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# Human Rights, the Political View, and Transnational Corporations: An Exploration\*

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## 1. Introduction

Recent debates on the philosophy of human rights have been polarized between so-called ‘orthodox’ and ‘political’ views. The former understand human rights as fundamental entitlements all human beings hold against every capable agent (individual or corporate), just by virtue of their humanity. The latter see human rights as entitlements human beings hold against *particular* types of agents only: political ones.<sup>1</sup> In this chapter, I focus on the latter, political view.

Several proponents of this view converge in regarding *states* as the sole agents bearing primary human-rights duties vis-à-vis their citizens, and the international community as bearing secondary ones vis-à-vis all human beings.<sup>2</sup> This focus on states seems problematic. In our increasingly globalized world, states often lack the capacity to secure human rights for their citizens. Since ‘ought implies can’, states that lack the relevant capacity cannot plausibly be burdened with primary responsibility to *secure* human rights now, but only with the long-term responsibility to develop the capacity to fulfil them. Yet the conclusion, seemingly implied by the political view, that when states are weak, no agent carries primary responsibility for securing some people’s (citizens’) human rights seems implausible. This is all the more so given the existence of non-state actors that *could* do a great deal to secure the human rights of those individuals. Among such agents, much attention has been recently given to Transnational Corporations (henceforth TNCs). These are the non-state actors I discuss here.

I assume that an ability to account for TNCs’ human-rights duties is a *prima facie* desideratum of a plausible theory of human rights. I then ask whether the political view can meet this desideratum, and answer in the affirmative. In developing this answer, I proceed as follows. In Section 2, I offer a sympathetic reconstruction of the political view, and of the reasons it offers for regarding states as the primary bearers of human-rights responsibilities. Two rationales are particularly relevant:

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<sup>1</sup> There are several senses in which human rights may count as political. Here, I focus on the most prominent one. See Laura Valentini, ‘In What Sense Are Human Rights Political? A Preliminary Exploration’, *Political Studies* 60 (2012): 180–94.

<sup>2</sup> See, for example, Charles Beitz, *The Idea of Human Rights* (Oxford: Oxford University Press, 2011); Joseph Raz, ‘Human Rights without Foundations’, in *The Philosophy of International Law*, edited by John Tasioulas and Samantha Besson (Oxford: Oxford University Press, 2010), 321–38; John Rawls, *The Law of Peoples: With “The Idea of Public Reason Revisited.”* (Cambridge, MA: Harvard University Press, 1999); Andrea Sangiovanni, ‘Justice and the Priority of Politics to Morality’, *Journal of Political Philosophy* 16, no. 2 (2008): 137–64; Ronald Dworkin, *Justice for Hedgehogs* (Cambridge, MA: Harvard University Press, 2011), 332–344.

what I call ‘capacity’ and the ‘authority-plus-sovereignty package’. In Sections 3 and 4, I characterize TNCs as distinctive types of agents, and argue that, while—in given circumstances—they may have the capacity to secure human rights, they seem to lack the ‘authority-plus-sovereignty’ package. In Section 5, building on the existing literature on the responsibilities of corporations, I show how the apparent authority-plus-sovereignty gap exhibited by TNCs may be filled. I note, with others, that by *de facto* enjoying some of the privileges associated with sovereign authority, agents (like TNCs) also acquire some of the *duties/responsibilities* associated with it.<sup>3</sup> This gives us a rationale for treating agents that are normally regarded as belonging to the ‘private’ realm (e.g., TNCs) as ‘political’, and thus fit for carrying primary human-rights responsibilities vis-à-vis their immediate subjects. In Section 6, I address two objections, and thereby further clarify the implications of the proposed argument. Section 7 concludes.

Let me make three points of clarification. First, this chapter is not meant to offer a defence of the political view of human rights. Its only aim is to address one possible objection against it, namely, that it cannot account for the (intuitively plausible) role of TNCs as bearers of primary responsibilities for human rights. In doing so, the chapter offers (what I hope is) an appealing construal of the political view, but the arguments it provides fall short of a full defence of it.<sup>4</sup> Second, the chapter is developed from a broadly normative individualist perspective on political morality, one that takes individual human beings as ultimate objects of moral concern, entitled to the basic conditions for leading their lives in pursuit of their ends and goals. Third, and finally, there has already been considerable debate about the role of TNCs in relation to human rights; and the conclusion that these corporate entities should bear human-rights duties by virtue of their *de facto* ‘political role’ is not a new one.<sup>5</sup> The chapter builds on these contributions to show how the human-rights duties of TNCs may be justified from a perspective on human rights, i.e., the political one, which may appear to have little room for them.<sup>6</sup>

## 2. Human Rights, the Political View, and the State

In this section, I offer a sympathetic construal of the political view—though one that is not representative of every ‘member’ of the ‘political family’—and specifically of its justification for identifying states as the primary bearers of the duties correlative to human rights.

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<sup>3</sup> Here, I use the terms ‘duties’ and ‘responsibilities’ interchangeably.

<sup>4</sup> For a defence of a middle-way between political and non-political views, consistent with the perspective defended here, see Laura Valentini, ‘Human Rights, Freedom, and Political Authority’, *Political Theory* 40, no. 5 (2012): 573–601. For an alternative middle-way, see Pablo Gilabert, ‘Humanist and Political Perspectives on Human Rights’, *Political Theory* 39, no. 4 (2011): 439–67.

<sup>5</sup> See, e.g., Steven Ratner, ‘Corporations and Human Rights: A Theory of Legal Responsibility’, *Yale Law Journal* 111, no. 3 (2001): 443–545; John Ruggie, ‘Business and Human Rights: The Evolving International Agenda’, *American Journal of International Law* 101, no. 4 (2007): 819–40; Florian Wettstein, *Multinational Corporations and Global Justice: Human Rights Obligations of a Quasi-Governmental Institution* (Stanford: Stanford Business Books, 2009); David Karp, *Responsibility for Human Rights: Transnational Corporations in Imperfect States* (Cambridge: Cambridge University Press, 2014).

<sup>6</sup> See, e.g., Cristina Lafont, ‘Accountability and Global Governance: Challenging the State-Centric Conception of Human Rights’, *Ethics and Global Politics* 3, no. 3 (2010): 193–215.

## 2.1 Human Rights and the Political View

From a structural point of view, human rights are what Wesley Hohfeld called ‘claim rights’, involving duties owed to others.<sup>7</sup> More specifically, claim rights have three components:

- a right holder;
- a particular object;
- a duty bearer.

Different approaches to human rights may be distinguished based on how they understand each component, including the political view.<sup>8</sup>

Regarding the first component—i.e., *right holders*—virtually every approach to human rights accepts that all human beings are in principle fit for holding such rights. The political view is no exception.<sup>9</sup>

Regarding the second component, once again most approaches converge in characterizing the *object* of human rights in terms of secure access to fundamental—social and material—goods needed to lead a decent life.<sup>10</sup> Different views, however, fill the list of fundamental goods differently, and some of them do so in ways that have been described as distinctively ‘political’.<sup>11</sup> In some cases, the identification of the relevant goods occurs by articulating the ‘public reason’ of international society, and this is what allegedly makes it ‘political’.<sup>12</sup> In other cases, the goods to be placed on the list are chosen by taking into consideration political feasibility constraints.<sup>13</sup> For present purposes, I bracket off the object dimension of political views on human rights, and limit myself to discussing rights that any plausible view (political or otherwise) would have to include in its list: e.g., life, bodily integrity, freedom from torture, shelter, sanitation, and so forth.<sup>14</sup>

Finally, let me turn to the *bearers* of the duties correlative to human rights. Proponents of the political view argue that the relevant bearers are only political agents: states and the international community. Specifically, states are *primary*

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<sup>7</sup> Wesley Newcomb Hohfeld, ‘Fundamental Legal Conceptions as Applied in Judicial Reasoning’, *The Yale Law Journal* 26, no. 8 (1917): 710–70.

<sup>8</sup> Although different approaches to human rights typically offer a unified rationale for the way they interpret each dimension, the three dimensions are logically separable, and I shall treat them as such in what follows.

<sup>9</sup> ‘In principle’ here is meant to allow for two possible restrictions: (1) on some views, children do not (yet) have human rights and (2) any given agent really does have a human right to X only if suitable duty bearers can be identified.

<sup>10</sup> See, e.g., Thomas Pogge, *World Poverty and Human Rights: Cosmopolitan Responsibilities and Reforms* (Cambridge: Polity, 2008). This also includes theorists like Griffin, if we understand a decent life as one in which human beings’ normative agency is protected. See James Griffin, *On Human Rights* (Oxford: Oxford University Press, 2008).

<sup>11</sup> For discussion, see John Tasioulas, ‘Are Human Rights Essentially Triggers for Intervention?’, *Philosophy Compass* 4, no. 6 (2009): 938–50; Valentini, ‘In What Sense Are Human Rights Political?’

<sup>12</sup> Rawls, *The Law of Peoples*.

<sup>13</sup> Raz, ‘Human Rights without Foundations’; Sangiovanni, ‘Justice and the Priority of Politics to Morality’; Valentini, ‘In What Sense Are Human Rights Political?’

<sup>14</sup> The reader may simply include whatever rights he/she regards as *sine qua non* of any plausible list of human rights.

bearers of human-rights duties vis-à-vis their citizens, and the international community is a *secondary duty bearer* vis-à-vis everyone in the world.<sup>15</sup>

Primary duty-bearers are under *stringent obligations* to secure the objects of human rights for a relevant set of individuals. More specifically, securing these objects involves three kinds of duties: to *respect, protect, and fulfil* human rights.<sup>16</sup> Duties to respect human rights require their bearers not to undermine others' access to the objects of human rights. Duties to protect human rights involve taking measures (e.g., enforcement) aimed at preventing others from undermining right-holders' enjoyment of the objects of human rights. Duties to fulfil human rights require their bearers to positively provide right-holders with access to the objects of their human rights. Take, for instance, the right to freedom of religion. Respect for this right requires duty bearers not to prevent right-holders from practicing their religion. Protection of this right involves preventing *others* from interfering with right-holders' freedom of religion. Finally, fulfilling the right to freedom of religion requires providing individuals with the means to practice their religion and creating a broader environment conducive to respect for freedom of religion. Whenever capable primary duty bearers fail to secure the objects of human rights, be it through lack of respect, protection or fulfilment, they perpetrate human-rights *violations*.

Secondary bearers, by contrast, have 'remedial' responsibilities to cater for human rights, which are triggered whenever primary bearers disregard their obligations, or are unable to discharge them.<sup>17</sup> These remedial responsibilities are often less demanding than primary ones. And failure to discharge them gives rise to human-rights unfulfilments, rather than violations proper.<sup>18</sup>

To better understand the relationship between primary and secondary responsibilities for rights more generally (as opposed to human rights specifically), consider the difference between parental and third-party duties of care towards children. Parents are bound by stringent duties to do what they can to give their children access to the goods they need to become well-functioning adults. When parents fail to honour these duties, third parties in a position to help acquire secondary, remedial duties to address the situation. These remedial duties are arguably less demanding than parents' primary duties of care. Third parties should help neglected children, if they can do so at reasonable cost to themselves, but are typically permitted to offer a more minimal level of assistance than parents. From a structural point of view, third parties' duty to help needy children is akin to one of beneficence—it lacks clear recipients and is constrained by weighty considerations of costs.<sup>19</sup> Irresponsiveness to this duty arguably does not result in *violations* of the

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<sup>15</sup> Beitz, *The Idea of Human Rights*; Rawls, *The Law of Peoples*.

<sup>16</sup> See Asbjørn Eide, 'The New International Economic Order and the Promotion of Human Rights. Report on the Right to Adequate Food as a Human Right', 1987, UN Doc E/CN.4/Sub.2/1987/23. Cf. the original tripartite categorization of duties in Henry Shue, *Basic Rights: Subsistence, Affluence, and U.S. Foreign Policy* (Princeton, N.J.: Princeton University Press, 1980, 2<sup>nd</sup> ed. 1996). For discussion, see Lafont, 'Accountability and Global Governance'.

<sup>17</sup> For the related (but not identical) distinction between primary and secondary agents of justice, see Onora O'Neill, 'Agents of Justice', *Metaphilosophy* 32, no. 1–2 (2001): 180–95. For the notion of remedial responsibility, see David Miller, 'Distributing Responsibilities', *Journal of Political Philosophy* 9, no. 4 (2001): 453–71.

<sup>18</sup> I borrow the notion of an unfulfilment or under-fulfilment from Pogge, *World Poverty and Human Rights*.

<sup>19</sup> Allen Buchanan, 'Justice and Charity', *Ethics* 97, no. 3 (1987): 558–75.

rights of particular children, but in a wrongful failure to contribute to the fulfilment of children's rights generally.

With these conceptual preliminaries at hand, in what follows, I focus on how the political view characterizes primary and secondary human-rights *duty bearers* in particular. Why, one might ask, should we limit the range of duty bearers to states and the international community, as the political view does?

## 2.2 *Desiderata for the Identification of Duty Bearers*

A number of proponents of the political view have defended a state-centred conception of human rights, by (i) insisting that the concept of human rights should be responsive to human-rights practice and (ii) noting that human-rights practice has been largely (though not exclusively) state-centred.<sup>20</sup> As critics of the political view have pointed out, however, consistency with practice is not a convincing rationale for state-centrism. The plausibility of the political view thus depends on there being other, non-status-quo dependent reasons for regarding states as holders of primary human-rights responsibilities. In particular, proponents of the political view must explain why *it makes moral sense* to regard states as the relevant primary duty-bearers, and the international community as holding remedial responsibilities.

I suggest that, to 'make moral sense', an account of responsibility for human rights should:

- i. satisfy the ought-implies-can proviso;
- ii. explain (a) the distinctive wrongness of human-rights violations, and (b) the appropriate reactions to human-rights violations.

In other words, the account should satisfy general constraints on the imposition of duties, and stand in reflective equilibrium with our considered judgements about human rights.<sup>21</sup>

With respect to (i), just like any duties, human-rights duties can only bind agents who have the capacity to respect, protect and fulfil them—nothing more needs to be said in relation to this criterion. With respect to (ii.a), violations of human rights involve a *distinctive* affront to *dignity*.<sup>22</sup> Any normative outlook on human rights—and specifically of who should bear human-rights duties—must be able to account for this morally salient and widely accepted fact.<sup>23</sup>

With respect to (ii.b), human-rights violations, unlike other types of rights-violations, trigger international concern as an appropriate response.<sup>24</sup> While an isolated murder, within an otherwise well-ordered state, would seldom be described as a human-rights violation, and would not appropriately generate concern on the part of the international community, human-rights violations do. Yet, the right to life, violated in the murder case, is also a human right. The explanation for this difference,

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<sup>20</sup> Rawls, *The Law of Peoples*; Beitz, *The Idea of Human Rights*; Sangiovanni, 'Justice and the Priority of Politics to Morality'.

<sup>21</sup> For the notion of 'reflective equilibrium', see John Rawls, *A Theory of Justice* (Oxford: Oxford University Press, 1999).

<sup>22</sup> This is not to say that human-rights violations uniquely undermine human dignity, but that they do so in a distinctive way.

<sup>23</sup> See the discussion of 'official disrespect' in Pogge, *World Poverty and Human Rights*, chap. 2.

<sup>24</sup> On the 'international concern' dimension of human rights, see Beitz, *The Idea of Human Rights*.

then, cannot rest on considerations about right holders or content. Rather, it must refer to who the relevant duty bearers are.

On what strikes me as the most promising version of the political view, regarding states as primary bearers of human-rights duties, and the international community as a secondary bearer, allows us to make best sense of human rights' moral distinctiveness, consistently with the 'ought implies can' constraint.

### 2.3 *Political Agents as Human-Rights Duty Bearers*

A focus on states qua primary duty bearers allows the political view to meet the above-mentioned desiderata to the extent that states exhibit two features: (i) capacity and (ii) what I call the 'authority-plus-sovereignty package'.<sup>25</sup> As I suggest below, on the version of the political view I sketch, each feature is individually necessary, and the two are jointly sufficient, for an agent to carry primary responsibility for human rights.

#### (i) Capacity

At least under normal circumstances, states are particularly well placed to secure the objects of human rights for their citizens. And since, as we have seen, ought implies can, state capacity gives us a *prima facie* reason for attributing primary human-rights responsibility to states. The reason is only *prima facie*, however. Not all agents capable of performing a morally valuable action have a duty to perform it.<sup>26</sup> For example, a wealthy industrialist may have the resources to secure the human rights of a multiplicity of individuals, and yet we would be reluctant to conclude that this is a sufficient reason for holding him responsible for their human-rights protection and fulfilment. For instance, Bill Gates might have sufficient economic power to provide secure access to food, shelter, and sanitation to the inhabitants of a small village in the developing world, and yet we would not typically consider him a human-rights violator for not doing so. By contrast, if the government of the state in which the village is located altogether neglected its inhabitants, and failed to provide them with access to fundamental material and social goods (while having the capacity to do so), we would probably condemn it as a human-rights violator. Why? Because of its authoritativeness and sovereignty, says the political view—at least on the present construal of it.<sup>27</sup>

#### (ii) Authority-plus-Sovereignty

States are comprehensive ruling institutions characterized by special privileges. These privileges have both an inward and an outward dimension. First, states have *de facto authority* vis-à-vis their citizens, namely a socially accepted right to rule them, coupled with their obligation to obey. Second, states are *sovereign* vis-à-vis outside agents, and thus entitled to external non-interference.

This bundle of *de facto* privileges is key to statehood. However, the existence of these privileges—and, consequently, of the social artefact of statehood—is only legitimate if states rule their subjects consistently with their most important (i.e.,

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<sup>25</sup> Cf. Valentini, 'Human Rights, Freedom, and Political Authority'.

<sup>26</sup> Karp, *Responsibility for Human Rights*, chap. 5.

<sup>27</sup> Cf. Julio César Montero, 'Human Rights, International Human Rights, and Sovereign Political Authority: A Draft Model for Understanding Contemporary Human Rights', *Ethics & Global Politics* 7, no. 4 (2014): 143–62.

human) rights.<sup>28</sup> When an entity is recognized as a state, it is invested with privileges that can only be justified, from a normative individualist point of view, by assuming it has special responsibilities to ‘look after’ its members. States may only legitimately govern their citizens if they provide them with decent enough background conditions against which they may pursue their ends and goals. This, in turn, requires at least respect for human rights.

States’ possession of the authority-plus-sovereignty package allows a political approach to human rights to make sense of both the distinctive wrongness of human-rights violations and the appropriate normative reaction to them (in line with the second desideratum outlined in 2.2 above). First, human-rights violations are particularly harmful to dignity because the state, the *authoritative agent* presumed to be acting on behalf of its citizens and to look after their interests, blatantly fails to do so.<sup>29</sup> ‘Official disrespect’, namely the kind of disrespect displayed by authorities—as Pogge puts it—conveys the message that the entire community (domestic and, indirectly, international—insofar as the latter recognizes the authority of states) fails to acknowledge the fundamental entitlements of the victim.<sup>30</sup> A private person’s murder of a fellow citizen, and a state official’s execution of a political protester are both wrong, and both rights violations. However, on the political view, only the latter counts as a human-rights violation. Why? Because only the latter embodies a distinctive form of wrongdoing, a special violation of dignity, since precisely those agents who are presumed to act on behalf of their subjects and protect their interests perpetrate it.<sup>31</sup>

By way of (distant) analogy, consider again child-parent relations. The reason why a parent’s failure to provide for her child strikes us as distinctively morally wrong—more so than a stranger’s identical neglect—is that the parent has special moral obligations towards the child, and is granted a certain sphere of authority/sovereignty over the child in order to discharge those obligations. In a similar fashion, the existence of a comprehensive authoritative relationship between the state and its citizens explains why state-sponsored violence or neglect towards them amounts to a distinctive form of wrongdoing: a human-rights violation.

Second, human-rights violations trigger international concern because they are linked to state *sovereignty*. When a state fails to secure the objects of its citizens’ human rights, it is no longer performing its morally mandatory functions, and those individuals who live under its power require outside protection. The in-principle right to non-interference states enjoy is thus forfeited.<sup>32</sup> A murder—perpetrated by private persons—does not appropriately generate the same type of international concern. Rather, it triggers domestic concern, on the part of the domestic legal system. Once again, by way of distant analogy, when parents fail appropriately to take care of, or directly harm, their children, their actions and omissions are cause for ‘external’

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<sup>28</sup> Note that I am treating this as a necessary condition for legitimate authority/sovereignty, not as a sufficient one. There may be other, further conditions, on which I remain agnostic here.

<sup>29</sup> For a more extensive treatment of this point, see Laura Valentini, ‘Dignity and Human Rights: A Reconceptualization,’ manuscript, 2016.

<sup>30</sup> Pogge, *World Poverty and Human Rights*.

<sup>31</sup> Cf. Christian Barry and Nicholas Southwood, ‘What Is Special About Human Rights?’, *Ethics & International Affairs* 25, no. 3 (2011): 369–83.

<sup>32</sup> For a particular emphasis on this aspect of human rights, see Raz, ‘Human Rights without Foundations’. Note that human-rights violations are a necessary, but not a sufficient, condition for the justifiability of outside interference in a state’s affairs.



concern. Neglectful or abusive parents lose their immunity from external interference in raising their children.

So far, I have argued that—on a plausible version of the political view—(i) capacity and (ii) the authority-plus-sovereignty package are each individually necessary and jointly sufficient conditions for bearing primary human-rights duties. This gives us a relatively straightforward explanation for the emphasis the political view places on states, and allows this view to make sense of many wrongs we would intuitively call human-rights violations. There is, however, a set of circumstances in which people lack access to the objects of their human rights, and yet the political view seems unable to identify any primary responsibility-bearers who may be accused of violating those rights. This occurs when states *lack the capacity* to secure the objects of their citizens' human rights.

To be sure, proponents of the political view would insist that, in such cases, the international community has remedial responsibilities to deal with such human-rights deficits.<sup>33</sup> But, as I have mentioned, these are more elusive, secondary responsibilities to assist the needy, somewhat akin to duties of beneficence. Failure to discharge them would not result in human-rights violations proper, but in human-rights deficits or unfulfillment.

The implication that, when states lack capacity, no human-rights violator *proper* may be found, appears problematic. This is all the more so, given the existence of other agents who (a) are knowingly involved in people's lack of access to the objects of some of their human rights and (b) have the capacity to provide this access to them. Specifically, as recent discussions within and outside the scholarly community show, particular types of corporate agents deserve scrutiny when citizens of weak states lack secure access to the objects of human rights: transnational corporations (TNCs).

### **3. TNCs, States, and Human Rights: The Capacity Gap**

What are transnational corporations? They are large-scale commercial enterprises operating in a plurality of different countries. Familiar examples of such corporations include oil giants such as Shell, textile giants such as Nike and H&M, food and drinks giants such as Nestlé and Coca-Cola, retailers such as Wal-Mart, as well as many others.<sup>34</sup>

The power and influence that these actors exert on states and the global economy cannot be overstated.<sup>35</sup> In 2009, 44 TNCs figured among the world's top 100 largest economic entities. Just to give a flavour of the scale of this phenomenon, in 2009 Wal-Mart's and Shell's revenues were each greater than the GDPs of countries like Thailand, Portugal, Malaysia, the Philippines, Hungary, and Peru—to mention only a few.<sup>36</sup>

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<sup>33</sup> I use this term because, since there are no agents with the capacity to bear primary human-rights responsibilities, the language of violations appears out of place.

<sup>34</sup> Surya Deva, 'Human Rights Violations by Multinational Corporations and International Law: Where from Here', *Connecticut Journal of International Law* 19, no. 1 (2003): 1–57.

<sup>35</sup> Jordan Paust, 'Human Rights Responsibilities of Private Corporations', *Vanderbilt Journal of Transnational Law* 35, no. 3 (2002): 801–25, 802.

<sup>36</sup> The comparison has been drawn by Tracey Keys and Thomas Malnight, looking at data from the 2009 ranking of Fortune Global, 500 and the IMF's data on countries' GDP. For the full list see <http://www.globaltrends.com/knowledge-center/features/shapers-and-influencers/66-corporate-clout-the-influence-of-the-worlds-largest-100-economic-entities>. For scepticism about GDP-turnover

In addition to their economic power, TNCs are particularly well placed to (a) shape state regulation to their advantage through aggressive lobbying and (b) evade it when it obstructs their business interests, by operating in multiple countries, and relocating wherever they are likeliest to make the most profit. It is thus unsurprising that TNCs would often choose developing countries as the locus of their manufacturing activities. These countries most desperately need the investment and job opportunities created by TNCs, and are typically less willing or capable of enforcing demanding labour standards. Low production costs mean lower prices, and lower prices mean greater competitiveness: exactly what TNCs look for.<sup>37</sup>

TNCs' mobility and economic power are also partly responsible for global dynamics with perverse effects, such as tax competition, whereby countries are incentivized to lower taxes on foreign capital in order to attract and retain investment. Once again, although most countries are affected by this phenomenon, its most serious effects are felt by developing ones.<sup>38</sup>

TNCs' largely unchecked power and their ability to affect individuals' access to fundamental goods have generated much debate. Cases of TNCs' complicity in government-sponsored rights abuses, as well as instances of TNC-sponsored abuses, have received significant media attention.<sup>39</sup> Consider, for instance, the following ones.

*Unocal in Myanmar (Burma):* In 1996, Unocal was sued in the U.S. for complicity in human-rights abuses perpetrated by the Myanmar military—including rape, torture and murder—to force local villagers to build the 'Yadana' pipeline, running from Myanmar to Thailand. The case was settled in 2005. Unocal committed to compensating villagers and to contributing funds to ameliorate their living conditions.<sup>40</sup>

*Coca Cola in Colombia:* Coca Cola was accused of being indirectly responsible for the employment of paramilitary squads that have intimidated workers, and threatened—as well as killed—union leaders on Colombian premises.<sup>41</sup> (This case, which generated much public discussion, was eventually dismissed.<sup>42</sup>)

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comparisons, see Tim Worstall, 'GDP For a Country Is Not the Same Thing as Turnover for a Business', *Forbes*, <http://www.forbes.com/sites/timworstall/2011/06/28/gdp-for-a-country-is-not-the-same-thing-as-turnover-for-a-business/>.

<sup>37</sup> Ratner, 'Corporations and Human Rights', 461–5.

<sup>38</sup> Thomas Rixen, 'Tax Competition and Inequality: The Case for Global Tax Governance', *Global Governance: A Review of Multilateralism and International Organizations* 17, no. 4 (2011): 447–67.

<sup>39</sup> For this distinction, see Ratner, 'Corporations and Human Rights', 449.

<sup>40</sup> Rachel Chambers, 'The Unocal Settlement: Implications for the Developing Law on Corporate Complicity in Human Rights Abuses', *Human Rights Brief* 13, no. 1 (2005): 14–16. See also, Business and Human Rights Resource Center, 'Unocal Lawsuit (re Myanmar)', 2014, <https://business-humanrights.org/en/unocal-lawsuit-re-myanmar>.

<sup>41</sup> Sibylla Brodzinsky, 'Coca-Cola Boycott Launched after Killings at Colombian Plants', *The Guardian*, July 24, 2003, <http://www.theguardian.com/media/2003/jul/24/marketingandpr.colombia>.

<sup>42</sup> François-Xavier Bagnoud, 'Coca-Cola Lawsuit (re Colombia)', *Business & Human Rights Resource Centre*, 2014, <https://business-humanrights.org/en/coca-cola-lawsuit-re-colombia>. Similar lawsuits have also been brought against the banana giant Chiquita. See David Voreacos, 'Chiquita Executives Must Face Claims Over Colombian Torture', *Business & Human Rights Resource Centre (reported from Bloomberg)*, 2016, <https://business-humanrights.org/en/chiquita-executives-must-face-claims-over-colombian-torture>.

The first of the above cases involves TNC-complicity with government-sponsored human-rights abuses. The second involves accusations of TNC-abuse against a socio-political background, such as the Colombian one, characterized by ‘weak statehood’.<sup>43</sup> When statehood is weak, the government has little ability to exercise control—either territorially or with respect to a given issue-area—and TNCs have greater scope to engage in what would otherwise be illegal activities with impunity. These include violations of bodily integrity, damages to the environment with serious repercussions on local populations’ access to clean water and nutrition, and violations of fundamental labour rights—including exploitative working conditions and child labour.

Cases such as these have caused much concern in the international community, and sparked UN activities aimed at bringing TNCs to account for their actions, in the name of human rights. In 2003, this culminated in a set of UN ‘Draft Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights’, stating that:

Within their respective *spheres of activity and influence*, transnational corporations and other business enterprises have the obligation to promote, secure the fulfilment of, respect, ensure respect of and protect human rights recognized in international as well as national law...<sup>44</sup>

These draft norms were met with criticism—on the part of business representatives as well as states—and never gained legally binding status. They were followed, in 2011, by the ‘United Nations Guiding Principles on Business and Human Rights’, developed under John Ruggie’s lead.<sup>45</sup> These principles set forth somewhat more modest guidelines according to which:

Business enterprises should respect human rights. This means that they should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved.<sup>46</sup>

Although the emphasis on respect for human rights only—as opposed to respect, protection and fulfilment—may appear as a step back from 2003, the existence of the UN Draft Norms first, and of the Guiding Principles later, is testimony to the prominence gained by the issue of TNCs and human rights in international discourse. Even more importantly, it is a manifestation of the widespread conviction that TNCs

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<sup>43</sup> Thomas Risse, ‘Governance under Limited Sovereignty’, in *Back to Basics: State Power in a Contemporary World*, edited by Martha Finnemore and Judith Goldstein (New York: Oxford University Press, 2013), 78–104.

<sup>44</sup> United Nations, ‘Draft Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights’, 2003, 4, [http://www.unhchr.ch/huridocda/huridoca.nsf/\(Symbol\)/E.CN.4.Sub.2.2003.12.Rev.2.En?Opendocument](http://www.unhchr.ch/huridocda/huridoca.nsf/(Symbol)/E.CN.4.Sub.2.2003.12.Rev.2.En?Opendocument), emphasis added.

<sup>45</sup> From 2005 to 2011, John Ruggie served as the UN Secretary General Special Representative for Business and Human Rights.

<sup>46</sup> John Ruggie, ‘Guiding Principles on Business and Human Rights. Implementing the United Nations “Protect, Respect and Remedy” Framework’, 2011, [http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR\\_EN.pdf](http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf).

should be regarded as bearers of human-rights responsibilities.<sup>47</sup> Is the political view capable of accommodating this conviction?

#### **4. TNCs, Human Rights, and the Political View: The Authority-plus-Sovereignty Gap**

Note that, if the political view were unable to account for the human-rights responsibilities of TNCs in cases of *complicity* with government abuses, this would not be particularly troublesome.<sup>48</sup> In such circumstances, the political view can still point to a human-rights violator: the government. TNCs' acquiescence in, or indeed encouragement of, such violations is deeply morally problematic, of course, but may not itself count as a human-rights violation. While we can certainly consider TNCs complicit, the human-rights violators remain states.<sup>49</sup>

The situation becomes more complex, and more troubling for proponents of the political view, where TNCs operate in areas of weak governance, not reached by state regulation.<sup>50</sup> Here, as we have seen, TNCs can act in ways that deprive individuals of secure access to at least some of the objects of their human rights—e.g., through inhumane labour standards, violent security practices, and environmental degradation—but without governments having the capacity to place constraints on them and bring them to account for their actions. Could TNCs, from the perspective of the political view, be considered primary bearers of some human-rights responsibilities in such cases?

To answer this question, we need to remind ourselves of which features, on the political view, make certain agents appropriate primary bearers of human-rights responsibilities—i.e., *capacity* and the *authority-plus-sovereignty* package—and ascertain whether TNCs exhibit them.

##### (i) Capacity

As the foregoing discussion shows, the satisfaction of the capacity criterion on the part of TNCs is rather unproblematic. In a multiplicity of different circumstances—including in areas of weak or, even more so, failed statehood<sup>51</sup>—companies have the ability both to undermine and to secure access to the objects of some key human rights for those falling 'within their spheres of influence'—an expression I will make more precise later in the text.<sup>52</sup> In other words, TNCs are often able to fill at least part of the capacity gap left by weak states. Things appear less straightforward, though, once we turn to the second feature human-rights duty-bearers must exhibit: the authority-plus-sovereignty package.

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<sup>47</sup> For forceful defences of this conclusion, see Ratner, 'Corporations and Human Rights', Wettstein, *Multinational Corporations and Global Justice*, and Karp, *Responsibility for Human Rights*.

<sup>48</sup> For a comprehensive discussion of corporate complicity in human-rights abuses, see Wettstein, *Multinational Corporations and Global Justice*, 295–305.

<sup>49</sup> Similar considerations apply if governments outsource responsibility to TNCs.

<sup>50</sup> For extensive discussion, see Karp, *Responsibility for Human Rights*.

<sup>51</sup> For the latter, see David Karp, 'Transnational Corporations in "bad States": Human Rights Duties, Legitimate Authority and the Rule of Law in International Political Theory', *International Theory* 1, no. 1 (2009): 87–118.

<sup>52</sup> Ratner, 'Corporations and Human Rights'.

(ii) Authority-plus-sovereignty

In the case of TNCs, the ‘package’ may seem to be missing. In our moral universe, TNCs are not sovereign authorities. Instead, they are voluntary ventures, speaking on behalf of private interests, and devoted to the pursuit of profit. Moreover, instead of being themselves sovereign, they are fit for being regulated by sovereign entities, who are in turn the primary bearers of human-rights responsibilities.

TNCs are transnational ‘private associations’ in relation to the state system. As John Rawls explains, private associations pursue particularistic ends, in line with their members’ wills.<sup>53</sup> The pursuit of their ends ought to be constrained by the state, to secure the demands of justice, a subset of which is what we call human rights. But it would be contrary to the commitment to respect for persons underpinning (justice and) human rights to require private voluntary associations to become themselves primary vehicles of justice; to consider the realization of justice as one of their *goals*. There exists a ‘division of moral labour’ between public institutions and private associations, one that is integral to the aim of justice: giving each the space to pursue his or her own conception of the good.<sup>54</sup>

As recently argued by Chiara Cordelli, applying standards of public justice to private institutions would conflict with their specific purpose.<sup>55</sup> For example, it would be contrary to the point and purpose of a women’s only association to practice non-discrimination—which is what justice otherwise requires—and allow men to join.<sup>56</sup> To the extent that justice and human-rights protection are meant to enable individuals freely to pursue their goals, it is self-defeating to force them to *pursue* human-rights protection in their private capacities.

If securing human rights were the job of TNCs, so the argument goes, these would no longer be TNCs, they would altogether change their nature. They would cease to be the expression of particularistic interests and ends, and become vehicles of justice.<sup>57</sup> And if free enterprise is an institution we should value both intrinsically—as an expression of individual freedom—and instrumentally—as a means of creating wealth—then TNCs should not be burdened with responsibilities to protect and fulfil human rights.

In light of the above, the problem for the political view is that, in some circumstances, *states have a capacity gap*—hence they cannot act as the primary bearers of human-rights responsibilities—while *TNCs* appear to exhibit *an authority-plus-sovereignty gap*—hence, even if TNCs are capable of both preventing and securing access to the objects of some human rights, moral reasons are lacking for regarding them as primary bearers of human-rights obligations.

This conclusion may be disappointing, but it also shows why the popular slogan ‘with power comes responsibility’ is insufficient to establish the role of TNCs

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<sup>53</sup> John Rawls, *Political Liberalism: Expanded Edition* (New York: Columbia University Press, 2013), Lecture VII.

<sup>54</sup> For discussion see Samuel Scheffler and Véronique Munoz-Dardé, ‘The Division of Moral Labour’, *Proceedings of the Aristotelian Society, Supplementary Volume* 79, 1 (2005): 229–84.

<sup>55</sup> Chiara Cordelli, ‘The Institutional Division of Labor and the Egalitarian Obligations of Nonprofits’, *Journal of Political Philosophy* 20, 2 (2012): 131–55.

<sup>56</sup> For a related discussion of the Rawlsian idea that different regulative principles apply to different contexts/practices, see Meckled-Garcia, ‘On the Very Idea of Cosmopolitan Justice: Constructivism and International Agency’, *Journal of Political Philosophy* 16, no. 3 (2008): 245–71.

<sup>57</sup> Cf. the remarks about agents’ public vs private nature in Karp, *Responsibility for Human Rights*, chap. 6.

as primary responsibility-bearers for human-rights protection. As argued earlier, power (capacity) is necessary but not sufficient for primary responsibility: authority-plus-sovereignty must also be present, at least from the perspective of the political approach to human rights. Unless TNCs' (apparent) authority-plus-sovereignty gap can be closed, the political view will be unable to identify them as primary bearers of human-rights duties.

### 5. Bridging the Authority-plus-Sovereignty Gap

As several contributors to the literature on business and human rights—such as Steven Ratner, Florian Wettstein, and David Karp—have pointed out, although our standard conceptualization of TNCs classifies them as 'private associations', their *de facto* political role in contexts of weak statehood warrants a change in perspective.<sup>58</sup> In certain contexts, some TNCs have both some *de facto* authority and some *de facto* sovereignty (i) vis-à-vis a given set of people and (ii) relative to important issue areas. In turn, as explained in previous sections, the existence of these *de facto* privileges can only be justified if they are consistent with securing the fundamental rights of those within TNCs' spheres of influence. Let me elaborate on these points.

First, like states, powerful corporations in areas of weak governance are ruling institutions vis-à-vis *at least* their employees, who may be regarded as full members: they set some of the most consequential ground-rules affecting their existence, and enforce them.<sup>59</sup> They define a good number of aspects of their workers' lives, and their totalizing dimension contributes to their being perceived as the 'only authority around'. In the words of Florian Wettstein, 'an increasing number of people spend well over 75 percent of their active time ... under the *direct rule* and supervision of

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<sup>58</sup> Ratner, 'Corporations and Human Rights'; Wettstein, *Multinational Corporations and Global Justice*; Karp, *Responsibility for Human Rights*. Ratner, Wettstein and Karp emphasize aspects of TNCs that render them relevant political actors. Their starting point, though, is not the political conception of human rights, or at least not the version of the political conception I have sketched here. Wettstein, for instance, argues that human rights '...make their normative claim for unconditional respect not merely vis-à-vis governments but against everyone' (see Wettstein, *Multinational Corporations and Global Justice*, 285). He then argues that the *de facto* political power possessed by corporations—i.e., their ability to affect the basic functioning of society in a variety of ways, without being effectively challenged, hence acquiring a position of authority—justifies placing primary responsibility for human rights on them. See his 'Beyond Voluntariness, Beyond CSR: Making a Case for Human Rights and Justice', *Business and Society Review* 114, no. 1 (2009): 125–52, esp. 141–142. Karp too thinks that 'all moral agents have responsibilities both to *respect* human rights and also to *refrain from harming* human rights' (see his *Responsibility for Human Rights*, 5, added emphases). But when it comes to responsibilities to *protect and provide for* human rights, he defends what he calls the 'publicness' approach. This approach grounds the human-rights responsibilities of transnational corporations in their taking up a public, authoritative role through providing public goods for certain groups of people. See Karp, *Responsibility for Human Rights*, 148. For related discussion, see also O'Neill, 'Agents of Justice'.

<sup>59</sup> This also explains why, just like governments, TNCs are deemed appropriate subjects of public accountability demands. See Mathias Koenig-Archibugi, 'Transnational Corporations and Public Accountability', *Government and Opposition: An International Journal of Comparative Politics* 39, no. 2 (2004): 234–59. In the main text I say 'at least' because it is an open question, and one I will not explicitly address here, whether local populations affected by TNCs but not 'directly under their rule' may still count, in some weaker sense, as falling under their authority. To the extent that TNCs *require and enforce* non-obstruction with their operations on the local populations, they may be said to exercise some degree of authority over them as well—with the associated normative consequences. Cf. the discussion of the position of outsiders vis-à-vis the state in Arash Abizadeh, 'Democratic Theory and Border Coercion No Right to Unilaterally Control Your Own Borders', *Political Theory* 36, no.1 (2008): 37–65.

the corporation'.<sup>60</sup> If a local employee of a TNC is supposed to work 16 hours every day for the corporation, then a very large portion of their time will indeed be spent under the corporation's rule. And to the extent that supervisors consider employees under an obligation to obey the company's rules, and have the means to enforce those rules, the corporation in question may be said to have *de facto* authority at least over its local employees with respect to important areas of their lives.

If *de facto* authority is associated with human-rights responsibilities in the case of states, then it is not clear why it should not also be so associated in the case of TNCs.<sup>61</sup> Again, by parity of reasoning, when these responsibilities are not discharged, a distinctive affront to human dignity occurs. The only or main 'authority around', the main official structure governing people's lives in a certain area, conveys a systematic lack of recognition of its subjects' humanity.

A critic might object that this fails to acknowledge a very significant difference between states and TNCs: while membership in the former is, typically, non-voluntary, membership in the latter is acquired through an act of will, such as signing a contract. This, it might be thought, has important implications for the moral standards we apply to states and TNCs. States' non-voluntariness places them under stringent obligations to behave in ways that all members could accept, such as by respecting human rights. Since membership in TNCs is voluntary, however, we can presume that members have *accepted* their terms of operation, which in turn exempts them from being subject to stringent human-rights requirements.

There are two possible lines of response to this objection. The first questions the link between non-voluntariness of membership and human-rights obligations. The suggestion that, for an agent A to have human-rights obligations towards another agent B, B must be subject to A's rule *non-voluntarily* has counter-intuitive implications also in the case of states. Although it is true that most citizens have not consented to becoming members, there are instances in which membership is consensual. Consider immigrants who, without being under duress, freely decide to move to a different country and acquire citizenship there. Imagine, say, an Italian citizen, Mario, moving to Canada for his love of Canadian nature and becoming a Canadian citizen. It would seem odd to suggest that, since his membership of Canada is voluntary, the Canadian state has no human-rights duties vis-à-vis him. If this is correct, then it is mistaken to argue that non-voluntariness of subjection is necessary for one to hold human rights against an authority.

But even setting this argument aside, and holding on to the thought that non-voluntariness matters to human-rights duties, we could still defend the conclusion that TNCs wield human-rights responsibilities vis-à-vis *the most vulnerable of their members*. This is because, while it is plausible to say that shareholders, CEOs, and high-ranking employees voluntarily join TNCs, in areas where states are weak and poor, factory workers must often join TNCs' production lines non-voluntarily, i.e., due to the 'lack of acceptable alternatives'.<sup>62</sup> It is better to be employed in sweatshop conditions than to starve.<sup>63</sup> To the extent that local employees of TNCs may not be seen as voluntarily consenting to work for them—i.e., their consent is given under

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<sup>60</sup> Wettstein, *Multinational Corporations and Global Justice*, 214, added emphasis.

<sup>61</sup> See Karp, *Responsibility for Human Rights*, 150.

<sup>62</sup> Serena Olsaretti, *Liberty, Desert and the Market: A Philosophical Study* (Cambridge: Cambridge University Press, 2004), chap. 6.

<sup>63</sup> Ratner, 'Corporations and Human Rights', 509.

duress, because all alternatives are unacceptable—then just like states in relation to most of their citizens, TNCs qualify as comprehensive non-voluntary authorities towards them. And *if* carrying human-rights obligations is conditional on non-voluntariness of subjection, then, in relation to at least some of those falling under the authority of TNCs, this condition is met.

In addition to *de facto* authority, in areas of weak statehood, TNCs have *de facto* sovereignty, i.e., *de facto* immunity from external interference on the part of the state within which they operate.<sup>64</sup> Here too, as with states, this *de facto* immunity may only be legitimate to the extent that it is consistent with responsibility for an adequate set of human rights. From a political perspective on human rights, then, there seems to be no normatively consistent rationale for treating states as in-principle bearers of duties correlative to human rights, but not TNCs, when the latter exhibit the authority-plus-sovereignty package. TNCs' avoidable failures to secure access to some fundamental goods for their members are also violations of human rights, which rightly trigger international concern.

In sum, whenever TNCs are functionally sufficiently state-like, their *de facto* authority and sovereignty, just like those of states, can only be legitimate if they are accompanied by primary human-rights responsibilities. And TNCs' violations of human rights both carry a special harm to dignity and appropriately generate international concern.<sup>65</sup>

## **6. Objections: How much responsibility?**

I have suggested that, from the perspective of the political approach to human rights, TNCs may be appropriately regarded as primary bearers of human-rights duties. But regarding TNCs as primary bearers of human-rights duties does not yet tell us how extensive their responsibilities for human rights are. This question might raise two opposite worries: that the view I have sketched requires either too much or too little of TNCs. In what follows, I consider each worry in turn. In doing so, I further elaborate on the nature of TNCs' human-rights responsibilities.

### *6.1 Over-demandingness*

It might be argued that placing primary human-rights responsibilities on TNCs requires too much of them. After all, TNCs are commercial enterprises, and trying to secure human rights (at least) for their local employees in areas of weak statehood may make them commercially unviable.

When it comes to the issue of how demanding TNCs' human-rights duties are, two broad views are available. On what one might call the 'maximalist view', TNCs should have the same duties as capable states; the protection of human rights should be their main goal. TNCs operating in areas of weak governance would have to act so as to provide access to basic goods such as shelter, food, sanitation, medical assistance, and education to those falling within their 'jurisdiction'. In other words, from a maximalist perspective, TNCs would have to take up the job of the state in the relevant areas. What is more, if the 'correct' list of human rights also included entitlements to political participation—something on which I have remained agnostic here—TNCs would have to become internally participatory, giving all those falling

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<sup>64</sup> See Wettstein, *Multinational Corporations and Global Justice*, chap. 7, for discussion.

<sup>65</sup> Cf. Ratner, 'Corporations and Human Rights'.



under their authority something like a right to vote on their internal organization, regulations, and policies.<sup>66</sup>

The maximalist view is probably the one a critical reader is concerned about, and rightly so. This view is unappealing for two reasons: one concerns its consequences, the other its in-principle moral appropriateness (independently of consequences). First, placing such extensive responsibilities on TNCs could, in the long run, be potentially counter-productive, at least on the plausible assumption that it is desirable for the state itself to bear human-rights obligations. States, after all, do not have private interests, at least vis-à-vis their citizens. Instead, ‘their job’ is to provide a background framework within which citizens’ private interests can be pursued. Unlike states, powerful corporations do have private interests, and are thus, by their very nature, less well suited to taking up human-rights responsibilities than states are.<sup>67</sup> Forcing TNCs to acquire the entire set of demanding state-like responsibilities would thus make it harder for states themselves to develop the necessary capabilities to eventually regain full primary responsibility for human rights. If a situation in which primary responsibility for human rights is in the hands of states is preferable to one in which such responsibility is shared between states and corporations, we should be sceptical of the maximalist view.

Second, although some TNCs may have the ‘crude capacity’ to secure *all* of the objects of human rights for those within their jurisdiction (i.e., *at least* local employees), their having the capacity is insufficient to establish their being under a duty to do so. Capacity is only necessary for duty. As we have seen, in addition to capacity, considerations about an agent’s morally salient features also matter.<sup>68</sup> In this respect, I have pointed out that, in some circumstances, TNCs are relevantly state-like in that they exercise inescapable authority, and act as sovereigns with respect to (i) a certain set of individuals and, crucially, (ii) a certain set of important dimensions of their lives. These considerations must be taken into account when thinking about the human-rights duties borne by TNCs. This leads me to consider the second account of the demandingness of the human-rights duties of TNCs.

On what I call the ‘proportional view’, these duties need to be circumscribed to the *areas of authority* distinctive of TNCs’ operations. These plausibly include labour standards, environmental protection, and the provision of security—though an accurate account of the relevant issue areas can only be given on a case-by-case basis. Relative to these areas of authority, TNCs are primary bearers of human-rights responsibilities vis-à-vis their local employees. This means that they have duties to respect, protect and fulfil their human rights in these areas. Respect for human rights requires that TNCs abide by the kinds of constraints that the legal system of a human-rights respecting state would place on them. Such constraints would plausibly feature prohibitions on child labour, on tolerating inhumane working conditions, on polluting and degrading the environment, on adopting brutal security practices and so forth. In addition, TNCs also have responsibilities to do more—i.e., to protect and fulfil human rights—by trying to foster an environment where decent labour standards are respected, where employees’ physical safety is protected, where their access to health is promoted.

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<sup>66</sup> Thanks to Anca Gheaus for raising this point.

<sup>67</sup> Thanks to Caleb Yong for pointing this out to me.

<sup>68</sup> Karp, *Responsibility for Human Rights*.

That said, even if rather demanding, the duties just discussed would not require TNCs to become, all of a sudden, the main education, housing, and welfare providers within a particular area. Such heavy, comprehensive requirements are not appropriately tailored to the significant, but still limited, authority TNCs exercise. Given TNCs' circumscribed authority, and their nature as commercial enterprises, placing the full set of demanding human-rights duties on them would go beyond what they could be *reasonably expected to do*.

As suggested by Steven Ratner, TNCs are relevantly state-like in some respects, but not in all respects, and their human-rights duties should reflect this fact.<sup>69</sup> Most importantly, their duties to *protect and fulfil human rights* would not have to be so demanding as to undermine their commercial viability. After all, most duties are conditional on their cost not being excessive for their bearers; and what counts as excessive costs typically depends on the bearer in question. Most would agree, though, that placing duties on agents so demanding as to potentially extinguish the agents themselves would fail to meet the 'reasonable costs' caveat, under any specification of it. If this is right, then it is arguably plausible to consider TNCs' duties to protect and fulfil human rights conditional on their continued commercial viability: a TNC that is not commercially viable would simply cease to exist.<sup>70</sup> What is more, demanding so much of TNCs as to making them commercially unviable could have adverse effects on local populations who rely on the employment opportunities offered by TNCs for their subsistence.

In sum, on the 'proportional' view, content-wise, TNCs would have more positive responsibilities vis-à-vis their employees—i.e., their 'subjects'—than they would under a human-rights protecting state; yet their human-rights responsibilities would not be as demanding as those of a well-functioning state, given that: (i) the issue areas on which they would apply would be fewer and (ii), unlike the duties to 'protect and fulfil' falling onto states, TNCs' would be constrained by considerations of commercial viability.

The status of TNCs' duties, and the appropriate reaction to their violation, differs depending on whether a human-rights protecting state exists or not. In the former case, failure to discharge these responsibilities would qualify as a violation of law, and would appropriately trigger intervention on the part of the state. If a capable state, however, failed to pass or enforce laws prohibiting the relevant repugnant behaviours, *that state itself* would be a primary bearer of human-rights responsibilities for the said violations. In the latter case—i.e., in areas of weak governance—TNCs that failed to constrain their behaviour in accordance with human-rights requirements, within their spheres of authority, would be correctly classified as human-rights violators, and directly accountable to the international community.

Finally, to further dispel the over-demandingness worry, let me note, following David Karp, that it is entirely up to TNCs to decide whether to operate in areas of weak governance, where they would acquire *de facto* authority and sovereignty, and hence the relevant human-rights duties.<sup>71</sup> Nobody forces TNCs to act as agents with some primary responsibilities for human rights. The only burden placed on them is a prohibition on taking advantage of the lack of state regulation in weak governance zones, and perpetrate human-rights abuses and neglect as a result.

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<sup>69</sup> Ratner, 'Corporations and Human Rights', 493, 511ff.

<sup>70</sup> Thanks to Suzy Killmister and Helen Irving for helpful discussion of this point.

<sup>71</sup> Karp, *Responsibility for Human Rights*, 149.

## 6.2 Under-demandingness

Others might worry that, even if the political view is capable of including TNCs within the group of primary bearers of the duties correlative to human rights, this is not enough. TNCs' duties are limited to their capacities and areas of authority, which in turn suggests that they won't be able to secure all human rights for everyone living in areas of weak statehood. For example, what about those who are not employees and so are not directly under the authority of TNCs, and yet, living in the vicinity of their industrial plants, are deeply affected by their operations? And what about many others who lack secure access to the objects of their human rights? Although the political view can *partly* respond to the worry concerning human beings whose human rights have no primary duty bearers, it is still likely to leave some people without primary human-rights protection.

A few points can be made in response. First, recall that my conclusion is stated in modest terms—I have argued that *at least* local employees have human rights against their TNC-employer. This does not exclude the possibility of extending the scope of human-rights holders further, if the relevant authority relationships between the individuals in question and TNCs obtain. Second, while the argument offered here has focused on TNCs, it is in principle extendable to other agents as well, as long as they exhibit capacity and the authority-plus-sovereignty package. Even if TNCs are not sufficient to secure all the human rights of everyone living in areas of weak statehood, other agents might be in a material and moral position to fill the gaps.

Third, TNCs, just like every other agent part of the international community, have general duties to do what they reasonably can to bring about effective authoritative institutions capable of securing human rights.<sup>72</sup> International reforms strengthening state sovereignty, the establishment of more equitable trade and financial institutions, and of an effective system of human-rights monitoring, are everyone's duty. Yet, these are duties to bring about human-rights respecting capacity, and as such, they cannot be *correlative to human rights* strictly understood.<sup>73</sup>

The problem, then, is not that the political view is insufficiently demanding. Rather, the problem is that, as things are, we lack institutions with the capacity to guarantee the fulfilment of human rights worldwide.

## 7. Conclusion

In this chapter, I have offered a sympathetic reconstruction of the political view on human rights, and considered whether it has conceptual room for conceiving of TNCs as primary bearers of human-rights duties. To the extent that the political view is associated with a purely state-based account of primary human-rights responsibilities, it is considered unable to account for the human-rights duties of non-state actors. A deeper inquiry into the moral underpinnings of the political view has revealed that what makes states appropriate primary bearers of human-rights responsibilities is their possession of the authority-plus-sovereignty package (coupled with their capacity to secure human rights). Drawing on the literature on the moral responsibilities of

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<sup>72</sup> On the idea of a natural duty to support and create just institutions, see Rawls *A Theory of Justice*, 293–300. For its application to the international context, cf. Shue, 'Mediating Duties', *Ethics* 98, no. 4 (1988): 687–704.

<sup>73</sup> See Valentini, 'Human Rights, Freedom, and Political Authority'.

corporations, I have suggested that TNCs in areas of weak governance meet both the ‘capacity’ and ‘authority-plus-sovereignty’ conditions. I have thus concluded that the political view has the conceptual resources to account for the primary human-rights obligations of TNCs. While my discussion has cast some favourable light on the political view, it has not provided a full defence of it. Such a defence would require a systematic comparison with competing views, for which I do not have the space here. Still, I hope that the chapter has shown that the political view has more conceptual and normative resources than ordinarily thought.