

What Do I Owe You?

Balancing the Abstract and the Concrete in Navigating
Individual Human Right Duties

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Abstract

This thesis focuses on the nature of individual human right duties. It argues that it is necessary to shift our focus on human rights towards duties and the question what we owe each other in terms of those rights. In navigating what duties individuals within a human community carry towards each other, a balance is struck between the abstract and the concrete. It is shown that while individuals are thought of to have duties towards the rest of the world community, this has traditionally been considered in a very abstract manner. Combine this with the fact that individuals have a strong tendency to prioritize the moral demands of individuals closest to them, and – as a consequence – individuals do not feel responsibility to act upon those duties. This has resulted in an urgency to spell out in a more concrete manner ‘who owes what to whom’ in terms of the fulfilment of human rights. However, this flight of abstraction comes with a loss that has been identified by Onora O’Neill: if we understand human rights as claims that bring about duties on specific duty bearers, a problem arises. For positive human rights it does not seem possible to specify concrete duty-bearers. The thesis, however, argues that we cannot hold on to the idea that human rights ought to be claimable in the sense that we always need to be able to spell out in a universal, yet concrete manner who owes what to whom. Instead, we should adopt a way of thinking about individual human right duties in an open-ended and situational way. This way we are still provided with a good starting point to spell out in a more concrete way what we owe each other in terms of human rights, while aiming for implementing human rights and individual human right duties in the mind and will of individuals.

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1. Introduction

The year 2023 marks the 75th birthday of the Universal Declaration of Human Rights (1948): a reason for both celebration and ambivalence. While considerable progress has been made in the field of human rights in the past decades, there is still a large part of humanity that is denied the rights that the Declaration has promised. There is something very crude about the fact that everyone has the right to education, while there are millions and millions of people who are denied access to education due to various factors such as poverty, conflict, discrimination, and lack of resources. Furthermore, the right to a minimal standard of living must ring increasingly meaningless to – especially – the 10% of the world’s population that has less than \$1,90 per day to spend, which approximately comes down to 734 million people.¹ And what to think about the growing number of people living in countries where freedom of expression is restricted, and individuals face censorship for expressing their opinions or beliefs? The fact that discrimination continues to impact every country in the world?

In this light, it would almost sound cynical to celebrate the anniversary of the Declaration. However, we must not fall into the trap of cynicism. In the past decades there have been numerous successful attempts within different fields of study and practice to contribute to a better protection and fulfillment of human rights worldwide.

Within the philosophical domain, the search for a better human rights protection often builds on the important observation made by Thomas Hobbes in *Leviathan*: “Covenants, without the sword, are but words.”² While this idea has different components to unpack, it ultimately translates into the following question: Who should deliver on human rights? The identification of the entities that carry responsibility for a better protection and fulfillment of human rights seems vital to prevent the ongoing violation of human rights.³

Within the realm of philosophy much of the attention regarding this identification therefore focuses on the correlation between rights and duties. After all, it becomes quite evident that human rights in themselves are not effective – or in the language of Hobbes “but words” – without the identification of certain correlating duties. In the end, rights derive their force from duties to refrain from acts that conflict with the right in question or duties to perform acts that promote the right in question. To illustrate, it would point to utter ignorance if someone went up to a group of children that do not have access to education to simply remind them of

¹ World Bank (2020), accessible via: <https://www.worldbank.org/en/topic/poverty/overview>.

² Thomas Hobbes, *Leviathan*, edited by Richard Tuck (Cambridge: Cambridge University Press. Revised student edition, 1996), 17.2.

³ Norberto Bobbio, *The Age of Rights*, translated by Allan Cameron (Cambridge: Polity, 1996), p. 12.

their human right to education. The same holds for someone that is being told that they have the right to freedom of speech, while someone is holding a gun to their head under the statement ‘‘Remain silent or I will shoot.’’

The notion that the exercise of a right necessarily entails the requirement of others acting or refraining from acting in accordance with the right in question is increasingly embraced.⁴ In other words, it stands to reason that for the promise of human rights to be met, ascribing universal rights alone would not be sufficient. In line with this, the responsibility approach departs from the idea that one is robbing human rights of any meaningful importance if the focus of almost every personal and political demand is framed as a right:

‘‘Unless a person or her representative can identify the agents against whom her right is held, her right may amount to little more than useless words.’’⁵

This is different for the field of philosophy, in which a substantial body of literature is to be found that delves into the correlation between human rights and duties and the relation and nature thereof. This should not come as a surprise, since it seems to be the case that for human rights to be effective, we not only need to identify its correlating duties. It seems also important to decide on the nature and scope of those duties and identify the bearers thereof. In other words, while a right is not effective without a duty to refrain from interfering with the right or a duty to help realize the right, a duty is also meaningless if we are unable to spell out who carries this duty and what it entails for these duty bearers to do so.

Most people tend to look directly to States when it comes to the protection and fulfilment of human rights – considering them as the primary duty-bearers of human rights. Especially within the field of law, there is a lot to support this view. After all, it is States that join human rights treaties under the premiss of implementing and protecting the rights laid down in those treaties. Particularly since the establishment of the United Nations, a lot has changed in the relationship between state sovereignty – by which states are free to shape their order according to their own political, social and economic views – and the international legal order, which explicitly commits itself to human rights. In this context, States nowadays must be organized in such a way that people have access to the human rights they are entitled to. States usually do

⁴ The thesis that there exists a logical correlativity between rights and duties is often ascribed to Wesley Hohfeld. According to Hohfeld, if someone holds a right, there is always someone else that has a duty regarding this right. See: Wesley Hohfeld, *Fundamental Legal Conceptions as Applied in Judicial Reasoning and Other Legal Essays*, edited by Walter Wheeler Cook (New Haven: Yale University Press, 1923).

⁵ Andrew Kuper, *Global Responsibilities: Who Must Deliver on Human Rights?* (New York: Routledge, 2005), introduction.

this through their legal or judicial systems, on the one hand passing legislation that implements human rights and on the other hand offering a system individuals can turn to when they believe their human rights to be violated.

Although many philosophical theories that address the identification of the entities that are responsible for delivering on human rights also tend to focus on international and national bodies on state-level, increasing attention has been drawn to another entity: the individual within the world community. In this thesis, I take the individual as a starting point for contributing to the question who should deliver on human rights. The reason for this is that I take it to be important to gain attention to the fact that human rights not only exist for individuals to claim them. Individuals are promised these rights within a world community, without which individuals would not be able to develop themselves. After all, individuals are for an important part dependent on one and other for the fulfilment of their rights.

That individuals from within themselves are inclined to feel little responsibility for the fulfilment of other individuals' human rights might not be unexpected. While there are philosophers that state there is no difference to be found between the moral burden we carry towards our loved ones and individuals on the other side of the world⁶, most individuals prioritize the moral demands of the people closest to them. Combine this with the very abstract nature of human rights and most individuals would not provide themselves as an answer to the question who should deliver on human rights.

I argue that it is therefore necessary to shift our focus on human rights towards the question that we owe each other in term of those rights. This, I argue, involves a balancing exercise between the abstract and concrete nature of individual human right duties. For this purpose, we cannot hold on to the idea that human rights ought to be claimable in the sense that it always must be possible to spell out in a universal, yet concrete manner who owes what to whom. Instead, we should adopt a way of thinking about individual human right duties in an open-ended and situational way.

In chapter 2, I will start with setting out the framework in terms of the nature of human rights, and the correlative relationship between human rights and duties. In chapter 3, I note that individuals are thought of to have duties towards the rest of the world community, but that this has traditionally been considered in a very abstract manner. Combine this with the fact that individuals have a strong tendency to prioritize the moral demands of individuals closest to them, and – as a consequence – individuals do not feel responsibility to act upon those duties.

⁶ See for example: Peter Singer, "Famine, Affluence and Morality," *Philosophy and Public Affairs* 1(3), pp. 229-243; Peter Singer, *One World Now* (New Haven & London: Yale University Press, 2016).

This has, as I discuss in chapter 4, resulted in an urgency to spell out in a more concrete manner who owes what to whom in terms of the fulfilment of human rights. However, this fight of abstraction comes with a loss that has been identified by Onora O'Neill: if we understand human rights as claims that bring about duties on specific duty bearers, a problem with positive human rights arises. For positive human rights it does not seem possible to specify concrete duty-bearers. In chapter 5, I tend to take a step back from the concrete and use the theory of Jeremy Waldron to defend a more abstract way of understanding the duties we owe each other in terms of positive human rights. I argue that instead of claiming human rights, we should focus on asking ourselves what we owe each other in terms of human rights. By balancing the abstract and the concrete, I argue that if we understand individual human right duties as situational and open-ended, we get offered a good starting point to spell out in a more concrete way what we owe each other in terms of human rights. This way we can start implementing human right and individual human right duties in the mind and will of individuals. I will end with a conclusion in chapter 6.

2. Setting the Stage: Human Rights and Human Duties

2.1. Introduction

An important part of answering the question on who should deliver on human rights, or, more precise, what role individuals play in the fulfilment of other individuals' rights, consists of determining what it is that human rights ask from us. In order to identify what is needed to deliver on human rights – and in a way to create an overview – it is often the case that human rights are categorized regarding the answer to this question. As a consequence, human rights are often divided between human rights that require action and human rights that require the refrainment of action: negative and positive human rights.

The distinction between negative and positive human rights is based on the distinction between negative freedom and positive freedom, first discussed by Isaiah Berlin, who's theory shaped the debate regarding different types of human rights, what they require from us and their relationship towards each other.⁷ One can speak of negative freedom when an individual is exempt from any particular treatment. This concerns 'freedom of' and draws an imaginary circle in which others are not allowed to intervene. Positive freedom on the other hand emphasizes that individuals are members of a community and can therefore claim certain benefits. In this respect, human rights guarantee 'freedom to'.

In this chapter I will elaborate on the distinction between negative and positive human rights and human duties. First, I will dwell on the philosophical notion of human rights itself (para. 2.2.). Then, I will continue by discussing the correlation between different types of human rights and duties (para. 2.3.). By doing so, I not only tend to shed light on the correlative relationship between human rights and duties, but also to formulate the starting point for exploring the nature of different individual human right duties.

2.2. The philosophical notion of human rights

It is a very old and widely held belief that everyone has certain rights that are inalienable. These rights exist by virtue of a certain minimal moral unity between people and their mutual equality.⁸ Today, this idea is enshrined in the Universal Declaration of Human Rights (1948). However, the concept of universal inalienable human rights is rooted in a longstanding philosophical heritage. The ultimate foundation thereof can be found in the theory of natural

⁷ Isaiah Berlin, "Two Concepts of Liberty," *Four Essays On Liberty* (Oxford, England: Oxford University, 1969).

⁸ Andrew Clapham, *Human Rights: A Very Short Introduction* (Oxford: Oxford University Press, 2007), p. 5.

law, according to which laws can be traced back to certain characteristics of human nature, according to which human rights would flow from human nature itself.⁹ In contemporary times, it is more common to derive human rights from an inherent value that everyone possesses by virtue of their humanity: human dignity. It is frequently observed that human rights declarations appeal to this notion on which basis individuals are granted the same inalienable human rights and – at the same time – are ordered to respect the dignity of others by respecting their rights.¹⁰

The concept of human dignity refers to a status that all individuals share amongst each other in an equal way. However, the concept is understood to be essentially contested. Meaning that there are different philosophical approaches to be found on the understanding of human dignity and its relation to rights and duties. The work of Immanuel Kant is seen as the source of the early modern concept of human dignity. In *Groundwork for the Metaphysics of Morals* (1785), Kant argued that individuals have a certain inherent value, which commands a unique form of moral respect, demonstrated through our adherence to specific boundaries in our interactions we have with other individuals. On the basis of this, Kant states that individuals have a categorical duty to treat other individuals ‘‘as an end’’ and ‘‘never merely as a means’’.¹¹ Kant refers to this as a categorical imperative. According to Kant, human dignity is based on autonomy. This means that every rational being has the capacity of prescribing the law for oneself. The source of one’s will cannot lie outside oneself, since this would mean one cannot be regarded as an end in itself.¹² In short, human dignity resides in the autonomy of rational beings, meaning that individuals only act in accordance with laws that they can impose on themselves. According to Kant’s categorical imperative individuals must act in a moral manner that does not deny human dignity in our own person.

William Edmundson distinguishes human rights from any other right by assuming that ‘‘Human rights recognize extraordinarily special, basic interests, and this sets them apart from rights, even moral rights, generally.’’¹³ The elevation of human rights resulted in the fact that behaviour cannot only be judged against (individual) moral standards or what national law requires, but also a certain standard that transcends national systems.¹⁴ The most important characteristic of human rights is that they apply to everyone at all times and everywhere. The

⁹ Marc de Wilde, ‘‘Het falen van de mensenrechten: een filosofische analyse,’’ *Krisis* 9(3) (2008), p. 32.

¹⁰ Oliver Sensen, ‘Human dignity in historical perspective: The contemporary and traditional paradigms’, *European Journal of Political Theory* (2011/10).

¹¹ Immanuel Kant, *Groundwork*, 4:429.

¹² Immanuel Kant, *Fundamental Principles of the Metaphysics of Morals*, transl. by Thomas Kingsmill Abbott, Second Section (Createspace Independent Publishing Platform, 2016), p. 31.

¹³ William A. Edmundson, *An Introduction to Rights* (Cambridge: Cambridge University Press, 2012).

¹⁴ Andrew Clapham, *Human Rights: A Very Short Introduction* (Oxford: Oxford University Press, 2007), p. 5.

fact that human rights are considered universal suggest that human rights should be understood as giving meaning to a universal morality to which almost all of humanity – to a lesser extent or not – should be able to agree.¹⁵ The inalienable nature of human rights furthermore implies that the political context in which human rights are violated or not observed should not be of any importance. This idea is also reflected in the Preamble of the Declaration itself, which emphasises that everyone, although belonging to different legal orders, is a member of ‘the human community’. Within this context, the Declaration was created with a certain promise according to which everyone has the right to such a social and international order that the rights and freedoms set out in the Declaration are to be fully realized.¹⁶

In order to justify the important and special status of human rights, it is common to refer to the substances of human rights or the relevance of the goods that are to be protected by human rights.¹⁷ Many legal theorists accept the idea that it is more efficient to think of human rights as giving rise to correlating duties that may obligate parties from interfering in individual freedom or taking action to fulfil certain human rights.¹⁸ In this context, human rights are often divided between negative and positive human rights. I will elaborate on this below.

2.2.1. Negative and positive human rights

The distinction between negative and positive rights is closely related to the distinction between negative and positive liberty and has been a much-debated topic by political and legal philosophers and legal scholars over the years. While the distinction was already discussed by Immanuel Kant in the eighteenth century, the most influential thinker to discuss the differentiation was the political philosopher Isaiah Berlin in his well-known essay ‘Two Concepts of Liberty,’ in *Four Essays on Liberty* in 1958.¹⁹ Isaiah Berlin distinguishes between positive and negative freedom. According to Berlin, negative freedom requires the absence of something, while positive freedom requires the presence of something. Thus, positive freedom is characterized by absence of hindrance, while positive freedom involves the unfolding of the

¹⁵ Often critiqued: Michael Ignatieff, *Whose Universal Values? The Crisis in Human Rights* (Amsterdam: Stichting Praemium Erasmianum, 1999); Peter Singer, *One World Now* (New Haven & London: Yale University Press, 2016), p. 163.

¹⁶ Article 28 of the Universal Declaration of Human Rights.

¹⁷ Corinna Mieth, ‘On human rights and the strength of corresponding duties,’ *The Philosophy of Human Rights* (2011), p. 171.

¹⁸ Sandra Fredman, *Human Rights Transformed: Positive Rights and Positive Duties* (Oxford: Oxford University Press, 2008).

¹⁹ Isaiah Berlin, ‘Two Concepts of Liberty,’ *Four Essays On Liberty* (Oxford, England: Oxford University, 1969).

true self.²⁰ The difference between negative and positive freedom ultimately lies in two different questions. Negative freedom poses the question of the realm of freedom considering the options one has. In this sense one is free to the extent that nothing or nobody interferes – it comes down to the domain in which someone can move freely without being restrained by external factors. This, however, does not mean that every inability to achieve certain goals makes one unfree.²¹ This is only the case if you are held back by others from doing what you otherwise would be able to do. After all, it is not about whether you want to do something, but if it is possible to do something. This is why negative freedom is often referred to as ‘freedom from...’. Positive freedom, on the other hand, questions the source of one’s actions and who decides what one does or who one is. Berlin believes positive freedom to stem from the desire to be one’s own master.²² In this sense, one is free to the extent that one’s life and decisions are dependent on oneself and not on external forces – one is free when one is moved by reasons or conscious purposes.²³ This makes it possible that interference can be legitimized, as long as it promotes an individual to become master of himself. It is for this reason that positive freedom is often referred to as ‘freedom to...’.

The work of Isaiah Berlin contributed significantly to the understanding of different conceptions of human rights and the debates surrounding the protection and fulfilment of human rights. Ultimately, the distinction is translated into the distinction between negative and positive rights. Negative human rights are usually thought of as referring to the absence of interference and focus on the protection of individuals from governmental or individual infringement. Positive human rights, on the other hand, are usually thought of as requiring action in order to ensure the resources or opportunities that are needed to fulfill the rights in order to achieve their full potential. Let us elaborate on this by respectively discussing the human rights in the Universal Declaration that are considered negative and positive.

2.2.1.1. Negative freedom, rights and duties in the Universal Declaration of Human Rights (1948)

Under the aspect of negative freedom, the Declaration contains rights in which the focus seems to be on individual living beings. For these individuals to survive and to live well, a number of

²⁰ Berlin 1969, p. 3.

²¹ Idem.

²² Berlin 1969, p. 8.

conditions must be met. Individuals must be free from attacks on their life and body.²⁴ Therefore, the basis of being human, life itself and one's physical integrity must be safeguarded. Besides, individuals should be free to shape their own lives. This means that one is not the property of another and must not arbitrarily be deprived of one's freedom of movement by another. In this context, one should be free from slavery and from unjust deprivation of his action through persecution and punishment. Furthermore, individuals should have the space to form opinions and express these. When it comes to ideological considerations, one should be free from interference, and no one may force one to adopt certain views. Finally, individuals should be able to own goods in order to provide the necessities of life. Therefore, individuals should be free from arbitrary interventions in one's property. The common ground is that the negative rights related to negative freedom tend to guarantee that one is not treated in a way that is contrary to one's freedoms and human nature insofar as he is an individual.²⁵

Duties that correlate with negative human rights can in turn be divided into duties of forbearance (duties to refrain from doing something) and duties to exercise one's own rights in a responsible way. The first category is quite straightforward and entails that rights necessarily require from others that they refrain from performing certain acts or behavior. The right to not be enslaved for example necessarily entails that one is prohibited to enslave someone; one cannot act in a way that results in another person being enslaved. The same goes for the right not to be tortured or treated in an inhuman way that correlates with the prohibition to torture or treat someone in an inhuman way. The duty to exercise one's own rights in a responsible manner is of a more complex nature. A famous example is the right of freedom of expression that may sometimes be limited when the rights of others are threatened to be curtailed.

2.2.1.2. Positive freedom, rights and duties in the Universal Declaration of Human Rights (1948)

Other than negative rights, positive rights do not protect one from something, but rather provide access. In this context, the Declaration contains rights that mainly consider individuals as part of a community.²⁶ On the basis of the rights that are discussed under positive freedom one can discern duties to grant access, to supply certain types of goods and to establish certain facilities. It is not so much about abstaining from certain acts that infringe rights, but about doing

²⁴ Thomas Mertens, *Mens & Mensenrechte: Basisboek Rechtsfilosofie* (Amsterdam: Boom Uitgevers, 2012), p. 132.

²⁵ Idem.

²⁶ Mertens 2012, p. 134.

something to effectuate rights. For example, putting in place an infrastructure; establishing an education system; guaranteeing that citizens have a nationality; making sure that cultural identities have the opportunity to develop and that fundamental rights are effectively protected and basic services provided. In other words, positive freedom is linked to the creation of space, to the facilitation of possibilities. It is not about omission, but requires action.²⁷

2.2.2. Rethinking the distinction between negative and positive human rights

While the distinction between negative and positive human rights can be useful to identify which duties different rights give rise to and creates an overview for understanding them, there is also a danger of strongly holding on to such dichotomies. It is important to note that this distinction is far more nuanced than it may seem in the first instance. Since Henry Shue published *Basic Rights: Subsistence, Affluence, and US Foreign Policy* in 1980, there is a widespread agreement that the idea that negative rights only give rights to negative duties and positive rights to positive duties falls short. Shue put the idea forward that the image that positive rights only give rise to positive duties and therefore would form a special category of rights is motivated by what Shue calls a distorted view of different dichotomies and the duties that correlate with rights.²⁸

In order to build his argument, Shue first proposes a criterion for determining what our most important rights consists of.²⁹ He continues by identifying different clusters or rights (security rights, existence rights, freedom rights and political participation rights) that meet this criterion and should be understood as the basic moral demands on the rest of humanity.³⁰ His conclusion: the normative burdens that are associated with these basic rights all imply negative and positive duties. On the one hand negative duties obligate us to not deprive others from the content of their rights and on the other hand, positive duties obligate us to fulfil rights or protect people from deprivation.³¹

Although Shue developed his thesis in the context of what he calls ‘basic rights’, he emphasizes that his thesis can be extended to all types of human rights.³² By means of illustration, Shue points out that any positive right to a certain good would be meaningless if

²⁷ It is especially this category that has occupied legal philosophers. Often questions are posed about how these types of duties are to be understood.

²⁸ Henry Shue, ‘Mediating Duties’ *Ethics*, 98 (1988), pp. 687-704.

²⁹ Henry Shue, *Basic Rights: Subsistence Affluence and US Foreign Policy* (Oxford: Princeton University Press, 1981), p. 15.

³⁰ Shue 1981, p. 19.

³¹ Shue 1981, p. 60

³² Shue 1981, p. 54.

there would exist no negative duties to not deprive individuals hereof. At the same time, for negative duties to be met, active action must be taken in order to prevent individuals from breaching their negative duties.³³

2.3. Conclusion

The notion of human rights has its basis in a longstanding philosophical tradition. Today, the ultimate foundation is to be found in the notion of human dignity. Human rights are thought to exist by virtue of a certain minimal moral unity between people and their mutual equality. This idea puts emphasises on the notion that everyone, although belonging to different legal orders, is a member of ‘the human community’. Within this context, the Declaration was created with a certain promise according to which everyone within this community has the right to such a social and international order that the rights and freedoms set out in the Declaration are to be fully realized.

In order for this promise to be met, human rights are to be understood as giving rise to different types of duties. After all, human rights are only effective if everyone refrains from actions that breach the rights or acts in a way that human rights are fulfilled. In this context, human rights are often divided between negative and positive human rights. However, one should take note that the idea of such a distinction is much more nuanced in practice: human rights often give rise to both negative as well as positive duties.

Now that the different types of human rights have been addressed, what different types of duties arise from human rights, it is time to connect this to the duty-bearer I am concerned with in this thesis: the individual. In the next chapter, I will focus on the role of the individual within the human community. I do this in order to show that the idea of the implementation of individual human duties in the mind and the will of the people was always bound to fail in some respect. I will elaborate on the reasons why we do not feel responsibility for the fulfilment of other individuals’ human rights within the human community.

³³ Shue 1981, pp. 35-40.

3. The Individual within the ‘Human Community’

3.2. Introduction

In chapter 2, it became evident that there exists a logical correlativity between human rights and duties. After all, human rights in themselves are ineffective. Human rights derive their effectiveness from duties to either refrain from actions that infringe human rights or to act in order to fulfil human rights. This correlation exposes the difference between man as an individual and man as part of a community. Individual human right duties are not only necessary for the sake of the community, but also because without that community individuals would not be able to fully develop. In line with this, in article 29(3) of the Declaration, we find an emphasis on the idea that individuals are not only part of their own country or national community, but that individuals also belong to the international community as a whole, meaning that individuals must consider the global community as their own.

In this regard, individuals cannot separate themselves from the interest of individuals within their own national community from the interests of other individuals worldwide. However, it is one thing to take into account other individuals rights when performing one’s own human rights, but something else to actively contribute to the fulfilment of other individuals’ human rights. In this chapter, I will elaborate on the role of the individual in the fulfilment of human rights within the human community. I will elaborate on the reason why there is growing attention for the desire to shift the focus from human rights to individual human duties (para. 3.2). I argue that the abstract nature of human rights and the relationship between human rights and individual human right duties, combined with the existence of the idea of special moral obligations, results in unawareness of our existing individual human right duties (para. 3.3). Therefore, I conclude that it is necessary to fight this abstraction by formulating individual human right duties in a more concrete way (para. 3.4).

3.3. From an age of rights to an age of duties?

While it stands to reason that rights in themselves are ineffective and are intertwined with duties, it would not be oversimplified to speak in terms of an ‘age of rights.’³⁴ Today the emphasis seems to be mainly on protecting and exercising individual human rights. One only needs to look at the Declaration to see that it provides a concrete set of rights but entails only a very abstract way of addressing how these rights should be realized. The point of reference for

³⁴ Louis Henkin, *The Age of Rights* (New York: Columbia University Press, 1990).

individual human right duties in article 29 of the Declaration merely states that everyone has duties towards the world community.³⁵ Put differently, the conditions of the realization of rights are not specified, which leaves room for normative questions about the nature of duties that correlate with human rights. This is at odds with the idea that human rights in the end must be practical entitlements which hold the potential of making an actual impact on people that are the bearers of those rights. It is therefore not uncommon that the discourse of human rights is criticized for its focus on the mere existence of rights rather than focusing on identifying correlating duties.³⁶

In 1998 the drafters of the Universal Declaration of Human Responsibilities attempted to redirect the human rights debate to encourage awareness of certain duties that individuals hold towards society.³⁷ The statement was critically received, the main objection being that existing human rights treaties contain sufficient human duties.³⁸ However, the Declaration of Human Responsibilities was never intended to bring about a radical change in the human rights debate, but to merely encourage a certain awareness of individual human rights duties.

It is, in this regard, important to take notice of the fact that the Universal Declaration of Human Rights was never intended to be legally binding. Instead, the drafters of the Declaration thought the best way to defend human rights worldwide was to implement human rights as well as human duties ‘‘in the mind and the will of the people.’’³⁹ In other words, the protection of human rights relies for an important part on the internalization of human rights and duties by individuals, by which – even in the absence of legal enforcement – individuals at all times act in accordance with human rights. In sum, article 29 insists on individuals that realize that they are dependent on the world community for their own development and, in turn, have certain duties towards that community.

However, how easy it seems for most people to accept the idea that human rights are meaningless without the identification of duties to act in accordance with human rights, as difficult it seems to be for us to grasp the notion that we carry responsibility for the fulfilment of other individuals’ human rights. In this light, in the next part, I will argue that the idea of the

³⁵ Article 29 Universal Declaration of Human Rights.

³⁶ Adem Etinson, ‘‘Human Rights, Claimability, and the Uses of Abstraction,’’ *The Graduate Center, City University of New York*, via: <https://philarchive.org/archive/ETIHRC>.

³⁷ Inter Action Council of Former Heads of State and Government, *A Universal Declaration of Human Responsibilities*, 1997, <https://www.interactioncouncil.org/sites/default/files/udhr.pdf>.

³⁸ See for example: Ben Saul, ‘‘In the shadow of human rights: human duties, obligations and responsibilities,’’ *Columbia Human Rights Law Review* (31) 2001, ep. 3, pp. 565-624). The idea prevailed that human duties have little practical significance and should be limited to morality.

³⁹ Charles Habib Malik, ‘Introduction’, in: O.F. Nolde, *Free and Equal: Human Rights in Ecumenical Perspective* (Geneva: World Council of Churches, 1968), p. 70.

implementation of human duties in the mind and the will of the people was always bound to fail in some respect. This can be explained by two components: our tendency to prioritize the moral demands of the people closest to us, combined with the very abstract nature of human rights and its relationship with duties itself.

3.4. The lack of individual human right duty awareness

On a daily basis, we are being confronted with the human rights of other individuals within the human community not being fulfilled or being breached. In many countries, for example, one usually does not have to walk far from one's home before meeting someone that is forced to sleep on the streets. In such cases, it does not take much to realize that this person is being denied the human right to a minimal standard of living.⁴⁰ However, most individuals seem to phrase the problem of homelessness as a general problem of rights.

We seem to be able to on the one hand, accept that someone's human rights are not fulfilled, while we, on the other hand, sympathize with the idea that we have certain duties towards the human community, and still do not feel any form of responsibility regarding the actual fulfilment of the particular human right. Instead, when we are being confronted with specific situations of individuals, we – most of the time – do not seem concerned with the question 'what do I owe you?' I argue that this lack of responsibility is being prevented by two components: the idea of special moral duties and the abstract nature of human rights and individual human right duties.

3.4.1. Universal human rights versus special moral duties

It is a common belief that moral obligations are more demanding when it comes to people we have a special moral relationship with, such as family members, friends, or even compatriots. As long as someone does not have special moral obligations towards people in, for example, developing countries, one would likely not feel a duty to help those people realize their right to a minimum standard of living. Unlike universal duties, special moral duties are only for individuals to whom we have a special relationship, meaning that we do not have these obligations to all equally, but specifically to those with whom we have a special relationship

⁴⁰ Article 25 Universal Declaration of Human Rights.

such as family, our loved ones and friends or to whom we have made promises or commitments.⁴¹ After all, a special relationship is a resource for special responsibilities.⁴²

This stands in stark contrast with the universal idea of human rights. The moral standards of human rights are namely completely independent of a political or cultural context. The idea of human rights as being universal is closely related to the idea of cosmopolitanism, which presupposes a common order among all people, irrespective of social and political differences, based on the inherent dignity and equality of man. This means that principles that override a universal moral priority of duties to members within a (national) community to persons outside of that community are rejected.⁴³ This, combined with the very abstract way human rights and duties are addressed, results in the fact that individual duties are not sufficiently reflected.

3.4.2. The abstract nature of human rights and duties

Human rights are governed by abstractness, meaning that human rights are often very broad and generally formulated, instead of being clearly defined in specific and concrete terms. This should come as no surprise since human rights are considered to describe fundamental principles and values that always apply universally to all individuals, regardless of their background. The principles spelled out through human rights were therefore never expected to dictate precise actions in every situation. Instead, they are thought of to provide a certain structure that can serve as a certain starting point for individual behavior, practical policies or legal frameworks.

At the same time, however, human rights are expected to have some practical impact. This second expectation is inherent to the nature of human rights to represent normative standards that we should all adhere to. In other words, the abstract nature of human rights on the one hand underscores their universality, but on the other hand the importance of a dialogue to ensure the fulfilment of those rights becomes apparent. After all, there is danger in too much abstraction: abstractness can undermine the performance of human rights.⁴⁴ Tension can arise between the abstract, broad, foundational nature of human rights and the ambition and need to apply them in specific situations. The abstract nature of human rights can result in different or

⁴¹ Susan P. Murphy, ‘Special Obligations,’ in D.K. Chatterjee, *Encyclopedia of Global Justice* (Dordrecht: Springer, 2011).

⁴² Samuel Scheffler, ‘Relationships and Responsibilities,’ *Philosophy and Public Affairs*, 26(3) (1997): pp. 189-209.

⁴³ Samuel Scheffler, ‘Conceptions of Cosmopolitanism,’ *Utilitas* 11 (1999): pp. 255-276.

⁴⁴ Adem Etinson, ‘Human Rights, Claimability, and the Uses of Abstraction,’ *The Graduate Center, City University of New York*, via: <https://philarchive.org/archive/ETIHRC>.

even conflicting interpretations about their application and scope. This is exactly why it is thought to be important to pay attention to the duties that correlate with human rights – the question who should deliver on human rights. After all, it is one thing to say that there are duties corresponding with human rights, but something else to specify who the bearers of these duties are, how strong they are and what they entail.

As a result, attention has been paid to move away from the abstract nature of human rights and duties in order to answer the question ‘who owes what to whom’ in order to make human rights claimable. The starting point of this question lies in the idea that the claimability of a right depends on whether we can identify precisely whom this right can be claimed against and the idea that human rights cannot be claimed or enforced if it remains indeterminate where the claim should be submitted, who has the authority to waive it, or upon whom it can be imposed.⁴⁵ By answering the question who owes what to whom, Onora O’Neill encounters an important objection, often referred to as the ‘claimability objection’ to human rights.

3.5. Conclusion

In this chapter, I have argued that the philosophical notion of human rights – albeit in a very abstract way – implies that everyone has certain duties towards the rest of the human community. This idea is also reflected in Article 29 of the Declaration. At the same time, the focus in the current human right domain seems to be on rights and not on the individual human right duties that correlate with these rights. Due to the very fact that human right duties are only addressed in a very abstract manner, combined with our tendency to prioritize the moral demands of people closest to us, human right duties are not implemented in the mind and will of individuals. The abstract nature of human rights and the relationship with their correlating duties, makes it very uncertain how these duties should be interpreted and what they exactly ask from individuals. Hence, we not only tend to deny asking ourselves what we owe each other. We are also very uncertain regarding the answer to this question.

In short, formulating human rights duties in a very abstract manner as derived from rights, combined with our tendency to prioritize the moral demands of people we stand in a special moral relationship with, has resulted in a failure to implement human duties towards individuals in the mind and the will of the people. It makes us very unaware of the duties we carry towards other individuals within the human community. Therefore, I believe it to be

⁴⁵ Onora O’Neill, *Towards Justice and Virtue: A Constructive Account of Practical Reasoning* (Cambridge: Cambridge University Press, 1996), p. 129.

necessary to shift our focus from human rights to human duties. In the next chapter, I will show how – in fighting the abstract nature of individual human right duties – the question ‘who owes what to whom?’ becomes a relevant one. In fighting the abstract nature of individual human right duties, the focus is being shifted towards the question how we can claim human rights through specifying individual human right duties.

4. Fighting the Abstract: Claiming Human Rights

4.2. Introduction

In the previous chapter, it became clear that the abstract nature of human rights combined with the strong tendency to prioritize the moral demands of the people we stand in a special moral obligation to, results in individuals not acknowledging responsibility for individual human rights duties towards other individuals within the human community. At the same time, millions of people are denied the fulfilment of their human rights.

On the one hand, the fact that human rights are supposed to give rise to normative standards makes the abstractness that it brings about a logical consequence. However, the very idea that human rights consist of normative standards makes it, at the very same time, hard to accept that such normative standards are not being enforced. Given this, the need to spell out in a more concrete manner ‘who owes what to whom’ seems reinforced. Whereas human rights might be abstract by nature, it seems that human right duties ought to be specified in order to enforce responsibility for duties to fulfil human rights. On this basis, a lot of philosophers have embraced the idea that human rights need to be claimable in order to be effective. In this chapter, I will elaborate on this idea.

4.3. Human rights as claims: the thesis of correlativity

The idea that human rights ought to be claimable has its basis in the idea that human rights are always centered around a freedom, protection, status, or benefit for the one holding the right. Therefore, human rights are to be understood as claims that impose duties or responsibilities on their addressees.⁴⁶ This strongly relates to the thesis of correlativity, according to which anyone’s right can be related to a duty on the part of someone else. This would mean that in order to claim a right, one needs to identify its duty bearers. Put differently, rights are thought of as claims that we can claim against others. In order to do so, we would have to know who these others are.

The thesis that there exists a logical correlativity between such claims and duties is often ascribed to Wesley Hohfeld. According to Hohfeld, if someone holds a right, there is always someone else that has a duty regarding this right.⁴⁷ In his influential work, he distinguishes

⁴⁶ Charles R. Beitz, *The Idea of Human Rights* (Oxford: Oxford University Press, 2009).

⁴⁷ Lazarus at al., ‘the relationship between rights and responsibilities,’ *Ministry of Justice Research Series* 18/09, December 2009.

between rights to do things (liberties or privileges) and rights to have certain things done (claim rights). According to Hohfeld, duties only correlate with claim-rights.⁴⁸

What is important is that according to Hohfeld every jural relation is to be understood between two people and that every set of correlatives exists together. This means that it cannot be the case that someone has a right without someone else having a duty or that someone has a duty without someone else having a right.⁴⁹ Hohfeld illustrates this by giving an example wherein person X has the right against person Y that obligates Y to stay off the land of X, meaning that the invariable correlation holds for X having a right and Y having a duty. On the other hand, if someone has a *privilege* to walk through land, it means that there is no other person that has a *claim* by which the person with the privilege to walk through the land has a duty to refrain from doing so.⁵⁰ Rights as claims, according to Hohfeld, are only enforceable if it consists of protection against interference or the refusal of providing access to the right. In short, someone's right always involves a duty of someone else, as someone's duty always involves someone else's right. Meaning that rights and duties cannot exist on their own. It is for this reason that Makinson considers Hohfeld's theory as being "resolutely relational" – every right always consists of a relationship between agents.⁵¹

The idea of human rights as claims that impose duties on someone else is very influential. However, there are a lot of nuances to this idea. After all, the idea of Hohfeld is thought to be quite radical as he assumes that there cannot exist a right without a duty and there cannot exist a duty without a right. In this regard, it is thought that as long as individuals do not violate the rights of other individuals, one cannot be violating duties. These duties after all only exist insofar as they arise from rights.⁵² It falls outside the scope of this thesis to address exactly how we should understand the correlation between human rights and duties. What is important to note here is the highly influential premise by which individuals hold human rights that can be claimed against others.⁵³

⁴⁸ Heidi M. Hurd & Michael S. Moore, "The Hohfeldian Analysis of Rights," *The American Journal of Jurisprudence* Vol. 63, No. 2 (2018), pp. 295–354.

⁴⁹ Arthur L. Corbin, "Legal Analysis and Terminology," *The Yale Law Journal* (1919), pp. 163–166.

⁵⁰ Wesley Hohfeld, "Fundamental legal conceptions applied in judicial reasoning", in W.W. Cook, (ed.), *Fundamental Legal Conceptions Applied in Judicial Reasoning and Other Legal Essays* (New Haven: Yale University Press, 1923), pp. 23–64.

⁵¹ David Makinson, "On the formal representation of rights relations: Remarks on the work of Stig Kanger and Lars Lindahl", *Journal of Philosophical Logic* 15(4) (1986), pp. 403–425.

⁵² Resulting in the neglecting of duties that cannot be derived from rights, see for example: Onora O'Neill, *Towards Justice and Virtue: A Constructive Account of Practical Reasoning*. Cambridge: Cambridge University Press 1996, chapter 5.

⁵³ For example, we find it in the account of Henry Shue, who states that a claim of right is incomplete until we have spelled out "at least a little bit, what it would actually mean for a certain right to be fulfilled and enjoyed."

4.4. Abstract human rights and specified individual human right duties

From the thesis of correlativity, it follows that human rights ought to provide right-holders with certain claims to the respect of duty-bearers. These duties, in turn, are directed to the right-holders. This strongly relates to the idea that while the philosophical notion of human rights makes it inevitable that human rights are abstract in nature, duties must be spelled out in a more concrete way.⁵⁴ Human rights after all amount to a ground for right-holders to hold duty-bearers responsible for protecting the interests that are to be protected by the rights.⁵⁵

It ultimately comes down to the question of how we should specify individual human rights duties. This specification, in turn, relates to three different aspects: who owes what to whom? This way, one tends to move away from the abstract, in order to call upon the responsibility of individuals to act upon human rights. In this light, it seems necessary to specify when individuals hold duties to which other individuals and what these duties look like.

In chapter 2, I have already set out different types of duties. I showed that negative duties focus on avoiding depriving other individuals from the content of their human rights, whereas positive duties can either focus on aiding the protecting against the violation or nonfulfillment by others or the aid to help fulfil human rights. For both types of duties, it seems necessary to spell out who carries them and what they contain. To illustrate, for the right to a minimal standard of living to be met, it seems vital to focus on the content of this right. In order to specify the duties that correlate with this right, one does not only need to spell out which individual at what time should act upon this right, but also what exactly is needed from individuals in order to fulfil this right. However, in the next chapter, I will show that there lies a danger within deciding upon this route. This danger is also known as the ‘claimability objection’ and has been put forward by Onora O’Neill.

4.5. Conclusion

In this chapter, I explained how the shift from human rights to individual human right duties in order to successfully claim human rights forces us to think about the question ‘who owes what to whom’. I gave attention to the idea that while human rights might be abstract, it seems necessary to specify the individual human right duties that correlate with human rights. On this

See: Henry Shue, ‘Thickening Convergence’, in: *The Ethics of Assistance: Morality and the Distant Needy* (Cambridge: Cambridge University Press, 1996), ed. D.K. Chatterjee, pp. 226-227.

⁵⁴ Joseph Raz, “On the Nature of Rights,” *Mind* 93, no. 370 (1984): 196, 200.

⁵⁵ Jeremy Waldron, “Introduction,” in *Theories of Rights* (New York: Oxford University, 1985).

basis, a lot of philosophers have embraced the idea that human rights need to be claimable in order to be effective. Claimability can be reached through identifying when, which individuals carry duties and how these duties look like. In the next chapter I will, however, show that there is a cost in fighting abstraction this way.

5. The Cost of Fighting the Abstract: The Claimability Objection

5.2. Introduction

In the previous chapters, my focus has been on demonstrating the necessary shift from the abstract nature of human rights and their correlating duties towards the addressing of a very specific question regarding the role individuals play in the protection and fulfilment of other individuals' human rights within the human community: who owes what to whom?

In this chapter, I zoom in on the theory of Onora O'Neill, who departs from the very same idea as has been set out in the previous chapters: there are no rights without duties.⁵⁶ Or, in O'Neills' words:

‘‘Rights are mere pretense unless others have obligations to respect them.’’⁵⁷

Within the theory of Onora O'Neill, the claimability of a right depends on whether we can identify precisely whom this right can be claimed against – one can only have a right if someone has a justified claim. Every claim in turn has two dimensions. First, a claim needs an object, signifying a demand for something. Subsequently, a claim requires direction, indicating it is made against a specific duty-holder.⁵⁸ Human rights can therefore only be claimable if the object and direction are justified.

This makes the theory of Onora O'Neill an effort to spell out human right duties in as much of a concrete way possible. However, as it will become clear, there is a cost in fighting abstraction this way. It will become clear why, according to O'Neills approach, specific duties cannot be spelled out for positive formulated human rights. O'Neill refers to this as the claimability objection. I will first discuss the claimability objection (para. 5.2). Then, I will engage with the objection to this theory regarding the distinction O'Neill uses between positive and negative human rights (para. 5.2.1). I conclude that there are two ways one could try to overcome the limitation O'Neill exposes (para. 5.3). I will end with a conclusion (para. 5.4).

5.3. The claimability objection

Onora O'Neill departs from the idea that the claimability of a right depends on whether it is possible to identify whom this right can be claimed against.

⁵⁶ Onora O'Neill, ‘‘The dark side of human rights’’, *International Affairs*, 81(2) (2005), p. 431.

⁵⁷ Onora O'Neill, *Bounds of justice* (Cambridge: Cambridge University Press, 2000), p. 97.

⁵⁸ Jesse Tomalty, ‘The force of the claimability objection to the human right to subsistence’, *Canadian Journal of Philosophy* 44(1) (2014), p. 2.

“Any right must be matched by some corresponding obligation, which is so assigned to others that right-holders can in principle claim or waive the right (or where not competent to do so, that others be able to at least claim it on their behalf). Unless obligation-bearers are identifiable by right-holders, claims to have rights amount only to rhetoric: nothing can be claimed, waived or enforced if it is indeterminate where the claim should be lodged, for whom it may be waived or on whom it could be enforced.”⁵⁹

O’Neill believes that both liberty rights (negative rights) and welfare rights (positive rights) are able to function as rights as long as their corresponding duty-bearers are able to deliver on these duties on a universal scale.⁶⁰ This relates strongly to the human rights principles that have been set out in chapter 2. The essential aspect of human rights, after all, is that they apply to everyone in an equal way, at all times.

However, by referring to the distinction between positive and negative duties, O’Neill believes there to be a certain asymmetry between negative and positive human rights.⁶¹ O’Neill understands liberty rights as rights that guarantee the protection of various freedoms of individuals. These negative rights intend to provide right-holders with the right to not be interfered in certain respect.⁶² Negative human rights would entail duties that can be universally ascribed to everyone regarding the right-holder and can (and must) be fulfilled by everyone carrying this duty. One can for example think of the right to property, which entails a correlative duty to not arbitrarily deprive the right-holder of their property. As stated, this duty would be ascribed to everyone, meaning that there is no one that does not have the duty to not arbitrarily deprive the right-holder from their property. The same holds for the right to privacy, which obligates everyone to refrain from actions that infringe this right. Liberty rights would be meaningless if they would only obligate certain individuals to refrain from infringing them and if individuals that do not bear such duty would decide to infringe them.

Welfare rights on the other hand should be understood as positive claims to something such as education, healthcare or a minimal standard of living. Such positive human rights would, contrary to negative human rights, entail duties that, according to O’Neill, must only be

⁵⁹ O’Neill 1996, p. 129.

⁶⁰ Jude Browne, ‘O’Neill and the Political Turn Against Human Rights’, *International journal of politics, culture, and society* 26(4) (2013), p. 293.

⁶¹ O’Neill refers to ‘welfare rights’ to address positive rights to goods and services and to ‘liberty rights’ when referring to negative rights that obligate others to not interfere.

⁶² O’Neill 2005, p. 428.

fulfilled by certain individuals. Other than liberty rights, welfare rights are not depending on every individual when it comes to their fulfilment.

One can for example think about children in Libya that are denied access to education due to conflict and political instability. In order for them to effectuate their human right to education, they are not depending on all individuals worldwide to help realize this, but on, for example, organizations that can provide them with an education system and the necessities to participate within such a system. Besides, there seems to be a huge difference among individuals about what is needed in order to fulfill their rights. Being born in a wealthy family that can help provide with the costs of education and obtaining multiple degrees means that one is – besides that there is an education system one can attend – not depending on any help outside of one's family. This is not the case for children that are born in countries where not only such education systems do not exist, but that also do not have the resources to access such a system. This makes positive human rights special universal rights, since everybody has them, but not everyone should act upon the duties that correlate with these types of rights.⁶³ After all, according to O'Neill, anyone can enter into a special relationship.⁶⁴

'The obligations that must exist if there are any welfare rights are obligations to provide goods and services to particular persons at particular places. It would be absurd to claim that everyone has an obligation to provide a morsel of food or a fraction of an income to each deprived person. Goods and services have to be rendered by particular persons or institutions to some others.'⁶⁵

In the concrete, O'Neill states that we cannot identify the bearers of duties that correlate with positive rights in an abstract manner, outside the context of an institutional scheme.⁶⁶ This has everything to do with the fact that the claimability of positive human rights is dependent on resources and goods and involves the performance of certain services. Without the existence of institutions assigned to provide for the fulfilment of these rights, positive rights, according to O'Neill, are to be unclaimable. In short, whereas for negative rights it is obvious '*who* (everyone) owes *what* (refrainment) to *whom* (every right-holder),' for positive rights this question seems impossible to answer without the existence of certain institutions.

⁶³ Corinna Mieth, 'On human rights and the strength of corresponding duties,' *The Philosophy of Human Rights*, p. 173.

⁶⁴ O'Neill 1996, p. 136.

⁶⁵ Onora O'Neill, 'Hunger, Needs, and Rights,' in: *Problems of International Justice* (Boulder: Westview Press, 1988), p. 76.

⁶⁶ O'Neill 1996, p. 133.

5.3.1. *The nuance of the distinction and response*

It deserves note that the strict distinction between positive and negative rights when it comes down to giving rise to respectively positive and negative duties is slightly contrived. In chapter 2 we have seen that Henry Shue even argues that the distinction between negative and positive rights is unfounded: both rights would entail both negative and positive duties. In order to fulfill a negative duty, one may need to perform certain actions in order to realize the right in question and in order to fulfill a positive duty, one may need to refrain from certain actions.

This idea becomes apparent in the right to a minimal standard of living. It goes without saying that for this right to be fulfilled the providing of certain resources is crucial. However, when the right-holders right is fulfilled, it would still mean a breach of that very same right if someone would decide to take away some of the resources that are necessarily for a standard minimal of living or if someone would block the access to those resources. This also holds for negative rights. According to Shue, it is in fact not rights but duties that are to be understood as positive or negative. On a first level, according to Shue, there exists a symmetry between negative and positive rights and their corresponding duties to avoid the depriving (negative duties) of the rights of right-holders. Besides, institutions are appointed positive duties to make sure that right-holders are not deprived of their rights or the goods that their rights tend to protect. Other than O'Neill claims, it is not the case that liberty rights refer to negative rights and welfare rights to positive rights – both are not exclusively positive or negative.⁶⁷

O'Neill nevertheless holds on to the asymmetry between negative and positive rights, when she discusses primary and secondary duties. Whereas it may be the primary duties of individuals to refrain from actions that infringe negative (liberty) rights, secondary rights can be found that require government institutions to enforce these individuals' primary duties. This can for example be through legislation or prosecution. But O'Neill emphasizes that we, in this case, already knew *who* owes *what* to *whom*. After all, *who* refers to everyone and *what* to non-interference. Governments just make sure this existing normative relation is enforced.⁶⁸ This is very different when it comes to positive (welfare) rights. In this case, according to O'Neill, one cannot hold on to the idea that there exists a known normative relation between right-holder and duty-bearers by which it is clear *who* owes *what* to *whom* and it is up to governmental institutions to simply enforce this. Prior to the introduction of certain institutions, appointed to

⁶⁷ Samantha Besson, "The bearers of human rights' duties and responsibilities of human rights: a quiet (r)evolution?", *Social Philosophy and Policy* 32(1) (2015), p. 251.

⁶⁸ Adem Etinson, "Human Rights, Claimability, and the Uses of Abstraction," *The Graduate Center, City University of New York*, via: <https://philarchive.org/archive/ETIHRC>.

guarantee the fulfillment of positive (welfare) rights, there is, according to O'Neill, not much we can know about the corresponding duties in order to answer *who* owes *what* to *whom*. It is throughout institutions, for example such as a healthcare program or housing projects we can identify the primary duties that correlate with these rights.⁶⁹

Again, the right to a minimal standard of living can be used as an illustration to this problem. The duty to assist individuals that suffer from severe poverty is thought of as undirected, since it is unthinkable to interpret such duty to assist all individuals that suffer from severe poverty, which would be beyond anyone's capacity. The duty that correlates with the right to a minimal standard of living is not owed to anyone in particular, which makes the right unclaimable. For individuals that suffer from poverty, it is indeterminate who has a duty regarding the protection of their human right to a minimal standard of living and therefore untraceable who neglected or violated the human right to a minimal standard of living.

In chapter 6, I will come back to this, when I argue that it is important to take notice of the fact that all human rights implicate both negative and positive duties.

5.4. Conclusion

O'Neill departs from the idea that in order to count as a right, one has to specify the bearers of the with the rights corresponding duties. However, when it comes to positive rights, O'Neill identifies a problem that is often referred to as 'the claimability objection'. The account by which rights must be claimable in order to function as rights, forces us to accept that the bearers of duties that correlate with positive human rights are to be agents that are expected to deliver on every individuals' human rights claims.⁷⁰ This is considered an undirected duty, making it impossible to answer the question who owes what to whom in a specific manner. This results in O'Neill claiming that many positive rights are in fact "false rights". The human right to a minimal standard of living is therefore not considered a practical entitlement which hold the potential of making an actual impact on people that are the bearers of these human rights, but primarily serves as "a bitter mockery to the poor and needy."⁷¹

With this conclusion, we have now moved from the very abstract idea that everyone holds certain duties towards the world community, to the idea that individuals cannot be held responsible for duties that correlate with positive human rights. However, I believe that it is unnecessary to end our conclusion here. The claimability objection can be either replied with

⁶⁹ Idem.

⁷⁰ Brown 2013, p. 294.

⁷¹ O'Neill 1996, p. 13; Brown 2013, p. 294.

by targeting the premise that claimability is an inherent condition of human rights or by arguing that positive human rights are in fact claimable. In the next chapter I will try to overcome the claimability objection by questioning what it should mean for human rights to be claimable.

I will argue that the universal and equal nature of human rights does not mean that we need to ascribe individual human right duties in a universal way. In order to do so, I will reject the binair way by which O'Neill divides human rights between negative and positive rights. By doing so, I take a step back in the direction of the abstract nature of human rights and tend to balance this with the concrete.

6. Balancing the Abstract and the Concrete

6.1. Introduction

In chapter 3, it became clear that we cannot rely on individuals acting upon duties that correlate with human rights, when human rights and duties are only addressed in a very abstract way. For this reason, the urge to spell out in a more concrete manner what individual human right duties correlate with human rights, who carries them, and what they entail is reinforced. However, Onora O’Neill has demonstrated that ascribing duties in a universal way is met with the claimability objection. In this chapter, I therefore tend to balance the abstract and the concrete, focusing on the universal aspect of individual human right duties. To do so, I will use the theory of Jeremy Waldron on duties, whereby duties are to be comprehended based on the circumstances for which duty-bearers take responsibility, which makes duties open-ended instead of settled and determinate. I will show that while the approach Waldron uses, is in a way much more abstract than O’Neill’s approach, it still provides a good starting point for concretizing individual human right duties.

By using the theory of Waldron, I want to offer a more abstract way of answering the question ‘who owes what to whom’ than O’Neill aimed for. With this I do not tend to offer concrete guidelines to identify who has which duty and what these duties should look like. Rather, I tend to shift our understanding of individual human right duties. I argue that we do not necessarily need to know ‘who owes what to whom’ in a universal yet very concrete manner, to still be able to become more aware of certain responsibilities that we carry towards other individuals.

First, I will focus on the claimability objection as has been set out in the previous chapter. I will argue that, understanding claimability in a way that we need to be able to spell out in a very concrete, exact, yet universal way what different human rights ask from individuals does not do justice to the multitude of different kind of individual human right duties that correlate with human rights (para. 6.2). For this reason, I believe it to be important to understand individual human right duties in a more open-ended and situational way. In this context, I will discuss the notion of open-ended and situational individual human right duties as discussed by Jeremy Waldron (para 6.3). Thereafter, I will address the aspects I believe are part of the notion ‘on duty’ (para. 6.4). Then I will come back to how we should implement these duties in a way that individuals act upon them, considering the problem of the idea of the existence of special moral obligations. This strongly relates to the understanding of the protection of human rights as relying for an important part on the internalization of human rights and duties by individuals,

by which – even in the absence of legal enforcement – individuals at all times act in accordance with human rights (para. 6.5). I will end with a conclusion (para. 6.6).

6.2. Rethinking claimability

In the previous chapter it became evident that human rights can be made effective by means of claiming them. However, not for all types of human rights it seems possible to determine against whom these rights can exactly be claimed. In this chapter I want to question whether that is necessary. What role can indetermination play within the idea of claimability? This in fact brings us back to the abstract nature of human rights and its correlation with duties.

One can think of a lot of situations in which one would agree there exists a duty, without being able to determine to whom this duty should be matched. For example, one can think of someone that is almost dying due to dehydration. Water, considered essential for survival and human dignity, is something considered to be protected by human rights. In this case most people would agree that this person should be granted water. However, it remains unclear who should be appointed to do so, meaning that this human right cannot be claimed against a specific person. There are numerous individuals that have access to clean drinking water, but it is not necessary that all these individuals come into action. It is only necessary that someone acts. However, according to O’Neill this right is considered unclaimable, since one cannot claim it against a particular individual that carries its correlating duty.

I do not agree with O’Neill, however, that this only is the case for positive human rights. After all, both negative and positive human rights bring about different individual human right duties. I believe it to be important to note that, as demonstrated in chapter 3, every individual lives in a world community in which everybody has human rights. This forces individuals in the first place to act responsibly with the rights they are entitled to and to take into account the consequences of their exercise for the rest of the community. After all, within such a community it is inevitable that individual human rights conflict with each other. In this regard, individuals should refrain from excessive individual claims that result in the rights of others being curtailed. In other words, all human rights are accompanied by duties to which everyone must adapt their behavior in advance.

Besides, positive human rights do not only imply action. They also ask from individuals to refrain from any action that would infringe or scale back the fulfilment of these rights. One can for example think about obstructing the access to clean drinking water. The fulfilment of positive rights is for an important part depending on individuals refraining from acting in a

certain way. It is important that individuals balance their individual human right claims against the interests of all others and the world community as a whole.

Understanding claimability in a way that we need to be able to spell out in a very concrete, exact, yet universal way what different human rights ask from individuals does not do justice to the multitude of different kind of individual human right duties that correlate with human rights. For this reason, I believe it to be important to understand individual human right duties in a more open-ended and situational way. In this context, I will discuss the notion of open-ended and situational individual human right duties by Jeremy Waldron in the next part.

6.3. Open-ended and situational human right duties

In ‘On Duty’ Jeremy Waldron proposes a different understanding of duties than the usual prescriptive understanding. The latter is used for a situation in which a person (P) has a duty to perform or omit a certain action. This usually also involves a relational aspect, meaning that someone owes someone else the action performed in certain circumstances (S).⁷² In the alternative understanding that Waldron proposes a duty is considered in a relationship between an individual and a situation. In this sense, someone holds a duty when it is this individual’s responsibility ‘to be alert to and, if need be, to do something about various possibilities inherent in S.’⁷³ In this regard, individuals can be ‘on duty’ regarding a certain situation. The idea of such a situational duty might also involve a relational aspect, meaning that an individual (P) can have a duty to a person (Q) in relation to a certain situation (S).⁷⁴ The idea of being ‘on duty’, according to Waldron, refers to situations in which individuals are expected to be alert to situations that require attention. However, the situations individuals carry such responsibility for cannot be expected to be ‘tidily labeled or individuated.’⁷⁵ Waldron does not rule out the possibility that ‘an ultra-responsible person’ would take responsibility for the entire world.⁷⁶

Waldron believes duties as situational and open-ended to be important for our moral understanding and social responsibility, emphasizing that individuals are constantly being presented with situation after situation, each of which should be closely assessed by asking oneself what is asked for and what role one should play herein. Waldron believes it to be a mistake to think of duties that are demanded by morality (or law) in terms of a set of clear prescribed or forbidden actions. One cannot expect such duties to be pre-determined

⁷² Jeremy Waldron, ‘On Duty’, *NYU School of Law, Public Law Research Paper no. 21-48*, (2021), p. 1.

⁷³ Waldron 2021, p. 2.

⁷⁴ Waldron 2021, p. 2.

⁷⁵ Waldron 2021, p. 10.

⁷⁶ Waldron 2021, p. 10.

beforehand, with duty-bearers seemingly exempt from the responsibility of actively engaging in real-time assessment. Furthermore, an individual that is ‘on duty’ cannot be expected to choose from a list of actions. Individuals are being presented with situations and what is to be done in those given situations becomes apparent through the assessment of the situation itself and does not rely on a set of instructions intended to outline such assessment.⁷⁷

The important difference between the approach of Waldron, compared to O’Neill is that whereas O’Neill focuses on claiming rights, Waldron uses duties as a starting point to invoke individual responsibility. This way, one can actually avoid the claimability objection. The focus is after all not on claiming rights, but on duties and how to implement those in the mind and the will of individuals. In other words, the question ‘who owes what to whom?’ is being translated into the question ‘what do I owe you?’. Let us now elaborate on what it could mean to be ‘on duty’.

6.4. Being on duty

The understanding of when someone should be considered ‘on duty’ is, as formulated by Waldron, in a way very undefined. Its meaning in fact is diminished as long as we fail to comprehend its content. If we consider human rights to give rise to abstract widespread open-ended and situational duties, it is important to establish ways of specifying the conditions in which those duties arise. The overarching purpose thereof would be to promote a different conception of what it means to have duties that must be acted upon in a situational manner. This would involve a different view of individual human right duties. One that does not only require individuals to respect the human rights of others, but also that individuals contribute positively to a better society and fulfilment of human rights. While I believe this to be a product of continuous work, I consider the notion to be ‘on duty’ to exist of two important aspects.

6.4.1. Individual human right duties as a continuous responsibility

The fact that individual human right duties are thought of as open-ended and situational does not necessarily result in the conclusion that individuals not always carry them. In fact, I believe the distinction Onora O’Neill makes on the basis of negative and positive duties, by which only the former is considered to always be acted upon, is somewhat contrived. In other words, I consider negative duties to be in the same way open-ended and situational as positive duties. We at all times have a duty to refrain from breaching the human rights of other individuals

⁷⁷ Waldron 2021, pp. 19-20.

within the human community. However, what it means to act upon these duties, differs from one situation to the other. It should be thought of as a continuous responsibility, but only in specific situations one refrains from acting in a certain way. The same holds for positive human right duties: we carry them all the time but handle upon them only in specific situations.

To illustrate, one can think of the right to privacy, which is thought to be a negative human right, asking from individuals to refrain from actions that would infringe this right. According to O'Neill the duty that correlates with this human right can therefore be ascribed in a universal way: everyone at all times must refrain from infringing this right. However, if we scrutinize what this duty entails, we find that it asks from individuals to respect and protect individuals' personal space and information. Whereas everybody has this responsibility, for each individual's human right to privacy, there are only certain individuals that find themselves in situations in which they are in the position to breach this right. This highlights the importance of how we behave towards each other in situations. In other words, the respect for human rights is for an important part dependent on the choices individuals make in certain situations, in which other individuals will not find themselves in.

6.4.2. Individual human right duties as a condition of possibility for human rights

Understanding individual human right duties as situational, in a way, seems to ignore the relational aspect that has been set out in para. 3.3.1. by which individuals prioritize the moral demands of the ones closest to them. I, however, argue that the situational aspect is intertwined with a relational one. By relational I mean that duties are defined in a situation by which individuals are confronted with (the rights of) other individuals. Instead of taking the rights of individuals as a starting point in order to spell out a specific claim towards a specific duty-bearers, one should think of duties as an obligation to treat other individuals in a certain way, due to the fact that they are holders of certain human rights. This is also closely related to the foundation of the philosophical notion of human rights that has been set out in chapter 2.

6.5. Towards the fulfilment of individual human right duties

Specifying when human right duties arise, does not say anything about what they should look like, and which factors should be taken into account when deciding hereupon. However, by understanding duties as a possibility condition for human rights, one ought to treat other individuals in such a way that their human rights are respected. This begs the question when someone's rights are being fulfilled. For example, it is not hard to imagine that the right to a

minimal standard of living is not fulfilled when someone is forced to sleep on the streets and is depending on others for food. However, when do we consider that someone is enjoying a minimal standard of living? And how does one act in accordance with this right? Would it be enough to give some money, a meal, or must one buy a house when one has the resources to do so? What if someone is homeless because one gave his house away by choice?

For each different human right an endless list of question arises on how we should understand them in order to act in accordance with them. However, by understanding duties as a possibility condition for human rights, it is not so much about the question how one should act towards the fulfilment of other individuals right, but more about how one's actions are subject to the terms and conditions that are set out by human rights.

The philosophical notion as has been set out in chapter 2 implies that all individuals are equal. At the same time, it is important to note that every individual within the human community either has (all) their human rights fulfilled or not. For this reason, we constantly need to question how our actions affect the human rights. In order to do so, it is not necessary to spell out beforehand what this should look like. After all, this will be different for every individual, for every different situation. In other words, we cannot answer the question 'what do I owe you' in a universal way.

For example, how we should understand the duty we have towards a homeless person on the street, is dependent on the circumstances of the individual that is being confronted with this homeless individual. We cannot spell out in a universal way what we owe each other in this regard. The only thing we can do is take into account our own situation and how our actions affect the individuals within the human community. This could mean that a wealthy individual carries a different duty than someone that struggles to make ends meet.

Each situation we find ourselves in, we - as part of the human community – constantly have to relate to other individuals. Therefore, we have to take account of the consequences of those actions for other individuals. Therefore, we need to refrain from breaching the rights of other individuals. By exercising our own rights, we furthermore need to take into account the consequences thereof for other individuals. Regarding the fulfilment of other individuals rights, it should be acknowledged that this is very difficult to spell out. However, what is important to note here, is that the approach by which we understand duties as situational and open-ended, we have a starting point to implement our responsibility towards other individuals in our minds and wills.

6.6. Conclusion

In this chapter, I have tried to balance the abstract and the concrete nature of individual human right duties. I have shown that Jeremy Waldron, by understanding duties as situational and open-ended, offers a good starting point to concretize individual human right duties. Individual human right duties are to be understood by reference to situations for which the duty-bearers take responsibility. I showed that while the approach Waldron uses, is in a way much more abstract than O'Neill's approach, it still provides a good starting point for concretizing individual human right duties. By doing so, I do not tend to offer concrete guidelines to identify who has which duty and what these duties should look like in a universal way. Rather, I tend to shift our understanding of individual human right duties, by arguing that we do not necessarily need to know 'who owes what to whom' in a universal yet very concrete manner, to still be able to become more aware of certain responsibilities that we carry towards other individuals. I consider it the subject of an ongoing debate how – as individuals – we should understand the individual human right duties we carry towards other individuals we are being confronted with within the human community.

7. Conclusion

In this thesis, I have tried to contribute to the shift in focus from human rights to individual human right duties. I consider this a necessary shift, as the promise of human rights to be met is dependent on the fulfilment of the with human rights correlating duties. After all, in chapter 2, it became clear that human rights are only effective if everyone refrains from actions that breach the rights or acts in a way that human rights are fulfilled. In this context, human rights are often divided between negative and positive human rights. However, one should take note that the idea of such a distinction is much more nuanced in practice: human rights often give rise to both negative as well as positive duties.

In chapter 3, I argued that the philosophical notion of human rights – albeit in a very abstract way – implies that everyone has certain duties towards the rest of the human community. This idea is also reflected in Article 29 of the Declaration. However, at the same time, the focus in the current human right domain seems to be on human rights and not on the individual human right duties that correlate with these rights. Due to the very fact that human right duties are only addressed in a very abstract manner, combined with our tendency to prioritize the moral demands of people closest to us, human right duties are not implemented in the mind and will of individuals. This makes it very uncertain how these duties should be interpreted and what they exactly ask from individuals. Hence, we not only tend to deny asking ourselves what we owe each other. We are also very uncertain regarding the answer to this question.

In chapter 4, I showed how – in fighting the abstract nature of individual human right duties – the focus is being shifted towards the question how we can claim human rights through specifying individual human right duties. I gave attention to the idea that while human rights might be abstract, it seems necessary to specify the individual human right duties that correlate with human rights. On this basis, a lot of philosophers have embraced the idea that human rights need to be claimable in order to be effective. Claimability can be reached through identifying when, which individuals carry duties and how these duties look like.

In chapter 5, however, I showed that there is a problem with fighting abstraction in this way. I used the theory of Onora O’Neill to demonstrate that by understanding claimability in a universal way, we are forced to accept that the bearers of individual human right duties that correlate with positive human rights are to be agents that are expected to deliver on every individual’s human rights claims. This is considered an undirected duty, making it impossible to answer the question ‘who owes what to whom’ in a concrete manner.

However, in chapter 6, I have shown why I believe it to be unnecessary to end our conclusion here. The claimability objection can be either replied with by targeting the premise that claimability is an inherent condition of human rights or by arguing that positive human rights are in fact claimable. I have tried to overcome the claimability objection by questioning what it should mean for human rights to be claimable. I argue that the universal and equal nature of human rights does not mean that we need to ascribe individual human right duties in a universal way. I have shown that Jeremy Waldron, by understanding duties as situational and open-ended, offers a good starting point to concretize individual human right duties. According to this idea, individual human right duties are to be understood by reference to situations for which the duty-bearers take responsibility. I showed that while the approach Waldron uses, is in a way much more abstract than O'Neill's approach, it still provides a good starting point for concretizing individual human right duties.

I have tended to shift our understanding of individual human right duties, by arguing that we do not necessarily need to know 'who owes what to whom' in a universal yet very concrete manner, to still be able to become more aware of certain responsibilities that we carry towards other individuals. In sum, the navigation of individual human rights duties is to be thought of as a balancing exercise between the abstract and the concrete and should be subject to constant debate.

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