

CHAPTER FIVE
INTERNATIONAL HUMAN RIGHTS
AND POLITICAL EQUALITY: SOME
IMPLICATIONS FOR GLOBAL
DEMOCRACY

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International human rights are often considered as evidence of the existence or at least of the possibility of global democracy and citizenship (see, e.g., Simmons 2001, 179; Gould 2004; Erman 2005; Habermas 2011).¹ This is sometimes explained by reference to the possible grounding of democracy and human rights in a common value: equality (see, e.g., Christiano 2008; Brettschneider 2007). This common egalitarian dimension rather than grounding in equality needs to be argued for, however. But something that is even more problematic is that it is readily assumed in those accounts that the relationship between democracy and human rights can be transposed to the global level and be activated anew horizontally and outside the boundaries of domestic or regional democratic polities.² A lot hinges on this debate, however, on what equality and, more specifically in this context, political equality can and ought to mean when applied to global or transnational law and institutions. This is a very difficult question that democratic theorists have started addressing lately (see, e.g., Christiano 2010; Pettit 2010) and that is discussed by different contributions in this volume.

Instead of looking directly at the relationship between global democracy and equality, however, it may be interesting to look at the relationship between equality and international human rights. Not only is this a vexed issue in human rights theory. Thus, by addressing it, one may remedy an important gap in the understanding of the nature and justification of

human rights practice where equality is everywhere to be seen but nowhere to be explained. But it is also a missing link in egalitarian theories where the relationship between equality and basic moral rights is a topic fraught with difficulties, but still largely undertheorized. In turn, broaching that issue can support certain conclusions as to the relationship between equality and global democracy and arguably help debunk the idea that the existence of international human rights necessarily implies looking for a kind of global democracy where individuals are the only possible subjects of political equality.

Curiously, the gap between international human rights and equality has long been left open. Of course, the relationship between domestic human rights and equality, and especially political equality, has been explored in depth by political and legal theorists, especially from the German tradition.³ The implications of that relationship once either human rights or equality, or both, are internationalized remain to be assessed, however. The disconnect between international human rights and equality is actually evident in the work of human rights theorists and equality scholars alike.⁴

Among egalitarian theorists, on the one hand, neglect for human rights is attributable to the lack of interest for international law and for politics beyond domestic boundaries (see, e.g., Gosepath 2004, 2007a; Scheffler 2003; Pojman 1997; Arneson 1989; Roemer 1986; Cohen (G.) 1989; Dworkin 1981a, 1981b. See, however, Dworkin 2006, 2011). This may largely be explained by the apparent, albeit largely unreflected upon, incompatibility between the defense of a universal equal moral status that would fit the universality of international human rights, on the one hand, and a robust approach to equality of welfare or resources or to equality of outcome or opportunity of the kind that requires a well-organized political and social community and does not fit the universality of international human rights that well, on the other (see, e.g., Gosepath 2007a, sec. 4).

Human rights theorists, by contrast, have been just as guilty of neglecting the egalitarian dimension of human rights. This is due in part to the resilience of foundationalist, and also to monist approaches to the justification of human rights; those approaches either exclude any reference to other values besides autonomy, well-being, or dignity, or concentrate on one of them exclusively. Another explanation lies in the lack of reference to the institutional and political practice, history, and function of human rights in many traditional human rights theories; those theorists look at international and domestic human rights law merely as a way to implement

a moral reality or not, but without any impact on that moral reality in return (see Buchanan 2010; Besson 2011c. *Contra*: Griffin 2010; Tasioulas 2009, 2010a). This kind of separation between the morality and the legality of human rights has a price, however: It severs links to the collective and political role of human rights and hence to their relational and accordingly egalitarian dimension in particular. This is even more surprising as equality and nondiscrimination are not only preeminent traits of international and domestic human rights law and practice, but often a source of intriguing legal complexities in that context. A final explanation may be that all contemporary human rights theories are struggling with the parochialism objection and the difficulties it raises for their claim about the universality of human rights. The fact that most egalitarians defend robust theories of equality of some kind would actually make the case against human rights parochialism even more powerful if those theories were somehow to be more deeply connected to human rights.

Recently, some authors have tried to link international human rights more closely to equality, and hence to fill the gap between them (see Buchanan 2005, 2009, 2010; Gérard 2007, 184ff. See also Dworkin 2006; 2011, 327ff).⁵ Even though the egalitarian dimension of international human rights has now been slowly uncovered, more work is needed on what that normative ideal means in the human rights context. Often, human rights theorists gesture at equality as being related to human rights, for instance, in the latter's justification, without, however, explaining what kind of equality is at stake and the exact nature of its (justificatory or not) relationship to human rights (see, e.g., Tasioulas 2013). This is the project of this chapter, albeit modestly and from the perspective primarily of human rights theory. The concept of equality and its justifications being one of the most complex fundamental questions in contemporary moral and political philosophy, its relationship to human rights are bound to constitute an even more complex issue. As a result, any attempt at clarifying that relationship has to tread cautiously.

The chapter has two goals: First of all, remedying the gap in human rights theory by accounting for the egalitarian dimension of human rights, and thereby, secondly, reinforcing an argument for the equality of states qua democratic peoples and not only of individuals in global democratic theory. My argument unravels in three consecutive stages. After a section on the concept of equality and its justification, the next section presents the egalitarian dimension of human rights, thus emphasizing their inherently moral and legal nature. The subsequent section returns to the original

question of the relationship between global democracy and equality and draws conclusions from the egalitarian dimension of international human rights for the importance of the equality of democratic states and the kind of democratization we should hope for beyond the state.

Equality

The first task in the elucidation of the relationship between human rights and equality is clarifying the concept of equality that is at stake in the human rights context. This requires, first of all, an analysis of the most basic notion of equality: that of equal moral status. In a second step, the discussion moves to a more robust notion of equality: that of political equality. I argue that the latter is an elaborate form of equal moral status in the political context, explain how one may move from equal moral status to political equality and elaborate on the relationship between the two.

From Equal Moral Status

Basic moral equality is usually referred to as equal moral status or basic equal status. It is useful to distinguish between the concept of equal moral status and its justification. The concept of equal moral status, first of all, is best explained by dissociating the notion of moral status from that of equal moral status. In a nutshell, *moral status* pertains to the way in which a being is subject to moral evaluation, how it ought to be treated, whether it has rights, and what kind of rights it has (see Nussbaum 2006; McMahan 2002; Buchanan 2009). Moral status goes further therefore than mere moral considerability: The latter is a standing that may be shared with many other sentient animals and even with things, whereas moral status only belongs to human beings.⁶ When it is *equal*, moral status refers to the idea that "All people are of equal worth and that there are some claims people are entitled to make on one another simply by virtue of their status as persons" (see, e.g., Scheffler 2003, 22).

There are two core ideas in this understanding of equal moral status: The idea that all persons should be regarded as having the same moral worth (i) and the idea that this equal moral status is relational and the basis for mutual moral claims (ii). Those two aspects of equal moral status are indissociable.

First of all, the idea of equal moral worth of all persons pertains to the intrinsic and noninstrumental value of personhood. According to that

idea, no person may be deemed inferior morally to another: All those who have the characteristics that are sufficient for being a person and hence the capacity for rational and moral agency have the same moral status (Buchanan 2009, 347). Equal moral status is of course compatible with important inequalities on other counts such as health, beauty, and luck. It is important to stress that what matters here is personhood and not human nature (see Buchanan 2009). The former captures what ought to be protected morally in human beings qua moral agents, and it escapes the naturalistic fallacy and many other misconceptions that come with the notion of human nature (348–9).

The second core idea in equal moral status pertains to its inherently relational nature (see Anderson 1999, 289, 313). One is at once a person valuable in herself and a person equal to others, that is, a person whose status and moral worth is defined by one's moral relations to others. The relational or, as Anderson calls it, the social nature of equal moral status explains why the latter amounts to more than mere autonomy or rational capacity that is covered by the first core idea (288–289). The denial of equal status amounts to a judgment of exclusion and inferiority *to others* where this kind of judgment is "thought to disqualify one from participation as an equal in important social practices or roles" (see Buchanan 2010, 708–710).

As a result, equal moral status does more than simply entitle persons to mutual claims. It can actually be defined by reference to those mutual claims. This is why it is often deemed as consisting in those mutual moral entitlements (see Buchanan 2009, 378–379; 2011, 233). Those mutual entitlements inherent in equal moral status are usually described as mutual basic moral rights.⁷ Those basic moral rights are equal rights.⁸ They are universal moral rights. As we will see, human rights are among those basic moral rights that constitute one's equal moral status, although they do not always exhaust them. Those mutual moral entitlements include other basic moral rights than human rights: Rights that may bind other individuals and not institutions like human rights, on the one hand, and rights that do not need to be institutionalized and legalized unlike human rights, on the other.⁹

The next question is the justification of persons' equal moral status. Curiously, given its pivotal role in morality, but maybe because of that pivotal or even liminal role, the concept of equal moral status remains a largely unquestioned notion in much of contemporary moral theory (see also Tasioulas 2013; Gosepath 2007a, sec. 2.3). So, the problem with

the justification of equal moral status is not so much that moral philosophers are divided but that they rarely provide a justification of the equal moral status of persons (see Tasioulas 2013). Some authors, such as Jeremy Waldron, actually see this lack of justification as a shortcoming of current moral theory on basic moral equality (see Waldron 2002, reviewed by Fabre 2003. See also Tasioulas 2013; Buchanan 2005, 2009, 2010). Other such as Bernard Williams saw that absence of justification as a virtue of the idea of equality (Williams 2005).

Schematically, one may distinguish between two kinds of justification of basic moral equality: a Christian one that refers to God and that is mostly based on Locke (see, e.g., Waldron 2002, ch. 3) and a nonreligious one that refers to shared rational nature and that is mostly based on Kant (see, e.g., Habermas 2010). The difficulty with the former is its religious and hence noninclusive and teleological nature (see Fabre 2003; Buchanan 2009). But the latter also suffers from important shortcomings. One of them is its metaphysical, and nonnaturalistic or empirical inclination (see Tasioulas 2013; Williams 2005, 102). A way of rebutting this objection may actually be found in the second core idea to equal moral status, however: its relational or social nature. The social nature of basic moral equality implies making a certain number of empirical assumptions about people and their relationship in society (see, e.g., Buchanan 2005, 77–78). This feature of equal moral status and its justification is actually something that will prove crucial in the context of the justification of human rights and their defense against the parochialism critique.

To Political Equality

Equal moral status holds an intermediary ground between moral considerability, on the one hand, and more specific or robust notions of equality, on the other. Based on the equal moral or basic status of individuals, however, one may want to justify more robust egalitarian and especially distributive ideals such as equality of resources or equality of welfare, or such as equality of opportunities or equality of outcomes. Scope precludes entering into a highly contested debate over those different robust forms of equality, and distributive equality in particular (see, e.g., Gosepath 2007a; Scheffler 2003; Pojman 1997; Arneson 1989; Roemer 1986; Cohen (G.) 1989; Dworkin 1981a, 1981b). What I would like to do, however, is focus on one of them in particular without excluding the others nor attempting to link it to the others, and that is public or political equality. Political

equality is indeed the kind of robust equality that matters in a legal order and, accordingly, in the context of human rights law.

Before discussing political equality itself, it is important to explain how one can get to political equality from equal moral status and elaborate on the relationship between the two. That passage and relationship are actually reflected, I will argue, in the recognition of universal moral rights as human rights (moral and legal), and the passage from one to the other.

First of all, from equal moral status to political equality: The relational or social nature of equal moral status alluded to before implies that, to borrow Allen Buchanan's words, "The proper acknowledgement of a person's moral status requires some sort of fundamental public recognition of equality" (see Buchanan 2009, 379; Anderson 1999, 288–9. See also Habermas 2010, 472). Equality is distinctly public or political as a result (see Anderson 1999, 288–289. See also Williams 2005). In a nutshell, public or political equality implies that people can see that they are being treated as equals by others and this takes the form of its recognition by the law and institutions (see Christiano 2010, 121).

The inherently political dimension of equality implies reconciling the moral universality of equality with the relativity and contingency of political life. With respect to the relativity of politics, first of all, political equality depends on the existence of a political community, but corresponding political communities are not (yet) universal. Here it is important to emphasize the normative nature of political equality and the fact that is used both to refer to a state of affairs and to how it should be. As to the contingency of politics and its implications for political equality, secondly, the tension may be alleviated by reference to the conditions or circumstances of political equality. If it is true that the public recognition of equal moral status requires public institutions and processes and hence a political community, the existence of the latter depends on other elements. Those further conditions of existence of a political community and hence of political equality are, on the one hand, the common subjecthood to decisions and laws, and the interdependence of stakes and the rough equality of those stakes among the members of the future community, on the other (see Christiano 2008, 2; 2010, 121–122). If those conditions are given, the equal moral status of the members in that community implies their political equality.

What this means is that there are prepolitical circumstances in which individuals merely benefit from a social form of equal moral status (see also Erman in this volume). It also means that not all individuals may claim

political equality in a given political community on the grounds of their equal moral status; their claim to political equality will follow their full membership in the community, that is, their being subjected to the community's decisions and law, and their sharing interdependent and roughly equal stakes with others. This is particularly interesting in the context of postnational political communities, such as the European Union (EU) or other international communities of states. I will get back to the question later in this chapter, first, in the context of the kind of mutual moral rights there are in prepolitical and political communities and by reference to the place of human rights in that context and, secondly, in the international context and by reference to international human rights and their relationship to political equality.

Secondly, political equality: Once the political conditions are such that political equality may be required on the grounds of equal moral status, the next question to arise is how political equality can be vindicated. The political dimension of equal moral status together with its rights-based nature lead to a further process: The struggle for equal participation rights is based on the idea of equal moral status (see Buchanan 2009, 380 by reference to Waldron 2002, ch. 3. See also Anderson 1999, 317–318). And this in turn implies struggling for the establishment of a democratic regime that includes all those subjected to a decision into the decision-making process. Democracy is indeed the way “of publicly realizing equality when persons who have diverse interests need to establish rules and institutions for the common world in which they live” (see Christiano 2010, 121–122) and this in spite of persistent and widespread reasonable disagreement (see also Anderson 1999, 289). Democracy enlivens and enables political equality. The idea of equal political status or membership may also be referred to as democratic membership therefore (see Christiano 2008, 2; 2010, 121–122). Of course, democracy implies more than political equality. Scope precludes discussing it extensively, but democracy qua political regime also requires egalitarian deliberation and decision-making procedures. There may be political communities as a result where there is political equality but where other elements necessary to democracy are missing (see Erman in this volume). One may think of the EU, for instance.

In conclusion, when the political circumstances are given and when individuals are not only subjected to the same decisions and laws, but also share interdependent and roughly equal stakes, equal moral status implies political equality. In turn, as a person's equal moral status implies mutual moral rights and duties, political equality gives rise to equal participation

rights and is therefore best served by a democratic regime where individuals are recognized those equal participation rights. Of course, one may object to the parochial dimension of democratic equality. It is here that the proposed minimalist approach to political equality qua principle of transnational justice becomes most interesting. Its institutional and political dimension and its need for contextual specification enable it to escape overspecification and parochialism (see, e.g., Buchanan 2010; 2005, 78–80; 2008).

Human Rights and Equality

The next step in the argument is dedicated to clarifying how equality fits into the concept of human rights.¹⁰ This is what one may refer to as the egalitarian dimension of human rights.

The Morality and the Legality of Human Rights

To start with, the relationship between human rights and equal moral status, and political equality more specifically, explain the inherently moral-political and legal nature of human rights.

The Morality of Human Rights

Human rights are a subset of universal moral rights (i) that protect fundamental and general human interests (ii) against the intervention, or in some cases nonintervention of (national, regional or international) public institutions (iii). Those three elements will be presented in turn.

First of all, a human right exists qua moral *right* when an interest is a sufficient ground or reason to hold someone else (the duty-bearer) under a duty to respect that interest against certain standard threats vis-à-vis the right-holder (Raz 1984b, 195). For a right to be recognized, a sufficient interest must be established and weighed against other interests and other considerations with which it might conflict in a particular social context (200, 209). Once the abstract right is recognized, specific duties will be determined in each concrete case by reference to the specific circumstances and potential duty-bearers. Rights are, on this account, intermediaries between interests and duties (208).

Turning to the second element in the definition, *human* rights are universal moral rights of a special intensity that belong to all human beings by virtue of their humanity. Human rights are universal moral rights because the interests they protect belong to all human beings. Qua general moral

rights, they protect fundamental human interests that human beings have by virtue of their humanity and not of a given status or circumstance (unlike special rights). Human rights are universal and general rights that protect fundamental interests. Those interests constitute part of a person's well-being in an objective sense; they are the objective interests that, when guaranteed, make for a decent or minimally good individual life.

Of course, there has to be a threshold of importance at which a given interest is regarded as sufficiently fundamental to give rise to duties and hence to a right. Not all fundamental and general interests give rise to rights and hence to human rights. The fundamental nature of the protected interests has to be determined by reference to a context and time rather than established once and for all (see also Tasioulas 2002; 2007, 76–77. See also Raz 2010. Contra: Griffin 2001). What makes it the case, that a given individual interest is regarded as sufficiently fundamental or important to generate a duty and that, in other words, the threshold of importance and point of passage from a general and fundamental interest to a human right is reached, may be found in the normative status of each individual qua equal member of the moral-political community, that is, their political equality or equal political status (see Forst 2010; 1999, 48; Christiano 2008, 138, 156). Only those interests that are recognized as socio-comparatively important by members of the community can be recognized as sufficiently fundamental to give rise to duties and hence as human rights. A person's interests merit equal respect in virtue of her status as member of the community and of her mutual relations to other members in the community. The recognition of human rights is done mutually and not simply vertically and top-down, and, as a result, human rights are not externally promulgated but mutually granted by members of a given political community (see Cohen (J.) 2004, 197–198; Forst 2010; Baynes 2009, 382). This is particularly important as it allows for the mutual assessment of the standard threats on certain interests that deserve protection therefore, on the one hand, and of the burdens and costs of the recognition of the corresponding rights and duties, on the other.

As a matter of fact, human rights are not merely a consequence of individuals' equal political status, but also a way of actually earning that equal status and consolidating it. Without human rights, political equality would remain an abstract guarantee; through mutual human rights, individuals become actors of their own equality and members of their political community (see Cohen (J.) 2004, 197–198; 2008, 585–586). Human rights are power-mediators, in other words (see Shue 1988, 703. See also Reus-Smit

2009): They enable political equality. Borrowing Arendt's words: "We are not born equal; we become equal as members of a group on the strength of our decision to guarantee ourselves mutually equal rights" (Arendt 2009, 147–182). Although there may seem to be a contradiction in arguing both that human rights require political equality as a constitutive threshold and, in the previous section, that political equality amounts to the mutual entitlements that are human rights, the contradiction is only apparent. Like basic moral rights and equal moral status, human rights and political equality are synchronic and mutually reinforcing: *à la fois* the moral entitlements that are constitutive of a status and the status made of those entitlements. Again, this explains why, if human rights are constitutive of equal moral-political status, they are not themselves grounded in that status: Political equality is a ground for the recognition of human rights and vice versa, but does not ground them (Waldron 2013). All this does not prevent, of course, human rights from being in conflict with more robust forms of equality, such as equality of welfare or even equality of opportunity for welfare, or vice versa (on this question, see Besson 2012c).

In short, the proposed account of the nature of human rights follows a modified interest-based theory: It is modified or complemented by reference to considerations of equal moral-political status in a given community. Considerations of political equality are not simply considered as objective interests, but are distinct from them, albeit articulated with those interests in the process of recognizing human rights. Nor would political equality be a sufficient ground for human rights without objective interests in a decent or minimally good individual life; there are cases in which a person's political or public equality is threatened without this affecting her decent or minimally good life. The relationship between human rights and political equality bridges the sterile opposition between the individual and the group, on the one hand, and the good and the right, on the other (see also Forst 2010; 1999, 48–50; 2007). Under a purely status-based or a purely interest-based model, the Manichean opposition between the individual and the group, and between his private and public autonomy would lead to unjustifiable conclusions that are tempered in the proposed account (see Tasioulas 2010).

The relationship between human rights and political equality explains how closely tied human rights are to democracy (see Christiano 2008; Gosepath 2004, 322, 345). If democracy is required by political equality and if human rights and political equality are mutually constitutive, democracy is a requirement of human rights and implies human rights in

return. Of course, one may object to the parochial dimension of a human rights account based on democratic equality. The parochialism objection is that international human rights law embodies a “parochial” set of values or ordering of the same values that it unjustifiably imposes, through its quasi-universal or universal scope, on people and societies who do not share it. The proposed minimalist approach to political equality qua principle of transnational justice can escape this objection, however. Its institutional and political dimension and its need for contextual specification enable it to escape overspecification and parochialism.

This brings me to the third element in the definition of human rights: Human rights are entitlements against *public institutions* (national, regional, or international). Human rights are rights individuals have against the political community, that is, against themselves collectively. They generate duties on the part of public authorities not only to protect equal individual interests, but also individuals’ political status qua equal political actors. Public institutions are necessary for collective endeavor and political self-determination, but may also endanger them. This is why one can say that human rights both are protected by public institutions and provide protection against them; they exist because of collective endeavor in order both to favor and to constrain it. Of course, other individuals may violate the interests protected by human rights and ought to be prevented from doing so by public institutions and in particular through legal means. This ought to be the case whether those individuals’ actions and omissions may be attributed to public authorities or not *qua de jure* or *de facto* organs. However, public institutions remain the primary addressees of human rights claims and hence their primary duty-bearers.

True, there may be many overlapping political communities (e.g., international organizations (IOs), regional organizations, and states) at stake and the present argument is not limited to the national polity and to the state—although we will see later how it excludes a world state. Nor is the argument limited to formal citizens¹¹ only or at least to those citizens who are also nationals; equal membership and the corresponding rights ought to include all those normatively subjected to the activities of political authorities and who are therefore subjects to the laws or decisions of the community.¹² This includes asylum seekers, economic migrants, stateless persons, and so on. As we will see, human rights work as political irritants and mechanisms of gradual inclusion that lead to the extension of the political franchise and in some cases of citizenship itself to new subjects in the community. Nor, finally, does the argument imply that human rights

apply within national borders only; if national political authorities subject the fundamental interests of individuals to norms and decisions outside its borders, those individuals deserve equal protection both in the decision-making process and the application of those decisions. This includes individuals and groups subjected to law making and decisionmaking abroad (see Besson 2012d).

The institutional nature of human rights’ duty-bearers is the main ground for the distinction between universal moral rights and human rights that are a subset of universal moral rights. Human rights are the universal moral rights of the individual members of a given political community. This explains their grounding in political equality. Universal moral rights also have an egalitarian dimension, of course, but it is one that pertains to the basic equal moral status of all persons as it was discussed in the previous section. Their equal moral status gives rise to mutual entitlements that one may refer to as universal moral rights. Those rights may be held against individuals and do not require institutions for the protection. This also explains, as we will see, the difference between human rights and universal moral rights regarding legalization.

The Legality of Human Rights

It follows from the moral-political nature of human rights that the law is an important dimension of their recognition and existence. It is time to understand exactly how this is the case and to unpack the inherently legal dimension of human rights.

Just as moral rights are moral propositions and sources of moral duties, legal rights are legal propositions and sources of legal duties. They are moral interests recognized by the law as sufficiently important to generate moral duties (Raz 1984a, 12; 2010). The same may be said of legal human rights: Legal human rights are fundamental and general moral interests recognized by the law as sufficiently important to generate moral duties.

Generally speaking, moral rights can exist independently from legal rights, but legal rights recognize, modify, or create moral rights by recognizing moral interests as sufficiently important to generate moral duties.¹³ Of course, there may be ways of protecting moral interests or even independent moral rights legally without recognizing them as legal “rights.” Conversely, some legal rights may not actually protect preexisting moral rights or create moral rights, thus only bearing the name of “rights” and generating legal duties at the most. The same cannot be said of human rights more specifically, however. True, universal moral interests and rights

may be legally protected without being recognized as legal “rights.” But, as we will see, human rights can only exist as moral rights qua legal rights. Conversely, one may imagine legal norms referred to as human rights that do not correspond to moral human rights. In such a case, the legal norms named “human rights” would only give rise to legal duties and not to moral (rights-based) duties. Legal human rights, however, can only be regarded as rights *stricto sensu* when their corresponding duties are not only legal, but also moral.

Two additional remarks on the relationship between moral and legal rights and the relationship between moral and legal human rights are in order. The differences between rights and human rights, on the one hand, and between their respective moral and legal dimensions, on the other, can be quite important given the moral-political nature of human rights and what this implies in turn for their inherently moral and legal nature (contra: Wellman 2011; Tasioulas 2010; Griffin 2008).

First of all, not all moral rights are legally recognized as legal rights. There are many examples of moral rights that have not been recognized as legal rights. Nor should all moral rights be recognized and protected legally. Respect for them should be a matter of individual conscience in priority.

The same cannot be said about human rights, however. True, not all universal moral rights have been or are recognized as legal human rights. Some are even expressly recognized as universal moral rights by the law even though they are not made into legal rights or modulated by the law. A distinct question is whether they ought to be legalized and hence protected by law. Again, respect for universal moral rights ought to be voluntary in priority, and this independently from any institutional involvement. However, the universal moral rights that will become human rights create moral duties for institutions, and hence for the law as well, to recognize and protect human rights (see Raz 2010). On the basis of the moral-political account of human rights presented previously, the law provides the best and maybe the only way of mutually recognizing the socio-comparative importance of those interests in a political community of equals (see, e.g., Cohen (J.) 2008, 599–600; Forst 2010; 1999, 48–50; Pogge 2005, 3, fn. 26). It enables the weighing of those interests against each other and the drawing of the political equality threshold or comparative line. Further, the law provides the only institutional framework in which the necessary assessment of the abstract feasibility of human rights prior to their recognition can take place, and in particular the abstract assessment

of a feasible identification and egalitarian allocation of human rights duties and duty-bearers.

In short, the law makes universal moral rights human rights, just as politics turn equal moral status into political equality. As a result, in the moral-political account of human rights propounded here, the legal recognition of a fundamental human interest, in conditions of political equality, is part of the creation of a moral-political human right. While being independently justified morally and having a universal and general scope, human rights qua subset of universal moral rights are also of an inherently legal nature. To quote Jürgen Habermas, “They are conceptually oriented towards positive enactment by legislative bodies” (Habermas 1998a, 183; 1998b, 310–312; 2010, 470; 2011, 22). Thus, while legal rights *stricto sensu* are necessarily moral in nature (qua rights), human rights (qua rights) are also necessarily legal, and they are as a result both moral and legal rights.

Secondly, legal rights do not necessarily always preexist as independent moral rights. Most do and are legally recognized moral rights (see also Meckled-Garcia and Cali 2006; Cali and Meckled-Garcia 2006), but others are legally created or legally specified moral rights (see Raz 1984a, 16–17; 2010). In some cases, law and politics may affect a person’s interests, thus in a sense enhancing the moral interest and/or its moral-political significance, which are necessary for that interest to be recognized as a source of duties and hence as a right. One may think of zoning rights in the context of land planning, for instance, or of government bond-holders’ rights.

The same cannot be said about legal human rights, however: All of them necessarily also preexist as independent universal moral rights that are constitutive of equal moral status. However, the law can specify and weigh moral human interests when recognizing them as legal human rights. One may imagine certain political interests whose moral-political significance may stem from the very moral-political circumstances of life in a polity. As a result, the law does not create universal moral rights, but it can modulate them when recognizing them. Furthermore, the inherently moral-political nature of human rights and the role the law plays in recognizing given interests as sufficiently important in a group as to generate duties, and hence human rights, make it the case that the law turns preexisting universal moral rights into human rights and hence actually makes them human rights. As a result, human rights cannot preexist their legalization as independent moral human rights, but only as independent universal moral rights.

The Domestic and International Legality of Human Rights

The next question pertains to the political community that ought to be recognizing the existence of human rights legally and whose members' political equality is in the making, and hence to the level of legalization of those rights.¹⁴

The Right to Have Rights

The legalization of human rights, that is, the legal recognition and modulation of universal moral rights qua human rights, may in principle take place either at the domestic or at the international level: through national or international legalization.

Given what was said about the interdependence between human rights, political equality, and democracy, however, the political process through which their legalization takes place ought to be democratic and include all those whose rights are affected and whose equality is at stake. As a result, using international law as the main instrument to recognize fundamental and general human interests as sufficiently important to generate state duties at the domestic level is difficult. Not only does international law-making include many other states and subjects than those affected by the laws and decisions of the polity bound by human rights, but also the conditions of political equality and the democratic quality of its processes are not yet secured at the international level (see, e.g., Christiano 2010; Cohen (J.) 2008, 599–600; Besson 2009b, 2009c, 2011e).

To solve this riddle and succeed in recoupling human rights and democracy across levels of governance, it is important to distinguish between two categories of rights: rights that pertain to the access to membership in a political community (rights to membership) and those that pertain to actual membership in the political community (membership rights). Interestingly, this distinction corresponds to two competing readings of Hannah Arendt's 1949 idea of the "right to have rights" depending on whether one understands them as being moral or legal rights, first, and as being domestic or international rights, second (Arendt 2009, 177–178; 1949).¹⁵

Starting with the first category of rights, rights to equal political membership contribute to the constitution of an equal political status, as opposed to the second category of rights that protect that very equal political status. Rights to membership prohibit, for instance, submitting individuals to genocide, torture, and other extreme forms of cruel treatment, through which a community excludes individuals and does not treat them

as equal members (see Cohen (J.) 2008, 587). They also include rights to asylum (art. 14 UDHR) and the customary right to *non-refoulement*.

Moral and legal rights to membership of this kind cannot be guaranteed exclusively from within a given political community as they work as constraints on democratic sovereignty and self-determination. This is why they are usually protected from the outside and through international human rights law (see also Dworkin 2011, 335–339). Of course, to be democratically legitimate, they have to be recognized legally through inclusive and deliberative processes. This may prove difficult in the current circumstances of international law, but processes of that kind are incrementally developed in international law-making. Importantly, the legalization of international human rights is a two-way street that is not only limited to a top-down reception but is also bottom-up and comes closer to a virtuous circle of legitimation. The recognition and existence of those rights qua international human rights that constrain domestic polities ought therefore to be based on democratic practices recognized domestically. And only those polities that respect international human rights are deemed legitimate in specifying the content of those rights and hence in contributing to the recognition and existence of those rights qua international human rights that will constrain themselves in return. This is what Allen Buchanan refers to as the mutual legitimation of domestic and international laws, and it applies very well to international human rights law (see Buchanan 2004, 187–189; 2010; Besson 2013).

In short, rights to membership correspond to a first and main reading of Arendt's right to have rights: Those universal moral rights, and potentially also international legal rights to membership, are rights that guarantee the ulterior benefit of human rights within each political community (see, e.g., Cohen (J.) 2008; Benhabib 2004, 56–61). Those universal moral rights to have human rights are constitutive of one's equal moral status and amount, in political circumstances where the conditions of political equality are given, to a right to equal political membership and participation.

The second group of rights that guarantee membership in the political community, that is, most human rights, can at least be regarded as legally protected universal moral rights and most of the time as legal rights as well. However, unless they refer to and correspond to existing domestic (moral-political and legal) human rights, they cannot (yet) be regarded as human rights for lack of an international moral-political community.

Qua legal rights, those international human rights norms guarantee rights to individuals under a given state's jurisdiction, on the one hand,

and to other states (or arguably also IOs) (international human rights are usually guaranteed *erga omnes*), on the other, to have those rights guaranteed as “human rights” within a given domestic community. They correspond to states’ (and/or arguably also IOs’) duties to secure and ensure respect for those rights as “human rights” within their own jurisdiction (see also O’Neill 2005, 433). In that sense, international human rights duties are second-order duties for states (and/or arguably IOs) to generate first-order human rights duties for themselves under domestic law, that is, international duties to have domestic duties. What those international human rights norms do, in other words, is protect legally the universal moral right to have rights discussed as a first kind of human rights, that is, the right to equal membership in a moral-political community with all the other human rights this status implies.

Unlike most readings of Arendt’s right to have rights (see, e.g., Benhabib 2004; Gosepath 2007b), this reading understands rights in the second category, that is, membership rights, as universal moral rights that may also be protected as international legal rights. Their underlying nature as universal moral rights actually explains their *erga omnes* effects. They are not human rights themselves but are rights to have human rights, the latter being at once moral and legal rights and not only positive legal rights.

In sum, there are two groups of rights among the right usually referred to as international human rights: the first group (rights to membership) being legalized at the international level, while rights belonging to the second group (membership rights) have to be legalized in domestic law in a given political community before they can be recognized as human rights under international law. In the meantime, international law’s “human rights” norms that protect rights in the latter category guarantee rights to have human rights protected under domestic law.

From International Human Rights to Domestic Human Rights and Back

Interestingly, the normative considerations presented before about the locus of legitimation and legalization of human rights are reflected in contemporary processes of legalization of human rights under domestic and international law. They fit and justify, in other words, our current international human rights law and practice. The latter are indeed usually drafted in abstract and minimal terms, thus calling for domestic reception and specification (see Besson 2011a; Dworkin 2011, 337–338).

As a matter of fact, it is through the relationship of mutual reinforcement between citizens’ rights and human rights and the productive tension between external guarantees and internal ones that human rights law has consolidated at both domestic and international levels (see Besson 2011a; Habermas 2010, 478; Benhabib 2009; 2011, 16, 126; Habermas 2011, 31–32, 36–8). International human rights generate duties of inclusion on domestic authorities and the democratic concretizations of citizens’ rights, and the latter feed into international human rights guarantees in return. This constant interaction between human rights and citizens’ rights is reminiscent of Arendt’s universal right to have particular rights and the to-ing and fro-ing between the universal and the particular highlighted in the previous sections. Human rights are specified as citizens’ rights but citizens’ rights progressively consolidate into human rights in return.

This virtuous circle can actually be exemplified by the sources of international human rights law. International human rights law is indeed deemed to belong to general international law and finds its sources not only in general principles of international law, but arguably also in customary international law. Both sets of sources derive international norms from domestic ones and this jurisgenerative process is epitomized by the sources of international human rights law (see Besson 2011g; Simma and Alston 1988–1989; Flauss 1998). The mutual relationship between human rights and citizens’ rights can also be confirmed by recent human rights practice, whether it is of a customary, conventional, or even judicial nature. On the one hand, citizens’ rights contribute to the development of the corresponding international human rights’ judicial or quasi-judicial interpretations. This is clearly the case in the European Court of Human Rights’ case law where common ground is a constant concern and is sought after when interpreting the European Convention on Human Rights (ECHR) (see Besson 2011d).

Besides its explanatory force in light of current human rights practice, the proposed approach to international human rights has the further benefit of fitting the structure of the international legal order more generally. It puts international human rights law back into its political context. State sovereignty and political self-determination constitute indeed one of the pillars of the international order, a pillar that is complemented and not replaced or, strictly speaking, even restricted by the second pillar of international human rights law (see also Macklem 2007, 577; Cohen (J.) 2008, 595–597). Through those two pillars and its dualistic structure, the international legal order protects the very interdependence between democracy

and human rights alluded to before and, hence, keeps the tension between the individual and the group at the core of international law making. International law guarantees the basic conditions for political equality and self-determination by protecting peoples through state sovereignty, on the one hand, and by protecting individuals through human rights, on the other (see Besson 2011b, 2012b).

International Human Rights and Global Democracy

The egalitarian dimension of human rights has implications outside the human rights context, and in particular for international, global, or cosmopolitan democracy. The time has come therefore to revert to the original question in this chapter: the relationship between political equality and democracy beyond the state. On the basis of the proposed egalitarian understanding of international human rights, I would like to argue that the existence and justification of international human rights do not per se imply a model of global democracy where individuals are the main political subjects (contra, e.g., Peters 2011; Menke and Pollmann 2007, 208–215; Habermas 2011, 122ff). Quite the contrary. Not only is that conclusion a non sequitur from the perspective of human rights theory, but the egalitarian dimension of international human rights actually provides an additional argument for the equality of democratic states, on the one hand, and for a federal kind of development of global democratization efforts, on the other. Importantly, unlike other similar arguments developed elsewhere (see, e.g., Habermas 2011), those arguments are developed from a human rights framework and not from within democratic theory.

International Human Rights and the Absence of Global Political Equality

The egalitarian dimension of international human rights explains the existence of a universal moral right to have human rights and accordingly to equal political membership. That right, however, can only be respected within the bounds of domestic democracy as things stand.

By reference to Thomas Christiano's argument about the conditions of political equality, indeed, one may legitimately consider that individual stakes in global decision making are still largely unequal, and that those stakes, when equal, are rarely interdependent (see Christiano 2010, 130ff). As a matter of fact, the vertical recoupling of international human rights

and domestic democracy after 1945 has actually proven extremely beneficial to domestic democracy through the external/internal divide between international and domestic human rights and the corresponding mechanisms of mutual definition and legitimation.

Of course, the conditions of individual political equality may develop at the global level, just as they have at the regional level in the EU (see Besson 2011a, 2011f). The fact that individual stakes in global decision making are still largely unequal, and that those stakes, when equal, are rarely interdependent make it difficult to imagine circumstances in which this may change short of creating a world state, however (see Christiano 2010, 130ff. See also Besson 2011e). True, the EU has developed over the years into a third kind of multilevel political community that is neither an international organization nor a supranational entity on a state-model. However, neither the world state nor a multilevel political community options are normatively desirable outside the EU.

With respect to the first option, that is, the idea of a worldwide political community and hence of a global democracy *stricto sensu*, it is not only implausible practically, but also normatively undesirable (see, e.g., Besson 2009c). One may indeed share Arendt's fears about an unchecked global sovereign. Moreover, given what was just said about the externally guaranteed international legal rights to have human rights on the inside and the beneficial tensions between those international rights and duties and the corresponding internal ones, conceiving of the international community as a political one with its own human right-holders and human rights duty-bearers would undermine the productive tension between international human rights and domestic democracy, and the equilibrium that may be reached between the universalizing process of the particular and the particularization of the universal (see also Benhabib 2008, 2009).

The only legitimate solution would therefore be to maintain a multilevel political community of some sort. The difficulty with this second option, however, is that once human rights and democracy are recoupled horizontally within an international organization, it is difficult to maintain a general human rights competence and democratic self-determination at the domestic level. As I have argued elsewhere, current developments in the EU are evidence to the instability of the transnational model when both human rights and democracy are guaranteed beyond the state (see Besson 2011a. See also Besson 2011f).

In sum, not only is a global democracy of equal individual citizens unlikely in the near future, but it also lacks justification. Not only does

it lack justification from an individual political equality perspective, but also, and this is the point here, from a human rights perspective. This is the first implication of the egalitarian dimension of international human rights for democracy beyond the state.

International Human Rights and the Equality of Democratic States

Even though the egalitarian dimension of international human rights cannot on its own justify the existence of global political equality of individuals and then of a global democracy, it reinforces domestic democracy and the right to have human rights and political equality domestically.

This means that international relations are not developing in a democratic vacuum (see Erman in this volume; Cheneval 2011). On the contrary, they are relations being built among democratic peoples or, more accurately, states-peoples (see Cheneval 2011, 11). The egalitarian dimension of human rights sheds light therefore on how one may potentially justify another form of equality, that is, the equality of (democratic) states in international law and the mutual rights and duties it implies. This takes two arguments: The principle of the sovereign equality of states has, first of all, to be revisited from a human rights perspective, before one may argue, in a second step, for the cooperative duties that arise from the political equality of democratic peoples with roughly equal and interdependent stakes.

First of all, a modified principle of the sovereign equality of states qua democratic peoples finds support in the egalitarian dimension of international human rights. The principle of sovereign equality is a fundamental principle of classic international law. That principle, at least in its traditional understanding, is not usually taken to imply the political equality of federal entities. Its justification as a general principle of international law has actually long been anything but democratic (see Kokott 2012; Besson 2012b). This explains why any analogy between the equality of states and individual equality is usually, and rightly so, disparaged with great haste (see, e.g., Waldron 2011; Besson 2011b). And the same may be said of the analogy between the political equality of states and that of individual citizens. For a long time, that dis-analogy could actually be supported by a democratic argument in favor of the right of veto of every democratic state. That veto was indeed taken to protect the right to democratic self-determination of every people.

There is scope, however, for a human rights-based argument for the principle of political equality between (democratic) states. The democratizing effect of international human rights presented before has indeed triggered a dynamic process of international democratization of states in their domestic political regimes (see, e.g., Moravcsik 2000; Crawford and Marks 1998). And this in turn has consequences on how those democratic entities should treat each other in their international relations to one another and outside their domestic boundaries.

True, international sovereignty and interstate democracy are sometimes held to be in tension. Nondemocratic states are sovereign and benefit from all rights and duties of a sovereign state. As they benefit from the principle of sovereign equality, requiring them to be democratic seems to be an invasion of their sovereignty. This approach corresponds, however, to the classical view of sovereignty in international law according to which the political regime was a matter of internal sovereignty and hence left to domestic law. During the second half of the twentieth century, democratic requirements on states have multiplied in international law, qua human rights duties (e.g., political rights and right to self-determination), but also *per se*. One may mention the international human right to democratic participation in this respect.

With the democratization of states and the correlative development of human rights protection within states in the second half of the twentieth century, domestic sovereignty has gradually become more and more limited and found its source in a democratically legitimate legal order. Following 1945, international law was seen by modern democracies as a new way to secure their democratic development and to entrench democratic requirements from the outside through minimal international standards and especially international human rights standards. International sovereignty objectively limited in this way became, in other words, a direct way to secure domestic sovereignty in a legitimate fashion (see Besson 2011b). As a result, modern state sovereignty now finds its source both in constitutional and in international law—and this in turn explains the circumstances of constitutional and legal pluralism where distinct valid legal orders overlap as opposed to constitutional and legal monism at the international level or at the domestic level (see also Cohen (J.) 2010). Sovereignty has been partly outsourced to international law, in other words.

According to modern sovereignty, therefore, the sovereign subjects behind international law are peoples within states, and no longer states only. And those peoples organize and constrain their sovereignty through

both the international and the domestic legal orders and no longer only the latter, and hence through both the new international rule of law and the more traditional domestic rule of law. Democratic states may no longer merely act as individual agents on the international plane, but also by reference to the peoples they represent (see, e.g., Waldron 2011; Besson 2009a, 2011b). Importantly, however, international sovereignty protects a collective entity of individuals—a people—and not individual human beings per se. Of course, their fates are connected; the way democracy and human rights are correlated. But sovereignty and sovereign equality, in particular, protect democratic autonomy in a state's external affairs and remain justified for this separately from international human rights law.

My second point pertains to what this new form of political equality of states qua peoples implies in terms of rights and duties among states and for the gradual democratization of international relations and international law making. One may wonder, in view not only of the democratization of sovereign states, but also of their increasing interdependence, whether the modern principle of sovereign equality itself does not need to be revisited. It is no longer the governing principle of a society of equal but independent states, but that of equal and interdependent peoples. In those conditions, one may want to explore a principle of political equality between states that share increasingly equal and interdependent stakes even when their respective citizens do not among themselves.

Unlike existing models of transnational *demoi*-cracy (see, e.g., Besson 2007, 2009b; Bohman 2007, 2010; Cheneval 2011; Habermas 2011, 82ff), the proposed model does not work with the idea of a *demos* of *demoi* where global democracy would have individuals and states-peoples as subjects (see, e.g., Cheneval 2011, 10–11), but only with the idea of duties of equal cooperation among *demoi* or states-peoples stemming from their shared domestic democratic underpinnings and human rights standards. While such cooperative duties may contribute to the democratization of international relations in the long run, it cannot yet bear the democratic name in the absence of a *demos* in which individual political equality can be respected (see Besson 2011e). Where the conditions of political equality of states-peoples are fulfilled without those of individual political equality, there is a political community albeit a community without a people and hence no democracy *stricto sensu*.

Here the analogy to confederal entities is worth exploring, not so much to conclude in favor of a federal supranational entity as this was set aside

beforehand (see, e.g., Schütze 2009; Magnette 2000), but as a way of developing equal ties between equal peoples without a larger political entity and a global *demos*. Of course, the usual objections to the antidemocratic aspects of federalism have to be mentioned. Further, the federal model does not alleviate the tensions between the equality of individuals and that of peoples (see, e.g., Dahl 1983). And this even more so as the proposed model does not assume (for lack of fulfillment of its preconditions) the global political equality of individuals alongside that of states-peoples, and may therefore actually threaten the political equality of individuals within each domestic polity, on the one hand, and the general individual equality of the citizens of all states-peoples brought together, on the other (see, e.g., Besson 2011e.; Habermas 2011, 87).

Of course, there are ways of taming those objections, for instance, by referring to the domestic democracy-enhancing effects of transnational and international cooperation (see, e.g., Keohane, Macedo and Moravcsik 2009; Christiano 2010; Besson 2006, 2011e). Moreover, even if it is not qua global but domestic citizens, members of the respective domestic polity have duties to others qua members of a democratic state-people that is equal to others (see Menke and Pollmann 2007, 214–215). This has implication, for instance, for the ways in which international law-making processes are organized and so on. One may think, for instance, of the representation and cooperation of peoples within international organizations, not the least on the model of the European Union. Importantly, therefore, the proposed model of states-peoples' political equality, while not being a model of democracy, is deeply egalitarian: It focuses on and tries also to protect not just individual political equality within each democratic state, but also individual general equality across different states, at least to the extent that equality in interstate relations reflects their demographic size and the populations' interest in the negotiation and hence contributes to protecting transnational individual equality.

In sum, the proposed model is situated halfway between the global democracy of (states and) individuals qua global citizens in a world state, on the one hand, and the current transnational indirect democratic legitimation processes in a society of democratic states, on the other. It comes very close to Christiano's model of a fair association of democratic states, as a result (see Christiano 2010). Interestingly, Christiano's model is not referred to as a democratic model either (129): The democratic subject remains the individual and her political community the domestic one.

Unlike Christiano's, however, the proposed model defends the idea of an association based on the political equality of democratic states, and not just of a fair association between them.

Conclusion

A remarkable feature of the contemporary philosophical literature on international human rights is its lack of in-depth engagement with the principle of equality. This is also true of equality scholars who rarely dwell on the relationship between equality and international human rights. This is not only regrettable from a human rights theory perspective, but has also misled many democratic theorists who work on the assumption of a relationship between human rights, political equality, and democracy, and have therefore concluded that international human rights imply global political equality and hence a right to global democracy.

This chapter had as its aim to uncover the egalitarian dimension of human rights and draw some of its implications, first, for international human rights and, then, for international democracy. It unraveled in three steps: two arguments and one set of implications. The first two sections of the chapter were devoted to the making of two main arguments: the first one pertained to the relationship between equal moral status and political equality; the second one to the relationship between political equality and human rights.

A first section of the chapter presented a conception of equal moral status and its relationship to political equality. Equal moral status comprises two indissociable elements: The idea that all persons should be regarded as having the same moral worth and the idea that this equal moral status is relational and the basis for mutual moral claims of which some are basic universal moral rights. When the political circumstances are given and when individuals are not only subjected to the same decisions and laws, but also share interdependent and roughly equal stakes, I argued that equal moral status gives rise to political equality. In turn, just as a person's equal moral status implies corresponding mutual moral rights and duties, political equality gives rise to corresponding equal participation rights. Political equality is therefore best served by a democratic regime where individuals are recognized and can practice those equal participation rights effectively.

In the second section, I explained how human rights are related to political equality and how human rights theory can account for that connection

while, at the same time, salvaging their universal justification against the parochialism critique. I argued that human rights are a subset of universal moral rights that protect fundamental and general human interests against the intervention of (national, regional, or international) public institutions. I focused on the ties between political equality and human rights to explain how human rights are a subset of universal moral rights that bind political entities and have a moral-political nature. Human rights are based on objective interests that are recognized as sufficiently fundamental to give rise to duties. The threshold of importance of those interests lies in political equality: Members of the polity grant each other those rights mutually and become political equals by doing so. This intricate articulation between human rights and political equality explains in turn why human rights and democracy are closely related. It also confirms, I argued, the inherent legality of human rights as the law provides the best and maybe the only way of mutually recognizing the social-comparative importance of those interests in a political community of equals. Democratic law actually enables the weighing of those interests against each other and the drawing of the political equality threshold or comparative line.

The second section then turned to the implications of the egalitarian dimension of human rights for international human rights and especially international human rights law. Given the moral-political and inherently legal nature of human rights and given their ties to political equality and democracy, the legalization of human rights ought to take place within democratic settings. As international law-making processes may not (yet) be deemed sufficiently democratic, the locus of legalization and hence of legitimation of human rights remains domestic, or at the most regional. This raises a puzzle for the role and justification of international human rights law. That puzzle may be solved, I argued, by reference to Arendt's right to have rights and by distinguishing between two types of universal moral rights: rights to political membership and rights of membership. The former are universal moral rights and can be guaranteed in international law as legal rights, but may not be regarded as human rights *stricto sensu*. The latter, by contrast, are universal moral rights and legal rights that become human rights on the basis of their domestic guarantees and the way in which those guarantees are then fuelled back into international law guarantees. Indeed, international human rights generate duties of inclusion on domestic authorities and the democratic concretizations of citizens' rights, and the latter feed into international human rights guarantees in return.

The third section of the chapter drew implications of the egalitarian dimension of human rights for the equality of democratic states and international democracy. There, I reverted to the question of political equality in transnational or global democracy and identified implications of the proposed egalitarian account of international human rights for the equality of democratic states. I first argued that the egalitarian dimension of international human rights cannot on its own justify the existence of global political equality of persons and then of a global democracy, as the conditions of political equality are not, and ought not arguably, be given globally. As the egalitarian dimension of human rights actually reinforces the right to have human rights and political equality domestically and hence domestic democracy, I emphasized that international relations do not develop in a democratic vacuum. On the contrary, they are relations among democratic peoples whose democracies and human rights are constantly reinforced by the effect of international law. The egalitarian dimension of human rights justifies, I argued, another form of equality, that is, the equality of (democratic) states in international law and the mutual rights and duties it implies. To do so, I revisited the principle of sovereign equality of states *qua* peoples from a human rights perspective, before arguing, in a second step, for the cooperative duties that arise from the political equality of democratic states with roughly equal and interdependent stakes.

Notes

1. In the absence of global democracy, international human rights are often considered as a sufficient condition for the legitimation of international law and decisions: see, for example, Goodin 2007; Goodhart 2008 and, for a critique, Besson 2011a; Erman 2011.
2. See Besson 2011a on the idea of horizontal versus vertical recoupling between human rights and democracy after the internationalization of human rights in 1945. There, I argue that international human rights have been recoupled with domestic democracy. See also Menke and Pollmann 2007, section IV on the various scenarios.
3. See, for example, in the Habermasian and co-original tradition, Gosepath 2004; Menke and Pollman 2007; Forst 2010; Habermas 2010. Again, there is a noticeable difference between the state of development of German and Anglo-American human rights theories in this respect, a difference I have elaborated on elsewhere: see Besson 2011c. See, however, Dworkin 2011; Buchanan 2010; Christiano 2008; Buchanan 2005.
4. See the egalitarian challenge raised against current human rights theories by Buchanan 2005, 2009, 2010. See for a short reply, Griffin 2010.

5. See, more generally, in the Habermasian and co-original tradition, Gosepath 2004; Menke and Pollman 2007; Forst 2010; Habermas 2010.
6. The question of the threshold of equal moral status *qua* threshold concept is a highly controversial subject whose scope precludes addressing here, but which one also needs to address within human rights theory at large as it constitutes part of the explanation of the difference between human rights and animals' rights. See, for example, Buchanan 2009, 358ff. Of course, that difference does not preclude applying human rights theory *mutatis mutandis* to animal rights: see Buchanan 2013.
7. The distinction between basic moral rights that define equal moral status and other nonbasic rights is difficult to draw in the absence of an elaborate theory of equal moral status and of moral rights. See Buchanan 2011b, 233.
8. This is compatible with people having other moral rights that are different from one another as long as they are neither basic moral rights nor human rights. See Buchanan 2009, 378–379.
9. As I will argue later on, while equal moral status constitutes the threshold in the recognition of universal moral rights based on fundamental interests, it is political equality that constitutes the threshold in the recognition of human rights.
10. This section is an updated version of a section of previously published work: see Besson 2011a. See also Besson 2012c.
11. In the rest of the chapter, I will be using “citizenship” to mean democratic membership. Of course, one may be a citizen of a nondemocratic state or a nondemocratic postnational political community more generally, but this will not be my concern here.
12. See for a discussion of the all-affected or the all-subjected principles, for example, Goodin 2007; Näsström 2011.
13. Legal recognition of human rights can therefore be taken to mean, depending on the context, both the legal recognition of an interest *qua* human right and the legal recognition of a preexisting human right.
14. The argument presented in this section is a summary of a lengthier argument developed in Besson 2011c, 2011a.
15. For Arendt's views on human rights, see, for example, Benhabib 2004; Gosepath 2007b; Cohen (J.) 2007; Menke 2007; Besson 2012a.

References

- Anderson, Elizabeth. 1999. “What Is the Point of Equality?” *Ethics* 109, no. 2: 287–337.
- Arendt, Hannah. 1949. “‘The Rights of Man’: What Are They?” *Modern Review* 3, no. 1: 24–37.
- Arendt, Hannah. 2009. “The Decline of the Nation-State and the End of the Rights of Man.” In *Human Rights: An Anthropological Reader*, edited by Mark Goodale, 32–57. Oxford: Blackwell. Originally published in Hannah Arendt, *The Origins of Totalitarianism*, 147–182 (London: Penguin, 1951).

- Arneson, Richard. 1989. "Equality and Equal Opportunity for Welfare" *Philosophical Studies* 56: 77–93.
- Baynes, Kenneth. 2009. "Towards a Political Conception of Human Rights." *Philosophy and Social Criticism* 35, no. 4: 371–390.
- Benhabib, Seyla. 2004. "The Right to Have Rights: Hannah Arendt on the Contradictions of the Nation-State." In *The Rights of Others: Aliens, Residents, and Citizens*, 49–70. Cambridge: Cambridge University Press.
- Benhabib, Seyla. 2008. "The Legitimacy of Human Rights." *Deedalus* 137: 94–104.
- Benhabib, Seyla. 2009. "Claiming Rights across Borders: International Human Rights and Democratic Sovereignty." *American Political Science Review* 103, no. 4: 691–704.
- Besson, Samantha. 2006. "The European Union and Human Rights: Towards a New Kind of Post-national Human Rights Institution." *Human Rights Law Review* 6, no. 2: 323–360.
- Besson, Samantha. 2007. "Europe as a Demoi-cratic Polity." *Nordisk Juridisk Tidsskrift* 116, no. 1: 3–21.
- Besson, Samantha. 2009a. "The Authority of International Law—Lifting the State Veil." *Sydney Law Review* 31, no. 3: 343–380.
- Besson, Samantha. 2009b. "Institutionalizing Global Demoi-cracy." In *Justice, Legitimacy and Public International Law*, edited by Lukas H. Meyer, 58–91. Cambridge: Cambridge University Press.
- Besson, Samantha. 2009c. "Ubi Ius, Ibi Civitas. A Republican Account of the International Community." In *Legal Republicanism and Republican Law—National and Post-National Perspectives*, edited by Samantha Besson, and Jose Luis Martí, 204–237. Oxford: Oxford University Press.
- Besson, Samantha. 2011a. "Human Rights and Democracy in a Global Context—Decoupling and Recoupling." *Ethics and Global Politics* 4, no. 1: 19–50.
- Besson, Samantha. 2011b. "Sovereignty, International Law and Democracy: A Reply to Waldron." *European Journal of International Law* 22: 373–387.
- Besson, Samantha. 2011c. "Human Rights—Ethical, Political...or Legal? First Steps in a Legal Theory of Human Rights." In *The Role of Ethics in International Law*, edited by Donald E. Childress, 211–245. Cambridge: Cambridge University Press.
- Besson, Samantha. 2011d. "The *erga omnes* Effect of ECtHR's Judgements—What's in a Name?" In *The European Court of Human Rights after Protocol 14—First Assessment and Perspectives*, edited by Samantha Besson, 125–175. Zurich: Schulthess.
- Besson, Samantha. 2011e. "The Democratic Legitimacy of WTO Law—On the Dangers of Fast-Food Democracy." *World Trade Institute Research Papers*. <http://www.nccr-trade.org/publication/>
- Besson, Samantha. 2011f. "The Human Rights Competence in the EU—The State of the Question after Lisbon." In *Taxation and Human Rights in Europe and in the World*, edited by Georg Kofler, Miguel Poiras Maduro, and Pasquale Pistone, 37–63. Amsterdam: IBFD.
- Besson, Samantha. 2011g. "General Principles in International Law—Whose Principles?" In *Les principes en droit européen—Principles in European Law*, edited by Samantha Besson, and Pascal Pichonnaz, 21–68. Zurich: Schulthess.
- Besson, Samantha. 2012a. "The Right to Have Rights—From Human Rights to Citizens' Rights and Back." In *Arendt and the Law*, edited by Marco Goldoni, and Chris McCorkindale, 335–356. Oxford: Hart Publishing.
- Besson, Samantha. 2012b. "Sovereignty." In *Max Planck Encyclopedia of Public International Law*, edited by Rüdiger Wolfrum et al., 366–391. Oxford: Oxford University Press.
- Besson, Samantha. 2012c. "The Egalitarian Dimension of Human Rights." *Archiv für Sozial- und Rechtsphilosophie Beiheft* 19–52.
- Besson, Samantha. 2012d. "The Extra-territoriality of the European Convention on Human Rights." *Leiden Journal of International Law* 25: 857–884.
- Besson, Samantha. 2013. "The Legitimate Authority of International Human Rights—On the Reciprocal Legitimation of Domestic and International Human Rights." In *The Legitimacy of Human Rights*, edited by Andreas Follesdal, Cambridge: Cambridge University Press. In press.
- Bohman, James. 2007. *Democracy across Borders: From Demos to Demoi*. Cambridge, MA: MIT Press.
- Bohman, James. 2010. "A Response to my Critics: Democracy Across Borders." *Ethics and Global Politics* 3: 71–84.
- Brettschneider, Corey. 2007. *Democratic Rights—The Substance of Self-government*. Princeton, NJ: Princeton University Press.
- Buchanan, Allen. 2004. *Justice, Legitimacy, and Self-Determination: Moral Foundations for International Law*. Oxford: Oxford University Press.
- Buchanan, Allen. 2005. "Equality and Human Rights." *Politics, Philosophy and Economics* 4: 69–90.
- Buchanan, Allen. 2008. "Human Rights and the Legitimacy of the International Order." *Legal Theory* 14: 39–70.
- Buchanan, Allen. 2009. "Moral Status and Human Enhancement." *Philosophy and Public Affairs* 37, no. 4: 346–381.
- Buchanan, Allen. 2010. "The Egalitarianism of Human Rights." *Ethics* 120(4): 679–710.
- Buchanan, Allen. 2011. *Beyond Humanity?* Oxford: Oxford University Press.
- Buchanan, Allen. 2013. "Do we Need a Philosophical Theory of Human Rights?" Forthcoming (manuscript on file with the author).
- Cali, Basak, and Saladin Meckled-Garcia. 2006. "Introduction: Human Rights Legalized—Defining, Interpreting and Implementing an Ideal." In *The Legalization of Human Rights, Multidisciplinary Perspectives on Human Rights and Human Rights Law*, edited by Basak Cali, and Saladin Meckled-Garcia, 1–8. London: Routledge.
- Cheneval, Francis. 2011. *The Government of the Peoples. On the Idea and Principles of Multilateral Democracy*. New York: Palgrave.
- Christiano, Thomas. 2008. *The Constitution of Equality*. Oxford: Oxford University Press.

- Christiano, Thomas. 2010. "Democratic Legitimacy and International Institutions." In *The Philosophy of International Law*, edited by Samantha Besson, and John Tasioulas, 119–137. Oxford: Oxford University Press.
- Cohen, Gerald A. 1989. "On the Currency of Egalitarian Justice." *Ethics* 99: 906–944.
- Cohen, Joshua. 2004. "Minimalism about Human Rights: The Most We Can Hope For?" *The Journal of Political Philosophy* 12, no. 2: 190–213.
- Cohen, Joshua. 2007. "Sovereignty and Rights: Thinking with and beyond Hannah Arendt." In *Hannah Arendt: Verborgene Tradition—Unzeitgemäße Aktualität?*, edited by Heinrich-Böll-Stiftung, 291–309. Berlin: Akademie Verlag.
- Cohen, Joshua. 2004. "Whose Sovereignty? Empire versus International Law." *Ethics and International Affairs* 18, no. 3: 1–24.
- Cohen, Joshua. 2008. "Rethinking Human Rights, Democracy and Sovereignty in the Age of Globalization." *Political Theory* 36, no. 4: 578–606.
- Cohen, Joshua. 2010. "Sovereignty in the Context of Globalization: A Constitutional Pluralist Perspective." In *The Philosophy of International Law*, edited by Samantha Besson, and John Tasioulas, 261–280. Oxford: Oxford University Press.
- Crawford, James, and Susan Marks. 2003. "The Global Democracy Deficit: An Essay in International Law and its Limits." In *International Law as an Open System*, edited by James Crawford, 137–56. London: Cameron May. Originally published in Daniele Archibugi, David Held, and Martin Köhler, eds. *Re-Imagining Political Community. Studies in Cosmopolitan Democracy*, 72–90 (Cambridge: Polity Press, 1998).
- Dahl, Robert A. 1983. "Federalism and the Democratic Process." In *NOMOS XXV: Liberal Democracy*, edited by Roland Pennock, and John W. Chapman, 95–108. New York: New York University Press.
- Dworkin, Ronald. 1981a. "What is Equality? Part 1: Equality of Welfare." *Philosophy and Public Affairs* 10: 185–246.
- Dworkin, Ronald. 1981b. "What is Equality? Part 2: Equality of Resources." *Philosophy and Public Affairs* 10: 283–345.
- Dworkin, Ronald. 2006. *Is Democracy Possible Here?* Princeton, NJ: Princeton University Press.
- Dworkin, Ronald. 2011. *Justice for Hedgehogs*. Harvard: Belknap.
- Erman, Eva. 2005. *Human Rights and Democracy*. Aldershot: Ashgate.
- Erman, Eva. 2011. "Human Rights Do Not Make Global Democracy." *Contemporary Political Theory* 10: 463–481.
- Erman, Eva. 2013. "Political Equality and Legitimacy in a Global Context." Chapter four in this volume.
- Fabre, Cécile. 2003. "Review: *God, Locke and Equality: Christian Foundations in Locke's Political Thought* by Jeremy Waldron." *Modern Law Review* 66, no. 3: 470–473.
- Flauss, Jean-François. 1998. "La protection des droits de l'homme et les sources du droit international." In *La protection des droits de l'homme et l'évolution du droit international*, edited by Société Française pour le Droit International, 11–79. Paris: Pédone.
- Forst, Rainer. 1999. "The Basic Right to Justification: Toward a Constructivist Conception of Human Rights." *Constellations* 6, no. 1: 35–60.
- Forst, Rainer. 2007. *Das Recht auf Rechtfertigung. Elemente einer konstruktivistischen Theorie der Gerechtigkeit*. Frankfurt am Main: Suhrkamp.
- Forst, Rainer. 2010. "The Justification of Human Rights and the Basic Right to Justification. A Reflexive Approach." *Ethics* 120, no. 4: 711–740.
- Gérard, Philippe. 2007. *L'esprit des droits. Philosophie des droits de l'homme*. Brussels: St Louis.
- Goodhart, Michael. 2008. "Human Rights and Global Democracy." *Ethics and International Affairs* 22, no. 4: 395–420.
- Goodin, Robert. 2007. "Enfranchising All Affected Interests, and Its Alternatives." *Philosophy and Public Affairs* 35: 40–68.
- Gosepath, Stefan. 2004. *Gleiche Gerechtigkeit: Grundlagen eines liberalen Egalitarismus*. Frankfurt: Suhrkamp.
- Gosepath, Stefan. 2007a. "Equality." *Stanford Encyclopedia of Philosophy*. Accessed February 2012: <http://plato.stanford.edu/archives/spr2011/entries/equality/>.
- Gosepath, Stefan. 2007b. "Hannah Arendts Kritik der Menschenrechte und ihr Recht, Rechte zu haben." In *Hannah Arendt: Verborgene Tradition—Unzeitgemäße Aktualität?*, edited by Heinrich-Böll-Stiftung, 253–262. Berlin: Akademie Verlag.
- Gould, Carol. 2004. *Globalizing Democracy and Human Rights*. Cambridge: Cambridge University Press.
- Griffin, James. 2001. "First Steps in an Account of Human Rights." *European Journal of Philosophy* 9, no. 3: 306–327.
- Griffin, James. 2008. *On Human Rights*. Oxford: Oxford University Press.
- Griffin, James. 2010. "Human Rights: Questions of Aim and Approach." *Ethics* 120, no. 4: 741–760.
- Habermas, Jürgen. 1998a. "Die Legitimation durch Menschenrechte." In *Die postnationale Konstellation. Politische Essays*, 170–192. Frankfurt am Main: Suhrkamp.
- Habermas, Jürgen. 1998b. *Faktizität und Geltung: Beiträge zur Diskurstheorie des Rechts und des demokratischen Rechtsstaats*. Frankfurt am Main: Suhrkamp.
- Habermas, Jürgen. 2010. "The Concept of Human Dignity and the Realistic Utopia of Human Rights." *Metaphilosophy* 41, no. 4: 465–480.
- Habermas, Jürgen. 2011. *Zur Verfassung Europas. Ein Essay*. Berlin: Suhrkamp.
- Keohane, Robert, Stephen Macedo, and Andrew Moravcsik. 2009. "Democracy—Enhancing Multilateralism." *International Organization* 63: 1–33.
- Kokott, Juliane. 2012. "States, Sovereign Equality." In *Max Planck Encyclopedia of Public International Law*, edited by Rüdiger Wolfrum et al., 571–585. Oxford: Oxford University Press.
- Macklem, Patrick. 2007. "What Is International Human Rights Law? Three Applications of a Distributive Account." *McGill Law Journal* 52: 575–604.
- Magnette, Paul. 2000. *L'Europe, l'État et la démocratie. Le Souverain apprivoisé*. Bruxelles: Editions Complexe.
- McMahan, Jeff. 2002. *The Ethics of Killing: Problems at the Margin of Life*. Oxford: Oxford University Press.

- Meckled-Garcia, Saladin, and Basak Cali. 2006. "Lost in Translation: The Human Rights Ideal and International Human Rights Law." In *The Legalization of Human Rights, Multidisciplinary Perspectives on Human Rights and Human Rights Law*, edited by Basak Cali, and Saladin Meckled-Garcia, 11–31. London: Routledge.
- Menke, Christoph. 2007. "The Aporias of Human Rights and the One Human Right: Regarding the Coherence of Hannah Arendt's Argument." *Social Research* 74, no. 1: 739–762.
- Menke, Christoph, and Arnd Pollmann. 2007. *Philosophie der Menschenrechte. Zur Einführung*. Hamburg: Junius Verlag.
- Moravcsik, Andrew. 2000. "The Origins of Human Rights Regimes: Democratic Delegation in Postwar Europe." *International Organization* 54, no. 2: 217–252.
- Näsström, Sofia. 2011. "The Challenge of the All-Affected Principle." *Political Studies* 59: 116–134.
- Nussbaum, Martha. 2006. *Frontiers of Justice: Disability, Nationality, Species Membership*. Cambridge, MA: Belknap.
- O'Neill, Onora. 2005. "The Dark Side of Human Rights." *International Affairs* 81, no. 2: 427–439.
- Peters, Anne. 2011. "Das subjektive internationale Recht." *Jahrbuch des öffentlichen Rechts* 59: 411–456.
- Pettit, Philip. 2010. "Legitimate International Institutions: A Neo-Republican Perspective." In *The Philosophy of International Law*, edited by Samantha Besson, and John Tasioulas, 139–160. Oxford: Oxford University Press.
- Pogge, Thomas. 2005. "Human Rights and Human Responsibilities." In *Global Responsibilities: Who Must Deliver on Human Rights?*, edited by Andrew Kuper, 3–35. New York: Routledge. Originally published in Pablo de Greiff, and Ciaran Cronin, eds. *Global Justice and Transnational Politics*, 151–196. Cambridge, MA: MIT Press, 2002.
- Pojman, Louis. 1997. "On Equal Human Worth: A Critique of Contemporary Egalitarianism." In *Equality: Selected Readings*, edited by Louis Pojman, and Robert Westmoreland, 282–298. Oxford: Oxford University Press.
- Raz, Joseph. 1984a. "Legal Rights." *Oxford Journal of Legal Studies* 4, no. 1: 1–21.
- Raz, Joseph. 1984b. "On the Nature of Rights." *Mind* 93: 194–214.
- Raz, Joseph. 2010. "Human Rights in the New World Order." *Transnational Legal Theory* 1, no. 1: 31–47.
- Reus-Smit, Christian. 2009. "On Rights and Institutions." In *Global Basic Rights*, edited by Charles Beitz, and Robert Goodin, 25–48. Oxford: Oxford University Press.
- Roemer, John. 1986. "Equality of Resources Implies Equality of Welfare." *The Quarterly Journal of Economics* 101: 751–784.
- Scheffler, Samuel. 2003. "What Is Egalitarianism?" *Philosophy and Public Affairs* 31: 5–39.
- Schütze, Robert. 2009. *From Dual to Cooperative Federalism. The Changing Structure of European Law*. Oxford: Oxford University Press.
- Shue, Henry. 1988. "Mediating Duties." *Ethics* 98: 687–704.

- Simma, Bruno, and Philip Alston. 1988–1989. "The Sources of Human Rights Law: Custom, *Jus Cogens* and General Principles." *Australian Yearbook of International Law* 12: 82–108.
- Simmons, John. 2001. "Human Rights and World Citizenship: The Universality of Human Rights in Kant and Locke." In *Justification and Legitimacy: Essays on Rights and Obligations*, 179–196. New York: Cambridge University Press.
- Tasioulas, John. 2002. "Human Rights, Universality and the Values of Personhood: Retracing Griffin's Steps." *European Journal of Philosophy* 10: 79–100.
- Tasioulas, John. 2007. "The Moral Reality of Human Rights." In *Freedom from Poverty as a Human Right: Who Owes What to the Very Poor*, edited by Thomas Pogge, 75–101. Oxford: Oxford University Press.
- Tasioulas, John. 2009. "Are Human Rights Essentially Triggers for Intervention?" *Philosophical Compass* 4, no. 6: 938–950.
- Tasioulas, John. 2010. "Taking Rights out of Human Rights." *Ethics* 120, no. 4: 647–678.
- Tasioulas, John. 2013. "Justice, Equality and Rights." In *The Oxford Handbook of the History of Ethics*, edited by Roger Crisp. Oxford: Oxford University Press. <http://www.oxfordhandbooks.com/view/10.1093/oxfordhb/9780199545971.001.0001/oxfordhb-9780199545971-e-36>.
- Waldron, Jeremy. 2002. *God, Locke, and Equality: Christian Foundations in Locke's Political Thought*. Cambridge: Cambridge University Press.
- Waldron, Jeremy. 2011. "Are Sovereigns Entitled to the Benefit of the International Rule of Law?" *European Journal of International Law* 22, no. 2: 315–343.
- Waldron, Jeremy. 2013. "Is Dignity the Foundation of Human Rights?" *NYU School of Law, Public Law Research Paper No. 12–73*.
- Wellman, Christopher. 2011. *The Moral Dimensions of Human Rights*. Oxford: Oxford University Press.
- Williams, Bernard. 2005. "The Idea of Equality." In *In the Beginning was the Deed: Realism and Moralism in Political Argument*, edited by Geoffrey Hawthorn, 97–114. Princeton, NJ: Princeton University Press.