

The Teleology of Human Rights:
Taking Justice and Utopian Aspiration Seriously

The Teleology of Human Rights

The debate in the philosophy of human rights has been dominated by the contest between political and orthodox theories of human rights. I draw attention to a cross-cutting distinction between teleological and non-teleological views. Teleological views characterize human rights partly in terms of their relation to the idea of international (or global) justice considered as an end to be pursued. Non-teleological views characterize human rights as way of protecting individuals in the present without reference to such a utopian horizon of aspiration. I argue that pressing problems for the two most prominent political conceptions of human rights—those of Charles Beitz and Joseph Raz—flow from the non-teleological character of their respective views. I pinpoint more precisely the uneasiness that many have had with the way these theories seem to take the status quo as given, arguing that these views take the unjust unwillingness of states to abide by human rights norms as grounds for exempting states from those very norms—a kind of concession to injustice that we recognize in other contexts as both normatively objectionable and even incoherent. In closing I show that teleological variants of the political conception avoid this pressing objection easily. For those attracted to a political theory of human rights, they would do best to adopt a teleological version. My intention is less the desire to defend political conceptions than to begin to make the case that whatever theory of human rights we adopt—political, orthodox, or something else altogether—we would do best to adopt a teleological version.

§1: Introduction

Since Charles Beitz's *The Idea of Human Rights*, it has been typical to divide the field between “orthodox”¹ and “political”² views of human rights. While there are recurrent attempts to move beyond this binary, it has had remarkable staying power.³ Fruitful as this division has been for organizing debate, there is another significant division that cuts across it. I call the theories falling on each side of this division “teleological” and “non-teleological” views of human rights.⁴ Teleological views of human rights characterize human rights partly in terms of their relation to the idea of international (or global) justice considered as an end to be pursued. While viewing the response to present injustice as crucial, they nonetheless take the utopian dimension of human rights seriously in theory and practice. Teleological views can be expressed through a division between what John Rawls called “ideal theory” and “nonideal theory”, on one understanding of this ambiguous and fraught division, on which ideal theory articulates an end for practice and non-ideal theory reasons towards this end under conditions of injustice.⁵

¹ Also often called “natural” or “humanist” views. See Martha Nussbaum, *The Frontiers of Justice* (Cambridge: Harvard University Press 2007); James Griffin, *On Human Rights* (Oxford: Oxford University Press 2008); John Tasioulas, “The Nature of Human Rights” in *The Philosophy of Human Rights*, ed. Gerhard Ernst and Jan-Christoph Heilinger (De Gruyter 2011), 17-56; and Pablo Gilabert, *Human Dignity and Human Rights* (Oxford: Oxford University Press 2021).

² Also often called “practical” or “practice” views. See John Rawls, *The Law of Peoples* (Cambridge: Harvard University Press 1999). Charles Beitz, *The Idea of Human Rights* (Princeton: Princeton University Press 2009); Joseph Raz, “Human Rights Without Foundations”, *Oxford Legal Studies Research Paper* 14 (2007); and Andrea Sangiovanni, “Justice and the Priority of Politics to Morality”, *The Journal of Political Philosophy* 16:2 (2008): 137-162.

³ My understanding of this debate has been shaped by three excellent anthologies that together contain many of the contributions to the ongoing debate. *Moral and Political Conceptions: Implications for Theory and Practice*, eds. Reidan Maliks and Johan Karlsson Schaffer (Cambridge: Cambridge University Press 2017); *Human Rights: Moral or Political*, ed. Adam Etinson (Oxford: Oxford University Press 2018); *The Idea of Human Rights Revisited: Charles Beitz and the Political Turn in the Philosophy of Human Rights* eds. David Álvarez and João Cardosa Rosas (New York: Routledge 2023).

⁴ [Author citation omitted.]

⁵ See [Author Citation Omitted].

Non-teleological views, by contrast, do not characterize human rights in terms of their relation to justice as an end to be pursued. They view it as way of protecting individuals in the present without reference to such a utopian horizon of aspiration. Although their views allow critique and can call for change, they do not refer to some vision of a just global or international order. Their views are thus not well-articulated in a division between ideal and nonideal theory, at least not on a version of that division on which ideal theory articulates an end of justice to be pursued in practice.

The first task of this essay is to draw our attention to this alternate way of demarcating the philosophical terrain. Although less acknowledged as an organizing principle, I will show that we already find the division between teleological and non-teleological conceptions operating in extant philosophical theories of human rights, with orthodox and political conceptions of both varieties. This distinction reveals important fault lines that are obscured when the focus remains on the contest between orthodox and political views.

My second task is to show that pressing problems for the two most prominent political conceptions of human rights—those of Charles Beitz and Joseph Raz—flow from the non-teleological character of their respective views. I pinpoint more precisely the uneasiness that many have had with the way these theories seem to take the status quo as given, arguing that these views takes the unjust unwillingness of states to abide by human rights norms as grounds for exempting states from those very norms—a kind of concession to injustice that we recognize in other contexts as both normatively objectionable and even incoherent. In closing I show that teleological variants of the political conception avoid this pressing objection easily. For those attracted to a political theory of human rights, they would do best to adopt a teleological version. My intention in making this argument is less the desire to defend political conceptions than to begin to

make the case that whatever theory of human rights we adopt—political, orthodox, or something else altogether—we would do best to adopt a teleological version.

§2: *Teleological and Non-Teleological Conceptions of Human Rights*

When presenting their influential political conceptions of human rights, Charles Beitz and Joseph Raz both draw inspiration from John Rawls' elliptical but tantalizing discussion of human rights in *The Law of Peoples*.⁶ While human rights are not his main topic, Rawls does stake a position in the context of his broader theory of international justice. When it comes to human rights, Rawls claims, we should not look for illumination to a philosophical conception of the human being or natural law of the sort that operated in the enlightenment natural rights tradition of Europe.⁷ We would do better to understand human rights in the context of the post-war international order as a novel development, a crucial alteration in our understanding of the Westphalian order of sovereign states.⁸ Human rights serve as a limitation on the sovereignty of states: their violations are matters of international concern that provide reasons for external actors (states, international organizations, non-state actors) to take actions intended to induce compliance with human rights norms in one way or another.

Although Raz and Beitz are skeptical of the ways Rawls develops this view, they both embrace his basic approach, accepting some version of what Beitz illuminatingly calls a “two-level model” of human rights.⁹ On the two-level model, human rights are requirements whose object is to

⁶ See Raz, “Human Rights Without Foundations”, 9-14; Beitz, *The Idea of Human Rights*, 96-106.

⁷ John Rawls, *The Law of Peoples*, 79-81.

⁸ Ibid.

⁹ They are each skeptical of the way Rawls relate human rights to the value of tolerance, i.e. as setting the limits of tolerance in the international arena. They are also skeptical of his ways of tying human rights to the distinction between social cooperation and political violence. Finally, they view his list of human rights as unduly narrow, and both think he focuses too much on military and economic interventions as the modes of political response to human rights violations. Of course, the most

protect urgent individual interests against certain predictable dangers to which they are vulnerable in a modern world composed of states. At the first level of the model, human rights requirements apply to states operating within their territorial jurisdictions, including to their constitutions, laws, public policies, and executive actions. Human rights principles require states to refrain from posing a danger to urgent interests through state action, to guard individuals against the dangers posed by non-state actors, and to give aid to those within its territorial jurisdiction who are subject to non-voluntary deprivations.

So far, these requirements do not distinguish human rights from other urgent interests of individuals that place requirements on their governing authorities. The real difference comes in the second level of the model, which concerns the response to failures to fulfill the requirements of the first level. These give rise to *pro-tanto* reasons for external agents who are “appropriately situated” and “capable” to help secure the requirements. In short, human rights are matters of international concern in that they provide second level reasons for external agents in the international community to address the failures of states to the first level of human rights requirements. Beitz further elaborates this two-stage model by developing a typology of modes of response from external agents for which human rights violations provide *pro-tanto* reasons.¹⁰ Beitz thus elucidates the concept of human rights by focusing on their practical upshot: to view something as a human right is to regard its violation as a matter of international concern, and so as potentially justifying political action by a diverse set of international actors.¹¹

For views that take inspiration from *The Law of Peoples* and emphasize the practical character of human rights, Beitz and Raz strangely ignore Rawls’ central conceptual apparatus for thinking

trenchant criticism of Rawls on tolerance and many of these other issues can be found in Nussbaum, *The Frontiers of Justice*, 238-264.

¹⁰ Beitz, *The Idea of Human Rights*, 31-42. For a more recent update of this elaborated typology, see also, Charles Beitz, “The Practice and Its Authority: An Elaboration” in *Critical Review of International Social and Political Philosophy* 25:1 (2022): 9-28.

¹¹ Raz’s view is quite similar. See Raz, “Human Rights Without Foundations”.

about the relationship of theory to practice. Rawls agrees that we best understand human rights by focusing on their practical role. He would also affirm the formulation that human rights violations are matters of international concern licensing external action. But Rawls develops this idea through a theory of justice structured by a contrast between ideal and nonideal theory.

As he treats them in *The Law of Peoples*, ideal theory articulates the idea of a just society of peoples as an end for practice, a long-range goal of our political hope and aspiration, which Rawls provocatively calls a “realistic utopia”.¹² Nonideal theory begins in the unjust society of peoples of the present and reasons dynamically towards that end by identifying and diagnosing current injustices, and looking for permissible, politically possible, and effective steps that can be taken to overcome them.¹³ Rawls holds that a defensible nonideal theory of international justice makes essential reference to ideal theory as the end towards which it aims in a variety of ways.¹⁴

On the one hand, as principles of international justice (elements of the Law of Peoples), human rights serve to partially characterize the justice of a society of peoples.¹⁵ They are partial specifications of the regime types compatible with the existence of a just society of peoples, since respecting human rights norms is part of what makes a people liberal or decent.¹⁶ Furthermore, human rights function in ideal theory as part of the framework of public reason, a common standpoint and set of core commitments, to which such agents can appeal when justifying their actions to one another and reasoning about international cooperation and foreign policy.¹⁷ They thus function to (1) partially specify the members of the society of peoples, (2) serve as norms to be

¹² Rawls, *The Law of Peoples*, 11-12.

¹³ Rawls, *The Law of Peoples*, 89-90.

¹⁴ Rawls, *The Law of Peoples*, 90. The best compact discussion of this aspect of Rawls’ thought is A. John Simmons, “Ideal and Nonideal Theory”, *Philosophy & Public Affairs* 38:1 (2010): 5-36.

¹⁵ Principle 6 of the Law of Peoples states, “Peoples are to honor human rights.” See Rawls, *The Law of Peoples*, 37.

¹⁶ John Rawls, *The Law of Peoples*, 27.

¹⁷ John Rawls, *The Law of Peoples*, 54-57.

adhered to both domestically and internationally, and (3) provide a partial framework for the discourse and public reasoning of the international community.

For Rawls, human rights also play a crucial and distinct role in nonideal theory. They serve in part to characterize unjust regime types that set some of the problems of international action as Rawls understand them.¹⁸ For “outlaw states” are partially characterized by their intentional violation of their citizens’ human rights, and “burdened societies” are partially characterized by their lack of state capacity to protect the human rights of their citizens.¹⁹ Rawls theorizes the requirements of just war theory in connection with outlaw states, and requirements of international aid in connection with burdened peoples. Human rights influence both the rationale of just war and set limits to its proper conduct. They structure justice post-bellum as well since the aim of war is to secure a just peace where outlaw states forgo aggression and respect the human rights of their population.²⁰ When it comes to international aid considered as a mandate of justice, human rights structure the aims and limits of aid, the function of which is to help burdened peoples reach one of the regime types compatible with a just society of peoples, including, crucially, by developing the capacity to meet their human rights requirements.²¹

In short, for Rawls, the practical role of human rights is to partially specify the end of a just society of peoples that serves as the object of aspiration and striving for international action.

Endemic violations of human rights in the present are injustices, and so great practical problems, in

¹⁸ Rawls’ use of his typology of actors to theorize nonideal theory is highly problematic, for it suppresses crucial questions about human rights that arise from actors who diverge from the ideal types of liberal or decent peoples without being outlaw states or burdened societies, e.g. quasi-imperial actors like the United States. I also accept the many trenchant philosophical criticisms of Rawls’ truncated list of human rights. My thinking about the deficits of Rawls’ approach has been shaped by the following critiques: Laura Valentini, “Ideal vs. Nonideal Theory: A Conceptual Map”, *Philosophy Compass* (2012); John Tasioulas, “From Realistic Utopia to Kazanistan”; and Martha Nussbaum, *The Frontiers of Justice*.

¹⁹ Rawls, *The Law of Peoples*, 90.

²⁰ John Rawls, *Law of Peoples*, 93.

²¹ Rawls, *The Law of Peoples*, 108-110.

the society of peoples that must be overcome to advance towards a condition of justice. These violations set the agenda for the theory of various aspects of nonideal theory including just war theory, the theory of international aid, and the just organization of cooperative international organization insofar as these grapple with human rights violations. As an end, the realistic utopia of a just society of peoples is to be approached by traversing permissible, politically possible, and effective pathways of change that are also shaped and constrained by human rights considerations. Human rights thus inform both the justice of a just society of peoples and the principled approach to towards this end under current conditions of injustice.²²

Beitz' view about these matters is nuanced, but on balance he rejects this Rawlsian structure.²³ Beitz is emphatic that our aim in developing a philosophy of human rights is *not* to construct a conception of human rights in a just global order, *but rather* to grasp the concept of a human right as it occurs within an existing practice.²⁴ He thus sets up what is intended as an exclusive choice, and it is clear which of these exclusive options he favors. "A theory of human rights is not [part of] a theory of ideal global justice," Beitz writes in no uncertain terms.²⁵ While human rights are norms that do critique the present, and in so doing, point towards some transformations, these transformations are not best understood as having an end in the idea of a just society of peoples, nor are they part of an ideal of global justice, or the like. They are not principles of justice in

²² One should bear this context in mind when evaluating complaints like that of John Tasioulas that Rawls treats human rights as "something akin to the Swiss army knife of international political theory", defined by a bewildering number of practical roles. The complexity that Tasioulas rightly identifies in Rawls' view comes from the complex practical structure of justice as Rawls conceives it. It is no more or less complex, I think, than the practical role of any principle of justice on a Rawlsian view. See John Tasioulas, "Towards a Philosophy of Human Rights", 18.

²³ There is some openness in Beitz to an end-directed style of thinking that could be harnessed to steer his view in a Rawlsian direction. For example, he calls human rights "standards of aspiration" that are "bases of political criticism" and "ideals that guide political efforts at change". He also incisively defends Joel Feinberg's related idea of rights "in the manifesto sense", which are practically relevant even though they cannot be secured in the present. See Beitz, *The Idea of Human Rights*, 43-44 and 117-122.

²⁴ Beitz, 102.

²⁵ Beitz, *The Idea of Human Rights*, 128.

Rawls' sense, and so not connected to a vision of a just world. They are rather to be understood as "middle level" principles arising from a novel practice operating in circumstances of injustice.

In several places, Beitz emphasizes the fact that the practice of human rights takes the world as it is as given, presupposing the state system in its present (possibly unjust) form. He tells us that the injustice of the state system itself, "regarded as a question of ideal theory" is a question that "does not arise" in the philosophy of human rights.²⁶ This is connected with his seemingly deflationary remark that human rights "can only be understood" as a "revisionist appurtenance of a world order of independent, territorial states".²⁷ According to this metaphor, human rights represent an appendage that modifies the prevailing international order. It thus "takes the structural features of such a political order as more-or-less fixed", however we are to evaluate that political order from the perspective of justice.²⁸

To be clear, on Beitz' view, there is plenty of room for critiquing and revising the present order in light of human rights concerns. As normative standards human rights guide action and so can set goals for us. But these goals are ones that presuppose the present order as more-or-less fixed irrespective of its ultimate justice, and so can be pursued without raising questions about what normative requirements would characterize a just international community. Beitz, unlike Rawls, views the practical role of human rights in the present as something to be characterized independently from thought about the role of human rights in a just world order understood as an end for action. Rawls, by contrast, while agreeing that human rights are tied to novel changes of practice, nonetheless argues that to grasp their practical role in the current practice under conditions

²⁶ Beitz, *The Idea of Human Rights*, 128-129.

²⁷ Ibid.

²⁸ Beitz, *The Idea of Human Rights*, 131. Beitz also says, in a similar vein, that the philosophy of human rights does not raise, and so may bracket, broader questions about global economic justice. As we will soon see, this is not the only aspect of the status quo Beitz accepts as given.

of injustice, one must also grasp their role in an ideal theory of a just global order. What Rawls views as a necessary structural connection between the topics, Beitz sees an exclusive choice.²⁹

We thus find, amongst proponents of the political view, teleological and non-teleological versions of this theory.³⁰ We might suspect that this contrast arises solely because of Rawls' idiosyncratic theoretical framework. However, this would be hasty, for we find a similar disjuncture amongst orthodox theorists who oppose political views. Consider two of the most prominent orthodox theorists, James Griffin and John Tasioulas. Both develop a view of human rights as moral rights that hold merely in virtue of being human. Griffin elaborates this idea by specifying three interests that are tied to a certain conception of the human being as a normative agent.³¹ Tasioulas opts for a broader characterization of their bases in human dignity as equal status and universal human interests.³² In an early and penetrating review of Rawls' *The Law of Peoples*, Tasioulas briefly and tantalizingly related his preferred conception of human rights to the Rawlsian distinction between ideal and nonideal theory.³³ But all reference to this structure falls away in his later work where he systematically develops his views. Griffin is more resolutely silent on this distinction, opting for a treatment of human rights as a timeless set of moral principles. Neither describes human rights as part of an end that incorporates other requirements of global or international

²⁹ Raz is an even clearer case than Beitz. Beyond adopting a political conception, he does not even flirt with Rawlsian understandings of practice.

³⁰ I thus agree with Kristin Hessler that Rawls' view diverges from Beitz' and Raz's more than is often acknowledged. However, I think all three are meaningfully characterized as political conceptions of human rights; their difference lies elsewhere. See Kristin Hessler, "Theory, Politics, and Practice: Methodological Pluralism in the Philosophy of Human Rights" in *Moral and Political Conceptions of Human Rights: Implications for Theory and Practice*, 15-32.

³¹ James Griffin, *On Human Rights* (Oxford: Oxford University Press 2008).

³² See Tasioulas, "Towards a Philosophy of Human Rights"; John Tasioulas, "On the Foundations of Human Rights" in *Philosophical Foundations of Human Rights*, ed. Rowan Cruft (Oxford: Oxford University Press 2015), 45-70.

³³ John Tasioulas, "Review: From Utopia to Kazanistan: John Rawls and the Law of Peoples", *Oxford Journal of Legal Studies* 22 (2): 367-396 (2002).

justice, nor do they theorize the distinctive way human rights claims relate to conditions of injustice. One assumes that they find the general framework of ideal and nonideal theory unhelpful.

For a dramatic contrast, consider the philosophy of human rights of Pablo Gilabert. Gilabert has defended the relevance of ideal theory to reasoning about nonideal circumstances in political philosophy quite generally.³⁴ In concert with Holly-Lawford Smith, he presents an account of different and increasingly demanding feasibility constraints appropriate at three stages of analysis: the selection of normative principles, the institutionalization of these principles, and concrete political reforms intended to approach the end set by these principles.³⁵ Gilabert has also articulated the concept of dynamic duties—duties to change the context of action to make something feasible in the future that is not at present—and the associated concept of dynamic powers.³⁶ He explains the non-maximal character of human rights by locating them midway on what he calls “the arc of humanist justice”, as partial realizations of broader dignitarian and egalitarian justice that are focused on protecting urgent interests in ways that are practicable in the present.³⁷ In answer to skeptics who are disappointed by the limited character of human rights in contrast with broader visions of social transformation, he argues that human rights flow from the same dignitarian bases as more ambitious egalitarian and socialist claims of justice.³⁸ Since they are undergirded by the same source, and are partial realizations of the same ambitious norms, *pace* the skeptics, they are compatible with broader

³⁴ See Pablo Gilabert, “Comparative Assessments of Justice, Political Feasibility, and Ideal Theory”, *Ethical Theory and Moral Practice* 15 (1): 39-56 (2012).

³⁵ Pablo Gilabert and Holly Lawford-Smith, “Political Feasibility: A Conceptual Exploration”, *Political Studies* 60:4 (2012): 818-823.

³⁶ Pablo Gilabert, “Justice and Feasibility: A Dynamic Approach” in *Political Utopias: Contemporary Debates*, ed. Michael Webber and Kevin Vallier (Oxford: Oxford University Press 2017), 95-126.

³⁷ Pablo Gilabert, *Human Rights and Human Dignity*, 287-321. Note that this “non-maximalism” sets Gilabert’s view of human rights apart from Nussbaum’s, although Gilabert would affirm her broader claims about justice.

³⁸ For the critique of human rights along these lines, see Samuel Moyn, *Not Enough: Human Rights in an Unequal World* (Cambridge, MA: Harvard University Press 2019); Wendy Brown, “‘The Most We Can Hope For...’: Human Rights and the Politics of Fatalism”, *The South Atlantic Quarterly* 103 (2/3): 451-463 (2004). For Gilabert’s reply, see, *Human Rights and Human Dignity*, 84-113.

egalitarian aspirations. Furthermore, in present conditions of injustice, Gilabert argues we do best to theorize human rights as sources of dynamic power for the wronged that enable greater future transformations. He calls the conception of human rights associated with this approach to nonideal theory “the solidaristic empowerment view”.³⁹ On the solidaristic empowerment view, we conceptualize human rights under conditions of injustice as meeting the claims of wronged agents in such a way as to simultaneously build their capacity as agents of change to effectuate social transformations.⁴⁰ In short, for Gilabert the philosophy of human rights is shot through with reference to a dynamic structure that bears a resemblance to that of Rawls, although serving a dignitarian, humanist, and so orthodox, theory of human rights.

Thus, we find in the orthodox camp the same division between teleological and non-teleological views of human rights that we find in the political camp. Having noted the cross-cutting character of this distinction, I set aside discussion of orthodox conceptions to focus on problems specific to political approaches.

§3: *On Being Beholden to the Status Quo*

On Betiz’s two-stage model, the argument that something is a human right must pass through two stages. In the first stage, we begin by specifying an urgent interest that matters to a wide range of normal lives. This interest must be subject to standard threats in the absence of state action. In light of this, we argue that the state is subject to a responsibility to respect, protect, and promote the interest through legislation and policy. But this is not enough. For, we must also attend to the distinctive second stage according to which human rights violations are matters of international

³⁹ Gilabert, *Human Rights and Human Dignity*, 161-190.

⁴⁰ This informs Gilabert’s robust defense of labor and democratic rights as protections of urgent interests that also empower oppressed agents, enabling them to push for broader transformations. Gilabert, *Human Rights and Human Dignity*, 229-287.

concern. So, we must argue that when a state fails to satisfy the first level norm, these violations serve as appropriate matters of international concern at the second level.⁴¹ For this layer of justification, we must show that when a state fails to secure the right at the first stage, there are, generally speaking, permissible and feasible sequences of actions that open to outside political agents that would help remediate the failure. Furthermore, in “the central range of cases” some of these outside agents must have reasons to shoulder the burdens of enforcement associated.⁴²

To explore the way in which these requirements can produce difficulties in justifying human rights, Beitz considers three “hard cases” for human rights: anti-poverty rights, rights of political participation, and women’s rights. His discussion of each of these rights is meant to highlight a different challenge that can arise in the attempt to justify a human right. Drawing on several informative critiques, I will focus on women’s human rights, where the problem is clearest.⁴³

When it comes to women’s rights, the challenge Beitz identifies is saying how much human rights norms should defer to prevailing cultural norms about gender and women’s appropriate roles. As Beitz argues, women’s human rights have an extraordinarily strong basis, since they rely mainly on the same interests as human rights in general, only taking account of the special threats that arise from structures of gender oppression.⁴⁴ Beitz is thus unimpressed by the thought that women’s human rights might run roughshod over prevailing norms about gender, especially given that in all real-world cases, the relevant norms will be subjects of disagreement and contestation.

⁴¹ Beitz, *The Idea of Human Rights*, 33-40; Charles Beitz, “The Practice and its Authority: An Elaboration”, *Critical Review of Social and Political Philosophy*, 25(1) (2022). While they include the forms of “interference”, they also encompass more supportive ways of engaging with human rights shortfalls, including providing aid designed to help foster human rights fulfillment, as well as altering international regimes to remove barriers that result in human rights shortfalls in other nations.

⁴² Beitz, *The Idea of Human Rights*, 140.

⁴³ I believe a similar case could be made about what he says about rights of political participation, although the dialectic is complicated by his complex views in democratic theory.

⁴⁴ Beitz, *The Idea of Human Rights*, 188-189.

The real question, Beitz thinks, is what feasible actions are permissible for outside agents to pursue when a state is failing to secure women's human rights. In particular, Beitz focuses on norms that requires changes in prevailing attitudes and beliefs about gender. For example, to secure women from domestic assault, it is not enough to alter criminal law to outlaw domestic abuse. It is also necessary to alter the norms and beliefs of police officers that investigate domestic violence and rape, as well as judges who apply the law, and if trial by jury is involved, the attitudes of jurors as well. Similarly, to secure the human rights of sex workers, it will not be enough to target traffickers and debt slavery, it will also be necessary to alter attitudes to sex workers so that they are viewed as deserving equal protection and dignity.⁴⁵ Presumably, this is why *The Convention on the Elimination of All Forms of Discrimination Against Women* requires states to combat demeaning and misogynistic views about women.⁴⁶

Beitz asks us to focus on cases where a "recalcitrant state" "refuses to adopt" measures to secure this right at the first stage, resulting in women's human rights being subject to violations widespread enough to be matters of international concern.⁴⁷ A state might be recalcitrant for several reasons, but in the case as Beitz has elaborated it, the violations faced by women, such as domestic abuse victims and sex workers, arise in part because of "culturally sanctioned habits of legal and administrative practice" of state actors such as police, juries, judges, and ultimately legislators who share demeaning conceptions of women that hinder effective enforcement.⁴⁸ In this case, Beitz suggests that there may be nothing that other states can permissibly do to affect the situation in the central range of cases. If so, Beitz suggests that women do not have a human right to their state's

⁴⁵ Beitz, *The Idea of Human Rights*, 194.

⁴⁶ See especially Article 5 of UN *General Assembly, Convention on the Elimination of All Forms of Discrimination Against Women* (1979).

⁴⁷ Beitz, *The Idea of Human Rights*, 196,

⁴⁸ *Ibid.*

combatting of demeaning views about women, even when this predictably results in a failure to secure their urgent interests.

Beitz softens the blow, indicating that non-governmental organizations employing voluntary means, through education, consciousness raising, or support of domestic feminist groups, may have courses of action open to them that states do not. Perhaps for this reason, we may see women's rights operating as matters of international concern even under these circumstances, albeit in an attenuated way.⁴⁹ Beitz also hastens to point out that improving many aspects of women's human rights does not require such cultural transformations. In these areas, there is no question that women's human rights are on a firm footing.

Critics of the political conception have tended to object that it somehow takes as given facts about the international community in ways that blunt its critical edge.⁵⁰ Several authors have scented trouble with Beitz's argument about women's human rights in particular, pointing out that it appears to concede rather than challenge the misogynistic status quo.⁵¹ While the dissatisfaction of the critics is palpable, it is less clear how to formulate the problem in its generality. After all, taking the status quo as given can be legitimate in some ways in practical reasoning or the specification of ones obligations.

In general, the problem seems to lie less with Beitz's carefully hedged practical prescriptions, and more with the form of his argument. What forecloses the possibility of a human right to a

⁴⁹ Beitz, *The Idea of Human Rights*, 195-196.

⁵⁰ For an exceptionally forceful and illuminating critique of the general problem, with which I engage lightly below, see Massimo Renzo, "Human Rights and the Priority of the Moral", *Social Philosophy and Policy* 32:1 (2015): 127-148.

⁵¹ See Kristin Hessler, "Political Legitimacy and Women's Human Rights", *Project MultiRights. University of Oslo, PluriCourts - Centre for the Study of the Legitimate Roles of the Judiciary in the Global Order*. <https://www.jus.uio.no/pluricourts/english/projects/multirights/docs/hessler-role-of-courts.pdf>; Luise K. Müller, "Which Practice? – Rescuing the Practical Conception of Human Rights", *Critical Review of International Social and Political Philosophy*, 25:1 (2022): 128-142; and Cristina Lafont, "Are Human Rights Associative Rights? The Debate Between Humanist and Political Conceptions of Human Rights Revisited", *Critical Review of International Social and Political Philosophy* 25:1 (2022): 29-49.

non-misogynistic and demeaning culture is the intransigence of the state. As David Estlund has forcefully argued, the unwillingness of an agent to abide by a requirement of justice does not exempt them from that requirement, even when their unwillingness is highly predictable.⁵² This is especially clear where the cause of the unwillingness to abide by a principle is itself shown to be bad by the lights of that very principle. For example, the fact that someone predictably fails to abide by the principle of racial equality owing to racist dispositions has zero force to exempt them from that principle. On the contrary, what is wrong with the disposition is to be explained in part by the fact that it makes subjects unwilling to act according to the principle of equality.

The problem for Beitz is that the intransigence of the state actors he imagines has on its surface just this form. Women have a human right to have their state combat misogynistic and demeaning ideas about them, at least when these threaten their urgent interests by undermining the enforcement of their rights in personal security. Agents of the state are not doing this, precisely because they share these demeaning and misogynistic ideas that are to be criticized by this very principle. But Beitz asks us to believe that this observation somehow has the power to undermine the status of the human rights requirements to which the offending state is subject. This would appear to be the same patently bad form of moral reasoning against which Estlund rails. It threatens the same sort of incoherence insofar as the demeaning and misogynistic ideas shared by state actors are to be critiqued *inter alia* precisely on the grounds that they lead to a failure to protect women's human rights.

We need to tread carefully here. It is true that what undermines the status of the claim is not the unwillingness of the state actors to enforce the human rights requirement *per se*. It is not a problem that arises at the first stage of the two-stage model, but rather at the second stage. The

⁵² Strands of this argument appear in several places in Estlund's corpus. See especially David Estlund, "Human Nature and the Limits (If Any) of Political Philosophy", *Philosophy and Public Affairs* 39:3 (2011):207-237; and David Estlund, *Utopophobia: On the Limits (If Any) of Political Philosophy* (Princeton: Princeton University Press 2019), 124-149.

point is that given what remediation would require, the intransigence of state actors makes it impossible for outside agents to take effective and permissible actions to address the failure of the state at the first stage. Perhaps this difference makes a difference?

But we must ask *why* this issue cannot be addressed feasibly and permissibly by concerned outside parties. In some non-recalcitrant states, failures in this area clearly would be amenable to action motivated by international concern. For example, if some state actors were willing to work on this issue, then they might be open to receiving assistance, perhaps in the form of learning the best practices from nations that had tackled similar problems successfully, undergoing trainings facilitated by the United Nations, receiving targeted aid for police or judicial reform efforts, and the like. But in our case, the reason why permissible action from outside agents is infeasible is that state actors *share* the values that the norm requires the state to combat, and so will frustrate any international attempts to improve the situation. The very same disposition that can be critiqued in light of the norm explains both their failure to abide by the norm and the successful resistance to outside remediation. If the disposition that makes them unwilling to abide by the human rights norm does not exempt them from it, why would the fact that the disposition *also* leads them to resist international remediation do so? Indeed, rather than an exempting condition, this seems if anything like a further ground to criticize the disposition.

Now, for Raz the issues are subtly different. He shares with Beitz a version of the two-stage theory of human rights.⁵³ But for Raz, what sets human rights apart from other moral rights is the feature of being “sovereignty disabling”. They mark the limits of sovereign immunity, which Raz understands as a feature of states that makes intervention (broadly construed) in domestic affairs normally inappropriate. Raz writes that human rights are those rights “whose violation can justify any international action against violators” including, “making conformity of rights a condition of

⁵³ For these purposes, he deploys his famous interest theory of rights. See Joseph Raz, *The Morality of Freedom* (Oxford: Oxford University Press 1986), 165-192.

aid, calling on states to report on their conduct regarding protection of human rights, condemning violation, refusing to provide landing or over-flight rights, trade boycotts, and others”.⁵⁴ When human rights violations are in play, states can no longer reply that its domestic affairs are none of the business of outsiders.

To show that something is a human right, we must show that when states fail to fulfill the duties that arise from the urgent interests of individuals, the rights violation provides a defeasible reason for outside agents to take interfering action. We must also show that when they do take action, the human rights violating state is not in a position to invoke sovereign immunity as a defense against their intervention. Our views about sovereignty and human rights interact and need to be developed in tandem.

But Raz argues that the proper scope for sovereign immunity does not depend only on questions of domestic justice. If all we have in view are what domestic actions are legitimate, we do not yet have enough to reach a conclusion about human rights. For, we must also consider the character of the international community in which sovereign states operate. In particular, we must understand how outside actors responding to human rights violations are likely to comport themselves in the existing international environment if they are allowed to intervene on human rights grounds in the affairs of other states. He writes,

[M]oral principles determining the limits of sovereignty must reflect not only the limits of the authority of the state, but also the relatively fixed limitations on the possibility of justified interference by international organizations and by other states in the affairs of even an offending state. When the international situation is one in which it is clear that international measures will not be applied impartially, that they will be used to increase the domination of a super-power over its rivals, or over its client states, etc. the moral principles setting the limits to sovereignty will tend to be more protective of sovereignty than in the relationship among states which exists within a union, like the European Union, which has relatively impartial judicial institutions and fairly reliable enforcement mechanisms.⁵⁵

⁵⁴ Raz, “Human Rights Without Foundations”, 9.

⁵⁵ Raz, “Human Rights Without Foundations”, 12-13.

The argument that something is a human right presupposes a “relatively fixed” geo-political “situation”. We consider how, in this environment, the license to meddle in the affairs of other sovereign nations is likely to be used by different actors. Will it be applied impartially, making good faith efforts to address human rights violations wherever they occur as happens in the European Union (as Raz thinks)? Or will it be used in bad faith, as a tool in service of the ulterior motives of a super-power, such as the United States, seeking advantage over its rivals and client states? If the enforcement environment is the former, then the need for the protections sovereign immunity provides are smaller, since impartial enforcement can be expected. Where there is less need to guard sovereignty, the range of human rights can be larger. If the enforcement environment is the latter, then the need for the protection sovereign immunity provides will be greater to guard against rapacious, bad-faith enforcement, and so the range of human rights will be narrower. As the need for sovereign immunity waxes and wanes relative to given geo-political environment, the frontier of human rights advances or recedes along with it.

Behind these remarks lie a juridical picture of the enforcement of human rights. Elsewhere Raz brings this picture explicitly into view, arguing that if there is a human right to something, there is “a duty to establish and support impartial, efficient, and reliable institutions to oversee its implementation”.⁵⁶ If “given prevailing circumstances” there is no possibility of such institutions coming into existence, then the relevant right cannot be a human right.⁵⁷ Furthermore, Raz is explicit about the shape such enforcement must take, writing that something can only be a human right if it ought to be “respected and enforced by law”.⁵⁸ It is clear that Raz does not have in mind only the idea that human rights should be enshrined in domestic law, for the enforcement of which he speaks is the one distinctive of human rights by outside actors, proceeding ideally through an

⁵⁶ Joseph Raz, “Human Rights in the Emerging World Order”, 43.

⁵⁷ Raz, “Human Rights in the Emerging World Order”, 44.

⁵⁸ Raz, “Human Rights in the Emerging World Order”, 43-44.

apparatus of international law applied reliably and impartially by duly constituted international authorities that hold violating nations to account.

The first thing to notice about Raz's view is that the "relatively stable" international situation varies considerably in different geo-political contexts, especially with respect to judicial or quasi-judicial enforcement of international law. Raz himself draws a strong contrast between the international situation in the European Union, or the Council of Europe, and the situation elsewhere. Generally speaking, regional human rights regimes would seem to be quite important on his view. This has the awkward consequence that different individuals will have different human rights, depending on what "relatively stable" international situation they happen to find themselves in. Individuals who reside in member states of the European Union will have more human rights than individuals who reside, say, in the Philippines. When I say that they have "more human rights" I do not mean that their human rights will be better enforced, but rather when some human rights of Europeans are violated, they will be matters of international concern, whereas when those same things happen to people in the Philippines, say, they will not be human rights violations and so not matters of international concern. This seems disturbingly out of step with the way human rights are conceived in human rights culture and politics, including in the foundational documents like the Universal Declaration of Human Rights, and its successor covenants that clearly treat human rights as the same for applying to all human beings.⁵⁹

But a deeper problem is that Raz holds the content of human rights hostage to the activity of bad actors. According to Raz, the existence in the international community of a super-power with

⁵⁹ As his views evolved, Raz walks this obvious consequence back, but only for pragmatic reasons. He continued to insist that sovereign immunity defeating individual rights are not universal. But he acknowledges a pragmatic reason for reserving the phrase "human rights" for that smaller subclass of sovereign immunity disabling rights that happen to be universal. Doing so makes it impossible for human rights violating regimes to deflect legitimate criticism with case-by-case arguments about why the local geo-political context makes the interference in question sovereignty violating. See Raz, "Human Rights in the Emerging World Order".

an imperial agenda and bad faith human rights politics limits the human rights that others have. Again, when I say that it limits the human rights others have, I don't mean that it limits the adequate enforcement of human rights, or that its activity results in the violation of human rights, for example, as a result of the Iraq War (pursued from ulterior motivations on a false human rights justification). On the contrary, because this shark is swimming in international waters, the importance of sovereignty waxes, and so the human rights people have wanes; things that would otherwise be human rights violations but for the presence of this bad actor are no longer human rights violations. When these things subsequently happen to people, their human rights are not violated, and the events are not matters of international concern.

The issue as it arises in Raz is subtly different than the corresponding issue in Beitz. For, in this case, the problems arise at the second stage in a way that is independent from problems at the first level. Here the issue is not that first level violators block the enforcement intended to rectify their own shortfalls, but rather that allowing a regime of second level enforcement opens up the possibility of bad faith abuses of this system. In other words, the bad actors are second-level enforcers who raise international concern in bad faith ways, rather than first level violators who shield themselves from international concern through recalcitrance.

We can start by noting that the bad faith enforcement of the quasi-imperial actor will also exempt them from human rights norms. As sovereign immunity waxes in light of their imperial disposition to abuse enforcement, the content of the human rights norms to which they are subject shrinks. Things the United States does would be matters of international concern, but for the United States's disposition to abuse human rights enforcement. The problem here has the same flavor that spoiled Beitz's treatment of women's human rights. Why would this disposition to abuse a human rights norm exempt the abuser from the norm to which they are subject?

But the problem is not primarily that the bad faith enforcer is able to exempt themselves from human rights requirements. The problem is that the bad faith imperial disposition is itself subject to criticism on the grounds of human rights principles. One very important ground for criticizing the imperial disposition is that it leads to bad faith enforcement that destabilizes or diminishes the possibilities of global remediation of human rights violations. Human rights norms in part explain what is wrong with the imperial disposition that leads to bad faith enforcement. The reason why having a shark swimming in international waters is a problem is that the disposition of this apex predator compromises human rights enforcement, undermining international cooperation and good faith enforcement. If we allow human rights norms to vary purely in response to the disposition to abuse of second-level norms, we are blocked from saying this. While the problem Raz is pointing to is real, the order of explanation he proposes gets things backwards. The issue is closer to the one that confronted Beitz than it initially seemed. Indeed, they seem like different facets of the very same problem.

§4: Teleology to the Rescue

Some orthodox critics of political conceptions of human rights, like John Tasioulas, think the problem with political conceptions lies with the fact that they tie human rights to the political functions characteristic of the second stage of the two-stage theory. The solution is to adopt an orthodox theory that does not tether the concept of human rights to one or another practical function but treats practical consequences as contingent applications of moral ideas that must be defended on substantive grounds.⁶⁰ This breathing room allows us to reject the untoward pattern of argument into which Raz and Beitz fall.

⁶⁰ John Tasioulas, “Towards a Philosophy of Human Rights”, 18-25.

It is true that the problematic forms of argument Beitz and Raz countenance depends crucially on attributing political significance to human rights at the second stage. But the problems arise also because of the way they index this political function to the status quo. They operate within the horizon of “relatively stable” international situations prevailing at present in different geo-political regions. This style of argument involves lowering the bar of aspiration to match the horizons of possibility in the present. If some ostensible human rights are unable to play the political role their theory specifies under the prevailing status quo owing to injustice, they conclude that the considerations are not human rights after all.

It would be one thing if Beitz and Raz believed that the pathologies they consider were perennial aspects of the human condition. To their considerable credit, they do not. When it comes to bad faith imperialism, Raz is clear that the situation so far from being an unchangeable condition varies considerably by geo-political context even in the present. He also emphasizes that the human rights practice is changing rapidly in ways that are hard to predict in an “emerging world order”.⁶¹ Beitz similarly describes the practice of human rights as “emergent” and so in a sense not yet consolidated. He also emphasizes the intentionally evolving character of the human rights practice.⁶²

What one wishes is that Beitz and Raz had connected this sense of the possibilities of development in the human rights practice to their discussion of the limitations of the present. This might have opened up a different kind of breathing room. Instead of tethering the practical role of human rights to the present status quo and then allowing its pathologies to control the content of human rights norms, they might have allowed thoughts about a utopian horizon to inform their understanding of the practical role of human rights in the present. While retaining a political

⁶¹ Raz, “Human Rights in an Emerging World Order”.

⁶² Beitz, *The Idea of Human Rights*, 42-44.

conception, they could maintain a kind of double vision, treating the practical role of human rights with one eye to the present and another to a more just future.⁶³

In fact there are many possible ways that human rights might be related to an end of justice that might produce drastically different political theories of human rights. To take just one schematic example, suppose that our authors advanced a teleological conception of human rights treating human rights as playing a practical role in a just international community. Extrapolating from the present practice, and looking to the role of human rights in the ideal theory of a just international community, imagine they first specified human rights as matters of international concern according to a juridical paradigm (as in Raz) or a more flexible political paradigm (as for Beitz).⁶⁴ In specifying these practical roles, imagine that they took themselves to be saying something about how a just international community would approach certain problems as matters of international concern.

Suppose they then accounted for the practical role of human rights under conditions of injustice in terms that partially referenced the end of a just international community. The end specified in ideal theory is something to be pursued in nonideal theory, but it also informs the manner of pursuit, because justice is always at stake in the response to injustice.⁶⁵ Let us suppose our theorist also explored the ways in which injustice (endemic human rights violations) introduces many substantial divergences and novel questions, for example, permissions to resist injustice in dramatic ways that would perhaps be unjustified under better conditions. Imagine they explored questions

⁶³ I am here joining cause with Louise K. Müller's important case that one can rescue a political conception from complacency, provided one links it to an ideal of political morality. (This common cause is not surprising given Müller's defense of a Rawlsian approach to human rights.) I differ from her because I do not see the supra-national function of rights as optional for a political conception. For the Müller's Rawlsian understanding of human rights, see Louise K. Müller, "Rawls' Relational Conception of Human Rights" in *Moral and Political Conceptions of Human Rights: Implications for Theory and Practice*, eds. R. Malik & J. Karlsson Schaffer, 58-76; for the idea of relating political conceptions to moral ideals see Müller, "Which Practice? –Rescuing the Practical Conception of Human Rights".

⁶⁴ For Beitz's critique of the juridical paradigm see *The Idea of Human Rights*, 31-42.

⁶⁵ For an extensive discussion of the manifold ways justice informs the pursuit of justice, see [author citation omitted].

about imperfect agency for change and the capacity for enforcement, under conditions where state actors are highly compromised, and enforcement is uneven at best. This would be a question, in part, of how elements of international justice might be partially realized in the present.

How would this allow us to reframe the problem posed by the situation Beitz imagines with respect to women's human rights? There would be no pressure to infer from the fact that useful international action to combat pervasive misogynistic and demeaning cultural norms is blocked at present by recalcitrant state violators to the conclusion that women do not have the relevant human rights. Instead, we can insist that women's human rights would be secured in a just international order and that violations of women's rights would indeed function there as matters of international concern. This is our ultimate commitment, and it is not threatened by the fact that at present injustice prevents women's rights from playing this role with full generality. Thus, we can hold onto our view about the practical function of human rights without lower the bar of justice in the present. This would also allow us to maintain the proper order of explanation. That women's human rights are part of international justice explains the fact that the limitations of the present are themselves unjust and must be overcome.⁶⁶

Given that useful international action is blocked in the "relatively stable" international situation at present, the question is what changes might destabilize that situation so that progress could be made over a longer period. It may well be that to approach a better international situation, we must wait on domestic political developments undertaken not by international agents but by domestic actors. Would such domestic contestation develop it would become possible for transnational and international actors to support these domestic agents as they emerge and push for change. This would be one of many possible analyses of the situation. But we cannot engage in this

⁶⁶ This is the way in which the political theorists might wield teleology to defang the counterexample of the fictional state of Tyrannia so exquisitely developed by Massimo Renzo against their views. See Renzo, "Human Rights and the Priority of the Moral".

analysis unless we are able to hold fixed the content of human rights in the face of present injustice. The idea of justice as an end provides the required space to think in suitably practical ways about the present without giving up the game by prostrating our politics of human rights before the idols of injustice.

Similar thoughts would hold with respect to Raz's problematic. If we took this perspective, we could agree with him that enforcement in the present was compromised by bad faith imperial actors. But we could do so not by bending the requirements of human rights norms to guard against enforcement abuses, but rather by treating this as the injustice that it is, which raises crucial questions about what sorts of responses are justified. To reason in this way would be to think in part about what defensive actions might be taken in the present to mitigate the harms of the current pathological systems, and what pathways of change might be open to a better future.

There are many other possible ways of relating human rights in the present construed according to a political conception to the end of global or international justice. Take one non-statist possibility. Suppose the political theorist views the current system of states as unjust in part because it is a system of states. A just international community requires the devolution of sovereignty to more regional, local, and cross-cutting forms of control. Although the utopian horizon is non-statis, a political theorist might nonetheless defend human rights as a transitional form appropriate only to nonideal theory. Human rights are defensible in the present because, and insofar as, they protect individuals and groups from the predation of states, thereby limiting sovereignty, and pointing towards the development of transnational and regional regimes of cooperation and enforcement that might weaken the power of states over their own populations, paving the way for non-statist futures.

Here human rights would be defended not as principles of justice, since human rights on the political conception are matters of international concern appropriate to a world of states, and justice

requires overcoming this state form (and so human rights). They would rather be defended on the ground that they are partial realizations of genuine principles of global justice that dynamically pave the way to a non-state future through experimentation with transnational, regional, and international cooperative regimes. This would be a *very* different normative justification and ensuing politics of human rights than the preceding version, likely with quite different political commitments in the present. No doubt there are many other possibilities.

Of course, were a political theorist to pursue any such a strategy, they could not bracket questions about justice, but would need to take a stand about an end of justice to which they might relate human rights, whether conceived as cosmopolitan or international.⁶⁷ They would need to develop an ideal theory and to make arguments in support of one or another view about justice writ large. In short, they would need to embed their philosophy of human rights in precisely the set of commitments that Beitz urges us to bracket. If we wonder how this might be possible, we would do well to remember both Rawls' example as well as the fact that Beitz himself is a pre-eminent theorist of global justice. There is a great deal of material on which to draw in the work of political theorists themselves.

Would the resulting theories remain political conceptions in any important sense once they had related human rights norms to a broader vision of justice? Not, to be sure, if we equate political conceptions with those that bracket questions of international or global justice. But why should we so equate them, especially given their Rawlsian lineage? Instead, we would do better to conceive of political conceptions as those identifying human rights with matters of international concern that limit or modify state sovereignty by opening up states to remediation by outside actors. On this formulation, political conceptions can certainly take a teleological form.

⁶⁷ Louise Muller calls this “morally tethering” a political conception. See Müller, “Which Practice?—Rescuing the Pactical Conception of Human Rights”.

Conclusion

I have argued programmatically that we might divide theories of human rights not only between the orthodox and the political, but also between the teleological and the nonteleological. After sharpening an objection to political theories, I have argued that teleological variants of political theories slip past this otherwise damning objection easily. Were one to advance a political conception of human rights, one would do best to advance a teleological version. The conclusion is hypothetical because I have not defended political conceptions, but rather urged their practitioners to stop bracketing questions of justice in ways that opens them to this pressing objection.⁶⁸ My interest in making this argument is not primarily to defend political conceptions, but rather to begin to make the case that whatever theory of human rights we adopt—political, orthodox, or something else altogether—we would do best to adopt a teleological version.

In closing, I will say only this. There is a tendency to think about views on which justice is an end as impractical and extravagant. But I think something like the opposite is true. It is by conceiving questions of justice in relation to an end that they become properly practical and grounded. If one wants to think about justice critically in the present, then one must think of justice as an end to be dynamically pursued. Obviously, I have not argued for anything remotely near this level of generality here. But I think it's true. If it was, it would explain why teleology is one cure for the malaise besetting political theories of human rights.

⁶⁸ Many objections to political theories remain even after this maneuver. To my mind, the main objection untouched by my discussion is the rigid way political theories sideline a political morality of human dignity and tie human rights to the state form.