Assembly, 3rd Session, 3rd Committee, 98th Meeting, *Draft International Declaration of Human Rights* (A/C.3/ SR.98), October 9, 1948, p. 110). I interpret this as recognition of dignity's function as a deontic status that grounds the very idea that human rights are rights held by *all* human beings independently of their race, nationality, etc. and whose pursuit is a matter of obligatory global concern. For other interpretations, see Mary Glendon, *A World Made New* (New York: Random House, 2001), 146, and Charles Beitz, "Human Dignity in the Theory of Human Rights: Nothing but a Phrase?" *Philosophy & Public Affairs* 41 (2013), 259–90, at 266.

roles R2 and R1 of the idea of human dignity. To explain how they might work, we need to introduce two further items to the conceptual network of human dignity: the basis of dignity and the circumstances of dignity.

5.3.2. The Basis of Dignity

What is it about human beings that makes the application of human rights norms appropriate? Why are they owed such strong forms of respect and concern? To answer these questions, we need to identify certain features of human beings that warrant the ascription of status-dignity to them. These features constitute the *basis of dignity*.

What are these features? This is an important question in the substantive theory of human rights. I cannot fully answer it here, but I will make three points to frame the inquiry about them.[26] First, the features making up the basis of dignity must be general, valuable, and important. Human rights are rights that people have in virtue of relatively invariant features (such as their "reason," "conscience," and capacity to act in a "spirit of brotherhood"[27]), which are not contingent upon other properties such as their "national or social origin."[28] Although not necessarily unchangeable, these features are resistant to change, and are thus likely to be displayed by human beings in various social and historical contexts. The relevant features must also be valuable. We would not say that people have status-dignity because they can subject others to psychological torment (of the kind displayed by interrogators through torture). And they must be important in the sense that supporting them contributes significantly to the quality of life of those who have them. They are thus useful for identifying the content of their rights.

It could be objected that a dignitarian conception commits the "naturalist fallacy." It would do so if it attempted to deduce normative statements about dignitarian rights and duties from descriptive statements about the features making up the basis of dignity. But dignitarianism envisages no such deduction. As characterized in the previous paragraph, statements about the basis of dignity are both descriptive and evaluative: they say that certain entities have certain features and also that those features are valuable and important. A dignitarian conception could affirm conditional statements of the form "if an entity X has certain features F, then X has status-dignity and agents ought to treat X in certain ways W articulated by dignitarian norms." But these are

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[26] I explore these points further in chapters 6–8.

[27] UDHR, Art. 1. I take it that what is crucial is that people have these features to a sufficient extent (beyond which they may of course differ). See the notion of "range property" in John Rawls, *A Theory of Justice*, rev. ed. (Cambridge, MA: Harvard University Press, 1999), sect. 22.

[28] UDHR, Art. 2.

not statements of logical implication. They do not say that the normative consequent follows logically from the descriptive antecedent. They are, rather, substantive normative claims.

The second framing point concerns the methodology for drawing up a list of the relevant features. We do not need to start with an abstract exploration of the valuable features of human beings as such and then, in a second step, move to an exploration of how these features are engaged in the circumstances and situations in which human rights (and other dignitarian norms) apply. The process of discovery can be, and is likely to be, less tidy and linear. We can move back and forth between abstract judgments about the general valuable features of human beings and the specific judgments about people's challenges in achieving a decent or a flourishing life in their circumstances (see section 5.3.3 below). But what is a reasonable list of the valuable features of human beings for the purposes of identifying the basis of dignity? What features are such that they provide the ground of humanist dignitarian norms concerning human rights (requiring access to a decent life) or dignitarian norms concerning social justice (requiring access to a flourishing life—see section 5.3.5 for this distinction)? The best way to proceed here, I think, is simply to propose a list as a hypothesis, and see how it helps us state, defend, and implement dignitarian norms. We can revise that list (adding or dropping elements, or refining their characterization), as our search for reflective equilibrium about what to think about human rights and social justice unfolds. One such list would include the human capacities for sentience, knowledge, prudential and moral reasoning and choice, aesthetic appreciation, self-awareness, creative production, social cooperation, and sympathy. This list strikes me as a plausible initial hypothesis, which meets the conditions of adequacy mentioned above (generality, value, and justificatory importance). It can of course be assessed and refined as its fruitfulness for the justification of various human rights is explored. I will engage in such an exploration in this book by discussing various political and socioeconomic rights.

A third framing point is that we should recognize within the basis of dignity a plurality of features. The list just mentioned is an example. This pluralism is important for two reasons. First, and obviously, it makes sense to notice that various features have intrinsic significance. For example, a monistic approach based only on rational agency would miss the independent significance of avoiding pain for people with severe cognitive disabilities. Second, as I proceed to explore now, a plurality of features serves well the purpose of explaining how the idea of human dignity can play roles R1–R3.[29]

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[29] James Griffin provides a monistic approach centered on normative agency in *On Human Rights* (Oxford: Oxford University Press, 2008), ch. 2. For an effective pluralist response, see Tasioulas, "Human Dignity and the Foundations of Human Rights." For a Kantian version of the monistic focus on rational agency, see Thomas Hill Jr., "Kantian Perspectives on the Rational Basis of Human Dignity," in Düwell et al., ed., *Cambridge Handbook of Human Dignity*, 215–21. Other pluralistic accounts are offered by James Nickel in *Making Sense of Human Rights*, ch. 4;

Take first R1. By referring to human dignity, we anchor the human rights project in the strong and inspiring thought that *each* individual human being, in virtue of possessing certain valuable features, has a normative standing that imposes duties on *every* other human individual who can affect them. The basis of dignity is the patrimony of humankind, not the privilege of the members of some groups. It matters that people have political rights to exercise their capacity for prudential and moral judgment in setting the terms of their social life. This has general significance. We may not grant political rights to our compatriots but support dictatorships in other countries that crush the will of other human beings just because they are foreigners. The recognition of the value of the human capacities making up the basis of dignity enables us (and calls us to) articulate human rights as universal rights that apply to "all members of the human family" (UDHR, Preamble). We cannot associate ourselves out of universal humanist morality.

The treatment owed to a person A by another B, and the recognition of rights to that treatment, is an appropriate response to A's dignity. Now, when A has dignity, A has some features F such that any agent B ought to respond to A-who-has-F by treating A in certain respectful and helpful ways. The appropriate forms of respect and help, and their correlative rights, precisely depend on the content of F. Different kinds of dignity depend on (involve different normative responses to) different features. Thus, human dignity is broader than the "dignity of office" of a magistrate; it is based on general facts about

John Tasioulas, "On the Foundations of Human Rights," in Cruft, ed., *Philosophical Foundations of Human Rights*, 45–70; Martha Nussbaum, *Frontiers of Justice* (Cambridge, MA: Harvard University Press, 2006); Nussbaum, *Creating Capabilities* (Cambridge, MA: Harvard University Press, 2011); Amartya Sen, "Elements of a Theory of Human Rights," *Philosophy & Public Affairs* 32 (2004), 315–56; and Sen, *The Idea of Justice* (Cambridge, MA: Harvard University Press, 2009). Like Nickel, I offer a broadly deontological framework, but go further by explaining how exactly dignity features in it. Although I build on Tasioulas's important critique of monism, I offer a different account of how dignity and interests operate in the justification of human rights (see my discussion on R3). I share much of the capability approach as developed by Nussbaum and Sen. I have discussed their views in Pablo Gilabert, "Comparative Assessments of Justice, Political Feasibility, and Ideal Theory," *Ethical Theory and Moral Practice* 15 (2012), 39–56, "The Capability Approach and the Debate between Humanist and Political Perspectives on Human Rights: A Critical Survey," *Human Rights Review* 14 (2013), 299–325, and "Human Rights, Human Dignity, and Power," in Cruft, ed., *Philosophical Foundations of Human Rights*, 196–213. In this book, I will develop my discussion of the capability approach further by explaining more fully what dignity is and what specific roles it plays, while also sharpening the justification of human rights to account for R3 and R6.

A narrow focus might be recommended as giving human rights greater coherence and unity. But these desiderata are appropriately served by my account, which gathers the relevant considerations within the group of valuable human capacities. Furthermore, we should not confuse the desiderata of coherence and unity with the different and far less important one of simplicity. It is better to believe a complex truth than a simple falsity. We need a pluralist account of valuable human capacities to avoid missing the articulation of the human rights of individuals who have some of these capacities but lack others. Thus, some may have sentience but lack normative agency. They have important rights (e.g., regarding physical integrity, health care, etc.).

human beings rather than on some specific institutional statuses. Notice that in this way reference to the basis of dignity helps account for R2. The case of political rights is again useful. To justify those rights, we can show that their implementation constitutes key forms of respect and concern for human beings with capacities for prudential and moral judgment and thus for political self-determination. In political regimes without equal rights to political participation, some people are inappropriately regarded as second-class citizens. They are forced to be passive law-takers who may not be also active law-givers. Such a condescending treatment betrays an insufficient appreciation of their valuable capacities.

Dignitarian norms involve duties to support (respect, protect, and promote) the valuable features that constitute the basis of dignity of human individuals. People have important interests regarding those features. For example, they have interests in being able to maintain, develop, and exercise their valuable capacities. This point helps us to further account for R2, as we often justify rights by saying that their implementation is crucial for supporting certain important interests.[30] Furthermore, since those interests are tied to the basis of dignity, they have deontic significance. As I proceed to show, this point in turn helps us account for R3.

It is not obvious that saying that a person has an important human interest in an object O is enough to justify their human right to O. How can we move from statements about human interests to statements about human rights? The key is to show how interests can be justifiably paired with duties (since rights are deontic statuses). There are at least two important moves that need to be made, and vindicated. The first is to show that the agents called to support the interests of the putative right-holders (either directly or through certain institutions) are able to do so at reasonable cost. That is, we must take up the perspective of the duty-bearers besides that of the right-holders, and find that the alleged duties correlating with the putative rights are feasible to fulfill, and that to fulfill them agents would not have to shoulder unreasonable burdens. To be appropriate, norms must respond to the status-dignity of everyone. For example, norms of aid should factor in the needs of aid's recipients, but also the importance for agents to have room for their own personal projects. Both considerations stem from exploring what condition-dignity would look like for *every* individual. I have explored elsewhere a schema and a framework for accounting for this justificatory step, and will return to aspects of it in chapter 8.[31]

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[30] See Joseph Raz, *The Morality of Freedom* (Oxford: Oxford University Press, 1986), ch. 7; Beitz, *The Idea of Human Rights*, ch. 6.

[31] Pablo Gilabert, "The Capability Approach and the Debate between Humanist and Political Perspectives on Human Rights. A Critical Survey," *Human Rights Review* 14.4 (2013): 299–325. See chapter 8, section 8.4, where the following schema is proposed: A (a right-holder) has a right to O (an object) against B (a duty-bearer) just in case there are feasible and reasonable demands

I want to show now that there is a second, important move, which is logically prior. The first move identified some necessary conditions for showing that a putative right correlated with an interest actually exists. But why even entertain such a putative right? Why does a statement about a human interest even prompt us to wonder whether a right to support for its satisfaction exists? We seem to presuppose that there is some bridge principle licensing the conversion of some interests into pro tanto rights (i.e., entitlements to feasible and reasonable support in accessing the objects of those interests). This bridge principle links evaluative claims about what contributes to the decent or flourishing life of people (i.e., about their interests) to deontic claims about what agents ought to do to support them (i.e., certain rights and duties). Now, I suggest that human dignity is the source of a bridge principle of the kind we need. The bridge principle is this: When human beings have dignity, they have the deontic status of being owed (reasonable and feasible) support by every agent who can affect the fulfillment of their interests in retaining, developing, and exercising the human capacities that give rise to that dignity. The features in the basis of dignity simultaneously ground status-dignity, certain interests, and the importance of those interests. We can now understand why the rights specifying status-dignity focus on supporting those interests.

Thus, human dignity bridges the gap between human interests and human rights. This is an important result because interest-based theories of human rights do not do enough to explain the link between interests and rights. However, it might be objected that this account is circular because having status-dignity just is having certain rights; and that no information relevant for identifying the various rights that people have can be extracted from the claim that they have status-dignity.[32] These objections fail. There is no

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on B that B support, in some significant ways to be specified, A's access to O. The specification of what B owes to A regarding O tracks the moral importance of A's interest in O, the feasible ways for B to support A's access to O, and the subset of such feasible forms of support that do not involve morally unacceptable burdens on B or others (given the importance of their own interests) and on A (given the importance of other interests of A besides that concerning access to O). Further normative considerations (e.g., regarding responsibility and fairness), and feasibility considerations (e.g., concerning progressive fulfillment over time) may be relevant, and considerations specific to human rights (e.g., their global scope and high priority) should be added. Dignity underpins many of these reasons, but I do not claim that every basic reason is dignitarian.

[32] For another discussion of these objections, see Tasioulas, "Human Dignity and the Foundation of Human Rights," 300. I provide a different, broadly deontological account of human rights and dignity. Discussing similar worries, Beitz ("Human Dignity in the Theory of Human Rights: Nothing But a Phrase?" 277) suggests that we justify human rights by appeal to human interests *rather than* to human dignity. But this suggestion misses the bridging issue I address. Furthermore, the dichotomy interests/dignity dissolves once we characterize the relevant interests as relating to the features making up the basis of dignity. By paying attention to the significance of the basis of dignity, we see that R1, R2, and R3 have the same source. The features

circularity because status-dignity involves only a very general, fundamental right-claim to respect and concern. As a category, human rights lie downstream from status-dignity: they specify the kind of appropriate response to the individuals with dignity that instantiate the aspects identified in the concept of human rights mentioned in chapter 1, section 1.3: they involve requirements regarding rights that are held by all human persons at least in the contemporary world, have normative force independently of whether they are already recognized in existing legal and political institutions and practices, may however be (and normally are) such that at least in part they should be implemented through legal and political institutions and practices, have extremely high priority, and give rise to global in addition to merely local concern. Not every type of response to human dignity belongs in this category: some might not track rights, some might track rights that do not have the high priority of human rights, and so on.

In turn, the various specific human rights lie further downstream, and they specify the appropriate responses to status-dignity in various circumstances. Crucially, we can get substantive information relevant for articulating those rights by considering the basis of dignity. The features in it include valuable human capacities, and these capacities generate important human interests to retain, develop, and exercise them in various circumstances. As I proceed to explain (in section 5.3.3), these circumstances (in which rights hold) are precisely those in which the valuable human capacities can be significantly affected in social life.

Thus, I do not beg the question against the derivations mentioned in the last paragraph of section 5.3.1. One derivation consists in showing that there is indeed a category of urgent and universal rights to support interests of human individuals linked to their valuable capacities as they face various problems regarding their satisfaction. In turn, the other derivation proceeds by identifying such rights in detail, in view of the prospects for social action in various relevant circumstances.

5.3.3. The Circumstances of Dignity

So far we have discussed status-dignity, condition-dignity, and the basis of dignity, and explored their significance for human rights. Human individuals have human rights because they have status-dignity. They have status-dignity in virtue of some of their valuable features (the basis of dignity). Human rights are such that their fulfillment makes it the case that human individuals enjoy a

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that (1) give rise to status-dignity also (2) provide grounds for figuring out what are appropriate responses to it and (3) make such responses pro tanto obligatory. These links are discussed in more detail in chapter 8, section 8.3.

dignified life (condition-dignity). To further understand human dignity, we should add to our conceptual network the idea of the *circumstances of dignity*.

The circumstances of dignity are the circumstances in which dignitarian norms are practically relevant. This means that the fulfillment of dignitarian norms is both necessary—in the sense of morally "called-for"—and feasible. In these circumstances, there are threats and obstacles to the achievement of condition-dignity, and they can be overcome. These threats and obstacles may have various sources. They may arise because of the presence of some disvaluable features of human beings, such as their greed or cruelty. Or they may result because of some deficits in people's exercise of some of their valuable human capacities, such as when they display insufficient sympathy. Or the key factor may be unfavorable external conditions, such as scarcity of material resources. The problems may be resolvable thanks to human beings' potential and the changeability of their environment. For example, people can use their valuable capacities for moral and prudential reasoning and for social cooperation to reach fair solutions to their conflicts, and their capacity for creative work to reduce material scarcity through technological innovation.

The circumstances of dignity help us to further account for R2. The idea of human dignity organizes and orients the search for the grounds and content of human rights. It directs us to identify the valuable features of human beings grounding their universal normative status and to articulate rights and duties supporting them. Now, these rights and duties state how we should properly respond to people's valuable features in certain circumstances. Which ones? Those in which (a) there are threats or difficulties regarding the maintenance, development, or exercise of the valuable capacities (or other valuable features) which (b) can be dissolved or significantly reduced at reasonable cost. The circumstances of dignity are relevant (together with the basis of dignity) to move from status-dignity to the articulation of various human rights. They help us state salient problems for human rights discourse, and to figure out what are reasonable and feasible responses to them which agents can be justifiably required to perform. For example, a right to political participation is feasible and reasonable given individuals' capacities for practical judgment and self-determination, and their need to exercise them in the face of the common tendency of many people to be self-serving and biased when wielding asymmetrical decision-making power.

An account of human rights identifies forms of condition-dignity to which people are entitled in their social life. Now, as discussed in chapter 2 of this book, we can identify rights (and correlative duties) at different levels of abstraction. It is useful to distinguish between abstract and specific rights.[33]

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[33] See also James Nickel, *Making Sense of Human Rights*, 2nd ed. (Oxford: Blackwell, 2007), 62–3. As I explained in chapter 2, this distinction helps arbitrate the debate between so-called "humanist," "naturalist," or "orthodox," and "political" or "practical" approaches to human

Specific human rights in the contemporary world are urgent claims that people have against their own government and fellow citizens and against international organizations, foreign governments, and foreign citizens. Abstract rights are general claims based in extremely important interests shared by all (or most) human beings, and whose protection involves responsibilities for anyone who can affect their fulfillment.[34] The distinction between the (more) abstract and the (more) specific actually applies throughout the conceptual network of human dignity, including the circumstances of dignity.

As stated above, the circumstances of dignity identify the most general conditions for the application of dignitarian norms. But we can also recognize what we may call *situations of dignity*: narrower configurations of the circumstances of dignity which lead us to formulate specific rights and duties. For example, given quite general human capacities, interests, and vulnerabilities we may claim that there is an abstract human right to health care in the form of support by others in dealing with health problems. In every society people will face health problems, and in every society there will be some support that human individuals can receive to cope with them. At the very least, there is always the possibility of palliative care. But what, exactly, particular people owe to each other varies widely depending on specific contexts. Some illnesses exist in some historical contexts but not in others (think about HIV/AIDS). Medical technology changes over time (think about modern vaccines). The scope of effective action also varies historically (for example, today we can harm—through pollution—or help improve—through scientific cooperation— the health of human beings in distant continents in ways that were not feasible two centuries ago).

How can abstract rights and duties be identified and justified? In my view, the answer to this question (which helps account further for R1 and R2) lies in paying attention to status-dignity, the basis of dignity, and the circumstances of dignity. Some quite general norms are justified because there are relatively

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rights. The former focuses on abstract rights and the latter on specific rights. Both kinds of rights are relevant, and related. See further chapter 6, section 6.7.

[34] More precisely, there is a spectrum going from more to less abstract rights. It spans, e.g., fairly abstract rights that hold in any (or most) social context(s); the rights in UDHR; the rights in international covenants, conventions, and treaties; the rights in national constitutions; the specific rights as construed by governments' laws and policies; and individuals' claims in various situations (as addressed, e.g., in courts' rulings or in interpersonal reactions). We get to specific norms by identifying various circumstances and situations in which the capacities making up the basis of dignity are significantly engaged and by figuring out what are desirable and feasible ways to support the capacities in them. This articulation is not a formal deduction of specific from abstract norms. It involves a substantive judgment about the appropriateness of the specifications in certain contexts. Importantly, the same abstract norms may have different appropriate specifications in different contexts. E.g., norms requiring access to food, shelter, and education may be implemented through more or less intervention of governmental institutions in the economy. The drafters of UDHR decided to construe these norms quite abstractly to allow different societies to specify them differently given their own predicaments.

invariant valuable features of human beings in virtue of which respect and concern is owed to them, and because there are some difficulties affecting the interests linked to those features that are recurrent and addressable through action. It is true that we never encounter abstract human beings. We face instead concrete individuals immersed in specific situations. However, we can distill what is significantly common to them. The process is one of a cognitive back-and-forth between propositions about the specific and the general. We formulate hypotheses about the latter as we consider the former in some situation, and revise them as we address new situations. In this way, we search for reflective equilibrium in our thinking about abstract and specific rights.

But why are abstract humanist norms important for human rights discourse? What is the point of identifying them if by themselves they do not tell us what exactly is to be done in specific situations? Why not focus instead on specific norms for specific situations? We do have reason to identify abstract humanist norms. First, there is theoretical satisfaction in finding invariant patterns of fact and value in human social life. Second, those patterns inform our responses to specific situations. By reference to more abstract norms we can compare the relative appeal of various specific norms proposed for regulating a certain situation. We can determine that some specific norms are better because they do more to serve the ideas captured by the abstract norms. If human beings have the valuable capacity for self-determination regarding whether and how they work, then specific norms banning slavery are superior to others merely regulating the treatment of slaves by slave-owners. There is also a role for the more abstract norms when we consider our relation to the past and the future. Retrospectively, we can use the abstract norms to judge whether our changes in specific normative practices have been a form of progress, decline, or mere drift. These variations will be characterized in terms of the extent of realization of the abstract norms in various situations. In this way, we can explain why the elimination of slavery involved ethical progress. Prospectively, the abstract norms orient us by setting a horizon for our moral and political imagination. We ask ourselves: Are there desirable and feasible specific social configurations we could bring about that would serve the abstract norms better than the social configurations we currently have? Given that self-determination in work is important, shouldn't we go beyond the elimination of slave labor by combatting the intense domination that waged laborers face in sweatshops? Third, and finally, the abstract humanist norms help us develop a truly universalistic attitude in our thought and practice. This is obviously important as we proceed with the current process of globalization. Humanist norms can become an ethical compass and lingua franca to develop common standards (regarding, say, trade and immigration) with people who are in many ways quite different from us.

I conclude the discussion of the circumstances of dignity by noting their importance in accounting for R4. Recall that human rights advocacy importantly calls for empowerment and solidarity. For example, regarding empowerment, it grants people strong political rights to shape the state institutions that structure their life-prospects (see UDHR, Arts. 20–1), and it requires that if people work, they do so only on jobs they choose, and with the ability to form and join unions to defend themselves against abuses by their employers (UDHR, Art. 23). Regarding solidarity, there is a plethora of invocations of positive rights to support in accessing various economic, social, and cultural goods (UDHR, Arts. 25–8). These forms of empowerment and solidarity can be seen as flowing from a view of human dignity that captures, amongst people's valuable features, their capacities for self-determination through prudential and moral judgment and choice, cooperation, sympathy, and compassionate aid. We can interpret the reference to people's capacity for reason, conscience, and the ability to act in a spirit of brotherhood (UDHR, Art. 1) as including these capacities. Recognizing and supporting these capacities is certainly relevant if we include in our account of the circumstances of dignity the pervasive fact that human beings are in various ways deeply vulnerable. Political rights enable people to express their political judgment and hold to account governments and other national and international institutions which otherwise might fail to take their interests seriously. Unionization rights allow workers to act collectively to challenge humiliating conditions of long hours of work, unsafe working environments, and grievously low salaries which corporations with enormous bargaining power are prone to impose on them.[35] Health care rights support people when they fall ill. And so on.[36]

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[35] In 2013, in Dakar, Bangladesh, a building with garment factories collapsed, killing over 1,100 workers. Management knew that the building was unsafe, but cajoled workers to enter it through various threats. Significantly, garment workers' ability to unionize was restricted at the time. See Catherine Lu, "Worker Rights, Structured Vulnerabilities and Global Labor Justice" (ms.). Two years after these events, workers' rights were reported to be routinely violated. An investigation says that "[w]orkers report violations including physical assault, verbal abuse—sometimes of a sexual nature—forced overtime, denial of paid maternity leave, and failure to pay wages and bonuses on time or in full. Despite recent labor law reforms, many workers who try to form unions to address such abuses face threats, intimidation, dismissal, and sometimes physical assault at the hands of factory management or hired third parties." Mitu Datta, a garment factory worker in Chittagong describes an attack on his wife and him outside the factory as follows: "Four people were holding me and beating me on the legs with bars and two people were beating her with iron bars. She was beaten on her head and on her back. Her arms were severely injured and bleeding. Bones of one of her fingers were broken. She had to get 14 stitches on her head. When they were beating up Mira, they were saying 'You want to do unions activities? Then we will shower you with blood.'." Human Rights Watch, "Bangladesh: 2 Years After Rana Plaza, Workers Denied Rights" (April 22, 2015). See https://www.hrw.org/news/2015/04/22/bangladesh-2-years-after-rana-plaza-workers-denied-rights.

[36] There is a strong debate about the significance of democracy for human rights, and labor rights are receiving increasing philosophical attention. In chapters 9 and 10 I will survey the

By affirming both empowerment and solidarity, this approach counters a common characterization of dignity as a form of independence that increases as a function of self-sufficiency or self-reliance. This view is seriously problematic. First, it defies feasibility. Human individuals are social beings who can hardly reach significant levels of autonomy and well-being without substantial help from others. This is obvious during periods of time in which they are extremely vulnerable (such as during childhood, old age, illness, and unemployment). But in fact dependence exists throughout life, and most human projects cannot succeed without social cooperation, and, sometimes, unreciprocated help. Human rights practice recognizes these circumstances by enshrining various positive rights.

Second, the view of dignity as independence fosters a mean-spirited moral culture that makes those who are helped feel shame and those who help feel guilt. This culture represses instead of encouraging valuable sentiments and acts of solidarity. It also fosters lack of proper appreciation of crucial activities of help to the vulnerable, such as the care work of child-rearers, social workers, and nurses. Empowerment understood as self-determination (which is not the same as independence as self-sufficiency) is important for dignity, and should indeed be furthered. People should be able to feature as protagonists in the political processes securing their rights. But solidarity is crucial too. Both engage important human capacities (which give rise to status-dignity) to actively pursue, and help others to achieve, a decent or flourishing life. Instead of embracing a fantastic and undesirable dichotomy between dependence and independence, what the ethics and politics of human rights needs is to entertain norms of social interdependence that are fair and compassionate (rather than exploitative and egoistic) and to grant people (when possible) the power to shape their justification and implementation through deliberative and democratic participation.[37]

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relevant debates and provide an account of democratic and labor rights, arguing that a compelling defense of them can be given on dignitarian terms. This is also true of health care rights (which are more often discussed in relation to dignity—e.g., in debates on addictions, disability, and euthanasia).

[37] Sometimes help cannot be paired with enabling autonomy or strict reciprocity on the part of those helped. See Eva Kittay's discussion on the "residual dependency" of people with severe disabilities in "Centering Justice on Dependency and Recovering Freedom," *Hypatia* 30 (2015), 285–91. Even if solidarity fosters the independence of disabled people (e.g., their capacity to join the workforce when they cannot walk by supplying ramps to access buildings with wheelchairs), additional support will be needed to help those unable to partake in many activities. I agree with Kittay that if we recognize the pervasiveness of human dependency, we can also see it as a "source of value: a source of connection; an occasion for developing our capacities of thought, empathy, sensitivity, trust, ingenuity, and creativity; in short, as providing for us the conditions of our distinctive human freedom and dignity" (290). For instructive critique of ideological uses of the dichotomy dependence/independence, see Nancy Fraser and Linda Gordon, "'Dependency' Demystified: Inscriptions of Power in a Keyword of the Welfare State," *Social Politics* 1 (1994), 4–31.

Responding appropriately to the inherent dignity of human beings requires respecting their active agency—their capacity to control their own lives. It also requires giving them various forms of help, which they need because of their inescapable vulnerability and sociality. Dignitarian ethics and politics aim at fostering fair interdependence—an outlook that contrasts with independence, mutual indifference, and hierarchical exploitation and domination.

5.3.4. Dignitarian Virtue and Dynamic Dignity

We should expand the conceptual network of dignity to make room for the important ethical idea of virtue. We can indeed identify *dignitarian virtues* as dispositions to think, feel, and act in tune with dignitarian norms. To account for dignitarian virtue, we can therefore distinguish between status-dignity that is *endowment-based* and status-dignity that is *achievement-based*. The first is the status-dignity we have considered so far. According to it, individuals have status-dignity because of certain valuable features such as their capacity for prudential and moral reasoning, sentience, social cooperation, sympathy, etc. These are features with which people are endowed independently of their choices. Being typical of human individuals, these features make human dignity a universal and equally held normative status. Because of the moral significance of those features, the norms based on status-dignity have great normative force. They normally override conflicting considerations. For example, people have rights to political participation because they have some of these valuable capacities. Even if by violating their political rights a government could give people happier lives, it would normally be wrong to do so. It would be an affront to their status as self-determining agents.

In the different, achievement-based sense, individuals have (or lack) status-dignity because of certain features of them that have arisen as a result of their choices or that are, more broadly, such that the individuals can reasonably be held responsible for them. For example, some politicians may be said to "lack dignity" when they act in certain odious ways, such as when they foster the interests of corporations funding their electoral campaigns or promising them lucrative jobs for when they leave office, at the expense of the needs of the citizens they were chosen to represent.

Certain responses seem appropriate toward people regarding their status-dignity in the achievement-based sense that do not affect entitlements they have in accordance with their status-dignity in the endowment-based sense. Corrupt politicians may be scorned or removed from office, but they retain their human rights because their endowment-based dignity remains constant.[38]

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[38] It could be argued that some but not all rights can be forfeited (e.g., a criminal may temporarily lose some liberty rights but may not be tortured). James Nickel, "Personal Deserts and Human Rights," in Cruft, ed., *Philosophical Foundations of Human Rights*, 153–65.

The two forms of status-dignity involve different dignitarian norms (with corresponding forms of condition-dignity). For the most part, theories of human rights focus on dignitarian norms that spring from status-dignity in the endowment-based sense. Why is it important for human rights theory to consider achievement-based dignity? Because it helps us understand dignitarian virtue.[39] Dignity in the achievement-based sense applies to agents who live in ways that honor human rights (and other dignitarian norms). Specific forms of respect (including self-respect[40]) are due when agents take human rights seriously. This is a very important phenomenon in the political pursuit of human rights, which helps us understand R5. We sometimes say that people "gain dignity" when they stand up to defend their rights. Recall the example of the "rebel dignity" of Mexican Neo-Zapatistas, who challenged the humiliating conditions of social and political disenfranchisement imposed on indigenous communities.

The politics of human rights is in this way shown to have an important intrinsic significance, as it provides a key expressive medium in which people develop, display, and recognize their moral capacities to respond to the worth of every person (including themselves). A related idea is that of *dynamic dignity*. We may sometimes develop our own capacities, and help others develop theirs, in such a way that we become (more) able to honor dignitarian norms. I call the dignity associated with these virtuous choices "dynamic dignity" because they fulfill dynamic duties whose focus is not simply on what is to be done in certain situations but to change them to expand the feasibility of desirable outcomes.

Reference to dynamic dignity also helps to further account for R4. Recall the salience, in human rights discourse, of the demand for political empowerment. People should have power to control the political process and other mechanisms that dynamically affect the fulfillment of their human rights.[41] Without such power, their access to the objects of their civil and social rights is significantly less secure. Denial of political power also directly dents condition-dignity (as political rights partly consist in demands that citizens be treated as equals). Dynamic dignity also helps underscore the importance of

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[39] Importantly, the two forms of dignity are linked: appraisals of achievement-based dignity assess the extent to which agents respond appropriately to norms derived from endowment-based status-dignity. Using the distinctions proposed here, we can capture the nuances of human dignity without confusion or contradiction.

[40] See the striking discussion of the vice of "servility" by Immanuel Kant in *The Metaphysics of Morals* (*Practical Philosophy*; Cambridge: Cambridge University Press, 1996; *Ak* 6:434–7). Kant argues that when we are meek and servile in our relationships with others, we fail to take our equal worth seriously. By downgrading ourselves we fail to show proper "esteem" for our own worth or dignity. We fail to respect our own dignity as human beings, which is equal to that of any other human being. We let ourselves down.

[41] Social and political participatory rights are emphasized in the Vienna Declaration (Preamble and Art. 25) and in the UN Millennium Declaration (Art. 6).

(domestic and international) positive duties of solidarity to support the struggle by other people to achieve their own condition-dignity, especially when they face hard personal and social situations.[42]

5.3.5. Basic and Maximal Dignity

A dignitarian conception of rights identifies the forms of condition-dignity people are entitled to in their social life. In human rights, it identifies the conditions that have the highest priority, the ones warranting the most urgent domestic and global concern and action.[43] However, dignitarian norms can go further. Human dignity, and social justice, include but go beyond human rights. Human rights focus on *basic dignity*, requiring a form of condition-dignity in which people have access to a *decent life.* Beyond that, social justice can focus on *maximal dignity*, requiring a form of condition-dignity in which people have access to a *flourishing life.* Some (including global) versions of liberal egalitarianism and socialism make maximal demands of this kind.[44]

We can now account for R6. Human dignity helps us develop a unified view of the arc of humanist justice. Humanist justice takes each human individual as a basic unit of concern and respect. Once we accept the humanist dignitarianism of human rights, and the obligation to support people in their pursuit

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[42] On the importance of positive duties of concern besides negative duties of respect within institutions that support human dignity (e.g., in health care), see Denise Reaume, "Dignity, Choice, and Circumstances," in McCrudden, ed., *Understanding Human Dignity*, 539–58.

[43] There is a strong debate about how minimal or expansive human rights norms should be taken to be. Beitz, *The Idea of Human Rights*; Eva Brems, "Human Rights: Minimum and Maximum Perspectives," *Human Rights Law Review* 9 (2009), 349–72; Allen Buchanan, *The Heart of Human Rights*; Joshua Cohen, "Minimalism about Human Rights: The Most We Can Hope For?" *Journal of Political Philosophy* 12 (2004), 190–213; Maurice Cranston, "Human Rights, Real and Supposed," in P. Hayden, ed., *The Philosophy of Human Rights* (St. Paul: Paragon House, 2001), 163–73; Pablo Gilabert, *From Global Poverty to Global Equality* (Oxford: Oxford University Press, 2012); Gould, *Interactive Democracy* (Cambridge: Cambridge University Press, 2014); Griffin, *On Human Rights*; Michael Ignatieff, *Human Rights as Politics and Idolatry* (Princeton, NJ: Princeton University Press, 2001); James Nickel, *Making Sense of Human Rights*; John Rawls, *The Law of Peoples*; Carl Wellman, *The Proliferation of Rights* (Boulder, CO: Westview, 2009); Wellman, *The Moral Dimension of Human Rights* (Oxford: Oxford University Press, 2011). Some of these authors (such as Cohen, Cranston, Ignatieff, and Rawls) tend to be hostile to expansive construals of human rights, while others (such as Beitz and Brems) are more receptive to them. Their views are of course based on different arguments and rationales, and this leads them to account for the content of human rights in different ways. And because of this, even among those who tend to be comparatively expansivist or minimalist there are important differences as to the extent of their expansivism or minimalism. (E.g., Cohen argues that his account of human rights in terms of the strictures of global public reason make for a minimalist view that differs from a more extreme, "ultra-minimalist" view that only focuses on the preconditions of being alive—defended by Ignatieff). I believe that my approach captures the strong intuitions in these positions while developing an account of humanist justice that includes an appropriate distinction between basic and maximal requirements.

[44] Pablo Gilabert, *From Global Poverty to Global Equality: A Philosophical Exploration.*

of basic levels of development and exercise of their valuable capacities, it is natural to wonder whether we should also support people (in reasonably feasible ways) in their pursuit of higher levels of development and exercise of those capacities. The value of human capacities, and the concomitant status of the individuals who have them, is more fully reflected in principles that call for supporting human flourishing. A decent life is not enough.

To illustrate, take labor rights. We should prevent the most egregious violations of workers' rights. We should secure safe working conditions, adequate remuneration, provisions for rest and leisure time, and workers' entitlement to defend themselves through unions and other forms of political activity (UDHR, Arts. 23–4, ICESCR, Arts. 6–9). But to fully respond to workers' capacities for social cooperation, creative work, and prudential and moral reasoning, we should take seriously socialist arguments that see it as a matter of workers' dignity that they have access to work that is not alienating, exploitative, or dominating. In fact, socialist and workers' movements have been central contributors to the contemporary discourse of human dignity and human rights. In a world where avoidable inequality is intense and growing, we should expect dignitarian politics to articulate and pursue their agenda further. I will explore basic and maximal dignitarian rights in future chapters. But before proceeding with the development of the specific contents of the dignitarian program, I must address some fundamental objections to its cogency. This is the task of chapter 6.

6

Defending the Significance
of Human Dignity

In chapter 5, I identified the main dimensions of human dignity and some important roles of it in human rights discourse. Of course, many substantive questions have not been answered. But the account proposed presents the initial contours of a research program that can frame future inquiry about these questions. Further development of our understanding of human dignity should proceed by offering a more detailed conception that characterizes the components of the conceptual network of dignity and shows how to fulfill the six roles concerning universalist humanism, justification of rights, normative strength, recognition of positive duties, standing up, and the arc of humanist justice. I will continue developing this research program in the upcoming chapters. However, this optimistic outlook is threatened by a skeptical attitude according to which we should not even try to tackle these questions but should, instead, simply drop reference to human dignity from human rights discourse. This chapter confronts such disabling skepticism. It addresses the most important charges levelled against the deployment of the idea of human dignity in human rights discourse. They say that the idea is empty, indeterminate, incoherent, politically pernicious, exclusionary, sterile, or redundant. I argue that each of these charges fails. As a result, we can resist the disabling skepticism associated with them. We can learn from these objections to improve our views of human dignity, but we should remain confident about its significance in human rights discourse.

6.1. INDETERMINACY OF MEANING AND ROLE

The first objection is that "human dignity" has no clear meaning. Despite its rhetorical power and wide resonance, it is vacuous or hopelessly vague.

Furthermore, although it is often invoked to present certain human rights as justified, it is not at all clear how it helps justify them.[1]

In response, notice first that every core normative idea is somewhat indeterminate. Consider freedom, equality, and solidarity. They can be construed in many ways. Freedom can be negative or positive, individual or collective. Equality can require the same opportunities, end-states, or capabilities. And so on. The indeterminacy of dignity, as that of the other important ideas, is best seen as an invitation to substantive debate about how to tighten its content in relevant contexts. By engaging in that debate, political agents signal to each other that they recognize a worthy normative territory of discussion and action. They might lose track of that if they dropped reference to the common, but relatively indeterminate ideas.

Second, although it is relatively indeterminate, human dignity is certainly not meaningless. As discussed in chapter 5 when considering its role R1, human dignity marks a distinctive kind of normative practice that focuses on what people owe to each other as *human beings* rather than as members of some class, race, or nation. I have explored other important roles as well. A meaningless idea could not be so useful.

Finally, greater determinacy can be gained as we move from status-dignity to dignitarian norms, and within the latter, from more abstract to more specific requirements. The earlier components in the chains of increased determinacy affect those coming after them. We should not worry if no deductive inference occurs. The relation between the chain components is one not of deduction, but of increased articulation. This is typical in moral and legal reasoning.

6.2. INCOHERENCE

"Human dignity" is sometimes used in incoherent ways. For example, it is said both that people have a right against being enslaved because of their human dignity and that when they are enslaved people are deprived of their human dignity.[2] So, it seems, a person who is a slave both has and does not have dignity.

Incoherence is surely a fatal flaw, but as noted in section 5.3.1 of chapter 5, the alleged incoherence is simply dissolved if we use the distinction that I proposed between status-dignity and condition-dignity. We can say without contradiction that a person who is a slave lacks *condition*-dignity but still has *status*-dignity.

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[1] Brian Orend, *Human Rights* (Peterborough: Broadview, 2002), 87–9. Michael Rosen, "Dignity: The Case Against," in C. McCrudden, ed., *Understanding Human Dignity* (Oxford: Oxford University Press, 2013), 143–54, at 143–7.
[2] Steven Pinker, "The Stupidity of Dignity," *The New Republic* (May 28, 2008).

Furthermore, we can clarify, and illuminate the significance of, the connection between the two clauses in the superficially incoherent utterances. Status-dignity is the normative ground of condition-dignity. Because of their status-dignity, people who do not enjoy condition-dignity should be supported (in reasonably feasible ways) by agents who can affect them. It is precisely because status-dignity remains that condition-dignity is always worth fighting for. People do not drop out of the dignitarian universe when they are disrespected or neglected. Something similar happens with the distinction between endowment-based dignity and achievement-based dignity. When someone fails to respect their own status-dignity, they lack achievement-based dignity. But since they do not lose their status-dignity, they can and always must seize themselves and become virtuous. These distinctions make it possible to render consistent common judgments about dignity that would otherwise be contradictory. They help us understand why, as a condition or as an achievement, dignity is a quite fragile and contingent matter, but also why, as a status, it is a resilient and always valid source of hope, inspiration, and obligatory action. We must always recognize the status-dignity of human beings, and respond to it by supporting the existence and development of the features of human beings that give rise to it.[3]

6.3. PERNICIOUS USES AND "IRRESOLVABLE DISPUTES"

"Human dignity" lends itself to dangerous uses. One danger is that since human dignity is often taken to play a foundational and overriding role in the justification of ethical and political views, its indeterminacy makes it a very

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[3] A disturbing thought is that a person may lose their status-dignity when the features of them that constitute the basis of dignity are destroyed. In response, notice that the worry may involve two different possibilities. In the first, only part of the basis of dignity is destroyed. But since other parts remain, the person still has status-dignity, and various rights are still operative (specifically, the ones protecting the person in the maintenance and unfolding of the remaining features). In the second possibility, all the features have been destroyed. In that limit case, there is no carrier of dignity anymore, in the sense that there is no person with any of the relevant features. Of course, the acts leading to that obliteration certainly are deep and horrible violations of dignity. I should acknowledge that what I say in this note assumes a naturalistic view of the features making up the basis of human dignity. If some of those features were metaphysically impervious to destruction in the natural world (if, e.g., the basis of status-dignity were at least in part an immaterial soul, or a Kantian noumenal being), then the violations could not reach that far.

As Rowan Cruft suggested to me, even in the face of the destruction of the basis of dignity of people, we could still respond to their status-dignity by commemorating them. This would not restore status-dignity when its bearer is gone, but would still seem a fitting response to its importance (and a salutary announcement that similar acts of destruction are not to be tolerated).

attractive subject for manipulation. It can be used as a Trojan horse to smuggle into moral and political practice specific views that are not generally shared.[4]

Notice that the worry about manipulation is in tension with the worry about indeterminacy. There must be something to the idea of human dignity for it to be useful in manipulation. If it were an empty idea, nothing would be accomplished by using it to advance a moral and political agenda. It can be useful for persuading an audience only because it already contains some thoughts the audience accepts and finds important. Secondly, every important normative idea can be manipulated. We rightly do not take this to be a sufficient reason to stop using them. The appropriate response to manipulation is to expose it and call for an honest discussion about which amongst the various possible articulations of the relevant idea is substantively correct.

If an idea other than human dignity were used to frame human rights discourse, manipulability would not be escaped. The prospects for this escape are obviously not good if we look at the use of other key ideas in political theory and practice like freedom, equality, or solidarity. Furthermore, the alternative idea would have to serve the valuable roles that dignity does already serve. This may or may not happen. Since (as we have shown) dignity plays six important roles, the burden of the argument is on the skeptic to show that we should risk losing touch with them when we drop reference to dignity. Additionally, the suggestion that we stop using the idea of human dignity and opt for another may not succeed given that the former is already too entrenched in human rights theory and practice. In any case, once we identify its normative roles, it seems that the most appropriate strategy is to retain the idea of human dignity, which already has great currency, and accompany its use with an account of how the roles are fulfilled. Some manipulations will thereby be shown to be misuses of the concept properly understood, whereas others will be bona fide substantive proposals about the content and justification of dignitarian norms, which should then be welcome as moves in a debate where alternative articulations of those norms could also be voiced in response. We should indeed combat conceptual manipulation, but we should also avoid the tendency to call "manipulation" every use of a concept to phrase substantive claims we disagree with. Instead of talking past each other or ruling each other's views out of court as conceptual gibberish, we should frame

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[4] Rosen ("Dignity: The Case Against," 147–8) says that Catholics used dignity in the nineteenth century to challenge egalitarian views of rights. In contrast with the liberal, or Kantian, views of dignity as equally held by all persons, they ascribed it unequally to individuals with different roles in hierarchical societies. Catholic views changed in the twentieth century, aligning with the emerging international human rights doctrine. David Hollenbach, "Human Dignity: Experience and History, Practical Reason and Faith," in McCrudden, ed., *Understanding Human Dignity*, 123–39. On the manipulation of "human dignity" and related ideas to impose exclusionary agendas in Latin America, see Helio Gallardo, *Derechos Humanos Como Movimiento Social* (Bogota: Ediciones Desde Abajo, 2006), 28–9, 78, 120–1.

our argumentative encounters so that we can assess the truth or falsity of various theories we might entertain. This inclusive yet critical and reasonable debate is what non-manipulation would really amount to. In fact, it is an occasion for civic engagement and solidaristic empowerment of the kind that (through roles R4 and R5) human dignity already calls for. It would involve a respectful and dynamic *dignitarian forum*.

To illustrate, some worry that the extreme generality of invocations of human dignity could be exploited to threaten certain important freedoms, including some protected by key liberal rights. The scope for individuals' free choice may be undermined in the name of protecting dignity. Debates about banning consensual acts such as assisted suicide, or "dwarf throwing," are examples.[5] Dignitarian claims may even be used to undermine human rights, as many such rights precisely affirm individual liberties.[6] An analogous problem arises with respect to political liberty. Human dignity as a fundamental idea is invoked in some national constitutions (such as the German), and is prominent in international human rights documents (such as the two Covenants) that have been ratified and incorporated into the law of many countries. This allows courts to challenge parliaments' legislation when they see it as violating human dignity. In this way, the democratic authority of the people is constrained.[7] These are real difficulties. But again, the best way to address them is by engaging rather than ignoring the relevant substantive arguments.

The skeptic may respond that the disputes surrounding human dignity are worthless because they are irresolvable. If the disputes about the meaning of "human dignity" are irresolvable, then it may be "wise" to drop the term and "coin new" ones.[8] Alternatively, the disputes may be substantive rather than conceptual, concerning what dignitarian norms are true. A worry then is that the use of human dignity may push human rights discourse to search for deep moral, religious, or metaphysical foundations. This search is better avoided because no agreement on deep foundations is possible. We should follow the example of the drafters of UDHR and focus on identifying the rights we quite readily agree on without asking ourselves why we do so.

How do we know that a dispute is irresolvable? Irresolvability theses are very hard to justify. We should try to resolve our disputes and see. We can also

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[5] Roger Brownsword, "Human Dignity from a Legal Perspective," in Marcus Düwell, Jen Braaving, Roger Brownsword, and Dietmar Mieth, eds., *Cambridge Handbook of Human Dignity* (Cambridge: Cambridge University Press, 2014), 1–22, at 9–13, 17–18; Michael Rosen, *Dignity* (Cambridge, MA: Harvard University Press, 2012), ch. 2. There is a conflict between "liberal" and "conservative" interpretations of legal documents invoking human dignity. While the former support individuals' freedoms, the latter limit them.

[6] Marcus Düwell, "Human Dignity: Concepts, Discussions, Philosophical Perspectives," in Düwell et al., eds., *Cambridge Handbook of Human Dignity*, 23–49, at 25, 29.

[7] Rosen, "Dignity: The Case Against," 152–3.

[8] Samuel Moyn, "The Secret History of Constitutional Dignity," in McCrudden, ed., *Understanding Human Dignity*, 95–111, at 111.

district debate to insulate areas of agreement from areas of disagreement (for example, we can mark our agreement about certain intermediate premises even as we acknowledge and pursue discussion about deeper premises). In any case, dispute would likely plague any substitutive idea that manages to play similar roles. And we do need an idea that plays the roles R1–R6 (discussed in chapter 5) to structure the public discourse of human rights. So, going for substitutes risks simply repeating the difficulties we were trying to avoid, or solving some of them at the cost of failing to cater for some of the important roles the idea of dignity was already fit for.

Finally, some disputes may very well be a symptom that human dignity gives rise to various pro tanto reasons (and rights) that collide in certain situations. When this is so, it is in fact a benefit rather than a defect of dignity that it helps us make explicit those conflicting reasons. Instead of hiding the conflict under the carpet, we should process it by searching for appropriate all-things-considered judgments. If conflict of reasons is a deep and recurrent feature of normative reasoning, then we should welcome the dignitarian talk that compels us to deal with it. Ignoring the conflict would not only be theoretically unsatisfactory. It would risk missing interests and claims of people we will affect with our choices.

It is important to acknowledge that human rights practice is diverse and conflictive and, thus, *in process*. This goes further than saying that it is emergent.[9] Even mature practices are in process in the relevant sense (as is the case with liberalism, for example). Philosophers are participants in this complex, contentious, and dynamic practice. By proposing a certain view of dignity, they can help to shape it in desirable ways.

6.4. ELIMINABILITY AND BUCK-PASSING

Another possibility is that "human dignity" is simply redundant. Some critics argue that when it has a precise meaning, "human dignity" does not in fact amount to anything other than respect for persons or their autonomy. We can then use those terms and eliminate "human dignity" without loss.[10]

The proposed substitution will not do. Human dignity is used to back obligations that go beyond negative duties of respect. There is in fact a tension

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[9] On human rights practice as "emergent," see Charles Beitz, *The Idea of Human Rights* (Oxford: Oxford University Press, 2009), 42–4.

[10] Ruth Macklin, "Dignity is a Useless Concept," *British Medical Journal* 327 (2003), 1419–20; Pinker, "The Stupidity of Dignity." Pinker apparently assumes that the duties responding to dignity are negative when he articulates "the idea that, because all humans have the same minimum capacity to suffer, prosper, reason, and choose, no human has the right to impinge on the life, body, or freedom of another."

between a narrow view of human dignity as only giving rise to negative duties to respect other people's free choices and a broader view on which human dignity also gives rise to positive duties of solidarity to further other people's capacities to make choices and their access to opportunities to achieve well-being.[11] Moreover, it is not obvious that respecting (and furthering) the dignity of human beings is exhausted by respecting (and furthering) their freedom of choice. Some human beings may be unable to make free choices, but their access to a decent life in which unnecessary suffering is avoided could still be significantly reduced or enhanced. In sum, we need to explain why respect and concern are owed to people, and what kinds of respect and concern are appropriate. Referring to dignity helps organize our thoughts about these questions by identifying a normative status and valuable features grounding it.[12] The substitution of dignity with narrower ideas renders this task invisible, with evident theoretical and practical loss.

Why not drop "human dignity" and use "moral status" instead? This would not be so problematic given that here human dignity is, after all, defined as a moral status. But we do well to retain the phrase "human dignity" because it immediately links up to several distinctive and important roles in human rights discourse which would be less apparent if we just used "moral status." It is a certain moral status that we are after—the one that has these functional characteristics. Furthermore, even if we managed to substitute "human dignity" with some other phrase without extensional loss, we would still have practical reasons to keep using a phrase that features so strongly in the real political life of human rights struggle. People who take to the streets to defend their dignity might find a philosophical approach that characterizes their activism instead as a defense of their moral status quite remote from their experiences.

A related concern is that human dignity is a "buck-passing" concept.[13] It does not specify the grounds of human rights, but merely announces that something else exists which does provide that ground. Thus, a human right to political participation can be justified by referring to the interest people have in defending themselves against various threats by governments, or to their capacities for political self-determination and the importance that societies be shaped in a way that allows for these capacities' development and exercise. It is these interests or capacities that justify the right. Saying that people have the right because they have human dignity would not add anything substantive.

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[11] For the broader view, see Hollenbach, "Human Dignity"; Reaume, "Dignity, Choice, and Circumstances," in McCrudden, ed., *Understanding Human Dignity*, 539–58; and Pablo Gilabert, "Kant and the Claims of the Poor," *Philosophy and Phenomenological Research* 81 (2010), 382–418.

[12] See the discussion of R1–R3 in section 5.3 of chapter 5 of this book.

[13] This kind of worry is helpfully outlined by Govert Den Hartogh, "Is Human Dignity the Ground of Human Rights?" in Düwell et al., eds., *Cambridge Handbook of Human Dignity*, 200–7.

When human dignity is invoked to justify the right, this is only a roundabout way to signal the presence of the interests or capacities (and thus passes the justificatory buck to them).

In response to this challenge, we could accept that dignitarianism identifies a high-level, right-making property of some acts and institutions (their being such that they involve appropriate responses to status-dignity). As such it subsumes, or gathers, lower-level right-making properties (which engage more specific normative considerations of respect and concern).[14] But having a high-level concept of human dignity is far from idle. Indeed, it has crucial positive and critical roles. As shown when discussing roles R1–R6, the concept organizes the search for specific grounds of human rights, and indicates the unity and nature of the distinctive normative enterprise that seeks their identification and implementation. Importantly, in the account given here, human dignity encodes distinctive and plural reasons linked to the valuable human capacities making up the basis of dignity and the associated human interests in developing, maintaining, and exercising them in various social contexts. Thus, even when it passes the buck, human dignity tells us where to pass it. We may not just pass it to any claim we want. For example, human dignity does not track the claims of class, race, or nationality. Instead, *human dignity structures our thinking about what institutions and practices to accept by demanding that we respond to the claims of the human person in social life.* This point unifies and guides the use of the components of the conceptual network of dignity, and it underpins the specific roles of dignity in human rights discourse. As their moral heart, human dignity organizes the flow of normative considerations that keep human rights alive.[15]

6.5. EXCLUSION OF NON-HUMAN ANIMALS AND "NON-TYPICAL" HUMAN BEINGS

Human dignity is the dignity of human beings that is relevant (at least) in human rights discourse. In developing an account of human dignity and human rights,

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[14] On higher- and lower-level right- or wrong-making properties, see Derek Parfit, *On What Matters*, vol. 1 (Oxford: Oxford University Press, 2011), 369, 414–15, 476. Parfit applies this point to contractualism.

[15] Another way to put these points, suggested to me by James Nickel, is to introduce an "oak barrel" account of the concept of human dignity. Some concepts are used as containers carrying content that can fully be accounted for without using them. When that is the case, the concepts are like stainless steel barrels which do not affect the taste of what they carry. But sometimes barrel concepts operate as oak barrels which partly affect the content of what they carry. In the metaphor, the flavor of a wine that is stored in an oak barrel will change, while it would remain the same in a stainless steel barrel.

we should beware of unduly exclusionary implications regarding non-human animals and "non-typical" human beings. In this section, I address this important worry about exclusion. To confront exclusion of non-human animals, I will argue, we should note that human dignity is not equivalent with dignity as such. The former is only a species of the latter. And to avoid exclusion of "non-typical" human beings, we should construe human dignity broadly so that the various valuable features that are sufficient for the status-dignity of different human individuals are properly taken into account. Let me explain.

Despite the currency of "human dignity" in human rights discourse, it would be more appropriate to talk about "the dignity of human beings." The latter rubric makes it easier to say that some of the features that give rise to the dignity of human beings are also possessed by some non-human entities (such as sentience, which is present in non-human animals). Furthermore, it allows us to say that there might be features that non-human entities possess but human beings lack which give rise to status-dignity. We can say that non-human entities have dignity because what ultimately explains dignity is not the fact of being human, but the valuable features that form the basis of dignity. The dignity of non-human entities could be grounded in valuable features that are, and partly in features that are not, shared with human beings.

By using the idea of the dignity of human beings rather than the idea of human dignity, we do not invite the exclusionary thought that the basis of dignity must only include features that human beings possess but other entities do not, or the absurd inference that if we include features which human beings share with other beings, then we would have to say that the latter have human dignity. I do not, of course, expect that current usage will change. The phrase "human dignity" is already entrenched in human rights discourse. But we can introduce the caveat that when we use it, we express the concept of *dignity of human beings.*

The view suggested here might be challenged by saying that it conflicts with the common, and appealing, slogan that human rights are the rights people have in virtue of their humanity. But we can avoid this conflict. I think that the slogan should not be interpreted as implying the exclusion of non-human beings from dignitarian respect and concern. The key contrast for human rights discourse is not between human beings and non-human animals, but between human individuals as human beings and as members of some particular class, race, religion, nation, etc. Relatedly, the key contrast is not between human and non-human dignity, but between the dignity of human beings and specific social statuses linked to class, race, nationality, etc. This is the point made in the important Article 2 of UDHR, which says that "[e]veryone is entitled to all the rights and freedoms set forth in [. . . UDHR] without distinctions of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other

status." So, when we say that people have human rights in virtue of their humanity it is the second contrasts, not the first, that are explanatorily relevant.[16] The point of the slogan is to challenge the arbitrary exclusion of some people from enjoyment of rights that are acknowledged for others. For example, it has historically been used to say that blacks, women, and property-less workers should have the legal right to vote, that political rights should not be confined to whites, males, or property-owners, but apply instead to every human individual who has the capacities of political judgment, and the interest in affecting the decision-making process ruling the main institutions that structure their social life. Human rights have general scope. They are not based on parochial markers like race, class, race, religion, etc.[17]

Second, we should develop a dignitarian perspective that is truly inclusive of all human beings. To do so, we can proceed in three steps. First, we identify the set of human beings in the broadest possible way (an example is to say that it comprises all members of the species *Homo sapiens*). We ascribe status-dignity to all of them. At this stage, the ascription of status-dignity is only a promissory note. It expresses our intuition that all human beings count and are entitled to our respect and concern. But this reaction needs to be developed and defended. Thus, in a second step, we identify valuable features that are relatively constant amongst most of those we call (adult) "human beings" and articulate the norms of respect and concern that properly respond to them.[18] Most human rights norms are responses to these features of "typical" (adult) people in various social contexts. This step provides an explanation of the ascription of human dignity and an elaboration of dignitarian norms associated with it.

But we need a third step in order to include "non-typical" human beings. We should be able to respond appropriately to some members of the human

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[16] And what is ultimately significant for grounding status-dignity is not humanity but the features making up the basis of dignity (which allows for the existence of kinds of dignity—and corresponding rights—held by non-human entities in virtue of *their* valuable features).

[17] See the related discussion on "dignitarian overflow" in section 6.7 below.

[18] The features may have emerged in evolutionary processes and change in the future. Some are present in non-human animals. And some are absent in certain human beings. If we use a notion of human nature to identify the set of features of which the valuable ones making up the basis of dignity constitute a proper subset, we can, with Allen Buchanan, reject the assumptions that the relevant features must be unchangeable and literally universal amongst all those we call "human." On Buchanan's proposed definition, "*Human nature is a set of characteristics (1) that most beings that are uncontroversially human have at this point in biological and cultural evolution (and have had throughout what is uncontroversially thought to be human [as opposed to prehuman] history); (2) that are relatively recalcitrant to being expunged or significantly altered by education, training, and indoctrination; and (3) that play a significant role in explanations of widespread human behavior and in explanations of differences between humans and other animals*" ("Moral Status and Human Enhancement," *Philosophy & Public Affairs* 37 (2009), 346–81, at 353). I find clauses (1) and (2) of this definition congenial. However, (3) is problematic: not all that is important in explaining what human beings are and do is part of what distinguishes them from other animals.

species who do not yet have some of the features mentioned in the second step (such as children), or lost them (such as some elderly people), or never display them (such as people with certain disabilities). We do this by noticing that people in these latter categories still have some of the valuable features in the basis of dignity (or a tendency to form them). Many human rights (such as the rights to life and bodily integrity) straightforwardly apply to them. Further, some rights apply to them but should be specified to clearly address the distinctive ways in which they need support. Some adults might not be able to get to a voting booth, but could be helped to exercise their right to vote by letting them vote by mail. Although some rights might not apply straightforwardly, supplementary mechanisms can be put in place to help those who cannot now exercise the rights but can be enabled to do so in the future. Thus, children do not have the right to vote or run for office, but they should be educated in ways that help them develop the capacities that will eventually enable them to function as autonomous political agents. Human rights practice already does this through special instruments (such as the Convention on the Rights of the Child). Additional mechanisms can attend to people's important interests when they cannot exercise the rights even after support. Some might not be able to form or express political choices at all, but the political system could, and should, be made to reliably protect their rights to subsistence, bodily integrity, and so on.[19]

The moral category of *human beings with dignity* should then be articulated so that it leads to various norms. The main point is that it includes human beings who display *any* of the valuable features that ground status-dignity. This broad construal of human dignity enables us to recognize what is of value

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[19] In "Human Dignity and Political Entitlements," *Human Dignity and Bioethics* (Washington DC: President's Council of Bioethics, 2008, 351–78), Martha Nussbaum also argues that there are different kinds of dignity and that human dignity has a broad, disjunctive basis including various basic human capacities. She also argues, appealingly, that we should make human rights discourse inclusive of every human being. However, her claim that all have exactly the same specific political entitlements is puzzling. She says that a person with severe cognitive disabilities who is unable to vote still has a right to vote, which could be fulfilled by having a guardian vote on their behalf. But to say that someone has a right to vote is very different from saying that they have a right that someone else vote on their behalf. We should make the political system responsive to the interests of everyone (including those who cannot vote), but the specific entitlements may be different. I discuss other commonalities and differences with Nussbaum's views in chapter 7, section 7.3, and in "Human Rights, Human Dignity, and Power," in R. Cruft, M. Liao, and M. Renzo, eds., *Philosophical Foundations of Human Rights* (Oxford: Oxford University Press, 2015), 196–213; and "The Capability Approach and the Debate between Humanist and Political Perspectives on Human Rights. A Critical Survey," *Human Rights Review* 14.4 (2013), 299–325. Another difficulty for Nussbaum's approach, and my own, is to account for the rights of people in a permanent state of total unconsciousness. A possible answer, suggested to me by Allen Buchanan, is to acknowledge that the dignitarian approach is limited to the identification of the rights of minimally normal *Homo sapiens*. Additional moral considerations could be marshalled to account for moral and legal requirements regarding the treatment of those below the minimum.

in each human individual, and thus to respond to them with the respect and concern that are appropriate given their predicament in various situations.

We can thus distinguish between more general and more circumscribed uses of "human dignity." We engage in the former to identify human rights as a type of rights different from others. We engage in the latter to identify specific human rights and to ascribe them to particular people. In this latter use, human dignity correlates with the presence of certain, but not always all, valuable features in the basis of dignity. Now, as is common with categories, there is with human dignity a danger of excluding or downplaying the significance of some of the entities to which it should apply. We must proceed carefully, attending not only to the majority of people but also to minorities. The three-step procedure suggested here is meant to enable this careful response.[20]

It is worth noting, to conclude, that the three-step procedure should be applied in an ongoing and cyclical fashion. This is epistemically fruitful, as what becomes visible in an instance of the third step in a sequence might help us repopulate what is significant in the second step of an iteration of the exercise. Thus, our consideration of the claims of people with disabilities, the elderly, and children may reveal the significance of vulnerability and caring assistance. These phenomena will in fact have relevance for all people. It is part of the human condition to go through situations of great vulnerability. We can then make good sense of why human rights underscore solidarity and impose positive duties to help our fellow human beings in need.

6.6. SINGULARITY, DIVERSITY, AND CHANGE

The use of "human dignity" seems to presuppose that there is an essence of human beings. But some argue there is no such thing, as human individuals can be extremely different from each other. For most features of a human individual, we are likely to find others who lack it. Furthermore, there are enormous historical and cultural variations that affect the existence and significance of many human beings' capacities. Even more radically, the new

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[20] Debates within feminism illuminate these points. The category "woman" may be used in ways that implicitly include what is significant to heterosexual women but ignore what is significant to lesbians (or women who are not white, or middle class, or Western). Addressing this problem, feminists develop a heightened sensibility to how categorizations may both generalize and exclude, and encourage continuous critical discussion to find ways to capture what is marginalized. Jane Mansbridge and Susan Okin, "Feminism," in R. Goodin, P. Pettit, and T. Pogge, eds., *Companion to Contemporary Political Philosophy* (Oxford: Blackwell, 2007), vol. 1, 332–59 at 346–7, 350. See also Sally Haslanger, *Resisting Reality* (Oxford: Oxford University Press, 2012).

possibilities created by biotechnology mean that some allegedly fixed limits of people's intellectual and physical capacities can be changed.[21]

In response, let me note first that there is no need to assume, and I have not assumed, that human beings do not vary significantly across time and space, or that they cannot voluntarily reshape their biology in the future. The features tracked in our reflections can be seen as natural properties, and as such they can be seen as contingent. It is in part precisely because they can be causally affected that it is important to pose the normative questions as to which ones are valuable and how they can be protected and furthered.

Furthermore, as clarified when discussing the three-step procedure proposed in section 6.5, we must often supplement generalizations about what human beings "typically" are with characterizations of human beings that are different from the types invoked. What is crucial is to grasp and respond to what is valuable in each *individual person*. We do this by identifying their valuable features. The aim is not to achieve statistical or actuarial simplicity. Of course, it is hard to articulate dignitarian norms, especially at the institutional level, without simplifications and generalizations. But we should be careful not to confuse these (perhaps unavoidable) simplifications and generalizations with the terrain they seek to organize for practical purposes. Normative views can be articulated in a way that allows for, and invites, recognition of differences, and invites appropriate responses in different contexts. For example, legal frameworks can be applied in different ways to capture the specific differences that are relevant. This is common in human rights theory and practice. Furthermore, extra-legal and extra-institutional support for the dignity of individuals (in interpersonal interaction) is possible and appropriate. Think about disparaging speech. Some forms of it that target minorities in ways that systematically undermine their access to equal political and economic opportunity could be legally restricted in some contexts (such as in the labor market), while others could be the subject of softer informal rules and mechanisms of social pressure.

The three-step approach suggested in section 6.5 was that we start with some standardized human features, and then adjust the account to capture the rights of non-standard people. Is there any difference between this approach and one that starts by looking at each person separately and seeing what ground rights for them—that is, by seeing what their dignity consists in? Is one approach preferable to the other? I think that the two approaches would

[21] The worry about essentialism is mentioned in McCrudden, "In Pursuit of Human Dignity: An Introduction to Current Debates," in McCrudden, ed., *Understanding Human Dignity*, 1–59, at 18–19. On the "posthumanist" and "transhumanist" perspectives and the debate over "enhancement" through biotechnology, see Nick Bostrom and Julian Savulescu, eds., *Human Enhancement* (Oxford: Oxford University Press, 2009); Allen Buchanan, "Moral Status and Human Enhancement"; Martin Weiss, "Posthuman Dignity," in Düwell et al., eds., *The Cambridge Handbook of Human Dignity*, 319–31.

converge, and operate in synergy. Just as we must revise general pictures to capture the particularities of individual cases, we will have to identify relatively general notions when accounting for those cases, since the relevant features encountered in them are likely to reappear in others. In any case, some convergence and synergy is desirable in the case of human rights discourse, which seeks to shape ongoing practices that support *every* and *each* individual.[22]

Third, diversity and the capacity for self-change are (within moral limits) in fact valuable. A ground of status-dignity in human beings is, arguably, their remarkable capacity to fashion and pursue views of their own selves that are singular, original, and meaningful. Dignitarian norms protecting liberty of conscience, expression, and association precisely support this capacity.

Jeremy Waldron argued that the idea of human dignity in human rights discourse springs from, but changes, the pre-modern view of dignity as attached to some people in virtue of their higher rank in comparison with others within a hierarchical social structure. The modern notion gives the same equal and high rank to everybody. This view was probed satirically by Michael Rosen, who, quoting *The Gondoliers*, wrote that "when everybody's somebody, nobody's anybody." There is really no link with rank anymore if everybody is in the same ranking position.[23]

This challenge can be responded to in two ways, which help us develop further the points explored in this section. The first response is to note some consequences of my proposal that we construe the notion of "status" in status-dignity as involving a non-conventional *normative status* (see section 5.3.1 of chapter 5). It differs from the notion of a *ranking status*, which ties dignity to a conventional position held within a comparative and hierarchical structure. The latter is the view explored by Waldron. My interpretation need not be saddled with its difficulties (if they indeed exist). Secondly, we could think about the equality and universality of status-dignity (understood as normative status) as linking to *differentiation* rather than *hierarchy*. In a social world in which the equal status-dignity of all is given its appropriate response, where condition-dignity is enjoyed by all, each is "somebody" in two senses. First, each has a unique normative personality: each counts as a distinct bearer of rights. In addition, and relatedly, each has claims to access opportunities to develop and exercise (at least to some feasible and reasonable extent) the capacities in virtue of which they have status-dignity. By seizing these opportunities, everybody becomes somebody in the sense that they fashion themselves as singular agents with their own paths in life. Dignity thus links with the widespread emergence of individuals' singularity. The differentiation of individual life trajectories that results (their multifarious lifestyles which color the fabric of social life) need not be hierarchical to display the value and the

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[22] I thank Rowan Cruft for discussion on this point.
[23] Michael Rosen, "Dignity Past and Present," in Waldron, ed., *Dignity, Rank, and Rights*, 79–98, at 80.

identity of their pursuers. To be a valuable dignified somebody who is different from others you do not need to be above them.

6.7. ABSTRACT AND SPECIFIC RIGHTS AND THE SIGNIFICANCE OF THE HUMANIST PERSPECTIVE BASED ON HUMAN DIGNITY

As we saw in section 5.3.3 of chapter 5, it is epistemically fruitful to develop our views about the valuable features that give raise to status-dignity by engaging in a back-and-forth movement in the exploration of (more) abstract and (more) specific norms. This in fact affects every component in the conceptual network of a dignitarian view that I propose.

A critic might protest that even if some common aspects of human beings could be identified, found valuable, and referred to in order to articulate an idea of human dignity, the resulting notion would be too general to illuminate specific rights and duties which only apply in certain contexts. Indeed, many of the human rights affirmed in international documents are highly context-sensitive. As a result, it is not clear what relevance abstract dignitarian norms really have for the articulation of the specific claims that the actual politics of human rights has to grapple with.

I argued in chapter 2 for a synthesis between humanist and political perspectives on human rights, explaining that the abstract rights the first perspective focuses on can, and should, be illuminated in tandem with the specific rights the second perspective targets. We don't need to choose between reference to abstract and specific rights. The dignitarian approach in fact encourages us to articulate both. And it is indeed crucial to be able to invoke relatively general, abstract norms based on what most (or many) human beings share, instead of focusing only on particular features of the life of people in certain societies. It is important to figure out what we owe to human beings in accordance with their inherent dignity. As explained in chapter 2 (section 2.7), the abstract norms articulating these requirements at the most general level provide us with a moral compass to evaluate progress and regress in social history, a basis for domestic and international intercultural dialogue, and a critical source of ideas for reflection on and change of our own specific social rules. A dignitarian view of justice rightly insists that we must be sensitive to what human persons share independently of their class, nationality, etc., and be able to respond to that commonality with universal solidarity.[24]

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[24] When there is a conflict between some general norms inspired by dignitarian considerations and some more specific rules that are already accepted conventionally in some context, we often rightly see the former as outweighing, or even yielding the rejection, of the latter. The latter may be odious (as in the case of disenfranchising of women in politics) or fairly irrelevant (as in

To see that humanist dignitarian considerations are significant for the progressive articulation of political frameworks, consider an interesting pattern of critical reflection, which I will call *dignitarian overflow*. It proceeds as follows. Moral theories or practices normally assume a domain of application for their norms. They develop and justify the norms by reflecting on certain valuable features of entities within that domain. But sometimes those theories or practices are forced under argumentative pressure to entertain the extension of the scope of the application of the norms when they are faced with the challenge that entities outside the assumed domain also have the valuable features. Thus, if we think that men should have the right to vote because they can form rational judgments about political matters, why don't we also grant that right to women given that they also have that capacity?[25] If it is unfair that some children in our society are born poorer than others, why not also worry about some children being disadvantaged because of being born in poorer countries when all children have similar potentials regarding the pursuit of a flourishing life? In these cases, dignity overflows the assumed boundaries of the applications of some norms. The overflow occurs because the basis of dignitarian norms is present in entities outside the assumed domain of application of these norms, forcing us to push the boundaries of our moral and political theory and practice outward, to include the entities we have heretofore excluded. The inherent dignity of human persons knows no frontiers.[26] It compels us to identify general norms that are truly inclusive, and to articulate specific norms that implement them in ways that effectively respond to the relevant dignitarian features of every person in their social context.

6.8. MORAL, LEGAL, OR POLITICAL?

Human dignity is used in legal, political, and moral discourses. It might not always be clear whether these discourses, and the uses of human dignity in them, are related to each other, and if so in what ways. It might then be better

the case of etiquette), and should not stand in the way of the specific articulation and implementation of the demands flowing from the former. Although we need specific guidance for specific contexts, we can choose to drop some specific rules we have hitherto accepted and develop alternative guidance resulting from the specific interpretations or implementations of the general dignitarian norms which, on reflection, we see as correct.

[25] The Marquis de Condorcet pressed this point during the early stages of the French Revolution. He did not convince his fellow revolutionaries, but the argument eventually triumphed later on in political history. See Lynn Hunt, *Inventing Human Rights* (New York: Norton, 2007), 169–72.

[26] And dignitarian overflow can extend beyond humanity. If we accept that we should spare human beings unnecessary pain, why don't we also think that sentient animals should be treated similarly?

to drop a systematic account of human dignity and focus instead on what goes on in each of these different discourses separately, taking them as sui generis. For example, it might be all things considered correct not to prohibit legally some forms of disrespectful behavior that may be said to involve violations of moral dignity claims (as in the case of disrespectful speech, or ridiculing comedy).[27] In any case, it is not a good idea to assume that the legal use of dignity must be based in uses of it in moral philosophy.[28] And we should not ignore the jurisprudence of dignity.

In response, I would like to make three points. First, the "amphibious" nature of the idea of human dignity, its tendency to appear in legal, political, and moral discourses, is in fact one of its main virtues. This multiple performance forces us to think about the relation between these discourses rather than take them as disjointed compartments.[29] It is in fact a substantive issue of debate in human rights practice whether human rights should only be seen as institutional entitlements, and if so whether they should be only tied to the state—and, even then, to the modern nation-state and its international entanglements. Some claim, meaningfully, that some human rights generate interpersonal requirements that are not desirable (or even feasible) to implement as legal requirements. Certain norms about respectful speech may be a case in point. Others (including some anarchists and socialists) would claim that there could be realization (perhaps ideal realization) of human rights in a stateless society. Finally, the nature and role of the nation-state is being thrown into multiple difficulties in a context of growing economic, military, cultural, and political globalization. We need a concept of human dignity that helps us to directly engage rather than brush aside these substantive debates.

Second, I do not deny the great importance of legal discourse. If, in this book, I devote more space to moral philosophy and political theory, it is because I am more competent in these areas. My arguments should be seen as humble and fallible hypothetical moves within a larger, interdisciplinary debate which also includes legal scholars.

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[27] See Michael Rosen, *Dignity* (Cambridge, MA: Harvard University Press, 2012), 68–77.
[28] Waldron, *Dignity, Rank, and Rights*, Lecture 1. See also, more generally, Allen Buchanan's rejection of what he calls the "mirroring view," according to which there must be a strict correlation between legal and moral rights. Buchanan, *The Heart of Human Rights* (Oxford: Oxford University Press, 2013).
[29] Jürgen Habermas has argued that human dignity is significant as a "hinge concept" marking the connection between universalist and egalitarian moral norms, on the one hand, and justified legal structures (domestic, international, global) on the other. See Habermas, "The Concept of Human Dignity and the Realistic Utopia of Human Rights," *Metaphilosophy* 41 (2010), 464–80 (at 469). I agree with Habermas that human dignity has this function. But we should phrase the point more carefully, because not every dignitarian norm should be seen as a candidate for legal norm, and some dignitarian norms may go beyond what are typically called "human rights" (e.g., by requiring access to the conditions for a flourishing rather than a decent human life).

On the other hand, I do think (and this is my third point) that the moral dimension has a certain normative primacy. The reason-giving force of legal (and political) discourse is, from the point of view of all-things-considered normative reasoning, less fundamental than that of moral discourse. Asking for moral justifications of legal (or political) frameworks seems called for in a way that asking for legal (or political) justifications of moral outlooks does not. This issue of normative primacy needs to be distinguished from the issue of whether, in the epistemic process, we must start with moral considerations and only at a later stage move to political and legal ones. Often this is not so, but it is instead better to proceed by moving back and forth between the different registers, seeking an appropriate reflective equilibrium as we develop and revise our overall normative picture. It seems plausible to think that in some cases legal (and political) uses may usefully be explored first, as they give dignity a central role and provide important clues for building an account of human dignity.[30] But, once we move on to consider the content and structure of our overall normative reasons, the law strikes me as a normative system that is too specific and superficial to bear the weight that human dignity involves. We need to be able to explore questions about dignity beyond the law, and also about whether the law itself is a good site for dignitarian norms, and if so why, in what ways, and to what extent. This more general, and basic, *moral* exploration of what we owe to each other (and ourselves) is the home for these more fundamental questions.

As it turns out, the moral idea of human dignity may be especially significant to explain why it is a good idea to develop a system of international legal human rights that constraints states to act for the sake of individuals under their rule.[31] It marks *human individuals* as the fundamental beings which the law and politics must serve to be worth our allegiance. And it also gives *them* the authority to shape legal and political institutions as parts of the project of (and process leading to) their protection and their own emancipation.

The points made are relevant for answering a common challenge to humanist moral approaches to human rights according to which those approaches are disconnected from the real legal and political practice of human rights. The worry is that humanist approaches might problematically force "international human rights to conform to a received philosophical conception rather than interpret them, as they present themselves, as a distinct normative system constructed to play a certain special role in global political life."[32] The objection seems to rely on the view that an account of human rights should be such that it (in Rawls's words) "proceeds from the

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[30] I think that this is the kind of view that Waldron adopts when he says that we should start with legal rather than with moral philosophy. See *Dignity, Rank, and Rights*, 134–5.

[31] On this constraint, see Buchanan, *The Heart of Human Rights*, 86–93.

[32] Beitz, *The Idea of Human Rights*, 68.

international political world as we see it."[33] But what does this mean? What is it to proceed from x (a certain political environment) as we see it? Three possibilities are the following.

(a)   We take x as fixed; any reforms we propose will amount to improving x, not to going beyond it. (The *conservative or conventionalist reading*.)

(b)   We take x seriously, identifying reforms with an eye to what political agents able to affect x can feasibly achieve. (The *sober realist reading*.)

(c)   When entertaining reforms regarding x, we start by taking up the standpoint of those involved in x, asking what kinds of reforms they could reasonably accept or reject. (The *immanent discursive or contractualist reading*.)

I think that (b) and (c), combined,[34] are quite plausible, whereas (a) should simply be rejected as a general constraint because it risks flouting the constitutive feature of human rights as critical standards. This should be obvious if you consider, for example, that x is a social world involving slavery. We should aim at eliminating the practices of slavery, not merely at making them less humiliating or brutal. More generally, when it comes to human rights, we should not lose sight of contemporary political practice, but we should not take any feature of its current configuration as parametrically fixed without asking whether it is part of the best feasible way of responding to people's dignity. To determine this, we deploy the insights of both the humanist and the legal and political perspectives, seeking accounts of abstract and specific rights that no agent affected could reasonably reject.

We should avoid uncritical deference to the status quo. Legal and political perspectives, if they involve (a), are seriously problematic and should be rejected. However, on a charitable interpretation, I think that a key insight of those perspectives is this.

(d)   As we think about whether and how to reform x, we should pay attention to participants' views of the meaning of the practices that partly constitute x, and formulate proposals that relate to them. (The *hermeneutic reading*.)

The insight here is that normative reflection on human rights does not proceed in a vacuum, but draws on conceptual resources internal to existing practices. Even when it calls for their radical revision, it might be unintelligible without reference to that from which it emerges and to which it directs its

[33]   Rawls, *The Law of Peoples*, 83. Here I draw on, and revise, my discussion in "The Capability Approach and the Debate between Humanist and Political Perspectives on Human Rights. A Critical Survey," 320, and *From Global Poverty to Global Equality*, 282–3.
[34]   Arguably (c) already contains (b) if feasibility considerations are part of contractualist assessment. See further section 8.4 of chapter 8.

criticisms. This is a sensible point. The idea of a deliberative interpretive proposal that I presented in chapter 5 is partly meant to incorporate it, by suggesting that we start with a discussion of practical contexts in which human dignity is invoked in human rights discourse. However, I also presented that idea as involving an independent ethical assessment of the practical resources it addresses. We should indeed start from our own practical context (where else *can* we start?), but we should not take what is positively affirmed in it as being normatively self-authenticating. The idea of human dignity, which is normatively independent of any legal and political incarnation, is more basic, and helps us gain a deeper moral stance to engage in our practical contexts with a critical attitude. This attitude is appropriate if we are to articulate what enacting respect and concern for the dignity of every human being really calls for.[35] Such enactment is far from being disconnected from the concrete life of agents. Quite the contrary, the dignitarian approach puts agents front and center, adopts their deliberative stance, and asks: What do we have reason to accept as human rights requirements? How do we respond with solidarity to every person's status-dignity, by empowering them to access the object of their rights?

To conclude, we do best by construing human dignity as primarily a moral normative status of the human person in social life, which should be elaborated through specific norms in various interpersonal, political, and legal terrains. In chapters 7 and 8, I explore how a dignitarian program that captures this complexity and dynamism can be developed. I start with the ideal of solidaristic empowerment hinted at in the previous paragraph.

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[35] A worry about moral discourse is that it may make the prospects for agreement about human rights less likely. This would be so because people may be less likely to agree on deep moral foundations than on human rights. But recall, first, that moral justification can proceed at different levels of depth. People engaged in moral argumentation may agree on intermediate moral premises to justify the human rights they accept, even if they disagree on even deeper moral premises that might be invoked to justify the intermediate ones. Thus, moral argument could be shared to some extent even if disagreement remains. Second, it seems to me naïve to expect that discussion about human rights at the legal level can be fully insulated from disagreement about morality. Moral views will likely affect views about the content and application of legal rights. For example, Catholic views of human dignity may reject the voluntarism operative in some moral approaches based on the ideal of autonomy (construed as self-ownership). Thus, the former may take suicide, and euthanasia, as an affront to dignity, while the latter may take the opposite view. For powerful discussion of these issues, see Rosen, "Dignity Past and Present," 88–94.

7

Dignity and Solidaristic Empowerment

7.1. DEVELOPING THE DIGNITARIAN APPROACH

The idea of human dignity is pervasive in human rights discourse, and yet some scholars have challenged it by saying that it is empty, useless, or even harmful. In response, I have offered in chapters 5 and 6 an account of human dignity that clarifies and vindicates its importance. This account presents dignity as a distinctive normative status of the human person in social life, and shows that it plays crucial roles in shaping the articulation, justification, and application of the universalistic humanism characteristic of human rights. In this chapter and chapter 8, I will turn to a detailed discussion of how the dignitarian approach can be developed further. I will do so in a way that incorporates considerations about power and feasibility raised in chapters 3 and 4. I will propose an approach centered on an ideal of solidaristic empowerment. This ideal asks us to support persons' pursuit of a flourishing life by affirming both negative duties not to block or destroy, and positive duties to protect and facilitate, the development and exercise of the valuable capacities that give rise to their status-dignity. Enacting appropriate respect and concern for this dignity precisely involves enhancing and using power in solidaristic ways. This conceptual and normative perspective has important implications for the justification of specific human rights, such as the rights to political participation and decent work, which I proceed to explain in detail in chapters 9 and 10. It is also significant for justifying more ambitious demands of social justice, thus helping illuminate the full arc of humanist justice. This will be the topic of chapter 11. So, the idea of human dignity gives rise to an ambitious and fruitful theoretical and practical program. The structure of dignitarian arguments is discussed in chapter 8. In this chapter, I will concentrate on the articulation of the key notions of power, solidarity, and capability enhancement, and deploy them to formulate the ideal of solidaristic empowerment, which is the substantive normative core of the dignitarian approach I propose.

Before we proceed with the proposed development of the dignitarian approach, it helps to identify a set of key questions about human dignity to

chart the course of our discussion, noticing what we have done so far and what lies ahead. These are the questions:

Q1:   *Use*: In what occasions, and for what purposes, is the phrase "human dignity" used?

Q2:   *Concept*: What are the rules for the application of the phrase? What is it for a person to have human dignity?

Q3:   *Conception and justification*: What makes claims regarding human dignity true? What kinds of justification of those claims are appropriate?

Q4:   *Theory and practice*: How is a theory (a conception) of human dignity related to the practice of pursuing it? What difference (if any) does the former make to the latter?

In chapters 5 and 6, we took steps in answering Q1 and Q2. Various uses of human dignity were identified, and six significant roles for the phrase were outlined. I suggested that we see *human dignity* as involving a conceptual network whose components are deployed in the fulfillment of the six roles identified. Two key notions in the network are those of status-dignity and condition-dignity. To have human dignity in the sense of status-dignity is to have certain valuable features that give rise to certain dignitarian norms with broad, human reach, and to have human dignity in the sense of condition-dignity is to enjoy a situation in which those norms are fulfilled. Further notions were identified, including those concerning the basis of dignity, the circumstances of dignity, and dignitarian virtue, amongst others.

The distinctions mentioned in answering Q2 help organize our discussion regarding Q3. The question about conception and justification calls for a substantive view of human dignity that informs arguments about dignitarian norms, their content, justification, and nature. Dignitarian norms are requirements whose fulfillment constitutes condition-dignity. Their justification invokes status-dignity. And the theoretical and practical enterprise concerning the discovery, defense, and implementation of dignitarian norms is shaped by some commitments to the broad, *human* significance of the dignitarian norms. A conception of human dignity provides substantive theses about the desirable conceptual roles of human dignity, and accounts of what makes various dignitarian claims true.

There are significant philosophical questions facing the development of a substantive account of human dignity.[1] A first philosophical question concerns the *basis of dignity*. The basis of dignity is the set of valuable features in

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[1] For a survey of some philosophical questions see Marcus Düwell, "Human Dignity: Concepts, Discussions, Philosophical Perspectives," in M. Düwell, J. Braaving, R. Brownsword, and D. Mieth, eds., *The Cambridge Handbook of Human Dignity* (Cambridge: Cambridge University Press, 2014), 23–49. Düwell does not organize the debate in terms of the seven issues I proceed to identify.

virtue of which human persons have status-dignity (in the endowment-based sense). A substantive account of the basis of dignity naturally provides relevant grounds for ascribing status-dignity, and also for justifying various specific dignitarian norms (that is, various rights and duties). It also charts the contours of humanist discourse. An example of philosophical debate on the basis of dignity concerns whether we should only focus on rational agency (the capacity to make reasoned choices about how to shape our life) or whether we should acknowledge other valuable features of human beings, such as their capacity to feel pain and pleasure.

Besides the question about what constitutes the basis of dignity, there are questions about how we should link status-dignity and its basis with the various dignitarian norms. What should those norms be like if they are to articulate appropriate responses to the valuable features that give people their status-dignity? Thus, second, we should ask what are the *objects* of the rights and duties flowing from dignitarian norms. How demanding should dignitarian norms be? Should they call only for supporting people's pursuit of a basically good or decent life, or should they also support their pursuit of a flourishing life? What would decency and flourishing involve? Third, what is the *structure* of dignitarian norms? Do they involve positive rights and duties or only negative ones? Should dignitarian norms require provision of help besides avoidance of harm? Fourth, what is the *weight* of dignitarian norms? Are there different kinds of dignitarian norms, some stronger and some weaker? How would these different dignitarian norms measure up against competing considerations? Fifth, what is the *site* of dignitarian norms? Do they apply only, or primarily, to institutional structures such as those making up a coercive state? Or should they also apply more broadly to relatively "informal" contexts in which human beings interact with each other in consequential ways?[2] Sixth, what is the *scope* of dignitarian norms? How broad in geographical space and historical time can these norms apply? And what is the relation between dignitarian norms and norms concerning the treatment of non-human entities (such as non-human animals, plants, and inanimate objects)? If the scope of the moral community is wider than humanity, should we acknowledge forms of dignity, and dignitarian norms, that outstrip it? Seventh, and last, what should be the overall *strategy of*

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[2] For an illuminating exploration of the various sites of dignity injury and dignity affirmation, especially with regard to race and sexual orientation, see Edwin Cameron, "Dignity and Disgrace: Moral Citizenship and Constitutional Protection," in C. McCrudden, ed., *Understanding Human Dignity* (Oxford: Oxford University Press, 2013), 467–82. Discussing the legal and cultural stigmatization of blacks and homosexuals in South Africa, and the radical changes responding to it, Cameron explains that "[a]s with the effects of . . . subordination, the reparatory project is both private and public, both internal and external" (p. 473). Cameron explores various ways in which the post-apartheid South African Constitution and accompanying jurisprudence deploy appeals to human dignity.

justification of dignitarian norms? The debate might reach as far as the fundamental principles in normative ethics and political philosophy. For example, should dignitarian norms be construed within a consequentialist or a deontological framework? What forms of these (or other) broad families of ethical theory would be most appropriate? Might it be better, instead, to avoid a top-down approach based in these philosophical theories and proceed instead from an "overlapping consensus" amongst existing beliefs about what dignity amounts to? Is the justification of dignitarian norms ultimately based on contentious moral, religious, or metaphysical propositions or can it be (and perhaps should be), at least to some extent and in some contexts of discussion, carried out independently of affirmation or rejection of such propositions?[3]

A substantive account of human dignity will have to address these questions about the *basis, content (objects), structure, weight, site, scope, and strategies of justification* of dignitarian norms. It is difficult to regiment these debates in any quick fashion. I will not attempt to provide a preliminary survey of the possibilities. Instead, I will develop my own view and address these questions as they become relevant in the exposition and defense of it.

To conclude this mapping of questions about human dignity, consider the fourth question (Q4), which concerns the relation between theory and practice. What is the point of theorizing about human dignity? Does it make any practical difference? In response, I first note that philosophical work on human dignity may be valuable in itself by simply satisfying our theoretical curiosity. This is not unrelated to responding to our dignity as intellectual beings with epistemic interests. But there is more. As I see it, work in academic philosophy regarding human dignity and related topics is a natural outgrowth of reflection and discussion that already occurs outside academia. We ask ourselves what we owe to each other as beings with dignity in various practical contexts—at work, in politics, within the family, in friendships, and so on. Although I do not think that it has any special epistemic authority, academic philosophy does a significant job by systematically, and potentially fruitfully, pushing these already existing conversations further both conceptually and substantively. Thus, philosophical work can help us organize our public debates about the nature, content, and justification of certain norms of justice (such as human rights) by articulating with precision the main concepts involved in them. This may help participants in those debates to better understand their interlocutors (and themselves), and to identify clearly the

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[3] The discussion can go even further and address meta-ethical issues. Are claims about human dignity and dignitarian norms to be characterized within a cognitivist framework, an expressivist framework, or an error-theoretical framework? How are normative claims about the basis of dignity and the content of dignitarian norms to be related to descriptive propositions about the nature of human beings and social organization? How might the latter illuminate the justification of some dignitarian norms—e.g., by addressing the feasibility of their fulfillment in actual ethical and political practice?

options for debate without confusion and without talking past each other. Furthermore, philosophical work can propose valuable substantive articulations of the content, and defense, of dignitarian conceptions of justice. For example, philosophers can offer illuminating views about the basis of dignity, and suggestions as to what are promissory ways to state and vindicate the core dignitarian norms. Philosophers can also help in the organization of interdisciplinary research by exploring how inquiries in ethical theory, law, social science, and public policy can interact in coherent and cross-pollinating ways. The methodology of those interactions is itself an important area of second-order inquiry, which philosophy is well equipped to address. Finally, philosophical work on human dignity is part of the ethical and political practice of supporting human dignity in a very direct sense. We do not only want to support human dignity, we also want to know that and why we do so. Understanding human dignity is a central part of responding to its value. Appreciating our own value as beings with dignity is thus multiply significant.

7.2. DIGNITY, POWER, AND SOLIDARITY

In this section I present a characterization of the ideas of solidarity, dignity, and power. I also formulate some initial points about their relation.

7.2.1. Solidarity

What is solidarity? There are several existing and possible accounts of this idea, which I will canvass in section 7.2.5. As I see it, in a nutshell, solidarity is a feature of human relationships and interactions in which persons adopt towards each other an attitude that is fundamentally non-instrumental and involves positive concern. A person A approaches another person B non-instrumentally when A does not see B merely as a means to A's benefit, and A approaches B with positive concern when A sees the benefitting of B as an end in itself.[4] The solidaristic approach should be non-instrumentalist and involve positive concern in a fundamental way, not in every way, because

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[4] As I interpret Kant's famous Formula of Humanity (according to which you ought to act in such a way that "you use humanity, whether in your own person or in the person of any other, always at the same time as an end, never merely as a means"), it mandates both attitudes (not only the first, which is the one that often receives attention). It says that we should refrain from treating human beings as mere means and also that we should treat them as ends. See Pablo Gilabert, "Kant and the Claims of the Poor," *Philosophy and Phenomenological Research* 81 (2010), 382–418, at 389–90. See Immanuel Kant, *Groundwork to the Metaphysics of Morals* (*Ak* 4:429), in Kant, *Practical Philosophy* (Cambridge: Cambridge University Press, 1996).

some forms of mutual instrumentalization or non-benefitting may be justified on the basis of deeper norms that do express non-instrumentalization and benefitting. Thus, in some competitive games there are partial forms of instrumentalization and non-benefitting that are permissible, but these are justified if the existence of the game itself can be endorsed as contributing to social relations that are solidaristic. Another, more controversial example is the institutions of a market economy. Some believe that markets are justifiable because through their use people foster each other's autonomy and well-being more than they would if they used feasible alternative ways to organize economic exchange. Even if in discrete market transactions two individuals A and B focus primarily on their own benefit and only instrumentally on the benefit of others, by sustaining a market economy as a societal system, A, B, and others are sustaining the best feasible way to foster others' (not only their own) autonomy and well-being. This belief is certainly debatable, but it seems sincere when it is accompanied with an acceptance of taxation to fund help for those who would likely not benefit very much from an unregulated market economy.

7.2.2. Dignity

Dignity is, first, a normative status that persons have in virtue of certain valuable features of them. It grounds certain duties to treat them in ways that enact respect and concern. Solidaristic treatment is an appropriate response to persons' dignity. By not instrumentalizing people unduly and by exercising concern for them, we acknowledge the value of the features that give rise to their dignity (that is, persons' intrinsic worth). Thus, we engage in appropriate treatment when we do not destroy and when we enhance persons' valuable capacities, when we do not disable, and when we enable and further, their achievement of a life in which they develop and exercise those capacities to achieve autonomy and well-being. To the extent that people are treated in an appropriate way when it comes to their access to conditions of autonomy and well-being, they have *condition-dignity* (to be distinguished from the *status- dignity* mentioned above). As an example, consider educational institutions. When children are taught philosophy, and they learn about history and other world cultures, their capacities for independent reasoning and human sympathy are fostered. When their education is doctrinarian and one-sided those capacities are stunted. The first, and not the second, kind of education responds properly to children's status-dignity; it helps them achieve, and promote others', condition-dignity.

   In this book, I argue that human justice targets the forms of condition-dignity people are entitled to in their social relations. We can distinguish between *basic* and *maximal justice*. An account of the former is provided by a conception of human rights, which identifies the conditions that have the

highest priority and should be the focus of the most urgent domestic and global concern and action. But dignitarian claims can go further. Human dignity, and social justice, include but go beyond human rights. While the former focuses on the basic condition-dignity of having access to a decent life, the latter focuses on the more expansive condition-dignity of having access to a flourishing life (that is, one in which people help each other to achieve as much autonomy and well-being as they reasonably can). Thus, education should not only enable children to become productive workers, but should also enable them to engage in forms of work which let them assume decision-making responsibilities and fulfill their singular talents. Liberal egalitarianism and socialism are examples of conceptions of maximal justice. Although in this book I mostly focus on basic justice, I also believe that a dignitarian and solidaristic view of maximal justice is correct, and will explain so in chapter 11.

7.2.3. Power

Power can be, and has been, defined in many ways.[5] I prefer to work with a fairly general definition. Using a broad conceptual account is preferable because it leaves specific options open for substantive debate instead of ruling them in or out by definition fiat. Philosophical and normative reflection and debate about power is in this way enhanced rather than short-circuited. A second desideratum that I find important is that a concept of power help us illuminate our critical reasoning about what we ought to do. To do this, the concept has to focus on the intentional agency of power-holders. The concept should help us make claims about what difference agents can, and should, make in practice.[6]

How shall we understand agential power? We can say that an agent A has power with respect to a certain outcome or state of affairs O to the extent that A can voluntarily determine whether O occurs. Applied to social and political contexts, this definition leads to the view that A has power over another agent B to the extent that A can get B to be or to act in ways A intends. The general

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[5] My discussion in this section draws on Pablo Gilabert, "A Broad Definition of Agential power," *Journal of Political Power* 11 (2018), 79–92. For surveys, see Steven Lukes, *Power: A Radical View*, 2nd ed. (New York: Palgrave, 2005); Peter Morriss, "Power," in G. Gaus and F. D'Agostino, eds., *Routledge Companion to Social and Political Philosophy* (New York: Routledge, 2012), 585–95.

[6] Thus, in this text I use "agential power" to refer to a specific kind of power that can be had and exercised by entities in their capacities as agents. Agential power differs from other powers or dispositions (such as those held by non-agential entities—think about the power of water to dissolve sugar—or by agents when not operating agentially—as when my body has the power to displace water when it falls on a pond by accident).

idea is simply that agents' power is their ability to shape aspects of the world as they will. More formally, I propose the following definition:

> *Broad definition of agential power*:   In certain circumstances C, an agent A has power over a subject S (where S is either a thing or an agent, be it agent A or some other) with respect to whether some final outcome or state of affairs O occurs to the extent that A can voluntarily determine whether S exists or behaves in such a way as to generate O.[7]

This characterization is indeed very open and allows for the articulation of, and debate about, various substantive claims about power. This is indeed one of its main virtues. Let me highlight some (often related) features of this account that show its broad applicability:

- The characterization proposed allows for degrees of power. Two agents may have power to achieve a certain outcome, but one of them may have more power to achieve it than the other. For example, A and B may both be able to win in a competitive game, but even if both go for winning, A may be more likely to do so than B. And different outcomes may be accessible to different degrees to different agents, so that A may be more powerful than B with respect to O1 while B is more powerful than A with respect to O2.[8]

- It includes power over oneself as well as power over others. One respect in which agents can be more or less powerful concerns their ability to get themselves to act in certain ways. For example, A may be more powerful than B due to having more self-discipline, or willpower. There is an intrapersonal dimension of power. So comparisons of power between two or more agents have to look at interpersonal power (if there are potential interactions between the relevant agents) but also at intrapersonal power. Interestingly, the comparative exercises might also have to look at the relations between the two cases. Sometimes A's power over B has to be explained by the differences in self-directed power between them. B may grant a position of leadership to A because A is more self-disciplined. In reverse, sometimes interpersonal power shapes

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[7] We can add time indices to make the account more explicit. We can, e.g., talk about A having power at time t1 with respect to an outcome at tn—where tn coincides with, or comes later than, t1. Furthermore, it is common to add a counterfactual clause saying that the outcome of power exercise would not have occurred without that exercise. One should phrase this point carefully, however, as it could be that, e.g., if A had not exercised power over B to get B to produce O, O would have still been produced by B because, say, C got B to do it, or B decided to do it independently of anyone else's prompting. What is crucial for the counterfactual is that O would not have arisen in the exact same way (the one whose description makes reference to the agent of power's exercise of their power).

[8] As a matter of degree, power is best characterized as involving scalar feasibility. I explore this point in more detail in appendix 2.

intrapersonal power. It is not uncommon for some people to lose self-command when they are systematically subjected to domineering command by others.[9]

- It can apply to individuals acting alone, to individuals acting in concert, and to collective agents. As an individual, A may be more powerful than B, but the group to which A belongs may be less powerful than the group to which B belongs. A worker may be extremely weak when negotiating a labor contract with a capitalist, but if the worker is part of a union, their bargaining power shoots up. Individuals can form collectives with great power, such as trade unions, political parties, armies, and states.[10]

- It includes a capacious notion of outcome that allows for process-based considerations. Following Amartya Sen, we can distinguish between "comprehensive" and "culmination outcomes" and focus on the former, illuminating the process that leads to a final result in addition to that result itself.[11] What agents have power to bring about can include the process through which the final result arises. This point is significant when we engage in normative discussions about social power, as in those debates we are often interested in procedural issues about how people treat each other as they go about producing certain final results. For example, collective agents (unions, parties, states, etc.) may be organized in more or less democratic ways, and it may be reasonable to prefer a more democratic organization even if decision-making would be less effective in terms of producing some desirable procedure-independent outcomes. In any case, process-related and process-independent (or culmination outcome focused) dimensions of power can be distinguished and their relative explanatory and normative significance explicitly explored.

- It allows for various mechanisms of exercise of power. The characterization of power proposed here is non-moralized in the sense that it captures forms of power that may be bad as well as those that might be good (both regarding procedures and what results from using them). A can lead B to produce O by rationally convincing B that B has good reasons to do it which are independent from A's saying so. Or A can get B to produce O through force, coercion, or manipulation.[12]

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[9] I should add that although my characterization of power focuses on what agents can voluntarily bring about, it does not assume that the choices, intentions, etc. of those agents must be conscious. It is not ruled out by the definition proposed here that power be wielded unconsciously.

[10] We can in this way capture the idea of "power with." See Morriss, "Power," 589.

[11] Amartya Sen, *The Idea of Justice* (Cambridge, MA: Harvard University Press, 2009), 215–17.

[12] Often power operates through communicative interaction. That interaction can involve respectful and concernful discursive argumentation of the kind explored by Jürgen Habermas's discourse ethics and politics. See Habermas, *Moral Consciousness and Communicative Action* (Cambridge, MA: The MIT Press, 1990) and *Between Facts and Norms* (Cambridge, MA: The MIT Press, 1998). Communicative interaction can also display mechanisms of violence and

- It can be used to account for the idea that social structures are significant for power. Without needing to reify social structures—that is, without treating them as agent-like entities—we can use the broad account of agential power to understand why the power some people have over others depends on systemic or structural dimensions of their social life. Social structures simply are crystallizations of past social actions and relationships. They affect current actions and relationships, but they can also be changed within them depending on how people choose to construe the terms on which they live together. So, take the structural power of capitalists over workers as displayed in their unequal bargaining when setting up a labor contract and in their day-to-day interactions in the workplace. The relevant forms of structural power here concern the relative power that agents have in virtue of their class position within a class system.[13] Workers have some power as owners of their labor force. They may not be put to work without their formal consent. Capitalists in turn have power as owners and controllers of the means of production. Capitalists can bargain with significant clout with workers. Since workers lack means of subsistence, they must seek employment under some capitalist, who normally seeks to maximize profits and minimize labor expenditures (that is, wages). This structural power is the result of, and affects, the adoption and sustenance of certain conventions about private property rights in means of production and their application. Once accepted and deployed, these conventional rights become resources for agential power. As the history of social revolutions shows, however, property regimes and class structures can change dramatically, and when agents make these changes, they alter the resources for agential power in specific social environments.

- It includes various possible targets in the subject of power. Thus, in the case of social power, A may have power over B regarding the production of O more or less directly. A may physically force B to bring about, or constitute, O (as when A uses B as a human shield), or get B to make choices that generate O by influencing the process of formation of the

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domination. See Pierre Bourdieu, *Language and Symbolic Power* (Cambridge, MA: Harvard University Press, 1991). Rainer Forst has recently proposed an expansive view of power that captures many of these forms. See Forst, "Noumenal Power," *Journal of Political Philosophy* 23 (2015), 111–27. According to Forst, A has power over B when A can intentionally affect the reasons B draws on to think and act as they do. I am here proposing an even more expansive view which does not rule out mechanisms of power exercise that involve sheer causal force operating without the recruitment of the intentional endorsement of others. Thus, A can exercise power over B by using B as a human shield in combat with C even if this is achieved only through direct brute force (i.e., A never communicates with B and B never makes any choice as to whether to be A's shield).

[13] See Erik Wright, "Working Class Power, Capitalist Class Interests, and Class Compromise," in *Understanding Class* (London: Verso, 2015), 185–230.

beliefs, desires, emotions, dispositions, and other features and circumstances of B that affect B's intentions and actions regarding the production of O (as when A persuades B to go for O by presenting some evidence that O would satisfy B's present desires, or by steering B into forming some new desires that lead B to pursue O, or by reshaping the feasible set of options available to B so that O gains prominence in terms of its noticeability, desirability, or feasibility).[14]

- It includes power over things besides persons. Thus, we can talk about power as a social relation, but also as a relation between human beings and their material environment.[15] We can talk about technological power, and also explore its significance for social power. An important topic in both social science and political philosophy concerns the extent to which the feasibility of certain types of social organization (such as capitalism and socialism, or an international system of legal human rights) is constrained or affected by various levels of technological power.[16]

We can develop substantive views about power relationships by asking and answering descriptive and normative questions about the different dimensions of power allowed by this broad conceptual characterization. Substantive

[14] There is also the view that subjects of power may themselves be, in some respects, constituted by exercises of power. This happens, e.g., in the contexts of socialization in the family or in educational institutions, in which many people's beliefs, preferences, and habits are formed. The topic of constitution is familiar from sociological research. See Lukes, *Power*. It is also a central element in Michel Foucault's inquiries about power. See, e.g., Foucault, "The Subject of Power," in Foucault, *Power*, ed. J. Faubion (New York: The New Press, 2000), 326–48.

[15] So, even though the account of power presented here is restricted to intentional agents with respect to the power-wielder, it does not say that the subject of power must also be an intentional agent, and even when the subject of power happens to be an intentional agent, the account does not say that every power relation must affect the receiving subject *as* an intentional agent.

[16] For a strong view of this constraining relation, see G. A. Cohen, *Karl Marx's Theory of History: A Defense*, expanded ed. (Princeton, NJ: Princeton University Press, 2001). For a critique of technological determinism that affirms a greater malleability of social frameworks, see Cornelius Castoriadis, *The Imaginary Institution of Society* (Cambridge, MA: The MIT Press, 1998), Part I. The debates about the relative significance of physical violence and various forms of persuasion and consensus formation sparked by the work of Antonio Gramsci on hegemony are still relevant and interesting. See Antonio Gramsci, *The Antonio Gramsci Reader*, ed. D. Forgacs (New York: New York University Press, 2000), sects. VI and X. For discussion, see Perry Anderson, "The Antinomies of Antonio Gramsci," *New Left Review* I/100 (1976), 5–78; Chantal Mouffe, ed., *Gramsci and Marxist Theory* (London: Routledge & Kegan Paul, 1979); Adam Przeworski, *Capitalism and Social Democracy* (Cambridge: Cambridge University Press, 1985); Erik Wright, "Working Class Power, Capitalist Class Interests, and Class Compromise." Of course, another important topic concerns the normative dimensions of power relations between human agents and non-human animals and plants.

debates turn on how to best specify, in a certain context of discussion, the relevant circumstances, agents, subjects, outcomes, and their relations.[17]

7.2.4. Exploring the Relations

Power asymmetries may be used in ways that fail to show solidarity, and affront dignity. Typical cases are domination (the subjection of others to one's will) and exploitation (the unfair taking advantage of the relative vulnerability of others for one's own benefit). Domination and exploitation are forms of

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[17] To provide a handy framework to organize debates about the multiple possibilities identified above, I suggest that we can formulate and seek answers to the following questions about a certain power:

    i. Who has or exercises this power? (*Agents of power—power-holders or power-wielders.*)
    ii. Over what or whom is this power held or exercised? (*Subjects of power.*)
    iii. What outcomes does this power help create or facilitate? (*Outcomes of power. Range of power.*)
    iv. To what extent would these outcomes be under the control of the agent? (*Degree of power.*)
    v. What are the unintended effects (to be distinguished from the intended outcomes) of power relationships and exercise? (This relates to historical issues—see below.) (*Intended and unintended outcomes of power.*)
    vi. What are the means, or mechanisms, through which the agent can exercise this power, and help create or facilitate the relevant outcome? (Force, coercion, inducement, persuasion, etc.) (*Means, mechanisms, forms of power.*)
    vii. What are the resources the use of which enable the agent to exercise this power? (Prestige, status, authority, economic resources, tools of violence, organization, knowledge, rhetorical and argumentative skills, etc.) (*Resources of power.*)
    viii. Why, and in what circumstances, do the agents of this power want to have and use this power (if they do)? (*Operative reasons for power.*)
    ix. Why, and in what circumstances, do the agents of this power have reason to have and use this power (if they do)? (*Normative reasons for power.*)
    x. What are the enabling, and what might be some disabling, conditions for the agent to exercise their relevant power? (e.g., circumstances that might be necessary for the agent to use certain resources successfully, or that may block the likelihood of their intentions being fulfilled, etc.) (*Enabling and disabling conditions or circumstances of power.*)
    xi. How did circumstances C arise? (*History of circumstances of power*) (This includes the constitution of the agents and subjects of power; which may themselves be the effect of previous processes involving power.)
    xii. How might C change? What feasible reforms or transformations are feasible and how feasible are they? What degree of power do agents have to introduce them? (*Feasibility of change in circumstances of power; dynamic power.*)
    xiii. How should C be changed (if C should indeed be changed)? (*Desirability of change in circumstances of power.*)
    xiv. If there is reason to reform or transform C, how does this change relate to the relations of power under discussion (both normatively and causally)?
    xv. If certain power relations are desirable but not sufficiently feasible or reasonably accessible in C, is there reason to change C (into different circumstances C*) so that the new relations emerge? If so, what could and should be done to change C in this way? (*Dynamic duties to change circumstances of power.*) (On dynamic duties and dynamic power, see appendix 2.)

instrumental treatment, and are often also humiliating. Another important case is neglect or indifference (the failure to help when one can do so without unreasonable cost). Indifference exhibits lack of positive concern. Asymmetric power can sometimes also be used in a solidaristic way by helping the less powerful develop and exercise their capacities, and achieve greater levels of autonomy and well-being. Sometimes the relevant solidaristic duties will be to eliminate or reduce existing power asymmetries by empowering others or by disempowering oneself. Other times, these reductions of inequality in power may be infeasible, or all things considered undesirable. In those cases, solidarity may involve a use of asymmetric power that benefits others. Protecting others from threats by third parties in an emergency is an example. Enhancing their ability to seek and achieve what is of value to them—for example, by providing them with material resources they currently lack—is another.

The points made above help us arbitrate some contemporary debates about the characterization and significance of power. Peter Morriss helpfully distinguishes between two ways in which social arrangements can be critically evaluated by reference to power.[18] One addresses issues of "powerlessness" or "impotence." The concern here is whether people have "power to meet their own needs or wants." The other form of critical evaluation takes up issues of "domination," and addresses situations in which people are "subject to the power of another." Morriss claims, and I agree, that the distinction is important. We can criticize a society's arrangements by focusing on either issue separately.

Steven Lukes challenges this view.[19] He grants the analytic distinction between powerlessness and domination. He also agrees that we should avoid the "paranoid fallacy" that assumes that powerlessness always necessarily results from domination. But he thinks that Morriss is mistaken to see powerlessness and domination as sharply separate issues. The powerful may often make others powerless, or fail to remedy their powerlessness, whether deliberately or not.

Lukes is right to point out that powerlessness and domination are often causally related. But I think that he muddles the waters when he suggests that reference to domination is always necessary to account for the injustice of social arrangements. Lukes poses a rhetorical question: "If we think of powerlessness as an *injustice*, rather than as bad luck or misfortune, is that not because we believe that there are those in a position to reduce or remedy it?"[20] Now, we should not think that powerlessness involves injustice only if there is domination. Lukes's point is the more modest (albeit important) one that powerlessness carries injustice only if there are relatively powerful agents who

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[18] Peter Morriss, *Power: A Philosophical Analysis*, 2nd ed. (Manchester: Manchester University Press, 2002), 40–2.

[19] Lukes, *Power: A Radical View*, 67–9.   [20] Ibid., 68.

fail to fulfill an obligation to remedy the powerlessness of the powerless when they can. But notice that this obligation need not derive from considerations about domination. It need not consist in the elimination of, or a compensation for, harms imposed by domination. It may reflect independent, positive requirements of solidarity. Non-domination is not coextensive with solidarity. The latter includes certain positive requirements that go beyond the negative ones captured by the former. Consider, for example, the relation between two countries, A and B, which are quite well-off and relate to each other on fair terms, as equals. Imagine that an asteroid hits B, with devastating consequences. The new, relative powerlessness of people in B is not the result of domination on the part of A and its people, but it would be an injustice if people of A did not (through their state or on their own), help the people of B—or so the ideal of solidaristic empowerment would require.

We can, more generally, distinguish between (a) a "vertical" dimension of power that concerns the ability of agents to do or be certain things (such as things they have reason to value), and (b) an "horizontal" dimension of power that concerns the ability of agents to significantly affect the condition of other agents. The second dimension has multiple variants. Some involve the ability to harm, while others involve the ability to benefit and empower. The second dimension crisscrosses with the first, because what makes the affecting of others significant is that it touches upon their ability to access what they value or have reason to value (such as their personal liberties, their economic opportunities, etc.).

This book explores what basic justice requires in terms of empowerment and solidarity. Notice that the account of dignity, by referring to persons' capacities, already addresses issues of power, as capacities are powers (more on this in section 7.3 below). Solidarity is a certain use of power that affects the power of others. Dignity imposes an orientation to a solidaristic use of power in social life.

We need to think about how to connect the existence and use of power with negative duties of respect and with positive duties of aid to others. Sometimes asymmetries of power should be dissolved. But when asymmetries of power will not dissolve, or should not dissolve, negative and positive duties to exercise power in certain ways are crucial. Furthermore, positive help should be framed in certain ways if it is to honor dignity. It should aim at expanding the capacities of others to pursue their own projects. It should also proceed so that those who are helped can have an active role in the process by having a say as to whether, and how, they are helped. These points were briefly made in chapter 4 (section 4.2.2.3). But their significance becomes clearer once we adopt the dignitarian framework and make the ideal of solidaristic empowerment explicit. I will illustrate these points extensively when discussing political rights (see section 7.3 below, and chapter 10). Those rights give agents real opportunities to be protagonists in the social processes fostering their autonomy and well-being.

As we consider the points just made, it is important not to confuse autonomy or self-direction with independence understood as self-reliance. It is the former that imposes crucial constraints on solidarity from the point of view of dignity by demanding that nobody is made to live on other people's terms. The ideal of independence sometimes seems to involve this idea. To that extent it is acceptable. But independence is sometimes construed in the sense of radical self-reliance, which is problematic. This book argues that radical self-reliance is both unrealistic and undesirable. We need help from others to develop and exercise our capacities, and it is a good thing when we do help each other in this way. The ideal of independence as self-reliance sometimes is used to block or criticize solidaristic help as leading to arrogance (in the helpers) and humiliation (in the people helped). Once we make sure that autonomy and empowerment are in the picture, the remaining worries lose force. We should learn to receive and give solidarity without humiliation and arrogance, as the appropriate way of dealing with our condition as socially interdependent agents.[21]

7.2.5. Dignitarian Approach and Solidaristic Empowerment

We can now state the substantive view emerging from the foregoing considerations. According to the *dignitarian approach*, we have reason to organize social life in such a way that we respond appropriately to the valuable features of human beings that give rise to their dignity. That dignity is a deontic status in accordance to which people are owed certain forms of respect and concern. The relevant forms of respect and concern are stated by various norms, including human rights and requirements of social justice. These dignitarian norms can be articulated as specifying an *ideal of solidaristic empowerment*, which we can state as follows:

> *Solidaristic empowerment*:   We should support people in their pursuit of a flourishing life by fulfilling both negative duties not to destroy or block their valuable human capacities and positive duties to protect and facilitate their development and exercise.[22]

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[21] Some level of interdependence is also arguably a precondition for the questions that political philosophy addresses to make full sense. Radically independent beings would have no need to puzzle over the distribution of material advantages and the allocation of political power. Taken to its limit, the idea of independence as self-sufficiency or self-reliance points to an imaginary context in which politics has no place. See Robert Goodin, "Independence in Democratic Theory: A Virtue? A Necessity? Both? Neither?" *Journal of Social Philosophy* 24 (1993), 50–6, at 52.

[22] A flourishing life includes a decent life as its most urgent part, and human rights typically focus on the latter.

It is important to insist that human dignity gives rise to both negative and positive duties. If an individual has status-dignity in virtue of certain valuable capacities, it is surely pro tanto wrong to destroy those capacities or block their development and exercise. But it is also pro tanto wrong to not help other agents maintain, develop, and exercise those capacities when we can do so at reasonable cost. What grounds negative respect also grounds positive concern. We do not fully respond to the value of the valuable capacities unless we give proper weight to both kinds of considerations. This also means that justice includes, but goes beyond, non-domination. Taking seriously the dignity of others does not only involve avoiding the subjection of their will to one's own. It also involves reaching out to help them by enhancing their ability to pursue a good life for themselves.[23] I use the term "solidarity" in the ideal of solidaristic empowerment precisely to emphasize these points concerning the positives duties to help others.

Since the idea of solidarity has received comparatively little attention by political philosophers when compared to others like freedom and equality, it makes sense to pause for a moment to illuminate the conceptual territory it covers, and to make more explicit the part of it the ideal of solidaristic empowerment focuses on.

We can understand solidarity in a very minimal sense as dispositions and behavior (including their institutional articulation) toward others which affirm them by being helpful besides being non-harmful. But such dispositions and behavior may take many forms. The wealth of possibilities can be captured by considering the following questions:

(1) Who (*qua* who) are solidaristic?
(2) To whom (*qua* whom) are they solidaristic?
(3) When, in what circumstances, are they solidaristic?
(4) How, in what ways, are they solidaristic?
(5) Why, on the basis of what motives and reasons, are they solidaristic?
(6) To what extent, within what limits, are they solidaristic?

A descriptive, or empirical, study of social life would give us many different answers regarding these aspects of people's helping dispositions and behavior. Solidaristic empowerment normatively selects some of them.

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[23] I think that this point is not fully captured by some Kantian views of dignity only focused on the ideal of independence as non-domination. See, e.g., Arthur Ripstein, *Force and Freedom* (Cambridge, MA: Harvard University Press, 2009). Two societies could be equally just as far as non-domination is concerned, but one may be more just than the other because in it people justifiably go further in terms of creating practices and institutions that enhance the power of each to effectively (and freely) pursue their well-being. I explore the possibility of a wider Kantian view that includes solidaristic empowerment in "Kantian Dignity and Marxian Socialism," *Kantian Review* 22 (2017), 553–77.

Questions (1) and (2) refer to the *agents* and *recipients* of solidarity. They can be understood as members of a family, a club, a profession, an ethnic group, a religious group, a class, a nation, or humankind at large. Solidaristic empowerment can range over any of these sets, but in this book I am focusing primarily on the widest form of it, which centers on solidarity amongst all human persons insofar as they can affect each other. Although many forms of solidarity tend to appear, as a matter of fact, among those who share a particular conception of the good or share more or less defined identities as members of particular groups,[24] we should not underestimate the strength of universalistic solidarity. A powerful example of the latter can be found precisely in contemporary movements for global justice and human rights. Members of these movements speak a language of solidarity that is clearly universalistic in nature.[25] Human rights call for a form of human solidarity based on the fellowship of humankind. There was nothing absurd when the UN General Assembly declared December 20 the "International Human Solidarity Day." This is what solidaristic empowerment, as an articulation of the dignitarian approach, calls for.

Questions (3) and (4) track the *occasions* and *activities* of solidarity. Solidaristic behavior tends to arise when others require help to meet their interests or needs. But those interests or needs can be understood differently in different contexts. Members of a family may be sensitive to certain interests which would not stand out for officials distributing benefits in a welfare state. Helping behavior can come in many flavors too. You may help by directly giving others what they need, or indirectly by offering resources and opportunities they can use through their own choices (see the point about autonomy below.) When it comes to (3) and (4), solidaristic empowerment has the following significant features. First, it has a wide range of application, including institutions and personal behavior. When deployed as an ideal of justice, it is certainly geared to guiding the assessment of institutional structures such as states and international organizations, property law and labor law, the organization of firms, and the like. But it can also guide individuals in their face-to-face encounters. We can be solidaristic as citizens supporting a welfare state and as officials working within it, but also as participants in social movements

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[24] See Kurt Bayertz, "Four Uses of Solidarity," in K. Bayertz, ed., Solidarity (Dordrecht: Kluwer, 1999), 3–29; David Miller, *Principles of Social Justice* (Cambridge, MA: Harvard University Press, 1999), 26–7; and Charles Taylor, "Cross-Purposes: The Liberal-Communitarian Debate," in Taylor, *Philosophical Arguments* (Cambridge, Mass.: Harvard University Press, 1995), 181–203.

[25] Pablo Gilabert, *From Global Poverty to Global Equality* (Oxford: Oxford University Press, 2012), 144. See also Kai Nielsen *Globalization and Justice* (New York: Humanity Books, 2003); and Iris Young, *Responsibility for Justice* (Oxford: Oxford University Press, 2011). On the existence and evolution of tendencies to both narrow and inclusive forms of helpful and cooperative behavior, see Samuel Bowles and Herbert Gintis, *A Cooperative Species* (Princeton, NJ: Princeton University Press, 2011).

seeking to create new institutions or reform existing ones, and as ordinary people encountering each other in various informal settings. Second, the needs or interests solidaristic empowerment focuses on are those that concern the development and exercise of the capacities that give rise to people's human dignity. Not every conceivable wish or desire or need would qualify. Third, and finally, when possible solidaristic empowerment targets the fostering of autonomous agency. To empower others to access what would meet their relevant interests is not simply to shovel the objects of those interests down their throats, but to support their ability to meet those interests as they choose. We can see autonomy itself as something people have a critically important interest in, given their capacities for prudential and moral judgment and the role of these capacities in allowing them to shape their own lives from within.

The last question targets the *limits* of solidarity. Most people will find themselves unable to help others in certain situations, due to their lack of abilities or resources or their (sometimes justified) lack of motivation, or on account of the tension between certain solidaristic duties and other duties, solidaristic or not. I may lack the time to join a particular initiative by a human rights social movement, or might have to pass up the occasion to do so (even if I could join) in order to attend to the urgent needs of my son. Solidaristic empowerment, in so far as it caters for the dignity of all people both as agents and as recipients of respect and concern, will accept that there are reasonable limits to the demands of helpful support.

Of course, the different answers to these questions are connected with the answer to the fifth question about the *principles* of solidarity. This is the crucial normative dimension of solidarity. A deliberative (rather than descriptive) answer to this question will frame the normative answers to the others. Determining what kinds of duties of solidarity we should accept will orient us in determining who ought to help whom, on what occasions, in what ways, and within what limits. I have already said some things about the distinctiveness of solidaristic empowerment as a universalist, capacity-supportive, and autonomy-oriented principle. I would like to add to these points about scope and object two further points regarding modality and forms of specification.

With respect to modality, we must first distinguish between egoism and solidarism. I am egoistic to the extent that I care only about my own interests, not about those of others. On the contrary, I am solidaristic to the extent that I care about the interests of others. There are, however, different ways in which I may care about the interests of others. These would yield different modalities of solidaristic concern. A *merely instrumental* concern would be one in which the solidaristic agent cares about the interests of the recipient only to the extent that doing so would produce some benefits for the agent (by actively promoting the agent's interests or by preventing harm to them). Think about the attitude of an employer concerned with the well-being of a worker. Typically, such concern is conditional on making sure that the worker is as

productive as possible so as to maximize the employer's profits. Another example can be found in some of the arguments raised by some citizens of rich countries for helping poor countries, which appeal not so much to the moral duty of so doing, but rather to the prudential consideration that otherwise their inhabitants would inundate rich countries with immigrants.[26] At the other end of the spectrum we find *sacrificial* modalities of solidarity. In these, helping agents take the interests of the recipients to always matter more than their own, or even to be the only ones that matter. One can find this kind of disposition in certain ultra-altruistic persons, or guilt-ridden ones.[27] In between instrumental and sacrificial forms of helping disposition and behavior, we find, finally, the modalities of *fair reciprocity*. You are solidaristic in a fair way when you take your own interests and those of others as being, in principle, worthy of moral consideration. Behavior among the members of a cooperative or among friends can be good examples. The idea of fair reciprocity is different from the instrumental one. It may require helping others to an extent that is not matched by their own past or future help. The point is that we help each other actively, given our abilities, not that we contribute to each other's needs to the same extent. The needs of the other, not the amount of their previous and future contributions, is what moves us here, although we expect the other to be responsive and responsible in turn, helping in what they reasonably can, and will be feel justified in withdrawing or limiting our support when they neglect our needs. Solidarity as fair reciprocity implies neither self-denial nor other-denial, but an appropriate balance between one's and others' claims.[28]

Solidaristic empowerment will gravitate towards the modality of fair reciprocity. But we should be careful when we state this idea. The point is not only to help others when they also help you. One rightly expects, and is entitled to, similar contributions on the part of others, but in addition there is a specifically other-directed concern at play. There is reason to help others for their own sake. Solidaristic empowerment includes, but is not reducible to, a principle of fair play amongst those involved in a joint action or a joint

[26] Ulrich Steinvort, "The Concept and Possibilities of Solidarity," in Bayertz, ed., *Solidarity*, 29–37, at 35–6.
[27] This seems to be the view presented in Emmanuel Levinas, "Philosophy and the Idea of Infinite," in A. Peperzak, ed., *To the Other* (West Lafayette, Indiana: Purdue University Press, 1993), 88–119. Some would be reluctant to take instrumental helpfulness as a kind of solidarity at all, and some would perhaps take sacrificial helpfulness as an extreme form of altruism rather than as a form of solidarity. But these would likely be normative claims about what kinds of concern or helpfulness *deserve* to be elevated to the rank of morally required solidarity. While solidaristic empowerment shares this substantive preference, at the conceptual level it is important to make room for different conceptions of solidarity, without eliminating, by definitional fiat, those which we not favor.
[28] Pablo Gilabert, "The Socialist Principle 'From Each According To Their Ability, To Each According To Their Needs'," *Journal of Social Philosophy* 46 (2015), 197–225.

venture. This is why it can be used to justify unilateral and one-off acts of rescue of others in distress, or a call for starting new political associations when these do not exist but would, if created, enhance the power of others to lead decent or flourishing lives (even at some cost to oneself). The natural duty of justice to create such associations is not only grounded (if it is) in one's reason to protect or enhance one's advantages, and cannot be based on duties to mirror contributory moves by others in an associative framework which does not yet exist. It has an irreducible aspect that focuses on catering for the interests of others *as fellow human beings* even when they are not yet fellow associates.[29] Fair reciprocity is a constraint on how the associations should be articulated once they are up and running. But that such associations should be created in the first place is a requirement that reflects the fundamental moral duty to respond to the dignity of everyone. The construction of domestic and international institutional schemes supporting human rights gains a distinctively sharp outline once we see it this way rather than merely as an instrument of self-protection or as a device of mutual advantage.

Finally, regarding specification, it is important to note that solidaristic empowerment, and with it the requirement of solidarity, operates at different levels. The first, initial idea is quite abstract (although still clearly substantive). It says that we should take reasonable and feasible steps to support people in the development and exercise of their valuable capacities—the ones giving rise to their status-dignity. But how exactly such support should proceed depends on the articulation of certain schemes of justice, which will involve various considerations which cannot be simply read off the statement of the abstract

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[29] I believe that this point is not sufficiently clear in the otherwise valuable account offered in Andrea Sangiovanni, "Solidarity as Joint Action," *Journal of Applied Philosophy* 32 (2015), 340–59. Sangiovanni recognizes that there may be a natural duty of justice to create political associations (pp. 353–4), but the directly other-regarding reason for doing so is not illuminated. Furthermore, Sangiovanni dismisses the idea that solidarity might involve acting "*on behalf of* another" as different from acting "*with* another" (p. 350). But there is no necessary contrast here. Solidaristic empowerment recommends both. Sangiovanni says that a view of solidarity including relief of other people's suffering is a case of the Christian doctrine of "universal love," which he disqualifies as a political ideal given that it is based on certain religious doctrines (p. 356). But human solidarity (which is a political ideal within the human rights movement) can capture a plausible normative kernel in that doctrine without stating it in religious terms. The agent-neutral besides the agent-relative significance of solidarity is recognized in the account of solidarity offered in Avery Kolers, "The Priority of Solidarity to Justice," *Journal of Applied Philosophy* 31 (2014), 420–33, at 428. Kolers's account, however, seems to operate at a more specific level than mine, as it is concerned with contexts of collective action, while solidaristic empowerment ranges more widely. Kolers develops his account more fully in *A Moral Theory of Solidarity* (Oxford: Oxford University Press, 2016).

A helpful point in Sangiovanni's analysis is that he takes solidarity to be geared to facing some adversity. This point articulates the common intuition that solidarity involves a dimension of struggle without assuming that the struggle is that of a group of "us" acting against a group of "them." You and I may aim at constituting a group-agent, an active "we," in order to face a problem like global warming, and this "we" may really include every human being on the planet. Here we would be fighting "it" rather than "them."

ideal. Thus, we would need to develop more elaborate accounts of human rights and social justice which would specify solidaristic empowerment for certain contexts. These accounts would identify desirable and feasible requirements for practices and institutions which, when fulfilled, would provide the support for people's access to a decent and flourishing life that is appropriate in the contexts to which they apply. In this book, I focus on human rights. In chapter 11, however, I take some steps to explore the extension of the dignitarian ideal of solidaristic empowerment to social justice, which includes more ambitious egalitarian requirements.

7.3. RANK, STATUS, AND POWER

I present now a more determinate and substantive account of human dignity that puts to use, and combines, the resources laid out in section 7.2. I should emphasize that this proposal is partial rather than complete. It focuses on foregrounding the significance of solidaristic empowerment.

Some formulations in human rights discourse state intriguing connections between human dignity and social and political power. The Preamble of the Vienna Declaration says that people "should be the principal beneficiary and should participate actively in the realization" of the human rights that derive from their status-dignity. This statement suggests that people should have the power to shape the social processes that fulfill their human rights rather than be merely the passive recipients of it. Empowerment seems to have intrinsic significance and it also seems to be a constitutive part of the condition in which human rights are fulfilled. Article 6 of the UN Millennium Declaration, in turn, says that "democratic participatory governance . . . best assures" the fulfillment of human rights. Here specifically political empowerment appears to have at least instrumental significance. It may be causally important in the process of human rights fulfillment. How can we make sense of these connections between human rights, dignity, and power?

One possibility is to explore further the notion of dignity as a status. If we look at some central human rights statements, we notice an important contrast.[30] Human rights are based on a status-dignity that all human beings

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[30] Some utterances seem to refer to human dignity as an inherent property of human beings, a status they constantly have. The first sentence of the Preamble of the Universal Declaration of Human Rights (UDHR) refers to the "inherent dignity . . . of all the members of the human family." The fifth sentence expresses "faith . . . in the dignity and worth of the human person." Article 1 says that "[a]ll human beings are born free and equal in dignity and rights." The second and third sentences of the Preambles of both the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR) also refer to human persons' "inherent dignity." The expression also occurs in the first

possess. Such a status differs from more circumscribed ones that might be attached to specific or contingent social positions. In his recent work on the subject, Waldron has accounted for this kind of contrast by exploring the genealogy of the idea of dignity in relation to the idea of rank.[31] Historically, dignity was first associated with the high rank or nobility of some individuals occupying high positions in hierarchical social structures. But later dignity became ascribed to all individuals in an egalitarian way. Waldron explores, in particular, the significance of this shift for the development of our view of the nature of juridical institutions. I think that the genealogical link is worth exploring further to reveal the importance of social and political power for dignity and human rights. The inegalitarian and non-universalist use of dignity in the past was directed to agents who had power over others. Thus, the egalitarian and universalist use could be seen as demanding equal empowerment. Such an empowerment, I suggest, would be part of what condition-dignity involves, and it would be a fitting response to people's status-dignity.

Although the genealogical exploration of the relation between the ideas of rank and dignity is illuminating, we cannot make full sense of condition-dignity as involving equal empowerment if we just think about how to universalize and equalize the earlier entitlements of rank. First, as Waldron recognizes, some entitlements would simply disappear if they were to be universalized (this holds for essentially hierarchical power positions such as being a slave-holder or an aristocrat).[32] Second, in this exercise we would be stuck with the raw materials provided by the hierarchical societies we take as starting points. These may not provide enough information to articulate all the forms of condition-dignity and empowerment that we have reason to recognize. In addition to the formal test (according to which we should recognize only those conditions that survive universalization), we need a more substantive strategy that helps us explain why some candidates make moral sense, which amongst those that can be universally held are to be accepted, and why power is an important dimension for their articulation.

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clause of Article 10 of ICCPR and in the first sentence of Article 20 of the Vienna Declaration. It is important that human dignity as an inherent status of human beings differs from other, specific social statuses. "Everyone is entitled to all the rights and freedoms set forth in this Declaration without distinctions of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status" (UDHR, Article 2).

[31] Jeremy Waldron, "Dignity and Rank," *European Journal of Sociology* 48 (2007), 201–37; and "Tanner Lectures: Dignity, Rank, and Rights" (Berkeley, April 2009), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1461220. The latter has later been reprinted as *Dignity, Rank, and Rights* (Oxford: Oxford University Press, 2012).

[32] "Dignity and Rank," 224–5, 227–8; "Dignity, Rank, and Rights," 32.

Why does power matter for dignity? The answer I propose has two components. First, power matters for status-dignity because some forms of it are among the facts that make human beings need and deserve treatment in terms of human rights. Second, power matters for condition-dignity because some forms of it contribute both intrinsically and instrumentally to the fulfillment of human rights. I will argue that these points can be helpfully articulated in the language of capabilities, which is already being used to explore the link between what human beings can do or be and what they should be able to do or be in their social and political life. Because of this link, the capability perspective helps us account for human rights and dignity. Human beings have some capacities that justify status-dignity, and they should have some capabilities that constitute and secure condition-dignity.

Before unpacking these claims, let me briefly say why the concept of *capability* can be used to articulate various considerations about *power*. The general idea is that we can use the vocabulary of capabilities to capture important issues commonly couched in terms of power. This is possible because of the striking coincidence between the two concepts (or, at any rate, between the aspects of them that I proceed to mention). Let me start by characterizing the notion of capability. As used by defenders of the so-called "capability approach," a capability is a real or substantive (as opposed to merely formal) opportunity or freedom of persons to do or be certain things (that is, to engage in certain "functionings") if they so choose.[33] This notion can be used to capture the concept of agential power presented in section 7.2.3 in both its general sense and in its specific social and political senses. As discussed above, the general sense is that an agent's power consists in their ability (which comes in degrees) to shape aspects of the world as they intend. Now, as I see it, a capability is an agent's power to do or be certain things. A more specific sense of power concerns social and political settings: here an agent has power to the extent that they can voluntarily shape their social interactions with others, including the decision-making processes through

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[33] Amartya Sen, *Development as Freedom* (New York: Anchor Books, 1999), 74–6. Martha Nussbaum, *Creating Capabilities* (Cambridge, MA: Harvard University Press, 2011), 20–5, Ingrid Robeyns, "The Capability Approach," in Edward N. Zalta, ed., *Stanford Encyclopedia of Philosophy* (Winter 2016), sect. 2. Similar conceptions of justice underscoring the link between supporting people's autonomy and well-being and supporting the development and exercise of their capacities have been developed by others. See, e.g., Carol Gould, *Rethinking Democracy* (Cambridge: Cambridge University Press, 1988), and Iris Young, *Justice and the Politics of Difference* (Princeton, NJ: Princeton University Press, 1990). A common source of many approaches to social and political philosophy that focus on supporting the development and exercise of important human capacities is the work of Karl Marx. Thus, Nussbaum acknowledges a debt to Marx in her development of the idea of capability in *Women and Human Development* (Cambridge: Cambridge University Press, 2000), 13, 70–4. I discuss and develop the Marxian approach to justice as the support for people's capabilities in "The Socialist Principle 'From Each According To Their Abilities, To Each According To Their Needs'."

which the outcomes of those interactions are determined. Specific capabilities in social and political life can be identified to capture instances of this dimension of power.

Let us now consider how the idea of capability, by articulating the afore-mentioned general and specific dimensions of power, can help us make sense of status-dignity and condition-dignity.

(a) *Status-dignity.* To illuminate the relation between capabilities and status-dignity we can ask: What are the general facts that make our practical attitudes and responses to human dignity desirable and feasible? This question tracks what this book calls the "basis of dignity" and the "circumstances of human dignity."[34] Regarding the basis of dignity, it seems to me that at least part of the answer should refer to some basic capacities (that is, some basic powers) that people normally have.[35] Some valuable basic capacities are among the features of human beings that ground our view of them as deserving the kind of respect and concern that human rights specify. These clearly include the capacities concerning reason, conscience, and solidaristic action. Human beings are typically able to recognize, assess, and act on the basis of reasons. These involve both prudential considerations about how to live a good life and moral considerations about how to show proper respect and concern toward other persons. Human beings can take initiative and shape their lives (to pursue the good and the right) in multiple ways. They can imagine alternative forms of personal and social life, and achieve some of them through techno-logical inventions, productive work, and social cooperation. Of course, people have other valuable basic capacities, such as to experience pleasure and to relate cognitively and aesthetically to the world around them. (I will say more about this pluralistic view of the basis of dignity in chapter 8.)

Referring to the aforementioned valuable capacities is key for explaining status-dignity. But to link to talk of rights and duties, and for this talk to be practically relevant, there must also be some facts that render the development and exercise of the valuable basic capacities into socially supported capabilities both difficult and feasible. These facts constitute the circumstances of dignity. Sources of difficulty include the existence of certain *dis*valuable capacities—such as to be cruel or domineering—and certain deficiencies regarding the exercise of valuable capacities—such as indifference or insufficient solidarity. They also include conflicts of interests given material scarcity (so that people

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[34] See chapter 5, section 5.3.3, and chapter 8, section 8.1.
[35] Notice that I use here the term "capacity" rather than "capability." In this section, I reserve the latter to refer to the developed forms of the former which are the outcome pursued by the practices structured under the banners of human rights and social justice. Furthermore, I recognize that people vary in the extent to which they have these basic capacities, but what is crucial for what I proceed to say is that they have them to a sufficient extent. These capacities are what John Rawls calls "range properties" (see *A Theory of Justice*; Cambridge, MA: Harvard University Press, 1999, rev. ed., sect. 77).

find it hard to simultaneously realize their prima facie permissible life-projects when there are not sufficient resources for everyone). Still, if talk of human dignity and rights is to have real practical traction (as it clearly does), circumstances have to be such that important achievements regarding the development and exercise of basic valuable capacities are accessible. Thus, it should be the case that the operation of the disvaluable capacities is not always triumphant, valuable capacities could be extensively deployed, and circumstances of scarcity and conflict can be ameliorated (for example, through technical and institutional innovation). Dynamic duties to expand the scalar feasibility of a decent or flourishing life for all must be possible to fulfill. In other words, the prospects of dynamic power regarding these outcomes must not be too dim.[36]

(b) *Condition-dignity.* Human beings typically are agents with capacities for prudential and moral reasoning, imagination, knowledge, productive labor, and social cooperation. They have reason to respond to the existence of these features with respect and concern, by recognizing the status-dignity of each person. Given material and social difficulties, such respect and concern is to be expressed by articulating, and pursuing the fulfillment of, a set of human rights and duties. The basic valuable capacities that give rise to status-dignity ground a plurality of human interests whose content concerns the power to maintain, develop, and exercise such capacities in desirable and permissible ways. This brings us to the issue of condition-dignity. We can identify various kinds of social conditions in which human dignity is taken seriously. Human rights practice focuses on the most urgent of them. In general, seeing human rights as supporting capabilities means being concerned with whether people are *really* able to do and be what they have urgent reason to value.[37] If there is a human right to x, then every human person ought to have the capability—that is, the power—to get x.[38]

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[36] For discussion of the notions of scalar feasibility and dynamic power, see appendix 2.

[37] Nussbaum, "Capabilities, Entitlements, Rights: Supplementation and Critique," *Journal of Human Development and Capabilities* 12 (2011), 23–37, at 29–30.

[38] The power/capability perspective helps account for the actual fulfillment of human rights. It provides a compelling account of what it is for a human right to be fulfilled because focusing on capability requires paying attention to different individuals' specific circumstances or situation (personal, social, environmental)—which crucially affect their access to the object of their rights. A's human right to x is fulfilled to the extent that A is capable to get x given A's specific circumstances or situation. By figuring out people's power or capabilities we track the information that is relevant for appraising their human rights achievements. Take, e.g., the right to an "adequate standard of living" including access to "food, clothing, housing, and medical care," as stated in Article 25 of the UDHR. The capability perspective addresses the "conversion problem" that plagues other accounts that focus on resources and general means without being sensitive to important differences between agents in their ability to turn them into valuable functionings. Amy and Maria may have the same income, but since Amy is pregnant, she needs more food than Maria, and more income to purchase it. The medical care available to Carlos and Robert may be the same, but since Robert is physically handicapped he needs specific forms of assistance that the care available may not provide.

Now, the existence of specific capabilities involves the presence of social and political empowerment, which is significant both intrinsically and instrumentally. It is intrinsically significant for condition-dignity because it is desirable that the occurrence of states of affairs in which people develop and exercise their capacities is up to them—that they select and shape them through their choices. It is important that people be able to perceive themselves as shapers of their own lives rather than as mere puppets of external agencies or as helpless billiard balls pushed around by uncontrollable causal processes. Consider labor rights.[39] People should be able to work, but no one should be forced to work. And labor conditions should not be humiliating and degrading, as is often the case in contemporary sweatshops. Social and political empowerment is also instrumentally significant. It makes sense to recognize rights to form and join unions because they give workers the strength to bargain for labor conditions and remuneration that are not crushing. I will develop these points into a full account of labor human rights in chapter 9 of this book.

If we think of the content of human rights as involving capabilities to engage in valuable functionings, then it is important that people can choose whether to engage in such functionings. This includes being able to articulate, through exercises of prudential and moral reasoning and in inclusive and respectful decision-making with others, some appropriate solutions to circumstances of conflict of interests (and rights). Such political capabilities, and the empowerment they involve, are significant intrinsically, as their fostering involves a public recognition of people's capacity to judge and choose how to organize their social life. They also matter instrumentally: individuals can use them to prevent domination, oppression, or indifference to their basic interests.[40] People need political power to keep mechanisms of collective decision-making responsive to their urgent interests. They also need power to process, in a fair and insightful way, the indeterminacy and the disagreements about rights that exist. Political empowerment is a reasonable response to the common tendencies to exclude groups of people from access to social advantages (including political participation itself), be self-serving and biased when wielding decision-making power, disagree on moral matters, and have limited knowledge of the needs and views of others.

The points just made help defend democratic rights as human rights. The claim that such rights exist has recently been subject to philosophical

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[39] See, e.g., Art. 23 of UDHR.
[40] This also applies to collective self-determination. Empowerment of political communities in their international relations (or of national minorities within multinational states) deserves attention. This is important when addressing the common worry that human rights are used as an ideological instrument in domestic or international domination. To the extent that political equality exists within and between states, the worry loses force. For a use of dignitarian language to refer to collective claims, see Article 20 of the Vienna Declaration (which refers to indigenous peoples).

challenges. I will respond to those challenges, and develop a fuller defense of them, in chapter 10. But it is worth noting now that democratic rights are increasingly recognized in the international practice of human rights. Article 21 of the UDHR and Article 25 of the ICCPR include very strong statements of political participation rights. And a plethora of grass-roots movements from Latin America and Eastern Europe in the 1980s to the Arab Spring and the Occupy movement in 2011 have framed domestic and global campaigns for democracy in terms of human rights. Importantly for our discussion in this chapter, rights of political equality clearly make sense once we see human dignity as tied to power. When some people are treated as political inferiors their capacities for reason, conscience, and solidaristic action with their fellow human beings are not properly recognized. Their status-dignity is not respected. And when they lack political equality their condition-dignity is not appropriately guaranteed. Some are avoidably placed at the mercy of others who are more powerful. The realization of their urgent civil and socioeconomic rights is thus less secure than it would be in a political system that gave them full political standing, and with it the power to effectively defend their interests.

Let me add a cautionary remark about the limits of a treatment of human rights and dignity in terms of empowerment. In addition to identifying the many ways in which persons have or need power to fulfill their human rights, we must also recognize unavoidable restrictions. In politics, in economic affairs, and in personal life, human beings cannot be completely independent. A radical ideal of independence is infeasible. We all depend on the help of others to live a decent life. We may not always be able to reciprocate. Given that some significant differences of social and political power may remain even after profound reforms, we may not always be able to make it prudent (on instrumental grounds) for others who are more powerful to help us. Hence, we should emphasize the importance of solidaristic help which is not equivalent with increasing relative social power for those helped, and cultivate our readiness to give it and receive it. This affects the proper understanding of the nature and content of human rights. Consider, for example, Articles 1 and 25 of the UDHR. The first refers to the idea of universal "brotherhood," and the second recognizes a right to assistance for those who cannot fully support themselves. Securing human rights requires not depriving certain people of power they have, and helping certain people get power they lack. But it also requires that people use their power with a spirit of human solidarity. This will not be achieved unless we articulate our commitment to human dignity and human rights in a way that illuminates the passive besides the active dimensions of the human condition. We need moral space for dignified vulnerability and receptivity.[41]

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[41] "Children" are said to be within the scope of dignitarian principles. "[W]e have a duty . . . to all of the world's people, especially to the most vulnerable and, in particular, the children of the world" (UN Millennium Declaration, Art. 2). Further, we need this sensitivity to avoid sliding

The ideal of being able to stand alone, on one's own feet, without having to depend on others as a supplicant, is powerful. I feel the force of it. This includes the sense that depending on the help of others may be experienced as a form of humiliation. But perhaps we are in the grip of a sad exaggeration here. We need the help of others, and should not have to feel humiliated when we get it, or ask for it. We should also not need to feel that if we want to help others we will necessarily be engaging in patronizing or demeaning treatment of them.

Respect as avoiding undue interference or domination is certainly part of what we should care about when envisioning how we should treat each other. But there is more. A proper concern for other people's needs and important interests would also call for solidarity to help other people pursue the satisfaction of their interests. This would require empowerment and capability promotion, which go beyond negative duties of non-interference and non-domination.[42]

I conclude this chapter by briefly stating some synergies, complementarities, and disagreements with respect to the capability approach as developed by Martha Nussbaum. The conception of human dignity and human rights presented in this book is independent from Nussbaum's capability approach, and the points made in this section can be stated without reference to that approach. However, I have found it useful to establish a connection. The synergies are obvious. I agree with a view of human rights as requiring the presence of certain capabilities. I also take some basic capabilities (or capacities, as I refer to them) as the ground of human dignity, recognize that there is a plurality of them (including forms of sentience and striving that lie beyond rational agency), and claim that the content of human rights (which identify what is needed for a life worthy of human dignity) includes securing various central capabilities. These central capabilities, as Nussbaum explains, involve a development of basic capabilities (capacities) into "combined capabilities" that

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from the connection between dignity and power into a destructive attitude toward the non-human natural world. The pluralist view of human interests (discussed in chapter 8, section 8.2) can enhance this sensibility.

[42] The socialist tradition provides a particularly illuminating view of dignity, power, and solidarity which enables us to make these points. There are strands in this tradition that capture the importance of non-domination and autonomy while avoiding the pitfalls of the ideological exaggerations that accompany certain affirmations of these ideals. In socialism, there typically is concern for individual and political autonomy or self-determination *and* for social solidarity and fair interdependence. Consider the slogan "From each according to their capacities, to each according to their needs." It asks us to see people as producers and beneficiaries in a solidaristic and egalitarian economy. Under a moral and political culture shaped by this principle, there is no shame in getting more (to satisfy one's needs) than one produces (through using one's capabilities) so long as people make their appropriate effort to contribute and are capable to shape with others (through democratic politics) the terms on which the economy is run. See further chapter 11, and Pablo Gilabert, "The Socialist Principle 'From Each According To Their Abilities, To Each According To Their Needs'."

include both agents' internal preparedness to do or be certain things and external material and social conditions that allow them to do so.[43]

This book advances original points that were not developed by Nussbaum, but which are nonetheless consistent with her work. It provides a direct discussion of the uses of "dignity" in human rights documents, and offers a deliberative interpretive proposal to articulate their structure and substance. It explores the fruitful connection between capabilities and various issues normally couched in terms of power. Finally, it introduces the idea of the circumstances of dignity, and within them it emphasizes the significance of disvaluable capabilities. I also emphasize the importance of distinguishing the moral dimension of practical reason from the prudential one (that is, the power to be reasonable besides rational).

An important difference with Nussbaum is that I present reference to valuable capabilities as providing only a partial key to articulating human rights. There may be human rights whose content is not best, or fully, captured as securing some capability. An example concerns rights to due process, which are based on independent considerations of fairness. The wrongness of some violations of rights, such as the avoidable failure to make health care available, need not in every case depend on lack of choice by the right-holder (even if that makes them worse). Even when someone would choose not to use health care, sometimes the lack of access to it may involve a human rights violation. Furthermore, and relatedly, I think that to move from the identification of interests in having certain capabilities to the identification of rights to access them we need to deploy a framework of reasoning that systematically factors in the perspective of duty-bearers beside that of right-holders. We can thus articulate considerations of feasibility, fairness, and responsibility that contribute to determining whether the interest in having a certain capability does really link up to correlative duties of others to protect or promote its satisfaction. A more explicit and systematic account of how dignity features in our overall normative reasoning is needed.[44] I turn to the task of developing this framework of reasoning in chapter 8.

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[43] Nussbaum also proposes a list of ten central human capabilities, which, in her account, ground the various human rights. They refer to conditions securing adequate levels of people's capabilities with respect to life; bodily health; bodily integrity; the use of their senses, imagination and thought; the engagement of their emotions; the use of their practical reason; the development of social affiliation; the concerned relation with other species; activities involving play; and the control of their political and material environment. Although this is a valuable list, I do not develop my own account of the justification of human rights on the basis of it. I also find it problematic that the account of practical reason in this list does not distinguish between capacities for moral and prudential reasoning.

[44] I thank Matthew Liao for discussion on these points. For a more detailed discussion of the advantages and limitations of the capability approach to human rights as developed by Nussbaum and Sen see Pablo Gilabert, "The Capability Approach and the Debate between Humanist and Political Perspectives on Human Rights: A Critical Survey," *Human Rights Review* 14 (2013), 299–325.

8

The Dignitarian Approach as a Program

8.1. DIGNITARIANISM

I see the human rights project as a key form of dignitarianism. In this chapter, I outline the contours of dignitarianism—or the dignitarian approach—in its most general form, as a normative program, and explain how human rights can be fruitfully construed as an exemplary instance of it. As I present my account of dignitarianism, I will give especial attention to the ideal of solidaristic empowerment. As we saw in chapter 7, this ideal says that to enact proper respect and concern for the dignity of persons we should pursue social orders in which power relations are constrained and oriented by negative duties not to destroy or block, and positive duties to enable and facilitate, the development and exercise of people's valuable capacities. The purpose of this chapter is to articulate the main features of dignitarian arguments that apply this ideal, and to explore relevant philosophical issues that arise about their form and significance. The chapter starts by outlining the general structure of dignitarian arguments and by presenting human rights as an exemplary instance of them (section 8.1). It then proceeds to address several philosophical issues regarding dignitarianism. It offers a broad view of human capacities and interests (section 8.2), an account of how dignitarianism helps bridge the justificatory gap between important interests and rights supporting them (section 8.3), a recruitment of moral contractualism as an illuminating device for defending dignitarian norms (section 8.4), an exploration of the relation between dignitarianism and ethical pluralism (section 8.5), and a presentation of dignitarian inquiry as a form of critical theory (section 8.6). The chapter concludes by outlining the main components and tasks of dignitarianism understood as a theoretical and practical program (section 8.7). Chapters 9–11 of the book will then provide specific illustrations of its deployment to justify labor rights, political rights, and more ambitious egalitarian requirements of social justice.

(i) *Dignitarianism in general.* I start with a general statement of the normative perspective adopted in this book.

Dignitarianism: Dignitarianism is a type of normative approach accord-
ing to which at least some of the central norms concerning the treatment of
individual entities depend on their inherent dignity.

According to the dignitarian approach, we should treat entities (such as a
human person, or a non-human animal) in a way that involves certain forms
of respect and concern for them. The norms framing this treatment depend on
these entities' inherent dignity in the sense that the former articulate the
appropriate response to the latter. The inherent dignity of an entity is a
normative status that gives rise to various reasons for action, including
norms that state rights and duties. The normative status is based in certain
valuable features that are characteristic of the entity. The content of the rights
and duties also depends on the content of these features. The fulfillment of the
rights and duties gives the entity what is owed to it in the relevant circum-
stances. When the rights and duties are fulfilled, the entity enjoys a dignified
condition. Thus, in the case of human beings, an agent who can affect them
should respond to their capacities to reason prudentially and morally by
recognizing that they have various rights to develop and exercise those
capacities and by acknowledging various duties to not disable and to further
(when reasonably feasible) that development and exercise.

  Dignitarianism can be seen as a case of what Shelly Kagan calls "reflection
theory" in normative ethics.[1] According to reflection theory, moral reasons are
a matter of responding appropriately to (they reflect) the features of certain
entities (that is, certain facts about them). An intuitive way to motivate a
"reflection theory," and within it dignitarianism, is to ask ourselves why we
think we should treat human persons, non-human animals, plants, and stones
in different ways. The natural answer is that these entities are very different.
We assume that the proper treatment of an entity depends on what the entity
is like. Our norms should reflect, or appropriately respond to the valuable
features of each entity. What is distinctive about dignitarianism is its view that
the valuable features characteristic of an entity give every individual entity that
has these features a certain deontic status (dignity), which the norms about
how it should be treated by agents who can affect it specify or articulate.

  (ii) *Structure of a dignitarian conception.* A dignitarian conception within a
certain normative domain comprises substantive views about a set of related
points, which constitute the elements that such a conception characterizes in a
certain way. We have considered some of these elements in chapters 5–7,
when exploring the conceptual network of dignity. In this chapter, I return to
that network with the systematic purpose of showing how to weave

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[1] Shelly Kagan, *Normative Ethics* (Boulder, CO: Westview, 1998), sect. 7.4. See also the
powerful discussion of the idea of appropriate responses in Robert Nozick, *Philosophical
Explanations* (Cambridge, MA: Harvard University Press, 1981), ch. 5.

substantive normative arguments with some of its elements and the relations amongst them. I first state some of these elements and relations in their most abstract way, by referring to what is involved in the treatment of some entities E by some agents S. (The component "power," however, is only applicable when E are also agents.). Later I articulate their use in the context of human social life.

A dignitarian conception involves claims regarding these basic elements:

Basis of dignity: Certain characteristic features of E that are valuable.

Status-dignity: E's dignity as an inherent property, a normative status of each individual E that gives rise to certain dignitarian norms, which include some rights and duties.

Dignitarian rights: Some of E's rights to objects related to E's basis of dignity.

Condition-dignity: E's condition in which E's dignitarian rights are fulfilled.[2]

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[2] See further chapter 2, section 2.7; chapter 5, section 5.3.3; and chapter 6, section 6.7. The dignitarian norms, including the rights and duties, may be more or less abstract or specific. We may sometimes mark the distinction by calling some norms "abstract" and others "specific." But it is important to notice that there is a continuum between them. Also, norms may be wider or narrower. Conceivably, there may be imperfect duties and rights. The latter are fulfilled whenever duty-bearers give the right-holders proper consideration regarding their access to a certain good or condition (which is not the same as giving them access to that good or condition). It could be objected that the claim that rights can include amongst their correlative duties some imperfect duties is unconvincing because no one will be wronged when imperfect duties are not fulfilled. But we should not assume that someone's right to an object is only linked to duties that are perfect. This seems to me to be an unduly narrow account of rights. Take, e.g., a right to health care. Governments have perfect duties not to arbitrarily deprive any resident of access to existing public health care programs. They may not, e.g., discriminate on the basis of political opinion, race, ethnicity, or gender. But surely governments also have a duty to create some needed health care programs that do not yet exist. This duty is imperfect because it is indeterminate as to what programs of the many that are possible should be chosen (when not all can be feasibly and readily introduced at reasonable cost). It can be made more determinate at the level of policy. But its more general and imperfect (and thus somewhat indeterminate) form is itself significant. It is one of the reasonable counterparts of a constitution that includes social rights, and citizens and courts could press governments to acknowledge it and take steps to fulfill it in some of the many ways possible. (On the role of courts in getting the political process to acknowledge and specify rights, see Varun Gauri and Daniel Brinks, "Human Rights as Demands for Communicative Action," *Journal of Political Philosophy* 29 (2012), 407–31.) But, you may ask, who is wronged when an imperfect duty is not fulfilled? Everybody who is amongst the possible beneficiaries even if no one in particular, I answer. For a simple case, imagine that you can (without incurring unreasonable costs) save one of two persons A and B, who are drowning and could only be saved by you, but not both. You do not have a perfect duty to save A and you do not have a perfect duty to save B. You have an imperfect duty to save one of the two. If you saved A but not B, B would not be wronged by you (as long as you gave B some chance to be saved—e.g., by tossing a coin to choose between A and B). But if you saved neither, you would wrong both. For further discussion about the possibility of a conception of justice including imperfect duties, see Pablo Gilabert, "Justice and Beneficence," *Critical Review of International Social and Political Philosophy* 19.5 (2016), 508–33.

Dignitarian duties: S's duties towards E concerning the fulfillment of E's dignitarian rights (and thus their dignity in the two senses).

Power: Degree to which E, as also being S, may control the processes that affect the fulfillment of E's rights.

Circumstances of dignity: Circumstances in which dignitarian norms are practically relevant: their fulfillment is both necessary (in the sense of "called-for") and feasible.[3] In these circumstances, there are threats and obstacles to the achievement of condition-dignity, and those threats and obstacles can be overcome. These threats and obstacles may exist because of some disvaluable features of E and/or S, or because of some deficits in the development and display of some valuable features of E and/or S, or because of some external conditions (such as scarcity of material resources). The problems may be resolvable because of the potential of E and/or S (for example, some of the valuable features of E and/or S involve capacities which if exercised would support condition-dignity) or the changeability of their surrounding environment.

The central relations between the elements just mentioned are the following (assuming that the circumstances of dignity hold):

1. E have status-dignity in virtue of some of E's valuable features.

2. E have dignitarian rights because they have status-dignity. The objects of those rights are related to the features constituting the basis of E's status-dignity.

3. E's dignitarian rights are those rights the fulfillment of which makes it the case that E have a dignified existence (condition-dignity).

4. S have duties to respect, protect, and promote the fulfillment of E's dignitarian rights.

5. To secure the fulfillment of E's rights, E may require and have a right to access various forms of power. Some forms of power may be instrumentally significant (to achieve and retain condition-dignity). And some forms of power may be intrinsically significant (their recognition may involve an appreciation of valuable capacities which are among the features that give rise to status-dignity).

What is the point of the phrase "dignity" in dignitarianism? It has at least three important roles. First, it directs us to identify valuable features of the

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[3] Like the dignitarian norms, the circumstances of dignity can be more or less specific. They help us distinguish between more or less abstract and specific rights and duties. If we want to mark the difference between quite general and quite specific circumstances of dignity, we can use the term "situations of dignity" to refer to the latter.

entities for whose treatment we are trying to articulate norms. Status-dignity is based in those features. Second, the use of "dignity" leads us to identify what forms of response are owed to entities with those features. For example, when those features are capacities, we would have to identity ways to protect and further their development and exercise. Condition-dignity is the states of affairs in which the entities are treated properly, when their value is appropriately responded to.[4] A third role of "dignity" is that it marks the presence of a certain kind of normative exercise. By making us focus on entities' valuable features, dignitarianism leads us to recognize the equal normative standing of each and every individual entity that has those features, and to articulate the norms this recognition calls for. Of course, the development of a dignitarian conception depends on substantive views about what features of the entities under consideration are valuable, and what are appropriate ways of responding to them. Invoking the idea of "dignity" does not spare anyone the work of figuring out these substantive matters. But this does not render the phrase empty. To the contrary, given the conceptual roles just mentioned, its use frames the substantive normative work in an intuitively appealing and fruitful way. To see this more clearly, we should consider some actual form of normative discourse. The case of human dignity in human rights is paradigmatic.

(iii) *Dignitarian conceptions of human rights.* As shown in detail in previous chapters, human dignity is a central idea in human rights discourse. It is commonly invoked as the moral ground of human rights. For example, the Preambles of the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social, and Cultural Rights (ICESCR) present human rights as "derived from the inherent dignity of the human person." I am now suggesting that we understand the use of human dignity in human rights discourse by linking it with a universalistic idea of solidarity that involves negative and positive duties to respond, in appropriate ways, to valuable features of human beings. Dignity is a normative status that persons have in virtue of certain features of them. It gives rise to certain duties to treat them in ways that show respect and concern. Solidaristic treatment is an appropriate response to others' dignity. By not seeing human

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[4] I note that even though status-dignity is a binary notion (an entity has it or it does not), condition-dignity is a scalar notion. E.g., an entity's rights may be more or less honored or infringed upon. Even though E retains their status-dignity all along, S may act in ways that involve more or less appropriate response to E's status-dignity, and thus contribute more or less to E's condition-dignity. I thank Cecile Laborde for helping me to articulate this point. Some of these duties are such that flouting them amounts to straightforward rights violations, while others might be such that not fulfilling them involves contributing to human rights deficits. See Rowan Cruft's point reported in chapter 3, note 30.

individuals as mere instruments and by considering how to further their life-prospects, we acknowledge the value of the features that give rise to their dignity (that is, individuals' intrinsic worth). For example, we engage in appropriate treatment when we do not destroy and when we help further individuals' valuable capacities, when we do not disable, and when we enable, their achievement of a life in which they develop and exercise those capacities. To the extent that people have access to conditions of autonomy and well-being in which their valuable capacities are supported, they have *condition-dignity* (to be distinguished from the *status-dignity* mentioned above). A doctrine of rights identifies the forms of condition-dignity people are entitled to in their social relations. More specifically, a doctrine of human rights identifies the conditions that have the highest priority. However, dignitarian claims can go further. Human dignity, and social justice, include but go beyond human rights. *Human rights* focus on the basic condition-dignity of having access to a basically good or decent life, and *social justice* focuses on the more expansive condition-dignity of having access to a flourishing life.

Let me develop further this proposal about how to understand human dignity in human rights discourse by returning to the schema articulated above (in section 8.1(ii)). I start with the basic elements. Regarding the *basis of dignity*, human rights respond to characteristic features of human persons that are valuable, such as their reason, conscience, and capacity to act in a spirit of brotherhood.[5] Human rights articulate *status-dignity* by recognizing a normative status of individual human beings, which they possess as an inherent property independently of their class, nationality, and other similar features.[6] The general idea of dignity as a normative status is that dignity requires certain kinds of treatment toward those who have it. If X has dignity, then every agent Y ought to treat X in certain respectful and concernful ways. Furthermore, in our context of discussion, if X has dignity, then X is entitled to certain kinds of treatment by Y. The details about what forms of treatment are owed is specified by the corresponding human rights norms, which state dignitarian rights and

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[5] "All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood" (Universal Declaration of Human Rights—UDHR, Art. 1). (The capacity to act in a spirit of brotherhood must be assumed to exist since people "should" act in that spirit, and in this usage *should*, like *ought*, implies *can*.) These features contrast with other features that are irrelevant as a basis for human dignity. "Everyone is entitled to all the rights and freedoms set forth in this Declaration without distinctions of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status" (UDHR, Art. 2).

[6] The Preamble of the UDHR refers to the "inherent dignity . . . of all the members of the human family," and the Preambles of ICCPR and ICESCR refer to "the inherent dignity of the human person." For a detailed explanation of this characterization of status-dignity as a normative status (a moral standing in accordance to which human individuals are owed certain forms of respect and concern by agents that can affect them), see chapters 5–7 of this book.

duties. Thus, the *dignitarian rights* are the various civil, political, and socio-economic human rights of the sort stated in the major human rights documents (such as UDHR, ICCPR, and ICESCR). When these human rights are fulfilled, people enjoy *condition-dignity*. Condition-dignity is related to, but differs from status-dignity. Condition-dignity refers to a contingent situation that may or may not be enjoyed by people depending on whether they are treated in ways that honor the rights which they already have in accordance to their status-dignity. Examples of condition-dignity in human rights discourse include the reference to "economic, social, and cultural rights [that are] indispensable for [persons'] dignity and the free development of [their] personality" (UDHR, Art. 22), and the view that workers are entitled to remuneration ensuring "an existence worthy of human dignity" (UDHR, Art. 23).[7]

Human rights discourse recognizes the existence of duties to support the fulfillment of every individual's human rights. For example, Article 22 of UDHR presents social, cultural, and economic human rights as requiring, for their fulfillment, "national effort and international co-operation." Article 29 says that "[e]veryone has duties to the community in which alone the free and full development of his personality is possible." These are *dignitarian duties* because they are correlated with the dignitarian rights mentioned above, which flow from status-dignity and outline the target of condition-dignity. The rights whose fulfillment these duties support have global scope. "[E]veryone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized" (UDHR, Art. 28). This sweeping universalism is to be expected if human rights are derived from human dignity, which is a normative status held by each individual in their relation with every individual who can affect them.

The duties also have a broad site. They certainly apply to governmental institutions, national and international. There is increasing discussion as to whether international private institutions, such as multinational corporations, should also be seen as duty-bearers. Given their enormous power over governments and individuals, it is reasonable to say that they indeed should.[8] The site of duties is broad also in the sense that it is interpersonal as well as institutional. Thus, the Convention for the Elimination of all Forms of Discrimination Against Women identifies requirements that range over "the political, economic, cultural, civil or any other field" (CEDAW, Art. 1). In its Preamble, the UDHR is presented as "a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society...shall strive by teaching and education to promote respect for these rights and

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[7] See also education rights in ICESCR, Art. 13, and the treatment of refugees in the Vienna Declaration, Art. 23.

[8] See Allen Buchanan, *The Heart of Human Rights* (Oxford: Oxford University Press), 233–4.

freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance." Any dimension of social life may be subject to dignitarian analysis.

Human discourse also recognizes calls for respecting and enhancing people's *power* to control the political process and other mechanisms that affect the fulfillment of their human rights.[9] This flows naturally from the recognition of the dignity of human beings as agents capable of prudential and moral judgment and self-determination. Depriving them of the power to chart their own destiny on terms they themselves articulate or accept is to fail to appropriately respond to their capacities of agency. To fail to help them when they find obstacles in this process of self-governance and self-development is often also a deficit of proper appreciation—or so the ideal of solidaristic empowerment, including as it does positive as well as negative duties, would give us reason to think.

The last element in the dignitarian schema is not explicitly articulated in human rights discourse. But (as we saw in previous chapters) we must accept some account of the *circumstances of human dignity* to make sense of the practice of human rights. The circumstances of dignity are the circumstances in which human rights norms are practically relevant. In these circumstances, there are threats and obstacles to the achievement of condition-dignity, and they can be overcome. These threats and obstacles may exist because of the presence of disvaluable features of human beings (such as their greed or cruelty), or because of some deficits in the exercise of valuable human capacities (such as insufficient sympathy), or because of some external environmental conditions (such as scarcity of material resources). Some specifically modern conditions are of crucial significance for contemporary human rights discourse. For example, the powerful modern state may protect people's civil liberties, but also pose serious threats to them. Modern economies can create multiple opportunities for people to develop and exercise their talents and skills, but also generate involuntary unemployment and poverty. These problems may be resolvable thanks to the potential of human beings and the changeability of

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[9] Here are some statements of social and political participatory rights. "[A]ll human rights derive from the dignity and worth inherent in the human person, and . . . the human person is the central subject of human rights and fundamental freedoms, and consequently should be the principal beneficiary and should participate actively in the realization of these rights and freedoms" (Vienna Declaration, Preamble, third sentence). "[E]xtreme poverty and social exclusion constitute a violation of human dignity . . . It is essential for States to foster participation by the poorest people in the decision-making process by the community in which they live, the promotion of human rights and the efforts to combat extreme poverty" (Vienna Declaration, Art. 25). "Men and women have the right to live their lives and raise their children in dignity, free from hunger and from the fear of violence, oppression and injustice. Democratic participatory governance based on the will of the people best assures these rights" (UN Millennium Declaration, Art. 6). Furthermore, UDHR (Art. 21) and ICCPR (Art. 25) state strong rights of political participation.

their external environment. For example, people can use their moral and prudential judgment and choice to create democratic political institutions, and they can deploy their capacities for creative work and social cooperation to develop technological innovations that reduce material scarcity.[10]

While identifying the elements of the dignitarian schema as developed in the case of human rights (and assuming that the circumstances of human dignity hold) we have also discussed the central relations between them. They can be stated succinctly as follows:

1. Human persons have status-dignity in virtue of some of their valuable features.

2. Human persons have human rights because they have status-dignity.[11]

3. Human rights are those rights the fulfillment of which makes it the case that human persons enjoy a dignified life (condition-dignity).

4. Human persons have duties to respect, protect, and promote the fulfillment of those rights. Such duties may have a wide scope and site (that is, they may impose responsibilities on agents across the world, and may apply to various institutional and interpersonal settings).

5. To secure the fulfillment of human rights, human persons require, and have a right to access, various forms of power. These forms of power may be instrumentally or/and intrinsically valuable. For example, political empowerment exhibits both instrumental and intrinsic significance: with it people can defend their condition-dignity from threats, and through it they gain recognition for features of them that ground their status-dignity, such as their capacities for judgment and self-determination.

The idea of human dignity is very far from empty.[12] It frames the important task of identifying norms that articulate the appropriate responses to valuable features of individual human beings in social life. It helps us articulate human rights as universal rights, as presenting the basic charter for the fellowship of humankind, the one that includes you and I, and every other human individual we can affect. Before continuing our exploration of the articulation of dignitarian arguments in human rights discourse, I should recall the caveat that this discourse covers only a subset of these *humanist dignitarian norms*. They are the most urgent ones. Other humanist dignitarian norms

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[10] Recall the notions of dynamic duties and dynamic power introduced in chapter 3 and appendix 2.

[11] Recall the claim that human rights "derive from the inherent dignity of the human person" (ICCPR, ICESCR, Preamble).

[12] On the worry that it might be empty, see Charles Beitz, "Human Dignity in the Theory of Human Rights: Nothing But a Phrase?" *Philosophy & Public Affairs* 41 (2013), 259–80.

can be captured by wider principles of social justice, and even further, morality. Although human rights are a paradigmatic case of humanist dignitarianism, they do not exhaust its domain. I return to this issue in chapter 11 of this book.

8.2. HUMAN CAPACITIES AND INTERESTS: A BROAD VIEW

The idea of human dignity illuminates the characteristic view of human rights norms as norms applying to all human beings in virtue of their common humanity. By reference to human dignity, we anchor the human rights project in the strong and inspiring thought that *each* individual human person, in virtue of possessing certain valuable features, has a normative standing that imposes duties on *every* human person who can affect them. Human rights are rights that people have in virtue of relatively general and constant valuable features that are not contingent upon their race, class, or nationality. But what are those features?

As suggested in chapters 5 and 6, to identify the features making up the basis of human dignity in a certain domain, we do not need to take a top-down, rigidly sequential approach that starts with a conclusive list of the valuable features of human beings as such and then, in a second step, moves to a contextual exploration of how these features are engaged in the circumstances or, even more contextually, certain situations of dignity. The process of inquiry is likely to be, and in my opinion should be, less tidy and linear. We can move back and forth between judgments about the general valuable features of human beings and judgments about the appropriate norms to support people when they face challenges in their pursuit of a decent or a flourishing life in various social contexts.

We can then start, for example, by proposing an initially plausible list as a hypothesis. Put in the most abstract way, we can say that what makes a hypothetical list initially plausible is that its items are (a) general (i.e., they are widely displayed by the entities whose treatment we are considering), (b) valuable (i.e., they are worthy of appreciation and supportive normative response), and (c) justificatorily important (i.e., it is fruitful or relevant to mention them in the defense of the norms concerning the appropriate treatment of the entities we are considering). When certain features of some entities satisfy these conditions, they are consequential for the task of formulating, justifying, and applying dignitarian norms regarding these entities. We can reasonably refer to them as we engage in that task, and re-evaluate and, where necessary, revise them as our engagement progresses over time.

We can formulate an initial hypothetical list by articulating what we seem to be committed to when we invoke some dignitarian norms that are compelling to us. In our specific context of discussion regarding human rights, we can start by elaborating on UDHR's Article 1, which (as we saw in section 8.1(iii) above) suggests the significance of reason, conscience, and the ability to act in a spirit of brotherhood. These capacities are generally held by human beings. They also seem quite significant in themselves (i.e., they are worthy of appreciation and support). Finally, they also strike me as providing plausible grounds for defending important civil and political rights. The fulfillment of the various such rights that people have—to pursue their own personal life projects and to make political choices that shape the contours of the diverse local, domestic, and global communities in which they participate—seem to me to be tied to the development and exercise of these capacities. A full depiction of them would feature reference to people's capacities for prudential and moral reasoning, and for acting solidaristically to support the life prospects of other human beings. The rights deserve to be articulated through high-priority norms with universal reach—precisely the kind of norms that human rights are.

To justify other significant rights which are also prominent in human rights discourse, such as the various social and cultural rights supporting people's access to education, cultural and scientific products and activities, health care, and decent work, we can appeal to the items in the foregoing list and add some more. We can include, in addition to the capacities for prudential and moral reasoning, and the capacity for cooperation and sympathy, other general, valuable, and important capacities such as those concerning sentience, knowledge, aesthetic appreciation, and creative production. The items in this list, in connection with other dignitarian considerations (such as the circumstances and situations of dignity), can thus be used to defend various rights that people have to work to produce goods that meet their own needs and the needs of others, to help fellow human beings facing hardship and suffering, and to experience their social life as providing opportunities to enjoy the results of human discovery and creativity. Furthermore, other norms which are not yet currently stated in human rights discourse might also be proposed and gain credence in the future if they come to stand out to us on reflection as constituting appropriate responses to these and other components of the basis of human dignity. The inquiry about the content and justification of human rights is an ongoing project.[13]

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[13] Of course, some putative norms—either already widely endorsed or not—could also be criticized by appeal to similar considerations.

Consider now the worry (which may be part of what motivates narrow conceptions of the basis of human dignity[14]) that this broad account, by

[14] Another, perhaps related worry motivating narrower conceptions of dignity is that broader conceptions are too indeterminate. See Griffin, *On Human Rights*, 51–6, 88–90. I think that determinateness of sense is important. But we should also attend to the other important desiderata. If a somewhat less determinate proposal fits better the other desiderata than an alternative, more determinate proposal, then we may have all things considered reason to prefer the former. The need for greater determinacy can then be fulfilled at other levels of our conception through interpretations of dignity in specific contexts.

Another motivation for narrow conceptions lies in the desire for parsimony or simplicity, so it is worth pausing to evaluate its significance and strength. According to (one version of) the principle of parsimony, when we compare two theories, if they yield the same conclusions, we should choose the simpler one—the one that includes the smaller number of principles, hypotheses, etc. Is this principle appealing? Sometimes it might be worth following. Simplicity, economy, may be appealing. We may prefer a thinner theory because it is easier to learn, remember, communicate, and teach. There may be aesthetic considerations too: simplicity may be a mark of elegance and beauty. Another, common reason is that the claims of the thinner theory may be less controversial than some of those included in the thicker one. It seems desirable to be able to justify as many relevant conclusions as possible on the basis of principles that are as uncontroversial as possible.

But the principle provides only a pro tanto consideration. It can be defeated. As stated, it already has a ceteris paribus clause. Sometimes other things are not equal, and it is no doubt better to embrace a complex truth than a simple falsity. Furthermore, there are cases in which we may have reason to prefer a thicker theory even if it would yield the same relevant conclusions as the thinner one. Theories can be assessed not only from the point of view of whether certain important claims (scientific, philosophical, ethical, etc.) can be *inferred* from them, but also from the point of view of whether such inferences afford us *understanding* of what they yield. We want our scientific, moral, or philosophical theories to give us insight into what they explain (i.e., help us grasp what the relevant object-domain consists in, how it works, why it matters, etc.). More complicated explanations may sometimes be more insightful, give us more understanding, than the simpler ones. When this is the case, it may be worth embracing them even if they are harder to understand and communicate, even if they are not as dashing and elegant, and even if they attract more controversy than the thinner, or simpler ones.

The foregoing considerations are relevant to explain why a pluralistic account of the basis of dignity is appropriate. But the points made here are more general. Consider another illustration. Sometimes, in ethics and political philosophy, there is an attempt to derive recommendations typically viewed as moral from grounds that are exclusively prudential. This strategy seeks to explain why we should not harm other people, or why we should help them, by showing that our own long-term interests are best served if we do not harm others, or if we help them, in certain ways. The structure of prudential reasoning seems easier to grasp than the structure of moral reasoning, and the claim that we have prudential reasons is less controversial than the claim that we have moral reasons. So if we can cast views regarding the latter category in terms of views regarding the former, we will achieve more simplicity and less controversy. I think that the more parsimonious approach is in this case seriously problematic. I do not deny that it is a good idea to develop prudential arguments for moral actions. They may be useful to convince, or motivate, agents (including ourselves) when they must act soon but seem unlikely to be swayed before the relevant decisions are made by reasons other than prudential ones. But from the point of view of understanding moral reasons, and also from the point of view of expressing proper respect and concern toward other people (and ourselves), we cannot rest content with the more parsimonious approach. We understand our moral reasons better when we can see how they track what we owe people for their own sake. And we are reassured in our relationships with each other (and in our self-understanding) when we see that we can give and take moral reasons for action that are not reducible to self-interest. A reduction of moral rationality to prudential rationality seems perverse. Even if a theory of morality only based on prudential reasons yielded the same

including sentience, or the capacity to feel pain and pleasure, will be ill-suited for the task of identifying specifically human rights. The account would yield rights that some non-human animals (given that they are sentient) would also have. Wouldn't it be better, in an account of *human* rights, to see the basis of *human* dignity as comprising *specifically human* capabilities and interests?

We can respond to this worry in at least three ways, which I present in order of decreasing concessiveness. First, we can give instrumental arguments about the importance of responding appropriately to human beings' capacity to feel pain and pleasure. An example would be to point out that when people experience extreme pain, they are unable to exercise their specifically human capacities of rational agency. This response retains the narrow account of human dignity because the not specifically human capacities or interests are causally but not constitutively relevant for it.

A second response is to point out that people have a specifically human way to experience pain and pleasure. Usually, such experiences have an intentional content that involves some level of linguistic and inferential articulation. This response is less concessive than the previous one because it sees at least some instances of pain and pleasure as constitutive of specifically human life.

I accept the foregoing responses, but I think that we should go further. Consider pain. We also want to recognize the great importance of sheer, animal, pain in our lives, even when it is not articulated in the ways the second response envisages. We want to have arguments for human rights to avoid unwelcomed experiences of such pain that are not merely instrumental but also based on the recognition of their great intrinsic significance. For example, we do not only want to be able to say: "I shouldn't be beaten up or tortured when I try to express political dissent, because if I am I will be less likely to enjoy my right to political participation." We also want to be able to say, more directly: "I am entitled to live without arbitrary impositions of pain." Human rights practice would be severely impoverished if utterances like the last were ruled out as basic (rather than merely derived) moves.[15]

A third response seems then to be called for, in which we take some capacities that humans have, even when other animals also have them, as among the constituents of what gives rise to the normative status of human dignity. This response is not concessive to the objector, because it denies that human dignity must only be based on features of human beings that are not shared with other beings.

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conclusions about what we have reason to do than a more complicated and controversial theory that proceeds from moral principles (something I granted here for the sake of argument, but find quite improbable), we would still have reason to explore the latter both in order to reach more explanatory insight about what obligation is and in order to develop a morally more appropriate attitude to others and ourselves in our practical life.

[15] I thank Christian Rostboll for discussion on this example.

How should one then respond to the likely protest that this account fails to capture *human* rights? By insisting that the not specifically human features included are extremely important to understand what human beings are like, and what interests they have. Even if other animals *also* have these features, they are no less human for that. The objector may say: But will we not then have to grant dogs *human* rights to avoid pain? The answer is: Of course not, as dogs' pain is not humans' pain. But it is pain all the same, the objector continues. At this point one must simply say: Surely there are *animal* rights (rights of non-human animals) that partly overlap with *human* rights.[16]

An important source of the difficulty here is that the idea of human dignity is sometimes associated with a hierarchical perspective on value. Human dignity must capture the very high worth of human beings in contrast with other, lesser beings (by analogy with the earlier, historical use referring to the dignity of those in higher classes or castes when compared to those in lower ranks). I see the force of this point. But what gives "higher" worth to human beings is not all that gives worth to them: "lesser" sources of the worth of humans are still significant. Thus, the capacity for rational agency may make humans (or those humans who have it) especially significant, but their abilities to feel pleasure and pain are additional sources of value. I also see that pressing this line may lead to issues of conflict of interest between humans and non-human animals. But when not utterly tragic (as when we would die unless we killed animals for food), these conflicts may have to be responded to by surrendering, or severely qualifying, humans' alleged entitlement to harm other animals.[17]

The pressure to focus on what only human beings, as such, display may have two sources. One, quite legitimate, is that we have evolved, historically, to a point at which we think about what human beings, independently of specific social markers such as class or nationality, have rights to. This is the origin, and point, of talking about human rights as the rights that "all human beings have in virtue of being human." The other source is a form of speciesism that we could well progress further to leave behind. The moral community may (so far as we know) only include human beings as its moral *agents*, since (so far as we know) only human beings are capable of moral reasoning. However, the moral community, understood as the set of entities that deserve respect and concern for their own sake, is larger. The grounds of dignity are articulated not

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[16] My account relies on a conjunction: There is a human right to O if (inter alia) this is a right that humans have and O is connected with some of the features F that give rise to status-dignity. Other animals might have some F, and a right to O, but since the right would not be one that humans have, the absurd conclusion that they have a human right to O does not follow. The relevant contrast when shaping our ideas of human dignity and human rights is not between humans and other species, but between what belongs to all humans and what belongs to some by reference to special features such as race, class, and nationality (see chapter 6, section 6.5). I thank Rowan Cruft and Massimo Renzo for discussion on these issues.

[17] See Martha Nussbaum, *Creating Capabilities* (Cambridge, MA: Harvard University Press, 2011), 157–63.

by statements about what valuable features humans have, but by statements about what valuable features there are. Human beings will display some, but other entities may display their own (some overlapping, some not), and deserve respect and concern by moral agents accordingly. The moral domain outstrips humanity.

In sum, our lists of the features making up the basis of human dignity need not narrowly focus on what only human beings display. We should avoid the (unfortunately common) assumption that the basis of human dignity must be constituted by what distinguishes human beings from other entities. What is crucial for human dignity is the valuable features that human beings have. Some of those features (such as sentience) are also present in other animals.

Furthermore, the epistemic procedure envisaged here is a pursuit of deliberative reflective equilibrium in our dignitarian conception.[18] This amounts to a holistic, ongoing, and discursive development of our views about the basis of dignity, status-dignity, various dignitarian norms, and dignitarian virtue. Thus, we can sometimes proceed from an account of the basis of dignity to an account of rights—as when we invoke the significance of the capacity for prudential and moral reasoning to defend political rights. In reverse, we can revise an account of the basis of dignity by reference to our commitment to certain rights—as when we move from recognition of rights against the imposition of bodily pain on people who do not have certain reasoning capacities to a more pluralistic account of the basis of dignity that is not narrowly centered on rational agency.

It is important to note, to conclude, that this broad account of the basis of dignity is consistent with recognizing that some components have special significance for certain purposes. Thus, when present, the capacities for practical reasoning deserve special deference: it is often wrong to paternalistically impose on others forms of life they reject, or deprive them of opportunities to shape the political processes that structure their social opportunities, even if such impositions would make them experience more pleasure and less pain. The space of dignitarian reasons is pluralistic but not flat. Considerations based on certain capacities—such as those enabling self-determination—may have greater weight than others. This point will become prominent in chapters 9–11, as we consider specific social and political rights.

8.3. SOLIDARISTIC EMPOWERMENT, THE BRIDGE PRINCIPLE, AND THE SCHEMA OF JUSTIFICATION

The idea of human dignity helps organize and orient the search for the grounds and content of human rights. It does so by generating the two tasks

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[18] See section 8.7 below.

of characterizing status-dignity and condition-dignity. It directs us to identify the valuable features of human beings in virtue of which they have a universal normative status and to develop an account of both abstract and specific rights and duties that state how we should properly respond to those features in various social circumstances (in which response is called-for because people face certain threats or difficulties that can feasibly be dissolved or limited at reasonable cost).

I am proposing in this book a substantive articulation of dignitarian norms in terms of the ideal of solidaristic empowerment.

> *Solidaristic empowerment*:   We should support people in their pursuit of a flourishing life by fulfilling both negative duties not to destroy or block their valuable human capacities and positive duties to protect and facilitate their development and exercise.[19]

To act in a "spirit of brotherhood" (UDHR, Art. 1) towards those who have status-dignity, we should respond to the significance of what gives rise to that dignity. Whether the valuable features in the basis of dignity are maintained, developed, or exercised by their holders partly depends on whether other people treat them in respectful and helpful ways or in harmful or neglectful ways. Solidaristic empowerment asks that we be ready to support the human development of other people. Of course, although this is a universalist ideal involving, in principle, everyone (both as givers and as receivers of human solidarity), the precise duties and rights that would specify this general normative project can be fully stated only by looking at various contexts. We will have to identify specific duties for individuals, corporations, states, international organizations, and so on. The task is to develop the social arrangements that would provide the most reasonable implementation of the ideal in the relevant contexts.

Importantly, the dignitarian perspective helps strengthen arguments for specific human rights. A common strategy for justifying a human right is to show that its fulfillment supports important human interests. Unfortunately, although illuminating and appealing as far as it goes, reference to human interests is not enough to provide a robust defense of rights. We need more to claim that the agents who can affect people's access to the goods catering for those interests owe them support in gaining and maintaining this access. There is a logical gap between interests and rights. Moving from the former to the latter seems to involve a categorial leap from the evaluative to the deontic. To bridge this gap, we need to mobilize a notion that makes contact with both ends of it. It must, like rights, be deontic (which here I understand as

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[19] I do not claim that every requirement of respect or concern regarding dignity must be construed in terms of solidaristic empowerment. A flourishing life includes a decent life as it most urgent part, and human rights often focus on the latter.

regarding what people ought morally to do); and it must, like interests, be evaluative (which here I understand as regarding what people have reason to appreciate, or to want as contributory to their well-being and their autonomous functioning). In this section, I argue that the idea of human dignity provides a bridging notion of the kind we need. By showing that the interests supported by a right are related to the maintenance or development of some of the valuable capacities that give rise to human dignity (as status-dignity), the link between interests and pairs of rights and duties that the interests-based justificatory strategy invokes is given a more compelling form. The idea of human dignity enables the move from interest to rights, operating as a bridging category, because it has both an evaluative component (concerning the valuable features of the basis of dignity) and a deontic component (concerning the character of status-dignity as comprising rights and duties). Human rights, as dignitarian norms, specify the requirements flowing from more fundamental conditional claims that say that human beings have status-dignity when they have certain valuable features.[20]

I will now explain how the bridge between interests and rights works. The account I propose in this section (and the remaining ones in the chapter) focuses primarily on human rights, but it carries a core that can be extended to other dignitarian norms and to other rights which are justified by appeal to important human interests.

When we seek to answer the question "Why do people have rights?" it is illuminating to refer to people's dignity, and to the valuable capacities that give rise to it. But when we do so, we can also find a link to the important interests that people have. As it turns out, people have important interests in being able to develop, maintain, and exercise those capacities—interests whose fulfillment generate well-being and autonomous functioning. To articulate this line of argument involving a link between capacities, dignity, interests, and rights, I propose the following principle:

> *Bridge principle*:   When human individuals have dignity, they have the deontic status of being owed (reasonable and feasible) support by every agent who can affect the fulfillment of their interests in being able to develop, maintain, and exercise the human capacities that give rise to that dignity. The features in the basis of dignity simultaneously ground status-dignity, certain interests, and rights to support regarding those interests.[21]

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[20] On these conditional claims, see chapter 5, section 5.3.2.

[21] Notice that this principle does not claim that no entitlement can be justified unless it is based on the interests regarding the support for the capacities grounding the dignity of the entitlement's bearer. There may be other sources of entitlement. My focus here is to explain how justifications of entitlements that invoke interests could succeed. This caveat also applies to the Schema of Justification.

This principle was briefly mentioned in chapter 5 (section 5.3.2). Let me explain in more detail its content and role.

The bridge principle links certain important interests with rights via dignity. The thoughts crystallized in this principle can be reconstructed in terms of a sequence linking the following points:

- Recognizing and fulfilling human rights (generally)
- Responding appropriately to people's dignity (as status-dignity)
- Supporting people's valuable capacities at the basis of their dignity
- Supporting people's interests in maintaining, developing, and exercising these capacities
- Recognizing and fulfilling specific human rights that support these interests and capacities in various relevant contexts (that is, some dignitarian norms the fulfillment of which constitutes condition-dignity in certain circumstances of dignity).

The general stance we adopt when we recognize and fulfill rights can be explained by saying that it constitutes an appropriate response to people's status-dignity. When we are asked, "Why do we take people to have human rights, and treat them accordingly?" it is fitting to answer, "Because that is what recognizing that they have human dignity amounts to." That response can be articulated in terms of the task of supporting the valuable capacities in virtue of which people have such status-dignity. This support, in turn, can be enacted by catering for the interests that people have in maintaining, developing, and exercising these capacities. The autonomous functioning and well-being people would enjoy when they are treated in this way (or, in other words, the decent or flourishing life they would thereby be able to achieve) depends, at least in part, on their having the power to fulfill those interests.[22] The support for people in the fulfillment of these interests can finally be

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[22] My hypothesis here is that well-being and autonomous functioning (at least in part) coincide with the development and exercise of the capacities that give rise to human dignity. Whether we adopt an objectivistic, desire-satisfaction, or hedonistic view of well-being (or some combination thereof), states of well-being and autonomous functioning are likely to feature in the conditions protected and promoted by the fulfillment of dignitarian norms. I favor an objectivistic account according to which well-being involves access to objective intrinsic goods that include the development and exercise of various valuable human capacities. But success in this development and exercise might also involve the satisfaction of informed desires of the kind that desire-satisfaction theories of well-being center on. And, finally, the enjoyment that comes with these processes are of the kind a hedonistic theory might praise (and might, additionally, be highlighted by an objectivist theory that takes pleasure as one of the items in its theory of objective goods—perhaps because of the value of the capacity of sentience or because enjoyment is constitutive of what it is to develop and exercise capacities well). In turn, autonomous functioning can be seen as an aspect of well-being, or as a separate constraint generating an independent interest. Either way, it would be amongst the targets of dignitarian treatment, as it engages the development of (especially) valuable human capacities for reflection and self-determination.

articulated in terms of specific rights and duties in various contexts. But these requirements specify the general stance mentioned at the outset: they are dignitarian norms the fulfillment of which would give people the condition-dignity their status-dignity calls for.

Thus, by deploying the bridge principle, we can provide the additional argument needed to move from certain interests to rights. We can do so by linking the interests with the valuable human capacities that ground people's status-dignity. The strictures of the proposed dignitarian justification of rights can be stated, in their most general form, through the following schema:

> *Schema for dignitarian justification*:   Moral rights are justified if, and to the extent that, their fulfillment (through certain institutions and practices) is either necessary for, or strongly contributes to, the feasible and reasonable support for important human interests regarding the existence, development, and exercise of certain valuable human capacities of the relevant individuals—the ones grounding human dignity.

Specifically, the robust defense of rights requires identifying the institutions and practices, the human interests, and the human capacities stated in this schema in various contexts in which the circumstances of dignity hold. It involves showing that certain rights are indeed dignitarian norms—that is, that their fulfillment is either necessary for, or strongly contributory to, the feasible and reasonable support for important human interests linked to the valuable human capacities of people in the relevant contexts.

It is beyond the scope of this section to provide a detailed demonstration of how each putative right is justified. I will consider some cases in chapters 9–11. My point here is that the appeal to human dignity and solidaristic empowerment are fruitful for the defense of human rights (as well as other rights) because they provide a deontic strengthening of those justifications which appeal to human interests. By drawing on dignity, we can more easily move from interests to rights, from the good to the obligatory. The key idea is that since some important human interests are linked to valuable human capacities that give rise to status-dignity, responding to status-dignity as solidaristic empowerment requires would call for taking steps to support the interest people have regarding the development, maintenance, and exercise of their capacities. If we do not support the satisfaction of these important human interests (when we can do so at reasonable cost) it is not just the interests that are set back. We are also failing to enact proper respect and concern for the persons who have such interests. The interests are linked to the capacities that give rise to our duty to enact respect and concern for these persons to begin with. We cannot enact respect and concern and neglect the interests. What grounds these interests also grounds rights and duties regarding their support.

Two points in the schema for dignitarian justification need further clarification. The first is the reference to what is "either necessary for, or strongly

contributes to" the human development of right-holders. This formulation is meant to avoid unduly demanding statements of rights. It might not be strictly impossible for people to access the object of a right if others do not discharge correlative duties to support them. For example, people might be able to access food and other basic necessities through the charity of some private individuals without being granted access to jobs or to governmental assistance in times of crisis. But since this is not sufficiently likely for all, stating a right seems appropriate. Furthermore, the fulfillment of the correlative duties might not completely secure access to the relevant object, but might still be justified because of the strong contribution that fulfillment would make to that access.[23] Secondly, and relatedly, the reference to support that is "feasible and reasonable" is meant to recognize some important limits on duties. We discussed feasibility when outlining the idea of the circumstances of dignity (as well as in chapter 3). In addition, we must consider not only the interests of a particular right-holder who is being targeted for support by a duty-bearer, but also the interests of other right-holders, including the relevant duty-bearer and third parties. Their rights must also be taken into account. section 8.4 considers how this holistic assessment might proceed.

8.4. THE ARTICULATION OF RIGHTS AND DUTIES AND CONTRACTUALISM

What is key for solidaristic empowerment is that duty-bearers take seriously into account every right-bearer they can affect, by considering how they might affect their relevant options to lead decent and flourishing lives. How could they do that? Rights are best seen as correlative to several kinds of obligations. Because solidaristic empowerment focuses on supporting people's interests in the maintenance, development, and exercise of their valuable human capacities, it is best served by a broad approach to the duties correlative to human rights. Consider some examples. First, duties correlative to socioeconomic human rights can be quite general and quite specific. A government may have a duty to develop some new, more extensive plan of health care for all, and it may have to make sure that no one is deprived of coverage by whatever specific plan exists. Second, the duties can be negative and positive. Governments, and citizens under them, may have to avoid pursuing economic

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[23] I add that the schema can be used to provide linkage arguments for human rights. These arguments are common in the theory of human rights. See Nickel, *Making Sense of Human Rights*, 2nd ed. (Oxford: Blackwell, 2007), ch. 5. They indirectly justify some rights by noting that their fulfillment is necessary for or strongly contributory to the fulfillment of other, independently justified rights. I will draw on these kinds of arguments in chapters 9 and 10.

policies that foreseeably create massive unemployment, and they may have to help create opportunities for employment that do not exist. Third, duties can be perfect and imperfect. Individuals have a perfect (clearly delineated) duty not to kill others (with standard exceptions such as self-defense), and they have imperfect duties to take action to protect others either directly or through campaigning for new institutions that enhance security.[24] Fourth, duties can be held by governmental or private institutions and by individuals. If Peter can give emergency assistance to John, who has just had a heart attack while traveling on the same bus, then he should do it. This duty is complementary to institutional responsibilities of health care agencies, and it may sometimes state the only available recourse when such agencies are severely deficient. Fifth and finally, duties can be agent-relative and agent-neutral. We should not only refrain from the deprivation, and seek the promotion, of opportunities for our fellow citizens to avoid destitution. We should also take reasonable steps to prevent the destitution of members of other societies. In all these cases the animating thought is the same. The importance of supporting every human being's human interests in the maintenance, development, and exercise of their valuable capacities can give rise to multiple reasonable responses. As Amartya Sen has put it, there is a general duty to "give reasonable consideration" to possible action fostering people's capabilities.[25] The determination of what specific actions this duty might generate depends on many factors and should not be corseted by any narrow view about the kinds of duties mentioned above.

What is central according to the dignitarian ideal of solidaristic empowerment is that we respond in appropriate ways to the dignitarian interests of each person affected by the issue we are considering. I will now suggest one way in which we can develop this approach (and in particular the Scheme of Dignitarian Justification stated in section 8.3) by adopting a contractualist framework for the justification of rights.

Moral contractualism, in its Scanlonian version, is the view that in determining how to act we should follow the principles that no one could reasonably reject as a basis for informed, unforced, general agreement.[26] Four key features of "reasonable rejection" are these. It is comparative: a principle is justified by showing that the objections to it are no stronger than the

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[24] See note 2 above.

[25] Amartya Sen, "Elements of a Theory of Human Rights," *Philosophy & Public Affairs* 32 (2004), 315–56, at 319, 321–2, 338–42, 346–7.

[26] T. M. Scanlon, *What We Owe To Each Other* (Cambridge, MA: Harvard University Press, 1998), 153. The features of reasonable rejection I proceed to mention are outlined in ch. 5 of Scanlon's book. The following five paragraphs draw on Pablo Gilabert, *From Global Poverty to Global Equality* (Oxford: Oxford University Press, 2012), sect. 2.6; and "The Capability Approach and the Debate Between Humanist and Political Perspectives on Human Rights. A Critical Survey," *Human Rights Review* 14 (2013), 299–325, 311–14.

objections to relevant alternatives. It proceeds from individuals' standpoints: a principle is rejected by showing that it imposes unacceptable burdens on individuals to whom it applies. It appeals to "generic reasons": when we consider how individuals would be affected by a principle, we focus on reasons that any individual facing similar circumstances should accept. Finally, it is pluralistic: a principle may be rejected by appeal to various kinds of considerations, such as well-being, autonomy, fairness, and responsibility. Contractualist justification is an appropriate response to the moral status or dignity of human beings: to relate to them on the basis of principles they could not reasonably reject is a way to express and elaborate our view of them as ends in themselves.[27]

Contractualism can be fruitfully used to articulate dignitarian arguments for rights. Judgments about interests linked to important human capacities provide input in the formulation of generic reasons that human rights principles articulate. Those principles state requirements to support people in the fulfillment of their dignitarian interests. These judgments also supply what is necessary to formulate the substantive aim of human rights as requiring the achievement of condition-dignity. Condition-dignity is the aimed-at state in which people treat each other in such a way that their dignitarian interests are properly supported. Finally, contractualism provides a framework to process the input regarding human interests when reasoning our way to human rights principles. The four features mentioned above cohere well with key features of the dignitarian account as developed in this book. In particular, contractualism is helpful in the development of the dignitarian account because it illuminates the perspective of contributors besides that of beneficiaries of contributions to human rights fulfillment and because it is capacious when it comes to capturing the various considerations that might be relevant for justifying rights. Thus, when assessing a candidate for a human rights norm, we consider what its fulfillment would look like from the point of view of every individual affected. And, adopting these perspectives, we consider how any of the relevant generic reasons is engaged, selecting the principles that on balance do the best job at catering for these reasons.

As developed by Scanlon, contractualism is a general theory of moral right and wrong. But it can be tightened to frame reasoning about rights. Let me propose the following general schema for justifying rights: A (a right-holder) has a right to O (an object) against B (a duty-bearer) just in case there are

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[27] Scanlon, *What We Owe To Each Other*, 103–7. Scanlon's contractualism has some affinity with Immanuel Kant's so-called Realm of Ends formulation of the categorical imperative in *Groundwork for the Metaphysics of Morals* (in Kant, *Practical Philosophy*; Cambridge: Cambridge University Press, 1996; *Ak* 4:439). Kantian contractualism and Scanlonian contractualism are illuminatingly discussed in Derek Parfit, *On What Matters* (Oxford: Oxford University Press, 2011), vol. 1, sects. 52–3. See also Pablo Gilabert, "Kant and the Claims of the Poor," *Philosophy and Phenomenological Research* 81 (2010), 382–418.

feasible and reasonable demands on B that B support, in some significant ways to be specified, A's access to O. The specification of what B owes to A regarding O tracks the moral importance of A's interest in O, the feasible ways for B to support A's access to O, and the subset of such feasible forms of support that do not involve morally unacceptable burdens on B or others (given the importance of their own interests) and on A (given the importance of other interests of A besides that concerning access to O). Further normative considerations (for example, regarding responsibility and fairness), and feasibility considerations (for example, concerning progressive fulfillment over time) are also relevant, and considerations specific to human rights (such as their global scope and high priority) should be added. Contractualist reasoning is helpful in identifying the importance and content of each of these considerations in various contexts.

As an example, consider the important human interest in having bodily health, and a putative human right to it. In any social context agents will have very strong reasons to value access to some healthy functionings, and there will normally be some feasible and reasonable ways to help others maintain or gain them. There is an abstract right to assistance regarding health. The determination of appropriate mechanisms of assistance is a matter of specific rights in specific contexts. Thus, in the contemporary world, some forms of assistance are infeasible even though pro tanto desirable. Many, perhaps most, have reason to be able to choose whether they live indefinitely. But no one can deliver for anyone the conditions for such a choice. Other forms of assistance might be feasible, but might not be the subject of a reasonable demand. Perhaps some very expensive forms of medical treatment that could extend the life of those with cancer for a short period of time could be freely offered to most adults with cancer but only at the cost of serious public disinvestment in other areas of crucial concern, such as elementary education or other forms of health care (such as prenatal care or assistance to children facing life-threatening conditions). In those cases, it might be reasonable to reject a claim that there is a specific human right to the expensive medical assistance mentioned. Some forms of basic medical assistance, however, will certainly be reasonable to demand. In this way, contractual reasoning helps us account for the urgency of human rights claims.[28]

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[28] As we move from abstract to specific rights, we can make increasing room for contextual diversity. Conceptions of healthy functioning may vary across persons and cultures, and thus the specific articulation of human rights regarding health may vary too. Of course, some variations may track conventions that are not themselves reasonable (as when the health care of boys is deemed more important than that of girls). But other cultural patterns may be acceptable, embodying an autonomous choice by agents living in specific circumstances that is consistent with the application of justified abstract rights. A contractualist framework is open and in fact attuned to diversity, while it also helps frame conditions on its appropriate content.

Additional considerations, such as fairness, help us develop further the account of the relevant rights. If Alberto needs help to gain bodily health, and can get it from Bob and Carol, in principle it would be best if Bob and Carol do part of what is needed to help Alberto, not all of it. But if Carol chooses not to help Alberto, Bob might end up having to do a lot to help Alberto (if the badness of Alberto's need is morally more significant than the badness of Bob shouldering more than his fair share to help Alberto). Given the possibility, and indeed the likelihood, of this kind of situation, it is a good idea to set up institutions that impose penalties on agents like Carol who fail to do their fair share in helping others like Alberto. Where these institutions are in place, recipients' interest in being helped *and* contributors' interest in not having to do more than their fair share are protected. This is one reason why the development of welfare states involved a clear improvement when compared to earlier mechanisms of private charity, and why one of the common properties of human rights is that they should often be pursued by political means. The additional consideration of responsibility for harm done would also help in further developing our account of rights. If one of two agents is, and the other is not, causally responsible in a blameworthy way for the deprivations of a third agent, then there is reason to believe that the first agent has stronger, or more extensive, duties than the second to remedy the condition of the third. Thus, generic reasons other than the importance of well-being are significant, and are explicitly in view in contractualist reasoning about rights.

To avoid misunderstanding, I note that I am not claiming that there is a necessary connection between dignitarianism and moral contractualism. Contractualism seems to me useful and natural if one accepts dignitarianism, but the former is not implied by the latter, and it is the latter that is taken as basic here. Although I find the alliance between dignitarianism and contractualism fruitful, I present it here merely as a suggestion. I admit that a full defense of it requires further work.

A dignitarian approach identifies certain valuable features of certain entities and takes them to ground the status-dignity of those entities and to inform the rights and duties whose fulfillment constitutes the entities' condition-dignity. This is what the schema for dignitarian justification from section 8.3 requires. But such an approach is incomplete in the absence of an explanation of how we can move from listing the features making up the basis of dignity to identifying the norms stating the dignitarian rights and duties. The deployment of moral contractualism helps in this task. Contractualism may be understood as an operationalization of dignitarianism in the domain of human morality.[29] Dignitarianism and contractualism go well together in at

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[29] I am not saying that this is the only way of understanding it, or that it has been so understood by others—although there are elements in Scanlon's work that point in this direction, I do not want to present these remarks as an exegetical proposal.

least the following ways. First, organizing our moral reasoning by considering what others could reasonably accept or reject is to take up the perspective of other people as intrinsically significant, and to treat them as ends in themselves in virtue of (inter alia) their capacities to be rational and reasonable. This shows respect and concern for their dignity. Second, dignitarian considerations may enter as inputs in contractualist reasoning, in the identification of "generic reasons" to be explored and articulated in norms. We could reasonably reject principles by referring to the fact that their general acceptance, or observance, would block the development or exercise of people's valuable capacities that form the basis of their dignity, or because it would fail to foster them appropriately. Third, given its holistic and comparative nature, contractualist reasoning helps us consider the relations between various dignitarian considerations, exploring their relative weight and their interaction. Contractualism also allows moral reasoning to mobilize considerations about fairness, responsibility, and feasibility, which often bear on what prescriptions are justifiable. Thus, in a slogan, we can say that dignitarianism helps show the substantive normative point of contractualism, and contractualism helps organize the justification of dignitarian norms.

An interesting phenomenon in ethical reasoning is that we can hold several theories of normative ethics simultaneously, and organize them into nested sets.[30] In my case, I hold two such theories. One of them is contractualism. I find it quite helpful in the task of assessing principles of right conduct. But when I think about what gives rise to the multiple generic reasons used to support our rejection or acceptance of normative principles, or to articulate their content, I need to draw on another theory. My preferred such theory is dignitarianism as a form of reflection theory (presented in section 8.1 above). Thus, in the case of human beings, we can say that one should respond appropriately to their ability to reason prudentially and morally, cooperate, have sentience, and so on. The generic reasons used to justify moves within contractualist reasoning appeal to these type of responses, and the contractualist framework helps manage their relations, to identify their relative weight or the ways they might support, constraint, or intensify each other. Dignitarianism also helps us argue for the significance of contractualism itself. Contractualism is appealing precisely because it provides a fruitful way to organize our inquiry into how to appropriately respond to the dignity of each human being.[31]

This two-tiered approach is helpful to develop an account of human rights. The idea of human dignity engages the reflective part, and the articulation of

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[30] Kagan, *Normative Ethics*, 298–9.
[31] It seems to me that Scanlon himself engages in in this kind of exercise when he presents contractualism as responding to the value of rational life (see *What We Owe to Each Other*, 106).

rights the contractualist part. Status-dignity gives rise (in certain circumstances) to the human rights project. The contents of that project involve asserting certain rights and correlative duties. When we articulate these rights and duties we aim at realizing condition-dignity (the condition in which human rights are fulfilled). The identification of rights is done by considering what reasonable and feasible claims human beings in different contexts can make on each other. The contractualist approach fruitfully frames this exercise by asking us to adopt the standpoint of the people affected to identify the reasons they might have for accepting or rejecting alternative normative proposals.

8.5. DIGNITARIANISM AND ETHICAL PLURALISM

Ethical pluralism is the view that there are various fundamental moral norms. It is opposed to ethical monism, the view that there is only one fundamental moral norm. Act consequentialism (which holds that an act is right just in case it would make things go best) is a typical example of ethical monism. David Ross's ethics of prima facie duties is an example of ethical pluralism.[32] Ross argues that there are some (in his list, seven) prima facie duties each of which has permanent ethical importance, cannot be justified by reference to more basic norms, and is not absolute but may legitimately conflict with the others (so that all-things-considered, or final, duties must be identified for any circumstance in which conflict arises).

Dignitarianism, as developed in the previous sections of this chapter, involves ethical plurality in three ways. First, in the human domain, the basis of status-dignity includes various valuable features of human beings. Unlike narrower views, such as Kant's, which focus only on rational agency, dignitarianism can recognize that other features such as sentience may be of crucial and irreducible significance. This plurality regarding the capacities making up the basis of dignity generates a second, related plurality concerning interests and reasons regarding the support for such capacities. Third, and as a result of the first two points, dignitarianism recognizes multiple dignitarian norms articulating what forms of respect and concern are owed to human beings (including for example various civil, political, and social rights). We can identify a set of pro tanto (or prima facie) rights and duties demanding support for the existence, development, and exercise of certain valuable capacities that human persons have. These norms could be justified intuitively,

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[32] David Ross, *The Right and the Good* (Oxford: Oxford University Press, 1930).

showing, via examination of cases, that they explain our judgments about what to think and do in a wide range of significant cases.

However, dignitarianism is not a form of ethical pluralism as defined above. It takes one principle, the dignitarian principle that each entity ought to be treated in a way appropriate to its inherent dignity, as the single basic norm. Of course, one cannot deduce logically from that principle any statement of the various components of the basis of dignity, or any statement of the various dignitarian norms targeting condition-dignity.[33]

The relation between fundamental general principles in ethics and more specific norms is not one of deduction, but one of *expression* and *elaboration*. We must conduct ourselves in a way that expresses our recognition and effort to honor the principles in our thought and action. And we elaborate the principles by articulating specific ways in which they can be applied. The elaboration is a substantive exercise that proceeds by appeal to experience, imagination, and reflection. We develop an elaboration of a principle by reflecting on various practical problems (in which threats and opportunities regarding the support for persons' valuable features is engaged), imagining more or less specific ways for agents to enact a proper (desirable and feasible) response to the inherent dignity of persons in the relevant circumstances and situations under consideration. We revise our views as we go on. For example, we can start with a narrow view of dignitarianism in human affairs as requiring respect and promotion of people's rational agency. But then we notice that this does not illuminate our reactions to people who are not capable of rational agency. We still think that they have inherent dignity and that it would be an affront to them, for example, if we chose to gratuitously cause them pain. On reflection, we decide to expand our view of the basis of the dignity of human beings to include the capacity to feel pain, and acknowledge additional dignitarian norms for our relations with people who have this capacity. We have entertained this kind of expansion in section 8.2.

In the human domain, the dignitarian principle would involve something like this imperative: "Act in ways that involve an appropriate response to the inherent dignity of human persons, giving them the respect and concern that is their due." This principle identifies a high-level, right-making property of some acts (their being such that they involve an appropriate response to status-dignity). It subsumes, or gathers, lower-level right-making properties

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[33] In this way, I think, dignitarianism functions in a way similar to Kant's so-called Formula of Humanity of the categorical imperative (which enjoins you to "*act so that you use humanity, whether in your own person or in the person of any other, always at the same time as an end, never merely as a means*"). Kant, *Groundwork for the Metaphysics of Morals* (in Kant, *Practical Philosophy*; Ak 4:429). This principle requires that we avoid treating people with indifference and in merely instrumental ways, and also that we give them positive telic treatment. But what appropriate treatment of these kinds amounts to is open to interpretive specification. See Allen Wood, *Kant's Ethical Thought* (Cambridge: Cambridge University Press,1999), ch. 5.

(which identify norms of respect and concern, or specific instances of them).[34] The latter state how the features making up the basis of dignity should be engaged (via preservation rather than destruction, protection or promotion rather than indifference, and so on). This articulation in turn can be developed further through contractualist reasoning. As explained in section 8.4, we can reasonably reject principles on the basis that their general acceptance, or observance, would block the development or exercise of valuable capacities that form the basis of dignity, or because it would fail to foster them appropriately.

The reader might be curious about my metaethical commitments. Although I do not hold distinctive views in this philosophical area, and I think that the normative claims made in this book are probably compatible with different metaethical views, I will briefly state my current metaethical beliefs and relate them to the normative picture I have just outlined.

What is the status of dignitarian normative propositions? They say, at bottom, that it is wrong to treat entities in ways that fail to respond appropriately to their inherent dignity. I suppose it is possible to view dignitarian propositions through various metaethical lenses. They could be seen as not aiming at truth. An example of this non-cognitivist construal would be some expressivist view according to which dignitarian propositions are used to express certain conative attitudes on the part of the speaker (certain feelings, commitments, plans, etc.). Secondly, they could be construed as making truth claims that have only subjective status. They could be said to hold for certain agents (either individual or collective) only if they can be derived from basic commitments they happen to hold. Alternatively, dignitarian normative propositions could be seen as intended to affirm objective truths. These affirmations could be taken to be false if we hold some error theory. On this, fourth, view, dignitarian discourse systematically tries, but fails, to capture normative properties or facts (because these properties or facts simply don't exist). Finally, dignitarian propositions could be seen as sometimes succeeding if we hold some form of ethical objectivism. Ethical objectivism is the metaethical view according to which there are some ethical truths that hold independently of any desires, beliefs, or other attitudes of agents.

My own intuitions lead me to embrace the last, objectivist approach. The expressivist approach fails to capture the phenomenology of ethical deliberation and argument. When we examine some dignitarian norm or judgment, we primarily assess claims about what is valuable in some entity and about what is owed to it, not reports of our feelings (or other attitudes) about it. We justify the feelings by appeal to the normative status of the entity, not the other way around. Subjectivist views fail to capture the fact that we hold our beliefs

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[34] On higher- and lower-level right- or wrong-making properties, see Parfit, *On What Matters,* vol. 1, 369, 414–15, 476. Parfit applies this point to contractualism.

and deep commitments (individual or collective) to be revisable on the basis of whether they properly track the dignity of the entities we respond to. There is a difference between believing, or holding, something to be valuable or obligatory and its being so. The latter is the ground of the former, not the other way around. Finally, although an error theory might in the end be correct, this would require compelling argument. It cannot be the default position. For example, the supporting argument could not be that only empirical propositions about natural properties can be objectively true. This would rule out mathematical truths, and even the very judgment that only empirical propositions describing natural properties or facts can be objectively true (as this proposition is not itself empirical). I endorse the view Parfit calls "Non-Metaphysical Non-Naturalist Normative Cognitivism," according to which "[t]here are some claims that are irreducibly normative in the reason-involving sense, and are in a strong sense true. These truths have no ontological implications. For such claims to be true, it need not be true that reason-involving properties exist either as natural properties in the spatio-temporal world, or in some non-spatio-temporal part of reality."[35] Dignitarian propositions deeming some types of acts obligatory, claiming that some features of some entities are valuable, or taking such valuable features as grounding status-dignity, are irreducibly normative claims. They do not function like claims of empirical science. Their point is not to report what we believe, feel, or do. They are substantive ethical claims about reasons *to* value, respect, protect, help develop, etc., certain entities that have certain features. Their point is to identify reasons for wanting, or choosing, to act in certain ways. For example, when we say that the fact that human beings can form autonomous judgments about political matters gives us reason to grant them political rights to participate in the political process that shapes their life-prospects, we are not describing how we actually treat people with the feature mentioned. We are making a normative claim about how we should treat them.

8.6. DIGNITARIANISM AND CRITICAL THEORY

Some might ask: "Aren't the alleged natural and evaluative facts about the basis of dignity merely the creatures of some individuals' beliefs, reflecting their parochial cultural or personal prejudices or, perhaps, quite general cognitive limits of human beings' mental powers?" These are significant worries.

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[35] Derek Parfit, *On What Matters*, vol. 2, p. 21. See also T. M. Scanlon, *Being Realistic About Reasons* (Oxford: Oxford University Press, 2014).

Regarding personal and cultural parochialism, we can counter them through reflection, experience, and debate. Moral and political inquiry is an open-ended practice. Part of the dignitarian outlook must thus be a *critical theory* of dignitarian thought, which seeks to illuminate the best methods and procedures to counter narrowness of mind. In the case of human rights, it is especially important that we pursue discursive engagement with distant others whose interests we might affect. We should create dignitarian forums in which everyone's capacity for normative judgment is recognized and can be engaged. We can thus add a third tier to the sequence of nested normative views presented in section 8.4 that includes something like what Habermas's discourse ethics calls for: the search for principles that are the subject of agreement amongst those affected in actual argumentation (which sufficiently displays desirable characteristics such as inclusiveness, sincerity, non-coercion, and equal participation rights).[36] International debates could help notice and critically assess prejudices which people have acquired as a result of being socialized in certain cultural and social contexts, such as the intense possessive and competitive individualism assumed by some people in capitalist societies, or certain forms of oppressive collectivism embraced in deeply hierarchical social environments.[37] International diversity is of course coupled with domestic diversity, as most societies are multicultural and shaped historically by interaction with other societies (through trade, colonialism, imperialism, migration, and current processes of economic globalization). So domestic debate is also likely to provide an illuminating critical exercise. For example, people in industrialized capitalist societies in North America could learn from ethical outlooks held by members of indigenous peoples that robustly articulate caring concern for future generations of human beings and also for the life and well-being of non-human animals.[38] These debates

[36] See Jürgen Habermas, *Moral Consciousness and Communicative Action* (Cambridge, MA: The MIT Press, 1990). In my view, discourse ethics lies downstream from contractualism because actual agreement is best seen as a proxy for what we think, at a certain moment, to be what everyone *could* or *would* reasonably accept or not reject. The fact of agreement does not do ultimate justificatory work; instead it tracks hypothetical agreement (which—if dignitarianism is indeed the fundamental basis of justification—in turn tracks the appropriate responses to what is valuable in persons in the relevant circumstances).

[37] A defender of discourse ethics does not only criticize societies in which individuals are sacrificed for the sake of "communal integrity." It also criticizes the atomistic individualism so common in the capitalist West, which denies the importance of intersubjective practices of justification, or misconstrues them as strategic bargaining among instrumentally oriented self-interest maximizers. See Jürgen Habermas, *The Postnational Constellation* (Cambridge, MA: The MIT Press, 2001), 125–6. See further Pablo Gilabert, "Cosmopolitanism and Discourse Ethics: A Critical Survey," *New Political Science* 28 (2006), 1–21; Seyla Benhabib, *Dignity in Adversity: Human Rights in Troubled Times* (Cambridge: Polity, 2011); and Jeffrey Flynn, *Reframing the Intercultural Dialogue on Human Rights* (New York: Routledge, 2014).

[38] Lars Kirkhusmo Pharo, "Human Dignity in Indigenous Peoples of the Americas," in M. Düwell, J. Braarvig, R. Brownsword, and D. Mieth, eds., *The Cambridge Handbook of Human Dignity* (Cambridge: Cambridge University Press, 2014), 147–54; Linda Clarkson,

would exhibit the expression and elaboration called for in section 8.5, in which people join each other in respectful dialogue aimed at exploring, together, what their dignity calls for in various social contexts.[39] The debate called for may reveal a great deal of unity in diversity. Human dignity is after all a widely resonant value.[40] But disagreements will remain at various levels of justification and application, and it is important to have fair procedures in place that people can use to process these disagreements over time as they develop their shared domestic and international practices and institutions. The third, discursive tier of the dignitarian view entertained here offers precisely that procedure.

In contrast, when it comes to species' parochialism we may face an unsurpassable limit. We cannot inquire about status- and condition-dignity from a non-human point of view, with non-human minds. Perhaps beings with more sophisticated brains than ours would be able to capture the norms of dignity better than we can. There is then a second sense in which dignitarianism must be critical. In addition to unleashing the power of our ethical reasoning and inquiry (including the revision of our beliefs through discussion with others), it should acknowledge its limits. Of course, we cannot sharply trace the limits, for that would require knowing what lies beyond them (which is precisely what we cannot do). But we can develop a sense of humility.[41] There could be more to dignity than what human minds can grasp.[42]

Morrissette Vern, and Gabriel Regallet, *Our Responsibility to the Seventh Generation: Indigenous Peoples and Sustainable Development.* (Winnipeg: International Institute for Sustainable Development, 1992). On the complex and fluid nature of cultural views within diverse contemporary societies, and the importance of a discursive ethics to frame debates within them, see Seyla Benhabib, *The Claims of Culture* (Princeton, NJ: Princeton University Press, 2002). Everyone should be open to criticism. But given a history of domination and oppression, it is especially important for mainstream voices to be open to learning from marginalized ones. I thank Rowan Cruft for discussion on this point.

[39] On how practices of public reasoning can be understood as mediums of expressive elaboration of substantive values, see Pablo Gilabert, "A Substantivist Construal of Discourse Ethics," *International Journal of Philosophical Studies* 13 (2005), 405–37; and "The Substantive Dimension of Deliberative Practical Rationality," *Philosophy and Social Criticism* 31 (2005), 185–210.

[40] For a survey of its articulation across cultures and historical time, see Düwell et al., eds., *The Cambridge Handbook of Human Dignity*.

[41] These two senses of critical reflection (one emboldening, the other humbling) are well captured in Immanuel Kant's program of critical philosophy in his *Critique of Pure Reason* (Cambridge: Cambridge University Press, 1997). The third point (about ideology critique) reflects critical theory's characteristic efforts to illuminate the "contingency of common sense" and certain "pathologies of normalcy." See, respectively, Sally Haslanger, *Resisting Reality* (Oxford: Oxford University Press, 2012), 4; Erich Fromm, *The Sane Society* (Greenwich, CT: Fawcett, 1955), 15.

[42] If we could change human nature, should we do so? What changes should we make? These questions are unsettling for natural law theory (or at any rate for the versions of it that commit the naturalist fallacy). It does not help much to say that right actions and institutions are to be identified by reference to human nature when what we are trying to figure out is what human

A third way in which dignitarianism must adopt a critical stance concerns ideology. In general, an ideology is a framework people use to understand their relation to the world, including their social relations. In a more restricted sense, on which I focus here, an ideology supports a social order whose operative norms (the ones that are as a matter of fact dominant and deployed to defend the existing distributions of decision-making power, material advantages, and other goods and conditions) benefit some individuals or groups at the expense of others. In this broadly Marxian sense, ideologies tend to portray as being in the general interest what is in fact in the particular interest of only some members of society (such as the members of its ruling class).

A theory of human dignity should include a critique of ideology. Ideologies often present as essential to social life, or as unavoidable in some social context, what is in fact only a historically contingent feature that can be changed. Some views of dignity may be ideological constructs that present the particular as general, or the contingent as necessary, and in the process entrench practices and institutions that avoidably and unduly benefit some at the expense of others.

Consider, for example, the idea of the "dignity of labor."[43] Historically, this idea has been used to cast the situation of workers in hierarchical societies in which they are severely exploited, dominated, and oppressed, as being worthy of esteem and respect. Workers are praised for, and hectored into, "doing their part" in creating society's wealth. The ideological maneuver here is to combine a moderate valorization of the productive efforts of workers with an affirmation of the social order that pushes them into a condition in which they are subordinated to, and achieve fewer advantages than, those who hire them (and whose "part" and "rewards" in the social structure are misconstrued as necessary and deserved). To respond to this maneuver, a critique of ideology can show that workers have important human interests that are in fact set back

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nature should be like. These questions are less of a threat to dignitarianism because it can be construed as responding to valuable features of entities that are either already existing or feasible to create. A dignitarian recommendation in the treatment of an entity may be to help it become different from what it currently is. These questions are heuristically rich, and may become immediately practical due to scientific and technological developments. Consider, e.g., the debates over "posthumanist" and "transhumanist" proposals regarding the "enhancement" of human nature through biotechnology. See Nick Bostrom and Julian Savulescu, eds., *Human Enhancement* (Oxford: Oxford University Press, 2009); Allen Buchanan, "Moral Status and Human Enhancement," *Philosophy & Public Affairs* 37 (2009), 346–81; Martin Weiss, "Posthuman Dignity," in Düwell et al., eds., *The Cambridge Handbook of Human Dignity*, 319–31.

[43] See the illuminating historical discussion in Michael Rosen, *Dignity* (Cambridge, MA: Harvard University Press, 2012), 47–54. For further discussion on dignity and labor, see chapters 9 and 11 of this book, and Pablo Gilabert, "The Socialist Principle 'From Each According To Their Abilities, To Each According To Their Needs'," *Journal of Social Philosophy* 46 (2015), 197–225.

by a social order in which they face avoidable alienation, exploitation, or domination. Their capacities for meaningful and cooperative work, and their equal standing and needs as human beings, are not given a fair response in such circumstances. Furthermore, the critic can point out that there are background inequalities in resources and bargaining power that enable the cornering of workers into their subordinate and disadvantaged position, and that these inequalities are the historical creature of social institutions that could actually be changed. Through this critique of ideological views, talk of dignity can move from consolation and cultural discipline to the illumination of injustices of the existing social order and the articulation of ideals that point beyond it. A critical dignitarian perspective would insist that some undesirable facts of current social life (such as the background inequalities in power and resources) are changeable rather than inescapable, and affirm dynamic duties to transform them so that more just arrangements are created.

Another example of dignitarian ideology critique is to target the construal of dignity as individuals' independence. It is not uncommon to present independence (and with it dignity) as a function of self-reliance and self-sufficiency. This view helps reproduce unfair relations of production, exchange, and distribution. It encourages the advantaged to see their privileges as their own achievement and the disadvantaged to blame themselves for their bleaker condition. It encourages all to eschew mutual help. This ideology has traction partly because it mobilizes, and twists, some genuine norms and ideals. By separating the conventional, ideological norms from the justified, genuine ones, we can criticize the former on the basis of the latter. Thus, we can distinguish independence and self-reliance from autonomy and empowerment, and notice that a society that pursues the former would hamper the latter. Fostering autonomy and empowerment requires solidarity towards those in need. We can criticize norms that cement indifference to the interest of others, or compulsive competition, because under them people do not have as much power to control their lives as they would in an alternative, more solidaristic, environment.

As argued in this book, human rights discourse offers a compelling example of how to pursue both empowerment and solidaristic support. It embraces empowerment, for example, by recognizing that people have strong political rights to shape the governmental institutions that structure their social life (see UDHR, Arts. 20–1), and by requiring that if they work, people do so only on jobs they choose, while having the entitlement to form and join unions to defend themselves against abuses by their employers (UDHR, Art. 23). Human rights practice embraces solidaristic support, for example, by stating many positive rights to access education, housing, nutrition, and cultural goods (UDHR, Arts. 25–8). This palette of requirements of solidaristic empowerment flows from an understanding of human dignity that responds to, and recruits, people's capacities for self-determination, cooperation, and

compassionate aid. The reference to people's reason, conscience, and the ability to act in a spirit of brotherhood (UDHR, Art. 1) can be interpreted as recognizing these capacities. To concentrate on their development and exercise makes normative sense once we see that the circumstances of dignity feature human beings not only as agents with initiative but also as patients who are multiply vulnerable.

Solidaristic empowerment involves an understanding of dignity that avoids the ideal of independence as self-sufficiency or self-reliance. As discussed in previous chapters, that ideal is infeasible and undesirable. It is infeasible because human beings are extremely unlikely to achieve a decent or flourishing life without extensive help from others. During childhood, old age, illness, or unemployment, people are unavoidably at the mercy of others. The ideal of independence is also undesirable because it fosters a callous moral culture that makes those who are helped feel ashamed and those who help feel guilty. This ideological culture turns the virtues of solidarity into vices, and the vices of possessive individualism into virtues. By contrast, solidaristic empowerment calls for supporting others when they are vulnerable. It engages important human capacities (which give rise to status-dignity) to freely pursue, and help others to freely achieve, a decent or flourishing life.[44]

Let me conclude this section with a remark about the importance of critical self-awareness when it comes to power relationships. One of Michel Foucault's insights about power is that it has a constitutive effect on agents, that it changes and shapes them. For example, Foucault makes a distinction between "subjection" and other types of asymmetric relationships. What is specific about subjection is that through it subjects' identity is constituted and affirmed in the power relationships.[45] This point is relevant for human rights practice. Such a practice arguably defends people from many forms of power abuse. But it also makes them see themselves in a certain way. Specifically, people come to see themselves as members of a universal human community that is different from, and in some respects normatively prior to, more circumscribed identities of country, class, and ethnicity. Now, a suspicion that Foucault teaches us to cultivate is that as a practice may come to respond to certain undesirable power relations, it may also enable new ones. This may be the case with the universalist identity that human rights practice nurtures. It may make some people more available for some forms of control by other agents who are more

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[44] A third possible example of ideology critique is to target the common assumption that human rights must be premised on acceptance of the modern system of states. This takes as parametric what is historically contingent. Human rights need not take states (and the inequalities between human beings living in different states) as part of the circumstances, as opposed to the much more contingent situations, of dignity. See chapter 2 of this book.

[45] Michel Foucault, "The Subject of Power," in Foucault, *Power*, ed. J. Faubion (New York: The New Press, 2000), 326–48, at 331.

powerful. For example, a military intervention in another country that is actually motivated by interests in economic exploitation might be effectively presented as justified by characterizing it as an act of protection or liberation of fellow human beings who suffer mistreatment in the country being invaded (for example, if the people in that country are ruled by a bloody dictatorship). Of course, this point does not warrant the rejection of universalist human rights discourse and practice. Instead, the lesson is that one has to be aware that this discourse and practice (like any other) comes with risks. It is part of what in chapter 5 I called *dignitarian virtue* to develop an awareness of these risks and proper judgments about how to handle them. If the circumstances or situations of dignity include power asymmetries that cannot be fully eliminated, or if solidaristic empowerment will sometimes not recommend such complete elimination, then a critical exploration of the uses of surplus power is essential. The discussion of power and human rights offered in chapters 4 and 7 should be read as proposing an exploration of this kind.

8.7. DIGNITARIANISM AS A THEORETICAL AND PRACTICAL PROGRAM

Dignitarianism is a theoretical and practical program. It outlines a perspective on how to figure out what are agents' appropriate normative responses to various entities they may encounter and affect in diverse practical contexts. I have focused on humanist dignitarianism, which centers on human relations, taking human rights as the exemplary set of dignitarian norms. The components of the dignitarian program can be elaborated in theoretical inquiry (in philosophy and social sciences) and tested indirectly in practice (through institutional experimentation and in day-to-day interpersonal interactions). In this book, I propose (in chapters 5 and 6) an understanding of the main dignitarian concepts and (in this chapter and chapter 7) a substantive agenda of dignitarian justice formulated in terms of the ideal of solidaristic empowerment.

We can see the dignitarian program as including at least the following components:

(i) A *theory of value* that identifies the basis of dignity (the grounds of status-dignity).

(ii) A *theory of right conduct and institutions* that articulates dignitarian norms for individuals and social structures, and the corresponding forms of condition-dignity.

(iii) A *theory of virtue* and the related moral psychology that illuminates the emotional and intellectual dispositions that would lead agents to grasp and honor dignitarian values and norms.

(iv) An *account of feasibility* that explores what might make various purported dignitarian norms implementable and more or less likely to be fulfilled in various social contexts.

Of course, each of these components can be elaborated in different ways. As a result, the dignitarian program could be developed into various dignitarian theories.[46] Furthermore, the dignitarian norms the theories would articulate can be more or less abstract, and address more or less immediate problems. Three key dimensions of these theories would be the following:

DI: The most general and basic dignitarian ideas and principles (such as the ideal of solidaristic empowerment and the most abstract human rights).

DII: The implementation of the ideas and principles from DI in certain contexts by means of certain specific institutions or practices (such as those required by specific civil, political, and socioeconomic human rights).

DIII: The processes of political transformation that would get certain agents from where they are to a situation in which the implementations envisaged in DII are realized (when this has not already been achieved).

Each of these dimensions will involve a combination of formulations engaging each of the four components (i)–(iv) mentioned above. An important challenge is to figure out how the different moving parts of a dignitarian theory might be developed so as to support each other and constitute a coherent, systematic framework that can clarify and orient our normative practices. The method of deliberative reflective equilibrium is a valuable tool to use as we pursue this task and try to reach—introspectively and in dialogue with each other—all-things-considered judgments about the acceptability of a dignitarian conception of justice (or of some part of justice). Thus, in this book I have offered the reader an exploration of human rights that engages DI–DIII simultaneously, and have been seeking to outline a dignitarian conception in which our various beliefs stand in deliberative reflective equilibrium.[47]

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[46] To understand this, we can use Imre Lakatos's idea of a research program, and think of programs as involving some core ideas that can be elaborated through sequences of different theories. See Lakatos, "Falsification and the Methodology of Scientific Research Programmes," in I. Lakatos and A. Musgrave, eds., *Criticism and the Growth of Knowledge* (Cambridge: Cambridge University Press, 1970), 91–196.

[47] "The method of reflective equilibrium consists in working back and forth among our considered judgments (some say our 'intuitions'...) about particular instances or cases, the

We have so far considered the dignitarian program in a rather general and abstract way. Let us now test its appeal, and develop it further, by addressing specific human rights.

principles or rules that we believe govern them, and the theoretical considerations that we believe bear on accepting these considered judgments, principles, or rules, revising any of these elements wherever necessary in order to achieve an acceptable coherence among them." Norman Daniels, "Reflective Equilibrium," in Edward N. Zalta, ed., *The Stanford Encyclopedia of Philosophy* (Winter 2016). Reflective equilibrium is deliberative (rather than descriptive) when the primary aim of the exercise is to determine what *to* believe rather than to report what one *does* believe. See T. M. Scanlon, "Rawls and Justification," in S. Freeman, ed., *The Cambridge Companion to Rawls* (Cambridge: Cambridge University Press, 2003), 139–67. Furthermore, I take that search to be informed by experience, science, and debate (besides personal cogitation). I take the search of reflective equilibrium, thus conceived, to be the general method for normative theorizing.

Part III

Implications of the Dignitarian Approach

9

Labor Rights

9.1. INTRODUCTION

In this, final part of the book (Part III), I explore some implications of the dignitarian approach developed in Part II for the articulation and defense of specific human rights. I will focus on important yet controversial requirements, starting with labor rights. Most of us care deeply about work. If we don't have a job, we anxiously seek one. If we have one, we fear that we may lose it, or worry about the extent to which it enables us to live a decent life. The human rights practice reflects these concerns in its legal documents. It invokes entitlements to freely chosen work, to decent working conditions, and to form and join unions. Despite the importance of these rights, they remain under-explored in the philosophical literature on human rights. This chapter offers a systematic and constructive discussion of them. Section 9.2 surveys the content and current relevance of the labor rights stated in the most important human rights documents. Section 9.3 gives a moral defense of these rights, justifying their support[1] on the basis of important human interests and human dignity. Section 9.4 explores central normative issues about the relation between labor rights and human dignity. It replies to objections about the importance of work, explains why labor human rights may not exhaust the demands of dignity regarding labor, and arbitrates a common tension between independence and solidarity. Section 9.5 concludes. The key thesis of this chapter is that to solidaristically empower all persons who can work to access and defend decent working conditions in which their valuable capacities can be developed and exercised is an obligatory response to their human dignity.

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[1] I use "support" as an umbrella term comprising the standard triad of respect, protection, and fulfillment. Also, I use "labor" and "work" interchangeably.

9.2. SURVEY OF MAJOR
HUMAN RIGHTS DOCUMENTS

Labor human rights (hereafter "LHR") are rights that human beings have in their capacity as workers. What LHR are there? The central human rights documents identify several such rights. For example, these are the main claims in the Universal Declaration of Human Rights (UDHR):

> Article 23: (1) Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment. (2) Everyone, without any discrimination, has the right to equal pay for equal work. (3) Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection. (4) Everyone has the right to form and to join trade unions for the protection of his interests.

> Article 24: Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.

For purposes of the discussion in this chapter, I will divide the LHR stated in UDHR and other major human rights documents into three groups, concerning rights regarding access to work, to decent conditions at work, and to form and join unions (and related forms of workers' associational power). In the remainder of this section, I survey those statements and give an initial sense of their current practical significance.

9.2.1. Rights regarding Access to Work

The right to work is stated in Article 23.1 of UDHR. Also significant here are Article 4 of UDHR prohibiting slavery and servitude, and Article 6 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) recognizing "the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses and accepts."[2] The right to work can be taken to comprise at least three demands: there should be opportunities for people to work, people should be free to choose whether and where they work, and there should be some level of security or stability for those holding employment.

   Regarding opportunities to work, two associated ideas are these. First, there should be no arbitrary discrimination in hiring: people may not be excluded for reasons that are unrelated to competence in performing the job (such as,

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[2] In 2005, in its General Comment 18 (para. II.8), the Committee on Economic, Social and Cultural Rights claims that the right to work is interdependent with the other groups of labor rights (in the case of ICESCR, Art. 6 is interlinked with Arts. 7 and 8).

in many cases, their gender, skin color, or sexual orientation). Of course, non-discrimination extends to the internal organization of the workplace. There is a violation of human rights when individuals belonging to some racial groups are not granted access to certain necessities.[3] Second, there should be mechanisms that support people's development of talents and skills they could use in jobs. Thus, the right to education can be seen as importantly linked with the right to work. The Social Covenant already refers to states' responsibility to introduce "technical and vocational guidance and training programmes" (ICESCR, Art. 6.2). The first point identifies negative duties not to discriminate. The second adds positive duties to help others develop their talents and skills. A third component of the right to work is a correlative collective positive duty of the members of a society to help secure job opportunities for all. Since the drafting of the Universal Declaration, the limitation of unemployment has been taken as important.[4] Article 23.1 states a right to "protection against unemployment" and Article 55 of the UN Charter calls for the promotion of "full employment."

The foregoing points about opportunity to work are in practical terms relevant given common tendencies to racism and other forms of discrimination, the need for new skills resulting from technological change, and the fact that without public intervention modern economies seldom generate full employment (a phenomenon that is heightened during cyclical crises in capitalist economies).

The two other demands regarding the right to work also address important current problems. The second demand, about free choice of employment, is relevant given current forms of labor that come close to slavery (as in human trafficking for prostitution). Also problematic is work that is not strictly slavery but is rightly called "forced labor" because of the conditions in which labor contracts are generated and sustained.[5]

The third demand, concerning some security in employment, is illustrated, for example, in legislation that limits arbitrary dismissal of workers. This

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[3] A recent case occurred in a farm in Quebec, Canada, where black workers were required to use segregated toilet facilities. Adelle Blackett, "Situated Reflections on International Labour Law, Capabilities, and Decent Work: The Case of *Centre Maraicher Eugene Guinois*," *Revue Quebecoise de droit international (Hors-série)* (2007), 223–44, at 235–41. Non-discrimination in the implementation of human rights flows from basic requirements in UDHR's Preamble (which asserts that every member of society has a duty to honor these rights) and Art. 2 (which takes the rights to apply independently of specific statuses such has race, class, etc.).

[4] Johannes Morsink, *The Universal Declaration of Human Rights: Origins, Drafting and Intent* (Philadelphia, PA: University of Pennsylvania Press, 1999), 162.

[5] Recently, e.g., impoverished Nepalese were lured into paying high fees to be shipped to Qatar to work in the construction of sports stadiums. When in Qatar, they faced intensely exploitative working conditions, legal inability to change jobs, and difficulties in leaving the country. Peter Pattisson, "Revealed: Qatar's World Cup 'slaves'," *Guardian*, September 25, 2013.

demand is significant in an economic environment in which unemployment, and precarious and temporary employment, are increasingly common.

9.2.2. Rights to Decent Conditions at Work

These rights are briefly stated in Articles 23.1–3 and 24 of UDHR. Article 7 of ICESCR provides a more detailed statement. After a general "right of everyone to the enjoyment of just and favourable conditions of work," it identifies four subcategories specifying these conditions. The first requires "remuneration which provides all workers, as a minimum, with…[f]air wages and equal remuneration for work of equal value" and "[a] decent living for themselves and their families." Thus, salaries should be sufficiently high that workers (and their dependents) access basic necessities and an adequate standard of living (which is itself a right—see UDHR, Art. 25). Campaigning for adequate minimum salaries is widespread. Many workers cannot make a living even though they work full-time in some of the richest countries in the planet.[6] Besides this concern with sufficiency or adequacy, remuneration must track certain considerations of equality. Equal work must be rewarded equally. Some forms of discrimination—for example, against women—are salient targets in human rights advocacy.

A second set of rights at work concerns "safe and healthy working conditions." Workers face threatening conditions when they work in facilities in which they are exposed to hazardous substances (such as asbestos) or which

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[6] In December of 2013 fast-food workers protested across the US. Akilarose Thompson joined a strike at a McDonald's in Chicago. She said to a reporter, "To put it in perspective, yesterday I got paid, today I have not a dollar in my pocket." "Thompson has worked at McDonalds for almost a year, serving costumers on the cash register or on the drive-thru window. She got a pay rise in June and now earns $8.28 an hour—three cents above Illinois's minimum wage of $8.25. Thompson works a second job too, at Red Lobster, but still has to go to food banks to support her and her 15-month-old daughter." She says: "It is so depressing. You put a smile on because you're in customer service and you have to. But on the inside it really breaks you down when you're always at work but you're always broke." Jessica Davies, also working at McDonald's, says: "They say this is supposed to be a starter job but really we don't have any other jobs to go to. There's nothing else out there…We're just tired of making multimillion dollars for this company and at the end of the day we have nothing to show for it." Adam Gabbatt, "US fast-food workers strike over low wages in nationwide protests," *Guardian*, December 5, 2013. Campaigners called for a minimum wage of $15 per hour. This campaign sparked a national debate, and reached fruition in Seattle in 2014 (where a $15 minimum was legally imposed). For striking stories concerning the working poor in the US, see http://www.huffingtonpost.com/2014/05/19/working-poor-stories_n_5297694.html?utm_hp_ref=@working_poor. See also "Ontario hikes minimum wage to $11 an hour," *The Globe and Mail*, January 30, 2014. The situation of temporary workers (a growing group) is particularly difficult in terms of salaries, working conditions, and effective ability to organize for collective action. For a powerful recent depiction focused on warehouse workers in California, see Gabriel Thompson, "The Workers Who Bring You Black Friday," *The Nation*, November 26, 2013.

are poorly built or not adequately inspected. A striking recent case is the garment factories in Dakar, Bangladesh, where in 2013 over 1,100 workers died when the building they were working in collapsed on their heads.

A third category requires "equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence." This point has obvious relevance for contexts in which cultural norms discriminate against members of gender, racial, and other groups. For example, in some Latin American countries non-white people are underrepresented in leading positions in business, politics, and the media even though they constitute the majority of the population.

Finally, the Social Covenant mentions a category of rights regarding "rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays." The struggle for limiting working hours has been central since the beginning of the industrial labor movement in the nineteenth century. As technological development and automation decreases the social need for human labor, it becomes increasingly feasible to limit working hours without decrease in production.[7]

Rights regarding holidays have been criticized as either impossible to implement or implementable only at unreasonable cost. Human rights practice has addressed this challenge. The International Labor Organization set the minimum of vacations with pay (in convention 132, in 1970) as three weeks per year on completion of a year's service. The European Social Charter went further in 1996, setting a minimum of four weeks. European countries can and do implement these provisions. It is harder to achieve an agreement on a feasible and reasonable schedule with wider, global scope. Several factors seem relevant and difficult to balance, including "productivity levels, industrialization, computerization and even the weather."[8] But paralysis can be avoided. Thus, if the minimum the ILO requires is not immediately achievable in poorer countries, steps can be taken to progressively achieve it. Shorter vacations can be introduced first, with longer ones following as part of a plan that includes decisive domestic action and international cooperation. Article 2.1 of the Social Covenant already envisions progressive implementation and international cooperation when immediate and complete fulfillment of rights is either not feasible or too costly.[9] As argued in chapter 3 of this book, there are dynamic duties to make the fulfillment of socioeconomic human rights more feasible over time.

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[7] Another demand attracting increasing attention concerns fair policies of parental leave, allowing parents (women or men) to take up parental responsibilities without facing severe economic costs.

[8] Rhona Smith, *Textbook on International Human Rights*, 5th ed. (Oxford: Oxford University Press, 2012), 321.

[9] See also UDHR's Preamble.

9.2.3. Rights to Form and Join Unions

This final group of LHR appears in Article 23.4 of UDHR. Also significant are Article 22.1 of the International Covenant on Civil and Political Rights (ICCPR), which says that "[e]veryone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of their interests," and Article 8 of ICESCR which adds a right to strike.[10] A typical issue of debate in the theory and practice of human rights is how specific the statement of human rights should be. The right to form and join unions is a case in point. It is more specific than, and a subset of, the right to associate. The drafters of UDHR debated whether to state it given that they had already recognized a right to associate (in Article 20). They decided to state it anyway to highlight its novelty and importance for the contemporary world, and because its realization was threatened in practice.[11]

Unions remain important political actors in the protection of the interests of workers.[12] In capitalist societies, the right to form and join unions is standardly linked to the right to collective bargaining. The ILO sees the latter as among the key procedural rights boosting the bargaining power of workers.[13] Alone, most workers are quite weak when negotiating with employers, but together (and with the ability to strike) they can secure better working conditions and remuneration.

9.2.4. Framing Considerations

Several important considerations frame LHR. In the case of UDHR, I would like to emphasize the point that it identifies duties besides rights. We all have

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[10] See further ILO Conventions 87 and 98.

[11] Morsink, *The Universal Declaration of Human Rights*, 173–4. The drafters also discussed whether to mention even more specific issues about the exercise of the right to unionize (e.g., regarding "open" or "closed shop" rules), but decided to let this be settled in national contexts on the basis of what would best protect workers' interests in them (ibid., 174–81).

[12] Recent debate on, and increases in, minimum wages in North America are partly the result of pressure by unions (see, e.g., Josh Eidelson, "Strike wave spurs Obama to make contractors pay $10.10"; Salon.com, January 28, 2014). However, unions face serious difficulties. Their traditional base in the industrial sector is shrinking and they find it hard to organize workers in the service sector or in precarious positions involving temporary work, agency work, and subcontracting. Furthermore, unions face hostility or indifference from powerful business groups and governments. On various current threats to unions' activities, see the ITUC Global Rights Index at http://survey.ituc-csi.org/?lang=en. On the normative significance of the right to strike, see Alex Gourevitch, "Quitting Work but Not the Job: Liberty and the Right to Strike," *Perspectives on Politics* 14 (2016), 307–23.

[13] The ILO's 1998 Declaration on Fundamental Principles and Rights at Work includes: (a) the freedom of association and the effective recognition of the right to collective bargaining; (b) the elimination of all forms of forced or compulsory labor; (c) the effective abolition of child labor; and (d) the elimination of discrimination with respect to employment and occupation.

responsibilities to contribute to the fulfillment of human rights. LHR are part of the set of social, cultural, and economic rights, which give rise to both domestic and international obligations. Article 22 presents these rights as requiring, for their fulfillment, "national effort and international co-operation." More generally, Article 28 says that "[e]veryone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized." Article 29.1 says that "[e]veryone has duties to the community in which alone the free and full development of his personality is possible."

9.3. LABOR HUMAN RIGHTS AS MORAL HUMAN RIGHTS

We have seen that LHR have a significant legal and political existence. LHR are defended by international organizations, enforced by courts, articulated in laws passed by parliaments, and invoked in public debate and street protests. But are they morally justified? Answering this question is important for determining whether sustaining the legal and political practice that includes LHR is a good idea, and for orienting ourselves when interpreting and revising its contents in contexts of debate.[14] To justify LHR as moral human rights, I will proceed in two steps. The first makes conceptual possibility claims, while the second makes substantive existence ones. So, first, I will show that judgments invoking LHR constitute appropriate uses of a concept of moral human rights. Second, I will show that these rights involve a reasonable and feasible response to important human interests and to human dignity. This defense provides an illustration of the explanatory power of the dignitarian framework proposed in this book. Furthermore, this defense will enable us to address important normative questions about LHR, as I proceed to show in section 9.4. In what follows, unless otherwise indicated, when I talk about human rights (including LHR) I focus on *moral* human rights.

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[14] Moral human rights provide a characteristic and powerful resource to orient and justify human rights practice. But, as explained in chapter 1, section 1.3, I do not assume that identifying a moral human right to x provides by itself a sufficient condition for imposing a legal human right to x (various practical considerations are also relevant to reach that conclusion), or that it provides a necessary condition for such imposition (legal human rights might be morally justified on other grounds). On these points, see Allen Buchanan, *The Heart of Human Rights* (Oxford: Oxford University Press, 2013), ch. 2. Also relevant are the recent debates surrounding "political" or "practical" conceptions of human rights, which I engage in chapter 2.

9.3.1. Labor Human Rights as Possible Moral Human Rights

Recall the account of the concept of a moral human right introduced in chapter 1 (section 1.3):

> Something is a moral human right when it is (a) a right that (b) is held by all human beings at least in the contemporary world, (c) has normative force independently of whether it is already recognized in existing legal and political institutions and practices, (d) may however be (and normally is) such that at least in part it should be implemented through legal and political institutions and practices, (e) has extremely high priority, and (f) gives rise to global in addition to merely local concern.

Let me introduce some clarifying comments on the components of this conceptual proposal and on how LHR can satisfy them.[15] Human rights are (a) rights. "Most if not all human rights are claim rights that impose duties or responsibilities on their addressees or dutybearers," and are in that sense "mandatory."[16] LHR can satisfy this component. Any person who works or seeks work can hold them, and they can impose duties on various agents. Here are some candidates of correlative duties. Employers should avoid discrimination in hiring and promotion. Governments should promote access to employment when it is currently lacking (via subsidies and incentives to increase hiring by private firms, or via direct hiring). Internationally, governments should regulate trade by imposing labor standards, and consumers should purchase products made in conditions of decent labor rather than in sweatshops if they can do so at reasonable cost.

  Condition (b) is used to pick out rights that people have independently of certain particular social statuses and circumstances such as their nationality or class (see UDHR, Art. 2). LHR can have universal scope in this sense, as people have a capacity to work that is independent of those social statuses and circumstances. Notice, however, that (b) takes human rights to apply "at least in contemporary times." This careful phrasing does not assume that every specific human right must apply to every conceivable situation in which human beings exist and interact. It is important to note that when we develop an account of LHR we will often have to make claims at different levels of abstraction. Some abstract rights (such as a right to rest, or to have a say on how working conditions are organized) will have a wider scope than other, more specific rights (such as a right to holidays with pay or to join a labor union). The latter state the appropriate articulation of the former in

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[15] I do not assume that no other concept of moral human rights exists or is useful. For the purposes of my discussion, it is enough that this is a plausible and fairly ecumenical proposal.

[16] James Nickel, "Human Rights," in Edward N. Zalta, ed., *The Stanford Encyclopedia of Philosophy* (Winter 2014), sect. 1.

certain contexts (such as a modern economy). The difference in scope of application is not a problem as long as we are aware of the different levels of discourse we engage in, and thus recognize that some claims are more abstract and basic while others are more specific and derived.[17]

The foregoing point about abstraction and specificity is important when it comes to characterizing the very notion of work, which is central to this chapter's discussion. Indeed, work can be construed in more or less abstract terms. For example, work might be defined as "the provision of a service for and under the direction of another in return for remuneration."[18] But this definition is too narrow. It implies that work cannot take place in non-hierarchical settings (such as an egalitarian cooperative) or be undertaken without pay (as in slave labor). A more abstract definition of work could be this: work is an intentional activity of production of goods or services that can satisfy needs or desires. This definition avoids the problems of the former. It is capacious, allowing that work can take many forms: work can be individual and cooperative; involve decision-making procedures that give workers autonomy and others that do not; be remunerated and unremunerated; be done in the household, a private firm, and the public sector; etc. Now, this definition could in turn be criticized for being too broad. For example, it implies that hobbies (such as stamp collection) are forms of work, and this may strike some as a *reductio* of the definition. It is indeed quite difficult to provide a definition of "work" that is fully satisfactory for every context of use of that term. How should we proceed then? I think that we do best by starting with a fairly abstract definition like the one I suggested because it enables us to identify different, specific productive activities and explicitly discuss their significance. We can then formulate more circumscribed characterizations of work that add further characteristics that are evaluatively relevant in the contexts we are considering. For example, it will often be important to focus on activities that benefit others (and are thus worthy of some recognition, remuneration, or reciprocation) or enable workers to support themselves and their dependents. My discussion of work in section 9.4 will in fact identify various features that pick out work in this normatively circumscribed way (without falling for an unduly narrow definition of the kind rejected here).

Finally, components (c) and (d) in our definition of human rights are straightforward. We appeal to them to critically assess legal and political

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[17] For theoretical articulation of the distinction between abstract and specific human rights, see chapter 2. The distinction is deployed in the pioneering analysis of LHR in James Nickel, "Is There a Human Right to Employment?" *Philosophical Forum* 10 (1978–9), 149–70, at 165–7. Notice that there are three different, but related axes of consideration here. They concern the rights' content, justificatory force, and scope of application. These are tracked by corresponding distinctions, or continua, regarding the (more or less) abstract or specific, basic or derived, and universal or particular.

[18] Smith, *Textbook on International Human Rights*, 314.

institutions and practices. To be able to do this, we must take human rights to be relevant to various institutions and practices without reducing the former to whatever the latter already happen to state as valid. My definition allows for (and is in fact meant to invite rather than suppress) substantive debate about what are the appropriate duty-bearers (that is, governments, individuals, corporations, etc.).[19] In the case of LHR, we can say that laws and economic practices that do not recognize them should be reformed so that LHR become accepted and implemented. Workers can hold LHR not only against the state but also against other individuals and institutions in the economic sphere (which the state may have to regulate).

Conditions (e) and (f) are crucial for human rights. Human rights are quite strong, and normally decisive, requirements. Regarding (f), although there is significant substantive debate about what can and should be done by agents beyond a certain state to support human rights fulfillment, most agree that human rights are global standards that cannot be reduced to domestic politics. It is, for example, prima facie wrong for a government to impose labor standards on how firms conduct business within its borders, but ignore how home-based multinational corporations organize production abroad.

There is some skepticism as to whether LHR can indeed satisfy conditions (e) and (f). Some people worry that poor countries cannot afford to implement many putative socioeconomic human rights, including LHR. As a result, they are, unlike civil and political rights, mere aspirations, not rights.[20] However, this charge assumes an unduly narrow understanding of component (a) of human rights. We should have a broader view according to which rights give rise (inter alia) to obligations of progressive realization and international cooperation to address cases in which a full and immediate implementation in a country is not feasible. In fact, this is already affirmed in human rights practice (see section 9.2.2 above). Regarding (e), some may doubt that LHR have the priority that is typical of human rights. Properly to answer this worry, we need to move beyond merely conceptual considerations and take steps

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[19] My own view is that some rights involve direct interpersonal claims in addition to institutionally mediated ones, and that the relevant institutions are not only those of the state. Thus, e.g., sexual assault and harassment involve a violation of a right to bodily integrity that can occur in various interpersonal or institutional contexts (including the workplace).

[20] Maurice Cranston, "Human Rights, Real and Supposed," in P. Hayden, ed., *The Philosophy of Human Rights* (St. Paul: Paragon, 2001), 163–73 at 169–73. In his response to Cranston, Nickel notes that civil rights are also quite expensive to protect, as a review of the costs of running an effective and fair system of criminal justice would quickly reveal ("Is There a Human Right to Employment?" 168–9). Another possible response is that significantly higher employment is less hard to achieve than is often assumed (as governments could fund supplementary hiring at reasonable cost). For challenges to common assumptions, see David Schweickart, *After Capitalism*, 2nd ed. (Lanham: Rowman & Littlefield, 2011), 76, 104, 112–13,119, 183. In general, it is a mistake to view socioeconomic rights (as conservative and neo-liberal thinkers and policy-makers do) as no more than desirable goals. As argued in chapter 3, they generate binding obligations.

within a substantive conception of human rights. There is no *conceptual* implausibility in entertaining LHR as urgent or high-priority claims. But do we have substantive reasons to do so? I now turn to this issue.

9.3.2. Labor Human Rights and Human Interests

LHR can be moral human rights. But are they actually so? To answer this question, we need to consider whether LHR satisfy the conditions mentioned above, and what makes them do that. I will focus on the most controversial issue, which concerns the satisfaction of condition (e). What gives LHR the high priority typical of human rights? A common way of defending a human right is to show that its implementation supports extremely important human interests in feasible and reasonable ways.[21] I start my substantive defense of LHR by deploying this strategy.

We can defend the three sets of LHR identified in section 9.2 by engaging in a chain of reflection asking and answering three questions. The first question is "Why is work valuable?" The answer will help defend the first set of LHR concerning access to work. I think that work is extremely valuable for at least the following reasons.[22] Work provides a way for us to (1) access consumption goods necessary for (at least) a basically good or decent life, (2) develop and exercise our productive abilities, (3) socialize with other persons in common, cooperative activities, and (4) contribute to the well-being of others by helping produce goods that satisfy their needs or desires. A further reason is (5) that working contributes to our sense of self-esteem and self-respect. This reason is related to the others, and catering for it is partly a function of catering for the others. Many of us develop self-esteem and self-respect partly by reflecting on the positive judgment (by others and ourselves) concerning states of affairs in which we feature as active agents who succeed at accessing goods (1)–(4). For example, when (1) and (4) are serviced, we feel we can "stand tall" as fully contributing members of society. There is also a feedback loop here. When we feel self-esteem and self-respect, we are more likely to pursue productive activities and relationships effectively.

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[21] See chapter 8 for general discussion on how interests and dignity might feature in the defense of rights.

[22] In developing the view presented in this and the next paragraph I benefitted from the discussions in Hugh Collins, "Is There a Human Right to Work?" in V. Mantouvalou, ed., *The Right to Work* (Oxford: Hart, 2015), 17–38; Jon Elster, "Is There (or Should There Be) a Right to Work?" in A. Gutman, ed., *Democracy and the Welfare State* (Princeton, NJ: Princeton University Press, 1988), 53–78; Nien-he Hsieh, "Justice in Production," *Journal of Political Philosophy* 16 (2008), 72–100; Virginia Mantouvalou, "Are Labour Rights Human Rights?" *European Labour Law Journal* 3 (2012), 151–72; Guy Mundlak, "The Right to Work—The Value of Work," in D. Barak-Erez and A. M. Gross, eds., *Exploring Social Rights* (Oxford: Hart, 2007), 341–66; and Nickel, "Is There a Human Right to Employment?"

It seems to me that these reasons identify very important interests, and make it plausible to consider access to work as a high-priority right. (1) and (5) are obviously very important. For most people in the contemporary world, remunerative work is the standard means to access consumptions goods necessary for subsistence (and other goods necessary for a decent life). Without access to subsistence goods, other goods are hardly achievable. And self-esteem and self-respect are crucial for us to have the strength of will to pursue any life plan.[23] The high priority of (5) is at least in part transferred to the other reasons when there is a linkage between achieving self-esteem and self-respect and success in work regarding the dimensions those reasons track. Furthermore, (2)–(4) have intrinsic significance. Human beings typically are active agents for whom activities engaging their intellectual and physical powers are a major source of well-being. They can shape their environment besides being shaped by it, and cherish doing so by conceiving and executing tasks in which their talents find fruition. They are social beings who have strong reason to develop meaningful interpersonal relationships, and more generally to engage in activities involving cooperation with and support for other human beings. In contemporary social conditions, given that people have to spend a lot of their time and energies at work to cater for the goods mentioned in (1), much of their access to goods (2)–(4) depends on how work is organized. The same is true of (5).[24] This leads us to the next question.

The second question is this: "What are the features that work should have if it is to be valuable in the ways just mentioned?" An answer will help defend the rights to decent conditions at work, the second set of LHR. To be an ongoing and effective means to a decent living, work should be undertaken in safe and healthy conditions, and be remunerated adequately. To deliver on goods (2)–(4), work should be internally organized so that workers can (at least to some extent) develop and exercise productive abilities, have fair prospects for advancement, and engage in personally and socially meaningful cooperation with others. Alternatively or in addition, workers

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[23] On the linkage between (1) and (5) and the enjoyment of other values see, respectively, Henry Shue, *Basic Rights*, 2nd ed. (Princeton, NJ: Princeton University Press, 1996), ch. 1; and John Rawls, *A Theory of Justice*, rev. ed. (Cambridge, MA: Harvard University Press, 1999), sects. 67, 82.

[24] I disagree with James Griffin's rejection of a specific right to work in *On Human Rights* (Oxford: Oxford University Press, 2008), 207–8. He mistakenly assumes that advocacy of the right must focus on "jobs of the old sort" that cater for (1)—which might be alternatively served through a stipend—but not for (2)–(4). My discussion of other alternative forms of work in section 9.4.2 below is relevant here: we may need work to access enough of (2)–(4) quite independently of whether this work is also what delivers access to (1). Furthermore, as argued in this section and in sections 9.4.1–9.4.2, to the extent that people are pushed to work full-time, they should also be supported in accessing (2)–(4) through work.

should be enabled to access the goods (2)–(4) outside of work. This could be done, for example, by shaping their working conditions so that working hours are limited.

Of course, LHR are also supported by other important considerations. The defense of some specific LHR should draw on them. Take, for example, the (sometimes disparaged) "right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay" (UDHR, Art. 24). Time to rest is obviously important for workers to recuperate and maintain economic productivity. But this is not all. Workers need free time to cultivate personal relationships (such as friendship and family), and to participate in the political and cultural life of their society. The access to these important goods requires that working hours be limited, and is significantly enhanced when workers have periodic holidays with pay.[25]

Finally, we can defend the right to form and join unions by considering the question "What do workers need to ensure that their conditions of labor will be decent?" In the contemporary world, workers face common obstacles to access decent work. Unemployment may be structural in many economies. In addition, low demand may result from cyclical crises or increased international competition. Furthermore, the jobs available may involve crushing conditions by being isolating, humiliating, arduous, dangerous, or badly paid. We considered in section 9.2 examples from poor and wealthy societies. More generally, capitalist economic systems inherently make workers vulnerable. People normally cannot access means of subsistence without getting a job in the labor market. To get and retain a job, they have to bargain with owners or managers of capital who are more powerful and have an incentive to limit their salary and other benefits to maximize profit (or even to survive market competition). To respond to these difficulties, workers should not rely on self-limitation by employers. Recent research suggests that introduction by businesses of private, voluntary regulation to honor labor standards is not sufficient.[26] Workers still have to pressure employers to respect labor standards and governmental institutions to implement them through enforceable rules. To effectively defend their rights, workers need to strengthen their bargaining position. The third set of LHR enabling them to unionize (and to strike) does exactly that.

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[25] Although the relevant documents don't mention it, an alternative is that workers be granted unpaid holidays but higher salaries. I owe this suggestion to Massimo Renzo.

[26] Richard Locke, *The Promise and Limits of Private Power: Promoting Labor Standards in the Global Economy* (Cambridge: Cambridge University Press, 2013). For debate, see the dossier "Can Global Brands Create Just Supply Chains?" *Boston Review* 38.3 (2013). Philip Alston reports that the International Organization of Employers has opposed moving beyond voluntary codes of conduct or introducing independent monitoring of labor standards. "Labor Rights as Human Rights: The Not So Happy State of the Art," in Alston, ed., *Labour Rights as Human Rights* (Oxford: Oxford University Press, 2005), 1–24, at 22.

It is important to note that workers need independent unions that are not controlled by the state, as they often need to challenge its policies both as a general regulator of the economy and as an employer in the public sector.[27]

Besides supporting union rights, the foregoing considerations underscore the importance for workers to enjoy political rights to participate as active citizens in the political process of their society.[28] Historically, a central way in which workers have improved their situation is by campaigning for recognition of their voting rights, and later, by helping to form and by voting for parties that championed laws and policies implementing the three sets of LHR.[29]

The foregoing discussion suggests that the fulfillment of LHR would deliver goods that meet important human interests. The interests seem sufficiently important to motivate the demand that domestic and international economic systems be shaped so that LHR are met. Furthermore, it seems in principle feasible for people's access to these goods to be respected and promoted without imposing unreasonable costs. Rich countries have the resources to introduce general access within their borders. This would require redressing current levels of concentration of income and wealth.[30] But access to the goods

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[27] I thank Christian Barry for discussion on this point.

[28] See the statement of political rights in UDHR, Art. 21, and discussion in chapter 10 of this book.

[29] An important contemporary challenge is to identify ways to implement LHR in the context of a globalizing economy. Given increasing ability of corporations to move shop to other countries, the governmental limitation of their power and the unionization of workers in precarious positions are harder. In response, some unions adopt an international perspective. E.g., UNITE HERE operates in Canada and the US. According to a recent report, nationalist rhetoric is not as strong in it as it is in other unions. This "organization is dealing with global companies that own properties across North America: 'If the border doesn't matter to them,' [an organizer] says, 'it doesn't matter to us'." John Lorinc, "State of the Unions," *The Walrus*, December 2013, 24–31, at 28.

[30] Inequality of income and wealth has been growing in recent decades. "The 'labour share' of national income has been falling across much of the world since the 1980s...The Organisation for Economic Co-operation and Development...reckons that labour captured just 62% of all income in the 2000s, down from over 66% in the early 1990s." Possible causes of this are global "trade" and the availability of "cheap labour in poorer places" (e.g., China), technological innovation ("cheaper and more powerful equipment, in robotics and computing, has allowed firms to automate an ever larger array of tasks"), and changes in employment laws and regulations (limiting workers' entitlements). "Labour pains," *The Economist*, November 2, 2013. For the long view, see Thomas Piketty, *Capital in the Twenty-First Century* (Cambridge, MA: Harvard University Press, 2014). The following depictions make current inequalities vivid. The "average compensation among Canada's top 100 CEOs was $7.96 million in 2012," while "the average annual worker's salary [was] $46,634." Linda Nguyen, "CEO Pay: Canada's Top Bosses Earn Average Salary In 1.5 Days," *Huffington Post Canada*, March 2, 2014. In the US, "it would take a full-time hourly Walmart worker, who the company claims earns $12,67 an hour, more than 785 years to earn the annual salary of the company's CEO." Gerald Caplan, "Workers deserve a higher minimum wage," *The Globe and Mail*, January 10, 2014. Inequality at the global level is staggering: "The richest 85 people on the globe—who between them control as much wealth as the poorest half of the global population put together—could squeeze onto a single double-decker....Those richest 85 people...share a combined wealth of £1tn, as much as the

at stake is surely more important than the unconstrained control of accumulated capital on the part of any rich person objecting to economic reform. It would be harder to achieve LHR in poorer countries, but I have not seen any compelling argument that this is not feasible at reasonable cost in most countries, and, to repeat a point made above, where feasibility obstacles exist, there may be a dynamic duty to progressively overcome them over time. The framing considerations mentioned in section 9.2.4 above have full traction: we have collective duties, domestically and internationally,[31] to work progressively but decisively toward the fulfillment of LHR.

9.3.3. Labor Human Rights and Human Dignity

I will now develop further the substantive defense of LHR by drawing on the idea of human dignity, which is commonly taken to be the central substantive ethical idea in human rights discourse. Human rights are said to "derive from the inherent dignity of the human person" (Preamble, ICCPR and ICESCR). Social, economic, and cultural rights, which include LHR, are presented as "indispensable for [everyone's] dignity and the free development of [their] personality" (UDHR, Art. 22).

The idea of human dignity is indeed recurrent in central human rights documents, and more generally in the public discourse of human rights practice. As I explained in previous chapters, the idea can be interpreted as having several dimensions. Two of them are what I call *status-dignity* and *condition-dignity*.[32] The first concerns a normative status that people have in virtue of some relatively general and constant valuable features. This status grounds certain forms of respect and concern towards the persons who have it. Human rights (among other norms) articulate this response. The passage from ICCPR

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poorest 3.5 billion of the world's population." "The wealth of the 1% richest people in the world amounts to $110tn (£60.88tn), or 65 times as much as the poorest half of the world." Graeme Wearden, "Oxfam: 85 richest people as wealthy as poorest half of the world," *Guardian*, January, 20, 2014. "The richest 1% now have more wealth than the rest of the world's population combined. Global inequality is worse than at any time since the 19th century." Jason Hickel, "Global inequality may be much worse than we think," *Guardian*, April 8, 2016.

[31] Prudential (in addition to moral) considerations are significant. International labor standards may be important for countries seeking to fulfill the LHR of their own people to avoid competitive disadvantage in international trade (as lower labor standards elsewhere would lower labor costs and make products cheaper). This may partly explain the emergence of the ILO. See Mathias Risse, *On Global Justice* (Princeton, NJ: Princeton University Press, 2012), 247–9, 257–8. On trade and labor standards, see Christian Barry and Sanjay Reddy, *International Trade and Labor Standards* (New York: Columbia University Press, 2008).

[32] See chapter 5 (section 5.3.1). Other discussions that link dignity and empowerment (although in ways different from my own) include Seyla Benhabib, *Dignity in Adversity* (Cambridge: Polity, 2011) and Rainer Forst, "The Ground of Critique: On the Concept of Human Dignity in Social Orders of Justification," *Philosophy & Social Criticism* 37 (2011), 965–76.

and ICESCR quoted above refers to this dimension. Further examples are Articles 1 and 23.3 of UDHR. People have human rights because they have status-dignity. Condition-dignity, on the other hand, concerns states of affairs in which human rights are fulfilled. The passage from Article 22 of UDHR quoted above refers to condition-dignity, and presents it in conjunction with the free development of human beings' personality. We can construe condition-dignity as referring to situations in which human beings are effectively able freely to develop their personalities (that is, have the power or capability to do so). The view of human rights as entitlements to the conditions for the "development of human personality" appears also in Articles 26.2 and 29.1.

The distinction between the two dimensions of dignity is necessary to render consistent certain judgments we want to make, which otherwise seem contradictory. For example, we want to say that workers in sweatshops both lack dignity and have dignity. They lack *condition*-dignity because they don't enjoy various LHR. But they have those rights (and should enjoy them) precisely because they have *status*-dignity. Human beings have status-dignity independently of whether that dignity is honored, and they enjoy condition-dignity to the extent that their status-dignity is honored in practice. More specifically, we can interpret human rights discourse as making the following two points. First, human beings have status-dignity in virtue of (at least) certain valuable human capacities such as those regarding sentience, autonomous choice, prudential and moral reasoning, solidaristic cooperation, and engagement in productive activities. Second, human beings are entitled to situations of condition-dignity in which those capacities can be developed and exercised. As explained in chapters 7 and 8, this is what the interpretation of the dignitarian approach in terms of the ideal of solidaristic empowerment requires. I now want to argue that LHR can be seen as part of what dignity, so understood, requires.

On this view, human rights practice responds to human dignity through the solidaristic empowerment of all persons who can work to access and defend decent working conditions in which their valuable capacities can be developed, maintained, and exercised. Linking LHR to dignity is illuminating, and adds to the defense of LHR given above, in several important ways. First, the link helps explain why people should be enabled, to some reasonable and feasible extent, to access work involving the goods (1)–(4) discussed above. It is not just that people have an interest in these goods. Access to them involves the development of valuable human capacities to pursue them.[33] These capacities are part

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[33] The link to human dignity bolsters the case for the importance of decent work that caters for (2) and (3). When people only have chances to do work involving stunting and grueling tasks, and face a psychologically unhealthy workplace environment that is isolating or involves humiliating treatment by managers or other workers, their humanity as agents able to develop

of the basis of people's status-dignity, and people will not have full condition-dignity if they don't have real opportunities to develop and exercise them, as LHR require. By drawing on dignity, we can more easily move from interests to rights, from the desirable to the obligatory. Recall that the bridge principle, presented in chapter 8 (section 8.3) allows us to connect interests with rights by noting how they are both grounded in the valuable capacities that give rise to status-dignity.

Second, the dignitarian approach helps us to make sense of the wrong of discrimination in hiring and promotion, and more generally in differential support for the LHR of different people: discrimination involves failure to respond properly to the *equal* status-dignity of all workers. The common idea of equal pay for equal work can also in this way be defended further.

Third, reference to human dignity underwrites the global significance of LHR. *Human* dignity is a normative status that *all* human beings have independently of nationality. Thus, every worker's condition-dignity matters. This universalist perspective is quite timely when it comes to handling working conditions in a globalizing economy, in which the fate of workers anywhere is increasingly dependent upon what happens in an economic system that operates and is sustained elsewhere. The articulation of duties correlative to LHR should take notice of these normative and factual points. The predicament of the workers in a sweatshop in another continent deserves our serious attention because every human being matters in accordance with their global status as being with dignity. Our reasons for concern are intensified by the fact that we are deeply intertwined with these workers as buyers of what they produce, as voters of governments that bargain hard with their governments to limit labor regulations, and so on. Through these global interactions, we may be able to both harm and help distant workers in ways that were not feasible before.[34] Another important case here is that of migrant workers.[35] The governments of some rich countries create the legal category of migrant workers under temporary labor migration regimes. These workers (often coming from poorer countries) are especially vulnerable and thus subject to intense exploitation and many kinds of abuse. For example, since their visa is often linked to their performing a particular job or to being under a particular employer, they cannot leave them when they are badly treated without facing deportation. This vulnerable condition is the foreseeable result of the law and

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and exercise productive abilities and engage in meaningful social cooperation is not given proper recognition.

[34] For an account of global justice that explores the combination of considerations regarding normative universalism and facts of globalization, see Gilabert, *From Global Poverty to Global Equality* (Oxford: Oxford University Press, 2012).

[35] Virginia Mantouvalou, "Exploitation and Workers' Rights," in H. Collins, G. Lester, and V. Mantouvalou, eds., *Philosophical Foundations of Labour Law* (Oxford: Oxford University Press, forthcoming).

policies in the host countries, and is a clear target for normative criticism based on what the non-conventional, universal moral status of human dignity requires (which is also what international and domestic human rights law should be developed to articulate).

Finally, the dignitarian approach helps us to develop further the articulation and defense of specific LHR that support autonomous agency and self-determination. Part of what gives rise to people's status-dignity is precisely their capacities for choosing what kinds of life to lead and to shape the processes that fulfill their plans. We can thus understand further why it is important that work be freely chosen rather than forced: forced labor is an unwarranted affront to the dignity of people as agents capable of autonomous choice. Respect for self-determination is also important for the defense of the third category of LHR regarding rights to unionization, and workers' political and associational rights more generally. Other things equal, people should be able to be protagonists rather than mere recipients of the social processes supporting their rights. Thanks to their political rights, workers can help make their decent work conditions more secure. With their increased power, workers are less dependent on the good will of governments and employers, and become more active shapers of their condition-dignity.

9.4. ISSUES REGARDING LABOR HUMAN RIGHTS AND HUMAN DIGNITY

I will now discuss a series of objections and puzzles regarding the arguments advanced in section 9.3. This will provide occasion to develop the account of LHR further by addressing important normative issues about the relations between LHR and human dignity.

9.4.1. The Importance of *Decent* Work

The assertion of a right to work seems to assume that working is a very important activity everyone should have access to. But is work really so valuable? Often the work effectively available to many poor people (which they must take to afford basic necessities like nutrition and housing) is not in itself something that seems valuable at all: it involves unfulfilling tasks in which workers' productive abilities are stunted rather than developed, long hours, and conditions of severe heteronomy and humiliation in which workers must be subservient to managers. In addition, the salaries may enable them to

afford subsistence goods but little, if anything, else. Why is it important that people have access to *this*? Here the goods (2) and (3) are largely absent. The key elements present are (4) and (1) in its most minimal version, with (5) partially arising as a by-product. Many people need to work to get a salary to pay for basic subsistence goods, or to be respected by others as a "contributing member of society." But why take for granted the currently existing conditions of access to subsistence and social contribution and the resulting social status? Perhaps we could, and should, introduce reforms that make the work available intrinsically more desirable by providing also some access to goods (2) and (3), and adequate remuneration so that (1) includes more than bare subsistence. Not granting workers access to work that is fully *decent* in these ways when this is feasible without unreasonable cost is an affront to their dignity as autonomous agents capable of dynamic and cooperative production, and of pursuing basic goods other than subsistence ones.

To make vivid the normative point just made, let us entertain, for heuristic purposes, a policy that where conditions of decent labor can feasibly be generated without unreasonable cost, people able to work should either have access to them or receive a basic income through governmental provision. Some might criticize this policy by saying that it would condone and enable unfair free riding by letting some people who could work benefit from the work of others without reciprocation. This concern is important. But it applies with full force only if the background conditions are not severely unjust. Now, the circumstances people able to work face when they have to choose between accepting work that is less than decent and starving often contain serious injustice. Aren't the ones who can shape work opportunities so that they involve decent work failing to support just background conditions that give every person opportunities to live a decent life, and aren't they benefitting from the concomitant vulnerability of impoverished workers by exploiting them? Complaints by the well-off about the free riding of the poor ring hollow when the setup (which the well-off, with their superior power, have a disproportional role in shaping and sustaining, and who benefit disproportionally from it) gives alternatives to the poor that are less than decent.

Another possible response is that the policy entertained here overlooks the importance of independence for a sense of dignity (an issue I return to below). When people receive an income as assistance from the government rather than as remuneration for their work they become dependent, failing to stand on their own feet. The independence associated with making a living through work seems to be important for developing a sense of dignity.

In response, I agree that there is a relation between feeling a sense of dignity and contributing through one's labor to one's own sustenance (and also to the economy of one's society). This relation is not necessary, but it seems strong, psychologically, for many people. But it is perverse to appeal to it in a context

of background injustice where decent labor conditions can be made available but are not. To tell the poor that they should take work that is degrading so that they can have a sense of dignity when one is partly responsible for, or benefits from, their lack of opportunities for decent work is to take advantage of the vulnerability of the poor in a rather insidious and odious way.[36] An appropriate response to dignity involves duties concerning access to goods (2) and (3), and a less minimal access to (1) besides a subsistence core of (1) and (4). Entertaining the policy I mentioned is heuristically fruitful because it steers us toward tracking conditions of dignity in decent working practices simultaneously with conditions of dignity resulting from labor contribution, without accepting painful tradeoffs that can be prevented. When feasible at reasonable cost, the members of a society have a collective duty to spare workers conditions that are less than decent.[37]

From the point of view of a conception of human dignity linked to empowerment, the right to work is an entitlement to social conditions in which persons are not directly forced by others to work (except in emergencies), in which when opportunities for work that is decent are feasible they are made available, and when not immediately feasible their creation is made into an urgent target of progressive public policy. The existence of effective opportunities for decent work empowers people to provide for their subsistence and to contribute to society without having to face socially avoidable forms of work that are stunting and humiliating.

9.4.2. Is Work Really So Important?

Does reference to the goods (1)–(5) mentioned in the arguments in section 9.3 and section 9.4.1 really help justify LHR? This would be so when access to those goods is tied to work. But it could be objected that this conditional justification of LHR fails because (1)–(5) could be accessed independently of work. There could be someone, call him Sebastian, who gets the money he needs to pay for basic necessities from members of his family, or receives some of the goods directly from them or through governmental provision. Sebastian finds self-realization in activities outside the labor market, such as gardening or painting at home. He socializes in recreational activities. And he contributes to the well-being of others through domestic work and by volunteering in

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[36] It is largely the basic structure of a society, and the choices of powerful members of it, that make it the case that some people are more economically vulnerable than others, and are unlikely to survive or achieve a minimal sense of dignity unless they take up jobs they hate.

[37] To compute the reasonability of costs we should make a holistic assessment of the impact of a policy choice on the various human rights of all those affected. See chapter 8, section 8.4.

community-based activities (such as care for the elderly and the distressed). Thanks to these activities, Sebastian develops some self-esteem and self-respect.

To provide a satisfactory defense of LHR, we need to show that work is indeed crucial for accessing goods (1)–(5). We do not have to show that no amount of (1)–(5) could ever be accessed without working, however. That is a different, hopeless, and unnecessarily demanding task. What we need to show is that work plays a crucial role in accessing (1)–(5) that cannot be fully substituted by other mechanisms at reasonable cost for most people in (at least) contemporary circumstances. To show this we can make two points.

First, the case of Sebastian is not generalizable. In a market society, if the majority of people did not participate in the labor market, the economy would collapse, and the conditions for many of the activities mentioned would disappear (family members would not have resources to share, or the government would lack revenues to fund services, or tools for gardening and painting and the infrastructure for community work would be missing, etc.). More generally, every society in which economic activity is not fully automated will push people to work in various ways. Given this pressure, and the fact that people spend so much of their time working, it is important that they are given opportunities to work in conditions that are decent.

It could be replied that we do not need to assume that access to work must proceed through markets (or at least within labor markets as we know them in capitalist societies). Some forms of work could be available outside the market and grant access to some of the goods discussed here. This is an important truth (to which I return in the next paragraph). But (and this is the second point) it supports rather than undermines the case for LHR. This is so because it relies on the importance of work, even if this is not work as it is sold and bought in a market. Gardening and painting, homemaking and community service, are forms of work. They produce goods that can meet desires or needs, and engage several valuable agential capacities. Self-esteem and self-respect still depend, here, on the existence of activities engaging those capacities and their socially beneficial use. Sebastian is neither idle nor a complete free rider.

Access to decent work remains important. When envisioning opportunities for decent work providing access to goods (1)–(5) for all, we can construe the sphere of work in an ample way that includes work that takes place outside the market (such as domestic work and work in community organizations). It is important to factor in these "informal" forms of work for at least two reasons. First, it may be economically infeasible to secure for all decent jobs of the traditional kind (that is, "formal" jobs in the private or public sector accessed through the labor market). This may be a matter of conjuncture or, as some argue, a permanent feature of economically advanced societies. When these feasibility limits hold, we need additional ways of helping people access decent work. Second, these activities of informal work are productive and contribute to the well-being of many. They should be valorized even if this does not

happen through the market.[38] Now, it is important that those who engage in them have real options so that they do so autonomously.

To secure that workers choose the work they do autonomously, and to cater for the two reasons just mentioned, some have proposed the introduction of a policy of universal basic income.[39] This policy is appealing. It would indeed give people the ability to engage in informal but valuable work without being dominated by other members of their community, or family. It would also give them more bargaining power to access formal work that is fully decent, and an incentive for those hiring to offer it. These are all dignity-affirming consequences of the policy.[40] (It could be introduced as a substitute for the policy entertained in section 9.4.1.) However, to be convincing, this new policy should be part of a package that includes the following two elements. First, further to support dignity, there should be an effort to change the social norm that only formal work is a proper source of social esteem and respect. This should not be hard to do, as it is evident on reflection that many activities of informal work, such as care for children and the elderly, involve the development and exercise of important human capacities, and contribute dramatically to the well-being of some people, and indirectly to the reproduction and stability of the society as a whole.

Secondly, there should be a social norm according to which members of society who receive a basic income have a duty to pursue decent work if they can (in either the formal or the informal sector). We may or may not make this social norm also a legal norm.[41] But it seems to me crucial that, insofar as the

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[38] There is a debate between the view that the market should penetrate these informal spheres (so that, e.g., most of the work of child-rearing, elderly care, cleaning of homes, and community activities are done by people receiving a salary) and the view that this would be a bad idea because it would destroy the spirit of direct, other-oriented care proper of activities not primarily done for the sake of making money.

[39] For a version of this proposal and a survey of the surrounding debates, see Philippe Van Parijs, "Basic Income: A Simple and Powerful Idea for the Twenty-First Century," in B. Ackerman, A. Alstott, and P. Van Parijs, *Redesigning Distribution* (London: Verso, 2006), 3–42. "*A basic income is an income paid by a political community to all its members on an individual basis, without means test or work requirement*" (p. 4). Basic income may be set at different levels, being sensitive to available resources and conditions of sustainability—including likelihood that people will continue to work.

[40] For the emancipatory potentials of the universal basic income policy, see Erik Wright, "Eroding Capitalism: a Comment on Stuart White's 'Basic Capital in the Egalitarian Toolkit'," *Journal of Applied Philosophy* 32 (2015), 432–9. It is important that this potential might depend on the income being above the subsistence level. For doubts that in its likely feasible incarnation (which would be at lower levels still pushing people to work to survive) the policy would go sufficiently far in challenging the domination of workers, see Alex Gourevitch, "Labor Republicanism and the Transformation of Work," *Political Theory* 41 (2013), 591–617.

[41] The introduction of the social norm revises the view of basic income as strictly unconditional. The revision would impose explicit ethical and, perhaps, legal qualifications to the entitlement to basic income. An example would be the "intermediate proposal" of a "'participation income'...[that] impose[s] a broad condition of social contribution, which can be fulfilled by full- or part-time waged employment or self-employment, by education, training or

background conditions of a society are not severely unjust, we all have a responsibility to contribute to sustaining the opportunities that we enjoy. Free riding on the effort of others is wrong. The policy of basic income is a policy of solidarity, securing for all a floor to stand on to pursue a dignified life. But solidarity should involve reciprocity.[42]

It is worth noting that adding reference to a duty to work to the policy of basic income might not involve radical innovation in human rights practice. The human rights documents do not mention the existence of a duty to work. However, several drafters of the Universal Declaration proposed to include reference to a duty to do socially useful work.[43] In the end this reference was avoided for fear that it would be misused to justify forced labor. Still, Article 29.1 of the final draft frames human rights claims by imposing on "everyone . . . duties to the community in which alone the free and full development of his personality is possible." A defense of a duty to work could plausibly be articulated by reference to it.[44]

A final remark. As the sphere of work reaches beyond the formal sector, the defense of workers' rights by unions will lose some (although of course not all) significance. In response, unions may change to organize people working part-time or informally. And political activity outside unions through social movements, NGOs, and political parties, will be crucial. This is not a radical break with the practice of defending LHR, which has always supported political rights that include but go beyond unions. What is crucial is that workers have power to shape their working conditions.

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active job search, by home care for infant children or frail elderly people, or by regular voluntary work in a recognized association." Philippe Van Parijs, "Basic Income," 13–14.

A common argument against making this social norm a legal one (even if this means that some undeserving people will be benefitted) is that public mechanisms to identify who fulfills its conditions may be infeasible, or too costly, or too intrusive.

[42] See the discussion on solidarity in chapter 7, section 7.2.5. These points seem to have wider resonance (although this is not a necessary condition for their normative validity). Claus Offe reports that pairing of the ideas of solidarity and reciprocity seems widespread. Furthermore, contributing to the well-being of others through work is something people find important and motivating. "[S]urveys on 'happiness' seem to suggest that absence of opportunities to make oneself useful correlates strongly with a strong feeling of unhappiness." Offe, "Basic Income and the Labor Contract," *Analyse & Kritik* 1 (2009), 49–79, at 63. Immanuel Kant argued that we owe it to ourselves to develop our powers and make ourselves "a useful member of the world"—this "belongs to the worth of humanity in [our] own person, which [we] ought not to degrade"). *The Metaphysics of Morals* (in Kant, *Practical Philosophy*; Cambridge: Cambridge University Press, 1996), *Ak* 6:446.

[43] Morsink, *The Universal Declaration of Human Rights*, ch. 5.

[44] The existence of a moral duty to work, and a further consideration about the importance of opportunities to develop one's personality (originally part of the wording surrounding the right to work but dropped from the last draft given its inclusion in Articles 22 and 29) may be important ideas giving part of the rationale for the existence of a right to work. See Morsink, *The Universal Declaration*, 158–62. I recognize that much more needs to be said to justify a duty to work.

9.4.3. Basic and Maximal Dignity

Another challenge to my account of labor rights is that it is unduly modest because human dignity actually requires far more than what LHR, as present-ed here, include. Discussing this challenge helps us illuminate the relation between human rights and ambitious claims of social justice such as those defended by socialists. In response, I will distinguish between basic dignity concerning conditions of decency and maximal dignity concerning conditions of human flourishing, and explore the significance of this distinction for the articulation of labor rights.

According to some socialists, human dignity requires access to work activ-ities in which workers are not alienated, exploited, or dominated. A possible socialist[45] challenge to advocacy of LHR is this. Either access to work takes the form it would have in a socialist society or a right to it is merely a right to be exploited, dominated, and alienated. This is a challenge to LHR because the LHR commonly claimed in human rights practice (as surveyed in section 9.2) fall short of what socialists demand. Decent work can still be alienating, because in it workers may not be able to develop and exercise their productive abilities very much. It can involve domination, as workers have little decision-making power over what is produced and how. Finally, exploitation can be present, as background economic inequality enables capitalists to take advan-tage of the relative weakness of workers to bargain hard to get them to accept labor contracts that benefit capitalists disproportionally. Unions and demo-cratic politics may limit these phenomena but fail to dissolve them. To secure opportunities for work without alienation, domination, and exploitation, or with as little of these as is feasible, a socialist would argue that we need the instauration of a classless socialist society ruled by the principle "From each according to their abilities, to each according to their needs." Only in that society would economic organization fully affirm the dignity of workers, enabling them (and people generally) to flourish.

Two initial responses to this challenge are (a) to scale down the idea of human dignity so that it does not yield ambitious socialist claims and (b) to expand the list of specific current LHR so that the full palette of socialist claims is included. These options are problematic. I agree that when there is domin-ation and exploitation, and when opportunities for non-alienated work are lacking, there is a failure to properly respond to the dignity of workers. Situations including these wrongs cannot be all that condition-dignity amounts to.[46] On the other hand, recommending that human rights practice incorporate the socialist ideal in full clashes with the widespread assumption that human rights do not exhaust justice but focus on its most urgent claims.

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[45] Or "neo-Marxist," as Mundlak calls a version of it—"The Right to Work," 345–8.
[46] Pablo Gilabert, "The Socialist Principle 'From Each According To Their Abilities, To Each According To Their Needs'," *Journal of Social Philosophy* 46 (2015), 197–225.

According to this assumption, the condition-dignity tracked by human rights claims is one that enables people to have a decent or basically good life.[47] It identifies the subset of demands of justice comprising the most urgent claims. It is not so minimal as to exclude social and economic rights such as LHR, but is unlikely to be as extensive as the socialist view of social rights.

There is ongoing discussion on whether human rights should be seen as involving only relatively modest demands, and if so to what extent and in what respects.[48] We may disagree on where exactly to draw the line between decency and flourishing. But the distinction is intuitive. My view (which I develop in chapter 11) is that we might lose the specificity, and especial political potency, of human rights discourse if we make them coincide with our most ambitious views about justice. Since we currently disagree profoundly in our views of maximal justice, it is a good idea to carve out normative space for less ambitious, but more urgent, claims of justice we may more easily come to agree on, and act together to fulfill, fairly soon.

This of course does not mean that we have to give up on the more ambitious claims. I suggest that we consider three further alternatives. We can have (c) an inclusive but internally differentiated view of the requirements of human dignity, taking human rights as a proper subset of them. On this view, we should accept a spectrum of rights of justice going from less to more ambitious requirements. In the case of labor rights, human rights focus on decent labor conditions. Socialism goes further, targeting access to the most extensive equal conditions of human flourishing in work that are feasible (and compatible with other sufficiently weighty demands of justice). Notice that although there is on this view a difference between basic and maximal justice, or between conditions of decency and flourishing, the former may be quite ambitious. There already is a discussion about how ambitious LHR in fact are.[49] In section 9.4.1, I rejected overly minimal construals of decent work.

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[47] See, e.g., Nickel, *Making Sense of Human Rights*, 36–7, 62, 66. This is not the same as the ultraminimalist view of human rights as focused only on the conditions for being alive at all (on which see Michael Ignatieff, *Human Rights as Politics and Idolatry*; Princeton, NJ: Princeton University Press, 2000).

[48] Nickel, "Human Rights," sect. 1; Charles Beitz, *The Idea of Human Rights* (Oxford: Oxford University Press, 2009), sect. 22; Eva Brems, "Human Rights; Minimum and Maximum Perspectives," *Human Rights Law Review* 9 (2009), 349–72. I agree with Nickel that we do best by not assuming that minimalism is part of the concept of human rights. I do think (and Nickel agrees) that high priority is a conceptual component. But what claims have high priority, and how extensive they are, is a substantive matter.

[49] E.g., Blackett ("Situated Reflections") argues that to secure "decent work" we should go beyond the procedural measures mentioned in the ILO's Declaration (see note 13 above), and include "substantive" constraints fostering certain conditions at work. Mantouvalou argues that human rights doctrine should incorporate constrains on exploitation, and do so in a way that is less narrow than some existing construals (e.g., in the European Union) which limit the treatment of exploitation to cover only slavery and servitude, forced and compulsory work. See Mantouvalou "Exploitation and Workers' Rights."

A fourth possibility is (d) to retain the inclusive and internally differentiated view of the requirements of human dignity presented by (c) but take human rights themselves as embracing the whole spectrum of those requirements. On this view, specifically socialist labor rights would currently be LHR, but—unlike their status in (b)—they would be less urgent than the LHR focused only on decent work. This alternative might be in some tension with the assumption that human rights focus on high-priority claims (as the more we increase the number of such claims, the less the class of them seems to track what has high priority). But the former is not strictly inconsistent with the latter, and it may seem more plausible if we reflect on the fact that some human rights have higher priority than others (and may outweigh them in cases of conflict).[50]

A final possibility is (e) to take the distinctively socialist requirements as *future* specific human rights, whose implementation will become urgent after societies change in certain (feasible and foreseeable) ways. As suggested in section 9.3.1 (see also chapters 2 and 6), although abstract human rights are quite constant across human history, some specific human rights are fairly context-specific. Perhaps socialist labor rights are specific LHR that will become operative when certain conditions of economic development are achieved. At that point, their fulfillment will have high priority.[51]

It is beyond the scope of this chapter to determine which of the last three possibilities is best. But it does seem to me clear that a distinction should be made between two (compatible) approaches to condition-dignity in work: a rather maximal, socialist approach targeting access to human flourishing and a

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[50] E.g., the right to life often outweighs the right to privacy in cases of conflict (Nickel, "Human Rights").

[51] The worry about the feasibility of securing opportunities for decent work for all, mentioned in section 9.4.2, also applies to work involving human flourishing. André Gorz (in his influential *Metamorphoses du Travail*; Paris: Galilee, 1988) argues that the syndicalist utopia of a society in which all can find full-time employment involving high levels of self-realization and autonomy is not practicable. Due to technological developments (including deepening functional differentiation and integration of economic activities), workers are increasingly divided into a minority enjoying stable employment, decent pay and benefits, and some say in the organization of production, and a majority facing instability, low pay, scant benefits, and severely heteronomous roles in decision-making. Furthermore, unemployment is high and structural. In this context, the syndicalist utopia cannot be achieved because there are not enough good jobs available for everyone. Gorz suggests that we drop a view of social justice narrowly focused on achieving autonomy and well-being in work. Instead, we should reconfigure economic institutions to dramatically reduce working hours, make more jobs available, and enable people to flourish outside of work. Now, notice that these considerations do not really defeat the general socialist ideal of self-realization in work, as it could be achieved through productive activities within *or* outside formal employment if the economic system is reorganized and recognizes a wide notion of work (see section 9.3.2). For reconfigurations of economic activity including high levels of workers' self-determination and production primarily oriented to needs-satisfaction, see the exploration of the "social economy" in Erik Wright, *Envisioning Real Utopias* (London: Verso, 2010), ch. 7.

less demanding (although not overly minimalistic) view targeting access to decency. The claims regarding opportunities for decent labor are patently more morally urgent than those concerning flourishing labor. We facilitate agreement and action on the former by singling them out for separate political treatment.

There is a distinction here, but also continuity. There is a natural escalation of claims moving from the widely recognized rights of the human rights practice to the more ambitious ones of humanist socialism. The idea of human dignity can be used to justify that continuity, as conditions of non-alienation, non-domination, and non-exploitation can be said to be among the forms of condition-dignity we ought to help bring about.[52] Current human rights practice addresses the most egregious forms of alienation, domination, and exploitation. But equal concern for the dignity of all arguably requires aiming at giving all equal opportunities for a flourishing life, not only access to a decent life.[53] We see here at play one of the key roles of the idea of human dignity identified in chapter 5 (sections 5.2 and 5.3.5), which is to illuminate the arc of humanist justice.

An interesting historical point in this regard is that socialist ideas were in fact very important in the formulation of social, economic, and cultural rights during the drafting of the Universal Declaration (including, of course, LHR). The delegates from many Latin American countries, and John Humphrey from Canada, were either socialists or sympathized with socialist commitments, and they pressed hard to shape the Declaration so as to include many of them.[54] Thus, for example, the clauses of UDHR demanding decent

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[52] Pablo Gilabert, "Dignity at Work," in Collins et al., *Philosophical Foundations of Labour Law* (forthcoming).

[53] We should then challenge views that claim to be equally concerned with everyone's dignity but condone great inequalities of income. "When you're in a world where 40 money managers make as much as 300,000 high school teachers, it's just silly to imagine that there will be any sense, on either side, of equal dignity in work." Paul Krugman, "Inequality and Indignity," *New York Times*, February 11, 2014.

[54] Morsink, *The Universal Declaration*, chs. 4–5. Also significant was the supportive attitude to social rights in the US during F. D. Roosevelt's era (and displayed by Eleanor Roosevelt in the drafting of UDHR). The socialist and workers' movements are amongst the major sources of the use of the idea of human dignity in modern politics (other sources are strands in Catholic social doctrine and interpretations of Immanuel Kant's idea that humanity has dignity not price—an intrinsic worth grounding a duty to treat human beings always as ends and never merely as means). See the historical discussions in Charles Beitz, "Human Dignity in the Theory of Human Rights: Nothing But a Phrase?" *Philosophy & Public Affairs* 41 (2013), 259–80; Christopher McCrudden, "Human Dignity and Judicial Interpretation of Human Rights," *European Journal of International Law* 19 (2008), 655–724; Christopher McCrudden, ed., *Understanding Human Dignity* (Oxford: Oxford University Press, 2014); Michael Rosen, *Dignity* (Cambridge, MA: Harvard, 2012); Jeremy Waldron, *Dignity, Rank and Rights* (Oxford: Oxford University Press, 2012). For Kant's formulations, see Kant, *Practical Philosophy* (Cambridge: Cambridge University Press, 1996), *Ak* 4:428–30, 4:434–6, 6:434–6, 6:462. Pablo Gilabert, "Kantian Dignity and Marxian Socialism," *Kantian Review* 22 (2017), 553–77.

conditions of work were animated by "the socialist thesis that 'human labour is not a merchandise' and that a worker's dignity and that of his family is not to be denied or diminished by the bargaining process that usually precedes employment."[55] UDHR constrains the job market by affirming rights to unionization and by imposing strictures on working conditions and remuneration. These rights shape the market's bargaining process and outcomes so that they are not as humiliating to workers' dignity as they would otherwise be (in an unregulated capitalist economy).

Of course, unequal bargaining will remain as long as class division persists, and UDHR does not rule on this issue. Hence, socialists will demand more than what the doctrine of international human rights currently does. But bases for continuity are present in the text of the Declaration, especially in the various references to conditions enabling the free and full development of human personality (Arts. 22, 26.2, 29.1). Although these claims do not of course entail a socialist view, they can plausibly be articulated as important resources for a socialist framework. Historically, those claims partly sprang from socialist commitments shared by many drafters, which included "the concept and the right to self-development or self-actualization."[56] LHR doctrine had a socialist beginning, and could have a socialist continuation.[57]

9.4.4. Dignity, Independence, and Solidarity

The negative duties flowing from respect for the dignity of persons include letting them be independent in various ways. Thus, we should not choose other people's friends for them. We should not interfere with their choice of sexual partners. It is important to recognize people's agency, their authorship of their own lives. In politics, we should recognize people's capacity for judgment about public matters, and let them vote, run for office, protest, and form and join political parties. Regarding LHR, we should not choose

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[55] Morsink, *The Universal Declaration*, 182.

[56] Ibid., 188. Interestingly, these commitments help explain the significance of the right to rest and leisure. On the "socialist view . . . workers do not merely have the right to rest and leisure so that they can be better and more efficient producers of profit for those who own the modes and means of production. . . . In the socialist tradition the right to rest and leisure is linked, as is the right to work itself, to the right to the full development of a person's mental, spiritual, physical, and cultural potentialities" (ibid.). Furthermore, LHR form a package with other rights such as the right to education and to enjoy the scientific and cultural achievement of a society (UDHR, Arts. 26–7).

[57] There are other elements in current human rights practice that already point toward more ambitious requirements. An example is the emergent and quite expansive idea of a right to human development. See the Declaration on the Right to Development (December 4, 1986). For a view of human rights including expansive claims of positive liberty (e.g., opportunities for workplace democracy), see Carol Gould, *Interactive Democracy* (Cambridge: Cambridge University Press, 2014).

people's jobs for them, and we should let them unionize and strike (as these activities bolster workers' ability to stand tall rather than be submissive in their bargaining with management). There clearly is an important connection between independence, understood as self-determination or autonomy, and condition-dignity.

It is also common to link dignity with a different understanding of independence as self-sufficiency. Now, independence understood in this way conflicts with solidarity. This conflict appears, for example, in debates about benefits for the unemployed, or support for the poor regarding health care. Some politicians in the United States have argued that help of these kinds is dangerous because it reduces people's incentive to work, breeding dependency. They propose that we embrace welfare reform, "getting people off of dependency and on to lives of self-sufficiency."[58] This way of thinking makes solidarity an adversary of dignity.

I have been arguing in this book that we should resist this alleged conflict between dignity and solidarity by rejecting the ideal of independence as self-sufficiency. To begin with, the ideal is hardly feasible. The common tendency to see an individual's poverty or wealth as the exclusive consequence of their choices[59] ignores the extent to which the social environment in which agents act affects their preferences and their power to fulfill them.[60] Individuals who blame themselves for their poverty would benefit from knowing that millions make the "right choices" and yet remain poor, and that to seriously improve their personal situation of deprivation they may have to engage in collective action that changes the institutions shaping it. It is worth noticing that in history, the introduction of institutions supporting workers' rights was sometimes backed by empirical work in social science that precisely challenged the "false premiss . . . that destitution was always and everywhere the result of personal irresponsibility."[61]

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[58] Arthur Delaney and Michael McAuliff, "Paul Ryan Wants 'Welfare Reform Round 2'," *Huffington Post*, March 20, 2012.

[59] In *Bait and Switch* (New York: Metropolitan Books, 2005), Barbara Ehrenreich reports how an extreme voluntarism is widespread in American corporate culture. Mike Hernacki, a guru in the field, claims that "[y]ou must recognize that *you alone* are the source of all the conditions and situations in your life. You must recognize that whatever your world looks like right now, *you alone* have caused it to look that way. The state of your health, your finances, your personal relationships, your professional life—all of it is *your* doing, yours and no one else's" (*The Ultimate Secret to Getting Absolutely Everything You Want*; New York: Berkley, 2001, 47; Ehrenreich, 81–2).

[60] This coincides with what social psychologists call "correspondence bias," the "tendency to see people's behavior as a reflection of their dispositions and beliefs, rather than as influenced by the situation." E. Aronson, T. Wilson, and R. Akert, *Social Psychology*, 6th ed. (New Jersey: Pearson Prentice Hall, 2006), 109.

[61] Simon Deakin, "Social Rights in a Globalized Economy," in Alston, *Labour Rights as Human Rights*, 25–60, at 32. There is a pendular movement in the political history of western societies, with some periods emphasizing individual character and personality, and others social

So, first, some degree of social dependence seems unavoidable.[62] When we are children, or elderly, or ill, we must rely on the help of others. Our dependence on others extends to our life as workers: whether we find work, and whether the work we find is decent rather than humiliating, does not only turn on our own choices.

Second, reliance on others can take forms that are quite valuable. Human dignity gives rise to positive besides negative duties. This is captured in Articles 1 and 25 of the Universal Declaration, which invoke the idea of universal "brotherhood" and recognize a right to assistance for those who cannot fully support themselves. We should not have to feel shame when we are helped, or guilt when we help. Supporting the condition-dignity of other human beings is simply something we owe them. We could change our moral culture to recognize this. The stigma associated with being helped by others, common in many contemporary societies, is not a hard constraint but a contingent, malleable one. In fact, in some non-Western societies people are less prone to pairing dependence and shame in this way.[63] The valid ideas behind the norm I criticize here are that we should value active agency and engage in fair reciprocity. But these ideas do not require self-sufficiency or even strict equivalence in mutual exchange. They require that we do our part by contributing to the economy when we can, and that we respect the self-determination of others (including giving them a say on whether, and how, they are helped). Now, this can be done while attending to inevitable interpersonal differences in abilities and needs with a helping hand. We should shape our societies so that human solidarity gains proper traction. The important question is not whether we can avoid interdependence, but what kind of interdependence we should have.[64] Human rights require solidaristic empowerment.

circumstance, in the explanation of unemployment, poverty, and other economic conditions. Pierre Rosanvallon, *La Société des égaux* (Paris: Seuil, 2011), sects. II.2, III.3–4, IV.5.

[62] The concept of (in)dependence allows for degrees and may have different relational applications. We may be more or less (in)dependent from different constraints to do or be different things. Marilyn Friedman, "Independence, Dependence, and the Liberal Subject," in D. Archard, M. Deveaux, N. Manson, and D. Weinstock, eds., *Reading Onora O'Neill* (New York: Routledge, 2013), 111–29. This is congenial with the scalar accounts of power and feasibility offered in this book (in chapter 7 and appendix 2).

[63] Richard Sennett, *Respect in a World of Inequality* (New York: Norton, 2003), 113–25; Aronson et al., *Social Psychology*, 113.

[64] The proposal of a universal basic income is sometimes defended by saying that it involves a "lesser stigma" for the poor, who would receive it just like everyone else, without being singled out as the needy who cannot fend for themselves (Van Parijs, "Basic Income," 10). But notice that stigma will remain if we insist on self-sufficiency, because everyone will know that some are net contributors and others net drainers regarding the funds backing the institution of basic income (and notice who is what at the interpersonal level). I think that we should supersede the moral culture that ties dignity to self-sufficiency rather than continue embracing its unrealistic and undesirable commands. An important additional consequence of this change is that it would provide further support for the valorization of care work (formal and informal) advocated in section 9.4.2 above.

Solidarity is crucial in the realm of labor. Work often turns out to be meaningful when it is a form of social contribution that fosters the well-being of others. Solidaristic cooperation within the workplace also contributes to making work a fulfilling experience. Further, political solidarity is often causally relevant for the introduction and maintenance of regulations securing decent work. The support from other agents in a society, and sometimes from agents beyond its borders, is needed, and sometimes must come from people who will not personally benefit from giving it. Consider, for example, the improvement of labor conditions for workers in garment factories in poor countries. Safety conditions in sweatshops supplying global brands are often dismal (as the disaster in Dakar's garment factories mentioned above shows). Now, part of the explanation of the problem comes from the competition among retailers and brands to provide ever newer products at lower prices within ever narrower time intervals, which in turn creates incentives for suppliers to cut costs by imposing longer hours on workers, lowering their wages, and neglecting safety at the workplace. However, if consumers were willing to pay more for their clothes, if retailers decided to sell merchandise produced in safe conditions, or/and if governments of rich countries supported effective international regulations, then working conditions for workers could more easily be improved.[65] These forms of solidarity would enact the global concern that LHR require.

9.5. CONCLUSION: DIGNITY AND THE STRUGGLE FOR LABOR HUMAN RIGHTS

This chapter articulated and defended LHR as an important dimension of what we owe to each other as human beings with dignity. I do not claim that my arguments conclusively justify LHR. But I hope that they make a strong case for LHR and advance the philosophical discussion about them. People have status-dignity whenever they possess the valuable features giving rise to it (sentience, conscience, rationality, the ability to cooperate and produce, etc.). Condition-dignity, on the other hand, is rather contingent. People can get it and lose it as social institutions and practices change. However, workers are entitled to decent labor conditions whether they already enjoy them or not.

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[65] Workers' indignities in sweatshops are sometimes rationalized by saying that economic development is hard and involves tough tradeoffs: workers will just have to deal with non-ideal working conditions if jobs are to be made available to them. But resourceful agents in richer countries (and elites in poor countries) often avoidably create, or fail to disable or limit, the conditions imposing such tradeoffs. See appendix 2, sects. 2–3, for the underlying structure of this kind of situation.

They do not lose status-dignity when they face indecent labor conditions, even if they do not enjoy a dignified condition.

Now, condition-dignity does not only exist when agents already live in circumstances in which their human rights are fulfilled. As discussed in chapter 5 (section 5.3.4), there is a form of dignity that concerns how people react to circumstances in which human rights are under-fulfilled. Even when workers cannot presently avoid egregious exploitation, domination, and alienation at work, they can respond to these circumstances in dignified ways. They do so, for example, when they do not lose their self-respect and integrity when dealing with those in positions of power or economically better off, when they insist that they are entitled to decent labor conditions, and when they act politically to overcome the injustice they face. It is an interesting, and important dimension of human dignity that people achieve a sense of dignity when they fight for their rights. When they do so, they take themselves seriously as deserving opportunities to develop and exercise their valuable human capacities. The relatively poor and weak can gain some dignity in this way.[66] And the relatively rich and powerful lose some dignity when they use their superior resources and power in unjust ways—for example, by undermining or failing to promote the condition-dignity of others. They thereby fail to show respect and concern for the status-dignity of others. They also fail to respect themselves by neglecting their conscience and sympathy, their capacities for moral reasoning and human solidarity. A world where LHR are not fulfilled is one in which there is much indignity. Dignity regarding LHR starts by acknowledging that LHR exist, and by struggling to make sure that every worker enjoys them.

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[66] Rosa, a worker at a restaurant in Toronto, displays this dignity. "'We work so hard,' [Rosa] said, her frustration bubbling to the surface. 'The managers are trying to abuse us. They shove us everywhere. We're like furniture. That's how we feel. They give us five-hour shifts. How could we survive? Myself, I'm really struggling. I'm a single mom.' After working at a restaurant for twenty years, though, she didn't want to quit. 'I want to fight for my rights. They're making money. We're the backbone of the company, but they treat us like garbage'." Rosa joined a union and is an active organizer. Lorinc, "State of the Unions," 31.

10

Political Rights

10.1. INTRODUCTION

A protester in Cairo's Tahrir Square, feeling impatient because the transitional military government that took power after the demise of Hosni Mubarak was not taking decisive steps to introduce fair democratic elections, told a reporter that "the street has woken up" and had this to say to the Supreme Council of the Armed Forces: "we are the rulers, and you follow our orders—not the other way around..."[1] Is the idea of popular sovereignty, as expressed by the democratic ideal of political equality, a human right idea? Core documents such as the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights are somewhat open to interpretation, although they seem to lean strongly toward a democratic construal of political rights. At any rate, there is a growing consensus within the legal and political practice of human rights that the democratic interpretation should indeed be favored. However, some philosophers doubt that we should see democracy as a human right. In this chapter, I respond to those challenges and develop the view that there is such a human right. As I will show, considerations of human dignity play an important role in such a view.

  More specifically, this chapter continues the development of the practical implications of the dignitarian approach proposed in this book by addressing two interconnected questions about human rights and the pursuit of global justice: Is there a human right to democracy? How does the achievement of human rights, including the human right to democracy, contribute to the pursuit of global justice? In section 10.2, the first question is answered in the affirmative. It identifies three reasons for favoring democracy and explores the significance of those reasons for defending it as a human right. It answers important worries that acknowledging a human right to democracy would lead to intolerance and lack of respect for the self-determination of peoples,

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[1] The protester continued, less politely but revealingly: "We are the fucking red line, you do not cross us." See "Revolution turns to rancour as Arab spring loses momentum." *Guardian Weekly*, July 22, 2011, 12.

exaggerate the importance of democracy for securing other rights, generalize institutional arrangements that only work in some contexts, and tie human rights to specific ideas of freedom and equality that do not have the same universal appeal and urgency. Section 10.3 answers the second question. It distinguishes between basic and non-basic global justice and argues that democracy is significant for both. It claims that the fulfillment of human rights constitutes basic global justice, explains how a human right to democracy has significance for the legitimacy of international besides domestic institutions, and shows how forms of global democracy and the exploration of cosmopolitan and humanist commitments underlying the dignitarian approach to human rights may enable and motivate the pursuit of non-basic demands of global justice (such as those concerning socioeconomic equality). The key claim in the chapter is that by providing a floor of dignity on which people can stand in the organization of their social life, the fulfillment of the moral human right to democratic political empowerment is crucial for the pursuit of global justice.

10.2. THE HUMAN RIGHT TO DEMOCRACY

10.2.1. General Case for Democracy

A system of political decision-making is democratic when those subject to it have effective and equal opportunities to participate in it and shape its results. There are at least three important reasons for favoring democracy over other ways of organizing decision-making structures that do not involve this idea of effective political equality. That democracy is preferable on these reasons does not mean that no democracy ever fails to honor them. Actual democracies can be better or worse at honoring these concerns; the point is that feasible non-democratic regimes are likely to do worse. Here are the three reasons, stated as features of democracy:

(a) *Expressive recognition and respect (intrinsic significance)*: Democracy involves an expressive recognition of and respect for human beings as agents with the capacity for political judgment and self-determination.

(b) *Strong accountability (instrumental significance 1)*: Democracy involves strong mechanisms of accountability of decision-makers to decision-takers.

(c) *Epistemic enhancement (Instrumental significance 2)*: Democratic rights, institutions, and practices help political agents to identify and justify to themselves and to each other what political principles, agendas, and policies are appropriate.

The first consideration addresses the intrinsic value of a political decision-making procedure, and the other two capture its instrumental value: the former concerns how people treat each other within the practice of decision-making, and the latter concerns the issue of whether decision-making tracks the interests or good of those subject to it (or, rather, the interests or goods which are independent from the procedure of decision making itself). An underlying principle is, of course, that the worth and interests of all subjects deserves equal respect and concern within some range. This principle is a natural upshot of the dignitarian approach as presented in previous chapters of this book. Other connections will emerge as we proceed.[2]

The three kinds of considerations (a)–(c) should be familiar, even if I formulate them in my own words and present them from the perspective of the dignitarian approach.[3] My concern in this chapter will be to show how they link to the theory and practice of human rights. I think that the three reasons are very important, even though in the context of human rights the focus had tended to be on (b). Democracy's strong accountability certainly is crucial, as it involves a powerful incentive mechanism for decision-makers to cater for the interests of decision-takers (they may be sacked if they don't). But the other features are important as well. The intrinsic dimension in (a) is significant: an adult person's self-respect may be deeply wounded if they are treated as a second-class citizen, if their public status in their social world is that of someone who cannot or should not participate on equal terms with every other adult in the shaping of the coercive rules that frame that world.

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[2] I should comment briefly on the relative significance of the notions of "affecting" and "subjecting" in the justification of political rights. An agent may be said to have political rights to participate in shaping a political decision-making process when this process affects or subjects them. Reference to subjection highlights the importance of autonomy: it is important that the will of a person is not substituted by the will of others who shape the political process. But it is also important, more broadly, to consider the well-being of agents. The formulation referring to "affecting" captures that. It is broader than the formulation referring to "subjecting," and includes it, because one of the ways in which a political process may subject an agent is by affecting the capacity to choose, their will. Well-being and autonomy are interests that may be affected in ways that merit rights protection.

This issue should be explored further in accounting for democratic rights. No doubt the "affecting" principle can be too broad. For an analogy, consider that it seems counterintuitive to say that Sally should have a say as to whether Theresa chooses to marry Peter since Sally loves Peter and would like to marry him instead. It is not up to Sally whom Theresa marries. It would be different if Robert were arranging a marriage between Sally and Carlos. Since the will of Theresa would be substituted by Robert otherwise, Sally must have a say as to whether the marriage goes through (in addition to Carlos, of course). However, since politics has a significant impact on both autonomy and well-being, we can justify political rights on both grounds, even if the well-being based considerations are constrained (which is not the same as exhausted) by autonomy considerations.

[3] Charles Beitz, *Political Equality: An Essay in Democratic Theory* (Princeton, NJ: Princeton University Press, 1989); Thomas Christiano, *The Constitution of Equality* (Oxford: Oxford University Press, 2008); Jürgen Habermas, *Between Facts and Norms* (Cambridge, MA: The MIT Press, 1996); and Amartya Sen, *Development as Freedom* (New York: Anchor Books, 1999).

The epistemic dimension in (c) is important (inter alia) because we need strong political freedoms to gain understanding of the political process via active experience in it, to deliberate with each other about our political views so as to make up our minds, reach agreements or narrow disagreement, find fair compromises, and develop less crude or biased pictures about what we and others need and are entitled to. Of course, these features interact. For example, political agents with enhanced political knowledge will have more of the information they need to hold decision-makers accountable; and the opportunity to do the latter will be an incentive to seek political information. Agents who recognize each other as able to make political judgments and as worthy of political self-determination will treat each other in certain ways—for example, by pursuing forms of accountability and public debate that involve appropriate levels of civility.

10.2.2. Developing the Case for a Human Right to Democracy

10.2.2.1. Is Democracy a Human Right?

The three reasons for democracy just mentioned support the view that a society that is democratic is in some respects more just than a society that is not. But not every right of justice is a human right. In general, a right is a legitimate claim that one person can make against others.[4] A right is justified when the conditions and interests its fulfillment protects or promotes, and more generally the reasons it is based on, are sufficiently important to warrant negative or positive duties on the part of certain duty-bearers. Is the right to democracy also a moral human right? This depends on whether it has the standard features that characterize moral human rights, such as being universal, having high normative priority or great normative weight, being primarily a critical rather than a positive standard, and being often at least in part to be pursued through political action and institutions. I believe that a right to democracy has these features. The last two features are obviously held by a right to democracy: it is a right to be largely articulated institutionally and it can function as a critical standard for appraising different social structures even when those structures do not explicitly recognize it and when people do not currently endorse it. The real difficulty is to show that there is a right to democracy that has the features of universality and high priority. Is democracy a right that holds for everyone in the contemporary world? Is its pursuit a matter of global concern? Does it have the great weight that other, less

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[4] Jeremy Waldron, "Rights," in R. Goodin, P. Pettit, and T. Pogge, eds., *A Companion to Contemporary Political Philosophy* (Oxford: Blackwell, 2007), 745–54, at 746.

controversial human rights, such as the civil right to religious freedom or the socioeconomic right to subsistence, have?[5]

To show that a right to democracy has these features, we do well to defend it by using the dignitarian approach and the ideal of solidaristic empowerment proposed in this book. Recall that, according to the ideal of solidaristic empowerment, we should strive to create and sustain social orders that support the human interests linked to the development and exercise of important human capacities. Those capacities lie at the basis of people's status-dignity, and their support furthers people's achievement of condition-dignity. Now, the three considerations explored in the justification of democracy can be seen as catering for interests of the relevant kind. (a) can be seen as tracking crucial procedure-relative interests in developing and exercising capacities for self-determination at the most fundamental level of a social life (that is, at the level of the core political institutions and practices of a society). In turn, considerations (b) and (c) can be seen as tracking procedure-independent interests in developing and exercising any other capacities whose support is important for achieving at least a decent life.

In what follows, I will proceed dialectically, by addressing the four most important recent challenges to the idea that there is a human right to democracy (hereafter HRD). All of these challenges precisely deny that the right to democracy is both universal and of high priority. Underlying the polemical engagement with these challenges there is a positive argument for an HRD. It is in fact quite simple, and can be stated succinctly. The main idea is that we should accept an HRD because (at least contemporary) social life involves circumstances that make considerations (a)–(c) (stated in section 10.2.1) practically relevant in a widespread and urgent way. These common circumstances (which, to use an idea introduced in chapter 5, are circumstances of dignity which make dignitarian norms practically relevant) include some tendencies to (i) exclude groups of people from political power and other social advantages, (ii) be self-serving and biased when wielding decision-making power, (iii) disagree on moral matters, and (iv) have limited knowledge of the needs and views of others. These tendencies impose standard threats: wielders of political power may monopolize control of social regulations, brand some persons as second-class citizens, impose agendas and policies that fail to take account of the basic needs and the normative views of others, and render many of those subject to the resulting social order

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[5] In this chapter, I assume that the universality of human rights ranges over all persons in the contemporary world. A wider scope could be argued for, but I restrict my argument to the weaker account of universality that most critics of a human right to democracy accept. I also assume that that the high priority of human rights depends on their ranging over the conditions enabling a decent or basically dignified life. The focus is on conditions enabling a basically good life rather than (as arguably wider demands of justice concern themselves with) a fully flourishing life.

impotent to evaluate and to change it. The three dimensions of democracy are essential to respond to these threats. When they are in place, political power wielders are more likely to guarantee basic conditions of respect and concern for all persons. To the extent that people are recognized as having irreplaceable political status as equals, they are able to keep decision-makers in check, and they have the capability to join the public debate about what is the just way to arrange their social lives, it is that much harder to block their achievement of a decent life. Given these threats and the significance of dimensions (a)–(c) to respond to them, when people can but are not granted democratic political opportunities they are seriously wronged: they are denied what they are owed to live a decent life. They are denied the condition-dignity which an appropriate response to their status-dignity requires. The remainder of this section fleshes out this argument.

10.2.2.2. Toleration, Self-Determination, and Intervention

The first challenge says that accepting an HRD would lead to supporting problematic forms of international intervention. Since a human right merits global concern and action, pursuing the fulfillment of an HRD would license forceful international intervention in countries that are not democratic, and this would involve intolerance toward other forms of political organization and the violation of the self-determination of peoples. If we value international toleration and the self-determination of peoples, we should be skeptical about an HRD.

Each key aspect of this challenge is problematic. Although the ideas of toleration and the self-determination of peoples are valuable, they do not support the denial of an HRD, and the pursuit of the latter does not require the obliteration of the former. Regarding toleration, there is the immediate worry that in non-democratic countries governments do not tolerate a wide range of political actions amongst their members. Why accept an entitlement to toleration for a regime that does not tolerate its own people?[6] It would not help to focus on the toleration of *peoples* as the fundamental concern. Human

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[6] I am not claiming that a non-democratic regime necessarily is intolerant towards its own people in every important respect. A non-democratic regime could, e.g., tolerate many of its residents' exercises of their civil rights (such as their freedom of religion). But toleration with respect to civil (and other) rights does not entail that intolerance with respect to political participation does not exist. So the non-democratic regime is still intolerant in an important respect. Furthermore, one should worry about how secure other rights are when residents do not have effective power to respond to a regime that changes course and decides to violate them. A possible difficult question is how to respond to practical circumstances in which the two immediately feasible options are (a) a democratic regime under which serious underfulfillment of civil and social rights is likely to occur and (b) a non-democratic regime under which significantly greater fulfillment of civil and social rights is likely. I tackle this question in section 10.2.2.4 below.

rights are primarily held by individual human beings, not by peoples, societies, or states. On the other hand, the ideal of toleration is quite vague. To be made precise it needs a substantive account of the conditions that must be met for the conduct of other agents to be permissible even if they are different from one's own.[7] I do not deny the importance of the value of toleration and that it could be given a reasonable construal. But clearly any plausible account of what may be tolerated will be constrained by the recognition of the independent and high-priority rights that people have, and this surely includes their human rights. One of the key functions of human rights is precisely to set reasonable limits to claims of toleration. So we should be skeptical about limits on an account of the content of human rights that draws on toleration; the direction of limitation is the opposite.

Consider next the idea of a people's self-determination. First, there is the obvious but important point that there is no necessary conflict between the fulfillment of a people's right to self-determination and the HRD, as a people can determine itself while being democratically ordered. Second, notice also that the problem of taking peoples rather than people as the unit of fundamental concern applies here as well, and this undermines the force of the invocation of collective self-determination in the face of violation of an HRD. If in a certain situation the invocations of the two claims collide, we should consider whether catering for individuals' interest in their self-determination as a group should be qualified, or at least joined by serious attempts to pursue the honoring of their interest in democratic political opportunities. The multiple considerations spelled out in this chapter in favor of an HRD also tell in favor of such combination (which does not automatically ground a permission for foreign intervention—see two paragraphs down). If the members of a people are not themselves self-determining, then the self-determination of the group has less moral standing: there is less self-determination when the members of a group are blocked from shaping its political life than when they are allowed to control the group they constitute. This does not entail that there is no morally relevant way in which a society can be self-determining if it is not democratic. The point is that an invocation of collective self-determination cannot mute the concern with democratic freedom.

There is, then, a serious, and internal, problem with bypassing the wills of the members, as non-democratic regimes do, and then proceeding to claim that that group's will (as stated in the will of the rulers) expresses them.[8] The rulers of the non-democratic country may object that their subjects themselves

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[7] Rainer Forst, "The Limits of Toleration," *Constellations* 11 (2004), 312–25.

[8] This sentiment may underlie the struggle of some oppressed groups. Consider, e.g., MP Sophia Abdi's reaction after the Kenyan government decided to ban female genital mutilation: "Today is independence day for women. Men got their independence in 1963—but today women have achieved independence from the cruel hands of society." Cited in Sarah Boseley, "Kenya bans mutilation," *Guardian Weekly*, September 16, 2011, p. 13.

accept the non-democratic nature of their government. But this maneuver would be problematic on several counts. First, how do we know that the subjects prefer a non-democratic system if they are not allowed to fully participate in the political process? In the absence of strong accountability, they may be afraid to express their views fully even if they are allowed to speak publicly. Second, without experience in wielding political power, how do they themselves manage to form reflective judgments about political justice? Non-democratic regimes are epistemically deficient. Third, if the legitimation of the regime appeals to what the people living under it take to be just, then why deprive the people of the kind of regime whose procedures and outcomes are really powered by what the people think (that is, a democracy)?[9] A view of collective self-determination that crushes the political self-determination of the members of the collective does not take seriously the freedom of human beings.

The worry about forceful international intervention is real, however. Such interventions often fail to achieve their publicly avowed goals, involve serious violations of other rights, and cement relations of arrogant patronage. But these problems do not really show that there is no HRD unless we assume that if something is a human right then its violation makes international forceful intervention permissible. And this assumption goes against the grain of the legal and political practice of human rights and it is in any case morally unwarranted. Justifiable intolerance toward human rights violation need not be coupled with international coercion. There are other options.

As many critics have argued in response to Rawls's narrow construal of human rights in terms of the conditions for coercive intervention, there are many ways in which domestic and international action can respond to human rights violations; "human rights serve *many* international roles, some of them unconnected to enforceability."[10] Forceful intervention is just one kind of response, which is likely to be warranted only in extreme cases (such as genocide), and even then only as a result of a delicate balancing of many considerations. Human rights primarily generate obligatory goals that should inform various forms of national and international political action. They are not necessarily triggers of international coercion.

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[9] I thank Carol Gould for discussion on this point. There is the conceptual possibility that a people democratically choose to become non-democratic. Would this be acceptable or should it be as problematic as the case of voluntary slavery? My intuitive answer is that the latter is true, but the issue requires further discussion.

[10] James Nickel, *Making Sense of Human Rights*, 2nd ed. (Oxford: Blackwell, 2007), 101. For Rawls's view, see *The Law of Peoples* (Cambridge, MA: Harvard University Press), 78–81. An important function of human rights is that they warrant global concern and action, but the latter can take many forms. See Charles Beitz, *The Idea of Human Rights* (Oxford: Oxford University Press, 2009), 31–42.

This is as it should be, as human rights are best achieved from the ground up. Institutional structures that fulfill the HRD are likely to be best generated primarily domestically, as the achievement of a people's members' own political struggle. This of course does not mean that international solidarity is not warranted.[11] At a minimum, features of the international institutional order that foreseeably and avoidably create means and incentives for domestic elites to impose non-democratic regimes on their people should be eliminated.[12] The dilemma between aggressive international interventionism and international passivity is a spurious one.[13] We can understand how belief in something like it may have arisen as a result of the recent history of American military adventurism, which has sometimes been carried out in the name of democracy. But we can reject such aggressive adventurism without letting down fellow human beings in other countries who are fighting for their rights. Human rights indeed ground global concern. In the case of democracy, such concern can be expressed in innumerable ways that stop short of intervention. Several forms are already being explored, from protests and mutual assistance by pro-democracy social movements in different countries, to attempts at persuasion in several forums of international civil society, to economic and political incentives such as making membership in advantageous regional organizations conditional upon democratic reforms.[14]

Before we consider other challenges against an HRD, it is important to acknowledge that there is indeed a risk that the foreign policy of powerful states will be dangerously arrogant when it is shaped in the name of fostering democracy around the world. As discussed in chapter 4, an appropriate level of humility and sensitivity to diversity is called for. Such humility should be encouraged by noticing at least the following two points. First, the democracy of many powerful capitalist societies is seriously defective. Economic

[11] Democracy most often comes from the streets, not from foreign warships. The recent Arab Spring (e.g., in Tunisia), like the transition to democracy in Latin America and Eastern Europe around the 1980s, are possible examples. The achievements of the movements behind these transitions were supported by various forms of international solidarity, but they were not the outcome of international coercive intervention.

[12] These include, e.g., the international "resources," "arms," and "borrowing" privileges through which elites in poor countries can sell natural resources, purchase weapons, and contract debt in their people's name, which enable them to cement their despotic rule. See Thomas Pogge, *World Poverty and Human Rights*, 2nd ed. (Cambridge, Polity: 2008).

[13] A "laudable concern for liberal toleration and peaceful coexistence can also lead to liberal indifference, and … to an unjustified toleration for the world's repressive regimes such as many 'decent, hierarchical peoples' (Rawls) may be and often are." Seyla Benhabib, *Dignity in Adversity* (Cambridge: Polity, 2011), 78.

[14] Roland Rich, "Bringing Democracy into International Law," *Journal of Democracy* 12 (2001), 20–34. An important and hopeful recent development in Latin America is the introduction (in 2010) of the "democratic clause" within the UNASUR (Union de Naciones Suramericanas—Union of South American Nations). It authorizes coordinated responses to threats to the democratic institutions of any member state. See http://www.unasursg.org/index.php?option=com_content&view=article&id=292&Itemid=340.

inequality often translates into political inequality as the rich control the finance of electoral campaigns, have overwhelming access to the mass media, can develop bonds with politicians through lobbying or through promising them corporate jobs after they leave office, or simply discipline governments by signaling that they will disinvest in the country if policies that depress their profits are introduced (thus shrinking the tax base officials need to tap into to fund a successful administration and get re-elected). Second, it is crucial to note that democratic politics can be arranged in different ways and evolve over time, and that any country may have much to learn from experiments in other countries. Some innovations in participatory democracy introduced in the global South (such as participatory budgets in Brazil—which feature direct participation and public deliberation by ordinary citizens in the selection of policy priorities for city administrations) could provide lessons for improving the democracy of countries in the global North.[15]

10.2.2.3. Instrumental Considerations about the Protection of Other Rights

One of the strongest defenses of the HRD is that we should accept it because democracy helps prevent unacceptable outcomes in terms of uncontroversial human rights, such as famines and brutally oppressive tyrannies. This instrumental argument relies on aspects (b) and (c) of democracy: where there is a functioning democracy, decision-makers tend to avoid engaging in serious abuses because they anticipate that if they do so it will be known and discussed, and they will be held accountable. Sen famously argues that because of incentive mechanisms such as these, there has been no famine in a functioning democracy.[16] So, if we want to avoid the underfulfillment of civil and socioeconomic human rights, we should accept an HRD. Democracy inherits the great weight of the rights it protects.

This instrumental argument for an HRD has recently come under fire from Joshua Cohen.[17] Cohen's first challenge says that we can imagine a regime that

[15] For a powerful discussion of the democratic deficits of capitalist societies, and an exploration of various proposals to increase democratic empowerment, see Erik Wright, *Envisioning Real Utopias* (London: Verso, 2010). For empirical research supporting the claim that there is disproportionate, oligarchic, influence of business elites on government in the United States, see Martin Gilens and Benjamin Page, "Testing Theories of American Politics: Elites, Interest Groups, and Average Citizens," *Perspectives on Politics* 12 (2014), 564–81. For experiences in participatory democracy in the Global South, see Buonaventura de Santos, ed., *Democratizing Democracy: Beyond the Liberal Cannon* (London: Verso, 2007). See also Archon Fung and Erik Wright, eds., *Deepening Democracy: Institutional Innovations in Empowered Participatory Governance* (London: Verso, 2003).

[16] Amartya Sen, *The Idea of Justice* (Cambridge, MA: Harvard University Press, 2009), ch. 16.

[17] What follows draws, with revisions, on my more detailed discussion on Cohen's views in "Is There a Human Right to Democracy? A Response to Joshua Cohen," *Revista*

involves collective self-determination, is not democratic, and protects human rights. Collective self-determination involves three conditions:

1. "[B]inding collective decisions result from, and are accountable to, a political process that represents the diverse interests and opinions of those who are subject to the society's laws and regulations and expected to comply with them"

2. "[R]ights to dissent from, and appeal, those collective decisions are assured for all"

3. "[G]overnment normally provides public explanations for its decisions, and those explanations—intended to show why decisions are justified—are founded on a conception of the common good of the whole society."[18]

These conditions can be fulfilled even if there is political inequality (for example, if members of a certain ethnic group are denied access to decision-making positions in government). As long as there are mechanisms of representation of interests, dissent and appeal, and explanations that track fundamental interests such as those protected by basic civil and socioeconomic rights, the human rights of those partially excluded are not violated. They do not have a human right to be treated as political equals.

A concern about this view is whether it is realistic to expect that conditions 1–3 will reliably be satisfied, and lead to the protection of people's fundamental interests, without political equality. It is not enough to wonder whether it is *possible* for this to happen. For example, an enlightened despot certainly *could* exist who satisfies these conditions without democratic accountability. But it would be irresponsible to determine what political rights to recognize on the basis of just this possibility. We must also consider the *relative probability* (and *scalar feasibility*)[19] that different political arrangements will protect fundamental interests. And it seems that the burden of proof is here on the side of those who entertain the avoidance of democracy. Given the overwhelming wealth of historical evidence about the tendency to bias and abuse of political power, it is imprudent for agents not to favor regimes including mechanisms of strong accountability through equal rights to affect the political process of the kind only democracy affords.[20] As historical experience concerning manual

[18] Joshua Cohen, *The Arc of the Moral Universe* (Cambridge, MA: Harvard University Press, 2010), 357–8. See also Rawls, *The Law of Peoples*, sect. 9.

[19] On scalar feasibility, see appendix 2.

[20] "The fundamental interests of adults who are denied opportunities to participate in governing will *not* be adequately protected and advanced by those who govern. The historical evidence on this point is overwhelming." Robert Dahl, *On Democracy* (New Haven: Yale University Press, 1998), 77 (see 77–8 and 52–3). According to a report of recent research, the

workers and women suggests, those who lack equal and effective rights to affect the political process are more likely to be ignored by decision-makers. Their interests are less likely to be duly represented, and they are less likely to be consulted or offered explanations. And to be consulted, allowed to dissent and appeal, and given explanations is not enough. People also have reason to be able to sack decision-makers who do not in fact cater to the fundamental interests they pledge to track. Thus, instrumental considerations regarding the fulfillment of civil and socioeconomic rights in fact tell in favor of accepting strong political rights.

Cohen has a second challenge. He worries that "it is not clear how strong a case we have for the claim that a society that ensured a relatively rich set of human rights, including conditions of collective self-determination short of democracy, would nevertheless be so clearly unacceptable as to bear so much argumentative weight in the case for a human right to democracy."[21] The instrumental argument for democracy discussed here assumes that it is the lack of specifically democratic rights that is crucial when explaining the occurrence of famine, tyranny, etc. But, Cohen notes, when these terrible outcomes ensue we often find other factors that might be explanatorily relevant, such as weak or absent rule of law, freedom of the press, and collective self-determination.

Does this challenge succeed at overturning the received wisdom that in the absence of democracy the fundamental interests of all are less likely to be reliably protected? We cannot answer this question without looking at the empirical evidence. In a recent paper, Christiano has argued that in fact the empirical evidence available supports the instrumental case for democracy. The empirical debate is set to continue.[22] I would like to add, however, that we should not put endorsement of an HRD aside until the empirical dispute is settled. First, the instrumental argument should not be construed in unduly strong terms. From a practical standpoint, to support democracy instrumentally we do not need to find that famines and other terrible outcomes can only occur when and only because democracy is absent. It is enough if the evidence shows that democracy is an important (even if not the only) relevant contributory factor so that in its absence the likelihood of such conditions

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composition of the electorate seriously affects policymaking. "In late-19th century America, for example, rules barring most blacks in the South from voting seem to have resulted in a much lower ratio of teachers to children in black schools. Government spending on health, in contrast, jumped by a third when women got the vote. Health spending also rose by a third in Brazil, when the introduction of electronic voting made it easier for the less educated to vote." "Free exchange: Make me," *The Economist*, May 28, 2016, p. 68.

[21] Cohen, *The Arc of the Moral Universe*, 371.

[22] Thomas Christiano, "An Instrumental Argument for a Human Right to Democracy," *Philosophy & Public Affairs* 39 (2011), 142–76. Christiano's conclusions are not undisputed. A worry (discussed in section 10.2.2.4) is that the comparison between democratic and non-democratic regimes in terms of overall human rights fulfillment may be less favorable to democratic regimes in very poor societies than in middle- and upper-income ones.

increases significantly. Second, in the face of uncertainty about the precise composition of the explanatory factors leading to severe underfulfillment of human rights, and given that so far research appears to show that democracy is an important factor,[23] it is only prudent to be risk averse and err on the side of keeping the list of rights ample (including democracy besides the rule of law, freedom of the press, and the other important factors). It would be a reckless bet to choose a non-democratic regime before the empirical evidence develops enough to actually tip the balance away from the received wisdom that those with less political power are less secure in the enjoyment of their rights. The likely losers in that risky bet, who fear starvation, torture, and other human rights violations, can reasonably reject it.[24]

10.2.2.4. Institutional Specificity and the Problem of Generalization

Another challenge to an HRD is that it may lack universal application and high priority because it relies on too specific an account of the institutions of collective self-determination needed to protect other, uncontroversial human rights (such as basic civil, socioeconomic, and other political rights). In some, perhaps most, contexts, democratic institutions will likely do best, but in certain contexts they may not. Beitz has recently pressed this charge, arguing that we cannot generalize the instrumental argument discussed in section 10.2.2.3 because there may be cases of non-democratic societies in which either (i) economic conditions are such that the instauration of democracy may not lead to a stable regime or might involve lower protection of uncontroversial rights than some alternative, feasible regime; or (ii) the political culture is one in which the strong political equality that HRD involves is widely rejected, while the less demanding form of collective self-determination discussed by Cohen enjoys wide allegiance.[25] I think that the most serious worry concerns (i). As stated, the second puzzle risks a conventionalist view of the validity of human rights that is incompatible with seeing them as critical standards. The existence of rights does not depend on people believing that they exist. Slavery would involve a violation of rights even if most people (including the slaves) did not think there is a right against it. Such beliefs are

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[23] For the strong correlation between democratization and support for international human rights law, see Beth Simmons, *Mobilizing for Human Rights: International Law in Domestic Politics* (Cambridge: Cambridge University Press, 2009), 24–7. Simmons does not claim that democracy causes, but she says that it supports, the legalization of international human rights, and she explores some possible mechanisms (such as strong accountability) underpinning this contribution.

[24] Recall the contractualist framework discussed in chapter 8, section 8.4, and its significance for articulating the assessment of human rights norms.

[25] Beitz, *The Idea of Human Rights*, sect. 26.

relevant for the feasibility of implementing rights in the short term, but that is a different matter.

Let us grant, for the sake of argument, that in the short term the instauration of democracy in a certain country would likely lead to higher costs in terms of other, uncontroversial rights than the instauration of an authoritarian regime that approximates the features of collective self-determination discussed in section 10.2.2.3. How could a defender of an HRD respond? The first thing to say is that the high priority of human rights should not be interpreted too narrowly, as meaning that to have it, a requirement should be immediately and fully implementable. Human rights set up a normative agenda for the political future. What is crucial is that we recognize them as setting political goals of great importance, which we can achieve some time in the future and should pursue to the extent that we reasonably can from now on. When we encounter circumstances in which an obligatory goal cannot be achieved, we should acknowledge *dynamic duties* to progressively change them so that the obligatory goal becomes achievable.[26] Cases like the one we are here granting for the sake of argument can be seen as part of the non-ideal theory of human rights. Such non-ideal theory would depend on an ideal theory that sets the optimal feasible targets of long-term reform, and it would deal with cases of partial compliance and conditions in which the fulfillment of the ideal demands is not immediately feasible. Given that democratic regimes are feasible in the long term, and that (as Beitz recognizes) they are more likely than the alternatives to reliably protect the whole set of other urgent rights when stable, we should take them as the target for long-term reform. But since in the case under consideration we face non-ideal circumstances, we should adopt a transitional standpoint that explores the process rendering the final target accessible. Such process need not start with an immediate push for democratic institutions if the likely outcomes are worse on balance.

Second, the long-term view favoring democracy is not idle in the short term. It would have immediate bite in at least two ways. First, it would impose high evidentiary standards for choosing non-democratic alternatives in the short term. The presumption would be that democracy should be pursued unless

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[26] On the idea of *dynamic duties*, see chapter 3 and appendix 2. See further Pablo Gilabert, "Justice and Feasibility: A Dynamic Approach," in M. Weber and K. Vallier, eds., *Political Utopias: Contemporary Debates* (Oxford: Oxford University Press, 2017), 95–126. A worry could be that it is unrealistic to expect that we will know enough about what is likely to happen in the future for considerations about the long term to affect our current choices. I am not sure this is always the case. But when it is, we may still have dynamic duties to expand our level of political knowledge. Second, we must also factor in the undesirability of the status quo. The worse it is, the less strict we need to be about our foresight of the future to choose to make moves away from it. Even if the status quo is desirable, notice, third, that if we are unable to foresee the future, this may include inability to forsee whether the status quo will continue if we don't choose to change it, or if we choose to keep it. A radical skepticism about foresight would hamper *any* choice.

compelling evidence is given that an alternative regime would be better overall in the short term. Second, it would demand that among the several feasible non-democratic regimes that would do better, in the short term, at catering for other rights, we choose the one that is most likely to ease the transition to democracy in the future.[27] Thus, the goal of achieving democracy plays an immediate role in determining whether we should favor a non-democratic regime in the short term, and which one we should favor if we must indeed favor some.

Third, including democracy in the long-term political agenda of human rights would not only be reasonable given its likelihood to do better than the alternatives in the instrumental ways discussed so far once a stable form of it is achieved. In addition, democracy has intrinsic significance. An account of collective self-determination that is non-democratic (accepting, for example, unequal rights to vote or hold public office for people of different ethnic, religious, or other groups) violates the normative individualism and the commitment to some forms of equality and liberty that are constitutive of the human rights perspective. I will explore this point in section 10.2.2.5. But if this is correct, a consequence for the present discussion is that even if we construe human rights as making immediate demands of full implementation, the problem discussed in the hypothetical case would not be whether democracy is a right, but what is its relative weight when other rights (such as certain civil and socioeconomic rights that would be better served by a non-democratic regime) conflict with it in practice.[28] (It would also not need to be an issue whether democracy involves a high-priority right: Democracy could be a member of a package of high-priority rights even if in some circumstances its implementation has less priority than that of other rights in the same package.) The loss in terms of the intrinsic value of democracy leaves a reminder when a different regime is chosen that does better in the short term with respect to instrumental considerations concerning other rights. We are here facing a tragic choice rather than a mere tradeoff, and thus that reminder must be acknowledged. The first and second points mentioned above then reapply, this time regarding the future satisfaction of what has been left out in terms of the intrinsic concern.[29]

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[27] This example assumes that the feasible non-democratic regimes are roughly equivalent in terms of catering for the other rights.

[28] Christiano ("An Insrumental Argument of a Human Right to Democracy," 170) also discusses the potential conflict between an HRD and other strong rights, but my conclusion differs from his. Since his paper focuses only on the instrumental argument for an HRD, he concludes that in the circumstances an HRD is defeated rather than merely outweighed (as it would not serve the purpose that determines its value, which is to protect other strong rights).

[29] A possible objection is that since Beitz and Cohen accept that democracy is a demand of justice, they would also agree that it gives rise to obligatory goals of reform over the long term. But if the goals are not also seen as responding to human rights (which are a subset of the claims

Fourth, and finally, there is the issue of institutional specificity. The problem with the hypothetical case discussed here may be less likely to arise if we notice that the HRD can be stated at different levels of institutional abstraction. At the level of principle, HRD can be stated in a relatively general way that captures the key idea of political equality. The specific institutional form that political equality should take depends on the characteristics of the context in hand.[30] So if one specific institutional form of democracy (say, a certain electoral system, or organization of the relation between the legislative, executive, and judicial branches of government) is not likely to be stable in a certain context, this does not entail that democracy as such has no immediate stable application. Perhaps another specific articulation of political equality will be immediately stable. This *argumentative triangulation* (responding to the immediate unworkability of a certain institutional implementation by moving up one level to the relevant animating principle and then envisaging alternative re-specifications of it to see whether one is workable) must be pursued before moving to the concessive, non-ideal parts of the exercise discussed above. When we think about the universality of democracy, we should ask whether the key principle has general hold, not whether any of its specific incarnations is generalizable.[31]

The foregoing discussion touches upon a central theoretical point made in section 8.7 of chapter 8, according to which a fully developed conception of human rights has three dimensions, including quite general and abstract human rights (DI), specific rights demanding institutions and practices implementing the more general requirements in certain contexts (DII), and political strategies of reform leading people from where they are to the scenarios of implementation they envisage (DIII). In the case of the HRD, the idea of political equality falls under DI, the various specifications of democracy and the exercises of argumentative triangulation concern DII, and the transitional standpoint imagining paths for the introduction of workable democratic institutions and practices engages DIII.

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of justice), then their great weight will not be recognized: their pursuit will be seen as having a lower level of priority and will be more easily put aside to attend to other goals.

[30] See Dahl's illuminating general framework, which includes a distinction between democratic "principles," "criteria," and "institutions." For discussion of specific institutions that are appropriate in different contexts see Dahl, *On Democracy*, chs. 8–11. For a distinction between principles and institutions concerning the HRD, see Allen Buchanan, *Justice, Legitimacy and Self-determination* (Oxford: Oxford University Press, 2004), 145–7. We can also distinguish between minimal and maximal democratic political equality, seeing only the former as the focus of an HRD. Christiano ("An Instrumental Argument for a Human Rigth to Democracy," 146) suggests that the former demands institutions securing effective and equal voting, equal opportunity to engage in consequential forms of political organization and action, and a rule of law supporting independent judicial control over the executive power.

[31] The Universal Declaration's Articles 19–21 (which can be interpreted as formulating specific democratic rights) might be too specific.

10.2.2.5. *Intrinsic Considerations of Freedom and Equality*

The intrinsic argument for democracy says that democracy is desirable because it involves an organization of the ultimate political decision-making structures and practices of society such that through them human persons express the respect and recognition due to human persons given their capacities to form political judgments and determine themselves politically. Beings with these capacities (and most human beings have them to a sufficient degree—although of course they differ beyond it) are seriously harmed when they are treated as political puppets or inferiors—as decision-takers who may not also be decision-makers. This thought involves ideas of political freedom and equality. Democratic institutions aim at giving the adults subject to the political system equal political freedoms, which amount to equal and effective opportunities to participate in shaping the political process and its outcomes. A political system is procedurally unfair if it gives some of its subjects more rights of participation than others: all agents with the capacity of political judgment and self-determination deserve equal rights. Of course those capacities can and should be developed. And democracies will be in one way better, or deeper, to the extent that they facilitate such development—or so the ideal of solidaristic empowerment, applied to political institutions and practices, would give us reason to think.

The intrinsic argument for an HRD is more controversial than the instrumental one. To see this, we can address another important recent challenge posed by Cohen. The worry is that in invoking ideas of freedom and equality, this defense of an HRD may present an unduly maximalist view of human rights in which the distinction between human rights and justice is simply erased. But intuitively we think that such a distinction exists, that human rights are only a proper subset of what justice demands, and that this distinction is important for the role of human rights as especially weighty demands of both domestic and global political action. Ideas of freedom and equality seem better located at the complement of human rights in the wider set of demands of liberal-egalitarian justice, which do not so readily seem to have the kind of global priority that human rights are meant to have. A right to democracy is then best seen not as a human right, but as a wider (less weighty, and not so uncontroversially universal) demand of justice.

I discuss the details of Cohen's challenge elsewhere.[32] Here I want to make three positive, but related, points. The first is that ideas of freedom and equality are already operative in the most important document of the contemporary human rights political practice, the Universal Declaration, and that it is natural to see them as helping in making the intrinsic argument for an

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[32] "Is There a Human Right to Democracy? A Response to Joshua Cohen," sect. 3.2. This paragraph partly draws on p. 19.

HRD. Cohen takes political democracy to depend on the following two ideas: (a) "each member is understood as entitled to be treated with equal respect, and therefore as entitled to the same basic rights, regardless of social position"; (b) "the basis of equality lies, in particular, in … political capacity: we owe equal respect to those who have sufficient capacity to understand the requirements of mutually beneficial and fair cooperation, grasp their rationale, and follow them in their conduct."[33] Now consider the Preamble and Articles 1 and 2 of the Universal Declaration. The Preamble opens by referring to the "recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family" as being "the foundation of freedom, justice and peace in the world." Article 1 says that "[a]ll human beings are born free and equal in dignity and rights," and "are endowed with reason and conscience and should act toward one another in a spirit of brotherhood," and Article 2 claims that "everyone is entitled to all the rights and freedoms set forth in this Declaration without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status." These three framing clauses evidently support an idea of equal respect of the kind envisaged in (a), according to which all should be seen as equal in rights regardless of their social position and background. Article 1's reference to certain cognitive and volitional endowments, if applied to human adults who are not severely mentally impaired (that is, those in whom the endowments are clearly present), also identifies aspects of the idea of political capacity targeted by (b). If all such human adults are free and equal in dignity and rights, and have reason and conscience, and can (given that they ought to) act toward each other in a spirit of brotherhood, then arguably they have enough political capacity to be responsible citizens in a democratic polity. These points can clearly be used to support the idea that an HRD has intrinsic significance.

Could the ideas mentioned be reasonably accepted, in global public reasoning, by people who disagree in their comprehensive religious, moral, and philosophical outlooks, and who have also disagreements about what justice in the wide sense demands? The second point is that the ideas of freedom and equality just mentioned are relatively thin in two ways that are relevant for making a case for their universality and high priority. The first way concerns the levels of depth of ideas and principles in normative argument. The ideas of freedom and equality mentioned could be intermediate premises by reference to which we can justify the view that political decision-making should be democratic. But such intermediate premises can in turn be defended by appeal to different, and often incompatible, deeper commitments. A Kantian might say that democratic freedom is derived from the more fundamental idea of

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[33] Cohen, *The Arc of the Moral Universe*, 365.

autonomy as the source of value and normative validity. Defenders of some forms of religious morality could say that humans are equal in the eyes of God, who designed them with certain powers of autonomous political decision-making that is their duty to respect and use. Agreement on the idea of political freedom and equality does not require agreement at the level of these deeper comprehensive doctrines. The second way in which the ideas of political freedom and equality are relatively thin concerns the relation between political and other social institutions. Some may challenge the view that people should be equally free to determine decision-making in every domain of social action. Some hierarchies may be justifiable in some settings. But this point is not incompatible with political freedom and equality. What has high priority is that equal freedom be recognized at the level of the main political institutions. Why is it crucial that equal freedom exist at that level? Because politics is the master institutional framework; it sets conditions on every other institution in a society. This is why agents have very strong reason to be equally free at the political level. At other levels it is less important, and sometimes not even desirable, to live in conditions of equal freedom.

A consequence of the previous point is that although the thin ideas of freedom and equality support an HRD, they do not obliterate the distinction between human rights and maximalist claims of justice. There clearly are more demanding views of freedom and equality as matters of justice. The third point is that in fact equal political freedom helps frame the discussion about maximal justice in a fair way. Disagreement about justice is an enduring fact of contemporary social life. People disagree on whether, and how, ideas of freedom and equality (and other ideas of justice) are to be elaborated in different spheres of society (including, prominently, the economic one). Human rights are not meant to settle such disagreements. They can, however, enable their fair treatment. They do this by securing a *floor of dignity* on which disagreeing agents can stand. Such a floor of dignity clearly includes basic civil and socioeconomic rights such as bodily integrity and subsistence. But it should also include robust political rights of the kind democracy involves. Without them, the elaboration of disputes about wider justice would not give all a fair chance to contribute to the debate and to decide what proposals in it should be tried out, and later on perhaps repelled or amended, by the coercive decision-making political institutions. In chapter 11, I will return to the importance of this floor of dignity in allowing people to fairly process their disagreements about what is part of human rights and what are requirements of wider social justice.

At this point the intrinsic argument for democracy joins forces with the instrumental argument in both its accountability and epistemic dimensions. We should have democratic forms of egalitarian politics to recognize and respect, and give full play, to the cognitive and volitional capacities of all political agents: democracy enables us to learn from each other, and to

negotiate our disagreements in fair and informed ways. More specifically, democracy is important in the following ways. First, the intrinsic value of democracy is evident once we try to explain why of two final outcomes that are equal in every respect in terms of rights protection (other than democracy) the one reached through a decision-making process that involves equal political liberty is better than the other that does not. Being publicly recognized and empowered as an equal in shaping one's social world is something we have reason to care about. Second, equal participation, including public deliberation, is of great importance. It helps identify appropriate (desirable and feasible) specifications of abstract rights for the circumstances we face. It helps us find appropriate balancing acts if the implementation of several rights conflict in practice. It enables us to reach fair compromises when full agreement is not viable. It provides us with a way to learn about the specific circumstances, beliefs, and needs of others in diverse multicultural settings in which we cannot simply assume that everyone shares our world-view. Finally, democratic institutions and practices help cement a public culture of respect and attention to the interests and voice of each that makes social cooperation more stable. That public culture helps make cooperation more dynamic and productive as well. Democratic power not only helps us protect ourselves from threats by others; it also enables us to join with others to design and pursue social projects that improve people's lives in various ways. These points have general significance for the pursuit of global justice, the topic to which I now turn.[34]

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[34] These claims rely on the phenomenon of linkage relations between various rights. On this topic, see James Nickel, "Rethinking Indivisibility: Towards a Theory of Supporting Relations Between Human Rights," *Human Rights Quarterly* 30 (2008), 984–1001; and Pablo Gilabert, "The Importance of Linkage Arguments for the Theory and Practice of Human Rights: A Response to James Nickel," *Human Rights Quarterly* 32 (2010), 425–38. In the latter paper (at p. 429), I argue that we should expand our understanding of linkage arguments by recognizing that there are in fact different kinds of linkages. We can distinguish between conceptual, normative, epistemic, and causal forms of support between rights. These involve quite different patterns of support. Although they all exhibit the general idea that if you have reason to support the implementation of a right R2, then you have reason to seek the implementation of another right R1, the connection proceeds along different axes of analysis. An example of conceptual connection arises when we consider the relation between equality rights (captured by the idea of equality of fundamental rights and freedoms—UDHR, Art. 2; legal personality and equality before the law—UDHR, Arts. 6, 7; freedom from discrimination—UDHR, Arts. 2, 7; and equal pay for equal work, UDHR, Art. 22) and other rights. Human rights that are not implemented equally are not fully implemented, because no full implementation of a human right is consistent with viewing some humans as less entitled than others to their object. Examples of normative, epistemic, and causal support emerge when we consider the relation between political rights and socioeconomic rights. Although it is not strictly impossible to implement socioeconomic rights without implementing political rights, there is a clear moral advantage to implementing the former through processes that involve the implementation of the latter. People not only have reason to have economic opportunities to avoid destitution. They also have reason to care about how such opportunities are created. E.g., they have reason to want to be able to be the ones who frame, collectively, the institutions that get them out of poverty, to be their authors rather than

10.3. HUMAN RIGHTS, DEMOCRACY, AND THE PURSUIT OF GLOBAL JUSTICE

10.3.1. Basic and Non-basic Global Justice

How does the recognition of an HRD affect the pursuit of global justice? To answer this question we first need to distinguish between *basic* and *non-basic*, including *maximal*, global justice. Basic global justice targets the most urgent global demands concerning the conditions for a decent life for all—that is, the fulfillment of human rights—whereas non-basic global justice includes but goes beyond that. Consider economic justice. The universal fulfillment of the human right to an adequate standard of living including basic levels of nutrition, education, health care, and housing (stated in Article 25 of the Universal Declaration) would be an achievement of basic global justice. Beyond that, we can imagine more demanding claims of global justice. Some say that we should, as a matter of justice, aim for global equality of access or opportunity regarding goods such as advanced education and health care, income, wealth, forms of work involving self-realization, etc. These goods arguably lie beyond the objects of human rights. If access to them is an entitlement of global justice, it must be one of non-basic global justice. How does democracy fit this distinction? First, if it is a human right, democracy is a matter of basic global justice. As we saw, some critics disagree; they think that it is not weighty or universal enough to be a human right and that it might perhaps, at best, be seen instead as a demand of non-basic global justice. The response to such worries presented in section 10.2 amounts to defending a right to democracy as a demand of basic global justice. But we still need to consider what the significance of democracy is for the design of international institutions, if any. How does an HRD affect the reform and creation of international institutions? A second question is: how does an HRD affect the pursuit of non-basic global justice? In what follows, I present a brief exploration of these two questions. Answering them is important for completing the

only their passive recipients. Their active agency in the political process is part of their dignity, just as the material conditions for pursuing a decent life are, and the latter have a different normative significance when they are under the political control of those they affect. The same example concerning the relation between political and socioeconomic rights helps us identify different, epistemic and causal relations of support. Political participation (e.g., through public deliberation) helps people identify the kinds of socioeconomic policies that are most relevant for their circumstances. And political participation also enables people to keep those who wield sate power accountable, thus increasing the likelihood that they will cater for their socioeconomic needs. Supporting relations may operate in stronger or weaker forms. But to identify such degrees of support we need to identify the relevant mechanisms of support. The four types just mentioned would give us a sense of what we should be looking at. They would guide us in the identification of relations of interdependence and in the assessment of the quality of implementation of certain rights.

defense of an HRD. My remarks are programmatic, but I hope they offer illuminating hypotheses for future discussion.

10.3.2. The Pursuit of Basic Global Justice

How should we think about international institutions if we aim at the global fulfillment of human rights? What is the role of an HRD in this exercise? Consider Article 28 of the Universal Declaration, according to which "Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized." From the discussion in section 10.2 we can claim that domestic social orders should be democratic. We can also claim that a just "international order" would be one that promotes democracy in domestic settings. These are not minor results. But should we think of the institutions making up the international order as themselves bound by democratic norms? If so, how and why?[35]

Should international institutions such as the World Trade Organization be democratically organized? In an illuminating article considering this question, Thomas Christiano identifies two kinds of answers and important challenges they face.[36] I will reconstruct Christiano's points and then (in the next paragraph) offer a critical assessment of them. One option is a revision of the common "voluntary association model," which legitimizes international institutions and their actions on the basis of the consent to them given by member states. This model seems relatively feasible given the importance of states for any stable international institution (it would not last without their cooperation) and desirable given that states may be quite successful at defending the interests of their subjects. However, the model faces two serious problems. The "representativeness problem" arises when some of the participating states are not democratic. The "asymmetric bargaining problem" arises when states have enormous differences in bargaining power that allow stronger states to dragoon weaker ones into accepting conditions of international association that are unfair. For example, negotiations in the WTO may yield exploitative conditions for poorer countries. This model could be revised into a "fair democratic association" model in which member states are democratic

[35] One way to motivate this question is to say that our globalizing world involves a "democratic deficit," as decision-makers on issues of great importance (such as environmental protection and trade) are not democratically accountable to decision-takers. Charles Beitz criticizes this approach in "Global Political Justice and the 'Democratic Deficit'," in R. Jay Wallace, R. Kumar, and S. Freeman, eds., *Reasons and Recognition: Essays on the Philosophy of T. M. Scanlon* (Oxford: Oxford University Press, 2011), 231–55.

[36] Thomas Christiano, "Democratic Legitimacy and International Institutions," in S. Besson and J. Tasioulas, eds., *The Philosophy of International Law* (Oxford: Oxford University Press, 2010), 119–37.

and certain institutional restrictions on unfair bargaining are imposed. However, the accessibility of this model is problematic given the existing global inequalities in economic and political power. Still, Christiano thinks that it is overall better to work toward realizing this model than to pursue another, more ambitious model of "global democracy" calling for the legitimation of the international global order through a global parliament with representatives of constituencies of individuals. This model faces insurmountable problems. The most serious are these. First, democracy is a valid ideal for institutions only if those bound by them have roughly equal stakes in their decisions. This condition is met by modern states but not by international institutions. (For example, some countries are much more involved in international trade than others.) Second, there is not enough in the way of an international civil society (in terms of political parties, interests groups, and media outlets) to establish a sufficiently meaningful communication between global institutions and individuals across the world. Again, the contrast with the domestic case is too deep.

I think that Christiano is right that we should pursue some version of the fair democratic association model (and that we should do it for the reasons he states). But his rejection of global democracy is too quick. First, the condition of equal stakes could be met by a global parliament if its remit is properly circumscribed.[37] Importantly for our discussion, it could be focused on legislating on conditions on any *other* international institution (such as the WTO) so that its activities are consistent with the promotion and protection of *human rights*.[38] Everyone has a strong and equal stake in that. And international institutions directly representing individuals rather than states are appropriate here because it is the former, not the latter, that have human rights.

Second, the problem of weak civil society could be progressively resolved over time. The current process of globalization is already generating many forms of supranational political action, forums, and organizations. This could

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[37] Another possible response would rely on a proportionality view of democratic rights. According to this view, some may be entitled to more say on a certain issue to be decided upon than others if they have greater stakes in it. Global democratic arrangements giving different say to different people could then be argued for. On this view, some form of global democratic governance would be appropriate because some issues importantly affect everyone in the world, although since some would have greater stakes in some of those issues than others, rights of political participation in decision-making would not be strictly equal with respect to all global issues. On the proportionality view, see Harry Brighouse and Marc Fleurbaey, "Democracy and Proportionality," *Journal of Political Philosophy* 18 (2010), 137–55. For a response to Christiano that develops this view, see Laura Valentini, "No Global Demos, No Global Democracy? A Systematization and Critique," *Perspectives on Politics* 12 (2014), 789–807, at 795.
[38] On the human rights focus for global democratic governance, see also Carol Gould, *Globalizing Democracy and Human Rights* (Cambridge: Cambridge University Press, 2004), 178, and Habermas, *Europe: The Faltering Project* (Cambridge: Polity, 2009), ch. 7.

be accelerated by the creation of a global parliament focused on human rights, whose presence and action would create an incentive for the creation of new arenas of international civil society. That parliament could at first be only deliberative and perform tasks of recommendation, and develop the power to yield binding regulation only later on, when international civil society thickens to a sufficient degree. Interestingly, this progressive pursuit of a circumscribed global parliament might have positive interactions with the pursuit of the conditions for fair bargaining within the inter-state association. The former could press for action to remove conditions of extreme vulnerability, and thus bolster the negotiation power of the excluded or exploited.

Two key ideas underlying the position I am suggesting concern (a) the natural duties based on the cosmopolitanism of human rights and (b) the dynamic and long-term nature of the political practice they ground. Consider (a). If we owe equal moral concern and respect to every human being (given their status-dignity) at least when it comes to the fulfillment of their human rights, then the idea of an "international order" invoked in Article 28 of the Universal Declaration should be interpreted as demanding not only the reform of existing international institutions but also the creation of new ones (when this can be done at reasonable cost) which will *respond* to the pre-existing equal stake of every person in (either existing or feasible to create) institutions supporting their achievement of condition-dignity. Such institutions should be democratic in order to target that goal—and the three dimensions of democracy discussed in this chapter point in that direction.

Turn now to (b). Global institutions focused on human rights, if they include the third, epistemic dimension of democracy, will help us navigate more lucidly the uncertainties concerning what is the most reasonable way to protect human rights in the world. Given the first and the second dimensions, they will also make such protection lose the aura of unilateral imposition that human rights policies sometimes have in contemporary politics. They would constitute a form of global egalitarian empowerment through which the members of the global community of human beings (and there always is such a community from the moral point of view) pursue, in an autonomous way, the fulfillment of the human rights of each.

10.3.3. The Pursuit of Non-basic Global Justice

The previous discussion concerns human rights and basic global justice. But the pursuit of basic global justice affects the pursuit of non-basic global justice in important ways.

First, the generation of institutions and practices of supranational democracy (of the two kinds discussed) provide a *political bridge* between the pursuit of basic and non-basic justice. A world where basic global justice is achieved is one in which people have a floor of dignity to stand on. That floor is also a *floor of power*, as these people are in control of the political shape of their social world, both domestic and international. That power gives them the capability to explore together, on fair terms, the issue of whether global justice involves more than human rights, and if so what. The three aspects of democratic empowerment are important for this exploration: the exploration can be undertaken by those who will be subject to its results, whoever makes decisions on the implementation of emerging proposals will be accountable to those subjected to them, and everyone will have effective opportunities to improve through political experience and public deliberation everyone's epistemic grasp of the practical alternatives and their likely consequences on agents placed in different circumstances.[39]

The global fulfillment of human rights, including an HRD, constitutes a bridge in the movement from basic to non-basic global justice. But secondly, although human rights are only a proper subset of the demands of global justice, they rely on ideas that can, and arguably should, be developed further at the level of non-basic global justice. I conclude by suggesting the importance of two such ideas: cosmopolitanism and humanism. Both points can be seen as flowing from one of the key roles of the idea of human dignity identified in chapter 5, which concerns the universalism of human rights theory and practice. First, human rights mark the entrance of cosmopolitanism into domestic and international politics.[40] This has an important consequence for the kinds of duties the pursuit of basic justice should involve. Those duties should be not only agent-relative but also agent-neutral: human rights in the cosmopolitan sense should be respected and promoted by everyone toward everyone else. Duty-bearers may have responsibilities to right-holders whether they are intertwined in certain associative ventures or not. There are pro tanto duties to promote human rights with strictly universal scope. This prompts the hypothesis that there are some duties of non-basic global justice that also have

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[39] For another argument that securing human rights and fair global governance provides an appropriate starting point for the pursuit of global justice, see Rainer Forst, *The Right to Justification: Elements of a Constructivist Theory of Justice* (New York: Columbia University Press, 2012), ch. 12; and "The Ground and Point of Human Rights: A Kantian Constructivist View," in David Held and Pietro Maffetone, eds., *Global Political Theory* (Cambridge: Polity, 2016), 22–39. My argument is compatible with Forst's, but it is different because it does not rely on a constructivist approach to justice. For another important recent discussion about the significance of an HRD for processing political disagreement in a dynamic way, see John Dryzek, "Can There be a Human Right to an Essentially Contested Concept?" *Journal of Politics* 78 (2016), 357–67.

[40] Cosmopolitanism is the moral view that all individuals are ultimate units of equal moral concern and respect for everyone. See Pogge, *World Poverty and Human Rights*, 175.

a cosmopolitan nature. This point is already part of the practice of global movements focused on introducing and deepening democracy.[41]

   Second, and relatedly, the pursuit of non-basic global justice may also inherit the humanism of human rights (that is, the view that some claims are based in our shared humanity). Consider global economic justice. It may be worth entertaining some pro tanto demands of global economic equality in which certain conditions for human flourishing that all human beings have reason to value (such as advanced forms of health care and education) are pursued—whether their promotion occurs amongst those who already share associative frameworks or not. Once we acknowledge universal socioeconomic humanist rights with a sufficientarian target, why not acknowledge some universal egalitarian entitlements?

   Of course, I am not here attempting to show that these two suggestions about how the cosmopolitanism and humanism flowing from the dignitarian approach to human rights might shape the pursuit of non-basic global justice are true. The aim is simply to suggest that these are relevant hypotheses to explore. And the political conditions for such an exploration, as I have argued in this chapter, are precisely one of the achievements that the fulfillment of an HRD would deliver for all. The central conclusion is, then, that the fulfillment of the human right to democratic political empowerment is crucial for the pursuit of global justice.

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[41] E.g., the pursuit of democratic empowerment occurs in countries moving away from non-democratic rule, as in the recent Arab Spring. It also seeks to deepen democracy in countries that already have democratic institutions but face the domestication of the political process by the rich, as illustrated by the recent Occupy movement in the United States. Furthermore, and interestingly, the Occupy movement campaigned in solidarity with democratic movements in other countries. These movements converge in calling for democratic governance both at the domestic and international level. E.g., the manifesto "United for # Global Democracy" said in 2011 that "Undemocratic international institutions are our global Mubarak, our global Assad, our global Gaddafi. These include: the IMF, the WTO, global markets, multinational banks, the G8/G20, the European Central Bank and the UN Security Council. Like Mubarak and Assad, these institutions must not be allowed to run people's lives without their consent. We are all born equal, rich or poor, woman or man. Every African and Asian is equal to every European or American. Our global institutions must reflect this, or be overturned." See http://www.guardian.co.uk/commentisfree/2011/oct/14/manifesto-global-regime-change.
   A further clarification: The cosmopolitan duties (and the humanist ones mentioned in the next paragraph) are pro tanto because they can be limited by considerations of feasibility and reasonable costs, and because they have to be weighted against agent-relative and associative duties, which can sometimes (perhaps often) be stronger. (Notice that agent-relative and associative duties may rely on the generic value of certain special relationships, and be thus significant even from the cosmopolitan and humanist point of view.) For explorations of cosmopolitanism and humanism in relation to human rights and egalitarian distributive justice, see Pablo Gilabert, *From Global Poverty to Global Equality: A Philosophical Exploration* (Oxford: Oxford University Press, 2012).

11

Minimalist versus Expansive Views of Human Rights: Dignity and the Arc of Humanist Justice

11.1. INTRODUCTION

There is an ongoing debate in the philosophy of human rights about how minimalist or expansive human rights should be taken to be. Human rights documents include references to quite ambitious socioeconomic rights (such as access to high levels of health care and vacations with pay) and quite robust political rights (including, on some interpretations, a right to democracy). The documents do not mention any explicit threshold regarding how far human rights requirements can go. And non-governmental human rights activists have tended to endorse expansive views. Some philosophers argue, however, that there should be a threshold that keeps those requirements relatively minimal. Others think that an expansive outlook is preferable. What explains this disagreement? What kind of argument (drawing on what aims and criteria) might settle the dispute? To answer these questions, we need to engage in moral and philosophical reflection about human rights. It is not enough to merely describe how the legal and political practice of human rights proceeds. That practice may be contradictory, including both minimalist and expansive views. And we do not only seek consistency. We seek a picture of human rights that is ethically sound and worthy of our practical allegiance. In this final chapter, I explain how the dignitarian approach can help us develop that picture, supporting a *two-tiered, dynamic humanism* that enables us to arbitrate the debate between minimalist and expansive views of human rights. After a critical survey of eleven arguments for minimalist accounts of human rights, the chapter endorses a moderate form of expansivism casting human rights as basic claims that cover the most urgent requirements of human dignity. Elements of egalitarianism (in particular regarding political rights) are part of this picture. However, a wider and more ambitious set of egalitarian demands of humanist justice that go beyond human rights (such as democratic

socialism) is also seen as flowing from the dignitarian perspective, and its significance for the contemporary political context is explored.

11.2. MINIMALISM ABOUT HUMAN RIGHTS: A CRITICAL SURVEY

We can begin our philosophical exploration by surveying some arguments that have been given to embrace minimalism. I will critically assess these arguments, and, in the process, assemble considerations that will be relevant to offer my own view (to be stated in section 11.3).[1]

(1) *Hard feasibility*. The first argument against expansive views of rights is that they defy feasibility. Ambitious statements of rights, especially socio-economic ones, do not present rights because their associated requirements cannot be universally fulfilled. Many countries simply lack the necessary economic resources to provide people with what they require. Rights imply duties, and the infeasibility of the fulfillment of the latter defeats the existence of the former. Maurice Cranston provided a version of this challenge, recommending that human rights doctrine concentrate on civil and political rights, which, he thought, were feasible to implement universally.[2]

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[1] This critical survey does not pretend to exhaust all the possible positions. I should note that there are different issues regarding which norms could be more or less maximal or minimal. They concern:

    (a) The kinds of object involved in them (e.g., conditions or goods making up basic decency or flourishing).

    (b) The specific objects required within the relevant kinds (e.g., certain economic resources, civil liberties, political liberties, etc.)

    (c) The kind of relation to the objects that the norms would require support for (e.g., formal opportunity to enjoy them, capability or access to them, etc.)

    (d) How much of the selected relation to the objects is supported (e.g., to a sufficient amount of it, the totality of it that is feasible, etc.).

    (e) The distributive structure, identifying a comparative standing of different persons in their claims to the objects under the implementation of the norm (e.g., an egalitarian scheme supporting the same access to conditions or goods for each, a prioritarian scheme giving greater weight to the access by the worse-off, an aggregative scheme maximizing the sum or average of advantage of all, etc.).

    (f) The characterization of the individuals who benefit from the scheme (e.g., as citizens, as human beings, etc.).

Many of the possibilities envisaged in this list are engaged in the text of this section. But the exploration could go further (and the list itself could be extended). I hope that my discussion will be sufficient, however, to motivate the introduction of the position presented in section 11.3.

[2] Maurice Cranston, "Human Rights, Real and Supposed," in P. Hayden, ed., *The Philosophy of Human Rights* (St. Paul: Paragon House, 2001), 163–73.

There are three problems with the view underlying this challenge. First, it ignores the importance of international cooperation. In fact, human rights documents already explicitly require it. Richer countries can help poorer countries when the latter are not able to fulfill certain rights on their own. Second, human rights focus not only on the here and now. They also frame political agendas for the medium and long term. In this way, they justify the adoption of developmental policies that take the fulfillment of socioeconomic rights as priorities. If certain rights cannot be fully fulfilled now, this does not mean that they have no normative traction. If they could be fulfilled in the future if we take certain steps now to expand our political and economic capacities, then we may have dynamic duties to engage in such an expansion. Again, human rights documents can already be interpreted as affirming this perspective when they invoke the idea of "progressive realization." Finally, the massive economic changes that have been taking place over the last few decades make it less and less credible to say that there are not enough resources to fulfill expansive socioeconomic rights. Increasingly, the problem is not so much economic inability as political unwillingness.[3] A universalist agenda of solidaristic empowerment is what is needed.

(2) *Soft feasibility.* The feasibility challenge can be presented in less stark terms. Although the fulfillment of some ambitious rights is perhaps not strictly impossible, it may still be quite improbable. Existing economic, cultural, and political circumstances may impose serious obstacles that are extremely difficult to overcome. Expansive views of human rights are thus hopelessly naïve or utopian, even if what they envision is not impossible.

This challenge is not sufficient to defeat ambitious requirements. Since it is based on relative improbability rather than strict impossibility, it does not engage the sharp-edged principle that ought implies can (and thus does not trigger contrapositive debunking of ought claims). When certain requirements are difficult rather than impossible to fulfill, the correct response may be to try harder rather than to drop them from our political agenda. The idea of dynamic duties applies here even more pressingly than in the case of hard but temporary infeasibility mentioned above. In general, scalar, soft feasibility obstacles are important but insufficiently strong, on their own, to affect the

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[3] These points are developed in detail in chapter 3 of this book. References to international cooperation and to "progressive realization" arise in the Preamble and Articles 22 and 28 of the Universal Declaration of Human Rights (UDHR), and Articles 2.1, 11.2, 13.2, 14, and 23 of the International Covenant on Economic, Social and Cultural Rights (ICESCR). This commitment is also included in the United Nations Charter, which is central to modern international law. An important additional response is that the alleged contrast between civil and political rights, on the one hand, and socioeconomic rights, on the other, is artificial. It is not true that the former rights involve only negative duties that are relatively easy to fulfill. They also involve positive duties of protection and enablement, which are often quite expensive to implement. See Henry Shue, *Basic Rights*, 2nd ed. (Princeton: Princeton University Press, 1996), ch. 2.

content and weight of normative proposals.[4] They make a real difference only if they are mobilized in tandem with other, evaluative considerations about the opportunity costs of not pursuing alternative prospects. I will return to the significance of this kind of combination below.

   (3) *Non-generalizability*. Certain proposed human rights that present ambitious claims might be rejected by saying that they are not generalizable. The non-generalizability challenge can take several forms. It could say that the proposed rights could not generally be implemented. In this version, the challenge would be a variant of some of the two feasibility worries mentioned above. The challenge might alternatively say that regardless of whether the proposed rights could be generally implemented, it would not be advisable to see their implementation as a right, either because in some contexts this implementation would impose unacceptable costs on duty-bearers or because it would not be responding to significant problems that people in those contexts face. For example, it has been recently proposed that we acknowledge a human right to legroom in economy seats in airplanes that are not too constraining.[5] This may seem to be irrelevant in contexts where airplanes do not exist (say, in the nineteenth century), or where they exist but are not an important form of transportation for most people (say, in contemporary Bolivia as contrasted with the contemporary United States).

   To respond to this worry, we should deploy the important distinction between abstract and specific human rights discussed in chapter 2 of this book. The former hold in all (or most) contexts of social life, while the latter need not do so, and the former are important in the justification of the latter. The access to sufficient legroom in commercial airplanes is a fairly specific right that is not generalizable across many contexts, but it may be based on abstract rights that are generalizable. Thus, advocates for the specific right draw on important abstract rights such as freedom of movement or, more plausibly in this case, safety (when there is too little space between seats, it is harder to evacuate an aircraft in an emergency). Similar abstract considerations were successfully used to argue for better travel conditions in ships. There is a further theoretical question about how "general" rights must be to be deemed human rights. For example, should they hold in every society across time and space or only in modern societies including a state? I will return to this issue below, but for now the important point is that the consideration of this question must be qualified by distinguishing between abstract and specific human rights: the latter are derived human rights whose application may be fairly circumscribed without this counting against them.

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   [4] The difference between scalar and binary feasibility is discussed further in appendix 2.
   [5] Christopher Elliott, "Airplanes' space wars are shifting to the human rights front," *The Washington Post*, September 17, 2015. I thank Adam Etinson for this example (and for discussion on several issues in this chapter).

This point allows us to respond to several non-generalizability challenges by saying that they fail to approach their target appropriately: they judge specific rights by reference to criteria only applicable to abstract rights.

(4) *Rights versus goals.* Some alleged rights could be rejected by downgrading them to the category of goals or ideals. Thus, some statements in human rights documents—for example, regarding socioeconomic rights—are really statements of goals. The latter, unlike the former, do not tell us what exactly is to be done, and who is wronged by whom when what is called for is not done.[6]

As we saw in chapter 3 when discussing an incarnation of this kind of worry, there are some goals that have the status of obligatory goals, and when they do they function very much like rights by generating high-priority duties to fulfill them. Furthermore, some rights behave like goals in being somewhat indeterminate as to what exactly their realization requires. Second, rights, like imprecise goals, can be imperfect. To test compliance, we can ask whether agents are fulfilling any of the options which the imprecise goals or rights comprise once stated as a disjunctive requirement. For example, a right to health care against a state (or a state's goal to deliver it) may, in a certain context, be specified by stating a disjunction between various health policy packages the state could feasibly and reasonably implement. Even though state agents have latitude to choose any of those packages (assuming that not all can be simultaneously implemented, that they are equivalent in moral significance, and that they do not go below what is required, all things considered), they cannot be judged as violating the right (or failing the goal) if they do not choose this or that package, but they can be so judged if they choose none of them. Third, while imprecise goals and rights can and often should be made more precise through institutional articulation, it is sometimes a good idea to formulate the most general statements of certain goals or rights in a way that renders them somewhat indeterminate, to allow for various relevant agents to formulate different implementations that are fitting for their specific contexts. Ambitious rights are best pursued in this way, giving considerable flexibility in the policies implementing them. This allows political agents to respond lucidly to new circumstances, and to navigate disagreement in creative and effective ways. We should not let settled views about some implementation schemes blind us to other possible schemes that might cater for the same core concerns in ways that are more appropriate to new problems, or which may be shared with other people who have similar core concerns, face similar problems, but disagree with existing institutional schemes.[7]

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[6] For the objection, see Maurice Cranston, "Human Rights, Real and Supposed," 172. For a discussion of its use to downplay the importance of labor rights in national and international policies, see Alain Supiot, *L'Esprit de Philadelphie* (Paris: Seuil, 2010), ch. VI.

[7] For further discussion of how imprecision and imperfection of duties and rights can be approached, see Pablo Gilabert, "Justice and Beneficence," *Critical Review of International Social and Political Philosophy* 19 (2016), 508–33.

(5) *Principled minimalism 1: libertarianism.* Quite independently of whether some socioeconomic rights can be fulfilled, a challenge to expansive approaches is that they are morally unjustified. One form of this challenge relies on the view that the only rights worth recognizing are the negative ones to avoid interference by others with our freely chosen pursuits and in the use of our property (so long as that pursuit, and the acquisition of that property, do not unduly interfere with a similar pursuit of others, or with their own property rights). There are no fundamental positive rights to assistance, however minimal or demanding (even if there may of course be derivative rights to assistance arising from previous promises, contracts, and the due compensation for the violation of negative rights).[8] Expansive views of human rights fail because they typically allege that people have a plethora of positive rights (to be helped regarding access to employment, health care, and so on).

This challenge is as plausible as the libertarian political philosophy it depends on. Very powerful objections to that philosophy have been offered.[9] I think that the objections are decisive, and I will not rehearse them here.[10] So, although I recognize that there is a substantive debate about its libertarian premises, for the purposes of my discussion here I will assume that this objection fails. In any case, I have already argued in this book that the dignitarian approach generates both negative and positive duties, that we do not fully respond to the dignity of others if we acknowledge that it is an injustice to destroy or block the development of the valuable capacities that give rise to people's status-dignity but deny that it is also an injustice to be indifferent and fail to facilitate their unfolding and exercise.

(6) *Principled minimalism 2: toleration and national self-determination.* According to another challenge to expansive approaches, we should distinguish between human rights proper and liberal aspirations. Some demands, such as political equality, should not be considered human rights. To regard those expansive demands as human rights would be to invite interventionist policies that would threaten the national self-determination of peoples whose political organization is quite decent even if it is not liberal. Above a certain minimal set of demands (including, for example, subsistence and basic political consultation), different peoples should be internationally tolerated. This view has been defended by John Rawls, and refined by Joshua Cohen—who also, usefully, distinguishes this minimalism from an even more modest

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[8] Defenders of this approach include Robert Nozick, *Anarchy, State and Utopia* (New York: Basic Books, 1974) and Jan Narveson, *The Libertarian Idea* (Philadelphia: Temple University Press, 1988).

[9] G. A. Cohen, *Self-ownership, Freedom, and Equality* (Cambridge: Cambridge University Press, 1995).

[10] For a development of some of them in the context of socioeconomic human rights, see Pablo Gilabert, *From Global Poverty to Global Equality: A Philosophical Exploration* (Oxford: Oxford University Press, 2012), ch. 3.

position, "ultraminimalism," which for example takes human rights to only protect people's life.[11]

This challenge relies on a mistaken view of human rights as triggers of international intervention. As others have shown,[12] this approach leads to drastic surgery within the set of generally recognized human rights, implying that many of them (prominently, equality rights protecting women from discrimination) should be taken out of the human rights agenda. But the political roles of human rights are much less narrow. For the most part, human rights link up with forms of political action that fall well short of foreign intervention. They include domestic protest, strikes, criticism in civil society, revisions in executive policy, the issuing of new laws, judicial review, and constitutional reforms. They also include regional and global criticism and economic and political incentivizing by foreign states and individuals. Furthermore, and remarkably, the approach implicit in the challenge diverges strongly from the ongoing practice of human rights, which is far from being minimalist in this way. This is a serious defect in a philosophical view that takes pride in building on the practical standpoint of actual agents involved in human rights politics. Finally, it is problematic to tolerate non-democratic regimes that do not tolerate, and in fact suppress, the self-determination of their own members. If what grounds toleration is deference to the liberty of others to be protagonist of their own social life, then regimes that disenfranchise their subjects should be criticized, not given equal status. Criticism need not lead to military intervention, of course, although it should motivate proportionate, feasible, and respectful forms of pressure.

Issues regarding soft feasibility become relevant here (but should be distinguished from normative challenges alleging the moral defectiveness of certain principled demands). Some specific requirements of economic justice may be appropriate for some economies but not for others because of their different levels of development. Think about rights regarding access to some forms of technologically advanced health care. Some specific cultural or political rights might be appropriate for some societies but not for others because of their diverse historical trajectories and features. Think about the extent to which national subgroups within a political community should be given institutional recognition and allowed to structure their legal frameworks independently. These points may be couched in terms of the importance of general concerns regarding self-determination and respect for diversity and the exploration of

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[11] John Rawls, *The Law of Peoples* (Cambridge, MA: Harvard University Press, 1999). Joshua Cohen, *The Arc of the Moral Universe* (Cambridge, MA: Harvard University Press, 2010). For the ultraminimalist position, see Michael Ignatieff, *Human Rights as Politics and as Idolatry* (Princeton: Princeton University Press, 2001).
[12] James Nickel, *Making Sense of Human Rights*, 2nd ed. (Oxford: Blackwell, 2007), 98–103. I owe special thanks to Jim Nickel for discussion on many of the issues addressed in this chapter.

feasible ways to cater for them in different contexts. An example is the claims to self-determination on the part of indigenous peoples in postcolonial settings.[13] If they meet some constraints of fairness and respect, they can be recognized by a conception of human rights that distinguishes between abstract and specific rights and pays attention to dynamic change in social history. The approach to human rights developed in this book does these things.

(7) *Currency devaluation.* This is a popular charge. It raises the worry that the more we pack into the currency of human rights, the weaker that currency becomes. Despite its popularity, this challenge is not very powerful. To pursue the monetary analogy, one may purchase more with a lot of units of a weaker currency than with very few units of a harder one. Devaluation does not always dilute purchasing power overall. An economy may become more competitive (exports-wise) if it devalues its currency. Similarly, more moral value may be served overall if a more ambitious agenda of rights is pursued. Even if fewer cases of each requirement that is enshrined in the doctrine are implemented, the presence of more requirements could lead to more morally desirable action being undertaken overall. To use another analogy, a coarser but bigger net may catch more fish than a tighter but smaller one. Furthermore, and importantly, we can make consequential distinctions within the set of human rights. We can identify stronger, or more urgent, and weaker, or less urgent, subsets of them. The net may be tighter in some parts, or be tightened when fishing in some areas.

I think that the devaluation challenge gets whatever plausibility it has from the ideas that we should not make every morally desirable outcome a subject of human rights demands, and that we should retain the common view that human rights are particularly urgent demands.[14] I will in fact develop these points below. But the challenge based on the currency analogy is just too unspecific to capture them. It provides no guidelines for determining what properly belongs in the domain of human rights, and, worse, it generates a thoughtless tendency to reject proposals of inclusion on a merely quantitative preference that "less is better."

(8) *Associativism.* On some views, we should distinguish between human rights and social justice in the following way. Requirements of social justice are triggered only within certain associative settings, in particular those involving

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[13] Interestingly, some uses of the idea of dignity arise precisely in the characterization of the collective claims to self-government by some groups like indigenous peoples. See appendix 1, (vii).

[14] The ground for this common view is partly a pragmatic one about how to motivate people to act to fulfill certain claims. As Julio Montero pointed out to me, "the practical power of human rights seems to rely in part on the fact that they track—or people think they track—egregious moral wrongs. If we adopt an extremely wide definition of them and almost every injustice becomes a human rights violation, the holes in the net may become too big to catch any fish even if it is wider."

a shared economic system or a shared state. Human rights, on the other hand, apply more broadly, irrespective of such common ties. Now, many ambitious putative human rights are in fact associative claims that belong only to social justice, and should thus be excised from human rights discourse. This is especially the case with some heightened socioeconomic claims that go beyond subsistence, such as those regarding opportunities for high-quality jobs and to more or less egalitarian shares in income or wealth.[15]

The associativist view of distributive justice can be challenged, and has been. I (in previous work) as well as other philosophers have defended cosmopolitan and humanist articulations of some ambitious principles of global distributive justice that hold independently of associative ties.[16] I will not rehearse the relevant arguments here, but their upshot for our present discussion would be that the associativist challenge fails in so far as it is not the case that if a right is not associative it must be comparatively minimalist. The distinction between associative and non-associative rights and the distinction between minimalist and expansive rights are orthogonal to each other. Quick inferences from one to the other are suspect.

(9) *Chastened utopianism.* A source of pressure toward minimalism may come from people for whom human rights are the "last utopia," the political outlook to be embraced once more ambitious utopias, such as socialism or communism, have failed. Some disillusioned leftists have turned to human rights in this way. The pressure toward minimalism may arise out of an attempt by these chastened utopians to keep human rights distinct from the more ambitious, but failed, agendas of deep social change.[17]

It is worth noting, however, that chastened utopianism may lead in fact in the opposite direction, toward expansivism. The disillusioned may try to pack into the category of human rights as much as they can salvage of the more ambitious utopias they have given up.

In any case, I am not swayed by this line of thought. I would not attach so much weight to failed experiments of the kind pursued in the Soviet Union. I do not see more desirable ambitious utopias such as democratic socialism as having been defeated. No large-scale attempt to implement them has been performed. They remain untested. On the other hand, I do not worry very much about construing human rights in less than fully maximal terms. One reason for this, which is linked to the current discussion, is that I do not think

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[15] Thomas Nagel's approach to global justice may be interpreted as presenting a view of this kind. See Nagel, "The Problem of Global Justice," *Philosophy & Public Affairs* 32 (2005), 113–47.

[16] See, e.g., Simon Caney, *Justice Beyond Borders* (Oxford: Oxford University Press, 2005); Kok-Chor Tan, *Justice Without Borders* (Cambridge: Cambridge University Press, 2004); Gilabert, *From Global Poverty to Global Equality.*

[17] On the downsizing of leftist agendas to human rights as the "last utopia," see Samuel Moyn, *The Last Utopia* (Cambridge, MA: Harvard University Press, 2010).

that the more maximal demands would have to drop out of view if we adopted a less than maximal construal. As I see dignitarianism and humanist justice, they justify maximal requirements regarding the conditions for a flourishing life. I do not feel the need to pack everything under the category of human rights as if it were the last utopia. It is not. I have also explored, and will continue to explore, the broader and more ambitious requirements of socialist justice as part of what dignity and humanist justice embrace. Socialist utopianism is worth preserving.

So, if we have sympathy for the ambitious ideals of democratic socialism, we have in fact several options, which include more or less expansive views of human rights. We could go maximally expansive by seeing human rights as coextensive with socialism. Alternatively, we could think that the full realization of the socialist ideal is not within reach, but that what is reachable should be couched in terms of a different register of discourse that is more readily embraced by the masses. This would be a version of the "chastened utopia" approach, but one that could consistently construe human rights in quite ambitious terms. Another, likely less expansive, but not strictly minimalist, attitude is to think that we should not give up the ambitious socialist utopia as such, but see it as the long-term horizon for progressive political transformation. We could then identify human rights as the subset of this utopia that includes the most urgent demands for the short to medium term. This leads me to the next point.

(10) *Relative urgency or high priority*. Human rights are often seen as a subset rather than as the whole of justice. What makes human rights distinctive demands of justice is, at least in part, that they are especially urgent or are relatively high in the order of normative priority.[18] Some ambitious claims (such as that every person should have equal initial shares in productive assets) are not urgent in this way. So we should see human rights as relatively modest in the sense of focusing only on especially urgent claims that have priority when compared to other, more ambitious requirements.

It is not clear how we should go about identifying a claim as "urgent" or as having "high priority." What are the criteria? At first pass, we can intuitively characterize urgency as a matter of a combination of four considerations. First, urgent rights support claims of great moral importance. Second, they are claims whose fulfillment has a relatively high score of scalar feasibility prospects. Third, that fulfillment is one which can be achieved at reasonable cost to the relevant duty-bearers. And, finally, the fulfillment is time sensitive, in that it may not be deferred (it must be undertaken now or as soon as possible). So, for example, securing a right to subsistence or against murder would readily satisfy these considerations: it is highly morally important, is clearly workable

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[18] See, e.g., Nickel, *Making Sense of Human Rights*, 9–10.

in practice, no unreasonable costs would have to be involved, and it must be achieved as soon as possible.

I endorse a *moderate form of non-maximalism or of expansivism* that takes human rights to be urgent in this sense. This view is not maximalist because it does not collapse human rights into justice (that is, it takes the former to be a subset of the latter). But this non-maximalism is moderate because it is not strictly speaking minimalistic. There are three important ways in which it does not conflict with normative ambition. First, it is straightforwardly compatible with the view that we could retain rather than drop more ambitious require-ments of justice (avoiding chastened utopianism). We can, for example, advocate both human rights and democratic socialism. Second, we could maintain that what is relatively urgent can change over time. For example, some specific human rights demands may be unrealistic now because their general implementation faces serious feasibility obstacles, or imposes overly onerous burdens on many people, but they could become much more feasible to fulfill in the future as a result of new technological developments, and become urgent at that point. In chapter 9, we explored this point as applied to labor rights. Another example is health care technology. Some medical treat-ments which are now easily and cheaply applicable to most people who need them were not so in the past. And this changes continuously. Finally, the domain of the rights that have high priority could include more than extremely minimalist claims regarding subsistence and security. As shown in chapters 9 and 10, robust political liberties (including democratic rights) and socioeco-nomic entitlements (including strong labor rights) could be shown to be fairly urgent. Given these three considerations, my view can be labelled as *moderate expansivism* just as much as it can be labelled *moderate non-maximalism*.

(11) *Perfectionism and particular views of the good.* I will outline the moderate non-maximalist or moderate expansivist position in section 11.3 by linking it to the substantive concerns arising from the dignitarian approach. But before doing that, let me mention a final challenge to maximalism, according to which if we focus on a maximal list of goods as objects of human rights, then we may end up passing quite controversial judgments about the specific components of a good or flourishing life. People disagree about what makes for a flourishing life. These disagreements may be reason-able, and we should let people choose their own paths without invasive public scrutiny and interference. If we focus on a minimal set of goods, we can justify them as general purpose means in the pursuit of different particular concep-tions of the good. We can then require access to these means without having to enshrine any of the contentious ends.

I think that there is merit to this line of argument. But we should be careful about its development. According to a version of it, human rights should focus on securing a minimally decent life, not a flourishing life. This view identifies a threshold of decency as referring to whatever is necessary for people to

pursue any goals whatsoever.[19] This is different from being able to actually succeed in the pursuit of specific goals one chooses. Those specific goals concern flourishing rather than mere decency, and cannot be specified without controversial judgments about the good.

This view faces some problems, however. Very few goods can truly be assumed to be *necessary* for the pursuit of *every* goal (or even *most* of them). Most goods will at most be *strongly contributory* to the pursuit of *some* goals. Take access to formal education. A person can pursue many significant goals (concerning, for example, friendship or religion) without going to school. It will be difficult for this person to achieve some important goods without education. But this is not the same as saying that it is impossible. Furthermore, if we want the account of the threshold to yield a list of human rights of the sort we already accept (and which is affirmed in human rights documents, more or less), the view under discussion would be problematic in that it will justify far fewer rights. Finally, it is not clear that we can do without judgments about the good, even controversial ones. Some goods will be more important than others, and this will bear on the selection of appropriate means enabling access to them. It is true that it is useful to make distinctions between goods that enable the pursuit of various other goods without saying much about the significance of the latter. We want to be able to distinguish between a good like food and a good like a plasma TV. Clearly human rights (at least as I write this paragraph) should include the former, and need not include the latter. But some other goods such as education seem to lie in between: they are not strictly necessary for pursuing every other good, and they are not the object of desires whose satisfaction involve very particular conceptions of a good or flourishing life. These intermediate goods strongly support agents' ability to fulfill many goals, but may not be strictly necessary for achieving many (or perhaps even any) of them, and they may be irrelevant regarding some other pursuits. But some of them might be excellent candidates for objects of human rights norms. Their defense involves potentially controversial claims about the good. And their specific articulation may involve judgments about the good which are even more controversial. Think about the question of what items to include in the curricula of public education.

I think that the kernel of truth in the rationale for minimalism under discussion is that we should support people's ability to freely pursue their good life as they see it (within some constraints of respect and concern for others). To do this, we do well to enshrine fairly extensive civil and political liberties, and whatever socioeconomic conditions are strongly contributory to people's capability to exercise those liberties in a robust way. The result is a set of requirements that is *not* very minimalist. However, it might still fall short of

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[19] I thank Massimo Renzo for discussion about this view.

systematic public enshrinement of particular and highly controversial judgments about the good life. What is key, here, is to target robust support for people's autonomous pursuits—including, crucially, equal political liberties to process disagreements about the good in a fair way when some judgments about the good life are unavoidable for public policy (such as those regarding what opportunities for education, or of labor activities, to secure). Empowerment to cement effective freedom to pursue various conceptions of the good can itself be more or less profound, and this constitutes a space of considerations within which the distinction between human rights and more extensive requirements of social justice can be developed.

11.3. A TWO-TIERED, DYNAMIC HUMANISM

In this book, I have been suggesting that we should embrace a capacious view of the demands of humanist justice that includes both human rights and social justice. We can take human rights as focusing on certain relatively urgent requirements of humanist justice, and see broader claims of social justice as capturing the complement. We should also pay attention to the fact that feasibility parameters can change over time, so that what is not urgent now may become urgent in the future. In fact, we can *make* certain practices and institutions (more) feasible in the future in order to cater for our ambitious ideals. Certain rights that are now infeasible, or have relatively low feasibility, can in this way be made feasible, or more feasible to implement, over time.

To capture these points, I suggest that we adopt a *two-tiered, dynamic humanism*. This approach justifies a *moderate form of non-maximalism or of expansivism* regarding human rights. It recognizes that human rights are only a part of humanist justice—viz. the most urgent subset of it. But this self-limitation is moderate because the approach is attuned to the dynamic nature of feasibility constraints, and to the continuity between human rights and more ambitious humanist ideals and rights. It recognizes that the more ambitious demands might still be demands of justice, and it even has room for the possibility that some cases of them might become specific human rights in the future as the feasibility and costs of their implementation change (or are intentionally changed).

This two-tiered dynamic humanism accommodates some considerations speaking against expansive views of human rights. Although in section 11.2 I rejected most of those considerations, I acknowledged the significance of some of them. In particular, I agreed that it is important to single out, as a subset of principles with universal scope, some requirements which have especial urgency (given their relative moral importance, feasibility of fulfillment,

costs of implementation, and time-sensitiveness). I also agreed that it is important to allow people to chart their own course when it comes to the understanding and pursuit of their good life. On the other hand, the view I am proposing also makes contact with some reasons that have been given to embrace an expansive approach to human rights. Four important reasons of this kind are the following.

(1) *Qualified fidelity to practice*: Although in previous chapters I criticized uncritical acceptance of every aspect of human rights practice, I have also acknowledged that it is important for a conception of human rights to relate to what seems ethically correct in it. Now, it is remarkable that significant discursive instances within the political practice of human rights do not identify thresholds, and do not appear to be minimalist.[20]

(2) *Linkage arguments*: One way to justify some initially controversial human rights is by showing that they are necessary for, or (more realistically) strongly contributory to, robustly fulfilling other, non-controversial rights.[21] Now, it has indeed been argued that to secure (or to do all that must be done to support) the fulfillment of basic civil and socioeconomic rights, some more ambitious rights may have to be recognized and fulfilled. So, for example, civil and subsistence rights may not be secure, or as secure as it is reasonable to aim at, unless democratic rights are also fulfilled.[22]

(3) *Shaping the long term*: The role of human rights discourse is not only to identify the most immediately urgent requirements of justice, but also to shape a humanist agenda for the pursuit of global justice from now on.[23] A striking aspect of the politics of human rights is that it ushers into political discourse a form of sensibility, reasoning, and action that is sharply universalistic in orientation. Once an attitude of humanist solidarity gains traction, it is only natural that it will respond to needs

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[20] For sympathetic discussion of the lack of strict limits on human rights expansionism, see Charles Beitz, *The Idea of Human Rights* (Oxford: Oxford University Press 2009), 141–4; Eva Brems, "Human Rights: Minimum and Maximum Perspectives," *Human Rights Law Review* 9 (2009), 349–72.

[21] Henry Shue, *Basic Rights*; James Nickel, "Rethinking Indivisibility: Towards a Theory of Supporting Relations between Human Rights," *Human Rights Quarterly* 30 (2008), 984–1001; Pablo Gilabert, "The Importance of Linkage Arguments for the Theory and Practice of Human Rights: A Response to James Nickel," *Human Rights Quarterly* 32 (2010), 425–38; James Nickel, "Indivisibility and Linkage Arguments: A Reply to Gilabert," *Human Rights Quarterly* 32 (2010), 439–46.

[22] See, respectively, Jürgen Habermas, *Between Facts and Norms* (Cambridge, MA: The MIT Press, 1996) and Amartya Sen, *The Idea of Justice* (Cambridge, MA: Harvard University Press, 2009). See further chapter 10 of this book.

[23] Gilabert, *From Global Poverty to Global Equality*, Part II.

and interests of human beings that go beyond the avoidance of the worst forms of disadvantage.[24]

(4) *Dignitarian egalitarianism*: Finally, as I will explore more fully in the rest of this chapter, human dignity, which is a key ethical idea of human rights discourse, has an egalitarian dimension that includes but also reaches beyond minimal requirements.

We can retain what is appealing in these considerations without losing touch with the important concerns about relative urgency that justify the kind of moderate non-maximalism or expansivism I endorsed above.

To articulate the substantive difference, and continuity, between the two components of the two-tiered humanism, we can concentrate on the idea of human dignity as developed in this book. Recall that, according to the *dignitarian approach*, we have reason to organize social life in such a way that we respond appropriately to the valuable features of human beings that give rise to their dignity. That dignity is a deontic status in accordance to which people are owed certain forms of respect and concern. The relevant forms of respect and concern are stated by various norms, including human rights and requirements of social justice. These dignitarian norms can be articulated as specifying an *ideal of solidaristic empowerment*, according to which we should support everyone's pursuit of a flourishing life by affirming both negative duties not to destroy their valuable human capacities and positive duties to protect and enable their development and exercise.

Now, the distinction between basic and maximal rights is at once intuitive and obscure in its details.[25] We can say that the basic rights, which human rights affirm with global standing, are those the fulfillment of which provide reasonable and feasible support for people's access to conditions in which they lead decent lives, and these include, importantly, access to effective power (and an equal formal—e.g., legal—entitlement to it) to shape the terms on which their social life is structured. A decent social life is one in which you enjoy certain civil, social, and political rights: to pursue your conception of a good life, to basic material resources to effectively do so, and to participate in politics as a law-maker besides a law-taker. "Decency" is here a place-holder for the level of support for human capacities that constitutes the forms of condition-dignity that are most urgent.[26] We could also say that basic justice

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[24] See the discussion of the phenomenon of "dignitarian overflow" in chapter 6 (section 6.7) of this book, and the exploration of global egalitarianism in Gilabert, *From Global Poverty to Global Equality*, Part II.

[25] Stuart White, "Social Minimum," in Edward N. Zalta, ed., *Stanford Encyclopedia of Philosophy* (Winter 2015).

[26] James Nickel says that the demands of decency comprise four urgent claims: to have a life, to lead one's life, to avoid severely cruel or degrading treatment, and to avoid severely unfair treatment. See *Making Sense of Human Rights*, 61–6. These sound points can be articulated

tracks the conditions that must be in place for a social order to be legitimate. When those conditions are met, the members have content-independent reason to obey the order's rules.

But decency, and with it legitimacy, only identify a subset of what social justice requires. People may accept the authority of a social order while thinking that some of its rules are unjust and should be changed. Maximal justice can in turn be seen as also covering the further rules that the social order must generate if its structuring of the lives of its members is to be fully just besides legitimate. For example, basic justice might require that workers have access to freely chosen jobs that allow them to contribute to society, socialize in ways that are not humiliating, and meet their subsistence needs, while also having political rights to form workers' associations and more broadly act as citizens. They could then use these rights to seek more extensive changes in the organization of production in order to gain effective opportunities for work that involves not only decency but also deep human flourishing (that is, the elimination or minimization of alienation, exploitation, and domination). Both forms of justice can be seen to implement the solidaristic empowerment that human dignity calls for. Basic justice supports certain thresholds of development and exercise of valuable human capacities, while maximal justice unleashes the highest levels of development and exercise attainable in the relevant social contexts.[27]

within the dignitarian approach. The solidaristic empowerment that is most urgent is one that targets people's survival, affirms the especial significance of the development and exercise of their extremely important capacities for moral and prudential self-determination, blocks destructive relations in which these and other valuable capacities at the basis of their status-dignity are viciously attacked, and counters the treatment of people as less than equal bearers of moral status with the specific rights that this involves.

[27] In identifying what goods or conditions are the proper objects of human rights we may have to do more than say that they are necessary for, or strongly contributory to, the ability to achieve a decent or basically good life. As an analogy, consider Rawls's account of social primary goods. These are more than merely something that it is rational for people to desire. They are something that they would desire *as free and equal, rational and reasonable members of a society as a fair system of social cooperation*. (See John Rawls, *Justice as Fairness: A Restatement*; Cambridge, MA: Harvard University Press, 2001, 57–8.) The ideas captured in italics constrain, and orient, the inquiry into what goods (and rights supporting access to them) a theory of social justice should pursue. What might be the analogue in the case of human rights?

A possibility is to say that they support the access to a basically good or decent life, or some basic goods or conditions, *in the context of a modern state*. See Julio Montero, "Do Human Rights Derive from Natural Rights? The State of Nature, Political Authority, and the Natural Right to Independence," *Philosophical Forum* 47 (2016), 151–69. But this may be too narrow, as we could think of some (even quite specific) human rights as holding in pre-modern conditions, in a utopian (anarchist or Marxian) society that might be created in the future in which the modern state as we know it will have withered away, or in some future context in which there is only one global state (a situation in which the modern state, which is presumed to be one among several, would no longer exist).

Another possibility, which I prefer, is to continue with the exploration of the dignitarian approach, saying that human rights concern the required support regarding conditions and

I acknowledge that the distinction and continuity between basic and maximal requirements of human dignity and humanist justice require further investigation. And I will say more about this in a moment. But someone may ask, "Why not collapse them into one uniform set? Why take human rights as only a proper subset of the full sweep of humanist, dignitarian justice?" The answer is that it makes good moral sense to mark out a normative territory of claims tracking the most urgent requirements. Historically, the human rights movement represents a valuable alliance between several sectors of the political spectrum to engage in shared political, legal, and cultural action to intervene with respect to extremely important, relatively feasible, reasonably implementable, and intensely pressing concerns about what human dignity requires. It is worth affirming this landmark, and I do so here while also providing an independent normative rationale for it—which does not, however, hamper the obligatory pursuit of even more demanding moral requirements of humanist justice.

I will now focus on developing the idea of dignitarian egalitarianism, and explore how it generates both modest and expansive requirements of basic and maximal dignity. The former comprises the more morally urgent requirements. I will emphasize the importance of basic economic rights and political empowerment, and show how they belong to the set of moderately non-maximal or expansive claims that human rights state while also cementing the appropriate conditions for the pursuit of more ambitious claims of humanist social justice.

11.4. HUMAN RIGHTS AND EQUALITY

What is the relation between human rights and equality? On the one hand, it seems that human rights are not egalitarian in that their point is to secure that everyone achieves a certain threshold of decency. Human rights are rights to goods and conditions that are important for a basically good or decent life, not

goods that allow people to enjoy basic (condition-) dignity *in their social life*. The reference to social life is broader than the reference to the modern state. There was social life before the modern state and there could be social life after it dissolves, if it does. Furthermore, there are issues of social life in societies including a modern state which engage human rights but need not involve state action or regulation (such as issues about respect in interpersonal, day-to-day relationships of the kind that many feminists focus on). This focus is also different from the Rawlsian one in two ways. Crucially, it illuminates the claims of human persons who might not be "cooperators" in the full sense Rawls has in mind (e.g., they might be people totally unable to work, or to participate as active citizens in the political process). Furthermore, the focus would not be on what maximal justice requires, but only on its most urgent requirements. (Of course, dignitarian justice can—and, in my view, does—go beyond basic justice and human rights; and it is an important task to figure out what the reminder includes.)

also to the remaining ones supporting a flourishing one. It is not a problem, from the point of view of standard human rights doctrine, when a person has more income or wealth than another if both are above the threshold of a decent standard of living (and thus have access to housing, nutrition, health care, etc.). In contrast, egalitarian views of justice normally worry about how people's levels of advantage compare above any threshold of sufficiency.

On the other hand, there seem to be egalitarian elements in human rights doctrine. This is unsurprising if, as argued in chapter 5, human rights are grounded in status-dignity, and the latter is a deontic status equally held by all human persons. Two egalitarian elements are these. First, egalitarianism operates as a qualifier of the way in which human rights are to be respected, protected, and fulfilled. There is a problem when some get more support than others. The rights of all have equal importance. This point applies to *how* the threshold of decency mentioned above is pursued. For example, it would be wrong for a state to protect the physical security of men but not that of women, or to protect the security of the former more than that of the latter. In addition to this idea of adverbial or procedural equality, as we might call it, there is another which is adjectival or substantive. The substance or content of some human rights norms includes explicit reference to equality. Civil and political liberties are supposed to be such that everyone must enjoy equal levels of them. It is in principle problematic, from the point of view of standard human rights doctrine, when some have freedom of speech and others do not (or have less of it), when some religions are restricted but others are not (or are less restricted), and so on. Another example is the right to equal pay for equal work. In these cases, human rights norms demand equal access to the relevant goods or conditions for all, not merely a threshold of sufficiency.[28]

Do the egalitarian elements just mentioned imply that it is a mistake to take human rights as *only* focused on prescriptions regarding the conditions of a basically good or decent life? One possibility is to say that the egalitarian elements are part of what is demanded by the norms of decency. On this interpretation, to have a basically good or decent life each person has to get *equal* support from the relevant duty-bearers in their access to certain threshold goods. But this captures an adverbial or procedural egalitarian element without also capturing some of the adjectival or substantive ones (concerning, say, equal citizenship rights, or equality before the law). A better interpretation is to view human rights as including a combination of sufficientarian and egalitarian demands. The latter are both procedural and substantive.

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[28] See the idea of "equality rights" targeting equal citizenship, equality before the law, and non-discrimination in Nickel, *Making Sense of Human Rights*, 11, 94. The adverbial use of equality in human rights (extending Nickel's idea of equality rights) is suggested in Pablo Gilabert, "The Importance of Linkage Arguments for the Theory and Practice of Human Rights: A Response to James Nickel," 429. Allen Buchanan explores the "status egalitarian function" of human rights in *The Heart of Human Rights* (Oxford: Oxford University Press, 2013), 28–31.

Notice, however, that there still remains a difference between human rights and full-blown egalitarian agendas of justice. The latter include the egalitarianism of the former but add further substantive egalitarian demands. For example, when it comes to economic rights, a full egalitarianism would demand access to the conditions for leading a flourishing life. This might involve equal access to the highest opportunities that circumstances make feasible. It would not be enough to implement a sufficientarian scheme under which nobody suffers extreme poverty but there is great inequality of income and wealth, or great inequalities in access to leisure time, high-quality education, satisfying jobs, sophisticated consumption goods, etc.

Before proceeding with the discussion about dignity and equality, let me clarify further the important distinction between the two different ways in which a conception of rights may be egalitarian. The first (E1) concerns the possession, or ascription, of rights, and the second (E2) their content or object. (We have labeled them *adverbial or procedural* and *adjectival or substantive* types of egalitarianism or equality.) The difference can be captured through the following schemas:

(E1) Individuals A and B *equally* have a right to some good or condition O.

(E2) Individuals A and B have a right to *equal* amounts or extents of the good or condition O.

A conception of rights may be egalitarian in sense E1 but not in sense E2. Thus, for example, a polity may be egalitarian in sense E1 by giving every adult member a right to vote, but inegalitarian in sense E2 by taking the vote of some to count for more than the vote of others. Alternatively, the polity could be egalitarian in sense E2 by counting the vote of all those who vote as having equal weight, but inegalitarian in sense E1 by excluding some members (such as property-less workers, women, or immigrants) from voting at all. This egalitarianism regarding E2 would only be partial, however—benefitting only the subset of members of the polity who enjoy political entitlements. Of course, a polity may be egalitarian in both senses, but the point of the distinction is to notice that we cannot simply infer one form of egalitarianism from the other.

Now, when the Universal Declaration of Human Rights says that all human persons are equal in dignity and rights (Art. 1) irrespective of their class or nationality (Art. 2), does it make an egalitarian claim of type E1, E2, or both? This statement is most safely interpreted as making an egalitarian claim of type E1. But it is interesting to consider whether other statements in human rights doctrine are egalitarian in the sense of E2. Equality rights such as those concerning freedom from discrimination (Arts. 2, 7), equal rights in marriage and family (Art. 16), equal pay for equal work (Art. 22), equal social protection for children born out of wedlock (Art. 25.2), equal access to public service (Art. 21.2), and universal and equal suffrage (Art. 21.3), seem to be egalitarian

in sense E2 (although some—such as freedom from discrimination—also belong in E1).[29]

So, arguably, the political rights stated in human rights doctrine are egalitarian in sense E2 besides E1. For example, the vote of no voter is to count for more than that of others. This is different from saying that every adult in a polity equally has a right to vote. This last claim is of type E1, and it contrasts with exclusion from voting, while the former is of type E2, and focuses on the comparative political standing of those included. Human rights campaigners can focus, and have focused, on both, but they involve different objectives. Another example concerns rights to work in the sense of being allowed to enter the labor market. Access to work and economic resources like income might be construed in sufficientarian rather than egalitarian terms by saying that all the adults in the relevant context who have rights regarding work and income are entitled to have a job and have an income that is satisfactory (that is, work and income that provides *enough* with respect to some threshold of decency) (see Art. 23.1 and 23.3), but are not thereby entitled to jobs that pay the same salary or support equal levels of human development. This sufficientarian view is not egalitarian in sense E2. Egalitarian campaigning regarding workers' rights concerning type E2 claims would go further. For example, it could require, as mentioned above, equal pay for equal work, or go even further and require equalization in property titles or in management powers regarding the productive resources workers use when they work. Again, notice that this is different from egalitarian claims of type E1. Thus, focusing on E1, campaigners could also urge that refugees be given access to the labor market in the country in which they are refugees, or fight for the removal of explicit or implicit discriminatory schemes that exclude women from some jobs.

A question to consider now is whether, and if so in what ways, human dignity and inequality are compatible with each other. Three (often related) dimensions of this question need to be identified:

(a) Regarding the basis of dignity: Different individuals may be unequal with respect to the features (such as the capacities) making up the basis of dignity. Some may have more of these features than others, and some may lack some of the features altogether.

(b) Regarding the currency or metric in terms of which their rights and duties are articulated: Some individuals may have stronger claims to certain distributed objects and conditions than others, and some may have no claim to certain objects and conditions at all.

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[29] I draw here on the helpful list in the category of "equality rights" articulated by Nickel in *Making Sense of Human Rights*, 11 (although Nickel does not distinguish between senses E1 and E2, and I add reference to equal political rights).

(c) Regarding the nature of the distributive exercise: Some individuals may have the same rights as human rights holders, or as co-members of some political community, but have unequal claims as performers of different roles within certain specific associations, or when compared to those who are not members of those associations. Consider, for example, the contrast between the questions of who should have the right to vote in a certain polis and who deserves to be selected as a Supreme Court judge, or between the questions of who has a right to enter the labor market and who should get a particular job.

It is helpful here to engage Ian Carter's recent challenges and re-characterization of the Rawlsian account of the basis of equality.[30] Carter asks the question of the basis of equality: In virtue of what features of them are people entitled to equal distributions of some goods or conditions? A problem for egalitarians is that, for any feature that is said to be in the basis of equality, some people will have more of it than others. If some people have greater powers of practical reasoning than others, for example, why aren't they entitled to more extensive rights and resources related to the use of those powers? Shouldn't the vote of judicious people count for more than the vote of worse political reasoners? Rawls responded to this kind of worry by saying that when we justify egalitarian distributions we should focus on certain "range properties" of people. To be entitled to equal distributions, it is enough that people have the features of the basis of equality to a sufficient degree—that is, within a certain range. The fact that people differ above the threshold is irrelevant. Thus, people have a certain (binary) status property so long as they have enough of other (scalar) properties. For example, in the case of Rawls's account: people have moral personality and are entitled to make claims at the bar of justice as fairness if they have enough of the capacities to form, revise, and pursue a conception of the good and a conception of justice.[31] Carter thinks that this account is on the right track but is insufficient. We need to complete it by providing an independent reason (one that does not already draw on the idea of equal respect and concern) for focusing on range properties and not directly on the features they supervene upon. Carter offers what he takes to be an appropriate candidate for an independent reason by elaborating on the idea of respect for human dignity. His point is that to respect people's dignity, we have to treat them with "opacity respect." We do this by refraining from making comparative judgments about the extent to which different people display the agential capacities above whatever threshold of them is sufficient to mark the presence of the relevant range properties.

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[30] Ian Carter, "Respect and the Basis of Equality," *Ethics* 121 (2011), 538–71.
[31] John Rawls, *A Theory of Justice*, rev. ed. (Cambridge, MA: Harvard University Press, 1999), sect. 77.

Such judgments would be an affront to their dignity because they would involve treating some persons as non-agents. An egalitarian distributive attitude is thus justified by an independent requirement of respect for people's dignity as agents.

Carter does an excellent job of unpacking the question of the basis of equality. But his positive proposal does not succeed at providing an independent rationale for equal respect. Carter says that equal respect is grounded in opacity respect. He explains opacity respect as a matter of a proper response to people's dignity as agents. But why would making comparative judgments about the degrees of agential capacities above the relevant threshold involve an affront to people's dignity as agents? Since they focus on degrees of agency above the threshold of agency, such judgments would not deny the agency of agents.

The dignitarian harm that Carter seems to be concerned about cannot exist unless there is an equal normative status shared by all the people who have agential capacities within the relevant range. People are justifiably offended by public comparative judgments if they can justifiably claim to have equal public standing. But (and this is my second worry about Carter's account) this explanation presupposes the kind of egalitarianism it is meant to justify. Opacity respect is a behavioral constraint on how people, as agents, may legitimately treat each other in public (especially when it comes to their relationship as co-members of political institutions). Since opacity respect simply is an expressive case of equal respect for agents, the former cannot be an independent ground for the latter. Carter's proposal is illuminating, but does not provide a justification of equal respect. Instead, it provides a specification of what such equal respect requires in some public contexts.

Carter's account of opacity respect helps us to notice that there is a specific form of equal respect that responds to the interest of most people in having an equal public standing in their social life (that is, to avoid being the target of disparaging, downgrading, or humiliating public judgments that ascribe to them lower social status). The presence of this very strong interest also gives us reason to prefer to arrange public discourse (especially discourse of state institutions) so that we place the burden of argument on those who want to make comparative judgments and allocate goods unequally. Above certain uncontroversial thresholds (assuming they exist), it is often better to adopt the policy of treating all as equals unless there is some especially weighty reason not to do so. But (and this is my third point) sometimes there is compelling reason to make comparative judgments. This is clearly the case, for example, when it comes to institutions and practices of health care. These often focus on helping people facing challenges in the development or exercise of their agential capacities. For example, providing this help involves explicit considerations about how depression or traumatic experiences hamper people's abilities to make prudential or moral judgments in certain circumstances.

So, at least sometimes, we cannot give each other's dignity its due by helping each other appropriately unless we are ready to make, and accept that others make, judgments about agential variation. We should of course approach these practices in careful and tactful ways. But we should not *assume* that they involve dignitarian harm. An appropriate political culture of dignity should have room for solidarity (rather than see it as humiliating). Standing as equals does not imply viewing each other as self-sufficient, or as strictly equally capable, people. It is better to orient ourselves by the slogan "from each according to their abilities, to each according to their needs," which couples a general idea of equal standing with the recognition of individual differences in capacities to act and in needs for support.[32]

   An important question for future inquiry then is this: When is it a good idea to talk about range properties without saying anything about the extent to which the people we are considering are above the relevant threshold, and when is it a good idea to talk about the degrees to which people have the capacities above (or even below) the range? To answer this question, we need to pay attention to the nature of the normative exercise we are engaging in. To determine whether Pedro and Maria may vote, it is enough to focus on range properties regarding practical judgment. To determine who should be chosen as a member of the Supreme Court, we should also want to know (among other things) who has the most extensive abilities for impartial reasoning.

11.5. HUMAN DIGNITY AND THE ARC OF HUMANIST JUSTICE

I have claimed that although not strictly minimalist, human rights are only a proper subset of the requirements of justice. I have distinguished between access to a decent life (which is the focus of human rights), and access to a flourishing life (which is the wider focus of social justice as conceived by some democratic socialists and liberal egalitarians). I have claimed that human dignity requires support regarding both. In my view, there is then both difference and continuity between the norms of *basic* and *maximal dignity*. This generates a two-tiered political horizon: human rights are the most urgent requirements of human dignity, but humanist social justice can, and

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[32] See section 11.5 and Pablo Gilabert, "The Socialist Principle 'From Each According To Their Abilities, To Each According To Their Needs'," *Journal of Social Philosophy* 46 (2015), 197–225. For further discussion of Carter's views, see Richard Arneson, "Basic Equality: Neither Acceptable nor Rejectable," in Uwe Steinhoff, ed., *Basic Equality* (Oxford: Oxford University Press, 2014), 30–52; Gabriel Wollner, "Basic Equality and the Currency of Egalitarian Justice," in A. Kaufman, ed., *Distributive Justice and Access to Advantage* (Cambridge: Cambridge University Press, 2015), 180–223.

(in a world of growing avoidable inequality it certainly) should, demand more. This approach to the arc of humanist justice not only differs from other views about the reach of human rights and humanist principles. It also differs from other views of the reach of dignitarian obligations. In the account offered in this book, these obligations not only target sufficientarian requirements centered on securing that everyone has enough to be able to stand as equals in important social relations,[33] but also target, directly, certain requirements of distributive equality that call us to redress unfair disparities in people's access to the conditions of their human flourishing. After we have secured basic civil and political rights, and the socioeconomic conditions for their effective enjoyment, we can and should go further. Solidaristic empowerment takes the dignity of people to call for more than merely sufficientarian schemes. It matters that people have access to the highest levels of human flourishing that can feasibly (and reasonably) be made available, and that no one has less access than others through no choice or fault of their own. There are important connections between the triad of ideas including the basis of dignity, dignitarian concern and respect, and dignitarian norms, and the triad including the basis of equality, equal concern and respect, and egalitarian norms.

I recognize that the foregoing claims are controversial. Partly because of that, I have highlighted in this book the significance of political empowerment as a pivotal demand of human dignity. This is partly why I devoted chapter 10 to a defense of the view of strong, democratic political rights as human rights. These rights constitute a key demand when it comes to the issue of reasonable disagreement about how expansive requirements regarding maximal (or even basic) justice should be taken to be. When they are empowered as political agents, people reach a floor of dignity on which they can stand as they press their claims on each other. They can process their reasonable disagreements over time in an epistemically open and in a procedurally fair way.

We can see solidaristic empowerment as generating requirements of autonomy and well-being that compose a hierarchical set, so that the former must typically be implemented before the latter.[34] We first establish a system of individual and collective autonomy and then use the freedoms acquired to

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[33] For a sufficientarian construal of dignitarian requirements of this kind, see Elizabeth Anderson, "What is the Point of Equality?" *Ethics* 109 (1999), 287–337, at 320–1 (see also 306–7, 326, 330). I do not think that comparative distributive requirements must be motivated by envy and condescending or contemptuous pity. They can be based instead on a morally sound sense of fairness and a solidaristic concern for the well-being of others. From the point of view of egalitarian justice, it is problematic if some have greater chances to develop and exercise their valuable capacities than others (even if that would not generate relational patterns of social or political domination).

[34] This formulation can be revised if we prefer to see autonomy as part of well-being, by saying that this part typically has greater weight than the other parts.

figure out how to cater for well-being.[35] So my view is quite maximalist when it comes to political human rights. But I recognize that when it comes to other rights, a cut between basic human rights and maximal requirements of social justice that is somewhat less expansive about the territory covered by the former is appropriate. It makes sense to carve out a set of normative requirements that are especially urgent, and to create political alliances to make their fulfillment happen in the real world as soon as possible.[36] The leading example about this point that I have explored concerns labor rights. I identified (in chapter 9) robust labor human rights to freely chosen employment, to decent working conditions and remuneration, and to form and join unions. As I indicated, these rights are different from more expansive requirements of social justice which call for the prevention of (less intense forms of) exploitation, domination, and alienation at work. Still, as we gain political empowerment, I think that we should seek the implementation of those expansive requirements of social justice. Human dignity calls for a deeper challenge to contemporary capitalist societies than human rights doctrine normally calls for.[37]

A promising inquiry, I think, would be to explore how a specific view of social justice, such as socialism, might be articulated in dignitarian terms. Although a historically important tradition, socialism has been neglected in contemporary normative political philosophy. Two common worries about it are the following. First, socialism has failed to pay proper attention to civil and political liberties. It has concentrated on demands about economic organization without doing enough to address the importance of freedom of religion, freedom of the press, the right to form multiple political associations and parties, and other aspects of a pluralist environment for political participation. A second complaint is that socialists have relied on an expectation of dramatic technological development that involves unrealistic hopes for an end to

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[35] This is not the same as saying that well-being principles are constituted and explained by whatever people choose freely to go for. People can get it wrong. The point is that self-determination has a certain significance which is intrinsic (in terms of the expressive value of recognizing each person's capacities for practical judgment) and instrumental (in terms of epistemic and accountability advantages). Furthermore, it is important for people to think now about well-being principles. This is so for various reasons. First, of course, there is intellectual curiosity. Second, sometimes some people may have to make a choice that will affect other people when it is impossible to make that choice collectively. Having some grasp of well-being principles might help the decision-makers make a better choice. Third, as we join each other in the public forum, we will have to come up with proposals for well-being principles (or other normative principles) and arguments for them. We cannot simply say "Oh! Let's just go for the principles we all go for." We are trying to figure out, individually and collectively, what principles to go for, not to report what we are going for.

[36] This has the significant consequence that when some people in the world are suffering human rights deprivations, capable agents are required to tackle them first before moving on to wider justice matters (if a conflict is unavoidable). See further chapter 4, section 4.2.2.4; chapter 9, section 9.4.3.

[37] Pablo Gilabert, "Dignity at Work," in H. Collins, G. Lester, and V. Mantouvalou, eds., *Philosophical Foundations of Labour Law* (Oxford: Oxford University Press, forthcoming).

material scarcity and the need for distributive arrangements. Relatedly, social-ists have held a potentially dangerous and disrespectful view of the relations between human beings and the rest of nature. It is naïve to expect that we will not have to make hard choices about how to distribute scarce resources, and we should not approach non-human animals as having only instrumental value, merely as resources for satisfying human beings' desires.

The socialist tradition is very complex. It would be a mistake to think that all of these worries apply to every strand in it, or that when they apply they do so in the same way. But I think that the worries identify important concerns, and I am interested (in my future work) in developing a positive view of the socialist approach to social justice that helps take into account the values animating these worries. A successful answer to them would make socialism a more appealing ideal. And developing this ideal is a worthy endeavor because it already encodes quite compelling insights about what would make an economic system just. They concern the importance of positive duties of solidarity, fair reciprocity, responsiveness to individual differences, and mean-ingful work. Elsewhere, I have proposed the rudiments of an interpretation of the socialist principle "from each according to their abilities, to each according to their needs" (which I call the Abilities/Needs Principle) that develops these insights.[38] This principle responds to important dignitarian features of people as singular and autonomous agents capable of meaningful and cooperative production and consumption. It relies on a rich view of the basis of dignity that goes beyond a narrow focus on rational agency, including also human beings' capacities for aesthetic enjoyment, creative work, and sociality.

Socialism makes distinctive contributions to our understanding of human dignity. Furthermore, once we construe socialism within a dignitarian frame-work, we can address more lucidly the worries mentioned above. Civil and political liberties support important forms of condition-dignity. They involve an appropriate response to people's status-dignity as agents that can, and standardly care about being able to pursue their own good as they see it, and to partake as equals in the main decision-making institutions of their society. The dignitarian norms of economic cooperation that socialism proposes have to be articulated in conjunction with dignitarian norms of civil and political liberty, and the relations between these norms have to be assessed explicitly and systematically. In addition, the dignity of non-human animals must be acknowledged, since they have various important capacities—such as sen-tience and initiative—that make them deserve respect and concern. The socialist view of economic life must, and can, be developed in a way that enacts an appropriate response to intrinsic value in non-human nature.

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[38] Pablo Gilabert, "The Socialist Principle 'From Each According To Their Abilities, To Each According To Their Needs'." For a lucid overview of socialist arguments in normative political philosophy, see Samuel Arnold, "Socialism," *Internet Encyclopedia of Philosophy* (2016).

So, a development of the socialist ideal within a dignitarian framework would achieve three important objectives. First, it would help articulate socialists' insights about a just economy, which already rely on identifying certain important human capacities and calling for their support. Second, it would illuminate the relations between economic rights, on the one hand, and civil and political rights, on the other. Finally, it would show that the claims of human dignity have to be limited by, or weighted against, dignitarian norms concerning the proper treatment of non-human entities.

There is a fourth way in which a dignitarian articulation of socialism would be appealing: it involves continuity with human rights theory and practice. Socialism is more demanding than human rights by calling for access to a flourishing life, not only a decent one. But socialism can be seen as a natural continuation of the humanist project within which human rights is the first step. As I see it, the key element of continuity is this: like human rights, socialism builds its principles on the idea of responding to valuable general features of human beings. Humanist socialism simply extends the response by articulating principles supporting human flourishing besides decency. This continuity would make socialism easier to entertain for those who already embrace human rights discourse. Once we accept the humanist dignitarianism of human rights, and think that we should support people in their attempts to reach certain basic thresholds of development and exercise of their valuable capacities, we would find it natural to wonder whether we should also support people in their attempts to reach higher levels of development and exercise of such capacities. To repeat a point made in chapter 5 (section 5.3.5), the value of human capacities, and the resulting normative status of the people who have them, is more thoroughly reflected in principles that require support for human flourishing. Once we accept that the autonomy and well-being of other human beings is non-instrumentally valuable, we will feel inclined to explore the questions of whether, and how, we might support their blossoming. A merely decent life is not enough.

The link with human rights makes socialism more appealing by easing our reflective (and motivational) endorsement of the latter given our endorsement of the former. In addition, it helps respond further to the worries mentioned above. Since human rights involve very strong protections of civil and political liberties, an account of socialism that includes and builds on a commitment to human rights would naturally acknowledge (and indeed develop further) strong protections of such liberties. The relation between the human rights project and the socialist tradition already has historical roots. Socialists were decisive in the drafting of the Universal Declaration of Human Rights.[39]

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[39] John Humphrey from Canada, and several other socialists from Latin America were the drafters of UDHR who pressed most strongly for the inclusion of social and economic rights, including labor rights. See Johannes Morsink, *The Universal Declaration of Human Rights: Origins, Drafting and Intent* (Philadelphia: University of Pennsylvania Press, 1999), ch. 5.

The socialist tradition is also one of the main sources of the introduction of the idea of human dignity in politics.[40] This historical link can be developed further in the future.

A significant contribution of socialism to dignitarian theory and practice that I would like to highlight in closing is its emphasis on the importance of solidarity. The following passage from an early writing by Marx conveys a stinging critique of the separation of dignity from mutual support:

> The only comprehensible language we have is the language our possessions use together. We would not understand a human language and it would remain ineffectual. From the one side, such a language would be felt to be begging, imploring and hence *humiliating*. It could be used only with feelings of shame and debasement. From the other side, it would be received as *impertinence* or *insanity* and so rejected. We are so estranged from our human essence that the direct language of man strikes us as an *offence against the dignity of man*, whereas the estranged language of [commodity, economic] objective values appears as the justified, self-confident and self-acknowledged dignity of man incarnate.[41]

Marx may be read here as calling for a practical combination of the ideas of dignity and solidaristic support.[42] His critique of their separation is still relevant. Too much in contemporary moral and political philosophy consists in variations on the theme of giving theoretical articulation to the sentiment captured in utterances like "Get off my back!" "Mind your own business!" or

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[40] See Christopher McCrudden, "Human Dignity and Judicial Interpretation of Human Rights," *European Journal of International Law* 19 (2008), 655–724, at 661, 664, 673. See also Georg Lohmann, "Human Dignity and Socialism," in M. Düwell, J. Braarvig, R. Brownsword, and D. Mieth, eds., *The Cambridge Handbook of Human Dignity* (Cambridge: Cambridge University Press, 2014), 126–34. Karl Marx's views on morality and justice are notoriously complex, and subject to much controversy. For a lucid analysis of the primary texts and the debates about them, see Norman Geras, "The Controversy about Marx and Justice," *New Left Review* I/150 (1985), 47–85. For the view that the idea of human dignity is significant in Marx's thought, see Rodney Peffer, *Marxism, Morality, and Social Justice* (Princeton: Princeton University Press, 1990), 118–23. For some steps to articulate a dignitarian approach to socialism, see Pablo Gilabert, "The Socialist Principle 'From Each According to Their Abilities, to Each According to their Needs'"; and "Kantian Dignity and Marxian Socialism," *Kantian Review* 22 (2017), 553–77.

[41] "Excerpts from Mill's *Elements on Political Economy*," in Karl Marx, *Early Writings* (London: Penguin, 1992), 259–78, at 276.

[42] A classical, and related, move in Marx's work is to criticize views which fail to capture the extent to which people are socially dependent on each other. E.g., Marx argued that "[i]ndividuals producing in society—hence socially determined individual production—is . . . the point of departure" and that the "independent, autonomous subjects" of many eighteenth-century theories are "Robinsonades," "illusions." "The human being is in the most literal sense a [political animal], not merely a gregarious animal, but an animal which can individuate itself only in the midst of society. Production by an isolated individual outside society—a rare exception which may well occur when a civilized person in whom the social forces are already dynamically present is cast by accident into the wilderness—is as much of an absurdity as is the development of language without individuals living *together* and talking to each other." Karl Marx, *Grundrisse* (London: Penguin, 1973), 83–4.

"You are not the boss of me!" I do not deny that underlying these utterances there are deep and important ideas about liberty that should be theoretically articulated. Philosophy should do that. But these ideas are only centered on negative duties and rights. We also need to explore positive duties and rights. A moral and political philosophy that ignores positive requirements is unduly mean-spirited.

Appropriately to respond to the dignity of human beings involves not only respect, but also concern, for them. We show proper appreciation for the worth of human beings when we do not trample on their autonomy by destroying or blocking the development and exercise of their capacity for self-determination. But we owe human beings more than respect. We could fulfill duties of respect while remaining perfectly indifferent to whether other human beings are able to develop and exercise their various capacities for autonomy, if we do not protect them from disrespect by others, and if we do not help them in their efforts to achieve flourishing lives. That would be a callous attitude. We also owe human beings positive concern.

After all, the same valuable capacities and features that give rise to the demands of respect give rise to the demands of concern. If a person's capacity for self-determination gives you reason not to enslave or dominate them, doesn't it also give you reason to protect them when others try to enslave them or dominate them? If a person's various capacities to pursue a life including love, friendship, knowledge, productive work, etc., give you reason not to block that pursuit when they engage in it, don't they also give you reason to support that pursuit by making it more likely to succeed? Reasons for positive concern (for protection and aid) are grounded in the same facts that ground reasons for negative respect (for harm avoidance). I am not saying that these reasons have always the same weight. The relative weight of positive and negative normative considerations is a separate, and important, issue. But it would not even be noticed if we held a narrow view that only recognizes negative considerations. The claim here is simply that the positive considerations also hold as pro tanto sources for moral and political reasoning. That reasoning gets started in the wrong way if the platform of reasons it recognizes does not include the full palette of responses to what is valuable in people. The dignity of persons, which is based on those facts about value, would not be given proper recognition.

I should add that it is important to avoid the mistake of downplaying the significance of positive duties by drawing on the distinction between perfect and imperfect duties. It is true that many positive duties are imperfect while many negative duties are perfect. However, first, not all positive duties are imperfect. Cases of easy rescue in which an agent can save the life of another at little cost (when no other agent can do so) are a typical example.

Second, some negative duties might turn out to be imperfect. Sometimes an agent may have some latitude when choosing between two negative duties

when both apply, pro tanto, but cannot both be fulfilled. For example, I may have to fulfill a duty not to lie to my friend but also a duty not to offend them. Furthermore, in given circumstances a positive duty may be weightier than a negative duty with which it conflicts, as when you can only take a dying person to the hospital by temporarily stealing someone else's car.[43]

Third, the considerations that give rise to perfect negative duties also give rise to imperfect positive duties. The perfect negative duty not to assault others is, unfortunately, often violated. The risk, in any case, is always there. So we think that we have a positive duty to protect others from assault (when this can be done at reasonable cost). This is a positive duty. It is also imperfect, as each has some latitude in choosing whom to protect and how (except in cases that are akin to the easy rescue type mentioned above). Of course, the duty of protection can be rendered less imperfect through the introduction of institutions such as criminal law, the police, etc. I will say more about this institutionalization scheme in a moment. But notice that even then the duty will remain somewhat imperfect. We have competing moral goals, and we may be unable to devote all the energy and resources to protection that would make it a matter of specific perfect rights in every case. A government, for example, has also to attend to other demands. When resources are limited, officials and citizens will have to make choices, and have some latitude regarding their details.

Finally, we can, through social practices and institutions, articulate various practical schemes which render positive duties perfect (or much less imperfect). As a result, we can develop more fully determined rights (that is, rights with clearly identified objects, right-holders, correlated duties, and duty-bearers). In fact, once we acknowledge the independent, important reasons for the significance of positive duties (such as the fact that they constitute appropriate responses to the dignity of human beings), then we must recognize that we have strong reason to engage in this articulation of them. We could even say that imperfect duties have correlative imperfect rights, and that both can, to some extent (in some circumstances, in some respects) be specified in such a way that derived perfect duties and rights arise with clarity. To see this, think about solidarity, or aid, before and after the formation of welfare states. The latter came to specify, or render perfect (or less imperfect), rights and duties that predated the new institutions.

The last point helps counter another typical motive in bourgeois thinking, captured in utterances like "Get your hands off my things!" What is to count

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[43] For further critical discussion of views of justice narrowly focused on negative and perfect duties, see Elizabeth Ashford, "The Alleged Dichotomy Between Positive and Negative Rights and Duties," in R. Beitz and R. Goodin, eds., *Basic Global Rights* (Oxford: Oxford University Press, 2009), 92–112; and Pablo Gilabert, "Kant and the Claims of the Poor," *Philosophy and Phenomenological Research* 81 (2010), 382–418.

as "mine" and "yours" partly depends on how we could best organize our social life in such a way that proper concern for others is given its due. Institutions establishing property rights are conventions, and they must be subject to normative assessment. If that assessment includes an ideal of solidaristic empowerment, then it will not permit forms of property that allow some human beings to be totally indifferent to the needs of others.

The socialist adds to (and thereby qualifies) liberal considerations regarding negative duties the motto: "Let us help each other live flourishing lives!" There is some intuitive pressure to class positive duties as a matter of beneficence but not as a matter of rights and justice. I think that it is better to use a wider concept of rights and justice that does not assume that only negative and perfect duties are essential. Sure, one could shift the label for the broader normative territory covered by talking about "social ethics" rather than about "social justice." But I do not think one should give the term "justice" away so readily.[44] The socialist tradition, and various strands within feminism, have fought hard to develop a wider view of justice that includes solidarity. This has been an invaluable contribution. Given the prestige and salience of the term "justice" in political philosophy and in actual social and political practice, if the concerns of feminists and socialist are to be given proper attention, it is wise to make sure that the conceptual territory of "justice" is ample enough to allow for their presence. In any case, as this book has argued, human dignity calls for solidaristic empowerment—for a form of engagement amongst human beings in which they seriously entertain helping each other live decent and flourishing lives. We are all in this together.

11.6. CONCLUDING REMARKS

Let me close this book by returning to the proximate practical context in which the penultimate draft of this book was produced (see chapter 1, section 1.4). These final remarks link the previous discussion of the arc of humanist justice with my personal reaction to current politics.

After Trump's electoral victory in the United States (and other similar developments), and in view of what it seemed to indicate, I think that it is time to focus on a sharp articulation of the perspective of a Left that gathers under its banner the ideals of socioeconomic equality, democracy, and civil liberties, and welcomes *every* human being under it, as their human dignity requires. The neo-fascist incarnation of capitalism that Trump seems to

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[44] Pablo Gilabert, "Justice and Beneficence."

represent mobilizes the anger and disappointment of some sectors of the working class who have been left worse off by the neoliberal phase of capitalism, while neutralizing any serious systemic challenge: they will likely receive some concessions and be diverted into hatred for and scapegoating of racial, ethnic, religious, and other minorities. Alternatively, a democratic socialist Left could cover the whole territory of the (at least modern) ideals and overcome the alleged dichotomy between neo-fascist and neoliberal forms of capitalism. Dominant forms of liberalism and social democracy have timidly fail to go far enough. They have condoned the deep inequality that led to the disintegration neo-fascism tries to stitch together to avoid the return of a more serious systemic challenge from the Left (which Bernie Sanders seemed to represent in embryonic form). It may very well be socialism or barbarism as Cornelius Castoriadis once put it. Fortunately, leftists today can breathe freely without the pressure from the authoritarian strands of socialism of the kind exemplified by the Soviet Union. The Left can straightforwardly present itself as taking the torch of human progress towards a domestic and global order of civil and political freedom, economic and social equality, and universal human solidarity. This would be a dignitarian socialism.

So, the slogan might well be "Turn left or face barbarism." The Left can appropriately be characterized as the strand within the political spectrum that is ready to complete and extend universally the progression that, quite roughly and unevenly, has been taking place in the last few hundred years. This progression has included the pursuit of the fulfillment of civil rights (such as those to free religious practice, bodily integrity, and movement), political rights (to speak up, associate, strike, protest, vote, run for office), and social rights (to food, shelter, education, work, and other material contributors to a decent and flourishing life). The Left has always pushed for ambitious interpretations of these rights. It has called, for example, for forms of democratic politics that include direct participation besides representation, and for political regulations that deepen the application of ideals of freedom, equality, and solidarity to the organization of economic life rather than condone asymmetric power relations otherwise operating in it. The Left has also always called for extending the enjoyment of civil, political, and social rights to every human person. Leftist activists have been at the forefront of the struggle for securing access to education, jobs, and political participation for women, ethnic and racial minorities, property-less workers, and immigrants. The Left has also been at the forefront of new waves of justice championing the rights of LGBTQ people, seeing globalization as an opportunity for achieving global prosperity and fairness rather than as an occasion for devising new forms of plunder and imperialism. The Left is also committed to the exploration of new ways of shaping the relations between human beings and the rest of nature that are less irresponsible and predatory.

Of course, this optimistic picture of social progress is quite stylized and aspirational. The various waves of rights have not been pursued continuously. In fact, as pointed out, we face today a situation in which they are all being rolled back by an ugly, angry form of neo-fascist capitalism resurfacing across the world. In a way, it is understandable that this is happening. After thirty years of global neoliberalism in which economic inequality has increased exponentially and the condition of the majority of working people has not got any better, people are disappointed and upset. They see their salaries stagnate or retreat. Or they lose their jobs with little hope of getting similar or better jobs in the future. New forms of automation, labor deregulation, and cross-border mobility of capital are generating unemployment, or precarious employment. Climate change is also creating various challenges and harms which will likely increase. And traditional political parties, including those on the center-left, have done little to respond to these tendencies in decisive and creative ways. The political process has been colonized by economic elites (which control funding of political campaigns, own large chunks of mass media, effectively lobby politicians, and generally discipline governments by threatening to disinvest or move their capital abroad if their short-term wishes are not catered for). People see this landscape and feel deep concern. This legitimate concern could be channeled into a relaunching of the Left that leads to the resolute and simultaneous pursuit of the various strands of justice just mentioned. This Left could shore up labor rights, introduce an unconditional basic income for all to put a floor of dignity on which people can stand to access subsistence, and engage in experimental forms of economic activity that give them fair chances to flourish. This Left could keep intensifying the recognition of the claims of minorities and explore ways of making globalization a genuine project of global cooperation and solidarity. Failing that, neoliberal capitalism will be followed by other frameworks that will not pursue the full palette of progressive ideals but will instead pick out some, interpret them less ambitiously, and use them as a cover to trample on the others. Even some advances that were achieved in the last few decades (regarding the inclusion of LGBTQ people and racial and religious minorities) will be cast as undesirable, and some of their beneficiaries turned into scapegoats. We can already see the beginnings of a new form of capitalism that manipulates people's anger in odious ways, by turning it against ethnic and cultural minorities. This may perhaps even include throwing people into the battlefield of new imperial wars. These operations would create new forms of social cohesion and reactivate sectors of the economy, as similar maneuvers did in the past. But just as it happened before, these adventures would likely also lead to sinister outcomes. To avoid them, we should turn left.[45]

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[45] The following popular articles help focus on the right questions. George Monbiot, "Trump's Climate Denial is Just One of the Forces That Points Towards War," *Guardian*,

Or, at a minimum, we should hold fast to the pillars of the human rights movement. After all, the somber world situation we are contemplating seems worrisomely similar to the one that led to the catastrophes the human rights movement responded to at the end of World War II. This movement has rallied around a set of basic civil, political, and social rights, and has clearly articulated them as the entitlements that everyone around the world has in virtue of their human dignity. As world politics turns darker, this is where we need to start. The arc of humanist justice, of dignitarian respect and concern for every human person, starts with affirming everyone's human rights. And it concludes with the horizon of democratic socialism, which would pursue the most ambitious implementation of those ideas that is reasonably feasible.

This, I think, is a worthy agenda of ideals and principles of justice that philosophers and other intellectuals could fruitfully contribute to clarify and defend as part of a broader effort in civil society to contest barbarism and regain hope in human progress.

In sum, as I see the current situation, we either turn left decisively, extending the progressive project of universalist egalitarianism by introducing deep fulfillments of social rights, or we face the very real prospect that a neo-fascist form of capitalism will roll back several achievements regarding social rights (even though some partial gains may also be introduced in contrast with neoliberal capitalism), reduce previously achieved levels of fulfillment of civil and political rights, and shatter the gains in terms of universalist political conscience. In the face of the barbarism the second horn of this dilemma involves, we should at the very least find a way to resolutely put humanity first and rally around the banner of human rights, which defend a basic but crucial set of civil, political, and social requirements for everyone. To repeat, we are all in this together.

November 23, 2016. Erik Wright, "How to Be an Anticapitalist Today," *Jacobin*, December 2, 2015. Available here: https://www.jacobinmag.com/2015/12/erik-olin-wright-real-utopias-anticapitalism-democracy/. Erik Wright, "How to Think About (And Win) Socialism," *Jacobin*, April 27, 2016. Available here: https://www.jacobinmag.com/2016/04/erik-olin-wright-real-utopias-capitalism-socialism/. Monbiot warns about the worst tendencies in the current conjuncture, and Erik Wright devices some hopeful paths for a democratic Left. An initial mapping of current worrisome trends of increasing xenophobic nationalism is provided in the report "League of Nationalists," *The Economist*, November 19, 2016.

Survey of Uses of "Human Dignity"
in Major Human Rights Documents

An inspection of the main human rights documents reveals at least eleven points about the use of the idea human dignity.

(i) Some utterances seem to refer to human dignity as an inherent property of human beings, a status they constantly have rather than one they can achieve. (a) The first sentence of the Preamble of the Universal Declaration of Human Rights (UDHR) refers to the "inherent dignity...of all the members of the human family." (b) The fifth sentence expresses "faith...in the dignity and worth of the human person." (c) Article 1 says that "[a]ll human beings are born free and equal in dignity and rights." (d) The second and third sentences of the Preambles of both the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR) also refer to human persons' "inherent dignity." The expression also occurs in the first clause of Article 10 of ICCPR and in the first sentence of Article 20 of the Vienna Declaration.

(ii) A statement appears to tell us something about the features in virtue of which human persons have human dignity in the sense referred to in (i): "All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood" (UDHR, Art. 1).

(iii) We are told that human rights are "derived" from human dignity. (a) The third sentence of the Preamble of both ICCPR and ICESCR refer to the recognition "that these rights derive from the inherent dignity of the human person." (b) The third sentence of the Preamble of the Vienna Declaration claims that "all human rights derive from the dignity and worth inherent in the human person."

(iv) Some statements appear to refer to dignity as a more contingent condition or state that human beings may come to enjoy (and this includes certain treatment of them by others). This sense is different from the one considered so far. Examples include reference (a) to "economic, social and cultural rights as indispensable for [persons'] dignity and the free development of [their] personality" (UDHR, Art. 22); (b) to "just and favourable remuneration" from work "ensuring for [the worker and their] family an existence worthy of human dignity" (UDHR, Art. 23, third clause); (c) to education as being "directed to the full development of the human personality and the sense of its dignity" (ICESCR, Art. 13, first clause); and (d) to seeking a treatment of refugees that involves "durable solutions, primarily through the preferred solution of dignified and safe voluntary repatriation" (Vienna Declaration, Art. 23, third paragraph).

(v) Some references to dignity seem ambiguous between the senses mentioned in (i) and (iv). An example is the claim that "one of the most atrocious violations against human dignity is the act of torture, the result of which destroys the dignity and impairs the capability of victims to continue their lives and their abilities" (Vienna Declaration, Art. 55).

(vi) Some statements intimate a connection between dignity, rights, and social and political power:

(a) "[A]ll human rights derive from the dignity and worth inherent in the human person, and . . . the human person is the central subject of human rights and fundamental freedoms, and consequently should be the principal beneficiary and should participate actively in the realization of these rights and freedoms" (Vienna Declaration, Preamble, third sentence).

(b) "[E]xtreme poverty and social exclusion constitute a violation of human dignity and . . . urgent steps are necessary to achieve better knowledge of extreme poverty and its causes, including those related to the problem of development, in order to promote the human rights of the poorest, and to put an end to extreme poverty and social exclusion and to promote the enjoyment of the fruits of social progress. It is essential for States to foster participation by the poorest people in the decision-making process by the community in which they live, the promotion of human rights and the efforts to combat extreme poverty" (Vienna Declaration, Art. 25).

(c) "Men and women have the right to live their lives and raise their children in dignity, free from hunger and from the fear of violence, oppression and injustice. Democratic participatory governance based on the will of the people best assures these rights" (UN Millennium Declaration, Art. 6).

(vii) Dignity seems in most cases to be primarily a predicate that applies to individuals (see, for example, (vi)(a) above). However, it occasionally appears to apply to collectives. An example is indigenous people in Article 20 of the Vienna Declaration.

(viii) Some statements emphasize the global scope of the duties to respond to human rights deprivations. Thus (a) the UN Millennium Declaration, in its Article 2, says that "in addition to our separate responsibilities to our individual societies, we have a collective responsibility to uphold the principles of human dignity, equality, and equity at the global level." (b) The global scope of duties correlative to human rights (and thus to human dignity) is a clear corollary of Article 28 of UDHR, according to which "[e]veryone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized."

(ix) Not only are some duties correlative to human rights (and thus to human dignity) global in scope (as mentioned in (viii)). Some human rights documents emphasize that also the site of action and responsibility is quite wide, including not only state institutions. (a) A striking example is the Convention for the Elimination of all Forms of Discrimination Against Women (CEDAW), whose claims range over "the political, economic, cultural, civil or any other field" (Art. 1). (b) Rene Cassin, one the drafters of the UDHR, insisted that the duties of individuals and institutions below and above the

state are crucial.[1] (c) In its Preamble, the UDHR's is presented as "a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society . . . shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance."

(x) "Children" are said to be within the scope of dignitarian principles. The text cited in (viii)(a) continues: "[W]e have a duty . . . to all of the world's people, especially to the most vulnerable and, in particular, the children of the world."

(xi) It is important, when we think about human dignity as a status in the sense mentioned in (i), that this status differs from other, specific social statuses. "Everyone is entitled to all the rights and freedoms set forth in this Declaration without distinctions of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status" (UDHR, Art. 2).

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[1] See Mary Glendon, *A World Made New: Eleanor Roosevelt and the Universal Declaration of Human Rights* (New York: Random House, 2001), 93, 113–14. This is why Cassin proposed, just before its adoption, that the title of the Declaration be changed to "Universal Declaration of Human Rights" from "International Declaration of Human Rights." Glendon explains: "The title 'Universal' [Cassin . . .] later wrote, meant that the Declaration was morally binding on everyone, not only on the governments that voted for its adoption. The Universal Declaration . . . was not an 'international' or 'intergovernmental' document; it was addressed to all humanity and founded on a unified conception of the human being" (161).

Scalar Feasibility, Dynamic Power, and Solidarity

I presented in chapter 3 an exploration of the concept of feasibility and of its significance for understanding the content and defense of human rights. In this appendix, I develop a point which was made in that chapter only in passing,[1] viz. that feasibility is often a matter of degree. This point turns out to be crucial for the ideal of solidaristic empowerment presented in chapters 7 and 8. Duties of solidaristic empowerment are contingent upon considerations of scalar feasibility.

It is important to construe feasibility, and with it power, so that it has a scalar dimension. That is, we should not only make binary judgments about what an agent can or cannot do, about what they do or do not have the power to achieve. Feasibility (and with it power) allows for degrees. We use this scalar dimension, for example, to characterize the feasibility (and with it the power) of an agent A bringing about a certain outcome O in certain circumstances C as a matter of the probability P with which O would occur if A tries to bring it about in C (provided A can try). O can be characterized in a more or less fine-grained way, depending on the inquiry we are engaged in. A *wide notion of scalar feasibility* illuminates the complexity of O. For example, O could include A's forming an intention to do something, A's actually doing it, and A's action causing the result A was aiming at. The psychological mechanisms that go into determining feasibility degrees regarding the first two components may be quite important in political practice. By paying attention to them, when we deploy the wide scalar notion of feasibility we can make better political choices than when we use only a binary feasibility approach. Let me explain.

A2.1. Illuminating Difficult Choices and Avoiding Unduly Harsh Judgments

Degree of feasibility matters when we judge other people. This is clearly so when they face psychologically difficult choices. Consider a political prisoner who is tortured to extract from them information about the whereabouts of comrades who are fighting a dictatorial regime. The prisoner under torture may be able to withhold the information, but we should not judge them in the same way in which we would judge a prisoner who is not undergoing torture. It is much harder to remain loyal when facing

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[1] See chapter 3, section 3.3.3. For recent accounts of feasibility and its significance for political philosophy, see Pablo Gilabert and Holly Lawford-Smith, "Political Feasibility: A Conceptual Exploration," *Political Studies* 60 (2012), 809–25; Holly Lawford-Smith, "Understanding Political Feasibility," *Journal of Political Philosophy* 21 (2013), 243–59; David Wiens, "Political Ideals and the Feasibility Frontier," *Economics and Philosophy* 31 (2015), 447–77; and Pablo Gilabert, "Justice and Feasibility: A Dynamic Approach," in *Political Utopias: Contemporary Debates* (Oxford: Oxford University Press, 2017), 95–126.

the intense physical and psychological harms that torture involves. Paying attention to degrees of feasibility allows us to avoid being unduly harsh in our appraisals of people's choices and actions.

Being conscious of degrees of feasibility is also important to approach difficult choices of our own. During the Argentine military dictatorship of 1976–83, some activists resisting the regime carried poison pills to have the option of committing suicide if they were captured by the secret military service (and thus avoid torture and the prospect of betraying their comrades). Sometimes talented political leaders choose to step down after a long tenure at the helm of their party to avoid becoming corrupted and failing to faithfully pursue their goals as decisively as they ideally should.

These cases involve difficult choices because, in them, although agents are able to do what is ideally best they justifiably worry that the feasibility of their succeeding is low. We would not understand their predicament without using a wide scalar notion of feasibility.

A2.2. Understanding Social Power and the Injustices Related to It

Using a wide scalar notion of feasibility, and the cognate idea of degrees of power, can help us understand how social power works and notice some injustices related to it. This becomes clear when we consider how the expected costs of doing something affect the feasibility of doing it, or the power to do it, on the part of some agents.

It is sometimes said that the degree of power that an agent A has with respect to an outcome O is affected by the expected cost to A of pursuing O. The higher the expected cost, the lower, in one respect, is the power.[2] Consider two scenarios, one in which you tell me that you will beat me up unless I give you my wallet and another in which you just ask me to give you my wallet without any threats. In a binary sense of feasibility, I am able to refuse in both cases. But the costs involved in the threat make me less likely to refuse in the first scenario. In that scenario, I face opportunity costs that I do not face in the other (I have to choose between keeping my money and keeping my bodily integrity).[3]

Now, notice that expected costs affect the formation of agents' intentions, which is different from their ability to do something once they have formed the intention to do it. In the two scenarios discussed above it would be quite easy to say "No" to your request for my wallet if I chose to do so. But it would be harder for me to form the intention to say "No" in the first scenario than in the second. Expected costs may affect scalar feasibility by affecting the degree of agents' ability to form certain intentions.

The foregoing remarks help us understand features of social power, which includes the ability of some agents to get other agents to do certain things. Consider the case of

[2] See, e.g., Alvin Goldman, "Toward a Theory of Social Power," *Philosophical Studies* 23 (1972), 221–68, sects. IV–V. Goldman argues that an agent's power with respect to an outcome is inversely proportional to the cost of obtaining it. My account goes further by illuminating the issue of the formation and maintenance of intentions, which helps understand how costs bear on power to obtain an outcome through intentional actions.

[3] Notice that using a wide scalar notion of feasibility that considers costs does not conflate feasibility with desirability. The point is to foreground the issue that the extent to which something is *desired* or *undesired* by an agent may affect the extent to which the agent is able (in a psychological sense) to pursue it. The point concerns what is (un)desir*ed*, not what is (un)desir*able*. It is about perceived costs, not about costs that should count objectively.

sweatshops, in which wealthy employers exploit impoverished workers. If they have to choose between working in a sweatshop, facing all the humiliations and toil that this work involves, and the prospect of extreme poverty and even starvation that would await them if they do not take up the job, the workers are more likely to choose the former. They can choose either outcome, but it is psychologically harder to choose the latter given the greater costs involved. This is why the bargaining power of the capitalists setting up the sweatshops (when it comes to fixing salaries, working hours, workplace safety, etc.) is so high. If the workers had other options available, their intra-personal power (to form decisions regarding whether to accept employment) and inter-personal power (to secure certain outcomes in bargaining over labor conditions with employers) would be greater.

We thus have reason to see costs as affecting feasibility and this helps us understand social power. When applied to social processes, scalar feasibility concerns "soft constraints" (such as cultural or economic patterns). These, unlike "hard constraints" (such as the laws of logic or physics) are not inviolable, but affect the probability of success of paths of action that collide with them. Now, these constraints normally work through psychological mechanisms in which the weighing of costs by agents is essential.[4]

Some might prefer to use a notion of feasibility that is independent of costs to avoid a morally inappropriate capitulation in the face of an unjust status quo which, for example, lets off the hook those who say that it is not "feasible" for them to do what goes against their culture, religion, pecuniary interests, etc. But this insight can be maintained when costs are brought into the discussion of feasibility. This is so because expected costs do not normally entail strict (binary) limits, but just lower degree of (scalar) feasibility regarding some psychological processes in the agent. There still is room for pressing the agent with moral arguments, as it is not unachievable (in terms of any hard constraints) for them to do what we think they ought to do (see section A2.4 below).

Furthermore, failing to acknowledge that expected costs affect feasibility and social power may unwittingly hamper our ability to criticize some injustices. When countering criticisms that certain social relations and institutions involve injustice, it is a common maneuver to say that the agents who engage in them do so as equals, out of free choice. Consider again the case of sweatshops. A defender might say that the workers choose freely to work in sweatshops (the employers do not relate to them like slave-owners to slaves, forcibly putting them to work against their will). But free choice disables condemnation at the bar of justice only if all the choosers involved have decent alternative options to choose from. This is not true in the sweatshop case, in which only employers have decent alternatives. Impoverished people choose the humiliating and toilsome activities that work in the sweatshop involves because of the even greater hardships they would endure if they didn't. The alternatives faced by workers normally involve enormous costs, such as not providing food and housing for themselves and their family. These costs affect workers' power when they negotiate labor conditions, depressing their ability to achieve terms that are more beneficial, because they limit the likelihood that they will not settle for terms that are worse. The latter are however the terms that are better for their wealthy employers, who, not

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[4] On the importance of psychological mechanisms in social life, see Jon Elster, *Explaining Social Behavior* (Cambridge: Cambridge University Press, 2007).

facing similar costs in case of disagreement, have more power in the negotiation. It is because they face odious options rather than genuine, decent alternatives that impoverished people can be steered by sweatshop owners into choosing to work for them on terms that are crushing. The injustice lies in the fact that wealthy employers unduly profit from the relative weakness of impoverished workers, imposing on them hardships that could be avoided without unreasonable cost.[5]

Thus, to understand why the status quo is unjust we often need to see that people's ability to act in various ways varies in degree as a result of the costs they face. In general, without reference to expected costs, and their impact on scalar feasibility, we would fail to understand many relations of social power, and some injustices occurring in them. Those relations very often work through threats and incentives, which exploit prospective costs disproportionally faced by the weaker party (the costs that the fulfillment of the threat would bring about, and the costs of not going along the incentivized path).

A2.3. Enhancing Solidarity

According to the account of feasibility defended here, there is a dimension of feasibility that is scalar rather than binary and, when we consider the feasibility of some practical processes, we should consider not only whether the agents would succeed in producing the final result they are aiming at if they choose to pursue it but also the psychological processes that may lead them to form the intention to act, and sustain the action, that would produce the results. Now, using this account can enhance our ability to identify solidaristic duties to help. It makes us pay attention to the frailties, vulnerabilities, and limitations in people's psychological life. Low degrees of feasibility, as opposed to binary infeasibility, of success in forming and fulfilling plans do not dissolve an agent's prudential reason to pursue a good, or their obligation to fulfill a putative duty, but they might support the judgment that they should be helped by other agents.

Thus, if we use the wide scalar sense of feasibility, we may notice that we have specific reasons to help certain people that we would not have if their ability to achieve certain results, or their willpower to seek them, were stronger. The force of the duty to help people in need increases when the degree of their ability to give to themselves what they need decreases. It could be that certain people's degree of ability to get what they need without help is very low even if they still could, in the binary sense, get it by themselves. If we do not illuminate the scalar sense of feasibility, we will be less sensitive to the importance of helping. The same could happen if we focus only on the probability of success of certain actions without considering the probability that people would succeed in forming the intention to act in those ways. The former may be very high while the latter may be very low. We have reason to consider psychological tendencies that weaken people's willpower. They do not impose unsurpassable limits

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[5] I should qualify this point. Individual capitalists have limited power, on their own, to shape the conditions of their economic activity, as they face competitive pressures to lower costs and maximize profit to attract investment and stay in business. But they still can choose to limit their personal gains and, individually and through their corporations and associations, they have significant influence on political process establishing the rules under which they operate, domestically and internationally. Ordinarily, they have much more power to do so than the workers they exploit.

on agents' will. But they might make it hard for them to succeed without help. Noticing this situation, we might think about ways of helping them do what they have reason to do, and strengthen their will. An example is policies including public funding for psychological counseling to assist people facing very difficult tasks such as fighting addictions or managing depression, or simply dealing with common but serious crises such as a separation.

The foregoing remarks also affect cases in which we should help some people help other people. If some rich people are unlikely, because of certain psychological tendencies, to form an intention to help the poor, we may get them to contribute by generating circumstances that add new prudential reasons to the normative ones they already have. A typical example is to get the rich to pay taxes on pain of financial penalties, and then use the proceeds for (publicly avowed) redistributive purposes.

The issues addressed here are controversial because we seem to have colliding intuitions about the importance of respecting others' independence and the importance of responding to their vulnerability with solidarity. The former often leads us to leave other people alone, and the latter often leads us to reach out to them. We then wonder how can we show respect without being indifferent and how can we be solidaristic without causing humiliation. This question is pressing once we notice that a normative ideal of radical independence as self-reliance is hardly feasible or desirable. The human condition is one of social interdependence. Each of us can achieve very little without help from others, and is vulnerable to harm from them. The issue then is what forms of help we have reason to offer each other, and what forms of freedom each of us should enjoy to determine whether and how we are helped. We think more lucidly about this when we use a scalar notion of feasibility, including an analysis of degrees of power asymmetries.[6]

A2.4. Bolstering the Accessibility of Desirable Social Arrangements

In section A2.2, I argued that to explain why a status quo is unjust we sometimes need to use a wide scalar notion of feasibility to see how agents may be more or less able to act in certain ways. Now, this point also helps us think about how to change the unjust status quo.

To change an unjust status quo, we need to engage people's power to modify the way they act. Binary infeasibility in the present does not necessarily block the way for change in the future. Although something may be infeasible in current circumstances, it may become feasible in the longer term if agents take steps to change their circumstances, developing abilities they currently lack. So I may be unable to sing a certain opera aria now. If I try to sing it, I will fail. But I can take singing lessons to develop my singing talents and may eventually be able to sing the aria in a few years.[7]

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[6] See chapter 7, section 7.2.3.

[7] We can make this point by using Philip Pettit's useful distinction between "actual" and "virtual capacities" (where the former are more or less ready to be exercised, while the latter still need to be developed). See Pettit, *Republicanism* (Oxford: Oxford University Press, 1997), 54. The dynamic duties I proceed to mention target the generation of abilities that are actual capacities in Pettit's sense. An agent might now lack the actual capacity to sing the aria, but they can develop their virtual capacity and eventually have the actual capacity to sing it. Notice that the difference between the present and the future scenario is not just temporal; it involves a change in the circumstances (that is, in relevant features of the agent or their environment).

In politics, this indirect access is also common. Before getting the franchise, workers were quite unable to campaign effectively for robust legal social rights. But by successfully campaigning for getting the vote they made themselves able to press for and achieve new legal entitlements. I call demands to undertake these developments of agents' ability to achieve social justice *dynamic duties*.[8] Dynamic duties differ from normal duties in that they focus not merely on achieving certain desirable outcomes in given circumstances, but also on changing these circumstances so that certain desirable outcomes that are not immediately accessible now become immediately accessible in the future. This point is strengthened if we use the scalar notion of feasibility. Often certain reforms are not strictly infeasible now. But their pursuit may be made to have a significantly higher probability of success if some circumstances are changed first. If we want to make responsible choices in which we are both ethically ambitious (and thus seek to reform the status quo) and realistic (and thus pay attention to the obstacles and risks we face), then we should pay serious attention to this possibility of scalar development of our political abilities.

Interestingly, the ideas of dynamic duties and changes in (scalar) feasibility have a companion idea of *dynamic power*, which we can add to the characterization of power given in chapter 7 (section 7.2(iii)):

> A has dynamic power over A's power with respect to whether some outcome or state of affairs O occurs to the extent that A can, in current circumstances C1, voluntarily determine whether C1 change into different circumstances C2 so that A becomes more, or less, able to voluntarily determine whether O occurs.[9]

The wide scalar notion of feasibility, and the idea of dynamic power, are important when thinking about how to enhance the feasibility of certain projects of justice. I have talked about developing one's own feasible sets. But there is also the issue of changing the feasibility sets of others. There may be important dynamic duties in that respect as well. An example of this phenomenon emerges if we consider G. A. Cohen's critical discussion of the "incentives argument for inequality."[10] According to this argument, some unequal distributions are justified if they operate as incentives for highly talented people to use their talents more fully. By working harder, the highly talented help increase the resources available for distribution: both they and the less talented (who receive less than the highly talented under the inegalitarian scheme) get more than under an alternative egalitarian scheme. Cohen rightly presses the question whether it is really impossible for the highly talented to work harder under an egalitarian scheme. It turns out that in most cases there is no strict incapacity. They could work harder, and thus make available for the less talented a better standard of living than would be available under an inequality favoring the highly talented. The highly talented simply choose to block that option by signaling that they will not work harder unless they get

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[8] See chapter 3, section 3.5.1.

[9] Or, adapting the definition more fully to the schema used in chapter 7, section 7.2.3: A has dynamic power over A's power relations with S with respect to O to the extent that A can, in current circumstances C1, voluntarily determine whether C1 change into different circumstances C2 so that A becomes more, or less, powerful to determine how S turns out to be or behave with respect to O. We can also add time indices to make the account of power more explicit.

[10] G. A. Cohen, *Rescuing Justice and Equality* (Cambridge, MA: Harvard University Press, 2009), chs. 1–2.

paid more than others. If it now turns out to be infeasible, or less feasible, for the less talented to get what they would get under a more productive egalitarian scheme, it is the highly talented, acting as self-seeking high-flyers, who *make* it infeasible, or less feasible, for them.

Cohen identifies a case in which agents acting greedily shrink the feasible set of other agents. Now, we can identify the opposite case, in which agents acting solidaristically expand the feasible set of other people. When the highly talented choose to exercise their talents to increase production without demanding lower taxes to do so, they make more resources available for egalitarian distribution. They thus increase the extent to which a higher standard of living is feasible for others. While the greedy choices of some may depress others' feasible sets, alternative, solidaristic choices may expand them. A key dimension of political transformation consists in the pursuit of changes of cultural norms so that solidaristic choices become more likely than they currently are. As these cultural changes take hold, redistributive policies become more feasible.

To conclude, since these changes in motivational patterns proceed above binary thresholds of ability, we will not be alive to their significance unless we use a wide scalar notion of feasibility. To understand and enhance the prospects of social change it is crucial to pay attention to psychological mechanisms affecting people's behavior. This includes, interestingly, people's willpower to act in various ways. Willpower is variable. It can be reduced or expanded over time. Think about the effects of encouragement on the willpower of children, students, and friends. Much in politics turns on influencing the willpower of others and one's own. Think about the depression of willpower that results from the public disparaging and stereotyping treatment of members of certain minority groups, and the enhancement of their willpower that results from public acts of recognition and in processes of self-empowerment in which the members of those groups cast themselves in a new, self-affirming light.

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